



Appeal Decision

Site Visit made on 1 March 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2021

Appeal Ref: APP/Y3940/W/20/3263930

18 Burford Road, Harnham, Salisbury, Wiltshire SP2 8AN

- 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 Kiddi Galore Nursery against the decision of Wiltshire Council.
 - The application Ref 20/05322/VAR, dated 8 September 2020, was refused by notice dated 30 September 2020.
 - The application sought planning permission for a single storey flat roof extension without complying with a condition attached to planning permission Ref 18/10898/VAR, dated 18 January 2019.
 - The condition in dispute is No.4 which states that: The garden shall not be used for children's play outside the hours of 09.30 and 11.30, and between 14.30 to 16.00 Mondays to Fridays. The number of children able to play outside at any one time shall be restricted to a maximum of 15 at any one time.
 - The reason given for the condition is: In the interests of the amenity of the area and to protect the living conditions of nearby residents.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The name of the applicant differs slightly between the appeal and application forms. There is also a discrepancy in the date of application. In both cases I have referred to details given on the application form.
3. The site is an established children's nursery. In 2018, planning permission ref. 18/00376/FUL was granted for a single storey flat roof extension (the 2018 permission). It included a condition (No.3) limiting the number of children permitted to attend at any one time to 45, and another condition restricting the hours in which the garden could be used for children's play to 09.00 to 18.00 Monday to Friday.
4. In 2019, planning permission ref. 18/10898/VAR was granted under S73 of the Town and Country Planning Act 1990 for 'variation of condition 3 of planning permission 18/00376/FUL to allow an increase in the permitted number of children attending the nursery' (the 2019 permission). While the description of development permitted is as I have stated, the effect of a permission under S73 is to grant a new planning permission for the original act of development, without complying with conditions previously stated. That development was a single storey flat roof extension, as per the 2018 permission. By extension, that is still the act of development to which the now disputed condition relates, so my heading, above, refers to this.

5. The 2019 permission included a condition restricting the maximum number of children permitted to attend the nursery at any one time to 65, and the now disputed condition set out in the 5th bullet point of my heading, restricting the hours in which the garden could be used for children's play. This proposal seeks to extend the hours in which the garden can be used for children's play to 09.00-18.00, Monday to Friday.

Main Issue

6. The main issue is the effect that varying the permitted hours of children's play in the garden would have on the living conditions of neighbouring residents.

Reasons

7. The site is within a suburban neighbourhood where the rear garden environments are relatively quiet and tranquil. Against this background the sounds of children playing would be clearly audible. The proposal would allow use of the garden area for outdoor play for much of the day on 5 days per week throughout the year. Such intensity of activity and associated noise could lead to a harmful effect on the living conditions of neighbouring residents.
8. The planning history indicates that the nursery has previously had less restricted use of the garden area. However, that is not evidence that it did not cause unacceptable noise and disturbance at that time. I have no substantive evidence regarding noise to demonstrate that harm would not result if the hours were to be extended as proposed.
9. I understand that outside space is a prominent part of the Early Years Foundation Stage education set for nurseries. I am told that the nursery is not fulfilling its responsibilities under the plan set by Ofsted. However, there is no supporting evidence as to precisely what those responsibilities are or how the proposal would help to meet them. Comments that the restricted hours is affecting the children directly is similarly unsubstantiated by evidence.
10. There is suggestion that the outside space is part of the nursery curriculum which does not act as play time, reducing noise to a minimum. Whether or not certain activities are prevented by the condition is not a matter that is before me. Moreover, there is no mechanism presented that could give certainty that any noise levels can be managed in a way that would not cause disturbance.
11. I, therefore, conclude that the proposal would harm the living conditions of neighbouring residents, contrary to those aims of Policy 57 of the Wiltshire Core Strategy 2015 that require applications for development to demonstrate that they have had appropriate regard to the compatibility with adjoining uses and the amenity of existing occupiers.
12. For the above reasons, the appeal is dismissed.

M Bale

INSPECTOR