

**KEY INFORMATION**

Ward Strathmartine

**Proposal**

Retrospective change of use from dwellinghouse to mixed use of dwelling and children's day nursery for 12 children

**Address**

11 Frederick Street  
Dundee DD3 8QN

**Applicant**

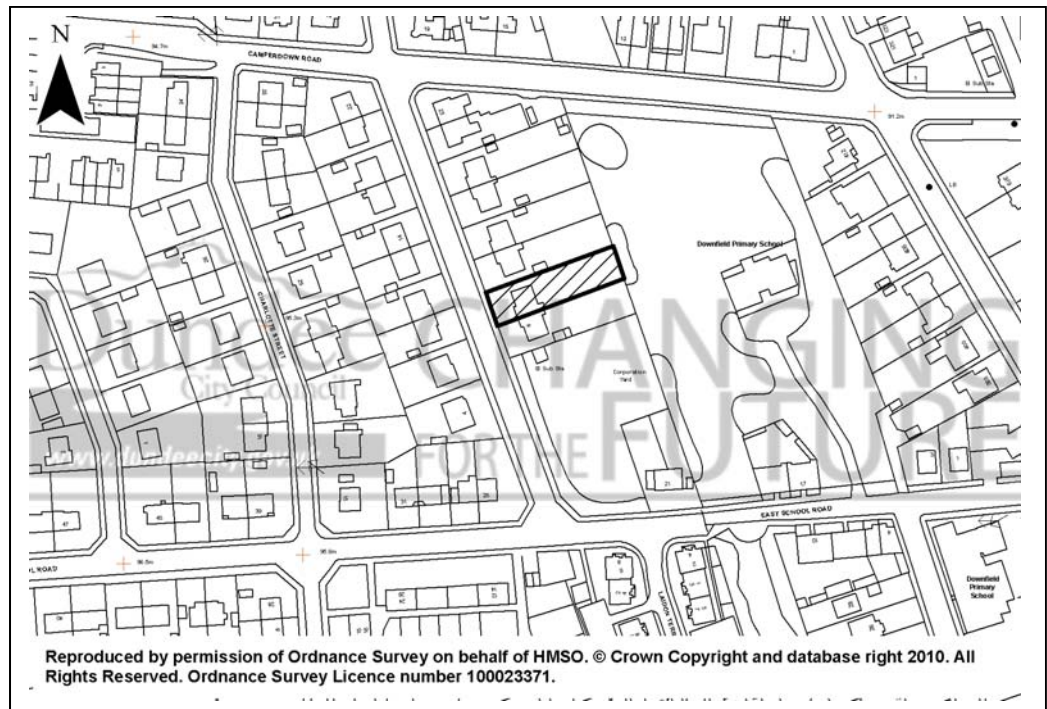
Mrs Janette Brown  
309 Strathmartine Road  
Dundee

**Agent**

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

Registered 2 Aug 2010

Case Officer Eve Young



# Retention of Nursery at Fredrick Street

The retrospective change of use from dwellinghouse to mixed use of dwelling and children's day nursery for 12 children 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 therefore 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. The application site is a semi-detached house on the east side of Frederick Street, There is a former garage at the site which is now used in conjunction with the nursery use.
- 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 notice. The City Council considers that care of up to 6 children, under age 16, in a house, does not require planning permission.
- 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.
- 3 objections from residents on planning issues are supported. 8 letters of support refer only to the nature of the service and staffing including 1 neighbour who does not object to the use. The suggested mitigation measures would not significantly reduce the impact of the use as detailed.
- It is concluded that the current scale of use of the premises as a dwelling and a nursery for up to 12 children, at any one time, with the required staffing levels is inappropriate and excessive for this quiet residential area.

## 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, for a maximum of 12 children at any one time, has been in operation since November 2008 and operates from Monday to Friday, 0800 hrs to 1730 hours. The application does not propose any changes to the existing dwelling or the off street parking.

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 semi-detached bungalow with box dormers to the front and rear and with a rear conservatory. There is a large outbuilding, approved as a garage, which is used to accommodate the main nursery. There is an enclosed rear garden. The area to the front of the house is hard surfaced for parking.

The house lies on the east side of Frederick Street, a long established residential street of detached and semi-detached traditional properties.

The site of the former annexe to Downfield Primary School lies to the rear and has been identified for future residential development.

## 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.

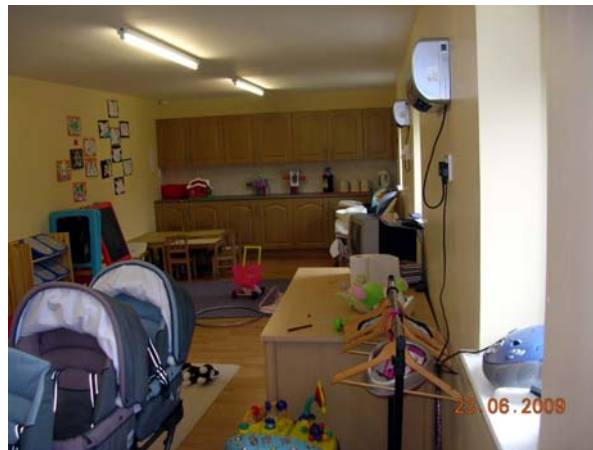
Policy 19: Private Day Nurseries.

## Non Statutory Statements of Council Policy

The Site Planning Brief for the redevelopment of Downfield Primary School (March 2008) is relevant.

## SUSTAINABILITY ISSUES

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



## SITE HISTORY

02/00243/FUL Planning permission was granted for the erection of a garage and workshop on 3 July 2002 subject to a condition that the garage be used only for a purpose incidental to the use of the application property. The reason for the condition was "to ensure that the garage is not used in a manner prejudicial to or likely to cause nuisance or disturbance to the occupiers of nearby properties".



08/00451/COU Planning permission was sought for the change of use from a domestic property to a childcare facility for up to 12 children. Additional information was sought

from the applicant, Mrs Brown, but the application was withdrawn on 8 August 2008 before any decision was made.

## Enforcement

09/00124/UNUSE Following a complaint in June 2009, the uses at the site were investigated and Planning Contravention Notices were served to seek detailed information regarding the operations which were underway at the property. Enforcement Notices dated 9 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 15 September 2010. However, the Reporter extended the period of compliance with the Notices to 6 months after the date of the decision. This means that by that date in March 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.

## 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.

3 objections were received from neighbours on the grounds of inappropriate use in a semi-detached house in a residential area, noise, increased traffic, parking problems, overprovision due to the applicant's other nursery in Strathmartine Road.

The applicant's agent submitted 10 letters of support, 3 from members of staff, 5 from parents or on behalf of parents, one of which is also a neighbour and 2 from training and support groups. The supporting letters refer to non planning matters regarding the quality of the service and staff training. The neighbour stated there were no parking problems and they enjoyed hearing the children playing in the garden.

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 semi-detached house in a relatively quiet residential street. The nursery can accommodate up to 12 children and according to the ages of the children, this will require up to 4 full time staff. The business employs 5 staff, 2 of whom are part time. One of the staff is also the resident occupant of the house. The main nursery activity takes place in the converted garage/workshop which was approved in 2002. However, the supporting planning statement indicates that 9 rooms within the house are also used for quiet activities, sleeping, changing etc as well as being in use as a family dwelling by the resident member of staff and her 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, it must be recognised that 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 2 existing parking spaces and 4 spaces are proposed. The submitted plan shows 2 spaces and the Supporting Statement states that the driveway currently provides 2-3 spaces. There are no amendments proposed to the existing site layout.

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. Up to 4 staff members could drive to the premises and require parking spaces. It is likely that the resident operator requires to park a vehicle at the site. The scale of the nursery use will be likely to result in cars parking in the street, for long or short periods, in excess of normal residential use.

The use has the potential to generate a minimum of 12 return car journeys per day if all children attend for the whole of the day. However some or all children could attend for half days or before and/or after school, resulting in even more car trips per day with a change over period at lunchtime or when schools finish. Up to 4 staff could also generate car journeys. The use for up to 12 children at any one time will be likely to result in car

journeys to and from the premises in excess of normal residential uses.

With regard to noise, the use is carried out mainly in the converted garage with the remainder of the house also in use and this will result in activity throughout the day between the buildings. The garden is also used for the nursery with up to 12 children and up to 4 staff. It is likely that the level of car activity, the number of people entering and leaving the property and the number who could be using the rear garden will be likely to generate noise in excess of normal residential use.

It is concluded that the use of this semi-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 criteria in Appendix 4 for Private Nurseries in residential areas is as follows:

Outdoor play space for 11 - 50 children - 9m<sup>2</sup> per child up to at least 400m<sup>2</sup>.

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 250m of an existing private nursery.

Outdoor play space. The Supporting Statement states that the rear garden is approximately 270m<sup>2</sup>.

It is considered that the amenity space should be sufficient for a family home in the Suburban area plus the nursery use. The private garden provision for a dwelling in this location is 120m<sup>2</sup>.

In respect of the provision for the nursery, there is a degree of ambiguity in the wording of the Appendix 4. Nurseries should provide 9m<sup>2</sup> per child up to at least 400m<sup>2</sup>. Accordingly, a minimum of 108m<sup>2</sup> is required for the nursery but "at least 400m<sup>2</sup>" is not achieved. The minimum requirements of 228m<sup>2</sup> for residential and nursery use can be accommodated but will provide minimal standards for both uses, in particular the nursery. 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 other space is required for the remaining staff members.

Dropping off. As the parking spaces are taken by the staff, there are no dropping off spaces within the site. This is a quiet residential street where on street parking is less of an issue than in a more heavily trafficked location. However, a nursery which caters for up to 12 children at any one time has the potential to have a high number of traffic movements dependant upon whether the same children attend all day or whether there are changes between different sessions in the day. The potential scale of use is likely to result in cars parking throughout the day which is likely to have an adverse impact on the amenities of neighbours.

Proximity to other nurseries. The policy uses radius to measure proximity, not distance by the nearest road. The site is within 250 metres of the applicant's other nursery at 309 Strathmartine Road which is considered elsewhere on this agenda. If both applications were to be approved, they would breach Policy

19. However, both are recommended for Refusal in these reports.

Accordingly it is concluded that the use of the subject of the application fails to meet the criteria for off street dropping off spaces in Appendix 4 and thus fails to meet Policy 19. 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 nursery provision and childminding.

Irrespective of the registration by the Care Commission, the City Council must consider the planning implications of such uses and takes the view that childminding of 6 children by one childminder, including their own children, is incidental to residential use and no planning application is required for the use. This applies only to houses. The Reporter who determined the appeal against the Enforcement Notice at 309 Strathmartine Road, 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.

One childminder, working in their own home, can care for up to a maximum of 6 children. Increased numbers of children and increased numbers of younger children require increased numbers of staff. Information from the Care Commission states that on 31

August 2010, there were 174 active childminders in the City. 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; the two premises which are the subject of the applications on this agenda.

## Permission for the Garage

The main nursery activity takes place in the converted garage/workshop which was approved in 2002. The use of the garage is restricted to a use incidental to the use of the site as a residential dwelling. The current use of the site as a nursery operates in breach of the planning condition.

## Representations

Three of the four neighbours closest to the application site have objected on the following grounds:

- inappropriate use in a semi-detached house in a residential area;

noise impact including loss of enjoyment in the adjoining garden; increased traffic; parking problems; overprovision due to the applicant's other nursery in Strathmartine Road. The objections are supported for the reasons given above.

Only one of the 8 letters of support refers to planning matters. The neighbour stated that a relative's child is about to attend and there were no parking problems. They enjoyed hearing the children playing in the garden. Clearly the noise of the children is a subjective matter but as noted above it is considered to form only part of the noise impact of the development.

It is considered that, on planning grounds, the balance of the representations is to object to the application and these objections are supported.

## Future Development

The former school grounds to the rear of the site are identified in an approved Planning Brief as a future residential site. It is likely that new residential properties will abut the application site and therefore the potential impact on those houses must be taken into account.

## 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 continued unabated. 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 6, including the operator's 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. Mitigation measures have been offered as follows:

- a no more than 3 children use the garden at any one time
- b provide additional screening to the garden boundaries
- c accept a restriction reducing the number of children to 9 should this be deemed absolutely essential.
- d provide 4 car parking spaces in front garden area, including removal of the front boundary wall if necessary.
- e provide sound insulation to party walls and/or;
- f that the rooms within the dwellinghouse are only used for rest/sleep purposes for the children, dining room (in the dining room), changing room facilities (in Bedroom 1), ground floor wc/shower room and that the nursery use primarily takes place within the detached outbuilding.

The comments on the proposed mitigation are:

- a and f could not be controlled by enforceable planning conditions;
- b would be unlikely to address the concerns re traffic, parking and related noise;

- c it is considered that the care of 9 children, with up to 4 staff in a semi-detached house would still adversely affect the residential amenity which neighbours should expect to enjoy in this location;
- d removal of the boundary wall will be detrimental to the visual appearance of the street and will require a wide footway crossing which is generally not acceptable in a residential area; and
- e there appears to be no issue with noise penetrating the internal walls.

## 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 15 September 2010. The garage/workshop which is now in use for the nursery was approved subject to a condition which sought to ensure that it was used for uses ancillary to a dwelling house in order to protect the amenities of neighbours. The objections from 3 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. New residential development is likely to take place to the rear of the site. The mitigation measures proposed by the applicant would not be likely to reduce the adverse impact of the use to a significant degree. The site lies in a quiet residential area where the amenities enjoyed by residents should be protected. The material considerations support the policy assessment that the current scale of use of the premises as a nursery for up to 12 children with the required staffing levels is inappropriate and excessive for this residential area.

## Design

There are no design issues. However, if Members were minded to approve the application and accept the mitigation measures proposed, the removal of the garden wall to provide a wide front parking area would be considered to have an adverse impact on the appearance of the house and the immediate surrounding area.

## 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 dwelling and a nursery for up to 12 children, at any one time, with the required staffing levels is inappropriate and excessive for this quiet residential area.

## RECOMMENDATION

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

### Reasons

- 1 The proposed development is contrary to Policy 1 - "Vibrant and Sustainable Communities" of the Dundee Local Plan Review 2005 as the use of this semi-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.

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

- 2 The proposed development is contrary to Policy 19 - "Private Day Nurseries" of the Dundee Local Plan Review 2005 as the use fails to comply in respect of lack of off street dropping off spaces.

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