



**45/2022/0226**

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Site from Dyserth Road, Grosvenor Road Junction



**WARD :** Rhyl South West

**WARD MEMBER(S):** Cllr Diane King  
Cllr Pete Prendergast (c)

**APPLICATION NO:** 45/2022/0226/ PS

**PROPOSAL:** Variation of Condition 2 of planning permission 45/2010/0171/PF to read no more than 43 children shall be accommodated at the Children's day nursery at any one time

**LOCATION:** Early Learners Day Nursery 13 Dyserth Road Rhyl LL184DW

**APPLICANT:** Ms Rachel Wood Early Learners Day Nursery

**CONSTRAINTS:** Article 4 Direction

**PUBLICITY UNDERTAKEN:** Site Notice - Yes  
Press Notice - No  
Neighbour letters - Yes

**REASON(S) APPLICATION REPORTED TO COMMITTEE:**  
**Scheme of Delegation Part 2**

- Recommendation to grant – Town / Community Council objection

**CONSULTATION RESPONSES:**

**RHYL TOWN COUNCIL**

"Object on the grounds of Highway safety which continues to be an issue with the existing numbers of children attending".

**DENBIGHSHIRE COUNTY COUNCIL CONSULTEES –**

Traffic, Parking and Road Safety:

- Highways Officer

No objection to increase in numbers from 26 to 43.

**RESPONSE TO PUBLICITY:**

No representations received.

**EXPIRY DATE OF APPLICATION: 20/07/2022**

**EXTENSION OF TIME AGREED? N/A**

**REASONS FOR DELAY IN DECISION (where applicable):**

- awaiting consideration by Committee

**PLANNING ASSESSMENT:**

**1. THE PROPOSAL:**

**1.1 Summary of proposals**

1.1.1 The application proposes the variation of condition no. 2 of planning permission 45/2010/0171/PF to read:

"No more than 43 children shall be accommodated at the Children's day nursery at any one time".

1.1.2 The original planning condition on the 2010 permission stated:

"No more than 26 children shall be accommodated at the children's day nursery at any one time." The reason was: "In the interests of highway safety."

1.1.3 There are no physical alterations proposed as part of the application. It solely relates to the condition controlling the number of children who attend the site. It is proposed to increase the planning controlled occupancy level to correspond with the Care Standards Inspectorate for Wales (CSIW) licence. The licence would allow for 43 children to be cared for on the site.

## 1.2 Other relevant information/supporting documents in the application

1.2.1 The Application is supported by a justifications statement. Within this the Agent has advised that the increase is sought confirmed that the CSIW licence The statement sets out how the site is currently managed and the level of occupation and habits in relation to travel and pick-up/drop off times.

### 1.1 Description of site and surroundings

1.1.1 The nursery is a detached property located at the junction of Dyserth Road and Grosvenor Road in Rhyl.

1.1.2 There is one parking space on the site which is utilised by a vehicle associated with the use, rather than parking for visitors.  
See Snip of site location plan\* and google maps image (not to scale)



### 1.2 Relevant planning constraints/considerations

1.2.1 The site is located within the development boundary of Rhyl. There are no specific use designations for this area in the plan.

### 1.3 Relevant planning history

1.3.1 The property has the benefit of planning permission for use as a children's nursery dating back to the 1980's, with the current owner operating the site since the mid 2000's.

1.3.2 The planning condition restricting the number of children on site to 26 was imposed in 2010 when the use of the upper floor was incorporated into the nursery.

1.3.3 Prior to this an application was made to increase the numbers to 41 in 2008, however this was refused on ground of highway safety.

### 1.4 Developments/changes since the original submission

1.4.1 After an initial review of the application, Officers sought clarification in relation to the number of children proposed to attend the site. Following discussions with the Agent and Applicant it was agreed that the intention of the application was to increase the numbers to meet those of the License. Hence the description was altered to reflect this more precisely.

### 1.7 Other relevant background information

1.7.1 None.

## **2. DETAILS OF PLANNING HISTORY:**

- 2.1 45/2010/0171 Change of use of first floor living accommodation to form extension to existing ground-floor day nursery. Granted 23/06/2010  
Condition No. 2: No more than 26 children shall be accommodated at the children's day nursery at any one time. Reason: In the interests of highway safety.
- 2.2 45/2008/0985/ PF Change of use of first floor to day nursery to allow increase in child numbers from 26 to 41 Refused 13/11/2008 for the following reason:  
"It is the opinion of the Local Planning Authority that the proposal does not make adequate provision for the parking of vehicles within the site and would give rise to a proliferation of parking on the highway, in close proximity to a junction. If permitted the proposal would result in an interference with the free flow of traffic, endangering all road users, contrary to criterion vii) of policy Gen 6 of the Unitary Development Plan."
- 2.3 45/2008/0221 Variation of Condition No. 3 on planning permission Ref. No. 45/2007/1350/PF to allow hours of operation to read 0730-1900 hours Mondays to Fridays. Granted 23/05/2008
- 2.4 45/2007/1350 Increase in number of children from 20 to 26 at day nursery. Granted 23/01/2008

### 3. RELEVANT POLICIES AND GUIDANCE:

The main planning policies and guidance are considered to be:

#### Local Policy/Guidance

Denbighshire Local Development Plan (adopted 4<sup>th</sup> June 2013)

**Policy RD1** – Sustainable development and good standard design

**Policy ASA** -

#### Government Policy / Guidance

Planning Policy Wales (Edition 11) February 2021

Development Control Manual November 2016

Future Wales – The National Plan 2040

Technical Advice Notes

TAN 18 Transport (2007)

### 4. MAIN PLANNING CONSIDERATIONS:

In terms of general guidance on matters relevant to the consideration of a planning application, Section 9.1.2 of the Development Management Manual (DMM) confirms the requirement that planning applications 'must be determined in accordance with the approved or adopted development plan for the area, unless material considerations indicate otherwise'. It advises that material considerations must be relevant to the regulation of the development and use of land in the public interest, and fairly and reasonably relate to the development concerned.

The DMM further states that material considerations can include the number, size, layout, design and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment (Section 9.4).

The DMM has to be considered in conjunction with Planning Policy Wales, Edition 11 (February 2021) and other relevant legislation.

Denbighshire County Council declared a climate change and ecological emergency in July 2019. In October 2020 the Council approved an amendment of its Constitution so that all decisions of the Council now have regard to tackling climate and ecological change as well as having regard to the sustainable development principles and the well-being of future generations.

The Council aims to become a Net Carbon Zero Council and an Ecologically Positive Council by 31 March 2030. Its goal and priorities are set out in its Climate and Ecological Change Strategy 2021/22 to 2029/30. The actions, projects and priorities in the Strategy directly relate to council

owned and controlled assets and services. One priority of the Strategy is to promote the existing policies within the Local Development Plan (LDP) 2006 to 2021 and Supplementary Planning Guidance (SPG) which contribute to environmentally responsible development. In preparing these reports to determine planning applications we therefore highlight the LDP 2006 to 2021 and appropriate SPG. Applications that are determined in accordance with the LDP 2006 to 2021 are environmentally responsible developments.

Planning applications are assessed in accordance with statutory requirements including The Environment (Wales) Act 2016, national policy (Future Wales, PPW 11) and local policy (LDP 2006 to 2021) and therefore they are assessed with regard to tackling climate and ecological change which is a material consideration.

The following paragraphs in Section 4 of the report therefore refer to all statutory requirements, policies and material planning considerations which are considered to be of relevance to the proposal.

4.1 The main land use planning issues in relation to the application are considered to be:

- 4.1.1 Principle
- 4.1.2 Residential amenity
- 4.1.3 Highways (including access and parking)

4.2 In relation to the main planning considerations:

4.2.1 Principle

The application is made under Section 73 of the Town and County planning Act 1990 (the 1990 Act).

Section 73 allows applications to be made for planning permission without complying with conditions previously imposed on an extant planning permission. Where a Section 73 application is granted, its effect is to grant a new planning permission.

Section 73 applications can be broadly separated into three different application types, based on their intended purpose. These are to:

- extend the time limit of an existing permission (commonly referred to as a 'renewal' application)
- allow 'minor material amendments' to planning permissions
- allow the variation or removal of any other condition attached to a planning permission.

This application is for the latter, to vary the wording of a planning condition attached to the original consent.

The principle of a nursery in this location is already well established and dates back to the 1980's. The Agent has confirmed that the site is licensed by CSIW for up to 43 children, therefore in terms of welfare and space standards the proposal is acceptable. Consequently the main issue for consideration is the potential impact on the amenity of the area and highway safety issues. The detailed impacts are explored further below.

4.2.2 Residential amenity

Local Development Plan Policy RD 1 test (i) requires due regard to issues of siting, layout, form, character, design, materials, aspect, microclimate and intensity of use of land / buildings and spaces between buildings, which touch on the potential for impact on residential amenity; and test (vi) sets the requirement to assess the impact of development on the amenities of local residents, other land and property users, or characteristics of the locality, in terms of increased activity, disturbance, noise, dust, fumes, litter, drainage, light pollution, etc. and that it provides a satisfactory amenity standards itself.



No objections have been received from residents concerning the increase in numbers of children attending the nursery.

This is a well-established nursery use on the approach to the town centre. The area immediately surrounding the site is residential with some retail/commercial uses to the north at an area known as Parry's Corner. The use is a daytime use that is operational from 07.30 to 17.30. CSIW have assessed the space standards inside and out, and the Agent confirms that the property would be licensable for 43 children.

Having regard to the existing use and factors mentioned above, Officer conclude the proposal would not adversely impact on residential amenity of neighbours and the proposal would provide a satisfactory standard of amenity itself.

#### 4.2.3 Highways (including access and parking)

Local Development Plan Policy RD 1 supports development proposals subject to meeting tests (vii) and (viii) which oblige provision of safe and convenient access for a range of users, together with adequate parking, services and manoeuvring space; and require consideration of the impact of development on the local highway network. Policy ASA3 requires provision of appropriate parking spaces with development proposals, having regard to the nature of the locality, access to public transport or alternative means of transport, and availability of parking in the area. These policies reflect general principles set out in Planning Policy Wales.

There is an objection to the proposal on 'highway safety' grounds from the Town Council. The precise nature of the safety concern is not stated, however Officers consider the concerns relate to the generation of additional traffic, on street parking (as there is no on-site parking) and associated danger on surrounding roads with drop off/ pick-ups.

The Agent has noted the existing number of children and referred to the fact there are family groups/siblings attending the nursery; a proportion of the families and staff walk also to work, and the main drop off/pick up times are outside of peak school traffic time.

Highway Officers have previously raised concerns over increasing the numbers and indeed this was the reason for resisting the increase in 2010. However 12 years have passed to allow further consideration of the increase and a review of the current operation.

In this respect the Highways Officer have reconsidered their objections and advised; "in the period from 2008 to date the Local Authority is not aware of any highway related issues arising at this location, in particular to the operation of the nursery. There has been one recorded accident at this location in the last five years, however, the time of this does not relate to the nursery opening and closing times."

The Highways Officer has advised that; "on-street parking for drop-offs and pick-ups are staggered throughout the morning and afternoon on Grosvenor Road, this has always been the arrangement. There is no off-street parking on site and users park on Grosvenor Avenue where there are no parking restrictions in force where the Authority has no control of vehicles parking on the streets."

The Highway Officer notes "the increase of 17 proposed would not arrive and pick up children at the same time and the available on-street parking could manage this increase".

The Highways Officer also confirmed they undertook a site visit and do not dispute the information put forward by the Agent in terms of staff and children walking to the site and the existence of parking conflicts in the area.

The Highways Officer concludes that there is no clear evidence to suggest any significant highway safety issues arising and therefore to defend a refusal on highway safety grounds would be difficult in an appeal.

The planning issue to address in relation to the application is whether the additional number of children attending the nursery would lead to unacceptable impact on the local highway network and whether the development provides safe and convenient access. The site is located within a residential area and staff and attending families have been observed walking to the site. Whilst there is no on-site parking there is unrestricted on street parking in the area. Operating hours are spread out. As the technical consultee the Highways Officer takes the view that the proposal would not cause any significant parking/traffic problems, as such Officers do not consider these are reasonable grounds to oppose the application.

#### Other matters

##### Well – being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015 imposes a duty on the Council not only to carry out sustainable development, but also to take reasonable steps in exercising its functions to meet its sustainable development (or well-being) objectives. The Act sets a requirement to demonstrate in relation to each application determined, how the development complies with the Act.

The report on this application has taken into account the requirements of Section 3 'Well-being duties on public bodies' and Section 5 'The Sustainable Development Principles' of the Well-being of Future Generations (Wales) Act 2015. The recommendation is made in accordance with the Act's sustainable development principle through its contribution towards Welsh Governments well-being objective of supporting safe, cohesive and resilient communities. It is therefore considered that there would be no significant or unacceptable impact upon the achievement of well-being objectives as a result of the proposed recommendation.

## **5. SUMMARY AND CONCLUSIONS:**

5.1 It is the opinion of Officers that the variation of condition is considered acceptable and is recommended for grant.

**RECOMMENDATION: APPROVE-** subject to the following conditions:-

1. No more than 43 children shall be accommodated at the Children's day nursery at any one time.

The reason for the condition is:-

1. In the interests of highway safety.