
Appeal Decision

Site visit made on 27 November 2017

by K Ford BSocSc (Hons) MSc MRTPI

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

Decision date: 19th December 2017

Appeal Ref: APP/G4620/W/17/3181334
94 Penncricket Lane, Rowley Regis B65 0RE

- 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 Ron Sahota against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/17/60401, dated 9 March 2017, was refused by notice dated 3 May 2017.
 - The development proposed is change of use from a dwelling (class C3) to a children's nursery (class D1).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect on the character and appearance of the area.
 - The effect on the living conditions of the occupants of neighbouring properties with particular regard to noise and disturbance.
 - The effect on highway and pedestrian safety.

Reasons

Character and Appearance

3. The appeal site houses a semi-detached property set back from the road by a gated driveway. The property is close to employment uses, although the adjacent railway line and associated bridge and embankment provide a physical and visual separation between the property and these uses. The site is located in an area that is residential in character, albeit on the edge of that area. An electricity pylon, visible to the rear of the property does not change this character significantly.
4. The proposal would introduce a commercial use into an area that is residential in character. The proposal would lead to limited physical alterations to the appearance of the site but the activities of the business and its operational needs, as well as the comings and goings with increased number of cars above that which would be considered typical for a residential area would however harm the character of the area. Cumulatively this would erode the character of the area, and as a result the proposal would conflict with the part of Policy SAD

EOS 9 of the Site Allocations and Delivery Development Plan (Plan). Although I note that the appellant considers that this policy is not relevant to the proposal, the policy seeks to avoid new development which would be incompatible with their surroundings. Supporting text confirms that particular concern will be given to the effect of new development on local character.

5. On this matter the appellant considers that it is notable that the Council do not consider that the proposal would be contrary to the locational requirements of policy SAD MD 6 of the Plan. However, the locational aspects of this policy seemingly relate to encouraging community facilities on the fringes of commercial areas, as opposed to discouraging such uses in any particular area.

Living Conditions

6. The noise created by some surrounding uses is audible but was not notably intrusive at my site visit. The proposal would increase activity in and around the site. The fairly frequent turnover of cars taking children to the site or collecting them, as detailed within the submitted evidence, would lead to the opening and closing of doors, engines running and the noise of people talking. It would be particularly notable during peak times creating a level of activity and noise for 3 hours of the day causing particular disturbance to neighbouring properties early in the morning and in the evening with the proposed opening times of the nursery being 08:00-18:00.
7. The neighbouring property to the appeal site has openable windows to habitable rooms on the rear elevation, some of which are close to the boundary with No 94 and therefore would be particularly affected by children playing outside. They also share a party wall increasing the risk that noise from inside No 94 would be heard by No 92. Plans indicate that all rooms adjoining the party wall would be occupied by children within the proposed use.
8. I note that technical officers of the Council have not raised concerns over noise and disturbance, and that the appellant has identified a willingness to install acoustic insulation along the party wall and acoustic fencing on the shared boundary with No 92 to replace the existing standard close boarded fence which currently separates the 2 properties. However, based on the little technical information and detail provided it is unclear the extent to which this would be effective. It is accepted that it may be possible to mitigate some of the harm created by the operation of the children's nursery through appropriately worded conditions on matters such as opening hours, play times, and the number of children. However, it would not be possible to overcome the noise and disturbance completely or to the extent that it would avoid significant harm to the living conditions of the neighbouring property, given the proximity of this dwelling.
9. The proposal would harm the living conditions of the occupiers of neighbouring properties with regards noise and disturbance. It would therefore conflict with Policy SAD DM6 of the Plan which does not support community uses in buildings that share a party wall where clear evidence has not been submitted to demonstrate that the use will not adversely affect the occupiers of adjoining properties.

Highway and Pedestrian Safety

10. The property currently has off street parking in the form of a garage and driveway which would be configured to provide a policy compliant level of staff and visitor parking for the proposal. Elsewhere in the road not all properties have off street parking to the front of the house. Whilst a track between Nos 86 and 88 leads to parking opportunities for residents at the rear of properties, it has been identified that nevertheless cars park on the road and on the pavement, something I witnessed on my site visit.
11. Although the proposal would provide an adequate number of parking spaces and it has been demonstrated that 2 cars could pass accessing and egressing the site in a forward moving gear, use of the car parking spaces would still require a level of manoeuvring that would likely deter use of the spaces due to the fairly restricted space available. Concerns are also raised by the Council's Public Health officer over the use of this space and possible conflict with small children with manoeuvring cars. This would likely lead to parking in the street or on the pavement outside Nos 86, 90 and 92 adding to parking and congestion pressures in the area and creating a risk to pedestrian safety. If the spaces were used it would likely lead to queuing on the highway, especially during peak times creating a risk to highway safety even if dwell times were not significant and speeds were low. Whilst it is acknowledged that some people may travel to the site by means other than the car, it is reasonable to presume given the nature of the business and restrictions on bus timings in the immediate vicinity that most users of the site would travel by car.
12. Irrespective of the off street parking and a separate pedestrian access point on site, the proposal would pose a risk to pedestrian and highway safety and therefore conflict with the National Planning Policy Framework, which advises that planning decisions should take account of whether 'safe and suitable access to the site can be achieved for all people' and should 'create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians'.

Other Matters

13. I note the importance of childcare provision to enable parents and carers to work and that the appellant has identified a geographical gap in provision in the area of the appeal site. Nevertheless the benefit of the proposal in filling this gap and the wider social benefits of the scheme is outweighed by the substantial harm I have identified.
14. The appellant makes reference to other nurseries abutting dwellings in the Sandwell Borough area although I have been provided with insufficient information to enable comparisons with the case before me. In any event each case is determined on its own merits and my assessment is based on the information presented to me.

Conclusion

15. For the reasons identified, and having regard to all other matters raised, the appeal is dismissed.

K Ford

INSPECTOR