

Gingerbread Nursery, Saltdean Oval. Landlord Review.

Property & Design

CASE:	Gingerbread Nursery, Saltdean Oval – Decision Review	FILE:	
GIVEN BY:	Property & Design Estates	DATE:	04.06.20

Background information

Childcare 360 (Nick Childs) tenant of the Gingerbread Nursery has a current lease that was granted in November 2017 for 15 years with tenant break options in 2022 and 2027. Planning permission was obtained in December 2018 to demolish the existing premises and replace with a new nursery building and play area. The tenant and the council's agent Avison Young, with oversight from the Property Estates team, have been in negotiations since October 2019 for a new lease to facilitate the development for a 25 year term providing a 2 year rent free period and subsequent 23 years of adjusted rent to reflect the level of tenant investment.

The Landlord Review

The decision not to grant a new lease to the tenant of the Gingerbread Nursery, Mr Childs, to facilitate a new nursery building was sent to him on the 6th January 2020 by the Property Estates team. Mr Childs contacted the Leader, Nancy Platts and the Chief Executive on the 24th January questioning the decision. In response to Mr Childs letter Nancy Platts requested and received a briefing from property officers of the process followed to date. Following this and given the officer advice and recommendations and the concerns raised by ward councillors, Nancy Platts requested that the property decision be reviewed at a senior level.

The review is a property review re-examining the asset and estate management aspects of the property case from the corporate Landlord's perspective. The Landlord decision making process is independent of the Local Authority planning process and not directly comparable as the council's roles as planning authority and land owner are both different and separate. The Landlord review has considered in depth the options, the officer recommendations and the Ward Councillor concerns.

The decision to grant the lease can be done under property officer delegations. Such a decision will take into account and be influenced by the outcome of any consultation with Ward Councillors but remains an officer decision unless the matter is presented to Policy and Resources Committee for Members to consider.

The Landlord review also considers the further concerns expressed by Ward Councillors at a meeting on the 5th February when several queries were raised by them in objection to the proposed Gingerbread nursery development. In addition, correspondence dated 17 February was received from Helen Hicks, the owner of the adjacent Boomerang Nursery.

The Landlord review has been completed and the summary and conclusion are outlined below and evidenced by the themed concerns and responses contained in Appendix A.

Summary

A series of themes evolved from the concerns and queries that have been investigated with the relevant council departments. This evidence has informed the Landlord review and the decision as to whether a new lease be granted to facilitate the development of a new nursery.

Nursery Provision

The Early Years team have provided data that shows there is an above average number of nursery age children within the ward per nursery places available. However, the data does not measure or analyse actual demand for nursery places. Ward Councillors have provided anecdotal evidence to support there being enough child care places available and believe there also to be sufficient choice for parents in Saltdean, including Boomerang Kids, 4 sessional care providers and 4 childminders. The data provided by Early Years looks at only a part of the Saltdean conurbation through the BHCC ward data thus the need for places is not fully proven. It does not take into account the Lewes District Council ward data and therefore does not fully assess Saltdean's overall need for nursery places.

New Building Design, Construction & Use

The concerns raised in relation to the proposed building's design, construction and use have been or can be addressed.

Impact on Amenity

The potential impact of the proposed new building on the amenity has been considered. It is clear that the development would result in a loss of c400m² of designated space which is contrary to City Plan Part 1 policy. The proposals do not meet the exception criteria where loss of open space would be permitted.

CityParks have confirmed that they would not support development that does not add benefit to the park for park users. Each case is considered on its own merits, and the building and the provision of a nursery within a park setting does not in itself add benefit to the park or park users.

In addition, concerns have been raised by Ward Councillors regarding the impact on traffic and access during peak times and whilst the production of a Travel Plan is a condition of the planning permission to mitigate traffic impact it is not known at this stage how successful that may be. There could be high impact if the nursery numbers increase from the existing 25 to the 42 as consented in the planning permission.

Impact on adjacent nursery (Boomerang Kids)

The council has been contacted by Boomerang Kids and their concerns have been noted. The council does not have a duty of care to shelter Boomerang Kids from the potential competition of a new nursery within the park. Nor does the council have a legal obligation to grant a lease to Gingerbread.

Asset Management

Saltdean is the only park in the city that has two nurseries. All other parks in the city with a nursery provision only have one nursery.

Governance and Legal

The council in its role as land owner is not legally bound by the decision of the planning committee. The decision to grant a lease is delegated to officers, who have consulted with Ward Councillors, who are strongly opposed to the granting of the lease for the reasons set out above and in Appendix A.

Conclusion

Having reviewed the Landlord decision, investigated and responded to the issues raised by Ward Councillors and the tenant, the most significant areas for consideration are:

- **Nursery Provision**

The BHCC Early Years data for nursery provision does not look at the whole conurbation of Saltdean which is split between BHCC and Lewes District Council. It is only considering the BHCC ward data which is not representative of the Saltdean area need. The fact that the proposed nursery has a need for the consented increase from 25 to 42 places is therefore unproven by the data. It is recognised too that undoubtedly the potential increase in numbers will impact on the local traffic.

- **Impact on Amenity**

It is clear that there would be a loss of open space which is contrary to policy. CityParks do not support a development of a proposed permanent building that does not add benefit to the park and its users.

The potential increase in numbers of places from 25 to 42 could have an impact on traffic that will need to be monitored.

- **Governance and Legal**

The Ward Councillors, who do not support the proposed development, have expressed very strong views which represent the views of their constituents and therefore park users.

Having considered all the evidence summarised above and contained in the Appendix the recommendation of the property review remains against the granting of a new lease. In coming to this conclusion the Landlord decision has taken into consideration the local community views as represented by the ward councillors.

Background information

Appendix A – Further investigations

Appendix A Further investigations

Concern	Response
<i>Nursery Provision</i>	
<p>1. There is not sufficient need for nursery places in this location to support both nurseries.</p>	<p>Early years have provided advice on child care provision within the ward which Ward Councillors have seen.</p> <p>This advice confirms that supply in the ward is less than the citywide average for both full day & sessional care.</p> <p>Ward Councillors do not agree with this and have commented as follows:</p> <p><i>“We already have this [feedback from Early Years Team] and please be careful not to apply generalities about Rottingdean Coastal ward with its 6 distinctive areas to Saltdean.</i></p> <p><i>We would not want to encourage any children living outside Saltdean to be driven to nurseries here.</i></p> <p><i>I [Cllr Fishleigh] have spoken with My Baby Bunnies childminders who confirmed that they abandoned plans to expand after Gingerbread got planning permission. This is because their research showed vacancies at the two other nurseries: Boomerang and St Nick’s pre-school. Boomerang Kids nursery has confirmed to me that they are operating at an average of 60% capacity”.</i></p> <p>Early Years have provided a link to the data (page 15 for Rottingdean Coastal) :</p> <p>https://infogram.com/childcare-ward-profiles-1hnq41wymldk63z?live</p> <p>The Early Years Team have stated that the table in the top righthand corner shows that the ward has a higher number of children under five per childcare place compared with city-wide.</p> <p>From this information Early Years advice is that there is not an oversupply of childcare in the ward. An earlier statement from and Early Years’ member of staff dated 10 January 2019 which suggested there was a high number of places was not verified by this information.</p> <p>Early Years use a geographical measure to report on childcare places and doing this by ward is an accepted way. Data from other local authority areas is not measured and geography or transport are not taken account of. The lack of information from other local authority areas is of particular pertinence to Saltdean, part of which, East Saltdean, is in Lewes DC.</p> <p>The ward data does not take account of</p> <ul style="list-style-type: none"> - Local demand e.g. the percentage of parents who are working and want to use formal childcare. The only ward data we have on this is the take up of the

		<p>extended entitlement [this is additional childcare to which working parents are entitled] which can be seen in the chart on the bottom right. This is only for three-and four-year olds and takes no account of younger children</p> <ul style="list-style-type: none"> - The fact that parents don't necessarily use local childcare. Our data is based on the number of children under five living in the ward but does not take account of people coming in and going out.
2.	Suitability of the tenant to run nursery.	<p>Gingerbread Nursery is rated as Good by Ofsted following and August 2019 inspection. https://reports.ofsted.gov.uk/provider/16/EY547518</p> <p>The building fabric has suffered further since the Ofsted inspection which has limited them operationally.</p> <p>The other nursery Mr Childs company operates, The Apple Tree in Rottingdean has not yet been inspected by Ofsted.</p> <p>The Early Years Development Team have confirmed that they have had no direct dealings with the owner but have a positive relationship with the manager who is receptive to support offered, with no issues to report.</p>
<i>New Building Design, Construction & Use</i>		
3.	The building use might change to café or restaurant.	<p>The council would have the ability as landlord to restrict the use class within the lease.</p> <p>Point 12 on the planning decision notice (PD) refers to a restriction for use as nursery only. The PD also restricts the opening hours to Mon-Fri, 8-6pm and the number of children to 42 maximum.</p>
4.	The construction would impact on the safety of the flint wall on the Boomerang building.	<p>Paragraph 8.14 of the Planning Committee report states:</p> <p><i>“On the western side the proposed building retains a suitable gap to the existing listed boundary flint wall to ensure no harmful impact would result to the wall and to ensure that the future maintenance of this wall is not compromised”.</i></p> <p>Point 11 within the PD refers to a requirement for a survey report to be produced and a method statement provided explaining how the existing flint boundary walls are to be protected, maintained and stabilised during demolition and construction.</p> <p>The Party Wall Act would also safeguard the tenant of Boomerang and the council as freeholders.</p>
5.	The design of building inappropriate for the park setting.	<p>We are advised that pre-application advice was sought by Nick Childs and the advice provided by the planning authority with regard to design and appearance was taken into account as part of the subsequent planning application. The report submitted to the Planning Committee states:</p>

		<p>“The new building provides a contemporary but contextual design which results in an appearance that is more sympathetic to its contextual proportions, material and finish.”</p> <p><i>“Overall it is considered that the design of the new building sits comfortably within the context of the site and is in accordance with the development plan policies”.</i></p> <p>The design was approved by planning with associated conditions.</p> <p>So far as the Council’s functions as Local Planning Authority and landowner are concerned, these are separate. In the making of planning decisions the LPA is constrained by the need to make decisions on the basis of material planning considerations, and the Council as landowner is not bound by these. However, although the Council as landowner can come to a different view from the LPA, in order to be reasonable as landowner it would have to have good reasons as to why it considered the design to be inappropriate when this had already been explored by the LPA and been found acceptable.</p>
<p>Impact on Amenity</p>		
<p>6.</p>	<p>Loss of Park Land. This nursery would result in the loss of 400m² of the park on flat land which is much needed in a park of which around 50% is on a slope.</p> <p>In 2016 Development Control wrote: "Rottingdean Coastal Ward is not shown to have a clear surplus in open spaces. The Ward is indicated to have an open space deficient by 2030. With increasing population an additional amount of 160 hectares is required in B&H by 2030."</p>	<p>The report to Planning Committee states:</p> <p><i>“The development would result in the loss of c400m² designated open space and is therefore contrary to City Plan Part 1 policy CP16. Policy criteria 1a to 1d set out circumstances whereby planning permission resulting in loss of open space would be permitted, however the proposals do not fully meet any of these exception criteria.</i></p> <p><i>Although it is acknowledged that the current use of the site means it is not currently publicly accessible and does not currently serve a physical or visual open space purpose...</i></p> <p><i>...The applicant has sufficiently justified the loss of open space and therefore there is no objection to the scheme based on CP16.”</i></p> <p><i>“As a consequence of the permanency of the existing buildings, hard standings and fences, the site is physically incapable of meeting the city’s wider open space need. The enclosed nature of the site makes it ‘poor quality’ as an open space given that it is accessible to the public”.</i></p> <p><i>“Furthermore whilst there is not an overall surplus in all types of open space within the Woodingdean and Rottingdean Ward, there is a surplus of the Parks & Gardens typology, for both current and future needs, which is the only typology applicable to Saltdean Park”.</i></p>
<p>7.</p>	<p>A permanent building is inappropriate for the park (current building temporary).</p>	<p>CityParks have advised that as a general principle, rather than policy, unless a building adds to the benefit of a park and its users, CityParks are generally unsupportive of any building development and/or building extensions or structures</p>

	The principle of having a permanent (rather than temporary) building on the site (a public park) is not acceptable in asset management terms.	whether permanent or not, though each case would be considered on its own merits.
8.	Parking issues are a problem at drop off and pick up will be exacerbated.	<p>Point 10 on PD requires a Travel Plan to be submitted within 3 months of overall occupation by the tenant. This will include such measures and commitments as are considered necessary to mitigate the expected travel impacts of the development and the minimum initiatives and commitments are set out in the report to Planning Committee aimed at promoting safe, active and sustainable travel choices by its users. The report to planning committee states:</p> <p><i>“A number of comments received by the public make reference to transport issues and it is considered this document [the Travel Plan] will alleviate those concerns.”</i></p> <p>In addition, cycle parking and children’s buggy and scooter parking is to be provided as part of the development.</p> <p>Ward Councillors made the following points regarding travel:</p> <ul style="list-style-type: none"> • Most parents drive to the nursery come rain or shine and continue onto work. They pick-up and drop-off at the same point which is by a sharp bend on Saltdean’s busiest road • Access arrangements can’t be better managed. It is unrealistic to think that parents will park further away. • Nor will they cycle or walk due to Saltdean’s man hills.
Impact on adjacent nursery (Boomerang Kids)		
9.	<p>Existence of new building and nursery provision will impact on business viability of Boomerang. The priority is to support Boomerang to ensure listed building they occupy is maintained.</p> <p>The council has the right to not grant the lease as landowner (there is no anti-competitive law that would compel the council to have to grant a lease over such). We are a property owning country, so it would be unprecedented for the</p>	<p>As a matter of planning law there is no duty to protect the Boomerang nursery as a nursery provider. The only duty as regards Boomerang in determining Gingerbread’s application for planning permission was in relation to the listed building that Boomerang occupies (ie not the building’s use as a nursery), as when considering planning applications that affect listed buildings there is a statutory duty for the LPA to have “special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.</p> <p>There is no legal obligation for the council to grant a new lease.</p>

	council to have to act in such a way.	
10.	The water meter for the adjacent Boomerang Nursery is apparently underneath a shed within the Gingerbread demise and as a consequence there are problems for Boomerang to obtain meter readings and accurate billing based on consumption.	In the event that a new lease is granted to Gingerbread it will be a condition of the lease that the water meter is moved to an accessible location.
Asset Management		
11.	A new building may impact on the value of existing Boomerang building.	The previous asset valuation of the Boomerang building was completed in 2013, however the asset is treated as a finance lease so is not recorded on the council's balance sheet and the valuation is not updated. There is therefore little impact.
12.	The current tenant could stay there on his existing lease and renew the building.	<p>There are 12 years remaining on the existing lease at a rent of £7800. The lease is excluded from the provision of the Landlord and Tenant Act and therefore has no statutory right to renewal. Alterations are permitted on prior consent of the council which cannot be unreasonably withheld.</p> <p>Given the level of investment required (we are advised C£360,000) replacing the building on a term certain of 12 years at a rent of £7800 is unlikely to be considered viable, hence the tenants request for a lease re-gear.</p> <p>However, whether the tenant demolishes and rebuilds the building under the existing or a new lease, the Ward Councillors' objections are against the new building, rather than the provision of a new lease and therefore should the tenant demolish and rebuild under the existing lease the Ward Councillors' concerns would not be addressed.</p>
13.	Check how many other parks in B&H have nurseries within them. Do any have 2?	<p>Excluding Forest School nurseries, other parks with nurseries include:</p> <ul style="list-style-type: none"> • Easthill • Wish • Nevill • Knoll • Westdene • Preston <p>Only Saltdean Oval has 2 nurseries</p>
Governance and Legal		
14.	The council cannot be bound by the decision of the local planning authority, they act in	As set out above, the Council's functions as Local Planning Authority and landowner are separate. In the making of planning decisions the LPA is constrained by the need to make decisions on the basis of material planning

	different capacities.	considerations, and the Council as landowner is not bound by these.
16.	Ward Councillors object to the granting of a new lease in the strongest possible terms. They are very concerned if the decision were to be changed, as this will reflect badly on the Ward Councillors and on their integrity as the original decision was made on the basis of the responses received from Ward Councillors when consulted.	The views of the Ward Councillors will be taken into consideration by officers when making a decision under the council's Officer Scheme of Delegations.

