
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: 22 September 2016

Appeal Ref: APP/P4605/W/16/3151914
680 Tyburn Road, Birmingham B24 9RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Miss Safina Razak, Happy Days Nursery against the decision of Birmingham City Council.
 - The application Ref 2015/10284/PA, dated 15 December 2015, was refused by notice dated 18 May 2016.
 - Planning permission was granted for a change of use of the existing side extension to Class D1 nursery, extended adjacent garden area, construction of new vehicle crossing, and variation of conditions B2, B3 and C3 attached to planning application N/01900/05/FUL to allow amended parking arrangements and increase in children from 25 to 33 reference N/06337/05/FUL on 29 November 2005. Subsequently, planning permission 2014/02667/PA was granted on 14 August 2014 for variation of condition number 5 attached to planning application 2005/06337/PA to allow an increase in children from 33 to 60. The application subject to this appeal sought to vary condition 2 of planning permission reference 2014/02667/PA.
 - The condition in dispute is No 2 which states that: *"The day nursery hereby approved shall accommodate no more than 60 children on the premises at any one time until 31st August 2016, after which the permitted number of children shall revert to 33 as approved under 2005/06337/PA."*
 - The reason given for the condition is: *"In order to give the Local Planning Authority an opportunity of ascertaining whether the development hereby permitted has adversely affected the free flow traffic and the safety of highway users 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 dismissed.

Background and Main Issue

2. Whilst the Council dealt with the application the basis that it sought to vary condition 5 of planning permission reference 2005/06337/PA to allow an increase in children from 33 to 60 at the nursery, it is clear from the application and appeal documentation that the appeal relates to a variation of condition 2 of planning permission reference 2014/02667/PA and I have dealt with the appeal on this basis. This matter makes no difference in terms of my consideration of the planning merits.
 3. Disputed condition 2 of planning permission 2014/02667/PA set a maximum of 60 children to be on the premises at any one time for a temporary period, until
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31 August 2016, after which time the number would revert to 33. The reason for the condition was to allow the local planning authority the opportunity to ascertain whether the development would adversely affect the free flow of traffic and the safety of highway users. The appellant wishes the disputed condition to be varied to read "The day nursery hereby approved shall accommodate no more than 60 children on the premises at any one time". The main issue for the appeal therefore is whether the condition is necessary and reasonable in the interests of the safety of all highway users.

Reasons

4. The nursery is situated at the junction of Tyburn Road and Inland Road. I saw at my site visit that there is a small area of forecourt car parking to the front of the nursery which is marked by concrete bollards which limit access to the forecourt via a footway crossover on Inland Road. The access onto the forecourt from Inland Road is restricted by the narrow width of the footway crossing to one way traffic. I also observed that Tyburn Road to the front of the nursery is a busy dual carriageway with a light controlled junction with filter lanes close to the appeal site and is subject to Red Route restrictions which continue around the junction with Inland Road, up to the dropped kerb for the footway crossover for the nursery. Inland Road to the side of the nursery is relatively narrow and is subject to waiting restrictions between 0830 and 0930 and 1430 and 1530 Mondays to Fridays.
5. Planning permission 2014/02667/PA allowed the nursery to accommodate up to 60 children at any time for a temporary period in order to allow for an assessment of the effects upon the free flow of traffic. The evidence is that whilst the nursery has operated with up to about 40 children in this temporary period, it did not operate at the maximum of 60. The Council states that its Transportation Department has not been able to assess the effects of the business operating with 60 children present, but the observations of the Transport Officers made when the nursery has been operating with fewer children indicate high model split towards the private car, contraventions of Traffic Regulation Orders, parking on the footway on Inland Road and vehicles egressing the site through the bollards. Whilst I have limited details of any such occurrences, I note that the appellant acknowledges that highways problems occur. The proposed increase in the number of children would give rise to a significant increase in the number of trips made to and from the nursery.
6. I have taken into account the statements by the appellant that there have not been any accidents, that they write to parents and carers regarding safe parking, that parking is monitored by CCTV and issues are addressed and that 90% of parents/carers are from the local area and use public transport or walk. I have also considered that children arrive at different times, fewer children attend during school holidays and that parking problems arise from customers of the nearby shop including parking on the nursery drive. I note that the appellant erected bollards to prevent the shop from being accessed by vehicle from its car park. However, on the balance of the evidence, given the characteristics of Tyburn Road, with its red route restrictions and light controlled junction, the width of and parking restrictions on Inland Road, that there are existing problems and the limited size of the forecourt parking and its narrow access, I do not consider it has been demonstrated that the nursery can operate with an increase in the number of children of up to 60 without

detriment to highway safety. I consider that the condition is necessary and reasonable in the interests of the safety of all highway users. The removal of the condition would conflict with saved paragraph 6.39 of the Birmingham Unitary Development Plan (UDP) which sets out factors for the determination of planning applications including safety and saved UDP paragraphs 3.8 and 3.10 which are concerned with safeguarding environmental quality.

Other matters

7. I have taken into consideration that the nursery is in receipt of funding for deprived families within the area and that the area has a particular need in this regard and that it is aiming to increase numbers, mirroring government initiatives. I also note that the nursery is OFSTED registered.
8. I have considered the proposal in the context of the policies of the National Planning Policy Framework which support small businesses, support strong, vibrant and healthy communities by providing accessible local services, creating a high quality built environment and in terms of sustainable development. However, I do not consider that safe and suitable access can be achieved to the site for all people as set out in paragraph 32 of the Framework. I have considered the reference to saved paragraph 4.7 of the UDP which is concerned with day nurseries but have found the proposal to be unacceptable in terms of highway safety. I note the comments regarding the length of time the Council took to determine the application but that is a matter for local government accountability. I also note that the appellant has been working with the Council to address the concerns raised. I have considered that there have been no objections raised in terms of noise and disturbance and that issues regarding waste dumped nearby raised by a third party are as a result of fly tipping. These matters do not outweigh the harm found.

Conclusion

9. For the above reasons and having considered all matters raised, I conclude that the appeal should be dismissed.

Philip Lewis

INSPECTOR