

<u>No:</u>	BH2012/00587	<u>Ward:</u>	WESTBOURNE
<u>App Type:</u>	Full Planning		
<u>Address:</u>	20 Rutland Gardens, Hove		
<u>Proposal:</u>	Change of use from residential house (C3) to child care facilities (D1) with living accommodation to second floor.		
<u>Officer:</u>	Clare Simpson	<u>Valid Date:</u>	07/03/2012
<u>Con Area:</u>	N/A	<u>Expiry Date:</u>	02 May 2012
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	Downsview Associates, 3 Hillside Road, Storrington, West Sussex		
<u>Applicant:</u>	Ms Lisa Southon, 3 Scott Road, Hove		

1 RECOMMENDATION

That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in this report and resolves to **REFUSE** planning permission for the following reason:

1. The conversion of this semi-detached property with a small garden from a residential house to a nursery gives rise to potential significant noise and disturbance to neighbouring properties. In the absence of an acoustic report, the applicant has failed to demonstrate that the premises can operate whilst preserving the residential amenity of neighbouring occupiers. The proposal is contrary to policies SU10 and QD27 of the Brighton & Hove Local Plan which seek to protect amenity.

Informatives:

1. This decision is based on drawing nos. 2011.64.01 02 and supporting statements received on 24th February 2012.

2 THE SITE

The application relates to a single dwelling on the west of Rutland Gardens. Rutland Gardens is a predominately residential area characterised by semi-detached houses, some properties have been converted in to flats. The property is attached to 18 Rutland Gardens which is located on the corner of Lawrence Road.

3 RELEVANT HISTORY

BH2010/03075: Erection of dormer to front roofslope. Approved 23/11/2010.
BH2005/01659/FP: Change of use from Rest Home to single dwelling. Approved 08/08/2005.

Of relevance to this application are recent planning applications at 3 Scott Road. The applicant currently operates a childminding facility from these premises.

3 Scott Road

BH2010/02383: Change of Use of existing mixed use Day Nursery and residential property (D1/C3) to Day Nursery (D1) to serve up to 18 children on

the ground and first floors and formation of self contained flat above. Refused 06/05/2011. This application was the subject of an appeal to the Planning Inspector. The appeal was dismissed on the 26/10/2011.

BH2009/02405: Use of ground floor as Day Nursery between 8.00am and 6.00pm Monday – Friday. Approved 12/01/2010

It is understood that the number of children in attendance at 3 Scott Road may be in excess of the permitted 9 children allowed under application BH2009/02405. Enforcement action on this property has been held in abeyance pending the determination of this planning application at Rutland Gardens.

4 THE APPLICATION

Planning permission is sought for the change of use from residential house (C3) to child care facilities (D1) with living accommodation to second floor.

The applicant currently runs a childcare facility from 3 Scott Road which has been operating for the last 4 years. The application is accompanied by a Management Plan for the outdoor activities and a Travel Plan.

The proposed opening hours are 8am to 6pm Monday to Friday. The applicant currently runs a flexible childminding facility where children attend for the proportion of the day required. The premises would employ up to 9 members of staff.

5 CONSULTATIONS

External

Neighbours: Twenty Five (25) letters of representation have been received from **Flat 1 30 Goldstone Villas, 37a Hova Villas, 11 Coleridge Street, 26 Wayfield Avenue, 32 Mansfield Road, 49 Rutland Road, 63 Berriedale Avenue, 49 Sherbourne Road, 30 Ghyllside, 63 Highlands Road, 42, 83(x2) Wordsworth Street, 9 St Keyna Avenue (x2), Flat 3 19 Wilbury Villas, 3 Borrow King Close, 55 Ruskin Road, 6 Albany Villas, 16 Alpine Road, 4 (x2) Payne Avenue, 92 Livingstone Road, 100 Tamworth Road, 16 Amesbury Crescent** supporting to the application for the following reasons:

- The applicant and team provide an excellent childcare facility,
- The environment is more homely than other nurseries,
- The new property would provide an excellent environment,
- They are good neighbours,
- The area needs this facility,
- It is essential for flexibility and working parents,
- The facility is rated excellent by Ofsted,
- It is not a nursery and provides a different experience,
- It would be no more disruptive than a family home,
- The facility provides jobs and apprentices,
- Care facilities should be integrated in to the communities which they serve

Forty Seven (47) letters of representation have been received from **1, 2, 3, 4,**

5, 8, 11, Lawrence Road, 7, 10a, 14, Flat 2 17, 17, 16, 18 (x2), 19, Flat 2 20, 21, 23, 22, 24 (x2), 25, GFF 26, 27, 28, 29, Flat 2 30, Flat 1 30, 31, 33, Flat 1 34, Flat 2 41, Flat 1 42, Flat 3 42 (x2), Flat 1 50, Flat 2 52, 55 Rutland Gardens Flat 1 56, Rutland Gardens, 11 65, Rutland Road, 26 Montgomery Street, 13 Payne Avenue, 3 Modena Road, 31 Vallance Gardens, Top Flat 15 Norton Road, objecting to the application for the following reasons:

- There are existing parking stress and parking hazards,
- Insufficient car parking for the site,
- Lawrence Road will be used for car parking as it is not in a fully controlled CPZ,
- Lack of car parking in Rutland Gardens,
- Noise and disturbance issues would result,
- The outdoor space is insufficient in size,
- The property is a semi-detached and too small,
- De-valuing adjoining properties,
- Loss of residential house where there is a need for these for families,
- Sound transfer through walls,
- The opening hours are excessive and beyond usual business hours,
- There is not an identified shortfall in nursery provision in the area,
- The proposed flat would not be genuinely self –contained,
- No space for a buggy or cycle store,
- The outdoor patio is dangerous,
- The application would set a precedent,
- Proximity of existing care homes and hospices nearby,
- Principle of businesses and commercial activity in a residential area,
- Future applications to increase the numbers of children for the site would be forthcoming.

Internal:

City Early Years and Childcare: Recommend approval

The internal accommodation is appropriate for up to 18 children. The amount of outside space is small and the applicants will need a robust management plan to ensure the outside area is used with minimum disturbance to other residents.

Environmental Health: Recommend refusal due to insufficient information: an acoustic survey needs to be provided.

Regarding this application, noise due to children playing both inside and outside of the premises could have an impact on neighbours. In order to address the issue of outside noise, the applicant has supplied a management plan which highlights that there will only be a maximum of 9 children at any one time in the outside area and in accordance with the Early Year Development and Childcare Partnership (EYDCP) they will have a free flow policy, i.e. children choosing whether they play indoors or outside'.

With respect to the success of a free flow system, the EYDCP have found that by giving children unrestricted opportunities to play outside the noise level is

reduced, whereas when play outside is for short periods the activities tend to be purely physical and therefore more noisy.

The management plan also emphasises that the children will be occupied with external trips and the outdoor activities will be closely supervised. The outside space will be an extension of the learning environment and it is indicated that this should also prevent loud noise levels.

Whilst the above Management Plan incorporates some good ideas, it is felt that more information about the management plan (this can be conditioned) and in particular, the noise impacts on neighbours is required before comments can be made. This is because at 3 Scott Road, which is the location that 'My First Word' are moving from, similar problems were raised by a colleague, for a similar planning application at that premises. In this instance my colleague noted that an acoustic survey for the development showed that noise from children in 3 Scott Road significantly raised a low background level of noise inside 5 Scott Road. Whilst the raised noise levels were not above WHO levels, the difference in noise was still significant. Consequently, my colleague was unable to recommend approval for the plan. Having looked on Google Earth and our GIS records it is noted that 3 Scott Road appears to be a solid Victorian Terrace built between 1875 and 1898 and that 20 Rutland Road was built between 1898 and 1910. Therefore, it is concluded that similar problems might also occur for this premises if 18 children are introduced into it, daily between 8am and 6pm.

Therefore, it is recommended that an acoustic survey is provided to show the potential impacts that the addition of up to 18 children in this premises, will have on neighbours. This survey should address both internal and external noise sources associated with the development.

Sustainable Transport: Recommend refusal as the proposal is contrary to Policy TR1, TR14, TR19 of the Brighton & Hove Local Plan and SPG04 as no cycle parking is being provided.

As detailed within the Travel Plan the majority of trips are by walking, however some trips are made by car. There appear to be no significant circumstances in the surrounding area that would be exacerbated by this proposal. The proposed level of car parking is in line with the maximum standards, many parents and staff already use sustainable modes of travel and by securing a Travel Plan any negative impact in terms of increased trips can be successfully mitigated by promoting sustainable travel.

In order to be in line with Policy TR14 of the Brighton & Hove Local Plan 2005 the applicant must provide a minimum of 3 cycle parking spaces and they must be secure, convenient, well lit, well signed and wherever practical, sheltered. The applicant has not provided any information in relation to the proposed level of cycle parking. It is noted that within the submitted Travel Plan that they do indicate that one member of staff always cycles and that some parents cycle to the existing nursery. By not providing adequate cycle parking this is contrary to Policy TR1, TR14, TR19 of the Brighton & Hove

Local Plan and SPG04.

As the proposed development is only 149m² and below the 200m² threshold of when a S106 contribution is sought in this instance we would not be seeking a S106 contribution.

6 MATERIAL CONSIDERATIONS

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that “If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

The development plan is:

- The Regional Spatial Strategy, The South East Plan (6 May 2009);
- East Sussex and Brighton & Hove Minerals Local Plan (November 1999);
- East Sussex and Brighton & Hove Waste Local Plan (February 2006);
- Brighton and Hove Local Plan 2005 (saved policies post 2004).

The National Planning Policy Framework (NPPF) was published on 27 March 2012 and is a material consideration which applies with immediate effect.

Due weight should be given to relevant policies in the development plan according to their degree of consistency with the NPPF. At the heart of the NPPF is a presumption in favour of sustainable development.

All material considerations and any policy conflicts are identified in the considerations and assessment section of the report.

7 RELEVANT POLICIES & GUIDANCE

Brighton & Hove Local Plan:

TR1	Development and the demand for travel
TR7	Safe development
TR14	Cycle access and parking
TR19	Parking standards
SU2	Efficiency of development in the use of energy, water and materials
QD1	Design – quality of development and design statements
QD16	Trees and hedgerows
QD27	Protection of Amenity
HO8	Retaining housing
HO26	Day nurseries and child care facilities
TR1	Development and the demand for travel
SU10	Noise nuisance

Supplementary Planning Guidance:

SPGBH4 Parking Standards

The National Planning Policy Framework (NPPF)

8 CONSIDERATIONS

The main considerations in this case relate to whether the change of use is acceptable in policy context, its impact upon residential amenity of adjacent occupiers, highway considerations, the building and nursery meeting council's accommodation and staffing standards; and housing issues.

Proposed childcare use

Policy HO26 of the Brighton & Hove Local Plan states that planning permission for day nurseries and day care provision will be granted where a number of criteria are met. The criteria require that the property is capable of meeting the council's accommodation and staffing standards; the proposal would not have detrimental impact upon the amenity of adjoining residents or the surrounding area; that the location is accessible by walking, cycling and public transport and that adequate storage space for buggies and pushchairs is provided.

The potential impact of the works on the residential amenity of neighbouring occupiers will be assessed in the later sections of this report.

The application is supported by the City Early Years and Childcare Team who are confident that the facility in this property would provide a good standard of care. The applicant has been running a valued service from a terraced property in Scott Road and this application has attracted a significant level of support from the past and present customers appear keen for the expansion of this facility. This provision, if approved, will be classified as a nursery not as a childminder establishment.

The City Early Years Team and Childcare have not identified a need for additional childcare places in this area of the city. However, it is understood that the applicant wants to close the existing service in Scott Road if this application is successful. Should the application be considered acceptable, the City Early Years Team and Childcare Team have recommended a temporary consent of 12 months to ensure that the two premises do not run concurrently.

The applicant reports in the supporting statement that the children will be taken off site for outside play. However this cannot be the children's main way of accessing the outside. It gives them the opportunity to gain more life experiences, but does not give them the freedom to make choices about playing inside or out, in an informal way, which is very different. The City Early Years and Childcare Team work with nurseries in the city to develop effective management of the outside areas which has worked well in other nurseries in the middle of residential areas. The garden area although relatively small is not considered dangerous and is acceptable to the Early Years team.

A buggy store has not been identified on the site. There is an existing storage area which is undercover which runs alongside the building and the boundary to no.22. Rutland Gardens.

Residential Use

Policy QD26 also states that the loss of residential units may be permitted as an exception to policy HO8 to enable the provision of facilities in areas where it can be demonstrated that there is a significant shortfall. In the case of this application, a small residential unit would be retained on the upper floor of the property. This is annotated on the plans as self-contained, however, access to the residential unit is only achieved by using the main staircase through the property. Occupation of this residential unit would therefore only be practical if the occupation in connection with the nursery use. The applicant has stated that this flat would be occupied by the deputy manager who would also have access to the rest of the property outside nursery work hours. This arrangement is not uncommon for combined nursery and residential premises.

Letters of representation have been received regarding the loss of a family home. It is acknowledged that there is an identified need for housing in the city, however the proposed arrangement is not considered to conflict with Local Plan Policies. Notwithstanding this, it is the applicant's intention that the existing facility at 3 Scott Road would be change back to residential use.

Impact on Amenity:

The application has attracted a number of objections from neighbouring properties. The concerns mostly relate to noise and disturbance and traffic issues. In regard to noise and disturbance, the main issue is from noise breakout from the occupation of the property (internal spaces) and noise and disturbance from the use of the garden. The Environmental Health Team have commented on the application and are not satisfied that the use of this property as a nursery facility would have an acceptable impact on neighbouring occupiers.

There is no in principle objection to childcare in semi-detached properties, however, attached properties will always be more sensitive to noise issues compared to detached properties with greater separation distances between the children and neighbouring residential uses. It is for this reason that an acoustic report is considered necessary.

Similarities between this property and the applicant's existing facility at Scott Road have been identified. There has been an issue with noise from Scott Road, which is a mid-terrace property. In the most recent application for Scott Road an acoustic report was submitted with the application to try and demonstrate that significant noise and disturbance was not an issue. The submitted report was considered by the Environmental Heath Team and subsequently the Planning Inspector at appeal and it appears it was not found to demonstrate an acceptable level of noise. As with Scott Road the acoustic report must try to quantify the likely noise breakout from the premises. Only when an acoustic report is submitted and the results considered by the Environmental Health Team can a judgement be made on the suitability of the proposed use so close to residential premises. This application was not accompanied by an acoustic report.

Neighbours have also raised concerns regarding the principle of commercial activity in a residential road, however as stated above, there is no in principle objection to a proposed change of use as long as it can be adequately demonstrated that that residential amenity can be protected. At present this cannot be demonstrated and therefore the application is considered contrary to policies QD27 and SU10 of the Brighton & Hove Local Plan.

Sustainable Transport:

The Sustainable Transport Team have not objected to the application on the grounds of car parking or increased car movements on site.

The Supplementary Planning Guidance Note (SPG 4) states the maximum car parking standard for educational establishments is 2 visitor car parking spaces. There is a single parking space in the front curtilage of the property which it is stated will be used for parent drop-off and pick up. Additionally parents accessing the site would be expected to find a safe place to park to drop-off their children and there is no specific capacity problem with Rutland Gardens which would make this activity hazardous for existing highway users. Parking and traffic movements are a major concern for many residents, and whilst the trip generation associated with a nursery will be in excess of that attributed to a single house, movements will be spread throughout the day. Residents will experience additional transport movements but this is not considered to warrant refusal of the application. It is also predicted that the facility will result in additional car parking demand in the vicinity of the site, but the transport team have not identified a particular concern with the existing car parking capacity in the area.

The Sustainable Transport Team have recommended refusal of this application due to the lack of cycle parking provided on the site. The Supplementary Planning Guidance Note (SPG4) recommends 3 spaces would be expected to be provided for this site. There is an existing covered storage facility between the side wall of the property and boundary to no.22 Rutland Gardens. The applicant has not identified what this area would be used for however as noted above a secure buggy store would needed to be provided on site and therefore this would not be sufficient for cycle storage.

With very limited outdoor space, there is no obvious location for 3 cycle storage spaces, therefore the concerns of the Sustainable Transport Team are justified. Should the application be acceptable in all other respects, the applicant would be expected to provide more information in this regards to comply with the standards in SPG4.

Sustainability:

The application is for a change of use of the property with no external alterations. The Supplementary Planning Document on Sustainable building Design (SPD08) classifies the development as small scale and does not require the building to meet an identified sustainability standard. The development would not conflict with the requirements of policy SU2 or SPD08.

Other Considerations:

Representations have been received concerning potential reduction of value on neighbouring properties. This is not a material planning consideration that can be taken in to account in a planning application. The impact of the development on neighbouring occupiers is assessed in the relevant section of this report. In regards to concerns about setting a precedent for this type of application, and the potential for future proposals to increase the number of children over time, each application would need to be assessed on its own merits.

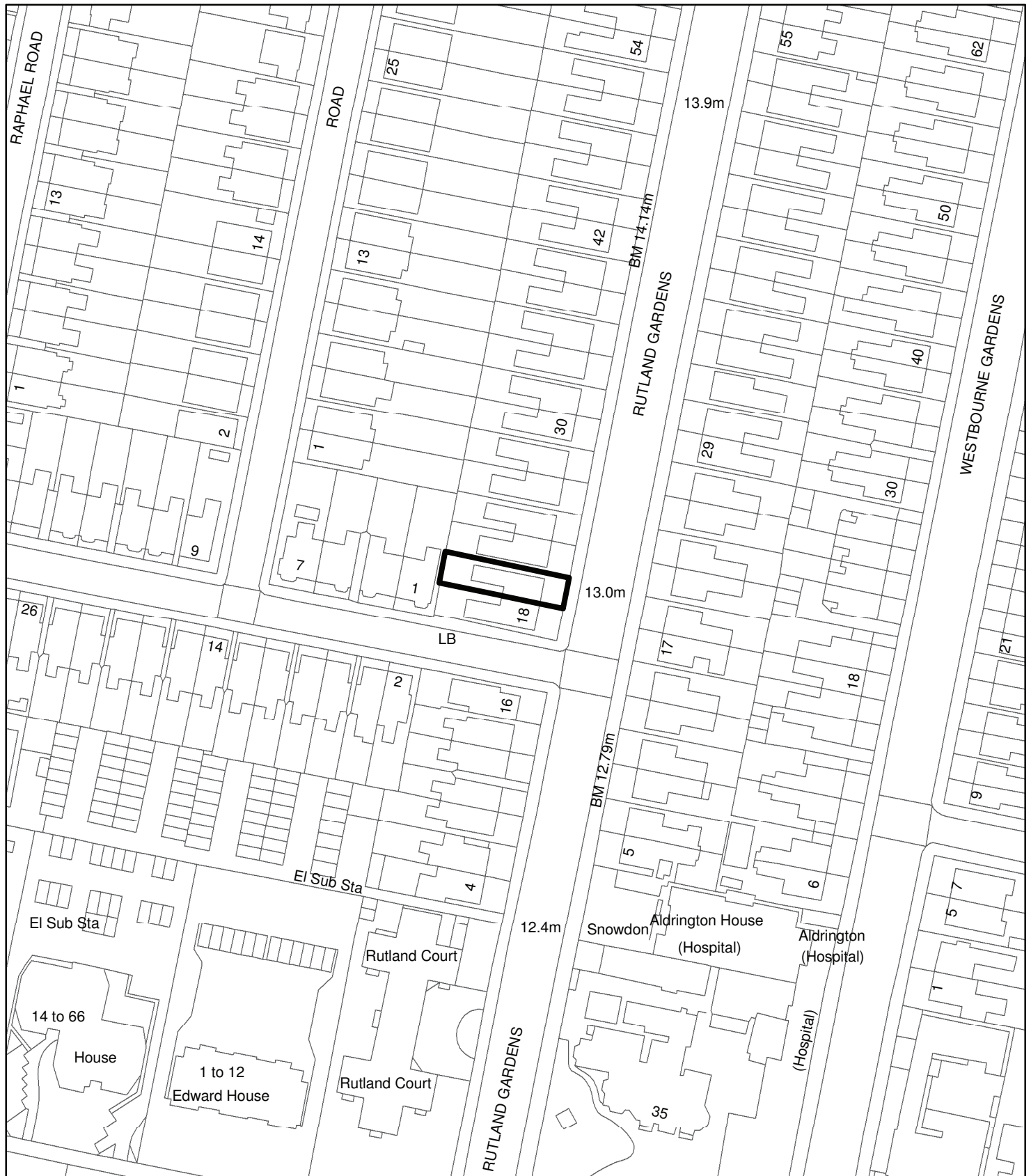
9 CONCLUSION

The conversion of this semi-detached property with a small garden from a residential house to a nursery gives rise to potential significant noise and disturbance to neighbouring properties. In the absence of an acoustic report, the applicant has failed to demonstrate that the premises can operate whilst preserving the residential amenity of neighbouring occupiers. The proposal is contrary to policies SU10 and QD27 of the Brighton & Hove Local Plan which seek to protect amenity.

10 EQUALITIES IMPLICATIONS

No external works are proposed in this application. The property is accessed via a small step to the front door.

BH2012/00587 20 Rutland Gardens, Hove.



**Brighton & Hove
City Council**



Scale: 1:1,250