

Application No: W 10 / 0991

Town/Parish Council: Kenilworth

Case Officer: Penny Butler

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Registration Date: 16/09/10

Expiry Date: 11/11/10

57 Fishponds Road, Kenilworth, CV8 1EY

Variation of Conditions (2) and (3) of W07/1614 to permit 12 children in the garden instead of 6 and to vary the starting time from 08.00 to 07.30 FOR Tommies Childcare Limited

This application is being presented to Committee due to an objection from the Town Council having been received.

SUMMARY OF REPRESENTATIONS

Kenilworth Town Council: "Notwithstanding the previous temporary arrangements, Members OBJECTED to the proposal on the basis that:

1. The proposal is an unacceptable intensification of the present conditions.
2. It constitutes a detrimental impact on neighbouring properties, especially the adjoining No. 55, due to a further loss of amenity.
3. In an area with restricted parking, the proposal exacerbates congestion and safety issues.

Members noted the history of piecemeal variations to this site."

Public Response: No.66 objects and points out that the original consent included a condition requiring parents to use the Castle Farm car park and walk their children to the nursery which is not happening. Also double yellow lines around the property are ignored causing traffic difficulties and the road is quite narrow. They also object to noise and inconvenience of parents dropping off children before 08.00. The noise from children in the garden is annoying now, and to double it would be totally unacceptable. If they had wanted to live opposite a school they would have done so.

No.55 objects and their home life has been constantly interfered with over previous years due to noise from the premises. The noise of staff talking above six children is already quite intolerable and having 12 in the garden, especially at 07.30 is unacceptable. The neighbour is an artist who needs a certain amount of serenity to paint, and already wears ear plugs which do not drown out the incessant noise pollution. They have complained several times about breaches of the 6 child garden limit. The Castle Farm access road and car park are not being used by staff or parents and the neighbour would like their drive to not be blocked. The applicants attic is leaking water onto her garage.

Environmental Health: No objection. The use of the garden by 6 children has not given rise to noise complaint, therefore, an increase to 12 children is justified. However, they suggest that the condition could be changed to require

the children to be supervised by at least 2 suitably qualified adults (rather than one at present).

WCC Highways: No objection.

RELEVANT POLICIES

- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP7 - Traffic Generation (Warwick District Local Plan 1996 - 2011)
- DP9 - Pollution Control (Warwick District Local Plan 1996 - 2011)
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)

PLANNING HISTORY

Planning permission for the change of use from a dwelling to a day nursery was originally granted in 2004 (W04/0011), when the hours of use, and the hours of use of the garden, were limited by conditions. The relevant conditions stated:-

The total number of children attending the day nursery shall not at any time exceed 28 and the day nursery shall only be operated between the hours of 08.00 and 18.00 on Mondays to Fridays.

The garden shall only be used between the hours of 10.00 and 16.00 and the maximum number of children using it at any one time shall be six, with those children being supervised by at least one suitably qualified adult.

In 2007 (W07/1614) an application to vary condition 2 of the above approval was granted, and increased the number of children from 28 to 30.

In 2008 consent (W08/0801) was granted by Planning Committee for a temporary period of one year, to enable opening from 07.30 instead of 08.00.

KEY ISSUES

The Site and its Location

The property lies in a residential suburb on the edge of Kenilworth, backing onto Castle Farm playing fields. The site is on a corner with the access into Castle Farm running along the side boundary. To the other side is a detached two storey dwelling about 1m from the side boundary.

Details of the Development

The proposal is to vary conditions 2 and 3 of the 2007 consent. It is proposed to permanently extend the opening hours, so as to be from 07.30 instead of 08.00, and to increase the number of children permitted in the garden at one time from 6 to 12. The applicant has provided a register of how many 07.30 starts were attended per month from February 2009 to September 2010. This ranges from 6 to 46, with 46 averaging at 2.3 per day assuming 20 operational days per month, and the pattern shows fewer earlier starts in the winter.

The applicants are new operators of the nursery who were not aware that the previous temporary consent for a 07.30 start had expired. They feel the earlier start has been successful and enabled parents to use the facility to go to work,

and also feel that 6 children is an unrealistic number of children to manage in the garden due to OFSTED ratios. The applicant claims that noise levels will not increase much due to the activities provided in the garden, which are classroom based and play based activities, not outdoor activities that will create noise.

Assessment

Since the property lies on a corner of the access road into Castle Farm, there is already a higher level of noise and disturbance in this part of the road than other parts. Due to the corner location, only one neighbour is directly affected and they have objected to increased noise and disturbance.

The proposal to drop children off earlier, without increasing the number of children at the nursery overall, could lead to a less intensive period of children being dropped off, thus reducing traffic congestion and parking problems. Bringing the opening time forward by 30 minutes would not in my opinion noticeably change the present impact, and this proposal has previously been permitted for a 12 month period. I consider that the earlier start time would not cause measurable increased harm to the extent that refusal would be justified.

Increasing numbers of children in the garden from 6 to 12 will have a direct impact upon no.55, as noise levels could clearly increase, but this would still be limited to between the hours of 10.00 and 16.00. Increasing the number of supervising adults to 2 should maintain control over noise, and with no objection from the Environmental Health Officer it would be difficult to support a refusal based on potential noise and disturbance. I consider that these measures will protect neighbouring amenity to a reasonable extent.

No condition has ever been imposed requiring use of the Castle Farm car park or access road. Leaking water is not a planning matter.

RECOMMENDATION

GRANT, subject to the conditions listed below.

CONDITIONS

- 1 The development hereby permitted must be begun not later than 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 total number of children attending the day nursery shall not at any time exceed 30 and the day nursery shall only be operated between the hours of 07.30 and 18.00 on Mondays to Fridays. **REASON** : To protect the amenities of surrounding properties, in accordance with Policy DP2 of the Warwick District Local Plan 1996-2011.
- 3 The garden shall only be used between the hours of 10.00 and 16.00 and the maximum number of children using it at any one time shall be twelve, with those children being supervised by at least two suitably qualified adults. **REASON** : To protect the amenities of surrounding

properties, in accordance with Policy DP2 of the Warwick District Local Plan 1996-2011.

INFORMATIVES

For the purposes of Article 22 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003, the following reason(s) for the Council's decision are summarised below:

In the opinion of the District Planning Authority, the variation in hours of operation, and increased number of children permitted in the garden does not give rise to any unreasonably harmful effects in terms of loss of residential amenity which would justify a refusal of permission. The proposal is therefore considered to comply with the policies listed.
