

Planning Development Management Committee

27 WHITEHALL TERRACE, ABERDEEN

CHANGE OF USE FROM DWELLING HOUSE
(CLASS 9) TO MIXED USE OF DWELLING
HOUSE AND CHILDMINDING (CLASS 10) FOR
10 CHILDREN OPERATING 8AM TO 6PM, MON
TO FRI.

For: Sunny Garden Childminding, Mrs Olga
Sevastyanova

Application Type : Detailed Planning Permission

Application Ref. : P140440

Application Date: 25/04/2014

Officer: Andrew Miller

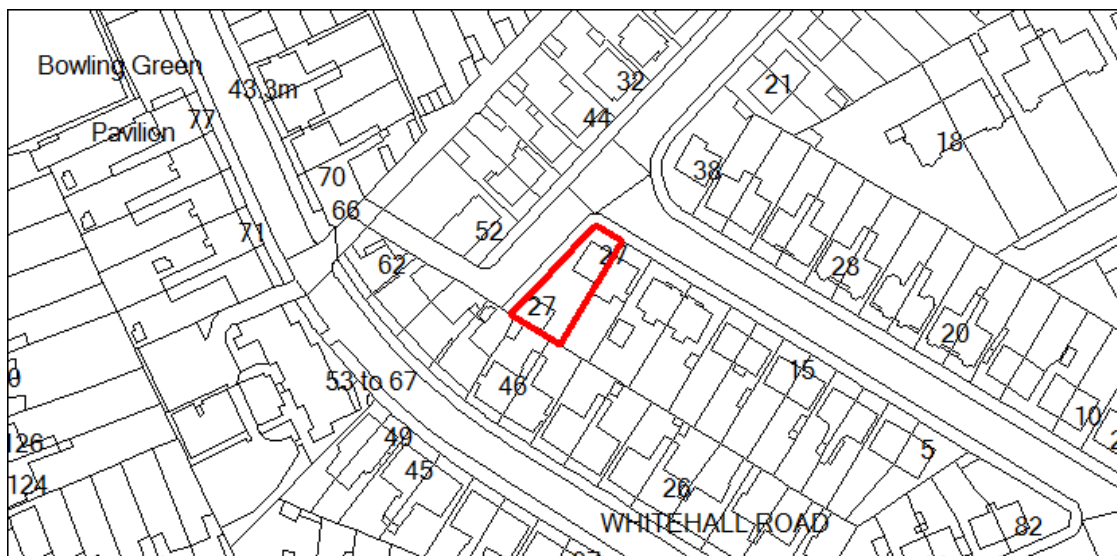
Ward: Hazlehead/Ashley/Queen's Cross(M
Greig/J Stewart/R Thomson/J Corall)

Advert: None

Advertised on: N/A

Committee Date: 24/07/2014

Community Council : Comments



RECOMMENDATION:

Approve subject to conditions

DESCRIPTION

The application site forms a one and half storey semi-detached dwelling, located on the western corner of Whitehall Terrace and Craigie Park. The dwelling dates from circa the 1920s, though has been altered in recent years. Within the rear garden of the dwelling is a relatively large one and a half storey studio building which is ancillary to the use of the dwelling. The surrounding area is residential, with dwellings of a similar style and scale. It is also located on the western edge of the Rosemount and Westburn Conservation Area, with the Albyn Place/Rubislaw Conservation Area immediately to the west of the site.

The application form states a temporary period of consent has been applied for (50 years).

RELEVANT HISTORY

91/0628 – Planning permission was granted by the then Planning Committee on 23 May 1991 for the erection of a studio in the rear garden. This was subject to the condition:

“that the use hereby approved shall ensure to the benefit of the present applicant only – in order that this permission may be reviewed in the event of the present applicant relinquishing interest therein.”

P111143 – Planning permission was sought for the removal of the condition granted under application reference 91/0628. The Development Management Sub Committee granted permission on 29 September 2011, subject to the following condition:

“that the studio shall not be used for any purpose other than that which is ancillary to the domestic use of the dwelling house – in order to preserve the amenity and character of the neighbourhood”

PROPOSAL

Detailed planning permission is sought for the change of use of the dwelling (Use Class 9) to a mixed use of dwelling and childminding (Use Class 10). The childminding operation would be for up to 10 children, operating Monday to Friday, from 8 am to 6 pm.

Supporting Documents

All drawings and the supporting documents listed below relating to this application can be viewed on the Council’s website at

<http://planning.aberdeencity.gov.uk/PlanningDetail.asp?ref=140440>

On accepting the disclaimer enter the application reference quoted on the first page of this report.

REASON FOR REFERRAL TO COMMITTEE

The application has been referred to the Planning Development Management Committee because the application has attracted 6 or more in time representations and the Community Council have objected to the proposals. Accordingly, the application falls outwith the scope of the Council's Scheme of Delegation.

CONSULTATIONS

Roads Projects Team – No objections. The Traffic Management Section have stated the size of the childminding operation would not attract a large number of additional vehicles above the existing levels and with its hours of operation, the local parking zone will be able to accommodate additional short stay parking for pick up and drop offs.

The drop off zones out with the pay and display controlled parking spaces shown in the plan provided with the application must not be used. Any areas of double yellow lines offer corner protection and allow safe access to the lane at the south west end of Craigie Park. The applicant must be aware of this and must put a mechanism in place informing parents of a safe procedure for dropping off and picking up children. This would involve using the pay and display controlled parking zone spaces and walking children to/from the property.

Environmental Health – No objections, recommend condition limiting operating hours.

Enterprise, Planning & Infrastructure (Flooding) – No observations.

Community Council – Object to the proposals on the basis that:

1. It would be detrimental to the amenity of neighbouring properties, particularly number 25 (attached to the application site).
2. There is insufficient space for children in the garden.
3. There is no safe area for drop off/pick up of children.
4. There are issues with health and safety in accessing the rear from Whitehall Terrace (crossing a parking space to the side of the studio, no handrail, broken up slate in rear garden). Also query if a Risk Assessment has been undertaken.
5. There are no fire exits for the rear studio building.
6. The trampoline requires staff with suitable qualifications for supervision of children.
7. There are parents who illegally park when picking up/dropping off children.

8. The Health and Safety Executive and Care Inspectorate have been contacted to raise concerns and hope that discussions will be undertaken between all parties before any decision is made on the change of use.
9. The value of property in the surrounding area will be decreased should the change of use go ahead.
10. The spirit of the condition attached to the studio requiring it to be ancillary to the use of the dwelling is broken with childminding being carried out in the building.
11. Children currently arriving prior to 8 am.
12. Current illegal parking will be exacerbated. Comments requiring the applicant to police the parking situation from Roads Projects totally unrealistic.

REPRESENTATIONS

36 letters of representation have been received: one letter of support and 35 letters of objection.

The application was open for representation/notified twice following amendments to the proposals (reduction in number of children, further information on operation).

30 letters of objection and one letter of support were received during the first notification period, with five further letters of objections (from people who had previously not objected) and eleven addendums/supersessions to original objections in the second notification period.

The objections raised relate to the following matters and is summarised below:

1. Noise/Amenity

- 1.1. Condition attached to studio at rear of the building requires use to be ancillary to dwelling in order to “preserve amenity” of neighbourhood. This proposal will impact on the amenity of the area.
- 1.2. Noise from children and cars will upset the peace and tranquillity of the area.
- 1.3. Adverse impact on amenity of occupants of dwelling attached to application site (25 Whitehall Terrace).
- 1.4. Adverse impact on the environment in terms of bins overflowing. Litter and toys have been thrown into neighbouring gardens and the street from the childminding.
- 1.5. Neighbours attached are unable to use garden due to noise and intimidation from children at childminders.
- 1.6. Noise from childminding will affect health of neighbours and will prevent visitors to the neighbours.
- 1.7. No other business premises within 280m walking distance of site.

- 1.8. Proposal is a bad neighbour use and should not be situated in residential areas, contrary to requirements of policy H1 of the ALDP. Such proposals should be located in other areas such as industrial estates.
- 1.9. Insufficient space to accommodate childminding, contrary to requirements of Council's Supplementary Guidance on Children's Nurseries and Sport Facilities.

2. Traffic/Parking

- 2.1. Roads Projects and Development Management should consult one another before coming to a decision.
- 2.2. Residents should not have to notify City Wardens and/or Police Scotland when there is illegal parking.
- 2.3. Proposals would result in an adverse impact on parking in an already congested area. Parking demand would be greatest when parents pick up children after school. Residents should be able to park outside their own homes.
- 2.4. Craigie Park and Whitehall Terrace are "walk to school" routes to Mile End Primary and Aberdeen Grammar Schools – parents dropping off/picking up children would have an adverse impact on the safety of children walking to school. School children also use the nearby lane to walk to school and vehicles associated with application will use lane, impacting on road safety.
- 2.5. Increase in traffic would result in additional wear and tear to Craigie Park, a road that is unadopted by the Council. Lane between Craigie Park and Whitehall Road is in a poor condition and used as a rat run by the users of the childminders.
- 2.6. Drop-off zone shown provides access to lane.
- 2.7. Lane adjacent to site contains blind corners.
- 2.8. Would impact on children playing and cycling in neighbourhood.
- 2.9. Discrepancies in parking layout provided with application. The spaces shown are for public use, not the sole use of the applicant.

3. Precedent

- 3.1. Should application be granted, it would set a precedent for such development and open floodgates for further businesses to operate from the building.
- 3.2. Residents' fears that a business would be established when condition was "relaxed" have been met.
- 3.3. Bruce Nursery on Osborne Place appeal (Application ref: P110265 and Appeal (DPEA) ref: PPA-100-2031 refers) sets a precedent for such applications to be refused.

4. Quality of Submission

- 4.1. Number of children proposed is still unclear – is it ten in total or ten in addition to the six already allowed?
- 4.2. Application history of the site makes it seem as if the planning system is being circumvented.
- 4.3. Site plan provided with application is inaccurate.
- 4.4. No details provided on changes to the building.
- 4.5. Temporary nature of consent (as stated in a letter to neighbours from applicant) makes it hard to believe why they are applying in first place. (NOTE – Applicant has applied for a temporary period of 50 years, as indicated on application form)

5. Other Comments

- 5.1. Loss of value in property prices in surrounding area.
- 5.2. Plenty of empty units around the city in suitable areas where the business could be run – why ruin the conservation area?
- 5.3. Not in keeping with the Conservation Area.
- 5.4. Applicant advertises as 0700 to 1800 hrs online but has applied for 0800 to 1800 hrs.
- 5.5. Application is contrary to the spirit of the condition contained in consent P111143.
- 5.6. Original consent for studio required it to be converted into a garage if no longer required for original purpose.

A number of issues regarding the operation of the childminders have been raised which are not planning matters, but controlled under legislation separate to the planning process and controlled by other agencies, in particular the Care Inspectorate who licence child care facilities.

The letter of support raises the following matters and is summarised below:

6. Comments of support

- 6.1. Only aware of the application from a mail drop from neighbours – someone in the neighbourhood clearly does not want this in the local area.
- 6.2. Live close to the property in question and cannot believe an increase from 6 to 18 children will impact on the neighbourhood in anyway.
- 6.3. There is no traffic problem in Whitehall Terrace or Craigie Park.
- 6.4. End of street an ideal location for “drop-offs” as very few cars use the two streets.
- 6.5. Support anyone trying to build a local business.
- 6.6. Hearing children play is “lovely” and it will not continue into the evening.
- 6.7. Parents picking up and dropping of children is for a temporary period during the day and will not disrupt the lives of anyone living here.

PLANNING POLICY

National Policy and Guidance

Scottish Planning Policy (SPP)

Development should pay regard to the layout, design, materials, scale, siting and use of listed buildings, as well as their surrounding area's character and appearance. It also states development should have a neutral effect on the character or appearance of a conservation area.

Aberdeen Local Development Plan

H1 – Residential Areas

Within existing residential areas, proposals for non-residential uses will be refused unless:

1. they are considered complementary to residential use; or
2. it can be demonstrated that the use would cause no conflict with, or any nuisance to, the enjoyment of existing residential amenity.

D5 – Built Heritage

Proposals affecting Conservation Areas will only be permitted if they comply with Scottish Planning Policy.

Supplementary Guidance

The Council's Supplementary Guidance on Children's Nurseries and Sports Facilities is a material consideration in this instance.

Other Relevant Material Considerations

None.

EVALUATION

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) require that where, in making any determination under the planning acts, regard is to be had to the provisions of the development plan and that determination shall be made in accordance with the plan, so far as material to the application, unless material considerations indicate otherwise.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities to preserve and enhance the character or appearance of conservation areas.

Background

Childminders are commonplace within residential areas throughout Aberdeen, providing an essential service within the community and enabling parents to

work, with a subsequent benefit to the local economy. The Council has noticed an increase in enquiries from established childminders looking to increase capacity due to demand for child care following the closure of the Hamilton Nursery School in early 2014.

There is a point where a childminding operation would no longer be classed as incidental/ancillary to the dwelling. In the case of Aberdeen the City Council has taken the view, as Planning Authority, that operations with seven or more children will generally require an appropriate change of use, which is the case in this instance.

When originally applied for, the application stated that it was for a variable number of children from 9 to a maximum of 18, however the applicant subsequently amended the proposal to a maximum of 10 children.

The application site falls within a residential area, as designated by the Aberdeen Local Development Plan 2012. Related policy H1 – Residential Areas requires proposals for non-residential uses to be complementary with the residential use where it can be demonstrated that the non-residential use would cause no conflict with, or any nuisance to, the enjoyment of existing residential amenity.

The determining factors in this instance relate to noise, general activity and traffic/parking associated with the proposed change of use

Use of Dwelling for Childminding

In assessing the suitability of dwellings for childminding uses, the Council's Supplementary Guidance on Children's Nurseries and Sports Facilities (SG) contains a number of criteria and general guidance on such proposals. Whilst childminding is briefly mentioned towards the end of the guidance, elements in assessing proposals for nurseries can be applied to this application in terms of the suitability of the dwelling for childminding purposes. The guidance states that for nurseries of 12 or less children, at least 100 sq. m of outdoor play space should be provided. Within the representations received, as well as the Community Council objection, reference was made to the lack of space in the rear garden. In this instance it is considered there is sufficient outdoor play space within the rear garden, a mixture of grass and patio covering an area of approximately 110 sq. m. Taking account of the Scottish climate, the garden is likely to be only used during the summer months on days of good weather – with the children likely kept indoors for the majority of the time. It is therefore considered that the provision of outdoor play space, whilst not fully relevant to childminding, is sufficient.

In relation to the suitability of the dwelling and studio for childminding, both are of a size that could accommodate the 10 children proposed under the application. Though there maybe some impact on the amenity of the neighbours attached to the dwelling, this would not warrant a refusal of the proposals on the basis that there is an existing childminding operation from the dwelling that operates and the addition of four children is unlikely to have a significant increase in noise and

disturbance. Accordingly, it is considered the change of use does not go against the principles contained within the SG.

Whilst the application is for 10 children, this is a maximum number of children and there are likely to be variations in this throughout the day, as the requirements of childcare vary between children and their individual circumstances.

The condition attached to the studio in the rear garden states that its use should remain ancillary to the domestic use of the dwelling house. As a result of this application, the proposed change of use would override this condition, enabling the dwelling and outbuilding to be used for childminding and residential use. Should the use of the childminding cease, then the use of the studio would still be subject to the condition presently attached.

Representations received made reference to the number of children at the childminding exceeding 6. Whilst the Council does not condone retrospective applications, no substantive evidence was provided demonstrating the assertions made.

Noise and Amenity

In this instance the existing childminding business is effectively seeking permission to accommodate an additional four children at the premises on top of the existing operation. It is noted that a number of representations received raised concerns in relation to the impact of the proposals on the amenity of the established area, particularly to residents in the immediate vicinity of the site – see section 1 of Representations section above.

Whilst noise formed one of the main reasons for objection of the development, children playing in established urban residential area is commonplace – indeed schools and nurseries with a substantially higher number of children are found within residential areas. However each case is assessed on its own merits and site specific characteristics. The semi detached house is situated in what is considered to be a quiet residential area where there are presently no businesses in place that are often found in residential areas such as corner shops. Consideration must therefore be given to the impact of the childminding on the amenity of the surrounding area and the relationship it would have with the surrounding area, particularly those within the immediate vicinity of the site.

Childminding is more often than not found in residential dwellings and the level of activity and noise from children associated with the proposed operations would not have any significant adverse impact on the amenity of the surrounding area, including neighbours in close proximity.

The points regarding the behaviour of children and the throwing toys into neighbouring gardens raised in representations is noted however this in itself is not a material planning consideration. Traffic associated with the development

would create some noise to a degree, particularly focused in the morning and late afternoon.

Taking a proportionate approach, it is considered that the proposals would not have an unacceptable impact on the amenity of the surrounding area, the nature of the activity of the proposals being compatible with the residential use of the surrounding area during reasonable daytime hours. In order to apply appropriate limitations, a condition is recommended restricting the operating hours to 8 am to 6 pm Monday to Friday and this is felt sufficient to avoid any disturbance to neighbours during the early hours of the day and evenings, nights and weekends from traffic or noise.

Traffic

As with all childcare, schooling etc., parents are very likely to drop off and collect children by car at the childminders. A number of representations made comments on the illegal parking by parents using the childminders in the past and allowing it to expand would exacerbate the problem, as well as other comments about the capacity of the surrounding infrastructure (as detailed in section 2 of the Representations section).

The Council's Roads Projects Team raised no objections to the proposals, stating the change of use would not attract a large volume of additional traffic in the area and there is sufficient parking availability in the locality. The Roads Projects Team also commented that the applicant should be aware that the drop off zone as indicated in the plan provided with the application should not be used and a mechanism be put in place informing parents of a safe procedure for dropping off and picking up their children. This would usually be done by means of a travel plan, however these are usually expedient of larger developments rather than small operations such as childminding. Accordingly, it is considered the requirement of a travel plan to be submitted is not proportionate to the proposals and as such will not be conditioned. Appropriate parking control measures are in place in the surrounding area and illegal parking should be reported to the appropriate authorities – i.e. City Wardens or Police Scotland.

Impact on Conservation Area

The application site falls within the Rosemount Conservation Area. Scottish Planning Policy (SPP) requires proposals for development within conservation areas and proposals outwith which will impact on its appearance, character or setting to preserve or enhance the character and appearance of the conservation area. Policy D5 – Built Heritage states that development should accord with the requirements of SPP. Whilst there are no physical works associated with the application, the change of use is still a consideration, in that uses within conservation areas should be compatible with their historic interest. In this instance, the proposed partial use of the dwelling for childminding would not have an adverse impact on the character of the Conservation Area as there is no requirement to carry out any physical alterations to the exterior of the premises, thus preserving its existing appearance and character. Accordingly, it is

considered the proposal satisfies the requirements of SPP and subsequently policy D5 of the ALDP.

Matters Raised in Representations

In relation to the matters raised in representations not addressed above, the comments of support for the application are noted as detailed in section 6 of the representations section.

In respect to the matters raised in section 3 of the representations, every planning application is assessed on its own merits. The application is for childminding which is commonplace in residential areas and would not set a precedent for all business types to operate in residential areas. The case relating to Bruce Nursery on Osborne Place (P110265) raised in point 3.3 is a rather different case and is not considered to be a precedent for refusal of childcare applications – the Reporters appeal decision notice stating a variety of factors that culminated in the dismissal of the appeal. Again, each application is assessed on its own merits.

Relating to the quality of the submission, the application is clear in that 10 children in total are being sought, as per comment 4.1. In relation to the point raised on the accuracy of the site plan provided with the application (point 4.3), the main consideration of this application is for the use of the property in question rather than any physical works and the absence of any outbuildings can be picked up on from site investigations. In respect of comment 4.4, no changes are proposed to the building as part of the application – it relates solely to the use of the dwelling and associated buildings. The applicant has indeed indicated a request for temporary permission of 50 years, however changes of use are not granted for a temporary period – rather a change of use should be suitable for any period of time. Accordingly, a permanent consent is recommended for approval.

Comment 5.6 made the comment that the original consent required it to be converted into a garage if no longer required for its original purpose (home office). There is no requirement for this to be done within the original consent.

Points 4.2, 5.1, 5.2 and 5.4 are not material planning considerations, nor are points 4 – 7, 8 and 9 of the points raised by the Community Council.

It should be noted that the welfare of children (though fully important in its own right) should not form part of the consideration of this application. This is not a material planning consideration and is covered under legislation separate to the planning process and administered by the Care Inspectorate.

RECOMMENDATION

Approve subject to conditions

REASONS FOR RECOMMENDATION

The proposed change of use of the dwelling to a mixed use of a dwelling and childminding is considered suitable for the house and the amenity of the surrounding area, subject to conditions as recommended, complying with the requirements of policy H1 – Residential Areas of the Aberdeen Local Development Plan 2012. The proposals accord with the principles of the Council's Supplementary Guidance on Children's Nurseries and Sports Facilities.

The proposed change of use would not have an adverse impact on the character of the surrounding Conservation Area, complying with the requirements of Scottish Planning Policy and subsequently policy D5 – Built Heritage of the Aberdeen Local Development Plan 2012.

CONDITIONS

1. that no more than 10 children shall be accommodated within the childminding element of the mixed use at any given time – in order to ensure acceptable development in the interests of the amenity of the surrounding area.
2. that the childminding use be restricted to the hours of 0800 to 1800 Monday to Friday – in order to preserve the amenity of the area during antisocial hours.

Dr Margaret Bochel

Head of Planning and Sustainable Development.