
Appeal Decision

Site visit made on 23 January 2018

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 07 February 2018

Appeal Ref: APP/W3710/W/17/3181271

Bulkington War Memorial Club, Stafford Close, Bulkington, Bedworth CV12 9QX

- 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 Max West (RHD Direct Ltd) against the decision of Nuneaton & Bedworth Borough Council.
 - The application Ref 034284, dated 01 August 2016, was refused by notice dated 14 February 2017.
 - The development proposed is a children's play area, including fixed static equipment.
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Decision

1. The appeal is allowed and planning permission is granted for a children's play area, including fixed static equipment at Bulkington War Memorial Club, Stafford Close, Bulkington, Bedworth CV12 9QX in accordance with the terms of the application, Ref 034284, dated 01 August 2016, and the plans submitted with it.

Application for costs

2. An application for costs was made by Mr Max West (RHD Direct Ltd) against Nuneaton & Bedworth Borough Council. This application is the subject of a separate Decision.

Procedural Matters Relating to Planning Policy

3. The Council's reason for refusal referred to policy EMP7 of the Nuneaton and Bedworth Borough Local Plan (2006) (the LP). The LP is time expired but certain policies have been 'saved' following a direction from the Secretary of State. However, policy EMP7 is not one of those policies and the Council accept that the policy is no longer extant. Therefore, I shall have no regard to it in reaching my decision.
4. Although no reference to the policy was made in the reason for refusal the Council has referred to saved policy ENV14 of the LP within its appeal statement. However, it has failed to provide a copy of the relevant policy as part of its case, or with the questionnaire, and the statement provides little analysis of the content of the policy and does not explicitly allege that the development contravenes its requirements. Given the lack of detail provided I am unable to conclude that any conflict arises in that respect and have assessed the impact of the development on the relevant policies of the National Planning Policy Framework (the Framework).

5. Paragraph 120 of the Framework has been referred to by the Council and that paragraph relates to the effects of pollution and land instability. The term 'pollution' is a general term and could be taken to relate to many things, including noise pollution, which is the alleged harm in this instance. Consequently, I am satisfied that the paragraph is relevant to the matters before me and have taken it into account.

Main Issue

6. The main issue is the effect of the play area and associated play equipment on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

7. The play equipment has been installed within an enclosed external space to the rear of the Bulkington War Memorial Club (the Club). The car park associated with the Club is immediately to the east and residential development is situated to the south and west. On the southern aspect, the rear of Warwick Close is separated from the play area by an unmade access track which gives access to the rear gardens of the adjacent dwellings. A number of properties have garages at the bottom end of the gardens, facing onto the play area. Immediately to the west is a car parking and service area associated with the flats at Stafford Close.
8. Consequently, there is a degree of separation between the play area and the external facades of the closest dwellings and flats. The parties appear to agree that there is no standard methodology for assessing noise associated with play areas. The appellant's noise consultant¹ has used data compiled from a number of different sources in an attempt to estimate the level of noise likely to be generated but the letter does acknowledge that there are uncertainties in those estimations because they rely on data collected by others.
9. The Council's Environmental Health Officer has also noted that the figures presented are time-weighted average levels, such that they may not reflect the maximum or peak noise levels from specific incidents. It appears to me that the typical use of a play area is likely to result in fluctuations in noise levels as a result of children shouting or screaming at specific points and concur that it is those peak levels, as opposed to averaged noise levels, that are likely to have the greatest potential for disturbance.
10. Other localised factors will also impact on the way in which noise affects nearby residents, including prevailing levels of background noise. The parties dispute the likely impact of the M69 motorway on background noise levels and traffic noise was clearly audible at the time of my site visit.
11. Having read the respective comments, it appears to me that the dialogue between the noise consultant and Environmental Health Officer relates to the difficulties in predicting noise levels from play areas in a situation where the facility in question had yet to be constructed. In this case, the play area was constructed in 2016 and both parties have had the opportunity to take actual noise readings when the play area is in use. However, no such readings appear to have been taken and the empirical evidence in that respect is lacking.

¹ Letter from Sean Sullivan of Acoustic Associates (Peterborough), dated December 2016

12. Whilst not condoning the erection of development in advance of receiving planning permission neighbouring residents have also had the opportunity to see, or hear, the play area when in use and to submit comments accordingly. Neighbouring properties were notified of the appeal and no letters of objection have been submitted in response to that notification². The Council has forwarded three letters that were received in response to its consultation on the planning application and those letters refer to numerous issues relating to the Club, some of which have nothing to do with the play area in question.
13. Only one of those letters refers specifically to noise resulting from the use of the play area. It is not clear if the complaint stemmed from an isolated incident or if the noise source was from the play area alone or other outdoor activity associated with the Club. Therefore, whilst I note the content of that letter, it is a single objection relating to a use that has continued for over a year and does not appear to be representative of a general or continuing impact.
14. Thus, for the most part, the response to consultation exercises would appear to be an indication that the area is used in a way that does not cause undue noise and disturbance. The equipment is designed for younger children and signs are in place around the area stating that the facility is for the use of 'Under 5's' only and that all children must be accompanied by an adult. CCTV cameras linked to the bar area look onto the space.
15. Whilst there will no doubt be occasions where children above that age limit seek to use the facility, its design is such that it is unlikely to stimulate older children for prolonged periods and, by and large, I consider it likely that the area will be used by the target audience. Children of that age are unlikely to use the area at anti-social hours and in that respect, the design of the area will help to avoid undue disturbance in the evening period. There is no lighting to the play area and that is a further factor that will limit its use in the evening period.
16. Therefore, whilst the Council contend that the play area has intensified the use of the external space I am satisfied that the equipment will largely be used during the daytime and early evening period, as opposed to the night-time period when people may expect a greater degree of quiet. In addition, the scheme must be viewed in the context of the permitted use of the Club and existing background noise levels that may occur from other activities.
17. Having considered all of the above I am satisfied that the play area has not substantially altered the character of the use at the site or the level of noise likely to be generated. Whilst noise may be noticeable I conclude that it will not be intrusive to a level that will result in a change in the quality of life for adjacent residents³. Accordingly, having regard to paragraph 123 of the National Planning Policy Framework (the Framework) the development has not had a 'significant adverse' or even an 'adverse' impact on the quality of life of local residents. Similarly, it has not led to an unacceptable risk of pollution, in the terms of paragraph 120 of the Framework and it accords with the one of the core principles of the Framework, set out at paragraph 17, which is that

² One letter of objection was received in relation to the use of a smoking shelter which is a separate development not related to the play area.

³ With reference to the Noise Exposure Hierarchy set out within the Planning Practice Guidance at Paragraph: 005 Reference ID: 30-005-20140306

planning should seek to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Other Matters

18. Following a letter from a local resident in relation to the planning application the Council concluded that the play equipment was located at a sufficient distance from neighbouring properties to prevent an undue loss of privacy as a result of overlooking, particularly from those using the climbing frame and tower. I see no reason to take a different view and the way in which the equipment is likely to be used, with children "on the move", is such that any overlooking would be fleeting and temporary in any event. When those factors are added to the distance from neighbouring properties I am satisfied that the development has not resulted in an unacceptable loss of privacy.

Conditions

19. The Council has put forward a condition that would require the construction of an acoustic fence around the perimeter of the area. In the absence of any firm evidence that the development is unacceptable without such a fence I find that the condition is not necessary to make the development acceptable in planning terms. Consequently, the condition would not meet the tests set out at paragraph 206 of the National Planning Policy Framework and I shall not impose it.
20. Within the application for costs, the appellant criticises the Council for not considering the possibility of granting planning permission for a temporary period. It is not clear if that suggestion was made before the Council refused the application. Given that the application was submitted retrospectively, the opportunity to assess the impact has already been available. Based on the information before me I conclude that the impact is within acceptable limits and, as such, I see no particular reason to grant planning permission for a temporary period. No other conditions have been suggested and I am satisfied that none are necessary to make the development acceptable in planning terms.

Overall Conclusion

21. For the reasons given above I conclude that the appeal should be allowed.

Chris Preston

INSPECTOR