

Classification: OFFICIAL

CHILTERN DISTRICT COUNCIL

PLANNING COMMITTEE - 18th April 2019

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Latimer & Ley Hill

CH/2017/2353/FA

Ward: Ashley Green Latimer And
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Proposal: Change of use of The Swan Pub to use class D1 (Non-residential institutions - nursery).

Recommendation: Conditional Permission

The Swan Public House, Blackwell Hall Lane, Ley Hill, Buckinghamshire, HP5 1UT

Latimer & Ley Hill

CH/2018/0231/HB

Ward: Ashley Green Latimer And
Chenies

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Proposal: Internal alterations to facilitate change of use of The Swan Public House to use class D1 (Non-residential institutions - nursery).

Recommendation: Conditional consent

The Swan Public House, Blackwell Hall Lane, Ley Hill, Buckinghamshire, HP5 1UT

REPORT OF THE HEAD OF PLANNING & ECONOMIC DEVELOPMENT

Main List of Applications 18th April 2019

CH/2017/2353/FA

Case Officer: Vicki Burdett
Date Received: 21.12.2017
Parish: Latimer & Ley Hill

Decide by Date: 23.04.2019
Ward: Ashley Green Latimer And
Chenies

App Type: Full Application
Proposal: Change of use of The Swan Pub to use class D1 (Non-residential institutions -
nursery).
Location: The Swan Public House
Blackwell Hall Lane
Ley Hill
Buckinghamshire
HP5 1UT
Applicant: Ms Fiona Murray-Young

SITE CONSTRAINTS

Article 4 Direction
Adjacent to Unclassified Road
Area of Special Control of Advertisements
Adjacent Listed Buildings
Adjacent to Archaeological Notification Site
Archaeological site
Bovingdon Technical Radar Zone
Within Green Belt other than GB4 GB5
Listed Building
Within 500m of Site of Importance for Nature Conservation NC1
On/within 250m rubbish tip
GB settlement GB5,6,12,23,H7,13,19

CALL IN

Councillor Garth has requested that this application be determined by the Planning Committee regardless of the officers' recommendation.

SITE LOCATION

The application relates to The Swan Public House located in Blackwell Hall Lane, Ley Hill. The site lies within the open Green Belt and is Grade II listed (listed in 1984) dating from the 16th and 17th century. The building has been in use as a Public House since at least 1843 and prior to this was originally three cottages, with two built in approx. 1520 and the third in 1680. The site is surrounded by mainly residential development but is

sited directly next to an existing pub (The Crown Public House). The first-floor of the pub is currently used for ancillary accommodation. The Swan Public House has recently been designated as an Asset of Community Value (on the 26th November 2018). Permitted development rights for this building are therefore removed.

THE APPLICATION

The application proposes a change of use of the pub (including the ancillary accommodation above) to use Class D1 (non-residential institutions - nursery).

No external alterations are proposed to the building.

RELEVANT PLANNING HISTORY

CH/2018/0231/HB - Pending Consideration - Internal alterations to facilitate change of use of The Swan Public House to use class D1 (Non-residential institutions - nursery)

CH/2016/1250/DM - NOOBJ - Prior notification for approval of the demolition of double garages

CH/2007/0900/HB - Conditional Consent - One externally illuminated pictorial sign, one non-illuminated car park disclaimer sign and one non-illuminated directional sign. Raised lettering and logo to be affixed to the front elevation of the building externally illuminated by three bullet lights. One externally illuminated replacement hanging sign and two externally illuminated amenity boards on post

CH/2007/0899/AV - Conditional Consent - One externally illuminated pictorial sign, one non-illuminated car park disclaimer sign and one non-illuminated directional sign. Raised lettering and logo to be affixed to the front elevation of the building externally illuminated by three bullet lights. One externally illuminated replacement hanging sign and two externally illuminated amenity boards on post

CH/2007/0489/HB - Withdrawn - One externally illuminated pictorial sign, one non-illuminated car park disclaimer sign and one non-illuminated directional sign. Raised lettering and logo to be affixed to the front elevation of the building illuminated by three bullet lights. The erection of a flood light to the side elevation.

CH/2007/0488/AV - Withdrawn - One externally illuminated pictorial sign, one non-illuminated car park disclaimer sign and one non-illuminated directional sign. Raised lettering and logo to be affixed to the front elevation of the building externally illuminated by three bullet lights. One externally illuminated replacement hanging sign and two externally illuminated amenity boards on post and the erection of a flood light to the side elevation

CH/2007/0290/HB - Withdrawn - One large permanent umbrella fixing to front of property

CH/2007/0288/FA - Withdrawn - One large permanent umbrella fixing to front of property

CH/1993/1315/HB - Conditional Consent - Alterations, single storey extension to dining room on south and west elevations, new pergola, external staircase on north elevation to serve first floor flat and additional car parking

CH/1993/1314/FA - Conditional Permission - Alterations, single storey extension to dining room on south and west elevations, new pergola, external staircase on north elevation to serve first floor flat and additional car parking

CH/1992/0401/HB - Conditional Consent - Single storey rear extension to provide store

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CH/1992/0400/FA - Conditional Permission - Single storey rear extension to provide store

CH/1985/0675/HB - Conditional Consent - Erection of a single storey side extension

CH/1985/0623/FA - Conditional Permission - The erection of a single storey side extension

CH/1985/0048/HB - Refused Consent - The erection of a single storey side extension for use as eating area, ancillary to the public house

CH/1985/0047/FA - Refused Permission - The erection of a single storey side extension for use as an existing area, ancillary to the public house

CH/1982/2045/FA - Conditional Permission - Construction of single storey extension to form integral male and female public toilets and additional beer storage area

PARISH COUNCIL

Latimer and Ley Hill Parish Council made the following comments -

4th February 2018:

Loss of Amenity

The Parish Council notes the number of submissions from local residents which are all objecting to the application for change of use to what we understand is a Grade II listed building. We would submit that this is evidence of the significant loss of amenity to the village should the change of use be approved. Whilst Ley Hill has two pubs, uniquely next door to each other, this is an intrinsic part of the charm of Ley Hill both for local residents and for visitors to the area, particularly walkers who use the pubs as a destination or refreshment stop. To lose one of these on the basis of unsubstantiated statements made in the application would be an egregious decision. We would also seek to challenge the suggestion that the replacement of the pub business with a children's nursery offers another form of community facility for the growing number of families in the area as stated in the application. There are already two children's nurseries in Latimer and Ley Hill and there is no evidence that a further facility is required and indeed the number of young families in the village is limited. Any demand for the facility would therefore come from further afield, offering no amenity for Ley Hill but further adding to the traffic congestion and parking issues identified below given that all the users would travel to the site by car.

Traffic/Parking

The application states that the site has access to unlimited parking but this is not the case. We would suggest that the applicant is referring to parking availability on local lanes adjacent to the property. We would comment that these lanes are already used for parking for the Crown pub as well as by users of the village common, Ley Hill Memorial Hall and Ley Hill School. There is no capacity along these lanes for the significant additional parking requirements of a children's nursery, for both staff for the whole day and during drop off and collection times. The Parish Council is already undertaking significant work to address speeding along the roads in the local area including around the area adjacent to The Swan. We would also draw the attention of the planning committee to the additional HGV traffic due to start once the waste disposal site at Meadhams Farm opens for business shortly. These vehicles would be passing The Swan building as the only access route to the site.

Change of Use

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The application notes that the two pubs are 'challenged with intense competition in a declining pub market' and implies that the business is not profitable. This is at odds with the advertised sales details for The Swan which state the business is a profitable operation with a high adjusted net profit.

14th February 2018:

The Parish Council raised comments regarding the submitted Traffic Report in addition to any previous comments submitted. The main concerns are summarised as follows:

- Volume of traffic figures are incorrect
- Traffic statement does not mention the absence of footways in the area - children will therefore be walking along a busy Highway
- Most times of the day any available parking is taken by current visitors of the common
- The statement claims that the parking is used "predominantly by golfers, cricket club but rarely by pub customers". The purpose for which cars are parking is immaterial, the key point is that there is no capacity for additional cars
- Inconsistency between the Traffic Report and application details on parking availability
- Not clear whether the proposals will affect the pedestrian access and bin access
- Refuse collection vehicles could affect the children being dropped off at the nursesey with no footway
- Deliveries to The Crown would also be adversely affected by congested traffic in the very limited roadway
- Concerned that the information presented is inaccurate and misleading as there have been some serious accidents close to the site
- Impact on local junction capacity
- Traffic congestion from HGV vehicles
- The Parish Council believes that all the land in front of the Crown and The Swan is common land and is not available for others uses such as parking

7th August 2018:

Several comments were provided regarding the amended plans submitted, however since these were submitted the inconsistencies have been rectified. Other comments relating to material planning considerations are summarised as follows:

- In the Design and Access Statement it states that there is excellent public transport. But this does not cover early morning, late afternoon and evening drop off and pick ups and also no public footpath from the bus stop to the premises
- Recent approvals elsewhere will place additional traffic demands on Blackwell Hall Lane
- Surrounding nurseries are evident
- Does not appear to be a traffic risk assessment for the dropping off period and crossing the road

29th November 2018:

The Parish Council has concerns as to whether visitors, visitors with disabilities or staff with disabilities will have access to toilet facilities. The latest proposed ground floor plan (10th October) shows only a cloakroom with two toilets for children. The only adult toilet is on the first floor which is accessible via the narrow stairwell and through the office and staff room. The Parish Council would appreciate clarification that is acceptable from Daniel Munday who commented on the Disabled Access Consultation.

REPRESENTATIONS

A total of 72 objection letters have been received and are summarised as follows:

- Detriment to listed building
- The Swan is a 500 year old pub which has been successfully serving the local community for the whole of that time
- Joint events held with The Crown Pub

- Interference with adjacent property
- Other infrastructure deficiency
- Many day nurseries in the area
- Proposed application would need to be unique to get it off the ground and enjoy any form of success
- Additional traffic activity and congestion
- The number of fulltime workers is solely dependent upon a full complement of children attending the day nursery
- Short term aspiration with no visible benefit to anyone in the immediate local area
- Intrusion into countryside
- Other loss of amenities
- Detriment to Conservation Area
- Contrary to Development Plan
- Inadequate access
- Noise/disturbance
- Lack of parking available
- No plans for the front grass, rear or side areas - will these be for future residential developments
- Not a good use of the site
- Mis-management has affected the business
- The Swan is on the market as having 'high adjusted net profit' and being a 'reluctant sale after 11 years ownership'
- Ley Hill will lose visitors from this proposed change of use
- Not appropriate for the area
- Parking would impinge on local residents and the business to The Crown
- Noise from garden area would be unfair on immediate neighbours
- Lack of hospitality has caused customers to go to The Crown instead
- Danger to children from the highway
- Current landlords have specifically and consistently run the business down in order to sell with change of use
- With the right management The Swan would be viable
- A private nursery would not constitute a community facility
- Would not be a social and communication connection for the village
- The fabric of a listed building being destroyed to provide a facility that is not required
- Loss of facility for walkers and cyclists
- Suggested covenant to prevent further applications for change of use
- Survey to local residents on how they would use The Swan if it were to open under new management - 70-82% would use the pub/restaurant/coffee and cakes either daily, weekly or monthly

In addition to this, the following have also been prepared:

- 350 signature petition
- The Save our Swan Action Group (SOS) Business Plan (16th October 2018)
- Save the Swan Facebook page

CONSULTATIONS

Bucks County Council Highways Authority have provided comments throughout, with the latest comments as follows:

18th January 2019:

I write further to my comments dated the 22nd January 2018, in which I had asked the applicant to provide a Transport Statement to accompany the application. Since these comments were submitted to the Local Planning Authority, the applicant had submitted the additional information requested. The comments below consider this additional information.

Information submitted within the TS to the Local Planning Authority states that the opening hours of the nursery would be between the hours of 7:30am to 5:30pm Monday to Friday and would cater for approximately 50 children. This would contradict the application form submitted, which states that the site would be open from 7:30am to 7pm.

When considering trip generation, I note from the submitted TS that the applicant has undertaken surveys of existing nursery sites in order to establish the trip generation that will be generated as a result of the proposals; however no information has been submitted relating to the trip generation potential of the existing public house. Having undertaken my own TRICS (Trip Rate Information Computer System) analysis, I would expect the existing public house to have the potential to generate in the region of 148 vehicular movements (two-way) per day, with 0 movements and 12 movements in the AM/PM peak hours respectively. With regard to the proposed 283m² nursery, I would anticipate that this would have the potential to generate in the region of 117 vehicular movements (two-way) per day, with 22 and 12 movements in the AM/PM peaks respectively. As such the site would result in a reduction in movements associated with the site.

When cross-checking the application site boundary plan (red-edge) with of the publicly maintained highway for the area, I note that the application site boundary does not meet with the public highway in this location, which would effectively create a 'ransom strip' between the development and the public highway. Whilst not a planning reason for refusal, the applicant will need to demonstrate that a legal right of access is achievable. The site can be accessed via a 'loop' of Blackwell Hall Lane, to the west of the main carriageway, and therefore vehicles can access the site through two separate access points.

When considering parking provision, I note that the submitted TS makes reference to 8 parking spaces being provided for use by staff only, accessed via an existing access between The Swan Public House and The Crown Public House, with no additional parking spaces or dedicated pick-up drop-off points proposed for parents. It should be noted that the site is surrounded by Common Land in the vicinity of the site, including the access road and the parking area to the front of the site.

Paragraph 5.7 of the submitted TS states that 'drop off activity will be aided by the layout of Blackwell Hall Lane adjacent to the site which forms a natural loop, such that parents dropping off children can circulate in a clockwise fashion.' As stated above, no detailed parent parking spaces have been provided, however, as with the staff parking, vehicles will be required to park on the area to the front of the site, and on the common in the vicinity of the site. I trust that the Local Planning Authority will consider the use of this Common Land in the vicinity of the site and whether the applicant has permission to use the land in question as parking in perpetuity. Given that the existing public house site currently has a shortfall in parking associated with the site, and that the proposed nursery would require fewer spaces than that of the existing public house, I do not consider that a reason for refusal could be upheld at appeal on the basis of an inadequate parking provision.

When taking into consideration the sustainability of the site, I note that public transport facilities in the form of bus stops are available within walking distance of the site. Buses 71/73 running from Chesham to Little Chalfont are served via these stops, with four services a day, six days a week, including Saturdays. There are no buses running during the peak hours, nor are there footways linking these bus stops to the site. In transport terms the site is not considered sustainable in the context of the requirements of the NPPF as it would predominantly be reliant on the use of the private car. However, the diversification vs sustainable development issue may be a matter that you need to weigh in the planning balance.

I note that representation has been received from Latimer and Ley Hill Parish Council, which outline concerns with the applicants Transport Statement. This information also includes responses by the applicant to the points raised, which includes concerns regarding parking, collision data, site servicing and a pick-up/drop-off

area. As the site would be expected to result in a reduction in movements, and that refuse collection and servicing would not alter from the previous arrangement on site, I do not consider that I could reasonably raise an objection on the basis of collision data or the site servicing.

With regard to site parking, I note that whilst the existing public house has a shortfall of parking spaces associated with the site, the proposed nursery would require fewer spaces than the existing public house, and as such I do not consider that a reason for refusal based on parking would be justifiable in this situation.

Mindful of the above, I have no objection to the proposals, subject to the following conditions being included on any planning consent that you may grant'.

Chiltern and South Bucks Building Control raised no objections.

The Districts Joint Estates Team made the following comments:

'In relation to the above planning application, I provide comments in relation to the property's listing as an Asset of Community Value. The Swan was listed as an Asset of Community Value (ACV) by the Council on the 26th November 2018 following the receipt of a nomination from Latimer and Ley Hill Parish Council, under Section 89 of the Localism Act 2011. The nomination was found to meet the criteria of the Localism Act to enable The Swan to be listed. The owner of a property listed as an ACV does have a right to request a review of the decision within 56 days of the date of listing. In the case of The Swan, no such request was received. The Swan will therefore remain listed as an ACV for a period of 5 years from the 26th November 2018 unless it is removed with effect from some earlier time in accordance with the provision of the Regulations, eg after a relevant disposal (other than an exempt disposal), or the Council is of the opinion that the property is no longer of community value'.

The Districts Historic Buildings Officer made the following comments:

27th March 2019:

Designation

The Swan PH is a grade II listed building dating from the 16th century. The northern two timber framed bays were constructed in 1520, with the southern brick wing added in 1680. Part of the building was used as a PH from at least 1843, and by 1881, the entire building was used as a pub.

Significance of the listed building

This attractive composition of historic buildings is prominently located facing onto the common. The earlier timber framed building has a timber fronted gable to the right with a thin brick 17th century stack behind, with the main entrance in the central bay. To the left/ south is the later brick wing, the gable end of which faces the road. Although the building has been altered over the years, the building retains many original features including the exposed timber frame, a narrow winding staircase and many old doors etc.

Relevant background information/planning history

This building has been in use a public house since at least 1843, but it is now proposed to change the use to a children's nursery. When the application was originally submitted, no heritage report was included; this was provided in June and an amendment submitted in October. A change of use of a building; particularly to a more public use where health and safety issues are of concern, such as in a home for the elderly or children. This can be particularly difficult where the building proposed to be converted is a grade II listed building as the requirement to comply with fire and buildings regulations, and even environmental considerations (thermal insulation) can often be onerous. However, in this case, the agents have advised that the proposed use does not constitute a 'change of use' for the purposes of the Building Regulations, so there is no obligation to substantially upgrade the building.

On 21.2.19 a report was submitted by the applicants indicating that the proposed change of use would not necessitate substantial alterations to the building for the use to comply with fire and building regulations. Amended plans were also submitted to address the minor alterations to ensure compliance. The applicant also confirmed that no additional new structures in the curtilage would be necessary for the operation of the nursery.

However, the 'Analysis of Building Regulations Compliance' submitted in February advised that under part M a larger external landing should be provided to the fire escape; this is shown on the amended floor plans but no elevations have been provided. This alteration would require listed building consent and full details including elevations should be provided if this alteration is essential for the operation of the building as a nursery. Alternatively, if the extended landing is not essential; this should be confirmed in writing and amended floor plans showing the existing landing provided.

Following opening up in the building to investigate the survival of the historic building behind modern finishes and a report on this was provided on 5.3.19.

Further amended plans were submitted on 11.3.19, showing that the proposed conversion of the building to a nursery could be achieved, including compliance with the fire and building regulations with minimal alteration and with the retention of historic fabric.

Relevant legislation, policies and guidance

The Council has had special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses, as required under Section 16, 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Furthermore, the application has been considered on the basis of the Chiltern District Council adopted local plan (consolidated Nov 2011) LB 1, LB 2

National Planning Policy Framework (NPPF) - Core planning principles, Part 7 paras. 58, 60, 61, and Part 12 Conserving and Enhancing the Historic Environment paras 128, 129, 131, 132, 133 and 134

The NPPF 2018; Part 16 Conserving and Enhancing the Historic Environment paragraphs 189, 190, 192, 193, 194 and 196.

Historic England Guidance; Managing Significance in Decision-Taking in the Historic Environment- 2015, and Making Changes to Heritage Assets- 2016

Reasons for proposed works

It is proposed to convert the existing public house to a day nursery. There are two staircases in the building at present; one is an ancient narrow winding stair alongside the main stack and the other is an external fire escape. To facilitate the new use a new staircase is proposed in the rear of the brick southern wing.

Impact on heritage assets

The latest information submitted has illustrated that the conversion of this public house to a day nursery could be achieved with minimal harm to the significance of the historic fabric of the listed building. A new staircase can be fitted into the rear section of the rear wing with minimal impact and as the new use is not considered By Building Regulations to be a 'change of use' and due to the listing of the building; only minimum changes appear to be required, which are considered acceptable. It is therefore considered that the proposed alterations, as amended, would enable this grade II listed building to be used as a to a day nurse

with only minimal alterations, which are not considered to cause harm to the significance of the heritage asset which would outweigh the benefits of the new use.

OFFICER NOTE: The concerns regarding the landing have seen been omitted, with the proposed extended landing reverted back to its original form.

Chiltern and South Bucks Environmental Health (Noise/Odour) made the following comments:

13th February 2018:

'The documentation submitted with the application has been reviewed and I have undertaken a visit to the premises and local area. Environmental Health express concern on this application in relation to the potential impact of noise nuisance from children's play at the premises to nearby sensitive receptors. The application submits proposed hours of operation as Monday to Friday between the hours of 7:30am - 7:00pm for 52 weeks of the year. In the absence of any other timings it is taken that the outside activity area can be used during these specified hours and duration. When Environmental Health have concerns over whether a proposed development has the potential to cause a noise nuisance to nearby sensitive receptors we would request an acoustic noise report be undertaken, such as a BS 4142; however such a report is not possible in assessing noise from this type of business. Therefore in the absence of any such statistical data a subjective noise assessment would be made as to the likely impact of the proposal in the locality. Officer experience with this type of business, operating in an area where there are residential homes in the immediate vicinity, indicates that noise complaints from local residents would be highly likely and give rise to a statutory nuisance, particularly when the children play outside and when windows and doors are open in the building allowing the outbreak of noise. Any control measures that could be proposed to address potential noise issues would likely be deemed as unreasonable to place on such a business. It is therefore the opinion of Environmental Health that this is an inappropriate location for such a business to operate with residential properties being in close proximity and raise concern to the application being approved on the grounds that the proposed application is likely to give rise to noise complaints. There are no appropriate noise conditions that could be placed on such a premises to address the issues of noise nuisance. So in the absence of any mitigation from the application Environmental Health would recommend that the Planning authority consider the implications of the impact of noise and refuse the application.

Reason: The development is likely to be detrimental to the amenity of the surrounding area by reason of undue noise and/or unacceptable disturbance.

24th August 2018:

'Environmental Health raised objections to the application on the grounds that the proposed development and change of use would likely give rise to noise complaints which would be detrimental to the local amenity and the surrounding area by reason of undue noise and/or unacceptable disturbance. Our opinion has not changed on this matter and Environmental Health raise objections for the same reason; however as additional information has been submitted by the applicant it is felt pertinent to respond accordingly specifically in relation to the below section of their Design and Access Statement Version B dated May 2018, relating to the impact of the development on neighbouring amenities and noise'.

'5.30 states: "The use of the outdoor areas would be restricted and the main activities would be largely contained indoors". There is no elaboration on this as to what restrictions would be put in place for use of the outdoor area. Whilst it is acknowledged that the applicant states that the "main activities would be largely contained indoors" the use of the outside area it is assumed would be used for play time and games activities which is where the majority of the noise is likely to be generated as is the very nature of children at play and the purpose of a nursery. Noise is also likely to be generated from within the building from the children specifically when windows and doors may be open during the warmer months'.

'5.32 and 5.33 states: "It is suggested that the proposed nursery would be open from 7:30am to 19:00pm Mondays to Fridays where it is that the potential harmful level of disturbance would be low". 'The proposed times to be open are over a 11.5hr period so the premises could potentially generate noise over this timescale whether from indoor or outdoor activities and throughout the whole year as unlike school nurseries tend to operate all year round without the respite provided by school holidays. Environmental Health have criteria to meet when assessing whether a noise has the potential to be a statutory noise nuisance. Part of these criteria is how long a noise occurs for and whether it is excessive and unreasonable, the opening times of the nursery would indicate that noise generated from the premises would likely meet these criteria. The Design and Access Statement continues stating that "the majority of residents would be at work and the proposed nursery would be replacing the existing public house which includes a large wrap around outdoor drinking area. The proposal would not have a greater impact on the amenity of the surrounding occupiers than this authorised use, which would also likely result in higher levels of noise and disturbance at sensitive times such as in the evenings and at weekends". 'This statement can neither be substantiated nor used as mitigation to address the likelihood of noise impact from the proposed development, specifically as the two mentioned type of premises as a licensed premises and a children's nursery offer a very different type of emitted noise and that it would result in harmful levels of additional noise and disturbance from the very nature of a children's nursery and the known noise from children's play. In addition due to the age of both of the licensed premises in this location being in situ for over hundreds of years so any residents currently living there would have known they were to live in the vicinity of two licensed premises and associated noise as opposed to a children's nursery.

The applicant has offered to accept a condition which; "details out noise mitigation methods such as appropriate screening or fencing around the outdoor play areas". The suggestion of appropriate screening or fencing would not address the outbreak of noise from children's play (or the human voice). Environmental Health are frequently asked to predict noise emissions from activities involving noise from crowds/people/children playing but there are no predication methodologies available for this. Whilst we may be able to predict the noise levels there is nothing that it can be measured again - in addition there is no known acoustic barrier or screening that could be placed in an outside area such as this that would prevent sound from children's play crossing the neighbouring boundaries.

In conclusion Environmental Health continue to raise objection to the application for the following reason: The development is likely to be detrimental to the amenity of the surrounding area by reason of undue noise and/or unacceptable noise disturbance'.

3rd October 2018:

'Environmental Health has been asked to respond to the Technical Note received from Paul Mews Associates Traffic Consultants dated 3rd September 2018. The Technical Note has been submitted in response to Environmental Health's original comments on the application dated 24th August 2018.

The Technical Note makes a number of comments relating to Environmental Health's consultation response and states that the response is based on 'flawed thinking with no evidence to support their assertion that noise would be more of a nuisance as a nursery compared with that as a pub'. The Technical Note also details about entertainment at The Swan and Temporary Event Notices (TENS) to which I refer to at the end of this response as there is a point of law that needs to be corrected.

Whilst my response is rather lengthy, I have found it necessary to detail how Environmental Health investigate complaints of noise nuisance from both a licensed premises and a business such as a children's nursery. Also the difference in perception of noise and a comparison between the two, which I hope will address the comment made within the Technical Note as cited above.

1. Legislation/Environmental Health Investigation Procedure

There are three separate pieces of legislation that Environmental Health can apply when dealing with noise nuisance, the Environmental Protection Act 1990 that deals with statutory noise nuisance, the Licensing Act 2003 that deals with the Prevention of Public Nuisance from a licensed premises and The Anti-social Behaviour Crime and Policing Act 2014, to which parts deal with protecting the community from nuisance. The Licensing Act would obviously not apply to a children's nursery.

When looking at a noise nuisance under the Environmental Protection Act 1990 a balance is made when deciding if the noise nuisance is a 'statutory nuisance'. This is assessed against specific criteria which I have felt the need to detail below for your understanding. This is commonly undertaken as a subjective assessment by a qualified Environmental Health Officer but can also be by undertaken using sound level recordings.

Whilst there is no definitive definition of a statutory noise nuisance common terminology used within the Environmental Health industry when assessing a statutory noise nuisance is whether a noise is considered to be 'excessive and unreasonable'.

To make this assessment the following criteria is considered:

1. Disturbance. The problems being experienced must unreasonably interfere with the enjoyment of living in a home or place of work; for example by preventing a person sleeping, interfering with reading or relaxing in a garden.
2. (Noise) Loudness. The louder the noise the more likely it is to be a nuisance.
3. Length of time (Duration). The longer the noise goes on for the more likely it is to be causing a nuisance.
4. Occurrence (Frequency). The more often the disturbance occurs the more likely it is to be a nuisance.
6. Type of noise- the more annoying the type of noise is the more likely it is to be a nuisance
7. Locality. The law of nuisance states that people living in different areas, e.g. town and country, can expect to experience different noises.
8. Average person. The law considers an average person when deciding if a nuisance is occurring. If a person has an above average sensitivity to noise then this cannot be taken into account.

When a complaint of noise is received by Environmental Health we assess the noise source against each of the points above. A professional opinion by an Environmental Health Officer is then made as to whether they consider the noise constitutes a statutory noise nuisance.

In addition sound level recordings (decibel levels) can be undertaken and assessed against The World Health Organisations (WHO) guidelines. Whilst there are no specific standards available for the assessment of playground noise levels, the Guidelines for Community Noise documented within WHO guidelines is commonly used. I have detailed this further at the end of this report as the applicant may wish to consider this further.

If a statutory noise nuisance is found to exist and/or exceedences of decibel levels are found to exist then the council has a legal duty to serve an abatement notice under S79 of the Environmental Protection Act 1990 on those responsible for the noise, to which they are then required to abate the nuisance within a specified timescale.

Under the Licensing Act 2003, Environmental Health can deal with the prevention of public nuisance from a Licensed premises and can bring a Premises Licence in for a review and place restrictions or conditions to control noise outbreak and prevent a noise nuisance from continuing. Public Nuisance include noise, odour,

general disturbance, litter, antisocial behaviour, light pollution and all the kinds of issues that can affect occupiers living or working near to a licensed premises.

When Anti-Social Behaviour occurs from any premises whether domestic or a business or in open spaces, the Council has powers under The Anti-social Behaviour Crime and Policing Act 2014 to take enforcement action to prevent any such noise nuisance from continuing or occurring that may affect a community in the form of a Community Protection Notice.

2. Consultation - Assessing an Application

When a planning application such as this is submitted for consultation, Environmental Health must consider the impact of such a business on a community; whether this is from a factory, restaurant or a children's nursery, taking into account what noise would be generated from any such business and what the likely impact would be.

As explained in my previous consultation, The Swan Public House has been operating for many hundreds of years as a public house/ale house and has always been operated as a 'traditional country pub' as has its neighbouring pub The Crown throughout this time. Those living near to these licensed premises would expect to hear social noises associated with a country pub both inside and outside of the premises. Noise such as talking, laughter, children playing and general socialising noise along with patrons arriving and leaving the premises would be expected.

Use of the garden areas are predominantly associated with the warmer weather; although it is acknowledged that this premise is situated within a rural setting and may be used through the winter months with country walkers/ramblers for example; however this said, noise generated from both the inside and outside of the premises during the day time is not a constant and is likely to be for short periods of time, specifically in the garden areas such as lunchtime. Looking at the operation of this premises over the past few years the day time hours of opening have been between 12 noon- 3pm with the premises even being closed on some weekdays.

The relevant question and purpose of planning consultation in this instance is; what noise do the local residents currently experience? If a children's nursery were to operate in such a location, what type of noise would be heard? Would it be considered reasonable? How long would noise occur for? What type of noise is it? Would this noise be expected to be heard in such a location? These questions would be assessed against the criteria I have cited in section 1.

The outcome of an Environmental Health Officers assessment would denote whether a statutory noise nuisance exists or is likely to exist, whether noise from the proposed application would be significant to object to a planning application. It is in my opinion that it is.

3. Assessing the Criteria

a. Dealing with noise from a licensed premises

When dealing with noise from a licensed premises such as music, sound/decibel levels could be set, noise limiting devices could be installed that cut out music if it exceeds a set sound level, control of hours of use can be implemented, restrictions or conditions on the use of indoor and outdoor areas and activities can be implemented.

If it is noise from extraction fans or motorised pumps, requirements for works to be undertaken on the units such as baffling, insulation or enclosures to reduce the noise output can be implemented or enforced.

If it is social noise then this can be controlled and managed under the public nuisance criteria within the Licensing Act 2003 such as a Noise Management Plan.

It is common practice and considered reasonable to place such conditions on a licensed premises to ensure that any noise generated inside or outside the premises does not cause a noise nuisance to those living and working nearby. These are standard requirements used daily with licensed premises that controls behaviour or unreasonable and excessive noise and can be enforced if breached.

Point 4 of The Technical Note itself refers to the current restrictions placed on The Swan because of potential noise outbreak and Point 5 reiterates that noise from the pub has potential to affect the neighbours significantly. This reiterates my original consultation opinion that to control noise from a licensed premises is acceptable, expected and possible as opposed to that with an operational children's nursery.

The Technical Note refers to The Swan holding an Annual Beer festival which is held jointly with its neighbouring pub The Crown. This is an annual event that has been held for many years under a Temporary Event Notice (TEN). A TEN is an application by the premises licence holder to the local licensing authority for approval to hold licensable activities that do not fall under the remit of their Premises. Part of this approval is to consult with statutory consultees such as Environmental Health, Highways and the Police Service as to whether there are concerns, comments or objections relating to a proposed event. If so then conditions or restrictions could be placed on any approved notice, or if a consultee felt it relevant then a TEN could be refused.

If complaints of a noise nuisance were substantiated from an event held under a TEN or any event at a licensed premises, then any future applications for a TEN would likely be refused and or their licence brought in for review.

It is pertinent to add here that Environmental Health have not received any complaints of noise relating to the operation of The Swan Public House.

b. Noise from children/children's nursery

The proposed application is for the change of use from a Licensed Premises to a Children's nursery operating from 7.00am to 7.30pm every weekday for 52 weeks of the year with up to 50 children between the ages of 3 months and 5 years and 15 staff members.

Children at play generate a whole array of noise such as laughing, high pitched screaming, crying, shouting and generally making 'a noise'. Noise is also generated from toys, games and musical instruments to name a few. There is also the associated noise of control measures from their guardians/nursery assistances, such as adult instruction, whistles or bells. I do not feel it necessary to list every activity that children may participate in a nursery and would expect there to be a general understanding that children make noise even when monitored or controlled.

The sound of children at play in any outdoor play areas is notoriously difficult to mitigate as the noise levels are highly variable. Whilst some may say that hearing children at play is pleasant and nice to hear others may find children's noise intolerable. Different noises generate different reactions with many bringing a different perception of nuisance and annoyance. From an acoustical point of view the worst case scenario for a nursery is one situated on a small plot of land with neighbouring properties in close proximity in a relatively quiet location. This describes The Swan premises well.

With the proposal for the business to be open for 12.5 hrs, every weekday for 52 weeks of the year, we must take the scenario that there is the potential for noise outbreak likely to be heard throughout the whole of this time, from both inside and outside the building. When relating to inside the building - it is often a concern as

to how the air flow will be controlled whether this will be by the opening of windows and doors or whether any ventilation system is proposed (Listed building restrictions/consent) that may allow for the further outbreak of noise from the premises.

In addition to the above there is the noise from clients 'dropping off and collecting' children. This application offers a starting time as 7.00am. The application also states that children may be at the premises for 'part time hours' therefore adding to the collection noise generated throughout the day. Summertime is Environmental Health's busiest time of year when dealing with complaint of noise nuisance for many reasons but mainly because more people are outside, and properties are more likely to have their windows and doors open.

Chiltern District Council are currently investigating complaints of noise nuisance under the Environmental Protection Act 1990 from other children's days nurseries within the district where noise from activities both inside and outside the premises affecting neighbouring residential properties.

Once a business is operational, mitigation and control measures to deal with nuisances are exceptionally harder to implement and are often dealt with through enforcement action to abate the nuisance. This can often have major impacts on businesses with some often having to relocate or close. This is therefore not an action that the local authority takes lightly and would rather not find itself having to implement such actions so take the opportunity to address concerns of noise nuisance at the planning stage.

4. Comparing noise from a licensed premises and a children's nursery

As explained above the current operation of the week day daytime hours of The Swan is between the hours of 12- 3pm (3 hours) and from approx 6.00/7.00pm with closing times varying between 9.30- 10.30pm. (4.5 hrs) with expected noise as described.

The proposed application for the nursery cites hours of operation as 7.00am - 7.30pm (Open 12.5hrs) to clients with expected noise as described above.

Whilst I do not have any data on how many patrons currently attend the Licensed premises, I would have to say that it is unlikely to have up to 50 children on a daily basis and unlikely to have anywhere near that on an infrequent basis. The application has proposed up to 50 children below the age of 5 years. It is understood that the majority of children at this age in a nursery environment will be at play. The additional noise generated by children using the nursery from as early as 7.00am would not have been experienced by those living nearby to the premises before on any occasion and would not be expected in such an area.

I have detailed why the two premises are very different and have a very different social acceptance of noise. The use of the premises is different. The activities taking place in the premises are different. The type of noise heard is different. The noise levels are different and the perception of noise is different. Therefore the impact of noise on nearby residents would be different and it is in my opinion for the reasons I have explained that the noise generated from the nursery will be considerably more than that from the licensed premises. To add, a licensed premises is heavily controlled by various pieces of legislation to regulate its operational impact which is deemed appropriate and reasonable. There is no such legislation for a children's nursery other than noise abatement; the question is then asked as to whether this would be reasonable to serve such an abatement notice on children playing whether it be from a playground, a back garden or a children's nursery. Environmental Health would therefore take the opportunity to address such concerns at the planning stage where possible and consider whether the location for such a business is appropriate.

For the reasons I have explained I therefore do not hold the same view point as the author of the Technical Note as I consider there to be a considerable difference of noise outbreak between the operation of this

licensed premises (including an annual 3 day beer festival) to a children's nursery and very importantly how Environmental Health can control/deal with noise outbreak between the two.

Noise Impact Assessment

In light of the agent's comments on comparison of noise, the applicant may wish to address this matter further by undertaking an Environmental Noise Impact Assessment (ENIA) of potential noise outbreak from the proposed nursery and submitting to the Local Authority for approval prior to any decision being made on this application.

If this option is considered the ENIA should be undertaken in accordance with BS7445-1 2003- Description and Measurement of Environmental Noise - Acquisition of Data Pertinent to Land Use and then assessed against the World Health Organisation (WHO) Guidance on Community Noise. It should also be in conjunction with the comparison of anticipated noise emission levels to the minimum measured background noise levels and provide a rating of impact according to British Standard:4142 'Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas'. Although the BS4142 method is primarily used for assessing noise emissions of industrial activities, it can be seen as a good guide for assessing the suitability of noise received to residential receivers as calculation of the predicted specific noise level at the façade, gardens and amenity areas of sensitive receptors such as the residential properties nearby.

As the proposed business is not operational at this site, equivalent sound can be generated using the frequency band that would mimic that of children at play ensuring that it is indicative of the proposed number of children that can be at the premises and during the length of time the premises would be operational. Full consideration of the impact of all likely noise for example from door slams, games/activities, ball strikes, shouts or whistles must be included.

Additional comments on the Technical Note

The Technical Note makes reference to Temporary Event Notices (TENS). If I may just correct one point in case it is taken as fact. A Licensed Premises does not need to apply for a TEN to have music outside as the Live Music Act 2012 allows for licensed premises, such as The Swan to play live or recorded music up until 11.00pm, unless there is specifically a condition on the Premises Licence that prevents this use.

The Technical Note also refers to the Kings Head in Prestwood. Environmental Health were not consulted on the planning application so I cannot comment further on this point.

The Technical Note also compares The Swan at Ley Hill and The Kings Head in Prestwood being very similar to their respective neighbours; whilst I acknowledge that these pubs are both in semi-rural/rural locations, the proximity and number of neighbours that border The Swan compared to The Kings Head I believe to be considerably different with The Swan having more neighbours in close proximity. I must also add that this nursery now located in the former Kings Head only opened in May of this year so we are yet to see if noise outbreak from the change of use will be an issue to local residents and one that will involve investigation and intervention by Environmental Health.

The comments in the Technical Note relating to fencing say that this was recommended at a committee meeting. I cannot comment on this as I do not know the facts of this application or who made this recommendation. There is detailed information widely available that addresses the issues in trying to deal with acoustic barriers and sound proofing when mitigating noise from speech, crowd/people noise and children at play.

I hope that the above information provides clarity and the reasons for Environmental Health's comments to the proposed application. I apologise for its length but felt it pertinent to detail.

Environmental Health welcome an ENIA to be submitted for review prior to any considered approval.

I am available for further discussion and consultation on this matter should this be required.

19th November 2018:

This response is in relation to the submitted Noise Impact Assessment (NIA) by Cass Allen Ref: RP01- 18398.

Environmental Health recommended in a previous consultation response, dated 3rd October 2018, that the applicant undertake a Noise Impact Assessment (NIA). This followed our objections to the application on the grounds that the proposed development would likely give rise to complaints of noise that would be detrimental to the local amenity.

The recommendation was that an NIA should be undertaken in accordance with BS 7445-1 and assessed against the World Health Organisations (WHO) Guidance on Community Noise, using BS 4142 as a good guide for assessing the suitability of noise received at sensitive receptors.

As the site is not currently operational, advice was given as to using equivalent sound frequency band that would mimic that of children at play that would be representative of the proposed number of children that could be at the premises, in addition to the length of time during the day the premises would be operational.

Response to the Noise Impact Assessment Ref: RP01- 18398

- The NIA has only used a model of 10 -15 children at play yet the nursery has cited up to 50 children at any one time.
- The NIA does not say how often the noise will occur or how many sets of play time there would be and how long each set would be. (e.g. Number of Children X how many occurrence X length of noise duration)
- During the warmer months when residents are more likely to be outside or have windows and doors open there is the potential for noise impact from this proposed business every weekday.
- Using the NPPG Observed Effect Levels due to Noise - Environmental Health believe that the noise will be at the very least 'Noticeable and Intrusive' where it requires that action required would be to 'Mitigate and reduce to a minimum'. The next level is 'Noticeable and Disruptive' with the actions cited to 'Avoid'.

It is in the opinion of Environmental Health that the noise will be 'noticeable, intrusive and disruptive' therefore one to avoid. Therefore Environmental Health cannot propose any mitigation that would be deemed acceptable for such a business.

- The NIA reports that a noise model was used from Cass Allens database of measured noise but does not provide details of whether this noise is indicative of the potential noise from the proposed development.
- The NIA itself states in section 4.4 that there is no specific local or national guidance for the assessment of noise from nurseries. In my original comments dated 3rd October I recommended using the an equivalent sound source using the frequency band that would mimic children at play, which must include the amount of children at play at any one time and for the duration of play) The NIA does not state whether this was used and if so at what frequency band.
- The NIA has not provided any LA Max noise for children at play only for background noise currently at the site.

- The Sound Power Level (SWL) was calculated at 83dBA but does not explain where the figure emanated from?
- The NIA has not taken into consideration the WHO guidelines on 'special characteristics' of the type of noise, in this instance being children at play, although it refers to annoyance of noise in section 4.7.
- The NIA concludes that the noise levels from their modelling will be 2-3dB above background noise levels and as such may be 'slightly audible at those times when the external play area is in use'.

Environmental Health question the modelling used and believe that the actual audible noise will be considerably higher than 2-3dB over background noise therefore at the very least is likely to be disruptive.

Summary

It is in the Council's opinion that noise generated from the operation of the proposed development will be noticeable and disruptive and has the potential to be up to 12.5 hours every weekday (7.00am - 7.30pm). This newly introduced noise will change the acoustic character of the area and likely give rise to a nuisance to residents that would be almost impossible to control and has the potential to be a statutory noise nuisance under The Environmental Protection Act 1990. If this is found to exist the local authority has a legal duty to take actions to abate the nuisance. Therefore it is Environmental Health's opinion to object to the application from the onset. Reason: To protect the occupants of nearby residential properties from noise disturbance.

11th March 2019:

Further to all previous consultation in relation to the above application.

Environmental Health recommend refusal for this application on the grounds that such a change of use will have a detrimental impact on the local amenity specifically related to noise.

Reason: To safeguard the amenities of nearby and future occupiers from noise in accordance with Local Plan Policies GC3 and GC7 of The Chiltern Local Plan. Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011.

POLICIES

National Planning Policy Framework

Core Strategy for Chiltern District - Adopted November 2011: Policies - CS4, CS8, CS20, CS25, CS26 and CS29.

The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011: Saved Policies - GC1, GC3, GC7, GB1, GB2, GB24, LB1, LB2, LB4, TR2, TR3, TR11 and TR16.

EVALUATION

Principle of development

1. The application site is located within the open Green Belt in Ley Hill where, in accordance with Local Plan Policy GB24, the Council will not allow the re-development or change of use of a building or land which is in use, or was last used for, local community purposes as defined in Local Plan Policy GB23, unless (i) a replacement building or land can be provided in an equally convenient location that complies with Local Plan Policy GB23; or (ii) it can be demonstrated to the Council that the facility is no longer required for any other

community use in the village and adjoining area where the facility is located. Policy CS29 of the Core Strategy also sets out that the Council's strategy is to ensure inclusiveness within its local communities and will only permit the loss of community facilities in exceptional circumstances. The proposal should also be in accordance with other relevant Development Plan Policies.

2. The application site consists of a Public House with ancillary residential accommodation on the first floor and is a community facility as defined in the Development Plan, and listed as an Asset of Community Value (ACV). The application proposes to change the use of the premises to a nursery for the entirety of the building. The use as a nursery would fall under the definition of a community facility as set out in the adopted Local Plan. The change of use is therefore being changed from one community facility to another and no objections are raised with regard to Local Plan Policy GB24 or Core Strategy Policy CS29. It is also noted that a neighbouring pub is still functioning; 'The Crown' therefore the community would still benefit from a public house within the local area.

3. It is also considered necessary to mention planning permission CH/2013/1511/FA at The Bull Public House in Bellington. Members will be aware of this previous application, which also proposed a change of use from a public house to a nursery, for a temporary limit of 3 years. This application was refused at Planning Committee but the appeal was allowed and costs were awarded against the Council for being unreasonable in refusing the application. The Appeal Inspector expressly stated that the list of community uses set out in both Local Plan Policy GB23 and Core Strategy Policy CS29 and the NPPF are not exhaustive and that none of these policies gives particular priority to one community use over another. The Inspector went on to relay that there would be no material conflict with Development Plan Policies arising from the proposed change of use, nor is there any policy requirement for a marketing exercise to establish demand for the existing use prior to a change of use being permitted where that use is an alternative community use, as in this case. It was concluded that there would not be a loss of a community facility as a result of the proposed development (in that case also being a nursery). It is noted that this application is for a permanent change of use to an alternative community facility, which would be compliant with Policy CS29 and recent case law.

Design/character & appearance

4. As aforementioned above, the proposed change of use would not involve any external alterations to the building. Any further alterations to implement this change of use i.e. via advertising would require advertisement consent and listed building consent. Any other alterations which may be proposed in the future would also be subject of an additional planning application and listed building consent.

5. The District's Historic Buildings Officer has raised no objections to the proposed change of use to a nursery with all alterations proposed being internal. It is therefore considered that the proposed alterations, as amended, would enable this grade II listed building to be used as a day nursery with only minimal alterations, which are not considered to cause harm to the significance of the heritage asset which would outweigh the benefits of the new use.

6. Therefore, the proposed change of use would not detrimentally harm the character and appearance of the building, nor the wider locality and would comply with Local Plan Policies GC1, LB1, LB2 and Core Strategy Policy CS20.

Residential amenity

7. Concerns have been raised from nearby residents regarding the potential noise implications from the proposed change of use from a pub to a nursery. The submitted application details state that the nursery will be in use from 7:30am-7:00pm with staggered time frames i.e. children who may only attend in the morning or afternoon with some attending for a whole day. At full capacity, the nursery would occupy 50 children, but this would not be at all times. It has been stated in the application details that approx. 10-15 children will be

outside at one time, which would be within daytime hours, Monday-Friday in comparison to a pub with later opening hours into the night time and at weekends.

8. It is acknowledged that the proposed use of a nursery would generate some noise throughout the daytime potentially into the early evening. It is also noted that the Environmental Health Officer objects in some detail. However, it is possible to restrict numbers of attendees to the nursery and the opening hours by conditions, whereas the use of the building as a pub is completely unrestricted in planning terms. It would be extremely difficult to justify a refusal based on a nursery with restrictive conditions being more harmful to the amenity of neighbouring properties than a busy pub with no restrictions on noise or opening hours. As such, it is not considered that the proposed change of use would adversely affect the amenities of neighbouring properties, in accordance with Local Plan Policy GC3.

Parking/Highway implications

9. With regard to parking provision, the Council's parking guidance for nursery schools is one car parking space per classroom. It has been specified in the application details that 8 spaces would be provided for staff. Bucks County Council Highways stated: 'Given that the existing public house site currently has a shortfall in parking associated with the site, and that the proposed nursery would require fewer spaces than that of the existing public house, I do not consider that a reason for refusal could be upheld at appeal on the basis of an inadequate parking provision'. The highway implications have been considered by the County Highway Authority who have advised that the trip generation would be less than a functioning pub.

Conclusions

10. To conclude, the proposed scheme is considered acceptable and the recommendation is for approval.

Working with the applicant

11. In accordance with Section 4 of the National Planning Policy Framework, the Council, in dealing with this application, has worked in a positive and proactive way with the Applicant / Agent and has focused on seeking solutions to the issues arising from the development proposal.

Chiltern District Council works with applicants/agents in a positive and proactive manner by:

- offering a pre-application advice service,
- updating applicants/agents of any issues that may arise in the processing of their application as appropriate and, where possible and appropriate, suggesting solutions.

In this case, Chiltern District Council has considered the details as submitted which were considered acceptable.

Human Rights

12. The following recommendation is made having regard to the above and also to the content of the Human Rights Act 1998.

RECOMMENDATION: Conditional Permission

Subject to the following conditions:-

- 1 C108A General Time Limit
- 2 The premises shall not be used for the purposes hereby permitted except between the hours of 7:30am and 7pm on Mondays to Fridays and at no time on Saturdays, Sundays or Public and Bank Holidays.
Reason: To safeguard neighbouring amenities.

3 Prior to occupation of the development a Travel Plan Statement shall be submitted to and agreed by the Local Planning Authority. The approved Travel Plan Statement shall be implemented upon first occupation of the development.

Reason: In order to influence modal choice and to reduce single occupancy private car journeys and comply with National and local transport policy.

4 AP01 Approved Plans

INFORMATIVES

1 **INFORMATIVE:** The applicant is advised that any further alterations could require listed building consent/a planning application/advert consent.

CH/2018/0231/HB

Case Officer: Vicki Burdett
Date Received: 05.02.2018
Parish: Latimer & Ley Hill

Decide by Date: 23.04.2019
Ward: Ashley Green Latimer And Chenies

App Type: Listed Building Consent
Proposal: Internal alterations to facilitate change of use of The Swan Public House to use class D1 (Non-residential institutions - nursery).
Location: The Swan Public House
Blackwell Hall Lane
Ley Hill
Buckinghamshire
HP5 1UT
Applicant: Ms Fiona Murray-Young

SITE CONSTRAINTS

Article 4 Direction
Adjacent to Unclassified Road
Area Special Control of Advertisements
Adjacent Listed Buildings
Adjacent to Archaeological Notification Site
Archaeological site
Bovingdon Technical Radar Zone
Within Green Belt other than GB4 GB5
Listed Building
North South Line
Within 500m of Site of Importance for Nature Conservation NC1
On/within 250m rubbish tip
GB settlement GB5,6,12,23,H7,13,19

SITE LOCATION

The application relates to The Swan Public House located in Blackwell Hall Lane, Ley Hill. The site lies within Green Belt Settlement 5 of the Districts Proposals Map and is Grade II listed (listed in 1984) dating from the 16th and 17th century. The building has been in use as a Public House since at least 1843 and prior to this was originally three cottages, with two built in approx. 1520 and the third in 1680. The site is surrounded by mainly residential development but is sited directly next to an existing pub (The Crown Public House). The first-floor of the pub is currently used for ancillary accommodation. The Swan Public House has recently been designated as an Asset of Community Value (on the 26th November 2018). Permitted development rights for this building are therefore removed.

THE APPLICATION

The application seeks Listed Building Consent for internal alterations to facilitate change of use of The Swan Public House to use class D1 (non-residential institutions - nursery).

The proposed application would not involve any external alterations.

RELEVANT PLANNING HISTORY

CH/2017/2353/FA - Pending Consideration - Change of use to Class D1 (nursery)

CH/2016/1250/DM - NOOBJ - Prior notification for approval of the demolition of double garages

CH/2007/0900/HB - Conditional Consent - One externally illuminated pictorial sign, one non-illuminated car park disclaimer sign and one non-illuminated directional sign. Raised lettering and logo to be affixed to the front elevation of the building externally illuminated by three bullet lights. One externally illuminated replacement hanging sign and two externally illuminated amenity boards on post

CH/2007/0899/AV - Conditional Consent - One externally illuminated pictorial sign, one non-illuminated car park disclaimer sign and one non-illuminated directional sign. Raised lettering and logo to be affixed to the front elevation of the building externally illuminated by three bullet lights. One externally illuminated replacement hanging sign and two externally illuminated amenity boards on post

CH/2007/0489/HB - Withdrawn - One externally illuminated pictorial sign, one non-illuminated car park disclaimer sign and one non-illuminated directional sign. Raised lettering and logo to be affixed to the front elevation of the building illuminated by three bullet lights. The erection of a flood light to the side elevation.

CH/2007/0488/AV - Withdrawn - One externally illuminated pictorial sign, one non-illuminated car park disclaimer sign and one non-illuminated directional sign. Raised lettering and logo to be affixed to the front elevation of the building externally illuminated by three bullet lights. One externally illuminated replacement hanging sign and two externally illuminated amenity boards on post and the erection of a flood light to the side elevation

CH/2007/0290/HB - Withdrawn - One large permanent umbrella fixing to front of property

CH/2007/0288/FA - Withdrawn - One large permanent umbrella fixing to front of property

CH/1993/1315/HB - Conditional Consent - Alterations, single storey extension to dining room on south and west elevations, new pergola, external staircase on north elevation to serve first floor flat and additional car parking

CH/1993/1314/FA - Conditional Permission - Alterations, single storey extension to dining room on south and west elevations, new pergola, external staircase on north elevation to serve first floor flat and additional car parking

CH/1992/0401/HB - Conditional Consent - Single storey rear extension to provide store

CH/1992/0400/FA - Conditional Permission - Single storey rear extension to provide store

CH/1985/0675/HB - Conditional Consent - Erection of a single storey side extension

CH/1985/0623/FA - Conditional Permission - The erection of a single storey side extension

CH/1985/0048/HB - Refused Consent - The erection of a single storey side extension for use as eating area, ancillary to the public house

CH/1985/0047/FA - Refused Permission - The erection of a single storey side extension for use as an existing area, ancillary to the public house

CH/1982/2045/FA - Conditional Permission - Construction of single storey extension to form integral male and female public toilets and additional beer storage area

PARISH COUNCIL

Latimer and Ley Hill Parish Council made the following comments (7th August 2018):

'We note the applicant's response to the Parish Council's previous comments and would wish to add that we stand by all comments previously submitted.

We have several comments on the newly submitted documents and we note significant difference in various versions of the proposed plans. Our comments are based on the plans available to the public and not those in the June 2018 Transport Statement.

1. The proposed stairwell referred in the Heritage Report (4.2) is not shown on the proposed ground floor or first floor plans.
2. The proposed plan for the ground floor shows an external door to what is designated as an office, currently the snug of the pub, we query whether such an external alteration is permitted in a Grade 2 listed building.
3. The siting of the staff room only has internal access through the food preparation area.
4. The main entrance - Is this intended to also be a fire exit and if so, where will be the designated meeting point as this leads straight onto the public highway. We also query whether that door way should be a fire door and whether this is permissible in a listed building.
5. We note the baby facilities are on the first floor. We query the evacuation process for nonmobile infants.
6. We note the sole emergency exit on the plan is an external staircase leading from the first floor to what we understand is intended to be the staff parking area.
7. Further issues regarding the emergency exit on the first floor, we query whether it is suitably accessible from all rooms on that floor.
8. Where is their proposed second meeting point in the event of evacuation and does this home key facilities such as baby changing areas and infants toilets?
9. We query the lack of laundry facilities on site.
10. We note that the toilet facilities on the first floor are shared between adults and children. Our understanding is that such an arrangement would be contrary to children's safeguarding guidelines.
- 11.2.4 In the Planning, Design and Access Statement states that there is excellent public transport. We note that the first bus is 9.00 and the last at 14.34 but this does not cover early morning, late afternoon and evening drop off and pickups. We would like to point out that there is no public footpath from the bus stop to the premises.
12. We note the recent approval by Chiltern District Council of the conversion of the Great Barn, Blackwell Hall Lane, Latimer to a Nursery which will place additional traffic demands on Blackwell Hall Lane.

13. Since the approval of the Great Barn, our previous comments regarding unnecessary nursery capacity for local people are ever more applicable as the demographics of the local population do not require this capacity. Old MacDonald's Nursery, Latimer has 96 places and The Great Barn has plans for 40 children from 3mths to 5 years. It is understood that Ley Hill School takes children from 3 years old and has up to 26 places. Use of these facilities will only cause an increase in traffic.

14.5.5 Traffic Report (June 2018) - We note that there is the assumption that the business can use public land to enable its business to function by using it to drop off and pick up.

15. We note that there does not appear to be a traffic risk assessment for the dropping off period and crossing the road with children and the business should demonstrate that this is actively safe.

16. We note from the proposed plans that there is not an outdoor play area for the babies who will be based on the first floor.

17.5.22 Planning, Design and Access Statement (May 2018) - We would be grateful for more clarity of the ten spaces mentioned.

18. Transport Statement (June 2018) - We note reference to Acorn Cottage Nursery. Our own research into this site would suggest it is not a nursery next to a pub but is the Head Office of the Nursery Building. The actual nursery with children is in a different location.

19.5.8 Planning, Design and Access Statement (May 2018) - We understand that the The Bull, Bellingdon is now being returned back to its former use as a public house and the nursery is being located at the back of the building. Such an arrangement would not be possible at The Swan.

20. We would be grateful for a Fire Safety Report which refers to emergency access and egress from the building in the event of an incident as well as with regards to the queries raised in this response.

In summary, the view of the Parish Council is that the Swan should remain a facility for the local community. Until recently, it has been a thriving business and would have the support of the community to become once more.

29th November 2018:

'The Parish Council would like to comment on the recent new first floor plans. The Council have concerns for the safety of the babies. The latest first floor plan shows that in an emergency the only access for babies who are either in the Baby Playroom or Quiet Room only have access via the internal staircase and do not have access to the fire exit. Also in order to get to the baby changing facilities, staff need to walk past the main staircase to access the baby changing room. This is not ideal for those babies who are toddling as presumably there will not be a stair gate in place as these cause additional risks. It is not clear where the evacuation meeting point is, as well as the second meeting point away from the building which should have toilet facilities'.

REPRESENTATIONS

8 letters of objection have been received and are summarised as follows (only comments regarding the impact to the historic building will be summarised):

- Detriment to Listed Building
- Inappropriate use of building
- The old internals should not be lost
- Poor design

- Internal alterations will obliterate the historical use of this ancient building
- It will be impossible to make the internal changes needed to meet health and safety regulations as a nursery
- The applicant proposes to change the beautiful, historic and uniquely characteristic snug, fireplace and bar area into a lot of toilets

CONSULTATIONS

The Districts Historic Buildings Officer made the following comments:

27th March 2019:

Designation

The Swan PH is a grade II listed building dating from the 16th century. The northern two timber framed bays were constructed in 1520, with the southern brick wing added in 1680. Part of the building was used as a PH from at least 1843, and by 1881, the entire building was used as a pub.

Significance of the listed building

This attractive composition of historic buildings is prominently located facing onto the common. The earlier timber framed building has a timber fronted gable to the right with a thin brick 17th century stack behind, with the main entrance in the central bay. To the left/ south is the later brick wing, the gable end of which faces the road. Although the building has been altered over the years, the building retains many original features including the exposed timber frame, a narrow winding staircase and many old doors etc.

Relevant background information/planning history

This building has been in use a public house since at least 1843, but it is now proposed to change the use to a children's nursery. When the application was originally submitted, no heritage report was included; this was provided in June and an amendment submitted in October. A change of use of a building; particularly to a more public use where health and safety issues are of concern, such as in a home for the elderly or children. This can be particularly difficult where the building proposed to be converted is a grade II listed building as the requirement to comply with fire and buildings regulations, and even environmental considerations (thermal insulation) can often be onerous. However, in this case, the agents have advised that the proposed use does not constitute a 'change of use' for the purposes of the Building Regulations, so there is no obligation to substantially upgrade the building.

On 21.2.19 a report was submitted by the applicants indicating that the proposed change of use would not necessitate substantial alterations to the building for the use to comply with fire and building regulations. Amended plans were also submitted to address the minor alterations to ensure compliance. The applicant also confirmed that no additional new structures in the curtilage would be necessary for the operation of the nursery.

However, the 'Analysis of Building Regulations Compliance' submitted in February advised that under part M a larger external landing should be provided to the fire escape; this is shown on the amended floor plans but no elevations have been provided. This alteration would require listed building consent and full details including elevations should be provided if this alteration is essential for the operation of the building as a nursery. Alternatively, if the extended landing is not essential; this should be confirmed in writing and amended floor plans showing the existing landing provided.

Following opening up in the building to investigate the survival of the historic building behind modern finishes and a report on this was provided on 5.3.19.

Further amended plans were submitted on 11.3.19, showing that the proposed conversion of the building to a nursery could be achieved, including compliance with the fire and building regulations with minimal alteration and with the retention of historic fabric.

Relevant legislation, policies and guidance

The Council has had special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses, as required under Section 16, 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Furthermore, the application has been considered on the basis of the Chiltern District Council adopted local plan (consolidated Nov 2011) LB 1, LB 2

National Planning Policy Framework (NPPF) - Core planning principles, Part 7 paras. 58, 60, 61, and Part 12 Conserving and Enhancing the Historic Environment paras 128, 129, 131, 132, 133 and 134

The NPPF 2018; Part 16 Conserving and Enhancing the Historic Environment paragraphs 189, 190, 192, 193, 194 and 196.

Historic England Guidance; Managing Significance in Decision-Taking in the Historic Environment- 2015, and Making Changes to Heritage Assets- 2016

Reasons for proposed works

It is proposed to convert the existing public house to a day nursery. There are two staircases in the building at present; one is an ancient narrow winding stair alongside the main stack and the other is an external fire escape. To facilitate the new use a new staircase is proposed in the rear of the brick southern wing.

Impact on heritage assets

The latest information submitted has illustrated that the conversion of this public house to a day nursery could be achieved with minimal harm to the significance of the historic fabric of the listed building. A new staircase can be fitted into the rear section of the rear wing with minimal impact and as the new use is not considered By Building Regulations to be a 'change of use' and due to the listing of the building; only minimum changes appear to be required, which are considered acceptable. It is therefore considered that the proposed alterations, as amended, would enable this grade II listed building to be used as a day nursery with only minimal alterations, which are not considered to cause harm to the significance of the heritage asset which would outweigh the benefits of the new use.

OFFICER NOTE: The concerns regarding the landing have seen been omitted, with the proposed extended landing reverted back to its original form.

POLICIES

National Planning Policy Framework

Core Strategy for Chiltern District - Adopted November 2011: Policies - CS4, CS8, CS20, CS25, CS26 and CS29.

The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011: Saved Policies - LB1 and LB2.

EVALUATION

Principle of Development

1. The application building is a Grade II listed building. In this instance the only issue for consideration is whether the proposal would unduly affect the architectural or historic character of the listed building. To this end the comments of the Historic Buildings Officer raised no objection to the impact of the proposed change of use and internal alterations subject to a condition and informatives. Consequently, the proposal would accord with the requirements of Local Plan Policies LB1, LB2 and the guidance contained in the NPPF relating to heritage assets.

Human Rights

2. The following recommendation is made having regard to the above and also to the content of the Human Rights Act 1998.

RECOMMENDATION: Conditional consent

Subject to the following conditions:-

1 The development to which this consent relates must be begun not later than the expiration of three years beginning with the date on which the consent is granted.

Reason: To comply with the provisions of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended, to prevent the accumulation of unimplemented listed building consents and to enable the Local Planning Authority to review the situation at the end of this period if the development has not begun.

2 Pursuant to the provisions of Section 8 (1) & (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the consent hereby granted expressly authorises the execution of the works shown on the deposited plans hereby approved. This consent relates to the details shown on the approved plans as listed below:

Reason: Because the building is included in the Statutory List of Buildings of Special Architectural or Historic Interest.

3 All new or disturbed work to the interior and exterior of the building shall be finished or made good to match the existing.

Reason: To retain the character of this Listed Building.

4 Prior to occupation details of any new external flues, vents, grills or external pipework relating to this application shall be submitted to and approved in writing by the local planning authority.

Reason: To safeguard the special architectural and historic character of the building, and to accord with Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

5 AP02 Approved Plans - HB applications only

INFORMATIVES

1 INFORMATIVE: The applicant should be reminded that any additional upgrades to the building required under the building regulations or fire officers requirement, due to the proposed change of use, may require listed building consent and that if those alterations are considered to cause harm to the significance of the heritage assets, then the proposed use may not be implementable

Classification: OFFICIAL

2 INFORMATIVE: The applicant should be reminded that any new/replacement signs fixed to the building will require listed building consent.

The End

Classification: OFFICIAL