
Appeal Decision

Site visit made on 23 August 2016

by Philip Lewis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 September 2016

Appeal Ref: APP/P4605/W/16/3150397

320 Hob Moor Road, Birmingham, West Midlands B10 9HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Miss Aneela Saeed against the decision of Birmingham City Council.
 - The application Ref 2015/08563/PA, dated 10 October 2015, was approved on 16 February 2016 and planning permission was granted subject to conditions.
 - The development permitted is change of use from Use Class A1 (Retail) to Use Class D1 (Nursery) and retention of single storey rear extension.
 - The condition in dispute is No 1 which states that: *"The uses hereby approved shall only take place between 1000 hours to 1400 hours Monday – Saturday"*.
 - The reason given for the condition is: *"In order to define the permission and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Paragraphs 3.8 and 3.10 of the Birmingham UDP 2005 and the National Planning Policy Framework"*.
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Decision

1. The appeal is allowed and the planning permission Ref 2015/08563/PA for change of use from Use Class A1 (Retail) to Use Class D1 (Nursery) and retention of single storey rear extension at 320 Hob Moor Road, Birmingham, West Midlands B10 9HJ granted on 16 February 2016 by Birmingham City Council, is varied by deleting condition 1 and substituting for it the following condition:
 - (1) The uses hereby approved shall only take place between 0730 hours to 1900 hours Monday – Friday and 0800 hours to 1700 hours on Saturdays.

Procedural matter

2. The appellant has submitted with the appeal a technical note which has been prepared to consider the highways impact of the proposal. This includes a plan which shows the provision of off-street parking to the rear of the appeal site on land within the control of the appellant. This plan and proposed parking provision was not part of the proposal before the Council and represents a material change to the proposal. If I were to determine the appeal on the basis of the additional plan it is possible that interested parties who might wish
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to comment would be prejudiced¹. I have therefore determined the appeal on the same basis as the Council.

Background and Main Issues

3. Planning permission for the change of use to a nursery included a condition which limits the hours when the approved uses shall take place. The Council's statement for the appeal indicates that the condition is necessary to safeguard the living conditions of the occupiers of premises/dwellings in the vicinity as set out on the decision notice and additionally makes reference to highway safety concerns. The appellant objects to the condition as she considers that other conditions attached to the planning permission protect living conditions and that parking is available to the rear of the appeal site and wishes to vary the condition to allow longer opening hours of between 0730 and 1900. I saw at my site visit that works were being undertaken at the appeal site.
4. I consider that the main issues are:
 - Whether the condition is necessary or reasonable in the interests of the living conditions of the occupiers of nearby dwellings with particular reference to noise and disturbance; and
 - Whether the condition is necessary or reasonable in the interests of highway safety.

Reasons

Living conditions

5. The appeal proposal relates to a former shop unit, situated in a parade of commercial buildings with flats above. I saw during my site visit that commercial buildings in the parade include a convenience store, hot food takeaway, car sales and several vacant units.
6. Condition 2 of the planning permission limits the maximum number of children at the premises at any one time to 20 and in combination with the disputed hours condition limits the number and times of children. Given the evidence of the need for a limited stay nursery facility in the area cited by the appellant and that the nursery hours would be divided into a number of sessions, the proposed increase in opening hours is likely to give rise to a greater number of movements to and from the appeal site than with the permitted scheme, should a greater number of children in total attend over the course of a day.
7. The appeal premises are situated within a parade of commercial buildings where there is a degree of noise and activity associated with the various businesses. Any additional noise and disturbance which may result from children being dropped off and collected must be considered in this context. Given the nature of the nearby commercial uses, I consider that any increase in activity which may arise in respect of the nursery would not be out of place in this commercial area and would not give rise to unacceptable noise and disturbance. I have also considered the objection from a resident of a nearby flat above 314 Hob Moor Road who is a shift worker. Given that the approved plans do not show any outdoor play area and condition 7 of the permission

¹ Annex M of the Procedural Guide Planning Appeals – England advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

requires a scheme of noise insulation to be provided between the nursery, the floor above and adjoining premises, I consider that the proposal would not give rise to unacceptable effects in terms of noise and disturbance to the occupiers of nearby dwellings.

8. Whilst I note that the appellant had originally suggested the opening hours for the nursery, I consider that the disputed condition as worded is not necessary or reasonable in the interests of the living conditions of the occupiers of nearby dwellings in respect of noise and disturbance. The Council in its suggested conditions includes that the nursery should be open for a shorter period on Saturdays. I consider that this is reasonable as local residents would expect the area to be quieter early on Saturday mornings and evenings than on week days. The proposed extension of opening hours of the nursery would not conflict with saved paragraphs 3.8 and 3.10 of the Birmingham Unitary Development Plan 2005 (UDP) which are concerned with safeguarding environmental quality, or paragraphs 203 and 206 of the National Planning Policy Framework (the Framework) which are concerned, amongst other things, with the use of planning conditions.

Highway safety

9. The appeal site is situated on Hob Moor Road, near the junction with Newbridge Road. I saw during my site visit that there is a forecourt area to the front of the appeal site and that the site has rear access via an existing track from Newbridge Road. I note that, although no formal provision for parking is made in the approved scheme, there is some potential space to the rear which could be used by staff. However, it is unlikely that this area would be used by parents/carers to drop off as access to it would not be convenient. The planning permission for the nursery is subject to condition 5 which is concerned with preventing unauthorised access to the forecourt. I saw at my site visit that there is no on-street parking on Hob Moor Road immediately to the front of the appeal site due to a bus stop and pedestrian crossing, but that Hob Moor Road is not subject to traffic restrictions immediately beyond the commercial parade. I also observed that Newbridge Road is not subject to parking restrictions near to the appeal site.
10. I note that the Council refused a previous planning application for a nursery at the site, in part due to the lack of pick-up and drop-off facilities and inadequate car parking facilities proposed. I have considered the concerns of the Highways Officer as set out in their consultation response, that without a condition restricting operating hours, nursery parking demand would compete with school related demand on Hob Moor Road, particularly during morning peak periods, and that this is likely to further exacerbate issues with illegal and obstructive parking on carriageways and footways.
11. However, on the balance of the limited evidence before me, I consider that the arrival of up to 20 children at the nursery, spread across the morning peak period would not be significant. I have taken into consideration that not all children would arrive by car and that some would arrive before any conflicts could arise with children attending the nearby school. I have also taken into consideration that there is on-street parking available within close walking distance of the nursery and that condition 5 of the permission addresses the issue of forecourt parking. Consequently, I do not consider that any significant effects on highway safety would result from the variation of the condition as

sought and that the disputed condition as worded is not necessary in the interests of highway safety.

12. The Council, in its statement has referred to saved paragraph 8.16 of the UDP which includes that favourable consideration may be given to proposals for day nurseries within mixed use frontages and commercial areas subject to the availability of convenient on-street parking. I consider that the proposal accords with this requirement. I also consider that the proposal would not conflict with the Framework which in paragraph 32 includes that safe and suitable access to the site can be achieved for all people or paragraph 69 which includes that decisions should aim to achieve places which promote safe and accessible developments. Additionally, the proposal would not conflict with paragraphs 203 and 206 of the Framework.

Other matters

13. I have considered the comments from interested persons regarding the safety of children in respect of existing activities at nearby commercial businesses. However, I do not consider that an increase in the opening hours of the nursery as proposed would give rise harm given that children would be in the care of parents/carers and nursery staff. I have also considered the comments regarding the increased demand for parking on businesses in the parade and consider given the number of children involved and the short duration of time taken to collect or drop off children across the day, that any such effects would not be significant.

Conclusions

14. For the reasons given above, I consider that the appeal should succeed. I shall vary the planning permission by deleting the disputed condition and substituting for it an amended condition No 1 as indicated in my decision.

Philip Lewis

INSPECTOR