



Appeal Decisions

Site visit made on 14 August 2019

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 13 September 2019

Appeal Ref: APP/B5480/W/19/3222407

24 Severn Drive, Upminster RM14 1SW

- 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 Lee Stimpson against the decision of the Council of the London Borough of Havering.
 - The application Ref P1541.18, dated 11 October 2018, was refused by notice dated 6 December 2018.
 - The development proposed is a single storey nursery classroom and the variation of condition 5 to increase the number of children from 52 to 64 of Appeal re: APP/B5480/18/3194356.
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Appeal Ref: APP/B5480/W/19/3222408

24 Severn Drive, Upminster RM14 1SW

- 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 Lee Stimpson against the decision of the Council of the London Borough of Havering.
 - The application Ref P1657.18, dated 2 November 2018, was refused by notice dated 8 January 2019.
 - The development proposed is a single storey nursery classroom extension & the variation of condition 5 of planning application P.0731.17 (allowed at appeal REF : APP/B5480/W/18/3194356) to increase the number of children from 52 to 64).
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Decision

Appeal A

1. The appeal is allowed and planning permission is granted for a single storey nursery classroom and the variation of condition 5 to increase the number of children from 52 to 64 of Appeal re: APP/B5480/18/3194356 at 24 Severn Drive, Upminster RM14 1SW in accordance with the terms of the application, Ref P1541.18, dated 11 October 2018, subject to the conditions set out in the attached Schedule of Conditions.

Appeal B

2. The appeal is allowed and planning permission is granted for a single storey nursery classroom extension & the variation of condition 5 of planning application P.0731.17 (allowed at appeal REF : APP/B5480/W/18/3194356) to increase the number of children from 52 to 64 at 24 Severn Drive, Upminster RM14 1SW in accordance with the terms of the application, Ref P1657.18, dated 2 November 2018, subject to the conditions set out in the attached Schedule of Conditions.

Application for costs

3. An application for costs was made by Mr Lee Stimpson against the Council of the London Borough of Havering. This application is the subject of a separate Decision.

Procedural Matters

4. The planning applications made to the Council were described in the terms set out in the banner headings above. They follow the granting of planning permission at appeal¹ (the first appeal) for the change of use of 24 Severn Drive to a daycare nursery, single storey side and rear extensions and other external works. The appellant then sought permission² for the same but without complying with conditions attached to that permission. This matter was also dealt with at appeal³ (the second appeal) following refusal by the Council. The appeal was allowed in part⁴ in relation to conditions concerning the provision of car parking spaces, acoustic fencing and travel, and dismissed in part⁵ in relation to a proposal to increase the number of children accommodated within the premises at any one time from 52 to 64.
5. The appellant submitted a Noise Assessment (NA) with the second appeal that had been submitted to the Council after their refusal of the planning application that led to that appeal. As the NA did not form part of the Council's consideration of the application, the Inspector concluded that it could not be considered as part of the second appeal. Revised NAs were subsequently submitted as part of the applications that led to the appeals A⁶ and B⁷ that are now before me.
6. It is clear to me, and is not disputed by the main parties, that the proposals before me do not seek to alter or revise the previously approved operational hours of the daycare nursery, the hours between which the outdoor play space may be used by children or the maximum number of children, staff or owners that may use the outdoor play space at any one time. Nor is it a matter of dispute between the main parties that, other than the detached classroom building proposed in Appeal A and the classroom extension proposed in Appeal B, these appeal proposals do not differ from the previously approved schemes⁸.
7. The development descriptions given by the appellant refer to a variation of condition 5 of the permission allowed at the second appeal, thereby seeking to increase the number of children accommodated at the nursery at any one time from 52 to 64. The planning application documentation and also that of the subsequent appeals, also refer to the proposals as resubmissions of the previous scheme with revisions to the numbers of children that the daycare nursery can accommodate.
8. It is clear however that the Council does not object to the principle of the proposals or to the detail of the proposed physical structures. Nor, in either case, does the Council object to the proposals in terms of the effect of the

¹ APP/B5480/A/13/2204257

² LPA Ref No: P0731.17

³ APP/B5480/W/18/3194356

⁴ Allowed in respect of conditions 8, 9 and 11

⁵ Dismissed in respect of condition 6

⁶ Cole Jarman Noise Assessment Report 7/0739/R1 Revision 1 22 December 2017

⁷ Cole Jarman Noise Assessment Report 7/0739/R2 Revision 1 31 October 2018

⁸ As approved by the first and second appeals

classroom building or classroom extension on the character or appearance of the host building or the surrounding area, or the impacts of these structures on the living conditions of occupiers of neighbouring properties in terms of outlook, daylight / sunlight or privacy. Rather, it is the increase in the number of children and the resultant 'intensification of activity' within the site that the proposals would facilitate that the Council object to in both instances, and the effect that this would have on the living conditions of occupiers of nearby properties.

Main Issues

9. Having regard to the above therefore, the main issue in relation to both appeals is the effect of the proposed development on the living conditions of occupiers of nearby properties including, but not restricted to, 26 Severn Drive, with particular regard to noise and disturbance.

Reasons

10. The appeal property is a large, detached two storey building located on the corner of Severn Drive and Clyde Crescent. The building lies next to a residential property at 26 Severn Drive and backs on to the flank elevation of another residential property at 1 Clyde Crescent. A large rear yard area, enclosed by a substantial timber panel fence, provides an outdoor play area for children whilst the forecourt to the front provides a number of car parking spaces.
11. A narrow back lane leads between No. 24 and No. 1 to provide access to a large parking and garage courtyard, within which a small number of parking spaces associated with the day nursery lie. Despite the presence of a school and church on the opposite side of Severn Drive and the nearby short parade of commercial premises on Avon Road, the appeal site lies in a predominantly residential area.
12. As did the Inspector in relation to the previous appeal, I visited the site during the nearby school's summer holiday period. Despite the proximity to, and reasonably busy nature of, Avon Road, the general noise environment in the vicinity of the appeal site was typically suburban; by which I mean that traffic noise on Avon Road was discernible but by no means dominant. The local noise environment becomes quieter the further from that road that one travels. Approaching the appeal site, background noise and activity which I experienced was neither particularly intrusive nor out of keeping with that typically expected within a predominantly residential area.
13. However, in roadside areas around the perimeter of the appeal site, noise and activities associated with the nursery were more clearly evident in the context of such a residential area. Furthermore, as my visit coincided with meal time for some of the nursery classes and the wet weather meant that there was no activity within the outdoor areas, the noise which was audible was from within the building.
14. Whilst the Council have expressed concern over some aspects of the appellants' noise assessment, it is important to remember that the proposal does not seek to alter the hours of the nursery's operation, the periods that the garden may be used or, crucially, the numbers of children within the outdoor areas. Thus, it is the transmission of noise from within the proposed classroom

area and the comings and goings associated with the increased number of children that the Council are concerned with and which has led them to conclude that the proposal would result in the unacceptable intensification of use of the appeal site.

15. The uplift in child numbers that the proposals seek would be accommodated within either a detached single storey classroom building (Appeal A) or a single storey extension to the rear of the existing building (Appeal B). These structures would occupy broadly similar footprint areas. Although they would have a slightly different form and different relationship to the rear site boundary, they are also broadly similar to each other in terms of their principal orientation and fenestration. Thus, the main sources for break-out noise, the windows and doors, would be south facing into the rear yard.
16. The NAs model an increase in externally experienced noise from break-out noise with windows open as a result of the additional 12 children that the proposals would accommodate. I was conscious of break-out noise when walking around the external perimeter of the site on Clyde Crescent and the rear lane so it seems logical that an increase in the numbers of children would result in an increase in noise levels as a consequence. The NA confirms this and concludes that this would not improve as a consequence of the proposal.
17. However, in each case the physical presence of the proposed structure would of themselves, act as factors to mitigate the transmission of noise as a baffle between source and receptors. In the case of Appeal A, the proposed building would be a substantial physical presence close to the site's side (with No. 26) and rear boundaries. In the case of Appeal B, the proposal would be an equally substantial physical presence in relation to No. 26, and would additionally form a continuous wall parallel to the boundary with that property. In both cases, the flank and rear elevations would be blank.
18. Whilst the NAs note that the modelled impacts of the proposals upon No. 26 would be minor adverse or negligible, the effects on 1 Clyde Crescent would be greater; noted as moderate adverse. No. 1 has a number of windows at ground and first floor level on its flank elevation facing towards the rear of the appeal property. Clearly therefore, the source of any potential break-out noise would be closer to No. 1 than is currently the case from the existing doors and windows on the rear elevation of the appeal building.
19. Although the noise survey concludes that adequate mechanical ventilation and 'if necessary, comfort cooling' would remove the need to open the doors and windows, such measures would not, in all reality, prevent doors and windows from being opened or left open. Such periods may also become extended when children are moving between the classroom and the outdoor area during their allotted outdoor time. Nor would such situations be confined to just the summer.
20. The cumulative levels of break-out noise and noise from the use of the outdoor area are not modelled in the NAs in the manner set out at Tables 9 and 10 (T9 and T10), which is a cause of concern to the Council. The Council have not however provided any evidence to challenge the appellant's assumptions regarding cumulative levels. Nor do I have any further evidence before me to substantiate the Council's concern that background noise level assumptions were unrealistically high, thereby affecting the degree of change that would arise from the proposals.

21. Havering Core Strategy and Development Control Policies Development Plan Document (CS) policy DC26 sets a high bar in terms of assessing the effect of community facilities on residential amenity. Thus, permission will only be granted where such proposals do not have a significant adverse effect on residential amenity. The effects in the case of the proposals before me would be, at worst, minor adverse or moderate adverse in respect of one receptor in relation to Appeal B. In neither instance could such impacts be described as significant adverse, and the Council have not sought to directly challenge the appellant's conclusions in this respect.
22. The proposals do not seek to increase the number of children using the outdoor area and so the noise levels from this source would not alter. It may be inevitable that noise would be generated from both noise sources at the same time given the limitations on use of the outdoor areas. However, with the mitigation measures set out in the NAs and as previously adopted with the first and second appeals, I am satisfied that whilst the effects of the proposal would be observable, they would not breach the high bar set by CS policies DC26 or DC61, and would not therefore be so harmful as to justify the dismissal of the appeals before me.
23. In reaching this conclusion, I have carefully considered the comments of nearby residents as well as the nature of the surrounding area, within which the presence and characteristics of the primary school opposite the site have been noted. There would not be intensification of use of the outdoor areas of the site as it is not proposed to increase the numbers of children outside at any one time, nor is it proposed to increase the hours that the nursery would operate. I have also noted that the NAs found that the proportion of children and parents accessing the nursery by car and on foot is typically and broadly equally split. The Council have not challenged this and I have no reason to doubt either the accuracy of those findings, or that such a split could not reasonably be applied to the additional 12 children that the proposal seeks to accommodate.
24. The pick-up and drop-off times of the nursery are more spread out than those typically associated with the nearby school, even if the hours of operation are longer. In the context of the presence of the school, I am not persuaded that, in terms of the comings and goings associated with those accessing the nursery, that the either of the proposals and the additional numbers of children that could be accommodated within them, would result in intensification of use of the site. Nor would those comings and goings cause material harm to the living conditions of occupiers of nearby properties.
25. Thus, for the reasons I have set out above, the Council has not satisfactorily demonstrated that the proposals would cause significant adverse impact upon the residential amenities and living conditions of occupiers of nearby properties, with particular regard to those at No. 26 and No. 1. There would therefore be no conflict with CS policy DC61 in respect of Appeal A or with CS policies DC26 and DC61 in respect of Appeal B.
26. It is noted that CS policy DC26 refers to the location of new community facilities and that the daycare nursery currently already operates from the appeal site. The proposals would provide an additional classroom, either as an extension or as a detached building at the rear of the existing facility. Whilst not a new facility, per se, the proposals would nonetheless provide an

additional facility for the existing operation. I do not therefore consider it unreasonable to assess the proposals against the provisions of CS policy DC26, particularly with regard to the effect of the proposal on living conditions.

Other Matters

27. I saw that the forecourt of the appeal property was laid out for car parking in the manner shown on the submitted site plans. I also understand that there are car parking spaces associated with the appeal premises within the garage courtyard located to the rear of the appeal site. The NAs suggest that there is a broadly equal split between those who currently access the site on foot, and those who do so by car. I have no reason to doubt these conclusions, or that they should not be reasonably applied to the additional 12 children that the proposals would accommodate. Whilst I accept that there may be times of the day when Severn Drive and surrounding streets may become busier, due principally to the primary school opposite the appeal site, I have also considered that the school day will be shorter and the pick-up / drop-off periods considerably more condensed than those related to a children's daycare nursery with longer operating hours. In any event, I have noted that the applications were not refused on highways or highway safety grounds and I have determined the appeals on the basis of the evidence before me. Consequently, these matters are not sufficient to warrant dismissal of the appeals.

Conditions

28. I have considered the conditions suggested by the Council, and the subsequent response of the appellant to those conditions, in light of the Framework and Planning Practice Guidance. Where necessary I have made minor amendments to the wording of conditions in the interests of precision. Reference to conditions should be taken as to apply to both appeals unless otherwise stated.
29. I agree that time limit and plans conditions are necessary in order to provide certainty and have imposed conditions in respect of both appeals, albeit with the wording of the plans conditions tailored to reflect the specific circumstances of each proposal. Whilst the Council suggest materials in line with those specified within section 7 of the planning application forms, I prefer to rely on the approved plans conditions as they specify that the external materials will match those of the existing building. As such, the plans conditions provide greater certainty over the materials and I am satisfied that neither party would be prejudiced by my approach in this respect.
30. I agree that conditions to maintain limits on the hours of operation of the nursery and the periods within which the outdoor play area can be used should be imposed, as should conditions relating to the hours of use of the hereby approved additional classroom. I agree with the Council that the wording of these should specifically refer to each appeal proposal. So too conditions to prevent the insertion of additional windows on the flank or rear elevations of the approved classrooms where not otherwise shown, and in respect of the rooflights in the interests of residential amenity.
31. Car parking, cycle storage provision, travel plan and visibility conditions are necessary in the interests of highway safety, whilst conditions relating to acoustic fencing and details of plant or machinery are necessary in the interests of residential amenity. In the absence of specific justification from

the Council for the suggested noise limit at the nearest noise sensitive premises⁹, I have altered the suggested condition in line with the appellant's comment.

Conclusion

32. For the reasons I have set out, and having considered all other matters raised, conclude that Appeal A and Appeal B are allowed.

Graeme Robbie

INSPECTOR

⁹ Suggested condition 16

Schedule of Conditions – APP/B5480/W/19/3222407

- 1) The development to which this permission relates must be commenced not later than three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 01A - Garden nursery room Plans & Elevations Proposed; 809/SP2A - Site Plan: Proposed; 809/SP1A - Site plan: Existing; and 809/LP1A - Location Plan
- 3) The main nursery building shall not be used for the purposes hereby permitted other than between the hours of 07:30 and 19:30 on Mondays to Fridays and not at all on Saturdays, Sundays, Bank or Public holidays.
- 4) The single storey nursery classroom hereby approved shall not be used for the purposes hereby permitted other than between the hours of 09:00 and 17:00 on Mondays to Fridays and not at all on Saturdays, Sundays, Bank or Public holidays.
- 5) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 the main nursery building and the single storey nursery classroom hereby permitted, shall be used for a day nursery only and shall be used for no other purpose(s) whatsoever including any other use in Class D1 of the Order.
- 6) The total number of children accommodated within the main nursery building and the single storey nursery classroom hereby approved, shall not exceed 64 at any one time, including any children of staff or owners.
- 7) The provision of 11 car parking spaces shown on Drawing No.'s 01A and 809/LP1A shall be provided within the site and made permanently available for use.
- 8) The Travel Plan for the day care nursery dated August 2017, including measures to encourage staff and visitors to travel to the site by means other than the private car and proposals for monitoring progress should be reviewed annually. The survey and activities should be uploaded onto the TfL STARS online system and achieve a minimum of bronze level accreditation each year. The Travel Plan shall remain in force permanently and implemented in accordance with the agreed details.
- 9) The acoustic fencing on the northern and eastern boundaries, and the 1.8m high close boarded fence on the southern boundary of the application site shall be permanently retained in accordance with plan Ref: 01A.
- 10) The proposals should provide a 2.1 by 2.1 metre pedestrian visibility splay on either side of the proposed access, set back to the boundary of the public footway. There should be no obstruction or object higher than 0.6 metres within the visibility splay.
- 11) The rear garden shall only be used between the hours of 09:15 and 16:30 Monday to Friday and the maximum number of children using the rear garden for outdoor play shall not exceed 16 at any one time including any children of staff or owners.

- 12) All building operations in connection with the construction of external walls, roof, and foundations; site excavation or other external site works, including any works of demolition; works involving the use of plant or machinery; the erection of scaffolding; the delivery of materials; the removal of materials and spoil from the site, and the playing of amplified music shall only take place between the hours of 8.00am and 6.00pm Monday to Friday, and between 8.00am and 1.00pm on Saturdays and not at all on Sundays and Bank Holidays/Public Holidays.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), no window or other opening (other than those shown on the submitted and approved plan) shall be formed in the flank or rear walls of the building hereby permitted, unless specific permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.
- 14) The cycle storage shown on Drawing No. 01A shall be provided and permanently retained thereafter.
- 15) Before any works commence, a scheme for any new plant or machinery shall be submitted to the Local Planning Authority to achieve the following standard. Noise levels expressed to the equivalent continuous sound level LAeq (1 hour) when calculated at the boundary with the nearest noise sensitive premises shall not exceed LA90 – 5dB and shall be maintained thereafter to the satisfaction of the Local Planning Authority.
- 16) The proposed two roof lights in the ceiling of the single storey nursery classroom as shown on Drawing No. 01A shall be permanently fixed shut.

Schedule of Conditions – APP/B5480/W/19/3222408

- 1) The development to which this permission relates must be commenced not later than three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Plans and Elevations Proposed 809 02; Location Plan 809/LP1A; Site Plan Existing 809/SP1A and Site Plan Proposed 809/SP3.
- 3) The main nursery building and the single storey nursery classroom extension hereby approved shall not be used for the purposes hereby permitted other than between the hours of 07:30 and 19:30 on Mondays to Fridays and not at all on Saturdays, Sundays, Bank or Public holidays.
- 4) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 the main nursery building and the single storey nursery classroom hereby permitted, shall be used for a day nursery only and shall be used for no other purpose(s) whatsoever including any other use in Class D1 of the Order.
- 5) The total number of children accommodated within the main nursery building and the single storey nursery classroom extension hereby approved, shall not exceed 64 at any one time, including any children of staff or owners.
- 6) The provision of 11 car parking spaces shown on Drawing Nos. 809 02 and 809/LP1A shall be provided within the site and made permanently available for use.
- 7) The Travel Plan for the day care nursery dated August 2017, including measures to encourage staff and visitors to travel to the site by means other than the private car and proposals for monitoring progress should be reviewed annually. The survey and activities should be uploaded onto the TfL STARS online system and achieve a minimum of bronze level accreditation each year. The Travel Plan shall remain in force permanently and implemented in accordance with the agreed details.
- 8) The acoustic fencing on the northern and eastern boundaries, and the 1.8m high close boarded fence on the southern boundary of the application site shall be permanently retained in accordance with plan Ref: 809/SP3.
- 9) The proposals should provide a 2.1 by 2.1 metre pedestrian visibility splay on either side of the proposed access, set back to the boundary of the public footway. There should be no obstruction or object higher than 0.6 metres within the visibility splay.
- 10) The rear garden shall only be used between the hours of 09:15 and 16:30 Monday to Friday and the maximum number of children using the rear garden for outdoor play shall not exceed 16 at any one time including any children of staff or owners.
- 11) All building operations in connection with the construction of external walls, roof, and foundations; site excavation or other external site works,

including any works of demolition; works involving the use of plant or machinery; the erection of scaffolding; the delivery of materials; the removal of materials and spoil from the site, and the playing of amplified music shall only take place between the hours of 8.00am and 6.00pm Monday to Friday, and between 8.00am and 1.00pm on Saturdays and not at all on Sundays and Bank Holidays/Public Holidays.

- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), no window or other opening (other than those shown on the submitted and approved plan) shall be formed in the flank and rear walls of the extension hereby permitted, unless specific permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.
- 13) The cycle storage shown on Drawing No. 809/SP3 shall be provided and permanently retained thereafter.
- 14) Before any works commence, a scheme for any new plant or machinery shall be submitted to the Local Planning Authority to achieve the following standard. Noise levels expressed to the equivalent continuous sound level LAeq (1 hour) when calculated at the boundary with the nearest noise sensitive premises shall not exceed LA90 – 5dB and shall be maintained thereafter to the satisfaction of the Local Planning Authority.
- 15) The proposed two roof lights in the ceiling of the single storey nursery classroom as shown on Drawing No. 809 02 shall be permanently fixed shut.

****End of Schedule****