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## Appeal Decision

Site visit made on 10 January 2017

**by John Dowsett MA DipURP DipUD MRTPI**

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

**Decision date: 17<sup>th</sup> January 2017**

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**Appeal Ref: APP/J1915/W/16/3159210**

**Dhoon, Epping Green, Near Hertford SG13 8NB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs S Baker of Apple Daycare Limited against the decision of East Hertfordshire District Council.
  - The application Ref: 3/16/1163/FUL, dated 18 May 2016, was refused by notice dated 10 August 2016.
  - The development proposed is use of part of the ground floor for the purposes of childcare on a domestic premises for up to 42 children and erection of a single storey rear extension.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by East Hertfordshire District Council against Mrs S Baker of Apple Daycare Limited. This application is the subject of a separate Decision.

### Main Issues

3. The main issues in this appeal are:
    - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
    - The effect of the development on the openness of the Green Belt;
    - The effect of the proposed development on the living conditions of the occupiers of neighbouring residential properties with particular regard to noise and disturbance; and
    - If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and amounts to the very special circumstances necessary to justify the development.
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## Reasons

4. The appeal building is a substantial detached building that was originally a dwelling but which has planning permission to operate as a childcare facility/day nursery for up to 32 children, resulting in the building having a mixed use as a dwelling and childcare facility.

### *Whether the proposal is inappropriate development in the Green Belt*

5. It is common ground between the parties that the use of the building for the provision of childcare does not constitute inappropriate development in the Green Belt, and I have no reason to arrive at a different conclusion. The principal question is whether the proposed extension would be inappropriate development.
6. The National Planning Policy Framework (the Framework) establishes that new buildings in the Green Belt are inappropriate development unless, among other things it involves the extension of a building. This is provided that it does not result in disproportionate additions over and above the original building. Policy GBC1 of the East Hertfordshire Local Plan Second Review, 2007 (EHLP) deals with the Metropolitan Green Belt but does not contain any detailed guidance about the approach that the Council will take in considering such proposals.
7. The EHLP pre-dates the Framework and Policy GBC1 is based on earlier planning guidance<sup>1</sup> and, consequently, only refers to limited extensions or alterations to existing dwellings, and not to all buildings, in respect of inappropriate development. However, the main thrust of the policy is that within the Green Belt planning permission will not be given for inappropriate development unless very special circumstances can be demonstrated, which is consistent with the Framework and the policy can, therefore, still be given very significant weight.
8. Policy ENV5 of the EHLP relates to extensions to dwellings and states that outside of main settlements and larger villages extensions to dwellings will be expected to, not disproportionately alter the size of the original dwelling, either by itself or cumulatively with other extensions.
9. In determining whether or not extensions will be disproportionate, the starting point is the size of the original building. Annex 2 of the Framework defines 'original building' as a building as it existed on 1 July 1948 or if constructed after 1 July 1948, as it was built originally. From the evidence provided by the Council, the property was originally constructed as a bungalow in 1955 and was subsequently extended at ground floor level and later a first floor was added. The Council calculate that the floor area of the original bungalow was approximately 120 square metres and that the previous extensions have more than doubled the floor area of the original building. These calculations are not disputed by the appellant. These previous extensions have also substantially increased the height of the building. The proposed extension would add a further approximately 77 square metres floor area to the building.
10. Based solely on this statistical measurement the proposed extension, when combined with the earlier additions, would lead to a very significant increase in the size of the building both in terms of floorspace and volume.

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<sup>1</sup> Planning Policy Guidance Note 2: Green Belts

11. The appellant suggests that, were the appeal building solely a dwelling, the proposed extension could be erected under the permitted development rights for larger extensions set out in Part 1, Class A of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) and that on this basis, it cannot be considered disproportionate. Whilst permitted development is, in general, development that is unlikely to have harmful effects it is, however, not implicit that development carried out under permitted development rights would be proportionate to the property that is to be extended. The Order makes no reference to proportionality in determining whether a development is permitted under its terms.
12. Assessing proportionality is primarily an objective test based on size. Comparing the building as originally constructed in 1955 to the one which would result if the proposed development were to go ahead, the outcome would be disproportionate. It would therefore be inappropriate development which is, by definition, harmful to the Green Belt. The Framework requires that substantial weight should be given to any harm to the Green Belt. The proposed development would as, a result, also not comply with Policies GBC1 and ENV1 of the EHLP which set out the criteria for development in the Green Belt and outside of main settlements. I therefore attach substantial weight to the harm arising from the inappropriate nature of the proposed development.

*The effect of the development on the openness of the Green Belt*

13. A fundamental aim of Green Belt Policy, as set out in Paragraph 79 of the Framework, is to keep land permanently open and openness is an essential characteristic of the Green Belt. The construction of the extension would result in built development where there is presently none, and would inevitably lead to a loss of openness. As the proposal is an extension to an existing building, the loss of openness would, however, be minimal and would have a broadly neutral effect on the openness of the Green Belt.

*Living conditions of the neighbouring occupiers*

14. The Framework sets out as one of the core planning principles that new development should seek to secure a good standard of amenity for all existing and future occupants of land and buildings. Policy ENV1 of the EHLP also seeks to ensure that the occupiers of neighbouring buildings are not harmed by noise or disturbance.
15. Neither party has submitted any substantive, technical, evidence in respect of noise. The appellant has stated that the existing planning conditions which regulate the use of the premises for the provision of childcare and the measures that these require to control noise would remain in place once the development was carried out. It is also stated that the extension would be located on an area which is presently used as an outdoor play area for children which would remove an existing potential noise source. I do not have the full wording of the conditions attached to the present use of the property but from the evidence submitted these relate, among others, to the provision of an acoustic fence, a scheme for the management of outdoor activity and specified hours during which the childcare use can operate. The Council cite objections received from neighbouring properties in respect of the current operation of the childcare business but it is not suggested that there is any breach of the existing conditions.

16. The concerns expressed by neighbours relate to noise both from outdoor activities and from increased vehicular activity at drop off and pick up times.
17. I note that the Council's Environmental Health Officer did not have any objections to the proposal. The Council suggest that there is potential for harmful effects that do not necessarily constitute a statutory nuisance and that the existing noise mitigation measures may not necessarily address any noise arising from the increase in the number of children cared for. The only elaboration on this point is in respect of noise arising from children playing outdoors. The extension would be built on the area currently used for outdoor play. The Council have expressed concern about the displacement of this to another part of the site, however, the planning statement submitted with the planning application is quite explicit in that it is not intended to provide a replacement outdoor play area and that this activity would take place within the proposed new conservatory.
18. When I visited the site, the nursery use was in operation although, due to the time of year, the outdoor play area was not in use. The background noise levels in the area around the appeal building are low. At the rear of the building there was some noise audible from activities within the building, nonetheless, this was of a very low level and was not audible beyond the patio area.
19. From the representations received from neighbours in response to the planning application, it is apparent that the existing use of the building causes a degree of disturbance at certain times, although the duration and frequency of this disturbance is unspecified. Notwithstanding the appellant's statement that it is not intended to replace the outdoor play area for under three year olds, given the extent of the garden area associated with the building and the nature of the use, I consider that it is likely that there would be some external activity at the premises. However, the extent and location of this could be controlled by way of an appropriately worded condition.
20. Of the neighbouring residential properties, White Lodge is closest to the appeal building and has windows that face onto its parking area and driveway. Increased activity within this parking area would result in a slight increase in disturbance to the occupiers of this property at the times when children are being dropped off and picked up. Three Oaks, to the north, is located further from the appeal building and is set back only a short distance from the carriageway of the road. This road is relatively heavily trafficked and a small increase in the number of vehicles passing the house as a result of the proposed development would not significantly increase the disturbance already experienced from this road.
21. The increase in the number of children at the premises resulting from the proposal would result in a slight increase in the level of disturbance experienced by adjoining occupiers from external activities and vehicular movements, however, from the evidence before me and from what I saw on my site visit, this would not be so significant an increase over the prevailing situation as to warrant refusing planning permission. I therefore find that the proposed development would not cause harm to the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise and disturbance. It would comply with the requirements of Policy ENV1 of the EHLP and the Framework, which seek to ensure a good standard of amenity for

all occupiers. As this would not significantly alter the current situation, I only attach limited weight to this.

*Other considerations*

22. Highway safety was not raised as an issue by the Council and I note that the Highway Authority have not objected to the proposal on highway safety grounds, provided that the existing travel plan continues to operate, and have commented that if there were to be a future increase in the number of children, only then would the travel plan require updating. Whilst the road outside the appeal building is relatively heavily trafficked, a small increase in the number of vehicles accessing the site would not, in my view, result in any severe impacts on highway safety. Again, as this would not significantly alter the current situation, I attach only limited weight to this.
23. In support of their proposal the appellant cites a need for childcare facilities in the area. Whilst there is some evidence of demand for places and a need for childcare facilities, this has not been quantified and no figures have been given in respect of the number of places that are available or predicted demand for childcare places. It is not possible from the evidence to determine the extent of any need, and I can therefore only ascribe limited weight to this point.
24. The appellant also suggests that there is a fallback position, whereby the extension that is proposed could be constructed under the permitted development rights for dwelling houses set out in Part 2, Class A of Schedule 2 to the Order. It is not in dispute between the parties that were the appeal building a dwelling house, the extension could be constructed under the permitted development rights set out in the Order. However, the appeal building has a mixed use, established by previous planning permissions and consequently does not have the permitted development rights of a dwelling house. It is also necessary to consider whether there is a reasonable prospect of the fallback position being implemented.
25. In order to exercise the permitted development rights associated with a dwelling, the use of the premises for the provision of childcare would need to cease or be reduced to a level where it was ancillary to the main use of the premises as a dwelling. The appellant states in their evidence that it is not their intention to cease the childcare use. It is also states that at least part of the use of the extension would be to accommodate the childcare activities. This raises some uncertainty as to whether an extension of the size proposed would be sought should the childcare use cease. Against this background, particularly the stated intention not to cease the business use, I do not consider that there is a reasonable prospect of the fallback position being implemented and therefore attach only very limited weight to this point.
26. I have also been referred to a number of policies in the Pre-submission Draft of the East Hertfordshire District Plan. However, this plan is still at an early stage of preparation and as these policies have not yet been consulted on or been subject to examination and, therefore, may change. As a consequence, I can give only very limited weight to these emerging policies.

## **Conclusion**

27. The Framework sets out that inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness is clearly outweighed by other considerations. Substantial weight must be attributed to the inappropriate nature of the development. The neutral effect on the openness of the Green Belt, weighs neither for, nor against, the proposal. The lack of harm to the living conditions of neighbouring residential properties and to highway safety weigh very slightly in favour of the proposal, as do the need for childcare facilities and the fallback position set out by the appellant.
28. However, the substantial weigh that must be given to the harm to the Green Belt by reason of inappropriateness, is not clearly outweighed, either individually or cumulatively, by the limited weight I have given to the other considerations. They cannot, therefore, amount to the very special circumstances necessary to justify inappropriate development in the Green Belt.
29. For the above reasons and, having regard to all other matters raised, I conclude that the appeal should be dismissed.

*John Dowsett*

INSPECTOR