



Appeal Decision

Site visit made on 16 February 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th April 2021

Appeal Ref: APP/Y5420/W/20/3263650

Morriss House, 23 Coolhurst Road, Hornsey, London N8 8EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class T, Paragraph T.2.(1)(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Coolhurst 1 Ltd against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2020/1345, dated 3 June 2020, was refused by notice dated 4 September 2020.
 - The development proposed is change of use of care home premises (Class C2) to registered childrens nursery (Class D1).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Rob and Julie Mackenzie, who are interested parties, against Coolhurst 1 Ltd. This application is the subject of a separate decision.

Procedural Matters

3. I have dealt with another appeal relating to the site, which is also the subject of a separate decision¹.
4. The Town and Country Planning (Use Classes) Order 1987 (the UCO) has been amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. However, Regulation 3(2) of the latter provides that any references in The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) to uses or use classes specified in the UCO are to be read until 31 July 2021 as if those references were to the uses or use classes which applied on 31 August 2020. This letter should be interpreted accordingly.
5. Class T of Part 3, Schedule 2 of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class C2 (residential institutions) to use as a registered nursery.
6. The Council does not consider that the development would fail to be permitted because of the limitations set out at paragraph T.1. of Class T and no evidence

¹ Appeal reference: APP/Y5420/W/20/3263678

has been submitted which leads me to reach a different view. However, Class T sets out conditions which must be satisfied for the development to be permitted. These include a requirement for the developer to apply to the Council for a determination as to whether prior approval is required in respect of the matters specified at paragraph T.2.(1)(b) of Class T. In this case, the Council refused prior approval in respect of matters relating to noise and transport and highways impacts.

7. The appellant has confirmed that the statutory period for determining the application was extended by agreement between the appellant and the Council. Article 7 of the GPDO enables such action to be taken. It is not argued that the Council failed to determine the application within the statutory period. Based on the appellant's submissions, I am satisfied that the Council determined the application within the statutory period as amended.
8. In an attempt to overcome the Council's reasons for refusal, noise and transport and highways statements have been submitted with the appeal. These constitute additional evidence to support the appellant's case and do not alter the proposal. The Council and interested parties have been able to consider this evidence as part of the appeal process and thus I have taken it into account in making a decision.

Main Issues

9. The main issues are the effects of the proposal in respect of:
 - noise impacts; and
 - transport and highways impacts.

Reasons

Noise impacts

10. The site includes an Edwardian house that has an attached annexe and a rear garden at 23 Coolhurst Road. It is located within a primarily residential area and near to a junction between Coolhurst Road, Hurst Avenue and Crouch Hall Road. The property is adjacent to Hurst Lodge, which includes a flat block next to the junction and a garden beside Hurst Avenue. A detached dwellinghouse with a rear garden is located on the other side of the site at 21 Coolhurst Road. The sports ground to St Aloysius College is located on higher land beyond the rear gardens of the properties.
11. The house was last used as a care home with 25 bedrooms whereas the nursery would have 138 places in total for babies, toddlers and pre-school children. The nursery would operate from 0700 to 1900. No 'half day' places are proposed and drop off and pick up times would operate only from 0700 to 0900 and 1700 to 1900. An 'educational garden' is proposed to the rear of the annexe and, beyond that, would be 'play gardens'. The appellant's statement indicates that the outdoor spaces would be used between 0800 and 1800, albeit other documents suggest that the spaces may be used between 0830 and 1800 instead. It is also set out that the play gardens would be used by no more than 50 children at any one time.
12. The area has a prevailing suburban character and, when I visited, I heard birdsong and vehicle noise that seemed to largely originate from Hurst Avenue.

The principal concerns raised by the Council and interested parties relate to potential noise from the use of the outdoor spaces. Both the appellant and an interested party appointed noise consultants that undertook surveys to establish existing noise levels in the vicinity.

13. The appellant reports higher noise levels than the interested party. Some of those objecting to the development contend that the appellant's results were inflated by noise from live in guardians at the site during the survey period. However, definitive evidence has not been advanced which suggests that any activities undertaken by the guardians have undermined the results. In any case, noise would likely be generated in the garden if No 23 was being actively used as a care home.
14. Conversely, it is argued that the interested party's survey should not omit chainsaw noise originating from a neighbouring property. However, such activity would not be undertaken regularly in the area and thus its exclusion is reasonable. In addition, the appellant contends that the results should have been affected by a children's summer camp that occurred on the playing fields during the survey. However, the field is large and no convincing evidence has been put forward which indicates that typical activities at the sports ground would result in higher noise levels. Moreover, correspondence on behalf of the college suggests that the playing pitch nearest Coolhurst Road is rarely used as it is short and the furthest one from the changing rooms.
15. The appellant contends that restrictions associated with the Covid-19 pandemic suppressed the noise levels that would normally be experienced. However, the government statistics to which they have referred indicate that vehicle levels were near typical during the interested party's survey. It is further advanced that inclement weather suppressed the results. Whilst the weather conditions described may not be usual for July, they were not unrepresentative of weather experienced throughout the year. In addition, it is reasonable to conclude that the higher wind speeds recorded would have resulted in increased noise levels. The appellant argues that residential properties in similar streets in North London are subject to higher noise levels, but evidence to substantiate this has not been submitted.
16. Whilst various other arguments are put forward on both sides, firm and substantive evidence has not been presented which suggests that either survey is entirely unrepresentative of the existing noise environment. Outdoor settings can change because of many factors and, amongst other things, the surveys were undertaken at different times, in varying weather conditions and with monitoring equipment in different positions. These matters will have contributed to variances in the results.
17. Nevertheless, to ensure that the assessment of impacts is robust, it is appropriate to take the interested party's results into account. Moreover, that monitoring was taken from 2 positions in No 21's garden whereas the appellant's monitoring was from a single position near the shared boundary. The interested party's results are thus more likely to be representative of No 21's specific noise environment.
18. Computer modelling informed by surveys at other nurseries has been used to predict the proposal's impacts. The assessment is based largely on 1-hour average noise levels. A noise map suggests that average levels in parts of No 21's garden would exceed 55dB, which is an upper limit set out by WHO

Guidelines² for avoiding serious annoyance for external amenity areas. However, IEMA Guidelines³ explain that it is necessary to be sure that the indicators used to describe the noise environment, and the change in it, do so adequately. In this case, it is likely that children will shout, scream and cry whilst playing in the gardens. There is little analysis of instantaneous and potentially shrill noise events on the living conditions of the neighbours. Analysis of average levels across 1-hour periods will not therefore reveal fully the impacts of noise on the neighbours.

19. Moreover, British Standard 8233:2014⁴ indicates that occupants are usually more tolerant of noise without a specific character than, for example, that from neighbours which can trigger complex emotional reactions. The nursery would be open for most of the year and the play gardens would be in use for much of each day. More annoyance and disturbance would arise from children playing because of the frequency of such events, as the character of the noise would be distinctive and as the source would be readily apparent.
20. The proposed occupier's noise management plan states that unsettled children would be taken inside the building; however, in order to do so they would have to pass through the educational garden and only the play gardens would be enclosed by acoustic fencing. Furthermore, no survey data from educational gardens or similar facilities at other nurseries has been submitted. The appellant's assessment is predicated on an understanding that noisy activities would not occur in the educational garden; however, there can be no certainty that instantaneous noises would not be generated by children in these spaces.
21. The character of the noise generated by the nursery children playing would not be comparable with noises from use of the sports ground. It is unlikely that events would be focused at the edges of the sports ground and thus near the site. Conversely, the nursery children would be playing directly adjacent to the neighbouring properties. In addition, it is probable that the nature of the activities undertaken at the sports ground would be more formal and structured than the use of the play gardens. The character of existing peak noise levels would also be incomparable with the noise emitted from the play gardens.
22. Furthermore, I have not been referred to any guidance which suggests that the appellant's selection of the tenth highest measurements for determining maximum noise levels is typical practice. Across the survey periods a far higher number of measurements above 80dB occurred during the daytime for the nursery than the existing site, particularly in comparison with the interested party's survey results. Given the likelihood of shouting, screaming and crying during playtime and the distinctive characteristics of such noises, the discounting of the higher measurements is inappropriate. Consequently, I am not satisfied that the noise assessment is representative of the extent of the proposal's impacts on the neighbours' living conditions.
23. The limited detail included within the appellant's assessment as to the assumptions of the acoustic model, such as the heights of noise sources and receptors, noise attenuation and its limitations further my concerns. Whilst the appellant provides calculations for high noise events, details of the modelling assumptions and mapping of the results have not been provided. In addition,

² Guidelines for Community Noise, World Health Organisation

³ Guidelines for Environmental Noise Impact Assessment, Institute of Environmental Management and Assessment

⁴ Guidance on sound insulation and noise reduction for buildings

the cumulative impacts arising from other sources of noise, such as movements to and from the site daily, the use of the educational garden and any use of the external area between the house and the annexe, even if that area is accessible to adults only, also need to be considered.

24. Taking the interested party's lower recorded noise levels into account in combination with the above matters, most notably the change in the character of the noise environment and the likely frequency of peak noise events, the nursery would result in noise significantly above average and maximum levels. The noise impacts would lead to material changes in the behaviour of the occupiers of Hurst Lodge and No 21, at least insofar as garden use would be avoided for several periods each day. Moreover, I have no reason to doubt that the occupiers of No 21 use their garden and the 'writing shed' towards its rear regularly and extensively. Accordingly, the effects of the proposal would be substantial and disruptive.
25. I note that no windows or doors to the house would be left open and thus have no convincing reasons to conclude that internal noise would be harmful. Whilst the acoustic fencing, a management plan and conditions to limit the number of children using the play gardens and noise generated by external plant would mitigate the effects of the proposal to an extent, I am not convinced that the resultant impacts would be less than substantial. The Council indicates that a condition to require the play gardens to be used by fewer children could achieve acceptable noise levels; however, nothing before me indicates the level at which children numbers might be capped. Additionally, further limitations may prevent the reasonable operational needs of a nursery from being met.
26. Based on the evidence before me, I conclude that the proposal would generate noise that would have significant adverse effects on the living conditions of the occupiers of the neighbouring properties. The proposal conflicts with paragraphs 170 and 180 of the National Planning Policy Framework (the Framework), which explain that levels of noise giving rise to significant adverse impacts on health and the quality of life should be avoided.

Transport and highways impacts

27. The site is located within a controlled parking zone (CPZ) that restricts parking between 1400 and 1600 on weekdays. No parking is proposed on site. The appellant has assumed that the use would generate one trip per child at the beginning and end of each day, which is a logical approach. The implications of the proposal have been assessed in terms of potential traffic generation and car mode share by comparing it with nurseries elsewhere. The selected cases have car mode shares of less than 30 percent and it is put forward that the car mode share for the proposal would be similar.
28. The Council and interested parties contend that the cases are not directly comparable, the car mode share for the proposal would be much higher and car use is greater at other nursery sites. However, the evidence of car use at other sites is largely anecdotal. Whilst the circumstances of development in separate locations will not be identical, firm and substantive evidence to counter the appellant's evidence has not been provided.
29. The site is within a Public Transport Accessibility Level 2 area, which indicates that access to public transport is poor. I also note that the Council considers that the catchment for the site would be larger than an 'average' nursery.

Nevertheless, the proposal would still serve the local area and a significant proportion of trips could be made by non-car modes. In addition, although the Council contends that the car mode share for the nursery would be higher, it has confirmed that travel plan data from 2019 for Coleridge Primary School to the south of the site indicates an 18 percent car mode share for the students. This suggests that the appellant's purported car mode share is not unrealistic.

30. The Council suggests that parking stress levels above 85 percent would be unacceptable. The appellant has provided a survey which assesses on street parking capacity within approximately 200m of the site. The extent of the survey area is suitable having regard to the proposed use. When existing on street parking is most prevalent, the evidence indicates that there would be sufficient capacity to accommodate a car mode share of up to 45 percent for parents and carers before stress levels exceed 85 percent.
31. Additionally, the 45 percent mode share is based on the parents and carers of all the children being in the vicinity of the site at the same time. Whilst the nursery may include a 'parents area' that would encourage longer visits than the 5 minute dwell time suggested by the appellant, there would be little reason for all parents and carers to remain in the vicinity for the entirety of the 2 hour drop off and pick up windows. Furthermore, some parents and carers may have more than one child attending the nursery. In addition, staff would be deterred from using cars or parking in the immediate area due to the CPZ restrictions. Therefore, even if the car mode share is higher than the appellant suggests, there would still be sufficient capacity for on street parking.
32. The appellant has also undertaken surveys which indicate that there are a limited number of vehicle movements along Coolhurst Road at peak times and that vehicle speeds are low. The Council states that these findings do not reconcile with its observations; however, substantive evidence has not been put forward to support its position. The presence of on street parking prevents 2-way traffic flow, which encourages cautious driving and slow vehicle speeds. Additionally, CrashMap data shows no recorded traffic incidents in the immediate vicinity in the past 5 years. Although a limited number of slight incidents have occurred in the wider area and some have been reported by interested parties, the data nevertheless indicates that the existing highways arrangement is not unsafe. There is no reason to conclude that trips generated by the nursery would have a significant effect on traffic in the area.
33. The Council contends that illegal parking would occur near the junction and along the immediate roads and that this would result in highway safety issues and passing places between parking bays becoming blocked. Double yellow lines extend a significant distance from the junction and I am not convinced that visibility splays would be restricted to such an extent that safety would be jeopardized. Illegal parking is an enforcement matter but, in any case, the proposal is unlikely to result in prolific illegal parking as there would be sufficient parking capacity in the vicinity for the development.
34. Whilst another nursery operator could offer half day places, it is unlikely that drop off and pick up times would be within the CPZ restricted hours. Furthermore, half day places would likely lead to trips being more evenly distributed across the day and thus the trips at peak times would be reduced.
35. The proposal would not include any disabled parking facilities and I have not been referred to any on street bays in the vicinity. However, the existing care

home includes no such provision. A condition to require adherence to a travel plan would ensure that accessibility matters, and the transport and highway impacts of the proposal more widely, are acceptable.

36. The proposal accords with paragraphs 109 and 110 of the Framework, which set out that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on safety or the residual cumulative impacts on the road network would be severe.

Other Matters

37. The appellant has put forward that the proposed development would have several benefits. However, I can only make an assessment as to the specific matters set out at paragraph T.2.(1)(b) of Class T. I cannot therefore take wider benefits of the development into account in determining this appeal.

Conclusion

38. For the reasons given above, I consider that the noise impacts of the proposal would have significant adverse effects on the living conditions of the occupiers of the residential properties adjacent to the site.
39. I therefore conclude that the appeal should be dismissed.

Mark Philpott

INSPECTOR