Planning Inspectorate

Appeal Decision

Site visit made on 9 November 2026

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2026

Appeal Ref: APP/A2470/C/25/3362546

1 Cheviot Close, Oakham, Rutland LE15 6NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Christine Nelson against an enforcement notice issued by Rutland County Council.
- The notice was issued on 5 March 2025.
- The breach of planning control as alleged in the notice is the material change of use of the land from a dwellinghouse (Class C3) to a mixed use as a dwellinghouse (Class C3) and a children's day nursery (Class E(f)).
- The requirement of the notice is 'cease the use of the land as a children's day nursery'.
- The period for compliance with the requirement is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of the land from a dwellinghouse (Class C3) to a mixed use as a dwellinghouse (Class C3) and a children's day nursery (Class E(f)) at 1 Cheviot Close, Oakham, Rutland as shown on the plan attached to the notice and subject to the following conditions:

> The premises shall be used for a mixed use as a dwellinghouse (C3) and a children's day nursery (Class E(f)) and for no other purpose.
>
> The children's day nursery shall not operate other than between 0730 and 1800 hours on Mondays to Fridays and at no time on Saturdays, Sundays or Bank or Public holidays.

Reasons

The ground (c) appeal

2. The alleged breach of planning control relates to the use of the appeal property and not to any operational development that has been carried out. The existence and physical size of buildings on the property are not therefore relevant. It is also not relevant that the Appellant was not informed that planning permission would be required when her business grew beyond a certain size.

3. Planning permission has not been granted for the mixed use of the property and the mixed use is not permitted development. The ground (c) appeal therefore fails.

The ground (a) appeal

4. 1 Cheviot Close is an end-terraced dwelling close to the junction of Cheviot Close, a cul-de-sac of 20 residential properties, and Grampian Way. The property has a front, rear and side amenity area that includes several outbuildings that are used in connection with the children's day nursery use of the property.

5. The Council's 'evidence' in their appeal statement is, in total, that "The use of the land and surrounding buildings as a day nursery for children up to the age of 4 results in adverse impacts on the amenities of the neighbouring and nearby residents of Cheviot Close, Grampian Way and Alpine Close by virtue of the level of vehicular traffic arriving and departing the premises relating to staff movements and the dropping off/collecting of children, as well as the level of noise generated by the children attendant at the premises being well in excess of that which would normally be anticipated for a residential dwelling".

6. The Council consulted the Local Highway Authority (LHA) during their investigations and their position, as set out in an email dated 14 June 2024, is that "Should a retrospective planning application be received, the LHA would strongly recommend refusal on the grounds of insufficient on-plot parking for staff, visitors, drop-off/pick-up and highway safety concerns of the immediate road network including the junction, which sits adjacent to the site".

7. The main issues are the effect of the use of the appeal property as a children's day nursery on; first, living conditions at nearby dwellings; and second, highway safety.

The first issue – living conditions

8. There is no evidence to indicate that Council Officers have assessed the level of noise generated by vehicular traffic associated with the use or by children at the property. The Council has not referred to any complaints made to them by nearby residents about noise generated by traffic or children. The residents of all properties on Cheviot Close were notified of the appeal against the enforcement notice and one representation has been submitted. But the representation, by a resident at 16 Cheviot Close, supports the day nursery business and includes the comment that "It is very quiet and I have not seen any disturbance to the neighbourhood".

9. It is possible that noise generated by children at the appeal property does exceed, on occasions, that which would normally be anticipated for a residential dwelling. Furthermore, noise generated by up to four year old children is different in character to noise normally emanating from a residential property. But whatever noise is being generated by children at the appeal property is not causing any demonstrable harm to living conditions at nearby dwellings.

10. The use of the appeal property as a children's day nursery, which has been operating for about fifteen years, is not, as a result of noise, having any significant adverse effect on living conditions at nearby residential properties. The use does not therefore conflict with policy SP15 c) of the Council's Site Allocations and Policies Development Plan Document (SAPDPD) or with policy CS19 of the Council's Core Strategy Development Plan Document (CSDPD).

The second issue – highway safety

11. There is no evidence to indicate that LHA Officers have visited the site and if they have there is no evidence to indicate that they have witnessed or recorded any

incidents of parking associated with the children's day nursery use that caused danger to highway safety, either for drivers or pedestrians. SAPDPD policy CS15 l) requires that parking is provided in accordance with standards set out in Appendix 2. Appendix 2 does not include any minimum parking standards for Class E development.

12. Appendix 2 does state that "Where no parking standards are provided for a particular development, we will consider the provision required taking certain factors into account…". These factors include the control of on-street parking in the area, the development's exact nature and use, and the standard of the surrounding road network and the traffic and parking conditions on it. There are no parking controls on roads in the surrounding road network, roads and pavements in the area are wide, and visibility for drivers is not impeded on roads or at any road junctions.

13. The resident of 16 Cheviot Close has commented, with regard to traffic and parking, that "It's true that cars do park outside, and nearby of necessity, but this does not appear to be excessive to me and it is only at drop off and pick up times in the morning and afternoon. There is also plenty of car parking space at the end of Cheviot Close…The road is a cul-de-sac so there is little traffic to be inconvenienced". This evidence is afforded substantial weight because it is by someone who has day to day experience of circumstances in the area.

14. The day nursery has been operating for about fifteen years and there is no evidence that traffic associated with the use has resulted in any traffic accidents or incidents in that time. It is clear from the evidence, and from observations at the site visit, that staff parking is accommodated without causing any concerns for highway safety. It is also clear that the comings and goings of vehicles to drop off and pick up children attending the day nursery does not cause harm to highway safety and does not cause any significant inconvenience for local residents.

15. Taking into account the factors mentioned in Appendix 2, the use of the appeal property as a children's day nursery does not cause any concerns for highway safety. The use does not therefore conflict with SAPDPD policy SP15 l) and m).

Conditions

16. The two conditions imposed on the planning permission were suggested by the Council and are necessary to limit the use and its days and hours of operation. The Council also suggested a condition that would limit the number of children but this is unnecessary because the nursery is operating without causing any demonstrable harm with its current number of children, which is limited by the size of the property.

Conclusion

17. The use of the appeal property as a children's day nursery does not have any significant adverse effect on living conditions at nearby dwellings or on highway safety.

18. The appeal succeeds on ground (a) and planning permission has been granted for the material change of use of the land from a dwellinghouse (Class C3) to a mixed use as a dwellinghouse (Class C3) and a children's day nursery (Class E(f)) at 1 Cheviot Close, Oakham, Rutland, subject to conditions. The appeal on ground (f) does not need to be considered.

John Braithwaite Inspector