

**RE: 11 Ryder Gardens, Rainham, Essex RM13 7LS**

**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN AND COUNTRY PLANNING ACT 1990  
(as amended by the Planning and Compensation Act 1991)**

**ENFORCEMENT NOTICE**

- TO:**
1. The Owner of the said land.
  2. The Occupier of the said land.
  3. Denesh Kumar Marwaha of 11 Ryder Gardens, Rainham, Essex RM13 7LS.
  4. The Company Secretary, GE Money Home Lending Limited of Building 4, Hatters Lane, Croxley Green Business Park, Watford, Hertfordshire WD18 8YF.

**ISSUED BY:** London Borough of Havering

1. **THIS IS A FORMAL NOTICE** which is issued by the London Borough of Havering ("the Council") because it appears to the Council that there has been a breach of planning control, under Section 171A(1)(a) of the above Act, at the land described below. The Council considers that it is expedient to issue this Notice, having regard to the provisions of the development plan and to other material planning considerations.

2. **THE LAND AFFECTED**

The land and property known as 11 Ryder Gardens, Essex RM13 7LS shown outlined in bold black on the attached plan ("the Property").

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

The unauthorised change of use of the Property, at 1<sup>st</sup> floor level, from Residential Use to use as a Day Nursery with associated intensification of use of outside areas for educational / playground purposes.

4. **REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last ten years.

By virtue of the increase in the number of children attending the Day Nursery, and number of children allowed outside, the change of use creates unacceptable levels of noise and disturbance in a residential area to the detriment of the living conditions and residential amenity of the occupiers of nearby dwellings, contrary to the provisions of Policy DC61 of the LDF Core Strategy and Development Control Policies DPD.

By virtue of inadequate provision for off-street parking within the site, and absence of drop off points for parents, the change of use results in an unacceptable level of on-street parking that adds to congestion in the area and constitutes a hazard to road users that is not in the interests of highway safety, contrary to Policy DC26 of the LDF Core Strategy and Development Control Policies DPD.

The Council do not consider that planning permission should now be given because there has already been an unsuccessful appeal against retrospective refusal of planning permission and because planning conditions would not overcome clear policy-led objections to the development.

In making its decision to issue this Notice the Council considered that the unauthorised use is contrary to the following policies of the Local Development Framework: policies DC26 and DC61 of the LDF Development Control Policies DPD

## **5. WHAT YOU ARE REQUIRED TO DO**

- (i) Cease Use of the 1<sup>st</sup> floor of the Property as a Day Nursery within Class D1 of the Town and Country Planning [Use Classes] Order 1987, as amended, and re-instate the Property to its original condition suitable for use for residential purposes.

Time for compliance: 3 months from the effective date of this notice, or by 31 July 2012, whichever date is later.

**6. WHEN THIS NOTICE TAKES EFFECT**

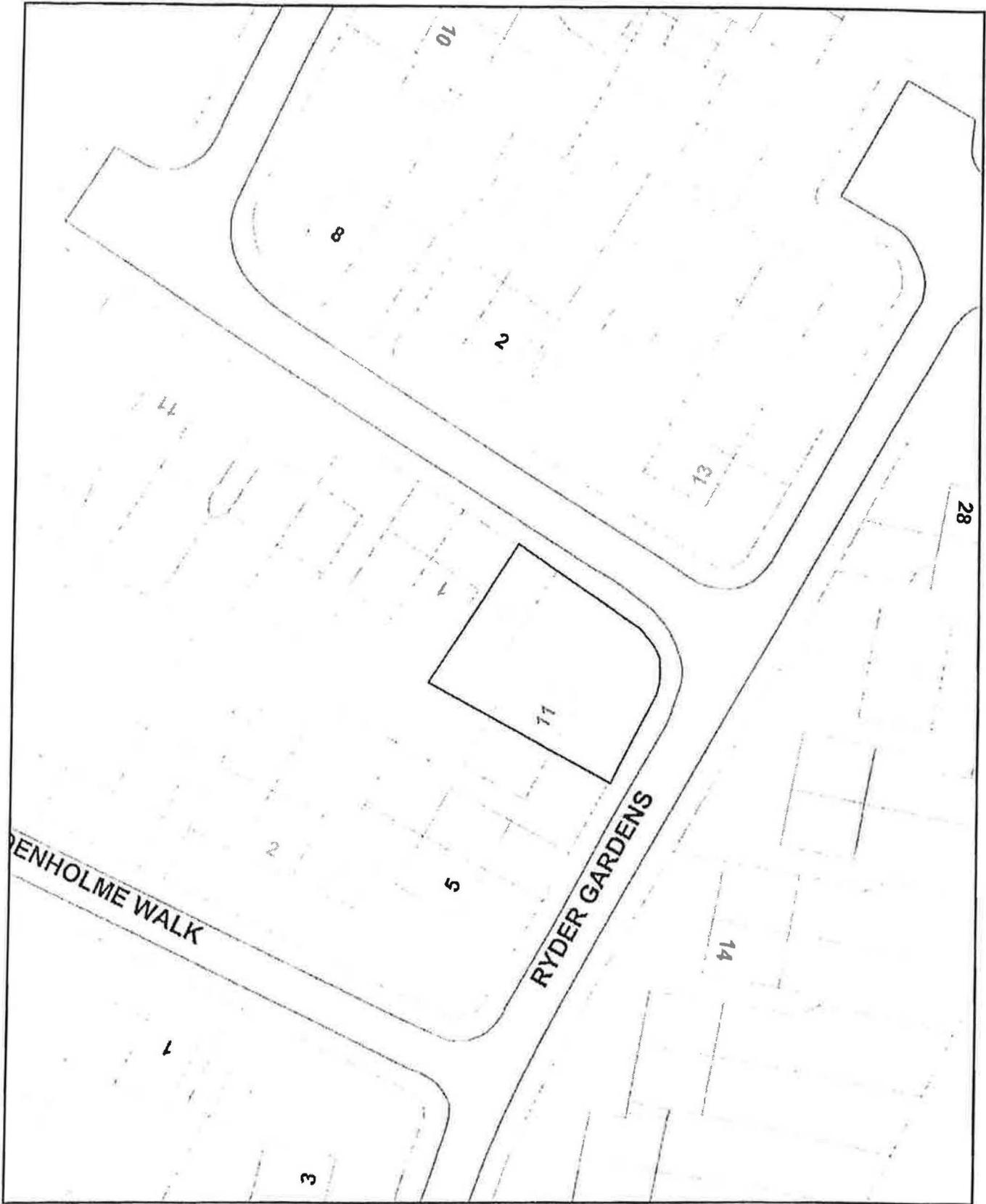
This Notice takes effect on 24 October 2011, unless an appeal is made against it beforehand

Dated: 19 September 2011

Signed:

A handwritten signature in black ink, appearing to read 'V. H. H. H.', written over a faint circular stamp.

Authorised Officer  
on behalf of London Borough of  
Havering  
Town Hall  
Main Road, Romford RM1 3BD



**11 Ryder Gardens Hornchurch. ENF/421/11**

Map Reference: TQ5184NE



Scale @ A4 1:500  
Date: 15/09/2011



London Borough of Havering  
Town Hall, Main Road  
Romford, RM1 3BD  
Tel: 01708 434343

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## **YOUR RIGHT OF APPEAL**

You can appeal against this Enforcement Notice to the Secretary of State by 24 October 2011. Further details are given in the attached explanatory note.

## **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this Enforcement Notice, it will take effect on 24 October 2011 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the Notice.

**FAILURE TO COMPLY WITH AN ENFORCEMENT NOTICE WHICH HAS TAKEN EFFECT CAN RESULT IN PROSECUTION AND/OR REMEDIAL ACTION BY THE COUNCIL.**

## **EXPLANATORY NOTES**

### **STATUTORY PROVISIONS**

A summary of Sections 171A, 171B and 172 to 177 of the Town and Country Planning Act 1990 (as amended) is enclosed with this Notice.

### **YOUR RIGHT OF APPEAL**

You can appeal against this Notice, but any appeal must be in writing and received, or posted (with the postage paid and properly addressed) in time to be received in the ordinary course of the post, by the Secretary of State before 24 October 2011.

If you intend to appeal against this Notice you should follow the instructions given on the information sheet from the Planning Inspectorate which accompanies this Notice.

### **GROUND OF APPEAL**

The grounds of appeal are set out in Section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:-

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the Notice, planning permission ought to be granted, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the Enforcement Notice were not served as required by section 172;
- (f) that steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

Not all these grounds may be relevant to you.

### **PLANNING APPLICATION FEE**

Should you wish to appeal on Ground (a) - that planning permission should be granted for the unauthorised development - then a fee of £335.00 is payable both to the Secretary of State and to the Council making the total fees payable £670.00. If the fees are not paid then that ground of appeal will not be valid.

## **STATEMENT ON GROUNDS OF APPEAL**

You must submit to the Secretary of State, either when giving notice of appeal or within 14 days from the date on which the Secretary of State sends him a notice so requiring him, a statement in writing specifying the grounds on which you are appealing against the enforcement notice and stating briefly the facts on which you propose to rely in support of each of those grounds.

## **RECIPIENTS OF THE ENFORCEMENT NOTICE**

The names and addresses of all the persons on whom the Enforcement Notice has been served are:

1. The Owner of the said land.
2. The Occupier of the said land.
3. Denesh Kumar Marwaha of 11 Ryder Gardens, Rainham, Essex RM13 7LS.
4. The Company Secretary, GE Money Home Lending Limited of Building 4, Hatters Lane, Croxley Green Business Park, Watford, Hertfordshire WD18 8YF.



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## Appeal Decision

Site visit made on 13 March 2012

**by Nigel Burrows BA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 6 June 2012**

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**Appeal Ref: APP/B5480/C/11/2163359**

**11 Ryder Gardens, Rainham, Essex, RM13 7LS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Denesh Kumar Marwaha against an enforcement notice issued by the Council of the London Borough of Havering.
- The Council's reference is ENF/421/10/EL.
- The notice was issued on 19 September 2011.
- The breach of planning control as alleged in the notice is unauthorised change of use of the Property, at 1<sup>st</sup> floor level, from Residential Use to use as a Day Nursery with associated intensification of use of outside areas for educational / playground purposes.
- The requirements of the notice are 'Cease Use of the 1<sup>st</sup> floor of the Property as a Day Nursery within Class D1 of the Town and Country Planning [Use Classes] Order 1987, as amended, and re-instate the Property to its original condition suitable for use for residential purposes'.
- The period for compliance with the requirements is '3 months from the effective date of this notice, or by 31 July 2012, whichever date is later'.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation**

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### Background

1. The appeal relates to a two storey semi-detached property situated in a predominantly residential area within Rainham. The property is the right hand of the semi-detached pair and occupies a corner plot at the junction of Ryder Gardens and Wells Gardens.
2. The Council discovered during September 2010 that the property was not being used in accordance with the terms of planning permission P0574.09, previously granted in September 2009 for 'Part change of use of existing dwelling into day nursery for up to 12 children with three carers (opening hours: 8:00am-6:30pm Mon-Fri)'. According to the Council the first floor was being used as part of the day nursery, whereas the application drawings indicated this would be retained as residential accommodation.
3. A retrospective planning application (P1328.10) was lodged for 'Change of use of first floor from residential to nursery and increase of number of children on site from 12 to 36 and number of children outside from 6 to 12 and 1m boundary fence'.<sup>1</sup> This was refused in November 2010. A related appeal was dismissed on 12 September 2011<sup>2</sup>. The Council indicates the ground (a) appeal before me is for the same scheme. This appears to be corroborated by the appellants' grounds of appeal against the notice.
4. The planning permission granted in September 2009 was subject to various planning

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<sup>1</sup> As described in the Council's decision notice

<sup>2</sup> Ref: APP/B5480/A/11/2151983

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conditions which were intended to control the scale and character of the nursery use. However, the enforcement notice has been issued because it appears to the Council that a breach of control has occurred under section 171A(1)(a) of the Act, which is the carrying out of development without planning permission, rather than (b) which is the failure to comply with any condition of a planning permission. As the main parties have approached the matter on this basis, I shall deal with the appeal in the same way.

### **The appeal on ground (a) and the deemed application**

5. Having regard to the Council's reasons for issuing the enforcement notice, I consider there are two main issues in this case. The first is the effect of the development on the living conditions of the neighbouring residents, particularly in terms of noise and disturbance. The second is its effect on the prevailing highway conditions in the area.

#### *Issue 1: Living Conditions*

6. The planning merits of the unauthorised use of the property were, in effect, addressed by the Inspector who dismissed the section 78 appeal on 12 September 2011.
7. The Inspector said at paragraph 11 of his decision: "*Such is the close juxtaposition of the use to houses in this quiet residential area that it is inevitable, based on my experience of similar schemes and the evidence of my site visit, that the use of the premises on the scale proposed would cause severe amenity problems to neighbouring residents.*" He went on to say at paragraph 12: "*The main sources of the noise and disturbance would be the sounds normally associated with a significant number of congregating children; the comings and goings, on foot and by car, of numerous parents, and those of the not inconsiderable number of carers, fairly early in the morning and well into the evening*". The Inspector did not accept the appellant's claim that the erection of fencing would provide adequate noise attenuation. He concluded that the use would continue to cause harm to local residents particularly those living closest to the site (namely the occupiers of 9 Ryder Gardens and 1 Wells Gardens).
8. I am entirely in agreement with my colleague's conclusions on this issue. The Council considers there has been no material change in planning circumstances since this previous appeal decision. It is clear from the representations of local residents that noise and disturbance arising from the use of the property continues to be a significant problem; some of the adjoining residents state the noise generated is 'horrendous'. The intrusive impact of the unauthorised use appears to have continued unabated.
9. As matters stand, I conclude the scale of the nursery use has seriously harmed the living conditions of nearby residents due to noise and disturbance. It conflicts with policy DC26 of the Council's Core Strategy and Development Control Policies Development Plan Document, which seeks to ensure that community facilities do not have a significant adverse affect on residential amenity. It is also inconsistent with the aims of policy DC61, which amongst other things seeks to ensure that development addresses the amenity of nearby properties and environmental quality of the area.

#### *Issue 2: Highway Conditions*

10. The Council argues there is inadequate provision on the site for off-street parking and an absence of drop off points for parents, which leads to an unacceptable level of on-street parking, thereby increasing congestion in the area and harming road safety.
11. The submissions for the appellant suggest that many of the nursery staff live in the area and the majority of parents walk to the premises. The appellant is also prepared to introduce a mini-bus pick up/drop off service. Whilst I have no doubt that some staff and parents might walk to the site, there is no firm evidence to indicate the traffic generation associated with this use is minimal. The appellant has not provided a Transport Plan or any other persuasive evidence to demonstrate the majority of trips associated with the development involve the use of sustainable modes of transport.

12. Local residents refer to staff vehicles 'spilling over into the roads', indiscriminate parking and 'a rush' of cars arriving each morning. The Inspector who dismissed the previous appeal said at paragraph 19 of his decision: *"In the light of my knowledge of the operation of nurseries elsewhere, and in the absence of compelling evidence to the contrary, I intend to give significant weight to the evidence provided by local residents as to the amount of traffic generated and the indiscriminate parking and congestion caused. The congestion and indiscriminate car parking arising from the substantial increase in child and carer numbers, particularly when footways are used for parking, raises the degree of risk to the safety of pedestrians and drivers using the highway to an unacceptable level."* Again, I agree with my colleague's conclusions on this issue.
13. There is persuasive evidence to indicate the current use contributes to parking and traffic congestion in the vicinity of the road junction and the surrounding area, thereby leading to an unacceptable deterioration in the local highway conditions. I conclude that it conflicts with the aim of policy DC26 to ensure on-street parking generated by community facilities can be absorbed without harming pedestrian and highway safety.

#### *Other Considerations*

14. I have taken into account the significant demand for nursery facilities and the benefits of these facilities to the community. However, I consider these benefits are clearly outweighed by the adverse impact the current use of the premises has on the nearby residents and local highway conditions. The submissions for the appellant refer to nurseries in residential areas where the number of children has increased 'without causing any material planning issues whatsoever'. Be that as it may, I have considered the current use of the property on its individual merits and have found it unacceptable.
15. The appellant alleges the premises could be used by up to 6 persons living together as a household without the need for permission, or by someone operating a childminding service with up to 6 children plus their own family. However, in terms of their impact on residential amenity and local highway conditions, it is highly unlikely that such activities would be comparable to a day nursery accommodating up to 36 children.
16. Whilst the appellant would accept a temporary permission, this is not a case where a 'trial run' is necessary to assess the impact of a nursery use of this scale. The appellant would agree to a limit of 24 children, or any other lesser number 'deemed suitable'. However, it is not obvious to me what reduction in numbers would be required to mitigate the impact of the use. It is reasonable to assume the conditions on the 2009 permission reflected the Council's concern to strike an appropriate balance between allowing a use that benefits the community whilst protecting the amenity of residents.

#### *Summary*

17. The continuation of the current use of the property conflicts with the objectives of the relevant development plan policies and with the National Planning Policy Framework (NPPF)<sup>3</sup>. Paragraph 14 of the NPPF sets out the presumption in favour of sustainable development. The economic, social and environmental dimensions of sustainable development should be addressed. Paragraph 9 makes it clear that pursuing sustainable development includes improving people's quality of life. Paragraph 17 indicates that one of the core planning principles of the NPPF is to ensure a good standard of amenity for all existing and future occupants of land and buildings.
18. The relevant policies in the Council's Core Strategy and Development Control Policies Development Plan Document generally reflect the objectives and principles of the NPPF. In view of my findings on the main issues, I conclude the ground (a) appeal must fail.

#### **The appeal on ground (f)**

19. The issue under ground (f) is whether the steps required by the enforcement notice

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<sup>3</sup> Published in March 2012, after the appeal was lodged

exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity caused by the development. The manner in which the Council has prepared the enforcement notice against the unauthorised use, including the formulation of its requirements, indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4)(a) of the Act.

20. The appellant's ground (f) arguments, for the most part, appear to address the planning merits of the development. I have already considered these arguments under the ground (a) appeal and have concluded that it should not succeed. Permission for the current use of the premises cannot be obtained through the ground (f) appeal.
21. However, I am concerned about the scope of the requirements in clause 5 (i) of the enforcement notice, especially '*re-instate the Property to its original condition suitable for use for residential purposes*'. The reference to reinstatement applies to 'the Property' even though the allegation in the notice is mainly concerned with the first floor; in effect, it appears to expand the scope of the notice. I intend to vary the notice by deleting this part of the requirements, as the cessation of the use of the first floor would remedy the breach of planning control and achieve the purpose of the notice.
22. In other respects, I do not consider the requirements of the notice (as varied) would be excessive. Lesser steps would not remedy the breach of planning control in this case, or satisfy the purpose in section 173(4)(a). Nevertheless, my overall conclusion is the ground (f) appeal should succeed, albeit to the limited extent I have indicated above.

#### **The appeal on ground (g)**

23. As indicated in the bullet points on page 1 of this decision, the period for compliance with the requirements of the notice is '*3 months... or by 31 July 2012, whichever date is later*'. However, citing a date for compliance is inappropriate as the date in question will invariably have passed in the event of an appeal made under section 174 of the Act (which suspends the effect of a notice). To avoid any confusion, I shall correct the notice by deleting this date; I am satisfied this would not cause injustice to the parties.
24. The appellant argues the 3-month period given to comply with the notice is too short. It is argued that it should be extended to 6, 12, 18 or 24 months, giving the appellant more time to allow all the parties involved to make alternative childcare arrangements. However, I have not been provided with any compelling evidence to show that even a 6-month period would be necessary to allow alternative arrangements to be explored.
25. In my view an extension of the compliance period would blunt the urgency and purpose of the notice and would unacceptably prolong the adverse impact of the development. I conclude the 3 months given for compliance with the notice constitutes a proportionate and reasonable response to the breach of planning control. The ground (g) appeal fails.

#### **Conclusion**

26. I have taken into account all the other matters raised in the representations, but I find they do not alter or outweigh the main considerations that have led to my decision.
27. For the reasons given above, I intend to uphold the enforcement notice with a correction and a variation.

#### **Formal Decision**

28. I direct that the enforcement notice be:-
  - (a) Corrected by deleting from the compliance period in clause 5 (i) the words; '*from the effective date of this notice, or by 31 July 2012, whichever date is later*'.
  - (b) Varied by deleting from the first paragraph of clause 5 (i) the words '*and re-instate the Property to its original condition suitable for use for residential purposes*'.

29. Subject to the above correction and variation, I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Nigel Burrows*

INSPECTOR