

<b>LOCATION:</b>	39 Chertsey Road, Windlesham, Surrey, GU20 6EW,
<b>PROPOSAL:</b>	Change of use of land from residential to play area for children's nursery.
<b>TYPE:</b>	Full Planning Application
<b>APPLICANT:</b>	Ms J Protheroe
<b>OFFICER:</b>	Miss Patricia Terceiro

**This application would normally be determined under the Council's Scheme of Delegation. However, it is being reported to the Planning Applications Committee by Cllr Emma McGrath, due to concerns that the proposal would be unneighbourly to the adjacent properties.**

**RECOMMENDATION: GRANT, subject to conditions**

**1.0 SUMMARY**

- 1.1 The application site is located in the settlement of Windlesham and the surrounding area is residential in nature. The site is currently occupied by a nursery that currently does not benefit from any outdoor space and seeks with this application to provide an outdoor playground to the children in attendance.
- 1.2 This application follows a previously refused application (LPA ref 20/0373/FFU) and, similarly, the principle of development is considered acceptable. The scheme now before the LPA would necessitate the provision of a 2m height acoustic fence to mitigate against noise and it is considered that this revised height would sufficiently integrate into its surroundings. Subject the provision of this fence, together with control over the number of children using the space at one time, it is considered that the proposal would overcome the previous reason for refusal. As such, the proposal is recommended for approval.

**2.0 SITE DESCRIPTION**

- 2.1 The site subject to this application currently comprises a residential garden that is under the curtilage of no 39 Chertsey Road and is located directly to the rear of Chertsey Road Hall (no 41 Chertsey Road). Chertsey Road Hall is currently used as a pre-school/nursery. The application site lies within the settlement of Windlesham.

**3.0 RELEVANT HISTORY**

- 3.1 78/1006 Renewal of consent for playgroup. Approved, 1979.
- 3.2 80/1032 Renewal of consent SU/78/1006 dated 11.10.79. Re: playgroup. Approved, 1980. *[Officer note: this was a temporary permission until 1981, limited to 20 pupils and to the hours of 9:30 to 12 noon on Mondays, Tuesdays, Wednesdays and Fridays].*

- 3.3 81/0885 Renewal of consent SU/80/1032 dated 17.11.80. Re: Playgroup. Approved, 1981. *[Officer note: this was a temporary permission until 1984, limited to 20 pupils and to the hours of 9:30 to 12 noon on Mondays, Tuesdays, Wednesdays and Fridays].*
- 3.4 06/1066 Erection of wrought iron railings, vehicular and pedestrian access gates and a picket fence to the front. Refused 2007 (not implemented), on the following grounds and subsequently allowed at appeal:  
*The use of the forecourt as a children's play space is likely to result in an increase in activity which would be prejudicial to the residential amenities of the adjoining occupier (Three Gables). In addition the loss of on site parking will result in additional on street parking prejudicial to the visual character of the area.*  
The Appeal decision did not restrict the number of pupils or hours of operation.
- 3.5 20/0373/FFU Change of use of land from residential to play area for children's nursery. Refused, 2020 for the following reasons:  
*In the absence of any mitigation strategy, the change of use by reason of the noise generated within the garden area would be harmful to the residential amenities of the adjoining neighbours. The applicant's 2.5m high acoustic fence along the boundary with School Lane by reason of its length and height, would appear incongruous in the street scene, be harmful to the rural character of the lane and fail to improve the character and appearance of the area. No other alternative mitigation strategies have been identified to safeguard residential amenities. As such, the proposal would fail to comply with Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012 and the National Planning Policy Framework.*

#### 4.0 THE PROPOSAL

- 4.1 Full planning permission is sought for the change of use of land from residential to play area for children's nursery.
- 4.2 The application site joins land that currently forms part of Chertsey Road Hall would be accessed through this property. Chertsey Road Hall is currently used as a pre-school/nursery with operating hours between 7:30-18:30. Currently, there are 45 children attending the nursery in the age group 3 months to 5 years.
- 4.3 In its current form Chertsey Road Hall does not benefit from an outdoor play area and so the proposal aims to provide this. The proposal would not affect the capacity of the existing nursery, which would remain as existing and the applicant advises that there would be a maximum of 20 children in the garden at one time, supervised by an appropriate member of staff.
- 4.4 Since the previous refusal the accompanying noise report has been updated after discussions with the owner which confirmed that previous assumptions that all children could play outdoors at any given time was incorrect. Instead, an adjustment has been made to account for restrictions on numbers in addition to the times this would take place. These are detailed in para 6.4 of the Noise Impact Assessment and comprise a maximum number of children in the outside 'garden' area of 20 (instead of 25 as previously refused) at any one time (supervised by an appropriate number of staff). The play times would typically be between 09:00 – 11:30 and 13:00 – 18:00 hours.
- 4.5 The Noise Report advises that, without a mitigation strategy, the predicted levels from children's proposed play area would not be acceptable. To mitigate against this, the report recommends that 2m high acoustic fence is installed around the perimeter of the site and, subject to this fence, the children's play would not cause annoyance. It is noted that the

previous application advised that this acoustic fence should measure 2.5m in height. Therefore, the assessment of this application has also considered the impact of this mitigation strategy in terms of character and residential amenity.

## 5.0 CONSULTATION RESPONSES

- |     |                                 |   |
|-----|---------------------------------|---|
| 5.1 | Surrey County Highway Authority | No objections                                 |
| 5.2 | Environmental Health            | No objections, subject to planning conditions |
| 5.3 | Windlesham Parish Council       | No objections                                 |

## 6.0 REPRESENTATION

- 6.1 At the time of preparation of this report three written representations have been received which raise the following issues:
- Noise nuisance [*Officer comment: see section 7.5*];
  - As the noise barrier would not be all sides it would fail to protect the residents at no 47;
  - Concerns regarding elevated play equipment, as the noise report says that no elevated play equipment should be installed as it would negate the intended impact of the fencing [*Officer comment: see section 7.5*];
  - Concerns regarding number of children playing outside [*See section 7.5*].
- 6.2 At the time of preparation of this report thirty written representations have been received in support of the application for the following reasons:
- The proposal would support children's development and support their interest in enjoying time outside in the natural environment;
  - The proposal comprises clear measures to mitigate the noise impact on the neighbours;
  - The nursery would benefit from having a direct outdoor space that children can access at certain times throughout their day to encourage positively on their mental health and wellbeing;
  - The proposal would provide an outdoor learning space;
  - This would be a welcome facility to a nursery and a necessary addition to the facilities provided by the nursery.

## 7.0 PLANNING CONSIDERATION

- 7.1 The application site is located in a residential area within a defined settlement, as set out in the Proposals Map of the Surrey Heath Core Strategy and Development Management Policies 2012 (CSDMP). In this case, consideration is given to Policies DM9, DM14 and DM11 of the CSDMP.
- 7.2 The main issues to be considered within this application are:
- Principle of development
  - Impact on character and appearance of the surrounding area
  - Residential amenity
  - Transport and highways considerations

### **7.3 Principle of development**

- 7.3.1 Policy DM14 of the CSDMP states that the Borough Council will seek opportunities to enhance and improve community and cultural facilities within the Borough.
- 7.3.2 The principle of development has been accepted by application 20/0373/FFU. Similarly to this previous application, the current proposal would see the site becoming part of the curtilage of no 41 Chertsey Road, which has an established use as a nurseery. Currently, the nursery does not benefit from any outdoor play space and by providing this, the proposal would be improving this community facility. Despite losing part of its garden, no 39 would be retained in a generous curtilage, so it would benefit from appropriate garden space.
- 7.3.3 The proposed development is therefore considered acceptable in principle, subject to no adverse impact on the character and appearance of the surrounding area, amenity of neighbouring occupiers, highway safety etc. These matters are assessed below.

### **7.4 Impact on character of area**

- 7.4.1 Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies Document (CSDMP) 2012 promotes high quality design. Development should respect and enhance the character of the local environment and be appropriate in scale, materials, massing, bulk and density.
- 7.4.2 Although currently part of no 39's rear garden, historically, the application site was a part of the curtilage of no 41. Both plots would revert to their original form and so they would fit comfortably in the surrounding area.
- 7.4.3 The previous application considered that the soft boundary treatment would be lost and replaced by a fairly high, unrelieved hard boundary treatment that would erode the soft green verdant character of the lane and fail to reflect its surrounding context. The acoustic fence was considered to give rise to an urban and visually harmful form of development that would be detrimental to the character of the area. Given the height and length of the proposed structure, it was not considered the visual harm could be mitigated with the provision of soft-landscaping which, in addition, would take time to establish.
- 7.4.4 As detailed in Section 3 above, in order to reduce noise levels to acceptable levels, the proposed change of use would require the installation of a 2m high fence. This has been reduced from 2.5m high as previously assessed. The fence that would be installed on the site's western and northern boundaries would not be visible from public vantage points. However, it remains that an approximately 6.5m long section of fence would be installed adjacent to School Lane, which would be visible from public vantage points. Currently, the site's boundary with School Lane in this location untreated, as the previously existing hedge has been removed. The lane is rural and verdant in character, as most properties have their boundaries with it treated to high hedges. It is, however, noted the presence of a brick wall and a small section wooden fence (approximately 1.8m to 2m in height) in the property directly opposite of the application site.
- 7.4.5 Although the application site's boundary with School Lane remains currently untreated, any boundary treatment in this location would be expected to be sympathetic to the character of the lane. Public Footpath Number 72b runs adjacent to the application site, however, it is noted that this is not a main thoroughfare. In comparison to the last application, while the same length would be retained, the acoustic fence has been reduced in height by 0.5m. The reduced height would bring the fence more in keeping with the other hard boundary treatments within the lane. In this instance, and given the rural character of the road, the provision of soft landscaping would also help integrate the boundary treatment into the surrounding character and this can be secured by planning condition.

- 7.4.6 The previous assessment considered that the harm caused by the proposed fence in character terms needs to be balanced against the provision for outdoor space for the children attending the pre-school/nursery at Chertsey Road Hall, as currently there is none. Paragraph 3.58 of the 'Statutory Framework for the Early Years Foundation Stage' (2017), states that providers must provide access to an outdoor play area or, if that is not possible, ensure that outdoor activities are planned and taken on a daily basis. Whereas, therefore, it is acknowledged that there is no requirement for the nursery to provide an outdoor play area, the provision of such facility would improve the services offered and some weight is attached to this
- 7.4.7 On balance, it is ultimately considered that the proposal would overcome the previous concerns and would be acceptable in terms of its impact on the character of the area. The proposal would therefore comply with Policy DM9 of the CSDMP.

## **7.5 Impact on residential amenity**

- 7.5.1 Policy DM9 of the CSDMP 2012 states that development should respect the amenities of the adjoining properties and uses.
- 7.5.2 The Council's Environmental Health Officer has been consulted in relation to potential noise and disturbance to neighbouring property occupants, as the proposal aims to provide the nursery with an external play area. The Officer advises that the noise report submitted in support of this application identifies significant noise issues to neighbours from the operations. This could, however, be mitigated by the provision of acoustic fencing and the Officer recommends that a 2.0m high fence is secured by planning condition. This would reduce the noise impact on the neighbours from unacceptable to imperceptible. The fencing would be acoustic grade of minimum mass of 10kg/m<sup>2</sup> and installed along the boundary lines as detailed in Appendix 6 of the noise impact assessment. The fence would therefore be placed in the common boundary with no 39 Chertsey Road to the west, Sunray to the north and part of the eastern boundary with school lane, as there is a substation in this location.
- 7.5.3 The Environmental Health Officer further advises that such a barrier would not prevent occasional loud shouts above the hub-bub from being heard by neighbours which could cause nuisance and annoyance. Accordingly, the Officer recommends the hours that the playground could be used are restricted to 09:30 - 10:30, noon to 13:00, and 14:30-16:30. In addition, it is recommended that the number of children in the garden at one time is restricted to 20, so to meet the conclusions of the Noise Report. These conditions have been agreed with the applicant.
- 7.5.4 Paragraph: 003 Reference ID: 21a-003-20190723 of the PPG says that para 55 of the NPPF makes clear that planning conditions should be kept to a minimum, and only used where they satisfy 5 tests. Test 4 is enforceability and it is considered that condition 4 is capable of being adequately monitored, should an officer visit the site and count the number of children in the garden at one time.
- 7.5.5 Concerns have been raised regarding noise from elevated playing equipment. The Noise Report advises that climbing frames should not be installed within the outside play area, as these may compromise attenuation provided by the acoustic fencing. As such, a planning condition has been added to this recommendation restricting the installation of this type of play equipment. Part 7 Class M of the current GPDO removes permitted development rights for the erection, extension or alteration of a school and in order to assure that any equipment eventually installed in the playground does not give rise to noise concerns a planning condition has been added to this recommendation removing such rights.
- 7.5.6 Although the proposed change of use on its own would not give rise to overbearing, overshadowing or overlooking impacts, in order for the noise levels to be considered acceptable it would be necessary to install a 2m high fence. As such, the impact of this structure on the residential amenities of the nearest neighbours has been assessed.

- 7.5.7 Due to the nature of the fence it is not considered it would give rise to loss of privacy on any of the adjacent neighbours.
- 7.5.8 No 39 Chertsey Road contains a garage located near the common boundary with the application site which would screen part of the fence from these neighbours. Behind this fence, there is mature vegetation and, owing to the siting of the fence in relation to the dwelling at no 39 and its primary amenity area, it is not considered the proposal would cause overbearing or overshadowing impacts to these residents. These neighbours would lose part of their rear garden, however the remaining garden area would be generous in size and comply with the current standards.
- 7.5.9 Sunray contains an outbuilding near its common boundary with the application site which currently accommodates a garage. As such, the proposal would not be considered unduly overbearing or overshadow these neighbours.
- 7.5.10 The fence would be adjacent to School Lane to the east and, given it would be sited at approximately 4.3m from no 43 School Lane (which benefits from its own boundary treatment) it is not considered the fence would be unduly overbearing or detrimentally overshadow these neighbours.
- 7.5.11 As such, the fence associated with the proposal would not be considered to affect the residential amenities of the neighbouring properties and would be in accordance with Policy DM9 of the CSDMP and the RDG.

## **7.6 Parking and access**

- 7.6.1 Policy DM11 states that development which would adversely impact the safe and efficient flow of traffic movement on the highway network will not be supported by the Council, unless it can be demonstrated that measures to reduce such impacts to acceptable levels can be implemented.
- 7.6.2 The County Highway Authority has been consulted on the proposal and advises that as the proposal would not lead to an increase in the capacity of the nursery it would not have a material impact on highway safety.
- 7.6.3 The proposal is therefore in line with Policy DM11 of the CSDMP.

## **7.7 Other matters**

- 7.7.1 Surrey Heath's Community Infrastructure Levy (CIL) Charging Schedule was adopted on 16 July 2014 and the CIL Charging Schedule came into effect on 1 December 2014. Given its nature, the proposal would not be CIL liable.

## **8.0 POSITIVE/PROACTIVE WORKING**

- 8.1 In assessing this application, officers have worked with the applicant in a positive, creative and proactive manner consistent with the requirements of paragraphs 38-41 of the NPPF. This included 1 or more of the following:-
- a) Provided or made available pre application advice to seek to resolve problems before the application was submitted and to foster the delivery of sustainable development.
  - b) Provided feedback through the validation process including information on the website, to correct identified problems to ensure that the application was correct and could be registered.
  - c) Have suggested/accepted/negotiated amendments to the scheme to resolve identified problems with the proposal and to seek to foster sustainable development.
  - d) Have proactively communicated with the applicant through the process to advise progress, timescale or recommendation.

## 9.0 CONCLUSION

- 9.1 The application site would be incorporated into a well-established nursery and therefore the principle of changing the use is considered acceptable. Both plots would revert back to their original form, so in this respect the proposal would be acceptable. In order to mitigate against the noise associated with the change of use the provision of a 2m high acoustic fence would be necessary. It is considered that this would structure would sufficiently integrate into the character of the area. Subject to the provision of said fence, the proposal is further considered acceptable in terms of residential amenity and highway safety. It is considered that the lower height fence, together with control over the number of children using the space at one time would overcome the previous reason for refusal. As such, the application is recommended for approval, subject to planning conditions.

## 10.0 RECOMMENDATION

GRANT subject to the following conditions:

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: To prevent an accumulation of unimplemented planning permissions and in accordance with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004.

2. The proposed development shall be built in accordance with the following approved plans, unless the prior written approval has been obtained from the Local Planning Authority.  
- Drawing no PL-01 rev A - Site location plan, existing block plan & proposed block plan. Received 4 January 2021

Reason: For the avoidance of doubt and in the interest of proper planning and as advised in ID.17a of the Planning Practice Guidance.

3. Prior to the children play area hereby approved being first brought into use a 2m high acoustic grade fence of minimum mass of 10kg/m<sup>2</sup> shall be installed along the boundary lines as detailed in Appendix 6 of the Noise Impact Assessment ref J04085R1 dated 9 November 20 shall be installed in accordance with a scheme agreed in writing with the Local Planning Authority and retain 1m gap to School Lane. The fence shall thereafter be retained in perpetuity.

Reason: In the interests of the visual amenities of the area and of the amenities enjoyed by neighbouring residents to accord with Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012.

4. The total number of children at one time in the play area shall not exceed twenty children.

Reason: In the interests of the amenities enjoyed by neighbouring residents and to accord with Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012.

5. The hours of outdoor play shall be 09:30 - 10:30, noon to 13:00, and 14:30-16:30.

Reason: In the interests of the amenities enjoyed by neighbouring residents and to accord with Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012.

6. Prior to commencement of development a full details of soft and hard landscaping shall be submitted to and approved in writing by the Local Planning Authority.  
The approved details shall be carried out as approved and implemented prior to first occupation. The scheme shall include indication of all hard surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with the new planting to be carried out and the details of the measures to be taken to protect existing features during the construction of the development.  
Any landscaping which, within 5 years of the completion of the landscaping scheme, dies, becomes diseased, is removed, damaged or becomes defective in anyway shall be replaced in kind.

Reason: To preserve and enhance the visual amenities of the locality in accordance with Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012.

7. Notwithstanding the provisions of Part 7, Class M of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re enacting that Order) no further extensions or alterations shall be erected or undertaken without the prior approval in writing of the Local Planning Authority. For the avoidance of doubt, there shall also be no climbing frames or play equipment above 1 metre in height within the outside play area.

Reason: To enable the Local Planning Authority to retain control over the enlargement, improvement or other alterations to the development in the interests of the residential amenities and to accord with Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012 and the National Planning Policy Framework 2012.

### **Informative(s)**

1. This Decision Notice is a legal document and therefore should be kept in a safe place as it may be required if or when selling your home. A replacement copy can be obtained, however, there is a charge for this service.
2. The applicant is advised that this permission is only pursuant to the Town and Country Planning Act 1990 and is advised to contact Building Control with regard to the necessary consents applicable under the Building Regulations and the effects of legislation under the Building Act 1984.
3. The decision has been taken in compliance with paragraphs 38-41 of the NPPF to work with the applicant in a positive and proactive manner. Please see the Officer's Report for further details.