

<b>Committee Date</b>	20.08.2020	
<b>Address</b>	77 Cumberland Road Shortlands Bromley BR2 0PL	
<b>Application Number</b>	19/02719/ELUD	<b>Officer</b> - Victoria Wood
<b>Ward</b>	Shortlands	
<b>Proposal</b>	Residential and childminding on ground and first floor Lawful Development Certificate (existing)	
<b>Applicant</b>	<b>Agent</b>	
	Mr Bob McQuillan	
77, Cumberland Road Shortlands Bromley BR2 0PL	Downe House 303 High Street Orpington BR6 0NN	
<b>Reason for referral to committee</b>	<b>Call-In</b>	<b>Councillor call in</b>
	Call-In	Yes

<b>RECOMMENDATION</b>	PROPOSED DEVELOPMENT/USE IS NOT LAWFUL
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<p>KEY DESIGNATIONS</p> <p>Biggin Hill Safeguarding Area London City Airport Safeguarding Smoke Control SCA 9 Smoke Control SCA 21 Urban Open Space</p>
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<b>Representation summary</b>	Neighbour letters were sent on the 05.07.2019 and again on 15.07.2019
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Total number of responses	8
Number in support	5
Number of objections	3

## 1 SUMMARY OF KEY REASONS FOR RECOMMENDATION

- The application seeks a certificate for a mixed residential and childminding use.
- The use is more than ancillary and therefore there is a need to demonstrate childminding activity at a level of intensity that would be sufficient to result in a change of use over the required 10 year period.
- The Council do not consider that it has been sufficiently demonstrated on the balance of probabilities that the activity has been at a consistent level of intensity during that time to demonstrate that the change of use occurred more than 10 years ago and has subsisted continuously since.
- Accordingly it is recommended that the certificate be refused.

## 2 LOCATION

- 2.1 The host dwelling comprises of a semi-detached dwelling which lies on the southern side of Cumberland Road. The dwellings in the street are generally arranged in pairs of semi-detached houses. The street slopes up from the east to the west, as a consequence of which some of the pairs of semi-detached dwellings have ridgelines that step up relative to each other.
- 2.2 The surrounding area is residential in character with Highfield School to the rear (south).



## 3 PROPOS

- 3.1 This Lawful Development application seeks to establish that the premises have been used for residential and childminding for more than ten years before the date of the application (21.06.2019).

#### **4 RELEVANT PLANNING HISTORY**

- 4.1 The relevant planning history relating to the application site is summarised as follows:

- 4.2 04/00387/FULL6 - Half hip/gable end roof extension – Approved

#### **5 CONSULTATION SUMMARY**

##### **A) Statutory**

None

##### **B) Adjoining Occupiers**

Nearby owners/occupiers were notified of the application and representations were received which can be summarised as follows:

##### Support:

A Number of letters of support have been provided confirming that the applicant has been operating as a childminder since 2009.

##### Objection:

- The applicant does not specify the number of children for the LPA to understand what the applicant is seeking;
- The submission assumes to seek a certificate for childminding on the basis of 10 continuous years without enforcement action having been taken;
- The starting point is to ascertain whether or not there has been a breach, whilst the applicant does not state this generally low key working from home, but a general rule of thumb is 6 persons/dogs etc.
- The documents provided do not provide enough clarity and therefore the certificate cannot be granted;
- The evidence in the Ofsted reports shows a rise in the number of children from 3 to 13 between 2009-2016. The Ofsted report shows there were not breach in 2009 and as such a breach has occurred over the last 3 years.
- The law states that if there has been an intensification which would constitute a material change of use of land. The evidence that has been provided demonstrates on the balance of probability there has been a significant change in the character.
- 2019 the applicant utilised three childcare assistants which is an increase in staff and incorrectly registered with Ofsted;
- Scale of activity has been concealed;
- The information and document provided does not corroborate the current level of childcare being taken plans for more than ten years;

- The number of children attending this setting should be reduced;
- Unacceptable level of noise and disturbance caused by this setting;
- Detrimental impact on neighbouring amenities;
- Parking in the road and blocking driveways.

*Please note that the above is a summary and full text is available upon request, however sensitive information will be redacted.*

## **6 PLANNING CONSIDERATIONS**

- 6.1 This Lawful Development application needs to be considered under Section 171B(3) of the Town and Country Planning Act 1990 which provides that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

## **7 ASSESSMENT**

- 7.1 Section 191 (2) of the Town and Country Planning Act states that uses and operations are lawful if no enforcement action is taken against them and they are not in contravention of any enforcement notice which is in force. Section 191 (1) of the act allows a person to make an application to determine whether a specified existing use, operation which has been carried out on land is lawful for planning purposes.
- 7.2 Section 191(4) of the Town and Country Planning Act 1990 (as amended) if the Local Planning Authority has not been provided with information satisfying them of the lawfulness at the time of the application of the use specified in the application, they shall refuse the application.
- 7.3 The applicant would need to prove that it is more likely than not that the use of the premises have been used as residential and child-minding for 10 years preceding the date of the application.
- 7.4 If the Local Planning Authority have no evidence of their own, or from others, to contradict or otherwise make the applicant version of events less probable, there is no good reason to refuse the application, provided the applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability'.
- 7.5 In support of the application the applicant has provided the following:
- Covering letter
  - Two sworn statements from the owner of the property (applicant)
  - Copies of Ofsted registration reports with inspection dates 15/05/2009 & 24/03/2016. Full copy of inspection report 01/10/2020 not provided, however available to view on Ofsted website
  - Email from the Profession Association for Childcare and Early Years confirming membership since 17<sup>th</sup> December 2008.

- Letters of support from Nos. 71, 75 and 96 Cumberland Road.
- Letters from parents/carers who have used the childminding service.
- A plan identifying the land to which the application relates
- Table setting out year, number of children on roll (including age range), number of children at any one time and number of staff

7.6 The application seeks a certificate of lawfulness for a mixed residential and childminding use. It is acknowledged that the applicant has been a registered childminder and the premises have been used for childminding since 2008 given the level of evidence provided. However, the application seeks to demonstrate that that level of use has been of a sufficient intensity to result in a partial change of use of the dwelling from residential to a mixed residential and childminding use. In order to grant a certificate, the Council would need to be satisfied that, on the balance of probability, the mixed residential and childminding use first occurred more than 10 years ago and has subsisted continuously since then.

7.7 Whether the partial use of a residential property for non-residential purposes (such as childminding) would result in a material change of use is a matter of fact and degree in each case. It is possible that childminding could be carried out a low level of intensity as an ancillary use of a residential property and without resulting in a change of use. Factors to consider could include the number of children looked after at any one time and for what length of time, and whether any other members of staff are employed.

7.8 Currently on site there is the applicant and she employs four assistants; one of whom helps on 4 days; one who helps on 2/3 days and 2 half days; two who are flexible with days and times. The applicant at present has also on average 17 children on site (9 under 5s and 8 x 5-11's). On the roll (this is the register not the number of children in attendance at one time) there are 22 children (13 under 5's, 8 x 5-8's and 1 x 8-11 year old).

7.9 The report will now consider and assess the evidence provided by the Applicant in turn:

7.10 Two sworn statements by (applicant):

7.10.1 The statement confirms that the premises and applicant have been operating as a childminder since 23<sup>rd</sup> February 2009 and supported by three Ofsted inspections. The statement confirms the days and hours of operation. The statement does not set out the numbers of children over the years, however confirms that a table showing the years between 2009-2019 setting out the numbers of children and staff has been provided. The number of children shown in the table within each of the three age brackets varies over the years. At present the applicant confirms that she has four assistants; one of whom helps on 4 days; one whom helps on 2/3 days and 2 half days; two who are flexible with days and times.

7.11 Ofsted Reports and table:

7.11.1 Ofsted report inspection date 15/05/2009 states that there are only three children on the roll, one of whom is in the early years range. The report only records children under the age of eight and it acknowledges the setting also makes provision for older children but they are not counted. This is inconsistent with the table provided by the applicant which states that there were eleven children on the roll (six of which are in the early years range). There is no confirmation of staff working in the Ofsted, however it is noted in the report that the when working with an assistant the childminder may care for up to six children under the age of eight of whom not more than three may be in the early years range group. The table provided by the applicant has not broken down the attendance in the same way as the roll and Ofsted, however it does states that there were 4 under 5's which in turn would be over the Ofsted recommendation.

7.11.2 Ofsted report inspection date 01/10/2010 (full copy obtained from the Ofsted website) states that there are only five children on the roll, two of whom is in the early years range. The report again only records children under the age of eight and it acknowledges the setting also makes provision for older children but they are not counted. This again is inconsistent with the table provided by the applicant which states that there were fifteen children on the roll (eight of which are in the early years range). There again is no official recording or acknowledgement of additional staff working, however the report makes reference that when working with an assistant the childminder may care for up to ten children under the age of eight of whom not more than five may be in the early years range group. The table provided has not broken down the attendance in the same way as the roll and the Ofsted report, however it does states that there were 5 under 5's.

7.11.3 Ofsted report inspection date 24/03/2016 states that the age ranges of children are between 1-6 years with a total number of spaces 6 and 13 on the roll. This again is inconstant with the table provided by the applicant who states that there were nineteen children on the roll and nine children in attendance under 5. The table provided has not broken down the attendance in the same way as the roll and Ofsted report, so the children between 5-8 years cannot be counted. The report again only records children under the age of eight and it acknowledges the setting also makes provision for older children but they are not counted. This report now acknowledges that the applicant works with three part-time assistants; however the table provided states four part-time assistants.

7.11.4 Whilst it is acknowledged that Ofsted is a "snapshot" in time on the day of inspection, the data provided is vastly different and not sufficiently clear to corroborate the table provided by the applicant and to confirm that the childminding activity has been at a level of intensity that would be sufficient to result in a change of use over the required 10 year period.

## 7.12 Letters of support:

7.12.1 Three letters of support have been provided from the occupiers of Nos. 71, 75 and 96 Cumberland Road these all confirm that the applicant has been a

childminder for over 10 years, however they do not provide any detail over the number of children, hours of operation nor corroborate the number of staff.

#### 7.13 Letters from parents:

7.13.1 Again all these letters support that the applicant has been a childminder for over 10 years, some of the evidence provided also states that there were additional members of staff however no corroborating evidence has been provided to support the number of staff or children being looked after on site at one time.

#### 7.14 Councils Investigations:

7.14.1 From the investigations the Council have carried out the information provided was insufficient to corroborate the statements and does not cover the full 10 year period. It is also noted that the applicant only uses the playroom, kitchen breakfast area, dining room and living room but not at the same time.

### **8 CONCLUSION**

8.1 The application seeks a certificate for a mixed residential and childminding use. As set out above it is considered that the use is more than ancillary and therefore there is a need to demonstrate childminding activity at a level of intensity that would be sufficient to result in a change of use over the required 10 year period. This is a finely balanced case and whilst it is accepted that childminding has occurred over the 10 year period, the Council do not consider that it has been sufficiently demonstrated on the balance of probabilities that the activity has been at a consistent level of intensity during that time to demonstrate that the change of use occurred more than 10 years ago and has subsisted continuously since. Accordingly it is recommended that the certificate be refused.

### **RECOMMENDATION: PROPOSED DEVELOPMENT/USE IS NOT LAWFUL**

#### **For the following reason:**

The Certificate of Lawfulness should not be issued in accordance with Section 191 and 191(2) of the Town and Country Planning Act 1990 as the evidence provided is not sufficiently clear or unambiguous to substantiate on the balance of probability that the level of use has occurred for a continuous period of at least 10 years.