

Appeal Decision

Site visit made on 3 May 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 22nd May 2017

Appeal Ref: APP/W4325/W/17/3169128

4 Holm Lane, Prenton, Wirral CH43 2HP

- 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 Mr Graham Smith against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/16/00884, dated 20 June 2016, was refused by notice dated 2 November 2016.
 - The application sought planning permission for the demolition of the existing residential property, construction of a 2 storey children's nursery for 36 children with secure rear teaching area, parking for 10 spaces in forecourt without complying with a condition attached to planning permission Ref APP/13/00773, dated 2 April 2014.
 - The condition in dispute is No 5 which states that: The outdoor play area shall only be used between 09:30 hours and 11.30 hours, and between 14:30 hours and 16:30 hours each day.
 - The reason given for the condition is: In order to limit the noise and disturbance associated with the use.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Graham Smith against Wirral Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The appellant seeks to change condition 5 to allow children at the nursery to play outside from 09:30 hours to 16:30 hours, without the current three hour break between 11:30 hours and 14:30 hours. If the appeal was successful, a new permission would be granted with condition 5 altered in the manner sought. On the basis of the reason for the condition and reason for refusal of the application, the main issue in this appeal is whether, having regard to the development plan and the National Planning Policy Framework ('the Framework'), the condition is reasonable and necessary in order to protect the living conditions of nearby residents from noise and disturbance.

Reasons

4. Of the two development plan policies referred to, I consider policy HS15 of the Wirral Unitary Development Plan (UDP), to be the most relevant to the main issue. It seeks to protect neighbouring uses from development that causes
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noise and disturbance. Reference has been made to policy HS12 of the UDP and the supplementary planning guidance Note 12 'Pre-School Child Day Care Facilities'. However, as both relate to the use of existing buildings for pre-school day care, and the nursery has been purpose built, they do not apply to the appeal property. Nevertheless, they provide some useful guidance in relation to noise and disturbance, including that a 2m metre high screen fence or wall should be provided to garden / play areas along with a noise assessment.

5. The Framework is also an important material consideration. A core planning principle of the Framework is that a good standard of amenity for existing and future occupants of land and buildings should be sought. In planning policy 'living conditions' are also referred to as 'amenity'.
6. The nursery is located in a residential area with houses on its northern side and to the rear. It was constructed following planning permission that I granted on appeal in 2014. Other schemes had been refused permission and dismissed on appeal, in part, because of concerns that noise and disturbance from outdoor play at the nursery would harm the living conditions of neighbours. I found that the scheme I allowed was acceptable in this regard, partly because the pram store building that formed part of the proposal would help keep children away from the small courtyard to the side of Woodbine Cottage and the rear garden at 8 Holm Lane. In conjunction with a tall boundary wall of 2.4m separating the play area from Woodbine Cottage, the contested condition in this appeal and a condition restricting the number of children at the nursery, I found that noise and disturbance would not harm the living conditions of neighbours.
7. However, what was shown on the approved plans as a pram store enclosed by brick walls is now a covered outdoor play area with a lightweight roof. As a result, children are playing closer to the small courtyard to the side of Woodbine Cottage and the rear garden of No 8 than was shown in the scheme for which I granted permission. Consequently, the potential for noise and disturbance to these areas is likely to have increased, rather than decreased. I recognise that the occupiers of No 8 have not objected to the proposed extension of play hours. Nevertheless, it is the function of the planning system to secure good living conditions for existing and future occupants of buildings and I have dealt with the appeal on this basis.
8. Since the nursery has opened a triple single storey garage has been constructed adjacent to the common boundary with the nursery. However, as this detached building only extends along part of the boundary it is ineffective as a noise barrier and will not have reduced noise levels experienced within the garden to the cottage. Whilst the tall boundary wall and garage in the north eastern corner of the appeal site to an extent reduces the level of noise experienced at neighbouring residential properties from children playing outside at the nursery, it is clear to me from the site visit that such noise is readily audible within the small courtyard and garden serving Woodbine Cottage.
9. I am not persuaded that allowing play over a longer period would materially reduce the level of noise generated and compensate for the lack of a three hour break during the middle of the day. The appellant has suggested that the number of children playing outside could be restricted to ten in order to reduce noise and disturbance. However, given that the play area is screened from

external view, and the security procedures in place that delay entrance to the nursery, such a condition would not in practice be enforceable. To my mind, changing the condition in the manner sought and allowing outdoor play during a seven hour period each day, by removing the three hour respite, would unacceptably harm the living conditions of neighbours.

10. Reference has been made to the absence of complaints of noise nuisance received by Environmental Health. However, for the reasons that I have given the absence of complaint does not mean that the condition is unnecessary. Instead, it indicates to me that the condition is being effective in striking a reasonable balance between the competing tensions of the need for outdoor play at the nursery and protecting the living conditions of neighbours. This position is supported by the receipt of an objection to the application to extend the hours of play on noise grounds from an immediate neighbour. As a result, this consideration has not altered my finding in relation to this issue.
11. Taking all these matters into account, I therefore conclude that changing condition 5 to allow children at the nursery to play from 09:30 hours to 16:30 hours, without a three hour break during the middle of the day, would unacceptably harm the living conditions of neighbours. This would be contrary to policy HS15 of the Wirral Unitary Development Plan and a core planning principle of the Framework. Condition 5 is therefore reasonable and necessary. I find that condition 5 also complies with the remaining tests of paragraph 206 of the Framework and the advice in Planning Practice Guidance on the use of conditions.

Conclusion

12. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector