
Appeal Decision

Site visit made on 13 July 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2021

Appeal Ref: APP/B5480/W/20/3263139

1 Ambleside Avenue, Hornchurch RM12 5ES

- 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 Lifeline Projects against the decision of the Council of the London Borough of Havering.
 - The application Ref: P1104.19, dated 17 July 2019, was refused by notice dated 4 September 2020.
 - The development proposed is the change of use from Dwelling (C3) to Nursery (D1).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from a dwelling (C3) to a nursery (D1) at 1 Ambleside Avenue, Hornchurch RM12 5ES in accordance with the terms of the application, Ref: P1104.19, dated 17 July 2019, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Lifeline Projects against the Council of the London Borough of Havering. This application is the subject of a separate Decision.

Procedural Matter

3. The description of development in the banner heading above is taken from the planning application form and the Council's decision notice. It refers to the proposed Use Class as it was prior to changes that took place on 1 September 2020¹. Under the Regulations, an application that was made prior to this date is also to be determined with reference to the uses or use classes that were in place prior to that date. Accordingly, I have considered the appeal on this basis.

Main Issues

4. The main issues are the effect of the proposal on (i) the living conditions of the occupiers of surrounding neighbouring properties by way of noise and disturbance, in particular 3 Ambleside Avenue (No 3); and (ii) highway safety, in relation to dropping off and picking up, parking provision and associated living conditions matters.

¹ Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Reasons

Noise and Disturbance

5. The appeal property is an extended house that comprises one half of a pair of semi-detached properties. It lies on a generous sized corner plot where Ambleside Avenue meets Rosewood Avenue, where the site has its longer frontage. The attached semi, No 3, has shared common rear and front garden boundaries, as well as an internal party wall with the appeal property. No 3 is in residential use.
6. The uses in the vicinity of the site are primarily residential, although there are a number of community and medical related uses close by. To the rear of the site is an existing children's nursery. The site also lies close to Elm Park centre, where there are parades of shops and commercial uses. Rosewood Avenue is a thoroughfare to and from this centre.
7. With the proximity of the residential properties to the site, in particular No 3, there would be the potential for the proposal to cause additional noise compared to the existing use. As such, the applicant submitted a Noise Impact Assessment (NIA) with the application. This included a baseline noise survey in order to capture the existing ambient and background noise levels in a position deemed representative of No 3. Measurements were also taken from a different nursery at 15 St Nicholas Avenue. The NIA has regard to the guidance and criteria set out in British Standard 8233:2014² (BS 8233:2014).
8. The NIA found that the noise levels that the occupiers of No 3 would likely experience from the proposal internally would exceed those recommended by BS 8233:2014, without mitigation. On the side of the appeal property at ground floor level, a toddler room is proposed where such noise would most likely emanate from. Thus, noise insulation is proposed to the party wall by way of a partition on the side of the appeal property. This would also be applied at first floor level where a baby room and a baby sleep room are proposed. The noise insulation would lessen the noise levels to accord with the guidance in BS 8233:2014.
9. With regard to the external windows and doors, these are proposed to remain shut so as to reduce the likelihood of noise escaping. A ventilation strategy will be required for the appeal property. As with the insulation of the party wall, this can be satisfactorily addressed through the imposition of a planning condition so that internal noise levels would not be unacceptable.
10. The NIA also found that there would be a likely exceedance of the upper noise levels of BS 8233:2014 in the rear garden of No 3. For a short distance along the shared boundary, a 2.4 metre (m) high acoustic fence would be erected. A planter area would act as a buffer so that the proposed outdoor play area would be set in from the boundary to further mitigate the predicted noise levels at the rear of No 3. The usage of the outdoor play area would also be limited by way of the hours and the maximum number of children. Whilst the occupiers of No 3 would no doubt hear children playing, in particular in the summer months, the various mitigation measures proposed would ably mitigate the effects from the use of the play area.

² BS8233:2014 Guidance on sound insulation and noise reduction for buildings

11. There has been some criticism of the use of measurements in the NIA from the 15 St Nicholas Avenue nursery, in particular as numbers of children are lower at that nursery and so it is said to operate at a lower intensity. However, the baseline noise survey itself was carried out in a position that was close to the boundary with No 3, as is detailed in the NIA. It is also not unreasonable for the NIA to seek some comparisons with another nursery because many of the sources of noise will be the same, even with the difference in numbers of children. Whilst clearly the proposal would have a larger overall capacity, when the not insignificant level of mitigation measures are also considered, the use of measurements from this different nursery does not alter my conclusion on this issue.
12. Concerning the related appeal decision³ for the 15 St Nicholas Avenue nursery, this is of some age and has a limited bearing on my decision as it is not evident whether the noise standards and guidance would have been similar.
13. The Planning Practice Guidance: Noise (PPG) also recognises that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. Therefore, it is also important to consider the effect of the characteristics of the noise. The PPG sets out that a contributory factor includes non-continuous sources of noise.
14. This is of relevance to the proposal in relation to the intermittent nature of noise from children, such as crying. However, the mitigation measures would seem able to address such noise through the party wall noise insulation, the acoustic fence, setting the play area away from the boundary and the control of the number of children outside.
15. With regard to noise associated with comings and goings, including vehicular noise, Rosewood Avenue is already a fairly busy route on the approach to Elm Park centre. Such noise associated with the proposal would be unlikely to result in a marked increase compared to the existing situation. Whilst the mitigation measures would not prevent the congregation of parents or guardians and children on arrival or leaving, this would be unlikely to amount to significant disturbance due to the numbers involved.
16. The noise would also not occur during unsociable hours due to the proposed hours of use. It would occur during the daytime when noise levels would be expected to be less quiet. With regard to the scale of the proposal, the numbers of children would be limited at 37 and due to the extended size of the property, this would not be unreasonable. A number of the rooms would also not abut the party wall with No 3.
17. In taking these considerations together, the proposal would avoid noise giving rise to significant adverse impacts on health and the quality of life, when the nature and capacity of the proposal are considered. I am mindful of the juxtaposition to No 3, however the various measures would mitigate and reduce to a minimum potential adverse impacts resulting from noise and would result in effects that would not be unacceptable. Other residential properties are more distant and so would also not have their living conditions unduly impacted.

³ T/APP/B5480/A/96/268906/P2

18. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of surrounding neighbouring properties by way of noise and disturbance, in particular No 3. Hence, it would comply with Policies DC55 and DC61 of the Council's Core Strategy and Development Control Policies Development Plan Document (2008) (DPD) where they state that planning permission will not be granted if it will result in exposure to noise or vibrations above acceptable levels affecting a noise sensitive development such as all forms of residential accommodation, and has unreasonable adverse effects on the environment by reason of noise impact, amongst other matters.

Highway Safety

19. Vehicular access is taken from Rosewood Avenue. The roads in the vicinity of the site are well used with their proximity to Elm Park centre and as they also serve a residential area. On-street parking itself is restricted by double and single yellow lines, in particular around and close to the junction of roads to the front of the site which form a roundabout. There are marked bus stops in both directions on Rosewood Avenue in proximity to the site. The Council consider the location is not well served by public transport, but this does not seem to be borne out by what I observed on my site visit in relation to especially buses.
20. The proposal does not propose a dropping off and picking up area as per the Council's Local Development Framework. In this instance, as on-street parking is restricted and with the site's proximity to public transport options, it would not be unreasonable to expect a variety of means of transport to be utilised. The proposal also includes cycle parking and it would also be within walking distance of the residential area if the children live close to the site. In this regard, buggy parking is proposed to the front of the property.
21. Even if on-street parking is utilised for short periods, this would not amount to untoward parking stress. Periods of congestion and competition for spaces would be for a short duration and likely only involve a small number of vehicles. That it may be at times when roads are likely to be busy would be unlikely to tip the proposal into unacceptable effects on highway safety and the associated living conditions of local residents. The absence of a dropping off and picking up area is not decisive.
22. The parking standards that the Council operate are to maxima and would relate only to members of staff. Two parking spaces are proposed for 6 staff, which accords with this approach. Staff members would also have access to cycle parking, public transport and walking if they live within a reasonable distance from the site. The Council has also suggested that a Travel Plan by way of a planning condition would be appropriate if I was minded to allow the appeal. This would also benefit the use of modes of transport other than the car and would apply to both customers and staff.
23. I conclude that the proposal would not have an unacceptable effect on highway safety, in relation to dropping off and picking up, parking provision and associated living conditions matters. As such, it would comply with Policies DC26, DC33 and DC61 of the DPD where they are concerned with accessibility by a range of transport modes, ensuring that any on-street parking which is likely to be generated by the use can be accommodated without detriment to pedestrian and highway safety, car parking provision within new developments not exceeding the maxima and development to be designed and oriented

around the needs of pedestrians, cyclists and connectivity to the public transport network, amidst other matters.

Other Matters

24. The proposal would result in the loss of a single dwelling unit and I have been referred to Policy DC5 of the DPD in this regard. The policy accepts the loss of housing where it involves the provision of essential community facilities and a children's nursery can be viewed within this context. Evidence has been put forward in relation to the need for early years provision in the area from the appellant, and interested parties have detailed a number of existing nurseries in the area, their rates of occupancy and the availability of car parking. In any event, such provision is in the best interests of the child and so the existence of other nurseries and their own circumstances is not pivotal.
25. The acoustic fence on the boundary with No 3 would be a fairly tall structure. It would however only extend for a short distance along the boundary and so it would not be overbearing and nor would it have an undue effect on outlook. Overall, there would be limited visual impacts because the external alterations would not be significant.
26. I have also been referred to potential effects on pre-existing medical conditions arising from the proposed use. I am not unsympathetic and the proposed noise and disturbance mitigation measures should also assist in this regard.
27. I am also mindful that the Council's decision was informed by local knowledge and this led to the weight that was attached to the matters of dispute. I have considered the totality of the evidence in my decision. Overall, I find this favours the proposal.

Conditions

28. In addition to the timescale for implementation, I have imposed a condition concerning the approved plans for the purposes of certainty. These exclude existing, indicative and superseded plans.
29. I have also imposed conditions concerning the hours of use of both the property and the outdoor play space, the associated maximum numbers of children, as well as the provision of the buffer and the acoustic fencing. These conditions are imposed in the interests of protecting the living conditions of the occupiers of the nearest neighbouring properties, in particular No 3. For the same reason, a condition is imposed concerning the internal sound insulation measures and a ventilation scheme.
30. A condition is imposed concerning a Travel Plan, in order to encourage the use of modes of transport other than the car. For the same reason, a condition is imposed by way of the details of the proposed cycle parking and because full details of the associated storage facilities have not been provided. A condition is also imposed concerning details of refuse storage in the interests of pollution control and protecting living conditions.
31. Where I have altered the wording of the conditions put forward by the Council, I have done so in the interests of precision and without changing their overall meaning.

Conclusion

32. For the reasons set out above and having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

Darren Hendley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 001 Rev D Proposed Block & Location Plan, 003 Rev C Proposed Plans & Elevations.
- 3) The use hereby permitted shall only take place between the hours of 07:30 - 18.30 Mondays – Fridays and not at any time on Saturdays, Sundays, Bank or Public Holidays.
- 4) The maximum number of children at the property at any one time shall not exceed thirty-seven children with a maximum of eight children at any time using the rear garden as outdoor play space as demarcated on the layout plan (ref: 001 Rev D) provided with a buffer to the neighbour at 3 Ambleside Avenue and acoustic fencing in the arrangement shown to be installed and maintained for the lifetime of the development hereby permitted.
- 5) The outdoor play-space to the rear of the building shall be used only between the hours of 09:30 - 16:00 Mondays – Fridays and not at any time on Saturdays, Sundays, Bank or Public Holidays. No other outdoor areas of the site shall be used for outdoor play/teaching use.
- 6) The building shall be adapted so as to provide sound insulation against internally generated noise in accordance with details that have been previously submitted to and agreed in writing by the Local Planning Authority, with details of party wall insulation, self-closing doors and windows shut and including a scheme of ventilation. The sound insulation works and the scheme of ventilation shall be carried out in accordance with the approved details and completed before the use of the building hereby permitted begins and retained thereafter.
- 7) The development hereby permitted shall not be brought into use until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include measures to encourage staff and visitors to travel to the site by means other than by private car and an implementation schedule. The development shall be carried out in accordance with the approved Travel Plan. The approved Travel Plan shall be monitored and reviewed on an annual basis for three years and a copy of that review and action plan arising shall be submitted to the Local Planning Authority annually.
- 8) The development hereby permitted shall not be brought into use until space has been laid out within the site for bicycles to be parked in accordance with details that have been previously submitted to and approved in writing by the Local Planning Authority. Thereafter that space shall be kept available for the parking of bicycles.
- 9) The development hereby permitted shall not be brought into use until space has been laid out within the site for refuse storage in accordance with details that have been previously submitted to and approved in writing by the Local Planning Authority. Thereafter that space shall be kept available for refuse storage.