

West Malling

TM/24/00927/PA

East Malling West Malling
And Offham

Location: ROTARY HOUSE NORMAN ROAD WEST MALLING ME19 6RL

Proposal: Proposed change of use from an existing community centre to a nursery with associated parking and landscaping

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1. Description of Proposal:

- 1.1 Permission is sought to change the use of the building from a community centre to a nursery with associated parking and landscaping. It is understood that the last use of the premises was as an Age UK day care centre, which ceased to operate around 5 years ago.
- 1.2 The nursery will accommodate 30 children with seven members of staff. It has been indicated that it is likely to take a year to reach these figures. The opening hours will be 7am-7pm Monday-Friday. The existing parking spaces to the eastern side of the building will be retained in connection with the nursery.
- 1.3 In support of the application, it is stated that the KCC Childcare Sufficiency Assessment (2023) identifies West Malling as currently having an indicative deficit of 160 childcare spaces for 0-4 year olds. This is considered to be a significant deficit in the number of spaces available when compared to the needs of the area. The applicant's agent believes this demonstrates that there is an identified need for nursery accommodation.
- 1.4 A second application TM/24/00673 remains under consideration in respect of signage for the proposed nursery. The department is aware that the signage is in place but the application remains on hold pending the outcome of the application for the change of use.

2. Reason for reporting to Committee:

- 2.1 The application has been called to committee at the request of Cllr Roud for the following reasons:
 - Planning history of the site.
 - Building is protected from loss as a community building under the NPPF and TMBC Policies. It has also been successfully listed twice as an asset of Community Value.
 - Highway safety and parking Issues.

- The site lies extremely close to West Malling Primary School and is also located on a busy very narrow road adjacent to the junction with Offham Road.
- The effect on the Green Belt and the Countryside status.
- The impact of a commercial building in a residential area.
- Effect on Heritage assets, such as the Historic County Cricket Ground and the West Malling Conservation Area.
- Site is outside of the built-up confines of West Malling.

2. The Site:

- 2.1 The application relates to a single storey flat roofed building set on the northern side of Norman Road and outside the settlement confines, as defined on the Local Plan map. The site lies within the West Malling Conservation Area and the Green Belt. To the west and south are the residential properties of Norman and Offham Roads, whilst to the north is the West Malling Cricket Ground (understood to be the location of the first recorded cricket match). To the east are bungalows within County Grove. Behind these properties is West Malling Church of England Primary School. A short walk east along West Street is the High Street area of West Malling.
- 2.2 The building comprises a number of separate rooms with associated office, kitchen and WC facilities. The building is said to have a floor area of 289 square metres. The accommodation would be arranged to provide toddler and baby rooms and space for creative and messy play. Externally there is an amenity area enclosed by a brick wall and more recent fencing. On the eastern side are 5 designated parking spaces, at right angles to the road. There was formerly a protected tree to the front of the site but this has previously been removed following the submission of an application.

3. Planning History (relevant):

24/00673/PA

- Application remains under consideration

Retrospective Advertisement consent for proposed signage in relation to the Precious Gems Nursery to be located on the main facade of the property

24/00460/PA -Application returned

Change of use from an existing community centre, to a nursery with associated parking and landscaping. To include internal alterations and a garden play area to the front of the building as well as a timber closeboard fence, metal railing and entrance gate to the southern boundary / front of the site

22/01714/FL

Refuse - 05 July 2023

Demolition of existing building and replacement of 4 no. 4 bedroom semi-detached dwellings with associated parking and landscaping

13/01464/FL

Application Not Proceeded With - 15 December 2014

Erection of a conservatory

12/02645/TPOC

Approved - 17 October 2012

Fell Sycamore with decay and die-back and replace on frontage with more suitable species

04/02762/TPOC

Grant With Conditions - 09 September 2004

Remove branch of one Sycamore growing close to roof and telephone cables; remove deadwood throughout the tree (TPO ref. 12.10.04)

98/02129/ORM

ORM approved - 07 May 1999

relocation of fire exit from the west elevation to the north elevation of the extension

96/01298/FL

Grant With Conditions - 28 October 1996

retention of existing day care centre

96/01057/FL

Grant With Conditions - 14 October 1996

extension to existing day care centre

95/50841/FL

Grant With Conditions - 10 October 1995

extensions to existing day care centre

93/01620/TP

Grant With Conditions - 26 March 1993

Trim one sycamore tree

90/10327/FUL

Grant With Conditions - 31 July 1990

Renewal of permission TM/85/449 for vehicular access and Day Care Centre for Elderly Persons Welfare.

85/10423/FUL

Refuse - 22 February 1985

Single storey building for use as day care centre for elderly persons including dining area, common room, office, lavatories and kitchen for temporary period of 5 years.

4. Consultees:

4.1 Parish Council: Have provided details which outlined how Rotary House previously operated and the range of services it provided. A total of 416 Day Care sessions were held over the period 2017/18 (the last year of opening). In summary the Parish Council states that there is currently a lack of older people services in the Malling area, as confirmed by the Chief Executive Officer of Age UK Maidstone. It is stated that demand for older people services is high, and that Age UK would be interested in working with the Parish Council to provide much needed services for senior age groups.

4.2 Further comments include:

- Five, not 6 parking spaces are available at the site as stated in the Planning Statement. Insufficient spaces for all staff involved. Tandem parking would not be a viable option as this would cause problems with the entrance to the primary school. Potential for conflict between all users of the access road to the side of the site.
- Potential total of 84 additional vehicle movements across the day leading to exhaust pollution.
- Potential highway hazards with parents stopping in the road at drop off collection times/ constructing double yellow lines and causing highway problems and displacement parking.
- Parking at the village hall, approximately 15 minutes walk away is not a realistic suggestion.
- Access from the west (via Sandy Lane) and the south (via Offham Road) would be along narrow rural roads.
- Loss of second vehicle access to the site may impact access for emergency services.
- State that the approach road and the use of the Rotary House site have been managed cooperatively so that all these community facilities are able to continue to function, by complementary opening and closing times. Change of use of Rotary House would result in loss of community control to a commercial operation to the detriment of the local amenity groups.

4.3 Neighbours: Total of 38 representations received.

- 8 representations received in **support** and following comments made:
- Need for additional local childcare places where there is a lack of availability locally and waiting lists. Essential facility for young families in the area.
- Convenient for those families who already have children at the primary school.
- Renovation work has improved the appearance of the building which had become an eyesore. The property is well suited to the proposed use.
- Nursery will be within walking distance for some families.
- The community centre use was lost 5 years ago.
- Benefit to employment, providing job opportunities and enabling parents to return to work.
- Street setting is utilitarian and associated works will not be visually harmful to the area.
- Re-use of the building is preferable to demolition or dereliction.

- 30 representations received raising objections as follows:
- Parking problems, conflicts and increased strain on availability of spaces in this already congested area. Inadequate number of on site spaces available to accommodate seven members of staff and ancillary employees such as caterers or cleaners.
- Vehicle access at the front of the site and off road parking spaces in front of the building have been lost through the construction of the boundary fence.
- No provision for on site drop off/pick up with potential for hazardous on street parking and congestion in the area. Double yellow lines/zigzag markings are present in the adjoining road and the site is located at a bottleneck.
- Potential for cars to be parked on KCC owned land with obstruction of the school entrance creating hazardous situation for children. Parents rarely stick to designated drop off/pick up times.
- Applicants reference to use of unrestricted parking spaces in the village hall is inaccurate as these are restricted to users of the Village Hall, tennis courts and the adjoining recreation ground.
- Increased number of car journeys compared to use of minibus to bring customers to the former community centre.
- Drop off/pick up times will clash with those attending breakfast/after school clubs at primary school and those using the cricket club and field.
- The proposal involves a change from a community use to a commercial business use. There are already other nursery facilities nearby including two at Kings Hill, two in East Malling, two in West Malling and one at the school site. The demand for older age services is greater than that for nursery places.
- The building was designated as a community centre for use by older age groups to provide friendship and combat loneliness. There is still a demand for these facilities. Would prefer the building to be retained for use as community centre for senior age groups or as a medical centre.
- Reference made to the refusal of the previous application for 4 houses with one of the reasons being the loss of the community centre.
- Applicants have not provided details of the lack of need for a community centre or of any alternative provision for day care for the elderly. There is a greater need for elderly service facilities than for childcare places.
- Applicants have not provided details of any enhancements of the building.
- Objection to retrospective applications for the nursery, associated works and advertisements as a tactic to put pressure to recommend approval.

- The recently constructed fence is visually harmful to the area, having a detrimental impact on the Green Belt, Conservation Area and heritage assets of Cricket Ground.
- Building is a designated Asset of Community Value.
- Associated light and noise pollution through the introduction of a commercial use in a residential area.
- A mechanism should be put in place, if permission is granted, stating that the applicants should make a donation to a local club or charitable organisation that would benefit the community.
- Site could be sold on the open market for development.

4.4 Environmental Health: Initial comments: Queried the proposed finished surface for the nursery amenity area. Noted that it is currently hardstanding but due to the high risk nature for young children, if it is to be converted to soft landscaping, further information regarding the soils to be used may be needed.

4.5 Further comments: Confirmed no formal comments or objections.

4.6 With regard to air quality the following observations are made: "Norman Road is not a very busy road, so it won't have anywhere near the AQ issues of the A20. The nearby school had one of our short-term AQ monitors up recently and there were no AQ concerns."

4.7 KCC Highways: *"I note that the proposal is a change of use from community centre to nursery, with the existing 5 parking spaces retained and no new on-site parking provision proposed (as confirmed in the applicant's application form). Having reviewed the submission I note the absence of a Transport Statement (TS) to assess the likely impact of the development in highway terms; however, it must be acknowledged that the site has an existing lawful use which would inevitably generate a degree of traffic. Therefore, if TMBC were so minded they could ask the applicant to provide a TS."*

4.8 *It is likely that the traffic profile of the two uses will be different, with a nursery generating daily movements, particularly during the AM Peak and 16:00-18:00 period; whereas a community centre in all likelihood would be used less frequently depending on how well it is utilised by the local community. In terms of parking specifically I note that many of the streets listed in the objections below are subject to extensive on street parking controls, which in theory should be subject to patrols by your enforcement officers and act as a deterrent to parking that could be hazardous to the safe or free flow of traffic. Therefore, on balance I do not believe a highway-based objection relating to parking would be sustainable at an appeal situation, particularly given how KCC's standards for the proposed use are a maximum, rather than minimum, standard."*

4.9 The Highways Engineer also noted:

4.10 *Once planning approval for any development has been granted by the LPA, it is the responsibility of the applicant to ensure that before development commences, all necessary highway approvals and consents have been obtained, and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority.*

4.11 *The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site."*

4.12 In response to the submission of the Transport Statement, the following was received 7.8.2024:

4.13 *"I can confirm that the highway authority are satisfied that the Transport Statement (TS) demonstrates that the proposals will not impact upon the public highway in an unacceptable way and therefore raise no objection."*

4.14 Landscape Officer: "Notes the site lies in a Conservation Area but that very little landscaping details have been provided. A green area identified within the red line area as soft landscaping does not include details about species of vegetation. Also notes that prior to this application some vegetation was removed including tree saplings and that a new front boundary fence has been erected.

4.15 The Landscape Officer identified that there is some opportunity for limited planting at the site which could help to soften the built form and contribute positively to/enhance the character and appearance of the Conservation Area. A landscaping condition can be imposed on any grant of consent to take advantage of an opportunity to enhance the visual appearance of the scheme."

4.16 Policy, Scrutiny & Communities Manager: Confirmed protected period for Asset of Community Value ends March 2025. The Parish Council did express an interest to be a potential bidder, which meant the 6 month moratorium kicked in, but not aware that anything progressed further.

5. Determining Issues:

5.1 In line with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning decisions must be taken in accordance with the 'development plan' unless material considerations indicate otherwise. The requirements of the National Planning Policy Framework are a significant material consideration in this regard.

Policy Context

5.2 The relevant policy considerations are as follows:

Tonbridge & Malling Borough Core Strategy (2007) policies (CP1 Sustainable Development), CP2 (Sustainable transport), CP3 (development in the Green Belt), CP12 (development within the confines), CP14 (development in the countryside), CP24 (Achieving a High Quality Environment), CP26 (community services)

- 5.3 Policy CP1 outlines the context for determining applications and the need for new development to result in a high quality sustainable environment which will be balanced against the need to protect and enhance the natural and built environment.
- 5.4 Policy CP2 states that development that is likely to generate a significant number of trips should be well located relative to transport routes, minimise the need to travel and make use of sustainable travel methods.
- 5.5 Policy CP3 identifies that National Green Belt policy will be applied where identified on the Local Plan map and will only be permitted if it is justified by very special circumstances.
- 5.6 Policy CP12 includes reference to conversions and changes of use being permitted within the confines of rural settlements, including West Malling.
- 5.7 Policy CP14 restricts development in the countryside to certain categories. Where development in the countryside is justified, the preference will be for re-use or redevelopment of existing buildings.
- 5.8 Policy CP24 states that all development must be well designed and of high quality in terms of detailing, scale, layout and appearance with the use of appropriate materials to respect the site and its surroundings.
- 5.9 Policy CP26 states that:
- 1. The Council will safeguard land required for the provision of services to meet existing and future community needs, as identified by service providers.*
 - 2. Land required for the implementation of transport schemes approved by Government or adopted by Kent County Council as Highway Authority or other schemes that are necessary to support the development strategy will be safeguarded from prejudicial development.*
 - 3. Proposals for development that would result in the loss in whole or part of sites and premises currently or last used for the provision of community services or recreation, leisure or cultural facilities will only be proposed in the LDF or otherwise permitted if:
(a) an alternative facility of equivalent or better quality and scale to meet identified need is either available, or will be satisfactorily provided at an equally accessible location; or
(b) a significant enhancement to the nature and quality of an existing facility will result from the development of part of that facility; or
(c) the applicant has proved, to the satisfaction of the Council, that for the foreseeable future there is likely to be an absence of need or adequate support for the facility.*

5.10 Managing Development and the Environment DPD (2010) (SQ1 Landscape and Townscape Protection and Enhancement) and SQ8 (highway safety). Policy SQ1 states that all new development should protect, conserve and where possible, enhance the character and local distinctiveness of the area including its historical and architectural interest. Policy SQ8 states that development proposals will only be permitted where they would not significantly harm highway safety and where traffic generated by the development can adequately be served by the highway network and should comply with parking standards.

National Planning Policy Framework 2023

5.11 Relevant paragraphs include 7, 8, 11, 39, 88, 97, 115, 131, 135, 142, 152-154, 180, 195, 200, 201, 203, 205, 206, 207, 208.

5.12 Paragraph 39 encourages early engagement which has significant potential to improve the efficiency and effectiveness of the planning application system for all parties.

5.13 Paragraph 88 a) and d) relates to the need to support a prosperous rural economy and states: *“Planning policies and decisions should enable:*

a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings;

d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.”

5.14 Paragraph 97a) relates to the need to promote healthy and safe communities and states: *“Planning policies and decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings which:*

a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages.”

5.15 Paragraph 115 states: *“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*

5.16 Paragraph 135 of the NPPF seeks to ensure that decisions result in developments which are visually attractive as a result of good architecture, and are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.

5.17 Paragraph 142 states: The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.”

- 5.18 Paragraphs 152-154 concern development in the Green Belt and identify that inappropriate development is by definition harmful to openness and should not be approved except in very special circumstances.
- 5.19 Paragraph 180 concerns the need to conserve and enhance the natural environment.
- 5.20 Paragraphs 195, 200, 201, 203, 205, 206, 207, 208 identify the need to address the impact of development on heritage assets and whether any potential harm amounts to substantial or less than substantial harm to its significance.
- 5.21 Unfortunately a pre-application advice submission, as recommended by paragraph 39 of the NPPF was not received in relation to the proposals for this site and the department is aware that some works have taken place prior to determination. As usual, any works carried out without the benefit of planning permission are entirely at the applicant's own risk.
- 5.22 The key considerations with this application are the impact of the proposed change of use and associated works on the residential amenities of the occupants of the area and highway matters. Other considerations are the visual impact on the character of the Conservation Area and the openness of the Green Belt. The designation of the building as an ACV is also a factor to be considered.

Planning History

- 5.23 This site has been the subject of several applications over the years, most recently with TM/22/01714 to demolish the community centre and erect 4 houses. This application was refused for various reasons including inappropriate development in the Green Belt, loss without justification of a community facility, failure of the development to respect the scale of local development, harmful relationship to the Conservation Area, highway safety matters and conflict with users of the cricket ground and playing fields.
- 5.24 These matters are addressed in the following review of the impact of the current proposal in relation to the policy context and bearing in mind that the application is for a change of use rather than new built development.

Impact on residential amenity

- 5.25 The application site lies in a mixed-use area with residential properties close by as well as the primary school and the playing fields, with various associated recreational activities. The commercial part of West Malling is nearby around the High Street area. The roads in the vicinity have time limited parking restrictions and as a result there is frequent vehicle activity throughout the day with visitors parking and walking to the shops and services. With the existing primary school and those using the playing fields for sport or general exercise, this is an area of frequent pedestrian and vehicle movements.
- 5.26 The application has been carefully considered having regard to the amenities of occupants of neighbouring houses. It has been indicated that the nursery would

accommodate 30 children and would be open between 7am and 7pm Monday - Friday with around 7 members of staff. Drop off and pick up times are to be staggered with children arriving between 0700-0800 with collections at 1300,1800 and 1900.

- 5.27 The introduction of a nursery for 30 children will inevitably lead to comings and goings with staff arriving/departing and children being dropped off/picked up. There will also be deliveries, potentially for supplies and meals, as well as cleaners and maintenance vehicles at times. Whilst it may not be possible to limit drop off and pick up to exact times these are likely to peak early in the morning and at the end of the afternoon or early evening depending on parents work commitments. It is acknowledged therefore that there will be general activity associated with the operation of the nursery including the outside amenity area.
- 5.28 It is recognised that Rotary House has not been in use for a number of years as a community facility for older age groups, but when it did operate there were associated vehicle movements in the form of mini bus activity collecting and returning residents from their homes. In the event that a day care centre were to start up at the premises again, there would also be associated vehicle activity with staff, cleaners, food delivery and maintenance vehicles visiting the site in a similar way. A level of general associated activity has therefore been accepted at Rotary House and was established at this site for many years.
- 5.29 It is considered that whilst there are some differences between how the community centre and the proposed nursery would operate, the associated level of activity would not be so significantly different or at such a high level in relation to the general business of the area as to cause undue harm by reason of noise or disturbance. The proposed change of use is therefore considered acceptable with regard to any impact on existing residential amenities and having regard to the above policy context and the spirit of NPPF paragraph 88a).

Highway Matters

- 5.30 Under paragraph 115 the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 5.31 Following submission of the application the applicant's agent provided follow up information in a Transport Statement. The Statement indicates that the parking places to the side of the building are available for staff or drop off. It has also been stated that there would be the option for tandem parking but this would need to take place on land under the applicants' ownership without obstruction of other accesses or the public highway.
- 5.32 With regard to the need for parking in association with the proposed use, the agent stated that there are also 36 unrestricted parking spaces in the village hall which could be available for staff to use. Use of spaces at the Village Hall premises would however be a private matter between the parties concerned.

- 5.33 To fully assess the highway impact of this development proposal, it is essential to understand the level of vehicle activity associated with the last use of the building and the current proposal. The KCC Highways Engineer has recognised that there are differences between the last and proposed uses with peaks of activity at certain times of the day. Reference has been made to the local on street parking restrictions which would be enforceable in the area.
- 5.34 The KCC Highways Engineer has considered the submitted Transport Statement and confirmed that the proposals will not impact upon the public highway in an unacceptable way and raises no objection to the change of use. On balance the Highways Engineer does not believe a highway-based objection relating to parking would be sustainable at an appeal situation.
- 5.35 Paragraph 115 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. In absence of the substantive evidence to suggest otherwise and any objection from the Highway Authority, it is not considered that the perceived impacts on highway safety and parking are so significant as to warrant a reason for refusal with regard to the paragraph referred to earlier.

Design and visual impact on the Conservation Area

- 5.36 Other than the installation of timber fencing along Norman Road, there would be no external changes to the building and to the site. The visual impact of the proposal is considered having regard to the location close to but outside the settlement confines and within the Conservation Area. The Conservation Area extends from the historic High Street centre of West Malling to include the Old County Ground and sports pavilion to the north and includes the application building.
- 5.37 The application relates to a single storey low key flat roofed standalone building on the edge of the historic cricket ground. It is seen from the south against the backdrop of the hills in the distance but is opposite residential properties along the southern side of the road. The appearance of the site has been altered in recent times with the erection of a panel fence with trellis around the front boundary and installation of yellow lettering along the fascia to show the name of the proposed nursery. As mentioned above the advertisement application for the signage remains on hold at the present time.
- 5.38 In this instance the main heritage consideration is the impact of the external works on the character of the Conservation Area. Rotary House has no immediately adjacent neighbouring properties and is not considered to be of a high standard of design. Whilst it does not make a particularly positive contribution to the character of the Conservation Area, it is single storey and has a low key appearance. The introduction of fencing/trellis around part of the site to enclose the proposed nursery play area is not thought to result in greater harm to the visual amenities of the wider street scene, where a variety of boundary treatments including brick wall, picket fencing and hedging already exist.

- 5.39 With regard to the heritage assets of this part of the Conservation Area it is noted that there is a general open aspect to the north as the built form adjoins the cricket ground. The introduction of the panel fencing with trellis introduces a more modern feature but the structure is well made and of a similar shade to the brick of the application building.
- 5.40 Due consideration has also been given to the West Malling Conservation Area Appraisal when assessing the heritage impact of this development proposal. The site is identified in the Appraisal as being part of Sub-Area C; the western part of the Conservation Area predominately residential in character.
- 5.41 In relation to Norman Road where the site sits, the Appraisal highlights that “there are several modern single storey homes to the north side of the road where it joins Norman Road. There is an attractive lack of formal kerbstones to the front boundaries along the south side of the road and informal hedges and small grass verges are more evident. There are also extensive vistas in all directions from the open space used as The Old County Ground in Norman Road. However, this important open space would continue to benefit from some environmental improvements.”
- 5.42 The new fencing is roughly of the same height as the brick wall currently presented on site. Since it is set to the southern boundary behind the application building, there should be no harm to the vistas of The Old County Ground. The proposed fencing would reinforce the sense of enclosure, identified as being a contributing factor towards the significance of the Conservation Area in the Appraisal. Whilst it is a new structure it does not stand out as a harmful feature, nor does it detract from the appearance of Rotary House or the character of the Conservation Area.
- 5.43 In terms of the relevant NPPF paragraphs above, the change of use and associated works are considered to result in no harm to the significance of West Malling Conservation Area and general setting of the cricket ground within it. The proposal is considered acceptable in relation to the aims of policies CP24, SQ1 and paragraphs 135, 195 and 200-208 of the NPPF. In absence of any harm to designated heritage assets, no public benefits are required to be demonstrated for this development to be deemed acceptable in respect of paragraph 207 of the NPPF.

Loss of community centre/Asset of Community Value

- 5.44 Rotary House is designated an Asset of Community Value (ACV) as outlined under Section 90 of the Localism Act 2011. The procedure is summarised as follows. To be listed, a community group must nominate the property, and it must have been in recent use for a purpose that furthers community wellbeing with a realistic prospect of such use continuing. The Local Authority (LA) then has to decide whether to list the asset on their list of community value. In deciding whether to list, it is important to look at the actual primary use and if that use could continue in the future. If the landowner does not object to the listing then the land is added to the community value land list, maintained by the LA.
- 5.45 Any land designated as an ACV cannot be disposed of without first notifying the LA. The LA then notifies the community group that nominated it and publicises the

information about the disposal. The notification starts a moratorium period of 6 weeks during which the land can only be sold to a community interest group. If no such group expresses an interest in buying the land, an owner can dispose of the land at the end of the initial 6 week period.

- 5.46 If, however, a community group does express an interest in bidding for the site the full moratorium period of 6 months will apply. During this time the landowner cannot sell the land to any party other than the community interest group. There is no compulsion to sell to such a group, merely a restriction on selling to any other parties during the moratorium. After the moratorium period expires there is no restriction on to whom the asset may be sold or at what price. A landowner is under no obligation to accept a bid from a community interest group if disposing of their land. Designation as an ACV can therefore delay the disposal of land, but it will not prevent any sale for longer than 6 months.
- 5.47 In the case of Rotary House, TMBC received a nomination on 27.6.23 by West Malling Parish Council for Rotary House to become an ACV. Under Authority delegated to the Policy, Scrutiny and Communities Manager it was agreed on 25.7.2023 that Rotary House should be accepted as an ACV. (This was a re-nomination as a previous ACV status applied to the building, following a nomination from West Malling Parish Council in 2021. The first ACV status was removed when the previous owners sold the property, following the required moratorium period).
- 5.48 On 5.9.23 TMBC received an Intended Disposal Notice with the interim 6 week moratorium period ending on 17.10.2023. The Full 6 month Moratorium Period therefore ended on 5.3.2024 with the Protected Period due to end on 5.3.2025. The Protected Period is an 18 month period during which the owner of the premises is free to sell the asset without delay, provided a community asset group has not submitted a request and/or pursued it through to completion of purchase.
- 5.49 With regard to the current application the correct time frames have been followed in relation to the ACV procedures.
- 5.50 The change from a former community centre to a children's nursery is a key consideration in this application and has been assessed having regard to policy CP26. The applicant's agent argues that the proposed nursery will continue to provide a community facility albeit for a different age category. Representations received however have made reference to the loss of the community centre and the associated opportunity of being able to provide services for older age groups within Rotary House. The department is of course sympathetic to the need to provide services for older age groups in the interests of their wellbeing.
- 5.51 In the supporting text to policy CP26 it identifies that it is essential for a range of community services to be available and this can include schools and other educational provision. Paragraph 20(c) of the NPPF, similarly, defines community facilities as those, which include but are not limited to health, education and cultural infrastructure. Paragraph 88, again, reiterates, that community facilities may include "local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship. It is clear from the above that the terms "community facilities" in the context of both local and national planning policies encompasses a

broad range of uses, which may on occasions involve commercial activities and be subject to restricted access.

- 5.52 From a policy point of view a children nursery is considered as an educational provision, which the TMBCS in paragraph 6.4.12 describes as “community services”. With the current and proposed uses both being community services as defined in the TMBCS, the proposal is not considered to result in the loss in whole or part of sites and premises last used for the provision of community services. Accordingly, the restrictions set out in Part 3 of Policy CP26 are not engaged in this instance.
- 5.53 It follows that there is no requirement for the applicant to demonstrate the need for an alternative facility of better or equivalent quality and scale at an alternative location. The proposed nursery, despite a commercial operation, is considered to fall within the provision of educational services and as a result would not conflict with the aims of Policy CP26 of the TMBCS and Chapter 8 of the NPPF.

Impact on the Green Belt and countryside

- 5.54 The Green Belt covers the playing fields on the north side of Norman Road, the primary school and the application building. The application does not indicate any additional built form other than the timber fencing beyond the site boundaries and. In any case, the re-use of buildings of permanent and substantial construction could be deemed not inappropriate in the Green Belt. The timber fencing is considered an integral part of and incidental to the proposal for re-use of an existing building, which is not inappropriate in the Green Belt. Moreover, given the site is already occupied by a permanent structure and associated fixed surface infrastructure, it falls to be considered previously developed land as defined in Annex 2 of the NPPF, where limited infilling, partial or complete redevelopment could be appropriate, provided that it does not give rise to a greater impact on openness than existing.
- 5.55 The timber fencing is intended to replace the hedging and metal railing presented along Norman Road. Whilst partly higher than the boundary treatment intended to be replaced, the siting of the fencing in relation to its surroundings means there is no greater impact on openness, nor is there any conflict with the purposes of including the site within the Green Belt. The site is in a built-up area occupied by a building last used as an elderly day care centre. The fencing proposed would be viewed in the context of the building associated and the houses on the opposite side of the road. As such, the erection of fencing in the chosen location would not erode the sense of openness in both visual and spatial terms. No objections are raised in terms of the relevant Green Belt policies or paragraphs 142, 152-154 of the NPPF as outlined above.
- 5.56 Although the site does fall outside the settlement confine of West Malling where Policy CP14 of the TMBCS applies, it is viewed in the context of the West Malling identified as a Rural Service Centre by Policy CP12. The proposal seeks to re-use an existing building already presented in the countryside and to install other paraphernalia associated. The scale of development proposed is not considered to result in an adverse impact on the landscape character of countryside in this location, where there is already an established linear pattern of development extending from

within the confine of this Rural Service Centre. As such, the proposal accords with Policy CP14 of the TMBCS and Chapter 15 of the NPPF.

Landscaping

- 5.57 Rotary House stands on its own and contains very little planting either inside the fenced area or around the site. It was felt however that the site could benefit from some additional planting, although it is appreciated that space is tight and plant species will be limited having regard to use of the premises by very young children. Appropriate species may encourage wildlife and provide early learning opportunities regarding nature for children at the nursery.
- 5.58 The Tree Officer considers there is some opportunity for further soft landscape enhancements, albeit on a limited scale. Appropriate planting within the outdoor play area could be provided without making the outdoor space unsafe for children. There may also be the option to include some climbing plants in front of the new fence to soften its form. A landscaping condition is therefore recommended.

Biodiversity Net Gain

- 5.59 The submitted application form states that there are no protected or priority species present on site or important habitats and the applicants agent considers that the proposal falls below the BNG threshold for requirements.
- 5.60 The Planning Practice Guidance states that exemption may apply to development that does not impact a priority habitat and impacts less than 25sqm of non-priority habitat or 5m for non-priority on site linear habitats.
- 5.61 Based on the information provided and the empirical evidence gathered during the site visit, officers are content fall below the de minimis threshold and therefore could be deemed to be exempted from the statutory requirement for biodiversity net gain.

Other Matters

- 5.62 The concerns of the neighbours and Parish Council are noted and have been given careful consideration and addressed above. In addition, the following are noted:-
- 5.63 Any unacceptable noise issues associated with works at the site would need to be reported to the Environmental Health team for assessment under their legislation, to establish whether a statutory noise nuisance had occurred. No objections have been raised to light pollution from the proposed use of the building.
- 5.64 The alleged lack of need for a further nursery in the locality would be determined by the market. Any formal or informal agreements between community groups and the applicants regarding the use of the access road to the side of Rotary House would be a private matter to be resolved between the parties concerned.
- 5.65 With regard to any potential conflict with users of the cricket field/recreational grounds it is noted that children and babies would spend much of the day inside the

nursery building. When using the outside amenity area activities would be supervised and the building would provide screening from any recreational users of the playing fields in the same way as when Rotary House operated as a community centre.

Conclusion

- 5.66 The proposed change of use has been given very careful consideration having regard to the relevant policy context and views of residents and the Parish Council. With regard to policy CP26 it is concluded that the proposal, regardless of its commercial element, would continue to be in use as a community facility, although for a different age group. The principle of the change of use would not give rise to such a significantly harmful level of activity or result in highway or noise disturbance such as to justify withholding consent. There would be no undue harm associated with the external works to cause harm to the Green Belt or Conservation Area. The ACV procedures have been followed by the site owners and TMBC.
- 5.67 The proposal is found to be acceptable in terms of policies CP1, CP24, SQ1 and SQ8 of the MDE DPD and relevant paragraphs of the NPPF. In light of the above considerations, it is recommended that planning permission is granted.

6. Recommendation:

- 6.1 Approved subject to the following:

Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

01 Location plan received
04 Existing floor plan
05 Proposed floor plan
02 Existing site layout plan
03 Proposed site layout plan
All received 10.6.2024

Transport Technical Note received 1.8.2024

Planning Statement received 5.8.2024

Reason: To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

3. The parking spaces adjacent to the eastern side of the building the subject of this application shall be retained at all times for use by staff/customers in association with the nursery hereby approved.

Reason: In the interests of highway safety.

4. a) Within 3 months of the commencement of the development/use hereby approved a scheme of hard and soft landscaping, including details of existing trees and shrubs to be retained and size, species, planting heights, densities and positions of any soft landscaping, shall be submitted to the Local Planning Authority for written agreement.

b) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use.

c) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

Reason: To ensure a satisfactory appearance to the development.

5. The nursery hereby approved shall only operate between the hours of 0700 and 1900 Monday to Friday.

Reason: In the interests of the residential amenities of the occupants of nearby properties.

Informative:

1. Your attention is drawn to the requirements of the KCC Highways Engineer with regard to all necessary highway approvals and consents being obtained and the limits of the highway boundary having been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority.

Contact: Josh Kwok