The Planning Inspectorate

Appeal Decision

Site visit made on 27 December 2019

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th December 2019

Appeal Ref: APP/J0540/W/19/3238406
The Fenman, Whittlesey Road, Stanground, Peterborough PE2 8RR

- 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 Dan Slipper (Alpha Kindergarten Stanground Ltd) against the decision of Peterborough City Council.
- The application Ref 19/00168/FUL, dated 1 February 2019, was refused by notice dated 18 June 2019.
- The development proposed is the demolition of the existing public house and the erection of a new children's nursery (D1 use) with associated car parking and landscaping.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing public house and the erection of a new children's nursery (D1 use) with associated car parking and landscaping at The Fenman, Whittlesey Road, Stanground, Peterborough PE2 8RR, in accordance with the terms of the application Ref 19/00168/FUL, dated 1 February 2019, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Alpha Kindergarten Stanground Ltd against Peterborough City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council has confirmed that since the planning application was refused the Peterborough Planning Policies DPD 2012 (DPD) has been superseded by the Peterborough Local Plan which was adopted on 24 July 2019 (LP). I have not therefore assessed the proposal against the DPD policies as referred to in the Council's refusal notice.

4. The planning application was refused for three reasons one of which included the effect of air pollution on the occupiers of the children's nursery. The planning application was refused on 18 June 2019. However, the air pollution reason for refusal was considered again by the Planning Committee on 23 July 2019 with it resolving not to defend this reason for refusal.

5. I have taken into account the air pollution evidence that was considered at both Planning Committee meetings. I also note that the Council's Pollution

Team do not raise any objection to the proposal in this respect. I do not disagree with the Council's altered position that there is no credible or objective evidence to indicate that in terms of the location of the appeal site, it would not give rise to any significant health issues for the occupiers of the proposed nursery from an air pollution point of view. In reaching this view, I have considered the comments made by other interested parties including the references to articles and research about air pollution matters more generally.

Main Issues

6. In the context of the above, the main issues are (i) the effect of the development on highway safety and the free movement of traffic; and (ii) the effect of the use of the proposed car park on the living conditions of the occupiers of surrounding residential properties in respect of noise and disturbance.

Reasons

Site and proposal

7. The appeal site is on the corner of Coneygree Road and the B1092 Whittlesey Road. On the other side of the signalised T junction of Coneygree Road there is a petrol filling station with a car wash and a shop. The site currently includes a disused brick built public house called 'The Fenman' which has a tarmacadam car park to the rear, with access taken from Coneygree Road, and a beer garden to the front. The surrounding area is predominantly residential in character and comprises a mixture of single and two storey residential properties.

8. It is proposed to demolish the public house and to erect a 'U' shaped building to be used as a 78 place children's nursery operating between 07:00 and 18:00 hours Monday to Friday. The building would be mainly single storey, although part of it would be two storeys close to the site access. It would be built in a combination of facing brick and rainscreen cladding. A courtyard play area would be formed within the middle of the 'U' shaped building and adjacent to Corneygree Road. It is proposed to erect 1.8 metre high railings in a light grey colour above the existing dwarf stone site perimeter walls fronting the highways. It is also proposed to form a 32-space car park with a turning head, timber bin store, bicycle storage and with an altered existing access.

Highway safety and traffic movements

9. Whilst it is likely that some parents would not pick up and drop off children using a private motor vehicle, it is very likely that a very high number would do so. Nonetheless, I have no reason to disagree with the Highway Authority that the 32-space car park would not only address the need for car parking for the 12 FTE members of staff, but would also ensure that there is space on site to deal with the turnover of required spaces at pick up and drop off times. In reaching this view, I also note the results of a car parking survey at the Fletton Avenue nursery and the appellant's proposed phased car parking strategy for parents/guardians.

10. In addition to the above, and despite contrary views expressed by other interested parties, I am satisfied that the size of the proposed car parking spaces would be acceptable and that it would be possible to ensure 6 metre aisles between spaces thereby ensuring adequate for vehicle manoeuvring.

The submission of a more detailed car parking layout and access could be controlled by means of the imposition of a planning condition and thereafter retained.

11. I can understand some of the concerns raised by the occupiers of surrounding residential properties about the potential for parents to park in nearby residential streets and then walk to the nursery. However, in the context that on-site pick up and drop off provision would be acceptable, I do not consider that it would be likely that many parents/guardians would seek to opt to park further afield.

12. I acknowledge that the T junction onto Whittlesey Road is signalised. However, the access into the proposed car park is positioned some distance back from this T junction (about 30 metres) and hence several cars would be able to leave the site at any one time even if the traffic lights were on red. Furthermore, and even if on occasion a queue were to take place, the proposed access and internal car park circulation route would be capable of being wide enough for vehicles to pass in either direction.

13. I note the Council's view that there may be about five to six vehicles arriving and exiting the site at peak times. Whilst at such times this may be a more intensive use of the site/access than the previous use of the site as a public house, I have not been provided with any reasonable or credible evidence to suggest that this would lead to any significant congestion or highway safety issues on or off the site.

14. For the above reasons, I do not consider that the proposal would give rise to any severe impacts from a traffic movement or congestion point of view. In reaching this view, and whilst only a snap shot in time, I am cognisant of the fact that as part of my site visit I was able to see that there was not any significant queuing at the T junction of Coneygree Road and Whittlesley Road and that users of the petrol filling station were able to enter and leave such a site with relative ease.

15. I note the comments made by Councillor Harper who has commented that at times Whittlesey Road can be busy including when there are periods of high rainfall and the *'closure of North Bank'*. In this regard, I have viewed his photograph which shows queuing vehicles on Whittlesey Road. The evidence before me, including my own site visit, suggests that this is likely to be the exception rather than the norm. In any event, I have not seen any photographic evidence of queuing on Coneygree Road.

16. I do accept that drivers have to be particularly alert in this part of Coneygree Road, particularly as there is also an access about 12 metres back from the T junction and into the petrol filling station. Nonetheless, visibility is acceptable from all junctions, including this one, and owing to the existence of the signalised T junction it ensures that traffic speeds are kept relatively low and that there is some order/control to the way that the traffic moves in the immediate area.

17. I note that some of the other interested parties have commented that occasional drivers have used the petrol filling station as a cut through, rather than waiting for traffic lights to turn green. I also note the comment made that some drivers travel on the other side of the road when turning right out of Coneygree Road in order to *'jump the queue'*. I cannot be certain if these

movements have happened or do happen, but, in any event, I have not been provided with any accident data from the police or Highway Authority relating to such manoeuvres. If these things do happen, it does not mean that visitors of the children's nursery would do the same.

18. Overall, and based on the evidence that is before me, I find that subject to the imposition of planning conditions the proposal would not give rise to any adverse highway safety impacts. Furthermore, I am satisfied that the proposal would not unacceptably interrupt the free flow of traffic in the area or lead to any significant traffic congestion issues.

19. In reaching the above view, I am also aware that the site has already been used for a commercial purpose. I accept that a public house and a children's nursery are different from an operational and peak time car parking use point of view. Nevertheless, there is a current lawful use fallback position to take into account and it cannot be ignored that there is already an existing car park/access to the rear of the public house. In this regard, I note the undisputed Council comment that *'the application has an existing access in a similar location serving a commercial use which would appear to have operated without undue danger to motorists for many years'*.

20. For the collective reasons outlined above, I conclude that the proposal would not have an unacceptable impact on highway safety or a severe impact on the free movement of traffic in the area. Therefore, the proposal would accord with the highway safety and traffic movement requirements of Policy LP13 of LP and paragraph 109 of the National Planning Policy Framework 2019.

Living conditions – noise and disturbance

21. This planning application needs to be considered in the context that there was recently an established commercial use on the site including a large car park to the rear. It is reasonable to take the view that there will have been, or still could be, some traffic and pedestrian movements on the site as part of its use as a public house.

22. I do not doubt that the use of the existing car park in association with the public house is likely to have been more sporadic than would be the use of the proposed car park by visitors of the children's nursery. A lot of the staff and visitors to the nursery would likely use the proposed car park at peak times of the day and, in this regard, pedestrian and traffic movements on the site would, in relative terms, be likely to be much more concentrated.

23. Notwithstanding the above, it is of note that the appellant is proposing to operate the nursery during relatively sociable hours and not at weekends, i.e. 07.00 to 18.00 hrs Monday to Friday. Subject to the imposition of an hours of use condition (as agreed by the appellant), the occupiers of the flats and bungalows on the boundaries of the site would have prolonged periods of time in the evenings and at weekends when the children's nursery was not in use. Hence, they would be afforded reasonable and prolonged periods of peace and quiet. Whilst I do not know when the public house was previously open, it is possible that it was open in the evenings and at weekends. To this extent, the proposal might in fact result in a relative improvement during these times/days from a noise and disturbance point of view.

24. I do accept that at peak times the car park would likely be used a good deal. This would include the movement of vehicles, the revving of engines, the closing of car doors and some chatting between parents/guardians and children. The aforementioned hours of use condition would ensure that such activities were restricted to business hours. In addition, and given that the proposed car parking spaces would be mainly positioned on the boundaries of the site in close proximity to existing residential units, I consider that it would also be reasonable to impose a planning condition requiring acoustic fencing in these areas.

25. The Council has raised some concerns about noise from delivery vehicles. I do not doubt that there were previously delivery vehicles in association with use of the site as a public house. I do not envisage that there would be a significant number of deliveries associated with use of the site as a children's nursery. Consequently, I do not find that this is a matter that would lead to a material increase in noise or disturbance for the occupants of surrounding residential properties.

26. For the above reasons, and subject to the imposition of the above planning conditions, I conclude that the use of the proposed car park would not give rise to any significant levels of noise or disturbance for the occupiers of neighbouring residential properties. Therefore, the proposal would accord with Policy LP17 of the LP which requires that development does not result in an unacceptable impact on the amenity of existing occupiers of any nearby properties.

27. In reaching the above conclusion, I do not doubt that a number of people in the area are retired. Nonetheless, the schedule of planning conditions outlined at the end of this decision would mean that there were acceptable living conditions for all residents in the area. I am also cognisant of the Council's comment that the appellant's submitted noise assessment reflects other sites as a baseline assessment when site conditions may be different. Nonetheless, this does not alter my conclusion on this main issue which has taken into account my site visit observations, the historic use of the site and the potential to impose a number of planning conditions.

Other Matters

28. I have taken into account the comments made by other interested parties. There is no dispute between any of the parties that the proposal would meet a pressing need for additional nursery places in Peterborough. This is a matter to which I afford positive weight in the overall planning balance. Furthermore, I am satisfied that whilst the building would be relatively contemporary in terms of its design, it would nonetheless include some materials that are reflective of the local area and it would be appropriate in terms of its scale. It would not look out of place in the its immediate setting.

29. I acknowledge that many of the visitors to the proposed children's nursery would arrive by private motor vehicle. This in itself would not justify refusing planning permission, although I agree with the Highway Authority that a travel plan should be submitted within six months of the Children's nursery being first used. This would need to include measures which would seek to reduce the reliance on the private motor vehicle by all visitors (including staff) to the site. I note that there is no dispute between the parties that the site is well located in terms of public transport provision.

30. I note the comments made about the potential for noise to emanate from the building/site from the playing of music, from children's play and from staff calling out. A number of planning conditions are recommended by the Council's Environmental and Pollution Control team which would suitably deal with these matters. In addition, I note that the children's outside play area would be positioned away from the boundaries of the site with neighbouring residential properties. Subject to the imposition of conditions, I have no reason to disagree with the position reached by the Council's Environmental and Pollution Control team in terms of pollution and noise and disturbance considerations.

31. None of the other matters raised alter or outweigh my overall conclusions on the main issues.

Conditions

32. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary, I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance. There are a number of pre-commencement conditions, all of which have been expressly agreed by the appellant and are exceptionally justified.

33. Planning permission is granted subject to the standard three-year time limit condition. It is also necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty. I have therefore imposed a condition to this effect.

34. In the interests of highway safety, and to minimise the use of the private motor vehicle, it is necessary to impose conditions relating to the layout and surface materials for the car park; revised access details; the implementation of an approved construction management plan (which would need to include a temporary area for the loading/unloading and manoeuvring of construction vehicles) and the completion and implementation of a travel plan for the children's nursery.

35. In the interests of the living conditions of the occupiers of neighbouring residential properties, and the health of occupiers of the children's nursery, conditions are required relating to the submission of a Phase 1 contaminated land report and, where necessary, a remediation statement; the submission and implementation of noise insulation/mitigation measures for the building and the site; a requirement that noise levels for the external play area do not exceed LAeq 55dB (30 mins); controls relating to cooking odours and noise levels from any extraction system, and restrictions on the hours of use for the children's nursery.

36. In the interests of the character and appearance of the area, it is necessary to include planning conditions relating to materials; the provision of a bin store; the submission of an arboricultural method statement (which would seek to ensure safeguards in terms of the Willow trees adjacent to the site) and the submission of a landscaping scheme.

37. In the interests of biodiversity enhancement, it is necessary to impose a condition relating to the provision of bird boxes. Finally, and in order to minimise the risk of surface water flooding given that the site is in a Critical

Drainage Area, it is necessary to impose a planning conditions relating to the submission and approval of a surface water drainage scheme and that the mitigation measures as outlined in the Flood Risk Assessment prepared by Parsons dated 21.5.18 are implemented.

Conclusion

38. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

D Hartley

INSPECTOR

Schedule of Conditions

1)The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2)The development hereby permitted shall be carried out in accordance with drawings: 2505(08)001; 2505(08)003 rev B; 2505(08)E03; 2505(08)E02; and 2505(08)E01 rev E.

3)No development above slab level shall take place until details of the materials to be used in the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The details submitted for approval shall include the name of the manufacturer, the product type, colour (using BS4800) and reference number. Samples shall be submitted for consideration. The development shall not be carried out except in accordance with the approved details.

4)Notwithstanding the submitted drawings/plans and prior to the development hereby permitted being brought into first use, full details of the proposed car parking layout and surfacing materials shall be submitted to and approved in writing by the local planning authority. The approved details shall be fully implemented prior to the development hereby permitted being brought into first use, and retained thereafter in perpetuity solely for the parking of vehicles in connection with the children's day nursery use.

5)Notwithstanding the submitted drawings/plans and prior to the development hereby permitted being brought into first use, full details of the proposed vehicular access, including revised access details and vehicle-to-pedestrian visibility splays, shall be submitted to and approved in writing by the local planning authority. The revised access shall be constructed in accordance with the approved details prior to the development hereby permitted being brought into first use, and shall be retained thereafter in perpetuity.

The vehicular access shall be ungated and remain as such in perpetuity.

6)Prior to the commencement of the development a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. This shall include amongst other matters: a scheme of chassis and wheel cleaning for construction vehicles including contingency measures should these facilities become inoperative and a scheme for the cleaning of affected public highways; a scheme of working hours for construction and other site works; a scheme for construction access from the Parkway system, including measures to ensure that all construction vehicles can enter the site immediately upon arrival; adequate space within the site to enable vehicles to load and unload clear of the public highway and details of any haul routes across the site; a scheme for parking of contractors' vehicles; a scheme for the storage of all equipment and materials to be used during construction; and a scheme for access and deliveries including hours. The development shall thereafter be carried out in accordance with the approved CMP.

7)No development, shall take place until a Phase I Report to assess the actual or potential contamination at the site in relation to the proposed extension has been submitted to and approved in writing by the local planning authority.

If actual or potential contamination and/or ground gas risks are identified, further investigation shall be carried out and a Phase II report shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development.

If the Phase II report establishes that remediation or protection measures are necessary, a Remediation Statement shall be submitted to and approved in writing by the Local Planning Authority.

For the purposes of this condition: A Phase I Report consists of a desk study, site walkover, conceptual model and a preliminary risk assessment. The desk study comprises a search of available information and historical maps which can be used to identify the likelihood of contamination. A simple walkover survey of the site is conducted to identify pollution linkages not obvious from desk studies. Using the information gathered, a 'conceptual model' of the site is constructed and a preliminary risk assessment is carried out. A Phase II Report consists of an intrusive site investigation and risk assessment. The report should make recommendations for further investigation and assessment where required. A Remediation Statement details actions to be carried out and timescales so that contamination no longer presents a risk to site users, property, the environment or ecological systems.

8)All remediation or protection measures identified in the Remediation Statement referred to in Condition 7 above shall be fully implemented within the timescales and by the deadlines as set out in the Remediation Statement and a Site Completion Report shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any part of the development hereby permitted.

For the purposes of this condition: a Site Completion Report shall record all the investigation and remedial or protection actions carried out. It shall detail all conclusions and actions taken at each stage of the works including validation work. It shall contain quality assurance and validation results providing evidence that the site has been remediated to a standard suitable for the approved use.

9)No development shall take place until a detailed scheme of noise insulation measures for the D1 use hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The scheme of noise insulation measures shall be prepared by a suitably qualified consultant/engineer and shall take into account the provisions of BS 8233: 2014 Guidance on sound insulation and noise reduction for buildings. The approved scheme shall be implemented prior to the development hereby permitted being brought into first use and retained thereafter in perpetuity.

10)Prior to the commencement of the development, a scheme for the mitigation of noise emitted from the development (including the car park) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be prepared by a suitably qualified consultant/engineer and shall take into account the provisions of BS8233: 2014 Guidance on sound insulation and noise reduction for

buildings. Development shall be carried out in accordance with the approved mitigation scheme and all approved mitigation measures shall be permanently retained.

11)Notwithstanding the submitted drawings/plans and prior to the development hereby permitted being first brought into use full details of the proposed bin store shall be submitted to and approved in writing by the Local Planning Authority. The bin store shall be provided in accordance with the approved details prior to the development being first brought into use and shall be retained as such thereafter.

12)No development shall take place until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the approved drainage scheme.

13)No development or other operations shall commence on site in connection with the development hereby permitted (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and or widening, or any operations involving the use of motorised vehicles or construction machinery) until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved Method Statement.

Such a Method Statement shall include full detail of the following: implementation, supervision and monitoring of the approved Tree Protection Scheme; implementation, supervision and monitoring of the approved Treework Specification; implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected in the approved Tree Protection Scheme; and timing and phasing of Arboricultural works in relation to the approved development.

14)No development shall take place above slab level until a scheme for the hard and soft landscaping of the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the following: planting plans including retained trees, species, numbers, size and density of planting; all boundary treatments; and hard surfacing of pedestrian circulation areas and play spaces.

The approved hard landscaping scheme shall be carried out prior to the development hereby permitted being first brought into use and the soft landscaping shall be carried out within the first available planting season following completion of the development or the development being first brought into use (whichever is the sooner) or alternatively in accordance with a timetable for landscape implementation which has been approved as part of the submitted landscape scheme.

15)The development hereby permitted shall not be brought into use until bird boxes have been installed in accordance with details submitted to and approved in writing by the Local Planning Authority. The approved bird boxes shall thereafter be retained.

16)If, during development, contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with

the suspected contamination has been submitted to and agreed in writing with the Local Planning Authority. The development shall thereafter not be carried out except in complete accordance with the approved scheme.

17)The development hereby permitted shall accord with the indoor ambient noise levels set out within Table 1 of Building Bulletin 93 'Acoustic design of schools: performance standards'.

No later than 6 months following the development hereby permitted being brought into first use, results of post-completion testing of the internal teaching areas shall be submitted to and approved in writing by the Local Planning Authority.

In the event that the results demonstrate that the indoor ambient noise levels fail to meet the level specified above, a scheme of noise mitigation shall be submitted to and approved in writing by the Local Planning Authority, including a timetable for its implementation. The approved noise mitigation shall be implemented in full and in accordance with the agreed timetable. Thereafter, it shall be retained as such in perpetuity.

18)The noise level within the outdoor play area shown on drawing number 2505(08)010 rev G shall not exceed LAeq 55dB (30mins). Prior to the development hereby permitted being brought into first use, a scheme to ensure that this noise level is not exceeded shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in full prior to first use of the outdoor play area, and thereafter retained as such in perpetuity.

19) All ventilation of steam and cooking fumes to the atmosphere should be suitably filtered to avoid nuisance from smell, grease or smoke to persons in neighbouring or nearby properties. Details of the nature and location of such filtration equipment shall be submitted to and approved in writing by the Local Planning Authority before installation and should be installed before the use of the premises commences. The filtration equipment shall thereafter be retained as approved. The document prepared for the Department for Environment, Food and Rural Affairs (DEFRA) recommended best practice for 'Control of Odour and Noise from Commercial Kitchen Exhaust Systems' (2005).

The objective of the guide is that for new premises, or premises covered by planning conditions restricting the impact of odour, the system shall be designed to prevent harm to the amenity. The document advises that to achieve these objectives the odour control system shall include an adequate level of odour control and stack dispersion. The overall performance of the odour abatement system represents a balance of these two factors.

The guidance recommends that the discharge stack shall: Discharge the extracted air not less than 1 m above the roof ridge of any building within 20 m of the building housing the commercial kitchen. If the above cannot be complied with for planning reasons, then the extracted air shall be discharged not less than 1 m above the roof eaves or dormer window of the building housing the commercial kitchen. Additional odour control measures may be required. If neither of those dispersion requirements can be complied with for planning reasons, then an exceptionally high level of odour control will be required. The efflux velocity, position of extraction and location of sensitive receptors should be stated to enable a risk assessment of odour.

Prior to installation details of the nature and location of such filtration equipment should be submitted to and agreed in writing by the Local Planning Authority before installation and should be installed before the use of the premises commences. Approved filtration equipment shall be retained as approved.

20)The rating level of noise emitted from the extraction system shall not exceed 40dB LAeq, (5 minutes) at any time. The noise levels should be determined at the nearest noise sensitive premises.

21)The use hereby permitted shall only take place between the following hours: 07:00 – 18:00 hrs Monday to Friday.

22)The surface water flood risk mitigation measures detailed in the Flood Risk Assessment prepared by Parsons dated 21.5.18 shall be fully implemented prior to first use of the site as a children's nursery. The flood risk mitigation measures shall thereafter be retained.

23)No later than 6 months following the development hereby permitted being brought into first use, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include SMART targets based upon travel surveys undertaken of staff and children, and a mechanism for review and update. Thereafter, the approved Travel Plan shall be implemented.