

Report

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Report to:	Planning Committee
Date of Meeting:	21 June 2011
Report by:	Executive Director (Enterprise Resources)

Application No	CR/11/0036
Planning Proposal:	Variation of Condition 3 of Planning Consent CR/06/0167 to Allow Use of Garden Area Between 4.00pm and 6.00pm During Termtime and 10.00am and 6.00pm During School Holidays

1 Summary Application Information

- Application Type : Detailed Planning Application
- Applicant : Oakwood After School Care
- Location : 6 Upper Bourtree Drive
Rutherglen

2 Recommendation(s)

2.1 The Committee is asked to approve the following recommendation(s):-

- (1) Grant Detailed Planning Permission - Subject to Conditions (Based on the Conditions Attached).

2.2 Other Actions/Notes

- (1) The Planning Committee has delegated powers to determine this application.

3 Other Information

- ◆ Applicant's Agent: N/A
- ◆ Council Area/Ward: 11 Rutherglen South
- ◆ Policy Reference(s): **South Lanarkshire Local Plan (adopted 2009)**
DM 1 - Development Management Policy
RES 6 - Residential Land Use Policy

◆ Representation(s):

- ▶ 6 Objection Letters
- ▶ 9 Support Letters
- ▶ 0 Comments Letters

◆ Consultation(s):

None

Planning Application Report

1 Application Site

- 1.1 The application site is 6 Upper Bourtree Drive, Rutherglen which lies within an established residential area. The site comprises a large two storey sandstone villa which sits within substantial grounds. The former residential property was used by the applicant previously as a nursery, however that use has relocated and this property is used as an after school care facility for children. The site is on the north side of Upper Bourtree Drive opposite the junction with Credon Gardens and bound to the north, west and east by residential properties. Upper Bourtree Drive itself steeply slopes to the east.

2 Proposal(s)

- 2.1 The applicant seeks detailed planning permission for a variation of Condition 3 of planning consent CR/06/0167 to allow use of the garden area between 4pm and 6pm during termtime and 10am and 6pm during school holidays.

3 Background

3.1 Local Plan Status

- 3.1.1 The South Lanarkshire Local Plan (adopted) provides the development plan context for this application. The application site is adjacent to an area covered by Policy RES6 – Residential Land Use which states that the Council will resist any development that will be detrimental to the amenity of residential areas and that the development must relate satisfactorily to the surrounding environment.

- 3.1.2 Policy DM1 – Development Management states that all planning applications should take account of the local context and built form and that all development should be compatible with adjacent buildings and surrounding streetscape in terms of scale, massing, design, external materials and impact on amenity.

3.2 Planning History

- 3.2.1 Planning application CR/06/0167 is relevant to this proposal and was for the revocation of condition to allow use of garden in association with existing nursery. This was approved August 2006. More recently, planning application CR/11/0037 was approved for the increase in number of after school care places by 3 at the existing facility.

4 Consultation(s)

- 4.1 No consultations were required as part of this application.

5 Representation(s)

- 5.1 Following neighbour notification, 6 objection letters and 9 letters of support were received, the points of which are summarised below:

- a) **The children attending this service should be able to use the large garden provided at this property in line with Government aims to improve the health and fitness of children.**

Response: This point is noted; however is not a valid planning consideration.

- b) **This garden will only ever be used for short periods of time after school and school holidays. If this was still a residential property children would be using the garden anyway including weekends.**

Response: Noted.

- c) **As children are picked up from 4.30pm onwards, there is nowhere nearby that the children can use as an alternative outdoor facility.**
Response: Noted, there are no nearby green spaces that the children could easily and safely use as an alternative though this alone is not justification for approval of this application.
- d) **Although under the original planning consent the use of the garden was restricted from 11am until 4pm from June until August and for no more than 10 children at any one time, this was repeatedly flaunted and ignored resulting in the serving of a Planning Contravention Notice following several complaints. Despite this further complaints have had to be made.**
Response: It is my understanding that a Planning Contravention Notice was not served on the property, however it is noted there is an enforcement history with this site which led to the most recent applications being submitted. Whilst all applications are considered on their own merits, any approval will be accompanied by advice to the applicant of the importance of complying with conditions.
- e) **The applicant is looking to increase use of the garden by approximately 150% and does not specify the number of children who would use the garden at any one time.**
Response: It is agreed that this application would mean that the garden space was used more than previously. In terms of the number intended to use the garden, this is for Planning to specify an acceptable number. In this case, I would still recommend no more than 10 at any one time. As such, Condition 3 refers to this restriction.
- f) **The original consent set out to protect the surrounding residential area by restricting the noise and numbers of children using the garden. If this is approved it would have a serious detrimental impact on the amenity of the area and would not retain effective planning control as there is a history of non-compliance with conditions.**
Response: It is agreed that the restrictions placed on this approval are for the protection of the surrounding residential properties. In terms of the proposed additional hours the garden would be used I am satisfied that this will be acceptable provided the numbers of children are still restricted to a maximum of 10.
- g) **It is alleged that the children are not fully supervised as surrounding neighbours have had to contact nursery due to children being in their gardens.**
Response: This is a matter for the applicant and does not offer sufficient justification for refusal of the application.
- h) **The application site is approximately 2 metres higher than the gardens of surrounding residential properties and debris, stones, sticks etc have been thrown over the wall in the past.**
Response: It is acknowledged that the application site does sit higher than the surrounding residential properties, however any items thrown out the site is a matter for the after school care facility and not a valid planning consideration.
- i) **The number of children in the garden during school holidays will restrict use of the gardens of the residential properties due to noise.**
Response: The applicant has confirmed that she will provide additional screen fencing to the rear of the garden in the interests of residential amenity. As such, a condition has been attached to ensure details of this are submitted to the Planning Service for approval and then implemented prior to the garden being used the additional hours. I am satisfied that the additional screening together with the

restriction on numbers of children using the garden will not restrict neighbours using their own gardens.

- j) **All letters of support shown on the planning portal are from the parents of children who do not live near the application site. Their points are therefore irrelevant.**

Response: Anyone has the right to comment on a planning application. All relevant planning issues are taken into consideration.

These letters have been copied and are available for inspection in the usual manner and on the Planning Portal.

6 Assessment and Conclusions

- 6.1 The applicant seeks detailed planning permission for a variation of Condition 3 of planning consent CR/06/0167 to allow use of the garden area between 4.00pm and 6.00pm during termtime and 10.00am and 6.00pm during school holidays. It is noted that under the original planning consent CR/06/0167 the use of the garden was restricted to use between 11.00am and 4.00pm from June 1st to August 31st and for no more than 10 children at any one time. It is noted there is also a separate application that has been granted for the increase in children using the after school care facility by 3 (CR/11/0037).
- 6.2 The main considerations in determining this application are its compliance with the relevant local plan policies. In this case, the relevant South Lanarkshire Local Plan policies are DM1 – Development Management and RES6 – Residential Land Use. In this respect, the application site is located within a residential area. The rear garden area to which this application relates is split and is part lawn and part children's play area. Due to the topography of the area, the application site is at an elevated position in comparison to the residential properties to the rear. It is noted that a few of the adjacent residential properties have built up gardens towards the application site. There is an existing boundary fence together with mature trees and shrubs that provide a degree of screening.
- 6.3 The applicants now wish the children to have use of the garden during all school holidays from 10am to 6pm and for the two hours after school i.e. 4pm to 6pm. The existing consent allows for the garden to be used by no more than 10 children at any one time between 11am and 4pm during summer holidays only. It is noted that the building itself has the capacity for 45 children to use this facility. The outdoor garden area is much larger than surrounding properties and therefore has the capacity for use by a number of children, however it is not considered acceptable for 45 children to use the garden area at the same time due to the proximity of surrounding residential properties. Given the concerns raised by some of the adjacent properties in relation to noise, the applicant has advised that she will erect a further fence to reduce noise from the property. Taking this into consideration, I am satisfied that the additional usage of the garden area is acceptable for the hours specified, provided there are no more than 10 children in the garden at any one time. As such, condition 4 has been attached to ensure details of the fencing are submitted and approved and the fence erected prior to the garden being used during these additional hours. Furthermore, condition 3 limits the number of children using the garden at any one time to 10.
- 6.4 Given the issues that have been raised over the past few years in relation to breach of conditions of the previous consent, the applicant has been advised of the importance of adhering to the conditions and the enforcement action that will be

taken should these conditions not be complied with. Any consent will include written advice on this matter.

- 6.5 There were no consultations required as part of this application. Following neighbour notification, 6 letters of objection and 9 letters of support have been received, the points of which are summarised in section 5 above. It is noted that several points raised are valid, however I do not consider there is justification to refuse this application.
- 6.6 In summary, I am of the opinion that the additional hours of use of the garden will not have a detrimental impact on the amenity of the surrounding residential area provided the numbers of children using it continue to be restricted. I therefore recommend planning permission is granted subject to the conditions attached.

7 Reasons for Decision

- 7.1 The proposal complies with Policies DM1 and RES6 of the Adopted South Lanarkshire Local Plan (March 2009)

Colin McDowall
Executive Director (Enterprise Resources)

3 June 2011

Previous References

- ◆ CR/11/0037
- ◆ CR/06/0167
- ◆ CR/05/0060
- ◆ CR/03/0330
- ◆ CR/02/0036
- ◆ CR/01/0041

List of Background Papers

- ▶ Application Form
- ▶ Application Plans

- ▶ Consultations
None

- ▶ Representations
 - Representation from : J Beattie, 2 Kelso Avenue, Rutherglen, G73 3BX, DATED 09/03/2011

 - Representation from : Gail Annan, 37 Woodside Avenue, Rutherglen, G73 3JE, DATED 11/03/2011

 - Representation from : Osprey Concrete Structures Ltd., 52 Second Avenue, Kings Park, Glasgow, G44 4TE, DATED 23/03/2011

- Representation from : Catherine O'Brien, 24 Elm Road, Burnside, G73 4ET, DATED 05/04/2011
- Representation from : Mrs Lerryn Hunter, 24 Inchmurrin Drive, Rutherglen, G73 5RT, DATED 05/04/2011
- Representation from : David Johnston, 35 Albert Drive, Rutherglen G73 3RT, DATED 21/03/2011
- Representation from : Ms F Zaman, 89 Culzean Crescent, Glasgow, G77 5SW, DATED 08/03/2011
- Representation from : Mrs Catherine O'Brien, 24 Elm Road, Burnside, Glasgow, G73 4ET, DATED 23/03/2011
- Representation from : Catherine O'Brien, 24 Elm Road, Burnside, Glasgow, G73 4ET, DATED 27/04/2011
- Representation from : Drs Elena and Mark Fawcett, 35 Brownside Road, Cambuslang, G72 8NH, DATED 08/03/2011
- Representation from : Pamela Thompson, 17 Thorn Drive, Burnside, Glasgow, G73 4RH, DATED 10/03/2011
- Representation from : Robert Lawrie, 26 Elm Road, Burnside, G73 4ET., DATED 21/03/2011
- Representation from : Robert Laurie, 26 Elm Road, Burnside, G73 4JR, DATED 27/04/2011
- Representation from : Gillian Allan, 87 West Coats Road, Cambuslang, G72 8DN, DATED 21/03/2011
- Representation from : Susan Keegan, 57 Vancouver Drive, East Kilbride, G75 8LQ, DATED 20/04/2011

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

Julie Stanfield, Planning Officer, Civic Centre, East Kilbride
Ext 6327, (Tel: 01355 806327)
E-mail: Enterprise.ek@southlanarkshire.gov.uk

Detailed Planning Application

PAPER APART – APPLICATION NUMBER: CR/11/0036

CONDITIONS

- 1 This decision relates to the drawing titled:

Location Plan
- 2 That the development shall be carried out strictly in accordance with the plans hereby approved and no change to the design or external finishes shall take place without the prior written approval of the Council as Planning Authority.
- 3 That the hours at which the rear garden can be used shall be limited to between 10am and 6pm during school holidays, 4pm and 6pm during termtime and shall be for no more than 10 children at any one time.
- 4 That before development starts, details of a further screen fence to the rear of the application site shall be submitted to and approved by the Council as Planning Authority and thereafter all approved works shall be completed to the satisfaction of the Council prior to the development hereby approved being brought into use.

REASONS

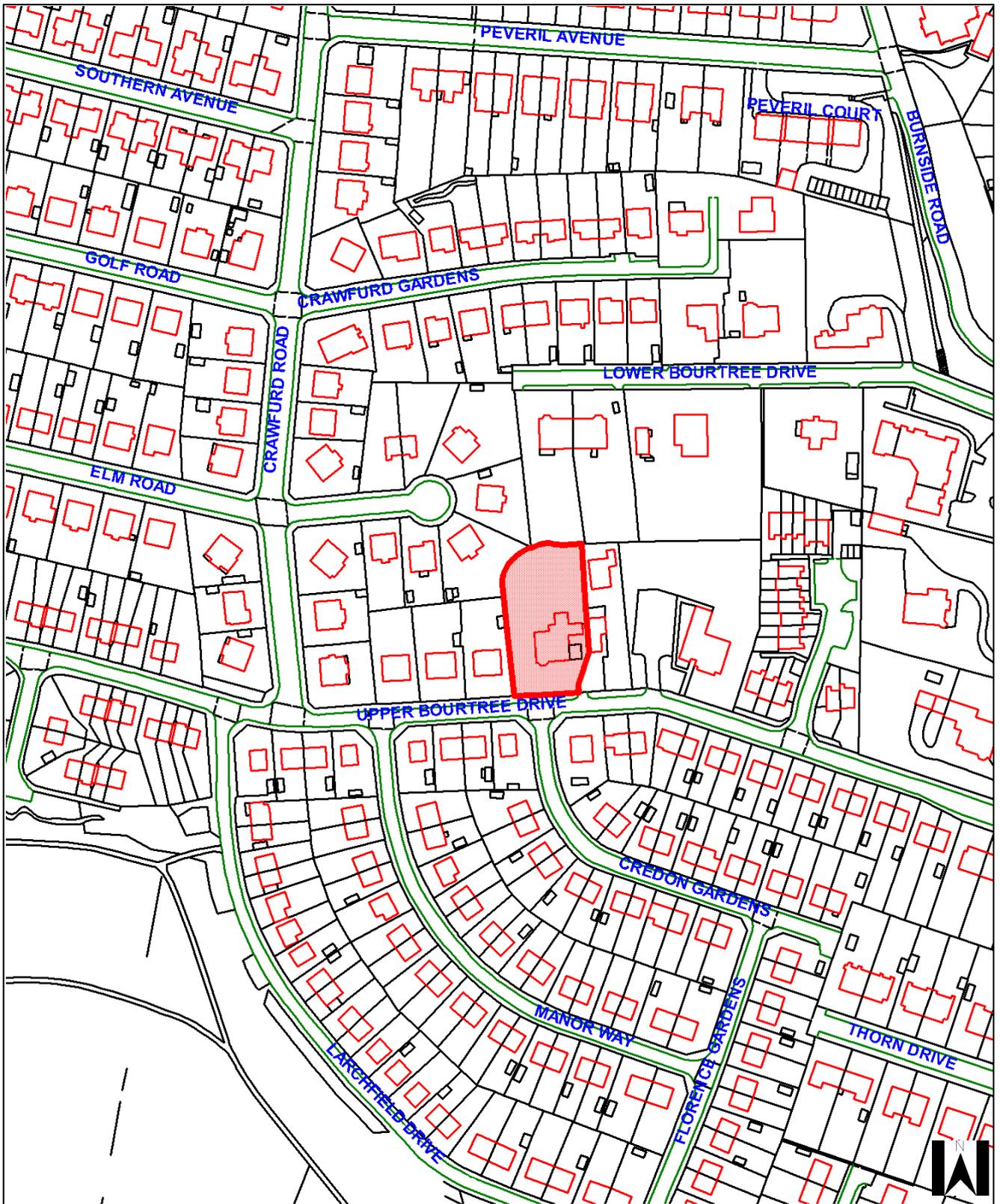
- 1 For the avoidance of doubt and to specify the drawings upon which the decision was made.
- 2 In the interests of amenity and in order to retain effective planning control.
- 3 To safeguard the amenity of the area.
- 4 These details have not been submitted or approved.

CR/11/0036

6 Upper Bourtree Drive, Rutherglen

Planning and Building Standards Services

Scale: 1: 2500



For information only

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