

DEVELOPMENT CONTROL COMMITTEE - Date: 07 July 2010

Report of the Executive Head of Planning and Transportation.

Ref: A2010/62569/FUL	WARD: A04 / CHEAM	Time Taken: 11 weeks, 1 days
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Site: Garden land rear of 38 THE AVENUE Cheam Surrey SM2 7QE

Proposal: Retrospective application for covered play area with hardstanding, single storey detached building for storage purposes together with associated works all in connection with use as a safe play area for adjoining church.

Applicant: Mr Nigel MacDonald

Agent:

Recommendation:

GRANT PLANNING PERMISSION

Reason for Report to Committee: The application has been de-delegated by Councillor Pritchard and more than 10 letters of objection have been received.

Summary of why application proposals are acceptable: The retention of the wooden structure, shed and other associated work is considered acceptable and is not considered to have a detrimental impact on the character and appearance of 38 The Avenue, the surrounding area in general or the amenities of adjoining residential occupiers.

1.0 BACKGROUND

1.1 Site and surroundings:

1.2 The application site comprises an area of approximately 18 x 20 metres (360 sqm) situated at the western end of the rear garden of 38 The Avenue. This site has physically been separated from the larger curtilage of that property by the erection of a 2 metre high timber fence within the last 6 months. The application site has historically formed part of a larger site comprising the house and garden of 38 The Avenue, situated on the western side of the street, which itself has been an adjunct to a variety of uses associated with St Andrews Church, church hall and car park to which it continues to be physically and functionally linked on its northern side. Whilst physically separate from areas to its east, south and west, the site is currently accessible from the north through a lockable gate that provides access from the church. The remainder of the northern site boundary is formed by a chain link fence. To the south of the site is the residential garden of 40 The Avenue and to the west is a scout hut and associated buildings on the eastern side of the church car park. Beyond that to the west are in the rear gardens of the residential properties at 25 and 27

Shirley Avenue.

- 1.3 38 The Avenue was purchased by St Andrews Church in 1942, after which it has been used for a variety of purposes associated with the church, including accommodation for the caretaker, a Sunday school in the main double room at ground floor and a safe play area by various organisations associated with the church such as 'Rainbows', 'Brownies', 'Scouts' and the pre-school nursery that was a precursor to the current 'Jelly Beans' nursery.
- 1.4 **Site specific UDP designation:**
- South Cheam Special Policy Area
- 1.5 **Site Development Policies DPD:**
- Burton Estates proposed Area of Special Local Character
- 1.6 **Relevant Planning History:**
- 1.7 18354 – The use of the whole of the building at 38 The Avenue for religious instruction within Class XIII of the Schedule to the Town and Country Planning (Use Classes) Order 1950. Permission granted for a temporary period of 2 years in 1956 (not implemented)
- 1.8 20330 – Use of ground floor, except kitchen as Sunday school classroom, remainder as residence for caretaker of church premises. Permission granted in 1956 (implemented).
- 1.9 A2010/62925/CEU – Use as premises ancillary to St. Andrews Church for Sunday school activities and committee use and accommodation for church caretaker and use of garden as a safe play area by organisations associated with the Church. This was granted in June 2010.
- 1.10 When the church purchased 38 The Avenue it extended further to the rear and over time the church have built on this land shortening the length of the garden (77/16613).

2.0 **APPLICATION PROPOSALS**

2.1 **Details of Proposal:**

- 2.2 Planning permission is sought to retain a covered play area with rubberised play surface, single storey detached building for storage purposes together with associated works to create a safe play area.
- 2.3 The proposal includes the retention of a wooden structure with red synthetic tiles measuring 7 metres in length and 5 metres in width that has a maximum height of 2.83 metres. This structure is fully open on its western side, partially open on its north and south sides (on the upper parts) but is fully enclosed on its eastern side where it immediately abuts the 2 metre high timber fence that denotes the eastern extent of the application site. The rubberised surface measures approximately 63 square metres and is to facilitate safe outdoor play

in all weathers. The remaining parts of the garden are largely laid to grass with the exception of a metal storage shed painted green (2.9 metres long, 2.5 metres wide and 2.9 metres high to its ridge) to the south of the timber structure together with three raised flower beds constructed from timber (measuring 2.4 metres in length, 1.2 metres in width and 0.28 metres high together with a covered sandpit measuring 2.4 metres long, 2.35 metres wide and 0.37 metres high). The structures were erected by Jelly Beans Pre-School, which is operated and owned by St Andrews Church.

2.4 **Significant amendments to application since submitted:**

2.5 None.

3.0 **PUBLICITY**

3.1 **Adjoining Occupiers Notified**

3.2 **Method of Notification:**

3.3 Letters were sent to 25 adjoining occupiers in The Avenue on 27 April 2010. An additional five letters were sent to adjoining occupiers in Northey Avenue and Shirley Avenue on 04 May 2010. A site notice was erected within the vicinity of the site on 27 April 2010.

3.4 **Number of Letters Received:**

3.5 54 letters of objection were received from the following address:

3.6 Belmont and South Cheam Residents Association, 24 South Drive

3.7 18, 23, 40, 42, 44, 47, 48 49, 50, 51, 55 The Avenue

3.8 7, 14, 17, 25, 26, 27, 29, 36, 43, 65 Shirley Avenue

3.9 12, 15a, 16, 25 Warren Avenue

3.10 28, 49, 65, 92, 112, 180 Sandy Lane

3.11 38, 42, 54, 65, 79, 104 Burdon Lane

3.12 20 Wilbury Avenue

3.13 16, 17-19 Onslow Avenue

3.14 36 Devon Road

3.15 27, 38, 54 Manor Road

3.16 13, 23, 31 Glebe Road

3.17 30 Highview

3.18 15 Arundel Road

3.19 24, 32 Downside

3.20 18 West Drive

3.21 32 Belmont Rise

3.22 Cheyhem, Cuddington Way

3.23 5 Golfside

3.24 **Summary of material Responses:**

- The property has a lawful use as private residential and commercial use in the rear garden is unacceptable
- Loss of garden area
- Noise disturbance and nuisance created by 40 children using the playground
- The rear part of the garden is of ecological importance
- Change of use from C3 to D1
- Development is inappropriate as site lies within South Cheam Area of Special Local Character
- Granting permission will set a precedent for future development in back gardens
- The garden has only occasionally been used by the church and remains private garden land.
- The application is retrospective.

3.25 Four letters of support were received from the following addresses:

3.26 140 Northey Avenue

3.27 123 Burdon Lane

3.28 54 Beresford Road

3.29 54 The Crescent

3.30 **Summary of material responses:**

- The proposal is for a small garden area to be used by the children and not a playground
- The gardens in South Cheam are large and therefore would not be disturbed by noise
- Concerns about the precedent for future developments in backgardens are unfounded.
- As an immediate neighbour have not been disturbed by noise
- The proposal is a vast improvement on the informal arrangements that were in place before.

3.31 **Councillor Representation:**

- 3.32 The application has been delegated by Councillor Pritchard on the grounds that the proposal is incompatible with the Special Policy Area and that a change of use has taken place.

4.0 **MATERIAL PLANNING POLICIES**

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that when determining a planning application, regard is to be had to the development plan, and the determination shall be made in accordance with the development plan, unless material considerations indicate otherwise. The development plan for the London Borough of Sutton comprises the following documents:

- The London Plan (originally adopted 2004, amended version, consolidated with alterations, adopted February 2008)
- The Sutton Unitary Development Plan (UDP) (adopted April 2003)
- The Local Development Framework (LDF) will in due course replace the UDP as the Development Plan for the Borough along with the London Plan. At present the LDF comprises two main documents (an additional Area Action Plan is being prepared for Sutton Town Centre):

(a) The Core Planning Strategy (CPS) which sets out the Council's long term vision, spatial strategy and core policies for shaping the future development in the Borough and managing change over the next 15 years in line with the principles of sustainable development. In June 2009 a public Examination by an independent Government Inspector was held into the CPS and subject to certain changes the CPS was considered to be 'sound'. An amended version of the CPS, incorporating the Inspector's recommendations, has been approved by the Council's Executive Committee for formal adoption. The CPS contains a schedule of those UDP Policies that will be superseded after Adoption.

(b) The Site Development Policies (DPD) which identifies sites for future development (outside Sutton Town Centre) and sets out detailed development management policies to be used to help decide planning applications. The DPD has been through two stages of public consultation and will be submitted to the Council's Executive in December 2009 for Publication and subsequent submission to the Secretary of State. A further public consultation will be carried out in January 2010 with Submission scheduled for May 2010. The DPD is likely to be the subject of public examination in October 2010. At present the DPD only has limited weight as a material consideration in deciding planning applications and it is not yet appropriate to list the relevant policies in Committee reports. However, the DPD will gather increasing weight as it moves further towards Adoption.

- The London Plan: Consultation draft replacement plan, October 2009. This document, which will eventually replace the existing consolidated version of the London Plan, has been published for public consultation until 12 January 2010. A public Examination is likely to be

held in Summer/Autumn 2010. Although the draft replacement plan will not supersede the existing London Plan until after it has been formally adopted, the draft plan will be a material consideration that should be taken into account in deciding planning applications and will gather increasing weight the further into the replacement process.

- 4.2 Also a material consideration in determining planning applications are:
- National Planning Guidance in the form of Planning Policy Statements and Planning Policy Guidance documents.
 - Adopted London Borough of Sutton Supplementary Planning Guidance documents.
- 4.3 Local Development Framework
- BP12 Good Urban Design and Heritage
 - PMP2 Suburban Heartlands
- 4.4 Sutton Unitary Development Plan
- BE4 Buildings Relationships
 - BE5 Daylight and Sunlight
 - BE18 Privacy
 - BE26 Control Over Development within the setting of a Listed Building.
- 4.5 Supplementary Planning Guidance/Documents
- SPD14 – Creating Locally Distinctive Places

5.0 **PLANNING CONSIDERATIONS**

- 5.1 The principal considerations (including whether any material planning objections have been reasonably addressed) in relation to this application are:
- **Use**
 - **Design Quality**
 - **Impact on neighbours**

5.2 **Use:**

- 5.3 It is noted that a considerable number of objections have been received concerning the use of the application site which is regarded by those objectors to be unlawful, being a commercial use of a residential property, which is regarded to be out of character with the area and detrimental to the amenities of neighbouring occupiers by virtue of increased noise. However, evidence has been submitted to the Council that demonstrates that 38 The Avenue was purchased by St Andrews Church in 1942 and the house and garden have been used for purposes associated with the Church without interruption since that time. In particular, the garden has been used by various church organisations including 'Rainbows', 'Brownies', 'Scouts' and more recently by the pre-school nursery. As such, the church has been able to demonstrate, on the balance of probabilities that the use of 38 The Avenue and its garden for purposes associated with the St Andrew's church is lawful and this has been confirmed by the Council in the granting of a lawful development certificate in June 2010. As such, and notwithstanding the representations received from

local residents on the matter of the current use, The committee are advised that objections concerning the lawfulness of the current use should not form part of their consideration of the merits of the current application, as the use itself is considered to be lawful in planning terms. The main issues in this case are whether the retention of these structures causes demonstrable harm to the character and appearance of the area or adversely affect the amenities of adjoining occupiers. These matters are considered further in the following sections of this report.

- 5.4 The recently published Planning Policy Statement 3 (June 2010) confirms that 'private residential gardens' are no longer 'previously developed land' and, therefore, there is no longer a presumption in favour of development subject to other material considerations. However, in this case the revised version of PPS3 is not considered relevant given that the site is no longer lawfully in residential use.
- 5.5 The applicant, 'Jelly Beans Pre-school', has advised that the outdoor play area is for pre-school children aged 2-3 years old and needs to be usable even when it is raining to meet OFSTED standards. The structures and rubberised surface are a response to the basic requirements of OFSTED to provide a suitable outdoor play area, providing a covered area in inclement weather and to provide some shade, all within a secure area. It is noted that many representations received describe the use of the site as a playground, but it is noted that the site has the appearance of a garden being mainly laid to lawn apart from the covered structure, storage shed and rubberised play surface. There are three raised planters which are aimed to develop the children's interest in plants which reinforce the appearance of the site as a garden area. There are no slides, swings, climbing frames or other fixed equipment associated with most 'playgrounds', apart from a sand-pit, which emphasises that the main purpose of this area is to provide safe, secure outdoor space for pre-school ages. The requirement to provide an improved standard of outdoor space for the pre-school nursery is a material consideration in this case, and it is considered that the erection of the structures the subject of this application merely support the continuation of an existing use but do not, in themselves result in any intensification in the use of the land as suggested in some of the representations received. Given that the use of this site is lawful, it is considered that there is no objection in principle to the erection of these structures in a more formal garden setting, subject to the assessment of all other relevant policy guidance and material considerations as outlined below.
- 5.6 **Design Quality:**
- 5.7 Core Policy BP12 states that the Council will seek to ensure that development respects the local context and distinctive local character. Core Policy PMP2 seeks to maintain and enhance the quality of the boroughs environment by ensuring that all new development respects the positive features of Sutton's suburban character. UDP policy BE26 states that the Council will not grant planning permission for development which would adversely affect the setting or important views of a listed building.
- 5.8 The application site is located within the South Cheam Special Policy Area as designated by Sutton's Unitary Development Plan proposals map. UDP policy

BE39 *New Development in Special Policy Areas* has been superseded by Core Policy BP12 and PMP2. The Site Development Policies DPD (Proposed Submission) proposes the deletion of the South Cheam SPA and its replacement with the Burton Estate Area of Special Local Character. However, the DPD is yet to be adopted and has limited weight in determining planning applications.

- 5.9 The application site is located within a residential area characterised by detached dwellings set within large plots. The adjoining properties have relatively deep rear gardens of between 60-70 metres in depth. Some adjoining occupiers have added structures and facilities incidental to the enjoyment of their properties such as tennis courts and sheds, mostly situated at the end of the garden, and it is noted that features such as wooden structures, sheds and flower beds are commonly found in gardens, with some structures in this part of South Cheam being significantly larger than that proposed to be retained on this site. It is also worth noting that under the current provisions of the General Permitted Development Order (2008), it is possible to erect an outbuilding of considerably greater dimensions than those found on the application site, without the benefit of planning permission. Such structures can be up to 4 metres in height with a ridge roof and cover up to 50% of the total ground area covered by buildings (excluding the original house). Given that the structures the subject of this application only cover approximately 20% of the application site, and noting that their size and appearance are consistent with other garden structures commonly found in rear gardens, it is considered that they are in scale with their surroundings.
- 5.10 In terms of their impact, it is noted that only the eaves and pitched roof of the covered structure are visible from the east and south above the height of the fence that separates this play garden from the remaining parts of 38 The Avenue and are well screened from other neighbouring properties by mature planting and trees on its south and western sides (beyond the car park to the rear of properties in Shirley Avenue). Given the above, and noting that in the limited views of these structures from private residential gardens to the south, they will appear in the context of the larger church buildings immediately to the north, it is considered that these structures do not cause demonstrable harm to the character and appearance of the area as they appear integrated with and compatible with this garden setting. The structures are of a basic, functional design, but in using timber for the largest structure, this is a material that is entirely consistent with most outbuildings found in rear gardens in the area and is unobtrusive in appearance. The other structures are relatively small in comparison and do not appear out of place in this garden setting and are considered acceptable in their appearance.
- 5.11 Given the above it is considered that the structures are of an acceptable design and appearance, entirely suited to their garden setting and will not appear obtrusive in the very limited glimpses of the site from adjoining residential properties. The site is set out in the manner of a garden, maintaining the openness of the site and being well integrated with and not detracting from the character and appearance of this part of South Cheam. Given the relatively unobtrusive appearance of these structures, they will not have a detrimental impact on the setting of the Grade II listed St Andrews Chapel, noting that they

will only appear in very limited views towards the chapel from the south and west. As such, it is considered that the structures and associated works are acceptable in design terms and comply with policies BP12 and PMP2 of the Core Planning Strategy and UDP policy BE26.

5.12 Impact on neighbours:

5.13 Policy BE4 of the UDP seeks to protect the privacy and amenity of adjoining occupants. Policy BE5 seeks to protect daylight and sunlight, whilst BE18 seeks to protect privacy.

5.14 The wooden structure and shed are located on the northern edge of the site approximately 10 metres from the boundary with the nearest residential property to the south at 40 The Avenue. Given this separation distance, it is considered that the structures do not appear overbearing on the outlook from this neighbouring property, noting the mature planting on the southern boundary of the site and the fence on the eastern site boundary that also screens the development from views from 40 The Avenue. The nearest residential properties to the west are situated some 90 metres away in Shirley Avenue and will not be affected in terms of loss of outlook in view of the considerable separation distances and the intervening tree screen and scout buildings which would be in the foreground of any views these properties may have towards the application site. As such, it is not considered that the proposed development would adversely affect the living conditions of adjoining residential occupiers in terms of loss of outlook or loss of light.

5.15 Given that the use of the site is primarily intended for younger children, it is noted that the choice of the western end of the garden means that the garden is further away from the nearest neighbours to the south and will maintain mutual conditions of privacy for the occupiers of adjoining properties and for the children at the nursery. As such, there were no issues in terms of an unacceptable increase in overlooking in this particular case.

5.16 A number of residents have objected to the proposal on the grounds that the use of the garden, by as many of 40 children, results in noise disturbance. However, given that it has been established that the use of the application site for purposes ancillary to the Church is lawful in planning terms, it is considered that objections on grounds of noise from the number of children using the garden cannot be taken into consideration in assessing the planning merits of this case, as any number of children could use the garden prior to the works the subject of this application being carried out.

6.0 CONCLUSION AND RECOMMENDATION

6.1 The objections received in respect of the use of the garden cannot be taken into consideration in assessing the merits of this application as the use is regarded to be lawful, and Committee is advised that the main considerations relate to the impact of the size and appearance of these structures on the character and appearance of the area and on the amenities of adjoining occupiers in terms of any loss of outlook or light, together with considerations regarding privacy.

- 6.2 The retention of the wooden structure, shed and other associated work is considered acceptable and is not considered to have a detrimental impact on the character and appearance of the area, the setting of the adjacent listed building or on the amenities of adjoining residential occupiers.

Background Papers: A2010/62569/FUL

Drawings and other documents can be viewed on line –

- 1) Go to page: <http://82.43.4.135/FASTWEB/welcome.asp>
- 2) Enter Planning Application Number: **A2010/62569**
- 3) Click on Search and View Current Applications
- 4) Click on View Plans & Documents

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A2010/62569/FUL

DRAFT

WARNING: It is in your interests to ensure you obtain the approval of the Local Planning Authority, where the conditions require that to occur. Failure to comply with the following conditions may lead to enforcement action to secure compliance.

FIRST SCHEDULE

Garden land rear of 38 THE AVENUE Cheam Surrey SM2 7QE

Retrospective application for covered play area with hardstanding, single storey detached building for storage purposes together with associated works all in connection with use as a safe play area for adjoining church.

SECOND SCHEDULE

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