

Appeal Decision

Site visit made on 28 January 2021

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2021

Appeal Ref: APP/B5480/W/20/3254480

89 Frederick Road, Rainham, RM13 8NS

- 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 Alpha Nursery Rainham against the decision of the Council of the London Borough of Havering.
 - The application Ref P0423.20, dated 13 March 2020, was refused by notice dated 15 May 2020.
 - The application sought planning permission for a "change of use from residential to day nursery" without complying with conditions attached to planning permission Ref P1662.08, dated 24 March 2009.
 - The conditions in dispute are Nos 5, 7 and 8 which state that: 5. "The number of children accommodated within the premises hereby approved shall not exceed 10 at any one time, including the applicant's own children without the prior consent in writing of the Local Planning Authority". 7. "The number of staff accommodated within the premises hereby approved shall not exceed 4 at any one time without the prior consent in writing of the Local Planning Authority". 8. "The maximum number of children using the rear garden for outdoor play activities shall not exceed 4 at any time without the prior written consent of the Local Planning Authority".
 - The reasons given for the conditions are: 5 & 7. "To enable the Local Planning Authority to retain control and to avoid disturbance to adjoining residents, and that the development accords with the LDF Development Control Policies Development Plan Document Policy DC61". 8. "To safeguard the amenities of neighbouring and nearby residential occupiers and to accord with Policies DC55 and DC61 of the LDF Development Control Policies DPD".
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Decision

1. The appeal is dismissed.

Background

2. The change of use of the appeal site from a dwelling to a day nursery was permitted in March 2009. Permitted hours of opening are from 0700 to 1900 on weekdays although actual opening hours are understood to be from 0730 to 1830. Conditions limit the total number of children to a maximum of 10 and staff to a maximum of four. The number of children permitted to play in the garden at any one time is four. Evidence indicates that the garden is currently used for a period of some 40 minutes each morning and each afternoon. It is not clear whether these hours are extended, for example during fine weather.
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3. The appeal proposal would allow the total number of children at the nursery to increase from 10 to 30 with an increase in staff from four to 10. The number of children permitted in the garden at any one time would increase from four to nine. Hours of opening would remain as currently permitted.

Main Issues

4. There are two main issues. Firstly, the effect on the living conditions of neighbouring occupiers with respect to noise and disturbance if the number of children and staff at the nursery was increased as proposed; and secondly, the effect on highway safety, including the safety of pedestrians and cyclists, if the number of children and staff at the nursery was increased as proposed.

Reasons

5. The appeal site comprises an extended, semi-detached former dwelling and its garden. It has off street parking on the frontage. The building is located on a corner plot in a largely residential area. The streets are relatively narrow and in Askwith Road street parking is mostly designated as semi-pavement parking, including adjacent to the side boundary of the appeal site. This limits the width of the footway. Street parking is limited in both Askwith Road and Frederick Road by the number of driveways and by the narrow width of the highway. There is no evidence that the current operations are a cause of complaint.
6. The appellant states that the nursery currently draws children and staff from the local area and that they generally arrive on foot or by public transport. However, if the number of children trebled and the number of staff more than doubled it is likely that the catchment area for both would increase. This would increase the likelihood that children and staff would arrive at the nursery by car. Moreover, whilst it is the appellant's policy to recruit from the local area that could change if the nursery changed hands in the future.
7. The appeal is accompanied by a noise assessment which considers noise from children playing in the garden and inside the building. It does not address noise from parents dropping off/collecting children. Whilst it considers the effect on noise levels of an increase in numbers of children playing in the garden it does not take account of the distinctive character of that noise and neither does it consider the effect of any potential increase in the duration of garden use.
8. With respect to the use of the garden, the number of children would increase from a level in keeping with a residential dwelling to a level significantly greater than that routinely expected at a residential property. Although absolute noise increases may be within tolerable limits, the distinctive character of noise generated by children at play would be readily discernible from the background noise levels. This is likely to result in material disturbance to near neighbours, especially during good weather when windows are open and people are using their gardens. I am particularly concerned that it would lead to significant disturbance for anyone using the first floor habitable room served by the rear window in the adjoining property, 87 Frederick Road.
9. The evidence therefore fails to demonstrate that the increased number of children playing in the garden, including any increase in the duration of use of the garden, would not be materially detrimental to the living conditions of neighbouring occupiers with respect to noise and disturbance.

10. With respect to noise emanating from inside the building, again the distinctive character of the sound is not addressed in the noise report. I am therefore concerned that whilst absolute noise levels may be tolerable, sounds such as children crying would become noticeably more frequent and would be clearly audible by and materially disturbing to adjoining neighbours at No 87.
11. Turning to noise and disturbance from dropping off and collecting from the nursery, according to the evidence, this mostly occurs between 0730 and 0900 and 1700 and 1830, with peak times between 0730 and 0800 and 1730 and 1830. Currently that equates to, on average, one child being dropped off about every nine minutes. If numbers increased to 30, this would increase to a child being dropped off, on average, every three or four minutes. It is also likely to result in more children arriving by car. Since dropping off and collecting would take some minutes there would be a period of almost continuous activity, including vehicle movements, during the drop-off and collection times.
12. The substantial increase in the number of comings and goings would be likely to result in a significant increase in noise and disturbance. The parking and manoeuvring of vehicles and the sound of car doors being slammed would only serve to exacerbate this. I have no evidence that this would not result in material harm to the living conditions of neighbouring occupiers.
13. With respect to staff arriving and leaving, those doing so by foot, cycle or public transport are unlikely to cause any noticeable disturbance. If some arrived by car I am satisfied that the limited numbers of vehicle movements involved would not be readily distinguishable from other vehicular activity in the street and would be unlikely to cause an unacceptable level of noise or disturbance.
14. It is concluded on the first main issue that the evidence fails to demonstrate that, if the number of children at the nursery was increased as proposed, it would not result in an unacceptable increase in noise and disturbance that would have a materially harmful effect on the living conditions of neighbouring occupiers. Adopting a precautionary approach, I therefore find that the proposal would conflict with Policy DC61 of the Core Strategy and Development Control Policies Development Plan Document (CS), 2008, and with the National Planning Policy Framework (NPPF) which taken together expect development to create places that provide a high standard of amenity for existing and future users and do not result in unacceptable noise impact.
15. Turning to the effect on highway safety, parking is currently available on the frontage and, according to the evidence, there is one further space to the rear. The submitted plans indicate three existing spaces on the frontage. None were in use at the time of my site visit. There is currently a single width dropped kerb with narrow verge in front of the rest of the frontage. The verge is shown on the submitted site plan as being retained. This is likely to prevent vehicles being able to access all three spaces independently.
16. The rear parking area, which lies within the application area, is unmade and provides access to a garage on the appeal site as well as a vehicular gateway and garage which lie outside the application area and appear to lie within the curtilage of No 87. At the time of my site visit there was a car parked beyond

the gateway and within the curtilage of No 87. This dwelling has no off-street parking to the front.

17. Although the Council has previously raised this issue, the appellant has provided no evidence to demonstrate either that access to No 87 could be maintained or that no right of access exists. There is therefore doubt that the three spaces to the rear could be provided. In their absence, the number of spaces for staff would be significantly below the standard set out in Annex 5 of the CS which requires a maximum of one space for each staff member. Notwithstanding that the standard is a maximum and that some staff may arrive on foot or by bus, the evidence therefore fails to establish that adequate off-street parking provision would be available. In its absence there is likely to be a material additional demand for the limited on-street parking, leading to increased parking stress, congestion and obstruction.
18. In addition to staff parking, Annex 5 requires nurseries to provide a dropping off area. The appellant states that currently, if parents arrive by car, they are able to use the frontage spaces for dropping off. However, these would not be available for dropping off if staff required the spaces.
19. In view of the significant increase in the proposed number of children, if parents parked on the highway this would be likely to lead to parking congestion during the main drop off and collections times, causing obstruction of the highway and footway from parked vehicles, open car doors and the attendant loading and unloading of children. This would be to the detriment of the safety of other road users, including cyclists and pedestrians. Moreover, if the existing or proposed spaces were used for dropping off and collecting, this would result in a significant increase in the number of verge crossings, including reversing, which would create an additional hazard to road users and especially pedestrians and cyclists. The location of the nursery on a junction would only serve to aggravate the risk of harm.
20. It is concluded on the second main issue that if the number of children and staff at the nursery increased as proposed there would be inadequate provision for parking, dropping off and collecting, leading to a material detriment to the highway safety of highway users and in particular cyclists and pedestrians. In consequence, the proposal would conflict with Policies DC61 and DC33 of the CS and with the NPPF which, taken together, expect new development to provide adequate off-street parking to ensure that it does not give rise to on-street parking problems or safety issues and to be designed around the needs of pedestrians and cyclists. Development that would have an unacceptable impact on highway safety should be resisted.
21. For the reasons set out above and having regard to all other matters raised, including the value of the nursery to the local community, the fire service recommendations, the proximity of a local primary school and the lack of third party objection, I conclude that the appeal should be dismissed and Conditions 5, 7 and 8 should remain unchanged.

KE Down
INSPECTOR