

DEVELOPMENT CONTROL BOARD

6 June 2019

Reference: 18/01548/COU **Officer:** Jas Bansil

Location: Holy Trinity Church
High Street
Dartford
Kent
DA1 1DE

Proposal: Change of use of 43m² of land as play space to rear of church and erection of timber fence

Applicant: West Hill Life Ltd/Mrs Copley

Agent: MRW Design/Mr Matthew Woodhams

Parish / Ward: Not Parished / Town

RECOMMENDATION:

Approval

SITE DESCRIPTION

- (1) The application site comprises of the northern most part of the side and rear external curtilage of the Holy Trinity Church in Dartford town centre.
- (2) The Holy Trinity Church is Grade I Listed. The rear of the church is linked to the modern church hall building.
- (3) The site is in the Dartford Town Centre Conservation Area and both the Grade I Listed Church and the adjacent Grade II Listed building are significant parts of the historic environment.
- (4) To the north and west, the space around the Church is enclosed by an 'L' shaped Grade II Listed building which contains a shop on the ground floor fronting the High Street (number 82), with the remainder of the building having been recently converted to a high standard into individual apartments and dwellings, which are accessed from Bullace Lane. The adjacent neighbouring building has several existing windows, openings, vents which immediately abut the Church curtilage and face onto the area which is the subject of the application. The area to the north and west of the church and church hall has recently been tidied and the area which is now the subject of this application was recently cleared of rubbish and the surface of the area levelled. The space to the west of the church is visible from the High Street and contributes to the amenity of the town centre, the character of Dartford Town Centre and the setting of the Listed Buildings.

THE PROPOSAL

- (5) The application seeks retrospective permission for the creation of a dedicated external play area to serve the nursery operating from the church hall. The nursery operates between the hours of 08.00 and 18.00 Monday to Friday. Given the length of time this use occupies the church hall in my opinion the use cannot be considered ancillary to the church hall. This use is a separate business, not an ancillary community use and therefore forms a separate planning unit from the church and its hall. Since the use class for a nursery is D1, and the church and church hall are also D1 use, planning permission is not required for the use of the church hall as the nursery as planning law allows the subdivision of a use (not residential) into 2 planning

units which are in the same use. However, the external space which is the subject to this application is in my opinion part of the curtilage to the church itself and is not part of the nursery planning unit. Planning permission is therefore required for the use of this external circulation area as a defined play area which is part of the nursery use.

(6) The play space is currently enclosed with a timber fence which runs from the corner of the rear wall of the church hall westwards to the side of the adjacent Listed Building at 1 Bullace Lane (this is a timber frame building with a stone plinth and a jettied timber overhang). This timber fence requires planning.

(7) The retrospective application for the fence was deferred at the Development Control Board meeting held on 14 February 2019 for officers to discuss a revised boundary treatment. A revised drawing, is now before Members for consideration. This shows an alternative fence enclosure comprising of a new close boarded fence with horizontal slats finished in black. The fence will be attached to the church hall and on a post which would sit adjacent to the Listed Building at 1 Bullace Lane.

(8) The size of the external play space, is not different on the revised plans, and will be as on site currently; mainly occupying a narrow access way between the church hall/café and the adjacent Listed Building property to the north, however, it also occupies part of the open space which separates the curtilage of the church and the adjacent Listed Building, which is visible publicly from the High Street. At its narrowest the newly formed external play space is 80cm and at its widest it is 2.3m. The applicant advises that the external space is currently used between 10 - 11.30 and 13.00- 14.30.

RELEVANT HISTORY

(9) This application was referred to the Development Control Board on 14 February 2019 with an officer recommendation for refusal for the following reasons:

1. The external play area and associated boundary enclosures is considered unacceptable as it results in a detrimental impact to adjacent residential amenity, is of poor design and does not contribute to the Local Plan aims of revitalising the town centre, contrary to Policy CS2 of the adopted Core Strategy 2011 and Policies DP2 and DP5, of the adopted Development Policies Plan 2017 and the objectives of the Dartford Town Centre Framework Supplementary Planning Document 2018.
2. The external play area and associated boundary enclosures is considered unacceptable and results in significant harm to the setting of the adjacent Grade I Listed Holy Trinity Church and Grade II listed 82 High Street and the character and appearance of the Dartford Town Centre Conservation Area by virtue of the incongruous appearance of the boundary enclosures and the subdivision of the historic space. The proposal is therefore contrary to Policy CS2 of the adopted Core Strategy 2011 and Policies DP2, DP12, and DP13 of the adopted Development Policies Plan 2017 and the objectives of the Dartford Town Centre Framework Supplementary Planning Document 2018.

(10) During discussion at the Board meeting Members were not convinced that the use would result in such unacceptable harm to neighbouring amenity, given the town centre location, and considered that restrictions on the use of the outside area could reduce any harm. However, Members were not satisfied with the fence which has been erected on site and resolved:

"That consideration of the application be deferred to enable officers to negotiate an acceptable style of boundary treatment to enclose the space and suitable operating hours for the play space".

(Minute 100 Development Control Board 14-02-19)

(11) It should be noted that the associated Listed Building Consent application, reference 18/01549/LBC, was refused by Members, for the following reason:

"The external play area and associated boundary enclosures are considered to result in substantial harm to the character and setting of the adjacent Grade I Listed Holy Trinity Church and Grade II listed 82 High Street by virtue of the incongruous appearance of the boundary enclosures, the subdivision of the historic space and inappropriate use of modern materials adjacent to these historic buildings. The proposal is therefore contrary to Policy CS2 of the adopted Core Strategy 2011 and Policies DP12, and DP13 of the adopted Development Policies Plan 2017."

COMMENTS FROM ORGANISATIONS

(12) The Council's Heritage advisor raised objections to the application as originally submitted and recommended that permission should be refused on aesthetic grounds due to the impact on the setting of the Listed Buildings and the character of the Conservation Area. He does not consider the revised proposal to be ideal, but the Heritage advisor considers that it would be difficult to secure something that would be of better quality.

(13) Historic England do not wish to offer any comments and suggest that the views of the Council's specialist conservation adviser are sought, in respect of the original and amended scheme.

(14) The Council's Environmental Health department raise objections to the application because of the negative impact to neighbouring amenity. Complaints have been received from the public in relation to the noise from the nursery use adversely impacting adjacent residential property. Environmental Health consider that the applicant has not addressed potential noise problems and not provided an acoustic assessment. Environmental Health consider that the applicant should provide an acoustic assessment prior to determination considering the potential noise from playing children, including any psychoacoustic potential that may arise from children's vocalisation that may make the noise more intrusive than the simple measured value. However, given the location and nature of the noise it is not considered that measures could be used to adequately attenuate noise from nursery age children to the extent that would render this location usable without a significant loss of amenity to the adjacent dwellings.

NEIGHBOUR NOTIFICATION

(15) Three letters of objection were received for the consultation of the originally submitted application. The objections raise strong objections about the negative impact to adjacent neighbouring amenity from the use of the external play space. The objections comment on the number of windows and vents which abut the play area and through which the noise transfers. "When the children are screaming, which can be a normal part of play, the noise in the properties of Bullace Mews is very loud. Due to the enclosed space and shape of the alleyway the noise seems to project up and straight in the bedroom and bathroom windows."

(16) An occupier of one of the adjacent units states that he was 'mortified' to discover that the alley way that backs onto this property has been turned into a children's play area. He goes on to state that no planning permission had been obtained by the nursery operator and therefore his solicitors did not pick up the development and if they had he would have pulled out of the purchase straight away. He states that as he has recently retired, the prospect of hearing this very loud noise throughout the day is very troubling.

(17) The developer of the adjacent Bullace Mews development states that the acoustic treatment of the property has been designed around an environmental report which required additional measures to protect future occupiers on the elevations facing Bullace Lane and the High Street, but did not require such measures facing the Church. The developer states that retro-fitting additional acoustic measures will now be very costly for the residential units.

(18) The objections also raise concerns about the safety of the children playing in an enclosed space next to a flint wall. It is also asserted that the low windows cills are dangerous for the children.

(19) The objections note that there is an existing play space in between the Church and the Church hall.

(20) An additional letter from one of the occupiers of the adjacent Bullace Mews has been received in response to the consultation of the amended plan. This neighbour continues to object on the grounds of noise and disturbance. The neighbour raises concern about the inappropriateness and safety implications of the use of the area as a children's play space and refers to the Children Act 2006.

RELEVANT POLICIES

(21) The Dartford Core Strategy 2011, the Dartford Development Policies Plan 2017 and the Kent Minerals and Waste Local Plan 2016 form the Dartford's Development Plan and the application should be determined against this unless material considerations indicate otherwise.

(22) Adopted Dartford Core Strategy adopted 2011
CS2: Dartford Town Centre - Revitalisation aims.

(23) The Dartford Core Strategy 2011, the Dartford Development Policies Plan 2017 and the Kent Minerals and Waste Local Plan 2016 form the Dartford's Development Plan and the application should be determined against this unless material considerations indicate otherwise.

(24) Adopted Dartford Development Policies Plan 2017
DP1: Presumption in favour of sustainable development
DP2: Good Design
DP5: Environmental & Amenity Protection
DP12: Historic Environment Strategy
DP13: Designated Heritage Assets

(25) The Dartford Town Centre Framework Supplementary Planning Document (SPD) was adopted in July 2018 and amplifies the aims of Policy CS2 and outlines key projects which are being undertaken and sets out principles and objectives for development.

(26) Dartford Town Centre Conservation Area Appraisal and Management Plan - outlines the significance of the buildings and the spaces between them

(27) The NPPF (as amended) is also a material consideration and requires development to be determined in accordance with the adopted Local Plan. The NPPF seeks sustainable development. It states that decisions should ensure the vitality of town centres and notes that residential development often plays an important part in ensuring this. Chapter 12 places great importance on achieving well designed places and states that 'Good design is a key aspect of sustainable development, creates better places in which to live and work and helps makes development acceptable to communities.' It states that decisions should ensure that developments will function well and add to the overall quality of the area, not just for the short term but for the lifetime of the development, is visually attractive, sympathetic to local character and history, built environment, creating places that are safe with a high standard of amenity for existing and future users. Chapter 16 requires development to conserve and enhance the historic environment. It states that development should take into account the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation and the desirability of new development making a positive contribution to local character and distinctiveness. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to a Grade II Listed Building should be exceptional and wholly exceptional to a Grade I Listed. It states that where

development leads to substantial harm Local Planning Authorities should refuse consent unless it can be demonstrated that the harm is necessary to achieve substantial public benefits that outweigh the harm. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance.

COMMENTS

Key Issues

(28) The main issues are considered to be the impact to neighbouring amenity; the impact on the historic environment (specifically to designated heritage assets); safety issues; and the impact on the Core Strategy objectives of revitalising the town centre.

(29) The application has previously been considered by the Development Control Board on the 14th February 2019 and at that time Members considered that the impact to neighbouring residents was acceptable given the town centre location and the fact that noisy uses are to be expected in a town centre. It was also considered that the harm from the noise could be mitigated because the use of the external play area can be restricted by condition. Members considered that the development was not in conflict with the town centre revitalisation aims. However, Members were not satisfied with the proposed screening to the enclosure due to the impact on the Conservation Area and the setting of the Listed Building and therefore asked officers to seek an alternative treatment.

Impact to neighbouring amenity

(30) The development has created an enclosure, from part of the external curtilage and access way for the church and its hall, which is now being used as an external play area by children attending the nursery operated in the Church hall. The play area immediately abuts a converted building which is in residential use. The adjacent residential building, due it being a conversion of an historic building, has several windows, openings and vents in its southern and eastern wall which immediately abut the play area.

(31) Members considered that the activity and associated impact was not so harmful as to warrant a refusal, particularly because of the town centre location but requested that the hours of use of the external play area be controlled by condition and for officers to agree times of use with the applicant. The applicant has agreed to a condition limiting the use of the external play space to the rear of the church hall, to the hours of 10:00 to 11:30 and 13:00 to 14:30 Monday to Friday [Condition 3] which I consider will reduce the impact of the activity on neighbouring residents.

Impact to designated heritage assets and the historic environment

(32) The proposed revised enclosure detail is for a timber close boarded fence, with horizontal slats; coloured black. The agent has provided this design to replicate the weather-boarding which is on the adjacent Listed Building. I consider that metal railings with planting would have been a more appropriate solution, but the applicant was concerned that this solution would not be safe for the children. I consider the safeguarding of children a valid justification. The proposed amendment is an improvement to the un-authorized fencing and I consider will be less intrusive and incongruous, assimilating more easily with the surrounds. I also consider that the benefit of a simple close-boarded fence is that it can also be easily reversed. The fence is mounted on a post away from the adjacent Listed Building and so will not impact on this property. Taking these factors into account, I consider that the amendment is not so harmful as to justify a refusal of planning permission.

Revitalisation of the town centre

(33) Members previously considered that small town centre uses need to be supported and I recognise these types of uses can provide positive benefits within the town centre by providing a range of services.

Other issues

(34) It is noted that the play space for the children of the nursery is constrained and small, but Members recognised that the development would at least facilitate some outdoor play.

FINANCIAL BENEFITS

(35) Under section 75ZA of the Town and Country Planning Act officer reports to the Development Control Board are required to include a list of 'financial benefits' which are likely to be obtained by the authority as a result of the development. A 'financial benefit' must be recorded regardless of whether it is material to the Council's decision. Government advice is that the decision maker should consider whether it is a material consideration in the consideration of a planning application.

(36) In this instance, I am not aware of any financial benefits.

HUMAN RIGHTS IMPLICATIONS

(37) I have considered the application in the light of the Human Rights Act 1998. I am satisfied that my analysis of the issues in this case and my consequent recommendation are compatible with the Act.

PUBLIC SECTOR EQUALITY IMPLICATIONS

(38) Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

CONCLUSIONS AND REASONS FOR RECOMMENDATION

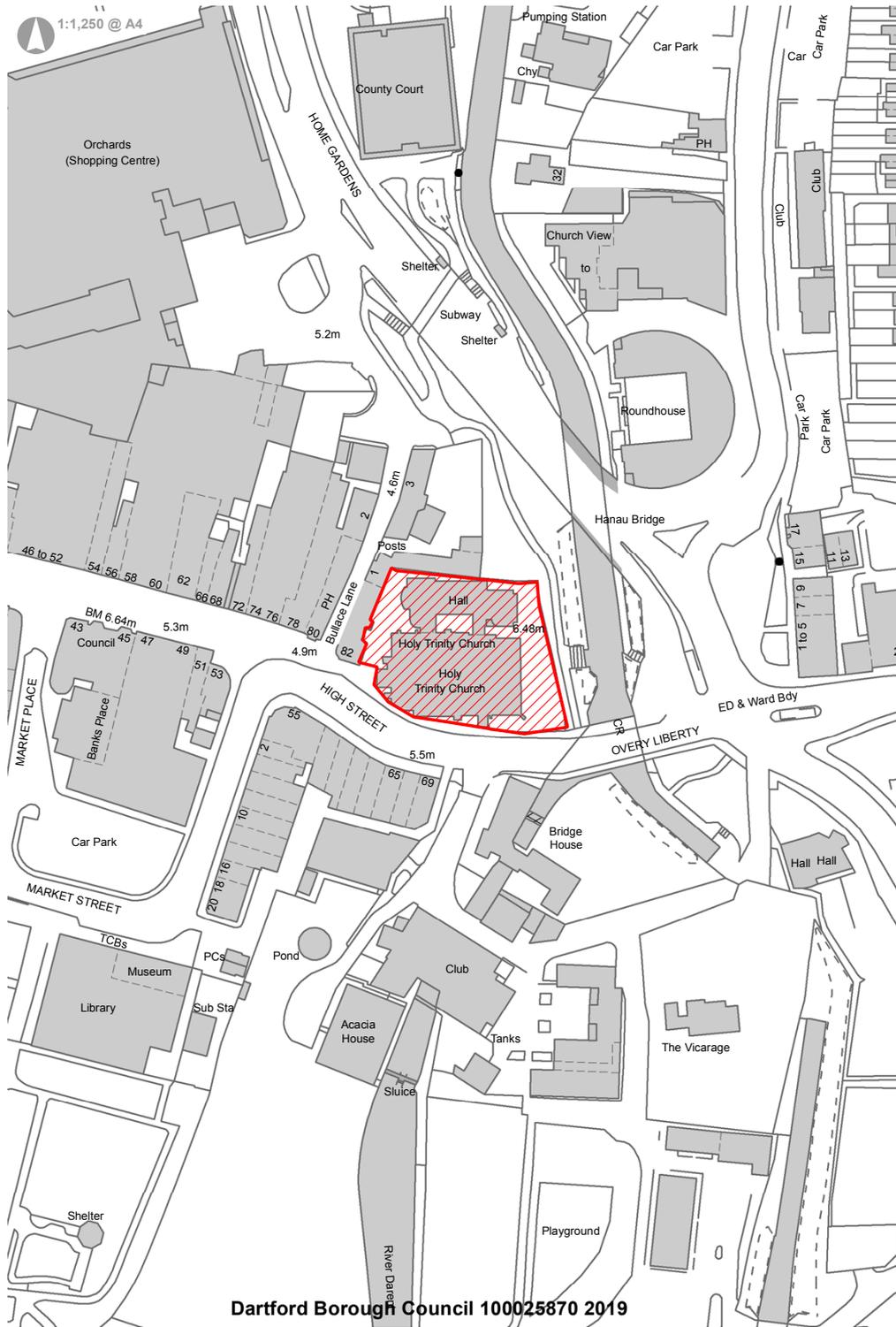
(39) I consider that the proposed amendment under consideration is an improvement to the existing un-authorized fence and will not result in long term undue detriment to the setting of the Listed Building and the Conservation Area. I am satisfied that restricting the hours of use of the external children's play area and use of the entrance to the nursery opening hours will be sufficient to protect the amenity of neighbours in this town centre area. I consider therefore that the proposal complies with planning policy.

RECOMMENDATION:

Planning permission is granted subject to the following conditions:

- 01 The development shall be carried out in accordance with the following plans and documents: Site Plan 1856-PL01, Proposed Fencing Revision A 1856-PL04.
- 01 For the avoidance of doubt and to ensure a satisfactory form of development.
- 02 Within 4 months from the date of this decision, the un-authorized fencing on site shall be removed and the fencing shown on the approved drawing 1856-PL04, shall be installed and maintained thereafter. Should the fence hereby approved not be implemented within this timescale the planning permission shall be deemed to have expired.
- 02 In the interests of the setting of the Listed Buildings and the Conservation Area in accordance with Policy DP12 and DP13 of the adopted Local Plan.
- 03 The external play space to the rear of the church hall, hereby approved, shall not be used outside of the hours of 10:00 to 11:30 and 13:00 to 14:30 Monday to Friday unless otherwise agreed in writing by the Local Planning Authority.

- 03 In the interests of neighbouring amenity in accordance with Policy DP5 of the adopted Local Plan.
- 04 The external entrance, hereby approved, shall not be used outside the hours of 08:00 to 18:00 Monday to Friday unless otherwise agreed in writing from the Local Planning Authority.
- 04 In the interests of neighbouring amenity in accordance with Policy DP5 of the adopted Local Plan.
- 05 If the nursery use ceases to operate from the church hall for a period longer than 8 weeks, the fence and any associated works, hereby approved, shall be removed from the site within 12 weeks of the use ceasing.
- 05 In the interests of the historic environment and the designated heritage assets in accordance with Policy DP12 and DP13 of the adopted Local Plan.



Application No.:	18/01548/COU
Address :	Holy Trinity Church High Street Dartford Kent DA1 1DE
Date: 21 May 2019	Scale: Not to Scale