



Appeal Decision

Site visit made on 21 November 2017

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 10 January 2018

Appeal Ref: APP/L5240/W/17/3179734
16 Burcott Road, Purley, CR8 4AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Kola Olamiju against the decision of the Council of the London Borough of Croydon.
 - The application Ref 17/00570/FUL, dated 2 February 2017, was refused by notice dated 5 April 2017.
 - The application sought planning permission for the change of use of the first floor lounge to an additional nursery room and the adjoining office to children's toilets without complying with a condition attached to planning permission Ref 98/2654/P, dated 21 July 1999.
 - The condition in dispute is No (v) which states that: The use of the first floor room as a nursery shall not commence until details of the periods of use of the garden by the nursery children have been submitted to and approved in writing by the local planning authority. The use shall be in accordance with the agreed scheme.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. In Part E of the appeal form it is stated that the description of development has not changed from that on the application form but, nevertheless, a different wording has been entered. On the basis of the evidence before me, it is clear that the appellant seeks to vary a condition on a previous planning permission for the site, as is reflected in the wording of the Council's decision and that on the appeal form. I have therefore dealt with this case as being for an appeal to vary a condition, as stated in the heading to this decision.
3. The planning permission which is the subject of this case was granted on appeal¹ and a reason was not therefore directly appended to the disputed condition. However, in her decision the Inspector states "*I have indicated that the use of the garden, including the first floor terrace, needs to be controlled with some quiet periods.... I therefore consider that, prior to the expansion of the nursery, details of the precise times when the garden will be used or free of children should be agreed with the Council*". I have dealt with the appeal on that basis.

¹ Appeal ref: T/APP/L5240/A/99/1020582/P7 dated 21 July 1999

Main Issue

4. I consider that the main issue in this appeal is whether the condition is reasonable or necessary in the interests of the living conditions of nearby residents in respect of noise and disturbance.

Reasons

5. The appeal site consists of a nursery located in a residential area which is characterised by large detached properties. The site is a corner plot and is located in close proximity to a number of dwellings, particularly the adjoining properties of 14 Burcott Road and 2 Haydn Avenue. I saw that the property has an external play area to the rear as well as outbuildings and a play area on decking.
6. Due to the limited area of the rear garden and the close knit relationship with adjoining properties, the use of the rear garden by a significant number of children may lead to undue noise and disturbance to adjacent residents. It is therefore appropriate that the use of the garden is controlled by a planning condition.
7. The variation in times proposed by the appellant may seem relatively limited compared to those currently permitted. However, I note that the details approved by the Council under the extant condition include limitations on the number of children in the garden at any one time as well as the length of time each group of children may use the garden. Furthermore, I note that an Inspector also placed a restriction on the number of children using an external wood decking area when allowing a previous appeal² for the site. I therefore consider that such restrictions are an effective method of limiting noise and disturbance arising from the site.
8. The effect of varying the condition as suggested by the appellant would not solely result in an extension to the times of use of the outside play facilities, but could also lead to a greater intensity of use. However, the appellant has not provided any substantive details as to how the use of the rear garden would be managed or the provision of suitable mitigation measures. An increase in intensity as well as hours of use would lead to a commensurate increase in noise and disturbance to nearby residents. I also note that the Council's Pollution Team have referred to a history of complaints from nearby residents being received in relation to the property.
9. I have had regard to the personal statement provided by the appellant, and I am mindful of the benefits that extended hours of outdoor play would have for children as well as for the operation and future development of the nursery. I also acknowledge that there may be increasing demand for child care facilities. However, these matters do not outweigh the harm I have identified above.
10. In support of the appeal, the appellant has referred to a number of nurseries in the area which he states do not have planning restrictions on the use of outdoor areas. However, I do not have full details of the circumstances that led to these developments being accepted and so cannot be sure that they represent a direct parallel to the appeal site. I have also had regard to matters referred to by the Council, such as distance from neighbouring properties,

² Appeal ref: APP/L5240/A/09/2097437

boundary treatment and the nature of adjacent uses. In any event, I have determined this appeal on its own merits.

11. I therefore find that the condition is reasonable and necessary in the interests of the living conditions of nearby residents in respect of noise and disturbance. In this respect the removal of the condition, or its replacement on the basis of the details provided by the appellant, would conflict with Policies SP6.3 of the Croydon Local Plan: Strategic Policies 2013; EP1 of the Croydon Replacement Unitary Development Plan 2006; and 7.15 of the London Plan 2015. The proposal would also conflict with the National Planning Policy Framework which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.
12. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR