

# LONDON BOROUGH OF ENFIELD

## PLANNING COMMITTEE

Date : 24<sup>th</sup> September 2013

**Report of**  
Assistant Director - Planning,  
Highways & Transportation

**Contact Officer:**  
Andy Higham Tel: 020 8379 3848  
Sharon Davidson Tel: 020 8379 3841

**Ward:** Town

**Application Number :** P13-01929PLA

**Category:** Other Development

**LOCATION:** FORESTERS HALL, 44, CHASE SIDE, ENFIELD, EN2 6NF

**PROPOSAL:** Variation of TP/11/1562 condition 09 to allow the permanent use of the rear outdoor play area for a maximum of 9 children between the hours of 10:00 to 11:30 and 14:30 to 16:00, Mondays to Fridays only.

**Applicant Name & Address:**

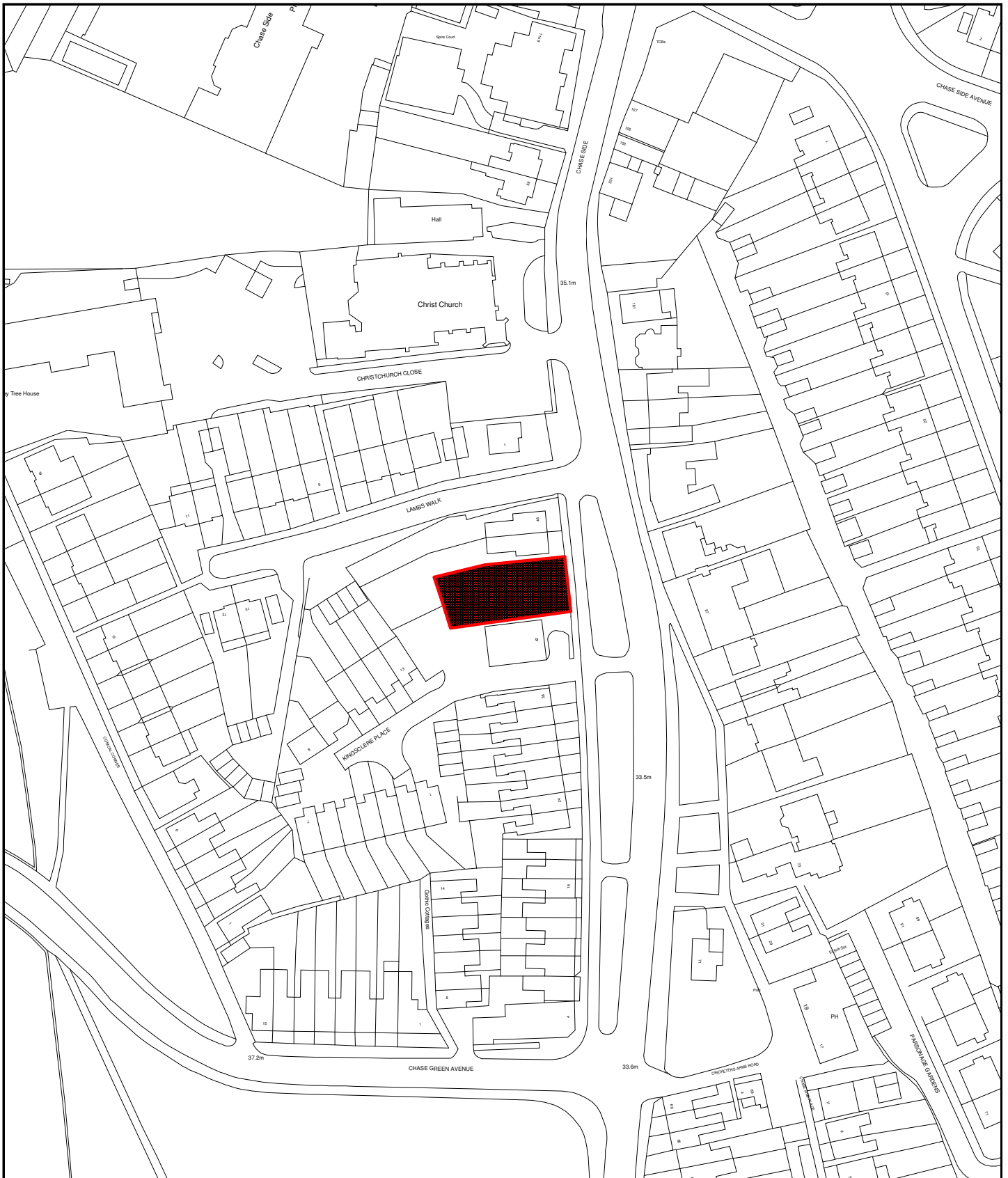
Mrs Kaye Wildman  
FORESTERS HALL,  
44, CHASE SIDE,  
ENFIELD,  
EN2 6NF

**Agent Name & Address:**

Mr Timothy Edens,  
Planning Consultant  
29, CANFORD CLOSE  
ENFIELD  
EN2 8QN

**RECOMMENDATION:**

That permission be **REFUSED** for the variation of condition 9 of planning permission reference: TP/11/1562.



### Development Control



Scale - 1:1250  
Time of plot: 10:23

Date of plot: 06/09/2013

## 1. Site and Surroundings

- 1.1 Forester's Hall is situated along the service road on the western side of Chase Side, close to the residential cul-de-sac Lambs Walk to the north. The application site is located within the Enfield Town Conservation Area.
- 1.2 The application property is a two storey detached building that was formerly occupied by a photographic studio at ground floor level and is now a children's day nursery known as the 'Nursery on the Green'. There is a residential flat at first floor level which benefits from its own independent access at the side of the building.
- 1.3 The property benefits from 4 off-street visitor spaces at the front of the building and a garden to the rear. The original grant of planning permission under reference TP/11/1562 restricted the use of this garden for children's play. A subsequent planning application under reference P12-01274PLA granted temporary permission (for a period of one year) for the use of the rear garden for children's play for one and a half hours in the morning and afternoon.
- 1.4 The application site is surrounded by residential development and the rear garden is bound by neighbouring residential dwellings at Nos. 46 & 48 Chase Side and No. 13 Kingsclere Place.

## 2. Proposal

- 2.1 This application seeks permission for the variation of Condition 9 of the planning permission granted under reference TP/11/1562 to allow the permanent use of the rear outdoor play area for a maximum of 9 children between the hours of 10:00 to 11:30 and 14:30 to 16:00, Mondays to Fridays only. The applicant has indicated that the play sessions would take place for one and a half hours in the morning and afternoon as follows:

| AGE         | MAXIMUM NUMBERS | TIMES         |
|-------------|-----------------|---------------|
| 0 – 2 years | No more than 9  | 10:00 – 10:30 |
| 2 – 3 years | No more than 8  | 10:30 – 11:00 |
| 3 – 4 years | No more than 7  | 11:00 – 11:30 |
|             |                 |               |
| 0 – 2 years | No more than 9  | 14:30 – 15:00 |
| 2 – 3 years | No more than 8  | 15:00 – 15:30 |
| 3 – 4 years | No more than 7  | 15:30 – 16:00 |

- 2.2 The applicant has submitted an open letter from the Nursery on the Green which supports the continued use of the garden for children's play as this provides health and educational benefits for those children attending the nursery.

## 3. Relevant Planning Decisions

- 3.1 The planning history at the application site is as follows:

TP/10/1739 – Change of use from photographic studio to a pre-school for 48 children together with access ramp at side. Refused for the following reasons:

- The proposed change of use to a nursery by virtue of the number of persons to use the premises and potential for significant noise generation would cause undue harm to the amenities of nearby residential properties and prejudice the use of adjacent offices contrary to Policy (II)CS4 of the Unitary Development Plan and 4B.8 of the London Plan.
- The proposed change of use is considered unacceptable due to the narrow width of the Chase Side service road outside the premises and the lack of available off street and on street parking. This would lead to vehicles being unable to pass each other in both directions and increase the possibility of indiscriminate and illegal parking in residential bays and on Chase Side, prejudicial to the free flow of traffic and highway safety and to the parking availability for local residents contrary to Policies (II)GD6 and (II)GD8 of the Unitary Development Plan and Policy 3C.23 of the London Plan.

TP/11/1562 – Change of use of ground floor and first floor storage room into a day nursery for 24 children aged 6mths - 5yrs. Granted subject to conditions, including condition 9 that stated:

The outside rear garden area as shown on the approved plans shall not be used at any times or for any purposes by children attending the day nursery.

Reason: In the interest of the amenities of nearby neighbouring occupiers.

P12-01274PLA – Variation of TP/11/1562 condition 09 to allow use of the rear outdoor play area for a maximum of 9 children at any one given time. Granted subject to a condition that stated:

The outdoor play space as shown on the approved 'Location Plan' shall only be used for children's play by no more than 9 children at any one time and in accordance with the schedule attached between the hours of 10:00 to 11:30 and 14:30 to 16:00, Mondays to Fridays only, excluding Bank Holidays. The use of the garden for children's play shall take place for a temporary period of one year from the date of the Decision Notice. Once this time has elapsed, the outdoor play space shall no longer be used for children's play unless otherwise agreed in writing by the Local Planning Authority.

| AGE         | MAXIMUM NUMBERS | TIMES         |
|-------------|-----------------|---------------|
| 0 – 2 years | No more than 9  | 10:00 – 10:30 |
| 2 – 3 years | No more than 8  | 10:30 – 11:00 |
| 3 – 4 years | No more than 7  | 11:00 – 11:30 |
| 0 – 2 years | No more than 9  | 14:30 – 15:00 |
| 2 – 3 years | No more than 8  | 15:00 – 15:30 |
| 3 – 4 years | No more than 7  | 15:30 – 16:00 |

Reason: To enable the Local Planning Authority to assess the potential noise levels generated by the proposed use of the garden and safeguard the amenity of the occupiers of adjoining properties.

## **4. Consultations**

### **4.1 Statutory and non-statutory consultees**

#### Environmental Health

- 4.1.1 Environmental Officers advise that the use of the outside space has undoubtedly led to some loss of amenity to neighbouring residential properties. Environmental Health has received several complaints from neighbouring properties regarding noise generated by children playing in the garden of the nursery as well as the noise from the supervisors calling to the children.
- 4.1.2 Officers have visited the different complainants several times during mornings and afternoons and on each occasion the issues have been consistently the same, which is noise from children and adults in the garden. The noise from the garden use can be heard throughout the rear of the neighbouring houses. The problem is exacerbated during the summer months, as when the neighbouring residents want to use their garden, they suffer a discernable loss of amenity as the 3 hours-a-day that the nursery garden is used prevents them from comfortably relaxing due to shouting and screaming.
- 4.1.3 Following visits by Environmental Health to several local residents, whilst the noise generated by the children in the garden does not amount to a statutory nuisance, it is considered that there is a loss of amenity in comparison to the situation where the outdoor area at the nursery was not in use.
- 4.1.4 In the original application for use of the garden Environmental Health Officer's did object, but following discussion, it was agreed to allow a temporary permission to use the garden for a restricted period during the day to allow for monitoring. Having now done assessments from the neighbouring gardens over the temporary period, it is clear that noise is audible

### **4.2 Public response**

- 4.2.1 Letters were sent to 7 adjoining and nearby residents. In addition a notice has been displayed on site and in the local press. Twelve letters of objection have been received in response to the application. The concerns raised can be summarised as:
- that the continued use of the garden will result in noise nuisance to adjoining residential gardens and carry through open windows of residential and commercial properties
  - It has been suggested that a maximum of 6, rather than 9 children should be allowed in the garden at any one time to alleviate the some of the noise nuisance currently experienced.
- 4.2.2 In addition, Cllr Rye, Cllr Laban and Cllr Jukes (Town Ward) have objected to the removal of condition 9 of the original planning condition, because this was put in place deliberately by the Planning Committee to protect the amenity of residents in Kingsclere Place and Lambs Walk. They advise that residents should reasonably be allowed to enjoy the outside amenity of their properties without undue noise and disturbance, that removal of this clause would cause.

- 4.2.3 Cllr East has confirmed his support for this proposal, which he considers will benefit residents in both Chase and Town wards.

## **5. Relevant Policy**

- 5.1 The National Planning Policy Framework (NPPF) published in March 2012 allowed local planning authorities a 12 month transition period to prepare for the full implementation of the NPPF. Within this 12 month period local planning authorities could give full weight to the saved UDP policies and the Core Strategy, which was adopted prior to the NPPF. The 12 month period has now elapsed and as from 28th March 2013 the Council's saved UDP and Core Strategy policies will be given due weight in accordance to their degree of consistency with the NPPF.

- 5.2 The Development Management Document (DMD) policies have been prepared under the NPPF regime to be NPPF compliant. The Submission version DMD document was approved by Council on 27 March 2013 for submission to the Secretary of State for examination. Examination and subsequent adoption is expected later this year. The DMD provides detailed criteria and standard based policies by which planning applications will be determined.

- 5.3 The policies listed below are considered to be consistent with the NPPF and therefore it is considered that due weight should be given to them in assessing the development the subject of this application

### 5.4 London Plan 2011

- Policy 6.9 Cycling
- Policy 6.13 Parking
- Policy 7.4 Local Character
- Policy 7.8 Heritage Assets and Archaeology

### 5.5 Core Strategy

- SO10 Built Environment
- CP30 Maintaining and Improving the Quality of the Built Environment
- CP31 Built Landscape and Heritage
- CP32 Pollution

### 5.6 Unitary Development Plan

- (II)GD3 Aesthetic and Functional Design
- (II)GD6 Traffic Generation
- (II)GD8 Site Access and Servicing
- (II)C29 Use in Conservation Area
- (II)C30 Development in Conservation Areas
- (II)CS4 Day Nurseries

### 5.7 Submission version DMD

- DMD18 Early Years Provision
- DMD37 Achieving High Quality and Design-Led Development
- DMD44 Preserving and Enhancing Heritage Assets

DMD45 Parking Standards and Layout  
DMD68 Noise

## 5.8 Other Relevant Policy

National Planning Policy Framework

## 6. **Analysis**

### 6.1 Principle of Development

6.1.1 The application under reference P12-01274PLA granted temporary permission for the use of the rear garden for children's play. This application seeks the permanent use of the garden for outdoor play as set out in the schedule in Section 2. The key issue to consider is the impact the use of the garden has had upon the amenities of nearby residential and commercial occupiers over the past year and whether planning permission should be granted on a permanent basis.

### 6.2 Impact on Neighbouring Properties

6.2.1 In the light of the monitoring that has been undertaken, and the views of the Environmental Health Officer set out above, it is considered that the use of the garden for one and a half hours in the morning and afternoon does result in a loss of amenity to residential neighbouring properties from children's play and nursery supervisors. Whilst this is not considered to be a statutory nuisance, for which the test is different and more onerous, it is considered that the use does result in unacceptable harm to the amenities of adjoining occupiers and therefore continued use of the garden cannot be supported.

6.2.2 It is recognised that refusal of planning permission will result in the nursery having no direct access to outdoor play facilities within the application site. However, it should be noted that the concerns raised by Environmental Health were raised when the original application for the change of use of the premises to a children's nursery was first under consideration and the agent removed the use of the rear garden as a children's play area from the proposal and proceeded to accept and implement the planning permission with a condition preventing use of the garden area for play facilities.

## 7. **Conclusion**

7.1 Having regard to monitoring that has taken place over the temporary period for which use of the garden area was approved, it is considered that the use has resulted in unacceptable noise and disturbance, which harms the amenities of the occupiers of adjoining residential properties and therefore it is considered that permission should not be granted to facilitate the continuation of this use.

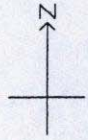
## 8. **Recommendation**

8.1 That permission be REFUSED for the variation of condition 9 of planning permission reference: TP/11/1562 for the following reason:

1. The use of the rear garden area by children and staff of the nursery results in undue noise and disturbance detrimental to the amenities of the occupiers of adjoining residential properties contrary to Policy CP32 of the Core Strategy, (II)CS4 of the Unitary Development Plan and DMD68 of the Submission version Development Management Document.



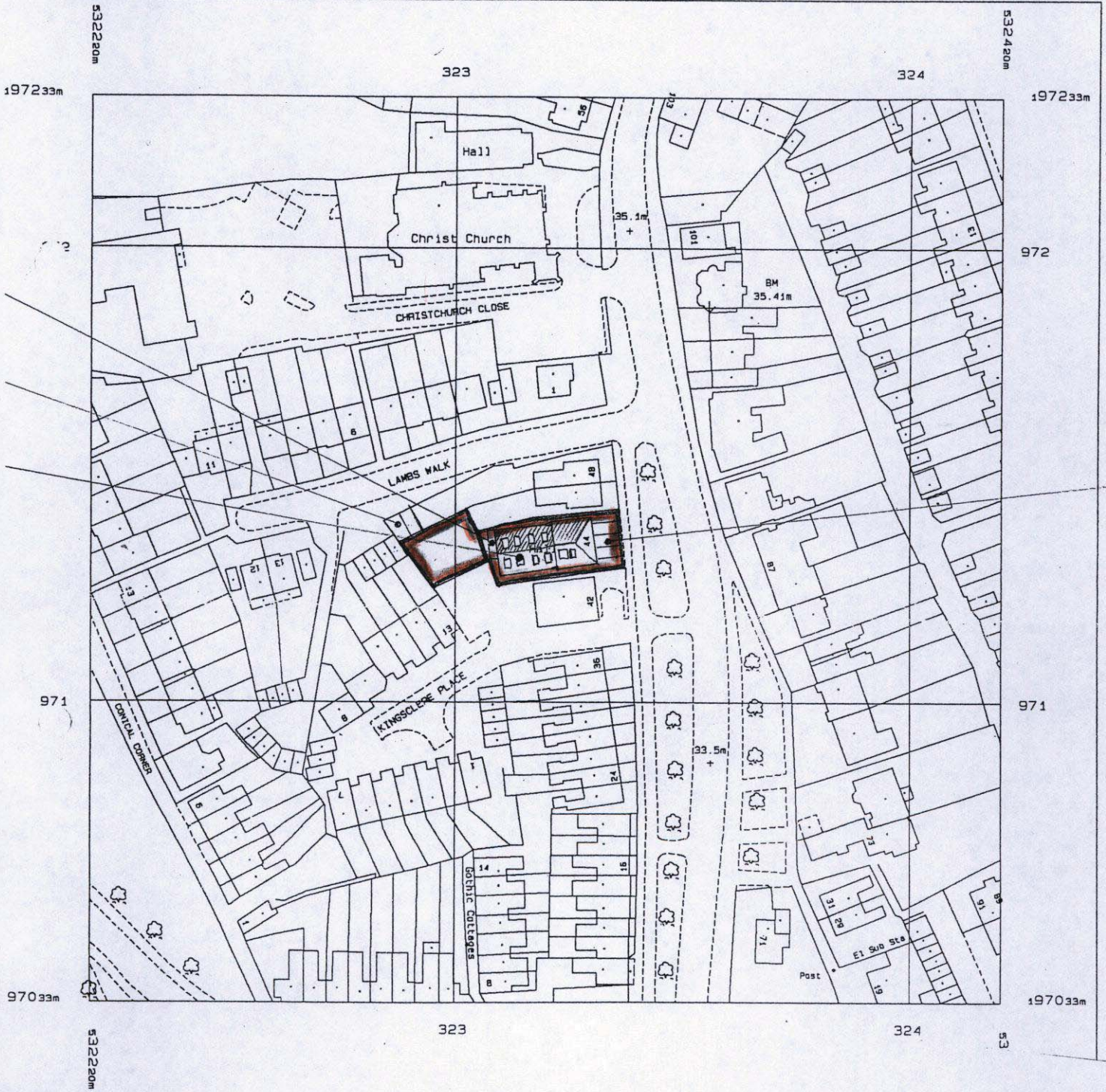
Location Plan  
NURSERY ON THE GREEN



**OS** Ordnance Survey®  
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44 CHASE SIDE

Planning Extract - 1  
Site-centred



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Scale 1: 1250

National Grid sheet reference at centre of this Superplan: TQ3297SW

The representation of a road, track or