
Appeal Decision

Site visit made on 15 May 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 7 June 2017

Appeal Ref: APP/G5180/W/17/3169462 62 Kings Hall Road, Beckenham BR3 1LS

- 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 Steven Fenn of Fennies Day Nurseries Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/16/04331/RECON, dated 14 September 2016, was refused by notice dated 22 December 2016.
 - The application sought planning permission for single storey side and part one/two storey rear extensions to children's nursery to increase number of children from 36 to 58 without complying with a condition attached to planning permission Ref DC/09/03023/FULL1, dated 8 April 2010.
 - The condition in dispute is No 4 which states that: "*(a) The children attending the day nursery/play group shall be between the ages of 0 and 6 years and not more than 58 children and 17 staff shall be accommodated at any one time.
(b) The use of the premises as a children's nursery shall be limited to Mondays to Fridays inclusive between the hours of 7.30am and 8.00pm.*"
 - The reason given for the condition is: "*In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the amenities of nearby properties*".
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Decision

1. The appeal is allowed and planning permission is granted for a single storey side and part one/two storey rear extensions to children's nursery at 62 Kings Hall Road, Beckenham BR3 1LS in accordance with application Ref DC/16/04331/RECON dated 14 September 2016, without compliance with Condition 4 previously imposed on planning permission Ref DC/09/03023/FULL1 dated 8 April 2010, but subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Within the banner heading of this decision I have included reference to the description of development granted planning permission under Ref DC/09/03023/FULL1, dated 8 April 2010, which specifies the number of children at the nursery at the appeal site within the description of proposed development. However, the description of a development, cannot, in itself, control, restrict or limit a development; this is the purpose of conditions. In this case children numbers has correctly been restricted by the imposition of Condition 4 of this permission. Despite the description of the development purporting to contain limitations to children numbers, this does not prevent the
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number of children from being greater than that given in the description. I shall therefore deal with those limitations set out within Condition 4. However, I have amended the description of the development to omit the limitations on the number of children as this is controlled by Condition 1 within the attached schedule.

Application for costs

3. An application for costs was made by Mr Steven Fenn of Fennies Day Nurseries Ltd against the Council of the London Borough of Bromley. That application is the subject of a separate Decision.

Background and Main Issue

4. The appeal property is a large detached building that has been converted into a nursery some years ago. Nos 1 – 10 Densole Close, a two-storey block of flats is positioned at right angles to the west of the appeal property. The communal rear garden of these properties abuts the garden of the appeal site. Nos 64 – 66 Kings Hall Road, to the east of the appeal site, is a semi-detached building comprising flats with a shared large rear garden. The surrounding area is generally residential in character, although the rear of the appeal site is bounded by a railway line.
5. Planning permission was refused (Council ref: DC/08/01528/FULL1) and dismissed at appeal (Appeal ref: APP/G5180/A/08/2090332) for a part one/two storey side/rear extension with related increase to 68 children. Subsequently, planning permission was granted in 2010 (Council ref: DC/09/03023/FULL1) for a single storey side extension and part one, part two storey rear extension, in association with a maximum number of 58 children and 17 staff to be accommodated at any one time. An ancillary outbuilding was subsequently permitted in 2011 (Council ref: DC/11/01600/FULL1) and is located within the rear garden along the rear boundary. This permission did not involve an increase in the number of children or staff accommodation at the property.
6. In 2014 planning permission was refused (Council ref: DC/14/01672/VAR) to vary Condition 4(a) of the 2010 permission to increase the number of children at the premises from 56 to 86 and staff from 17 to 25. This decision was upheld at appeal (Appeal Ref: APP/G5180/W/14/3001880) on the grounds that the increase in children and staff at the premises would cause a significant adverse impact on the living conditions of neighbouring occupiers by reason of noise and disturbance.
7. The appellant seeks to increase the number of children and staff at the premises allowed under Condition 4 (a) from 58 to 72 children and from 17 to 20 staff. With relation to the hours of use of the premises as a children's nursery, the appellant seeks to change them to between the hours of 0700 and 1930 Monday to Friday from 0730 and 2000 on these days under Condition 4 (b).
8. I consider the main issue in this appeal to be the effect of the proposed increase in children and staff numbers and earlier operational hours on the living conditions of adjoining occupiers, having particular regard to noise and disturbance.

Reasons

9. In addition to the above proposed increase in children and staff and changes to the times of use and as part of the proposal, the appellant has also proposed to restrict the number of children accommodated at the nursery in its first half hour of opening, that is between 0700 hours and 0730 hours, to 15. The appellant has also proposed limiting the number of children at the outdoor play area to 20 at any one time. Currently, there is no planning restriction in place that would control numbers using the play area over the course of the operational day. The appellant's Noise Survey and Assessment (noise assessment) also indicates there would be a benefit to attenuating noise by improving the boundary fencing to adjacent properties.
10. I have had regard to paragraph 123 of the National Planning Policy Framework (the Framework), which states that planning decisions should aim to avoid noise which gives rise to significant adverse impacts on health and quality of life as a result of new development.
11. The Council is concerned about the incremental intensification in the use of the site and the progressive increase in children attending the day nursery over the years. It contends that the appellant's noise assessment does not take this history into account. In the past conditions have been imposed to limit the number and age of children to ensure the protection of the adjoining occupiers' living conditions. The Council point to views presented by local residents that indicates noise and disturbance is likely to increase as a result of the proposed expansion. Many residents in the area who are retired and are home during the day have indicated that the existing nursery is audible to them. The Council asserts that the more children accommodated at the nursery, the greater the overall level of activity, and submits that not everyone enjoys the sound of children at play.
12. I note the findings of an Inspector in an earlier appeal at regarding this current appeal site which sought an increase to 68 children that the more intensive use of the play space would result in a cramped and over-intensive use of the site and would lead to neighbours experiencing significant levels of noise and disturbance. Notwithstanding this, a subsequent scheme for 58 children and 17 staff has been approved by the Council, along with the ancillary building in the rear garden. Whilst this 2010 planning permission restricted numbers of children and staff at the appeal site, it did not limit numbers using the play area at any one time or seek to control how this area would be managed or children supervised. Therefore, extensive use of the play area can currently take place which could inevitably result in lengthy periods of noise and disturbance to adjoining occupiers, particularly during summer months.
13. I recognise that, despite the Council's Environmental Health officer not objecting to the 2014 proposal, the previous Inspector acknowledged that *"noise and disturbance below statutory noise limits can often have a significant impact on the living conditions of nearby occupiers, and representations from neighbours highlight significant concerns with the level of noise associated with existing operations"*. However, unlike that previous 2014 application a professional noise assessment has been prepared for the appellant in support of the proposal. This is a significant difference in terms of the evidence before me to that which was before the previous Inspector. In addition, the number of both children and staff proposed is less than that of the 2014 application.

14. The appellant's noise assessment indicates that the noise from the playground and drop-offs would be within acceptable levels. No technical evidence has been provided to the contrary, although there is some local concern as to the locations at the appeal site where sound measurements have been taken. The Council's Environmental Health officer did not object to the proposal and considered the impact would be minimal, both in regard to noise from activities in the garden and children drop-offs.
15. The appellant indicates that the increase of children would be 12 additional baby spaces and 4 additional toddler spaces. However, I consider this split would be very difficult to monitor and control, especially in the overall context of children numbers, and I therefore have not had regard to this in reaching my decision.
16. There is some local concern that fencing around the rear boundaries of the site would not prevent noise. I note from the appellant's noise assessment that the existing 1.8m high fencing already offers acoustic screening but an extended well fitted closeboard 2m high fence would provide further robustness and, as such, would, in my opinion be beneficial. A marginal increase in height would not significantly add to shading of adjoining gardens or vegetation. Concern is also raised to noise fluctuating and varying in intensity and pitch but the appellant's noise assessment indicates that there is scope for such variations before there is likely to be a significant adverse impact from children's play within the open activity areas.
17. There is also local concern relating to the increase in numbers of parents picking up and dropping off children. The appellant's noise assessment indicates that the noise from the increased number of children would be insignificant at drop-off, and therefore I would also consider this to be similar during pick up.
18. I visited the appeal premise at different times of the day and from my observations there is a steady trickle of drop-offs from 0730 hours and for an hour or so following, both by car and by foot. The appellant's noise assessment indicates that the noise from vehicle drop-offs would not affect overall noise levels along Kings Hall Road and any impact at nearby residences would be insignificant. Although the proposal would be to open half an hour earlier than current hours, I do not consider the noise generated by the arrival of staff and children drop-off and transfer to the garden classroom would be significant, especially if limited to a maximum of 15 children between 0700 hours and 0730 hours and some staff arriving earlier.
19. Based upon the evidence before me, it is possible to take a different view to that of the previous Inspectors. Whilst 'statutory nuisance' may deal with serious and unreasonable noise, a degree of judgement should be applied to assessments of noise. I am satisfied that the noise assessment submitted by the appellant is robust and takes into account existing background noise in the area.
20. The Council, in its statement of case, accepts, correctly in my view, that the overall impact of the proposal could be mitigated by conditions. Such conditions would be ones that a responsible operator would abide by and in any event local residents would be able to inform the Council of any non-compliance. The imposition of a condition limiting the number of children at

the outdoor play area to 20 at any one time would provide adjoining occupiers with a greater degree of certainty as to the maximum usage of the outdoor playground which is not the case currently.

21. I acknowledge that the Childcare Sufficiency Assessment indicates a shortfall of 0 – 5 years childcare places within the ward and more generally within the Borough as a whole. However, this has not been a decisive factor in my consideration of this appeal.
22. I conclude that the proposed development, with conditions to control the number of children and staff, opening times and the use of the outdoor play area, would not cause unacceptable harm to the adjoining occupiers' living conditions with regard to noise and disturbance. As such, the proposal would not conflict with Policy BE1 of the London Borough of Bromley Unitary Development Plan in so far as it seeks to prevent such harm. In addition, the proposed development would not conflict with Paragraph 123 of the Framework in that the impact of noise can be mitigated through the use of appropriate conditions.

Other Matters

23. I acknowledge the concerns of neighbouring occupiers relating to parking problems in the area. The appellant's transport assessment concluded there would be more than sufficient on-street parking in the locality to accommodate additional demand. The Council's Highway Officer confirmed the additional parking demand could be accommodated within available on-street spaces in the area. I have no substantive evidence before me to dispute the findings of the appellant's transport assessment in relation to on-street parking provision and I am satisfied that this could be accommodated in the locality.
24. There is local concern that this proposal would worsen traffic problems along Kings Hall Road and in the surrounding area by increased congestion, illegal or poor parking and reduced road safety. The Council's Highway Officer did not however object to the proposal. Although data from websites submitted by objectors highlights illegal parking incidents and stories regarding accident blackspots in the area, there is nothing before me that would indicate that these incidents are attributable to the nursery. I have given these matters limited weight in determining the appeal.
25. Concerns have been raised regarding overflowing refuse bins at the appeal site, staff smoking outside the premises and children damaging residents' plants, but inconsiderate behaviour is not a matter that can be brought within planning control. There is also concern that the residents' parking at Densole Close would be abused and unwanted litter or dumped waste is taking place. These are separate matters to this appeal, as is any installation of a gate in the boundary fence at Nos 44 & 46 Kings Hall Road. Accordingly, these matters do not affect my conclusion in respect of this appeal. Any future proposal to increase the number of children at the nursery would be considered on its own merits.
26. The appellant has referred me to other sites. However, in view of my conclusion to allow this appeal, there is no need for me to address these in the current decision.

Conditions

27. The advice in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me regarding the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
28. I have considered the planning conditions previously imposed by the Council in light of paragraph 206 of the Framework and the advice in the Planning Practice Guidance.
29. Planning permission for the extensions to the children's nursery and increased number of children have been implemented; therefore a timeframe for commencement condition is not necessary. For the same reason a condition requiring approval of external surfaces is not necessary. Conditions limiting overall children and staff numbers and that of early morning children, hours of operation and numbers of children using the play area at any one time are necessary in the interests of the living conditions of adjoining occupiers.
30. I have not been informed as to the situation with regard to the Travel Plan but this remains relevant to ensure the appropriate management of transport implications of the development and a matter for the Council to monitor its compliance. Similarly, the use and details of the hard and soft landscaping of the garden area are relevant to provide adequate play area for the nursery and in the interests of the living conditions of adjoining occupiers. I have reworded this condition to make it more precise and to ensure that landscaping would be maintained at the appeal site. Details of the acoustic boundary fence are necessary for those reasons outlined above and in the interests of character and appearance of the area and the living conditions of adjoining occupiers. As the frontage of the premises is hardsurfaced and already enables parking to take place I consider a condition that requires this to be kept available for such use to be prudent to prevent inconvenience to other road users and in the interests of highway safety.

Conclusion

31. For the reasons set out above I conclude that preventing the increase in children and staff numbers and earlier operational hours from condition 4 is not reasonable and necessary in order to protect the interests of the living conditions of adjoining occupiers and therefore the appeal should be allowed. I will grant a new planning permission subject to new conditions, together with the imposition of those previously imposed conditions considered appropriate above.

Nicola Davies

INSPECTOR

SCHEDULE

CONDITONS

- 1) (a) The children attending the day nursery/play group shall be between the ages of 0 and 6 years and not more than 72 children and 20 staff shall be accommodated at any one time.

(b) The premises shall not be used as a children's nursery outside the hours of 0700 and 07.30 Mondays to Fridays and not at all on Saturdays and Sundays.

(c) No more than 15 children shall attend the day nursery/play group Mondays to Fridays between the hours of 0700 to 0730.
- 2) No more than 20 children shall be allowed to occupy the play space area to the rear of the building at any one time.
- 3) Within 3 months of the date of this appeal decision details of an acoustic boundary fence along the rear boundaries of the site shall be submitted to the Local Planning Authority for approval in writing. The acoustic boundary fence shall be erected in accordance with the approved details and put in place within 3 months of the details being approved and shall thereafter be retained for the lifetime of the development.
- 4) The garden area as shown on drawing number 5640-P002 shall be available for use by the children and staff of the day nursery. Within 3 months of the date of this appeal decision details of the hard and soft landscaping of the garden area shall be submitted to the Local Planning Authority for approval in writing. The hard and soft landscaping of the garden area shall be carried out in accordance with the approved details no later than the first planting season following the approval of details and shall thereafter be retained for the lifetime of the development. Any trees or plants which within a period of 5 years die, are removed or become seriously damaged or diseased shall be replaced in the next planning season with other of similar size and species.
- 5) Within 3 months of the date of this appeal decision, a Travel Plan shall be submitted to the Local Planning Authority for approval in writing. The Travel Plan shall include measures to promote and encourage the use of alternative modes of transport to the car. It shall also include a timetable for the implementation of the proposed measures and details of the mechanisms for implementation and for annual monitoring and updating. The Travel Plan shall be carried out in accordance with the approved details and shall thereafter be retained for the lifetime of the development.
- 6) The parking area to the front of the premises shall be kept available for parking purposes associated with the day nursery and shall be retained for parking purposes for the lifetime of the development.