



Appeal Decision

Site Visit made on 7 July 2021

by Sarah Housden BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Appeal Ref: APP/N2739/W/21/3272851

Maisy Moos Day Nursery, Station Road, Wistow, SELBY, YO8 3UZ

- 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 Ms Helen Marshall against the decision of Selby District Council.
 - The application Ref 2020/1147/FUL, dated 21 October 2020, was refused by notice dated 11 February 2021.
 - The development proposed is 'retrospective application for the erection of a side shelter over play area'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The side shelter had been erected over the play area at the time of my site visit and I have determined the appeal on that basis.
3. The revised National Planning Policy Framework (the Framework) was published on 20 July 2021. Paragraph 218 indicates that its policies are material considerations which should be taken into account in dealing with applications from the day of publication. The principal parties were therefore invited to comment on any implications of the revised Framework for this appeal, but did not submit any comments. I have determined the appeal having regard to the revised Framework.

Main Issues

4. The main issues in this case are:
 - The effect on the character and appearance of the area; and
 - The effect on the living conditions of adjoining occupiers, having particular regard to noise and disturbance.

Reasons

5. The day nursery is located to the west of Wistow village centre, within the frontage development of residential properties along Station Road. Formerly a dwelling, planning permission was granted for a change of use of the property to a day nursery in 2015, subject to a number of conditions. Further applications have been made in conjunction with the day nursery use, including the retention of a buggy park and rear shelter and the erection of a classroom.

Planning permission¹ was also granted to vary a condition relating to the hours of outdoor activities on the site, so that they can now take place between 09:00 and 18:00 hours.

Character and appearance

6. The shelter has a lean-to clear polycarbonate roof supported on timber joists and posts and fitted with guttering. To the west, the common boundary with the dwelling 'Marshland' is enclosed by a 1.8 metre high timber fence which also wraps around the front of the play area with an infill of horizontal boarding between the top of the fence and the polycarbonate roof. At the time of my site visit, the floor was covered with astro-turf and the area contained a number of pieces of play equipment, suitable for outdoor and indoor play.
7. Due to its location between the nursery building and Marshland, and its position set back from the road, the shelter is not prominent in longer distance views when approaching along Station Road from either direction. Although it is visible at closer distances, due to its simple lean-to form and dimensions, it appears as a subordinate addition to the nursery building and the timber materials and colouring are muted. The timber fence provides effective screening of the contents of the interior when viewed from the road. Overall, due to the combination of its scale and form, the shelter has the appearance of an ancillary structure to the nursery building and does not appear intrusive or have a detrimental impact on the character and appearance of the surrounding area.
8. For these reasons, I find no conflict with Policy ENV1 of the Selby District Local Plan (2005) (LP) in so far as it requires new development to take account of its effect on the character of an area nor with LP Policy EMP6 which requires that the extension of an existing business should not have a significant adverse effect on the character or appearance of the surrounding area. Whilst it is somewhat utilitarian in appearance rather than being of high quality design as sought by Policy SP19 of the Selby District Core Strategy (2013) (CS), the shelter is appropriate in relation to its function, its impact on the host building and in the context of its surroundings. I conclude, therefore, that it does not harm the character and appearance of the area.

Living Conditions

9. The day nursery is in a residential area and at the time of my site visit on a weekday during mid-morning, there was very little through traffic or other noise generating activity in the area, resulting in a relatively quiet environment. Whilst this situation could change at different times of the day, general background levels of noise are likely to be low during the nursery's opening hours.
10. The Framework indicates at paragraph 185 that planning decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and should avoid noise giving rise to significant adverse impacts on health and the quality of life. The Framework also requires a high standard of amenity for all existing and future users.
11. The Planning Practice Guidance (PPG) refers to the aims of the Noise Policy Statement for England (NPSE) and states that planning decisions should

¹ Permission reference 2018/1187/COU

identify whether the overall effect of noise exposure is above or below the significant observed adverse effect level, the point at which noise can cause a material change in behaviour such as keeping windows closed or avoiding certain activities during periods when the noise is present. It advises that decision making should take account of the acoustic environment and where noise starts to have an adverse effect, consideration needs to be given to mitigating and minimising those effects, taking account of the economic and social benefits being derived from the activity causing the noise.

12. The submitted site layout plan for planning permission reference 2018/1188/FUL² initially proposed a roof covering over the side play area. However, due to concerns about the amenity of adjoining occupiers, the roof covering was removed in the amended plans. The amended site layout plan³ shows an outdoor play area to the side of the nursery. Therefore, the use of the area which is the subject of this appeal for outdoor play is authorised by the planning permission and this will generate a degree of noise and disturbance. Whilst concerns have been expressed about the general noise and disturbance associated with the day nursery use, the main issue for this appeal is whether the noise and disturbance associated with the use of the covered shelter would be noticeably different compared with its use for outdoor play.
13. The protection from the roof covering together with the floor surfacing creates a more usable area, including for the storage and use of a wider range of play equipment and would also allow for play during wet weather. At my site visit, the area contained a more diverse range of play equipment compared with that shown on the appellant's submitted photograph 19, including items for indoor play. The patio doors in the side of the nursery building opening out onto the covered shelter are also likely to facilitate its use in conjunction with the indoor room, shown on the approved plans as the toddler eating/messy playroom. Overall, the area is likely to be used more intensively compared with its use solely for outdoor play.
14. Due to the combination of its weather proof construction, floor surfacing and the wider range of activities it could accommodate, the noise and disturbance from children playing in the covered shelter would be likely to be materially different from its use for outdoor play. It would be concentrated within a confined area and could occur at any time between 09:00 and 18:00 hours which are the hours authorised for outdoor play. I have also taken into account that the nursery's opening days are not restricted by means of a planning condition and any owner or operator could choose to open at weekends.
15. Representations indicate that outdoor play is audible from within one of the properties opposite the site, as well as from its front garden area. However, it was apparent from my site visit that that property is set back from the road and on the opposite side of the road from the nursery. Due to the separation distance, the additional noise and disturbance over and above the level generated by use of the area for outdoor play would be unlikely to be noticeable or cause a significant adverse effect on the living conditions of the occupier of that property.
16. The additional noise and disturbance would be likely to be most noticeable to the occupiers of Marshland. That property has a side garden area adjoining the

² Retrospective application for erection of buggy park and rear outside play area shelters

³ Drawing Number 03a

fence on the common boundary with the play area and a large three pane window with top opening lights in its east elevation. Although it was curtained at the time of my site visit, the window appears to serve a habitable room. Noise from the use of the play area would be likely to be heard from within that property, particularly on warm days when windows and doors are likely to be open and from its garden area. Due to its proximity, the noise and disturbance would have a significant adverse impact on the enjoyment of the dwelling and garden area that the occupiers could reasonably expect.

17. I conclude that the noise and disturbance from children using the covered shelter would be materially different from its use for outdoor play and would have a significant adverse effect on the living conditions of the adjoining occupier at Marshland. In coming to that view, I have taken into account that there were no objections from the Environmental Health Officer or from the occupier of Marshland and that it would not result in an increase in the nursery's floor area or the number of children using the play area.
18. In accordance with paragraph 55 of the Framework, I have considered whether conditions could be used to mitigate the impact of noise and disturbance. However, that would be likely to require further restrictions on the hours of use of the side play area which would be impractical to operate in conjunction with the different permitted hours of use for the play area to the rear of the building. In these circumstances, such a condition would fail to meet the tests for conditions set out in the Framework and the PPG.
19. For the reasons outlined above, there would therefore be conflict with LP Policies ENV1 and ENV2 and CS Policies SP13 and SP19 in so far as they seek to ensure a good standard of amenity and ensure that new development does not result in unacceptable levels of noise. There would be further conflict with the provisions of the Framework to require a high standard of amenity for existing and future users.

Other matters

20. The enforcement of conditions requiring the erection of acoustic fencing on the boundaries of the nursery is a matter for the Council and not a matter for this appeal.
21. The existence of a private covenant on the nursery building is a civil matter and not something on which I can comment further as part of this appeal.

Planning Balance and Conclusion

22. Drawing matters together, I have found that the covered shelter does not harm the character and appearance of the area and this aspect of the proposal would accord with the development plan. However, there would be material harm to the living conditions of the adjoining occupier at Marshland.
23. As indicated in the NPSE and the PPG, the adverse effect from noise has to be assessed against the economic and social benefits of the proposal. More diverse outdoor learning would be beneficial to children attending the nursery as well as helping to meet curriculum requirements. This accords with the Framework's requirement to provide the social facilities needed by the community. However, the economic benefits over and above those associated with the existing childcare facilities that are available at the nursery would be

limited and therefore I consider that the economic aspect carries limited weight in support of the appeal.

24. Based on the balance of considerations before me, I conclude that the material harm to living conditions and the conflict with the development plan in that regard would outweigh the social and economic benefits of the proposal. I have taken into account the representations of support made but overall, there are no material considerations of sufficient weight to justify a decision other than one in accordance with the development plan.
25. For the reasons outlined above and having had regard to all other matters raised, the appeal should be dismissed.

Sarah Housden

INSPECTOR