

**13/00650/FUL**

**SITE OF 40 TO 46 EASTWOOD ROAD, RAYLEIGH**

**CHANGE OF USE OF 42-46 EASTWOOD ROAD TO DAY CARE NURSERY WITH SINGLE STOREY INFILL EXTENSION AND FIRST FLOOR COVERED WALKWAY EXTENSION BETWEEN NOS. 40 AND 42**

**APPLICANT: RAINBOW DAY NURSERY**

**ZONING: SECONDARY SHOPPING, RESIDENTIAL, RAYLEIGH TOWN CENTRE**

**PARISH: RAYLEIGH TOWN COUNCIL**

**WARD: WHITEHOUSE**

In accordance with the agreed procedure this item is reported to this meeting for consideration.

This application was included in Weekly List no. 1213 requiring notification of referrals to the Head of Planning and Transportation by 1.00 pm on Wednesday, 18 December 2013 with any applications being referred to this meeting of the Committee. The item was referred by Cllr S P Smith.

The item that was referred is appended as it appeared in the Weekly List, together with a plan.

## **1 NOTES**

- 1.1 Planning permission is sought for the change of use of 42-46 Eastwood Road to a day care nursery with single storey infill extension and first floor covered walkway extension between No. 40 and No. 42 at the site of 40 to 46 Eastwood Road, Rayleigh. The existing day care nursery (No. 40) is located within the residential area of Rayleigh. The extension works proposed would be partly within the residential area and partly within the secondary shopping frontage area. No. 42-46 is an existing furniture and carpet shop at ground floor known as 'Suttons'. To the north of the site is No. 38, a semi-detached house, and to the south is an attached shop at ground floor level in use by Thermoshield. Residential dwellings border the remaining boundaries of the site.

- 1.2 The proposal is for the change of use of 42-46 Eastwood Road at ground and first floor level to a day care nursery with a single storey infill extension to the side/rear and a first floor covered walkway extension between No. 40 and No. 42 linking the proposed day care nursery to the existing nursery. At ground floor level the infill extension would provide an entrance lobby and central link with an outdoor changing and toilet area and staff WC to the rear. The shop at No. 42-46 would be converted at ground floor to provide 3 baby rooms, staff WC, a staff training room/meeting room and a toddler room. The first floor would be converted to provide a pre-school room, outdoor play area, cloakroom, staff room, WC and parents meeting room. The internal layout of the existing nursery would also be altered.

## **2 RELEVANT PLANNING HISTORY**

### **2.1 40 Eastwood Road (existing nursery):-**

84/00580/FUL - Change of use from residential to nursery school play group premises. APPROVED

85/00523/FUL - Renew planning permission for use as play group nursery school. APPROVED

88/00741/FUL - Continued use as nursery school compliance with condition 2 (temporary use expiring 31/10/88) ROC/523/85. APPROVED

89/00673/FUL - Continued use as nursery school. APPROVED

91/00575/FUL - Continued use as nursery school. APPROVED

94/00469/FUL - Continued use as nursery school. APPROVED

95/00450/FUL - Ground Floor Rear Extension. APPROVED

95/00627/ADV - Display Non-illuminated Sign to Front of Building. APPROVED

99/00502/FUL - Erect Conservatory to Rear. WITHDRAWN

99/00560/FUL - Erect Ground Floor Rear Extension with Flat Roof to Existing Children's Nursery. APPROVED

00/00596/FUL - Layout 7 Staff Parking Spaces and Surfacing Improvements to Existing Access. APPROVED

05/00669/FUL - To Continue the Use as a Day Nursery without Compliance with Condition Nos. 1 and 4 of F/0469/94/ROC. (To Allow the Day Nursery to be Operated by Persons/Organisations Other than Mr and Mrs Argentieri and also to Allow the Number of Children Attending the Property at Any Time Shall Increase from 40 to 45). APPROVED

2.2 42-46 Eastwood Road ('Suttons'):

EEC/RAY/79/59 - Extension to form showroom. REFUSED

EEC/RAY/204/59 - Alterations and new shop front. REFUSED

ROC/362/88 - Change use of part of premises to sale and display of kitchen/bedroom fitments, store and living accommodation. APPROVED

90/00288/FUL - New shop front, change of use of part first floor to beauty salon, part ground floor to A1 retail and forecourt parking. APPROVED

06/00056/COU - Change of Use of Retail Shop to Restaurant (Class A3) Opening Times: 12 Noon to 2.00 pm Monday to Sunday. 5.30 pm to 10.30 pm Monday to Thursday 5.30 pm to 11.00 pm Friday and Saturday. Creation of Self Contained First Floor Flat. APPROVED.

2.3 Site of 40 to 46 Eastwood Road:

13/00252/FUL - Change of Use of 42-46 Eastwood Road To Day Care Nursery With Single Storey Infill Extension And First Floor Covered Walkway Extension Between No. 40 and No. 42. REFUSED for the following reason:-

'The proposal, by virtue of the use of the garden area of Nos. 42-46 by the proposed day nursery, would generate unacceptable noise disturbance to the occupiers of No. 2 Daws Heath Road, whose rear elevation is a minimum of 13m (approximately) from the boundary with No. 42-46 and No. 4 Daws Heath Road, whose original rear elevation is a minimum of 9m (approximately) from the boundary with Nos. 42-46. This would be detrimental to the amenity reasonably expected to be enjoyed by the occupiers of these properties within their residential garden areas and within the rooms located to the rear of their properties when the windows are open.'

2.4 The only change that has been made between the previously refused scheme and that currently under consideration is the submission of an environmental noise assessment by Healthy Abode Environmental Health Consultancy (GB) Ltd., which makes recommendations including the incorporation of acoustic fencing and outdoor wet pour rubber flooring.

### 3 MATERIAL CONSIDERATIONS

#### Change of Use

- 3.1 The proposal would include the change in use of the existing ground and first floor retail premises at Nos. 42-46 to a day nursery. The site is located within the secondary shopping frontage area of Rayleigh where policy SAT5 of the Local Plan 2006 applies. Policy LT11 of the Local Plan actually encourages leisure and tourism uses above ground floor level within such areas. Although the current proposal is not considered a leisure use, it is a non-retail use, broadly supported by this policy at first floor level.
- 3.2 Policy SAT5 requires that a proposal for a change of use to non-retail at ground floor level does not result in an over-concentration of non-retail uses in part of the secondary shopping frontage area or in the secondary shopping frontage area as a whole. The most recent statistics for Rayleigh's primary and secondary shopping frontage areas were surveyed by the Council's Economic Development team in October this year. These show that there are 42% A1 and 58% non-A1 uses within the secondary shopping frontage area (this includes 5 vacant units on the basis of their last use class). The accompanying text to this policy requires 50% to remain retail within the secondary shopping frontage area, which is already exceeded. The current proposal would increase this further.
- 3.3 However, it is also important to consider the planning history at this site and the National Planning Policy Framework (NPPF). In 2006 planning permission was granted to change the use of Nos.42-46 to a restaurant (Reference 06/00056/COU). Within the officer report for this application, in accepting that a restaurant use would reduce the retail percentage below the recommended amount, it stated that 'given the location on the periphery of this secondary zone, the loss of retail floor space is unlikely to have a material impact upon the footfall for this part of the centre and consequently unlikely to have a material impact upon the viability of the town centre as a whole.'
- 3.4 The NPPF supports economic recovery via the planning system and has a strong presumption in favour of sustainable development. The expansion of a long-established Rayleigh business that has been located in Rayleigh town centre since 1984 is considered to be in accordance with the NPPF and also policy ED1 of the Core Strategy 2011, which seeks to encourage the growth of existing businesses.

- 3.5 Therefore, although the proposal would not technically comply with parts (ii) and (iii) of policy SAT5 other material considerations, namely the previous granting of planning permission for a non-retail use and the approach of the NPPF is considered to outweigh the strict implementation of these parts of this policy. The proposal would comply with the remaining parts of policy SAT5 and, in particular, it is considered that it would support the vitality and viability of Rayleigh town centre by bringing people to the town for childcare, which will then subsequently result in the use of other facilities within the town.
- 3.6 Policy SAT7 requires the provision of off-street servicing in all proposals for new development within town centres. However, the current proposal represents the change in use of an existing building with some extension work and the expansion of an existing business. As the proposal is predominantly the change in use of an existing building it is not considered reasonable to require off-street servicing arrangements, especially when none existed for the current use.

#### Design and Street Scene

- 3.7 The ground floor infill extension, in particular, would be visible from Eastwood Road. This entrance lobby is considered to represent a modest addition to this property. It is considered to form an attractive entrance way to the nursery and would not be detrimental to the appearance of the street scene here. Part of the first floor walk way to the rear of the building would be visible in the distance from Eastwood Road. However, visibility would be limited and it is not considered that this walk way would be detrimental to the appearance of the street scene of Eastwood Road. The walk way is partly of a very functional appearance and the side of it would be slightly visible from Daws Heath Road, but in a commercial context it is not considered to be unacceptable.
- 3.8 The overall design of the proposed extension works is considered to be acceptable and in accordance with policy CP1 of the Core Strategy 2011. The first floor walk way would use thermo wood cladding with windows to break up the continuity of the cladding. Whilst this material is not present on the existing building, the walk way is to the rear where it is less visible and the material is considered to create a modern contrasting effect with the materials and design of the existing buildings.

#### Trees

- 3.9 Whilst the block plan does not suggest that any trees are proposed for removal, at least two trees on the boundary of No. 40 and Nos. 42-46, and within the grounds of Nos. 42-46 would need to be removed to facilitate the ground floor extension. As they are located within the rear garden they are not considered to have significant amenity value to justify their retention. Their removal is not considered objectionable.

Residential Amenity

- 3.10 The adjoining neighbour (No.38) has not objected to the proposal. The ground floor extension would be located between an existing flat roofed extension at No. 40 and Nos. 42-46, away from the boundary with No. 38, and is therefore not considered to have a detrimental impact upon the occupiers of this property. The first floor walk way would be located closer to No. 38, but it would still be located 4m away from the boundary, which is not considered objectionable.
- 3.11 The closest properties to the rear are located within Sykes Mead, but even the rear elevations of these are located approximately 100m away from the rear of 40-46 so no detrimental impact would occur to these properties.
- 3.12 The properties most likely to be affected by the proposal are those that directly border the site of 42-46, namely 2 and 4 Daws Heath Road and 48 Eastwood Road, which has a residential flat at first floor level. The authorised use of Nos. 42-46 is retail at ground floor with a part residential/part beauty salon at first floor as granted planning permission under Reference 90/00288/FUL. The use actually operating is retail at both ground and first floor. It is likely that the garden area to the rear was actually the authorised garden for the residential unit. This is especially the case considering the nature of this area, which is laid to lawn and its limited accessibility from a commercial perspective apart from via an access alongside the side of the unit which would prevent its use as a yard area. When previously assessing the noise implications for neighbouring properties, it was considered that the proposal would generate unacceptable noise disturbance to the occupiers of No. 2 Daws Heath Road, whose rear elevation is a minimum of 13m (approximately) from the boundary with Nos. 42-46 and No. 4 Daws Heath Road, whose original rear elevation is a minimum of 9m (approximately) from the boundary with Nos. 42-46.
- 3.13 The rear garden area of No. 2 wraps around the back of No. 48 and the rear boundary adjoins the side boundary of Nos. 42-46 with metal wire fencing and some hedging forming the boundary. The rear garden area of No. 4 wraps around the corner of Nos. 42-46 and borders No. 40, the existing nursery, at a distance approximately 22m away. There would be several groups of children that would all use the garden area at various times of the day for activities. Whilst the length of time spent outside would be largely weather dependent, the children would always be outside at some point of the day, even if it were to rain but not during thunder and lightning. Therefore, there is the potential for noise disturbance. The depth of the rear garden area of no.2 is relatively short, with a distance of approximately 13m (minimum) between the rear elevation and the boundary with Nos. 42-46 and the original rear elevation of No. 4 is located approximately 9m from the boundary with Nos. 42-46 with a conservatory addition located approximately 6m away.
- 3.14 The current application submits a noise assessment produced by Healthy Abode Environmental Health Consultancy (GB) Ltd. in an attempt to address

the previous reason for refusal. This assessment concludes that with no acoustic fencing impact on neighbouring properties is considered to be of 'marginal significance'. However, it does also go on to state that 'based on a worse case scenario and in order to safeguard the local amenity, we have recommended additional noise attenuation methods in the form of an acoustic fence and sound absorbent rubber floor play area'. The Council's Environmental Services department did not object to the previous application in terms of noise. They have provided advice for the current application. The occupiers of No. 2 and No. 4 Daws Heath Road have both objected to the current proposal in relation to noise and other matters. Concerns have been raised with regard to the noise assessment. Such concerns mainly relate to its reliance on information provided by the applicant to conduct the assessment and its predicted and assumed calculations. However, the assessment is based on informed judgments, using calculations taken from the existing nursery and referring to potential worst case scenarios, including four groups of children (including 2 groups of 8 of the oldest children) outside at one time. The occupier of No. 2 does raise concerns with regard to the effectiveness of acoustic fencing, bearing in mind the land level differences between No. 2 and the site. However, bearing in mind the heights of the children in relation to a 2m high acoustic fence, it is still considered that this would provide a sufficient noise barrier. It would not be reasonable to consider implications for the noise barrier upon a possible future proposal for decking by the occupiers of No. 2, it is only reasonable to assess this proposal on the basis of the current situation. The Council's Environmental Services department states that concluding that the results demonstrate 'marginal significance' may be a matter of opinion; therefore, this phrasing should be treated with caution. However, they consider that the fencing would be a good barrier to deal with the noise, not to say that residents would not hear any noise at all and it would be unreasonable to expect that in such an arrangement of properties. Therefore, bearing in mind the site's town centre location in close proximity to a main road, the conclusions of the informed noise assessment, including mitigation that has been put forward which could be addressed by planning condition and the lack of objection by the Council's Environmental Services department to the first application and comments on the second application, which consider a fence would be a good barrier to deal with the noise, it is not considered justified to refuse the current application in relation to noise disturbance to No. 2 and No. 4 Daws Heath Road. It is not considered that such noise disturbance would be detrimental to the occupiers of the flat above No. 48 when considering that this premises already lies above a commercial unit. The number of children to attend the nursery was controlled on previous applications for No. 40, limiting the number of children to a maximum of 45 on a 2005 application by variation of an earlier condition. A supporting document supplied for the previous application explained that the total number of children as a result of this application would rise from 45 to 72 and a planning condition controlling this number should be attached to an approval.

- 3.15 Concerns were raised within the previous application with regard to the proposed construction of a fence and impact upon the views currently

available to No. 2 Daws Heath Road into the garden area of Nos. 42-46. However, Nos. 42-46 could construct a 2m high fence without the need for planning permission under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) within their boundary. Therefore it would not be reasonable to refuse the application on the basis of a proposal for a fence. Impact upon the value of properties, implications for a neighbouring property's dog and reference to the potential danger of urban foxes to children within the garden are not considered material planning considerations. Reference has been made to the siting of badgers but there is no clear evidence that badgers are present at the application site to justify refusal on ecological grounds. Any potential danger to children from urban foxes, apparently established in the site, or dogs in a neighbouring garden would not alone be justified reasons for refusing the application. Dogs in particular are the responsibility of their owner in terms of safety and foxes are more commonly creatures of the night rather than present in daylight hours when the children would be out in the garden.

- 3.16 The front flat roof to Nos. 42-46 would be converted to an outdoor balcony area as part of this proposal. This would be sited approximately 31m (minimum) from first floor windows opposite the site in Eastwood Road. If these windows do serve residential flats, it is not considered that such a distance would generate unacceptable overlooking. This would need to have a protective fencing/walling, which would further restrict visibility. The design details around such fencing/walling could be controlled by planning condition as this would be visible from Eastwood Road.

Parking Standards Design and Good Practice December 2010

- 3.17 The Parking Standards: Design and Good Practice Supplementary Planning Document adopted December 2010 requires for child care places, 1 vehicle space per full time equivalent staff plus drop off/pick up facilities, 1 cycle space per 4 staff plus 1 space per 10 child spaces, 1 powered two wheeler space plus 1 per 20 car spaces and 1 bay or 5% of total capacity, whichever is greater.
- 3.18 The block plan shows space for 9 vehicles including one disabled bay. In accordance with the Parking Standards document, the proposal should provide 23 parking spaces (maximum), drop off/pick up facilities, 6 cycle spaces for staff, 8 cycle spaces for visitors, 2 powered two wheeler spaces and 1 disabled bay. However, in considering parking provision, the site's location within the town centre in close proximity to public transport and public car parks needs to be considered and a reduction is possible within such locations. The current arrangements for Nos. 40-46 is informal parking with no spaces marked out and the area is used as a shared forecourt.
- 3.19 It should be noted, however, that the block plan does not show the parking spaces at the preferred parking bay width of 5.5m x 2.9m with spaces measuring 4.8m x 2.4m and the disabled bay should have 1m to the side and rear of this space. When re-formatting the parking layout to the preferred

sizes and allowing space for powered two wheelers and cycle provision, 7 parking spaces including one disabled bay could be provided. No drop off/pick up facilities are shown, but an area between 9 and 11m wide between the two lines of parking spaces, hatched on the ground to show temporary drop off/pick up areas could be provided. Whilst 7 parking spaces is well below the 23 spaces required in the Parking Standards Document, this is a maximum figure and does not take into account town centre locations where a lesser figure would be acceptable. Bearing in mind this figure is a maximum, the site's town centre location and that a nursery and retail facility already operate here with limited parking, 7 parking spaces is considered to be acceptable. It may be the case, because we are dealing with existing premises, for the minimum parking bay widths to be used here as an exceptional circumstance, which would provide a greater quantity of spaces. ECC Highways department does not object to the proposal. They have asked for a planning condition to be imposed requiring 6m to be provided between the rear of parking spaces. This could be addressed by requiring a parking layout to be submitted to and agreed in writing by the Council, which could incorporate a requirement for such distancing. It is not considered reasonable to impose the suggested condition relating to the reception and storage of building materials clear of the highway as any obstruction of the highway would be a matter between the developer and ECC Highways department.

- 3.20 Policy T5 of the Core Strategy 2011 requires developments involving both destinations and trip origins to provide travel plans outlining practical measures to encourage employees/staff and visitors to be able to use methods of transport other than the car, and to reduce the need to travel by private car. This has not been provided with the current application, however, with the site's location in the town centre public transport is easily available to those using or working at the site. In addition, the supporting statement advises that employees are not allowed to park their vehicles at the site, encouraging other methods of transport.

#### **4 REPRESENTATIONS**

- 4.1 RAYLEIGH TOWN COUNCIL - No objection.

- 4.2 RDC ENVIRONMENTAL SERVICES - The Head of Environmental Services has no adverse comments in respect of this application, subject to the Standard Informative SI16 (Control of Nuisances) being attached to any consent granted. Please will you add the following informative to any consent granted:-

- Regarding doors to which children may have access, ensure that all gaps formed on the hinged sides of doors are controlled with the provision of finger guards. If children have access to both sides of the door and there is a potential finger entrapment risk then guards should be fitted to both sides of the door. This will prevent access to both the small and large gaps which are formed on the hinge side during the opening and closing of

doors.

Further comments:

- From the acoustic report, it looks like the measures that they are suggesting might be satisfactory in that there would be little else they could do, other than completely enclose the garden (which would defeat the object). While the residents may well hear some noise, the flooring and the fencing will mitigate the noise arising from the nursery to reduce it to acceptable levels in terms of the overall background.
- The difficulty in this is that the original rejection of the planning application was based on "amenity", which is a concept that Environmental Health isn't used to and is a lesser threshold than "statutory nuisance" or "public nuisance," which we normally deal with.
- The report claims that the consultant agreed the use of BS 4142 with you as the method of assessing the noise. This is usually employed where new machinery/equipment/industrial premises move to a location, but it is the only method of trying to assess noise being brought to an area surrounded by housing. I realise that children playing is not similar to machine noise, but it has to be shoe-horned into the method to make an assessment.
- The BS4142 methodology appears to have been adhered to and the recommendations appear reasonable to deal with any noise arising, but without actually measuring the noise when it is in operation, it is difficult to say how accurate the predictions are.
- BS4142 says that if the level above the existing background is +5dB, then complaints are likely and if 10dB above background then complaints would be expected. To say the results of the calculations are marginal may be a matter of opinion, but the recommendations to deal with the expected levels appear to be designed to counter the noise. Despite the consultant considering the noise to be "marginal", the fencing and soft flooring have been recommended as measures to reduce the noise from the activities in the garden.
- With children playing the range will be in the higher frequencies and the height of the children will mean that the 2m high acoustically treated fencing would be a good barrier to deal with the noise. This is not to say that they will not hear the noise at all and it would be unreasonable to expect that in such an arrangement of properties.
- I presume that although the hours of operation are 0700 - 1800, the children will not be out in the garden throughout that time. This would limit the exposure to the residents to noise from the children playing.

- We have no complaints about the current nursery. Therefore, Mr. Sharr's comments of "but even situated at their current premises they have been problematic for both myself and my neighbours in respect of noise", "However, I am fully aware of how noisy the children are when they are playing in their play ground at the Rainbow Day Nursery" and "It is difficult enough we have to endure the noise from children and staff where the applicant is already situated" are not borne out by his lack of complaint to the Council about this matter.
- I believe that there is case law (Lawrence and another v Fen Tigers Ltd and others) that states that if planning permission is granted and does not change the nature of the neighbourhood, it is then difficult to establish nuisance. Would this be the case with the ABC Rainbow nursery already being in the area for many years? Especially as we have had no complaints from residents about it.
- I am not sure about planning restrictions regarding fences, but if Mr. Sharr chooses to build decking in his back garden and thus effectively reduce the height of the nursery's fence, may be the nursery will need a 10' fence to cope with any changes in differential ground level.
- The only way to stop any noise coming out of the nursery garden entirely would be to totally enclose it and I assume that this is not an option.
- From the report provided, I cannot think of anything else that the nursery could do.
- If "amenity" was the reason for refusal last time, it is a judgment call for you as to whether there would still be an issue on those grounds following the recommendations in the report.

4.3 ECC HIGHWAYS: No objection subject to the following conditions being attached:-

1. Parking spaces shall be provided in accordance with Parking Standards Design and Good Practice September 2009 (Essex Planning Officers Association/ECC).
2. A minimum dimension of 6m shall be provided between the rear of the parking bays within the parking court.
3. Prior to the commencement of works on site the applicant shall indicate in writing to the Local Planning Authority an area within the curtilage of the site for the reception and storage of building materials clear of the highway.

4.4 NEIGHBOURS - 2 responses received (2 and 4 Daws Heath Road), which can be summarised as follows:-

- I can only reiterate the contents of our previous email below, which outlined problems to their previous application and would apply to this application. I understand their previous application was rejected.
- I also believe this will be a hazard to traffic on the Eastwood Road as these properties are on a busy road by a roundabout, a bus stop and zebra crossing. It is already congested with parents dropping children off with the one property, but if they are looking to double the number of intake of children this will cause a greater risk to road users and pedestrians.
- We believe this is too big for such a school/nursery to be so close to local residents.
- I have been informed by our neighbour that the Rainbow Nursery is planning to buy Suttons and extend its nursery. While I appreciate the owner wants to make more money I think it is unfair that local residents have to suffer with a lot more noise and also it will affect the value and the future selling of our property.
- I do not know if you are aware of the lay out of our garden. I can only explain that it is like a k shape and the middle of the k is where Suttons garden joins ours. So we will have the end of our garden which joins their existing property and the right side up to about 3 metres to the back of our property. When staff and children are in the back garden of Suttons it will not only lose privacy in our garden, but there will be more noise in the back of our property, meaning not just our garden but our lounge as well.
- There are a lot of residents including old people properties surrounding the nursery and Suttons and I cannot believe that the local Council could allow a business such as Rainbows, which already has a lot of children attending from 7 in the morning to treble in size and not consider the noise and traffic this will create to private residences.
- Please bear in mind these are very young children who need the staff to constantly remind them how to behave. If you stand in our garden for one day you would understand how annoying the noise can get.
- I am also concerned for the wild life which resides in the garden and I do not think they are allowed to be removed, especially badgers. We know that foxes reside there, not sure about badgers but we have seen them in our garden.
- We do have a very large dog and we already have to rescue toys and balls which are thrown over by the children and we know they are only trying to play but it is a worry that our dog will choke on their toys if we do not find

them in time.

- Comments from previous application:-
- Following my conversation with Claire Robinson last Thursday 11th and on Tuesday 16th regarding the above I reiterate what I explained by placing on record the following:-
- I contacted the owner of Rainbow Day Nursery, Myra Argentieri, and we met last Thursday before I spoke to Claire Robinson.
- I took Mrs Argentieri into my garden as I wanted to know what exactly was being planned for the part of the proposed area which runs adjacent to my garden. However, Mrs Argentieri informed me she was unaware of any plans for this part of the proposed area as she said it was a family run business and her family were dealing with this part of the proposal. Mrs Argentieri said she was only aware of what was being proposed with the building (currently still owned by Suttons) which said she is due to purchase.
- Whilst in my garden, Mrs Argentieri asked me to listen and said the children were so quiet one could not hear a sound. I actually found her behaviour rather strange as the children were not even outside.
- However, I am fully aware of how noisy the children are when they are playing in their play ground at the Rainbow Day Nursery.
- Although I was dubious, Mrs Argentieri said she would telephone me either on Tuesday 16th or Wednesday 17th to advise me of the exact proposals for the outside area in dispute as I stressed the deadline for opposing the application was on Thursday 18th which I told her I and at least one other neighbour I was aware of were intending to do.
- It was of no surprise to me when she did not call as it appeared she was using stalling tactics until after the deadline date which I informed her of.
- I am now aware Mrs Argentieri is the sole owner of Rainbow Day Nursery and is solely behind the application."
- This is not the first time Mrs Argentieri has been dishonest in trying to obtain what she wants which is why neither myself, my family nor other neighbours hold her in much regard.
- In respect of the application 13/00650/FUL and noise disturbance, page three, paragraph seven of the report states the applicant has a full waiting list of children and paragraph eight goes on to say this demand will be even greater which highlights that the noise problem and vehicle congestion already experienced will be doubled if the application is

accepted.

- The noise will be amplified not only because of the proposed proximity which is a total invasion of our private space, but also due to the applicant's projection and plans to increase the number of children.
- Irrespective of the submitted "noise assessment" which is largely based on conjecture there is no real proposal for sound control, which is probably because this is impossible in the case when the children are outside, which runs along our private gardens, with merely a fence as a divide.
- The applicant's operating hours of Monday to Friday 0700-1830 would clearly be unsociable and the plans would be totally unjust to myself, my family the neighbouring residents and a disruption to the peace, and an invasion of private personal space which will include a noise disturbance that will only worsen as the amount of children increase.
- SK Architects themselves state on page four, paragraph one that there is an on going problem with the limitations to the existing structure and want to re-develop the proposed adjacent property known as Suttons to improve their constrained parking access.
- However, it is unlikely this will improve their constrained parking access as those entering the nursery are not only parking on the surrounding space on Suttons forecourt but using the space beyond Suttons on the neighbouring forecourt.
- This congestion alone has been an unnecessary problem and shows a total lack of consideration which is evidence alone that the current parking issues will only worsen, especially when the number of children increases.
- Much of SK Architects' document is repetitive and champions the applicant's achievements to date and accolades their intentions.
- However, in respect of the "executive summary" on page five number one, how on earth can one provide a noise report on an event that has yet to take place? How can one measure the noise of children who are not even there?
- Moreover, how can one suggest there would be no adverse harm for neighbours in particular myself, my family and other neighbours as a result of noise coming from numerous children and staff from 7am throughout the day? It is difficult enough we have to endure the noise from children and staff where the applicant is already situated.
- In respect of the "executive summary" on page five number seven, Suttons has always been a quiet retail furniture outlet that has never posed a problem to any neighbour with noise or parking. They have never even

used their rear garden which runs along both my garden and my neighbours'.

- I also notice the above states Suttons as "a shortly to become vacant commercial building". However, the "sound assessment" states the applicant has already purchased Suttons. I am wondering whether this has anything to do with the fact that the applicant (Mrs Myra Argentieri) had been informing people that she had withdrawn from her plans which now appears to be another ruse to stop neighbours from submitting their responses, who are against her plans.
- SK Architects go on to state on page six, paragraph four "To the rear the external space has very large and mature landscaping providing screening and privacy to a deep and long lawn garden". This is precisely the sole reason why I purchased my property. I had be close to the busy town and amenities which begin close to my property but I also required the privacy, serenity and scenery of the rear and it took me a long while to find the perfect property to fit this criteria which I have enjoyed for nearly eight years. This, however, is the area the applicant wants to turn into a children's playground.
- SK Architects state on page six, paragraph six "The existing nursery premises is located in one of a pair of semi-detached family houses with exceptionally large rear gardens". So if the garden of their existing premises is exceptionally large then why do they need to use another external space which SK Architects themselves confirm is very large.
- In respect of SK Architects' statement on page six, paragraph eight, the existing nursery may have been supported by parents whose children attend there but even situated at their current premises they have been problematic for both myself and my neighbours in respect of noise and vehicle congestion and are certainly not supported by us.
- SK Architects are reiterating in paragraph eleven the issue regarding insufficient space for parking but have placed on record that the applicant will create approximately six child care staff. Under the child care guidelines for day nurseries the ratio of staff to children states there must be one child care professional to every four children and one child care professional to eight children from the age of three years old which means it is possible the applicant could have up to an extra 48 (forty eight) children attending if they expanded into the proposed premises. How then would they "benefit enormously by improving highway safety and access arrangements" especially as parents already use Suttons' and neighbouring forecourts? It will do nothing but exacerbate the current congestion problem on an already busy roundabout.
- Further, the guidelines for day nurseries state premises must have plenty of safe space to play inside and out. But the rear space that runs along my garden is clearly unsafe for children. Irrespective of the numerous foxes

who live in this space, which will endanger a child who is anywhere near that area, the main part of my garden is raised two feet. This means if the applicant erected a six foot fence this would become four foot thus, aside from the noise, would be a total invasion of me and my family's privacy. Further, I will be building a decking area which would lower the height by a minimum of another two feet making the situation no better than a shared garden with numerous screaming children running around in an open playground. The children will also be able to venture into my garden and vice versa. Moreover, I own a number of dogs some of which are very temperamental and in particular do not take to children or noise. They would effortlessly be able to venture onto the applicants proposed land (which they have done in the past witnessed by the owner of Suttons). This would not only endanger the children but also themselves and is totally impractical and clearly unsafe for all parties involved.

- The application incorporates a proposal to employ six child care professionals. In addition to the number of children who currently attend the applicant's premises, the guidelines for the ratio of staff to children would suggest the applicant will have a large amount of children occupying a play ground that will expand their current "exceptionally large rear gardens" through to the "very large and mature landscaping" which SK Architects themselves state "provides screening and privacy to a deep and long lawn garden" throughout the day all year round.
- SK Architects have included on page seven the planning history and background. In respect of the "approval" for the change of use from the retail shop to a restaurant in 2006, this was a couple of months before I purchased my property. However, after speaking with neighbours, I am informed they were very unhappy that they were not properly informed about the application and therefore complaints were raised which precipitated the applicant withdrawing their plans.
- On page nine "Proposed Change of Use", SK Architects merely continue to reiterate as they have done throughout their document how much the community will be improved by the applicant's plans. This, however, has no bearing on the problems the application would cause and in respect of paragraph seven which states the applicant "will provide acoustic fencing to remove any potential harm to neighbouring amenities", I have already explained why this would only exacerbate the problems that would surface.
- Further, there is no mention of space between the proposed land and my garden. This is because there is no space between the proposed land and my garden which lay juxtaposed together and therefore acoustic fencing which will be around 2 feet high once I have built my decking will make no difference to the noise problems generated.
- In relation to SK Architects' statements that "the proposed change of use will dramatically improve both vehicular and pedestrian access," etc. and

"the customer parking and drop off will not be used by staff" etc., I have already confirmed the problems with the parking congestion at the applicant's current place of business which I believe will be substantiated by other neighbours. Therefore, it will do nothing but exacerbate the problem with many more customers' vehicles congesting the forecourts and the already congested busy road and roundabout.

- As for the statement about the customer parking and drop off, etc. This is totally untrue. If this were true then why are they not doing it now, what with there being an on going problem with the vehicle congestion.
- In respect of page ten, I have already explained and substantiated why the applicant's plans are impractical for my family and I and for my neighbours and also unsafe for their children.
- Moving on, the document in paragraph two states "To the rear the extensive soft landscaping and mature planting will remain to create a unique green setting for the nursery" but "maintain screening to the surrounding domestic dwellings as well as the acoustic fencing". This report is becoming more farcical by the page.
- Page eleven again has no bearing whatsoever on the problems the application will cause to my family and I and my neighbours.
- In respect of the "Impact on Neighbouring Amenity", I have already explained the problems we already have when the children are outside the applicant's current premises and the parking congestion endured.
- However, I find it quite astonishing that SK Architects have submitted a noise assessment based on conjecture, thus totally inaccurate, without fully assessing the situation for others save for their client, the applicant.
- In any event, the proposal to erect a six foot six "barrier" along my private garden which is totally out of character would make no difference at all to the noise pollution which would continue to reverberate throughout both my home and my neighbours', and I have already explained how my garden is raised and the complications the plans would cause.
- In respect of the "conclusion" on page thirteen, the Council may have referred to the fact that the previous application would have generated an unacceptable noise disturbance but there are many other problems this application will cause which have to be taken into consideration.
- The report repeats "loosely based on" or "we anticipate" etc. Again, I am astounded that a noise assessment based on conjecture, because it is conjecture, has even been submitted, let alone considered, as supporting evidence.

- In respect of the report under "Site Description - Surrounding Area" 3.1, for the avoidance of doubt, to the left is not "a convenience store that will remain open until late evening" but Thermoglaze whose operating hours are 9am to 5pm. They too are also very unhappy about the applicant's proposal and, as I have already mentioned, customers of the applicant use their forecourt when the applicant's and Suttons' frontage is congested.
- In respect of "Site Description - Surrounding Area" 3.2, again, for the avoidance of doubt, Daws Heath Road is a very long residential road, save for Rayleigh Motorist Centre, which is situated opposite my home over the other side of the road. They are a business operated by a father and son and have always been very respectful without being any nuisance with parking or noise. Their place of work is inside their garage and office and neither I nor to my knowledge any other neighbour have had any problems with them. The applicant, however, has been nothing but a problem to myself, my family and other neighbours at their existing premises.
- Moving on, the report measures 13m as the distance from my home "façade" to the "site boundary". What about the distance between my private garden and the site boundary? I spend with my family and dogs a great deal of time in the garden in the quiet and serene private surroundings. The distance between my private garden and the site boundary is not referred to because there is no distance. They lay side by side. That is the same site boundary which has been proposed to be changed into a children's playground.
- In reference to the report which goes on to refer to noise criteria under 5.1. Similar in style? I don't believe I have read something so nonchalant concerning such a grave and delicate matter. If they want to adhere to a method for assessing the impact of noise, let them record the many children the applicant has in their current play ground that I have seen at one time and the large amount of extra children they will have in the garden of the proposed area and then submit their findings.
- The report goes on to say "Note that whilst BS4142 is not strictly applicable for assessing the impact of noise from nurseries, it has been used, as the closest applicable standard". So what they are saying is there is no standard of assessing the noise but the noise assessment they are undertaking is similar to something which is not strictly applicable for assessing the impact of noise from nurseries anyway!
- The report continues "As the existing nursery levels is directly adjacent and the types of activity and sound levels of children playing in either or simultaneously both gardens are known, then we have also calculated sound levels in the new site by adding +3db (A) to the calculation". How can the sound levels be known if the children are only playing in one area and the applicant has nowhere near the amount of children that would be in both areas? Therefore how can a calculation be made by adding 3db to

the equation? It is impossible to know how loud or how many children there are going to be in the new premises. Further, the few children may not have been shouting and screaming at the time of being monitored as I have heard many more at one time do on a number of occasions. So, in regard to the noise disturbance, this so called noise assessment once again is no more than a biased piece of rhetoric based on conjecture.

- Moreover, it is stated that a group of eight children were measured for the report. But, as I have already placed on record, I have witnessed numerous more children at one time screaming and shouting both from inside my home and when I have been in my garden. So, this report is not only based on conjecture but is also fabricating the truth. This, however, is of no surprise being that it is Mrs Argentieri herself who has fabricated that only eight children are outside at any one time.
- The report further states "The installation of an acoustic fence would decrease sound levels further and make complaints unlikely". However, the noise over the other side in the applicant's current premises is already difficult to bear when the children are outside. So, with the proposed area running along my garden with an acoustic fence lowered to approximately 2 feet high when my decking area is erected, this statement is totally unfounded and again would make no difference to the noise disturbance which would also be a gross invasion of privacy resulting in an unsafe environment for the applicant's children and my dogs. We, and I think I can speak for my neighbours, are just grateful we still have our privacy intact.
- There are many points placed on record in the report that are totally untrue and unfounded which one can only think would be written in an effort to make the application more favourable.
- However, it is the general consensus that nothing has changed from Mrs Argentieri's previous application save that an inaccurate so called noise assessment having no set standard for noise from nurseries and based on conjecture and fabrication has been drafted.
- We just want to live in the privacy of our own homes without the disturbance of Mrs Argentieri's day nursery encroaching on our private space.
- I have been advised by Bairstow Eves who recently valued my property that it will lower in value should the applicant's plans be accepted.
- If this planning application is passed the noise will be intolerable and any privacy my family and I have will be ruined.
- The fact that the applicant would erect a six foot acoustic fence barrier should their application be granted will make no difference whatsoever to the noise as, it has already been established, my garden is raised two feet

higher than the proposed site boundary and a further two feet (minimum) will be lowered from the fence barrier when my decking is erected which as I have already said would make the situation no better than a shared garden with numerous screaming children running around making unbearable noise in an open playground which is a total invasion of me and my family's privacy and an unsafe environment for the applicant's children and my dogs.

- The outside area in dispute is clearly unsuitable for what the applicant wishes to use it for and I have no doubt that having been to the site, you yourself will conclude the obvious reasons why.
- In respect of the application for the change of use from the retail shop to a restaurant in 2006, SK Architects have compared this to the above application on several occasions and make a point of saying how worse the previous change of use would have been for the residents of Daws Heath Road. However, the outside of the retail shop was completely omitted from the plans. Therefore, the restaurant would have been solely operated from the retail shop only which is in Eastwood Road, thus there would not have been any disruption to the residents in Daws Heath Road.
- One other thing we wanted to bring to your attention was that the nonsensical "noise assessment" was carried out monitoring eight children. Aside from the fact that there will be in excess of 72 children screaming and shouting outside my garden (which makes the so called assessment even more laughable), what about the child care staff we always hear shouting at the children? This also gives you an indication of how loud the staff are being able to hear them shouting above the numerous children.

4.5 LOCAL RESIDENTS/STAFF - 6 responses received in support of the proposal (31 Parkway Close, 16 Wellsfield, 14 Grove Road, 51 Crown Hill, 3 Whitehouse Mews, Nine Acres Flemings Farm Road) which can be summarised as follows:-

- With more and more people needing to work to support their families and Rayleigh High Street being a large source of local job opportunities, we need adequate child care provision in the area to be able to care for the growing number of children. The extension to the already existing and well thought of nursery is an asset to Rayleigh and will help employers as well as employees.
- My daughter attends the nursery and I feel strongly that being able to extend the nursery into Sutton's Furniture Shop (the current occupiers of the space) would benefit her and the other children attending the nursery through additional space, and better equipped indoor and outdoor facilities.

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- This is a great nursery that can only be made better by an extension that grants more space for children and nursery staff.
  - I urge you to move forward on the decision to approve this request for extension of nursery premises.
  - Both of our children have attended the nursery and we are delighted with the standard of care they provide. The nursery is not certainly of benefit to the Rayleigh community and expansion into the neighbouring property strikes me as a sound plan. The expansion is unlikely to impact on any people or businesses who are not already affected by their presence in the current accommodation.
  - The hours of business at the nursery ensure that any noise from pick-up or drop-off and from children at play will not be anti-social hours and I do not believe that even with additional children there would be a prohibitively significant increase in noise or traffic. I would suggest that the impact of the nursery would in fact decline as the parking issues at typical collection times will be mitigated by the much larger forecourt space that will become available. This in turn will make manoeuvring on and off of the forecourt much safer and easier.
  - I feel very strongly about this proposal going ahead as both my sons attend the nursery and I feel that by extending it and giving them more room and resources would most definitely benefit not only my sons but all the children who attend the nursery now and in the future.
  - The current set up at the nursery is an unusual one with it being a house conversion. I would really like to see Rainbow spread out into Suttons to make it a spacious free flowing nursery for the children to enjoy.
  - I am writing to give our full support on this application for ABC Rainbow. My daughter attends this nursery and I have a 1 year old son who will also be attending in the near future.
  - For ABC Rainbow to get an extension, this would make a much nicer and bigger environment for all the children that attend.
- 4.6 RESIDENTS OUTSIDE THE DISTRICT - 3 responses received in support of the proposal (317 Bournemouth Park Road Southend, 17 Ferndale Road Southend, 4 Snakes Lane Southend) which can be summarised as follows:-
- More space for young children is always a good thing.
  - This extension of the local day nursery is very much needed for the local area. I can only see this development being of great benefits to many families for years to come.

- This would provide better childcare facilities

## 5 RECOMMENDATION

- 5.1 It is proposed that the Committee **RESOLVES** that planning permission be granted, subject to the following conditions:-
- 1 SC4B Time Limits Full - Standard
  - 2 SC14 Materials to be Used (Externally)
  - 3 Prior to works commencing, a parking layout incorporating parking spaces, cycle provision, powered two wheeler provision and one disabled bay shall be submitted to and agreed in writing by the Local Planning Authority. A 6m distance shall be provided between the rear of parking spaces. Once agreed, the parking layout shall be marked out on site prior to first use of the development hereby permitted and thereafter retained and used solely for the parking of vehicles.
  - 4 Prior to works commencing, plans and details of the acoustic fencing and outdoor acoustic flooring, including positionings of such acoustic measures on the site, shall be submitted to and agreed in writing by the Local Planning Authority. Once agreed, such acoustic measures shall be implemented prior to first use of the development hereby permitted and permanently retained thereafter.
  - 5 The use hereby permitted shall only be used as a day nursery and for no other purpose, including any use otherwise permitted within Class D1 (Non-residential institutions) of the Use Classes (Amendment) Order 2005 (including any Order revoking or re-enacting that Order, with or without modification), or such uses ordinarily incidental to the use hereby permitted.
  - 6 The number of children attending the day nursery at any time shall not exceed 72.
  - 7 Prior to works commencing, plans and details of the balcony enclosure to the front elevation shall be submitted to and agreed in writing by the Local Planning Authority. Once agreed, such balcony enclosure shall be implemented on site prior to first use of the development hereby permitted and permanently retained thereafter.
  - 8 The number of children within the garden area hatched blue on drawing no.186.09.13 P01 date stamped 6 November 2013 shall not at any time exceed 8.



Shaun Scrutton

Head of Planning and Transportation

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**Relevant Development Plan Policies and Proposals**

CP1, ENV5, CLT2, T1, T3, T5, T8, ED1, RTC1 and RTC4 of the Core Strategy 2011

EB6, LT11, SAT5 and SAT7 of the Local Plan 2006

Parking Standards: Design and Good Practice Supplementary Planning Document adopted December 2010

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If you would like this report in large print, Braille or another language please contact 01702 318111.

