

HARROW COUNCIL

SUPPLEMENTAL ADDENDUM

PLANNING COMMITTEE

DATE: Wednesday 17th February 2021

<p>1/01</p>	<p><u>Addendum Item 1:</u></p> <p>Consultation Responses Update – Section 4 of the report (pages 34-37).</p> <p>Since the agenda was published, one additional objection has been received:</p> <p>Summary of Comments:</p> <ul style="list-style-type: none"> • Proposal would result in overshadowing • No need for new housing
<p>2/02</p>	<p><u>Addendum Item 1:</u></p> <p>Consultation Responses Update – Section 4 of the report (pages 33-70).</p> <p>Since the Addendum was published, a revised petition has been received with additional signatures.</p> <p>An additional 3 letters of objection have been received.</p> <p>Summary of total objections received: Petition containing 753 signatures Individual objections – 142</p> <p>A letter from Richard Buxton Solicitors acting on behalf of the residents has been received which has been circulated to Members.</p> <p>Add Appendix 7 – Letter from Richard Buxton Solicitors on behalf of residents</p>

RICHARD BUXTON SOLICITORS

ENVIRONMENTAL, PLANNING & PUBLIC LAW

Office A, Dale's Brewery
Gwydir Street
Cambridge CB1 2LJ
Tel: (01223) 328933
www.richardbuxton.co.uk
law@richardbuxton.co.uk

Harrow Council
Civic Centre
Station Road
Harrow
HA1 2XY

By email only to:

Head of Legal: jessica.Farmer@harrow.gov.uk
Head of Development Management: beverley.kuchar@harrow.gov.uk
Planning Committee Members: ghazanfar.ali@harrow.gov.uk; simon.brown@harrow.gov.uk;
keith.ferry@harrow.gov.uk; Marilyn.ashton@harrow.gov.uk;
Christopher.baxter@harrow.gov.uk; anjana.patel@harrow.gov.uk

Your ref: P/0050/21/PRIOR

Our ref: OLL1/1/MM/RS

Email: mmcfeeley@richardbuxton.co.uk; rstewart@richardbuxton.co.uk

16 February 2021

**URGENT LETTER
RELEVANT TO PLANNING COMMITTEE MEETING 17 FEBRUARY 2021**

Dear Council

Objection to prior approval application for the change of use of Oakleigh House Nursing Home from a nursing home (class c2) to a registered nursery (class d1) (Ref. P/0050/21/PRIOR)

1. We have been urgently instructed by a group of local residents to object to the Application for Prior Approval submitted to Harrow Council ("**the Council**") in respect of a change of use of Oakleigh House Nursing Home, 10 Oakleigh Road, Hatch End, HA5 4HB, from a nursing home (class c2) to a registered nursery (class d1). The prior approval application relates to transport & highways impacts, contamination and noise ("**the Application**").
2. We are aware that this matter is on the Agenda to be considered by the Planning Committee tomorrow, on Wednesday 17 February 2021. We are surprised that the Application is being determined on this date given that it falls within the consultation period (which runs until 19 February). However, it is our view from an initial look at the documents that there are a number of issues with the supporting evidence for the Application and the Officer's Report ("**the OR**") that should be brought to the Committee's attention before a decision is taken at the meeting. Given time constraints as well as difficulties accessing the documents from the Council's website¹, we do not attempt to set out a comprehensive critique of the application. However,

¹ We have been unable to download the crucial background documents for the Application from the website. When we attempted to 'download all' of the documents, a zip file was produced containing only 10 of the dozens of documents shown online and those in the zip file were mostly objections rather than the Application supporting documents. The Council's portal also prevents individual documents from being downloaded or Partners: Richard Buxton* MA (Cantab) MES (Yale), Lisa Foster-Jones D MSc (UEA) MA (York), Simon Kelly BA MSt (Oxon), Paul Taylor BA (Oxon)
Solicitors: Hannah Brown MA (Cantab), Matthew McFeeley BSc MPP Juis D, Lucy Cooter BA (Hons), Sarah Knox-Brown MA (Hons)
Consultants: Paul Stookes* PhD MSc LLE, Kristina Kenworthy BA (Hons) LLM Ent (UCL)
Solicitor and Practice Manager: Caroline Chivers BA (Hons) Office Manager: Kath Kivryn

we highlight a few crucial points below which should in any event justify refusal of the Application.

Traffic

3. One of our clients' major concerns is regarding the modes of transport that the Applicant suggests will be used by parents bringing and collecting their children to and from the site and by other visitors. We are instructed that the Applicant's consultant has estimated that 75% of travel will be by foot, 12% by car and 11% by bike or scooter. These are implausible suggestions for the reasons set out below.
4. We note in the OR that Transport for London "rates Oakleigh Road as PTAL rating '1a' – 'Very Poor' which effectively means that it is difficult to access by other modes of transport other than the private car". The Officer has failed to grapple with this critical point, simply stating that TFL has not objected on strategic transport impacts and that "while the site has a poor PTAL rating, this in itself does not discourage the use of other modes of transport that is available". It is clearly not the case that simply what the scheme *encourages* is relevant, but also what is actually *likely*, when assessing traffic impacts. On the facts it is highly implausible that the other modes of transport being promoted will be taken up at the level envisaged. TFL's rating is clearly relevant to whether sustainable transport can be relied on to the extent that is assumed by the Applicant. Furthermore, the suggestion that 86% of visitors will travel by foot, bike or scooter does not seem realistic given the age of children attending the nursery is 0-5. Some parents will not be willing or able to walk their children to the nursery and many children at the lower end of this age range cannot ride a scooter or a bike.
5. The fact that TFL has not objected to the Application and that sustainable transport is being promoted does not obviate the Officer's duty to consider the actual likely traffic impacts of the scheme. This is even more so the case where, as here, evidence has been put to the Council undermining the figures submitted by the Applicant (see the residents' own planning consultant's view below, which seriously questions the figures) and also where the Highways Authority has based its own view on potentially inaccurate or optimistic data in documents submitted by the Applicant.
6. Raymond Ashall BA Hons DIP EP MRTPI, who is an expert on planning matters relating to nursery buildings, was instructed by a number of residents and objected on their behalf. Mr Ashall explicitly raised concerns about the figures supporting the Application:

"The entire application, its reports, appendices and conclusions as to the effects on traffic generated problems such as on street parking and noise to the adjoining and residential properties close to the site, are based upon the wholly unreasonable assumption that the percentage of parents walking their children to the proposed nursery will be 75% based upon figures extrapolated from a single other day nursery (Maria Grey Nursery, 18A Friars Stile Road, Richmond) which has only 36 child spaces (approximately 28% of the current scheme). However, the Maria Grey site is located in a Controlled Parking Zone, whereas the applicant proposes to allow the 127 parents and 25 staff to park in Oakleigh Road (as only 5 off-street parking spaces are shown on the plans). A small nursery with only 36 child spaces will clearly be able to generate a far higher percentage of its customers from the local area where walking is perhaps an option for parents. This is not an option at Oakleigh Road however due to its unsustainable location. Transport for London rates Oakleigh Road as PTAL rating '1a' – 'Very Poor' which effectively means that it is difficult to access by other modes of transport other than the private car."

7. When considering Mr Ashall's comments in the OR, the Officer simply states "This has been addressed above", presumably referring to earlier comments made that the Highways

printed. Because of this we have only been able to read the documents via an unhelpful online viewer, which makes it difficult to navigate and view the documents, prevents searching, printing, etc. This is highly unsatisfactory and prevents full consideration of the content of the documents.

Authority ("the HA") consider there to be adequate parking and that there is intended to be a reduced operational capacity and staggered visits to and from the site:

"The impact of the proposals on highways and parking has been assessed by the Council's Highways Authority...the Highways Authority is satisfied with the information submitted including the parking surveys that were undertaken which concluded that there is on street capacity to accommodate parking in street. Whilst it is appreciated that there will be a change in traffic flows in the surrounding areas, it should be taken into consideration that while the maximum capacity is being sought for 127 children, the applicants design and access statement at section 7.1 does state that the nursery target daily operational capacity will be approximately 100 children and 20 staff. It should also be noted that unlike a conventional school, the drop off and pickups would be at different stages during the morning and afternoon/early evening and as such the intensity of the use associated with traffic would be more dispersed." (para 4.6)

8. Firstly, as noted in the OR, the Highways Authority gave its view about the impacts of the scheme based on "a prediction of an additional 33 AM and 34 PM two-way trips". In other words, the Highway Authority took as given the Applicant's faulty assumption that the vast majority of trips would be on foot. It is on that basis that the HA decided there was adequate parking capacity and that a number of road junctions would not be affected. As discussed above, these estimations seem implausible given the maximum capacity of the nursery and the accessibility of the site to other forms of transport other than car. The HA also specifically required that a "good full travel plan with ambitious but realistic targets and robust measures will be required in order to minimise the impact on residents". The current Travel Plan (the implementation of which is recommended in Appendix 1 as Condition 3 of the consent) fails to provide realistic targets for travel and robust measures for achieving those targets.
9. Secondly, and separately, reliance is placed on the site operating at a 'target daily operational capacity' well below the figure for maximum capacity which the Applicant applies for (100 children and 20 staff versus 127 children and 25 staff). However, it is a clear error for reliance to be placed on this bare assertion from the Applicant when there is no guarantee it will be met, particularly as there is no condition proposed to limit the use of the site to that number of children. It would be improper to grant the Application on the assumption that the nursery will operate according to the Applicant's target capacity and have a reduced impact on traffic as a result, as is suggested by the Officer. The OR therefore fails to properly consider the actual likely traffic levels and impacts and the assessment of these impacts has not been undertaken in accordance with the requirements of the General Permitted Development Order.

Noise

10. The faulty assumption about traffic generation also infects the assessment of noise impacts because the noise assessment is based on a similarly limited and unrealistic number of vehicles making journeys to and from the site. Additionally, it fails to consider noise arising from the use of other means of transport to and from the site. As such the noise report fails to provide a proper basis for determining noise impacts and does not meet the requirement under para W sub-para (9) of the GDPO 2015 to provide an assessment of impacts.
11. The noise report assesses the noise impact from vehicles on the basis of 30 arrivals and departures with 40 door slams over a period of one hour from the nursery's 'drop off point' (page 12). This is stated to be a "worst-case scenario". Given that the maximum capacity of the nursery sought is for 127 children, it would appear to be inherently implausible that journeys to and from the site by car will be less than a quarter in number.
12. Furthermore the impacts of these journeys are said to be intended to be controlled by the use of a warden supervising the drop-off and pick-up zone and taking the children to and from the cars so as to encourage parents to stay in their vehicles and thereby "minimise door slams"

(Page 16). Vehicles are said to be expected to have to turn off their engines on arrival and 'minimal talking' and socialising is expected between parents because of the use of a warden. It is not clear how such measures will be enforced to ensure that the noise levels are not exceeded and it does not seem credible to suggest that a warden will always be available for transporting each child to and from the vehicles.

13. Additionally, there is no mention in the report of noise impacts arising from drop off and collection of children from the 75% of trips that will supposedly be arriving on foot/cycle/scooter. Emphasis is placed on how talking and socialising of parents arriving in vehicles will be minimised. However, surely those arriving on foot are more likely to cluster near the nursery entrance and socialise, generating noise. If the numbers presented by the Applicant are to be believed then this could amount to a considerable level of noise. If the numbers presented by the Applicant are implausible, as we say they are, then there will be considerably more noise generated by vehicles. In either scenario, the present assessment falls short.

Faulty Advice to Residents

14. We have had sight of a letter sent by the Council to one of the residents (sent in response to her objection to the Application) which provides advice which is both misleading and contrary to law (see Appendix 1). The letter states that "if you are not an owner or occupier of an adjoining property the Council is not empowered to assess the impact of the proposed development on the amenity of your property" (emphasis added). This is obviously erroneous. Noise and other amenity impacts (e.g. due to traffic) are clearly relevant to the Council's prior approval powers under Class T. The General Permitted Development Order, Schedule 2, Part 3, paras W (8) & (10) (a) require the planning authority to take into account any representations made to them as a result of any site notice relating to the proposal. We are concerned that distributing such misleading information might have misled residents by essentially telling them that their views are irrelevant thereby leading them to refrain from making further or more detailed submissions of objection.

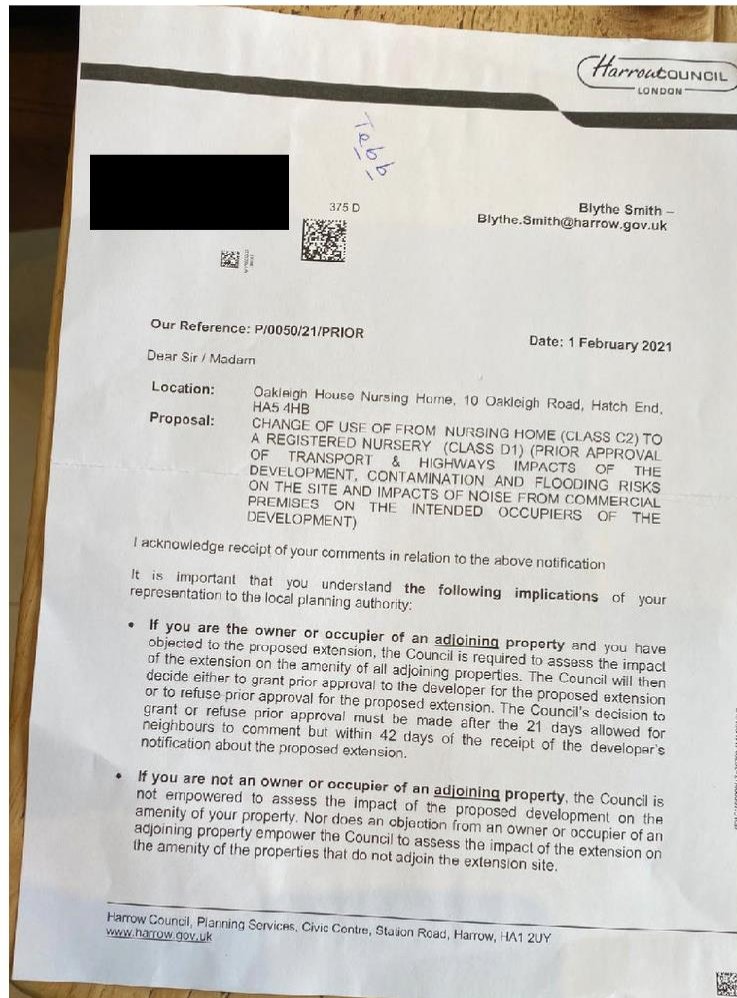
What steps the Council is requested to take

For the reasons outlined above we consider that the Council should refuse the Prior Approval Application.

Yours faithfully


Richard Buxton Solicitors
Environmental, Planning & Public Law

Appendix 1



AGENDA ITEM 10 – REPRESENTATIONS ON PLANNING APPLICATIONS

Agenda Item	Application Address	Speakers
2/01	Cornwall Court, Cornwall Road, Pinner, Ha5 4lr, P/4252/20/Prior	Cllr John Hinkley (Back Bench) Cllr Jean Lammiman (Back Bench)
2/02	Oakleigh House, P/0050/21/Prior	David Glassman (Objector) Sati Panesar (Agent for Applicant) Cllr John Hinkley (Back Bench) Cllr Jean Lammiman (Back Bench)

