



Appeal Decision

Site visit made on 25 January 2021

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 05 AUGUST 2021

Appeal Ref: APP/P1245/W/20/3271285

44 Lincoln Avenue, Peacehaven, East Sussex BN10 7JU

- 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 Nick Childs against the decision of Lewes District Council.
 - The application Ref LW/19/0496, dated 9 July 2019, was refused by notice dated 5 September 2019.
 - The development proposed is Change of use of workshop/office/warehouse and van depot (sui generis) to children's nursery school (D1).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The revised National Planning Policy Framework was published on 20 July 2021. The main parties were given the opportunity to comment on the revised Framework insofar as the revisions related to the appeal.

Main Issues

3. The main issues are;
 - The effect of the proposal on the living conditions of surrounding occupiers;
 - Whether the existing use remains economically viable; and
 - Whether the proposal would incorporate measures to reduce locally contributing causes of climate changes.

Reasons

Living conditions

4. The appeal site is set back from the road, to the rear of 44 Lincoln Avenue, with access provided between Nos 44 and 46. The site, which has a sui generis use, has an existing building on it. Due to the unusual shape of the site the building wraps around the boundaries and is almost entirely surrounded by residential properties.
5. With accommodation for up to 46 young children/babies, and associated outdoor play equipment, the proposal would result in a significant intensification in activity on the site. Hours of operation would be 8am through

- to 6pm, which would result in an escalation in use such to create substantial levels of noise and activity, five days a week, both inside and outside of the building.
6. I note the proposal that a suitable management plan could be put in place to stagger and restrict the use of the outdoor area. I have carefully considered the use of a management plan, however I do not consider that staggering the use of the area would result in an overall reduction in the level of noise that would adequately mitigate the harm.
 7. Whilst the existing building would create a form of buffer for the properties on Ambleside Avenue, the properties along Lincoln Avenue would be exposed to a dramatic increase in noise and activity levels. This would have a profoundly harmful impact on the use of outdoor amenity space for those occupiers and may also be detrimental to the use of indoor space. The existing fence is not a substantial structure but a simple boundary fence, and realistically noise associated with the activity of young children travels a considerable distance. As such I consider that acoustic fencing would do little to mitigate the noise associated with the appeal site.
 8. Whilst the site has been previously used for commercial purposes, the proposal would create a level of noise and activity that would be almost constant through-out the day. As such there would be no release from the impact of the use for those residents living nearby. Previous commercial uses referred to such as vehicle workshop and vehicle depot would have peaks and troughs of activity through out the day, which may also alter across the course of the week. I consider that the historic use of the site would have a lesser impact on the use of amenity space for surrounding occupiers.
 9. Two parking spaces would be provided in the accessway for use by staff. A turning area would be provided at the front of the accessway, and cycle storage and pushchair storage would be provided. Whilst some users may travel on foot or by bicycle, it is likely that a significant number will use a vehicle, particularly if they have more than one child or are travelling onto work. As such there would be inevitable crunch points relating to vehicle movements at drop off and collection times.
 10. It is not unusual to find modest forms of childcare within residential areas. However, those are usually very modest in terms of size, with larger childcare settings found close to main thoroughfares with good transport links. This appeal site is set within a quiet, residential area, and the site is surrounded by residential properties. The increased level of activity would eradicate the calm and tranquil environment, and result in significant harm to the living conditions of surrounding occupiers.
 11. I have considered the comparative sites put forward by the appellant. When permitted Wild Monkeys was restricted to 20 children, which is in excess of half the number proposed for this appeal. Whilst that number has now increased, I do not have before me any evidence to explain what information may have been considered at the time of that application. An increase from 20 to 49 children for a use that has been in situ for a number of years is materially different from a complete change of use of a site to allow for up to 42 children. Hopscotch Nursery had an existing childcare provision on the ground floor when it was subsequently permitted to expand.

12. The comparative sites were all located within residential areas, which I have acknowledged is normal for a day care setting. However, there are fundamental references to be found in the character of residential areas; some are busy and have an existing level of noise, some are quiet and tranquil like the area around the appeal site. Accordingly, I find that, without significant levels of detail to allow meaningful comparisons, the examples put forward do not justify the scheme when I have found it to be harmful to living conditions of surrounding occupiers.
13. Accordingly, I find that the proposal would be harmful to the living conditions of surrounding properties. It would conflict with policies ST3, CP11 and CP13 of the Lewes District Local Plan Part 1; Joint Core Strategy which, amongst other things, seek to ensure that development, including conversion, should respect the amenities of adjoining properties in terms of noise.

Whether the existing use remains economically viable

14. The information submitted with the planning application indicated that the site had been vacant since December 2018. At the time the application was determined the site had not been marketed for a 12-month period as required by the supporting text to Core Policy 4 of the Lewes District Local Plan Part 1.
15. The updated Marketing Statement by Oakley demonstrates that the property has been marketed for sale and to let since January 2019 which is in excess of 12 months. The report also details the extent of advertisement that was undertaken and lists the number and dates of viewings from January 2019 to March 2020. Despite a number of viewings there has been no interest in acquiring the site for a business/industrial use.
16. Accordingly, I find that the proposal would meet the requirements of Core Policy 4 of the Lewes District Local Plan Part 1: Joint Core Strategy having regard to 7.45 of the explanatory text of that policy which advocates the need to suitably market a site.

Whether the proposal would incorporate measures to reduce locally contributing causes of climate changes

17. The site would provide two staff car parking spaces, each with an electric vehicle charging point. It would also be possible to condition a travel plan which would provide some control of the transport used by staff. However, I consider that such a plan would have limited impact on users of the facility, especially those travelling on to other places.
18. Overall, within the limitations of the scheme, I find that the proposal would incorporate measures to reduce the use of the site contributing to climate change. As such it would comply with Core Policy 14 of the Lewes District Local Plan Part 1 which requires development to provide facilities and measures to support sustainable travel modes.

Planning Balance and Conclusion

19. I have found that the proposal would be detrimental to the living conditions of neighbouring occupiers and would therefore conflict with the development plan.
20. The proposal would make use of a site that has been marketed in accordance with the development plan to no avail, thereby making efficient use of available

land. It would incorporate measures to tackle climate change and include an element of skilled employment generation for nine full time equivalent staff.

21. However, I conclude that these material considerations do not, either individually or collectively, equate to a benefit that would outweigh the conflict that has been identified with regard to the harm to the living conditions of surrounding occupiers.

22. Accordingly, for the reasons above I conclude that the appeal is dismissed.

J Ayres

INSPECTOR