
Appeal Decision

Hearing held on 10 January 2017

Site visit made on 10 January 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 3 February 2017

Appeal Ref: APP/L3625/W/16/3153353

1 Somers Road, Reigate, Surrey RH2 9DU

- 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 and Paragraph W of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr K Potter, CLNS Ltd against the decision of Reigate & Banstead Borough Council.
 - The application Ref 16/00798/PAP3T, dated 26 March 2016, was refused by notice dated 3 June 2016.
 - The development proposed is described as the change of use of the property from B1a office use to D1 registered nursery to accommodate 69 children. Transport – the proposal will not have any unacceptable impacts in terms of transport and highways – please refer to Transport Statement. Noise – the proposals are not expected to generate any unacceptable noise impacts – please refer to Noise Impact Assessment. Contamination – there are no known contamination risks associated with the site – please refer to Covering Letter. Any relevant minor alteration to the building will be dealt with through a separate planning application.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class T and Paragraph W of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of the property from B1a office use to D1 registered nursery to accommodate 69 children at 1 Somers Road, Reigate, Surrey RH2 9DU in accordance with the terms of the application Ref 16/00798/PAP3T, dated 26 March 2016, and the plans submitted with it, subject to the conditions on the schedule attached.

Procedural Matters

2. The provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) require the local planning authority to assess the proposed development on the basis of the transport, highways and noise impacts as well as contamination risks on the site. My determination of this appeal has been made in the same manner.
 3. I have omitted the extraneous information from the description of development in the formal decision above from that given in the application form, as it more concisely describes the development.
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Main Issue

4. The main issue is the effect of the proposed development on the living conditions of surrounding occupiers, with particular regard to noise.

Reasons

5. The appeal site contains what was once a large, semi-detached house, last used as offices, which has been extended to the rear, and which retains a small open area along one side. Immediately to the south of the site runs a railway line, and to its west, the counterpart house, No 3. To the east of the appeal site stands a recently completed development of flats on three floor levels above a commercial ground floor, 51 London Road, which encloses a parking area alongside the open area of this site. Across Somers Road are further flats and houses and a school for children up to the age of 11.
6. The Council's concern is that the activity of children in the external play area of the nursery would result in an unacceptable noise impact on the living conditions of the occupiers of the flats at first, second and third floor level of 51 London Road, which overlook the site and include openable windows, Juliette balconies, and terraces at high level.
7. The occupiers of No 3, which has single-glazed windows in its rear elevation and a back garden that runs alongside the rear extension on the appeal site, also object to the use of the external play area for fear it would result in a significant, adverse noise impact on their living conditions.
8. While the Council does not have any policies specific to noise in this situation, the National Planning Policy Framework (the Framework) sets out objectives in paragraph 123. These include that decisions should: avoid noise from giving rise to significant adverse impacts on health and quality of life, mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, and recognise that development will often create some noise.
9. Turning first to the effect upon the occupiers of the flats in No 51, the appellant's Noise Impact Assessment compares the source of noise with the underlying or background noise level, using noise levels recorded at a comparable nursery. The site noise survey recorded corrected values for the assumed, daytime ambient noise level of 56dB $L_{Aeq,16hr}$ with a typical maximum noise level during train passes of 82dB L_{AFmax} at the furthest façade of No 51 and up to around 95dB L_{AFmax} at the façade closest to the railway. The average ambient daytime noise level incorporating 6 hours of children's play, which is the duration of play proposed, would be 59dB $L_{Aeq,16hr}$ with a typical maximum noise level of 82dB L_{AFmax} . This shows an increase of 3dB in the average daytime noise level.
10. The occupiers of No 3 challenge the use of the 16 hour average in the figures above which relate to the hours between 07:00 and 23:00, because the external play area is proposed to be used for only 6 hours, not 16. They contend that noise relating to a period of 1 hour, as described in BS 4142: 2014, is more relevant. In which case the residual ambient noise level of 53dB $L_{Aeq,1hr}$, compared to a predicted noise level at 51 London Road of 63dB $L_{Aeq,1hr}$, would result in an increase of 10dB.

11. However, while I note the elevation of 10dB over 1 hour, this level relates to only two periods together lasting a total of 2.5 hours, whereas for the other 3.5 hours of play the increase would be 5dB. The remaining 10 hours of the 16 hour 'day' would have no children playing in the external area. I consider the 1 hour interval to be an insufficient measure in relation to this proposal. I also note that BS4142: 2014 says in section 1.3 that it is not intended to be applied to the rating and assessment of noise from people. As such, it is not directly relevant to this appeal.
12. The occupiers of No 3 refer to the World Health Organisation Guidelines for Community Noise 1999 which state that to protect the majority of people from being seriously annoyed during the day time, the outdoor sound level for a continuous noise source should not exceed 55dBA. However, the assumed, daytime ambient noise level of 56dB $L_{Aeq,16hr}$ already exceeds that value. I am not persuaded that the peaks and troughs of noise which characterise children's play in this case, as demonstrated in the recordings of the play sessions at the example nursery, amount to the continuous noise source to which it refers.
13. Whilst there is no formal guidance on the assessment of noise from the external play areas of nurseries, the approach in the appellant's Noise Impact Assessment, which found that there would be an increase of 3dB in the average daytime noise level at the nearest neighbouring window, draws a reasonable conclusion.
14. In considering whether or not such an increase is acceptable, the character of the existing noise environment, and how the proposal would be heard within it are important factors. While I was on site I could hear the distinctive warning sounds of the gates lowering at the nearby level crossing, and the rattle of lorries passing over the tracks at the crossing. I also heard the noise of the children of Micklefield School playing in their playground after their lunch.
15. I note that these noises, like the regular passage of trains at the foot of the site, are infrequent, and that occupiers can become habituated to them to the point that they do not cause annoyance. However, together with the underlying, continuous tone of the traffic on the London Road, these sounds suggest that the noise generated by this proposal would be compatible with the noise environment around the site, consistent with its central location in Reigate, and the urban character of its surroundings.
16. The age groups of children using the external play area would vary, and the different characters and levels of noise they produce would be staggered in 60-minute and 90-minute phases. The appellant explained that the operation of the nursery, rather than forcing children to remain outside during play would encourage them to pass freely between the sand-pit area in the room closest to the railway line and the external play area. The consequence of these arrangements would be to avoid a continuous, high sound level.
17. In the context of the existing noise environment, I do not consider that an increase of 3dB in the average daytime noise level would disturb the occupiers of the flats. I take into account the point that the 3dB increase relates to an average increase over 16 hours, and that the measure over a shorter period gives a higher increase. However, I have also to take into account the nature of the external play and its duration.

18. In this regard, the appellant proposes to limit the number of children using the external play area at any one time to 24, which is what the Noise Impact Assessment is based upon, and to restrict its use to 3 hours in the morning and 3 hours in the afternoon. This would provide a 3 hour respite period in the middle of the day, between 12:00 and 15:00, during which time no children would use the external play area. This would significantly offset the effect on surrounding occupiers of the exposure to noise from the external play area.
19. Moreover, while there is no information on the windows and doors installed at No 51, it would be reasonable to expect them to provide some attenuation. This would reduce the noise entering those dwellings from the predicted levels when they are closed. Further, it was agreed at the Hearing that measures to reduce direct and reflected sound from children playing in the external area by using soft ground surfaces, and sound-absorbing, external wall panels may reduce the noise levels by 1dB or 2dB. I also take into account the use of the building as offices, in which use it would be likely that the area proposed for play would be used for parking cars, which would also generate a degree of noise, which would not be subject to the same degree of control as the proposal in this case.
20. I have taken into account the daytime ambient noise level and the impact of the maximum noise levels, which I note are predicted to be around 82dB L_{AFmax} . However this would be little different to the level recorded at the furthest residential façade when a train passes, which occurs around 4 times per hour. Nor, given the degree of increase in the average daytime noise level, and the restricted hours of use, would the proposal have a significant, cumulative effect.
21. Turning to No 3, it is shielded to a large degree from the proposed play area by the substantial extension to No 1, the flank wall of which, at around 3m in height, forms the boundary between the sites. The noise modelling provided by the occupiers of No 3 shows that the greatest level predicted at the rear façade of No 3 would be 4dB less than the greatest level anticipated at the façade of No 51.
22. I have taken into account that No 3 is a family home, providing the opportunity to work from home and, importantly, a sense of seclusion and peace to its occupiers. However, given my conclusion above, I do not consider that the increase in the average daytime noise level would disturb the occupiers within No 3. Nor, in the context of the existing noise environment would the limited hours of play in the external play area, harm their enjoyment of their back garden to an unacceptable degree.
23. I have also taken into account the advice in the Planning Practice Guidance, and that neither the Noise Policy Statement for England nor the National Planning Policy Framework expects noise to be considered in isolation from the economic, social, and other environmental dimensions of proposed development. In this light, bringing back a commercial building empty since 2014, into use as a nursery with the accompanying jobs and provision of care would have substantial economic and social benefits, which are factors which attract significant weight.
24. I have considered the specific circumstances of the surrounding occupiers, and I acknowledge that there would be some impact from the change of use. However, I consider that the existing noise environment around the site, the

limited hours of use of the external play area, the limited number of children using it at any one time as well as the opportunity to reduce the noise through surface and wall treatments are significant mitigating factors.

25. For these reasons, I conclude that the proposed development would not conflict with paragraph 123 of the Framework and it would not have a harmful impact on the living conditions of surrounding occupiers, with particular regard to noise.

Other Matters

26. Objections have been raised by neighbours, Micklefield School and the St. Alban's Road Residents' Association in relation to the impact of the proposed development on highway safety, parking, and the free flow of traffic. Their concerns include that parents dropping children at Micklefield School already struggle to park in Somers Road which is frequently busy with local traffic and is designated as a Heavy Goods Vehicle route. Furthermore, there are frequent instances of illegal parking in a road where parking spaces are at a premium, especially since the opening of the shop at 51 London Road.
27. While I note the proximity of the site to Micklefield School where the school day starts at 08:35, the estimated number of morning drop-offs at the nursery would tend to be staggered though the early morning, with peaks occurring around 07:40 to 08:00, and 08:10 to 08:20. While I note that the majority of Micklefield School pupils arrive between 08:05 and 08:35, during these periods the parking survey indicates that there would be sufficient space to park cars within 400m of the site. The peak drop-offs at the proposed nursery show that there would be up to 4 cars arriving during a 10-minute period, however there would remain sufficient parking on-street for these cars. I also note that the duration of drop-offs would be short at around 5 minutes.
28. The Micklefield School day ends at 15:15 and 15:30, whereas the estimated peak for collection from the nursery would be from 17:20 to 17:50, which almost coincides with the peak availability of free parking spaces within 400m of the site. The duration of collections from the proposed nursery is estimated at around 8 minutes. I appreciate that clubs and activities may extend the school day for some. However, the different peaks in collection times suggest that there would be no conflict in terms of parking spaces between parents collecting children from Micklefield School and the proposed nursery.
29. For these reasons I am satisfied that the free flow of traffic would not be interrupted, and on-street parking would not be placed under pressure to the degree where it would be harmful to the safety and convenience of other highway users, by parents dropping-off and collecting children at the site. I note that the highway authority raised no objection to the proposal.
30. In addition, the appellant proposes a Travel & Parking Management Plan to encourage staff to travel by sustainable transport and to encourage good on-street parking behaviour of parents and staff. I have also had regard to the fact that the site is in a highly sustainable location, close to the town centre which has public car-parks and is close to a busy railway station. I have considered the presumption in favour of sustainable development as set out in the Framework, paragraph 32 of which advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

31. I consider that sufficient evidence has been provided to demonstrate that the impact of the change of use of the appeal site from offices to a nursery, subject to the implementation of the Travel & Parking Management Plan, would not result in adverse harm to highway safety, parking, and the free flow of traffic in the area.

Conditions

32. Paragraph W(13) of Schedule 2, Part 3 of the GPDO provides for prior approval subject to conditions reasonably related to the subject matter of the prior approval. The Council suggested conditions limiting the number of children using the external play area and the hours they would have access to it on any day. Given the proximity of the openings in No 51 and No 3, and the position of the garden of No 3 in relation to the external play area, such limits would be necessary and reasonable.
33. At the hearing there was some discussion about whether or not the requirements of the Building Regulations would apply to the scheme, but no conclusion was reached. In any event, the appellant offered to be bound by a condition requiring details of reasonable measures to reduce the risk of noise from the proposed use passing through the wall shared with No 3. Given the age of the buildings and the uses of the rooms adjoining No 3, a condition to this effect would be necessary and reasonable.
34. Both parties agreed at the Hearing that measures to reduce direct and reflected sound from children playing in the external area by using soft ground surfaces, sound absorbing external wall panels and the like may reduce the noise levels by 1dB or 2dB. This would be a valuable reduction in this situation, and necessary given the sensitivities of surrounding residential uses and my conclusions above.
35. The Travel and Parking Management Plan proposed by the appellant would encourage sustainable travel by staff and parents, and provide some control over the behaviour of parents parking in the street, which in the context of Somers Road I consider to be necessary to make the development acceptable.

Conclusion

36. For the reasons given above, I conclude that the appeal should be allowed and approval granted.
37. In granting approval, the appellant should note that the GPDO requires at paragraph T.2(2) that the development must begin within a period of 3 years starting with the date of the prior approval. Under paragraph T.2(3), where planning permission is granted on an application in respect of associated operational development before the end of the 3 year period, then development under Class T must begin within the period of 3 years starting with the date that planning permission is granted.

Schedule of Conditions

- 1) The proposed use shall not commence until a scheme to protect the occupiers within 3 Somers Road from noise generated within 1 Somers Road shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before the building is used as a nursery and retained thereafter.
- 2) The proposed use shall not commence until a Travel and Parking Management Plan as described in section 6 of the Transport Statement of March 2016 by Messrs Bellamy Roberts which accompanied the prior approval notification, shall have been submitted to and approved in writing by the local planning authority. The Travel and Parking Management Plan shall be implemented on first use as a nursery. The nursery shall be operated thereafter in accordance with its provisions.
- 3) The external play area shall not be used for children's play until a scheme for reducing the effect of noise generated by children playing in the external play area on surrounding occupiers shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before the external play area is used for children's play.
- 4) The external play area shall not be used by more than 24 children at any one time.
- 5) The external play area shall not be used by children before 09:00, after 18:00, and between 12:00 and 15:00 on any day.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Mr Potter
Mrs Potter
Ms Parkinson
Mr John Lloyd

CLNS Ltd
CLNS Ltd
Perspective Planning
Scotch Partners

FOR THE LOCAL PLANNING AUTHORITY:

Mr Sheahan
Ms Rogers

Planning Officer
Reigate & Banstead Borough Council
Environmental Services Officer
Reigate & Banstead Borough Council

INTERESTED PERSONS:

Mr & Mrs Herman
Mr Jordan

Occupiers, 3 Somers Road
Mach Acoustics, for Mr & Mrs Herman

Dr Grant-Duff

Councillor, Surrey County Council and
Reigate & Banstead Borough
Council

Mr Flowerday

Bursar, Micklefield School

Mr & Mrs Soer

Occupiers, 22 Somers Road

Ms Telford

Occupier, 44 St. Alban's Road

DOCUMENTS SUBMITTED AT THE HEARING

1. Statement of Common Ground, dated 10 January 2017