

Delegated Report

Planning Reference: 25/00172/CLP
Applicant(s): Mrs Dorothy M Kallika
Ward: Barwell



Hinckley & Bosworth
Borough Council

Application Site: 85 Shilton Road, Barwell, Leicester

Proposal: Certificate of proposed lawful development to extend existing pre-school

Case Officer: Sullivan Archer (Senior Planning Officer)
Date: 17/04/2025

1. Recommendations

1.1. Refuse Certificate of Lawful Proposed Development

2. Planning Application Description

2.1. This application seeks a Certificate of Lawful Proposed Development to confirm that the extension of an existing pre-school, Lynton Childcare, at 85 Shilton Road, Barwell is lawful development.

2.2. The extension is to the rear of the property and externally measures 6.7m in width by 3.6m in depth, with a roof height of 2.7m. The Project Plan confirms that these works are required to increase the capacity of the use to support an additional eight to ten children. The proposal shall increase the floor space of the property from 25.4sqm to 49.5sqm and the project plan states that these works shall generate additional employment opportunities at the site.

3. Description of the Site and the Surrounding Area

3.1. The application site is located within the centre of Barwell on the northern side of Shilton Road. The site adjacent to residential properties to the east, south, and west, and a series of employment and retail uses are located to the north of the site along Kingsfield Road. Due to the variety of styles and designs of properties along Shilton Road, there is no discernible unique character to the street scene.

3.2. The application consists of 85 Shilton Road, which is a two-storey semi-detached property that is constructed with a hipped roof, a red brick finish on the ground floor, and a pebble dash rendered finish on the first floor. The Applicant states that both 85 Shilton Road and the attached property, 83 Shilton Road, are occupied by the owners of the childcare facility and utilise the two driveways to the respective properties from Shilton Road as in/out vehicular accesses to the childminding facility.

- 3.3. The ground floor of the property within the application site was approved for a temporary change of use to a childminding facility for up to 12 children until 25 December 2001 in 2000 via planning application 00/000815/COU.
- 3.4. This childminding use, now established as Lynton Childcare, was made permanent by planning permission 02/01359/CONDIT and Condition 01 of this permission increased the capacity of the use from 12 to 18 children at any one time. Condition 04 of this permission limited the use of the childminding facility to between 07:30 and 18:00 on Mondays to Fridays.
- 3.5. The approved use was amended by two further Section 73 Applications (13/00890/CONDIT, and 14/00682/CONDIT). In addition to the two conditions detailed above, Condition 02 of the latest planning permission, 14/00682/CONDIT, limited the use of the rear garden of the property for children's recreation between 09:00 and 09:30 to a maximum of eight children, and to a maximum of 12 children between 09:30 and 16:30.

4. Relevant Planning History

4.1 14/00682/CONDIT

- Variation of Condition 2 and 3 of planning permission 13/00890/CONDIT to allow a maximum of 8 children in the rear garden between the hours of 09:00 and 09:30 and extend children's recreation in the rear garden from 09:30 to 16:30 for a maximum of 12 children
- Permitted
- 05.02.2015

4.2 13/00890/CONDIT

- Variation of Condition 3 of planning permission 02/01359/CONDIT to extend children's recreation in the rear garden from 1 to 2hr per morning and afternoon
- Permitted
- 18.12.2013

4.3 02/01359/CONDIT

- Continued use of property for childminding purposes with an increase in number of children accommodated from 12 to 18
- Permitted
- 27.02.2003

Two previous applications were refused in 2002 for proposals to increase the capacity of the childminding service from 12 to 18 (02/00973/CONDIT) and 24 (02/0090/CONDIT).

4.4 00/00815/COU

- Change of use to childminding facility for up to 12 children
- Permitted
- 11.10.2000

5. Publicity and Consultation

- 5.1. There is not a statutory requirement to consult third parties on an application for a lawful development certificate. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is a good reason to believe they possess relevant information about the content of a specific application.
- 5.2. Notwithstanding this, views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question are irrelevant when determining the application.
- 5.3. In this instance, neighbouring properties were consulted on the application. No responses were received to the proposal.

6. Policy

- 6.1 Section 192 of the Town and Country Planning Act 1990.
- 6.2 Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

7. Appraisal

- 7.1 Section 192 of the Town and Country Planning Act 1990 enables any person with the opportunity to ascertain whether any proposed use of buildings or other land, or any operations proposed to be carried out in, on, over or under land would be lawful.
- 7.2 The statutory framework covering, 'lawfulness,' for lawful development certificates is set out in Section 191(2) of the Town and Country Planning Act 1990. Section 191(2) of the Town and Country Planning Act 1990 confirms that uses and operations are lawful at any time if:
- (a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

- 7.3 Paragraph 55(1) of the Town and Country Planning Act 1990 defines, 'development' as the carrying out of building, engineering, mining, or other operations in, on, over, or under land, or the making of any material change in the use of any buildings or other land.
- 7.4 In accordance with National Planning Practice Guidance (NPPG), the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable to a local planning authority to understand exactly what is involved. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. However, this does not preclude another application being submitted later on if more information can be produced.
- 7.5 The NPPG confirms that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is, or would be, lawful. Planning merits are not relevant at any stage in this particular application.
- 7.6 The Applicant has stated that these works can be undertaken through Permitted Development Rights.

Appraisal of the Proposal's Compliance with the GPDO

- 7.7 The Applicant has stated that the existing use of the site relates to a Use Class E(f) (Commercial Business and Service) and not a school. Therefore, Class M of Part 7 of Schedule 2 of the GPDO is not applicable to the determination of this application.
- 7.8 However, Permitted Development Rights for non-domestic extensions and alterations are detailed at Class A of Part 7 of Schedule 2 of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
- 7.9 Paragraph A.1 of Class A of Part 7 of Schedule 2 of the GPDO states:

"Development is not permitted by Class A if—

(a) The gross floor space of the original building would be exceeded by more than—

(i) In respect of an original building or a development on—

(aa) An Article 2(3) Land; or

(bb) A Site of Special Scientific Interest

25% or 50 square metres (whichever is lesser);

(ii) In any other case, 50% or 100 square metres (which is the lesser);

- (b) *The height of the building as extended would exceed 4 metres;*
- (c) *Any part of the development (other than an alteration)—*
 - (i) *Is on land which—*
 - (aa) *adjoins other premises which are used for a purpose falling within any of the classes in Part C (Residential Premises or Institutions) of Schedule 1 to the Use Classes Order;*
 - (bb) *is Article 2(3) Land; or*
 - (cc) *Is a Site of Special Scientific Interest; and*
 - (ii) *Is within 2 metres of any boundary of the curtilage of the premises;*
- (d) *The development would be within the curtilage of a Listed Building;*
- (e) *Any alteration would be on Article 2(3) Land;*
- (f) *The development would consist of or include the construction or provision of a veranda, balcony, or raised platform;*
- (g) *Any part of the building would extend beyond the front of any existing building;*
- (h) *The development would involve the insertion or creation of a new shop front or the alteration or replacement of an existing shop front; or*
- (i) *The development would involve the installation or replacement of a security grill or shutter on a shop front.”*

7.10 The proposal does not increase the floor space of the property by 50% of the existing building or by 100sqm. The development is stated to have a roof height of 2.7m. Therefore, the development complies with the limitations of Paragraphs A.1(a) and A.1(b) of Class A of Part 7 of Schedule 2 of the GPDO.

7.11 However, the proposal is on land that adjoins 83 Shilton Road, which is occupied under a residential use (Use Class C3). The development is also located immediately adjacent to the shared boundary between the two properties. Although the Application Form highlights that the Applicant lives at the application site and the property is viewed as, *“One big, detached dwelling and nursery,”* 83 Shilton Road does not form part of the approved childminding facility, nor is it included within the red line boundary of the application site. As a result, the proposal does not comply with the limitations of Paragraph A.1(c) of Class A of Part 7 of Schedule 2 of the GPDO.

- 7.12 The development is not within the curtilage of a Listed Building, nor on Article 2(3) Land, or on a Special Site of Scientific Interest. Therefore, the scheme complies with Paragraphs A.1(c)(bb) and (cc), A.1(d), and A.1(e) of Class A of Part 7 of Schedule 2 of the GPDO.
- 7.13 The development does not consist of or include the construction of provision of a veranda, balcony, or raised platform, and does not involve any alterations to the front elevation of the property, nor the installation or replacement of a security grill or shutter. Therefore, the scheme complies with Paragraphs A.1(c)(bb) and (cc), A.1(f), A.1(g), A.1(h), and A.1(i) of Class A of Part 7 of Schedule 2 of the GPDO.
- 7.14 Paragraph A.2 of Class A of Part 7 of Schedule 2 of the GPDO states:
- “Development is permitted by Class A subject to the following conditions—*
- (a) Any alteration is at ground floor level only; and*
 - (b) Any extension is, in the case of Article 2(3) Land, constructed using materials which have a similar external appearance to those used for the building being extended; and*
 - (c) Any extension or alteration is only to be used as part of, or for a purpose incidental to, the use of the commercial, business or service establishment.”*
- 7.15 The proposal is not on Article 2(3) Land, and it is for a single storey extension that is proposed to be only used as part of the commercial service establishment. Therefore, the scheme complies with the conditions detailed at Paragraph A.2 of Class A of Part 7 of Schedule 2 of the GPDO.
- 7.16 In summary, the application site does not benefit from Permitted Development Rights under Class A of Part 7 of Schedule 2 of the GPDO because the site is on land that adjoins other premises that are used as residential premises falling within Use Class C of the Town and Country Planning (Uses Classes) Order 1987, and the proposal is within 2 metres of the boundary of this adjacent property. Therefore, the Applicant has failed to demonstrate that the proposal represents lawful development and the consequently the scheme will require planning permission.

Intensification of the Use of the Site

- 7.17 Notwithstanding the proposed extension to the property, the proposal constitutes a significant intensification of the use of the application site through the creation of between eight to ten new spaces for children within the facility and the employment of additional staff to support this increased capacity. Without further information to demonstrate otherwise, this is considered represent a material change and significant intensification in the use of the site that will require planning permission. Therefore, the Applicant has failed to demonstrate that the proposal represents lawful development and the consequently the scheme will require planning permission.

Summary

- 7.18 In conclusion, the Applicant has failed to demonstrate that the proposal represents lawful development and therefore the scheme will require planning permission. The proposal does not benefit from Permitted Development Rights and represents a material change and significant intensification in the use of the site. In light of the above, the development is not considered to be lawful, and a Lawful Development Certificate is refused.

8. Equality Implications

- 8.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; and
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 8.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

- 8.3 There are no known equality implications arising directly from this development.

- 8.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

9. Conclusion

- 9.1 The Applicant has failed to demonstrate that the proposed extension of the existing pre-school, Lynton Childcare, at 85 Shilton Road, Barwell represents lawful development. The scheme represents a material change and significant intensification in the use of the site. In light of the above, the development is not considered to be lawful, and a Lawful Development Certificate is refused.

9.2 This conclusion is made on the basis of details provide by the Applicant, and as shown on the following documents received by the Local Planning Authority:

- Application Form (submitted: 24.02.2025)
- Block Plan (submitted: 24.02.2025)
- Project Plan (submitted: 24.02.2025)
- Site/Floor Plan (submitted: 24.05.2025)
- Site Location Plan (submitted: 24.02.2025)

10. Recommendation

10.1 Refuse Certificate of Proposed Lawful Development