

KEY INFORMATION

Ward Strathmartine

Proposal

Change of use to mixed use dwelling and childrens day nursery for 12 children (retrospective)

Address

309 Strathmartine Road
Dundee
DD3 8NS

Applicant

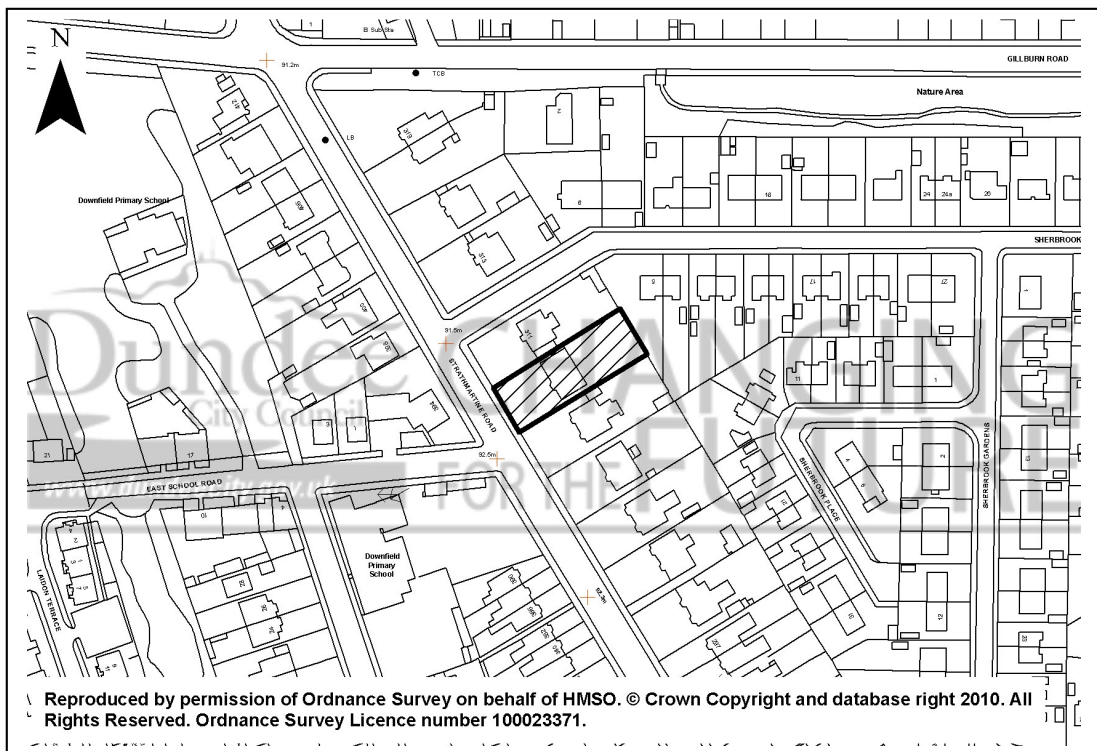
Mrs Janette Brown
309 Strathmartine Road
Dundee
DD3 8NS

Agent

Jane Fox
Fox Planning Consultancy
24 Glengate
Kirriemuir
Angus DD8 4HD

Registered 2 Aug 2010

Case Officer Eve Young



Retention of Nursery at Strathmartine Road

The change of use to mixed use of dwelling and childrens day nursery for 12 children (retrospective) is **RECOMMENDED FOR REFUSAL**. Report by Director of City Development.

RECOMMENDATION

The scale of use of the premises as a dwelling and a nursery for 12 children fails to comply with policy and is unacceptable in this residential area. An Enforcement Notice is in effect which requires the use to be reduced to care of up to 6 children within 6 months. The application is recommended for **REFUSAL**.

SUMMARY OF REPORT

- Planning permission is sought for change of use to a mixed use of dwelling and childrens' day nursery for 12 children. The application is retrospective as the use has been in operation since 2008. The nursery operates with up to 12 children at any one time which requires up to 4 staff to comply with Care Commission requirements. The application site is a detached house on the east side of Strathmartine Road where a two storey rear extension is being constructed.
- An Enforcement Notice is in effect on the premises, following an unsuccessful appeal. The Notice requires the number of children being cared for to be reduced to no more than 6 within 6 months of the date of the appeal decision.
- The use is considered to be contrary to Policies 1 and 19 of the Dundee Local Plan Review 2005 due to traffic movements and parking issues and the noise impact on adjoining residents which all result from this scale of use in this residential property. 5 objections from residents on planning issues are supported. 28 letters of support refer only to the nature of the service and staffing and this indicates the high numbers of children attending at varying times of the day and throughout the week which is inappropriate in this location.
- This application was deferred by the Development Management Committee on 18 October 2010 pending provision of additional information on childcare regulation; traffic information and assistance given to applicant. Details are provided in the report.

DESCRIPTION OF PROPOSAL

Planning permission is sought for change of use from a dwelling house to mixed use of dwelling and childrens' day nursery for 12 children. The use began as a child minding facility for 6 children in 2006, increased to 8 in 2007 and to 12 children in 2008. 6 staff are employed, one full time who is also the resident occupier and 5 part time. The Supporting Statement advises that it operates from Monday to Friday, 8.00am to 5.00pm with occasional weekend work. The application does not propose any changes to the existing dwelling but does include proposals to provide off-street parking. The application refers only to the original house as the extension is currently under construction and is not in use.

In accordance with the Council's mandatory scheme of delegation this application requires to be reported to the Development Management Committee at the request of a local member.

SITE DESCRIPTION

The application site is a detached stone built one and a half storey house with a driveway and parking space. There is an enclosed rear garden. A large rear extension is currently under construction to provide additional residential accommodation in accordance with a planning permission. The house lies on the east side of Strathmartine Road, a busy local distributor which carries traffic to and from the Kingsway. It is also a bus route. The area is predominantly residential with long established detached and semi-detached properties in mature gardens. On the west side of the road lies the former Downfield School now in use as offices.

Application Deferred

This application was deferred by Committee on 18 October 2010 to provide additional information with respect to:

- 1 Childcare regulation by the Care Commission - The Regulation of Care (Scotland) Act 2001 ("the Act") provides a definition of "childminding" and "day care of

children" (which includes nurseries) :

A childminder is a person that looks after at least one child, up to the age of 16 years, for more than a total of 2 hours per day in domestic premises. The numbers

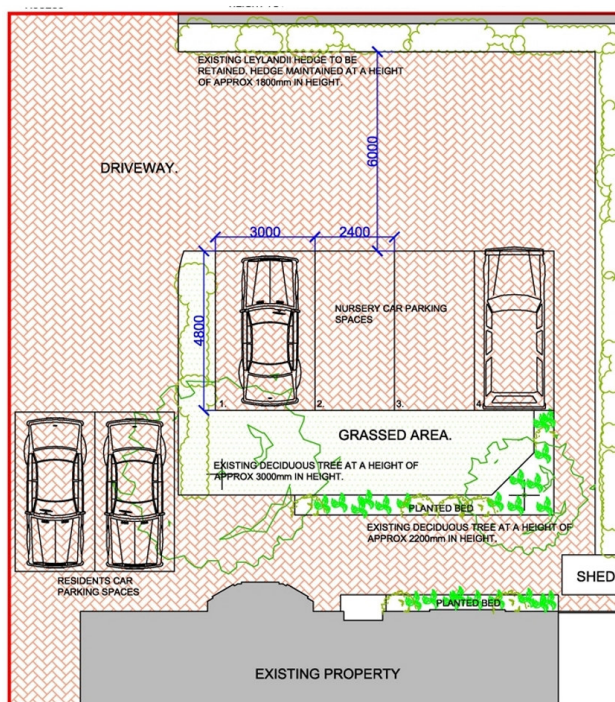
Care Commission has discretion to vary the standards to take account of special circumstances. However, there are no space standard requirements for domestic premises (i.e. child minding services).

As part of its overall assessment of an application for the registration of a care service, the Care Commission does take into account the applicant's compliance with relevant requirements of other agencies, including some local authority departments. It expects service providers to address the requirements of other agencies. However it cannot refuse to register a service simply because it does not have planning permission. Furthermore although the Care Commission endorses the Councils standards relating to the siting of nurseries and the provision of parking and outdoor play areas set out in the Development Plan, it

cannot refuse to register a service simply because it fails to meet these standards.

The Care Commission inspection of December 2009 relating to 309 Strathmartine Road notes that this is a large childminding service with a manager and staffed on a rota basis by 6 staff working part time. It is a unique, extremely flexible service which operates 7 days per week. Whilst the use is akin to a nursery, because it operates in domestic premises, it is registered as a childminding service.

In respect of planning control, the planning authority is required to consider whether or not a material change has occurred in the use of premises and that assessment is a matter of fact and degree. However, in order to provide some degree of clarity in a very complex matter, the planning department considers that caring for up to 6 children by one childminder, including their own children, in a house, is incidental to residential use and no planning application is required for the use. This view has been endorsed by the Scottish



and ages of children being cared for is related to the number of people working.

Day care of children provides care for children on non-domestic premises for more than 2 hours per day and on at least 6 days per year. This includes nurseries, crèches, after school clubs and play groups.



Child minding can only operate from domestic premises, defined as "any premises which are wholly or mainly used as a private dwelling". Day care of children can only operate from non-domestic premises. The

Government Department of Planning and Environmental appeals. Care for more than 6 would then be considered to be private nursery use, which requires planning permission and would be assessed against Policies 19 and 1 of the Dundee Local Plan Review 2005. This would allow relevant issues such as parking, traffic, amenity space and impact on the residential amenities of neighbours to be taken into account in the processing of an application and would allow the imposition, where relevant, of appropriate planning conditions to regulate the use.

2 Traffic Matters - Downfield School closed in summer 2008 when the school relocated to a new building at Haldane Crescent, approximately 400 metres to the north. The former school building is now an office for 73 staff which has an average of 10 visitors and 5 deliveries of goods and equipment per day. St Paul's High School on Gillburn Road opened in January 2009 and impacts on traffic on Strathmartine Road.

The figures show that in 2007 there were around 960 vehicles in both AM and PM peaks on Strathmartine Road at the location of the proposed development.

The figures have remained the same for August 2010 showing that the closure of Downfield School at this location has had no affect on the level of traffic using this road.

The average 2 way daily flow on this length of Strathmartine Road is just over 11,000 vehicles whereas the Kingsway has between 18,000 and 20,000 on an average day. This comparison shows that Strathmartine Road at this location is a heavily trafficked road and gives the background to why the road is seen as a district distributor and a C class road.

3 Advice to the applicant - March 2008 - Mrs Brown proposed a child care service for 15 children at 309 Strathmartine Road. She was advised, by letter, that planning permission was required

and was provided with information on policies, application forms, details of the fee and advised what information was required as part of an application. Application 08/00333/COU was lodged on



25/04/2008 but required information which was not provided until 24/06/2008. Advice was given to Mrs Brown by phone from the planning



officer. Additional information was requested on 14/07/2008 but the application withdrawn by Mrs Brown on 21/07/2008 when she advised "The proposed is not viable". She was asked to clarify the level of childcare she was operating and she stated, in a letter to the Council that care would be for 9 children, including her own 3, and 2 staff. She was advised by letter, 23/09/2008, that the intended scale of childcare still required planning permission and was given advice on how to make another application without paying a further fee. Clear and unambiguous advice was given to Mrs Brown who did not make a

further planning application to regularise her nursery business.

In 2009, when the Enforcement Officer discovered the nursery use operating at Mrs Brown's other premises in 11 Frederick Street, an investigation of the Care Commission web site identified care at 309 Strathmartine Road for up to 12 children.

Planning Contravention Notices were served 25 Jan 2010 to determine the nature of the use and a reply was received from Mrs Brown's agent on 5 Feb 2010. The use was described as "a children's day nursery and also as a private dwelling house" and was stated to have commenced in 2006. Following legal considerations, further PCNs were served on 25 February 2010 to clarify further information. A reply received on 17 March 2010.

Emails and telephone conversations between the agent and the Enforcement Officer over this period provided additional information. At the same time, PCNs were served, and replies received, in respect of Mrs Brown's other nursery at 11 Frederick Street.

Mrs Brown's agent submitted a 3 page letter on 16 February 2010 for both 309 Strathmartine Road and 11 Frederick Street, asking for justification of the Council's actions, detailed explanation of the policies, information in support of the use and how the nurseries could meet the requirements, details of any objections and information on any other nurseries in the area. Many of the issues could only be addressed in the consideration of planning applications, not in advance of applications being submitted. The agent then requested 6 weeks following receipt of the requested information before planning applications would be submitted.

The planning application for the erection of the rear extension to the house 10/00026/FULL was submitted on 01 February and

approved on 26 March 2010. 15 February, the planning officer sought to consolidate the nursery use and the extension in one application. 08 March 2010, the applicant was unwilling to agree to this.

The planning, enforcement and legal staff were involved in the complex assessment of the PCNs and the preparation of Enforcement Notices for the unauthorised use of the nurseries at both 309 Strathmartine Road and 11 Frederick Street.

Enforcement Notices dated 7 June 2010 were served on relevant parties.

16 June 2010 a reply was sent to the agent and a meeting was held on 23 June with the applicant and agent to discuss the applications.

The planning application for the nursery use was submitted on 13 July 2010 but was not valid until 2 Aug 2010 when requested further information was received.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

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

Dundee Local Plan 2005

The following policies are of relevance:

Policy 1: Vibrant and Sustainable Communities.

Policy 19: Private Day Nurseries.

Non Statutory Statements of Council Policy

There are no relevant documents.

SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

SITE HISTORY

Enforcement

08/00116/UNUSE - the applicant sought to increase the number of children cared for to 15 and was

advised on 1 April 2008 that planning permission was required.

08/00333/COU - a planning application for change of use from domestic property to a childcare facility for up to 12 children was lodged on 25 April 2008 and then withdrawn on 25 July 2008.

In 2010, the uses at the site were again investigated and Planning Contravention Notices were served to seek detailed information regarding the operations which were underway at the property. Enforcement Notices dated 7 June 2010 were served on the relevant parties which required the use as a nursery for any children exceeding 6 in number under the age of 16 years to cease. Appeals against the Notice were lodged but were dismissed on 29 September 2010. However, the Reporter extended the period of compliance with the Notices to 180 days after the date of the decision. This means that by that date in April 2011, unless planning permission is granted for a different scale of use, the premises must only operate for the care of no more than 6 children, under the age of 16, including the applicant's own children.

10/00026/FULL - planning permission was granted on 26 March 2010 for the erection of a two storey rear extension to the property to provide additional living accommodation. The permission is subject to the following condition; "This consent is in respect of an extension to a domestic dwelling only and does not permit any subdivision or commercial use of any part of the premises as extended". The extension is currently under construction.

PUBLIC PARTICIPATION

The application was the subject of statutory Neighbour Notification and was advertised in the local press as a departure from the Development Plan.

5 objections were received from neighbours on the grounds of increased traffic, parking problems and noise.

The applicant's agent submitted 28 letters of support all of which relate to the quality of the service or the support for staff and do not relate to planning matters. The letters include 7 from members of staff, 3 of whom are also parents of children who attend. 2 of the parents are also neighbours. The letters indicate that up to 26 children

attend the nursery at varying times including at early mornings, night and to cover shift work and for varying numbers of days. One late letter of support was also submitted.

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

CONSULTATIONS

No consultation responses were received.

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.

The application site is a detached house on a busy road. The nursery can accommodate up to 12 children at any one time and according to the ages of the children, this will require up to 4 staff in accordance with Care Commission requirements. The business employs 6 staff, 1 of whom is the resident and 5 are part time. The supporting planning statement indicates that all 11 rooms within the house are used for the nursery including quiet activities, sleeping, changing etc as well as being in use as a family dwelling by the resident operator and her family. The front and rear gardens are also used by the children and the family.

Policy 1: Vibrant And Sustainable Communities - "The City 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."

Child care facilities are an important element in the social and economic

fabric of the City and the provision of a good range of facilities close to home or work place assist parents and children. However, the environmental quality enjoyed by residents is also important and this policy requires that new developments seek to minimise any adverse affects. Whilst some parents and staff may walk to the nursery at present, no planning permission would be unable to control or restrict how many staff and customers use cars and this report must consider the likely scenarios in order to assess the acceptability of the use for up to 12 children at any one time.

The application form indicates that there are 4 existing parking spaces. Two alternative plans were submitted to show how parking for 6 cars could be provided with a turning space within the site. Option 1, which would result in most of the front garden being paved, is the only option which can technically allow vehicles to enter, turn and leave the site in a forward gear. If the application were to be approved, this would be the acceptable parking layout. This results in the loss of the front garden which is currently used for wheeled play by the children.

The owners have 2 vehicles which must be accommodated. The supporting letters indicate that up to 26 children use the nursery at different times and days. Due to the nature of the use, parents or carers will require to stop the car for some minutes to take children into the premises. The provision of 4 additional parking spaces will provide some off street parking but it is likely that the intensity of use indicated by the supporting letters will result in cars parking in the street, for long or short periods throughout the day.

The number of children using the nursery clearly has the potential to generate a large number of return car journeys per day. Up to 4 staff could also generate car journeys. Whilst this is a busy road, such activity will add to the local traffic movement issues which affect local residents.

The noise from vehicles entering and leaving the site is likely to adversely impact upon adjoining residents despite the location of the site on Strathmartine Road. The garden is also used for the nursery with up to 12 children and up to 4 staff and this is likely to generate noise particularly

during the summer and especially during school holidays.

The Supporting Statement indicates that the nursery operates from Monday to Friday, 0800 hrs to 1730 hours with occasional weekend work and employs 5 staff.

Information from another Council Department which also regulates elements of this operation advises that the stated hours of operation are 0730 to 2030 hours, 7 days a week and that there are 11 registered staff but only 4 working at any one time. This scale of use, even if it is not a daily occurrence, clearly has increased potential to affect neighbours over a longer day and for the whole week.

It is concluded that the use of this detached house for a mixed use of dwelling and childrens day nursery for up to 12 children, at any one time, fails to comply with Policy 1 in respect of parking and traffic movement issues and noise. Policy 1 also requires that any new development also comply with other policies in the plan.

Policy 19: Private Day Nurseries - "In support of the development of well located nurseries offering good quality facilities in a pleasant surrounding environment, planning permission will only be granted where proposals are in accordance with the guidelines contained in Appendix 4 of the Local Plan. In general proposals that provide for more than 50 full time places (or equivalent) will not be supported, nor will sites on major or heavily trafficked roads be considered suitable. Nursery premises should be situated wholly or predominantly on the ground floor and should have ground floor access, including ramped access suitable for wheelchairs and pushchairs. Tenement buildings/flatted accommodation are not considered suitable. Adequate sound insulation to the satisfaction of the Director of Environment and Consumer Protection should be provided."

The site lies on a heavily trafficked road which carried local traffic to and from the Kingsway. It is also a bus route. It is considered that, for this reason, the use of this site for a nursery does not meet Policy 19.

The criteria in Appendix 4 for Private Nurseries in residential areas is as follows:

Outdoor play space for 11 - 50 children - 9 square metres per child up to at least 400 square metres.

Staff parking - one dedicated space per 3 staff members.

Dropping off - Up to 25 children - 3 spaces.

Size and proximity to other private nurseries - not within 250 m of an existing private nursery.

Outdoor play space. The Supporting Statement states that the rear garden is 396 square metres and that the front garden is also used for play. The Option 1 parking proposals as detailed above will result in the loss of the front garden play space. A large rear extension is currently being built at the rear of the property leaving an area of private usable garden ground of approximately 250 square metres, including a proposed decking area, for the nursery and the large, extended family home. It is considered that the amenity space should be sufficient for a family home in the Suburban area plus the nursery use. The minimum private garden provision for a dwelling in this location is 120 square metres.

In respect of the provision for the nursery, there is a degree of ambiguity in the wording of the Appendix 4. Nurseries should provide 9 square metres per child up to at least 400 square metres. Accordingly, a minimum of 108 square metres is required for the nursery but "at least 400 square metres" is not achieved. The minimum requirements of 228 square metres for residential and nursery use can be accommodated when the extension has been completed but will provide very minimal standards for both uses, in particular the nursery, given the loss of the front garden space. It is concluded that the proposal will meet the required standard for outdoor play space.

Staff parking. One staff member is resident and will therefore require one of the spaces. The family also has another vehicle which requires to be accommodated. One further space is required for staff.

Dropping off. The policy suggests that the remaining 3 spaces for dropping off will be acceptable. However, the number of letters of support indicate

that throughout the day there must be a significant change over of children involving parents or carers arriving and departing. On this basis and taking into account the location of the property and the busy road it is considered that the number of dropping off spaces is not sufficient for the scale of use of the premises.

Proximity to other nurseries. There are no private day nurseries within 250 m radius of the site.

Accordingly it is concluded that the use the subject of the application fails to meet Policy 19 due to the location on a busy road and the lack of sufficient off street dropping off spaces. It therefore also fails to meet Policy 1 which requires applications to meet other policies in the Plan.

Accordingly, the development fails to comply with the Development Plan.

Other Material Considerations

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

Childcare provision

The availability of a wide range of childcare provision in the City is an important factor which allows parents and carers to continue to, or return to, work to support their families. These services are regulated by the Care Commission. They are generally divided into childminding and day care which includes nurseries.

Irrespective of the registration by the Care Commission, the City Council must consider the planning implications of such uses and takes the view that caring for up to 6 children by one childminder in a house, including their own children, is incidental to residential use and no planning application is required for the use. The Reporter who determined the appeal against the Enforcement Notice as detailed above, stated that, "I am satisfied with the council's approach to the use of private dwellings as nurseries".

The applicant has indicated in this application, and in submissions relating to the enforcement notices, that the service is a nursery. However, the Care Commission has advised that whilst the service provided is more akin to a nursery rather than childminding the legislation prevents its registration as a nursery as it is in domestic premises where the provider lives.

Information from the Care Commission states that on 31 August 2010, there were 174 active childminders in the City, 38 of which are located within 1 mile of this property. The majority care for a maximum of 6 children and this level of use is considered to be acceptable and appropriate for residential areas. Only 2 operators are registered to care for a maximum of 12 children, this property and the property at 11 Frederick Street which was refused planning permission at the Development Management meeting on 18 October.

Alternative premises - the Council considers that the nursery business which is in operation in this dwelling has outgrown its premises as it has expanded from an initial childminding business caring for 6 children. The business appears to be successful both in providing care for children and training to staff. However, it is considered that this scale of use should be located in more appropriate premises in a more appropriate location. There are numerous vacant industrial and commercial premises within the City where the use could be accommodated without the adverse impacts on local residents and traffic safety.

Representations - 5 neighbours have objected on the following grounds:

Inappropriate use in a house in a residential area; noise impact including loss of enjoyment in the adjoining garden; increased traffic; parking problems. The objections are supported for the reasons given above.

None of the 28 letters of support refers to planning matters but address the quality of the service provided or staff circumstances and training.

It is considered that, taking planning matters into account, the balance of the representations is to object to the application and these objections are supported.

Planning History

The planning history indicates that the applicant was aware of the need for planning permission in 2008 when a planning application for the change of use from a domestic property to a childcare facility for up to 12 children was submitted and then withdrawn. The applicant indicated that the number of children would be reduced. However it is clear from the submitted supporting statement that the use has developed since 2007 and has operated at its current level since 2008. The appeal against the Enforcement Notices has been dismissed by the Reporter and an Enforcement Notice is in effect to reduce the number of children cared for to a maximum of 6, including the applicants' own children.

Supporting Statement

The statement addresses both the enforcement issues and the planning application issues. The policies and material considerations have already been considered but the applicant's views are considered as follows:

Highway Considerations - the Statement considers that as the staff have limited parking requirements, the site is on a bus route, drop off times are not simultaneous, some parents walk and there is unlimited on street parking the use does not adversely impact on traffic movements and safety. Off street parking can be provided. There are other commercial uses in Strathmartine Road.

The Council considers that as Strathmartine Road is a busy classified road with restricted on-street parking and the site is opposite the junction with East School Road, vehicles should be able to enter and leave the site in a forward gear and Option 1 for off street parking is the better option to meet this requirement. Sufficient off street parking and dropping off spaces should be provided for the scale of operations at this site in the interests of pedestrian and road safety.

Impact upon Amenity and Environmental Quality

The Statement considers the site has sufficient garden ground, there have been no complaints of noise, the nursery use will have less impact than one childminder caring for 6 children.

The Council considers that the site has very limited garden ground for the

shared use proposed; does not support the comments on the impact of the use and neighbours have objected to this application.

Provision of important Community Facility

The Statement considers the nursery provides high quality care convenient to parents.

The Council's view on Childcare is noted above. The provision of good quality childcare, appropriate to the premises and the location is very important in the City. However the scale and the impact of this level of use in a domestic setting is considered to be unacceptable on road traffic and parking grounds and on the impact on the amenities of neighbours.

Assessment of material considerations - an Enforcement Notice is in effect which will require the use to be reduced to caring for no more than 6 children, 6 months from the dismissed appeal on 29 September 2010. The objections from 5 immediate neighbours refer to traffic, parking and noise issues. The quality of the care provided is not an issue in the consideration of this application and the supporting letters which relate to the care cannot be taken into account. The off street parking proposed by the applicant would not be likely to reduce the adverse impact of the use to a significant degree or significantly reduce the number of car journeys or the parking of cars by parents, carers and staff. The site lies in a residential area where the amenities enjoyed by residents should be protected. The Council considers that the use has outgrown the site and more appropriate premises in a more appropriate location should be found. The material considerations support the policy assessment that the current scale of use of the premises as a residential property and a nursery for 12 children is inappropriate and excessive for this residential area.

Design

The provision of parking within the majority of the front garden will result in the loss of hedging and landscaping which will be detrimental to the appearance of the house and the local environment.

- 4 There are no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy.

CONCLUSION

The applicant admits that a childminding facility has operated, without the benefit for planning permission, since 2008 when a previous application was withdrawn. Whilst good child care is important, it must be carried out in appropriate premises and locations relative to the scale of the use and the nature of the surrounding properties. There is an Enforcement Notice in effect which will require the number of children cared for to be reduced to a maximum of 6 within 6 months of the date of the notice. This will give adequate time for alternative arrangements to be made by parents and carers.

For the reasons given above, it is concluded that the use fails to comply with Policies 1 and 19 of the Dundee Local Plan Review 2005 and the material considerations support the policy assessment that the current scale of use of the premises as a residential property and a nursery for up to 12 children, at any one time, with the required staffing levels is inappropriate and excessive for this residential area.

RECOMMENDATION

It is recommended that consent be REFUSED for the following reasons:

Reasons

- 1 The proposed development is contrary to Policy 19 - "Private Day Nurseries" of the Dundee Local Plan Review 2005 as the use fails to comply due to its location on a heavily trafficked road and its lack of sufficient off street dropping off parking spaces.
- 2 There are no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy.
- 3 The proposed development is contrary to Policy 1 - "Vibrant and Sustainable Communities" of the Dundee Local Plan Review 2005 as the use of this detached house for a mixed use of dwelling and childrens day nursery for 12 children fails to comply in respect of parking and traffic movement issues and noise and with other policies in the plan.