

## COMMITTEE REPORT

**Date:** 2 February 2017      **Ward:** Micklegate  
**Team:** Major and      **Parish:** Micklegate Planning  
Commercial Team      Panel

**Reference:** 16/02574/FUL  
**Application at:** 105 Bishopthorpe Road, York, YO23 1NY  
**For:** Change of use of part of dwelling (use class C3) to mixed use dwelling and child minders (use class C3/D1)  
**By:** Mrs McNichol  
**Application Type:** Full Application  
**Target Date:** 3 January 2017  
**Recommendation:** Refuse

### 1.0 PROPOSAL

1.1 The application seeks permission to formally change the use of part of the dwelling to a child minders following the previous granting of permission for a two storey side extension.

1.2 The application is reported to sub-committee at the discretion of the Assistant Director.

### RELEVANT HISTORY

16/01465/FUL - First floor side extension, single storey front extension and loft conversion with dormer to rear - Approved 08.08.2016

### 2.0 POLICY CONTEXT

2.1 Policies:

2005 Draft Local Plan - CYC7      Criteria for children's nurseries  
2014 Draft Local Plan - CF1      Provision of community facilities

### 3.0 CONSULTATIONS

#### INTERNAL

#### Public Protection

3.1 On the basis that there is no increase in numbers no objections are raised. The business has been running for a number of years with no complaints received about it. A condition should be attached preventing an increase in numbers.

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## Highway Network Management

3.2 No objection. There are parking restrictions preventing indiscriminate parking at the junction and main road. There is short term on street parking available for drop-offs nearby. The setting is close to the city centre and surrounded by residential dwellings so it is envisaged that the child minder will have a good proportion of clients arriving on foot or bicycle. The site has been operating as a child minders for some time without complaints of parking. No objections are raised

## Childcare Strategy Service

3.3 There is a shortage of childcare provision in this immediate area, particularly after-school care. The two out of school clubs at Scarcroft and Knavesmire are oversubscribed and the few childminders that there are in this area are generally full or cannot offer a school pick up service. Family Information Services frequently receive calls from parents requesting childcare in this area and /or identifying the issue of lack of available childcare and at least one family has raised this issue with their local councillor. The Childcare Strategy Service would therefore support this application.

## EXTERNAL

## Neighbour Notification and Publicity

3.4 Thirty five comments of support have been received raising the following points:

- Shortage of child minders within the South Bank area
- If the application were to be refused there would be no provision locally for the children to go
- The applicant provides excellent care and home cooked meals
- The applicant provides a good level of care and education
- It has been made clear that parking is not allowed to the highway
- The majority of parents travel by foot or bicycle

3.5 Two objections have been received raising the following planning issues:

- The child minder now looks after 13 children and this should not increase
- Unacceptable levels of noise from the children in the garden during the summer months
- Noise transfer through the party wall
- Parents park half on the highway and half on the pavement to drop children off

## **4.0 APPRAISAL**

## 4.1 Key Issues

- Highway implications
- Noise
- Increased numbers of children
- Limited childcare providers

## PLANNING POLICY

4.2 The National Planning Policy Framework 2012 (NPPF) sets out the Government's overarching planning policies. At its heart is a presumption in favour of sustainable development. The framework states that the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. A principle set out in paragraph 17 is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

4.3 Paragraph 32 states that plans and decisions should take account of whether safe and suitable access to the site can be achieved for all people. Paragraph 34 states plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.

4.4 The NPPF does not contain specific policies relating to nurseries. However at paragraph 70 within the section 'promoting healthy communities' it states that planning decisions should aim to deliver the social, recreational and cultural facilities and services the community needs. It should guard against the unnecessary loss of valued services and facilities, especially those that meet day-to-day needs. Such services should be able to develop and modernise in a sustainable manner so that they are retained for the benefit of the community.

4.5 The Development Control Local Plan was approved for Development Control purposes in April 2005; its policies are material considerations although it is considered that their weight is limited except where in accordance with the content of the NPPF.

4.6 Policy C7 'Children's Nurseries' states that planning permission will be granted for the development of, or change of use to, a children's nursery provided: adequate internal and external play space is provided; and where development will not adversely affect the amenity of neighbouring properties or the residential character of the area; and the proposed development is well served by footpaths, cycleways and public transport routes. It goes on to state that the number of children can be

conditioned where this is considered acceptable. Although the Local Plan has never been formally adopted, it is considered that this policy reflects sound planning principles.

4.7 Following the motion agreed at Full Council in October 2014, the Publication Draft of the York Local Plan is currently not progressing through its statutory consultation pending further consideration of the Council's housing requirements and how it should meet those requirements. The emerging Local Plan policies can only be afforded weight in accordance with paragraph 216 of the NPPF and at the present early stage in the statutory process such weight will be limited. Policy CF1: 'Provision of community facilities' supports the development of strong, supportive and durable communities where every community has access to quality community facilities to meet day to day needs. Any new community facilities should be in locations which are well served and linked by public transport and easily accessible by walking and cycling. Policy CF3 states that new, high quality, childcare facilities will be supported where there is an identified need for the additional provision, including strategic housing allocations. Any new facilities must be in accessible locations, which are well served and linked by public transport and easily accessible by walking and cycling. Proposals will be refused which fail to protect existing community facilities or involve the loss of facilities unless it can be demonstrated the use is no longer, or cannot be made, viable or equivalent alternative provision can be made.

## ASSESSMENT

4.8 The house has previously been used as a childminders but due to increased numbers, above 6 children, it was considered that the child minding business could no longer be classed as an ancillary use and as such planning permission is sought for a change of use to a nursery. Planning permission has previously been granted for the erection of a two storey side extension which has recently been constructed. It is proposed that the first floor element of this extension is used as a play room for the children along with the kitchen and, on occasion, the dining room. A garage is provided to store equipment, such as push chairs and refuse facilities and a large garden is provided to the rear.

## HIGHWAY IMPLICATIONS

4.9 Concerns have been raised that parents park on the highway to the front of the site. Double yellow lines are present and as such parking is restricted and unlawful parking could be enforced under highway legislation. Furthermore, the neighbouring street is restricted as a Respark zone with parking open to non residents for 60 minutes. It is considered that there is provision within the side road for the parking of parent's vehicles during drop off and pick up times.

4.10 In addition the site is in a sustainable location and the significant majority of families using the child-minder at the site live within the South Bank area.

## NOISE

4.11 Concerns have been raised by neighbouring residents that noise disturbance often occurs when a high number of children are playing within the garden during the summer months and through the party wall all year round. The applicant has submitted information which identifies that between 6 and 8 children are cared for on site full time. These will be children who are five and under and who are not attending school. However, a drop off and pick up service is also provided to take and collect children from Knavesmire Primary School. This results in a total of 15 children being at the property from 16:00 to 17:30 during the week. Parents collect their children at various times so this number would reduce the closer to 17:30 it is when the majority of the children will have left the site.

4.12 Whilst the application site has a relatively large rear garden for the children to play in the neighbouring gardens at 29, 30 and 31 Southlands Road are small and immediately abut the application site. The immediate neighbour at 107 Bishopthorpe Road has a long rear garden serving the property but this does abut the application site for the majority of its length. It is considered that the noise being generated by up to 15 children playing within the garden would result in an unacceptable level of noise disturbance to these neighbouring residents and would reduce the level of enjoyment that they could reasonably expect to enjoy to their private amenity spaces. Whilst the higher number of children are only on site between 16:00 and 17:30 there is still the potential for up to 8 children to be playing outside for the majority of the day when the weather is fine. It is considered that this continued level of noise disturbance is not a situation that would typically occur within a residential area and as such would give rise to an unacceptable loss of amenity to the neighbours.

4.13 Objections have been raised that noise transfer currently occurs through the party wall. The applicant has stated that the rooms to the party wall would be occasionally used by children. However, the provision of a specific children's play room to the external elevation would reduce the need for the party wall rooms to be utilised to such a degree.

## INCREASED NUMBERS OF CHILDREN

4.14 Concerns have been raised that now the extension has been erected the additional first floor play room could result in additional children being cared for at any one time, which in turn would result in the potential for additional noise. The current regulations for childminders state that at any one time, childminders may care for a maximum of six children under the age of eight. Of these six children, a maximum of three may be young children, and there should only be one child under the age of one. A child is a young child up until 1st September following his or her fifth birthday. Any care provided for older children must not adversely affect the care of children

receiving early year's provision. If additional staff are employed on site then the number of children who can be cared for increases proportionately.

4.15 Nurseries and childminders are also restricted to the number of children they can care for by floor space as well as the regulations on numbers stated above. The increase in the floorspace now available within 105 Bishopthorpe Road, as a result of the two storey extension, could potentially result in a further increase in the number of children cared for on site by up to 4 children. However, this would require an additional member of staff due to the limitations on the ration of children to adults.

4.16 The applicant has stated that it is not their intention to further increase the number of children and that the aim of the extension is to provide a distinction between the owners dwelling and the business element of the site. The number of children cared for at the site could be reasonably controlled by planning condition.

## LIMITED CHILDCARE PROVIDERS

4.17 Childcare Strategy Services have identified that there is a shortfall of childcare provision within the immediate area. Whilst this is a material issue it is considered that this does not outweigh the loss of amenity that would arise to neighbouring residential properties which lie immediately adjacent to the site.

## 5.0 CONCLUSION

5.1 Whilst it is recognised that there is a shortage of childcare providers within the immediate vicinity of the application site it is considered that the level of noise disturbance which could be generated at the site would result in an unacceptable loss of amenity to nearby residential properties. As such the application fails to accord with Policy C7 of the Local Plan which states that development should not adversely affect the amenity of neighbouring properties.

## COMMITTEE TO VISIT

## 6.0 RECOMMENDATION: Refuse

1 It is considered that the proposed use of this semi detached property as a day care nursery would result in unacceptable levels of noise and disturbance being generated by the children. As such there would be an unacceptable loss of amenity to the occupiers of the neighbouring residential properties, in particular the attached dwelling at number 107 Bishopthorpe Road and those at 28 to 31 Southlands Road. The application therefore fails to accord with Policies GP1 and C7 of the City of York Council Draft Deposit Local Plan, April 2005, which state that proposals should

ensure residents living nearby are not unduly affected by noise and that nursery uses do not conflict with neighbouring uses.

## **7.0 INFORMATIVES:**

### **Notes to Applicant**

#### **1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application including the potential for using planning conditions to mitigate the impact of the change of use. However, it was not possible to achieve a positive outcome, resulting in planning permission being refused for the reasons stated

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