



Appeal Decision

Site visit made on 11 June 2019

by J Williamson BSc (Hons), MPlan, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2019

Appeal Ref: APP/W4325/W/19/3226211

Mulberry Tree Day Nursery, 128-130 Market Street, Hoylake, Wirral, Merseyside CH47 3BH

- 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 Claire Gormley against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/18/01229, dated 19 September 2018, was refused by notice dated 30 November 2018.
 - The development proposed is described as: The provision of glass balustrading around a new decking area and around a flat roof which is to change to a decking area, all for the use of nursery children to provide an outdoor experience for the children.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was made in the name of Claire Trigg. The appeal is made by Claire Gormley. It has been clarified that this is one and the same person with Claire Gormley being the married name of Claire Trigg.
3. The post code for the site provided on the appeal form differs to that provided on the application form. Both parties now agree that CH47 3BH is the correct post code.
4. Following a request for confirmation, the Council provided evidence that policies of the Wirral Unitary Development Plan 2000 (WUDP) have been 'saved'.
5. It is noted that since the determination of application APP/18/01229 the National Planning Policy Framework (the Framework) has been revised (February 2019). However, none of the changes are material to this case.
6. I note that the appellant has submitted amended plans with the appeal. It appears that the residents of the properties next to the site were notified by the appellant of these plans. However, they were not the plans that the Council determined. I consider the amended plans to be materially different to those the Council determined and that a comprehensive publicity and consultation process has not been undertaken. Consequently, it would be prejudicial to the Council and other interested parties to accept the plans at this stage.

7. The appellant has questioned the Council's reference to Policy HS15 of the WUDP, which relates to non-residential uses in primarily residential areas. The Council was asked to clarify the location of the site and the relevant policy constraints. The appellant was given the opportunity to comment on the clarification received from the Council. The Council confirmed that the application site and numbers 1-3 School House Cottages fall within the area designated Key Town Centre. The additional information shows that the appeal site is close to the area designated primarily residential but not within it. Consequently, policy HS15 of the WUDP does not apply.
8. I have determined the appeal in accordance with all the above.

Main Issue

9. The main issue is the effect of the proposed development on the living conditions of the occupants of properties in the neighbouring terrace known as School House Cottages, with reference to noise and disturbance and privacy.

Reasons

10. The appeal building is a two-storey, detached building comprising a children's nursery on the ground floor and residential accommodation above. The site fronts Market Street and is located within Hoylake Town Centre, a designated Key Town Centre in the WUDP. The town centre comprises a mix of commercial and residential uses. An access runs past the south western side of the site to a public car park located at the rear of the site. There is a terrace of residential properties, School House Cottages, located beyond the north eastern boundary of the site.
11. The building has a single storey flat roof element extending off the rear; there is also a small courtyard area at the rear from which the accommodation above can be accessed via an external stairway. There is an area of decking immediately to the rear of the residential unit at first floor level, approximately 3 metres (m) deep, extending across the full width of the property. The decking is approximately the same height as the flat roof.
12. Although the site lies within the designated Key Town Centre area the existing site circumstances, as described above, are such that the occupants of School House Cottages do not experience any significant noise and disturbance or privacy issues. I acknowledge the presence of the existing residential decking. However, its use is limited to the occupants of the accommodation and their visitors and is unlikely to generate much noise nor does it cause any significant privacy issues for the occupants of School House Cottages. Moreover, residential uses are not known for generating much noise and disturbance.
13. The proposal broadly entails extending the flat roof area over the small courtyard area, creating a space measuring, along the longest edges, approximately 6.2m x 8m, converting the area to allow it to be utilised as a children's outdoor play area associated with the nursery and erecting a glazed balustrade around its perimeter approximately 1.1m high.
14. The proposed outdoor play area would be located very close to the front elevations and gardens of some of the residential properties in the terrace of School House Cottages, particularly numbers 1-4. These properties have numerous habitable room windows on their south western facing elevations and gardens evidently used as private outdoor space.

15. The use of the area for children's play would generate a substantially greater level of activity than that which results from the existing circumstances. Given this, combined with the close proximity to Nos 1-4, this would give rise to an unneighbourly level of noise and disturbance for the occupiers of, particularly, numbers 1-4 School House Cottages. For the same reasons and given the transparent nature and low height of the proposed glass balustrade, it would also give rise to an unacceptable level of overlooking to the properties of Nos 1-4 with a resulting loss of privacy for the occupiers of these properties. Consequently, the proposal would have a significant adverse effect on the living conditions of the occupiers of Nos 1-4 and a resulting detrimental effect on the enjoyment of their homes and gardens.
16. I note the appellant proposes arrangements to limit the use of the proposed outdoor play area to 2 periods per day, between the hours of 1000 to 1115 and 1330 to 1500, on days when the nursery is operating, and to limit the number of children using the space at any one time to 8, supervised by 2 members of staff, with no play equipment that would raise children above the play area level. However, I consider such arrangements would be at best very difficult to enforce. Moreover, I consider that such arrangements would not overcome the harm I have identified.
17. In light of my findings the proposal would be contrary to saved Policy SH1 of the WUDP, which requires, amongst other things, proposals within Key Town Centres not to cause nuisance to neighbouring uses or lead to loss of amenity as a result of noise and disturbance. This policy is consistent with the aims and objectives of the Framework which seek to ensure that developments create places with a high standard of amenity for existing users.

Other Matters

18. I recognise the proposal would provide social benefits for the nursery children and there would be some minor economic benefits as a result of the construction works. However, these matters would not, in my view, be sufficient to outweigh the harm that I have found.
19. The appellant raises concerns in respect of the Council's handling of the application. However, this is not a matter for my consideration in an appeal under s78 of the Town and Country Planning Act 1990 (as amended).

Conclusion

20. For the above reasons and having regard to all matters raised I conclude the appeal should be dismissed.

J Williamson
INSPECTOR