

KEY INFORMATION

Ward North East

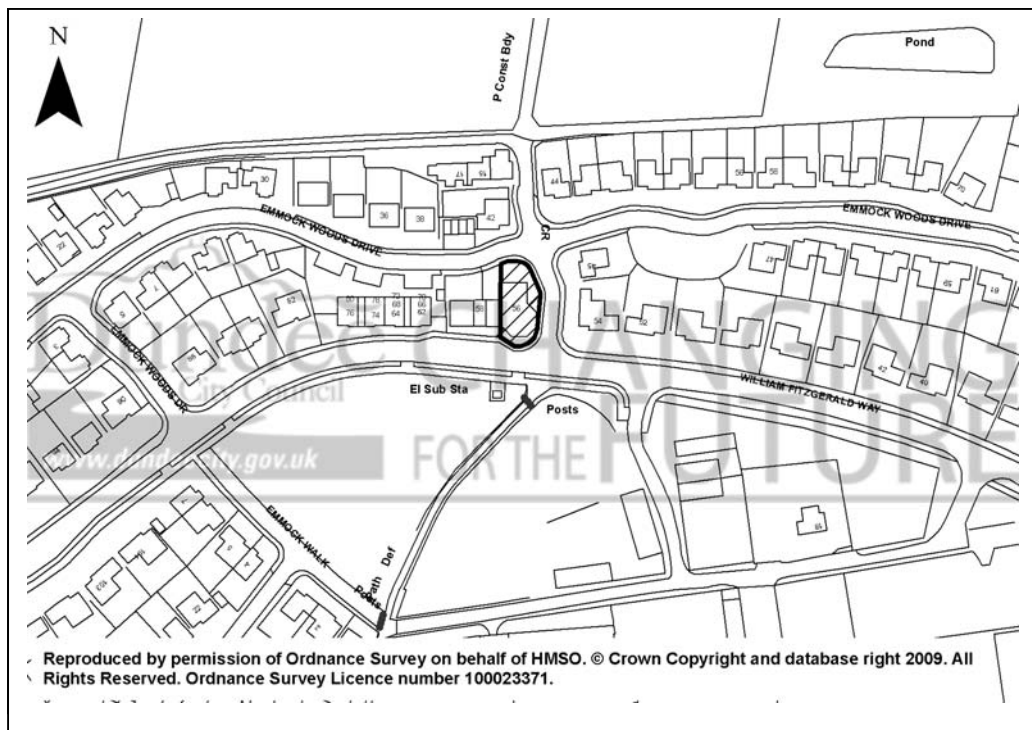
Proposal

Use of vacant retail unit as day care nursery

Address56 William Fitzgerald Way
Dundee
DD4 9FB**Applicant**Mrs Myles
4 Ceres Crescent
Broughty Ferry
Dundee
DD5 3JN**Agent**Paul Doig
7 The Esplanade
Broughty Ferry
Dundee
DD5 2EL

Registered 30 Dec 2009

Case Officer Eve Jones



Proposal for Nursery in William Fitzgerald Way

The use of a vacant retail unit as a day care nursery is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

RECOMMENDATION

The proposed change of use fails to meet the criteria of Policy 19 and therefore also fails to meet Policy 1 of the Dundee Local Plan Review 2005. However, the material considerations to be taken into account include the previous appeal decision to approve use as a nursery. Given the long term vacancy and the lesser impact of a nursery when compared to a shop, it is concluded that the material considerations are of sufficient weight as to justify the grant of planning permission. Therefore, the application is recommended for **APPROVAL** subject to conditions.

SUMMARY OF REPORT

- Planning permission is sought to change the use of this vacant shop unit and the adjoining ground to a nursery for a maximum of 26 children. A previous application, approved on appeal, included the provision of 2 parking spaces for staff. However, the applicant cannot provide these spaces and has submitted this amended application.
- The site comprises a ground floor vacant shop unit in a 2 storey building containing 4 flats. It occupies a prominent location in this recent housing development. The unit is boarded up and has never been used as a shop. William Fitzgerald Way is not a classified road; has no on street parking restrictions; does not carry high levels of traffic and is not a bus route.
- The proposal does not comply with the provisions of Policy 19 of the Local Plan in terms of the provision of outdoor play space or staff parking and also fails to comply with Policy 1 because it does not meet other policies in the Dundee Local Plan Review 2005.
- A planning appeal decision in 2009 used the quality of the indoor space and the location of the Village Green to justify departing from strict adherence to the local plan and planning permission was granted subject to conditions.
- 6 third party submissions supported or did not object to the development regarding it as an improvement to the area. 1 objection stated a shop use was preferable and 1 representation indicated a willingness to operate a shop from this unit.

DESCRIPTION OF PROPOSAL

Planning permission is sought to change the use of this vacant shop unit and the adjoining ground to a nursery for a maximum of 26 children. It is indicated that an outdoor play area of 100m² would be provided to be enclosed by railings on top of the existing wall. There is a lay by area of 4 spaces to the front of the premises to be used by parents dropping off or picking up children. There is unlimited on street parking on William Fitzgerald Way.

It is stated that the premises would operate from 8.00am to 6.00pm with pick up/drop off at 1.00pm also. The applicant states that even though the Care Commission has no requirement for outdoor space, 100m² can be provided, that staggered play times will cater for different age groups to achieve good use of this space and that play equipment will not be permanent in order to maximise the space available.

In terms of access and parking, the applicant states that there are adequate arrangements for dropping off and picking up (which would be staggered) for on street parking for staff, that public transport is close by and that many of the customers would be local.

A previous application, which was approved on appeal, was very similar but included the provision of 2 parking spaces for staff to the rear of the premises. However, the applicant cannot legally utilise this space, hence this amended application.

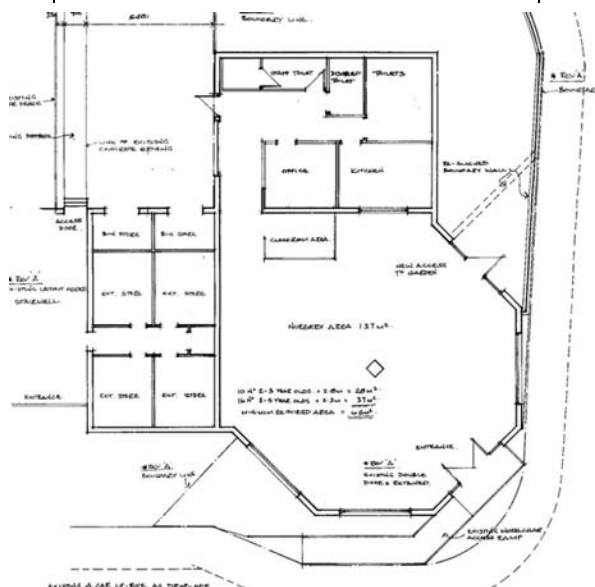
The application relates to land which is in the ownership of the Council. In this respect, the application is prohibited from being determined by an "appointed officer" under the Council's Scheme of Delegation.

SITE DESCRIPTION

The site comprises a ground floor vacant shop unit in a 2 storey building constructed approximately 5 years ago and containing 4 flats, 1 at ground floor to the west of the shop unit and 3 on the upper floor level. The shop unit has never been occupied other than for

a temporary period as a sales office for the adjoining housing development.

The proposed nursery area is 137m² and the site is enclosed by a low reconstituted stone boundary wall to Emmock Woods Drive.



The site is surrounded by dwellings to the north, east and west. To the south is an area of public open space known as the village green.

William Fitzgerald Way is the main



distributor road which serves this housing development. It is not a classified road; has no on street parking restrictions; does not carry high levels of traffic and is not a bus route.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

Dundee Local Plan Review 2005

The following policies are of relevance:

Policy 1 is of relevance and states that in existing residential areas such as this the Council will promote vibrant communities, encouraging the development of an appropriate range of services and facilities close to and within housing areas. New development should be in accordance with other policies in the Plan and seek to minimise any affect on the environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise or smell.

Policy 19 on Private Day Nurseries supports nurseries in accordance with the guidelines contained in Appendix 4 of the Local Plan. It states that nurseries should offer good quality facilities in a pleasant surrounding environment.

The guidelines in Appendix 4 state that in residential areas nurseries should provide at least 9m² of outdoor play space per child, which should be attractive, useable, safe and enjoy a sunny aspect. Parking should be 1 space per 3 staff members and 4 for picking up and setting down. Finally the development should not be within 250 metres of an existing nursery.

As the proposal does not meet the standards for parking and outdoor play space it was advertised as contravening the Local Plan.

Scottish Planning Policies, Planning Advice Notes and Circulars

There are no statements of Government policy relevant to the determination of this application.

Non Statutory Statements of Council Policy

There are no non statutory Council policies relevant to the determination of this application.

SUSTAINABILITY ISSUES

The provision of a shop at this location is the most sustainable solution for the site and could help to reduce the need to travel by car. However a shop has never been provided at this location and a nursery development could at least ensure that the unit didn't continue to lie vacant and would be sustainable insofar as it would lead to a reduction in the need to travel by car by local residents using this facility.

SITE HISTORY

The original Emmock Woods Planning Brief adopted by the Council in October 1996 made provision for a shop in the centre of this new housing development. A planning application was subsequently made to erect this retail unit and 4 flats and permission was granted on appeal in February 2001 - application 01/24634/D refers. As the development has been carried out, the permission for use of the site as a shop still applies to the vacant shop unit.

In June 2008 an application was made to change the use of these premises to a day care nursery - application 08/00444/COU refers. That application was almost identical to the current proposals, the only difference being the provision of 2 staff parking spaces to the rear of the building, but it was withdrawn by the applicants in August 2008.

The application was resubmitted in Sept 2008 (ref 08/00663/COU) and was refused by the Development Quality Committee on 10 November 2008. An appeal against the refusal was lodged on 18 December 2008 and planning permission was granted, subject to conditions on 3 April 2009. The conditions limited the use to no more than 26 children and required an appropriate soundproofing scheme to ensure that noise from the use would be inaudible inside each of the adjoining and overlying flats.

The Reporter's findings in respect of the planning merits of the case are detailed in the Material Considerations section of the Observations.

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the proposal was advertised as contravening Policy 19

of the Local Plan. 6 submissions were received which either supported the development or did not object to it. Most indicated it would be of benefit to the area. 1 objection indicated that there were 2 other nurseries and a shop would be preferable. 1 representation was received from proprietors of an existing shop in the City indicating a wish to operate a shop from these premises.

Members will already have had access to these submissions and the points raised are considered in the "Observations" Section of this Report below.

CONSULTATIONS

There were no adverse comments from consultees. The previous application was approved on appeal subject to several conditions, one of which related to the provision of sound proofing to prevent noise transference to the adjoining flats. If this application is considered to be acceptable, the same conditions should be applied to any consent.

OBSERVATIONS

Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the development plan unless material considerations indicate otherwise.

The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

Policy 1 - in terms of Policy 1 Vibrant and Sustainable Communities, it is a requirement that development should be in accordance with other policies of the Plan and should minimise any affect on the environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise or smell. An assessment against Policy 19 is considered later in these observations.

In respect of environmental quality, the potential impact on residential amenity needs to take into account the fact that the building already has consent for a shop which would be likely to generate more traffic and longer periods of activity. There are no significant issues in terms of design, layout and smell.

No major works are proposed and the design and layout of the premises and site will largely remain unchanged.

In terms of parking and traffic movement issues, parking and drop off spaces cannot be provided within the curtilage of the premises. However they will be provided on street because there is a lay by at the front of the premises, there are no parking restrictions on William Fitzgerald Way and it is not a heavily trafficked road with buses etc. It is likely that the development will be less intrusive in terms of access and parking compared with a shop. Although there may be a greater extent of traffic peaking with a nursery drop off time (despite the applicants suggestion that times would be staggered), a shop unit is likely to generate large service vehicles and is likely to operate late at night and throughout the weekend.

In terms of noise, it is considered that the proposed hours of operation would ensure that there would be no significant adverse impacts either from the use of the premises or from traffic accessing the site. In addition adequate sound proofing could be provided to prevent noise transmission to adjoining flats.

It is concluded that there would not be an adverse impact on amenity such as to justify a refusal of planning permission in terms of Policy 1, provided the application is considered to be in accordance with Policy 19 or there are sufficient material considerations to support approval of the application.

Policy 19 - in terms of Policy 19, it is a requirement that nurseries should offer good quality facilities in a pleasant surrounding environment. Specific requirements for outdoor play space, staff parking, dropping off and distance from other nurseries are contained in Appendix 4 of the Plan linked to Policy 19.

In this case it is considered that in principle a nursery development could be accommodated at this location and that the nursery would comply with the standards of the Council on dropping off space and distance from other nurseries. There are no other nurseries within 250 metres. However the provision of outdoor play space falls well short of the Local Plan requirement of at least 234m² in this case. For this reason the proposal has been advertised as contravening Policy

19. It is proposed to provide 100m² of ground which is not only is this less than half the minimum requirement but also is effectively an incidental area of ground around the building.

The site also cannot now provide two off street car parking spaces for staff to the rear of the building as approved by the previous application which was granted on appeal.

It is concluded from the foregoing that the proposal does not comply with the provisions of Policy 19 of the Local Plan in terms of the provision of outdoor play space or staff parking.

The application also fails to comply with Policy 1 because it does not meet other policies in the Dundee Local Plan Review 2005.

Other Material Considerations

The other material considerations to be taken into account are as follows:

Appeal Decision

As noted, planning permission was granted on appeal in April 2009 for use of this building as a nursery for up to 26 children. The issue of the suitability of the play space was considered by the Reporter who concluded that the internal space provision was more than double the normal nursery license minimum and was very bright with large south facing windows. Furthermore, the site is opposite the village green of this residential development which offers a significant space for activity for children which should not be disregarded. Accordingly these matters were considered to be material considerations which justified departing from strict adherence to the local plan and planning permission was granted subject to conditions.

In that case, the application failed to meet the criteria on one count only, the provision of outdoor space. The failure to be able to legally park on the service area to the rear of the unit means that this proposed development now also fails to meet the criteria on staff parking. In many other areas of the City, a lack of parking for a nursery development could be sufficient to justify refusal of an application due to the impact on limited parking resources, traffic safety, access to other properties etc.

In this particular case, William Fitzgerald Way is a wide modern access road which serves this new housing development. It is not a classified road; has no on street parking restrictions; does not carry high levels of traffic and is not a bus route. As a result, staff will be able to park on street and there will be no adverse impact on traffic safety. In addition, the unit is adjacent to flats with their own parking spaces at the rear, rather than individual houses with private drives which could be affected by inconsiderate parking on the street frontage. In these particular circumstances, it is considered that the loss of the 2 staff parking spaces is not sufficient to justify refusal of this application when the material consideration of the previous appeal decision supported the development. The site still has planning permission for use as a shop and such a use would generally be acceptable in this location and have benefits for the local community. However, such a use may have more adverse impacts on local amenity in terms of the hours of operation and the pedestrian and vehicle traffic which might be generated.

Third Party Responses

8 representations were submitted in respect of this application. 6 were in support of the development or had no objections to it. The submissions state that this is a useful facility in the area and that it will improve the appearance of this empty building. Several intend to use the nursery.

1 objection was received on the grounds that there are 2 other nurseries which can be used and a shop would be preferable. The nearest nursery is almost 1km/0.6 miles away from the site.

1 representation was received from proprietors of an existing shop in the City indicating a wish to operate a shop from these premises. The site already has planning permission to be used as a shop.

Applicants Submission in Support of the Application

Although the provision of outdoor play space does not comply with Policy 19 of the Local Plan, the applicants suggest that any inadequacy can be overcome by staggering play times according to the age of the children

and that play equipment will not be permanent in order to maximise the space available. They also point out that the Care Commission has no mandatory requirement for outdoor space.

Assessment of Material Considerations

This site has a long planning history but is a relatively new building in a prominent location within a successful residential neighbourhood which still remains vacant and boarded up. The granting of planning permission on appeal for change of use to a nursery appeared to have resolved the problem of the use of the premises. However, the parking to the rear cannot now be provided and this amended application has been submitted to clarify the proposals. The proposed change of use fails to meet the criteria of Policy 19 and therefore also fails to meet Policy 1 of the Dundee Local Plan Review 2005.

However the material considerations to be taken into account support the proposed use and it is considered that the subsequent inability to provide two staff parking spaces is not sufficiently critical, in this particular location, to justify refusing this application. Public response is in favour of the development to allow use of this boarded up property. 1 objection is not sufficient to justify refusal and notice of interest from another party to use it as a shop is a matter for the owner. Given the long term vacancy and the lesser impact of a nursery when compared to a shop in respect of residential amenity, it is concluded from the foregoing that there are the material considerations of sufficient weight such as to justify the grant of planning permission.

Design

There are no design issues associated with this proposal.

CONCLUSION

The proposed change of use fails to meet the criteria of Policy 19 and therefore also fails to meet Policy 1 of the Dundee Local Plan Review 2005. Given the appeal decision, the local circumstances, the long term vacancy and the lesser impact of a nursery when compared to a shop, it is concluded that the material

considerations are of sufficient weight such as to justify the grant of planning permission. Public response is in favour of the development to allow this use in this boarded up property. 1 objection is not sufficient to justify refusal and notice of interest from another party to use it as a shop is a matter for the owner.

RECOMMENDATION

It is recommended that consent be GRANTED subject to the following conditions:

- 1 The development hereby permitted shall be commenced within three years from the date of this permission.
- 2 That the number of full time (or equivalent) places at the proposed nursery shall not exceed 26 in total.
- 3 No works shall begin on site in implementation of this permission until written approval has been obtained from the planning authority for a soundproofing scheme for the premises such that noise from the use is inaudible from inside each of the adjoining and overlying flats. Thereafter the works shall be implemented in accordance with the approved soundproofing scheme.
- 4 The use hereby permitted shall operate only between 0800 and 1800 hours Monday through to Saturday and not at all on Sundays.
- 5 The boundaries of the site shall be enclosed with railings and fencing as detailed in the submitted plans prior to the first use of the premises.

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 The size and location of the premises, the lack of parking and the limited open space associated with it means that this is the maximum number of children that should be accommodated on the site without detriment to residential amenity and in order to provide adequate outdoor amenity space for the children using the nursery.

- 3 To safeguard the amenity of the flats beside and above the site and to protect the residents of the flats from undue noise and disturbance.
- 4 The site is close to dwellings and it is considered necessary to restrict the hours and days of operation in the interests of residential amenity.
- 5 To ensure that the proposed development has a satisfactory external appearance in the interests of the visual amenities of the area.