
Appeal Decision

Site visit made on 21 November 2016

by Mr K L Williams BA, MA, MRTPI

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

Decision date: 2 December 2016

Appeal Ref: APP/U2615/C/16/3150219

Land at Beau Rivage, 93 California Avenue, Scratby, Great Yarmouth, Norfolk, NR29 3NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms A Ewing against an enforcement notice issued by Great Yarmouth Borough Council.
- The enforcement notice, ref: ESN/818/16, was issued on 9 May 2016.
- The breach of planning control as alleged in the notice is the material change of use from the authorised established use of a single dwelling to a mixed use of C3 Single dwelling and D1 Day Care Nursery/Childminding Business.
- The requirements of the notice are that:
 - i) No more than 2 clients are allowed to pick up or drop off children at the property within any 15 minute period on any day. When clients are dropping off and collecting children all vehicles should park within the site edged red on the plan attached to the notice, entering and leaving the property in a forward gear;
 - ii) No more than one member of the staff is allowed to work on the property at any time without the prior written consent of the Local Planning Authority;
 - iii) No more than a total of 6 children are to be minded on the property at any time. In addition to the 6 children being minded, during Norfolk County Council school term times only; the siblings of any children being minded as part of the daily total of 6, can be dropped off to school from the land and picked up from the school and returned to the property for collection with their siblings;
 - iv) No school drop offs or pick-ups are to be provided for children who do not have a sibling being minded at the property on the day when a drop off or pick up is taking place;
 - v) Opening times are restricted to 0730-18-30 between Mondays – Fridays. No children are to be minded at the property on weekends. Outside of these hours no children are to be child minded at the property and no drop offs or collections are to take place;
 - vi) The childminding/nursery use is to remain subservient to the use of the property as a single dwelling and is only to be carried out by the owner occupier of the property while they are residing within the main dwelling house on the land;
 - vii) At all times a register must be kept available for inspection detailing the full names of each child being minded on the property that day and confirming the full names of all children being dropped off at and collected from the school that day.
- The period for compliance with the requirements is 2 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal succeeds and planning permission is granted subject to conditions as set out in the Formal Decision.

Preliminary Matters

1. Reference in the enforcement notice allegation to Use Classes C3 and D1 is not appropriate in the context of a mixed use, which is a “sui-generis” use. The appellant explains that she operates as a childminder rather than a day-nursery, which would require compliance with different regulations. These matters can be corrected without injustice as set out in the Formal Decision. On that basis the deemed planning application is for a material change of use from a single dwelling to a mixed use of use as a single dwelling and for childminding.

Main Issue

2. The purpose of the notice is not to secure cessation of childminding at the property. It is to remedy the injury to amenity that the Council considers arises from traffic movements to and from the property. The notice seeks to do this through compliance with its requirements. The appeal on ground (a) and the related deemed planning application is for a material change of use to the alleged mixed use. The main issue is whether adequate access, parking and service arrangements can be provided.

Background

3. No.93 is a large detached house and is at the northernmost point of California Avenue. It is approached along an unmade section of road, which is of limited width. The road is surfaced with hardcore and has an uneven, potholed surface. Some of the ground floor accommodation is used for the childminding business and there is provision for outdoor play in part of the rear garden. There is a forecourt at the front of the property and a driveway along one side of the house leads to a double garage.
4. The appellant explains how childminding operates at the site. In term time up to 6 children are minded. Transport between the property and school is also provided for their siblings. During the 38 weeks of the school terms children arrive between 07.30 and 08.30. Siblings of those to be minded at the property are taken to school. Between 09.00 and 15.00 children are looked after and between 15.30 to 18.30 school age children are collected and returned to the house. The children are then picked up by parents or carers. Outside term times up to 9 children are cared for, including 2-3 of school age. Sessional care is not offered and, in addition to the appellant, there is one childminding assistant. That person drives to and from the premises.

Whether Access, Parking and Service Arrangements are Adequate

5. Amongst other things, policy EMP18 of the 2001 Great Yarmouth Borough-Wide Local Plan requires that small scale businesses have adequate access, parking and service arrangements. Amongst other things policy CS6 of the Council’s Core Strategy encourages flexible working by allowing home working where there is no adverse impact on residential amenity.
6. The appellant asserts that some clients walk to the premises and that there are no more than 6 vehicles dropping off children per day. She observes that the school trips would in any case be necessary for her own children. Clients have been asked to drive and park with consideration. Nevertheless, a number of local residents nearby are concerned about traffic related problems, including congestion and blocking of property entrances, which they attribute to the

childminding business. Reference is made to the limited width and poor condition of the road, excessive speed by some drivers, noise and disturbance from traffic and the lack of authorised areas for parking.

7. I appreciate the concerns of local residents. On the other hand, while there is not unlimited parking available, there is a good amount of space in the forecourt of the house for clients to use when picking-up and dropping off children. Other space to the side of the house is limited width but can be used for parking the appellant's own vehicles and that of an assistant. Those picking up and dropping off children are unlikely to arrive at precisely the same time. A minibus used for school drop-offs is parked immediately east of a boundary hedge. The road widens a little at its northern end which would allow any clients who drop off or collect children at that point to reverse into the forecourt of no.93 and leave in forward gear. Provided that the business is of a limited scale it is unlikely to generate many trips for servicing purposes.
8. The site is reasonably close to a bus route and is well located for access by public transport or on foot. The nature of the access road is likely to help discourage excessive speed. Having regard to the limited width of the road I do not doubt that its use causes inconvenience for local residents. However, it is used by other traffic, so that some of the problems experienced by residents may be unrelated to the childminding business. The appellant provides some photographs of vehicles in the vicinity which are said to be unrelated to the childminding use.
9. I also take into account that some childminding activity at the property could take place without the need for express planning permission but would, nevertheless generate traffic movements. An appeal decision concerning a site in Willingham is submitted (APP/N2535/C/10/2141442). The Inspector remarked that the main parties agreed that the minding of up to 6 children at that site, excluding the appellant's own children, would not amount to a material change of use. He saw no reason to take a different view but also observed that this was a matter of fact and degree in each case.
10. Taking into account the nature of the road access and the interests of residential amenity this is not a location where an unrestricted childminding business would be appropriate. Nevertheless, subject to appropriate conditions, which I address below, the mixed use of the property would be acceptable with regard to access, parking and service arrangements. It would not meet the criterion in policy CS6 of avoiding any adverse effect on residential amenity but it would not conflict with policy EMP18.

Other Matters

11. There is an extensive garden but only a small part is used in connection with childminding. There are hazards elsewhere in the garden so the limited use of the garden by children is unlikely to change. The enterprise is of a small scale and the part of the garden used by the children is well separated from neighbours. There is unlikely to be undue noise and disturbance to neighbours from children playing.
12. Reference is made to a critical need for local, affordable and good quality childminding in rural areas, its contribution to the well being of families and the wider economy and the decline in childminder numbers. The Council does not

dispute the need for such facilities. These matters weigh in the appellant's favour.

Conditions

13. I have had regard to the conditions suggested by the Council, to the appellant's comments on them and to her own suggestions. Conditions are required to define the use and to protect residential amenity. In all the circumstances the Council's suggestion of limiting the number of children to be minded to 6 is reasonable and necessary. A limitation on operating hours is also required and is not disputed between the parties. The appellant observes that National Standards allow a childminder to have up to two assistants. However, having regard to the constraints on parking at the site, a limitation to one assistant is reasonable and necessary in this case.
14. Some of the suggested conditions would not meet the six tests for conditions as set out in paragraph 206 of the National Planning Policy Framework. The Council's proposes a condition limiting the number of drop-offs in any 15 minute period and requiring all clients to park within the property. The appellant can encouraged good conduct by clients. However, these matters are beyond her direct control and the condition would be unenforceable. The extent of the childminding element of the mixed use would be controlled by the limitation on numbers and operating hours. A condition requiring it to remain subservient to the use as a dwelling is unnecessary. Planning Practice Guidance explains that planning permission runs with the land and it is rarely appropriate to provide otherwise. My decision in this appeal does not turn on the particular personal circumstances of the appellant and a personal condition would not be appropriate.
15. The Council also suggests a condition requiring the keeping of a register of children attending, which would be available for it to inspect. The appellant suggests that this would infringe the Data Protection Act unless it was kept with the consent of the parents/carers. It has not been shown that such consent is likely to be withheld if the function of the register was explained. Nevertheless, should the Council have reason to consider that a breach of planning control was occurring, for example by the minding of numbers of children in excess of those allowed by condition, it would be able to serve a Planning Contravention Notice (PCN). There are penalties for the provision of false information or failing to respond to a PCN. In that context a condition requiring a register is unnecessary. No such condition was imposed in appeal decision APP/N2535/C/10/2141442, to which I refer above.

Overall Conclusion

16. Having regard to the above and to all other matters raised the appeal should succeed. Planning permission should be granted subject to conditions as set out in the Formal Decision. The enforcement notice should be corrected and quashed.

Formal Decision

17. I direct that the enforcement notice be corrected by the replacement of the words in paragraph 3 after the paragraph title with the words: "Within the last 10 years the property has undergone a material change of use from a single dwelling to a mixed use of use as a single dwelling and for childminding."

18. I allow the appeal, quash the enforcement notice as corrected and grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for a material change of use from a single dwelling to a mixed use of use as a single dwelling and for childminding at Beau Rivage, 93 California Avenue, Scratby, Great Yarmouth, Norfolk, NR29 3NS subject to the following conditions:

1. No more than 6 children are to be minded at the property at any time.
2. Opening times for childminding at the property shall be limited to 07.30 to 18.30 between Mondays to Fridays. No children are to be minded at the property at weekends. Outside these hours no children are to be minded at the property.
3. In addition to the occupiers of the property, no more than one member of staff shall work at the property at any time.

K Williams

INSPECTOR