

**Committee Report
Planning Committee on 14 April, 2010**

**Item No. 3
Case No. 10/0124**

RECEIVED: 20 January, 2010

WARD: Brondesbury Park

PLANNING AREA: Kilburn & Kensal Consultative Forum

LOCATION: Bowling Green Pavilions, Chatsworth Road, London, NW2 4BL

PROPOSAL: Erection of a single-storey building for use as a nursery school (Use Class D1) and erection of pitched roof to existing clubhouse.

APPLICANT: Crickets Montessori Nursery School

CONTACT: Gerald Eve

PLAN NO'S:

Elevations (Proposed Nursery)
Plan (Proposed Nursery)
Proposed Layout
Existing Elevations (Pavilion)
Proposed New Pitch Roof (Pavilion)
Existing & Proposed Plans (Pavilion)

Introduction:

The application is reported to Planning Committee under the provisions of Clause 24 of the Planning Code of Practice following the resolution at the previous meeting of the Planning Committee on 16th March 2010 of 'minded to grant' consent for the erection of a single-storey building for use as a nursery school (Use Class D1) and erection of pitched roof to existing clubhouse, contrary to the Officer recommendation to refuse consent.

This report discusses the implications of the committee's resolution, maintains the original recommendation to refuse, but sets out the planning conditions and Section 106 Agreement, that should be attached should the Planning Committee decide to grant planning permission. A copy of the report that went to the 16 March Planning Committee is attached as APPENDIX 1.

At the March Planning Committee, Members indicated that they were minded to grant planning permission contrary to officers' recommendation for refusal because:

- (1) the proposal would not have a significant impact on wildlife corridor;
 - (2) it would address the need for nursery places in the area (and an exception should be made in the application of policies regarding effect on the adjoining property in order to assist in meeting this need) and;
 - (3) it would not encroach on open space available to the public (since the land is privately owned).
- The view was expressed that, in any event, the proposal was considered to constitute an improvement to the open space which helped to offset any impact

Revised Drawings:

The applicants have submitted revised plans since the Planning Committee of 16th March 2010 revising the form of the proposed nursery building. They state that the amendments will assist in

reducing the effects of the nursery building on the occupiers of No.49 Chatsworth Road. The changes are:

- reduction in the front veranda to 1.5 metres (from 3.0 metres);
- reduction in the rear veranda to 1.5 metres (from 3.0 metres);
- moving the building in line with the main building line on Chatsworth Road (rather than the line of the side extension);
- these modifications bring the rear elevation of the building approx. 4.5 metres closer to Chatsworth Road.

These amended plans have now been formally substituted for the drawings that originally formed part of this application.

Impact on Neighbouring property:

Although the amendments set out above do reduce the overall length of the building as far as it relates to the rear wall of the adjacent residential property at No.49, Officers remain severely concerned at the relationship that is been proposed between the existing and proposed sites.

It has been confirmed with the applicant that the level of the ground on which the nursery would be built would be approximately 1.9m above the ground level of the rear gardens to the adjacent property at No.49 Chatsworth Road. Furthermore, even with the changes set out above, the proposed building would project approximately 10 metres beyond the main rear wall of the property at No.49 with the roof of that building (eg: the overhanging eaves) projecting to within approx. 0.1m of the joint boundary. It is considered by Officers that a combination of the overall length of the building, the change in levels between the two sites and the proximity of the building to the adjacent residential accommodation would all result in an unacceptable relationship, quite unlike anything that the Council has considered acceptable in recent times, that would inevitably have a detrimental impact on the amenities of those people living nearby.

As indicated in the report that was considered at the Planning Committee of 16 March 2010, the plans submitted in connection with this application indicate that the height and proximity of the proposed nursery building would fail to comply with the guidance contained in SPG17, in that it would breach a line of 45 degrees taken from a height of 2m, measured from the ground level of either the subject or neighbouring site. This guidance would be breached for the full length of the 10 metre (previously 14 metre) projection beyond the rear wall of the property. Having revisited the case, Officers have been able to re-confirm their opinion that the proposed nursery building would have an overbearing impact on the outlook and visual amenity of adjoining occupiers at 49 Chatsworth Road.

This judgement is reached without considering the issues relating to the potential nuisance to those residents from the proposed nursery use and the use of the rear outside space.

Recent Appeal Decision:

Members are also reminded of a very similar situation at the Forty Avenue Wembley Sephardi Synagogue (08/2345) whereby a single storey rear extension to the building was refused planning permission following a Committee site visit in December 2008. An appeal against the refusal was subsequently dismissed following a Hearing and the Inspectors decision letter of 16 June 2009 is considered to be relevant. Whilst it is acknowledged that each case should be determined on its own merits, there are clear similarities between the two applications including the change in levels between the adjoining sites, the length of the building and the proximity to the joint boundary. In dismissing the appeal, the Inspector stated that (paragraph 5):

".....the upper part of the south-west elevation of the proposed building would be visible along the length of No.48's (Forty Avenue) garden, above the fence to the property. As No.48 is at a lower level to the appeal site, the perceived height would be exacerbated and from the patio it would

appear, at its highest to be over 4 metres. The extension would be set away from the boundary and parts of it would be lower; however, its overall depth and siting would create an unsightly and overbearing structure."

For the avoidance of doubt, the synagogue extension would have been over 6.0 metres from the boundary with the neighbour, whereas, as indicated above, the eaves of the nursery building would come to within 0.1 metres of the boundary with No.49 Chatsworth Road. At Forty Avenue, the Inspector considered if there were any means by which the impact of the structure could be mitigated, but she concluded that:

"Although a landscaping condition could be imposed, new planting would take time to grow to provide any effective screening. Moreover, planting is temporary in nature and cannot be relied upon to overcome the harmful effect of the proposal."

Absence of Objection?

Officers note that weight appears to have been attached in earlier discussions to the fact that the current occupiers of the building most obviously affected by the proposal have not objected to the proposal. There can be any number of reasons for this and Officers advise that Members should be cautious about making planning decisions based on whether the most impacted upon residents either support or object to the scheme. The basis for making recommendations on planning proposals is how it complies with the adopted Local Plan and any other adopted planning guidance. It is considered that to begin to frame decisions on anything else, certainly the popularity (or in this case absence of objection) of a proposal could cause problems for the Planning Authority in other instances.

Urban Greenspace:

Policy OS11 of Brent's UDP sets out that proposals to develop urban greenspace should not normally be accepted unless the greenspace can be replaced on a site nearby or in an area of openspace deficiency and the site has no recreational, amenity or nature conservation value. It is important to note that the policy requires both criteria to be met. The subject site is located within an area of local and district open space deficiency and, whilst it is acknowledged that the presence of Japanese Knotweed has diminished the sites nature conservation value, it is considered that the site does have a value in terms of recreation and amenity. It is considered that the proposal would fail to meet both criteria set out in policy OS11.

In terms of the UDP policy concerning these sorts of urban greenspaces and their importance, this inevitably transcends matters of ownership and, consequently the matter of whether the land is privately or publicly owned should have no bearing on whether, or not, a proposal would have a detrimental impact on the greenspace. This is emphasised here in biodiversity terms by the fact that the site also has some importance in terms of contributing to the visual amenity of the Wildlife Corridor that runs along the back of the site.

Nursery Spaces:

Officers acknowledge that there is a need for increased nursery accommodation throughout the Borough, but feel that, for the reasons set out in both this report and the original one to the 16 March 2010 meeting, this is not the right site for such increased provision.

Section 106 Legal Agreement:

In the event that Members were minded to grant consent for this proposal, then it would need to be on the basis that a Section 106 legal agreement formed part of the approval. In the absence of such an agreement it is considered that the proposal would give rise to unacceptable highway conditions within the locality of the site.

Suggested conditions in the event that approval is granted:

If Members wish to grant consent, your Officers would recommend that the following conditions be attached to this consent:

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: To conform with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. Details of all new external work, including samples, shall be submitted to, and approved in writing by, the Local Planning Authority before any work is commenced. The work shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory development which does not prejudice the amenity of the locality.

3. The development hereby approved shall be carried out and completed in all respects in accordance with the proposals contained in the application, and any plans or other particulars submitted therewith,

Reason: To ensure that the proposed development will be carried out as approved so as to avoid any detriment to the amenities by any work remaining incomplete.

4. Further details shall be submitted to, and approved in writing by, the Local Planning Authority and shall be installed prior to the commencement of the development hereby approved:-

- details of refuse storage area/enclosure.
- details of cycle storage area/enclosure.

Reason: To protect the amenities of the locality and in order to exercise proper control over the development.

5. Further details of the methodology for treating and removing the Japanese knotweed from the site shall be submitted to and approved in writing by the Local Planning Authority prior to the development commencing. The removal shall be carried out in accordance with these details.

Reason: In the interests of amenity.

6. All external areas shown on the approved plans, and outside play spaces, shall be suitably landscaped and a scheme is to be submitted to and approved in writing by the Local Planning Authority prior to commencement of any demolition/construction work on the site. Such landscape works shall be completed (a) prior to occupation of building(s) and/or (b) within 18 months of commencement of the development hereby approved.

Such details shall include:-

- (i) Existing contours and levels and any alteration of the ground levels, such as grading, cut and fill, earth mounding and ground modelling.
- (ii) Hard surfaces including details of materials and finishes. These should have a permeable construction.
- (iii) Proposed boundary treatments including walls and fencing, indicating materials and heights.
- (iv) All planting including location, species, size, density and number.
- (v) Any sustainable construction methods which are to be used.
- (vi) A detailed (min 5 year) landscape management plan showing requirements for the ongoing maintenance of hard and soft landscape.
- (vii) Play equipment including details of types of equipment to be installed.

Any trees and shrubs planted in accordance with the landscaping scheme which, within 5 years of planting are removed, dying, seriously damaged or become diseased shall be replaced in similar positions by trees and shrubs of similar species and size to those originally planted unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure a satisfactory standard of appearance and setting for the development and to ensure that the proposed development enhances the visual amenity of the locality in the interests of the amenities of the occupants of the development.

7. Prior to commencement of any demolition/construction work, an ecological survey of the site shall be carried out, and details, including an assessment of the impact of the proposed development and any measure to alleviate this, shall be submitted to and approved by the Local Planning Authority concurrently with the site layout drawings.

Such details shall include:

- (i) Creation of habitats.
- (ii) Planting of native flora (trees and shrubs).
- (iii) Implementation of nesting habitats for native fauna.
- (iv) Biodiversity roof

Reasons: To protect and enhance the urban greenspace and adjacent Wildlife Corridor to increase the biodiversity of the borough and to strengthen and support any wildlife pockets within or in the vicinity of the development.

INFORMATIVE

The applicant is informed that they should contact the Council's Landscape Designers on 0208 937 5248 to discuss the requirements of the landscape conditions, given this urban greenspace location.

Recommendation : Remains refusal, for the reasons set out in the original report. However if the Planning Committee resolves to grant planning permission, the conditions, Informative and Section 106 Legal Agreement set out in this report are recommended.

RECOMMENDATION: Refuse Consent

CONDITIONS/REASONS:

- (1) The proposed development of the site, which is considered to constitute valuable urban greenspace in recreational and amenity terms, is considered harmful to opportunities to improve or provide open space uses, within an area of local & district open space deficiency, which would be of benefit to the enjoyment, health and wellbeing of local residents contrary to policy OS11 of the London Borough of Brent Unitary Development Plan 2004 and policy CP18 of the emerging Local Development Framework Core Strategy.
- (2) The proposed development would result in an unreasonable loss of amenity to neighbouring residential occupiers of 49 Chatsworth Road, in terms of outlook and visual amenity by reason that the overall size and unsympathetic siting of the proposed building would constitute an overbearing and intrusive form of development and in general amenity terms by virtue of the likely noise and disturbance that would be caused during play times, contrary to policies BE2, BE9, EP2 and H22 of the London Borough of Brent Unitary Development Plan 2004.

- (3) In the absence of a legal agreement to control the matter, the proposed development would fail to provide adequate measures, in the form of a Travel Plan, to mitigate the impact of the proposed development, in terms of an increased demand for on-street parking and increased traffic congestion, which cannot be accommodated locally to the detriment of pedestrian & highway safety, the amenities of local residents and the quality of the local environment contrary to policies TRN3, TRN4, TRN23 and TRN24 of the London Borough of Brent Unitary Development Plan 2004.

INFORMATIVES:

None Specified

Any person wishing to inspect the above papers should contact Ben Martin, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ, Tel. No. 020 8937 5231



Planning Committee Map

Site address: Bowling Green Pavilions, Chatsworth Road, London, NW2 4BL

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