

## REPORT FOR WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	23 October 2019
<b>Application Number</b>	19/06692/VAR
<b>Site Address</b>	Barney Lodge Day Nursery, 5 Westbury Road, Warminster, BA12 0AN
<b>Proposal</b>	Removal of condition 3 appended to approved planning application 18/01851/FUL that restricted consent for a temporary 2-year period for the partially retrospective change of use from residential to child care nursery use and to vary condition 3 of planning consent W/06/00806/FUL to change the permitted number of children from 45 to 70) to allow the use of the nursery premises for 70 children to be made permanent.
<b>Applicant</b>	Mrs Lyn Ashton
<b>Town/Parish Council</b>	WARMINSTER
<b>Electoral Division</b>	Cllr Pip Ridout WARMINSTER WEST
<b>Grid Ref</b>	387,541 145,696
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	David Cox

### Reason for the application being considered by Committee

Cllr Pip Ridout has requested that should officers be minded to approve this application, it should be brought before the elected members of the area planning committee to consider the relationship of the existing nursery with adjoining properties and the impacts of increased noise and highway safety.

#### 1. Purpose of Report

Having assessed the merits of the proposed development and tested it against the policies of the development plan and other material considerations, officers recommend that the application should be approved subject to conditions.

#### 2. Report Summary

The main issues discussed in this report are:

- The Principle of the Development
- Impact on Neighbouring Amenity
- Impact on Highway Safety
- Impact on the Designated Heritage Asset
- Other considerations

#### 3. Site Description

The application site relates to the Barney Lodge Day Nursery which is a former residential property located at No 5 Westbury Road in the settlement limits of Warminster and is a large detached building located in a predominantly residential part of the town comprising of a mixture

of fairly large detached and semi-detached dwellings. The existing nursery has a ground floor area of 189.3 square metres, a below ground floor area of 32.0 square metres and a first-floor area of 68.2 square metres and has a tarmac car park at the site's frontage which accommodates 6 spaces with sufficient space for vehicles to turn and leave the site in a forward gear. The access is fairly tight at no more than 4.8 metres wide, but it is wide enough for two cars to pass each other and visibility splays of 2.4 metres by 59 metres looking right and 2.4 metres x 120 metres + looking left are available.

There are two on-road parking spaces at the front of the subject property with a 30-minute waiting time restriction in place. Barney Lodge itself is within the 30mph zone of the town, although the 40mph zone, located to the north-west is only circa 15 metres away. Westbury Road is lit in the vicinity of the site and is a 7.5 metre carriageway with a 2.5 metre footway on its west side and a 4.1 metre verge on its east side.

To the south east, Westbury Road bends around a 90-degree corner leading onto Portway Road. There are two additional junctions that interface with Westbury Road in close proximity to the site – serving Copheap Lane and Elm Hill Road.

It is also worthy of note to record that as part of the endorsed master planned West Warminster Urban Extension development, highway mitigation work has identified the need to upgrade the junction arrangement illustrated below to provide a new roundabout, to be funded and delivered by the developers advancing development on the WWUE site.



As the insert map extracts illustrate, many of the properties on the western side of Westbury Road, that adjoin the site have long rear gardens extending to approximately 110 metres which abut the Salisbury-Bath railway line, which is easily identifiable in the top right insert.

The nursery has two outbuildings in the rear grounds, which is split into different sections with a range of various play equipment and activities being available. The land to the east and north east beyond Westbury Road, is open countryside with the golf club beyond. The nursery property is within approximately 10 metres of the Warminster conservation area and employs 19 members of staff (12 full time and 7 part time).

#### **4. Planning History**

W/88/02072/FUL – Change of use of ground floor from residential to day nursery school – Approved

W/94/01409/FUL – Single storey classroom extension incorporating two WC's – Approved

W/06/00806/FUL – Extensions and alterations – Approved with conditions

W/07/00933/FUL – Two wooden cabins in rear garden – Approved with conditions

W/07/01302/FUL – Two conservatories – Approved with conditions

18/01851/FUL - Change of use of part of building from residential to nursery uses (Part Retrospective) and Variation of Condition 3 of planning consent W/06/00806/FUL to change the permitted number of children from 45 to 70 – Two-year temporary permission granted at Planning Committee on 30 May 2018.

## 5. The Proposal

This application seeks to remove condition 3 of approved application 18/01851/FUL (the two-year temporary permission restriction). For clarity sake, condition 3 reads as follows:

*“3. The use hereby permitted shall be discontinued on or before 31 May 2020 unless an extended timeframe is approved under a separate application.*

*REASON: In the interests of amenity.*

*NOTE: The approved use only applies to this planning application (45 to 70 children and the use of the managers flat as nursery accommodation). Should another application not be approved by 31 May 2020 the number of children and the managers flat shall revert back to the extant permissions as approved under applications W/06/00806/FUL and W/07/01302/FUL”.*

The proposal also seeks a variation of planning condition (condition no. 3) which was imposed at the time of granting planning application reference W/06/00806/FUL to allow for an increase in the number of permitted children to be accommodated by the day nursery from 45 to 70 on a permanent basis.

Application 18/01851/FUL also sought consent to convert the existing managers flat (which was granted under W/06/00806/FUL and is illustrated in the image below) to provide the additional nursery space (to accommodate the increased number children to 70).



Members are advised that there was an erroneous element within the 18/01851/FUL application which assumed and sought partial retrospective permission for “*partial retrospective*” change of use of residential use to nursery use. It transpires that this was not in fact the case. The approved plans (as highlighted above in red outline) illustrate that the managers flat was located in the projecting rear elevation section of the building but not the first-floor extension to the main building (outlined in green). In 2018, the applicants confused their submission by arguing that a partial

change of use had taken place – when it had not. The first floor of the building (which is currently used for the under 2's) can be legitimately used (subject to the restricted levels of occupancy) for nursery accommodation.

However, application 18/01851/FUL was permitted on a temporary basis and due consideration must be given to any permanent change to the premises, including the use of the managers flat to nursery accommodation.

As part of the case officer's site inspection which was carried out 2 May 2018 (pertaining to application ref 18/01851/FUL) it was confirmed that the consented managers flat was not being used for nursery accommodation and that there was no evidence of any planning breach of planning condition 4 of W/06/00806/FUL. The managers flat is however now being used as nursery accommodation as permitted by application 18/01851/FUL.

The nursery operates an "arrival and pick up timetable", where parents are allocated dedicated times. The timetable is split into 10-minute segments i.e. 7.30am, 7.40am, 7.50am etc. until 9.40am. Under this arrangement, between 3 or 4 cars are expected to arrive for each 10-minute block with some children arriving on foot (or by other means). A member of staff is always available to take each child into their care, which limits the number of children arriving at any one time. The supporting statement produced by the applicant, states that parents generally work around the times they are given and that flexible working arrangements allow parents to work to the times they are allocated; and it is submitted that parents, in the main, stick to the allocated time slots when dropping off their children. The supporting statement also sets out that children are encouraged to walk to the site and priority on the waiting list is given to children who can walk to the premises.

Following the decision of the elected members on 30 May 2018, application 18/01851/FUL was implemented and this application seeks to make the temporary and caveated permission permanent.

There are 15 full time employees and 11 part time employees. For the avoidance of any doubt, none of the members of staff park at the premises.

## **6. Planning Policy**

The **Wiltshire Core Strategy (WCS)** - The following Core Policies (CP) are relevant when assessing this application: CP1 (Settlement Strategy), CP2 (Delivery Strategy), CP3 (Infrastructure Requirements), CP31 (Warminster Area Strategy), CP57 (Ensuring High Quality Design and Place Shaping), CP58 (Ensuring Conservation of the Historic Environment), CP60 (Sustainable Transport), CP61 (Transport and Development), CP62 (Development Impacts on the Transport Network) and CP64 (Demand Management)

The **National Planning Policy Framework (NPPF)**, **Planning Practice Guidance (PPG)** and the **Noise Policy Statement for England (NPSE)** are all of relevance to this application.

**Warminster's made Neighbourhood Plan** is also a material consideration.

## **7. Summary of Consultation Responses**

**Warminster Town Council** – Objects on the following grounds:

- Adverse impact on neighbouring amenity through additional noise
- The proposal would adversely affect highway safety and the convenience of road users
- This is a residential area and unsuitable for this type of use
- Children would be cramped inside if weather is bad

- Concerns over insufficient toilet and other facilities
- Concerns that a future application may follow to increase from 70 children to an even higher number.

**Wiltshire Council's Early Years Childcare Services Officer – Support:**

Demand for Early Years & Childcare provision continues to grow across Wiltshire. Across Warminster it's self approximately 561 children aged two, three and four will be seeking a place in a nursery or pre-school in any one year. Children don't always require full time place so one place can accommodate two children, some two year olds don't attend a pre-school or nursery at all. Other parents will choose a nursery outside of Warminster e.g. on their way to work which could be in another town. Some children will be cared for by a Childminder.

In Warminster we have 387 nursery/pre-school places for children who will reach the age of two, three and four years of age over the coming school year. Currently we have sufficient Early Years provision in Warminster, but with the increased demand for places as Warminster grows all the places that are currently available in Warminster are required. With the development of the West Warminster Area Urban expansion we will definitely need to maintain and increase the amount of nursery/pre-school provision in Warminster. Further demand has come about due to the Government providing working parents 30-hour Free Entitlement and not just the universal 15 hours.

Due to the potential growth for Warminster we would wish to support the continuation of the two year permission for 18/01851/FUL, I agree that in the future we will require a considerable number of new Early Years places to support families to access nursery/pre-school provision locally, this could mean that may even need another nursery for the town to meet the demand.

**Wiltshire Council's Environmental Health Officer – No objection.**

**Wiltshire Council Highways Officer – No objection subject to maintaining existing Green Travel Plan.**

**8. Publicity**

A site notice was displayed on a lamp post at front of the site and two neighbour notification letters were posted. Following these notifications, 2 letters of objection were received from the same objector.

- There is no need for the extra spaces that are proposed to become permanent
- The concerns of residents regarding increased noise were not properly considered when the application was first submitted to the Planning Committee in May 2018
- The committee only concentrated on traffic concerns not noise
- The number of children has increased which has led to more noise
- If not addressed now, this would only become worse and more distressing for neighbours
- Children are outside from 9am to 5.15pm Monday to Friday. There should be a timetable for when children should be allowed outside and this should be conditioned
- The Council should consider requiring a 90-minute period when there should be no outside play during the morning and afternoon
- Neighbours were not informed of the May 2018 committee date and the childcare services officer position could not be challenged in person

**9. Planning Considerations**

Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate

otherwise. In this case, the Wiltshire Core Strategy, including those policies of the West Wiltshire District Plan that continue to be saved and enshrined within the WCS, constitutes the relevant development plan for the Warminster area.

## 9.1 Principle of the Development

9.1.1 The Nursery has been operating since circa 1988 and is a well-established business. It is noted that as part of the public notification exercise a complaint was lodged with the Council's public protection team in 2014, which resulted in on-site adoptive measures to reduce noise and disturbance created by children in the grounds. The principle land use of the property being used as a day nursery is extant and is not open for re-consideration. However, the proposed expansion of the premises to accommodate up to 70 children on a permanent basis (i.e. 25 more than the consented 2006 implemented development).

9.1.2 Legislatively, it is important to appreciate that nursery facilities must comply with the requirements set by the Department of Education "*Statutory Framework for the Early Years Foundation Stage: Setting the Standards for Learning, Development and Care for Children from Birth to Five*"; which came into force 3 April 2018; with Ofsted being the appropriate overseers and enforcers. Under the statutory framework, nurseries must provide a minimum space of 3.5m<sup>2</sup> for each child under the age of 2; 2.5m<sup>2</sup> for two-year olds and 2.3m<sup>2</sup> for three to five year olds.

9.1.2 In this particular case, the Barney Lodge nursery has approximately 200m<sup>2</sup> of usable internal floor area to accommodate children once toilets, staff and circulation spaces are excluded. This ultimately affects the maximum number of children that can be accommodated within the premises when applying the Government Standards (listed above). The applicant has provided two examples of how 70 children could be accommodated within the nursery.

### Example 1

Age	Area per child (sqm)	Assumed Number	Space Required (sqm)
Children under two years	3.5	23	80.5
Two year olds	2.5	23	57.5
Children aged three to five years	2.3	24	55.2
<b>Total</b>			<b>193.2</b>

### Example 2

Age	Area per child (sqm)	Assumed Number	Space Required (sqm)
Children under two years	3.5	11	38.5
Two year olds	2.5	16	40.0
Children aged three to five years	2.3	43	98.9
<b>Total</b>			<b>177.4</b>

9.1.3 The Government space standards do not state whether this is a minimum or a maximum but for the avoidance of doubt, officers have treated the threshold as a minimum requirement. Therefore, more space could be allocated for each child if the nursery so decides by reducing the maximum child intake. The nursery submitted this application to increase the number of children to 70 knowing how much space they have available. Both submitted examples record how the



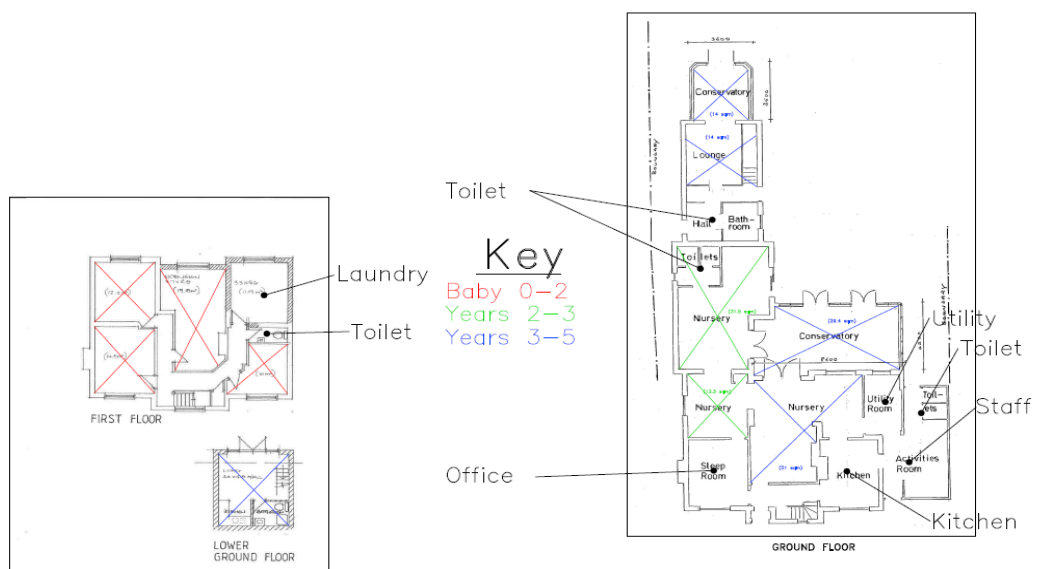
facility could accommodate 70 with some flexibility to respond to the occasions when the nursery may have to accommodate more children of different age groups. Nevertheless, officers consider it necessary for any permission to be restricted by way of a planning condition that limits the total number of children to 70.

## 9.2 Impact on Neighbouring amenity

9.2.1 Adopted Wiltshire Core Strategy Core Policy 57 (criterion vii) requires development to have regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants including consideration of privacy, intrusion and noise. The Noise Policy Statement for England aims to avoid “significant” adverse impacts on health and quality of life. Officers acknowledge that a noise related complaint was submitted to the Council’s environmental health / public protection team in 2014, which resulted in the applicant and site operator making changes as to how the external space and garden are used by children.

9.2.2 It is noted that since the Western Area Planning Committee’s decision to grant temporary permission that another noise complaint was made to the Council’s environmental health / public protection team (around the same time as this application was received). The case officer has been advised that the environmental health team have completed their investigations and have not upheld the complaint. Moreover, the Council’s Environmental Health team have confirmed that they have no objection to the continuation of the nursery accommodating up to 70 children on a permanent basis.

9.2.3 In the consideration of 18/01851/FUL the case officer undertook two site inspections at No 6 Westbury Road which shares a boundary with the nursery site. The first visit was undertaken during the afternoon on Wednesday 2 May 2018 (after the children’s lunchtime) after it had been raining in the morning. The visit lasted approximately 30 minutes. The case officer observed that the children were kept inside presumably because of the wet ground and occupied the large conservatory which is adjacent to No 6 and is illustrated on the plan reproduced on the following page. Whilst in the garden of No. 6 a degree of noise from the children within the conservatory was picked up, and would, if it continued for a sustained period of time lead to a substantive level of neighbouring harm. During the first visit to No.6, the case officer noted that the audible noise from the children in the conservatory only lasted a short period of time, presumably following staff intervention and/or as a consequence of the children being taken away from the conservatory to another section within the nursery.



9.2.4 The case officer whilst out on site fully appreciated and recognised that the conservatory offered very little noise abatement mitigation. However, once the children were inside the solid brick wall confines of the building, the children could no longer be heard.

9.2.5 Planning and public protection officers fully acknowledge that if this application is given planning permission the use of the conservatory could be used much more. However, the May 2<sup>nd</sup> observation demonstrated that with prompt, appropriate and responsible staff intervention and the better sound insulated floorspace provision within the main fabric of the building being available, noise levels should be controllable. The same situation should also apply to when the conservatory in the managers flat is used by children adjacent to No 4.

9.2.6 The proposed permanent conversion of the managers flat which is formed within the solid walled construction of the premises would provide additional nursery floor space that would have sufficient protection in terms of safeguarding neighbouring amenity. When the case officer visited the application site the manager fully acknowledged that the conservatories offered poor noise insulation and that they would try to use those spaces for more 1:1 interaction sessions between children and staff with focused based tasks so the children aren't 'playing'. Whilst this cannot be secured by condition, it demonstrates that the nursery staff are mindful of the neighbouring impacts and are actively trying to mitigate the impact of the noise from children.

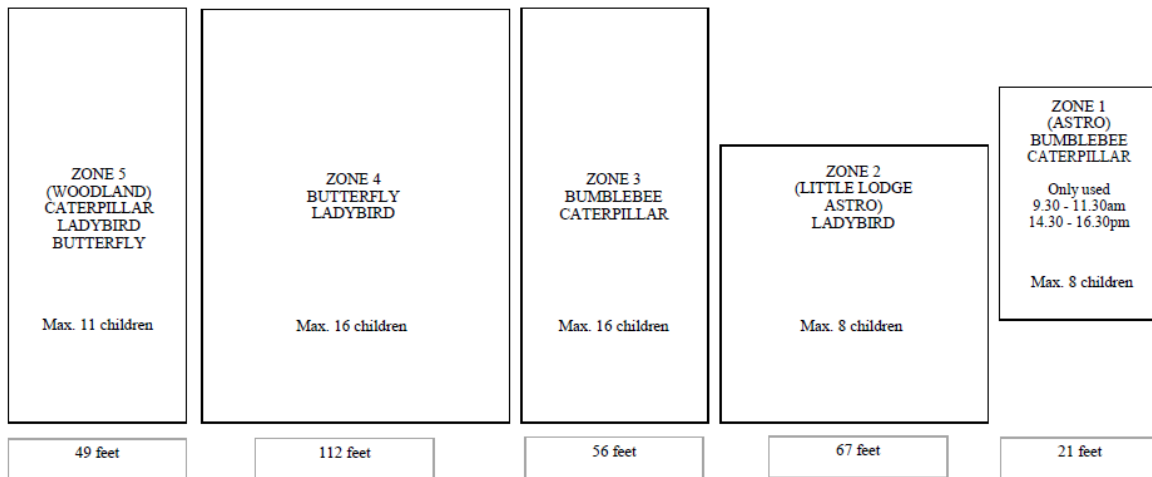
9.2.7 Officers are also mindful that across the County, especially in our towns, many education and nursery establishments are located in primarily residential areas, with some housing being in very close proximity to where children congregate and play; and it is accepted that for periods of time, the schools and nurseries when in use, will cause a certain degree of harm through audible noise. The Barney Lodge nursery has operated since 1988 and whilst the concerns from local residents are fully noted and appreciated, the facility appears to be well run and managed and following the 2014 complaint, mitigation was put in place to respond to and reduce the neighbouring concerns and conflicts.

9.2.8 As part of the public participation exercise in application 18/01851/FUL, neighbours and local residents referenced the fact that when the nursery first opened there wasn't many children and the use was perfectly acceptable. The approval of W/06/00806/FUL (which was also determined at planning committee) extended the existing nursery from a capacity of 24 children to 45 children; and condition 3 was imposed to limit such a number as there had been no limit previously imposed. The imposition of the 45 children limit cap as a condition was appropriate at the time recognising the extant standards that applied in 2006 as well as acknowledging the amount of floorspace within the nursery that could be used for childcare nursery purposes. The condition does not and could not dictate how each part of the nursery operates for the functions of looking after children. Such a condition would be unenforceable and would fail the Wednesbury Principles to which all condition must legally satisfy.

9.2.9 As set out in the principle section of this report, the nursery must abide by the Department of Education's *Statutory Framework for the early years foundation stage* requirements which set out staff ratios for specific age groups. Officers are satisfied that the nursery would have enough staff to manage 70 children indoors, they also have a self-imposed policy that restricts the number of children who could be outside at any one time to 51. The applicant has explained that they consider outside play to have a higher risk than indoor play; given that they have play equipment etc. and therefore the nursery increases the ratio of staff for every child playing outdoors and would be present to manage unruly, noisy behaviour. The nursery outdoor staffing policy is as follows:

- Under 2's – inside 3 children per 1 staff member; outside 2 children per staff member;
- Over 3's – inside 8 children per 1 staff member; outside 6 children per staff member.





Max. 51 children  
(4 groups in 4 of the 5 zones)

9.2.10 The applicant has submitted a garden zone plan which is reproduced above. The plan illustrates how the facility separates the children into different sections to limit the impact on the neighbours as per the enacted mitigation and agreements reached following the 2014 noise complaint.

9.2.11 In application 18/01851/FUL, the case officer's second site inspection to the neighbouring property at No 6 took place during the afternoon on Friday 4 May 2018, when children were outside playing in the rear sections of the garden in (in zones 4 and 5). Zones 1 to 3 did not have any children at the time of the case officer's site inspection. The noise observed was akin to noise usually heard at any school and was considered to be at a reasonable level and was not significantly disruptive or harmful.

9.2.12 It is not possible to condition the number of children that would be allowed to play outside or within each section of the garden at any given time. This would fail the reasonableness and enforceability test. It would of course be entirely possible for 45 children to make as much, if not more noise, than 70 children. The critical and necessary mitigation would be secured through proper staff management; and officers have applied significant weight to the applicant's commitment to impose the aforementioned staff ratios for outside play; and in addition, officers are satisfied that the nursery management team actively want to sustain a good reputation amongst parents and neighbours. Should the proposed site management falter and statutory noise nuisance complaints be lodged, the Council's public protection would investigate and there may need to be additional noise mitigation measures and agreements put into place. For the purposes of this application, planning and public protection officers are satisfied with the commitments expressed by the applicants and in limiting the maximum number of children being outside at one time to 51, represents an additional 6 children that could be outside at present. This uplift would not be substantial enough to warrant the refusal of the application.

9.2.13 Officers do however recommend the imposition of a planning condition to restrict the use of zone 1 play area to be used only at 9.30am-11.30am and 2.30pm to 4.30pm. Zone 1 is adjacent to No 6's rear patio and rear elevation doors and windows and it is considered reasonable and necessary to add a heightened level of amenity protection to the neighbour during the early morning and evening. The number of children using zone 1 and the other zones can be satisfactorily left to the nursery management to control and enforce.

9.2.14 It is also important to appreciate that the nursery use would only be limited to Mondays to Fridays with no use at the weekends or bank holidays, which can be conditioned. It is furthermore appreciated that the use of outside areas/zones are often influenced by the weather conditions

as the case officer's first site observation revealed. During spells of hot weather e.g. in June 2017, it is to be expected that children would be largely kept inside to protect them from the sun and avoid excessive play which would as a consequence, limit the levels of noise. On the basis of the above, it is submitted that the increased number of children be accommodated within the existing premises and the proposed extension to the operating hours from 7am to 6pm would not cause significant adverse harm to neighbouring amenity to warrant a refusal of planning permission.

9.2.15 It is also important to record that the case officer has not visited the neighbouring property at No 6 as part of the assessment of this application and writing up this report because the owner/occupier when asked, refused the officer access. However, due cognisance should be given to the fact that recently as part of the noise complaint raised by local resident, officers from the public protection have made a visit, and after investigating the complaint, report there is no statutory noise nuisance taking place.

9.2.16 The case officer has however visited the site and taking note of the prevailing existing local relationships and conditions which will be reported to members at the committee meeting.

### **9.3 Impact on Highway Safety**

9.3.1 Officers acknowledge that this is another area of great concern as set out clearly in the representations submitted by the concerned third parties and the Town Council. As part of wanting to observe and appreciate how the nursery is accessed by parents dropping off their children, in application 18/01851/FUL the case officer visited the site on three occasions which included an early morning visit to witness the existing peak time traffic levels. The other two visits were around midday/the early afternoon. In this application a further site visit on Friday 4 October between 8.15am and 9am was undertaken.

9.3.2 The morning visit in application 18/01851/FUL was commenced just after 8am on Wednesday 2 May 2018, which coincided with prolonged and very heavy rainfall. The nursery had already opened at 7.30am. The applicant submitted timetable for arrivals indicates that there should have been 3 or 4 cars every ten minutes, which was broadly adhered to until approximately 8.53am when a total of 9 cars arrived at site – with 7 cars entering the car park and two being parked in dedicated bay on Westbury Road). At 9am there were a total of 5 cars (4 in car park and 1 on the road).

9.3.3 The case officer was unable to record the specific movements of individual cars and it was duly noted that the car park and movements were in general busy but by no means overly frantic or dangerous. The case officer did observe two separate incidents of cars waiting and queuing on the main road whilst cars emerged from the site although the general turnover of the cars appeared to be quite quick. The officer also noted that cars arriving at the nursery generally tended to be on site between 2-4 minutes with the averaging parked –up time being approximately 3 minutes.

9.3.4 At 9.10am there were three cars on site but between 9.17am and 9.40am (the last time for arrivals as per the submitted pick up and drop off timetable) it was noted that there was only one arrival. The timetable suggested that there should have been 9 arrivals between 9.20am and 9.40am (assuming there was full occupancy of the 45 children on that day).

9.3.5 In consideration of the above, and whilst on site, the officer considered whether the 9:00-9:40am appointments may have been "front loaded" into a period: 8:50 and 9:10am. However, when the matter was put to the applicant, they responded by stating May 2<sup>nd</sup> was a "Free trial day" and there was a higher than usual number the arrivals by car during part of the morning arrival period, which admittedly conflicted with the timetabled protocols; and the case officer fully accepted the applicant's explanation.

9.3.6 Vehicle manoeuvres were not dangerous, but the case officer did observe occasion when drivers had to firmly break either entering or leaving the site – which was attributed to poor driving. The access is 4.8 metres wide, which is wide enough for two cars to pass each other but it was observed that some drivers tended to take the middle part of the access and deny other drivers the opportunity to pass. Such irresponsible driving are matters that fall beyond the remit of planning that cannot influence the determination of this application.

9.3.8 Officers also report that between 8.15am and 8.53am (in 18/01851/FUL) during the case officer's unscheduled visit, the car park did not have any more than 3 cars on site at any one time and vehicles were able to safely enter and leave the site. The site visit was invaluable in terms of observing and understanding that parent drop offs tended to last for about 3 minutes on average. The submitted timetable breaks each time period into 10-minute blocks for the period of: 7.30am to 9.40am – allowing for 14 x 10-minute blocks. In a worst-case scenario if all 70 children were to arrive by car this would mean 5 cars would need to be allocated for every ten minute slot. However, it is to be expected, and as encouraged by the nursery that some parents shall bring their children by foot.

9.3.9 The applicant fully understands and appreciates the highway safety and traffic flow implications and proposes, through negotiation with officers, to expand the block arrival timetable protocols to commence at 7am (which is already advertised on their website). This would consequently increase the number of 10-minute blocks from 14 to 17 (7am to 9.40am); and, would equate to 4 appointments every ten minutes in a car park that has 6 spaces, with a further two spaces available off road. If the observed “front loading” occurred on a daily basis, the number of 10-minute blocks would reduce to 14, which would mean 5 appointments per block. However, there is not sufficient evidence to suggest that appointments between 9.20-9.40am are being ignored.

9.3.10 In the 4 October 2019 site visit, the case officer acknowledges that Fridays are likely to be less busy than at the start of the week. Nonetheless, during a period between 8.15am and 9am the car park only had one car at a time and drop offs continued to average around 4 minutes. There did not seem to be any issue with highway safety on that particular day. Additionally, in verbal conversations with a neighbouring objector, the case officer specifically asked if the highway arrangement was being adhered to. The objector accepted that the timetable was being reasonably kept to which further demonstrates that increasing the pupil numbers to 70 has not caused any undue harm to highway safety.

9.3.11 It is submitted from the above analysis that there is sufficient capacity in the car park to accommodate the additional vehicle movements that would potentially arise to service the increased number of children accessing the nursery. Officers acknowledge that there will be occasions when parents arrive early or late, potentially meaning that more than 4 cars are on site in each 10-minute time period. However, it also has to be taken into account that this is assuming that 70 children would be on site every day, and each child would be driven.

9.3.12 Whilst it is not possible to condition how many children should walk to the site, officers recommend that the Green Travel Plan condition should be re-imposed on any planning permission whereby the appointment system can be formally submitted alongside a commitment to engage with and encourage parents within walking distance of the nursery, use sustainable modes of transport to access the site. Officers even suggest that this should be included on the nursery website.

9.3.13 Officers note that there have been no accidents within 50 metres of Barney Lodge for the last 17 years; and given the applicant's commitment to spreading the arrival times, the projected nominal increase of vehicle movements along and off Westbury Road would not lead to substantive harm.

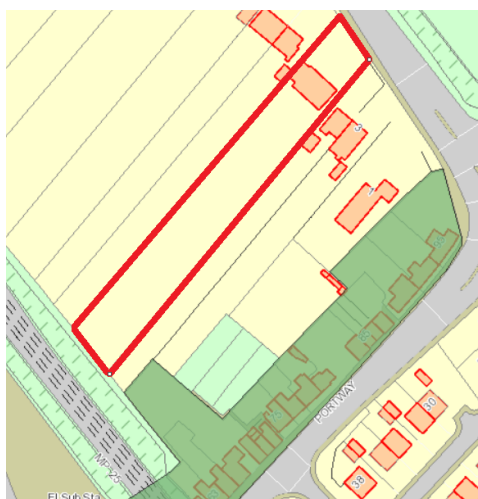
9.3.14 All the nursery staff either park off site or are dropped off which was observed during the case officer's site inspections (including 4 October 2019). It was also noted that staff were dropped off on the main road rather than inside the car park, which left the spaces free for parents. Staff park on surrounding roads where existing road restrictions allow and there can be no substantive objection thereto. The number of full-time employees would potentially rise from 12 to 15 and the number of part time employees to increase from 7 to 11. Officers accept that this would consequently increase the pressure on surrounding roads but there is plenty of on road parking spaces available along Cophead Lane and Portway to accommodate such additional demand without harming highway safety interests.

9.3.15 Officers fully acknowledge that the on-road parking spaces are most likely to be used by occupiers of the residential properties, and perhaps especially those that do not have their own off-road parking spaces but these spaces can nevertheless be used publicly and there are no parking restrictions in place at present. Any spaces taken by staff would only also extend to working hours around the time the nursery is open.

#### **9.4 Impact on designated Heritage Assets**

9.4.1 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in the exercise of any functions, with respect to any buildings or other land in a conservation area, under or by virtue of any of the provisions mentioned in this Section, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

9.4.2 The application site is within 10 metres of the Warminster conservation area (which is illustrated in green shading on the following insert). It is submitted that the character of the conservation area would not be harmed as the existing use of the site is for a nursery. Additionally, there would be no harm to the appearance of the conservation area as the application proposes no extensions or outbuildings.



#### **10. S106 / Developer Contributions**

No S106 financial contributions are sought for this site, and CIL would not apply.

#### **11. Conclusion (The Planning Balance)**

This application proposal seeks to remove the temporary two-year restriction imposed by planning condition no.3 imposed on application reference 18/01851/FUL to make the permission

permanent. The application also seeks to vary condition 3 of planning consent W/06/00806/FUL to increase the number of children to be accommodated from 45 to 70 on a permanent basis.

It is submitted that the applicant has reasonably set out how this would not have a substantively adverse impact on neighbouring amenity or to highway safety interests. Officers have noted the existing difficulties in terms of both existing highway access and noise levels experienced from neighbouring properties and gardens; and, in recognition of the applicant's commitment to properly staff children and to limit the number of locations where children play in the rear grounds, this application is supported by officers.

Whilst there has been a recent noise complaint lodged with the Council's public protection team, there was no statutory noise nuisance found; and, moreover, the Environmental Health team within the local authority raise no objection to this application.

To ensure the premises do not result in creating future statutory noise nuisances, the nursery operatives must be burdened to keep noise levels under control, and the measures to do so were observed by the case officer when he visited no.6 and duly witnessed how the nursery operated. Subject to a series of planning conditions, the use of the site should be able to continue without causing significant levels of public nuisance or compromise highway safety interests.

**RECOMMENDATION: - Approve with the following 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 the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

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

Location Plan, Block Plan and Design and Access Statement – all received 8 March 2018; Consolidated Transport Statement, Children Space Requirement Statement, Noise Mitigation Statement – all received 9 April 2018; Further Children's Space Requirement and Garden Use Statement – Received 18 April 2018; Garden Zone Plan – received 8 May 2018; Proposed Plans and Elevations – received 11 May 2018

REASON: For the avoidance of doubt and in the interests of proper planning.

NOTE: There have been no changes to the proposal since the granting of the temporary 18/01851/FUL permission and therefore all approved plans and supporting documents are considered to have been rolled over from their original submission date.

3. The extended nursery premises hereby permitted shall not accommodate any more than 70 children at any one time.

REASON: In the interests of Highway Safety and neighbouring amenity

4. The extended nursery premises hereby permitted shall only operate between the hours of 0700 in the morning and 1800 in the evening Monday to Friday. The use shall not take place at any time on Saturdays, Sundays and Bank or Public Holidays.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area

5. The extended nursery premises hereby permitted shall continue to comply with the details submitted in the Green Travel Plan as discharged on 3 July 2018. Future monitoring reviews of the Travel Plan should be submitted to the Local Planning Authority on request, together with any changes to the plan arising from those results.

REASON: In the interests of road safety and reducing vehicular traffic to the development.

6. The white line painting for the 6 on-site car parking spaces and the centre line at the site's intersection with the public footpath (i.e. on the nursery site land) shall be maintained in perpetuity.

REASON: In the interests of road safety.

7. The outside play area, shown as ZONE 1 on the submitted garden plan shall only be used during the hours of 0930 to 1130 and 1430 to 1630.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.