

**5d 3/12/1805/FP – Use of part of ground floor for the purposes of childcare on a domestic premises for up to 20 children at Dhoon, Epping Green, Hertford, Hertfordshire, SG13 8NB for Samantha Baker**

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**Date of Receipt:** 24.10.2012

**Type:** Full – Minor

**Parish:** LITTLE BERKHAMSTED

**Ward:** HERTFORD – RURAL SOUTH

**RECOMMENDATION:**

That planning permission be **GRANTED** subject to the following conditions:

1. The number of children to be cared for at the property shall not exceed 20 on any single day.

**Reason:** To prevent an intensification of the approved use which would be harmful to the amenities of neighbouring residents, contrary to policy ENV1 of the East Herts Local Plan Second Review April 2007.

2. Notwithstanding the details shown on the approved plan B1, there shall be submitted to the Local Planning Authority within 2 months of the commencement of the use approved by this permission, a plan setting out the areas of the site to be provided for the nursery use. Once agreed in writing by the Local Planning Authority, the use shall be restricted to the areas set out on the submitted plan (subject to reasonable access and passing between any separate approved areas):

**Reason:** To ensure that the approved use takes place within the site in such locations as to minimise the harmful impact of the use on the amenities of neighbouring residents, in accordance with policy ENV1 of the East Herts Local Plan Second Review April 2007.

3. Within 2 months of the date of this permission full details of both hard and soft landscape proposals shall be submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate: (a) Means of enclosure for the outdoor play area within the rear garden (b) acoustic screening to the north edge of the patio edged green on Plan B1 (c) Planting plans (d) Written specifications (including cultivation and other operations associated with plant and grass establishment) (e) Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate (f) Implementation timetables (g) retention of mature trees and landscaping to the site boundaries. The approved details shall be implemented within 2 months

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of the date of written approval of the details and the planting, fencing and acoustic screening shall thereafter be retained for the operational life of the permitted nursery use.

Reason: To ensure the provision of amenity afforded by appropriate landscape design, in accordance with policies ENV1, ENV2 and ENV11 of the East Herts Local Plan Second Review April 2007.

4. The premises shall not be used as a day nursery outside the following times: Monday to Friday 7:30am to 6:30pm and at no time on a Saturday, Sunday, Bank or Public Holiday.

Reason: In the interests of the amenities of neighbouring residents, in accordance with policy ENV1 of the East Hertfordshire Local Plan Second Review April 2007 and guidance contained in the National Planning Policy Framework.

5. The use of the outdoor areas of the site for the use approved by this permission shall be restricted to between the times of 10.00am and 5.30pm on any day when the use is permitted.

Reason: In the interests of the amenities of neighbouring residents, in accordance with policy ENV1 of the East Hertfordshire Local Plan Second Review April 2007 and guidance contained in the National Planning Policy Framework.

6. The number of children permitted to be in the garden and any other outside area of the premises shall be restricted to no more than 10 at any one time.

Reason: In the interests of the amenities of neighbouring residents, in accordance with policy ENV1 of the East Hertfordshire Local Plan Second Review April 2007 and guidance contained in the National Planning Policy Framework.

7. The use shall be operated in compliance with the submitted Sustainable Travel Plan. Within six months of commencement of the use approved by this planning permission, a monitoring report shall be submitted to the local planning authority outlining the effectiveness of the Travel Plan and any additional or amended measures proposed as a result. Once approved in writing by the Local Planning Authority, those additional measures shall thereafter be implemented within two months of the date of their written approval.

Reason: To promote sustainable transport measures to the

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development, in accordance with policy TR4 of the East Herts Local Plan Second Review April 2007.

8. Approved plans (2E123) ; A, B1, 95/GL/04 B.

#### Directives:

1. Other legislation (01OL1)

#### Summary of Reasons for Decision

East Herts Council has considered the applicant's proposal in a positive and proactive manner with regard to the policies of the Development Plan (Hertfordshire County Structure Plan, Minerals Local Plan, Waste Core Strategy and Development Management Policies DPD 2012 and the 'saved' policies of the East Herts Local Plan Second Review April 2007 and in particular policies ENV1, EDE3, EDE6, GBC1, TR4 and TR7); the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012. The balance of the considerations having regard to those policies and the amendments made following the refusal of application ref: 3/12/0814/FP is that permission should be granted.

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#### **1.0 Background:**

- 1.1 The application property is a detached two-storey dwellinghouse located in the Category 3 village of Epping Green within the Metropolitan Green Belt. The proposal is to use the property for childcare for up to 20 children between 0730 and 1830 from Monday to Friday each week.
- 1.2 At present the premises are in use for childcare on what is argued to be an ancillary basis. According to the applicant's submission, care is already provided for up to 16 children on any given day. No application has been submitted to regularise this use, and therefore no formal determination has been made about its lawfulness or acceptability.
- 1.3 Complaints were received from a nearby resident about the existing nursery use of the premises in 2011 and earlier this year. Planning Enforcement Officers have been seeking to resolve the matter through the submission of a formal application for planning permission.
- 1.4 An application for the use of the property for childcare for up to 32 children (ref: 3/12/0814/FP) was submitted in May 2012. That

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application was however refused under delegated powers in July 2012 for the following reason:

*The proposed use of the site for childcare for up to 32 children would result in an unacceptable increase in noise and disturbance to neighbouring occupiers, contrary to policies ENV1, EDE6 and EDE3 of the East Herts Local Plan Second Review April 2007 and the requirements of the National Planning Policy Framework.*

- 1.5 An appeal against this refusal has recently been lodged with the Planning Inspectorate and is under consideration.
- 1.6 The current application seeks permission for the use of the property for childcare for up to 20 children and is submitted together with a supporting Planning Statement, Noise Impact Assessment, Transport Statement and Sustainable Travel Plan.
- 1.7 At present three part-time members of staff are employed at the premises and this would increase to three full-time members of staff if permission is granted. In addition to this, the applicant (Mrs. Baker) and her husband also provide full-time care. The applicant's agent indicates that proposed use for up to 20 children is in accordance with guidelines for a facility of this nature.
- 1.8 The property is a detached house, with the current (and proposed) childcare facility provided within part of the ground floor. The house has a large garden to the rear which is used by the children for formal and informal games and play. There is a small swimming pool on the patio immediately to the rear of the house that is, occasionally, used for formal swimming tuition during warmer weather.

## **2.0 Site History:**

- 2.1 The relevant planning history for the application site is as follows:
  - 3/94/1190/FP – Alterations and extension – Withdrawn
  - 3/95/0453/FP – Rebuild garage; Extensions to ground and first floors – Refused May 1995
  - 3/95/0892/FP – Ground and first-floor extensions – Approved November 1995
  - 3/02/2038/FP – First-floor extension over garage – Refused November 2002
  - 3/03/1868/FP – First-floor extension over garage – Approved

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November 2003

- 3/12/0814/FP - Use of the ground floor for the purposes of childcare on domestic premises for up to 32 children – Refused July 2012 – Appeal lodged.

### **3.0 Consultation Responses:**

- 3.1 The County Council Highways section comments that the development is unlikely to result in a significant impact on traffic levels around the site. Compliance with the submitted sustainable travel plan should be conditioned, and a report analysing its effectiveness submitted after six months.
- 3.2 Environmental Health officers initially raised concerns about the method through which the submitted noise analysis was conducted, and recommended refusal as it was not clear that the development would not be harmful to neighbour amenity.
- 3.3 Following discussions with the applicant's appointed noise consultants and a visit to the site conducted on the 6<sup>th</sup> December, Environmental Health officers have revised their initial recommendation. The recommendation is now one of approval, subject to conditions including limiting the hours of opening for the nursery use, and the hours of use of the garden, maximum number of children present in the garden at any one time, the provision of an acoustic screen at the rear of the house and the fitting of rubber wheels to outdoor toys used in the garden. These conditions are intended to mitigate for any noise disturbance to neighbouring occupiers.

### **4.0 Parish Council Representations:**

- 4.1 Little Berkhamsted Parish Council does not object to the change of use, subject to stringent conditions being included to protect neighbour amenity.
- 4.2 The Parish Councillors raised concerns about the recommendations of the noise consultants' report, and requested that it be assessed in detail by Environmental Health officers.

### **5.0 Other Representations:**

- 5.1 The application has been advertised by way of press notice, site notice and neighbour notification.

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5.2 Four letters of objection have been received, including representations from three properties in the vicinity of the application site. Those properties are Three Oaks and White Lodge, which are the immediate neighbouring properties, and Storeys Cottage to the north of Three Oaks. These are the three nearest properties to the application site. The grounds of objection raised are as follows:

- That the applicant has misled the Council since initial investigations began in 2011
- The existing use has caused problems of noise and general disturbance to neighbouring occupiers; and that the proposed use would result in greater levels of noise and disturbance
- There is no way to guarantee that projected traffic flows are realistic
- The development is inappropriate in this isolated rural settlement
- The development would result in increased demand on the non-mains waste water management system serving the site and neighbouring properties
- Increased demand on the local road network, to the detriment of highway safety
- That the information submitted by the applicant in support of their application does not address neighbour concerns, and is an inaccurate interpretation of planning policy
- Request that a decision on the application be postponed until the summer so that an assessment of the noise generated during the busiest period of garden use can be made

5.3 31 letters of support have been received which can be summarised as follows:

- High standard of care provided
- Reasonably priced care
- The service is accessible without needing to go into Hertford
- The service meets a local need
- Creation of jobs in a rural location
- Country environment is beneficial to the children
- Expanded number of spaces would make it easier to place family groups together
- Provision of flexible care of the type on offer allows parents to return to work

5.4 The 31 letters included letters of support from parents of children attending the nursery who are resident in the following places:

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- Hertingfordbury
- Brickendon
- Bayford
- Hertford
- Barnet, North London

5.5 In addition, letters of support were received from other supporters, including parents who would like to place their children in the expanded facilities if approved, who are resident in the following places:

- St Leonards on Sea, East Sussex
- Hatfield
- Broxbourne

5.6 Not all letters of support included the address of their sender, as many were received by e-mail.

### **6.0 Policy:**

6.1 The relevant 'saved' Local Plan policies in this application include the following:

ENV1	Design and Environmental Quality
EDE3	Employment Uses Outside Employment Areas
EDE6	Home Working
GBC1	Green Belt
SD1	Making Development More Sustainable
TR4	Travel Plans
TR7	Car Parking – Standards

6.2 In addition, national planning policy in the National Planning Policy Framework (NPPF) is of relevance to the consideration of this application. In particular, it indicates support for the continued provision of businesses and local services in the rural area and for the facilitation of flexible working, such as integrating residential and commercial use within the same unit.

### **7.0 Considerations:**

7.1 The determining issues in this case relate to the principle of the development in the Green Belt, its impact on neighbour amenity, the highway and its impact on the character of the surrounding area.

Principle of development

- 7.2 The site lies within the Metropolitan Green Belt wherein the material change of use of land is not inappropriate provided that it maintains openness and does not conflict with the purposes of including land in the Green Belt. Those purposes are set out in the NPPF.
- 7.3 The proposal the subject of this application does not involve any new building on the site and the parking area needed to support the development already exists. There would, in Officers opinion, be no impact on the openness of the surrounding Green Belt as a result. Furthermore, officers consider that the proposal would not conflict with any of the purposes of including land in the Green Belt as set out in paragraph 80 of the NPPF.
- 7.4 Officers consider therefore the proposal is not inappropriate development in the Metropolitan Green Belt. It is not necessary therefore for the applicant to show 'very special circumstances' in this case. The determining issues are therefore whether the proposed use would be acceptable in respect of other policies of the adopted Local Plan and in terms of neighbour amenity and highway safety.
- 7.5 Council policy, as set out in policies EDE3 and EDE6 of the Local Plan, is broadly supportive of home working, especially where this can be carried out without harm to neighbour amenity. This also reflects national planning policy guidance in the NPPF. Policy EDE3 specifically refers to the business use of residential properties in the main settlements, indicating that they should not result in the loss of satisfactory residential properties.
- 7.6 Dhoon occupies a large plot of land, with a substantial rear garden of some 0.4ha in area. The residential use of the house would not be lost, as it would remain the home of the applicant and her family, although a grant of permission would result in the property taking on a mixed use of residence (Use Class C3) and childcare (Use Class D1).
- 7.7 The use of the house and this large rear garden to provide childcare is therefore considered by officers to accord in principle with national and local planning policy provided that any impact on the amenities of neighbouring properties can be satisfactorily mitigated and that traffic generation, access and parking matters are acceptable.

Neighbour amenity; Character of local area

- 7.8 This application is, as referred to above, the second received for the



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purpose of formalising the existing use of the property for childcare purposes. The initial application, which sought consent for up to 32 children, was refused. Officers considered the scale of that proposal would result in an unacceptable increase in noise and disturbance to neighbouring residents.

- 7.9 The former proposal represented a potential fourfold increase in the number of children to be cared for at the site, based on the situation as understood by officers at that time (Officers were then advised that only up to 8 or 9 children were accommodated at the site).
- 7.10 The situation at the site has moved on in the interim, with staff now apparently being employed and the number of children being cared for having risen to a stated maximum of 16.
- 7.11 In determining the previous application, officers considered that there were two primary sources of disturbance and noise to neighbouring residents. These were the comings and goings of vehicles associated with the collection and dropping off of children, and the noise associated with the use of the house and garden for up to 32 children (reduced now of course to 20 children within this application).
- 7.12 These two sources of noise and disturbance are discussed below in relation to this reduced number of children and taking into consideration the new supporting information now available.

#### Disturbance from traffic and vehicles

- 7.13 Dhoon is a relatively isolated dwelling, located outside of the village of Epping Green, approximately 500m from its centre. A single bus service runs between Hertford and Cuffley via Epping Green three times a day between 10am and 4pm. Access to the area is otherwise limited to private transport. The practicalities of transporting children would mean that for those outside of the immediate vicinity of the site this is almost certainly going to be by private car.
- 7.14 It is therefore necessary to consider whether the disturbance generated by the travel associated with the proposed twenty children would be materially harmful to neighbour amenity.
- 7.15 The worst-case scenario would be for all twenty children to be delivered to the site in the morning at the same time, and collected in the afternoon. However, in practice this is very unlikely to occur and the applicant indicates that the proposed pattern will be as follows: 6-7 will arrive between 0730 and 0900, a further 6-7 will be collected from pre-

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school at around noon, and the final 6-7 will be collected from school at about 1500-1530. They will depart in sibling groups staggered over the period 1600-1830.

- 7.16 The applicant conducted a survey during April 2012 to analyse traffic movements around the site. They noted that on the days in question, there were 33 arrivals at Dhoon, collecting or dropping off a total of 45 children. This equates to approximately 1.3 children per car. This figure is used in assessing the likely vehicle movements associated with the use.
- 7.17 For all twenty children to be picked up and delivered at the site each day would therefore result in an additional 30 vehicle movements associated with the use. This would be in addition to the typical comings and goings associated with a fairly large house such as Dhoon, which officers estimate as around 10-12 movements per day.
- 7.18 However, the applicant offers collection services from local schools and pre-schools that would reduce this number somewhat. The applicant's figures, taken across two days in April 2012, suggest that around 60% of the children are present throughout the day, and around 40% are collected during the course of the day. Although the two day sample is small, officers consider it is sufficient to allow an estimate of the amount of traffic associated with the proposed use.
- 7.19 Around 12 children (60% of 20) would be delivered in the morning, resulting in nine vehicle movements. There are two round trips to local schools and pre-schools, collecting the remaining 8 children (40% of 20). Approximately 15 further vehicle movements would be needed to collect the children in the evening. The use for 20 children is therefore estimated to result in around 26 additional vehicle movements per day.
- 7.20 This level of traffic would be significantly in excess of the normal residential traffic associated with the site. It is therefore necessary to assess this traffic in terms of the general level of traffic on the local road, Church Road.
- 7.21 The applicants have provided an analysis of normal traffic flow during the main times (0730-0930 and 1600-1800) when traffic associated with the childcare use would take place. On average, 960 cars passed Dhoon during each two hour period. Within the context of this volume of traffic, officers consider that the addition of the traffic movements solely associated with the childcare use would not, in themselves, be the source of such disruption to cause a material loss of amenity to neighbouring occupiers. This view is supported by the County Council's

Highways officers, who consider that the development would have limited impact in highways terms. They recommend that the sustainable travel plan submitted by the applicant be conditioned in its entirety.

- 7.22 However, the greatest impact from the vehicles would come from the noise generated by the vehicles manoeuvring onto and off the forecourt of the property, and the movement of children between the vehicles and the house. This is assessed by officers as part of the general level of disturbance caused by the childrens' presence. The noise and disturbance associated with the presence of up to 20 children at the property will inevitably exceed that generated in their absence. It is therefore necessary to determine the extent to which this noise would impact on neighbour amenities.
- 7.23 The Travel Plan measures are to be encouraged and it is proposed that traffic generation and parking be monitored at the site for six months following the grant of permission to ensure the effectiveness of the Travel Plan and, if necessary, to implement any further measures that are considered necessary after that period. A condition to secure this monitoring report is recommended.

#### Disturbance from children

- 7.24 Considerable frustration appears to have been generated among neighbouring residents by the manner in which the applicant has opened and expanded the nursery to its current size of up to 16 children. Although officers have not endorsed the current unauthorised use, this application must be assessed on its own planning merits, separately from these concerns.
- 7.25 The current situation is one that has evolved without control under planning legislation. No significant measures have been put in place to protect neighbour amenity. The boundary between Dhoon and Three Oaks, the property to the immediate north, is largely open, particularly in the area to the far end of the garden where it appears that the children spend the majority of their outdoor time. The shared boundary in this location is a post and rail fence, providing no screening for the neighbouring occupiers.
- 7.26 An enhanced landscaping scheme in this area, designed to close off a clearly marked area for formal outdoor activity by the children, would provide some reduction of the noise generated by the children during play and this is proposed by the applicant. The outdoor play areas would be one around 70 metres from the house and the other around the patio area immediately to the rear of the house. Additional

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landscaping would help to limit the impact of noise from the children and a condition to this effect is recommended.

- 7.27 In addition to this, the applicants have proposed a limit of a maximum of 10 children to be present outdoors at any time. Officers consider this to be acceptable, and it is likely to be desirable to separate the younger and older children during playtime in any case. A condition to this effect is recommended, and whilst officers note that there would be difficulties enforcing this on a day to day basis, any evidence of a consistent breach of the condition is considered to be enforceable in an effective way.
- 7.28 Environmental Health Officers have recommended a condition limiting the hours of use of the garden by the children, as well as the nursery in general. Officers consider that a condition limiting the hours of use of the garden would help in preventing disturbance to residents and this is recommended at the head of this report
- 7.29 Environmental Health officers have also recommended that acoustic screening be introduced to the immediate rear of the house to limit impact to the occupants of Three Oaks. The applicants have stated that this area is primarily used by the youngest children, although this doesn't limit the potential for noise generation. The addition of formal acoustic screening in this area, in addition to the landscaping already in place on the opposite side of the patio, would help to limit the noise impact to neighbouring occupiers and again this condition is recommended.
- 7.30 Environmental Health officers have visited the property and confirmed that they have no objections on noise grounds. In particular, it was noted that there was no noise audible from the children inside the house when officers were outside the house, albeit at a lesser number than now proposed. As the children are expected to be inside the house for much of their time – particularly on days of poor weather conditions – then this is a view given significant weight.
- 7.31 Environmental Health officers have also recommended a condition setting out recommended opening hours of 7:30 am to 7:30pm. Officers consider that such a condition is reasonable, but based on the submitted information it appears that the nursery at present closes by approximately 6:30pm. Officers therefore recommend a condition setting opening hours at 7:30am to 6:30pm.
- 7.32 Even with these measures in place, officers consider that there would still be some harm arising from the development to neighbour

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amenities. The noise generated by the children at play could not be wholly avoided, and inevitably there would be some impact on neighbours.

- 7.33 It is therefore necessary to consider whether the benefits of the development would outweigh the level of harm caused.
- 7.34 Policy ENV1 of the Local Plan states that new developments must “respect the amenity of occupiers of neighbouring buildings and those of future occupants and ensure that their environments are not harmed by noise and disturbance”. Officers have assessed the proposal and consider that, provided the recommended conditions are complied with, the impact on neighbours’ amenities should be limited to an acceptable level.
- 7.35 Guidance is given by the Government in the NPPF. Paragraph 17 states that when taking decisions on planning applications, authorities should “always seek to secure ... a good standard of amenity for all existing and future occupants of land and buildings”. It goes on to state that authorities should “promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas”.
- 7.36 Paragraph 21 states that authorities should “facilitate flexible working practices such as the integration of residential and commercial uses within the same unit”. This is in accordance with Local Plan policies EDE3 and EDE6.
- 7.37 Paragraph 28 states that “Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development”. It goes on to recommend that local plans should “support the sustainable growth and expansion of all types of business and enterprise in rural areas”. The development would result in three full-time jobs.
- 7.38 Paragraph 90 recognises within the Green Belt certain types of development (in addition to those specified in policy GBC1 of the Local Plan) will not be inappropriate provided they preserve the openness of the Green Belt. One of the recognised uses is “the re-use of buildings provided that the buildings are of permanent and substantial construction”. Officers consider that this is applicable in terms of this proposal, which seeks to introduce an additional use at the existing dwellinghouse.
- 7.39 Paragraphs 185 and 186 state that “authorities should approach

decision-taking in a positive way to foster the delivery of sustainable development” and that authorities should look for solutions rather than problems”. Paragraph 203 states that “authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions”.

- 7.40 Officers therefore conclude that, while the previous application for 32 children was of a scale that could not be made acceptable, the level of harm that would be caused by the current reduced proposal for 20 children can be satisfactorily mitigated, such that the benefits of the proposal would outweigh any harm resulting.

#### Other issues

- 7.41 Concern has been expressed about the quality of information submitted in support of the application. In officers’ experience applications may at times include information of limited relevance to the material planning considerations that are assessed in reaching a decision.
- 7.42 Concerns have also been raised that information supplied during the course of the investigation into the ongoing use has been deliberately misleading. Unquestionably the number of children being cared for at the premises has continued to grow since the applicant first established their business in 2011. However, officers accept that the information submitted was correct at the time of submission. That the business has continued to grow would likely be a matter for Enforcement action, should permission be refused.
- 7.43 Environmental Health officers have not raised any concerns regarding the proposed increase in demand relating to the disposal of waste water from the site. At present the site is not connected to a mains sewage line. Waste is managed through a private septic system. In the absence of any formal concerns raised regarding this matter, it is assumed that the system would be capable of handling the increase in use. In the event that the system was not adequate, Environmental Health would be able to require that appropriate measures be introduced to handle the added demands.

#### **8.0 Conclusion:**

- 8.1 The site comprises a detached dwellinghouse on a large plot of land, located in an isolated rural location. The proposal is to regularise the existing nursery use at the site and allow a further increase in numbers to a maximum of 20 children to be present on any one day.

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- 8.2 Officers consider that some harm would result from this development - primarily from the use of the garden and patio area. In addition, the location does not perform strongly in sustainability terms. However, Officers acknowledge the benefits of the service provision and consider that the recommended conditions of acoustic screening, landscaping, restrictions on the number of children, and hours of operation would be sufficient to limit the level of noise and disturbance to a reasonable level.
- 8.3 It is therefore recommended that planning permission be granted for the additional use of the premises for childcare for up to 20 children, subject to accordance with the conditions specified at the head of this report.