
Appeal Decision

Site visit made on 3 December 2019

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Monday, 22 June 2020

Appeal Ref: APP/V4630/W/19/3238011
78 Coltham Road, Willenhall WV12 5QF

- 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 Kerry Chapman against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 19/0660, dated 15 May 2019, was refused by notice dated 30 August 2019.
 - The development proposed is for change of use from Class C3 dwelling to dwelling and child minding business (sui generis use).
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Decision

1. The appeal is allowed, and planning permission is granted for change of use from Class C3 dwelling to dwelling and child minding business at 78 Coltham Road, Willenhall WV12 5QF in accordance with the terms of the application, Ref 19/0660, dated 15 May 2019, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Block Plan, Ground Floor Plan, Indoor Playroom Plan, First Floor Plan, Second Floor Plan.
 - 3) The maximum number of children cared for at the site shall be no more than 12 at any one time.
 - 4) The use hereby permitted shall only take place between the following hours: 0800 - 1800 Mondays - Fridays

Procedure Matter

2. I have taken the description of development from the Council's decision notice as this is more precise than the appellants application form. Notwithstanding this, the Council have advised that the appellant described the child-minding use as sui generis use but have determined the application on the basis of a Class D1 use. I shall therefore deal with the appeal on this basis.

Main Issue

3. The main issue is whether the proposed development would cause an increase in noise and disturbance to nearby residential properties.

Reasons

4. The appeal site comprises of a mid-terrace two storey dwelling with a rear garden and is in a predominantly residential area. The site adjoins two residential properties and to the rear adjoins the gardens of properties along Johnson Road. To the west of the site is a public house, the Duke of Cambridge, where the beer garden directly adjoins part of the garden area at the rear of the appeal site. The appeal site is an established child-minding business for up to 6 children.
5. The proposed development is the change of use of the dwelling to allow for an additional use of part of the property for a childminding business for up to 12 children. The appellants evidence sets out that it would cover nine children aged 6 months to 5 years and three children aged 5-8 years old. The business currently opens 0800 to 1700, Tuesday, Wednesday and Thursday, 45 weeks a year but this is likely to increase in the future. Two floors of the dwelling would be used with the second floor used for sleeping arrangements with travel cots and the first floor used for activities. Whilst the majority of the business would utilise the rear garden area and the existing log cabin, which has heating, electricity and toilet provision.
6. In support of the application a letter was submitted from Walsall Council¹ which advises that the appellant has worked co-operatively with Walsall Early Years' service to effectively develop her childminding provision. It confirms that the appellant employs two assistants and the provision meets the ratios required and was judged by Ofsted in 2017 as 'Good'. Furthermore, it states that the childminding provision contributes towards the sufficiency of childcare in an area of high need in Walsall and that the service which is provided is highly valued by the local authority.
7. The Council argues that the increase from 6 to twelve children would lead to the increase in noise and disturbance from the intensified use, comings and goings to the site by both vehicles and parents/guardians.
8. Paragraph 92 of the National Planning Policy Framework 2019, (the Framework) sets out that to provide the social, recreational and cultural facilities and services the community needs, planning decisions should plan positively for the provision and use of shared spaces, community facilities and other local services to enhance the sustainability of communities and residential environments; take account and support delivery of local strategies to improve health, social and cultural well-being for all sections of the community; guard against the unnecessary loss of valued facilities and services; ensure that established facilities and services are able to develop and modernise, and are retained for the benefit of the community.
9. The proposed business use will inevitably result in an increase in noise from the increase of numbers of children at the property and using the garden/outdoor areas/outbuilding and from the noise of vehicles as children are dropped off or collected. However, the dropping off and collecting of children would be staggered times throughout the day and it would be unlikely that there would be twelve children at the appeal site at any one time and for the full duration of the day, whilst it is likely that not all children would be driven to the property.

¹ Walsall Council, Walsall Early Years (School Ready Improvement Advisor) Dated 23 July 2019

10. Furthermore, the front windows of the terraced properties are in close proximity to the pavement, where it would be likely occupiers already experience a degree of noise and disturbance from other residents entering and leaving adjoining properties, particularly during the morning and evenings and pedestrians using the pavement. Nonetheless, I noted at the time of my site visit vehicles are already parked on the footway, which would be a matter for the Council or other regulatory Authority if these were causing an obstruction to existing occupiers. Therefore, on balance the noise generated from the additional coming and goings from the business would be unlikely to cause any further undue harm to the living conditions of neighbouring and nearby residential occupiers.
11. While the overall numbers of children proposed is higher than normally expected in a domestic setting the small numbers that would use the outdoor space/log cabin at any one time would not be unusual. Although, the garden space is adjoining neighbouring gardens, children playing in a garden is normal noise associated with domestic use and the times specified by the appellant are a reasonable use of the space for children to play. Furthermore, it would also be assumed given the proximity of the public house and beer garden to properties there would already be a level of noise associated with that use that is not characteristic with such a residential area.
12. I acknowledge the comments from environmental health, however this is not supported by any substantial evidence, other than anecdotal that the noise would unduly harm the living conditions of neighbouring occupiers. There does not appear to have been any complaints received by the Council in relation to noise and disturbance from the existing business, nor any objections received solely on this basis from adjoining/nearby occupiers and the appellant has already put in place mitigation measures to ensure there is limited impact on adjacent occupiers. The childcare facility is small in scale and in my judgement, the amenities of nearby residents can be protected by imposing planning conditions, with the result that the childcare element of the mixed use complies with the objectives of the Framework and planning policies referred to.
13. There would be some economic benefits as the appellant currently employs two members of staff with the anticipation of a third, providing local jobs and it would appear from the letters of support this is a much-needed affordable facility within the local community, providing child care provision for parents/guardians to enable them to go to work. I also noted on my site visit that it is in close proximity / walking distance to a nearby local school. Which all fall in favour of the proposal.
14. I conclude that the proposed development would not cause harm to the living conditions of nearby residential occupiers with particular regard to noise and disturbances. It would therefore comply with Policy HOU5 and ENV3 of the Black Country Core Strategy, 2011 and Saved Policies GP2 and ENV32 of the Walsall Unitary Development Plan, 2005. These policies, in so far, aim to ensure that facilities are well designed and well related to neighbourhood services and amenities; incorporate a mix of compatible service uses on a single site and existing facilities will be protected and enhanced. They assess the effect on the local character of the area and the integration of new development, taking account of the context and its surroundings and the principles of sustainable development. It would also not be at odds with the

guidance in the Designing Walsall Supplementary Planning Document, revised 2013.

15. Furthermore, it would not be contrary to the provisions set out in the Framework, particularly in meeting economic and social objectives and having regard to paragraphs 92, 127(f), and 180.

Other Matters

16. In relation to highway safety and parking, I note that there are no objections from the highway authority and the Council has not raised this as a reason for refusal. Furthermore, there are no parking restrictions on Coltham Road and there is a free public car park directly to the west of the site and as I saw at the time of my site visit there was ample parking within the vicinity of the appeal site. As such the proposed development would not exacerbate any parking issues or cause harm to highway safety within the immediate or wider area.

Conditions

17. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
18. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. In the interests of protecting living conditions of nearby occupiers it is important to control the operating hours of the business and that the maximum number of children is restricted to twelve, to define and control the childcare facility.

Conclusion

19. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

K A Taylor

INSPECTOR