

HC/CS P21-2009

22 February 2022

Manchester City Council
Planning Department
PO Box 532
Town Hall
Manchester
M60 2LA

Dear Sir or Madam

Submission of application for full planning permission

Section 58(1)(b) of the Town and Country Planning Act 1990 (as amended)

7 Moor End, Northenden, Manchester, M22 4JQ

We write on behalf of Harkalm Investments Ltd ("the applicant") in support of an application made to Manchester City Council ("the Council") for full planning permission at 7 Moor End, Northenden, Manchester, M22 4J ("the application site"). The application seeks the following "proposed development":

"Change of use from place of worship (Use Class F1(f)) to day nursery (Use Class E(f)), with associated provision of cycle and scooter stands and erection of acoustic fence."

The application has been submitted through the Planning Portal (ref. PP-11057573) and consists of this cover letter (and its Appendix 1: Statement of Case) and the following material:

- Completed application form and certificate
- Existing and proposed ground floor plans, ref. PL.001
- Existing and proposed first floor plans, ref. PL.002 Rev A
- Location and site plan, ref. PL.003
- Proposed site plan, ref. PL.004 Rev G

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- Bin store technical submission sheet
- Completed waste management proforma (10 November 2021)
- Letter from marketing agents Thomas Willmax (dated 5 July 2021)
- Transport Statement (by TTP Consulting)
- Transport Addendum (by TTP Consulting)
- Travel Plan (by TTP Consulting)
- Noise Impact Assessment (by ACA Acoustics)
- Operational Management Plan (by Monkey Puzzle)

The application is a resubmission of application ref. 131474/FO/2021 ("the previous application") for the exact same proposed development, made by the same applicant, and made within 12-months of the decision. As such, no application fee is required¹.

The previous application was submitted by the applicant on the basis that it complied with the Council's development plan. During the course of the application, the Council's Highways and Environmental Health Officers raised no objection in terms of transport and noise. Despite this, the Council refused the previous application on 19 November 2021 for the following sole reason:

"The proposed use as day nursery is considered to be unacceptable due to the detrimental impact the use would have on the residential amenity of the occupiers of surrounding properties, including from internal and external use of the site, in terms of activity associated with, traffic generation and increased comings and goings to a single property in a predominantly residential area. The proposed use is therefore considered to be contrary to policies SP1 and DM1 of the Manchester Core Strategy and saved policy DC26 of the Unitary Development Plan for the City of Manchester."

An appeal was lodged against the Council's decision, and this was lodged on 4 February 2022 under ref. APP/B4215/W/22/3292150. The Council was duly notified by the applicant. Registration of the appeal and a timetable is awaited.

The purpose of this application is to give the Council another opportunity to determine the proposed development and approve it. The Statement of Case that was submitted with

¹ Pursuant to Article 9 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended)

the appeal is appended to this letter. It gives an analysis of the proposed development against the Council's development plan and sets out why permission should be granted. As such, it acts as a Planning Statement for this resubmission. Again, it is worth emphasising that the previous application was refused for highway and noise reasons against the specialist advice of the Council's own Highways and Environmental Health Officers.

An approval of the application would benefit both parties. For the applicant, a permission within the statutory timeframe of 8-weeks would allow the nursery operator Monkey Puzzle to set up the nursery more quickly. For the Council, it reduces its risk of going into "special measures²." It is a very conceivable scenario that the Planning Inspector will overturn the Council's decision on the previous application and rule in the applicant's favour. The Council will be aware that if at least 10% of its total (non-major in this case) decisions are overturned by an Inspector at appeal, it may lose its ability to determine planning applications. The Government may intervene and dictate that the Planning Inspectorate take over as the determining authority.

The local community would also benefit by a speedier approval of the proposed development. The applicant and Monkey Puzzle are aware of a need for a new nursery in the local area. Families close to the application site would not have to wait as long to use the new nursery from the proposed development.

At capacity the nursery will provide 60 child spaces. As detailed within the submission material, the proposed use is anticipated to have a lesser impact upon the highways network than the currently unrestricted lawful use as a place of worship. Noise impact can be controlled through on-site management, including the restricted use of outdoor spaces. Therefore, the applicant contends that the previous reason for refusal of this change of use is unwarranted and the development proposal will make efficient use of this vacant site, providing local employment opportunities, in accordance with national and local planning policy.

Consultation with the Ward Councillors has been carried out prior to the submission of this application, and in light of them objecting to the previous application. The applicant is in the process of arranging a meeting and has expressed that transport surveys have been undertaken to demonstrate that there would be no adverse effects, and that hours of operation and number of users are not controlled by under the current lawful use, contrary the levels of control from the proposed development.

² Pursuant to Section 62B of the Town and Country Planning Act 1990 (as amended)

We trust that this is acceptable and look forward to receiving confirmation that the application is valid. If you have any queries in the meantime, please contact me or my colleague Henry Courtier (henry.courtier@pegasusgroup.co.uk).

Yours faithfully

Craig Slack

Principal Planner
craig.slack@pegasusgroup.co.uk

Enc.

Appendix 1: Statement of Case (by Pegasus)

PLANNING APPEAL STATEMENT OF CASE

**7 MOOR END, NORTHENDEN, MANCHESTER, M22
4JQ**

ON BEHALF OF HARKALM INVESTMENTS LTD

LPA REF: 131474/FO/2021

PEGASUS REF: P21-2009

DATE: FEBRUARY 2022



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1.0 Introduction

- 1.1 This report acts as a Statement of Case for Harkalm Investment Ltd ("the appellant") in support of a planning appeal made under section 78 of the Town and Country Planning Act 1990 (as amended) ("the Act"). The appeal is made against the decision of Manchester City Council ("the Council") to refuse planning application ref. 131474/FO/2021 ("the appeal application") at 7 Moor End, Northenden, Manchester, M22 4JQ ("the appeal site"). The appeal application sought the following "proposed development":

"Change of use from place of worship (Use Class F1(f) to day nursery (Use Class E(f), with associated provision of cycle and scooter stands and erection of acoustic fence."

- 1.2 The Council issued a decision on 19 November 2021 to refuse the appeal application. One reason was given:

"The proposed use as day nursery is considered to be unacceptable due to the detrimental impact the use would have on the residential amenity of the occupiers of surrounding properties, including from internal and external use of the site, in terms of activity associated with, traffic generation and increased comings and goings to a single property in a predominantly residential area. The proposed use is therefore considered to be contrary to policies SP1 and DM1 of the Manchester Core Strategy and saved policy DC26 of the Unitary Development Plan for the City of Manchester."

- 1.3 The purpose of this Statement of Case is to challenge the Council's decision and explain to the Inspector why the appellant believes that planning permission should be granted for the appeal application. The case made is that the granting of the appeal application would bring back into use the vacant building and provide a use that is beneficial for the local community. The Council's reason for refusal is not considered by the appellant to be substantiated. The Council's own technical officers supported the appeal

application in terms of transport and noise and found it not to have an adverse effect on nearby residents.

- 1.4 Written representations is the appeal procedure sought by the appellant (as set out in the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009). The appellant has followed the Procedural Guide: Planning Appeals – England (updated October 2021) at Annexe K in determining the appropriateness of the written representations procedure. Namely, the appeal application can be clearly understood from the appeal documents and a site inspection, and the issues are not complex and the Inspector is not likely to need to test the evidence by questioning or to clarify any other matters.
- 1.5 It should be known, that in accordance with National Planning Policy Framework paragraph 38, the appellant attempted to engage proactively with the Council during the determination of this application, however the Council refused to engage in constructive dialogue during the determination period, once it was known that the Council's technical officers raised no objection to the appeal application. As such, the outcome of the application was not known until the issue of the decision notice on 19 November 2021.
- 1.6 This Statement of Case should be read in conjunction with the full list of material submitted with this appeal. For ease of reference, the online appeal application form numerical references are used:
- (01) Original application form and (02) Site ownership certificate
 - (03) Decision notice for appeal application
 - (04) Site location plan
 - (05a) Copies of all drawings and documents submitted for appeal application
 - (05b) List of all drawings and documents submitted for appeal application
 - (05c) List of all drawings and documents which decision was made upon
 - (06a) Copies of all drawings and documents submitted for appeal application after original submission was made
 - (06b) List of all drawings and documents submitted for appeal application after original submission was made

- (09a) Additional material submitted to the Inspector
- (09b) List of additional material submitted to Inspector

2.0 Appeal site and surrounding area

- 2.1 The appeal site is a two-storey building that was previously in use as Kingdom Hall of Jehovah's Witnesses (a place of worship), until its closure in June 2020. To the front of the building is a large area of hardstanding, used for car parking.
- 2.2 The only planning history for the appeal site is a permission for a side extension, granted in 2014 (ref. 105326/FO/2014/S2). It is not considered to be relevant to the proposed development, although it does acknowledge the lawful use of the building as a place of worship (Use Class F1).
- 2.3 The building at the appeal site is not statutorily listed. The Assembly Hall of Jehovah's Witnesses, which is 100m to the north-west of the appeal site, is Grade II listed. The Northenden War Memorial, which is 150m to the north-east of the appeal site, is Grade II listed. Neither of these would be affected by the proposed development in heritage terms (since it concerns only a change of use and minor associated works).
- 2.4 The appeal site is within Flood Zone 1 (which has the lowest risk of flooding).
- 2.5 Moor End runs north to south and is characterised by two-storey homes and a large three-storey commercial building and its car park. Morden Road is a one-way street and contains double-yellow lines on both sides that prohibit parking.
- 2.6 Palatine Road runs perpendicular to Moor End and towards its east it acts as the retail and commercial high street for Northenden. The rest of the surrounding area is characterised generally by two-storey homes.

3.0 Appeal application

- 3.1 This Chapter describes the proposed development and the facts surrounding the submission of the appeal application and its determination by the Council.

Proposed development

- 3.2 The description of development for the proposed development is the following:

"Change of use from place of worship (Use Class F1(f)) to day nursery (Use Class E(f)), with associated provision of cycle and scooter stands and erection of acoustic fence."

- 3.3 The proposed day nursery would be operated by Monkey Puzzle, who is an experienced business, operating around 60 children's day nurseries nationwide. The proposed development is expected to cater for 60 children and would employ around 20 part- and full-time members of staff. The facility would operate from 07:30 to 18:30 Monday-Friday through 51 weeks of the calendar year.
- 3.4 To the rear of the building, the garden would be used as a play area during certain hours of the day. Typically this would occur during one period in the morning and one period in the afternoon. The number of children using the garden at any one time would not exceed 22 and the use of the play area by the different age groups would be planned. An Operational Management Plan (submitted as part of item (09a)) is submitted to the Inspector and this sets out how the nursery will be managed in terms of this capacity and use of the garden (with the estimated times).
- 3.5 No external alterations are proposed to the building at the appeal site. The only "building works" proposed are the provision of the cycle and scooter racks (to the side of the building at the north) and the erection of the acoustic fence at the northern (rear) boundary of the application site. Details of these have been

in indicated on the submitted drawings, with further details to be secured by way of planning condition if considered necessary.

Determination by the Council

- 3.6 The appeal application was made valid by the Council on 3 September 2021. It was given the reference 131474/FO/2021.
- 3.7 During the course of the appeal application, on 16 September 2021, the appellant submitted to the Council details for bins and waste management. At the request of the Council, these details were amended through the submission of updated information on 10 November 2021. All originally and subsequently submitted information is submitted to the Inspector as part of items (05a), (05b), (05c), (06a), and (06b) (as referred to in Chapter 1 of this Statement of Case).
- 3.8 The Council did not make any statutory or public consultation comments available online. The Council's planning officer sent an email dated 22 October 2021 that contained consultee comments and the comments were put in the public domain only when shown in the officer report that accompanied the decision notice. Table 3.1 below provides a summary of the comments.

Table 3.1: Consultee comments

Comment	Response
Council's Highways Officer	Proposed development is acceptable in terms of car and cycle parking arrangements, traffic generation, and refuse arrangements. A condition should secure a travel plan.
	An agreement under s278 of the Highways Act

1980 (as amended) should secure the following:

- Tactile paving on each side of the two vehicle access points
- Traffic bollards installed within the footway between the two access points to allow for safe drop-off and prevent use of the footway by parked vehicles
- Footway resurfacing and new kerbing provided to the eastern footway adjacent to the development

Council's Environmental Health Officer	No objection to proposed development, subject to planning conditions relating to fumes/odours, deliveries, noise/plant and refuse.
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Three Ward Councillors (Councillor Monaghan, Councillor Russell, and Councillor Lynch)	Object on transport grounds. Concerned that the proposed development would increase traffic, not contain enough parking for staff, and would compromise highway safety.
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Three local residents	Object on transport grounds. Concerned that the proposed development would increase traffic, not contain enough parking for staff, and would compromise highway safety.
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Object on grounds that the use of the nursery would harm amenity, including from noise.

- 3.9 The appellant attempted to work with the Council in a proactive manner and sent various emails to the Council's planning officer following the receipt of the consultation responses (these emails are contained within item (09a)). The appellant sought to agree a method for securing the section 278 highway works and in response to the Ward Councillor's concerns, also offered an alteration to the originally submitted parking arrangement to allow for two nursery drop-off spaces, two staff spaces, and one disabled space (rather than all spaces being offered as staff parking, as per the originally submitted Transport Statement (contained within item (05b))). Despite the appellant's best efforts, the Council did not engage and instead issued a decision notice refusing the appeal application on 19 November 2021, and without any prior warning. One reason was given:

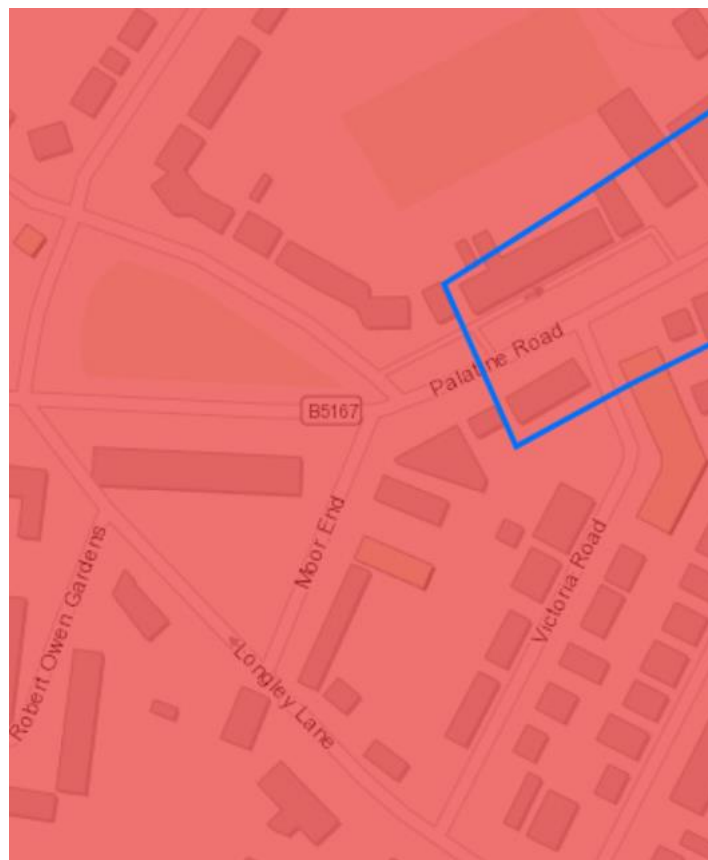
"The proposed use as day nursery is considered to be unacceptable due to the detrimental impact the use would have on the residential amenity of the occupiers of surrounding properties, including from internal and external use of the site, in terms of activity associated with, traffic generation and increased comings and goings to a single property in a predominantly residential area. The proposed use is therefore considered to be contrary to policies SP1 and DM1 of the Manchester Core Strategy and saved policy DC26 of the Unitary Development Plan for the City of Manchester."

- 3.10 The appellant's response to the reason for refusal is set out in Chapter 5 of this Statement of Case. Appropriate planning conditions relating to comments from the Council's Highways and Environmental Health Officers are also dealt with.

4.0 Decision-making context

- 4.1 Section 38 of the Planning and Compulsory Purchase Act 2004 requires applications for development to be made in accordance with the Development Plan unless material considerations indicate otherwise.
- 4.2 The Council's Development Plan is made up of its Core Strategy (2012) and its saved Unitary Development Plan (UDP) (2005) policies (there is no Neighbourhood Plan for the appeal site). The associated Proposals Map (extract below in Figure 4.1) shows the appeal site to lie within the Wythenshawe Regeneration Area part of Manchester (highlighted red in Figure 4.1). The nearest other designation is Northenden District Centre, located approximately 100m to the north-east, along Palatine Road (blue line in Figure 4.1).

Figure 4.1: Proposals Map extract



- 4.3 The Greater Manchester Combined Authorities consulted upon a draft Greater Manchester Spatial Framework Publication Plan in October 2020. However, Stockport Council withdrew support in December 2020 and the remaining authorities are in the process of considering how to proceed. This plan is therefore considered to hold no weight in the decision-making process, in accordance with National Planning Policy Framework paragraph 48.
- 4.4 Policies from the adopted development plan, that are relevant to the proposed development and the Council's reason for refusal, are assessed in the next chapter. The list of these policies is:
- **Core Strategy Policy SP1**, which seeks, amongst other things, for development to make a positive contribution to the health, safety and wellbeing of residents.
 - **Core Strategy Policy DM1**, which seeks, amongst other things, for regard to be had to a development's effects on amenity (including noise, road safety and traffic generation, amongst other things).
 - **UDP Policy DC26**, which seeks to control noise and ensure it does not harm residential amenity.
- 4.5 The government's National Planning Policy Framework (NPPF) (2021) is a material consideration of significant weight and its policies, which are relevant to the proposed development, are assessed in the next chapter.

5.0 Case for the appellant

- 5.1 This Chapter explains the appellant's case for the granting of the appeal application and how it complies with the development plan and receives support from the NPPF.

Principle of use

- 5.2 It is the appellant's contention that a children's nursery (Use Class E(f)) is an appropriate use within a residential area and does not need to be located within a town centre, as is indicated by the Council.

- 5.3 The Council's officer report states:

"On the 1st September 2020 amendments to the Town and Country Planning (Use Classes) Order 1987 (as amended) came in force that created new broader 'Commercial, Business and Service;' use class (Class E) which incorporated the previous shops (A1) and professional services (A2), restaurants and cafes (A3) and offices (B1) use classes. In addition, uses such as gyms, nurseries and health centres (previously in uses classes D1 Non-residential institutions and D2 Assembly and leisure were also included in the new use class. An explanatory memorandum issues alongside the amendment explained that the changes were brought to reflect the diversity of uses found on the high streets and in town centres and to provide flexibility for business to adapt and diversity to meet changing demands.

These regulations also created a new 'Learning and non-residential institutions' (Class F1 and 'Local Community (Class F2) use classes. The 'Learning and non-residential institutions' use class (F1) incorporates those uses from the former D1 Non-residential institutions use class which are more likely to involve buildings which are regularly in wider public use.

The relevance for this application is that prior to these changes planning

permission would not have been required as both uses fell within Use Class D1.

Therefore, it is clear that from the explanatory memorandum that a nursery which falls within Class E is considered by the Government to be an appropriate use for a town centre."

- 5.4 The Council is correct in stating that a nursery is now within Use Class E, but that does not necessarily mean that all Use Class E operations should be located within a defined town centre. The Use Class that a nursery falls within is not relevant to whether a nursery is acceptable in a particular area, in terms of policy.
- 5.5 First of all, what is relevant is that a nursery is not defined as a "main town centre use" by the NPPF (Annex 2 Glossary) and thus there is no preference for a nursery to be located within a town centre. Therefore the proposed location of a children's nursery at the appeal site does not conflict with NPPF paragraph 87, which requires main town centre uses to be within town centres.
- 5.6 Second, a nursery is a "community use" in terms of the Council's development plan (Core Strategy Glossary at part 17). The existing place of worship is also a community use and the appeal application, therefore, would result in the change from one community use to another. There is no development plan policy that seeks to control community uses at the appeal site, but the appellant did market the appeal site for alternative uses after the Kingdom Hall of Jehovah's Witnesses vacated the application site in June 2020. The letter from marketing agents Thomas Willmax (dated 5 July 2021) demonstrates that no other places of worship expressed any interest in using the appeal site; and that the proposed nursery use was the strongest interest received. Notwithstanding, there is another place of worship 100m to the north-west of the appeal site - The Assembly Hall of Jehovah's Witnesses.
- 5.7 Furthermore, the principle of the change of use is considered to be acceptable and in accordance with NPPF paragraph 92, which requires decisions to plan positively for community facilities to enhance the sustainability of communities and residential environments. The replacement nursery use would fulfil a

community need by providing day-care for approximately 60 children in the local area.

Operation of nursery

5.8 The operation of the proposed nursery would not lead to an overly intensive use for the appeal site, as is claimed by the Council, and which led the Council to ultimately conclude there would be adverse traffic and noise impacts. On the contrary, the proposed development would operate in a more controlled and less intensive way than the current place of worship use for the site and potential other uses that can lawfully operate.

5.9 The Council's officer report states:

"The property is located in between residential properties which are located either side and to the rear of the building. There are concerns that a 60 place nursery will lead to greater intensive use of the site for longer periods of both the day and week. According to the submitted documentation, the development would be in use for 51 weeks of the year, Monday to Friday from 07:30 to 18:30 each day. Whilst the applicant was asked to look at if this number could be reduced and it is noted that the nursery would not operate at full capacity to begin with it is considered that there would be a negative impact on the residential amenity of nearby residents from a more intensive use of the site on a regular basis from increased coming and goings and associated noise this would bring which would not be appropriate for a residential area."

5.10 The place of worship that previously operated at the appeal site was used more intensely than the proposed development. Its capacity was for up to 200 people and average attendance at a meeting was 90 people. Meetings were regularly held outside of normal working hours on evenings and on Sunday mornings and afternoons.

5.11 The application site currently has a lawful use within Use Class F1 and this means it can be used for any of the following uses, and without any restrictions

on hours of operation or capacity:

- Provision of education
- Display of works of art (otherwise than for sale or hire)
- As a museum
- As a public library or public reading room
- As a public hall or exhibition hall
- For, or in connection with, public worship or religious instruction
- As a law court

5.12 These operations, without any restrictions on usage, have the potential to have a greater adverse effect on residential amenity in terms of traffic, noise, intensification of use and comings and goings to the appeal site. As an example, the appeal site could be used for exhibitions with no restrictions on capacity whatsoever.

5.13 On the contrary, the proposed development would be operated with restrictions to the hours of use, use of the garden, and maximum capacity. Within the Operational Management Plan it states the 60 child limit, the maximum use of the outside by 22 children at any one time, and the operation of the nursery between the hours of 07:30 to 18:30, Monday till Friday.

5.14 Furthermore, whilst the maximum number of children would be restricted to 60 children, it is not expected that the nursery would be used at full capacity even when fully operational, with Monkey Puzzle typically operating at 85% of capacity. Also, through experience of opening other nurseries, Monkey Puzzle identify it would take a number of years for it to be established. It is expected that the nursery's capacity would be:

- Year 1: 13%
- Year 2: 44.8%
- Year 3: 59.5%
- Year 4: 73%
- Year 5: 82%

- 5.15 Therefore overall, it is clear that the proposed development and its nursery use would be more controlled and a less intensive use of the appeal site, compared with other uses that could lawfully operate now without planning permission.

Transport

- 5.16 No adverse transport effects would arise, in accordance with Core Strategy Policies SP1 and DM1.
- 5.17 As has been explained previously, the Council's Highways Officer did not raise any objections to the proposed development in terms of trip rates, which were presented in the originally submitted Transport Statement. Notwithstanding, the appellant submits to the Inspector a Transport Addendum Report. This report assesses the potential trip rates from a place of worship at the appeal site, which is a worst-case scenario for a current lawful use. It shows that the use of the appeal site as a place of worship would result in additional 40 vehicle trips and 75 person trips across the normal weekday. On a Sunday, when the nursery would be closed, a place of worship would generate 34 vehicle trips and 105 person trips. Therefore, a nursery would generate fewer trips than the current lawful use of the appeal site. In addition, a Travel Plan would be implemented as part of the proposed development (secured by a planning condition), and this would have the aim of reducing trips further.
- 5.18 The other matter the Transport Addendum Report addresses is the Council's Highways Officer's comments about the need for works outside of the appeal site to the highway under s278 of the Highways Act 1980. Details of these can be secured as part of the s278 agreement, and can be linked to the appeal application by the imposition of a planning condition that reads along the lines of:

"The development hereby approved shall not be commenced until such time as an agreement under section 278 of the Highways Act 1980 between the applicant and the Council's highways authority has been completed in relation to improvements along the footway and access along the front of the

application site."

- 5.19 It is mentioned in Chapter 3 that during the course of the appeal application, the appellant offered an alteration to the originally submitted parking arrangement to allow for two nursery drop-off spaces, two staff spaces, and one disabled space (rather than all spaces being offered as staff parking, as per the originally submitted Transport Statement). This was in response to a Ward Councillor's concerns, and not the Council's Highways Officer, who found the parking arrangements to be acceptable. The appellant will leave it to the Inspector's discretion as to whether a planning condition be imposed to control the spaces as two nursery drop-off spaces, two staff spaces, and one disabled space.

Noise and environmental matters

- 5.20 The appellant considers that the proposed development would not lead to unacceptable levels of noise and that the amenity of local residents would be maintained. Thus, it would comply with Core Strategy Policies SP1 and DM1 and UDP Policy DC26, which both seek to use the development control process to reduce the impact of noise on people living in the area.
- 5.21 A Noise Impact Assessment was originally submitted with the appeal application, and it sets out how the proposed development would achieve the relevant noise standards and would not adversely affect the amenity of the neighbouring properties. As part of the noise mitigation for the use of the outdoor space, it is proposed to install a 2.3 m acoustic fence along the northern (rear) boundary of the appeal site as shown on the accompanying Site Plan. The existing fences on the other boundaries provide sufficient acoustic mitigation and would be retained.
- 5.22 Furthermore, as indicated previously, many other uses could lawfully operate from the appeal site without any noise mitigation such as a new acoustic fence. Again, for example, another place of worship or an exhibition hall could use the appeal site with an unrestricted amount of attendees, and the noise

generated would likely be greater than the noise from the nursery (which is in any event considered acceptable).

5.23 During the appeal application's consultation process, the Council's environmental health officer recommended various planning conditions. Table 5.1 below gives the full wording suggested and the appellant's comments and suggestions.

Table 5.1: Conditions comments

EHO Recommended condition	Appellant's comments and suggestions
a) Fumes, vapours and odours shall be extracted and discharged from the premises in accordance with a scheme to be submitted to and approved in writing by the City Council as local planning authority before the use commences. Mixed use schemes shall ensure provision for internal ducting in risers that terminate at roof level. Schemes that are outside the scope of such developments shall ensure that flues terminate at least 1m above the eave level and/or any openable windows/ventilation intakes of nearby properties. b) Prior to commencement of the use hereby approved confirmation shall be submitted for the approval of the City Council as local planning authority that the approved scheme has been implemented.	The proposed development does not include ventilation and extraction equipment. This condition therefore does not meet the NPPF paragraph 54 test of being 'necessary.'

Deliveries, servicing and collections, including waste collections shall not take place outside the following hours: 07:30 to 20:00, Monday to Saturday, no deliveries/waste collections on Sundays/Bank Holidays.

The appellant will agree to this condition.

The acoustic fence will need to be constructed before the development is brought into use. A verification report is needed once work has been completed.

It is not possible to carry out verification work before the use has commenced. In any event, verification work would require access to the gardens of neighbouring properties, which might not be granted. The Council's environmental health officer deemed the findings of the submitted Noise Impact Assessment to be acceptable and the appellant believes that further noise assessments would not meet the NPPF test of being 'necessary.'

a) Externally mounted ancillary plant, equipment and servicing shall be selected and/or acoustically treated in accordance with a scheme designed so as to achieve a rating level of 5dB (LAeq) below the typical background (LA90) level at the nearest noise sensitive location. Prior to commencement of the use hereby approved the scheme shall be submitted to and approved in writing by the City Council as local planning authority in order to secure a reduction in the level of noise emanating from the site.

The proposed development does not include externally mounted ancillary plant. This condition therefore does not meet the NPPF paragraph 54 test of being 'necessary.' Any such plant would be secured by a separate application for full planning permission.

b) Prior to occupation of the development a verification report shall be submitted to

and approved in writing by the City Council as local planning authority to validate that the work undertaken throughout the development conforms to the recommendations and requirements in the approved acoustic report. The report shall also undertake post completion testing to confirm that the noise criteria have been met. Any instances of non-conformity with the recommendations in the report shall be detailed along with any measures required to ensure compliance with the agreed noise criteria.

Waste

- 5.24 The appellant considers that the proposed development would provide acceptable facilities for the storage of refuse and recycling. This is in accordance with Core Strategy Policy DM1, which states that all development should have regard to refuse collection. This matter is not under dispute between the appellant and the Council.
- 5.25 Refuse and recycling areas are shown the Proposed Site Plan (ref. 1020-21.PL.004 Rev G) for approval, and details of capacity and bin types are set out on the proforma submitted for approval. The planning condition that requires the development to be carried out in accordance with approved drawings and information can secure these.

6.0 Conclusion

6.1 Planning permission ought to be granted for the appeal application on the following basis:

- The principle of the use of a children's nursery at the appeal site is acceptable and is given support by NPPF paragraph 92. The opening of a nursery would provide a community benefit to the local area and make efficient use of this vacant building.
- The operation of the proposed nursery would not lead to an overly intensive use for the appeal site. The use would be restricted, unlike the current scenario whereby a range of uses (including exhibition hall uses) could operate at the appeal site without any restrictions in terms of operating hours and maximum capacity.
- Traffic impacts would be acceptable and would result in fewer trips compared with the lawful use of the appeal site. A s278 agreement would ensure footway improvements are delivered. The Council's Highways Officer raised no objection to the proposed development.
- Noise levels would be acceptable and the outside use of the garden would be controlled and restricted. The Council's Environmental Health Officer raised no objection to the proposed development.
- Waste provision would be acceptable, and this is not under dispute by the Council.