

# **Planning Committee Meeting Addendum and Declaration of Interest Form**

**Date:                      Wednesday 17 February 2021**

## **PLANNING COMMITTEE MEETING**

**17 FEBRUARY 2021 – 6:30PM**

The following Interests are to be taken as read at the meeting:

### **A. DECLARATIONS OF INTERESTS MADE BY MEMBERS OF THE COMMITTEE**

<b>MEMBER</b>	<b>AGENDA ITEM</b>	<b>PECUNIARY &amp; NON- PECUNIARY INTERESTS</b>	<b>NATURE OF INTEREST</b>
<b>Councillor Ghazanfar Ali (Vice-Chair in the Chair)</b>	<b>All</b>	<b>None</b>	<b>N/A</b>
<b>Councillor Christine Robson</b>	<b>All</b>	<b>None</b>	<b>N/A</b>
<b>Councillor Ajay Maru</b>	<b>All</b>	<b>None</b>	<b>N/A</b>
<b>Councillor Simon Brown</b>	<b>All</b>	<b>None</b>	<b>N/A</b>
<b>Councillor Marilyn Ashton</b>	<b>All</b>	<b>None</b>	<b>N/A</b>
<b>Councillor Anjana Patel</b>	<b>All</b>	<b>None</b>	<b>N/A</b>
<b>Councillor Christopher Baxter</b>	<b>All</b>	<b>None</b>	<b>N/A</b>

**B. DECLARATIONS OF INTERESTS MADE BY MEMBERS INVITED TO THE MEETING**

<b>MEMBER</b>	<b>AGENDA ITEM</b>	<b>PECUNIARY &amp; NON- PECUNIARY INTERESTS</b>	<b>NATURE OF INTEREST</b>

## HARROW COUNCIL

### ADDENDUM

### PLANNING COMMITTEE

DATE: 17<sup>th</sup> February 2021

2/02	<p><b><u>Addendum Item 1:</u></b></p> <p><b>Relevant Planning History – Section 3 of report (page 115-116)</b></p> <p><b>Add</b> P/510/93/FUL – Alterations, Two Storey Rear Extension and Change of use to Nursing Home – Granted 20/12/93</p> <p><b><u>Addendum Item 2:</u></b></p> <p><b>Consultation Responses Update – Section 4 of the report (pages 33-70).</b></p> <p>Since the agenda was published, a further 75 objections have been received:</p> <p><b>Summary of additional Comments:</b></p> <ul style="list-style-type: none"> <li>• The educational case for the nursery is unproven. The application claims that there is an unsatisfied demand for nursery places in the local Harrow area. However, the applicants have not provided any data or analysis to support their assertion, such that existing local nurseries are full. In fact, our understanding is that there are plenty of places available in existing nurseries in the area.</li> <li>• The traffic will generate noise as will five groups of 28 children using the garden from 9am-5pm. The noise report does not sufficiently cover traffic noise. The acoustic fence will be insufficient.</li> <li>• The applicant has only analysed the best case for traffic movements. The transport report was done in a period of dry, warm weather before the pandemic with increased use of private transport. Winter will be different.</li> <li>• The applicant has significantly over-estimated the number of families that will walk and then go to work.</li> <li>• The applicant has provided NO information about the effect of traffic and parking on surrounding streets including Rowlands Avenue, Cedar Drive, Royston Grove, Royston Park Road, the Avenue etc.</li> <li>• It seems that there is Asbestos in the building. There is NO detailed contamination report.</li> <li>• There are bats in the neighbourhood. A bat survey is required.</li> <li>• The junctions into and out of the Avenue onto the Uxbridge Road and Royston Park Road onto the Oxhey Lane are insufficient for additional traffic. Congestion is significant on Rowlands Avenue and Cedar Drive.</li> <li>• Station parking affects the lower end of the Avenue, Cedar Drive and Royston</li> </ul>
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Grove as a result of the CPZ, more parking will be required for staff at the new 78 bed care home at the end of Oakleigh Road.

Further comment from Raymond Ashall for The Oakleigh Road Appeal Funder Group:

*"I can now see that a copy of the planning application ref no: EAST/510/93/FUL decision notice (without the approved plans 211/01 & 211/02A) was attached as an addendum (although it would have been useful if this had been provided to me direct before now).*

*The title of the planning application is listed as;*

*"Alterations, two storey rear extension and change of use to nursing home with car parking".*

*However, having now examined this document, I would reiterate my previous opinion that Class T criteria cannot be used in this case because of the stated planning condition number 6 which states;*

#### CONDITION 6

*"Notwithstanding the submitted plan, the use hereby permitted shall not commence until the car parking, turning and loading area(s) have been constructed and surfaced with impervious materials, and drained in accordance with details submitted to, and approved in writing by, the local planning authority. The car parking spaces shall be permanently marked out and used for no other purpose, at any time, without the written permission of the local planning authority".*

#### REASON

*"To ensure the satisfactory provision of parking areas, to safeguard the appearance of the locality and in the interests of highway safety".*

*At no time, has 'written permission' in the form of a Section 73 variation of condition application or a planning application for change of use been sought in writing. Indeed, the car-parking spaces would have to be 'identical to the ones shown on any approved plans'.*

*It is therefore considered that because it states, "The car parking spaces shall be permanently marked out and used for no other purpose, at any time, without the written permission of the local planning authority" this relevant lawful planning condition no. 6 restricts the use of the site to a nursing home as shown on approved plans 211/01 & 211/02A and Class T criteria cannot be used in this case.*

*The correct way forward would therefore be for the applicant to submit a formal planning application for a registered day nursery use because Class T legislation cannot 'override' any previous approval or formally amend the lawful planning conditions attached thereto.*

*In summary, planning condition no 6. of planning reference number EAST/510/93/FUL prevents determination under Class T criteria."*

Legal Advice sought by officers on the above comments states:

The case law on this, as stated in the Dunoon case and subsequent cases, is that for a condition to remove permitted development rights under the GPDO, it has to specifically refer to that fact. Condition 6 does not do that. It merely specifies the condition subject to which the previous permission could be exercised or circumscribed the ambit of the previous use. To remove permitted development rights the previous permission should have included a condition that specifically stated that it could not be used for any other purpose authorised under any provision/s of the GPDO”.

**Addendum Item 3:**

**Amend Condition 5:**

REASON: To comply with Class T.2 (b)(ii) of the General Permitted Development Order 2015 (as amended)

**Addendum Item 4:**

**ADD Condition 9:**

The external space shall not be used for play or learning outside the following times: -  
a: 09.00 hours to 17.00 hours, Monday to Friday inclusive, including Bank Holidays without the prior written permission of the local planning authority.

REASON: To comply with Class T.2 (b)(ii) of the General Permitted Development Order 2015 (as amended)

**Addendum Item 5:**

Add Appendix 7 – APPLICANTS STATEMENT IN REPLY TO Oakleigh Road Funders Group Formal Objection

Our Ref: DHA/M/ORHE/LBH 120221  
Your Ref: P/0050/21/PRIOR



12 February 2021

Ms C Cooke  
Senior Planning Officer (West Team)  
Communities Directorate  
London Borough of Harrow  
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Dear Ms Cooke

**OAKLEIGH HOUSE NURSING HOME,  
10 OAKLEIGH ROAD, HATCH END, MIDDLESEX, HA5 4HB**

I refer to your email dated 10 February 2021, wherein you attached a copy of a letter of objection prepared by Ashall Town Planning on behalf of 'The Oakleigh Road Appeal Funders Group' and have asked me to review this and provide a response in your preparation for the Planning Committee meeting on 17 February 2021.

**Introduction**

Whilst there is no mandatory or legal requirement for the applicant to respond to any letters of objection as part of any planning application process, in this instance, given the tone and content of the letter of objection that has been submitted, and indeed the volume of local opinion against the proposal that has been expressed, and in the spirit of co-operation, I have heeded to your request.

**Validity of the Prior Approval Application**

The submitted Prior Approval is a properly and professionally constructed application and perfectly valid in terms of its scope, form and content. This particular application has been prepared and submitted under my direction, and it is the first application that has had the involvement of a Chartered Town Planner to lead it, and supported by Chartered Architects, Chartered Transport Consultants and Suitably Qualified and Accredited Acoustic Consultants. I am fully aware of the planning history of the site and the various applications that have gone on before, but that is largely irrelevant, because each application has to be considered on its individual planning merits.

Notwithstanding the above, the submitted Prior Approval application is materially different to the one or ones that were considered previously by the Council, two of which were withdrawn. This is borne out by the description of the proposed development and indeed the omission of various previous elements regarding the nature of the proposed use, the removal of a tree, changes to the hardstanding area and some external changes to the existing building.

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In light of the above, I would refute the allegations made in the objection about the validity of the proposed Prior Approval application, and this is borne out by the fact that the decision-making authority in its consideration of the same have also come to the same view. The objector's stance is a mere desperate attempt to try and frustrate the planning application process, but his submissions lack any legal substance.

The objector has also made a veiled threat of a judicial review of any decision, which is aimed at both the Council and the applicant. Such threats are not necessary, and nor are they welcome, but regardless, such a matter would first require the 'leave' of the Court before it could proceed to a judicial review, and given that due and proper process has been followed, there is no basis for such a review. Regardless, this is a matter for the Judge, and I am sure that both the Council and the applicant would defend any such claim, should it be forthcoming.

#### **Nature of the Proposed Use**

The objector has made much about the proposed use, but the description of the proposed development could not be much clearer, which states that the proposal is for the change of use of the existing land and buildings at the application site, which was previously used as a nursing home (Class C2) to a registered children's day nursery (Class D1); now also known as Class E(f) under the amended Use Classes Order. There is no reference in this description about mix-use or ancillary uses. Hence, the scope and content of the nature of the proposed use is absolutely clear.

Indeed, there is one erroneous reference to a 'mixed-use' in the Travel Plan document, but when this is considered in the context of the whole Prior Approval application submission, this amounts to nothing more than being *de minimis*. The objector has placed far too much emphasis on this, which in legal terms, is the incorrect approach and test. However, this reference can be removed by updating and re-submitting the said document, if deemed necessary.

Notwithstanding the above, any use of any land or buildings is controlled by the description of the proposed use or development and any planning conditions that are attached thereto. This provides the Council with sufficient planning control over the future use of any land and buildings, and should a breach occur, the Council would have sufficient powers to enforce. Indeed, it is widely accepted in planning law and practice, that primary uses can have some ancillary use(s) and activities associated with it, and provided that those ancillary use(s) cannot function on their own, namely that they will only work with the primary use in existence, then they will be deemed ancillary and acceptable within the scope of any planning permission, unless any particular use is specifically excluded by planning condition.

In light of the above, the proposed use as a registered children's day nursery (Class D1) and also referred to as Class E(f) under the amended Use Classes Order, could not be any clearer to anyone inspecting the Prior Approval application. There is no mixed or dual use involved.

#### **The Assessment of Impacts**

Turning to the intensity of the use of the land and buildings, this in itself is not within the scope of the Prior Approval process under Class T. However, the transport and highways impacts and noise impacts arising from the proposed use are indeed material planning considerations, which have to be taken into account, and these are specifically identified within the assessment criteria.



The applicant in respect of the two above-mentioned impacts have gone to great trouble and effort to first review the stance adopted by the Council's competent professionals, namely the Highways Officer and Environmental Health Officer, and to then agree the scope and content of both the previous and additional surveys required. This has been undertaken by the applicant's appointed Transport Consultant and Acoustic Consultant, who are the appropriate experts in their respective fields. They have followed the relevant standards applicable to their area of expertise, which is also in the context of both local, regional and national planning policies contained within the Core Strategy, Development Management Plan, London Plan and the National Planning Policy Framework and National Planning Guidance.

The comprehensive submissions, which have been submitted, have been thoroughly scrutinised by the Council's Highways Officer and Environmental Health Officer, both of whom have applauded the comprehensiveness and acceptability of the methodology, surveys, assessment, conclusions and recommendations. In addition, even Transport for London have responded favourably, who are often very difficult to satisfy. The point of substance here is that these submissions have been extensively scrutinised by the relevant statutory consultees and found to be in order. Hence, there is no basis to refute them. To this end, the views of the objector alone cannot be substantiated unless those views can be supported by robust evidence from an independent Transport Consultant and Acoustic Consultant, to prove that the applicant's submissions are technically flawed. No such evidence has been submitted, other than the opinion of a Planning Consultant.

I did refer the objection to the applicant's Transport Consultant and Acoustic Consultant, and they have respectively reviewed the same and respectively commented as follows.

#### **The Assessment of Transport and Highways**

A comprehensive Transport Statement and Travel Plan have been prepared in accordance with relevant national, regional, and local planning policies and best practice guidance, which includes the following:

The Ministry of Housing, Communities & Local Government's National Planning Policy Framework (NPPF).

The National Planning Practice Guidance on 'Travel Plans, Transport Assessments and Statements in Decision Making'.

The London Plan - Intend to Publish.

The London Borough of Harrow's 'Core Strategy' and 'Development Management Policies' document.

The Department for Transport's 'Manual for Streets' publication (March 2007).

The London Borough of Harrow's 'Active Harrow – Harrow Physical Activity and Sports Strategy' and the 'Harrow Health and Wellbeing Strategy 2016-2020' publications.

The preparation of the Transport Statement and Travel Plan have been prepared in conjunction with the London Borough of Harrow's Highways Officer, most notably with regards to the scope / timings of parking 'stress' surveys, methodology for establishing the multi-modal trip generation and associated impact of the change of use development proposals on the local highway and transport networks.

It has been demonstrated that the implementation of a robust Travel Plan containing a raft of measures and realistic targets will minimise the impact of the change of use development

proposal on the local highway and transport networks. As acknowledged by the London Borough of Harrow's Highways Officer, it is concluded that the change of use development proposal is unlikely to result in a severe or harmful impact on the surrounding local highway network.

#### **The Assessment of Noise**

A comprehensive noise impact assessment has been undertaken in accordance with the guidance of relevant standards including the following:

British Standard 4142: 2014 + A1: 2019 'Methods for rating and assessing industrial and commercial sound'.

British Standard 8233: 2014 'Guidance on sound insulation and noise reduction for buildings'.

Design Manual for Roads and Bridges.

We have also incorporated consideration of comments and requests made by the Environmental Health Officer in our assessment. The assessment considers noise from all proposed internal and external activities and associated impacts. It has been demonstrated that through the implementation of robust noise mitigation strategies and a noise management plan, noise can be reduced to a level that is in accordance with recommended criteria and good practice.

#### **The Assessment of Contamination**

Turning to the final criteria of Class T with regard to contamination, it is clear from the Regulations and indeed the consideration of many Prior Approval applications by various Councils and Inspectors at appeal, that in this regard, the contamination is concerned with the land or the ground.

Given the current authorised use of the site as a care home, and the fact that the site and the surrounding area is not identified as an area of risk of land contamination, or identified on any contamination maps, which the Council's Contamination Officer has actually verified, there is no requirement to submit any evidence on this ground, as the facts speak for themselves.

As for asbestos within buildings, this is a Building Regulations and Health and Safety Executive matter, which during the course of any construction process, the applicant or his contractors will need to deal with. This item does not fall within the scope of Class T, as is being alleged by the objector.

#### **Conclusion**

In conclusion on the objection that has been referred for the applicant to review, we are fully aware that the local residents are very strongly opposed to the proposed development, and that is why they have gone to the effort of employing a Planning Consultant to represent them. However, the Prior Approval process is a streamlined process of decision-making, which has been introduced by the Government, and whilst the local residents may not like the outcomes that it might produce, the applicant is following the correct protocol.

I am also aware that there will be significant pressure from local residents on the Local Ward Councillors and other Members of the Planning Committee to reject the proposed development, but I would like to place on record the fact that in light of the comprehensive

and conclusive evidence that has been submitted to and agreed with the Council, particularly in light of the transport and highways and noise impacts, the Council would be on very dangerous ground in an appeal situation, if the Prior Approval were refused, because it will be evident to the Inspector that Members allowed for political motives to overrule sound technical and objective evidence.

We appreciate that Members of the Planning Committee are not bound by their Officer recommendations, but Paragraph 030 of the Appeals section of the National Planning Policy Guidance (NPPG) does advise that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. I sincerely hope that this factor will also be taken into consideration by the Planning Committee when they are arriving at their resolution.

I trust that my comments set out above in response to the objection will assist in your preparations for the Planning Committee, and I have already confirmed my interest to speak at the meeting, which is scheduled for 17 February 2021 at 6.30pm.

Yours sincerely



**Sati Panesar**  
DHA PLANNING & DEVELOPMENT  
[spanesar@dhaplandev.co.uk](mailto:spanesar@dhaplandev.co.uk)

cc: Oakleigh Road Childcare Limited

**AGENDA ITEM 10 – REPRESENTATIONS ON PLANNING APPLICATIONS**

<b>Agenda Item</b>	<b>Application Address</b>	<b>Speakers</b>
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)