

Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 24th July 2014

Subject: 12/03198/FU – Variation of condition 9 and 18 of application 09/01417/FU to allow opening hours to be 08:00 to 20:00 hours Monday to Friday and 08:00 to 14:00 hours Saturday no opening on Sundays and Bank Holidays and to allow use to include a nursery/pre –school at New Horizons Community School, Newton Hill Road, Potternewton, Leeds, LS7 4JE.

APPLICANT
Mr T Mahmood

DATE VALID
25 July 2012

TARGET DATE
19th September 2012

Electoral Wards Affected: Chapel Allerton

☐ Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity ☐

Community Cohesion ☐

Narrowing the Gap ☐

RECOMMENDATION: GRANT PERMISSION subject to the following conditions:

1. Approved plans.
2. The hours of use of the premises shall be restricted to 0800 hours to 2000 hours Monday to Friday and 0800 hours to 1400 hours on Saturdays and no opening on Sundays and Bank Holidays.
3. The hours of delivery to and from the premises, including refuse collection, shall be restricted to 0730 hours to 1700 hours Monday to Friday and 0900 hours to 1200 hours on Saturdays. No deliveries or collections shall take place on Sundays and Bank Holidays.
4. The acoustic fence as erected on the eastern boundary of the site adjacent to 2 Harehill Lane shall be maintained and retained for the lifetime of the use.
5. No assemblies or lessons shall take place outside the school building and no amplified sound or music shall be relayed from the school to any external areas associated therewith.
6. Lighting restrictions.

7. No more than 120 children shall be on the premises at any one time.
8. Within two months of the date of permission the car parking area to the east of the school building shall be laid out and marked out in accordance with plan 09 1F dated 20th November 2013. This area shall thereafter be retained for the parking of vehicles only and shall not be used as part of the outdoor play area for the school.
9. The building and extension shall be used as a school and pre-school/nursery only and for no other uses within Use Class D1 of the Town and Country Planning (Use Classes) (Amendment) Order 2005.
10. Rooms of the school shall be used in accordance with the approved layout plan.

1.0 INTRODUCTION:

- 1.1 The application was deferred from 19th June Plans Panel for the report to be updated with a full summary of planning enforcement history relating to the site this is addressed in Section 4, paragraphs 4.9 – 4.15 of this report.
- 1.2 The application was brought to Plans Panel on 19th December 2013 and the application was deferred for the following reason as stated in the Panel minutes, *'The Panel's Lead Officer informed Members that the submitted report in respect of this application indicated that the site was used as a school and included a pre-school. At the time the report was written the legal view had been that the pre-school element did not require planning permission as the use was for educational purposes. However, in view of new information being received that the use was as a nursery rather than a pre-school, Officers were requesting consideration of the application be deferred to enable clarification to be sought and a further report be brought back to Panel which would set out the full facts of the case. Members considered how to proceed. It was resolved that consideration of the application be deferred to a future meeting and that a revised report be submitted which addressed the issues which had arisen in this case.'*
- 1.3 The application is was brought back to Plans Panel on 19th June 2014 with an amended description which incorporates an additional variation of condition to include use as a pre-school /nursery on the site with the school use. Officers met with the applicant on site following Plans Panel and discussed the issues and looked around the site. Following the site visit discussions were held with colleagues and the applicant was asked to submit the additional variation of use condition which is submitted to Plans Panel today.
- 1.4 The original 2009 application (09/01417/FU) for the retention of use of building as a school and a two storey extension was determined by North and East Plans Panel on 11th March 2010. It was therefore considered appropriate to report this current application to vary the hours of opening and use conditions back to Plans Panel for determination.

2.0 PROPOSAL:

- 2.1 The proposal seeks to vary condition 9 of planning permission 09/01417/FU approved on 16th March 2010 regarding hours of opening:

"The premises are restricted to 0800 hours to 1700 hours and 1800 hours to 2000 hours Monday to Friday and 0900 hours to 1200 hours on Saturdays and Sundays and the reason stated was in the interests of the amenities of neighbouring residents."

- 2.2 The variation in the hours sought are:

Monday to Friday 0800 hours to 2000 hours and Saturdays 0800 to 1400 hours with no openings on Sundays and Bank Holidays.

- 2.3 This application was originally submitted for the retention of school and use of part of the ground floor as a day nursery with associated landscaping and alterations. This, following negotiations and discussion was amended to vary the hours and has been re-advertised accordingly, as explained in section 5 of this report (in essence it was considered that not all the works applied for required planning permission but the new hours of use does). The application originally sought the hours of opening for the premises as Monday to Friday 0800 hours to 2100 hours and Saturdays 0800 to 1400 hours with no openings on Sundays.
- 2.4 The proposal now seeks to add a further variation of condition, number 18 of planning permission 09/01417/FU approved on 16th March 2010 regarding its use as solely as a school. The approved condition regarding the building and extension use is, 'The building and extension shall be used as a school and for no other uses within Use Class D1 of the Town and Country Planning (Use Classes) (Amendment) Order 2005 and the reason stated was to allow the local planning authority control over future changes of use, which may have different implications and requirement in terms of highway safety and residential amenity to the use hereby approved.'
- 2.5 The variation in the use(s) sought are:
- To include use of the building and extension as a school and a pre-school/nursery only and for no other uses within Use Class D1 of the Town and Country Planning (Use Classes) (Amendment) Order 2005.
- 2.6 A site layout plan which also includes the ground floor layout of the building site has been updated and re-submitted with this additional discharge of condition. The plan highlights what is used as the pre-school /nursery, what are communal facilities which is purely the front entrance and one room to the left of the entrance doors. The plan also shows the separate playing areas for the school and pre-school/nursery and the designated parking areas and sites pedestrian and vehicular accesses.

3.0 SITE AND SURROUNDINGS:

- 3.1 The application relates to New Horizons Girls' school in Potternewton. The school is housed in a large stone building with a slate roof, which has formerly been used as a training centre, and has been in use as a school since 2000. The building has two large bay windows at ground floor level to the front and a single storey extension to the rear, constructed of concrete blocks with render panels and a tiled roof and has a two storey extension.
- 3.2 There is an area of hardstanding to the west of the building, which is used as an outdoor play area, and an area of loose gravel to the east used for car parking. The site boundaries along Newton Hill Road to the south, Chapeltown Road to the west and Harehills Lane to the north are marked by stone walls which vary in height, with trees behind. Five of the trees around the site boundaries are protected by Tree Preservation Orders (TPOs).
- 3.3 The site is in a predominantly residential area with residential properties to the east, at a lower level than the application site, No 2 and 4 Harehill Lane and on the

opposite side of Chapeltown Road to the west. There is an area of open land to the north and a Polish Catholic community centre/social club to the south.

3.4 The site has a pedestrian access and a vehicular access, both of Newton Hill Road.

3.5 The building has one main access to the front of the building/east elevation.

4.0 RELEVANT PLANNING HISTORY:

Planning

4.1 11/04489/FU - Variation of conditions 9 (hours of opening) and 15 (student capacity) of application 09/01417/FU – withdrawn

4.2 10/03230/COND - Consent, agreement or approval required by conditions 3, 4, 11 and 12 of Planning Application 09/01417/FU – pending at the time of writing this report.

4.3 09/01417/FU – Retention of use of building as a school and 2 storey extension – approved 16th March 2010. This application includes a condition which limits the number of children to 120 allowed on site at any one time.

4.4 34/75/02/FU - Alterations to increase the height of the boundary wall to the site - approved in April 2002

4.5 34/28/00/FU - The change of the use of the building to an educational facility with a further two prefabricated classrooms was approved in July 2000 for a temporary period until 31st December 2003

4.6 H34/189/91 - Permission for a detached prefabricated classroom unit to the training centre - approved in September 1991

4.7 H34/368/85 - The extension to the rear of the building - approved March 1986

4.8 H30/113/82 - the original change of use of the building from a house to an industrial training unit, including workshops and offices – approved April 1982

Enforcement

4.9 A complaint was received on 24th March 2010 that a number of conditions on planning approval 09/01417/FU issued on 16th March 2010 which related to hours of operation, bin collection and external assemblies were being breached. At the time of the complaint, the evidence provided by the complainant and a site visit, it was evident that no works had commenced on site regarding the recent approval and therefore no breach of conditions of planning approval 09/01417/FU had taken place.

4.10 A planning contravention notice was issued on 10th June 2010 in relation to planning conditions 9, 10 and 13 of planning approval on 09/01417/FU relating to hours of operation, bin collection and external assemblies being breached; these matters related to the established use of the site and not the recent planning approval which had not been implemented at the time.

4.11 The site was visited on 23rd July 2010 where it was found that works had commenced. Following this, a meeting was held on site with officers and the applicant and followed up by a letter clarifying the position.

- 4.12 All pre-commencement conditions had been breached on site without any formal discharge of conditions which related to materials, windows detail, method statement for preserving trees and surface water drainage details. The materials and windows were agreed and therefore no further action was taken. With regard to the method statement for trees and water drainage details, whilst no information was submitted it was not considered expedient to take any further action.
- 4.13 All pre-occupation conditions were breached but a discharge of condition application was under consideration regarding materials, bin store and acoustic fence. Following the submission of the details of the works carried out on the site they are considered acceptable to fulfil the requirement of those conditions and no further action is required.
- 4.14 Operational conditions as far as Officers are aware at present, apart from the conditions relating to this application submitted to Plans Panel for variation of hours of use and use there are considered to be no current breaches in terms of the sites operation.
- 4.15 In summary, rather than issuing formal enforcement notices, officers have worked proactively with the applicant in accordance with the NPPF in seeking to addresses the breaches of planning control and to regularise matters. These issues have been addressed through negotiations with the applicant and conditions being subsequently agreed, or not pursued any further as it was deemed not expedient to do so, or through the current application which is currently before Members.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 A meeting was held in June 2012 after the applicant was advised that 11/04489/FU - Variation of conditions 9 (hours of opening) and 15 (student capacity) of application 09/01417/FU – would not be supported due to the hours they were requesting (Monday to Friday 0800 hours to 2100 hours and Saturdays and Sundays 0900 hours – 1800 hours) and the increase in students numbers due to their implications and also lack of information supporting the application. At the meeting where representatives for the School and council officers discussed all issues relating to the site and it became apparent that the applicant wished to vary many of the conditions of the 09 permission and it was considered that a new application would be required particularly regarding a proposed nursery. The intention was also to tie up all outstanding issues together regarding the site.
- 5.2 Following the submission of the application long and protracted discussions took place on all the issues including the nursery, landscaping, bin store, parking and fence. Having discussed these matters and taken legal advice it was considered that the issues regarding landscaping, bin stores, car parking and acoustic fence would be dealt with through discharge of condition. With regard to the nursery, after investigation and based on information provided and visiting the site that facility was set up as a prep-school as it provided an education element/activity and therefore there was no breach of the planning approval in this regard.
- 5.3 Therefore the applicant was advised of the council assessment of the situation and that the application should be amended to varying of hours and that all other issues would be dealt with separately via condition discharge or if applicable enforcement action. The hours put forward in this report are suggested by officers, taking into account discussions and views put forward and the lack of any supporting information from the applicant. It was requested that a school calendar be provided which details all the activities of the school. This has never been provided and is

considered appropriate to condition this. The delay in dealing with the outstanding issues and determining this application is due to a lack of response by the applicant.

- 5.4 Following the December 2013 Plans Panel a site meeting was held on with a representative of the Board of Governors and their planning agent to understand how the site works.

6.0 PUBLIC/LOCAL RESPONSE:

- 6.1 The original application for the retention of the school and use of part of the ground floor as a day nursery with associated landscaping and alterations was advertised by letter and site notice. A petition of 139 signatories was received stating:-

- that they object to further increase in noise and traffic congestion which will be caused by the new horizons schools' proposed changes to status and opening hours

And

8 letters of representation were received raising the points:-

- busy road and busy junction already
- pupils use polish centre grounds
- already noisy and this will increase with longer hours
- will disturb their peace and quiet
- what goes on beyond the school day after 3.30pm
- always parking on Newton Hill Road

- 6.2 Ward Members: Ward Members briefings have been held and they have been kept informed on the application and related issues and commented they wished to be kept informed.

- 6.3 The amended application was re-advertised by site notice and letters and emails posted and sent on 1st November 2013 and had a 21day consultation period.

- 6.4 Public/Local Response to amended proposal for the variation of hours: 4 letters of representation have been received since the application was amended and re-advertised raising the points:-

- Breach of planning conditions
- Nursery requires planning permission
- Opening beyond the hours approved
- No enforcement action has been taken
- Wants guarantee conditions will be adhered to
- School and nursery operated by two different
- Covenant on site that states it must be used as an educational facility
- Nursery not run as a faith nursery.

- 6.5 A meeting was held on Friday 19th April 2013 2.30pm at Mr. & Mrs. Hughes premises on 2 Harehills Lane Mr. and Mrs. and Hughes (2 Harehills Lane) and Mr. Wood (6 Harehills Lane) and Council Officers to provide an update of the issues relating to the site.

- 6.6 The amended application was re-advertised by site notice and letters and emails posted and sent on 17th April 2014 and had a 21day consultation period.

- 6.7 Public/Local Response to amended proposal which adds the variation of use to include us a pre-school/nursery to the previous application: 1 joint letter of representation has been received from Mr Hughes and Mr Wood since the

application was amended and re-advertised raising no new material planning considerations than previously reported.

7.0 CONSULTATIONS RESPONSES:

Statutory:

None

Non-statutory:

Highways – no objection to variation of hours or variation of use to include a pre-school/nursery element.

Environmental Protection Team – raise no objection to the variation of hours and it is noted that the premises would not be used at all on a Sunday which is reassuring and would preserve the amenities of the neighbours and will be safeguarded by conditions. No objections raised to the variation of use to include a pre-school/nursery element subject to relevant conditions previously imposed.

8.0 PLANNING POLICIES:

8.1 Under Section 38(6) of the Planning and Compulsory Purchase Act 2004, decisions on planning applications must be made in accordance with the Development Plan unless material considerations indicate otherwise.

8.2 The development plan comprises the adopted Leeds Unitary Development Plan (Review 2006) (UDP) and the Natural Resources and Waste DPD along with relevant supplementary planning guidance and documents.

8.3 Development Plan - Leeds Unitary Development Plan (UDP) Review:

The application site is unallocated in the UDP. The following policies are considered relevant to the proposal:-

GP5 – General planning considerations

T2 – New development and highway safety

8.4 Emerging Policy – Draft Core Strategy

The Core Strategy sets out strategic level policies and vision to guide the delivery of development investment decisions and the overall future of the district. On 26th April 2013 the Council submitted the Publication Draft Core Strategy to the Secretary of State for examination and an Inspector has been appointed and examination has been completed, including recent sessions in May 2014 on issues associated with housing. Modifications will be the subject to further consultation and adoption is anticipated later this year.

8.5 As the Council has submitted the Publication Draft Core Strategy for independent examination and the Inspector has indicated suggested modifications which have now been advertised weight can now be attached to the document and its policies.

8.6 National Planning Guidance – National Planning Policy Framework (NPPF):

The National Planning Policy Framework (NPPF) was published on 27th March 2012 and replaces previous Planning Policy Guidance/Statements in setting out the Government's planning policies for England and how these are expected to be applied. One of the key principles at the heart of the Framework is a presumption in favour of Sustainable Development.

- 8.7 The NPPF supports the centres first approach, and states that local planning authorities should 'recognise town centres as the heart of their communities and pursue policies to support their viability and vitality' (paragraph 23) and apply a sequential approach to the consideration of applications for town centre uses that are not in existing centres. It also advises that 'plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised (paragraph 34) and that developments should be designed to 'give priority to pedestrian and cycle movements, and have access to high quality public transport facilities' (paragraph 35). The Framework places great emphasis on the importance of good design as a key aspect of sustainable development.
- 8.8 Paragraph 72 of the NPPF states 'The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:
- give great weight to the need to create, expand or alter schools; and work with schools promoters to identify and resolve key planning issues...'
- 8.9 Guidance is provided in the NPPG on the use of planning conditions.

9.0 MAIN ISSUES

- 9.1 The implications arising from the variation of the hours of use and the variation of the use to include a nursery/pre-school in respect of:
1. Impact upon Highway Safety
 2. Impact upon Residential Amenity
- 9.2 Each aspect of the application will be considered in turn in section 10 below.

10.0 APPRAISAL

Variation of Hours

- 10.1 Condition 9 states 'The hours of use of the premises shall be restricted to 0800 hours to 1700 hours and 1800 hours to 2000 hours Monday to Friday and 0900 hours to 1200 hours on Saturdays and Sundays': The application seeks to vary the hours of use to the premises to be restricted to 0800 hours to 2000 hours Monday to Friday and 0800 hours to 1400 hours on Saturdays and no openings on Sundays.
- Impact upon Highway Safety
- 10.2 The application seeks that the premises remain open between the hours of 1700 to 1800. It is considered that including this hour within the school hours 0800 hours – 2000 hours would not have a material impact on the traffic movements that the site currently generates. In fact by not having to close each evening for an hour there could be an actual reduction in the amount of vehicles using the facility.
- 10.3 The application also seeks to open the premises at 0800 hours on a Saturday instead on 0900 hours and open till 1400 instead of 1200 hours. This creates an additional 3 hours and it is not considered to have a material impact on the traffic movements that the site currently generates.
- 10.4 The application finally seeks that there is no opening on a Sunday or Bank Holidays. This would result in no traffic movements generated at all in comparison to the

existing hours of opening which are 0900 hours and 1200 hours which is considered acceptable and is supported.

- 10.5 It is considered that the proposed variation to the hours of opening for the premises are acceptable and would not result in adverse impact upon highway safety as the altered hours would reduce the number of vehicles movements to and from the site.

Impact upon Residential Amenity

- 10.6 The application site is located on the corner of Chapeltown Road and Harehills Lane and the nearest residential property is on the eastern boundary set at a lower level which is 2 Harehills Lane. There is a 2 metre boundary 'acoustic' fence which has been approved by an Environmental Protection Officers following long discussion and negotiations. However it is considered appropriate to condition that this fence be retained for the lifetime of the development/uses.
- 10.7 The application seeks that the premises do not close up for the hour of 1700 to 1800. It is considered that including this hour within the school hours 0800 hours – 2000 hours will not have a material impact on residential amenity that the site currently generates. In fact by not having to close each evening for an hour there could be an actual reduction in the amount of coming and goings to the premises.
- 10.8 The application also seeks to open the premises at 0800 hours on a Saturday instead of 0900 hours and to open till 1400 instead of 1200 hours. This creates an additional 3 hours which is not considered to have a significant adverse impact on residential amenity because even though the hours of use are being lengthened the number of children on the site at any one time is not being increased and therefore the use of the site is not being intensified.
- 10.9 The application finally seeks that there is no opening on a Sunday or Bank Holidays: This would result in no movements at all to the premises as it would be closed in comparison to the existing approved hours of opening which are 0900 hours and 1200 hours and therefore the proposed no opening on Sundays and Bank Holidays is considered acceptable and is supported, providing a day of no-activity to nearby residential properties.
- 10.10 It is considered that on balance the proposed variation of hours are acceptable and would not have an adverse impact upon residential amenity and would improve on the existing hours on the whole.

Variation of use

- 10.11 Condition 18 states 'The building and extension shall be used as a school and for no other uses within Use Class D1 of the Town and Country Planning (Use Classes) (Amendment) Order 2005': The application seeks to vary the condition to include use of the building and extension as a school and a pre-school/nursery only and for no other uses within Use Class D1 of the Town and Country Planning (Use Classes) (Amendment) Order 2005.

Impact upon Highway Safety

- 10.12 The application seeks the variation of use of the site to include a pre-school/nursery uses with the existing school use. The site has been and still is operating as a school with pre-school/nursery; the pre-school/nursery occupies the ground floor area of the 2-storey side extension which was approved in 2010 and therefore the application seeks to regularise the use of the ground floor side extension as a pre-school/nursery.

- 10.13 The main entrance to the building for all uses is on the front elevation and there is an addition access to the rear for the pre-school/nursery remain unaltered. The number of students was conditioned as part of the original approval to no more than 120 children shall be on the premises at any one time for the reason in the interest of highways safety. It is considered appropriate to impose this condition again as it still relevant and applicable and condition the building floor plan for the avoidance of doubt.
- 10.14 It is considered that the use of the ground floor area of the 2-storey rear extension as a pre-school/nursery in conjunction with the rest of the site being used as a school is considered acceptable as it is not considered to have an adverse impact upon highways safety.

Impact upon Residential Amenity

- 10.15 As stated earlier in the report, the application site is located on the corner of Chapeltown Road and Harehills Lane and the nearest residential property is on the eastern boundary set at a lower level which is 2 Harehills Lane. There is a 2 metre boundary 'acoustic' fence which has been approved by an Environmental Protection Officers following long discussion and negotiations. However it is considered appropriate to condition that this fence be retained for the lifetime of the development/uses.
- 10.16 The application seeks the variation of use of the site to include a pre-school/nursery uses with the existing school use. The site has been and still is operating as a school with pre-school/nursery; the pre-school/nursery occupies the ground floor area of the 2-storey side extension which was approved in 2010 and therefore the application seeks to regularise the use of the ground floor side extension as a pre-school/nursery.
- 10.17 The main entrance to the building for all uses is on the front elevation and there is an addition access to the rear for the pre-school/nursery. The number of students was conditioned as part of the original approval to no more than 120 children shall be on the premises at any one time for the reason in the interest of residential amenity. The Environmental Protection Officer has stated that no noise issues have been reported by the neighbours from any activities associated with the pre-school/nursery. It is considered appropriate to impose this condition again as it still relevant and applicable and condition the building floor plan for the avoidance of doubt.
- 10.18 It is considered that the use of the ground floor area of the 2-storey rear extension as a pre-school/nursery in conjunction with the rest of the site being used as a school is considered acceptable as it is not considered to have an adverse impact upon residential amenity.

Other Matters

- 10.19 All other outstanding matters have either been dealt with or are being dealt with outside the scope of this planning application and through other processes.

11.0 CONCLUSION

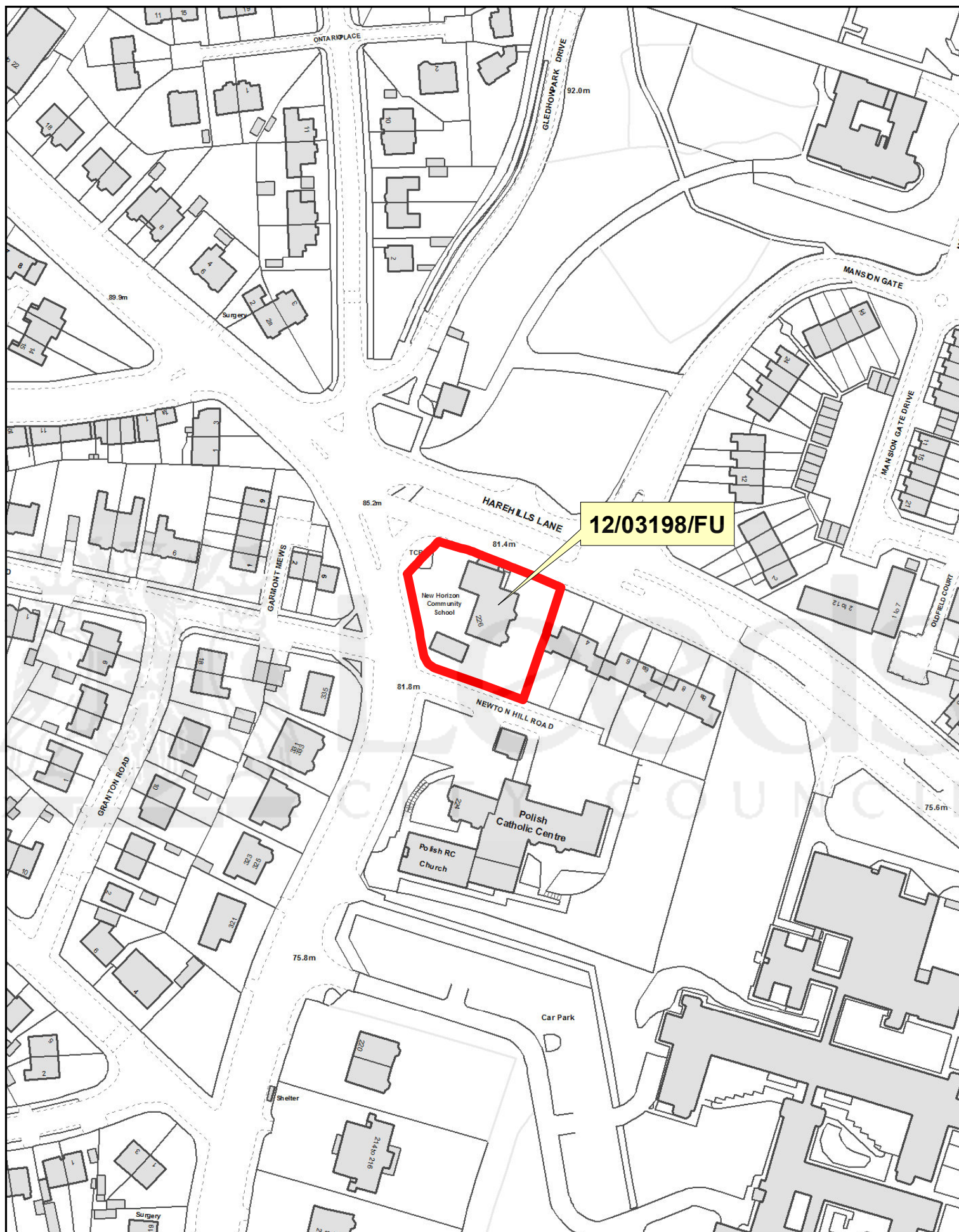
- 11.1 It is considered that the variation of hours proposed in comparison to what were previously approved are acceptable and an improvement and they are not considered to have an adverse impact upon highway safety or residential amenity.

- 11.2 It is considered that the variation of uses proposed are acceptable and is not considered to have an adverse impact upon highway safety or residential amenity.
- 11.3 In light of the above it is considered that the planning application proposal complies with policies GP5 and T2 of the UDPR and the guidance set out in the NPPF and NPPG.

Background Papers:

Application and history files.13/01398/FU, 11/0448/FU and 09/01417/FU

Certificate of Ownership: signed as applicant



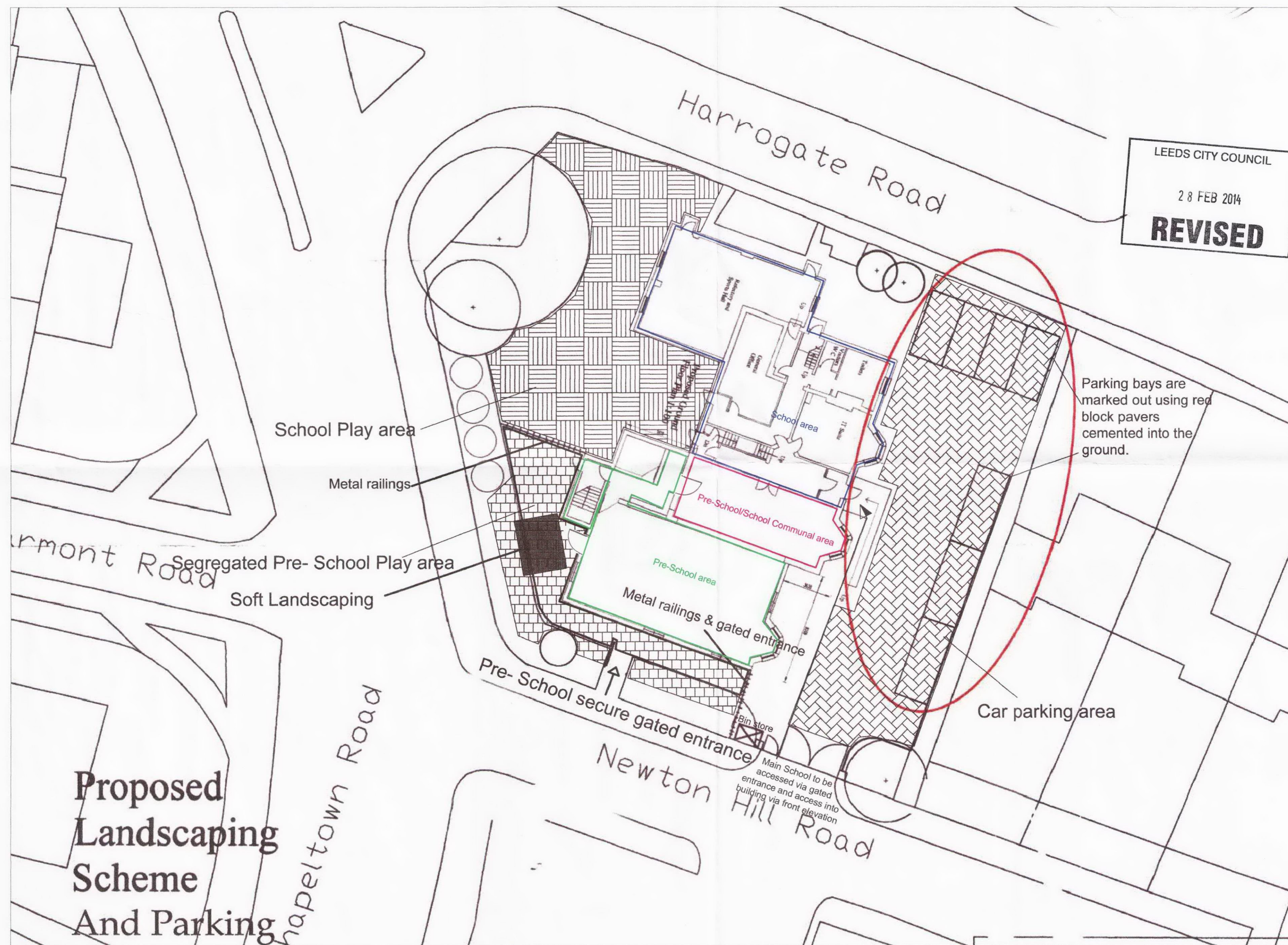
NORTH AND EAST PLANS PANEL

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PRODUCED BY CITY DEVELOPMENT, GIS MAPPING & DATA TEAM, LEEDS CITY COUNCIL

SCALE : 1/1500





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28 FEB 2014

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NOTES

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There is no liability accepted by the draughtsperson for any activities carried out on site for the proposed works.

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