

## **DEVELOPMENT PLAN**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise.

### **Unitary Development Plan - current status**

The Core Strategy and Development Plan was adopted on the 30 January 2020, whilst the saved policies from the Unitary Development Plan were adopted on 7 September 1998. In the report on each application specific reference will be made to policies and proposals that are particularly relevant to the application site and proposal. The CSDP and UDP also include several city wide and strategic policies and objectives, which when appropriate will be identified.

## **STANDARD CONDITIONS**

Sections 91 and 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 require that any planning application which is granted either full or outline planning permission shall include a condition, which limits its duration.

## **SITE PLANS**

The site plans included in each report are illustrative only.

## **PUBLICITY/CONSULTATIONS**

The reports identify if site notices, press notices and/or neighbour notification have been undertaken. In all cases the consultations and publicity have been carried out in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

## **LOCAL GOVERNMENT ACT 1972 – ACCESS TO INFORMATION**

The background papers material to the reports included on this agenda are:

- The application and supporting reports and information;
- Responses from consultees;
- Representations received;
- Correspondence between the applicant and/or their agent and the Local Planning Authority;
- Correspondence between objectors and the Local Planning Authority;
- Minutes of relevant meetings between interested parties and the Local Planning Authority;
- Reports and advice by specialist consultants employed by the Local Planning Authority;
- Other relevant reports.

Please note that not all of the reports will include background papers in every category and that the background papers will exclude any documents containing exempt or confidential information as defined by the Act.

These reports are held on the relevant application file and are available for inspection during normal office hours at the City Development Directorate at the Customer Service Centre or via the internet at [www.sunderland.gov.uk/online-applications/](http://www.sunderland.gov.uk/online-applications/)

Peter McIntyre

Executive Director City Development

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**Reference No.:** 20/01763/SUB Resubmission

**Proposal:** **Change of use of existing residential care home (Use Class C2) to children's day nursery (Use Class E). (Resubmission with additional noise survey work and revised car parking / traffic analysis).**

**Location:** Rowlandson House 1 Rowlandson Terrace Sunderland SR2 7SU

**Ward:** Hendon

**Applicant:** Mr Anthony Lang

**Date Valid:** 24 September 2020

**Target Date:** 19 November 2020

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## **PROPOSAL:**

The proposal relates to the change of use of existing residential care home (Use Class C2) to children's day nursery (Use Class E). (Resubmission with additional noise survey work and revised car parking / traffic analysis) at Rowlandson House, 1 Rowlandson Terrace, Sunderland.

## **PLANNING HISTORY AND CONTEXT**

Members may recall that the resubmission follows the refusal of planning application ref 19/00121/FUL. Change of use of existing residential care home (Use Class C2) to a non-residential institution (Use Class D1) to operate as a children's day nursery. The reasons for refusal were as follows:

1. The proposed children's day nursery will afford prospective children with a poor standard of amenity, particularly in respect to provision of external amenity space, and as such conflicts with the requirements of policy CF4 of the Core Strategy and Development Plan (CSDP) and paragraph 127 of the National Planning Policy Framework (NPPF).
2. The proposed use of the premises as a children's day nursery is not compatible with the prevailing character of the locality which is dominated by single family houses and will result in harm to the amenity of surrounding residential properties by virtue of noise, disturbance and on-street parking generated by such a use. The proposal therefore conflicts with the requirements of policies CF4 and EN5 of the Council's adopted Unitary Development Plan and Paragraph 127 of the National Planning Policy Framework.

The above decision was subsequently appealed to the Planning Inspectorate and the decision was upheld dated 23.06.2020. In the inspector's commentary, two material considerations were identified. These were:

- The effect on the living conditions of nearby residents in respect of noise, disturbance and parking; and,
- Whether the proposal would provide a suitable standard of amenity for children, with particular regard to external amenity space.

In reaching a decision the inspector noted that with regards to above point 1, the submitted acoustic report did not include robust evidence to demonstrate the impact of children playing outside at both the front and rear, furthermore the proposal would still generate traffic movements of a form and degree which would lead to parking on the rear lane contrary to policies CF4 and HS2 of the CSDP.

With reference to point 2, the inspector noted that the proposal would provide a suitable area of amenity space for children in accordance with policy CF4 of the CSDP.

Considering the above appeal decision, the applicant has resubmitted the application, supported by additional information to seek to address the effect of the development upon living conditions of nearby residents in respect of noise, disturbance and parking.

## **SITE LOCATION AND PROPOSAL:**

The host building is located within the Cedars Conservation Area and sited at the north west end of the Edwardian period Rowlandson Terrace. The host unit turns the corner of Ryhope Road and Villette Road and is served by a lane to the rear where a set of double gates open into a yard area covering 162 square metres. The immediate highway network is characterised by the four-arm signal-controlled junction with pedestrian phases across all arms, double yellow lines also surround the site to prevent illegal parking on or in the vicinity of the junction.

The predominant land use in the area is residential, however the land immediately to the north provides the entrance to Barley Mow Park.

The current proposal relates solely to the use of the building and involves no extensions or alterations to the external appearance of the property. The proposal has confirmed that the use seeks to accommodate up to 50 children and employ 8 members of staff.

Drop-offs would occur throughout the one-and-a-half-hour period between 07:30 and 09:00 and picked-up throughout the two-and-a-half-hour period between 15:30 and 18:00. With the above in mind suggested operating hours are sought from 6am-8pm to allow a degree of flexibility.

A small covered cycle shed is to be added to the rear yard.

The application has been supported by a Planning Support/Design and Access Statement, Transport Statement and a Noise Assessment.

The planning history of the site indicates that planning consent was approved and subsequently implemented in 1988 for the conversion to form an old persons home, including provision of 6 No. car parking spaces. The property was subsequently extended via approvals in 1994 and 1995. At present the building is vacant, following closure in January 2019.

## **TYPE OF PUBLICITY:**

Site Notice Posted  
Neighbour Notifications

## **CONSULTEES:**

Network Management

Final Date for Receipt of Representations: **16.10.2020**

## **REPRESENTATIONS:**

### **Public Responses**

Following the expiry of the consultation period 15 letters of representation were received, 11 supported the proposal, 2 were neutral in their views and 2 raised concerns. Concerns raised related to:

1. Standard of pre-application community consultation.
2. Enforcing highway concerns.

### **Consultee Responses**

#### **Network Management**

It is noted that this is a resubmission and therefore reference has been made to the Transportation Development responses to the previous planning application.

- Staffing and children numbers

The applicant has confirmed that a maximum of 8 staff will be employed at the facility and a maximum of 50 children will be in attendance at any one time as per the previous application.

- Parking

As agreed with the previous planning application it has been satisfactorily demonstrated that sufficient on street parking is available in the area to satisfy the likely demand from staff parking as per the existing use as a residential care home.

In addition, it is confirmed that a secure, covered cycle parking facility is to be provided for 2 cycles for use by staff. This is welcomed and will encourage the use of sustainable travel by staff.

- Drop off/ pick up

As stated above the submitted information confirms that a maximum of 50 children could be in attendance at the proposed nursery. It is considered that even taking into account the sites accessible location a significant number of children would be dropped off/picked up by car.

In order to discourage drivers to park on Back Ryhope Road/Back Manilla Street to drop off/pick up children the applicant has confirmed it is proposed to create a Traffic Regulation Order (TRO) to prohibit waiting on that back lane and to provide double yellow road markings. This is considered essential and the TRO should be in place before commencement of the operation of the proposed facility.

#### - Traffic Regulation Order (TRO)

The TRO would require a statutory consultation process, the outcome of which cannot be pre-determined. The estimated cost of a TRO is approximately £8,000.00, excluding any physical works. The actual cost of the TRO and the required physical works, such as provision of new lining and signage would need to be met by the applicant.

In addition, it is stated that the nursery proposes to fix two signs on the rear boundary of the application site stating, "No Parking Or Waiting In This Area". It is also confirmed that the management of the nursery will speak to those parents/guardians seen parking in the back lane to inform them that its absolute requirement that this should not reoccur as the nursery wishes to get on well with its residential neighbours

The applicant has also confirmed, as requested as part of the previous application, that a Travel Leaflet would be prepared by the nursery to ensure that all those dropping off and picking up children are made aware that parking is not available on the site, that drop-off/pick-up should certainly not take place from either Villette Road, Ryhope Road or Back Ryhope Road, of the locations of on-street car parking available in the area and of safe walking routes to the site from nearby residential areas. It would also provide details of bus stops in the vicinity and of bus routes provided from those bus stops.

This is considered essential and it is a requirement that the Travel Leaflet would be issued to all customers and potential customers and would need to be submitted to and approved by the local highway authority prior to the commencement of the operation of the facility.

It should also be noted that as part of the previous application the applicant was required to fund the extension of the pedestrian barriers along both Villette Road and Ryhope Road. The extension of the pedestrian barrier on Villette Road should be on both sides of the road and as far as the back lane, on Ryhope Road the barrier should be extended to the limit of the site frontage. This requirement will ensure that drop off/pick up does not happen in the vicinity of the signalised junction and will also increase pedestrian safety for those parents and children dropping off/picking up children at the proposed facility.

It would appear that this current proposal does not include this previous requirement. Transportation Development consider that this is essential for road and pedestrian safety and should be a requirement for this current application as it was for the previous application.

#### - Summary

Taking into account the additional information submitted in support of the planning application Transportation Development does not object to the planning application subject to the conditions below being applied should planning approval be granted.

- A Traffic Regulation Order be provided on Back Ryhope Road/Back Manilla Street to prohibit waiting by customers.
- A Travel Leaflet for issue to all customers should be submitted to and approved by the Local Highway Authority prior to the commencement of the operation of the facility. The Travel Leaflet should ensure that: all visitors to the facility are made aware that parking is not available within the site; drop off/pick up should not take place from Villette Road or Ryhope Road; the on-street car parking available in the area; and walking routes to the site from nearby residential areas.

- The pedestrian barriers at the signalised junction to be extended to ensure dropping off and picking up does not occur in the vicinity of the junction and to increase pedestrian safety. The extent of the extension of the pedestrian barriers is to be agreed with the local highway authority and be provided prior to the commencement of operation of the proposed facility.
- The facility to be limited to 50 children at any time.

**Reason:**

To ensure that development has no unacceptable adverse impact on the Local Road Network and to accord with CSDP policies ST2 and ST3.

**Environmental Health:**

This is a resubmission following refusal of permission and subsequent refusal of appeal by the Planning Inspectorate.

Two issues were raised, given that the sound insulation of the party wall had been addressed and accepted as part of the original application.

The new noise report from Northburn Acoustics ref 20-51-775 addresses the following issues raised by the Planning Inspector:

- noise from the potential use of the front forecourt
- noise from the use of the rear yard as a play area for children during the daytime operation of the proposed children's day nursery

The basis of the methodology followed by the noise consultant is accepted. It is considered that the impact upon neighbouring dwellings of noise associated with children in the rear yard is dependent upon the number of children at any one time, the character of their voices resulting from normal behaviour, and the factors that inhibit propagation of the noise. The existing noise climate has been assessed by the consultant and is presented in the report, being significantly influenced by road traffic. Operation of the premises is to be daytime hours. Numbers of children allowed in the rear yard area should be managed at all times. Noise levels associated with the use of the yard are unlikely to exceed the time weighted average (LAeq T) but it is inevitable that the voices of children will be audible in the immediate vicinity. The question is will this be significant.

Noise levels measured at the application site identified L<sub>Amax</sub> 81.5dB, L<sub>Aeq</sub> 62.4 dB, L<sub>A90</sub> of 47.6 to 53.9dB

Noise levels have been measured at a similar operation with 12 children present. L<sub>Amax</sub> 79.7, and L<sub>Aeq</sub> 61.4. No L<sub>A90</sub> value recorded but is likely to be lower as the play area at the example site is some 139m from the main highway (A167) and protected by intervening buildings.

The consultant has accepted that suitable external noise levels (as set out in the WHO community noise guidelines and BS8233: 2014) should be an L<sub>Aeq</sub> T of no greater than 55dB. The existing external noise climate already exceeds that.

The issue is therefore whether the noise associated with the use of the rear yard will increase the impact adversely upon the existing noise climate. There are a number of points that require clarification or review by the consultant before we can reach a conclusion on this application. These are set out below.

Whilst accepting some of the dimensions used in the calculation of the propagation path, the following require checking:

- The height of the yard wall to the application site - this is identified in the submitted plans as 1.8m total height (600mm wall plus timber fencing). This of course is the noise barrier closest to the source and is not 3m as used in the calculation within the report.
- The dwellings at the rear (i.e. those in Manila Street) have first floor windows to offshoots that may be exposed to direct line of sight from the yard of Rowlandson House and are approximately 5.1m from the lane.
- The Manila Street dwelling boundary wall is estimated at 2.25m high.

It would be appreciated if the calculation could be reviewed given the above.

It is suggested that the applicant considers committing to the exclusion of the use of the front forecourt as an amenity area for children. It is in any case not an ideal location next to a busy main road and traffic-controlled junction and this appears to be the applicant's intention in any case.

Further to the receipt of the above comments, the agent has confirmed through their acoustic engineer that the rear wall stands at a height of 2.8 metres and the Manilla Street wall stands at a height of 2.5 metres.

The following has also been noted. Residual sound levels have not been measured at the front of the building, but they are likely to be much higher than at the rear given that Ryhope Road is a dual carriageway in both directions and it carries significantly more traffic than Villette Road. Assuming that the residual sound level at the front is the same as at the rear, then the assessment will err on the side of caution.

The calculation is similar, except that the distance between the source (the children) and the receiver (the forecourt of the neighbouring property) is much closer, and the fence between the two properties will not be as effective as a noise barrier as the wall to the rear. However, since the forecourt is not fully enclosed by solid walls, the directivity correction will be zero. The distance between the centre of the forecourt and the centre of the front garden at the neighbouring property is approximately 12 metres. The results of this arrangement are such that the sounds due to children playing will have no effect whatsoever on the existing residual sound level.

The remodelled data has been forwarded to the Public Protection and Regulatory Services Section for consideration and it is anticipated that a summary of their findings will be reported to members at the committee meeting.

## **POLICIES:**

In the Unitary Development Plan the site is subject to the following policies;

CF\_4\_Provision for Nursery Education

EN\_10\_Proposals for unallocated sites to be compatible with the neighbourhood

## **COMMENTS:**

The main issues to consider in the determination of the proposal are:

1. The principle of the development.
2. The impact upon residential amenity in terms of noise, disturbance and parking
3. Highway safety impacts.

### **1. The principle of the development.**

The Local Plan is the starting point for the determination of planning applications. It sets a clear strategy for bringing land forward to address objectively assessed needs in line with the presumption in favour of sustainable development. It includes broad locations, land use designations and allocations to deliver this strategy. Sunderland's Local Plan is in three parts.

- Core Strategy and Development Plan 2015 - 2033 (CSDP).
- Allocations and Designations Plan (A&D).
- International Advanced Manufacturing Park (IAMP) and Area Action Plan (AAP) 2017 - 2032.

The above plans have superseded saved policies of the Unitary Development Plan (UDP) 1998 and UDP Alteration No.2 (2007) with the exception of a number of policies that will remain as saved policies until such a time that the A&D plan is adopted.

The site in question is not allocated for any specific land use by adopted UDP and, as such is subject to Policy EN10 of the UDP. This policy has been retained until the A&D plan is adopted. This policy dictates that, where the UDP does not indicate any proposals for change, the existing pattern of land use is intended to remain. Therefore, proposals for development in such areas must be compatible with the principal use of the neighbourhood.

Whilst the local area is predominantly residential, the proposal would replace the previous use as an elderly persons care home and operate over fewer days and hours of the week, with this in mind the use is considered to be compatible with the residential character of the area and therefore acceptable in principle.

### **2. The impact upon residential amenity.**

Paragraph 127 of the NPPF states in part that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Policy BH1 of the CSDP relates to Design Quality and seeks to deliver excellence in development quality, by ensuring acceptable levels of privacy and good standard of amenity are provided for existing and future residents.

Policy HS2 of the CSDP applies to noise-sensitive development and requires that in areas of existing low levels of noise, proposals for development which may generate noise should be accompanied by a noise assessment, provide details of the noise levels on the site and quantify the impact on existing noise sensitive receptors. Where necessary an appropriate scheme of



mitigation shall detail any measures required to ensure that noise does not adversely impact on these receptors.

Whilst the retained policy CF4 of the Unitary Development Plan states:

"Provision for nursery education will be made, so far as possible, within surplus accommodation at existing schools, or in new premises on existing school sites where sufficient land is available. Development of nurseries outside existing schools will be allowed where their impact on the amenities of the neighbouring area is acceptable and the traffic generated can be safely accommodated"

With reference to the above, the proposal seeks no external alterations to the appearance of the building and as such levels of privacy afforded existing residents are to be maintained.

In terms of noise the applicant has provided a noise assessment that demonstrates modifications to the internal fabric of the building are to be implemented to dampen the impact of any potential raised internal noise levels. Having regard to potential impact of increased noise from children playing outside, the layout of the building suggests that the only area that could accommodate outside play is within the enclosed rear yard area. The supporting noise assessment has also demonstrated that this area would not lead to levels of noise that are above the existing ambient noise levels.

In addition and with regards to the levels of outdoor amenity space provided with the proposal, it is considered and mindful of the previous planning inspectors appeal decision that this area of land to the rear is considered to provide a suitable area and standard of amenity for children to spend when exercising outdoors.

In light of the above, the existing layout of the building, its location adjacent to a road junction, the current proposal is not considered to lead to conditions that would be detrimental to levels of amenity currently afforded neighbouring residential dwellings. The proposal is therefore considered to accord with policy BH1 CF4 and HS2 of the CSDP.

### **3. Highway safety impacts.**

Section 9 of the NPPF relates to promoting sustainable transport, with paragraph 102 stating in part that opportunities to promote walking, cycling and public transport use should be pursued, whilst paragraph 105 states that maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network.

Paragraph is clear and states that:

"Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. or the residual impacts on the road network would be severe."

Policies ST2 Local Road Network and ST3 Development and Transport both seek to ensure that development must demonstrate that proposals will not have a severe impact on the safe operation and management of the local road network for all highway users

The current application has been supported by a Transport Statement and additional supporting documents following the appeal decision provided by the planning inspector.

Further to consultations with the Transportation Development section, comments received have been reported in the representation section of the main agenda report, that seek to outline the relevant areas of potential concern.

In summary, taking into account the additional information submitted in support of the planning application the Transportation Development Section does not object to the planning application subject to the imposition of conditions should Members be minded to grant approval.

### **Equality Act 2010 - 149 Public Sector Equality Duty**

During the detailed consideration of this application/proposal an equality impact assessment has been undertaken which demonstrates that due regard has been given to the duties placed on the LPA's as required by the aforementioned Act.

As part of the assessment of the application/proposal due regard has been given to the following relevant protected characteristics:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

The LPA is committed to (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In addition, the LPA, in the assessment of this application/proposal has given due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This approach involves (a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The LPA has taken reasonable and proportionate steps to meet the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities, as part of this planning application/proposal.

Due regard has been given to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves. Particular consideration has been given to the need to:

- (a) tackle prejudice, and
- (b) promote understanding.

Finally, the LPA recognise that compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

## **CONCLUSION**

For the reasons given above, the proposed change of use of the building is considered to have been justified, the principle of the development is considered to be acceptable and it is not considered that it would lead to conditions prejudicial to residential amenity. Furthermore, with the impositions of the conditions outlined above, it is not considered that the proposal would impinge upon the free passage of traffic or create conditions prejudicial to highway or pedestrian safety.

## **RECOMMENDATION:**

It is therefore recommended that Members **APPROVE** the application, subject to the draft conditions listed below.

### **Conditions:**

1 The development to which this permission relates must be begun not later than three years beginning with the date on which permission is granted, as required by section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 to ensure that the development is carried out within a reasonable period of time.

2 The development hereby granted permission shall be carried out in full accordance with the following approved plans:

Location Plan dated 13.12.2018.

Existing Plans and Elevations dated 12.2018.

Existing and Proposed Site Plans dated 12.2018.

Proposed Plans and Elevations dated 12.2018.

In order to ensure that the completed development accords with the scheme approved and to comply with policy BH1 of the Core Strategy and Development Plan.

3 The premises shall not be operated for the purposes hereby approved outside the following hours:

- o Monday to Friday (except Bank Holidays) 06:00 to 20:00
- o and at no time on Saturday/Sunday.

In order to ensure that the completed development accords with the scheme approved and to comply with policy BH1 of the Core Strategy and Development Plan.

4 The pedestrian barriers at the signalised junction (Ryhope Road/Villette Road) must be extended to ensure dropping off and picking up does not occur in the vicinity of this junction.

Details of the proposed extent of the extension of the pedestrian barriers should be submitted and approved to the local planning authority and the approved extended barriers installed prior to the commencement of the use of the proposed facility.

Reason: To ensure that development has no unacceptable adverse impact on the Local Road Network and to accord with CSDP policies ST2 and ST3.

5 A travel leaflet for issue to all customers should be submitted and approved by the local planning authority prior to the commencement of the operation of the facility. The travel leaflet should ensure that: all visitors to the facility are made aware that parking is not available within the site; drop off/pick up should not take place from Villette Road or Ryhope Road; the on-street car parking available in the area; and walking routes to the site from nearby residential areas. The approved leaflet should be distributed to all parent/ guardians prior to any child attendance.

Reason: To ensure that development has no unacceptable adverse impact on the Local Road Network and to accord with CSDP policies ST2 and ST3.

6 Notwithstanding any indication that may have been given in the submitted planning application, the facility should be limited to 50 children at any time in the interest of highway safety and to comply with policies ST2 and ST3 of the CSDP.

7 Prior to the commencement of the use a Traffic Regulation Order shall be obtained and be provided/implemented on Back Ryhope Road/Back Manilla Street to prohibit waiting by customers.

Reason: To ensure that development has no unacceptable adverse impact on the Local Road Network and to accord with CSDP policies ST2 and ST3.