



Appeal Decision

Site visit made on 19 June 2019

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2019

Appeal Ref: APP/X4725/W/19/3225416 5 Conway Road, Wakefield WF2 0AZ

- 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 Miss Kirsty Child against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref 18/00382/FUL, dated 18 February 2018, was refused by notice dated 11 October 2018.
 - The application sought planning permission for a change of use from office (B1) to a day nursery and pre-school (D1) without complying with a condition attached to planning permission Ref 16/01099/COUT, dated 1 December 2016.
 - The condition in dispute is No 3 which states that: *The number of children engaged in outside play and learning shall be restricted to a maximum of 8 at any one time.*
 - The reason given for the condition is: *in order to protect the living conditions of the occupants of nearby residential properties.*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Miss Kirsty Child against City of Wakefield Metropolitan District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the condition is reasonable and necessary in the interests of the living conditions of nearby residents with regards to noise and disturbance.

Reasons

4. The appeal site is in use as a day nursery and has an outdoor play area to the rear, although this play area was not in use at the time of my site visit. The appellant proposes to increase the maximum number of children engaged in outdoor play and learning from 8 to 20. I saw that the play area has a close knit relationship with the gardens of surrounding residential properties, although a degree of barrier screening is provided by garages and a canopy along the rear. Although some background traffic noise was apparent at my site visit, the appeal site and neighbouring properties are located some

distance away from the main through road and have a relatively quiet suburban character.

5. The Council and local residents have expressed concern that the proposed increase in the number of children using the play area would lead to an increase in noise from the site. Residents have referred to the effects of noise and disturbance from the existing business on the enjoyment of their properties, including having to keep windows shut when children are playing outside.
6. The Council's Environmental Health Officer has provided details from noise monitoring equipment installed at a nearby residential property as part of an on-going noise nuisance investigation. The monitoring results indicate noise levels which are regularly 10 to 30 dB ($L_{Aeq,T}$ and L_{A90}) above measured background levels. This also identifies the persistent occurrence of peaks of between 55-65 dB L_{Amax} from children playing. Within this context, I am mindful that there is a subjective human response to a child's shout or scream which can be particularly strident and highly distracting. The noise from interactions between staff and children adds to my concerns on this matter.
7. I acknowledge that the proposal would not lead to an increase in the magnitude of the 'peak' L_{Amax} sound levels arising from the play area. However, I consider that the proposed increase in the number of children using the play area would lead to a material increase in the number of such occurrences. The evidence suggests that this would exacerbate the existing noise levels associated with the appeal site to the detriment of the living conditions of nearby residents.
8. I also acknowledge that noise from children playing is not uncommon in residential areas. However, due to the potential number of children using the play area and the proximity of the site to nearby dwellings, I consider that the proposed increase would lead to levels of noise above that which could be reasonably expected by nearby residents.
9. The appellant has highlighted some concerns in respect of the evidence provided by the Council. This includes a reported noise level from shouting which is not represented by the measured parameter. Reference is also made to an elevated sound level arising from a passing HGV, although I note that the Council's evidence refers to clattering and banging which may explain the measurement. The appellant also refers to the maximum noise levels from children being below the maximum noise level of other events, although this does not address the relative frequency and pattern of occurrence of such events. Whilst I note the appellant's comments on these specific matters, this does not undermine the robustness of the Council's noise monitoring evidence as a whole or the substantial weight that I attach to it.
10. Both the Council and the Noise Impact Assessment¹ prepared in support of the original application refer to a 55dB L_{Aeq} value used by the World Health Organisation (WHO). However, the appellant has questioned the Council's use of this value for reasons including the nature of the measured parameter (i.e. L_{Amax} as opposed to $L_{Aeq,T}$) and whether this relates to the effect on the outdoor playground itself rather than surrounding properties. Based on the evidence before me, I consider that the Council's use of the WHO figure in this case is

¹ Noise Impact Assessment, Environmental Noise Solutions Limited, 27 April 2016.

flawed. However, this does not lead me to a different conclusion in respect of the noise impacts that would arise from the proposal or the wider supporting evidence submitted by the Council.

11. I have had regard to the limitations that the condition places on the practical use of the outside play area, but the effect of this limitation does not outweigh the identified harm to nearby residents. I also note that measures have been taken to reduce noise such as the installation of canopies and rubber matting, but there is no substantive evidence that these measures would mitigate the harm from the proposed increase in children using the play area.
12. I conclude that the proposed increase in the number children using the play area would lead to undue harm to the living conditions of nearby residents as a result of noise and disturbance. The extant condition is therefore reasonable and necessary in the interests of the living conditions of nearby residents with regards to noise and disturbance. The proposal would therefore be contrary to Policies D9 and D20 of the Council's Development Policies Document 2009 with regards to the amenity of neighbouring residents and the local area. The proposal would also be contrary to the National Planning Policy Framework with regards to preventing new and existing development from contributing to unacceptable levels of noise pollution.
13. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed and the condition retained in its present form.

David Cross

INSPECTOR