

**P/14/0978/VC**

**FAREHAM EAST**

MRS K GALLIFORD

AGENT: MRS K GALLIFORD

VARIATION OF CONDITION 7 TO PLANNING PERMISSION P/12/1017/VC; TO INCREASE THE NUMBER OF CHILDREN PERMITTED TO USE THE REAR GARDEN OF THE SITE AT ANY ONE TIME FROM 12 TO 18

GOOD MANORS DAY NURSERIES LTD MANOR LODGE CHURCH PATH FAREHAM HANTS PO16 7DT

***Report By***

Graham Pretty - Direct dial 01329 824665

***Introduction***

This planning application was first submitted in October 2014. It was due to be considered by the Planning Committee earlier this year, but was deferred with the agreement of the applicant. This was to enable Officers to consider with the applicants issues relating to alleged noise nuisance from the use both within the building and the garden.

Under the current delegation arrangements, Officers could normally determine this application under their delegated powers as only one representation has been received. In light of the lengthy planning history of the site and Members consideration of the previous application however, it is considered appropriate that this matter is reported to the Planning Committee for determination.

***Site Description***

The application site comprises a two storey semi-detached property located on the eastern side of Church Path. The site is within the Fareham High Street Conservation Area and is a Grade II Listed Building. The building is currently occupied by and used as a nursery.

The site is situated in an edge of town centre location, with a number of commercial and entertainment facilities in the vicinity. Some nearby properties are in residential use, including the first floor and second floors above the chiropodist business, in the adjoining semi-detached property.

***Description of Proposal***

Planning permission is sought for a variation of Condition 7 of P/12/1017/VC to allow the number of children permitted in the garden at any one time in association with the day nursery to be increased from 12 to 18.

***Policies***

The following policies apply to this application:

**Approved Fareham Borough Core Strategy**

CS17 - High Quality Design

**Development Sites and Policies**

DSP3 - Environmental Impact

***Relevant Planning History***

The following planning history is relevant:

P/13/0651/VC: (A) VARIATION OF CONDITION 7 OF P/12/1017/VC TO ALLOW INCREASE IN NUMBER OF CHILDREN PRESENT IN REAR GARDEN AT ANY ONE TIME TO 18; (B) VARIATION OF CONDITIONS 4 & 7 OF P/12/1017/VC TO ALLOW NURSERY EVENTS TO BE HELD UP TO 5 TIMES PER YEAR - PERMISSION 11/10/2013

P/12/1017/VC: VARIATION OF CONDITION 2 OF P/06/0764/VC (TO ALLOW OPENING OF THE PREMISES BETWEEN 07:30 HOURS TO 18:00 HOURS MONDAY TO FRIDAY)- PERMISSION 01/03/2013

P/10/0041/VC: VARIATION OF CONDITION 4 OF P/06/0764/VC TO INCREASE NUMBER OF CHILDREN FROM 52-58 - PERMISSION 10/03/2010

P/09/0309/LB: MINOR ALTERATION TO P/04/0462/LB INCLUDING REMOVAL OF CHIMNEY (INTERNALLY ONLY) & CHANGE OF WINDOW SIZES TO THOSE APPROVED TO SINGLE STOREY EXTENSION - REFUSED 21/05/2009

P/06/0764/VC: VARIATION OF CONDITION 4 OF P/97/0700/CU TO INCREASE NUMBER OF CHILDREN TO 52 - REFUSED 14/08/2006; APPEAL ALLOWED 16/08/2007

P/04/0462/LB: ERECTION OF SINGLE STOREY REAR EXTENSION, CONVERSION OF ATTIC TO STAFF ACCOMMODATION/OFFICES, PROVISION OF THREE ROOFLIGHTS & INTERNAL ALTERATIONS - CONSENT 19/05/2004

P/04/0461/FP: ERECT SINGLE STOREY REAR EXTN CONVERT ATTIC TO STAFF ACCOMMODATION/OFFICES & PROVISION OF THREE ROOFLIGHTS - PERMISSION 19/05/2004

P/04/0461/MA/A: ERECT SINGLE STOREY REAR EXTN CONVERT ATTIC TO STAFF ACCOMMODATION/OFFICES & PROVISION OF THREE ROOFLIGHTS MINOR ALTERATIONS INCLUDING CHANGE OF WINDOW SIZES TO SINGLE STOREY EXTENSION - APPROVED 22/09/2009

P/00/0610/VC: VARIATION OF CONDITION 4 OF P/97/0700/CU TO INCREASE NUMBER OF CHILDREN FROM 40-46 - PERMISSION 14/07/2000

P/98/0724/VC: VARIATION OF CONDITION 1 OF P/97/0700/CU (TO ALLOW USE AS DAY NURSERY OF PERMANENT BASIS) - PERMISSION 19/08/1998

P/98/0642/LB: RETENTION OF ONE NON-ILLUMINATED SIGN, DISPLAY OF TWO NON-ILLUMINATED SIGNS AND DISPLAY OF TWO TEMPORARY BANNERS. - REFUSED 18/08/1998

P/98/0641/AD: RETENTION OF ONE NON-ILLUMINATED SIGN, DISPLAY OF TWO NON-ILLUMINATED SIGNS AND DISPLAY OF TWO TEMPORARY BANNERS - REFUSED 18/08/1998

P/97/1321/FP: RETENTION OF A PATIO, PATH, 0.9 METRE GARDEN FENCE & AREA OF HARDSTANDING AND ERECTION OF A GARDEN SHED AND PLAYDEN - PERMISSION 05/03/1998

P/97/1291/LB: INTERNAL ALTERATIONS TO LISTED BUILDING - CONSENT 02/02/1998

P/97/0700/CU: CHANGE OF USE FROM RESIDENTIAL CARE HOME (C2) TO NURSERY DAY CARE CENTRE (D1) WITH ANCILLARY ONE BEDROOMED FLAT - TEMPORARY PERMISSION 06/101997

P/97/0700/DP/A: NURSERY DAY CARE CENTRE (D1) & ANCILLARY ONE BEDROOMED FLAT: DETAILS OF REAR ACCESS PURSUANT TO CONDITION 5 - APPROVED 19/11/1997.

### ***Representations***

One letter has been received from Manor Croft objecting on the following grounds:

- Concern over the 'creeping' increase in commercial activity at the site
- The site has a history of noise nuisance
- Noise complaints have not been submitted because these have not been treated seriously in the past and incremental increases in activity have been granted to the detriment of the enjoyment of the adjoining property (both commercial and residential uses)
- Verbal requests about noise have been made to staff in the garden
- The temporary consent for the increase in numbers of children using the garden have not be properly tested because the number of children using the garden has been about 10 (at which level considerable loss of enjoyment is already experienced)
- The increase in numbers of children in the garden was recommended for refusal in 2013 for good reason
- There are now many other available nursery facilities negating the need to allow this use to grow
- Duty to comply with Protocol 1, Article 1 of the Human Rights Act.

### ***Consultations***

Director of Planning and Regulation (Environmental Health) - No objection.

### ***Planning Considerations - Key Issues***

The key issues in this case are:

- The planning history of the use at the site
- Monitoring
- Noise impact and the needs of nursery business

### **THE PLANNING HISTORY AT THE SITE:**

Planning Permission was granted for the use of the site for a nursery on 6th October 1997 (P/97/0700/CU) with a limit set at 40 children for the use; no limit was placed upon the number of children using the garden at any one time. A further permission was granted (P/00/0610/VC) to increase the number of children to 46; and again no limit was placed upon the number of children using the garden at any one time.

Planning permission (P/06/0764/VC) was allowed on appeal in August 2007 for a further increase in overall children numbers to 52. The Inspector in allowing the appeal imposed a new condition restricting the number of children using the garden at any one time to 12. In his appeal decision the Inspector stated:

"I consider that the number of children playing outside is critical to the level of noise and disturbance that may arise from the nursery."

At that time the nursery operated an 'Outside Play Policy' which restricted the number of children outside to a maximum of 12. The Inspector concluded that 12 would be an appropriate limit for the condition.

On 10th March 2010 planning permission was granted (P/10/0041/VC) for a further increase in overall children numbers to 58 whilst maintaining the number of children using the garden to 12. This permission has not been implemented and has now lapsed due to problems experienced in providing internal sound attenuation to meet with the requirements of a further condition imposed at that time.

Planning permission P/12/1017/VC then permitted extended opening times from 07:30 to 18:00.

On 11th October 2013 permission was granted (P/13/0651/VC) on a temporary basis for an increase in the number of children able to use the garden at any one time from 12 to 18. The permission allowed this increase for a period of 12 months "in the interests of residential amenity and to allow monitoring of any noise complaints to take place" with the number of children permitted to use the garden reverting back to 12 after this temporary period.

Following this temporary period expiring the Applicant now seeks permanent planning permission to allow the garden to be used by a maximum of 18 children at any one time.

#### MONITORING:

The temporary permission granted under permission P/13/0651/VC allowed for the monitoring of any noise complaints to take place and that this was specifically related to residential amenity. In particular the Committee was aware, in making the decision, of the potential impact upon the residential amenity of the residents of the adjoining property in the semi-detached pair (Manor Croft). This was therefore a critical period within which the opportunity was afforded to the adjoining neighbour to monitor any noise arising and raise this with the Council and the Applicant. This monitoring period would, in essence, be key in determining any resultant planning application (this current submission) to allow continued use of the garden by up to 18 children.

Environmental Health Officers have been consulted on this application and confirmed that no noise complaints were received during the twelve month trial period. They do not raise any formal objection to making the arrangements permanent for a maximum of 18 children within the garden at any one time.

#### NOISE IMPACT AND THE NEEDS OF THE NURSERY BUSINESS:

Following receipt of the objection from the occupier of Manor Croft, Officers have met with both the objectors and the applicants.

The occupants of Manor Croft feel that the use of a semi-detached building for a nursery use is not appropriate as it immediately adjoins a property which is in residential use. The business use at ground floor level, a chiropodists, is also a 'quiet' use which can be adversely affected by noise.

The occupants of Manor Croft fully appreciate that there is an authorised nursery use at the site which allows for use of the garden as well. The occupants of Manor Croft have however

been in occupation since before the nursery use commenced and they are concerned that it has continued to grow incrementally, and in turn the adverse impact upon them has increased incrementally. Whilst the current application might be to increase the number of children using the garden at any one time by 6, they consider that this needs to be seen in the context of all the other incremental changes that have been made since the use began in the late 1990s.

Whilst the occupants of Manor Croft appreciate that the opportunity existed for them to raise concerns about increased noise nuisance during the temporary period, they did not do this. The reasons for not doing so was because they had made complaints in the past, and they had not in their view been treated seriously or led to any abatement of the noise nuisance.

The applicants have emphasised the statutory requirements for outdoor play to be provided, requirements that are based upon the needs and rights of the children rather than any particular interests of the applicants themselves. The applicants have drawn attention to the Department of Education 'Statutory Framework for the Early Years Foundation Stage' which requires that:

"Providers must provide access to an outdoor play area or, if that is not possible, ensure that outdoor activities are planned and taken on a daily basis (unless circumstances make this inappropriate, for example unsafe weather conditions)".

The Applicant has advised Officers that the requested number of 18 children in the garden enables them to meet the statutory requirements and the needs of all of the children where reduction back to 12 could result in children unacceptably missing out on their opportunities for outdoor play.

The Applicant has further advised that although the needs of the children for outdoor activity could be met by organised activity beyond the site, it is a key feature of their site that the garden is both available and secure. It is also noted that the OFSTED report for the nursery notes that "...the outdoor area is a rich learning environment".

Lastly the applicant has highlighted the fact that at a meeting at the Council with Officers and the objector, it was agreed that the nursery would be advised of any further complaints and they have received no email correspondence from the objector. Furthermore to help address complaints of nuisance caused by children using vehicles in the garden, they have replaced the plastic wheels on bikes to rubber tyres to try and minimise noise.

Policy DSP2 of the Development Sites and policies Plan seeks to ensure that development proposals should not have a "significant adverse impact" on neighbouring development by virtue of (among other things) noise.

In the opinion of Officers this proposal is very finely balanced. On the one hand the immediate neighbours consider that the incremental increase in scale and nature of the business has affected the enjoyment of their property. On the other hand the value of outside play for children, immediately alongside the building is recognised.

Walking along Civic Way the sounds of children playing can be heard when the garden is in use. Similarly when visits have been made to the neighbouring property, the sound of children playing in the garden can be heard both inside and outside the property. There is no dispute that the existence of the nursery use generates noise which is apparent in the surrounding area.

Officers are also aware of the fact that whilst accommodating outside play alongside the building is the most desirable arrangement for the applicant and indeed the children, the need for outside play could be achieved beyond the site.

The concern of the neighbouring occupants is that the noise disturbance now is much greater than when the nursery use first commenced. To try and quantify how noise disturbance might have changed over such a lengthy period of time is very difficult to do with any degree of accuracy.

Environmental Health Officers have viewed the proposal on the basis that there is an existing authorised nursery use at the site which also allows for a maximum of 12 children in the garden at any one time. In their view increasing the number of children outside to 18 at any one time would not materially increase the impact upon the occupants of Manor Croft.

Having carefully assessed all the matters raised by the proposal in this very finely balanced case, Officers consider that the request to allow the garden to be used by up to 18 children at any one time should be granted subject to conditions.

Should Members conclude on balance that having regard for the incremental increases in the scale of the use, that the increase in the use of the garden by up to 18 children at any one time would cause significant adverse impact to the neighbouring property, Officers would suggest that the planning application is refused as being contrary to Policy DSP2 of the Local plan Part 2: Development Sites and policies.

### ***Recommendation***

PERMISSION subject to conditions:

1) The use hereby approved shall be subject to those conditions imposed on planning permission P/97/0700/CU, so far as the same and still subsisting and capable of taking effect.

REASON: For those reasons specified respectively for these applicable conditions as set out on the decision notice for planning permission P/97/0700/CU.

2) The nursery day care centre hereby permitted shall not be open for day care provision before 07:30 hours nor remain open after 18:00 hours Monday to Fridays only. The use shall not take place at weekends or public holidays.

REASON: In order to protect the amenities of the locality and of the occupiers of nearby neighbouring properties; in accordance with Policy CS17 of the Fareham Borough Core Strategy.

3) Not more than 52 children shall be present at the site at any one time in connection with the children's day nursery.

REASON: In the interests of the amenities of the nearby residential properties.

4) In addition to the permitted day care use a maximum of five social events may be held at the nursery in any one calendar year. These events shall be limited to between the hours of 09:00-18:00 Monday-Saturday (excluding bank holidays) and shall be limited in length to a maximum of three hours.

REASON: In the interests of residential amenity.

5) The four car spaces provided for the parking of staff cars associated with the nursery care pursuant to condition 3 of planning permission P/97/0700/CU shall be kept available

for the parking of cars at all times.

REASON: In the interests of highway safety; in accordance with Policies CS5 and CS17 of the Fareham Borough Core Strategy.

6) The access way approved in accordance with the details pursuant to condition 5 of planning permission P/97/0700/CU shall be retained for the purposes of pedestrian access only.

REASON: In the interest of highway safety; in accordance with Policy CS5 of the Fareham Borough Local Core Strategy.

7) No more than 18 children shall be present within the rear garden area of the site at any one time (with the exception of social events) unless otherwise agreed in writing with the local planning authority following the submission of a planning application for that purpose.

REASON: In the interests of residential amenity and to allow monitoring of any noise complaints to take place.

8) Between 07:30 and 08:00 Mondays to Fridays the rear garden shall not be used for any other purpose other than entry to and exit from the building. Prior to 07:30 the rear garden area shall not be open for admittance by visiting customers.

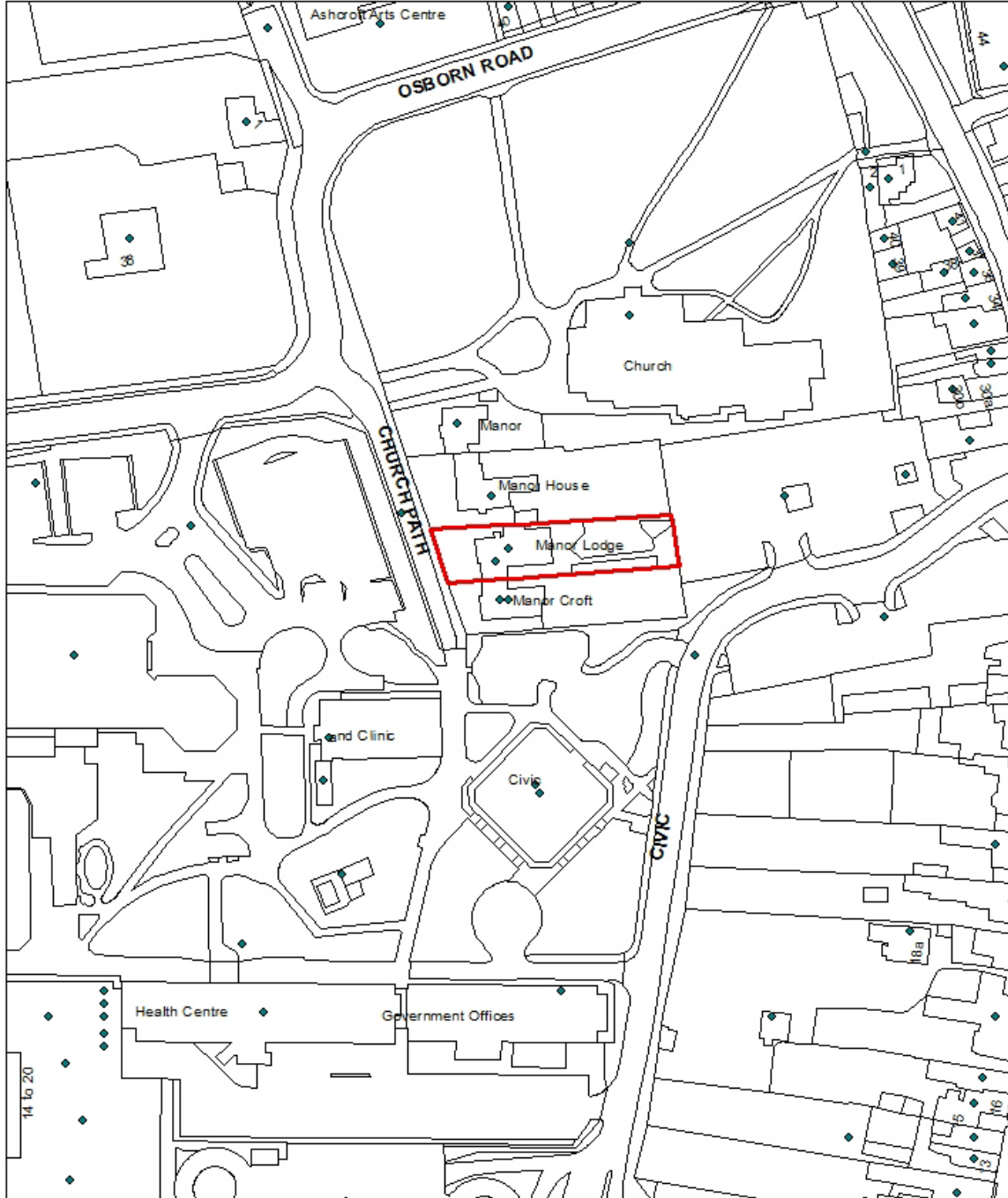
REASON: To protect the amenities of the occupiers of neighbouring properties in accordance with Policy CS17 of the Fareham Borough Core Strategy.

***Background Papers***

P/97/0700/CU; P/00/0610/VC; P/12/1017/VC; P/13/0651/VC; P/14/0978/VC

# FAREHAM

## BOROUGH COUNCIL



GOOD MANORS DAY NURSERIES  
MANOR LODGE  
SCALE: 1:1,250

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