



Appeal Decision

Site visit made on 1 June 2020

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2020

Appeal Ref: APP/J4525/W/19/3241160

**Rowlandson House, 1-2 Rowlandson Terrace, Hendon, Sunderland
SR2 7SU**

- 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 Anthony Lang against the decision of Sunderland City Council.
 - The application Ref 19/00121/FUL, dated 17 January 2019, was refused by notice dated 31 October 2019.
 - The development proposed is change of use of existing residential care home (Use Class C2) to Use Class D1 (as a children's day nursery).
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Anthony Lang against Sunderland City Council. This application is the subject of a separate Decision.

Procedural Matters

3. There is a minor variation in the wording of the description of development as given on the planning application form and the Council's decision notice. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the planning application and appeal forms.
4. This appeal must be determined on the basis of the development plan as it exists at the time of my decision. Subsequent to the Council's decision, it has adopted a new Core Strategy and Development Plan 2020 (CSDP). The Council has confirmed which policies of the Unitary Development Plan 1998 (UDP) referred to in its decision have been replaced and has confirmed the policies of the CSDP which now apply. Both parties have had the opportunity to comment on the new development plan. I have therefore considered the appeal against the relevant adopted policies and make no further reference to deleted policies.
5. The Council has referred to development at the property which may require planning permission. At my site visit, I saw that works had been undertaken at the property both internally and externally, including the reconfiguration of the front and rear yards. However, there was no evidence that the proposed use had commenced.

Main Issues

6. The main issues in this appeal are:

- The effect on the living conditions of nearby residents in respect of noise, disturbance and parking; and
- Whether the proposal would provide a suitable standard of amenity for children, with particular regard to external amenity space.

Reasons

Living Conditions

7. With regards to **noise and disturbance**, I saw that there are yards to the front and rear of the building which could be used to provide external play areas.
8. The yard to the rear is overlooked by the rear elevations of dwellings on Manila Street. Despite being located across a rear lane and separated by means of enclosure, the elevations of these dwellings have a relatively close-knit relationship with the rear yard so that residents would be aware of activities within the yard.
9. The appellant has submitted an Acoustic Report which considers noise from the rear yard, amongst other things. The Report submits that noise emitted from the site is likely to be due to children's voices, similar to a normal domestic garden. However, due to the potential number of children using the play area and the proximity of the site to nearby dwellings, there is a realistic possibility that the intensity of use arising from the proposal would lead to levels of noise above that which could be reasonably expected by nearby residents, with significant harm to their living conditions. The acoustic report submitted by the appellant does not include robust evidence to demonstrate otherwise.
10. Whilst the play area may not currently be in use, evidence could be provided on the basis of noise measurements taken from a similar site in operation elsewhere, as has been suggested by the Council's Environmental Health Team. Although the rear yard is enclosed on three sides by buildings which may provide acoustic screening, this would not benefit the dwellings to the rear. Whilst it is proposed to only use the play area during the day, there is no certainty that the affected rooms of nearby dwellings would be unoccupied or that noise levels would be acceptable for the daytime noise environment.
11. I also saw that an area in the front yard had been fenced off and may provide external play space. Even allowing for the background noise levels associated with the nearby road junction, the noise from a play area to the front may be of a scale and nature which could affect neighbouring dwellings and this has not been addressed in the Acoustic Report.
12. I have considered whether planning conditions could address noise issues, including limiting the number of children which could use the play areas and nursery; noise attenuation measures; and controlling the times of use. However, there is no evidence that these would satisfactorily mitigate noise impacts and on that basis I am not persuaded that conditions with regards to noise would be appropriate.

13. Turning to the matter of **car parking**, the appellant has provided a Transport Statement that indicates sufficient capacity for the parking of vehicles on nearby streets within a relatively short walk of the appeal site. With regards to staff, the car parking generated would not be greater compared to the use of the site as a care home and I consider that this could be appropriately managed.
14. However, the car parking generated by a nursery would be materially different to a care home, including the nature of passengers and peaks of demand at dropping off and picking up times. Whilst there may be suitable parking provision in the wider area around the site, the lane to the rear of the site has no parking controls and I consider that some parents would be likely to park here for reasons of convenience. This rear lane is relatively narrow and parking here would be likely to result in the blocking of access to residential properties. Whilst individual car parking occurrences would most likely be relatively short term, there is a significant possibility that the extent of parking demand at peak times would harm the reasonable access that residents should expect to their properties.
15. The Council's Transportation Development Team has suggested that a condition could require a 'Travel Leaflet' to be issued to customers of the site stating where parking should not take place and where suitable parking provision is available. However, I share the appellant's concerns about the enforceability of this measure, and in any event it would not actively prevent parking in the rear lane.
16. I acknowledge that the site is in a sustainable location with good pedestrian access and bus services. The site is also in an area of low car ownership. However, even within that context I consider that the proposal would still generate traffic movements of a form and degree which would lead to parking on the rear lane.
17. I conclude that the proposal would harm the living conditions of nearby residents with regards to noise, disturbance and parking. The proposal would therefore be contrary to Policy CF4 of the UDP in respect of assessing the amenities of the neighbouring area and Policy HS2 of the CSDP with regard to the submission of a robust noise assessment. The proposal would also be contrary to the National Planning Policy Framework (the Framework) with regard to providing a high standard of amenity for existing users.

Children's Amenity

18. The enclosed yard to the rear of the property would provide for an external play area. The submitted plans indicate that this yard would have a vehicular access and may therefore be used as a service area. Concern has also been raised that children would share this space with bin storage. However, the appellant has stated that part of the yard could be separated off to provide a storage area and this appeared to have been done prior to my site visit. Also, the appellant confirms that vehicles would not access the yard when it is in use as a play area. On that basis I consider that the rear yard would provide suitable external play space.
19. I saw that an area in the front yard of the property had been fenced off and could be used as a play area. However, it has not been demonstrated that this would provide suitable conditions for children due to noise and air quality

associated with the nearby road and junction. On that basis, I have discounted this area as contributing to available external play provision.

20. With regards to the extent of space provision, the appellant has provided detailed calculations of the space available per child if only the rear yard is utilised as play space. The Council has not contested these figures and based on the evidence before me I have no reason to doubt the suitability of the space provided, particularly if the number of children using the external space at any one time is limited.
21. Based on what I have seen and read, I conclude that the proposal would provide a suitable area of amenity space for children. In this regard, the proposal would not conflict with the Framework in respect of the amenity of future users. I find no conflict with Policy CF4 of the UDP as this does not address the amenity of children using nursery education.

Other Matters

22. The appellant has contested the need to erect railings in the vicinity of the junction. However, the Council's comments on this matter relate to issues of highway safety, which does not form the basis of the reasons for refusal and I have therefore not addressed this matter in my decision.
23. The appellant has referred to the potential to use the property's permitted development rights to turn it into a state funded school or nursery. However, this would be subject to the 'prior approval' process and there is no certainty that such approval would be granted. This matter does not therefore weigh in favour of the development.
24. I am mindful of the benefits of the development. The proposal is in an accessible location and would provide a service for the community as well as maintaining the building in an active use. However, whilst it is not desirable to locate nurseries and schools remotely from the population they serve, they should be located and designed so that they do not harm the living conditions of nearby residents. The benefits arising from the proposal do not outweigh the harm that I have identified.

Conclusion

25. Notwithstanding my conclusion in respect of children's amenity, I conclude that the proposal would harm the living conditions of nearby residents in respect of noise, disturbance and car parking which are the determinative considerations in this appeal. The proposal would therefore conflict with the development plan and the Framework as a whole with regard to providing a high standard of amenity for existing users.
26. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR