
Appeal Decision

Site visit made on 25 July 2017

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 29th August 2017

Appeal Ref: APP/B1930/W/17/3171063

Grasshoppers Nursery 20 York Road, St Albans AL1 4PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Childbase Partnership Ltd against the decision of St Albans City & District Council.
 - The application Ref 5/2016/2928, dated 28 September 2016, was refused by notice dated 15 December 2016.
 - The development proposal is described on the decision notice and appeal form as: 'Single storey side, first floor side and two storey rear extension and demolition of garage to create additional parking'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. This is a planning application to carry out various works. The current proposal follows the refusal of a similar proposal (Application ref: 5/2015/2563). Changes since that refused scheme comprise:
 - Removal of first floor balcony/roof garden on elevation fronting Clarence Road – change from French doors to windows
 - Addition of screening panels on first floor fire escape landing
 - Maximum numbers of children increased from 31 to 57, as previously approved by the Council under Reference 5/2016/0501 which also required the submission of a Green Travel Plan.
3. The refused scheme had also included the change of use of the first floor of the premises from residential to nursery use. That refusal was followed by the issuing of a Planning Contravention Notice in respect of the change of use which had already occurred. However the Council subsequently decided not to pursue that action after receiving further information from the nursery operators.
4. The Council's Officer report for the current application referred to the proposal as again involving the change of use of the first floor of the premises from Class C (Dwellings) to Class D1 (Non-Residential Institutions). However that change of use had not been included in the planning application description. Rather the application form described the current use of the site as 'Children's

day care nursery. Use Class D1' and stated that there would be no loss or gain of residential units. It is not for me to determine what the lawful use of the premises may be. An alternative procedure is available for that purpose under Section 191 of the Act. The appeal has been determined on the basis that the proposal only includes the works for which planning permission was sought and does not include any change of use.

Application for costs

5. A two-part application for costs was made by Childbase Partnership Ltd against St Albans City and District Council. This application is the subject of a separate Decision.

Main Issues

6. Having regard to the reasons for refusal, local and national policy, and representations from interested persons the main issues are considered to be what effect the development would have on:
 - the character and appearance of the building and the St Albans Conservation Area;
 - the living conditions of neighbouring occupiers in respect of noise, vibration, smells and outlook;
 - the safety and convenience of highway users; and
 - whether any identified harm in these respects would be outweighed by any benefits of the development

Policy Context

7. Statute requires that the appeal be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan here includes the saved policies of the St Albans District Local Plan Review 1994 (the LP). Other material considerations may include the National Planning Policy Framework (2012) (the Framework) and local and national planning guidance.

Reasons

Character and Appearance

8. The appeal site occupies a corner position at the junction of York Road with Clarence Road within Area 7i (Clarence Park) of the St Albans Conservation Area. It is occupied by an Edwardian building originally constructed as a large detached house. The modern flat-roofed single garage on the Clarence Road frontage is proposed for demolition, as is a modern conservatory extension to the main building. Following that demolition the main building would be extended to the side and rear.
9. LP Policy 72 Extensions in Residential areas provides amongst other things that when considering such extensions:

'(i) Scale and Character – the extension shall relate to the domestic scale, character and appearance of the street;

(ii) Compatibility with original building – the architectural style, roof form, windows, detailing and materials shall normally be appropriate to the original building, especially in conservation areas;’.

10. LP Policy 85 follows statute in providing that the Council will pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. To this end the policy in summary seeks amongst other things:

- a high standard of design;
- that development is sympathetic to its surroundings and the conservation area;
- that the existing building line shall be respected;
- that form and density shall have regard to the surroundings and the existing balance of buildings and landscape;
- that car parking and servicing shall not detract from the street scene;
- that extensions shall normally be designed to leave the original building form predominant and the form of the original roof shall normally be extended or repeated;
- that height, roofscape and skyline shall be appropriate to the locality and streetscene generally; and
- that pitched roofs are normally required.

11. The St Albans Conservation Area Character Statement (2016) (SACACS) describes the character of Clarence Park as essentially residential. The appeal property has been previously altered and extended. This may explain why it is one of only a few properties in Clarence Road and York Road that are not locally listed. Nevertheless it retains much of the character of a large house with an attractive front garden to York Road. Hedges and fencing along the Clarence Road frontage screen views of the external play areas and help to retain the impression from the street that this remains a large house with a garden, similar to others in the road.

12. The SACACS refers to the areas interesting streetscenes and to the locally listed buildings as exhibiting similar features to each other and giving a strong sense of cohesiveness. I concur with these observations and the appeal premises also possess similar features. The SACACS provides that: *‘Any development or redevelopment in the area must take account of the need to enhance the character and appearance of the area. The retention and enhancement of landscaping and the height and positioning of any new buildings within the area are key points in avoiding adverse effects and preserving the setting of the historic assets.’* In this context I take the historic assets to here include the locally listed houses and Clarence Park itself.

13. The previous single storey extensions to the side and rear of the building include dummy pitched roofs. They are subordinate in scale to the original building. Whilst they have already brought the building closer to Clarence Road than other houses in that road, and may have contributed to the building’s inclusion on the local list, they remain of broadly domestic scale. The large conservatory extension remains of a suitably domestic scale and in any case it

is not readily seen from the street. The conservatory and the garage are constructed of simple modern materials and their demolition would not harm the conservation area subject to an appropriate restoration of a replacement wall or fence on the northern boundary to screen the parking area and protect the streetscene and the amenities of the neighbouring occupier. That is not shown on the submitted drawings but could be required by a planning condition

14. The extensions now proposed would include prominent flat-roofed single-storey elements to the side of the building on the Clarence Road frontage that would not respect the character of the building or the conservation area. A tall and bulky second floor addition would surmount an existing side extension and would wrap around the side and rear of the property. I consider that the scale and bulk of these extensions and the proposed addition of an external fire escape would alter the visual character of the building from that of a domestic residential building to a more obviously non-residential institutional one which would not respect the area's essentially residential character.
15. The original building would cease to be predominant. There would be building over the side play area close to the road. Encroachment towards the existing frontage planting would threaten its survival and leave little room for effective replacement and subsequent maintenance. The likely loss of an open area and of screen planting would disturb the existing balance of buildings and landscape. The design would include a fussy roofscape. The significant flat-roofed elements would not be sympathetic to the building or the conservation area and would detract from the area's design cohesiveness.
16. Overall I consider that the development would fail to preserve or enhance the character or appearance of the building or the conservation area and that it would contravene LP Policies 72 and 85 and the objectives of the SACACS. In the terms of Paragraphs 134 of the Framework there would be less than substantial harm to the significance of the designated heritage asset of the St Albans Conservation Area which harm nevertheless merits considerable importance and weight. The Framework provides that the harm would need to be weighed with any public benefits of the development. There would also be less than substantial harm to the setting of the locally listed buildings in Clarence Road owing to the loss of design cohesiveness and the essentially residential character of their setting.

Living Conditions

17. LP Policy 9 provides amongst other things that: *'Within areas primarily residential in character, the council will not normally disturb lawfully existing non-residential uses, provided such activities are environmentally acceptable in terms of their visual impact, noise, smell, safety, health or traffic generation.'* *'Acceptable uses include community facilities.....'*
18. LP Policy 72 Extensions in Residential areas provides amongst other things that:

'(v) Affect on adjoining property – the light, privacy or amenity of adjoining property shall not be unacceptably harmed

(x) Two storey rear extensions

(a) shall not normally intrude into a 45 degree visibility zone of a neighbour's ground floor windows.'

19. The policy is in these respects consistent with the Framework which includes as a core planning principle at paragraph 17 to always seek a good standard of amenity for all existing and future occupants of land and buildings.
20. The Council's statement has claimed that there would be overshadowing, loss of outlook and loss of sunlight for the occupiers of No 19 York Road. A previous concern about reduced privacy at the neighbouring property has been addressed by the proposed addition of screens to the landing at the top of the fire escape and was not included as a reason for refusal.
21. I saw that No 19 has itself been considerably extended to the rear at ground floor level and to the side on 2 storeys. These extensions are not shown on the submitted OS site plan. Any outlook from ground floor or first floor habitable rooms at No 19 towards the extensions would be highly oblique. The 45 degree line would not be breached. Neither would these rooms suffer any unacceptable loss of sunlight or daylight. There would be a marginal loss of outlook from parts of the garden at No 19 but the garden surroundings would remain mainly open and these effects would not warrant the dismissal of the appeal.
22. Of more concern is the potential for harm associated with the rearrangement of the kitchen at the nursery. The numbers of children and staff attending the nursery would make the scale of meals production in the kitchen necessarily of a commercial rather than a domestic scale. I saw that at present the range cooker is set against an internal wall and that a flue from the hood apparently exits through a vent on a flat roof at the rear of the premises. Additional general ventilation is currently provided by a wall-mounted fan at ground floor level facing the boundary with No 19 York Road. In the proposed development the flue to the roof would be removed to allow the construction of the first floor extension and the cooker would be relocated against the external wall beneath the present location of the wall-mounted fan. That fan (or a replacement) would then direct all kitchen fumes horizontally towards the boundary with No 19 with an accompanying air input fan on the rear north-facing wall.
23. The Council has suggested that there could be harm from noise, smells or vibration. In respect of noise its own Environmental Health officer had no objection subject to the imposition of a condition requiring a BS4142:2014 noise assessment in respect of any plant, machinery or equipment to be installed to ensure that its noise rating shall not exceed background noise. Such an assessment was supplied with the grounds of appeal submission and statement in March 2017. The Council has sought that the assessment be given little weight on the basis that interested persons did not see the documents at an earlier stage. However there was the opportunity for any interested persons to comment on it when they were consulted on 30 May 2017 and they were advised that the appeal documents were available on the Council's website.
24. Neither side has submitted any evidence in relation to vibration. However, as a detached property it appears unlikely that any vibrations would be transmitted to any neighbouring property. Any annoying vibrations that may occur would be more likely to affect occupiers of the nursery than any neighbour and are therefore likely to be corrected.
25. In relation to smells, whilst there is an absence of expert evidence from either side on this point my experience suggests there is a strong possibility that

cooking smells would increase due to the redirection of the fumes extract towards No 19 at ground level instead of the existing roof level flue. The amount of food to be prepared and the likely period of time during the day when this would occur are both likely to exceed that normally associated with a domestic kitchen.

26. Another potential noise issue relates to the use of the external play areas. There is an existing planning condition which limits the numbers of children allowed outside the building to 6 at one time in order to reduce the risk of noise and disturbance. That appears to be a low proportion of the maximum 57 children which may attend the nursery at one time. It is unclear whether it accords with Ofsted guidance which the Planning Statement refers to and which is said to seek unrestricted freeflow access to external areas. The Appellant is not seeking a change to those numbers as part of the current application. However one effect of the proposed development would be to reduce the available playspace by building over the play area at the side. Future external play would then be concentrated at the rear of the premises adjacent to the garden of No 19 York Road. Another effect would be the loss of the conservatory which at present may serve as a halfway house to the outdoor space whilst helping to contain some of the noise. Nevertheless, as no increase in numbers of children allowed in the garden is being sought this would not warrant the dismissal of the appeal.
27. I conclude on this issue that there is at least a risk of the contravention of LP Policies 9 and 72 in respect of cooking smells harming the living conditions of the occupiers of No 19 York Road.

Highways

28. LP Policy 65a provides that: *"Planning permission for day nurseries and creches, involving new buildings or changes of use will not be granted unless the following criteria are complied with:*

(i) there is no materially adverse impact on the character of an area;

(ii) there is no materially adverse impact on the amenity of neighbouring properties in terms of:

a) the scale of the proposal;

b) the relationship of buildings and play to the adjoining properties;

c) noise and disturbance.

Conditions will normally be applied to planning permissions granted, limiting the maximum number of children on site at any one time, the number permitted outside at any one time, hours of operation and use of the premises;

(iii) car parking shall normally comply with Policy 39, which requires sufficient parking for the proposed use. Sufficient off-street parking for staff will normally be required and residents' parking must comply with Policy 40 and be independent of staff parking.

(iv) provision shall be made for the setting down and picking up of children in a safe and acceptable manner."

29. As written, that policy is directed towards new buildings or changes of use for nurseries. It is of limited relevance to proposals for the extension of existing nursery buildings.
30. The planning application claims that there are currently 3 on-site parking spaces and that this would increase to 5 as a result of the demolition of the garage. There are no existing or proposed cycle spaces. The application does refer to a modest increase in staff numbers from 16 to 17 full-time and from 5 to 7 part-time. Adding 1 or 2 parking spaces and addressing some of the need for cycle parking would be adequate for that level of increase and could be accommodated.
31. From what I saw the existing parking area has unmarked parking spaces and could currently accommodate 2 cars whilst still allowing access for waste bins to the side. A third car might be accommodated in the single garage but only if this is not used for storage, as seems likely. Given the restricted width, the presence of walls or fences on each side and the need for access to the bin storage area, I consider it unlikely that more than 3 or at most 4 cars would be readily accommodated after the development, using the tandem arrangement indicated on the submitted plans, whilst still allowing access for bins. However this would still allow for a modest increase in usable spaces compared to the present arrangement. Including space for cycle storage would encourage cycle use by staff and would accord with national and local guidance. It is not part of the submitted scheme but might be required by condition.
32. It is apparent that the on-site car parking provision is currently well below the maximum standards recommended in the Council's guidance and would remain so after this development notwithstanding the modest increase that is proposed. It is also apparent that the streets around the nursery currently lack any parking restrictions and are heavily parked during the day. It is likely that nursery staff are amongst the commuters who park on street. This may be inconvenient for those residents who lack sufficient off-street parking for their own needs. The proximity to St Albans Railway Station may be a factor in creating parking pressures but I understand that the Council has consulted on proposals to manage on-street parking which may address the issue. There is no information before me as to how any final scheme might affect staff parking on street.
33. Although I was unable to attend the nursery early or late in the day I understand from representations that many parents bring their children to the nursery (and to local schools) by car and that this entails much manoeuvring near the junction of York Road and Clarence Road. That may inconvenience other highway users but speeds are likely to be low and there is no accident record before me to confirm suggestions from interested persons that it is dangerous or would become more so as a result of this development. Neither is there any highway authority objection to the development. In any case, were the appeal to be dismissed these existing parking and servicing arrangements would continue in the fallback position with similar effects.
34. In permitting the original use of the ground floor as a nursery and the subsequent ground floor extension of the conservatory the Council has already conceded the principle of the site's use as a nursery, including the existing limited provision for off-street parking for staff and for setting down and picking up children. Planning conditions were used to limit the numbers of

children - originally to 28 and then to 31 but do not appear to have been effectively monitored as there is evidence that they were breached. More recently there was an opportunity to assess the impact on parking and travel of increased numbers when the Council considered and approved a variation of the previous condition to allow up to 57 children to be present. That latter figure was based on Ofsted standards relating to the usable floor area of 132.2 sq m which included both ground and first floor accommodation.

35. The current proposal seeks to further increase the usable floor area for children to 203.1 sq m (+54%) but does not seek a variation in the permitted numbers. On that basis there would be no permitted increase in the numbers of children or in associated vehicle trips. Were the appeal to be allowed it would be wise to re-impose that condition on numbers to assist its enforceability in respect of the additional accommodation and to add provisions for more effective monitoring than has been the case in the past. Were the Appellant to seek at a later date to apply to increase the numbers of children to make the fullest use of the extended accommodation the Council would have the opportunity to then assess the impacts of that intensification including traffic and parking impacts.
36. I conclude on this issue that, because the application does not propose any intensification of the numbers of children and because adequate parking provision can be made for the slight increase in staff numbers there would be no identifiable new harm to highway safety or the convenience of highway users and no conflict with the development plan or national policy in that regard. Insofar as the premises do not currently meet the parking standards sought by LP Policies 39 and 40 that is a consequence of past decisions rather than the development now proposed.

Benefits

37. The Appellant claims a social benefit from the qualitative improvement of the facilities (with a higher Ofsted grading), an economic benefit from employing the additional staff, and an environmental benefit by way of enhancement of the conservation area and a reduction in noise, smells and vibration through new equipment.
38. However for the reasons set out above I disagree that the conservation area would be preserved or enhanced. There is a lack of evidence to support the claimed improvements in relation to noise, smells and vibration. The relocation of the cooker extract risks an adverse effect in relation to smells. The only identifiable public benefits would thus be the qualitative improvement to the nursery accommodation and the modest increase in employment.

Conclusions

39. My overall conclusion is that the modest public benefits of improving the quality of the nursery accommodation and of providing some additional employment do not here outweigh the identified harm to the character and appearance of the area and the associated less than substantial harm to the significance of heritage assets. Neither do they outweigh the likely harm to the living conditions of the neighbour at No 19 in respect of cooking smells. In both respects there is an associated overall conflict with the development plan policies which in these respects are broadly consistent with the Framework and are not materially out of date. The benefits are insufficient as material

considerations to indicate that the appeal should be determined other than in accordance with the development plan.

40. The appeal should therefore be dismissed.

Robert Mellor

INSPECTOR