

Appendix 2

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T/APP/G3110/A/96/267013/P7

Date: 12 FEB 1997

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY MISS L CHENERY
APPLICATION NO: 95/00761/VTH

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the decision of the Oxford City Council to refuse planning permission on an application to vary Condition No 2 to planning permission 94/00331/VFH to increase the number of children from 15 to 24 maximum at The Nursery, 17 Lathbury Road, Oxford. I held a local inquiry into the appeal on 8 and 9 January 1997. At the inquiry, an application was made by Miss Chenery for an award of costs against the Oxford City Council. This is the subject of a separate letter.

2. The planning application also sought to vary Condition No 3 to the planning permission which only permitted the use to operate for a temporary period. The Council issued a split decision whereby this element of the proposal was granted. I shall therefore only consider Condition No 2 which states:

"this permission is personal to Mrs L Gerrard for the use as day nursery as set out in the applicant's supporting statement dated December, 1991 and shall care for a maximum of 15 children".

The reason for the condition is:

"the Local Planning Authority is only prepared to grant permission for a nursery on the basis proposed by the applicant, in order to limit the impact of the use on the surrounding area".

3. From the representations made at the inquiry and in writing and from my visit to the site and the surrounding area, I consider that the main issue is whether the increase in the number of children proposed would cause undue noise or disturbance to adjoining residential occupiers.



4. The development plan is the Oxfordshire County Structure Plan Alteration No 4 which was approved in 1992. I was not, however, directed to any of its policies which might be of relevance to this appeal. The Oxford Local Plan Review has reached deposit stage and adoption is anticipated later in 1997. The parties agreed that the two most relevant policies in the emerging plan are Policy CS 13 and Policy EN 106. I understand that neither of these policies are likely to change prior to adoption of the Plan and so I shall afford them considerable weight in accordance with Paragraph 32 of Planning Policy Guidance Note 1 (PPG 1).

5. Policy CS 13 permits the partial loss of residential floorspace to childcare use, subject to a number of provisions including considerations of scale and the proximity and relationship to dwellings. Policy EN 106 states that development resulting in noise problems will normally only be permitted where appropriate remedial measures can be applied. These policies accord with the general principles of good neighbourliness expounded in PPG 1.

6. The appeal premises is a three storey, semi-detached property located within a residential street where I was told that a number of the houses have been converted to flats and student accommodation. The day nursery, which was established in 1992, is on the ground floor and there is a flat above which is occupied by your client. The other half of the pair, No 19, is a single family dwelling house and I consider that it is this property which is most affected by the activities at the nursery.

7. Objections were raised by the occupiers of No 19 to the transmission of noise inside the building. I was invited to listen to the nursery activities from within the living room which adjoins the party wall. I could hear very little sound coming from the nursery and in my judgement the existing situation could not be considered detrimental or intrusive. You have assessed the effects of an increase of 9 children by using extrapolation techniques. You said that the proposal would add a further 2 decibels and that Planning Policy Guidance Note 24 indicated that this would represent an imperceptible increase in sound level. Your findings were not challenged at the inquiry and in the circumstances I consider that there would not be an unacceptable increase in the level of noise transmitted between the two properties.

8. To the rear of the appeal premises is a small garden which is enclosed by a wooden fence between 1.8 and 2.0 metres in height. At the visit I saw that it contained a swing, a climbing frame and a trampoline. There is also a patio area which adjoins the back of the building on which there were a number of wheeled toys. The garden of No 19 adjoins to the west and is attractive, well tended, and clearly valued as an important amenity by its occupiers. In addition, I heard that in warmer weather the patio doors to the rear living room are frequently open. I was told that noise from such sources as children shouting or crying and the sound of wheeled toys on the hard surface of the nursery's patio materially reduced the enjoyment of these facilities.

9. It is important to bear in mind that the nursery is a permitted use which is part of the existing noise environment. The relevant issue therefore concerns the effect of a further 9 children on this present situation. There is no specific guidance which relates to the effect of noise emitted by children from gardens. The Council referred to BS 4142 but I did not find this particularly helpful as it is intended to assess the effects of noise from industrial development. Sound from children playing is altogether different and is, to some extent, an accepted element in a residential area. Your assessment was based on extrapolation techniques which assumed an average noise level and did not take account of the frequency

of peaks caused by individual noise events. Noise arising from children playing in a garden is often irregular in character and this can cause annoyance to people living nearby. Although the maximum noise level may not increase, I consider that there is likely to be a greater number of peaks with a further 9 children using the garden.

10. I was, however, told that the children only played in the garden for up to 45 minutes in the morning and a similar period during the afternoon and that these sessions were closely supervised by members of staff. The impact of the proposal would therefore be limited to a relatively short period during the day. In addition, the nursery is only open during the working day and is closed at weekends which are the times when residents may reasonably expect a quieter environment. Taking account of these circumstances, I am satisfied that noise from within the garden would not be unduly harmful to adjoining residential occupiers.

11. Concern has been expressed that the increase in the number of children would cause additional disturbance through traffic movements to and from the premises. You explained that arrival and departure times were staggered and that a number of children travelled by bicycle or on foot. This is a fairly busy, closely parked street which runs between two main roads leading into the centre of Oxford. There are also a number of educational establishments in the vicinity. I would therefore expect existing activity in the area to be fairly high. In the circumstances I do not consider that the additional level of traffic movements associated with the proposal would materially affect existing background noise levels.

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12. I conclude that the proposed increase in the number of children attending the day nursery would not cause undue noise and disturbance to adjoining residential occupiers. It hence accords with Policies CS 13 and EN 106 in the emerging Oxford Local Plan Review.

13. The site is within the North Oxford Victorian Suburb Conservation Area and I must therefore consider the proposal in terms of the desirability of preserving or enhancing its character or appearance as required by S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This part of the conservation area is characterised by fairly large, detached and semi-detached Victorian town houses set back from the road and with private garden areas to the rear. I have also noted that some houses are used as flats and student accommodation and that the day nursery is already an established part of the locality. I do not consider that the proposal would materially change the nature of the use and I am therefore satisfied that it would preserve the character of this Conservation Area.

14. I turn now to consider the matter of conditions. In view of my findings, I consider it reasonable to limit the number of children to a maximum of 24. The nursery has been run by your client since it opened. My conclusions are to some extent based on the way that she runs the operation and in this case I consider that the personal condition is warranted. I understand that your client has reverted back to her maiden name and I shall therefore vary the condition to cover these matters.

15. I have also considered the other conditions attached to the 1994 planning permission. The original application specified that the nursery would only open on weekdays and would close at 1630. I understand that in practice it closes an hour later. This corresponds with the normal working day and I shall therefore vary the condition to take this into account. The Council has suggested a further temporary planning permission. However, the nursery has been operating since 1992 and in view of my conclusions regarding the main issue, I do

not consider that it would be reasonable to apply a condition to this effect. The existing condition requiring the residential accommodation on the upper floors to be occupied by your client or a member of staff is reasonable as it is not a self contained unit. These provisions will therefore be restated.

16. The Council has proposed a condition to limit the noise emission to adjoining rooms at 19 Lathbury Road. I have found that internal noise is unlikely to be a material problem and I do not therefore consider that such a condition is necessary. I am also concerned about enforceability as the condition relies on noise readings taken from inside the adjoining private property and relates to a noise source which is by nature variable in its intensity. In the circumstances I do not consider that such a condition would meet the tests in Circular 11/95.

17. My conclusions rely in part on the limited use of the garden for childrens' play. I shall therefore impose a condition restricting the use of the garden to 90 minutes per day. The parties suggested that the number of children using the garden at any one time could be restricted to 15. In view of my findings I do not consider that such a limitation is either necessary or reasonable. In any event, as outside play takes place in the enclosed rear garden it would be very difficult to adequately enforce. I do not therefore consider that such a condition would comply with the requirements of Circular 11/95.

18. I have taken account of all other matters that have been raised at the inquiry and in writing, including the concerns of local people about highway safety. However, I have found nothing to outweigh the considerations that have led me to my decision.

19. For the above reasons and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for the variation of Condition No 2 of planning permission 94/00331/VFH to increase the number of children from 15 to 24 maximum at The Nursery, 17 Lathbury Road, Oxford in accordance with the application No 95/00761/VTH made on the 30 May 1995, subject to the following conditions:

1. the development hereby permitted shall be begun before the expiration of 5 years from the date of this letter;
2. this permission is personal to Miss L Chenery for the use as a day nursery and shall care for a maximum of 24 children;
3. the nursery shall only operate between the hours of 0800 and 1730, Monday to Friday;
4. the use of the garden by children attending the nursery shall be restricted to a maximum of 90 minutes each day;
5. the residential accommodation on the upper floors shall be occupied by the applicant or a member of staff working in the nursery.

20. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.