
Appeal Decision

Site visit made on 28 November 2017

by Graham Wyatt BA (Hons) MRTPI

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

Decision date: 11th January 2018

Appeal Ref: APP/Z5630/W/17/3181480

Land at 190 Malden Road, New Malden, Kingston upon Thames KT3 6DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Eva Hejretova against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 16/14189/OUT, dated 19 February 2016, was refused by notice dated 17 February 2017.
 - The development proposed is the construction of a children's day nursery on land adjoining 190 Malden Road with car park and new vehicular access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application sought outline planning permission with access, layout and scale for consideration. Landscaping and appearance are reserved for future consideration.
3. The site has been the subject of a previous appeal¹ against a decision for the 'construction of 2 garages to serve 190 and 190a Malden Road, a children's day nursery on land adjacent along with in and out vehicular access' (the previous appeal scheme). I have considered the previous Inspector's findings and decision.

Main Issues

4. The main issues are:
 - The effect of air quality in the area on the development; and
 - Highway safety.

Reasons

Air Quality

5. The appeal site is a rectangular parcel of land that is located between Malden Way (the A3) and the rear of the properties at St. James' Close. A pavement runs along its southern boundary, adjacent to the slip road which allows traffic to merge with other vehicles on the A3. A new access would be provided off

¹ APP/Z5630/A/13/2195771 and APP/Z5630/A/13/2195783 dated 14 August 2013

the slip road into the site. The proposed day nursery would be in the western part of the site with a parking and turning areas to the east.

6. The Council confirms that the whole of the Royal Borough of Kingston-upon-Thames is designated as an Air Quality Management Area (AQMA). An air quality status report² confirmed that in 2015 the annual mean concentration level of 45.2µgm-3 for nitrogen dioxide (NO₂) in the area was in excess of European Union limits of 40µgm-3. Thus, the use of the site for a day nursery would expose children to high levels of pollution, detrimental to their health.
7. The appellant suggests that as the site lies within the London Low Emission Zone, it can be expected that pollution levels at the site should begin to fall. Moreover, no play areas are proposed outside the building and as a result of mechanical ventilation, air quality levels within the building would be lower than local dwellings which do not have such systems.
8. However, I note from Table D of the air quality status report that NO₂ levels at the site have steadily increased from 34.4µgm-3 to its current level since 2012. In addition, while I acknowledge that the matter of air quality was raised some time after the application was submitted, an air quality survey and/or mitigation measures have not been provided by the appellant. Therefore, I cannot be confident that the development would protect users of the day nursery from the effects of high and rising levels of NO₂ in the area, which could in turn have an adverse effect on human health.
9. Thus, the development would be in conflict with Policy 7.14 of the London Plan 2011 (March 2016) and the National Planning Policy Framework which seek, amongst other things, to minimise increased exposure to existing poor air quality and make provision to address local problems (particularly in AQMA's) where development is likely to be used by those particularly vulnerable to poor air quality, such as children.

Highway Safety

10. The development proposes a new access into the site from the slip road that serves the A3. The road is restricted to 30mph as it passes the site which increases to 50mph as one enters the A3 off the slip road. A large roundabout with a pedestrian crossing on its junction serves the slip road which widens to two lanes as it passes the site. The development proposes a new vehicle crossover over the pavement with a single access that would allow vehicles to enter and exit the site at the same time.
11. The appellant argues that new proposals for the access road were submitted to Transport for London (TfL) for comment in 2014 before the submission of the planning application. TfL responded that the plan "is acceptable for the purposes of planning"³ subject to the submission of a Road Safety Audit (RSA) for the revised access design.
12. On submitting the application to the Council, TfL acknowledged their response from 2014 and added that, "additional work was needed to clarify the principle of the access in this location, notably around traffic counts and speed data to qualify those undertaken by the applicant in 2013"⁴. Moreover, TfL had also

² The Royal Borough of Kingston upon Thames Air Quality Annual Status Report for 2015 (October 2016)

³ Email dated 23 May 2014 from Andrew Dorrian of TfL

⁴ TfL letter dated 14 December 2016

commissioned surveys in November 2016 which revealed that while the traffic count was lower than was observed by the appellant in 2013, with its normal AM peak periods, the 85 percentile speeds during the AM peak period is some 35 mph.

13. Moreover, TfL's Road Safety Action Plan for London 2020 states that 20mph speed limits are often appropriate in locations where schools and nurseries are present. TfL commented that a reduction in speed to 20mph on the slip road would not be considered appropriate given the nature of the slip road which joins the A3. Consideration was then given to splitting the lanes to create a decelerating and turning lane for traffic accessing the nursery and a straight ahead lane for joining A3 traffic. However, TfL considered that the consequences of this arrangement would be that traffic joining the A3 would be within close proximity of the highway structure which increases the chance of collision at the point before the current lane starts. As a result of this, TfL raised significant concerns over the proposed junction at this location and could not support the application.
14. I am mindful of paragraph 32 of the National Planning Policy Framework which states that developments should only be prevented or refused where the impacts of the development are severe. From my own observations, I have significant concerns over the presence of an access on the slip road to serve the proposed nursery. I agree with the Inspector's findings in the previous appeal decision that, despite the legal speed limit of the slip road, it does not have much in common with a residential street. The main function of the slip road is to provide access onto the strategic road network and drivers would not be expecting individual access points along its length.
15. It is clear that despite the 30mph restriction along the slip road, traffic exceeds this speed. Moreover, I witnessed that despite the presence of the pedestrian crossing, when vehicles do not have to stop at the junction while the crossing is in use, they enter the slip road rather quickly. Traffic using the road would be expecting to join the A3 further along the slip road and in my view would be likely to accelerate accordingly. As a result, there would be a risk to the safety of road users at the proposed access.
16. The appellant states that amended plans for the proposed access were submitted to the Council for consideration on 30 January 2017⁵, before the Council made their final decision. These drawings make further revisions to the visibility splays to make it easier to ensure that visibility at the proposed access is maintained. Although I have considered these drawings, they do not alter my concerns with regard to the nature of the slip road in relation to the proposed access.
17. I conclude therefore, that the development would result in an unacceptable risk to highway safety in conflict with Policy 6.3 of the London Plan 2011 (March 2016) and Policies DM9 and DM10 of the Council of the Royal Borough of Kingston-upon-Thames Local Development Framework Core Strategy (2012) which seek, amongst other things, to ensure that development proposals do not compromise highway safety.

⁵ Drawings 917/10/02-C and 917/10/03-G

Other Matters

18. The appellant refers to the public benefits that would arise from the provision of a nursery within the Borough and the re-use of previously developed land. However, the public benefit and re-use of land does not outweigh the harm I have identified above.
19. The appellant has also drawn my attention to a day nursery that has been provided within the neighbouring Borough of Wandsworth, also adjacent to the A3. However, the nursery is within a former museum building and its change of use did not require planning permission. Furthermore, I have only limited information of the traffic implications of the development and digital advertising boxes close to the site. Thus, I do not find the development to be so similar as to represent an appropriate reason to find in favour of the appeal before me.

Conclusion

20. Therefore, having regard to the development plan when read as a whole, I conclude that the appeal should be dismissed.

Graham Wyatt

INSPECTOR