

**Application Number: 20/10978** Full Planning Permission

**Site:** WOODBERRY DAY NURSERY, 1 ROLLESTONE ROAD,  
HOLBURY, FAWLEY SO45 2GD

**Development:** Alterations and additions to existing property

**Applicant:** Woodberry Day Nursery Ltd

**Agent:** The Planning Group Ltd

**Target Date:** 02/11/2020

**Case Officer:** Jo Chambers

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## **1 SUMMARY OF THE MAIN ISSUES**

The key issues are:

- 1) Health and safety matters
- 2) Design and impact on local character
- 3) Impact on neighbours

This application is to be considered by Committee because of a contrary view by the Health and Safety Executive.

## **2 SITE DESCRIPTION**

The site is located within the countryside; the built up area boundary is located on the opposite side of Rolleston Road. Residential properties are located opposite.

The site adjoins a crossroads which gives access to Blackfield and Fawley to the south and east and the rest of Holbury to the north. An estate of residential properties lies directly to the north and further west along Rolleston Road.

The site comprises a purpose built children's nursery with a large area of car parking to the west of the main buildings and recreation and playing fields to the south. The building is single storey with a variety of roof forms.

Vehicular access is taken off Rolleston Road, approximately 150 metres to the west of the crossroads. The access leads into a gravel parking area for parents with a separate area for staff parking. The car park is not formally laid out but can accommodate approximately 50 cars between the two areas.

## **3 PROPOSED DEVELOPMENT**

Full planning permission is sought for 2 single storey extensions to the existing building, creating 22 sqm of additional floorspace. This would facilitate a revised internal layout based on the model used by the chain of day nurseries of which this site forms part, and would provide larger rooms to allow more space for those inside the building as a response to the coronavirus pandemic.

No change is proposed to the maximum number of children that can attend the nursery. This would remain at a maximum of 65.

#### 4 PLANNING HISTORY

Proposal	Decision Date	Decision Description	Status
18/10921 Removal of condition 6 of Planning Permission 09/93731 to allow occupancy based on ofsted requirements	01/10/2018	Granted Subject to Conditions	Decided
09/94594 Day nursery for 40 children; demolition of existing	14/12/2009	Granted Subject to Conditions	Decided

#### 5 PLANNING POLICY AND GUIDANCE

##### **Local Plan 2016-2036 Part 1: Planning Strategy**

Policy CCC1: Safe and healthy communities  
Policy ENV3: Design quality and local distinctiveness  
Policy IMPL2: Development standards  
Policy STR1: Achieving Sustainable Development  
Policy STR8: Community services, Infrastructure and facilities

##### **Local Plan Part 2: Sites and Development Management 2014**

NPPF1: National Planning Policy Framework – Presumption in favour of sustainable development  
DM23: Shops, services and community facilities in rural areas

##### **Relevant Legislation**

Town & Country Planning Act 1990  
Planning and Compulsory Purchase Act 2004

##### **Constraints**

HSE Consultation Zone

#### 6 PARISH / TOWN COUNCIL COMMENTS

**Fawley Parish Council:** recommend permission

#### 7 COUNCILLOR COMMENTS

No comments received

##### **CONSULTEE COMMENTS**

Comments have been received from the following consultees:

**Drainage** - no comment.

**HCC Childcare** - no objection raised.

**HSE** - Advise Against. The assessment indicates that the risk of harm to people at the proposed development site is such that HSE's advice is that there are sufficient reasons on safety grounds, for advising against the granting of planning permission in this case.

**SSEN** - safety advice given

**SGN** - safety advice given

## **8 REPRESENTATIONS RECEIVED**

No representations received

## **9 PLANNING ASSESSMENT**

### Background of Nursery Use

#### 09/94594 Day nursery for 40 children; demolition of existing

Planning permission was granted for a replacement nursery for 40 children at this site in 2009 following an objection by the HSE. The Committee report at that time stated:

*The most significant objection to this application is that raised by the Health and Safety Executive (HSE). They have objected on the basis that they consider that the siting of such a vulnerable population in this location would be incompatible with the presence of a major hazard, namely the Fawley oil refinery. (The site lies within the middle consultation zone.) In objecting to the application, the HSE have made it clear that they have taken no account of the existing use of the site as a day nursery. The HSE are of the opinion that they should not take into account the existing use of the site when considering risk, because they believe this has the potential to allow a new development which would introduce more people to risk than the previous one which they see as being contrary to aims of the Seveso II Directive (December 1996).*

*It is felt that the HSE's position is very harsh. To ignore the existing use of the site when considering what is proposed takes no account of a legitimate fall-back position, which is to continue using the existing buildings as they have been used over the past few years. Common sense would suggest that the proposed new day nursery would pose no greater health and safety risk than the status quo when that new building has a smaller footprint than the existing building and when the applicants are agreeable to a condition restricting numbers of children to the same limitation as exists at present. The new development should not introduce more people to risk than at present. It is also of note that the children attending the nursery will be mainly resident within the local area and so there is no evidence that the proposal would draw people in from a lower risk area to a higher risk area. In considering this proposal, it is also important to recognise the important community benefits that this proposal will bring. Therefore, overall whilst one cannot say that there would be no risk, it is reasonable to say that the risk does not seem to be any greater than the risk that has already been accepted and on this basis and taking into account the community benefits arising from this proposal, it is felt reasonable to recommend approval of this application contrary to the advice of the Health and Safety Executive. If members accept this recommendation, the Health and Safety Executive would then have to be given 28 days to call the application in for a Public Inquiry.*

*Overall, taking into account that the risk to health and safety would be comparable with the existing use of the site, it is felt the impact of the development would be acceptable.*

It was subsequently resolved that the then Head of Planning be authorised to grant permission subject to the Health and Safety Executive not asking for the application to be called in for a public inquiry within 28 days of the resolution and subject to specific conditions. The Health and Safety Executive confirmed that it did not wish the application to be called in and that it did not wish to pursue the matter further. Given the position taken by the HSE, it was considered that the application could be granted planning permission.

#### 18/10921 Removal of condition 6 of Planning Permission 09/93731 to allow occupancy based on ofsted requirements

Subsequently planning permission was granted, which allowed an increase in the number of children from 40 to 65. Again, this followed an objection from the HSE.

The 18/10921 Committee report referred to:

*...the recent closure of the nursery at 11 Long Lane Holbury and the nursery at the Sure Start centre in Blackfield...*

*...it could be argued that children who already live in the area will be using the expanded nursery and the risk factor will therefore be reduced. Similarly the closure of a nursery in the inner zone with children potentially transferring to a middle zone site reduces the risk. Added to this, the type of institutional use envisaged does not provide 24 hour care but care on a rolling basis through the day with children coming and going.*

The HSE considered the Council's intention to grant permission and whilst maintaining its objection, did not wish to pursue the matter further, thereby acknowledging that the final decision rested with the Council.

#### Current Application

##### Design, site layout and impact on local character and appearance of area

The nursery building is partially screened from external views by hedging. The proposed extensions are modest in size and the submitted plans show that they would be complementary in design and subservient to the existing building. It is considered that the appearance is such that the proposal would comply with adopted policy ENV3.

##### Impact on neighbours

Residential properties are located opposite the site along Rolleston Road. The extensions would be visually well integrated with the existing nursery building such that the visual impact on neighbour amenity is considered acceptable. No additional children are proposed to be accommodated on site and this would continue to be controlled by planning condition, ensuring no additional impact would arise. It is noted that no objections have been received. The impact on neighbours is considered acceptable.

##### Health and Safety Matters

A significant consideration in the determination of this planning application is the consultation response of the HSE, which advises against the granting of planning permission. The proposed extensions straddle the middle consultation zone and the outer consultation zone. The response advises that major hazard sites/pipelines are subject to the requirements of the Health and Safety at Work etc. Act 1974, which

specifically includes provisions for the protection of the public. However, it points out the possibility that a major accident could occur at an installation and that this could have serious consequences for people in the vicinity. Although the likelihood of a major accident occurring is small, it is felt prudent for planning purposes to consider the risks to people in the vicinity of the hazardous installation and the advice is against the proposal.

Policy CCC1 Safe and Healthy Communities states that development within the consultation zones will be restricted or managed in accordance with the HSE guidelines. In this instance, the application relates to an existing children's day nursery accommodating a specified maximum number of children (65) to be accommodated at the premises at any one time. The agent has confirmed that the maximum number of children would not be changed.

Instead, the proposal would enable changes to the internal layout, and the removal of certain bespoke areas such as the soft play space, milk kitchen and art room, to create larger age specific rooms. For example, the existing 'pre-school' room measures approximately 27sqm compared to a proposed 70sqm; the 'Toddler' room measures approximately 30sqm compared to a proposed 54sqm; the existing 'Baby' room measures approximately 33sq m compared to a proposed 67sq m. This would have the benefit of increasing the size of the main rooms and therefore the amount of space available to children/staff occupying those rooms. The agent has explained that this new layout would reflect that used successfully as part of the business plan of this chain of day nurseries and, by increasing the space available in the age specific rooms, is also a response to the current coronavirus where an increased spatial setting is considered beneficial.

On the basis that this relates to an existing day nursery and that the numbers of children are not increased, it is considered reasonable to conclude that the level of overall risk associated with the site would not be increased. Consequently, the proposed additional floorspace and reconfiguration of the internal layout is being recommended for approval but it is deemed necessary to re-impose the existing planning condition to continue to restrict the numbers to no more than 65 children, thereby ensuring no escalation of the level of risk associated with this site.

Where the local planning authority is minded to grant planning permission, planning practice guidance states that the HSE should be given notification and allow 21 days from that notice for the HSE to give further consideration to the matter. This includes the option that the application may be called-in for determination by the Secretary of State for Communities and Local Government. In this context, the recommendation is one of delegation to the Chief Planning Officer.

## **10 CONCLUSION**

It is considered reasonable that the application be granted subject to the re-imposition of a condition restricting the number of children to 65. The level of risk would not be increased and the proposal is considered to comply with adopted planning policy and be acceptable with regard to other material planning considerations.

## **11 OTHER CONSIDERATIONS**

### Human Rights

In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention

on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

### Equality

The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty *inter alia* when determining all planning applications. In particular the Committee must pay due regard to the need to:

- 1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- 2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- 3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

## **12 RECOMMENDATION**

Delegated Authority be given to the Chief Planning Officer to **GRANT PERMISSION** subject to:

- i) notification to the HSE that the Local Planning Authority is minded to approve the application and allowing 21 days from that notice period for the HSE to give further consideration to the matter, including whether to request the Secretary of State for Communities and Local Government to call-in the application;
- ii) the imposition of the conditions set out below:

### **Proposed Conditions:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development permitted shall be carried out in accordance with the following approved plans:

Site location plan WDNF/PP/01  
Block plan WDNF/PP/02  
Existing site plan WDNF/PP/03  
Proposed site plan WDNF/PP/04  
Existing ground floor plan WDNF/PP/11  
Proposed ground floor plan WDNF/PP/14  
Existing roof plan WDNF/PP/12  
Proposed roof plan WDNF/PP/15

Existing elevations WDNF/PP/13  
Proposed elevations WDNF/PP/16  
Planning statement by The Planning Group and email from Martin Parrish of  
The Planning Group dated 25/09/2020

Reason: To ensure satisfactory provision of the development.

3. No more than 65 children shall be accommodated on the application site at any one time. The operator shall maintain a record and log of all children at the site and shall ensure there is no period of overlap when more than 65 children are on site at any one time. The record log shall be available for inspection at all reasonable times by an officer of the Local Planning Authority.

Reason: The site lies within the Fawley Major Hazard Consultation Zone where it is considered necessary to control the number of children present on site in the interests of health and safety.

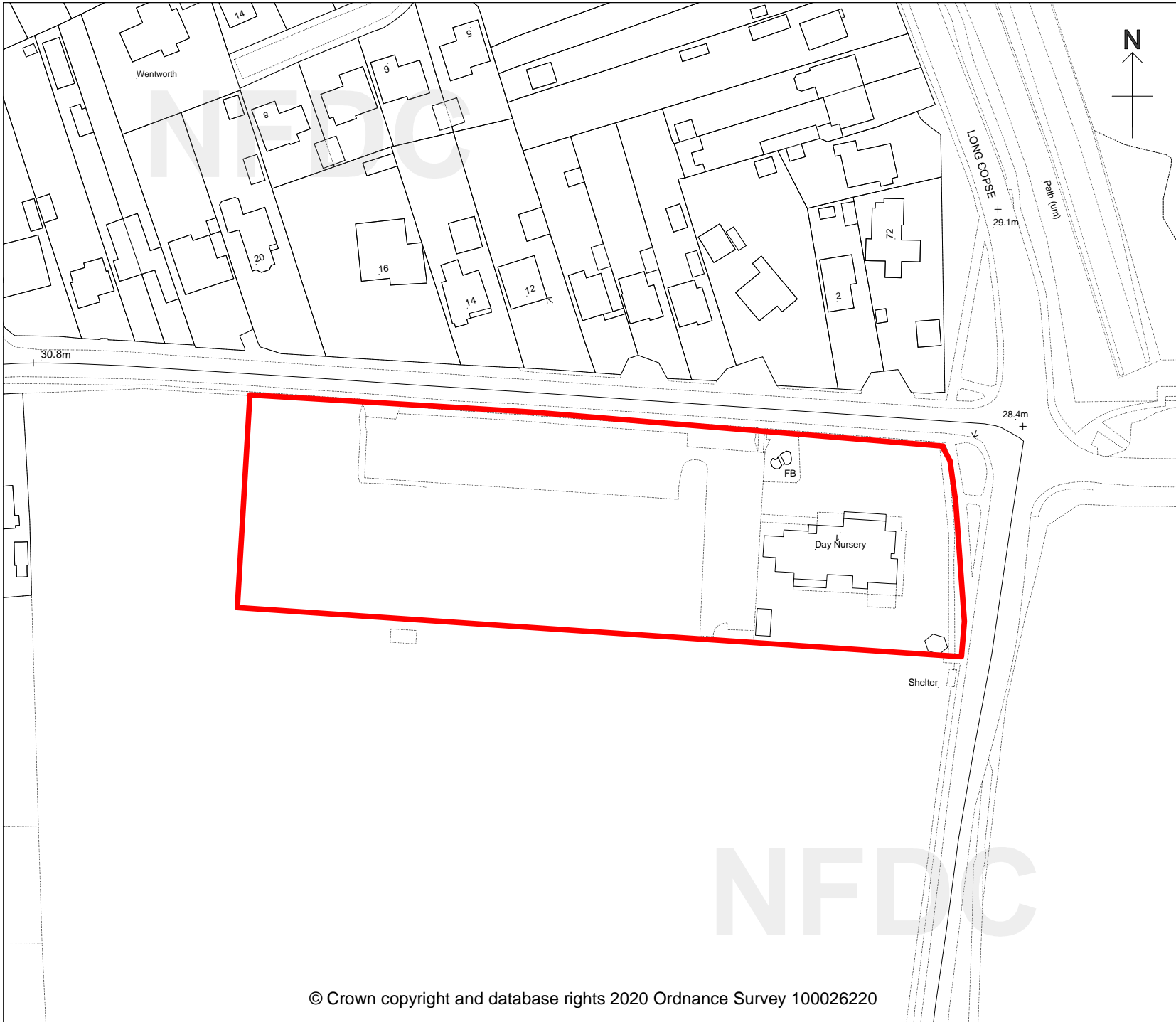
4. The external facing materials shall match those used on the existing building.

Reason: To ensure an acceptable appearance of the building.

**Further Information:**

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# New Forest

DISTRICT COUNCIL

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## PLANNING COMMITTEE

November 2020

Woodberry Day Nursery  
 1 Rollestone Road  
 Holbury Fawley SO45 2GD  
 20/10978

Scale 1:1250

N.B. If printing this plan from the internet, it will not be to scale.