

APPLICATION: MA/10/0960 Date: 22 June 2010 Received: 6 August 2010

APPLICANT: Mr A Tavani

LOCATION: WEALDEN SADDLERY, HIGH STREET, STAPLEHURST, TONBRIDGE, KENT, TN12 0AB

PARISH: Staplehurst

PROPOSAL: Application for change of use from A1 (hair and beauty salon) to D1 (day nursery) as shown on the site location plan received 3rd June 2010 and block plan received 22nd June 2010, supported by a schedule of works, KCC Child Care Sufficiency Assessment and copies of a request for informal pre-application advice and corresponding response all received 3rd June 2010, supporting letter received 22nd June 2010; supporting letter and operational details received 6th August 2010; and supporting email received 14th September 2010.

AGENDA DATE: 14th October 2010

CASE OFFICER: Catherine Slade

The recommendation for this application is being reported to Committee for decision because:

- it is contrary to views expressed by Staplehurst Parish Council.

## **1. POLICIES**

Maidstone Borough-Wide Local Plan 2000: R10, T13

Village Design Statement: Not applicable

Government Policy: PPS1 – “Delivering Sustainable Development”, PPS4 – “Planning for Sustainable Economic Growth”, PPS5 – “Planning and the Historic Environment”, PPG24 – “Planning and Noise”

## **2. HISTORY**

- MA/89/2156 Listed Building Consent for internal alterations and signs on front elevations – APPROVED WITH CONDITIONS
- MA/89/1470 Internal alterations and change of use of part of the ground floor from residential to shop/saddlery - APPROVED WITH CONDITIONS
- MA/89/1440 Hanging sign and fascia sign - APPROVED WITH CONDITIONS

### **3. CONSULTATIONS**

3.1 **Staplehurst Parish Council:** Wish to see the application refused and request that the application is reported to Planning Committee on the following grounds:

*"highways, access, parking, noise and disturbance to neighbours and Listed Building status of the premises. Councillors considered the proposed use to be inappropriate given the site is on the busy High Street close to the pedestrian crossing with no parking for staff (The Parade car park is private and restricted) nor any safe or convenient dropping-off access for small children."*

3.2 **Kent Highway Services:** Initially raised objection to the proposal on the grounds that the development would result in parking on the public highway and therefore cause obstruction and interfere with the free flow of traffic and prejudice the safety of road users. Following the submission of additional information by the applicant, including operational details of the business and a parent contract, objection to the proposal was withdrawn, on the grounds that:

*"The strong stance taken by the applicants in preventing obstruction to the highway is noted, and whilst the existing on street waiting restrictions, currently double yellow lines, would not legally prevent the legitimate setting down or picking up of passengers or indeed loading of goods, I am satisfied that the applicants have taken reasonable steps to deter parents and carers from stopping on the highway directly adjacent to the application site."*

3.3 **MBC Environmental Health Manager:** Raises no objection to the proposal, although wishes to make the following comment:

*"the main environmental health issue here could be noise disturbance from the future use of these premises affecting nearby residents. Staff should ensure that no unreasonable noise is generated from these premises, especially if and when children are outside, e.g. for breaks or lunch."*

3.4 **MBC Conservation Officer:** Raises no objection to the proposal for the change of use, on the grounds that it would not cause harm to the character or appearance of either the listed building or Staplehurst Conservation Area.

### **4. REPRESENTATIONS**

Two representations were received which have raised the following concerns:

- Harm to the amenity of neighbouring occupiers with regard to noise.
- Highway safety implications of additional traffic and unauthorised stopping on the public highway.
- Parking provision.

- Inaccuracies in the application documentation.
- Failure of Maidstone Borough Council to highlight the status of the building as a listed building.
- Inappropriate use of a listed building.

## **5. CONSIDERATIONS**

### **5.1 Site Description**

5.1.1 The site is located within the village envelope of Staplehurst as defined in the Local Plan, and is also within the Local Retail Centre of Staplehurst, as set out in Local Plan policy R10. The site has a frontage to the High Street (A229) and is to the west of the highway. The site is within the Staplehurst Conservation Area.

5.1.2 The site comprises the ground floor of a two storey terraced building with residential accommodation at first floor level and in the roof space and an L – shaped rear garden. The ground floor has an unrestricted A1 use, and although currently vacant was previously occupied by a hairdresser. The accommodation above ground floor level is in residential use. The property has no front garden, but is set back by approximately 4.15m from the public highway. This space is occupied by an area of hard surfacing.

5.1.3 The building is one of a terrace of eight buildings, all of which are Grade II listed except the northernmost. Some of the premises have been converted from two properties to single buildings, as is the case with the proposal site.

5.1.4 All the other premises in the terrace are in wholly residential use, with the exception of the northern most building which is in use at ground floor level as a pharmacy. The adjoining premises to the north, south and above the proposal site are therefore in use as residential accommodation. The southern end of the terrace adjoins the village Post Office which is located outside the defined Local Retail Centre.

5.1.5 Within the wider context of the Local Retail Centre there is a mix of uses at ground floor level including A1, A2, A4, A5 and C3 uses.

### **5.2 Proposal**

5.2.1 The current application seeks planning permission for a change of use of the ground floor and rear garden to a children’s nursery (D1) for the provision of day care facilities for children of the ages 3 months to 24 months.

5.2.2 The hours of use of the proposed nursery are set out in the application form as being 0720 to 1830 Monday to Friday. The nursery would not be open on Saturdays, Sundays, or Bank or Public Holidays. The operation of the nursery is stated to be on a variable basis with regard to the hours that children are cared for which is a function of

the differing needs of the parents. The agent has confirmed that morning registration of arrivals would occur between 0730 and 0830 and the corresponding afternoon registrations between 1630 and 1830, with some occurring in the middle of the day.

5.2.3 No on site parking is included in the application.

5.2.4 The proposal does not include any external alterations to the building or any supporting advertisements. Any internal alterations would require the submission of an application for listed building consent. There are no current applications for listed building or advertisement consent that have been submitted.

### **5.3 Principle of Development**

5.3.1 The proposal site is located well within the defined village envelope of Staplehurst in a sustainable location on the A229 which is served by bus routes, near to the train station which is located approximately 1.3km from the site. The principle of a D1 (child nursery) facility in this location is therefore acceptable, in accordance with central government planning guidance in PPS1 "Planning for Sustainable Development" and the policies set out in PPS4 "Planning for Sustainable Economic Development".

5.3.2 The site is also located in a Local Retail Centre, and as such is subject to Maidstone Borough-Wide Local Plan 2000 saved policy R10 which seeks to maintain existing retail uses. Notwithstanding this, "crèches" (among others) are identified in the Local Plan as facilities that are complementary to and acceptable in Local Service Centres.

5.3.3 Although as stated in paragraph 5.2.1 the premises are currently unoccupied, it was most recently occupied by a hairdressing salon, which falls within the scope of Use Class A1 (retail/shop). The proposed change of use would therefore result in the loss of an A1 retail unit. However, it is considered that in the circumstances of this case, given the healthy mix of existing uses within the Local Retail Centre, the availability of alternative units in comparable uses in the immediate vicinity of the site, in particular those comprising The Parade, the peripheral position of the site within the designated area and the fact that crèche uses are considered acceptable in Local Retail Centres, the loss of this retail unit and its use as a children's nursery would not result in harm to the overall vitality or viability of the Local Retail Centre, and is in accordance with local Plan policy. This is supported by national planning policy set out in PPS4 "Planning for Sustainable Economic Development", which supports the principle of flexibility within the planning system.

5.3.4 For the reasons set out above, it is considered that the principle of the change of use is acceptable in terms of the Maidstone Borough-Wide Local Plan 2000 and national planning policy and guidance.

### **5.4 Visual Impact**

5.4.1 The application is for a change of use, and no physical alterations to the external fabric of the building are proposed. The frontage of the unit is to remain unchanged.

5.4.2 The land to the immediate front of the building is already laid to hard surfacing, and as such it would not be possible to require the introduction of landscaping. Although it is possible that in the future the existing hard surfacing could be removed and replaced with planting, it is not considered that it is reasonable to require this through condition.

## **5.5 Residential Amenity**

5.5.1 Concern has been raised by neighbouring residents with regard to the potential for noise disturbance as a result of the proposed use as a result of the noise of children and vehicular activity. Vehicular activity is addressed under section 5.6 of this report below.

5.5.2 The established lawful use of the site is A1 (retail), and the premises was most recently occupied as a hairdressers within this use class. The business operated opening hours of 0800 to 1800 Monday to Wednesday inclusive, 0800 to 2000 Thursday and Friday, and 0800 to 1700 on Saturdays. The lawful use of the site is not controlled with regard to hours of use or deliveries, numbers of staff, etc. and is unrestricted within class A1.

5.5.3 The proposed hours of use of the nursery are 0720 to 1830 Monday to Friday inclusive. These are less than the existing hours of use, and would effectively result in the control of activities at unsociable hours, such as during the early evening and weekends.

5.5.4 Whilst the proposed use would potentially result in peaks and troughs of activities as a result of registration and collection of children, these would be spread over the day as a result of differing levels of care provision, e.g. mornings only, afternoons only or all day care, depending on the requirements of the parents as set out in paragraph 5.2.3 above, and as such disturbance as a result of arrivals and departures on the site would be to an extent mitigated.

5.5.5 Given the likely amount of customer activity associated with an A1 use in comparison to that which might be expected in association with use of the premises as a nursery restricted to a maximum of 12 children, it is considered that the proposed use would result in a lower level and intensity of use than could be undertaken without planning permission under the provisions of the existing lawful use.

5.5.6 Specifically, objections to the proposal have been raised on the grounds of acoustic disturbance as a result of the use of both the building and the garden, and it is

recognised that the site abuts noise sensitive development, including existing dwellings.

5.5.7 Whilst it is likely that the proposed use would result in some noise, including from the use of the garden as an outdoor recreation space, the Maidstone Borough Council Environmental Health Manager has raised no objection to the proposal on the grounds of noise. No noise mitigation methods have been proposed, and it is unlikely that any would be acceptable, given the status of the building as a Grade II listed building. However, given that the Environmental Health Manager has not raised any objection to the proposal, it is therefore considered that none are necessary in this case.

5.5.8 It is noted that the use of the nursery would be limited to children under the age of 2, and as such their movements can be strictly controlled by the staff. Therefore the impact upon neighbouring occupiers is less than would be the case with older children who are capable of greater independent mobility within the site. The agent has confirmed that the maximum number of children that can be on the site at any one time is 12, as regulated by OFSTED. This number is a function of the space available and the child to adult ratio. Notwithstanding this, it is considered that a condition restricting the number of children on the site at any one time to 12 is necessary, given that the criteria set out by OFSTED may change or, for example, the number of staff increase.

5.5.9 Although there is no objection to the proposal on the grounds of statutory noise nuisance, there remain concerns with regard to the potential of general disturbance resulting from the use of the building and garden, and it is recognised that the unrestricted use of the garden space for purposes ancillary to the use of the premises could potentially lead to disturbance to the residential amenity of neighbouring occupiers, and for that reason a condition should be attached to the permission restricting the extent of the time that the garden can be used for, and the numbers of children using the space at any one time.

5.5.10 The agent has also confirmed that the use of the garden would be structured and limited to periods of 20 to 25 minutes in the morning and evening, and that not all of the children would be in the garden at the same time.

5.5.11 Given the above, it is considered that any general noise nuisance caused by the proposed use would be limited by virtue of the operational practices set out in the application documentation, and that, subject to the conditions set out above, the proposal would not result in an unacceptable level of disturbance to the occupiers of the neighbouring dwellinghouses.

5.5.12 Notwithstanding the above, if noise levels resulting from the proposed use are such that a statutory noise nuisance was to result, this would be dealt with under separate environmental health legislation under the provisions of the Environmental Protection Act 1990.

5.5.13 In addition to the conditions set out above, it is considered to be reasonable and necessary, given the scope of uses that fall within use class D1, including places of worship, clinics and public halls, to restrict the use of the unit to that as a day nursery in order to avoid potential conflicts between neighbouring uses at a later date.

5.5.14 No external alterations are proposed to the building. There would therefore be no additional harm caused to the amenity of neighbouring occupiers with regard to loss of light or outlook by the change of use.

## **5.6 Highway Safety**

5.6.1 Concern has been raised by local residents and Staplehurst Parish Council with regard to highway issues including unlawful stopping and parking on the public highway resulting in obstruction and interference to the free flow of traffic, and traffic generation.

5.6.2 The proposal does not include the provision of any on site parking, and on street parking is restricted in the immediate vicinity of the site by double yellow lines and zig zags associated with the pedestrian crossing approximately 20m to the north of the site. The nearest public car park is located approximately 200m to the south on Bell Lane.

5.6.3 The applicants have submitted operational details and additional information relating to the functioning of the proposed facility, which include details of the registration and pick up procedures in place for children which take up to 25 minutes to complete (copy appended). It is considered that the length of time involved in the registration and pick up arrangements is such that parents and carers would be discouraged from parking illegally in contravention of the existing controls. In any case, the Maidstone Borough Council Parking Services Officer has confirmed that in the 12 months from October 2009 to October 2010 no penalty charge notices were issued on the High Street in Staplehurst, in comparison to 9 during the same period on Fisher Street, Staplehurst and 25 on High Street, Headcorn, which indicates that the parking restrictions in place on the High Street are effective and not contravened on a regular basis, possibly as a function of the width of the highway and the availability of alternative parking facilities such as the car park on Bell Lane.

5.6.4 In addition to the above, the operational practices of the business and the staff and parent contract clearly sets out the local public parking provision in Bell Lane, and the local limitations with regard to on street parking availability, setting out the responsibility of parents and carers to comply with local parking and waiting restrictions.

5.6.5 In the light of the material submitted comments have been received from the Kent County Council Highway Officer who considers that "the applicants have taken

reasonable steps to deter parents and carers from stopping on the highway directly adjacent to the application site”, and the original objection to the proposal has been withdrawn.

5.6.6 It should also be noted that the use of the nursery would be restricted by condition to 12 infants at any one time. Given the size of Staplehurst as a population centre, it is considered likely that most, if not all the children enrolled at the facility would be resident within the village, and as such not all the children would be brought to the nursery by car on a daily basis.

## **5.7 Other Matters**

5.8.1 The property is a Grade II listed building, and the Conservation Officer has raised no objection to the principle of the change of use.

5.8.2 Concerns have been raised with regard to the accuracy of the submitted plans and the extent of the submission. The current application is for the proposed change of use, and as set out in paragraphs 5.4.1 and 5.4.2, if physical works or alterations to the signage are proposed further applications may be required.

5.8.3 Whilst the objection on the grounds of inaccuracies to the submitted plans is noted, in the case of applications for changes of use where no operational development is proposed, the purpose of the plans is to correctly identify the site, and the submitted plans are considered to be adequate for this purpose.

## **6. CONCLUSION**

6.1 The principle of the change of use is acceptable in this location. Although the proposal would result in the loss of a retail unit in an area designated in the Local Plan as a Local Retail Centre under planning policy R10, the characteristics of this case are such that, as set out in section 5.3 of this report, that the loss of this unit would not result in harm to the viability or vitality of the designated area.

6.2 It is not considered that the proposal would result in any unacceptable harm to the character of the listed building or the amenity of the occupiers of neighbouring dwellings, and the Kent County Council Highways Officer and the Maidstone Borough Council Environmental Health Manager have raised no objection to the proposal on the grounds of highway safety or noise nuisance respectively.

## **7 RECOMMENDATION**

GRANT PERMISSION SUBJECT TO THE FOLLOWING CONDITIONS:



1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. No activity in connection with the use hereby permitted shall be carried out outside the hours of 0720 and 1830 Monday to Friday and not at any time on Saturdays, Sundays, or Bank or Public Holidays;

Reason: To safeguard the enjoyment of their properties of the occupiers of the neighbouring residential properties in accordance with PPS1 Delivering Sustainable Development and PPG24 Planning and Noise.

3. The use hereby permitted shall be restricted to use as a day nursery/crèche, and no other use, whether falling within Use Class D1 of the Use Classes Order 1987 (as amended) or not;

Reason: To safeguard the enjoyment of their properties of the occupiers of the neighbouring residential properties in accordance with PPS1 Delivering Sustainable Development and PPG24 Planning and Noise.

4. The use hereby permitted will be restricted to a maximum of 12 children at any one time. The children shall be between the ages of 3 months and 24 months only;

Reason: to safeguard the residential amenity of the occupiers of neighbouring dwellings in accordance with PPS1 Delivering Sustainable Development and PPG24 Planning and Noise.

5. The garden area shall only be used for up to 2 hours in total prior to 12 noon and up to 2 hours in total after 12 noon and by not more than 6 children at any one time during the hours of operation of the nursery hereby permitted on the site;

Reason: To safeguard the enjoyment of their properties of the occupiers of the neighbouring residential properties in accordance with PPS1 Delivering Sustainable Development and PPG24 Planning and Noise.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000) and there are no overriding material considerations to indicate a refusal of planning consent.