



Appeal Decision

Site Visit made on 27 May 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th August 2021

Appeal Ref: APP/J4525/W/21/3269107

Rowlandson House, 1-2 Rowlandson Terrace, Sunderland SR2 7SU

- 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 Anthony Lang against the decision of Sunderland City Council.
 - The application Ref 20/01763/SUB, dated 24 September 2020, was refused by notice dated 9 February 2021.
 - The development proposed is described as change of use of existing residential care home (Use Class C2) to non-residential institution as a children's day nursery with additional noise survey work and revised & additional highways analysis.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Dr Anton Lang against Sunderland City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. On 20 July 2021, the Government published its revised National Planning Policy Framework ('the Framework'). It replaces the previous version published in February 2019. The Framework represents the Government's up-to-date planning policies for England and how they should be applied.

Main Issues

4. The main issues are the effect of the proposed development on 1) the living conditions of occupants of nearby residential properties with regard to noise and disturbance and parking, and 2) highway safety.

Reasons

Living conditions

5. The appeal property is a two-storey end of terrace building with roof level accommodation. It is located at the junction between Ryhope Road and Villette Road. Although the surrounding area is predominantly residential in nature, there is also a petrol filling station, a public house and commercial properties on Villette Road in the wider area.
6. During my weekday afternoon site visit, I observed that Ryhope Road is a heavily trafficked dual carriageway. The traffic-light junction with Villette Road,

and a similar junction with The Cedars further along the road gives the immediate area very noticeable traffic movements.

7. In terms of the proposed use, the most likely generation of noise would be caused by the general comings and goings of staff, parents and children at the start and end of the day, and from children playing outdoors during the daytime.
8. A Noise Assessment by Northburn Acoustics (ref 20-51-775) was submitted with the application. The report measures noise levels at the appeal site and for a similar business. Using these measurements, the report puts forward that the area is already subjected to high levels of noise due to road traffic. It calculates that the sound level due to children playing in the rear yard to be 38.9 dB LAeq at the nearest residential property on Manila Street, which is below the Lowest Observed Effect Level (LOEL), according to national guidelines. The LOEL is the level of noise exposure above which adverse effects on health and quality of life can be detected.
9. There is a solid boundary wall with roller shutter of 2.8m in height at the rear of the property. This boundary would dampen the noise breakout from the rear of the site. The rear yard would be used during operational hours only. There would be no use at night-time or weekends. Given the operation of the nursery, combined with other activities and weather implications, it is also unlikely that the rear yard area would be in continuous use in any event. Taking these factors on board, combined with the findings of the noise report, the existing noise environment, and the lack of objection from the Environmental Health Officer, I do not find that the living conditions of occupants of nearby residential properties would be unacceptably impacted upon due to noise.
10. It is inevitable that children playing, and the general comings and goings of staff, parents and children would be audible and noticeable, however for these same reasons, I do not consider it would be to an unacceptable level.
11. In terms of disturbance, I acknowledge that the proposed use would be noticeable to surrounding residents, particularly at drop-off and pick-up times. It is outlined that drop-offs would be mainly between 0730 and 0900 with pick-up being mainly between 1530 and 1800. These are times when the majority of surrounding residents would also be leaving from and returning to home as opposed to times when the area would be quieter and less active such as the evening or night-time. Notwithstanding my considerations in relation to noise above and the impact on car parking below, I do not consider that the proposal would cause an unreasonable disturbance to surrounding residents.
12. In a previous appeal¹ the Inspector considered that the acoustic report that was submitted with that appeal did not include robust evidence to demonstrate that the proposed use would not cause significant harm to living conditions. The Inspector also considered that although the play area was not currently in use, evidence could be provided on the basis of noise measurements taken from a similar site elsewhere. This Inspector also considered that the possible use of an area to the front of the premises as a play space could affect neighbouring dwellings and this had not been addressed in the acoustic report.

¹ APP/J4525/W/19/3241160

13. I am satisfied that in this case there is now robust evidence, that includes an assessment of a similar use at another location, to contribute to my conclusion in relation to noise and disturbance from the proposed use. The appellant has outlined that it is not intended to use the area to the front of the property as a play area, this could be secured by condition.
14. The effect of the proposed development on the living conditions of occupants of surrounding properties extends to the impact on the local parking situation. A submitted Transport Statement by Tim Speed Consultancy (ref TSC504-01) identifies sufficient capacity for the parking of vehicles on nearby streets. As it relates to members of staff, which would not be hugely dissimilar to those of the former care home, I do not consider that the impact from staff would be unacceptable, particularly as they are more likely to park and walk a short distance given their vehicles may be stationary for longer.
15. Parking as it relates to pick-ups and drop-offs would be materially different. I do not agree with the appellant that the former use would have more comings and goings than the proposed use. Even if this were to be the case, the comings and goings of the proposed use, in terms of pick-ups and drops-offs would be heavily concentrated to two time periods of day where there would be a greater intensity than the former use. The parking would be for short periods, and whilst there may be capacity in the wider area, I consider that for reasons of convenience, parents and carers would seek to park as close to the premises as possible, in the knowledge that their vehicle would be parked for a short period of time. The parents and carers may also have time pressures of their own that would contribute to them seeking to park as close as possible to the premises.
16. This would inevitably result in parking on the rear lane directly behind the site where there is a notably more sedate ambiance than the street frontages. Unrestricted parking in this location would have the potential to restrict access to nearby residential properties, causing disturbance and harm to living conditions. With a view to preventing parking on the back lane and thus alleviate the impact on living conditions, that were also found in the previous appeal, it is proposed to create a Traffic Regulation Order (TRO). The Council's Transportation Development Team consider that this is 'essential' and should be in place before commencement of the operation of the proposed facility.
17. The Transportation Statement also identifies that in order to discourage drivers to park on the back lane, with the agreement of the Council's highways officers, it would be proposed to create a TRO to prohibit waiting on that back lane and to provide double yellow road markings.
18. I consider that the introduction of a TRO would be necessary to prevent parking in the back lane and ensure that there would not be an unacceptable impact on living conditions as a result. I acknowledge that it may not remove the possibility entirely, however any persons parking in a controlled area would be doing so in contravention of the order with possible penalties occurring. Either way, were a small number of drivers to breach the order, I do not consider it would be to the extent that would cause unreasonable levels of disturbance.
19. Concern has been raised that the introduction of a restriction, where there is currently none, would harm the living conditions of residents, by effectively removing something which they can currently use unrestricted. I observed on my site visit that there were no vehicles parked on the back lane, and owing to

the number of openings, it is unlikely that residents would park on the lane as a matter of course. It is also suggested that any restriction be applicable only during drop-off and pick-up times therefore the implication would not be effective for residents at all times. There may also be permitting possibilities for existing residents. I therefore find that the introduction of a TRO *per se* would not cause harm to living conditions.

20. A TRO is therefore necessary to make the development acceptable in planning terms. Furthermore, it would be directly related, and fairly and reasonably related in scale and kind, to the development proposed. The Council consider that the TRO can be secured by condition. They have also outlined that the TRO would be subject to statutory consultation, the outcome of which cannot be pre-determined, and it would have an estimated financial cost of £8,000, excluding any physical works. The costs of the TRO and any physical works would need to be met by the applicant (now appellant).
21. TROs and planning permissions are governed by separate legal processes. In this case the implementation of the TRO would require a payment of a sum of money to the Council. Despite the Council's recommended condition, planning conditions cannot be used to lawfully secure payments of money. Section 106(1) of the Act² specifically provides for 'a sum or sums to be paid to the authority'. The Use of Planning Conditions PPG also confirms that although possible 'a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases'.
22. The PPG also outlines that such a condition should only be used in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk, giving the example of a particularly complex development. There is no such clear evidence put to me that a negatively worded condition should be used in this instance due to the development being at serious risk, and I do not consider it to be a particularly complex development.
23. Planning obligations in respect of TROs will normally be required to secure financial contributions to implement parking controls where there is a requirement to regulate, restrict or prohibit the use of a road or part or part of it, due to the implementation of new development. They legally bind the parties to implement the terms of the agreement, which, unlike a condition, would, in this instance, provide the appellant with some assurance of the Council's commitment to implement the TRO, which as I have identified is a separate legal process from the planning permission.
24. In this case, it is therefore not appropriate to condition the implementation of the TRO which I have found to be necessary to make the development acceptable in planning terms. Therefore, in the absence of any suitable mechanism to deliver the TRO the proposed development would harm the living conditions of the occupants of nearby residential properties with regard to parking. The proposed development would therefore be contrary to Policy CF4 of the Sunderland Unitary Development Plan (1998) which requires, amongst other things, that the provision of nursery education will be allowed where the impact on the amenities of the neighbouring area is acceptable.

² Town and Country Planning Act 1990

25. The proposed development would also be contrary to paragraph 130 of the Framework, which requires, amongst other things, that developments ensure a high standard of amenity for existing and future users.

Highway Safety

26. As I have identified, the appeal site is located on a heavily trafficked dual carriageway, close to the busy traffic-light junction with Villette Road. The immediate area has very noticeable traffic movements.
27. The Council outline how they consider the traffic movements associated with the development would compromise the free flow of traffic on the public highway, which would lead to parking on the rear lane and endanger the safety of road users including pedestrians.
28. I have considered the impact of parking on the rear lane as it relates to living conditions above, and whilst it is necessary to require a TRO to ensure there is no unreasonable harm to living conditions, there is no substantive evidence that it would be required in the interests of highway safety.
29. At the front of the appeal site there is a section of red-block paving that runs parallel with the carriageway. It is not evident if this area is formally dedicated for parking, although I did observe a number of vehicles parked in this area during my site visit. In front of part of the appeal site, a section of the block paving has a pedestrian guard rail installed that serves to restrict any access by vehicles.
30. Although there are double yellow lines on this section of Ryhope Road, as I witnessed on my site visit, I consider that it would be inevitable that this area would be used for parking of vehicles associated with the proposed development. Whilst parking currently occurs at present, this is likely to be in association with the residential properties. I consider that the use of this area for drop-off and pick-up would be materially different. Such movements are likely to be much more frequent than the current use and of greater intensity. It would also require drivers to open their doors and leave their vehicles almost into the flow of traffic. When the necessity to assist children out of the rear of the vehicle, including removing them from car seats, I consider that without mitigation, this would endanger the safety of road users and pedestrians.
31. The Council have recommended the imposition of a condition requiring the extension of the guard rail to ensure drop off and pick up does not occur in the vicinity of the junction. For the reasons outlined above, I find that this would be necessary in the interests of highway safety. The appellant considers that such a condition would not be necessary, including having regard to the established use of the appeal site as a care home. I find that there is a material difference between the operation of the care home and the proposed nursery, particularly in relation to pick-up and drop-off that would warrant the extension of the pedestrian guard rail.
32. The appellant has also referred to a number of their own proposed initiatives to address the highway implications of the development. These include a Travel Plan and the installation of signage. Whilst these may alleviate the impact, including as it relates to living conditions, they would not provide the same physical prevention as a guard rail.

33. The appellant has referred to such measures adversely impacting on blue badge holders who may be legally allowed to park. I am not presented with any substantive evidence on this point that would lead me to conclude that this would negate the requirement I have identified.
34. Therefore, subject to the imposition of appropriate conditions, including requiring the extension of the pedestrian guardrail, I do not consider that the proposed development would be harmful to highway safety. It would therefore comply with Policy ST3 of the Sunderland Core Strategy and Development Plan (2020) which requires, amongst other things, that development should provide safe access for all road users in a way which would not compromise the free flow of traffic on the public highway, pedestrians; or increase the risk of accidents or endanger the safety of road users including pedestrians, cyclists and other vulnerable road users.

Other Matters

35. In terms of both the requirement for a TRO and the extension of the pedestrian guard rail, the appellant considers that they are not reasonable due to the financial implications and that they are outside the red-line of the application site.
36. With regard to the financial implications, I am not presented with any evidence that the imposition of the requirements would impact on the viability of the proposed development. In relation to the fact that they are outside the red-line, given that they are for associated highway works, this does not make the requirement unreasonable.
37. I acknowledge the benefits of the development that have been put forward. These include economic and social benefits due to employment creation and the provision of a service for use by the community. I also recognise that the proposed development would bring a vacant building into use and be in an accessible location. Whilst collectively, these benefits are of significant weight, they do not outweigh the harm I have identified would be caused in light of the absence of an appropriate mechanism to implement the TRO which I have found to be necessary to make the development acceptable in planning terms.
38. The appellant has referred to potential other uses of the building that may occur through permitted development rights. I acknowledge the fallback that may exist, however none of these are the same as the proposed development and the issues I have identified with it. Additionally, it is stated that the owner of the property does not want to use the building for the fallback uses, thus limiting the genuine likelihood of one of the other uses being implemented.
39. I appreciate that Council officers recommended approval of the application to the planning committee. However, it was within the committee's gift to make a decision on the application contrary to the officer recommendation, thus this consideration has had no bearing on my decision.

Conclusion

40. Although I have found that the proposed development would not harm highway safety, in view of the lack of an appropriate mechanism to secure the delivery and implementation of the TRO, which I have found to be necessary, I am unable to conclude that there would not be unacceptable harm to the living conditions of occupants of nearby residential properties.

41. Therefore, for the reasons set out above, and having had regard to all other matters raised, the appeal is dismissed.

A M Nilsson

INSPECTOR