

**Application Number:** 18/10921 Variation / Removal of Condition

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

**Development:** Removal of condition 6 of Planning Permission 09/93731 to allow occupancy based on ofsted requirements

**Applicant:** Mrs Young

**Target Date:** 29/08/2018

**Extension Date:** 12/10/2018

**RECOMMENDATION:** Service Manager authorised to Grant Subject to Conditions  
**Case Officer:** Stephen Belli

**1 REASON FOR COMMITTEE CONSIDERATION**

Contrary to Health and Safety Executive view

**2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS**

HSE Consultation Zone  
Countryside

**3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES**

**Core Strategy**

**Objectives**

- 4. Foster well being of local economy
- 5. Travel - improve accessibility to services

**Policies**

**Core Strategy**

CS1 Sustainable development principles  
CS5 Safe and healthy communities

**Local Plan Part 2 Sites and Development Management Development Plan Document**

None directly relevant

**4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE**

Section 38 Development Plan  
Planning and Compulsory Purchase Act 2004  
National Planning Policy Framework 2018

**5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS**

SPD - Car Parking Guidelines

**6 RELEVANT PLANNING HISTORY**

6.1 09/93731 – Single storey replacement nursery school – approved 13 October 2009

**7 PARISH / TOWN COUNCIL COMMENTS**

**Fawley Parish Council:** recommend permission

**8 COUNCILLOR COMMENTS**

None received

**9 CONSULTEE COMMENTS**

9.1 Health and Safety Executive:Based on the information supplied by NFDC the HSE advise against the grant of planning permission as there are sufficient reasons on safety grounds.

If nevertheless you are minded to grant permission you must give HSE advance notice and allow 21 days from that notice for HSE to consider whether to request that the Secretary of State for Communities and Local Government call in the application for their own determination.

9.2 Hampshire County Council Highway Engineer: no objection

**10 REPRESENTATIONS RECEIVED**

5 letters of objection raising the following points -

- Query regarding the facilities available on site
- Query numbers put forward and car parking able to cope
- Increasing numbers means increasing traffic
- Hazardous highway location for an expanded facility
- The Application, as submitted, gives no information concerning the implications of the "OFSTED" recommendations. However the plan (presumably submitted as part of the application) is dated 2008. I therefore infer that no addition to the existing accommodation is proposed and that it is being underused. If the District Council's original consent limited the number of children, there must have been a good reason. Unless it can be demonstrated that general congestion in the area of the school has and will continue to become lighter there can be little to support an increase in the number of attendees with or without the provision of additional accommodation.

**11 CRIME & DISORDER IMPLICATIONS**

None relevant

## **12 LOCAL FINANCE CONSIDERATIONS**

Local financial considerations are not material to the decision on this application

## **13 WORKING WITH THE APPLICANT/AGENT**

In accordance with paragraph 38 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council take a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome.

This is achieved by

- Strongly encouraging those proposing development to use the very thorough pre application advice service the Council provides.
- Working together with applicants/agents to ensure planning applications are registered as expeditiously as possible.
- Advising agents/applicants early on in the processing of an application (through the release of a Parish Briefing Note) as to the key issues relevant to the application.
- Updating applicants/agents of issues that arise in the processing of their applications through the availability of comments received on the web or by direct contact when relevant.
- Working together with applicants/agents to closely manage the planning application process to allow an opportunity to negotiate and accept amendments on applications (particularly those that best support the Core Strategy Objectives) when this can be done without compromising government performance requirements.
- Advising applicants/agents as soon as possible as to concerns that cannot be dealt with during the processing of an application allowing for a timely withdrawal and re-submission or decision based on the scheme as originally submitted if this is what the applicant/agent requires.
- When necessary discussing with applicants/agents proposed conditions especially those that would restrict the use of commercial properties or land when this can be done without compromising government performance requirements.

In this case the concerns raised by objectors and the HSE have been addressed by the applicant in consultation with the Local Planning Authority such that it is considered an approval should be granted.

## **14 ASSESSMENT**

### **14.1 Site Description**

14.1.1 The site is located in the countryside adjoining the settlement boundary of Holbury on Rollestone Road. 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 Rollestone Road.

14.1.2 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.

- 14.1.3 The site enjoys an existing vehicular access 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 parking can accommodate approximately 50 cars between the two areas.

## 14.2 Proposals

- 14.2.1 This application seeks to remove condition 6 of the original planning permission which states:

*No more than 40 children shall be accommodated on the application site any one time.*

*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 interest of health and safety and to comply with Policy DW-E46 of the New Forest District Local Plan First Alteration.*

- 14.2.2 The applicant has submitted supporting information which now sets out their aspiration to increase the number of children catered for at any one time up to a maximum number of 68 albeit the applicant has agreed a lower figure of 65 if necessary.

- 14.2.3 The key considerations are health and safety of all users of the site, impact on highway safety, and impact on local residential amenities

## 14.3 Health and Safety

- 14.3.1 The views of the Health and Safety Executive (HSE) are relevant in this case and they advise against the grant of planning permission.

- 14.3.2 Core Strategy Policy CS5 says *that development in the vicinity of hazardous sites and uses, known to present risks to public health and safety, will be restricted to ensure that there are no unacceptable risks to people....* (The refinery hazard zones are split into three areas inner, middle and outer zones). The HSE advise against residential and institutional development in the inner zone, institutional development in the middle zone and major developments in the outer zone where large numbers of people are involved).

- 14.3.3 In this case the nursery building is shown to lie within the middle zone whilst the playing fields and car parking areas are shown to lie in the outer zone.

### 14.3.4 Earlier planning permission 09/93731

- 14.3.5 The previous planning officer's report on the earlier application provides useful background to this case. The comments of the consultees was as follows:

**Fawley Parish Council** *recommends refusal but would accept delegated decision – concerned that entrance is too near crossroads.*

**Hampshire County Council Highways** *no objection subject to conditions relating to parking and turning.*

**Health and Safety Executive** *Health and Safety Executive: advises against granting of planning permission.*

This new application now needs to be considered afresh and the Health and Safety and Highway Authorities re-consulted. The HSE may object to the application if they consider that the application, if approved, may lead to more human beings being placed in a vulnerable position

- 14.3.6 This application was considered by the September 2009 Development Control Committee with the following extract of the report relevant -

*There is an existing children's day nursery on site which occupies a fairly long single-storey flat roofed building of no architectural merit.*

*This application seeks to erect a new children's day nursery within a purpose built building on the open undeveloped eastern part of the application site. It is then proposed that the existing buildings on site would be demolished. It was originally proposed to form a new access onto Rolleston Road with a new parking area set to the west side of the proposed new building.*

*However, the plans have subsequently been amended so that it is now proposed to retain the existing access. The new building would have a floorspace of 350 square metres, which would actually be less than the building proposed to be demolished.*

*Because the proposed day nursery would have less floor space than the existing buildings to be demolished and because the applicants are willing to restrict the number of children to 40 (as at present), there would be no intensification in the use of the site.*

*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 resolved that the 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 have now written again to the Local Planning Authority to confirm that they do not wish the application to be called in and they do not wish to pursue the matter further. Given the position now taken by the HSE, it is considered that the application can now be granted planning permission.

#### 14.4 Current application

14.4.1 In discussion with the applicant Mrs Young has made her view known that as other nurseries are either closed or in the process of closing down this potential increase in numbers at the application site would not result in an increase in public health and safety.

14.4.2 The applicant has provided information which currently shows the number of children accommodated at the site. The figures show that on Monday to Thursday mornings inclusive there are already more than 60 children accommodated with a maximum on Wednesday and Thursday mornings of 67. This drops to a range between 47 to 64 accommodated in the afternoons. What this demonstrates is that the level of demand is such that the nursery is in breach of the original condition. It is not clear how long this breach has been happening for, but unless the applicant can show an ongoing constant breach for more than 10 years the original condition of 40 children at any one time is still enforceable. In the event of a refusal of planning permission this gives rise to the consideration of potential enforcement action against the breach of the condition. Such enforcement action can potentially reduce staffing opportunities at the site as a knock on impact as well as forcing families to find other accommodation for their children.

14.4.3 The HSE in conversation with the case officer indicated that the key issue is about bringing more children into an area at risk. In response the applicant has pointed to the recent closure of the nursery at 11 Long Lane Holbury and the nursery at the Sure Start centre in Blackfield. The Long Lane nursery was conditioned to no more than 28 children at any one time. This was accepted at the time back in 1994 by the HSE. That permission followed earlier permissions for a smaller number of 12 which was expanded over time. The nursery closed in June 2017 and has now received planning permission for a conversion to a dwelling. It is likely

that the property will change use as there is currently an application to discharge the conditions. The other nursery referred to by the applicants is closed but may re-open in the future. This property is located in Blackfield.

- 14.4.4 The Long Lane site is located in the inner consultation zone, whilst the application site is located in the middle zone for the building. The policy rules against further institutional type development in the middle zone but the closure of another nursery 700 metres to the north of the application site must be a mitigating factor.
- 14.4.5 The planning permission granted for the Sure Start building in Blackfield has a condition attached which limits the use of the site only by persons who reside in certain postcode areas which presumably are either within the inner or middle zones of the Fawley Hazardous site although that in itself may be very difficult to manage and enforce when postcode boundaries do not match the consultation zone boundaries. While the Blackfield nursery is currently closed this is being handled by Hampshire County Council with a view to it re-opening. This site lies in the same middle zone as the application site. That property is owned by the District Council.
- 14.4.6 It is therefore considered that this is a marginal case where 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.
- 14.4.7 The procedure for going against the advice of the HSE is set out in their consultation response.

#### 14.5 Highway Safety

- 14.5.1 There is no evidence that the proposal would give rise to additional traffic movements that would be dangerous in highway safety terms. The access has good visibility in both directions and the car parking facility can cope with the extra number of parents envisaged. Neither is there a highway safety issue at the crossroads which is traffic light controlled. It is considered that there is no evidence to substantiate a refusal of planning permission in this case.
- 14.5.2 The Highway Authority have been consulted but no comments have been received. Any comments that are received will be reported verbally at the meeting.

#### 14.6 Residential Amenities

- 14.6.1 The site lies opposite existing dwellings but is far enough away not to cause any significant increase in noise and activity that would be detrimental to residential amenity. An increase in the number of children would have some impact but it is doubtful that the additional noise and activity would be sufficient to warrant a refusal.

## 14.7 Conclusions

14.7.1 The concerns of the HSE are acknowledged but it is considered that the risk factors in this case are lessened by the closure of a nursery within 700 metres of the site located in the inner consultation zone. The institutional use concerned is also not one which has 24 hour use being only used during the day time. There are no substantive highway safety or residential amenity issues which would warrant a refusal of permission. As the recommendation is contrary to the HSE's advice, the recommendation is subject to allowing a 21 day period for the HSE to consider requesting the Secretary of State for Communities and Local Government calling in the application for their own determination.

14.7.2 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.

## 15. **RECOMMENDATION**

Service Manager authorised to **GRANT the VARIATION of CONDITION** subject to allowing a 21 day period for the HSE to consider requesting the Secretary of State for Communities and Local Government calling in the application for their own determination and the imposition of the following conditions:

### **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. 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 and to comply with Policy CS5 of the Core Strategy.



**Notes for inclusion on certificate:**

1. In accordance with paragraph 38 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case the Council has asked the applicant to provide further justification for the proposal and this has led to a positive recommendation.

**Further Information:**

Stephen Belli

Telephone: 023 8028 5588



# New Forest DISTRICT COUNCIL

Tel: 023 8028 5000  
www.newforest.gov.uk

David Groom  
Service Manager  
Planning and Building Control  
New Forest District Council  
Appletree Court  
Lyndhurst  
SO43 7PA

## Planning Development Control Committee

September 2018

Item No: 3n

Fawley Independent Day Nursery  
1 Rolleston Road  
Holbury Fawley  
18/10921

Scale 1:2500

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

