

SECTION A – MATTERS FOR DECISION

Planning Applications Recommended For Refusal

<u>APPLICATIONNO:</u> P2016/1051	<u>DATE:</u> 01/12/2016
PROPOSAL:	Variation of condition 1 and 2 of planning permission (ref APP/Y6930/C/163150026 which granted a mixed residential Class C3 and music lesson sui generis use) approved at appeal on 10th October 2016 to increase number of student to 8 and change hours of operation to 12.00hrs to 20.30hrs Monday to Wednesday, 12.00hrs to 20.00hrs Thursday and Friday and 09.00hrs to 15.00 on Saturdays
LOCATION:	26 Rowan Tree Close, Bryncoch , Neath SA10 7SJ
APPLICANT:	Mr A Rees
TYPE:	Vary Condition
WARD:	Bryncoch South

BACKGROUND

While declaring a personal interest, Councillor Janice Dudley has requested that this application is reported to Planning Committee on the grounds that the suggested 6 month temporary permission would have only a temporary effect on the amenities of local neighbours against the economic benefits from a small increase in the number of students while the applicant finalises a move to alternative business premises.

It is noted that this application has been submitted following the determination of an appeal against an Enforcement Notice on 10th October 2016 which, while granting planning permission for the use of the property as a mixed residential Class C3 and music lesson sui generis use (and quashing the Notice) nevertheless placed restrictions on the music lessons use which reflected those stated in the Enforcement Notice (see planning history section).

SITE AND CONTEXT

The application site comprises a detached dwelling located at 26 Rowan Tree Close, Neath. The dwelling is accessed via a private drive serving two other dwellings (as shown on the aerial photograph below).



DESCRIPTION OF DEVELOPMENT

This is an application made under Section 73 which seeks a variation of conditions 1 and 2 of planning permission ref. APP/Y6930/C/163150026 (granted on 10th October 2016 following an enforcement appeal) which granted a mixed residential Class C3 and music lesson sui generis use of 26 Rowan Tree Close.

The relevant conditions are as follows:

- 1) *No more than 6 students shall be taught on site each day.*
- 2) *No music lessons are permitted on the premises on Sundays, Bank Holidays or outside of the hours of 09.00 to 20.00 Monday to Friday and 09.00 to 15.00 on Saturdays.*

This application seeks to amend these conditions imposed by the Inspector at appeal to increase the number of students to 8 (on all days), and change the hours of operation to 12.00hrs to 20.30hrs Monday to Wednesday, 12.00hrs to 20.00hrs Thursday and Friday and 09.00hrs to 15.00 on Saturdays.

The table below summarises the nature of the proposed changes: -

Day	Permitted hours of operation	Requested hours of operation	Permitted number of students	Requested number of students
Monday	09.00 until 20.00	12.00 until 20.30	6	8
Tuesday	09.00 until 20.00	12.00 until 20.30	6	8
Wednesday	09.00 until 20.00	12.00 until 20.30	6	8
Thursday	09.00 until 20.00	12.00 until 20.00	6	8
Friday	09.00 until 20.00	12.00 until 20.00	6	8
Saturday	09.00 until 15.00	09.00 until 15.00	6	8
Sunday/bank holidays	No lessons	No lesson	No lessons	No lessons

Table 1 Hours of operation.

All plans / documents submitted in respect of this application can be viewed on the [Council's online register](#).

PLANNING HISTORY

The property in question has a detailed recent planning and enforcement history, which is summarised below: -

- The Local Planning Authority (LPA) first received a complaint on the 26th June 2014 relating to guitar lessons
- Following extensive discussions / investigations, a lawful development certificate application was submitted on 17th June 2015 (**P2015/0495**), which was refused on 1st March 2016 on the following grounds: -

It is considered that the use, by reason of the number of students, hours of lessons, and associated movements of people coming and going within a small residential cul-de-sac of three dwellings, has a degree of impact on neighbours over and above what would normally be expected within a residential area, including at unsociable hours, and accordingly is not considered to be incidental to the main residential use of the property and to have altered the overall character of the property to such a degree to constitute a material change of use from residential into a mixed residential (Class C3) and commercial use (Sui Generis). It is therefore recommended not to issue the Lawful Development Certificate for the existing use and to take the necessary enforcement action as detailed in the next section.

- Authorisation was also given to take enforcement action, with an Enforcement Notice subsequently served on 14th April 2016 to restrict the degree of activities to a level which would ensure that there is no material change in the character of the use for the property as a residential dwelling.
- The applicant then submitted an appeal against the Notice (ref. APP/Y6930/C/16/3150026), with their appeal on ground (a) allowed, meaning the Enforcement Notice was quashed and planning permission granted on 5th October 2016 for the change of use from a residential dwelling (Class C3) to a mixed use of residential dwelling (Class C3) and commercial use for the

provision of music lessons (Sui Generis). The Inspector imposed the following conditions:

- 1) *No more than 6 students shall be taught on site each day.*
- 2) *No music lessons are permitted on the premises on Sundays, Bank Holidays or outside of the hours of 09.00 to 20.00 Monday to Friday and 09.00 to 15.00 on Saturdays.*
- 3) *The provision of music lessons shall only be conducted by the owner/ occupier of the property, with no other persons employed at the property in connection with the use hereby approved.*
- 4) *The music lessons hereby permitted shall relate to the provision of guitar lessons only.*

A copy of the Inspector's decision is included in full at *Appendix A*.

- It is emphasised that, while the appeal was allowed, the inspector actually agreed on almost all counts with the way the LPA sought to control the level of activities at the property, choosing instead to grant planning permission as it allowed the best ability to control the use.
- Since this decision the applicant has been given a 2 month 'grace period' to allow him sufficient time to reorganise his business to comply with the conditions, such period ending on the 5th December 2016.
- On 1st December 2016, however, the applicant submitted this planning application (P2016/1051) to vary the conditions set by the Planning Inspectorate in October 2016.
- Members attention is also drawn to the objectors' ongoing contact with the LPA since this issue was first reported in June 2014 (30 months), with continuing frequent complaints about the unacceptable impact the lessons are having on their amenity, and more recently advising that despite conditions being set that they are being breached.

CONSULTATIONS

None

REPRESENTATIONS

The neighbouring properties were consulted on 12th December 2016, with a site notice also displayed on 20th December 2016.

In response, to date 2 no. representations have been received, with the issues raised summarised as follows: -

- Since the date of the Appeal, the applicant has not reduced his pupils to the permitted 6 per day ruling set by the planning inspectorate.
- The applicant has already been given a 2 month grace period to rearrange his clients so that his business would comply with the conditions set by the inspectorate, despite this the applicant has continued to exceed the number of students and not abided by the hours of operation.
- The applicant has stated in this application that he has reduced the level of activities at a considerable and unsustainable cost to his livelihood. This is disputed.
- Cars continue to use the drive with parents sometimes sitting and waiting for their children with their engines running, this has a serious impact upon the neighbour's residential amenity.
- An objector has stated that Cllr J Dudley has requested that whilst Mr Rees looks for a suitable property to carry out the extra lessons that he is granted a further 6 months to teach the extra pupils at his home property. Mr Rees has already had many opportunities to look for a suitable property. As Mr Rees has continued to disregard the regulations set down by the council, further action should now be taken.
- An objector has provided observation of the comings and goings from 2nd October 2016 to 31st December which show that he has continually breached the hours of operation and the hours of operation
- If the applicant adhered to the condition he would have 36 pupils per week resulting in 72 comings and goings. If this is increased to 8 pupils this would result in 96 comings and goings, this could result in one car coming and going 4 times all within a half hour slot for one child's lesson.
- The Human rights act states that a person has their right to a peaceful enjoyment of their possessions which include the home. The continued breach of these condition is affecting the neighbours human rights

REPORT

Planning Policies

The Development Plan for the area comprises the Neath Port Talbot Local Development Plan which was adopted in January 2016, and within which the following policies are of relevance:

- **Policy BE1** Design

Criterion 4 in particular states that development will only be permitted where ...4. *It would not have a significant adverse impact on highway safety, the amenity of occupiers of adjacent land or the community.*

Issues

Having regard to the above, the main issue concerns whether the increase in the number of students and amendment to opening hours would be acceptable in terms of the impact upon residential amenity.

The applicant's agent has submitted the following statement in support of his application:

"Since the date of the decision the applicant has reduced the level of his activities at a considerable and unsustainable cost to his livelihood. This application therefore seeks a modest increase in the number of students without affecting the amenity of the neighbours. The applicant seeks a gross reduction of 7.5 hours per week and an increase in students by 2 per day. It is considered that this will have no detrimental effect on the amenity of the neighbours"

Assessment:

From the appeal decision notice and Officer's report on the Certificate of Lawfulness application, attached at Appendices A & B respectively, it will be noted that this has been a complex matter which has taken some time, and been the subject of much deliberation. This culminated in a decision by an independent Planning Inspector as recently as four months ago, at which time he carefully considered the impacts of the use, and concluded upon an acceptable number of students and hours of operation, these being imposed by the conditions forming part of this application.

Since the date of the appeal, there has been no material change in site or Policy circumstances. Within this context, the assessment below addresses the two separate elements proposed, namely the change in hours and then the number of students, and assess whether the proposed changes would be acceptable in terms of residential amenity.

Change of Hours

In relation to the increase of hours, whilst it is acknowledged the applicants intent to reduce of the hours of operation in the morning, the main reason for the condition is to ensure lessons are taught within a sociable timeframe to limit disturbance to neighbouring residents.

During the appeal the applicant requested the inspector to consider a weekday finish of 21.00 hours (see paras 15 of appeal decision) but concluded (at para 17) that while "...the appellant proposes a later start for the prospective music lessons at 10.00 hours and a later weekday finish of 21.00 hours... the Council's suggested operating hours .. represent a balanced and sociable period within which any lessons should take place. Indeed, in light of the concerns outlined above, I consider a **20.00 hour restriction on a weekday to be an absolute necessity if the levels of harm are to be mitigated to an acceptable level**". (emphasis added)

In light of these conclusions, as recently as four months ago, it is considered that there are no reasonable grounds to reach any alternate conclusion on the proposed increase of hours to 20.30 on Mondays – Wednesdays, and that the affected residents have every expectation that these hours should be adhered to.

Increase in students

The previous inspector considered the intensity and times of operation of the use, the comings and goings associated with the music lessons, as well as the noise generated from the lessons themselves, could have potential to cause material harm to the living conditions of the occupiers of neighbouring properties. Indeed, such matters were considered to be of particular concern given the small and intimate character of the residential cul-de-sac.

The planning inspector agreed with the LPA that the use could be acceptable subject to restrictions on the number of students. During the appeal the applicant requested 10 students per day, however the

inspector concluded (at para 16) that “*having regard to the levels of noise and general disturbance that should reasonably be expected at such a modest residential cul-de-sac, I consider that the restrictions set by the Council in respect of the numbers of students to represent a **pragmatic and proportionate approach relative to the concerns raised**”.* (emphasis added)

The restrictions set by the Council in respect of the numbers of students was 6, and in reaching this conclusion he specifically considered that the impacts associated with 6 students per day would be materially different to the 10 students per day proposed by the appellant at that time. While the applicant now wishes 8 students per day, it is still considered that 8 students per day would result in some 16 comings and goings over the course of a typical weekday which, in addition to the movements associated with the residential use of the property, would be excessive given the local context.

Objectors have also provided evidence which appears to indicate that the applicant is still regularly having over 6 students per day and they continue to complain to the LPA in relation to the unacceptable impact it having upon them. As such it is considered that the number of students should remain at six, for the reasons stated by the appointed independent Inspector.

Potential for Temporary Increase in Hours / Students Numbers

During the course of the application, Officers met with the applicant and his agent to discuss the severity of breaching the conditions set, with the applicant making clear that the effects of the appeal decision had been financially significant, with the purpose of the application being to increase turnover without increasing effects on neighbours.

It was subsequently advised that, due to changing personal circumstances combined with the permitted level of activity at the site, the applicant proposes to purchase a property with a view to relocating his business. It is stated that this will need a significant financial investment, with the current consent limiting the ability to raise revenue. Accordingly, it has been requested that consideration is given to the issue of a temporary variation of the consent for a period of between 3 and 6 months to assist in the relocation of the business.

Having considered this request as part of this assessment, and while noting the support of Councillor Dudley to such a temporary permission, it is noted that the LPA welcomes the applicant's intention to find a business premises to operate from, which following relocation should resolve the ongoing issues at Rowan Tree Close. Nevertheless, it is considered that given the length of time objectors and residents have had to tolerate this unacceptable level impact, (which to date is approximately 30 months from the date of the first complaint), that it would be unreasonable for the LPA in this instance to formally allow any increase in number of students or hours, even for a temporary period.

For this reason, it is concluded that the proposed change to number of students and hours of operation should be refused, and at the same time the applicant's attention drawn to the essential need for him to work within the restrictive conditions set by the Inspector, while actively seeking to relocate his business.

CONCLUSION

Having regard to the assessment and conclusions within the independent appeal Inspector's decision letter dated 5th October 2016, it is considered that the proposed increase in number of students and increase in hours later into the evening (within unsociable hours), by reason of the number of students, hours of lessons, and associated movements of people coming and going within a small residential cul-de-sac of three dwellings, would have an unacceptable impact upon residential amenity, contrary to the objectives of Policy BE1 of the Local Development Plan.

RECOMMENDATION : Refusal

- (1) Having regard to the assessment and conclusions within the independent appeal Inspector's decision letter dated 5th October 2016, it is considered that the proposed increase in number of students and increase in hours later into the evening (within unsociable hours), by reason of the number of students, hours of lessons, and associated movements of people coming and going within a small residential cul-de-sac of three dwellings, would have an unacceptable impact upon residential amenity, contrary to the objectives of Policy BE1 of the Local Development Plan.

Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 16/08/16

Site visit made on 16/08/16

gan **Richard E. Jenkins BA (Hons) MSc MRTPI**

by **Richard E. Jenkins BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 05.10.16

Date: 05.10.16

Appeal A - Ref: APP/Y6930/C/16/3150026

Site address: 26 Rowan Tree Close, Bryncoch, Neath, SA10 7SJ

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Ashley David Rees against an enforcement notice issued by Neath Port Talbot County Borough Council.
- The Council's reference is E2014/0233.
- The notice was issued on 4 April 2016.
- The breach of planning control as alleged in the notice is without planning permission, the change of use from a residential dwelling (Class C3) to a mixed use of residential dwelling (Class C3) and commercial use for the provision of music lessons (Sui Generis).
- The requirements of the notice are: "You are required to cease using the property for the provision of music lessons other than in accordance with the following: 1) That a maximum of 6 students will be taught at the property each day; 2) That no students shall remain on the property or be taught outside the following hours - Monday to Friday 09.00 to 20.00, Saturday 09.00 to 15.00, and Sundays and Bank Holidays No lessons; 3) That the provision of music lessons shall be conducted only by the owner of the property, with no other persons employed at the property in connection with the use, and that there shall be no other business use operating from the property".
- The period for compliance with the requirements is two months beginning with the day on which the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (f) of the Town and Country Planning Act 1990 as amended.

Appeal B - Ref: APP/Y6930/C/16/3150027

Site address: 26 Rowan Tree Close, Bryncoch, Neath, SA10 7SJ

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Ms Milena Anna Willmann against an enforcement notice issued by Neath Port Talbot County Borough Council.
 - The Council's reference is E2014/0233.
 - The notice was issued on 4 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use from a residential dwelling (Class C3) to a mixed use of residential dwelling (Class C3) and commercial use for the provision of music lessons (Sui Generis).
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- The requirements of the notice are: "You are required to cease using the property for the provision of music lessons other than in accordance with the following: 1) That a maximum of 6 students will be taught at the property each day; 2) That no students shall remain on the property or be taught outside the following hours - Monday to Friday 09.00 to 20.00, Saturday 09.00 to 15.00, and Sundays and Bank Holidays No lessons; 3) That the provision of music lessons shall be conducted only by the owner of the property, with no other persons employed at the property in connection with the use, and that there shall be no other business use operating from the property".
 - The period for compliance with the requirements is two months beginning with the day on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals fail insofar as they relate to ground (e). Nevertheless, the appeal under ground (a) is allowed, the enforcement notice quashed and planning permission granted on the application deemed to have been made under section 177(5) of the 1990 Act, as amended, for the change of use from a residential dwelling (Class C3) to a mixed use of residential dwelling (Class C3) and commercial use for the provision of music lessons (Sui Generis) at 26 Rowan Tree Close, Bryncoch, Neath, SA10 7SJ, subject to the following conditions:
 - 1) No more than 6 students shall be taught on site each day.
 - 2) No music lessons are permitted on the premises on Sundays, Bank Holidays or outside of the hours of 09.00 to 20.00 Monday to Friday and 09.00 to 15.00 on Saturdays.
 - 3) The provision of music lessons shall only be conducted by the owner/ occupier of the property, with no other persons employed at the property in connection with the use hereby approved.
 - 4) The music lessons hereby permitted shall relate to the provision of guitar lessons only.

Procedural Matters

2. Two appeals have been lodged in relation to the enforcement proceedings at No.26 Rowan Tree Close in Neath. However, whilst the appellant has submitted in correspondence with the Planning Inspectorate that the appeals relate to differing enforcement notices, it is clear that each notice incorporates the same reference number. It is also clear that the text of the two notices is identical. I recognise that the plans attached to the notice vary. However, it appears to me that this is a result of an administrative issue as opposed to a material difference between the land affected by the notice. As such, for the purposes of determining these appeals, I consider that both appeals relate to the same enforcement notice.
 3. Where a notice is served upon more than one party and more than one appeal follows, only one of the appellants needs to pay the prescribed fee to trigger the planning application deemed to have been made under section 177(5) of the Act. Since the prescribed fees were paid within the specified period in relation to Appeal A, the deemed application falls to be considered. To avoid duplication, I shall deal with both Appeal A and Appeal B in this single document.
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Application for costs

4. Applications for costs have been made by Mr Ashley David Rees and Ms Milena Anna Willmann against Neath Port Talbot County Borough Council. These applications are the subject of a separate Decision.

Reasons

Ground (e)

5. An appeal under ground (e) is that copies of the notice were not served as required by section 172 of the aforementioned Act. The reasons for appealing under this ground are two pronged in this case. Firstly, the grounds of appeal state that, having regard to *Burdle v Sec State (1972) 3 All ER 240*, the Council have not correctly identified the planning unit or land affected by the notice by failing to include within the plan attached to the notice the shared access to the site. Secondly, it has been submitted that the enforcement notices received by the appellants differ in respect of the attached plans, with particular reference to that received by Ms Willmann (Appeal B) which is considered illegible. In this respect, reference has been made to the tests set out in *Miller-Mead v Minister of Housing and local Government 1963 2 QB 196*.
6. With regards the issue of the site access, it is important to note that the shared access comprises a private road that also serves two other dwellings, namely No.24 and No.28 Rowan Tree Close. The appellants consider this access road to be both physically and functionally connected to the appeal site and that it should, therefore, have been identified as part of the appeal site on the plan attached to the enforcement notice. Furthermore, as the shared access road is owned by the occupiers of neighbouring dwellings, the appellants submit that the Council has not served notice on all of the owners, occupiers or other persons with an interest in the land. Whilst the appellant accepts that there are powers available to correct or vary a notice under section 176(1) of the aforementioned Act, it is submitted that such a practice cannot be implemented in this case as it would be prejudicial to the appellant and other interested parties. As such, it is contended that the enforcement notice is defective on its face and a nullity.
7. In this respect, whilst the shared access road does provide for the sole vehicular access to the appeal premises, the breach of planning control quite clearly relates to the music lessons being offered specifically at No.26. Indeed, the plan accompanying the enforcement notice is consistent with the registered title at the property. As such, for the purposes of determining these appeals, I am satisfied that the Council has correctly identified the site. Furthermore, I have found nothing to indicate that the approach advocated conflicts with the principles established in the *Burdle* or *Miller-Mead* cases referred by the appellant.
8. It has also been contested that the plan attached to the notice received by Ms Willmann is illegible and does not fairly tell her what land is affected by the notice. It is therefore submitted that she cannot reasonably remedy the breach and that the notice is a nullity. In this respect, whilst I accept that the copy of the plan referred to does appear to be faded, it is important to note that there is no formal requirement for an enforcement notice to include a plan. Indeed, Regulation 3(c) of the *Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003* states that an enforcement notice must specify the precise boundaries of the land to which it relates, whether by reference to a plan or otherwise. In this case, the postal address is clearly provided within the notice and the same address is also included on the key

to the plan. That is sufficiently clear and all of the evidence indicates that the recipients of the notice have understood what is being attacked and to which premises the unlawful activity relates.

9. Notwithstanding such matters, section 176(5) of the Act states that incorrect service of an enforcement notice may be disregarded where there has not been substantial prejudice. In this case, the appellants have lodged appeals against the enforcement notice and managed to contest it fully through the course of proceedings. It cannot, therefore, be said that they have suffered any prejudice. Likewise, given the nature of the breach and the requirements of the notice, I am satisfied that the other persons with an interest in the shared access road have not been prejudiced by the procedures undertaken to date. Indeed, Nos.24 and 28 have been provided with copies of the enforcement notice and have been fully informed of the appeals.
10. For these reasons, I conclude that the appeals under ground (e) should fail.

Ground (a)

11. The appeal under ground (a) is that planning permission ought to be granted in respect of the breach of planning control which may be constituted by the matters alleged in the notice. As such, planning permission is sought for the change of use from a residential dwelling (Class C3) to a mixed use of residential dwelling and commercial use for the provision of music lessons (Sui Generis). The Council objects to the proposed change of use on the basis that the comings and goings associated with the sui generis use would have an unacceptable and unreasonable impact of the living conditions of the occupiers of neighbouring properties. Such concerns are corroborated by those representations submitted by neighbouring occupiers, with further objections relating to alleged loss of privacy and concerns for highway safety.
12. It was clear at the time of my site visit that, having regard to the geometry of the road and other highway matters such as visibility, the concerns relating to highway safety are not well founded. Likewise, whilst concerns have been raised in relation to parking practices, the appeal site offers off street parking and, even if that is not available, the main highway along Rowan Tree Close offers ample opportunity for safe and lawful on-street parking only a short distance from the site.
13. Moreover, whilst it is inevitable that the offer of music lessons would see students entering and exiting the premises via the shared access, I do not consider that such a situation would result in any material harm to the levels of privacy at neighbouring properties. Indeed, the windows of the neighbouring properties that front the access road are largely set back from the highway and, in any event, such views would be short and fleeting and would have the same impact as those associated with the residential use of the property. Likewise, whilst the offer of music lessons would take place in a first floor room located to the rear of the property, any issues of overlooking from that room would not be any more significant than those associated with the lawful use.
14. Nevertheless, depending on the intensity and times of operation of the sui generis use, the comings and goings associated with the music lessons, as well as the noise generated from the lessons themselves, could have potential to cause material harm to the living conditions of the occupiers of neighbouring properties. Indeed, such matters are of particular concern in this case given the small and intimate character of the residential cul-de-sac within which the appeal site is located. However, whilst there remains some confusion over the reasons for issuing the enforcement notice,

specifically whether the requirements of the notice would remedy the breach or prevent injury to amenity, it is clear that both the Council and the appellant consider that there is a level of intensity at which the proposed use could be undertaken without material harm. Having undertaken a detailed site visit and considered all of the evidence available to me, including that submitted by interested parties, I have no reason to dispute such conclusions.

15. As set out in the requirements of the enforcement notice, the Council consider that the impacts of the use would be acceptable if, amongst other things, the number of students were restricted to a maximum of 6 per day and the hours of operation restricted to between 09.00 and 20.00 hours Monday to Friday and 09.00 and 15.00 hours on Saturdays, with no lessons offered on Sundays and Bank Holidays. In contrast, whilst the appellants are happy to agree to no lessons on Sundays or Bank Holidays, they wish to be able to operate the business use between 10.00 and 21.00 hours Monday and Friday and 10.00 and 15.00 hours on Saturdays. The appellants also seek to be able to teach up to 10 students per day.
16. Within this context, and having regard to the levels of noise and general disturbance that should reasonably be expected at such a modest residential cul-de-sac, I consider that the restrictions set by the Council in respect of the numbers of students to represent a pragmatic and proportionate approach relative to the concerns raised. Specifically, I consider that the impacts associated with 6 students per day within the hours specified by the Council would be materially different to the 10 students per day proposed by the appellant. Indeed, the latter could result in some 20 comings and goings over the course of a typical weekday which, in addition to the movements associated with the residential use of the property, would be excessive given the local context. I recognise that the appellant is seeking to limit the numbers of vehicles accessing the site. However, the condition proposed would be extremely difficult, if not impossible, to enforce and, for this reason, I consider that it fails the tests set out in Welsh Government Circular 16/2014: *'The Use of Planning Conditions for Development Management Purposes'*.
17. I acknowledge that the appellant proposes a later start for the prospective music lessons at 10.00 hours and a later weekday finish of 21.00 hours. However, I consider the Council's suggested operating hours to represent a balanced and sociable period within which any lessons should take place. Indeed, in light of the concerns outlined above, I consider a 20.00 hour restriction on a weekday to be an absolute necessity if the levels of harm are to be mitigated to an acceptable level. In addition, as proposed by the Council and the appellant, I consider that a condition is necessary to ensure that the lessons are only offered by the owner or occupier of the property and that no other persons are employed at the premises. Likewise, I have imposed a condition restricting the music lessons to the provision of guitar lessons only. These controls would assist in ensuring that the change of use at the property would not cause material harm to the living conditions of neighbouring occupiers.
18. I recognise that the requirements of the enforcement notice seek to prevent any other business uses from operating at the property. However, this clearly goes beyond remedying the breach of planning control. Indeed, an additional business use could be operated at a level that is incidental to the primary use of the property and would not, therefore, require planning permission. Likewise, it is possible that a potential business use could be acceptable in planning terms, regardless of the concerns set out above. As such, I do not consider that it is appropriate for this requirement to be transposed as a condition of the planning permission granted in this case.

19. I have considered all other matters raised, including those submitted by interested parties. Specifically, reference has been made to legal covenants on the land. However, such matters are clearly severable from planning processes and would need to be considered under the respective legislation. In addition, I do not consider that concerns relating to health and safety merit substantial weight in this case, whilst potential damage to property is clearly a civil matter. Furthermore, concerns for the wear and tear of the shared access road and any increase in electricity costs triggered by security lighting do not warrant the refusal of planning permission.
20. I have fully considered the comments made within the context of the Human Rights Act and in particular Protocol 1, Article 1 which states that a person has the right to the peaceful enjoyment of all their possessions which include the home. I have also considered the provisions of Article 8 of the Human Rights Act. However, I do not consider such concerns to be well founded because, for the aforementioned reasons, I do not consider that the use would cause material harm to the living conditions of the occupiers of neighbouring properties, provided that the intensity of the use is appropriately controlled by means of planning condition. Accordingly, there would be no violation of the neighbouring occupiers' human rights.
21. I have only imposed conditions where I consider that they meet the tests set out in Circular 16/2014 and have, in the interests of clarity and precision, adjusted the wording of the suggested conditions where necessary. Given that it is common ground that the breach of planning control alleged in the notice has already taken place, I do not consider the standard time commencement condition to be necessary. Likewise, the suggested condition preventing lessons from taking place outside of the property has not been raised as a particular issue and I see no reason to impose it.
22. I acknowledge that the planning permission granted allows for little more than what would have been the case if I was to uphold the enforcement notice with variations. However, having considered all the options available to me, it would appear that the grant of planning permission offers a more favourable approach to all parties concerned. Indeed, it provides certainty in terms of the intensity of use permitted, whilst also providing sufficient flexibility to enable an application under section 73 of the Act to be considered on its merits should it be considered pertinent to do so. Moreover, the option of serving a breach of condition notice remains open to the Council should it be found that the terms of the planning permission are not complied with.
23. On this basis, I conclude that, subject to the conditions imposed, the appeal under ground (a) should succeed.

The Appeals under Ground (f)

24. In light of my conclusion that the appeal should succeed on ground (a), the enforcement notice is quashed. As such, the appeals under ground (f) do not fall to be considered.

Richard E. Jenkins

INSPECTOR

Officer Report

Application Reference: P2015/0495

1 Brief Description of Proposal:

This application is for a Certificate of Lawful Existing Use or Development (CLEUD) for an existing residential dwellinghouse to be used for music lessons.

The application has been accompanied by a supporting letter from an agent which indicates that the use operates as follows: -

The **hours of operation** comprise: -

- Monday 15.30 to 20.00 (4 ½ hours)
- Tuesday 15.30 to 20.00 (4 ½ hours)
- Wednesday 15.30 to 21.00 (5 ½ hours)
- Thursday 15.30 to 20.00 (4 ½ hours)
- Friday 16.00 to 19.00 (3 hours)
- Saturday 12.00 to 15.00 (3 hours)
- Sunday No Lessons

Maximum hours in a week are 25 ½ (although it is noted that the above hours add up to 25 hours)

The supporting evidence also states that: -

- The property is still to be used mainly as a private residence
- There will be no external alterations to the property
- There will be no external advertising signs
- Only one small room will be used for the lessons
- Only one pupil will be taught at the premises at any one time
- An average of 2 vehicles call at the property each day
- There is adequate off-street parking on the forecourt
- Lessons are by appointment only and those students arriving by car are staggered to ensure that only one vehicle is parked on the forecourt at any one time
- A maximum of 8 students on foot call at the property each day (albeit see assessment below in respect of numbers)

The applicant advises that, following a meeting with the Planning Department on the 12th March 2015 the applicant has ceased all Sunday lessons, in addition to this he has stopped taking on additional students, and replacement students are now offered 1 hour lessons to reduce footfall in the cul-de-sac.

2 Planning History:

Although not relevant to this application, the planning history for the property is as follows: -

95/0484	Erection of 85 No. two storey dwellings with garages, landscaping and associated works.	Approved	01/04/96
14/0076	Works to Oak Tree covered by Tree Preservation Order comprising 15% Crown Lift plus 3m reduction in branches overhanging garden of No. 68.	withdrawn	24/02/14

3 Publicity and Responses (if applicable):

In response to this application, a petition of support signed by 7 people and 3 letters of objection have been received from the occupants of nearby residential dwellings, which are summarised under 3 main categories as follows:

(1) Loss of Privacy

- a. The application site is located across from the objector's property and there has been an invasion of privacy, such as being watched in the front garden and looking into their living room window.
- b. Threats from people visiting the application site when the objector advised them of driving over their lawn in the driveway of the application site
- c. False allegations being made to the police about the objector in relation to offensive hand gestures and swearing being made to people visiting the property which was made by the applicant.
- d. The proposed development contravenes Protocol 1 Article 1 of the Human Rights Act which states that a person has the right to enjoy peaceful enjoyment of all their possessions which includes their home and other land.
- e. The objector has had to install CCTV to protect them from false and malicious allegations being made to the police.
- f. The proposed development contravenes Article 8 of the Human rights Act which states that a person had the right to respect for their substantive family life.
- g. The objector being watched in their front garden by people in cars or waiting outside house making the objector nervous as they have experienced menacing and intimidating attitude from the clients.
- h. The applicant website advises lessons can be given in small groups, resulting in more than one person at a time which would create more people waiting for lessons to commence and finish.
- i. Feeling intimidated when at home on own in the evening with strangers either standing or parked in their vehicles , outside my front window.

(2) Disturbance and Noise

- a. The property is located in a residential cul de sac consisting of 3 properties the proposed development results in a noise and disturbance issue detrimental to the neighbouring residential amenity

- b. Increased noise and disturbance from people back and forth either in cars or by foot, there have been approximately 1800 people and 426 cars since 8th may 2014
- c. There have been occasions when 2 cars a day attend the proposed development.
- d. There have been occasions that the same car has dropped 2 children off separately resulting in the same car coming and going 4 times within 1 hour.
- e. Parents of children standing on driveway waiting for children reading paper or talking loudly, also endured parents playing loud music in their car, with engine running with lights shining into living room window. Website advertises business hours between 9am and 9pm seven days a week meaning a client can start a lesson at 9pm meaning they could leave at 10 causing a noise and disturbance.
- f. The objector's electricity bill has increased due to the security light at the front of the property being triggered more often. This also results in more wear and tear with the light on and off every half hour. As there are no street lights on the cul-de-sac the objector thinks it's unfair that they for this facility that benefits the proposed objector.
- g. The activity log provided by the objector shows the hours of operation each week to vary which on average would be 25 and half hours each week.
- h. Disturbance from electric guitar lessons especially in the summer months when sitting in the garden.

(3) Driveway and Stability

- a. The proposed development is situated on a shared un-adopted highway consisting of only 3 residential properties. Each householder would be required to contribute equally to maintain and repair. With traffic increase from the proposed development surely the applicant would need to pay more towards these costs
- b. As the driveway is adopted each residential property will be liable for prosecution should any of the proposed development clients injure themselves. Why should residents have to take out indemnity insurance to pre-empt this.
- c. Vehicles parking outside of No 30 causing a hindrance and making it awkward to gain access to their driveway
- d. Damage to property on numerous occasions with people driving over the edge of the front garden.
- e. Numerous occasions when the shared drive serving the three properties is blocked by the applicants clients, this is further exacerbated when they have family visitors.

(4) Other

- a. All properties within the Redrow estate are subject to a covenant in the deeds which prohibit the use for business purposes.
- b. Discrepancies in the CLOUD in relation to 1 hour and half hour lessons. The applicant's web site specifically offers half hour lesson for children.

While it is emphasised that in an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) planning merits of a proposal are not to be assessed, the assessment which follows has had regard to the views expressed by the nearby residential properties in coming to a conclusion on the facts of the case.

4 Description of Site and its Surroundings:

The application site comprises a detached dwelling located at 26 Rowan Tree Close, Neath. The dwelling is accessed via a private drive serving two other dwellings (as shown on the aerial photograph below).



Policy Context:

Planning Policies are not relevant to applications under Section 191 of the Town and Country Planning Act 1990 (as amended)

Material Considerations:

This application seeks a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990 which seeks to certify the lawfulness of existing operations on or use of land. The determination of the application is on legal grounds only, accordingly any views on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant.

Accordingly, this report concentrates solely on whether, based on the facts of the case, the specified matter is or would be lawful.

Having regard to the above, the main issues for consideration with this application relate to whether the extent and nature of use identified within the application would be incidental to the main residential use of the existing dwelling, or whether the use/development would constitute a material change of use of the property from residential into a mixed residential (Class C3) and commercial use (Sui Generis).

Assessment

As stated above, the key issue with this application is whether the proposal would be considered incidental to the main residential use of Number 26 Rowan Tree Close, or whether the proposal would constitute a material change of use of the property from residential to a mixed use of residential and commercial. As there are no clear cut planning rules on this type of activity, it would be a matter of 'fact and degree' based on the information provided as part of the application in the context of the application site.

Advice from the Planning Portal (the online planning and building regulation resource in England and Wales) states that *“You do not necessarily need planning permission to work from home. The key test is whether the overall character of the dwelling will change as a result of the business”*.

It further states *“Whatever business you carry out from your home, whether it involves using part of it as a bed-sit or for 'bed and breakfast' accommodation, using a room as your personal office, providing a childminding service, for hairdressing, dressmaking or music teaching, or using buildings in the garden for repairing cars or storing goods connected with a business - the key test is: is it still mainly a home or has it become business premises?”*.

Advice contained within ‘Development Control Practice’ (DCP) (an online planning resource) states that the *“point at which a use departs from being termed ‘incidental’ is difficult to determine”*. It also states that *“whether an activity is for hobby/humanitarian purposes or commercial gain is not a determining criterion on its own”*.

Factors which may assist such a judgement are as follows:

- A. Have there been any alterations to the dwelling to facilitate the business?
- B. Will the home no longer be used mainly as a private residence?
- C. Will the business employ other people?
- D. Will the business result in a marked rise in traffic or people calling?
- E. Will the business involve any activities unusual in a residential area?
- F. Will the business disturb neighbours at unreasonable hours or create other forms of nuisance such as noise
- G. Any other issues raised as part of this application

These ‘tests’ are considered below, following consideration of previous planning appeals cases found on DCP.

Planning Cases (DCP)

As part of the assessment, research using Development Control Practice has identified one case in relation to music lessons.

This was a case in **Sunderland (02/04/2001)** where the continued use of a substantial wooden building in a domestic back garden for music lessons was sought. At appeal an inspector noted that up to 25 students might use the premises on a Saturday. Whilst the building had been soundproofed and well insulated, the noise associated with comings and goings was likely to create an unacceptable level of disturbance to local residents. The site was unsuitable for such an activity and the effects could not be ameliorated satisfactorily through the imposition of conditions. This case whilst notably different to the current proposal (both in intensity and the fact that this used a detached outbuilding) nevertheless provides a good example of when the number of people visiting in a day would not be ancillary to a dwelling.

Further study of the database reveals numerous other cases of a business being run from home that didn’t constitute a change of use and were considered to be incidental to the enjoyment of the dwelling house, however none were found relating directly to music lessons. One such case that was considered acceptable whilst not directly comparable was **Slough (12/02/2007)** where a council's enforcement notice

requiring the cessation of a "mini health farm" at a dwelling in Berkshire was quashed after an inspector decided that it was ancillary to the lawful use of the premises. The inspector noted that the appellant had advertised the business widely in a local newspaper and on the web. However, he decided that the term "mini health farm" conveyed an overly elaborate impression of the actual activities that were provided on site. He decided that the breach of planning control should be more accurately described as comprising a mixed use involving residential and the provision of beauty treatment, reflexology, massage and the associated use of a spa bath. With this in mind, he noted that attendance at the premises was by appointment only and a maximum of two appointments per day was the norm. A professional reflexologist attended as required and this was usually one hour per week. The appellant had kept a diary of her appointments that supported her argument that the number of people visiting the site was limited and did not normally exceed more than four per day. It is evident that number of comings and goings are a key factor in considering whether a change of use has occurred.

An example of a case where it wasn't considered acceptable was **Kirkcaldy (11/03/98)** where a beauty therapy use was held not to be ancillary to a dwelling in one room of a large house had been used for no more than 5 clients a day, again this is not directly comparable as the room had been "kitted out" with a great deal of equipment and had clearly been taken out of residential use. However the comings and goings of customers, albeit numerically at a low level, distinguished the activity from that normally associated with residential use.

The report now considers the 'tests' referred to above.

A. Have there been any alterations to the dwelling to facilitate the business?

The applicant has indicated that there would be (have been) no external alterations to the property to facilitate the proposed operations, that there will be no external advertising on the property, and only one room in the house is used to teach students.

It is therefore considered that the use does not significantly alter the character or appearance of the surrounding area or dwelling, and it can be said that in this regard the use would be incidental to the main residential use of the property.

B. Will the home no longer be used mainly as a private residence?

Music lessons are not an activity which is unusual in a residential area, and there are likely to be many homes within Neath Port Talbot which are used for teaching music without the need to obtain planning permission.

As stated above the applicant uses a single room within the 3 bedroom detached house, which has not been physically modified and remains the private residence of the applicant and his family.

It is therefore considered that the remainder of the dwelling is still mainly used as a private residence.

C. Will the business employ other people?

The applicant (Mr Ashley Rees) has indicated that he operates the business, and that he does not employ any other people. Accordingly, there are no additional activities associated with the employment of staff which would materially change the character or use of the dwelling.

D. Will the business result in a marked rise in traffic or people calling?

Having particular regard to the application submissions and those from nearby residential dwellings, it is clear that this is the primary 'test' which will determine whether or not the nature and scale of the activities associated with the use would be of such intensity that they would materially change the character or use of the dwelling.

In order to assess this in this case, it is necessary to understand the specific context of this property. In this regard it is important to note that the dwelling is located within a small, private residential cul-de-sac serving 3 dwellings, No's 24, 25 and 26 Rowan Tree Close.

Given that the application site is within a small cul-de-sac in a residential area, it is apparent (notably from the nature of representations received in response to this application from the other two neighbouring properties within the cul-de-sac) that any increase in footfall or traffic would be more noticeable than if the application site was located on a main road. Nevertheless, while this affects the assessment, this does not mean that it must automatically be concluded that any such activities caused by the amount of people visiting or calling and the rise in traffic, would constitute a material change of use.

The application is not specific in respect of the number of students taught at the property, although it does state that: -

- An average of 2 vehicles call at the property each day; and
- A maximum and minimum number of students each day.

Although the submissions state that 'replacement' students are offered one hour lessons (to reduce footfall), no details are provided of the number of students on any one day. With one pupil taught at the premises at any one time, and based on ½ hour / one hour lessons, the maximum / minimum number of students can be calculated as follows (assuming every teaching 'slot' is filled): -

The table below shows the hours of operation and the maximum and minimum student taught each day. The applicant has also provided an actual week of booking for the w/c 9/11/15.

Table 1				
		Maximum	Actual for w/c Monday 9/11/15.	Minimum
Monday	15.30 to 20.00 (4 ½ hours)	9	7	5
Tuesday	15.30 to 20.00 (4 ½ hours)	9	9	5
Wednesday	15.30 to 21.00 (5 ½ hours)	11	8	7
Thursday	15.30 to 20.00 (4 ½ hours)	9	8	5
Friday	16.00 to 19.00 (3 hours)	6	6	3
Saturday	12.00 to 15.00 (3 hours)	6	4	3
Sunday	no lessons	0	0	0
Total per week		50	42	28

The applicant has advised that whilst they book more the actual turn out is lower due to cancellations. They have advised that the cancellation rate for the above week was 16% which was below the average of 20% for Term Time. The applicant also states the cancellation rate for Half Term is on average 30% and the cancellation rate for over Christmas/New Year is on average 50%. However no evidence has been submitted to prove this. This week shows that the number of people taught is nearer the maximum.

The applicant has also stated that they operate for between 3 and 5½ hours a day for a maximum of 25 Hours per week (also shown in table 1). They have also indicated that the students are appointment based only and are staggered so that only one vehicle calls at the property at a time, and there is sufficient space off street parking available.

The appeal cases referred to earlier indicate that businesses can be run from home as an incidental use depending on their intensity. The applicant has provided evidence to reflect the nature of business at the property.

As part of the application neighboring properties were consulted, and the two properties within the cul-de-sac have raised objections. One objector has provided detailed evidence of the 'comings and goings' related to the property over a substantial period of time, which indicates (amongst other things) that on occasions there have been overlaps in appointments resulting in two cars or two people there at the same time. The reason for this is not clear whether it was an error on the applicant's side of the student turned up early. It is also noted that there are occasions when there have been greater number of visitors in a day than those shown in table 1. Again it is not clear why this has happened on a few occasions however it is acknowledged that the applicant has tried to reduce the number of comings and goings prior to the submission of this application after meeting with the Local Authority by offering 1hr lessons. However ½ hour lessons are still advertised on their web and students are still taught in half hour sessions, this was also noted by one of the neighbours.

Nevertheless the number of students observed visiting by the neighbour illustrates that the number of students visiting the property is at or around the maximum on most days. In addition to this the number of visitors is further exacerbated due to the application site being positioned in a small cul-de-sac consisting of 3 dwellings which would have been subject to very little traffic in the past. Nevertheless an increase in traffic and foot fall is not a definite indicator that a change of use has occurred. The amount of traffic and foot fall needs to be carefully assessed.

A further submission was submitted by the same neighbour which only looked at the comings and goings outside of the hours indicated by the applicant. These are personal recordings by the neighbour when they are at the property, therefore may have been occasions that were missed (and clearly cannot be corroborated by the Council). These observations were taken from the 5th of November to the 25th of January. The evidence indicates that 35 students visited the property outside of the times indicated by the applicant. It also illustrates that the same vehicles are repeatedly observed arriving outside of the times indicated by the applicant, which would suggest that the appointments are being arranged at these times and not just a one off occurrence. Taking the neighbours submission as being accurate this would indicate the times of operation being as follows:

Table 2			
	Applicant's statement	Neighbours observations between 5 th November 2015 to 25 th January 2016	Increase to what has been stated
Monday	15.30 to 20.00 (4 ½ hours)	11.00 to 20.00 (9 hours)	4 ½ hours
Tuesday	15.30 to 20.00 (4 ½ hours)	14.00 to 20.00 (6 hours)	1 ½ hours
Wednesday	15.30 to 21.00 (5 ½ hours)	11.30 to 21.00 (9 ½ hours)	4 hours
Thursday	15.30 to 20.00 (4 ½ hours)	11.00 to 20.00 (9 hours)	4 ½ hours
Friday	16.00 to 19.00 (3 hours)	11.00 to 19.00 (8 hours)	5
Saturday	12.00 to 15.00 (3 hours)	10.30 to 15.00 (5 ½ hours)	2 ½ hours
Sunday	no lessons	0	0
Total Hours Per week	25 Hours	47 Hours	22 hours

The neighbour's submission suggests that the applicant frequently provides lessons outside of the time specified in table 1. If this was a regular occurrence as the submission suggests the hours of operation could be significantly increased, going from 25 hours per week to 47 hours per week, increasing the average day by approximately 4 hour.

Whilst not a comparable use, it should be noted that case law has established that child minding can operate from a dwelling for up to 6 children without the need for planning permission for a change of use. For example a child care facility at this property would be able to provide care for 6 children including the applicants own children. This could result in numerous vehicles movements and people coming and going each day. Whilst the vehicle movements and coming and goings would be different and concentrate in the morning and evening, it clearly illustrates the level of activity and noise that is considered to be appropriate within a residential area.

The appeal cases earlier suggest that over 5 visitors may be unacceptable, and the above case law suggest that caring for 6 children would be acceptable. It would therefore be prudent to consider that the coming and going of 6 people a day would be acceptable, and that the noise and disturbance associated with this would be comparative to a residential use. The applicants and objectors evidence illustrate that on average more than 6 people visit the property each day and could be 11 on certain days. It is considered that this is over what people living within a residential area would expect. This would be further exacerbated in small private cul-de-sac of 3 properties.

It is therefore considered that the increase in traffic and the intensification of people coming and going would be detrimental to the neighbouring properties and would indicate that a change of use has occurred based on movements alone.

The appeal cases and case law stated within the report illustrate what's has been considered acceptable and unacceptable within a residential area and supports this conclusion.

To conclude the number of people visiting per day is considered excessive in a residential area. Therefore the increase would not be considered incidental to the main residential use and would alter the character of the property and area to such a degree to constitute a material change of use in terms of traffic and comings and goings.

E. Will the business involve any activities unusual in a residential area?

Teaching music from home is not considered to be an unusual activity to undertake within a residential area. It is even mentioned on the planning portal stated earlier in this report.

F. Will the business disturb neighbours at unreasonable hours or create other forms of nuisance such as noise?

In relation to potential disturbance at unreasonable hours, the latest the applicant has stated they teach is 9pm on a Wednesday, 8pm Monday Tuesday and Thursday and 7pm on a Friday. The applicant teaches on a Saturday between 12 and 3. (This is shown on table 2)

Whilst it is acknowledged that there would be some level of noise from guitar lessons, the dwelling is detached and double glazed, and it is therefore highly unlikely to have any unacceptable noise generated from the proposal over and above what a normal household would produce. One of the neighbours have advised that electric guitar lessons are a nuisance in the summer when they sit in their

garden however there have been no complaints made to Environmental Health in relation to noise disturbance from the music being played at the property.

In relation to the noise and disturbance generated from people entering/leaving the premises and whether this is at an unsociable hour, this has largely been covered earlier in this report in respect of traffic movements. However, it is emphasised that the property is located in a residential cul-de-sac where at the proposed development results in a degree of noise and disturbance related to associated activities including people in cars with engines running and music playing, and parents standing on the applicant's driveway talking loudly. Whilst this type of activity may be acceptable in a residential area the issues are exacerbated in this case as the application site is within a small cul-de-sac. Residents within this area would have previously experienced much less activity and noise than a residential house on a road where there would be through traffic and pedestrians walking by.

The earlier assessment showed that the level of activity has resulted in a change of use and would therefore not be incidental to the residential dwelling. In relation to the hours of operation, the latest time stated is 9pm. As stated earlier residential areas do tend to see less activity in the late evening, a small private cul-de-sac would expect an even greater reduction of activity as people would only enter the cul-de-sac if they had business there.

Within this specific local context, it is considered that such activities should be restricted to no later than 8pm (the last student leaving at such time), and as such in addition to the number of students and associated movements- which cannot be controlled through design or condition - the noise and disturbance created from people and vehicles coming and going would be over and above what should be expected in a residential area and at a time in the evening when residents should expect a greater degree of amenity.

To conclude it is considered that the number of students and associated movements of people coming and going would disturb neighbours over and above what would normally be expected within a residential area and also at unsociable hours. It is therefore considered that the current scale and hours of the use are not incidental to the main residential use of the property, and have altered the overall character of the property to such a degree to constitute a material change of use.

G. Any Other issues: Will the business have an unacceptable impact in relation to privacy

Occupants of neighbouring properties have made a number of objections in relation to the loss of privacy from the proposed operation, largely due to the close relationship between the application property and its neighbours.

These include claims that there has been an invasion of privacy, such as being watched in the front garden and people looking into their living room window. Such activities relate to people getting to the site and not the guitar lessons. In this respect, it has to be acknowledged that a less intensive use of the property for lessons could still have an impact on privacy. However as stated earlier in this report the level of comings and goings are considered to be over and above what is considered to be acceptable within a residential area. Accordingly, while such impacts cannot be precluded, or neighbours' concerns completely satisfied, it is

considered that the degree of current activities causes a degree of harm which reinforces the conclusions reached above.

In reaching this conclusion, it is noted that any subsequent enforcement will not result in the use being stopped, since a reduced level of activity at this location would be acceptable.

The planning department has no control on what people do and look at and how they behave when in the street; or how they drive and park. It should be acknowledged that people visiting a property may have an impact upon privacy to any front facing windows and front gardens. Furthermore fronts of residential properties are not considered to be a private amenity area and would be subject to overlooking from people within the street.

The following responses are made to the objection raised that has not been addressed within the above report.

In relation to the proposal contravening Protocol 1 Article 1 and article 8 of the Human Rights Act; **the application is for a Certificate of Lawfulness for an existing use which is to ascertain if planning permission is required. If a planning application is made in the future then the Local Planning Authority (LPA) will fully assess the impacts of the development upon the amenity of residents of adjoining properties as part of their assessment. Notwithstanding this, the report clearly illustrate the factors that have been assessed as part of this application, which include whether the business has result in a marked rise in traffic or people calling and whether the business has disturb neighbours at unreasonable hours or create other forms of nuisance such as noise. The outcome of each assessment helps the LPA in determining whether planning permission is required or if the development is lawful.**

The objector has had to install CCTV to protect them from false and malicious allegations being made to the police. **This is not a material planning consideration.**

The applicant website advices lessons can be given in small groups, resulting in more than one person at a time which would create more people waiting for lessons to commence and finish. **The applicant has not advised that they wish to teach groups, and there has been no observations made by the objector that there have been small groups. The certificate applied for would be specific to what has been carried out which involves no groups.**

Website advertises business hours between 9am and 9pm seven days a week meaning a client can start a lesson at 9pm meaning they could leave at 10 causing a noise and disturbance. **The web site advertises that the applicant can be contacted via mobile or email during these times as it clearly states this under the contact section of the Ashley's guitar lesson web site**

The objector's electricity bill has increased due to the security light at the front of the property being triggered more often. This also results in more wear and tear with the light on and off every half hour. As there are no street lights ion the cul-de-sac the objector thinks It's unfair that they for this facility that benefits the proposed objector. **This is not a material planning consideration and will not be taken into consideration as part of this application.**

The objector has highlighted that the proposed development is situated on a shared un-adopted highway consisting of only 3 residential properties and that each householder would be required to contribute equally to maintain and repair. **Their particular concern is with the increase in traffic and would the applicant need to pay more because of this and that each residential property will be liable for prosecution should any of the proposed development clients injure themselves. However, it should be noted that this specific issue would be a civil matter between the relevant landowners, and would not be a determining factor in this application.**

In relation vehicles parking causing a hindrance, damage to property, the shared driveway getting blocked, and a covenant prohibiting properties for business purposes; **these are not a material planning consideration and are private matters.**

Conclusion:

It is considered that the use, by reason of the number of students, hours of lessons, and associated movements of people coming and going within a small residential cul-de-sac of three dwellings, has a degree of impact on neighbours over and above what would normally be expected within a residential area, including at unsociable hours, and accordingly is not considered to be incidental to the main residential use of the property and to have altered the overall character of the property to such a degree to constitute a material change of use from residential into a mixed residential (Class C3) and commercial use (Sui Generis). It is therefore recommended not to issue the Lawful Development Certificate for the existing use and to take the necessary enforcement action as detailed in the next section.

Recommendation:1

Not to Issue the Lawful Development Certificate for the Existing use on the following grounds: -

The use, by reason of the number of students, hours of lessons, and associated movements of people coming and going within a small residential cul-de-sac of three dwellings, has a degree of impact on neighbours over and above what would normally be expected within a residential area, including at unsociable hours, and accordingly is not considered to be incidental to the main residential use of the property and to have altered the overall character of the property to such a degree to constitute a material change of use from residential into a mixed residential (Class C3) and commercial use (Sui Generis).

Enforcement Action

Having regard to the assessment above, it has been concluded that the intensity and nature of activities undertaken, within this specific context, would amount to a material change in the character of the property from a residential use to a mixed use of residential and guitar lessons.

This therefore means that planning permission is required for the use.

In light of the persistent and strong objections raised by neighbouring properties, in respect of the impact of this use on their amenity, it is also necessary to consider the expediency of taking formal enforcement action against the use as it currently exists.

In this respect, for the reasons expanded upon in the earlier section of this report, it is also concluded that the degree of activity associated with the guitar lessons at this particular property, would also have an unacceptable and unreasonable impact on the amenity of the neighbouring properties.

Any enforcement action cannot necessarily stop the activities being undertaken at the site, and will only be able to reduce them to a degree which it is considered that planning permission would not be required. Nevertheless, while such impacts are unlikely to be reduced to a level which would be hoped by the neighbouring properties, enforcement action is considered to be warranted so as to reduce the intensity of activities to a degree, and at times, where such impacts would become acceptable in terms of not materially changing the character of the property.

Having regard to this, the following additional recommendation is made: -

Recommendation 2

That authorisation is granted for the service of an Enforcement Notice to restrict the degree of activities at the site associated with guitar lessons to a level which would ensure that there is no material change in the character of the use for the property as a residential dwelling. This would require that such activities do not exceed the following: -

- (1) A maximum of 6 students being taught at the property each day.
- (2) That no students are remaining on the property or be taught outside the following hours:
 - Mon to Friday 09.00 to 20.00
 - Saturdays 09.00 to 15.00
 - No lessons on Sundays or bank holidays.
- (3) That the use shall be conducted only by the owner of the property, with no other persons employed or present at the property in connection with the use, and that there shall be no other business use operating from the property.