

LOCATION: Former Wyevale Garden Centre, Daws Lane, London, NW7
4SL
REFERENCE: H/04210/11 **Received:** 12 October 2011
Accepted: 14 October 2011
WARD: Mill Hill **Expiry:** 09 December 2011

APPLICANT: C/O Etz Chaim Primary School

PROPOSAL: Change of use from current A1 use (Garden Centre) to proposed D1 use (Education). Proposals involve the retention and conversion of the existing building, additional windows on front elevation and modifications to existing facades. Removal of the existing central glass roof and glazed conservatory on the eastern side, followed by single storey extension. Opening up rear of the site to form an open courtyard, play area and soft landscaping. New front boundary treatment, additional planting and security hut, provision of 17 car parking spaces.

RECOMMENDATION I:

That the Applicant and any other person having a requisite interest be invited to enter into a planning obligation ('the New Obligation') supplemental to the existing planning obligation dated 29th March 2012 ('the Existing Obligation'), under Section 106 of the Town and Country Planning Act 1990 and any other legislation which is considered necessary to secure the following:

- 1 Paying the council's legal and professional costs of preparing the New Obligation and any other enabling agreements;
- 2 All provisions listed below to become enforceable in accordance with a timetable to be agreed in writing with the Local Planning Authority;

Special Site-Specific Obligation

Additional Clauses to augment the Existing Obligation in relation to the submission of a Community Access Plan, to provide for :

- Promoting and Publicising the agreed Community Access Plan within 2 months of approval and again within 2 months of occupation
- Procuring the implementation of the Final Community Access Plan approved by the Local Planning Authority
- Requiring surveys to be undertaken to monitor the impact of the Community Access Plan and requiring a review of the Community Access Plan in light of the outcome of that monitoring

RECOMMENDATION II:

That the Acting Assistant Director of Planning and Development Management and Building Control should be given the authority to make further minor amendments to the Existing Obligation under delegated powers as may be deemed necessary.

1. MATERIAL CONSIDERATIONS

Planning permission H/04210/11('the Permission') was granted for the development described above under the heading 'Proposal' on 30th March 2012, following completion of a Section 106 legal agreement dated 29th March 2012 (the Existing Obligation). This document secured contributions towards highway improvements, travel plan monitoring and the submission and implementation of a Community Access Plan (CAP).

The Council's Planning and Environment Committee had previously considered the Proposal on 31st January. The planning report that was considered by the Committee on 31st January is attached as an appendix to this report.

Since the granting of the Permission, the Council has received a letter before claim dated 25th April 2012, in connection with a potential legal challenge to the Council's decision to grant the Permission. One of the potential grounds of challenge raised concerns the 'enforceability' of the Community Access Plan...The current legal agreement contains the following clauses:

"3.7 The owners covenant with the Council that a draft Community Access Plan will be submitted in writing to the Council's Acting Assistant Director of Planning and Building Control (or such other officer as may be advised to the Owners) prior to this covenant taking effect pursuant to the terms of clause 2.7 hereof

3.8 Revise the draft Community Access Plan to incorporate any comments made by the Council within 6 weeks of submission to the Council of the draft Community Access Plan"

The ground of challenge is concerned with the wording of these clauses, and alleges that they require only the submission of a draft Community Access Plan, and do not require either the production of a 'final' Community Access Plan or its implementation.

The Council does not accept the proposition advanced in the letter before claim - namely that the benefits of the Community Access Plan will not be delivered; however in any event the Applicant has indicated it is agreeable to entering into a supplemental planning obligation to remove any doubt in relation to this matter and to render academic any complaints about the alleged inadequacy of the Existing Obligation. Accordingly, it is the view of officers that, in order to put the matter beyond question, the Applicant should be invited to enter into a supplemental planning obligation (the New Obligation) in order to clarify the position.

The Committee's authorisation is therefore sought for the Council to enter into the New Obligation to secure the submission of a 'final' Community Access Plan, as amended to the Council's satisfaction, and to secure its implementation thereafter.

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