
Appeal Decision

Site visit made on 27 June 2017

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 20 July 2017

Appeal Ref: APP/A5840/W/17/3172548

190 Southampton Way, Camberwell, Southwark, London, SE5 7RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Ms Nicole Bennett (Nicki Day Nursery) against the London Borough of Southwark.
 - The application Ref 16/AP/4992, dated 9 December 2016, was approved on 6 February 2017 and planning permission was granted subject to conditions.
 - The development permitted is Variation of Condition No. 2 of planning permission Ref 14/AP/4259 granted on appeal dated 15 March 2016, *to allow Nicki Day Nursery use on Saturdays from 09:00 to 16:00 hours, which was granted on appeal (lodged against planning application ref: 14/AP/4259) for a temporary period of 9 months from appeal decision date 15 March 2016 and which expired on 15 December 2016.*
 - The condition in dispute is No. 2 which states that: *The day nursery use hereby permitted shall not be carried on outside the hours of 0700 to 1900 Monday to Fridays; not at all on Sundays and Bank Holidays. For a period of one year only from the date of this decision, the use shall also be carried out between the hours of 0900 to 1600 on Saturdays.*
 - The reason given for the condition is: *To allow a trial run to enable a full assessment to be made of the effect of Saturday opening on the area and in particular on the amenities of the occupiers of the new housing development to the west of the site. This would be in accordance with the National Planning Policy Framework 2012, Policy 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes of The London Plan 2015, Strategic Policy 13 High environmental standards of the Core Strategy 2011 and Saved Policy 3.2 Protection of amenity of the Southwark Plan 2007.*
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Decision

1. The appeal is allowed and planning permission Ref 16/AP/4992 for the Variation of Condition No. 2 of planning permission Ref. 14/AP/4259 to allow Nicki Day Nursery use on Saturdays from 09:00 to 16:00 hours, which was granted on appeal (lodged against planning application ref: 14/AP/4259) for a temporary period of 9 months from appeal decision date 15 March 2016 and which expired on 15 December 2016, at 190 Southampton Way, Camberwell, Southwark, London, SE5 7RU, is varied by deletion of Condition No. 2, and the substitution of the following condition, as well as the inclusion of the existing plans condition;
 1. The use hereby permitted shall be carried out in accordance with the Ordnance Survey 1:1250 scale site location plan.
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2. The day nursery use hereby permitted shall not be carried on outside the hours of 0700 to 1900 Monday to Fridays, and 0900 to 1600 on Saturdays, and not at all on Sundays and Bank Holidays.

Background and Main Issue

2. Planning permission was originally granted for the use of the premises as a day nursery in 2009, with the hours of operation originally limited to 0800 to 1800 only on Monday to Friday, with no opening permitted on Saturdays, Sundays, or Public Holidays. These hours were subsequently extended to 0700 to 1900 by planning permission ref. 14/AP/4259, approved on 13 May 2015, with the planning permission being varied at appeal (ref. APP/A5840/W/15/3138533) in March 2016, so as to allow the appellant a 'trial run' for Saturday opening for a period of 9 months from the date of the appeal decision. This temporary period was to allow an assessment of the impact of Saturday opening on the wider area, and in particular as to whether the proposed opening would safeguard the living conditions and amenity of neighbouring occupiers of a recently completed residential development.
3. On this basis, the main issue is therefore whether the disputed condition is reasonable or necessary in the interests of safeguarding the living conditions of neighbouring occupiers, having regard to noise and disturbance.

Reasons

4. The appeal site is occupied by a two-storey semi-detached building and is situated on a busy road. The premises are within a predominantly residential area, albeit close to other ground floor commercial premises on the opposite side of Southampton Way. The appeal property is immediately adjacent to existing residential development, including a recently completed and occupied development to the west.
5. In reaching a decision, the Inspector for the 2016 appeal concluded that whilst there had been no technical objections to the proposed extension of hours to include Saturday opening *that it would be reasonable to allow the appellant a trial run to enable a full assessment to be made of the effect of Saturday opening on the area*. The Inspector considered that a 9 month period would *strike an acceptable balance between the interests of residential amenity and the social and economic benefits of supporting flexible working arrangements*. The Inspector also opined that *little harm would arise at the front of the building from opening on Saturdays as proposed*, which given the observed activity and noise generated from the road at the front of the premises, is a conclusion with which I would agree. The focus of the assessment of the trial run has therefore been clearly limited to activities, and in particular outdoor play or when windows and doors are left open in warmer weather, to the rear of the premises.
6. The Council has indicated that during the trial period of 9 months, no complaints have been received in connection with the operation of the day nursery on a Saturday, and I note that no such objections have been received during the course of the planning application or appeal.
7. I have had careful regard to the Council's reticence to allow a full planning permission, with the preference being for a further temporary planning permission for 1 year. This is expressed as a consequence of the recent

completion of the residential development to the West, and so as to allow new or future residents to consider the impact of the relationship. However, it was evident at the site visit that the residential development to the West was occupied at least in part, with the immediately adjacent units appearing to be lived in. In this respect, I would regard the absence of any objections or late submissions from the Council or immediately adjacent third parties during the course of the planning appeal, as being an indication of the absence of an adverse impact on living conditions through noise and disturbance. I also find that the absence of any other objections from nearby residential properties during the trial period to be a reasonable barometer as to whether the day nursery has had an adverse impact on the living conditions of neighbouring occupiers due to Saturday opening. As such, and being mindful of the more limited hours of opening on a Saturday, I do not consider that there is any need for a further 1 year assessment to be undertaken, which I believe would be unreasonably punitive on the appellant.

8. Therefore, I regard the disputed condition as being neither reasonable nor necessary in the context of the proposed development, or in the interests of safeguarding the living conditions of neighbouring occupiers, having regard to noise and disturbance. The proposed development would not therefore conflict with Policy 7.15 of The London Plan: The Spatial Development Strategy for London Consolidated with Alterations since 2011 (2016), Strategic Policy 13 of the Southwark Core Strategy 2011, and Saved Policy 3.2 of the Southwark Plan 2007. These policies seek to set high standards for reducing and avoiding significant noise pollution, and the avoidance of amenity problems to present and future occupiers in the surrounding area.
9. As a consequence, I am minded to allow the appeal subject to the substitution of the disputed condition with a condition restricting the hours of Saturday opening, which I regard as being necessary to safeguard the living conditions of neighbouring occupiers.

Conclusion

10. For the reasons given above I conclude that the planning permission should be varied as set out in the formal decision.

M Seaton

INSPECTOR