
Ref 2019/1549

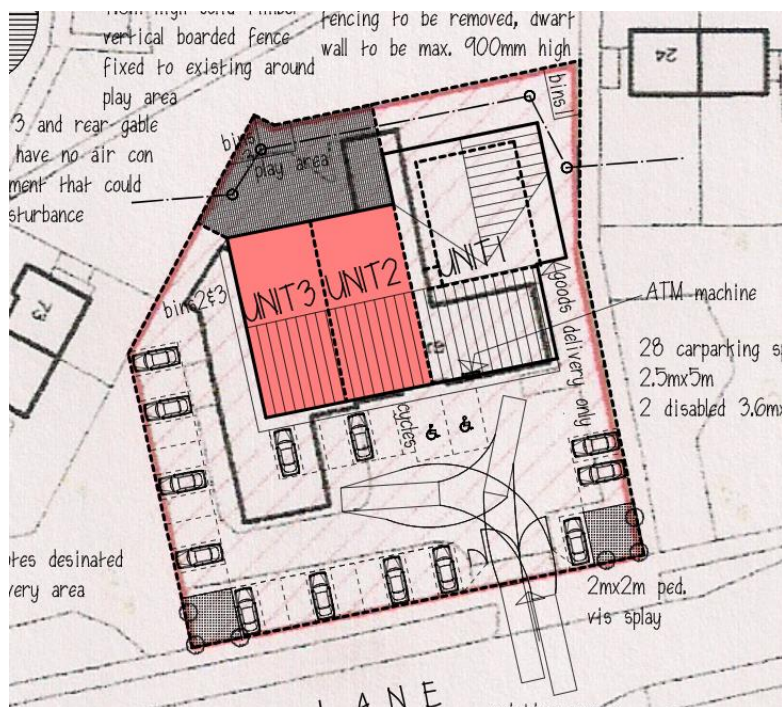
Applicant: Mr Sangha

Description: Change of use of 2no. retail units to children's day nursery (retrospective)

Site Address: Former Athersley Health Clinic, Laithes Lane, Athersley, Barnsley, S71 3AQ

Site Location and Description

The site is located to the north of Laithes Lane which connects Wakefield Road to the west with Carlton industrial estate to the east. The immediate surrounding area is residential in character but commercial uses are found to the west within a small retail complex located at the highways junction with Wakefield Road. The existing building has a large pitched roof with single storey elevations and a disabled access in front of the principle elevation, which faces south, and features two anthracite windows and doors surrounded by red brick. The remaining parts of the principle elevation and the whole of the side and rear elevations are composed of breeze block.



Proposed Development

The applicant proposes to alter the use of the Class E retail units to enable their use as a children's day nursery also covered by Class E. When the application was originally submitted, the retail use was covered by use Class A1 and a nursery was set under Class D1. The previous use did not benefit from permitted development rights however the new use class order infers that the use is now considered permitted development. Some ancillary development at the rear of the units has created a small play area for the benefit of the children who use the nursery.

Planning History

2013/1351 – Change of use of premises from D1 (non-residential institution) – A1 Retail – Approved Conditionally.

2014/0677 – Demolition of existing health clinic and erection of retail units – Approved Conditionally.

2015/0363 - Demolition of existing health clinic and erection of retail units (Resubmission) – Approved Conditionally

Policy Context

Planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise and the NPPF does not change the statutory status of the development plan as the starting point for decision making.

The new Local Plan was adopted at the full Council meeting held 3rd January 2019 after it was found to be sound by the appointed Planning Inspector following the examination process. This means that it now takes on full weight for decision making process in planning law terms as the development plan for the Borough, superseding the remaining saved policies from the Unitary Development Plan (adopted in the year 2000) and the Core Strategy (adopted in 2011). The Council has also adopted a series of Supplementary Planning Documents and Supplementary Planning Guidance Notes, which are other material considerations.

Local Plan Allocation – Urban Fabric & Existing Community Facility

Relevant policies include:-

I2 Educational and Community Facilities
LG2 The Location of Growth
GD 1 – General Development
D1 – High Quality Design and Place Making
Poll1 – Pollution Control and Protection

Supplementary Planning Document

Residential Amenity and the Siting of Buildings
Parking

NPPF

The revised National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. At the heart is a presumption in favour of sustainable development. Development proposals that accord with the development plan should be approved unless material considerations indicate otherwise. Where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or where specific policies in the Framework indicate development should be restricted or unless material considerations indicate otherwise.

Consultations

The following consultee responses have been received:

Childcare Services Manager – No objections

Ofsted – Following resolution of issues cited by Ofsted following a visit, the consultee has no objections to the proposed use.

Highways DC – No objections

Pollution Control – No objections following submission of noise management plan

Building Control – The site has achieved approval under the building regulations for its internal fit-out.

Ward Cllrs – Concerns highlighted in respect of quality of the provision, however consultee responses from BMBC Childcare Services and Ofsted find that the unit accords with the minimum requirements for the provision of childcare on the site.

Representations

The application has been advertised by way of a site notice and properties which share a boundary to the site have been consulted in writing in accordance with the requirements of the Development Management Procedure Order. No representations have been received. The main points of concern are:

- Concerns relating to increased traffic and parking.

The site was previously used as a clinic and it is not anticipated that the use will generate significantly more traffic than was previously the case under the former use of the site. The site also has ample off-street parking and the case officer has visited the site twice and has witnessed that there was an abundance of available spaces in front of the building. It is not considered likely that the use will generate on-street parking given the volume of parking within the confines of the site available via an established access off Laithes Lane. Indeed the majority of parking issues relate to those of parents and the drop-off of their children to the school nearby. The issues with parking are therefore not directly relevant to the proposal reviewed under this application.

- Concerns with the build quality of a building containing children.

The LPA share the concerns of the representor and originally undertook vigorous consultation to ensure the building was safe to be used as a nursery with consultations required from BMBC Child Services, Ofsted and LA Building Control. There are a number of outstanding discharge of conditions for the development approved under 2015/0363, including materials and boundary treatments. The LPA have also sought legal advice in respect of issuing a decision prior to the Use Class Order change on the 1st September 2020 which discouraged the LPA issuing a decision on the nursery whilst outstanding details remained to be satisfied. However given that building safety is covered under a separate legislative area (the building regulations) and is not a material planning consideration, in combination with the new Use Class Order rendering the change of use as permitted development as the approved retail use now sits under the same use class for children's day care facilities (Class E), the proposal is no longer able to be held in abeyance subject to the outstanding details under 2015/0363.

Assessment

For the reasons previously explained above, the proposed use as a children's day care facility now fall under permitted development rights given that the approved use for retail units (under 2015/0363) now sit under the same use class (Class E). The application has been deferred for a significant period of time to allow the applicant to submit details in respect of the outstanding discharge of conditions as the development approved under 2015/0363 is in breach of a number of conditions despite having been constructed and operating uses from the site. Though some improvements to the site have been made through the inclusion of hard surfacing for the parking area, and materials applied to the principle elevation are nearly finished a number of issues remain, including: external materials to the side elevations, boundary treatments have not been erected in accordance with the approved permission, and no landscaping has been implemented. An application to discharge the conditions was requested by the LPA and an application was received under

2020/0157/INVALID, yet the application was not able to be validated as the LPA did not receive the appropriate fee.

In respect of parking, 25 spaces are indicated on the site plan with 6 full time positions (5 full time and 3 part time) on the application form. The SPD Parking requires 1 parking space per full time employee which infers that 19 spaces are residually available for drop-off of children and for customers of the other units on the site.

Overall the LPA are not content with the situation with regard to the nursery and feel that the space is not necessarily fit for purpose despite meeting the minimum requirements under the rules applied by Ofsted and under the Building Regulations. However the LPA are cognisant of the legislative development in respect of the Use Class Order and are therefore unable to justify holding the application in abeyance any longer, especially in the context of the nursery operating from the site for a number of years since the application was originally submitted.

The application is consequently, and reluctantly, granted permission subject to conditions.

Recommendation:

Approve subject to conditions