
Appeal Decision

Site visit made on 26 and 27 November 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2019

Appeal Ref: APP/D1780/W/19/3233029

21 Merridale Road, Southampton SO19 7AB

- 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 Mrs Clare Hayles against the decision of Southampton City Council.
 - The application Ref 18/02090/FUL, dated 16 November 2018, was refused by notice dated 14 January 2019.
 - The application sought planning permission for change of use from family dwelling house (C3 class) to dwelling house (C3 class) and childminding business (D1) without complying with conditions attached to planning permission Ref 14/00976/FUL, dated 11 September 2014.
 - The conditions in dispute are Nos 2 and 4 which state that:
"(2) No more than 13 children shall attend the child-minding facility at any one time without prior written consent of the Local Planning Authority".
"(4) Unless the Local Planning Authority agree in writing, the premises to which this permission relates shall not be open for business outside the hours specified below and at no time on Saturdays or Sundays:
Monday to Friday 7.00am – 7.00pm".
 - The reasons given for the conditions are, respectively:
"To prevent an over-intensive use of the premises and in the interest of safeguarding the residential amenities of nearby residential properties".
"To protect the amenities of the occupiers of adjoining residential properties".
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Decision

1. The appeal is allowed and planning permission is granted for change of use from family dwelling house (C3 class) to dwelling house (C3 class) and childminding business (D1) at 21 Merridale Road, Southampton SO19 7AB in accordance with the application Ref 18/02090/FUL dated 16 November 2018, without compliance with condition numbers 2 and 4 previously imposed on planning permission Ref 14/00976/FUL dated 11 September 2014, subject to the attached schedule of conditions.

Procedural Matter

2. In order to experience the character of the area at different times of the day, I made two site visits. The first of these was in the late afternoon and the second one in the early morning.

Background and Main Issue

3. The planning permission that gives rise to the disputed conditions allowed the change of use of a dwelling to a mixed use, as a dwelling and a childminding business. The two conditions in dispute both seek to limit the impact of the childminding business on the living conditions of the occupants of surrounding residential properties. Condition 2 limits the number of children at the premises to 13 at any time, and Condition 4 limits the hours of use to 07:00 to 19:00 Monday to Friday.
4. The application to vary the conditions proposed an increase in the number of children permitted at the premises, and an extension to the hours of operation. It is proposed that the number of children allowed at the premises should be increased from 13 to 18 between 15:30 and 17:00, to allow older children to join their younger siblings after school, until they can be collected by their parents. It is also proposed that the business should be able to open 30 minutes earlier, and close 30 minutes later, to allow greater flexibility for parents who work shifts.
5. The main issue in this appeal is, therefore, the effect that varying the conditions would have on the living conditions of neighbouring residential properties, with particular regard to noise and disturbance from pedestrian and vehicular traffic.

Reasons

6. The appeal site lies in an area comprising mainly of bungalows, although there are also some two-storey houses, including 19 Merridale Road, the adjacent property to the north. Apart from a convenience store, approximately 100 metres to the northwest, the site is surrounded by residential uses. The site lies at the head of a short spur off the road, which serves Nos 17 – 23. These dwellings, particularly 19 – 23, are closely grouped around this spur, but they also have quite large rear gardens. In common with many other properties in the area, the front garden is given over to car-parking. However, other than a small sign on the front wall of the building, advising that the parking is for parents and visitors, the appearance of the site remains entirely in keeping with the character of the surrounding residential properties.
7. Merridale Road is wide enough to accommodate on-street car parking on both sides without impeding the free-flow of traffic. On both of my visits I saw that there were plenty of available spaces. The road serves a relatively small residential area and, consequently, I observed low levels of traffic moving at quite slow speeds. Peartree Avenue, to the northwest, is much busier, but traffic using that road is quite distant, so does not make a significant contribution to background noise levels near the appeal site. I also saw that customers at the convenience store used the parking facilities outside the shop, without causing any disturbance further into Merridale Road. The appeal site therefore lies in a comparatively quiet residential environment, where a relatively small increase in noise and disturbance would be discernible.
8. The proposed increase in the number of children at the premises between 15:30 and 17:00 would involve additional pedestrian and traffic movements to the property. However, these children would be arriving at, and leaving the premises, in the middle of the afternoon and early evening. At these times, some pedestrian and vehicular activity would be expected in the road, as a

result of the normal daytime activity associated with a residential area.

Consequently, the small increase in movements resulting from five children arriving and leaving the building at these times would not be likely to result in significant harm to the living conditions of surrounding residential properties.

9. The council has commented that five additional children would represent a 40% increase in the size of the business. However, this would only be the case for a 1½ hour period each afternoon. Nevertheless, during that period there is the potential for noise levels from the premises to increase as a result of the larger number of children. However, the appellants state that they limit the number of children in the garden at any one time. The evidence before me indicates that the childminding business has operated from this premises since 2011, and that for much of this time up to 16 children have been accommodated. The council's Environmental Health Officer has confirmed that there has been no history of justified noise complaints arising from this use and, as reasonable precautions are in place to manage any potential noise issues, there were no objections to the proposed variation of the conditions.
10. There is no evidence before me to demonstrate that raising the number of children from 13 to 18 would inevitably result in a significant increase in noise from the premises. The additional children would only be in attendance for a short period of time during the afternoon. Furthermore, it is likely that at least some of these additional children will be joining younger siblings who are already being accommodated, so will be collected by parents at the end of the day without additional vehicular traffic movements. The council has raised concerns about the enforceability of a planning condition limiting the additional number of children to this time slot. However, with some minor alteration, I see no reason why the condition that has been suggested could not be monitored and, if necessary enforced. Bearing all these factors in mind, I conclude that the variation of the condition, as proposed, would not give rise to a significant increase in noise and disturbance to neighbouring occupants.
11. The appellant states that the proposal to extend the opening hours of the business by 30 minutes at either end of the day arises from the needs of a particular client on certain days. However, over time, clients will change, and individual needs will vary. It would therefore be impractical and unreasonable to impose a condition limiting the increased hours to suit the present circumstances of current users. It is therefore necessary to consider, on a more general level, whether opening earlier and later would result in harm to the living conditions of the occupants of surrounding residential properties.
12. The proposed extended opening hours, particularly in the early morning, would extend into a time when relative tranquillity can be expected in a residential area. During my early morning visit I saw seven cars arriving at the site to drop children off between 07:15 and 08:15. There was little background noise, particularly for the earlier part of my visit. As a result, the noise of car doors slamming, and children's voices was audible from the opposite side of the road. Many of the drop-offs also involved a conversation between the parents and the staff at the front door, which is very close to the windows of 23 Merridale Road. Three of the visits involved cars being parked in the off-street parking space at the front of the premises, resulting in engine noise, car doors slamming and conversations very close to these windows.

13. The arrangement of the appeal premises and the dwellings to either side is such that their frontages are closely grouped around the head of the road spur. Therefore, vehicle movements to and from each property are concentrated within a small area, and noise outside the front of any one of the properties is likely to disturb the occupants of the others. Whilst some noise is an inevitable consequence of residential use, relative peace can be expected in the early morning and late evening. The extension of the opening hours to 06:30 would intrude into the early morning period when background traffic and other noise is at its lowest. The sounds of manoeuvring cars, doors slamming, and voices would be intrusive at such an early hour in this intimate cul-de-sac location and would, therefore, be harmful to the living conditions of adjacent occupants.
14. The additional 30 minutes opening at the end of the day, to 19:30, would be at a time when some level of traffic on the road could still be expected. Consequently, any noise from traffic movements associated with the appeal premises would not be as intrusive and disturbing as it would be in the late evening, when background traffic noise would have died down and residents could reasonably expect relative tranquillity. In coming to this view, I am mindful that the number of parents seeking childcare until 19:30 is likely to be small, and therefore the additional number of vehicle movements beyond the previously permitted closure time would be low. The additional 30 minutes would also spread the pick-ups out over a wider period, so that there is less likelihood of cars arriving at the same time.
15. The availability of the reliable and high-quality childcare that is provided by the appellants is of significant benefit to the local economy. However, this benefit must be balanced against the impact of the business on the living conditions of the occupants of surrounding residential properties. For the reasons given above, I have concluded that an increase in the number of children for a limited period each afternoon, and an additional 30 minutes operation in the early evening, would be acceptable. However, opening at 06:30 would result in disturbance in the early morning that would be harmful to the living conditions of neighbours.
16. I therefore conclude that varying the conditions to allow 18 children to be accommodated between 15:30 and 17:00, and to allow the premises to stay open until 19:30, would not harm the living conditions of neighbouring residential properties due to noise and disturbance from pedestrian and vehicular traffic. A new planning permission, with conditions varied accordingly, would comply with Policies SDP1, SDP7 and L4 of the City of Southampton Local Plan Review – 2nd Revision (2015). Together these policies seek to protect the amenity of the city and its citizens; ensure proposals integrate into the local community; and ensure that childcare provision in residential areas is only permitted where the impact on the amenities of neighbouring residential premises would not be unacceptable. In refusing the application, the council also referred to Policy CS13 of the Core Strategy Partial Review (2015), however I did not find it relevant to my consideration of the main issue.

Other Matters

17. It is clear, from representations received, that some conflict has arisen as a result of cars being parked inconsiderately to pick up or drop off children at the premises. I did not witness any such parking during my site visits, and the general availability of on-street car-parking in the area means that it is not an

inevitable consequence of the use of the building for childminding. The appeal proposals would not result in a marked increase in vehicles visiting the premises, so there would be little impact on pressure for car-parking or on general highway safety in the road. I note that the Highway Authority had no objections in this regard.

Conditions

18. The Planning Practice Guidance (PPG) says that, to assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. If certain conditions have already been discharged, that is a matter for resolution between the parties.
19. In imposing conditions, I have had regard to the advice in the PPG and the National Planning Policy Framework. I have amended some of the conditions, without changing their aim, to better reflect this guidance.

Conclusion

20. For the reasons set out above, I conclude that the appeal should be allowed. I will grant a new planning permission, with the disputed conditions varied, but retaining the non-disputed conditions from the previous permission, updated where necessary.

Nick Davies

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the Location Plan, Block Plan and Proposed Plans received by the Council on 10 June 2014 and approved under reference 14/00976/FUL on 11 September 2014.
- 2) No more than 18 children shall attend the childminding facility between the hours of 15:30 and 17:00. No more than 13 children shall attend the childminding facility at all other times.
- 3) The premises shall be used as a dwellinghouse and child-minding facility and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 4) The childminding business use hereby permitted shall only take place between the following hours:
07:00 – 19:30 Mondays - Fridays
and at no time on Saturdays or Sundays.
- 5) Details of facilities to be provided for the storage and removal of refuse from the premises shall be submitted to, and approved in writing by, the

local planning authority within 28 days of the date of this decision. If no details are submitted within this period, the business shall cease operation until such time as details have been approved and implemented. The facilities shall include accommodation for the separation of waste to enable recycling.

- 6) At least one car parking space shall be provided and marked out on the site for the use of visitors/parents. This space shall be kept permanently available for use by visitors and parents during the operating hours of the childminding business.
- 7) The childminding business use hereby approved shall only be operated by Mrs Clare Hayles whilst occupying the residential property of 21 Merridale Road and by no other person. Should the childminding business use cease or Mrs Clare Hales no longer operate the business or reside at the property, the childminding business use shall cease, and the use of the property shall immediately revert to a C3 dwellinghouse.