



Appeal Decision

Site visit made on 23 September 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2019

Appeal Ref: APP/M5450/W/19/3229160

41 Marlborough Hill, Harrow HA1 1TX

- 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 Shalini Silva against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/5696/18, dated 2 January 2019, was refused by notice dated 12 March 2019.
 - The development proposed is a change of use from a dwellinghouse (Class C3) to nursery (Class D1) at ground floor and flat at first and second floor (1 x 2 bed flat) (Class C3).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a dwellinghouse (Class C3) to a nursery (Class D1) at ground floor and flat at first and second floor (1 x 2 bed flat) (Class C3) at 41 Marlborough Hill, Harrow HA1 1TX in accordance with the terms of the application Ref P/5696/18, dated 2 January 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The description of development in the heading above has been taken from the appeal form which matches that within the Council's decision notice. It is a more concise description compared to that given in the application form. I have therefore used it in my formal decision for the sake of clarity.
3. From my site visit it is clear that the proposed development has already been carried out. I have therefore determined the appeal on the basis that retrospective planning permission is sought.
4. An amended plan was submitted with the appeal that proposes the removal of the en-suite bathroom which adjoins the second floor study. This change would be minor in nature. The Council has also had the opportunity to comment on the revised plan through the appeal process, and I do not consider that any other party would be prejudiced by my acceptance of it. I have therefore determined the appeal based on the revised plan.
5. I have also been referred to Policy H10A of the Draft London Plan (DLP). However, although the DLP has been through an examination in public, its policies could be subject to change. Moreover, no material has been supplied regarding the status of any unresolved objections to its policies. Consequently,

I attach limited weight to the DLP at this point in time, in line with paragraph 48 of the National Planning Policy Framework (the Framework).

Main Issues

6. The main issues are:

- the effect of the proposal on the living conditions of neighbouring occupants, with particular regard to noise and disturbance;
- whether or not satisfactory living conditions are provided for occupants at the self-contained flat, with particular regard to the provision of floor space;
- the effect of the proposal on users of the highway, with particular regard to safety, congestion and parking availability;
- whether or not the proposal functions well, with particular regard to the safety and security of the nursery; and
- the effect of the proposal on London's stock of houses.

Reasons

Living Conditions – Existing Residents

7. No 41 is a two and a half storey, semi-detached, property located within a predominately residential area. The proposal has resulted in the conversion of this former single dwellinghouse to a ground floor nursery (Class D1) and a self-contained flat with its accommodation spread over first floor and second floor levels.
8. On the evidence before me, the nursery employs one full-time and two part-time members of staff and currently caters for eight children. It operates between the hours of 08:00am and 18:00pm from Monday to Friday. The morning playtime associated with the nursery is during the hours of 11:30am and 12:00pm and afternoon playtime is between 14:30pm and 15:30pm. The drop off and pick up periods appear to be between the hours of 07:30am to 10:00am and 15:00pm and 18:30pm respectively.
9. A Sound Report (SR) has been submitted by the appellant. I acknowledge that this shows that levels of noise to the rear of the property fall between 'moderate annoyance' and below levels of 'moderate annoyance' in accordance with the WHO 2000, and that the noise levels to the front of the property fall into the 'serious annoyance' category in accordance with the WHO 2000. However, the primary source of noise to the front of the property is as a result of children being dropped off and picked up. With regard to the operating hours of the nursery, I find that this does not occur at unreasonable times. In addition, given the nature of the nursery use, it may also be that drop-offs and pick-ups are not concentrated at one particular time.
10. Moreover, the SR advises that a Noise Management Plan (NMP) should be introduced at the site. Amongst other things, the NMP would include details of acoustic fences, play time monitoring and drop off and collection routines. I have no evidence to show that the NMP would not suitably mitigate the above mentioned noise at the front and rear of the property and it could be secured through the imposition of an appropriately worded condition. Conditions could also be imposed ensuring that any amplified sound associated with the nursery

is not audible at the boundary of any nearby residential property and that the maximum number of children at the nursery does not exceed 20. These would further reduce the likelihood of noise and disturbance to neighbouring residents.

11. For these reasons, I conclude that the proposal does not significantly harm the living conditions of the occupants of neighbouring properties in terms of noise and disturbance. It therefore accords with Policy 7.6 of the London Plan and Policies DM1 and DM46 of the Harrow Council Development Management Policies (DMP). Amongst other things, these seeks to ensure that proposals, including new community and educational facilities, do not harm residential living conditions in terms of noise and disturbance.

Living Conditions – Occupants of the Self-Contained Flat

12. Submitted plans show that the self-contained flat would have two bedrooms. There is a dispute between the parties in terms of the requisite floor space for it, which stems from a dispute concerning the number of people that this unit could accommodate. The Council state that it could accommodate six people, whereas the appellant states it could only accommodate four.
13. The layout of the flat has been altered from a previous permission¹ for flatted units at the site in that the second floor bedroom has been sub-divided to provide another room. This room is labelled as a study on submitted plans. Given the size of this study, and as it has an existing en-suite (labelled as 'storage' on a previous version of the submitted plans), the Council considers that it would lend itself to becoming another bedroom. It is on this basis that it considers that the flat is capable of accommodating six people.
14. However, submitted plans show the removal of the en-suite from the study. The appellant has also agreed to the imposition of a condition to secure this. In my view, this shows that she does not intend on using this room as a bedroom and reduces the likelihood of such a use in the future. On the evidence before me, I am therefore not persuaded that the use of the rooms in the flat would be anything other than as indicated on the submitted plans. For the purposes of this assessment, it is therefore a two-bedroom unit that appears to be capable of accommodating four people.
15. The London Plan, together with documents such as the Housing Supplementary Planning Guidance (SPG), set out the minimum space requirements for all new residential units. The standards require that a two-bedroom, four person unit has a minimum gross internal floor area of 79sq.m. The evidence before me shows that the flat has an internal floor area of 83sq.m. It therefore meets the identified minimum acceptable standards of accommodation in terms of its quantity. Consequently, I find that the overall living space at the self-contained flat is not unacceptably cramped.
16. For the reasons given, I conclude that satisfactory living conditions are provided for the occupants of the self-contained flat in terms of the provision of floor space. The proposal therefore accords with Policies 3.5, 3.8 and 7.6 of the London Plan and the SPG, Policies DM1 and DM26 of the DMP and the Harrow Residential Design Guide Supplementary Planning Guide. Amongst other things, these seek to provide high quality homes, with adequately sized rooms, to

¹ P/2675/17

meet the needs of residents over a lifetime. It would also accord with the Framework insofar as it seeks to achieve a high standard of amenity for existing and future users.

Highway Users

17. Marlborough Hill has a PTAL rating of 4, which indicates that it is in an area with moderate access to public transport services. In common with many of the properties in this section of the street, No 41 has an existing dropped kerb which provides access to an area of hardstanding for off-street parking. I also note that this hardstanding is shared with the adjacent No 43 Marlborough Hill, which also appears to be within the ownership of the appellant.
18. I appreciate that catering for up to 20 children at the nursery could result in a number of vehicular movements to and from the site. A number of parents could also arrive at the site at the same time. Nonetheless, given the accessible location of the appeal site, it is likely that parents taking children to and from the nursery are not wholly reliant on private vehicles to do so. In addition, notwithstanding the results of the appellant's Parking Stress Survey, I observed that there were a significant number of available on-street parking spaces close to the appeal site, and indeed at nearby streets. Such spaces along Marlborough Hill appear to only be restricted to local residents at times outside of the pick-up and drop-off periods associated with the nursery.
19. I have no substantive evidence to show that this area is experiencing considerable on-street parking pressure. Taking this and all of the above into account, even if I were to discount all of the off-street parking spaces at the front of Nos 41 and 43 which further relieve parking stress, I am satisfied that there are sufficient on-street parking spaces for the users of the nursery. Such users are therefore unlikely to cause congestion on the highway or significantly inconvenience existing residents whilst parked for a short while to use the facility.
20. In terms of safety, Marlborough Hill has a wide carriageway that is subject to a 30mph speed limit. It also has speed reducing features along its length. There is no evidence before me which indicates that there have been any collisions near to the appeal site on weekdays, nor that the existing nursery has contributed to hazardous driving conditions. Consequently, I am not persuaded that the vehicular movements associated with the maximum number of 20 children at the nursery, even when viewed in conjunction with other similar nearby facilities, would compromise the safety or efficient functioning of the highway.
21. Furthermore, the appellant has agreed to submit a Travel Plan (TP) and details of cycle storage, which would further reduce the possibility of congestion or increased parking stress. These could be secured through the imposition of conditions and I have no evidence before me to show that they would not suitably mitigate the concerns of the Council's Highway Officer.
22. For the reasons given, I conclude that the proposal does not adversely affect users of the highway in terms of safety, congestion and parking availability. It therefore accords with Policies 6.3, 6.9 and 6.10 of the London Plan and Policies DM42 and DM43 of the DMP. Amongst other things, these seek to mitigate the transport impacts of developments, promote cycling and walking as modes of transport, ensure that developments afford suitable parking

provision and ensure that there is suitable capacity on the local highway network to accommodate for them.

Nursery Layout

23. The Council raises concern with the layout of the nursery as it shares a main entrance with the flat above it. However, behind this main entrance are two further doors which separate both aspects of this scheme. Entrance through the primary door is also via fingerprint recognition which is limited to key staff members of the nursery and the occupants of the flat. In addition, the main drop-off point for parents and children appears to be through the office door which is within the flank elevation of the appeal building. This is beyond a key-coded gate and further enhances security at the site. Overall, on the evidence before me, the security measures at the nursery have satisfied the relevant bodies that are responsible for protecting children within the care industry.
24. For these reasons, I conclude that the proposal functions well in that the nursery has a safe and secure layout. It therefore accords with Policy 7.3 of the London Plan and Policies DM2 and DM46 of the DMP insofar as they seek to create safe, secure and appropriately accessible environments.

Housing Stock

25. Policy 3.14B of the London Plan seeks to resist the loss of houses unless the housing is replaced at existing or higher densities with at least equivalent floor space. The supporting text to this policy confirms that this is to address London's housing needs and sustain its neighbourhoods. This text also states that existing housing should not be lost unless there are acceptable plans for its replacement.
26. From the evidence before me, the proposal would result in the loss of around 30sq.m of residential floor space from the site. However, I have found that there are acceptable plans for its replacement in the form of an adequately sized flatted unit. In addition, the scheme would not result in the loss of a residential unit from the site and would therefore not deleteriously impact upon the Council's stock of houses. Although the appellant has not assessed alternative sites for the nursery, I am therefore not persuaded that the scheme, in this site-specific circumstance, undermines the aims of Policy 3.14B or results in any material planning harm as a result of the identified technical conflict with it.
27. For these reasons, I conclude that the proposal does not have a detrimental impact on London's stock of houses and sustains its neighbourhoods. It therefore accords with the aims and objectives of Policy 3.14B of the London Plan.

Conditions

28. I have considered the conditions put forward by the Council. Having regard to the tests set out in paragraph 55 of the Framework, I have amended the wording where necessary in the interests of clarity and simplicity. Although the scheme is retrospective in nature, given that I have accepted amended plans which revise the proposal's internal layout, the standard plans condition is necessary in the interest of certainty. A condition ensuring the en-suite is removed within 3 months of the date of this decision is necessary to secure suitable living conditions within the flat.

29. I have imposed conditions requiring the submission of a NMP, managing the operational hours of the nursery, restricting the maximum number of children within it to 20 and the maximum number of persons within it to 35 and ensuring that any amplified sound is not audible at the boundary of any nearby residential property. These are necessary in the interests of the living conditions of the occupants of neighbouring properties.
30. Conditions requesting the submission of a TP and details of cycle storage are necessary in the interest of users of the highway. A condition requesting details of the refuse storage strategy for the proposal is necessary in the interest of the character and appearance of the area and highway safety. Furthermore, I have imposed a condition ensuring that the nursery is used for this and no other purpose. This is necessary in the interest of the living conditions of nearby residents and highway safety.

Conclusion

31. For the reasons set out above, the appeal scheme would adhere to the development plan and there are no other considerations which outweigh this finding. Accordingly, the appeal should be allowed.

M Heron

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Revised plan PA-01.
- 2) The ground floor nursery (Use Class D1) shall be used for this and for no other purpose.
- 3) The number of children attending the nursery shall not exceed 20 and the combined number of staff, students/pupils and patrons on the premises shall not exceed 35 at any time.
- 4) The use of the nursery hereby permitted shall only take place during the period from 08:00am and 18:00pm Monday to Friday.
- 5) No music or any other amplified sound associated with the nursery use shall be audible at the boundary of any neighbouring residential property.
- 6) Within three months of the date of this decision the en-suite to the second floor room labelled as a study on approved drawing PA-01 within the flat shall be removed from the property.
- 7) Within three months of the date of this decision a Noise Management Plan (NMP), including details of acoustic fences and the management of play time for the nursery, as well as a timetable for its implementation, shall be submitted for the written approval of the local planning authority. The approved NMP shall be carried out and completed in accordance with the approved details and timetable for implementation and retained thereafter.
- 8) Within three months of the date of this decision a Travel Plan (TP), as well as a timetable for its implementation, shall be submitted for the written approval of the local planning authority. The approved TP shall be carried out and completed in accordance with the approved details and timetable for implementation and retained thereafter.
- 9) Within three months of the date of this decision details of cycle storage shall be submitted for the written approval of the local planning authority. The approved storage shall be carried out and completed in accordance with the approved details within three months of its approval and retained thereafter.
- 10) Within three months of the date of this decision details of the refuse storage and collection strategy shall be submitted for the written approval of the local planning authority. This strategy shall be carried out in accordance with the approved details for the lifetime of the approved development.

End of Schedule of Conditions