



Appeal Decision

Site visit made on 16 August 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 25 August 2017

Appeal Ref: APP/A0665/W/17/3176947

Marcher House, Marcher Court, Sealand Road, Chester, Cheshire CH1 6BS

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mrs Jane Napier against the decision of Cheshire West & Chester Council.
 - The application Ref 17/00748/PDT, dated 17 February 2017, was refused by notice dated 13 April 2017.
 - The development proposed is change of use from offices/storage to childrens day nursery.
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Decision

1. The appeal is dismissed.

Procedural Matters and Main Issue

2. I have taken the description of development from the Council's decision notice, rather than the extended description provided by the application form and the appeal form. The description that I have adopted accurately describes the proposal before me and no parties are prejudiced by the change.
3. Schedule 2, Part 3, Class T of the GPDO sets out permitted development rights that, amongst other things, include change of use of a building and any land within its curtilage from a use falling within Class B1(business) to a registered nursery as proposed. However, a condition of the permitted development right at paragraph T.2(1)(b) is that before beginning the development, the developer must apply for a determination as to whether prior approval of the local planning authority will be required as to the transport and highways impacts, noise impacts and contamination risks on the site. This appeal relates to a notification for prior approval which was submitted by the appellant to the Council in seeking to meet the requirements of paragraph T.2(1)(b).
4. For the reasons set out in the officer's report, the Council takes no issue with the noise impacts of the proposal or with contamination risks on the site, and I have no reason to take a different view on those matters. However, the Council has determined that prior approval is required and not granted in terms of the transport and highways impacts of the development having applied the provisions of Schedule 2, Part 3, paragraph W of the GPDO.
5. Having regard to the above, the main issue is the effect on highway and pedestrian safety.

Reasons

6. The appeal site consists of a single storey office building accessed from Marcher Court on the south western side of Sealand Road (A548) within a former farm complex that now consists of a small employment area with a range of business uses. The curtilage of the site is enclosed by a mix of fencing and intermittent landscaping and includes an area of hardstanding used for car parking which is accessed from an adopted driveway that is shared with surrounding buildings. The site lies in close proximity to the boundary of England with Wales in a semi-rural setting to the west of Sealand Industrial Estate and Greyhound Retail Park and is located on the opposite side of Sealand Road to the residential area of Blacon.
7. Sealand Road provides a main western route between Chester and Wales to the north of the River Dee linking to the A494. The section of road close to the junction with Marcher Court has a single carriageway in each direction with a 50mph speed limit supported by a traffic enforcement camera positioned close to the junction with Western Avenue and facing toward the site. Street lighting is present to either side of the road with bus stops in walking distance. However, the south western side of Sealand Road adjoining the site consists of only grass verges and hedges around the junction with Marcher Court and beyond in both directions. There is a narrow footway present to the opposite side of the road which provides a link between Western Avenue and Ferry Lane, but there are no pedestrian crossings or refuges near to the site. The closest are some distance away within Sealand Industrial Estate beyond Ferry Lane.
8. During my visit in the early morning, I observed that Sealand Road is heavily used with almost constant flows of traffic in either direction travelling at speeds close to the 50mph limit, including a significant proportion of heavy goods vehicles (HGVs). The narrow footway was also in regular use by both pedestrians and cyclists, despite a cycle path ending to the south east of the site. Visibility from the Marcher Court junction and the footway opposite when looking towards the junction with Western Avenue is satisfactory due to the alignment of the road and the absence of intervening vegetation. However, the more enclosed nature of hedging to the south east, together with a bend in the road results in more limited visibility in that direction. As a consequence, given the levels and speed of traffic travelling in either direction along Sealand Road due patience, care and attention are required for vehicles using the Marcher Court junction and pedestrians crossing to and from it.
9. The appellant has submitted evidence including a transport statement which based upon a TRICS methodology indicates that the majority of trips to and from the site would be by car, with a reduced number of people trips overall and no significant changes during peak periods when compared with the existing office use. The Council has not offered any contrary evidence in that respect. Furthermore, it is reasonable that the operation of a day nursery generally results in a concentration of trips for drop offs and pick ups in the early morning, lunchtimes and late afternoons / evenings by commuting parents or guardians, whereas an office use has similar peak time movements of people, but also necessitates trips at other times of the day. In such circumstances, I am satisfied that the existing access and car parking arrangements would be suitable for the traffic movements proposed and would not have an adverse impact upon local highway conditions in that respect.

10. Notwithstanding the above, the transport statement also indicates that the change of use from offices to a day nursery with 30 places would involve a significant increase in the number of pedestrians likely to visit the site. In that regard, the site is in close proximity to the Blacon residential area which has pedestrian links to the footway opposite via a path from Treborth Road and via Western Avenue that provide convenient routes for pedestrians. Although the residential area is served by Dee Point Primary School which has its own day nursery, its presence would not preclude the possibility of residents within a reasonable walking distance from seeking to alternatively secure a nursery place at Marcher House. Consequently, I am satisfied that the proposal would result in an increased number of pedestrians, including a greater proportion of vulnerable groups such as young children, crossing a busy and high speed road in a location where an adjoining footway and formal crossing facilities are not available.
11. Having regard to the above, the likelihood of an increase in pedestrian movements associated with the proposed use would introduce an unacceptable increase in risk of accidents on Sealand Road and at the junction with Marcher Court. In that respect, influential risk factors are the vulnerable nature of user groups involved and the necessary patience, care and attention required to cross the road at the junction with Marcher Court due to the highway layout and traffic flows, together with the speed of vehicles. I consider, therefore, that the proposal would have a harmful highway impact as it would not ensure that safe and suitable access to the site could be achieved for its users.
12. In reaching the above findings, I have taken into account that the appellant has provided evidence relating to the location and causes of road traffic accidents in the local area within the last 5 years, all of which did not relate to the Marcher Court junction or pedestrians. Nevertheless, the absence of previous accidents arising from the existing uses in Marcher Court is not justification for an alternative development that would result in an increased risk of accidents due to the potential for a greater number of pedestrians crossing the road, including a much higher proportion of young children. I am not satisfied that conditions suggested by the appellant to necessitate only car use by parents or guardians to secure a nursery place or a pick up/drop off service would be enforceable or preclude the possibility of parents or guardians with young children accessing the site on foot. Despite the appellant making reference to future proposals to reduce the speed limit along Sealand Road to 40mph, there is no certainty that such a change will take place and the scheme could not be required by condition on adopted highway outside of the site.
13. The appellant has drawn to my attention that Ash Grove Farm Nursery located on Wrexham Road is a day nursery previously approved by the Council in 1999 and provided evidence of an absence of road traffic accidents close to it. However, I do not have the full details which led to the change of use being granted and therefore, cannot be certain that the circumstances are the same as the proposal before me. Although the highway layout is similar with an absence of a pedestrian crossings or a pedestrian footway on the adjoining carriageway of Wrexham Road and a residential area close by, I observed that the speed limit of the road in that location was lower. Consequently, the conclusions I have reached are based upon the specific considerations relevant to this appeal proposal as described.

14. I conclude that the change of use would have a detrimental impact upon highway and pedestrian safety, which reflects a highways impact in the context of the GPDO. Having regard to Schedule 2, Part 3, paragraph W of the GPDO, there would be conflict with Policy STRAT 10 Cheshire West & Chester Council Local Plan (Part One) Strategic Policies, adopted January 2015 and Saved Policy HO 19 of the Chester District Local Plan, adopted May 2006. When taken together those policies, amongst other things, seek that the safety of all road users should be taken into account and that the proposal would not be detrimental to highway safety. The policies are consistent with the National Planning Policy Framework in so far as it seeks safe and suitable access to the site can be achieved for all people, to which there would also be conflict. The proposal is, therefore, contrary to the requirements of the GPDO, with particular regard to Schedule 2, Part 3, Class T and the conditions listed at paragraph T.2.(1)(b), and, therefore, is not development permitted by it.

Other issues raised

15. The conditions of the permitted development right conferred by the GPDO necessitate a determination based upon only assessment of impacts as set out earlier in this decision. Consequently, the ability of the proposal to contribute to any future demand for nursery school places, potential benefits in terms of employment and levels of interest and support expressed by parents are not influential factors upon the outcome of an appeal against the refusal of prior approval.

Conclusion

16. I conclude that the proposal would not satisfy the relevant requirements of Schedule 2, Part 3, Class T of the GPDO due to the highway impact I have identified. Consequently, the proposal is not development permitted by the GPDO and the appeal is dismissed.

Gareth Wildgoose

INSPECTOR