

## **SECTION '2' – Applications meriting special consideration**

**Application No :** 16/03687/RECON

**Ward:**  
**Chelsfield And Pratts**  
**Bottom**

**Address :** Scout Hall Highfield Avenue Orpington

**OS Grid Ref:** E: 545791 N: 164149

**Applicant :** Miss Justine White

**Objections :** YES

### **Description of Development:**

Variation of Conditions 98 and 99 of planning permission reference 83/02042 to enable use of Scout Hall as out of school club purposed for children aged 4-12 years (max 24); and extend hours of operation from 9am-12noon Monday-Friday to 7.30am-12noon and 3.30pm-6.30pm during term time Monday-Friday, and 7.30am-6.30pm during school holidays Monday - Friday.

Key designations:

Biggin Hill Safeguarding Area  
London City Airport Safeguarding  
Smoke Control SCA 28

### **Proposal**

This application relates to the use of the scout site for the provision of pre-school and after-school childcare, and its use during the summer months for similar purposes for extended hours. The applicant has confirmed that the use accommodates up to 24 children.

Under reference 83/02042 planning permission was granted in respect of the continued use of the scout hall for playgroup purposes. This application seeks to extend the hours of operation of the playgroup operating from 9am-12 noon Monday to Friday, to the following times:

- 7:30am- 9am and 3pm-6.30pm during school times Monday to Friday
- 7:30am- 6:30pm during school holidays Monday to Friday

In addition, this application seeks to alter the age group of children attending the nursery from 3- 5 years to 4 - 12 years.

The childcare use is currently suspended, pending the grant of planning permission. This report assesses its continued use of the site for those extended hours.

The application is accompanied by a supporting statement which states that the proposal involves use of the rear garden area.

## Location

The application site comprises a scout hut which fronts the western end of Highfield Road. The surrounding area is entirely residential with the southern site boundary adjoining the rear gardens of 9, 10 and 11 Glentrammon Close, the western site boundary adjoining the rear gardens of 13 and 24 Briarswood Way, and the northern site boundary adjoining 6 King Henrys Mews.

The scout hut is located toward the western half of the site and is surrounded to its western and southern sides by a grassed area which is used for recreational activities. The eastern side of the site contains an area of gravel which is used for parking.

## Consultations

Nearby owners/occupiers were notified of the application no representations were received which are summarised below:

- neighbouring residents have previously endured a year of nuisance and aggravation
- excessive proximity to residential properties
- club was only closed down following threats of prosecution by the Council
- even though the applicant has stated that there is no intention to use the rear garden space, this could in time be refurbished to accommodate a play area and lead to noise disturbance
- unsatisfactory that children should be kept indoors all day
- difficulty in enforcing conditions restricting use of rear garden area
- use of front and side garden areas could lead to disturbance for other residents
- it is understood that OFSTED regulations require outdoor space provision which would not be the case here
- similar proposal has previously been refused by the Council and turned down at appeal
- additional traffic generation along Highfield Avenue, cars also travelling at high speeds and causing parking issues
- behaviour of drivers causes disturbance to residents
- nature and design of the Scout hall means that noise could still be heard from within that building, building has poor acoustics
- no noise survey to demonstrate that noise will be within tolerable levels
- nature of rear garden area not to be used has not been defined
- concern that door facing rear garden area is kept open and results in noise disturbance
- no need for this facility
- uncertainty regarding OFSTED registration
- building not suitable to accommodate 24 young children inside
- noise levels already generated by Scout activities are loud enough in late afternoons and evenings
- permission should have been sought prior to childcare use taking place

Comments in support have also been received stating:

- noise generated by children is within normal noise levels and is not excessive
- concerns have been blown out of proportion
- use provides an important local facility
- affordable, reliable and safe childcare
- facility should remain open

### **Consultee Comments**

From an Environmental Health perspective, in the absence of a Noise Impact Report or timetable of activities advising when children are playing outside, it is considered that there is a potential for serious loss of amenity unless effectively mitigated.

No technical Highways objections have been raised.

### **Planning Considerations**

Policy BE1(v) of the Unitary Development Plan is relevant. This advises that all development proposals will be expected to respect the amenity of occupiers of neighbouring buildings and those of future occupants and ensure their environments are not harmed by noise and disturbance or by inadequate daylight, sunlight or privacy or by overshadowing.

### **Planning History**

Under reference 83/02042 planning permission was granted in respect of the continued use of the scout hall for playgroup purposes.

Condition 98 of that permission required that:

"The children attending the playgroup shall be between the ages of 3 and 5 years and not more than twenty-four children shall be accommodated at any one time."

Condition 99 of that permission required that:

"The use of the premises for the purpose permitted shall be limited to Mondays to Fridays inclusive and only between the hours of 9am to 12 noon"

Both conditions were justified for the following reason:

"In order to limit the change of use of the building from its primary use to the use indicated in the application and to safeguard the amenities and character of the locality."

Under reference 15/03601, a retrospective application seeking the variation of Condition 99 of planning permission reference 83/02042 to extend the hours of operation from 9am-12 noon Monday to Friday to 7:30am- 12 noon and 3pm-

6.30pm during school times Monday to Friday, and to 7:30am- 6:30pm during school holidays Monday to Friday was refused by the Council in December 2015 on the following ground:

'The proposed increase in hours of operation would be seriously detrimental to the amenities that surrounding residents might reasonably expect to be able to continue to enjoy by reason of noise and general disturbance associated with the use of the site, thereby contrary to Policy BE1(v) of the Unitary Development Plan.'

A subsequent appeal was dismissed in June 2016. In considering the proposal, the Planning Inspector raised the following points:

'The position of the building results in the narrow form of the play area at the rear of the site. I consider that the concentration of outdoor play for up to 24 young children within such a relatively confined area with the inevitable noise of communication and activity that this would bring has the potential to cause serious disturbance to the living conditions of nearby residents.' (Paragraph 7)

'The modifications proposed to the operating hours would coincide with times of the day when residents might reasonably expect to enjoy the peace and quiet of their gardens. The proposal would therefore result in harm to the living conditions of residents which would be further exacerbated during the longer opening hours associated with school holiday times. Furthermore it was apparent from my visit during the morning that the levels of background noise in the locality were generally low. Therefore awareness of any changes to the surrounding noise environment resulting from the proposal would be likely to be that much greater.' (Paragraph 8)

'It appears to have been suggested as a compromise, that the specific timing of outdoor play be further phased and restricted within the daily operating hours of the business. However, this would be very difficult if not impossible to enforce and in any event I do not consider that it would overcome the issues I have identified above. The possibility of constructing an acoustic fence to attenuate noise levels also appears to have been suggested. However I have not been provided with any details of the design, specification or effectiveness of such a structure and am not therefore able to give this any weight in my deliberations.' (Paragraph 9)

'... I consider the present condition strikes an appropriate balance between these interests taking into account the circumstances of the site. This condition is therefore necessary and reasonable. However the proposed relaxation of the condition would result in unacceptable harm to the living conditions of residents.' (Paragraph 10)

## **Conclusions**

The principal consideration in this case is whether the condition as presently worded is necessary and reasonable having regard to the living conditions of neighbouring residents in terms of noise and disturbance.

The site is occupied by a long-established scout hall which forms the designated site use. The site has been hired for use by other groups over time, and it does benefit from an earlier planning permission enabling its use by a playgroup for more restricted hours from Monday - Friday and for a younger age group (3-5 years).

This proposal will entail an intensified use of the application site for pre-school and after-school activities and for longer periods during the summer months, essentially enabling extended child supervision throughout the working day. The site encompasses a garden area to the west of the scout hall which has previously been used for outdoor recreation. That garden area adjoins the residential properties at 13 and 24 Briarswood Way with the boundary with those properties bounded by a retaining wall up to approximately 1 metre high and a 6ft-high single-panel close-boarded fence. The site is elevated in relation to Briarswood Way.

Following on from the previous application, which was dismissed at appeal in July 2016, the applicant has proposed to restrict the use of the rear garden area by children attending the play group. Instead, the applicant has suggested that children based at the play group would walk to a nearby park (Glentrammon Recreation Ground is situated approximately 300 metres away by foot). The applicant has highlighted a report compiled by OFSTED in May 2016 in which the quality of the use was assessed following an inspection. Despite receiving a 'Good' rating, the report acknowledges that 'children do not always have access to a wide range of outdoor activities to emphasise the importance of fresh air and exercise.'

Whilst it is acknowledged that the applicant has sought to directly address earlier concerns relating to potential noise and disturbance associated with the playgroup - whose activities are presently suspended at the site - there remain a number of outstanding concerns in relation to the nature of the proposal; in particular, the nature and schedule of activities taking place at the playgroup, and how these might be affected by the lack of outdoor space, particularly during the summer months when children would occupy the site for extended periods; whether the proposal to confine all activities to the enclosed Scout hall would be viable in the long-term, particularly having regard to OFSTED advice to provide outdoor activities; and whether such an arrangement might be so unsatisfactory that as to generate an intractable demand for the use of the outdoor area by the playgroup. This leads to the question of how reasonable it might be for the Council, at a future time, to turn down any proposal to utilise the outdoor space - such that it might undermine the entire viability of the playgroup?

Furthermore, the merits of a condition which would (presumably) prevent the playgroup from using the outdoor space, while not preventing the Scout group (whose activities could overlap or which could attract also children based at the playgroup) from doing so, is questionable in terms of its enforceability and precision. In considering the previous proposal, the Planning Inspector considered that the present condition "strikes an appropriate balance" in safeguarding the living conditions of neighbouring residents. He also commented - in regard to a suggested compromise that the specific timing of outdoor play be phased and restricted within the daily operating hours of the business - that "this would be very

difficult if not impossible to enforce and in any event I do not consider that it would overcome the issues I have identified above."

Further concerns have been raised by the Environmental Health officer in terms of the lack of a Noise Impact Report which would serve to ascertain the potential noise levels generated by the proposed use. This would also identify any potential need for any noise attenuation, either within the Scout hall or around the site perimeter in terms of acoustic fencing. However, until noise levels are ascertained, only further doubt can be cast on the merits of this proposal.

In summary, there are too many uncertainties regarding the approach sought by the applicant -either in terms of substantive details regarding the nature and viability of the use, and potential noise generation; and in terms of the enforceability and precision of any condition restricting the playgroup's use of the garden area - and, in the circumstances, concern remains that this proposal could irrevocably lead to a diminution in the amenity of neighbouring residents.

Taking account of the above, it is considered that the proposal adversely affects neighbouring amenity and should be refused.

Background papers referred to during production of this report comprise all correspondence on the file refs set out in the Planning History section above, excluding exempt information.

## **RECOMMENDATION: APPLICATION BE REFUSED**

**The reasons for refusal are:**

- 1. The proposal to extend the hours of operation could potentially lead to an intractable long-term demand for the use of the outdoor area which could be difficult for the Council to resist and which could be seriously detrimental to the amenities that surrounding residents might reasonably expect to be able to continue to enjoy by reason of noise and general disturbance, contrary to Policy BE1(v) of the Unitary Development Plan.**
- 2. In the absence of evidence to demonstrate that the proposed use would operate within acceptable levels, the proposal could be seriously detrimental to the amenities that surrounding residents might reasonably expect to be able to continue to enjoy by reason of noise and general disturbance, contrary to Policy BE1(v) of the Unitary Development Plan.**
- 3. In view of the site circumstances, the use of a condition to restrict the use of the outdoor play area by the playgroup would fail to meet the conditions tests in terms of enforceability and precision, contrary to paragraph 206 of the National Planning Policy Framework regarding the use of conditions.**