

Application No: 20/5479C

Location: 39, ELM DRIVE, HOLMES CHAPEL, CW4 7QA

Proposal: Partial change of use from residential to a mixed use for residential and childcare on domestic premises (re-submission of planning application reference 20/2742C)

Applicant: Mrs Foden

Expiry Date: 02-Apr-2021

SUMMARY

This application seeks retrospective planning permission for the partial change of use from C3 to combined C3 and D1 (*childcare on domestic premises*) at 39 Elm Drive in Holmes Chapel

The childcare nursery business (*Little Monkeys*) operation at this residential property has gradually intensified over time since 2014 until it was found to require planning permission by the Council's Planning Enforcement Service following an investigation. There were 6 children being looked after and this has risen to up to 12 children with the facility for a pre-school and an after-school club for an additional 5 children.

In respect of the matter of the impact of the proposals on the amenity of neighbouring properties in terms of noise and disturbance, the key concern with regard to the previous application was the noise generated by use of the rear play area and that this cannot be controlled.

This has now been sufficiently addressed and it is considered that, on balance, the application proposals would not result in any significant loss of amenity, through the careful and responsible management of the operations on site restricting outdoor play to a limited number of children and limited hours per day.

The proposals provide adequate parking and the number of visitors to the premise would not have an unacceptable impact on highway safety.

SUMMARY RECOMMENDATION

APPROVE subject to planning conditions

REASON FOR REPORT:

This application was referred to Southern Planning Committee at the request of Cllr Les Gilbert for the following reason;

“The application is a re-submission of 20/2742C which was called in but subsequently refused under delegated powers for the following reasons:-

“The proposed use would cause unacceptable levels of noise and disturbance to the detriment of the amenities of the occupiers of nearby residential property. The approval of the development would therefore be contrary to the national planning policy guidance, CELPS Policies SD2, SE1, SE2 and CBLP Policy GR6 insofar as these policies strive to protect the living conditions of neighbouring residents.”

The application offers conditions which are intended to overcome the reasons for refusal. Consideration is required of the following:-

- 1. Whether the proposed conditions are sufficient for this purpose.*
- 2. If so, whether they are enforceable.*
- 3. Whether CE Highways, in the absence of local knowledge, have under-estimated the implications of the absence of off-street drop-off, pick-up and parking facilities for the use of four staff and parents of up to twelve children.”*

PROPOSAL:

This application proposals seeks retrospective planning permission for the partial change of use from C3 to combined C3 and D1 (childcare on domestic premises) at 39 Elm Drive in Holmes Chapel.

The business is owned by the applicant and her daughter and they have a total of two full-time employees who work varied shifts from Monday to Friday, only three members of staff work at any one time.

Currently as a result of the circumstances surrounding Covid-19 and the impact on the business, only the business owners and one child care assistant are currently working, with the remaining members of the staff on furlough leave, this allow for business continuity and maintaining the correct child to staff ratios.

The maximum number of children cared for at the site is a maximum of 12 at any one time.

DESCRIPTION OF SITE AND CONTEXT:

The application site is a detached two-storey dwelling on a modern housing estate, so the surrounding area is predominantly residential in character.

The property fronts onto Elm Drive and it has a private garden area situated to the rear and a hard surfaced driveway covering most of the frontage with fringe landscaping along the side boundaries, which can accommodate up to four private cars (two rows of two in a 'nose to tail' type layout).

The application site is within the Settlement Zone Line of Holmes Chapel.

RELEVANT HISTORY:

The application is a re-submission of 20/2742C which was called in but subsequently refused under delegated powers for the following reasons:-

“The proposed use would cause unacceptable levels of noise and disturbance to the detriment of the amenities of the occupiers of nearby residential property. The approval of the development would therefore be contrary to the national planning policy guidance, CELPS Policies SD2, SE1, SE2 and CBLP Policy GR6 insofar as these policies strive to protect the living conditions of neighbouring residents.”

NATIONAL & LOCAL POLICY:

National Policy:

National Planning Policy Framework
National Planning Practice Guidance

Cheshire East Local Plan Strategy (CELP):

The relevant policies of the CELPS are listed below: -

Policy MP1 – Presumption in Favour of Sustainable Development;
Policy SD1 – Sustainable Development in Cheshire East;
Policy SD2 – Sustainable Development Principles;
Policy PG1 – Overall Development Strategy;
Policy PG2 – Settlement Hierarchy;
Policy SE1 – Design;
Policy SE2 – Efficient Use of Land;
Policy EG1 – Economic Prosperity;
Policy CO1 – Sustainable Travel and Transport; and
Appendix C – Parking Standards.

Congleton Borough Local Plan First Review (CBLP):

Following the adoption of the CELPS, a number of policies of the CBLP have been saved. The relevant saved policies of the CBLP are summarised below;

Policy GR6 – Amenity and Health; and
Policy GR9 – Accessibility, Servicing and Parking Provision.

The Holmes Chapel Neighbourhood Plan (HCNP):

The Holmes Chapel Neighbourhood Plan (HCNP) referendum was held on the 9 March 2017. The plan was made on the 18 April 2017. The relevant policies of the PNP are summarised below: -

Policy CW4 – Child Care Facilities;
Policy TT1 – Promoting Sustainable Transport; and
Policy TT3 – Parking.

CONSULTATIONS (External to Planning):

Jodrell Bank:

No comments received.

Head of Strategic Infrastructure:

No objections, as this is a quiet residential street that with no restrictions on parking on both sides of the road.

Environmental Protection:

The Council's Environmental Protection Section has been made aware of this site due to them operating without permission. The main concerns that have been raised in the past have been noise from children playing and the vehicles dropping-off the children.

With regards to both these points the Council's Environmental Protection do not regulate vehicles on the highway and statutory nuisance legislation do not allow for the Council to tell children to be quiet.

The Council's Environmental Protection Section has reviewed the planning application and the Conditions that they have proposed to reduce the impact of noise to local residential properties. With this in mind they have no objections to the application.

VIEWS OF THE PARISH COUNCIL:

Holmes Chapel Parish Council:

Holmes Chapel Parish Council considered this application and appreciates the value of childcare provision and recognises the need for more provision in the village, however they have objected to this application for the following reasons:

1. The Parish Council considers the care of 12 children in this setting to be too many and inappropriate for both the size of building and the location in a residential area. The premises are not conducive to this level of childcare as well as serving as a residential property.
2. We do not consider that this application adequately addresses the reasons provided for refusal from Cheshire East and we support the original refusal from Cheshire East to this application (ref 20/2742C).

REPRESENTATIONS:

The application has been duly advertised by means of direct neighbour notification.

Twenty letter of support from residents and customers have been received and their comments can be summarised as follows: -

- They provide great and much needed childcare to the area of which we use; and
- We have had no problems with their current operation and hope for continued success for the future.

Three letter of representation has been received from residents have been received and their objections can be summarised as follows: -

- Inadequate parking provision;
- Highway Safety;
- Noise Nuisance / Pollution; and
- Insufficient information submitted with the application in that there has not been sufficient detail provided on child numbers and the ratio to staff, a management plan for the inside and outside areas of the property, a transport statement or justification for reduced parking standards; and no noise assessment.

OFFICER APPRAISAL

Procedural Matters:

Since the original application was submitted the Use Classes Order has been amended so that Use Class D1 has been changed to use class E(f). However as the site retains a residential use it is excluded from use Class E(f) and the development is considered to be a Sui Generis use.

Principle of Development:

The childcare nursery business that is in operation at this residential property trades under the name 'Little Monkeys'. The application is 'Retrospective', and the business has gradually intensified over time since 2014 until it was found to require planning permission by the Council's Planning Enforcement Service following an investigation.

Childcare is currently provided for up to a maximum of nine children at any one time, aged between nine months and three years old, up to pre-school age. However, the application proposals seek to increase to number of children. There would be a maximum of twelve children cared for on site at any one time.

This application was refused permission on 20 October 2020. This application provides additional information to overcome the concerns raised.

The main issues remaining in this case are:

1. Whether the increase in the number of children attending the day nursery has adversely affected the living conditions of surrounding residents by reason of noise and disturbance; and
2. Whether the proposals provide adequate parking and would the number of visitors to the premise unacceptably impact highway safety.

Residential Amenity:

The proposal is situated in a residential area with existing dwelling houses situated on both sides and opposite. The use of the property for childcare purposes has increased over time and is now at a much greater level and scale than a standard Childminder.

The Local Planning Authority accepts that Childminding can be an acceptable ancillary use in a residential area and can provide a useful and helpful facility to local residents with minimal adverse impact.

This business is now however operating on a commercial basis, similar to a Children's Day Nursery.

One of the most common problems arising from day nurseries is noise disturbance to neighbours. Nurseries with a larger number of children are better suited to large buildings with extensive grounds (they are usually associated with other schools).

Use of the outside space:

The sole reason for refusal of the earlier application was that the proposed use would cause unacceptable levels of noise and disturbance to the occupiers of nearby residential property. This was in particular reference to the noise resulting from children playing in the rear garden.

There is no acoustic report submitted with the original or this revised application, therefore the Council has no objective means of quantifying the noise impacts across the day. Nevertheless, it is logical to assume that the volume will vary according to how many children are playing in the outdoor space.

The applicants have stated that the use of the outside space is currently limited to two hours per day, with a one-hour morning play session and a one-hour afternoon play session.

It is accepted that these outdoor play sessions form a crucial part in the structure of the children's day.

In the morning outdoor play will not start before 10am and in the afternoon outdoor play will resume from around 3pm.

Historically all nine children have had their outdoor play time together.

As part of the application proposals, it is proposed that the number of children outside at any one time would be restricted to six children.

In addition to the outdoor play space, the business will continue to use other open spaces including the park to the rear of the property.

The applicants have stated that it is rare that children are taken into the garden in the winter months (due to the damage to the turf) instead they go further afield to local parks. On rare occasions they are taken into the garden for an hour in the morning.

The applicants have also stated that, during the spring and summer, day care children will play outside in groups of six in the morning. In the afternoon, day care children and after-school children will play outside in groups between 3:30pm and 4:00pm and between 4:30pm and 5:30pm.

In addition, to the childminding service provided, the business also offers wrap-around care in the form of breakfast and after school care (where capacity allows), with the children attending the nearby Hermitage Primary School and Happy Days Pre-School. The wrap-around care is provided for an additional four children, during term-time only. Overall, the applicants have stated that the total number of children on site will be restricted to twelve at any one time.

Conditions:

There remains concerns, given the small nature of the rear garden and close proximity of neighbouring properties, that unacceptable disturbance may arise from the numbers of children playing outdoors, particularly simultaneously and in fine weather when the neighbours are most likely to be enjoying their gardens.

There remains insufficient technical evidence to demonstrate that the increase in numbers has not had an unacceptable adverse effect on the living conditions of residents.

That being said, Conditions have been suggested which could be used to ensure good management practices. These being:

1. Development in accord with approved plans

The development hereby approved shall be carried out in total accordance with the approved plans numbered: -

- Site Location Plan (2583/100); and
- Existing Floor Plan (2583/101);

2. The house of use restricted to 0700 to 1800 Monday to Fridays.

The use shall not be open to children attending the day care facility outside the following hours 0700 to 1800 Monday to Fridays and not at any time on Saturdays, Sundays and Bank or Public Holidays.

3. Maximum number of children restricted to 12.

At no time during the hours of operation specified in Condition 2 above shall there be more than 12 children attending the day care facility.

4. Operating Hours of the garden.

The rear outside garden shall only be used for children's play between the hours of 10:00 and 12:00 and 15:00 and 18:00 Monday to Fridays and not at any time on Saturdays, Sundays and Bank or Public Holidays.

5. *Maximum number of children in the garden.*

At no time during the hours of operation specified in Condition 4 above, the number of children in the rear outside garden area shall be limited to a maximum of 6 children at any one time.

Given the compact nature of the site, the Council would need to have the necessary confidence that these suggested Conditions are a reliable mechanism, to mitigate any harmful noise impacts. It is noted that any outdoor play would be fully supervised at all times.

Having considered these proposed Conditions in light of the Planning Practice Guidance (PPG), it is accepted that they are commonly used and meet the test for Conditions.

In terms of a fall-back, it is noted that if the applicants were to reduce their operation to a level which would not require Planning Permission, there would be the potential for six children playing outdoors for an unrestricted amount of time during the day. The current application provides an opportunity through the imposition of Conditions to limit not only the number of children outdoors but also the hours of outdoor play, further reducing any potential disturbance to neighbouring properties.

Temporary Permission:

Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.

In respect of the potential for a temporary permission, the applicant has stated that their preference is for a permanent permission as this offers them the security they need in terms of their ability to offer places for children and security to parents, as well as certainty for their employees.

Residential Amenity Conclusion:

Bearing all the above in mind, it is considered, on balance, that the planning applications would not conflict with Local Planning Policies SD2, SE1, SE2 and GR6 insofar as these policies strive to protect the living conditions of neighbouring residents.

Highway Safety, Access and Parking:

Residents have raised concerns regarding parking and highway impacts.

The increase in the number of children attending the nursery will almost certainly have resulted in additional vehicle trips to the site. However, pick-ups and drop-offs are staggered and there is provision within the site for two visitor parking spaces, together with unrestricted kerbside parking in the immediate vicinity.

The applicant estimates that only half of children travel by car and likewise several members of staff make the journey to work on foot. Whilst the Council have no reason to doubt the reports of inconsiderate and illegal parking by parents, Elm Drive has the capacity to safely accommodate the traffic generated by the development.

Overall it is remains considered that the proposals would not cause an unacceptable impact on highway safety and the residual cumulative impacts on the road network would not be severe enough to warrant refusal in line with the tests in Paragraph 109 of the NPPF.

CONCLUSIONS:

The applicants provide a childminding service which is a well-established and responsibly run facility, supported by local parents. As a result of the high-quality service provided, the business has grown in recent years, culminating in the requirement for the current planning application.

This well-supported business, at the proposed level, should ideally be undertaken from more appropriate commercial premises in a less sensitive location. However, it is accepted that the application proposals provide much needed childcare within the Holmes Chapel area. The application site is sustainably located, with both staff and attending children accessing the site by a mix of private vehicle, public transport and by foot. Adequate parking provision is available for staff and it is considered that the proposals would not result in any harm to highways safety as a result of the pick-up and drop-off of children.

In respect of the matter of the impact of the proposals on the amenity of neighbouring properties in terms of noise and disturbance, the key concern with regard to the previous application was the noise generated by the use of the rear play area and that this cannot be controlled. This has now been sufficiently addressed and it is considered that, on balance, the application proposals would not result in any significant loss of amenity, through the careful and responsible management of the operations on site restricting outdoor play to only a limited number of hours per day.

The proposals also support the wider sustainability and community ambitions of both the Development Plan and the Framework, providing a vital community facility and through the development of the business in recent years providing local employment opportunities.

RECOMMENDATION:

APPROVE with the following conditions.

- 1. Approved Plans.**
- 2. The house of use restricted to 0700 to 1800 Monday to Fridays.**
- 3. Maximum number of children restricted to 12.**
- 4. The rear outside play area shall only be used for children's play between the hours of 10:15 and 18:00.**
- 5. The number of children playing the garden to be restricted to a maximum of 6 at any one time.**

In order to give proper effect to the Board's/Committee's intentions and without changing the substance of the decision, authority is delegated to the Head of Planning (Regulation), in consultation with the Chair (or in his absence the Vice Chair) of Southern Planning Committee, to correct any technical slip or omission in the wording of the resolution, between approval of the minutes and issue of the decision notice.

