The Planning Inspectorate

Appeal Decision

Site visit made on 16 October 2017

by S Jones MA DipLP

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

Decision date: 16th November 2017.

Appeal Ref: APP/L2440/W/17/3177868
1 Ladysmith Road, Wigston LE18 4UZ

- 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 Mr Kotak against the decision of Oadby & Wigston Borough Council.
- The application Ref 16/00377/COU, dated 21 August 2016, was refused by notice dated 19 March 2017.
- The development proposed is proposed change of use from existing offices to nursery that will accommodated up to 26 children.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The original application referred to up to a maximum of 26 children. The appellant referred in the appeal to a revised maximum of 15 children accompanied by further documents. Although this revised number has been brought to the Council's attention in the course of the appeal, I have determined the appeal based on the original maximum of 26 children.

Main Issues

3. The main issues are the effect of the proposed development on:

    - the character and appearance of the area with particular regard to the security fence and vehicle parking
    - protected trees
    - whether the site is a suitable location for the proposed nursery.

Reasons

Character and Appearance

4. The appeal property is a former Ministry of Defence (MoD) single storey building in a surrounding residential area of former MoD housing located across a grassed area of land on the west corner of Ladysmith Road and Hindoostan Avenue. The building is in a poor state of repair and is surrounded by a large number of trees protected by a Tree Preservation Order (TPO). It would undergo renovation to provide the nursery facility and for security the outdoor area would be fenced.

5. The area is characterised by modest housing on narrow roads amongst generous areas of green space with a high number of mature trees, many of which are protected under the TPO covering the estate. Frontages are largely open plan with few individual fences, hedges or other boundary markers in the vicinity of the site.

6. By necessity given the need to protect and secure small children, the proposed fencing would be a substantial wire mesh 2m high security fence enclosing the open area directly in front of the appeal site. Its significant height, length and commercial design would appear harsh and incongruous amongst the modest domestic housing and garaging that surrounds the site, and would harm the open plan character of the area.

7. It was not disputed that a significant number of vehicles would be connected to the proposed use; in particular I must have regard to the maximum possible use if all 26 childrens places were taken up. Provision of a mini-bus service could potentially reduce that impact although this would depend on parental choice. The appellant suggested that extra staff parking could be found in public car parks offsite, but there is nothing to guarantee that this would be the case.

8. Inadequate parking provision for staff and/or customers of the nursery facilities would result in overspill. The creation of staff spaces and customer spaces and associated path would hardsurface a significant part of the site which exacerbated by overspill vehicle parking littering the open plan verges and frontages of the estate would be out of keeping with the surrounding area and would considerably harm the green low density open plan character and appearance of the area and be contrary to paragraphs 60 and 64 of the National Planning Policy Framework.

Protected Trees

9. Works within the proposed development to enclose the proposed play with fencing, and create a hardsurfaced area for vehicles with a hardsurfaced footpath across to the nursery would be undertaken in very close proximity to several trees protected by a TPO. Concerns were raised that without suitable protective measures, the development could damage the trees or cause them to die off. There are several documents referring to root protection systems and showing different sizes and locations for the proposed vehicle hardstanding. A Tree Survey was submitted with the appeal but there was no assessment of the suitability of the siting of the parking, footpath or fencing with regard to the protected trees.

10. The Councils officers report also refers to the concern of the Arboricultural Officer that protected trees were not compatible with the nursery use due to a potential for risk to children from trees and a risk to trees from children. He stated some of the tree species were unsuitable for a play area for children because of their tendency to shed branches. The introduction of the use could result in the felling or relocation of TPO trees. The officer report goes on to speculate about any effect on trees, but no specific measures were put forward by the appellant to mitigate any harm or risk arising to the TPO trees. In consideration of all these factors, I am not satisfied that adequate measures would be in place to protect and enhance the natural environment with regard to the trees because of their value to the local environment and its enjoyment of it by the public.

Location of the Nursery

11. Policy 16 of the Oadby and Wigston Core Strategy Development Plan Document identifies community uses such as the proposed nursery to be primarily suited to town centre sites, district centres and local centres. This location does not fall into any of those categories. However, based on the information I have in this appeal, I consider the policy states 'Generally' rather than being restrictive. Whether or not in a preferred location, the criteria set out in the policy go on to indicate a number of reasons why a particular location might be supported, including sufficient parking, and positively reflecting the character and appearance of its surroundings.

12. Applying those criteria to this site, whilst it is in a suburban location and some bus routes are noted there is little evidence to show that the development would fulfil these criteria with regard to good accessibility to transport. Insufficient parking was one of the concerns expressed by the many objectors and the Council, and I concurred with them that the likelihood is there would not be sufficient provision with a consequent impact outside the development. Furthermore, based on my findings about character and appearance above, the proposal would not positively reflect its surroundings. Therefore the development would not satisfy several of the criteria in Policy 16 even if the locational preferences were dispensed with.

Planning Balance

13. The appellant states that there are waiting lists for local nurseries and a new one is needed. The development would result in the renovation of a deteriorating building and provide local community facilities, together with associated employment. However, despite these advantages the location would not be supported under Policy 16 and I find that the commercial use would be harmful to the character and appearance of the area and would not properly ensure the continuing protection of the trees covered by the TPO. There are no other matters including the identified benefits that would outweigh this harm. Therefore I conclude that the development would conflict with Policy 16 of the Oadby and Wigston Core Strategy Development Plan Document and the aims of the National Planning Policy Framework which together amongst other things seek to secure high quality sustainable development that reflects its surroundings and protects and enhances the natural environment.

Other Matters

14. I have taken account of the points raised in the objections to the development. I also note the roads accessing the proposed development fall within the remit of South Wigston Residents Company Ltd, a residents management company. However, additional expense falling upon residents to subsidise impact from the development would not be covered by the development plan or other considerations in respect of the planning merits of this case.

Conclusion

15. For the reasons given above I conclude that the appeal should be dismissed.

S Jones

INSPECTOR