
Appeal Decision

Site visit made on 11 September 2019

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2019

Appeal Ref: APP/B4215/W/19/3232137

1 Glen Avenue, Manchester M9 4EE

- 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 Olufemi Babalola against the decision of Manchester City Council.
 - The application Ref 122633/FO/2019, dated 6 February 2019, was refused by notice dated 3 May 2019.
 - The development proposed is described as “the change of use from C3 dwelling to D1 Day Nursery with driveway access alterations”.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. An amended plan¹ has been submitted with the appeal, substantially extending the area of carparking to the rear of the property. However, the Procedural Guide: Planning Appeals – England² clearly advises that the appeal process should not be used to evolve a scheme and “if an applicant thinks that amending their application proposals will overcome the local planning authority’s reasons for refusal they should normally make a fresh planning application”.
3. The amended plan appears to relate to only one of the Council’s three reasons for refusal but it has not been subject to public consultation through the application process. In the interests of fairness and natural justice, having regard to the Wheatcroft³ principles, I consider that the Council and interested parties would be prejudiced if I considered the amended plan. Thus, my findings relate to the scheme as it was determined by the Council.

Main Issues

4. The main issues are:
 - a) Whether the proposal would conflict with the aims of national and local planning policy to create mixed and balanced communities, having regard to the loss of a family sized dwelling.

¹ 19-673 (02) 001 rev.PL3 – dated 28.01.19

² Procedural Guide: Planning Appeals – England (2019): Annexe M – Can a proposed scheme be amended?

³ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

- b) the effect of the proposed development on highway safety with particular regard to parking and pickup/drop off facilities.
- c) the effect of the proposed development on the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance.

Reasons

Housing Mix

- 5. The appeal property is an extended end of terrace residential dwelling situated adjacent to a substantial area of open space, in an otherwise predominantly residential area. The plans submitted by the appellant show that the existing property has 3 bedrooms, a combined dining and lounge, a living room and a kitchen, to the side and rear is a large garden. As such, the property would be suitable for occupation by a family.
- 6. Therefore, the conversion of the property into a children's day nursery would result in the loss of a family dwelling. This is at odds with the Council's residential development strategy, as set out in its Core Strategy⁴. This seeks to create neighbourhoods of choice, in particular through increasing the availability of family housing. This will be achieved, in part, by preserving the existing supply of family homes and resisting conversions.
- 7. The appellant does not dispute the need for family housing but notes the lower, in comparison to the national average, owner occupation rate and suggests that the appeal property is not available to rent and the loss of this single family dwelling is therefore "insignificant". I have no substantive evidence before me to demonstrate that the accepted need for family sized dwellings relates solely or substantially to rented properties only, or that the appeal dwelling could not fulfil this need in the future.
- 8. Therefore, I find that the appeal scheme conflicts with the residential development strategy policies that seek to ensure an adequate supply of housing to meet local need and is therefore contrary to Policies SP1 and H3 of the Core Strategy that, amongst other matters, define that strategy.

Highway Safety

- 9. I saw at the site visit that there was significant demand for the available on street car parking and while there were some spaces available at that time, objectors have suggested that the demand for car parking increases substantially in the morning and in the evening, meaning that some residents struggle to find spaces.
- 10. The Council's Highways Team consultation response objects to any increase in demand for on street parking, including for pickup and drop off. The plans submitted with the application do not provide sufficient on site carparking to accommodate the increased need for parking resulting from staff, deliveries and drop-off and pick-up activities.
- 11. Therefore, the proposed development would lead to an increased demand for on street carparking in the immediate vicinity of the appeal site harming

⁴ Manchester's Local Development Framework: Core Strategy Development Plan Document (adopted July 2012).

highway safety contrary to Policies DM1, T2 and SP1 of the Core Strategy, that amongst other matters require new development to protect highway safety.

Living conditions

12. A number of resident's objections referred to the quiet and peaceful character of the area and the harm that the proposed development would cause as a result noise relating to drop off/pick up activities and from the operation of the nursery itself.
13. The submitted plans show that the garden area immediately adjacent to the boundary to the neighbouring property would be used for outdoor play space and that a two of the rooms with a common wall with the neighbouring property would be used to accommodate nursery children. As such, the appeal proposal has the potential to impact on the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance.
14. The Environmental Health (EH) response to consultation in respect of the planning application, as detailed in the Officer's report, suggested conditions restricting delivery and servicing hours, opening hours, the hours of use of the outside play area and requiring the submission of an acoustic attenuation scheme to prevent noise impact on the adjoining residential occupiers.
15. The use of the outdoor play area in the rear garden in particular, has the potential to result in a significant noise and disruption impact on the occupiers of the neighbouring property as a result of the close proximity to the neighbours garden and because the play space would extend for almost all of the shared boundary to the rear of the property. While I note the conditions suggested in the EH consultation response to control the hours of use of the outdoor play area, I do not find that this would adequately protect the living conditions of the occupiers of the neighbouring properties.
16. I have not been provided with any substantive details as to the nature of the acoustic attenuation that would be provided as a result of the condition suggested by the EH in order to mitigate the noise generated by the proposed nursery use, particularly where there is a common wall between the appeal property and the neighbouring residential property.
17. Furthermore, whether or not there is sufficient provision for drop-off and pick-ups to occur on site without the need for parents to use on street car parking this increased level of activity will result in some disruption of the occupiers of neighbouring properties.
18. Therefore, to conclude on this main issued, I find that the appeal scheme would harm the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance, contrary to policies SP1 and DM1 of the Core Strategy and saved policy DC26 of the Unitary Development Plan for the City of Manchester (1995), that among other matters seek to protect residents from the impacts of new development

Other Matters

19. I acknowledge the appellant's frustration with regards not being able to access local resident's or consultee comments. Whilst this is unfortunate, these matters are outside of the scope of this appeal.

20. I note that the proposed development would create a number of jobs and is located in an area that the Council acknowledges suffers from unemployment. This is a benefit that weighs in favour of the appeal scheme and I attach some weight to it but it does not outweigh the harm that I have identified previously.
21. Furthermore, the appellant asserts that the provision of child care facilities is a benefit of the appeal scheme. However, I have not been provided with any substantive evidence to show that there is a shortfall in child care facilities in the area or that the proposed development would fulfil an unmet need. Therefore, in so far as the provision of additional child care places is a benefit of the appeal scheme, I afford it some weight but I find that it does not outweigh the harm I have previously identified.
22. The appellant has referred to "numerous nurseries throughout Manchester and the Greater Manchester Area which are located within residential areas". However, I have not been provided with any substantive details of these nurseries and as such, I cannot be certain that the circumstances that led to these nurseries being granted planning permission are the same here. In any case I have considered the appeal proposal on its own merits.

Conclusion

23. The appeal is dismissed.

Mark Brooker

INSPECTOR