



Views from the Hill

NEWSLETTER OF THE TEWKESBURY LODGE ESTATE RESIDENTS' ASSOCIATION

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Piplings Nursery – the facts

You may already be aware of a day nursery that is currently operating from 5 Liphook Crescent. It is appreciated that relatively little information on this subject has been circulated through the Association's usual news channels, but now the Executive Committee feels the time has come for the full facts to be made available. We urge you to fully read and digest the information below and form your own conclusions about what you would prefer your neighbourhood to be like in the future.

The Planning Application

When a planning application was made in February 2010 for a day nursery for up to 24 children there was a high level of concern among members of the Association who would be directly affected by the proposal. The concerns centred around the nuisance that would be caused by staff and children arriving and departing, parking, and the inevitable noise from so many children using the garden almost continuously.

Throughout its 51 year history, the Association has campaigned to maintain the quiet, residential nature of the area, and applications that could significantly change the character of the Estate have consistently been opposed. To the knowledge of the current Committee this was the first ever application for a business on the Estate that would be expected to have sufficient impact as to require planning permission for change of use from a residential to commercial property.

Although the response to planning applications is often devolved to a small group of Committee members who, of course, are answerable to the full Committee for their actions, in view of the level of concern about this application, it was discussed at a full Committee meeting in March 2010 when it was agreed that the Association would support those objecting to the application.

Our first formal objection was sent the following day. Lewisham Council also received 27 letters of objection from residents opposing the granting of planning permission, along with a petition of 44 names, mostly from neighbours directly affected by the application. Only 1 letter of support was sent from someone who lives outside of the Estate.

Based on this evidence, the Association believed that it had a clear remit to oppose the application.

Lewisham Council's Planning Committee meeting.

There is general agreement that the issues were not seriously discussed by members of the Committee at the hearing on 11 November 2010 which was attended by some 40 members wishing to show their support for opposing the application. The meeting started at 7pm, but by 10.15pm

when the nursery application was heard, they were still only half way through the agenda.

As part of their application, Piplings claimed there was a shortage of nursery places in the area with parents having to wait 18 months to 2 years for a place. Prior to the meeting, the Association contacted 11 nurseries in the immediate area. None had a 2 year wait for a full or part time place and only one had an 18 month wait. The remaining 9 could all take children within a few months, and in some cases within weeks (depending on the age of the child and whether full or part time). On this evidence, the Association's Committee was not concerned that opposing Piplings Nursery meant that they would be depriving members of a nursery place for their child within a short distance of their home.

Since the nursery started operation in April 2010 without planning permission, neighbours had ample opportunity to observe the impact of the activity before the application came before the Planning Committee. The immediate neighbours were disturbed by the sound of children in the garden almost all day, every day, Monday to Friday. While some would argue that the sound of children playing is not such an issue, the Association agreed that having it a few metres from the windows of your house on an almost continuous basis, all the more so as more places were filled, was not acceptable. Cars were parked across driveways, and staff congregated outside people's homes to smoke.

All these issues were put by the Association to the Planning Committee, who also had the letters of protest from the objectors, but on the basis that day nurseries were 'a good thing', permission was granted. Does this mean that if the application had been for a Sainsbury's Local on the Triangle, they might well have granted it?!

Clearly the neighbours were upset at the Council's decision. The Association was concerned not only for the impact on the immediate neighbours, but because this could be the thin end of a wedge which could change the character of the whole Estate for ever by opening the door to other undesirable developments.

The Neighbour's Position

The neighbours on one side of Piplings Nursery were then advised that they were entitled to the benefit of a covenant imposed on the original owner of 5 Liphook Crescent when he bought the property. This stated that no trade or business would be undertaken (with certain limited exceptions) and that the new owners would do nothing to cause a nuisance or annoyance to the owners and occupiers of adjoining land. Such covenants were put in place generally when the Tewkesbury Lodge Estate was developed in the 1930s by High View Estates Ltd. They had a clear vision of the sort of place they were trying to create, with advertisements of the time stating that "The Estate is controlled by town planning regulations ensuring picturesque development at low density, of good-class private dwelling houses only". The developers ensured that the Estate met these objectives by enforcing covenants on the initial purchasers which passed to new owners as houses were sold on.

When buying a property on the Estate, every house purchaser can see the covenants associated with that property, and should be advised by his/her solicitor of their effect. In this case, any property whose title shows that it was initially transferred from High View Estates after 16/08/1938 will have the benefit of the covenants made by the owner of 5 Liphook Crescent.

With the help of a lawyer introduced by the Association, the neighbours of the property adjoining the nursery decided they would enforce their rights. Of course, the law moves slowly and now, around a year after they initially indicated their intention to enforce the covenants in January 2011, they are waiting for a court hearing which could issue an injunction against the nursery.

The Nursery Owner's Position

It has always been open to the owners of 5 Liphook Crescent to go to an institution called the Lands Chamber which has the power to modify or strike out covenants considered to be inappropriate in the 21st century in accordance with certain tightly defined statutory criteria. It is the view of the Association, and the lawyer acting for the neighbours, that the area is still quietly residential. Nevertheless, the owner has now made an application to modify the covenant to permit the premises to be used as a nursery for up to 12 rather than 24 children. Because the benefit of the covenants extend to many properties on the Estate, his lawyers have served papers on house owners in Liphook Crescent and Ringmore Rise who they believe to have the benefit of the covenant, so they can object to the modification of the covenant. It is, of course, up to each individual to respond as they think fit, but the Association is taking advice on the financial implications for individuals of objecting and/or claiming compensation for the loss of the benefit of the covenant, which will be circulated shortly.

The Association's Position

The Association's Committee is firmly of the view that in supporting opposition to Pipling's Nursery it is acting with the support of the majority of its members who wish to retain the quiet residential nature of the Estate, one of the principal reasons that a lot of people move to the area and continue to live here.

Whilst some members may feel that having a nursery in the area is a useful facility, how many would be prepared to have it next door to them? And would you be prepared to

accept an even larger scale business next door, possibly operating during more anti-social hours and causing even more disruption to neighbours? There is no doubt that acquiescence to one business that causes a nuisance may be used as a precedent to justify another, and that the likelihood of successfully opposing another business opening on the Estate will be significantly reduced. Therefore, the continuation of the quiet residential character of the Estate that all residents currently enjoy will be put at risk.

Although supportive, the legal action against the nursery has been entirely funded by neighbours. Because of the wider implications for the Estate, the Association did make a donation of £200 towards the costs of a planning consultant engaged by them to advise and, if possible, support their opposition to the grant of planning permission in view of the policies included in the Council's development plan and other planning guidance. The consultant was firmly of the opinion that the application should not have been allowed. The Association has also undertaken some research costing £60 regarding titles deeds in order to better understand the applicability of restrictive covenants across the Estate generally. The Committee has been well aware of the lack of communication of the day to day position to its members up to now. This has been a deliberate decision to avoid compromising any legal action being undertaken. However, of course Committee members are always willing to discuss any aspect of the Association's activity with members if they wish.

Closure of the Nursery

It is understood that staff and parents of children at the nursery have been given notice that the nursery is to close in 4 weeks time as a result of the legal action, and been advised to find alternative facilities. This appears to be a decision made by the proprietors. At the present time, there is no injunction (or other court order), requiring them to close.

Claims are being made that if the covenant is upheld, anyone running a business from their home would be affected. This is simply not the case. It would have to be demonstrated that the business was having a significant detrimental impact on neighbours such as noise, traffic and congestion, before the court would enforce such a covenant by an injunction. Furthermore, if these criteria are unlikely to be met it is inconceivable that anyone would be willing to take on the substantial legal costs involved if, for example, their neighbour was just using their home as a registered business address, offering private tuition, running a consultancy service, or anything of that sort.

In summary

The Association believes that the activities of this particular business are having an adverse impact on the neighbourhood, and there is a significant risk that the quiet residential neighbourhood which is appreciated by all who live here will be eroded. Please take some time to think about this and decide whether or not you would like a commercial enterprise operating next door to you which has the potential to adversely affect the property that you currently live in and enjoy.

We welcome comments from all our members, so please email chairman@tewkesburylodge.org.uk or contact us via your road representative.
