
Appeal Decision

Site visit made on 18 October 2016

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 09 November 2016

Appeal Ref: APP/M4320/W/16/3156025

57 Foxhouse Lane, Maghull, Sefton L31 3EW

- 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 Little Foxes Nursery against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2015/02123, dated 7 December 2015, was refused by notice dated 12 February 2016.
 - The application sought planning permission for the change of use of premises to a day nursery without complying with a condition attached to planning permission Ref 97/0302/S, granted on appeal under reference APP/M4320/A/97/287141/P4, dated 25 February 1998.
 - The condition in dispute is No. 2 which states that: the maximum number of children (including babies) present at the nursery at any one time shall not exceed 15.
 - The reason given by the Inspector for the condition is: in the interests of highway safety.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The use of the appeal premises as a day nursery for 15 children was granted planning permission following an appeal under planning application Ref 97/0302/S. The number of children present at the nursery at any one time was restricted by Condition 2 attached to this permission. It is this condition that the appellant has sought to vary to allow an increase in the number of children present at the nursery to 24.
3. The main issue is whether the disputed condition is necessary and reasonable having regard to highway and pedestrian safety.

Reasons

4. The appeal site forms an existing day nursery located on Foxhouse Lane, Maghull. The area is generally residential in character. The site has a front forecourt providing 5 car parking spaces and has two points of access operating an in/out arrangement. The premises are located on the inside of a bend in Foxhouse Lane where forward visibility is restricted. I noted a 'Slow' road
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- marking by the entrance to the site. There are no parking restrictions in the vicinity and the road has a 20 mph speed limit.
5. The number of on-site parking spaces meets the requirement for a nursery set down in the Council's Supplementary Planning Document (SPD) Ensuring Choice of Travel. The Technical Highways Note provided by the appellant shows a maximum of 3 vehicles parked on the forecourt at the busiest drop off/ collection times. The Note advises that the proposed increase in children would be likely to result in 7 additional vehicles. This has been calculated on the basis that currently around 80% of children arrive by car. The Note suggests that it is likely this would increase the maximum number of vehicles at the premises at any one time to 5. This number would be able to be accommodated on the site.
 6. The nursery is staffed by the owner who lives on site and 7 part time staff. I note that from the appellant's evidence that currently there is no demand for parking by employees, apart from the owner's vehicle which I am advised is housed in the garage. However this situation could change in the future, particularly if any further staff are required to look after the additional 9 children. It is therefore likely that staff would use the forecourt and reduce the available spaces for parents dropping off/collecting children.
 7. I consider that in this location with the premises sited on the inside of a bend with limited visibility it is essential that adequate off road parking is provided for parents as well as for staff in the interests of highway safety. I have had regard to photographs provided by a neighbour who suggests that staff regularly park on a nearby side road, Croftfield. However I have no evidence to confirm this.
 8. The appellant's Technical Note also provides evidence that parents dropping off and collecting children parked their cars on the highway, with a maximum of 3 vehicles being observed. This took place when there were available parking spaces on the site. This occurrence has been confirmed by the Council's own parking survey. I accept that there are no parking restrictions on Foxhouse Lane to prevent such parking and that the dropping off/collecting of children would be spread over a period of time. However an additional 9 children, increasing the current number of children attending the nursery by 60%, would increase the risk of on street parking in an undesirable location close to a bend with poor visibility. This would present a danger to pedestrian and highway safety.
 9. I observed on my site visit that the existing visibility splays to the site egress are substandard. The appellant has submitted an additional plan with the appeal submission illustrating improvements that could be achieved through relocating or lowering the existing boundary wall and pillars. However the required sight line of 2x40 metres would still not be achieved to the nearside of the road. In addition the on street car parking that currently takes place would reduce the sight lines and visibility for vehicles and pedestrians. With the potential for on street car parking to increase if additional children were to attend the nursery, this would be exacerbated.
 10. The Council has made reference to their observation of current manoeuvring issues in the forecourt. Vehicles whilst reversing obstruct the access/egress in to the site and also encroach onto the footway. Additional vehicles using the

forecourt, particularly if all 5 spaces are occupied, would exacerbate these problems.

11. I have had regard to a previous appeal decision on the site for a similar variation of condition to allow 24 children at the nursery. This was dismissed in 1998. The Council argues that this forms a material consideration particularly as there have been no significant changes in the locality since that time. However it appears to me that there has been change, in that the speed limit has been lowered to 20 mph and the car parking requirements have been updated with the adoption of the Councils SPD Ensuring Choice of Travel. I have considered both of these factors.
12. The appellant argues that the Council has not demonstrated that the development would not result in a severe adverse highway impact and therefore it would not conflict with paragraph 32 of the National Planning Policy Framework (the Framework). Whilst the Council have not put forward this argument they have provided evidence that in their view the increase in children would be a danger to road safety. They argue that the development would not be provided with a safe and suitable access, which is also a requirement of paragraph 32 of the Framework.
13. I acknowledge that the speed limit on Foxhouse Lane was reduced to 20 mph in 2013 to improve road safety for pedestrians and cyclists. It is clear from the appellant's Technical Note that this speed limit is not always adhered to by drivers. This I observed during my visit. The enforcement of this speed limit forms a Police matter outside the considerations of this appeal.
14. I note from the appellant's evidence that the current access arrangements and parking for the nursery have operated well for 15 children over the last 17 years. I am also advised that there have been no recorded road accidents in the vicinity of the site within the last 5 years.
15. However, whilst the on-site car parking meets the requirements of the Council's SPD and the 5 available parking spaces appear to be adequate to cater for parent's vehicles, I am not persuaded on the basis of the evidence before me that there would be sufficient car parking for parents, staff and the owner of the nursery. This should be achieved in order to ensure that on street car parking would not increase in this difficult location close to a bend in the road. Furthermore whilst the existing sight lines could be improved, the nearside sight line would still be deficient. Together with the potential increase in manoeuvring difficulties on the site, I consider that the appeal proposal would give rise to a severe localised effect on highway and pedestrian safety. The proposal would not provide a safe and suitable access and would therefore not accord with paragraph 32 of the Framework. Furthermore the proposal would be contrary to Policy AD2 of the Sefton Unitary Development Plan which seeks to ensure safe and adequate access and circulation within a site and in its connections to the public highway.
16. For the above reasons and having had regard to all other matters raised, I conclude that the appeal should be dismissed and the condition retained in its present form.

Helen Hockenfull

INSPECTOR