
Appeal Decision

Site visit made on 25 October 2016

by A A Phillips BA(Hons) DipTP MTP MRTPI

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

Decision date: 1 December 2016

Appeal Ref: APP/X4725/W/16/3155506

Alverthorpe Grange, 5 Conway Road, Wakefield WF2 0AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class T of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Miss Kirsty Child against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref 16/01099/COU, dated 29 April 2016, was refused by notice dated 28 June 2016.
 - The development proposed is a change of use from office (B1) to a day nursery and pre-school (D1).
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class T of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 2015 GPDO) for a change of use from office (B1) to a day nursery and pre-school (D1) at Alverthorpe Grange, 5 Conway Road, Wakefield WF2 0AZ in accordance with the details submitted through application, Ref 16/01099/COU, dated 29 April 2016. The approval is subject to the condition that the development must be completed within a period of three years starting with the date of this approval in accordance with Paragraph T.2 (2) of the 2015 GPDO and subject to the following additional conditions:
 - 1) The use hereby permitted shall only take place between 07.30–18.00 hours Monday–Friday and not at any time on Saturdays, Sundays or bank/public holidays.
 - 2) The use hereby permitted shall not commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of boundary fencing. Once approved, the scheme shall be fully implemented before the use commences and be retained thereafter.
 - 3) The number of children engaged in outside play and learning shall be restricted to a maximum of 8 at any one time.

Procedural Matters

2. I have taken the description of the proposal from the appellant's appeal form and the Council's decision notice rather than the extended description set out
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on the original application form. The description used above accurately describes the proposal the subject of this appeal.

Main Issue

3. The provisions of Schedule 2, Part 3, Class T of the 2015 GPDO require that applications such as this be assessed on transport and highways impacts, noise impacts and contamination risks on the site. For the reasons set out in the officer's report, the Council takes no issue with the transport and highways impacts of the development proposed, or with contamination risks on the site. Accordingly, the main issue in this instance is the effect of the proposal on the living conditions of the occupiers of neighbouring residential properties with particular reference to noise.

Reasons

4. The appeal site is located in a residential area, is surrounded by residential properties and shares its boundary with the curtilage of five properties. At the time of my early afternoon mid-week site visit, I observed that the ambient and background noise at the site comprised mainly local and more distant traffic with some minor residential generated activity. I did not notice any noise specifically associated with the nearby Aldi store or junior and infant school nearby.
5. The evidence before me suggests that the matter of concern is related to external play rather than noise from inside the property which, according to the appellant's planning submission would be mitigated by the double glazing which has been installed throughout the building.
6. In support of the proposal, a detailed Noise impact Assessment (NIA) has been submitted by the appellant. Based on a baseline noise survey and noise levels measured at a nursery site in Boston Spa (adjusted downward to reflect the fewer children that would be outside at any one time at the appeal site) the NIA concludes that, subject to mitigation measures¹, outdoor play activities at the appeal site would not have a significant effect on internal noise levels at the nearest residential properties, even when windows are partially open (when assessed against BS8233:2014 'Guidance on Sound Insulation and Noise Reduction for Buildings'). It also concludes that noise levels within the nearest residential gardens would also be acceptable, with predicted levels being well below the onset of serious annoyance based on the parameters set out within the World Health Organisation's Guidelines for Community Noise.
7. The Council's Environmental Health Officer disputes the findings of the NIA and the methods of noise measurement employed, suggesting that likely noise from the development proposed in relation to external play and learning, would have a significant adverse impact on the living conditions of nearby residents in terms of noise. However, it is for the Council to produce evidence to substantiate each reason for refusal on appeal. In this instance, the Council has provided no substantiated evidence, such as its own NIA for example, to support its concerns in this regard.

¹ Namely restricting the number of children outside at any one time and the erection of 2 metre high close boarded fencing to the south of the proposed outdoor play space (towards the northern boundary with Grange House)., The premises would only operate on weekdays, with no weekend activity. All these matters could be controlled by condition were the appeal to succeed.

8. In response to the Council's concerns the appellant has provided further clarification on their approach to assessing the noise issue in the NIA. In particular, the time weightings are explained and it is confirmed that a +3dB character penalty has been included to reflect typical nursery playground noise including 'shrieks etc'. In addition, it is confirmed that the predicted garden noise level at 28 Gentian Court is based on a 14 metre separation distance. Even though the centre of the garden of No 45 Gentian Court is closer, around 13 metres from the centre of the proposed outdoor play area, that would not change significantly the level of impact, given existing ambient noise levels. All in all, I am satisfied that the NIA is based on pertinent guidance.
9. According to the National Planning Policy Framework (the Framework) planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life, and refers to the Noise Policy Statement for England (NPSE). Adverse impacts on health and quality of life arising from noise from new development should be mitigated and reduced to a minimum, including through the use of conditions. Furthermore, Planning Practice Guidance defines a Significant Observed Adverse Effect Level as where '*The noise causes a material change in behaviour and/or attitude. E.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Quality of life is diminished due to change in acoustic character of the area*'.
10. I accept the Council's view that the former use of the building as an office is very different from the proposed use and requires careful assessment. However, although I recognise that the site is in close proximity to neighbouring residential properties which would be sensitive to noise, the substantiated evidence before me demonstrates that the proposal would not, subject to the aforementioned mitigation measures, result in levels of noise that could be defined as having a Significant Observed Adverse Effect.
11. In the absence of any objective evidence to the contrary, I conclude that the proposal would have no unacceptable effect on the living conditions of the occupiers of neighbouring residential properties with particular reference to noise. Therefore, I consider it to be compliant with the provisions of the Framework.

Other Matters

12. An objection has been received from a local resident raising a number of concerns, including parking. No evidence has been presented that the proposal would result in any significant transport and highways impacts.

Conditions

13. Section W (13) of Part 3 of Schedule 2 of the 2015 GPDO allows local planning authorities to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council has suggested two conditions in the event that the appeal was to succeed. The first suggests restricting hours of use to between 08.00-18.00 Monday to Friday with no opening at weekends or bank holidays. However, the appellant indicates that a minimum start time of 07.30 is required. I note, in this regard, that the NIA is based on a weekday start time of 07.00. Since I have found no material harm in terms of noise, I am satisfied that a start time of 07.30, as

sought by the appellant, would be appropriate in this instance and have altered the suggested condition accordingly.

14. The second suggested condition required that external areas not be used for play, structured learning or other related outdoor activity at any time.
15. However, it would be unreasonable to allow a nursery with no outdoor play space and I have found no harm in terms of the use of that space in relation to noise. The suggested condition is thus unreasonable and unnecessary. I have, however, imposed conditions restricting the number of children engaged in external play and learning at any one time and requiring the implementation of a scheme of boundary fencing in order to protect the living conditions of the occupants of nearby residential properties. I am satisfied that these would not come as a surprise to the parties, since they are referred to in a number of places as a mitigation measure in relation to noise, with the NIA including an adjusted predicted noise level to reflect the fewer children that would be playing outside when compared to the reduction in the predicted noise levels compared with the levels recorded at the larger nursery at Boston Spa.

Conclusion

16. For the reasons given above and taking into account other matters raised I conclude that the appeal should be allowed.

Alastair Phillips

INSPECTOR