The Planning Inspectorate

Appeal Decision

Site visit made on 4 September 2018

by Helen Hockenhull BA(Hons) B.Pl MRTPI

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

Decision date: 25 September 2018

Appeal Ref: APP/W4515/W/18/3202579
Unit 1, Churchill Street, Wallsend, NE28 7TQ

- 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 Mrs Kerrie Whiteley, Resilienti Ltd against the decision of North Tyneside Metropolitan Borough Council.
- The application Ref 18/00195/FUL, dated 12 February 2018, was refused by notice dated 30 April 2018.
- The development proposed is the erection of fencing and change of use of landscaping area to external nursery play area.

Decision

1. The appeal is dismissed.

Procedural matter

2. I observed on my site visit that the proposed new footpath had already been implemented and was in use. The scheme is therefore part retrospective and I have considered the appeal on this basis.

Main Issues

3. The main issues in this case are:

    - the effect of the development on the character and appearance of the area;
    - the effect of the proposal on the living conditions of the occupants of nearby residential properties with particular regard to noise disturbance;
    - the effect of the development on a nearby Ash tree the subject of a Tree Preservation Order.

Reasons

Character and appearance

4. The appeal site forms part of a landscaped area located to the front of three retail units and a children's nursery to the southern end of Churchill Street, Wallsend. The site lies in a busy mixed use area incorporating local shops, a library, a public house and residential uses. Churchill Street is a bus route and a bus stop is located immediately adjacent to the proposed external play area.

5. The residential properties to the north of the appeal site are set back from the road behind an area of grass with specimen trees. They also have low front boundary walls enclosing a small front garden area. A similar landscaped area with mature trees the subject of a Tree Preservation Order, lies to the front of the Nursery building and adjoining retail units. This provides an attractive setting to the units and an open spacious character to the area.

6. In this context, the proposed 2 metre high fencing would appear as an incongruous addition. Its forward projection to the back of the footway would increase its prominence in the street scene and cause harm to the visual amenity of the surrounding area. I acknowledge that the fence proposed would have an open structure and would allow views through. However it would be around 2 metres in height which would be significantly higher than other front boundary treatments in the locality. Consequently the proposal would appear out of place and cause harm to the character and appearance of the area.

7. It would conflict with Policy DM6.1 of the North Tyneside Local Plan 2017, Section 12 of the National Planning Policy Framework (the Framework) and the Council's Design Quality Supplementary Planning Document (SPD). These documents aim to ensure that development achieves high design standards and would be sympathetic to local character.

Living conditions

8. Residential properties are located immediately to the north of the proposed play area and also on the other side of Churchill Street. I am advised that the nursery operates between the hours of 8am and 6pm and children would be supervised when using the proposed facility.

9. On my site visit I noted the high level of background noise, with general activity, traffic and buses in this busy local centre. Whilst I accept that to some extent this would mask the potential noise from the play area, from my experience the noise of children playing, shouting, the use of toys/play equipment etc would be quite distinct from the general background noise.

10. The appellant has not provided details of how the area would be used or a noise assessment to demonstrate the impact of the development. In the absence of such evidence I cannot be satisfied that the appeal proposal would not lead to noise disturbance which would have an unacceptable effect on the living conditions of the occupants of nearly residential properties, in particular No. 110 Churchill Street immediately to the north.

11. Mitigation measures may be appropriate to reduce the potential noise from the proposal. However without a detailed noise assessment, such measures cannot be identified and their effectiveness assessed.

12. Accordingly, I conclude that the appeal scheme would cause harm to the living conditions of nearby residents and be in conflict with Policy DM5.19 of the North Tyneside Local Plan. This policy aims to protect new and existing development from contributing to or being put at an unacceptable risk of pollution. The appellant has questioned the applicability of this policy in terms of noise pollution. However it is clear from the wording of the policy that it concerns pollution caused by a range of factors including noise. I am therefore satisfied that this policy is relevant to the appeal proposal.

Trees

13. Whilst there are no trees within the appeal site itself, an Ash tree the subject of a Tree Preservation Order, lies immediately to the south of the proposed play area. The Council's Landscape Architect has expressed concern that the installation of the proposed fencing could affect the tree roots and that there may be a need to remove some lower branches to accommodate a fence of around 2 metres in height. Concern has also been raised about the repositioned footpath and the possibility of damage to tree roots during its construction. At the time of my site visit however this new path had already been put in place.

14. Following my observations on site, I consider that as a result of the height of the existing tree canopy, it would appear unlikely that lower branches would need to be removed to accommodate the proposed fence. However, I have not been provided with a method statement outlining measures to protect the tree during the construction of the development. I am therefore not satisfied by the evidence before me that the development can be carried out without causing harm to the nearby protected tree.

15. Accordingly the scheme would fail to comply with Policy DM5.9 of the North Tyneside Local Plan which aims to protect existing trees and woodland.

Other matters

16. I acknowledge that parents of children at the nursery would like to see an external play area provided. I also accept that this type of provision would have support from Ofsted. The principle of such provision would comply with local and national planning policy to promote active healthy lifestyles and contribute to health and well-being.

17. The Council have made reference to the appeal[1] decision for the original development of the retail units and nursery. I note that the Inspector considered the lack of external play provision. He concluded that it was reasonable to assume that appropriate regulation would prevent the operation of the nursery if it were considered to be inadequate with regard to active indoor or outdoor play space. This position is unchanged. Whilst it would be desirable for the nursery to have external provision, the benefits it would provide would be outweighed by the harm I have identified to the character and appearance of the area, the living conditions of nearby occupants and to the nearby protected tree.

Conclusion

18. For the reasons given above and having had regard to all other matters raised, I dismiss this appeal.

Helen Hockenhull

INSPECTOR

[1] Appeal Ref APP/W4515/W/16/3158978