

## Item No. 10

<b>APPLICATION NUMBER</b>	<b>CB/16/05738/VOC</b>
<b>LOCATION</b>	<b>11 Albany Road, Leighton Buzzard, LU7 1NS</b>
<b>PROPOSAL</b>	<b>Variation of Condition 1: variation of hours from 8am to 6pm Monday to Friday to 7.30am to 6.30pm Monday to Friday and removal of condition 2: use of garden area. (SB/90/421)</b>
<b>PARISH</b>	<b>Leighton-Linslade</b>
<b>WARD</b>	<b>Leighton Buzzard South</b>
<b>WARD COUNCILLORS</b>	<b>Cllrs Berry, Bowater &amp; Dodwell</b>
<b>CASE OFFICER</b>	<b>Debbie Willcox</b>
<b>DATE REGISTERED</b>	<b>19 December 2016</b>
<b>EXPIRY DATE</b>	<b>13 February 2017</b>
<b>APPLICANT</b>	<b>Footsteps Nursery Ltd C/O Agent</b>
<b>AGENT</b>	<b>JCPC Ltd</b>
<b>REASON FOR COMMITTEE TO DETERMINE</b>	<b>Called in by Councillor Dodwell for the following reasons:</b> <ul style="list-style-type: none"><li>• Full time use of garden by multiple young children, potentially from 0730 to 1830, will drastically reduce amenity for adjacent neighbours.</li><li>• Young children will be moving around very heavily congested road during busiest times causing highway safety problems.</li></ul> <b>Parking resulting from extended hours will exacerbate already critical situation beyond current working day.</b>
<b>RECOMMENDED DECISION</b>	<b>Variation of Condition - Granted</b>

### **Summary of Recommendation:**

The amendment to condition 1 and removal of condition 2 are recommended for approval as the impact of these alterations to the extant planning permission with the imposition of appropriate additional conditions would not give rise to an unacceptably harmful impact on the amenity of neighbouring occupiers or the safety and capacity of the surrounding highway network. The application is therefore considered to accord with Sections 4, 8 and 11 of the National Planning Policy Framework and Policy BE8 of the South Bedfordshire Local Plan Review.

### **Site Location:**

The application site comprises a detached building and its curtilage which functions as a day nursery named Footsteps, located in Albany Road in Leighton Buzzard. With the exception of the nursery, Albany Road is residential in nature.

To the rear of the site are dwellings in Lovent Drive. Morrisons supermarket and its associated car park is located a 150m walk from the site.

The day nursery has been operating from the property continuously since 1990 and there has been a history of the property being used as a nursery at various times since 1961. There is a rear garden of some 400 square metres which is subdivided into smaller areas and is bordered by a 1.7m high wall.

## **The Application:**

Planning permission was granted at appeal in May 1991 for the change of use of the ground and first floors of the building from residential to a day nursery. The planning permission was subject to three conditions, which were as follows:

- 1) The premises shall operate as a children's day care centre only between 08:00hrs to 18:00hrs on Mondays to Fridays and at no time on Saturdays, Sundays or public holidays.
- 2) There shall be no use of the garden for external activities associated with the day care centre outside the hours of 10:30 to 11:30 and 14:15 to 15:15 without the prior permission of the local authority and no more than 10 children shall be engaged in such activities at any one time.
- 3) Within 8 weeks of the date of this permission, a scheme of planting shall be submitted for the approval of the local planning authority. All planting, in the approved details of landscaping shall be carried out in the first available planting season and any trees or plants which, within a period of 5 years from planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

This application seeks to vary condition 1 to allow the nursery to operate between the hours of 7.30am to 6.30pm on Mondays to Fridays. The amended condition would still not allow operation of the day nursery on Saturdays, Sundays and public holidays. This would allow the nursery to offer more flexibility to parents.

The application also seeks to remove condition 2 to allow unrestricted use of the garden in association with the day nursery during its hours of operation.

## **RELEVANT POLICIES:**

### **National Planning Policy Framework (2012)**

Section 8: Promoting healthy communities

Section 11: Conserving and enhancing the natural environment

### **South Bedfordshire Local Plan Review**

BE8 Design Considerations

T10 Parking - New Development

*(Having regard to the National Planning Policy Framework, the age of the plan and the general consistency with the NPPF, policy BE8 is still given significant weight. Policy T10 is afforded less weight).*

### **Development Strategy for Central Bedfordshire (June 2014)**

*At the meeting of Full Council on 19th November it was resolved to withdraw the Development Strategy. Preparation of the Central Bedfordshire Local Plan has begun. A substantial volume of evidence gathered over a number of years will help support this document. These technical papers are consistent with the spirit of the NPPF and therefore will remain on our web site as material considerations which may inform further development management decisions.*

**Relevant Planning History:**

Application Number	CB/16/04726//LDCE
Description	Use of premises as a Nursery without complying with condition 1 of permission SB/90/00421/Full
Decision	Application withdrawn
Decision Date	06/12/2016
Application Number	SB/90/00421/FULL
Description	Change of use of ground and first floors from residential to day care centre
Decision	Planning permission granted on Appeal following Refusal by SBDC
Decision Date	08/05/1991
Application Number	SB/89/01367/FULL
Description	Change of use of ground and first floors from residential to children's day care centre
Decision	Refused
Decision Date	07/03/1990
Application Number	LUBDC/67/85
Description	Continued use of premises as nursery school
Decision	Planning permission granted
Decision Date	21/08/1967
Application Number	LBUDC/61/52
Description	Change of use of dwelling and curtilage to school premises
Decision	Temporary planning permission granted
Decision Date	28/09/1961

**Consultees:**

Leighton-Linslade Town Council RESOLVED to recommend to Central Bedfordshire Council that no objection be made to application reference CB/16/05738/VOC (11 Albany Road) in respect of the variation of condition 1, but in respect of removal of condition 2 (use of the garden area) the Town Council would like to see a compromise reached enabling greater use of the garden while giving consideration to the potential noise nuisance for neighbouring residents.

Public Protection Officer The proposal is to extend the current permitted hours for the nursery including the use of the garden to which this response primarily concerns. Nurseries are known to give rise to an amount of noise from children playing but it is important to stress that it has previously been demonstrated at other similar settings that such can be managed.

The nursery is an established use and children playing forms part of the character of the area. It is also important to understand the context within which noise is created. It is structured and timed play throughout the day which is in contrast to the image that the term 'free play' referred to by OFSTED infers. Likewise, discussions with not only the

management of the premises but also with similar settings over the years confirms that understanding and it is further

explained in the statement which supports the application which breaks down the day's likely activities. Therefore any impact is unlikely to take place across all permitted hours, more typically it will be interspersed throughout the day. Neither will the noise generated be consistent but will vary greatly depending on the type of activity taking place.

In drawing conclusions to this application I also have had regard to the garden setting. This is a large area, subdivided up into smaller areas. This allows creativity in how the garden is used and permits activities to take place in different areas, which in turn alters any noise generation and its impact on neighbouring residents. Likewise the play areas are structured and contain many activities which will stimulate children's learning and minimise excitability which may be associated with uncontrolled play spaces. Likewise the garden is enclosed at the points closest to residential neighbours by a substantial wall providing an element of noise reduction.

With regard to the arrival and departure scenarios, we have observed in similar settings that the perceived risk of adverse noise impact does not necessary exist in practice. Arrival and departure, unlike a typical school, is staggered over a longer period of up to two hours and therefore noise will be minimal. Likewise, given the restricted on site parking there will be no such issues such as door slams, talking and shouting etc. concentrated in the immediate vicinity. In fact given the difficulty in parking in the area any such impact will be likely to be dispersed throughout the neighbourhood and therefore not expected to contribute significantly or differ greatly from the existing background noise.

It is on this basis that I do not wish to object to the application on the grounds of noise.

Highways Officer

The applicant wishes to vary the opening times of a children's nursery by 30 minutes in the morning and 30 minutes in the afternoon. That is to say from 8am to 7:30am and from 6pm to 6:30pm.

The extension of the opening hours will not have any affect on the maximum capacity of children permitted at the nursery.

The extensions of time will, however, mean that some children may attend earlier or be collected later outside the peak traffic hours, which will slightly reduce the amount of traffic on the network at peak times.

The extension of opening hours may also coincide at a time where some residents' vehicles are occupying some of the on street parking space which may have otherwise been free after 8am, i.e. those residents travelling to work

by car. If this does occur then any inconvenience in not finding a parking space will be experienced by the users of the nursery, not necessarily the local residents. Indeed if this were to occur on a regular basis, users of the nursery may consider changing their drop off and pick up times to suit.

On this basis I would not be in a position to recommend a refusal on highway grounds.

### **Other Representations:**

#### Letters of objection

27 letters from 14 properties in Albany Road, 2 from Dudley Street and 1 from South Street: object for the following reasons:

- There are already parking problems in Albany Road which would be exacerbated by an extension to the operating hours as there are less parking spaces available between 7.30am - 8am and 6pm - 6.30pm as residents are more likely to be at home during those hours;
- Staff from the nursery park in the street all day, making the problem worse;
- Albany Road is also used as a rat run;
- Extra traffic at an earlier time would incur risk to pedestrian safety;
- Parents picking up and dropping off children park inconsiderately across residents' drives and are sometimes rude and / or abusive when asked to move their cars;
- Parents have caused accidents to cars and property in the area (including the breaking of brick pier) when parking and manoeuvring inconsiderately and unsafely;
- The nursery should fund the painting of white lines across residents' drives;
- Deliveries to the nursery and waste collection from the nursery regularly block the road or have to park a significant distance away;
- Any increase in noise levels during the week day would negatively affect retired people, shift workers and home workers who all need peace during these times;
- The noise from inside the nursery already causes unacceptable levels of disturbance;
- The noise of the door knocker is penetrating and wakes up neighbouring occupiers. Allowing the nursery to operate earlier in the day would increase this problem;
- It is impossible to work from home currently during the hours at which children are allowed to play outside, due to the high levels of noise;
- The nursery should take children to the nearby park to

play in;

- Up to 80 residential properties would be detrimentally affected by increased noise pollution;
- Ofsted does not require the provision of outdoor play, it merely encourages it.
- The nursery is an inappropriate use in a residential area;
- No other nurseries in the area are in residential streets with no parking;
- Numbers attending the nursery have increased from 44 to 52 at any one time since 1991, exacerbating the problems. There is no planning control of the numbers except through the limitation of space;
- The application seeks a way to increase numbers at the nursery as it will allow more children to be in the garden thus lessening the pressure on inside space;
- This will increase the number of staff who will park on street, further exacerbating the problems;
- The application seeks to make more money for the owners of the business to the detriment of local residents;
- The situation has changed since the approval was granted in 1991. Car ownership has increased and cars are larger and parking places in the vicinity have reduced;
- Litter at the premises has increased and is allowed to over spill the waste bins to the detriment of the amenity of the neighbourhood;
- There is no longer a residential use at the property, which was maintained on the second floor by the 1991 permission, instead the space is for used for office and storage, allowing more children on the ground and first floors;
- Use of the balcony at the property disrupts privacy;
- The owners of the nursery are dishonest and disrespectful, as demonstrated by the withdrawn application for a Lawful Development Certificate;
- The property has lead pipes (to the best of the objector's knowledge). Lead is poisonous and causes a reduction in mental facilities in the young.
- Central Bedfordshire Council have not enforced the existing conditions;
- No site notice has been posted;
- The Council has shown favouritism to the nursery over the years by systematically rejecting complaints about the nursery from residents;
- The Council should place the needs of residents above the needs of the nursery;
- The Council has made errors in the processing of applications in regards to the nursery;

Letter of support

Letter received from the owner and staff of Peter Bellingham, Billington Road: supports the proposal for the following reasons:

- Footsteps is a wonderful facility which has in the past and currently provides excellent care for the children of a number of employees of Peter Bellingham;
- The additional flexibility of expanded hours would really support working parents in the area;
- The noise of children playing in the garden is a pleasant sound;
- The facility is not a school and so drop-offs and pick-ups are staggered. The extended hours would allow drop-offs and pick-ups to be staggered further throughout the morning and evening;
- Parking in Albany Road is bad for two main reasons:
  1. The residents mostly have more than two cars per property and insufficient off-street parking on their properties;
  2. Office workers in Leighton Buzzard use Albany Road for parking during the day.

Letter of comment

Letter received from the occupiers of 4 Lovent Drive: comments as follows:

- In regards to condition 2 our property is in close proximity to the garden at Footsteps and we enjoy the sound of children playing.
- The garden is sorely underutilised and there is increasing evidence of the benefits of outdoor play to the development of children;
- The leaflet sent round to mobilise opposition is scaremongering nimbyism;
- The removal of condition 2 would not affect peak residential use of gardens in the evenings and at weekends;
- No comment in regards to condition 1 as this is an emotive issue for residents in Albany Road reference parking.

Petition of objection

45 signatures of residents in Albany Road, South Street, Lovent Drive and Hartwell Grove

Petition of support

67 signatures of clients of the nursery, 7 of whom live in Albany Road or the immediately surrounding streets. 5 other signatures of support from residents of Leighton Buzzard.

**Determining Issues:**

The main considerations of the application are;

1. Background
2. Principle
3. Neighbouring Amenity
4. Highways Considerations
5. Other Considerations

## Considerations

### 1. Background

- 1.1 11 Albany Road was originally used as a children's day nursery in the 1960s and 1970s before reverting to a residential property.
- 1.2 Planning permission was refused by South Bedfordshire District Council for the change of use of the ground and first floors of the dwelling to a day nursery in 1990 for two reasons: the impact of the proposal on the amenity of neighbouring residents in terms of noise and disturbance and the lack of off-street parking.
- 1.3 The application was appealed and the Inspector granted planning permission subject to the three conditions detailed above. The site has been operating as a day nursery ever since.
- 1.4 A number of complaints in regards to noise have been made to the Environmental Health Team over the years, but following investigation, these complaints have not been upheld.
- 1.5 Complaints were made to the Enforcement Team in May 2016 that the nursery were accepting children earlier than 8am. These complaints were investigated and were discovered to be true. Enforcement officers followed the Council's enforcement procedures and invited the nursery to submit an application.
- 1.6 An application for a Lawful Development Certificate was received, claiming that the nursery had been operating in breach of condition 1 by operating earlier than 8am for a period of 10 years.
- 1.7 Evidence found within the Council's records and submitted by neighbouring occupiers indicated that the nursery had not been operating earlier than 8am *continuously* for a period of 10 years and therefore a Lawful Development Certificate could not be granted. The application was withdrawn and this application was submitted instead.
- 1.8 The nursery has a Good Ofsted report, with the last inspection taking place on 08 April 2015. At that time it had 103 children on role with a total number of places of 52 children at any one time. The nursery offers childcare for children of 0 - 8 years, with those over statutory school age being cared for only after school and during the school holidays.

### 2. Principle

- 2.1 The application is made under Section 73 of the Town and Country Planning Act 1990, which provides for applications for planning permission to develop or change the use of land or buildings without complying with conditions previously imposed on a planning permission. In determining such an application under section 73, the decision maker should take into account any changes in circumstances since the parent permission was issued.
- 2.2 Advice within the National Planning Practice Guidance states that the original planning permission will continue to exist whatever the outcome of the application under section 73. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 the Local Planning

Authority may also impose new conditions - provided that the conditions do not materially alter the change of use that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.

- 2.3 In deciding an application under section 73, the Local Planning Authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application, (paragraph 031). The Local Planning Authority can grant permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original conditions should continue.
- 2.4 Several of the neighbouring residents who objected have raised the issue of whether Albany Road is a suitable location for a day nursery. However, the principle of a day nursery in this location was established under the grant of planning permission in 1991 and despite the passage of time and any changes in circumstances, the principle of the use of the property as a nursery is not a matter for consideration as part of this application.
- 2.5 Instead consideration of this application should depend on the examination of the likely impacts on the amenity of neighbouring occupiers and the highway network of the requested variation of condition 1 and removal of condition 2.
- 2.6 When considering these matters, attention must be paid to Section 8 of the National Planning Policy Framework, which deals with community services (such as childcare establishments). Paragraph 70 of the NPPF states that planning decisions should ensure that established services are able to develop and modernise in a way that is sustainable.
- 2.7 Paragraph 72 states that Local Planning Authorities should take a proactive, positive and collaborative approach to development that will widen choice in education.
- 2.8 These paragraphs must be balanced against the requirements of Section 11 of the NPPF as far as it relates to noise pollution and Section 4 of the NPPF as it relates to the highway network, both of which will be expanded on in the relevant sections, below.

### **3. Impact on Residential Amenity**

- 3.1 The variation of the operating hours and the removal of condition 2 to allow unlimited outdoor activities to take place at the nursery may have an impact on neighbouring occupiers in terms of an increase in noise and disturbance.
- 3.2 Section 11 of the NPPF deals with noise pollution and states in paragraph 123 that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life. However, it also states that planning decisions should recognise that development will often create some noise.
- 3.3 Neighbouring occupiers have raised concerns that the proposal would result in an unrelenting noise of children playing outside from 7.30am until 6.30pm daily. They have also raised concerns that the proposed amendments would result in

an increase in the number of children attending the nursery at any one time as the use of the garden as a space would provide more room within the establishment as a whole.

- 3.4 Taking the second point first, the applicant has confirmed that there are no plans to expand the number of children attending the nursery. Ofsted controls the number of children attending the nursery in two ways, staff: child ratios and floor space: child ratios. The garden cannot be included in the floor space as there will be times, for example during inclement weather when it would not be possible for children to be within the garden. Local residents can therefore be reassured that the proposed amendments to the conditions would not allow more children to be accepted at the nursery.
- 3.5 The Council's Public Protection Officer has visited the site on several occasions and examined in detail the operation of the nursery and the desired use of the outdoor space. His response clearly indicates that the proposed amendment to condition 1 would be very unlikely to result in an increase in noise and disturbance and as the increase in hours would not result in an increase in children numbers, and would be likely to further stagger the times of drop offs and pick ups, it may actually reduce noise and disturbance levels resulting from arrivals and departures.
- 3.6 It is noted that at the time the Inspector imposed condition 2, the garden comprised a grassed area and a concrete slab which provided little opportunities for structured outdoor learning and less emphasis was given on using the outdoor environment to educate children. However, since that time the garden has been remodelled to include specified learning and play areas, including a log cabin, a raised vegetable patch, a pets corner, water features and low level climbing frames. Furthermore, Ofsted guidance now encourages the use of the outdoors to enhance children's learning.
- 3.7 The Public Protection Officer's comments and the supporting document provided by the applicants indicate that a removal of condition 2 would not result in the levels of noise and disturbance envisaged by concerned neighbours as outdoor activities would predominantly be structured, supervised and often framed around learning and development. Activities such as nature study, feeding and cleaning out the rabbits and digging in the vegetable patch would all generate significantly less noise than unstructured "free play".
- 3.8 The Public Protection Officer is confident that the removal of condition 2 would not give rise to unacceptable levels of noise and disturbance for neighbouring occupiers. However, this needs to be balanced against the responses from neighbouring occupiers which raise concerns about existing noise levels during play times. It is considered that the removal of condition 2 without any replacement condition could potentially result in an increase in noise levels to the detriment of the amenity of neighbouring occupiers.
- 3.9 It is considered important to find an appropriate balance which would better allow the nursery to provide the appropriate levels of outdoor learning and play to children attending the nursery, whilst providing protection for surrounding residents from an unacceptable increase in noise levels.

- 3.10 Rather than imposing a condition restricting all outdoor use to certain hours a day, it is considered that a condition should be imposed which would properly differentiate between quiet, learning based outdoor activities and noisy unstructured play.

It is considered that the best way to do this would be to remove the existing condition 2 and impose an alternative condition requiring the

submission and implementation of a noise management plan which would limit unstructured play to two hours a day, while allowing increased hours for quieter outdoor activities.

- 3.11 Subject to the imposition of the recommended condition, it is considered that the proposed amendment to condition 1 and removal of the existing condition 2 are considered to be in accordance with Sections 8 and 11 of the NPPF and Policy BE8 of the South Bedfordshire Local Plan Review.

#### **4. Highways Considerations**

- 4.1 There is no doubt that Albany Road does experience considerable parking problems, which appears to be a combined problem with a number of contributing factors, including the limited off-street parking and the number of vehicles owned by residents; the proximity to Leighton Buzzard Town Centre encouraging workers and visitors to the town centre to park in the road during the day and the existence of the nursery with only one off-street parking space. It also appears that there are sometimes conflicts between neighbouring occupiers and parents of children attending the nursery, which is regrettable, but not material to the determination of this application.
- 4.2 The material consideration is what the likely impact of the proposed amendments to the conditions would be to the existing parking situation. However, this is not straightforward and is likely to be complex.
- 4.3 Neighbouring residents have raised concerns that allowing the nursery to open earlier and later in the day would result in a significant worsening of existing parking problems. The reasons given are twofold, the first being that more residents are parked or are seeking to park on Albany Road between 7.30am - 8am and 6pm - 6.30pm than between 8am - 6pm. Objectors envisage drop-offs and pick-ups taking place predominantly during these two half an hour periods should condition 1 be amended as per the application. The other reason is that objectors envisage the increased hours allowing more children to attend the nursery, resulting in more staff (needing to park) and more parents needing to pick-up and drop-off children.
- 4.4 The Highways Officer has noted that it is actually unlikely that the majority of parents would choose to utilise the extended opening hours. Those who will find it convenient will do so, but other parents are likely to maintain their current usage of the nursery. As a result, the impact of the requested variation of condition 1 would be to expand the period of time within which the period of drop-offs and pick-ups take place, thus lessening the intensity of pick-ups and drop offs. This would therefore be likely to improve the current situation rather than worsen the situation.

- 4.5 It is also noted that the impact of the proposed amendments would not result in an expansion in the number of children attending the nursery (as set out in section 3 above). The concerns of neighbouring residents in this respect are therefore unfounded and objectors can be reassured.
- 4.6 The matter of staff parking on Albany Road is also likely to be eased by the proposed amendment to condition 1. As some staff will be arriving earlier in the day, at a time when most residents are still parked on street, it is less likely that those staff will be able to park on Albany Road when they arrive and will therefore have to make alternative arrangements. This is also a benefit to allowing the amendment to condition 1.
- 4.7 However, it is envisaged that extending the operating hours into the evening may mean that some parents are still picking up when some residents of Albany Road are typically arriving home from work. This may result in a limited increase in parking problems between the hours of 6pm-6.30pm (although it is likely to ease pressure between 5pm-6pm).
- 4.8 Having considered the likely impacts of amending condition 1 on the existing parking situation, it is considered that, on balance, the net impact would be likely to be positive, in particular by reducing the number of parents who arrive at any one time to pick-up and drop-off.
- 4.9 Section 4 of the NPPF encourages the use of measures to reduce transport impacts. However, it concludes that permission should only be refused where the residual cumulative impacts of a proposal would be severe.
- 4.10 The applicant has further agreed to explore the potential help to the situation by the imposition of an additional condition requiring the preparation and submission of a Travel Plan to aim to reduce the impact of the nursery on the surrounding streets. This mitigation is considered to be in accordance with Section 4 of the NPPF and it is considered that the residual cumulative impacts of the application to vary condition 1 and remove condition 2 would not be severe. The proposal is therefore considered to be in accordance with Section 4 of the NPPF.

## **5. Other Considerations**

- 5.1 Neighbouring occupiers have raised a number of issues within their consultation responses which are either not material to planning or are not material to the determination of this application.
- 5.2 Matters that were raised which are not material to planning include the overflowing of litter and the existence of lead pipes at the nursery.
- 5.3 Matters raised which are not relevant to the determination of this application include the impact of the balcony (which existed in 1990) and the use of the second floor for nursery space rather than as a separate flat. It is understood that the Enforcement Team are currently investigating the use of the second floor as a separate issue. It is considered appropriate at this stage to impose an informative advising that the second floor of the building cannot be used in

association with the care of children without a separate planning permission.

- 5.4 The Enforcement Team have followed due procedure in their dealings with the nursery by investigating the breach and requiring the submission of an application. A formal complaint to the Council in regards to the conditions not being enforced through the service of an enforcement notice prior to the determination of this application was investigated and was not upheld.
- 5.5 A site notice has not been posted in this case as an unusually high level of direct notification to every property in Albany Road and several properties in Lovent Drive took place at the request of one of the neighbouring occupiers. Furthermore, this type of application would not typically require a site notice.
- 5.6 The Council has thoroughly investigated all the complaints made in regards to the nursery over the years and taken the appropriate action based on the outcomes of those complaints.
- 5.7 An error was made during the processing of the withdrawn Lawful Development Certificate application when a site notice was published referring to a "planning application" rather than a "Lawful Development Certificate" application. This error was acknowledged and an apology was issued.
- 5.8 **Human Rights issues:**  
The proposal raises no Human Rights issues.
- 5.9 **Equality Act 2010:**  
The proposal would not affect accessibility issues relating to the nursery, nevertheless, an informative is recommended, advising the nursery of their responsibilities under the Equality Act 2010.

**Recommendation:**

That the Variation of Condition 1 and the Removal of Condition 2 be APPROVED subject to the following:

**RECOMMENDED CONDITIONS / REASONS**

- 1 The premises shall operate as a children's day care centre only between 07:30hrs to 18:30hrs on Mondays to Fridays and at no time on Saturdays, Sundays or public holidays.
- Reason: To safeguard the residential amenity which the occupiers of neighbouring properties might reasonably expect to enjoy.  
(Policy BE8, SBLPR and Section 11, NPPF)
- 2 Within one calendar month of the date of this permission a noise management plan to control noise levels from the external areas of 11 Albany Road shall be submitted to the Local Planning Authority for their written approval. The noise management plan shall distinguish between quiet, structured, learning and development activities and unstructured free play and shall restrict the hours at which the latter can take place to no more than 2 hours a day. The management plan shall also include the managerial practices which will be implemented in order to limit noise from the external areas of 11 Albany Road. Following the written approval of the noise management plan, no use of the external areas at 11 Albany Road shall take place thereafter except in accordance with the provisions of the noise

management plan, which can only be varied through written agreement with the Local Planning Authority. Until the noise management plan has been submitted and approved in writing, the external areas shall only be used in association with the day nursery between the hours of 10:30 to 11:30 and 14:15 to 15:15.

Reason: To protect neighbouring occupiers from unacceptable levels of noise pollution.

(Policy BE8, SBLPR and Section 11, NPPF)

- 3 Before the introduction of the extended operating hours, a Travel Plan shall be prepared, submitted to and approved in writing by the Local Planning Authority. The plan shall contain details of:
  - a. plans for the establishment of a working group involving the nursery and parents
  - b. travel patterns and barriers to sustainable travel
  - c. measures to encourage and promote sustainable travel and transport for journeys to and from nursery
  - d. an action plan detailing targets and a timetable for implementing appropriate measures and plans for annual monitoring and review

All measures agreed therein shall be undertaken in accordance with the

approved Plan. There shall be an annual review of the Travel Plan (for a period of 5 years from the date of approval of the Plan) to monitor progress in meeting the targets for reducing car journeys generated by the nursery and this shall be submitted to and approved by the Local Planning Authority.

Reason: In the interests of highway safety, to reduce congestion and to promote the use of sustainable modes of transport

(Section 4, NPPF)

## **INFORMATIVE NOTES TO APPLICANT**

1. In accordance with Article 35 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the reason for any condition above relates to the Policies as referred to in the South Bedfordshire Local Plan Review (SBLPR) and the National Planning Policy Framework (NPPF).
2. This permission relates only to that required under the Town & Country Planning Acts and does not include any consent or approval under any other enactment or under the Building Regulations. Any other consent or approval which is necessary must be obtained from the appropriate authority.
3. The applicant's attention is drawn to their responsibility under The Equality Act 2010 and with particular regard to access arrangements for the disabled.

The Equality Act 2010 requires that service providers must think ahead and make reasonable adjustments to address barriers that impede disabled people.

These requirements are as follows:

- Where a provision, criterion or practice puts disabled people at a substantial disadvantage to take reasonable steps to avoid that disadvantage;
- Where a physical feature puts disabled people at a substantial disadvantage to avoid that disadvantage or adopt a reasonable alternative method of providing the service or exercising the function;
- Where not providing an auxiliary aid puts disabled people at a substantial disadvantage to provide that auxiliary aid.

In doing this, it is a good idea to consider the range of disabilities that your actual or potential service users might have. You should not wait until a disabled person experiences difficulties using a service, as this may make it too late to make the necessary adjustment.

For further information on disability access contact:

The Centre for Accessible Environments ([www.cae.org.uk](http://www.cae.org.uk))  
Central Bedfordshire Access Group ([www.centralbedsaccessgroup.co.uk](http://www.centralbedsaccessgroup.co.uk))

4. The applicant is advised that in accordance with the planning permission SB/90/00421 granted at appeal on 7/5/1991, the second floor of the building cannot be used for other than residential use, including as a children's day care centre, without a specific further grant of planning permission.

**Statement required by the Town and Country Planning (Development Management Procedure) (England) Order 2015 - Part 6, Article 35**

The Council acted pro-actively through positive engagement with the applicant during the determination process. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

**DECISION**

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