



Appeal Decision

Site Visit made on 24 August 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2021

Appeal Ref: APP/R0660/W/21/3273506

39 Elm Drive, Holmes Chapel CW4 7QA

- 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 Mrs Foden against the decision of Cheshire East Council.
 - The application Ref 20/5479C, dated 7 December 2020, was refused by notice dated 1 April 2021.
 - The development proposed is partial change of use from residential to a mixed use for residential and childcare on domestic premises.
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Decision

1. The appeal is allowed and planning permission is granted for partial change of use from residential to a mixed use for residential and childcare on domestic premises reference 20/2742C at 39 Elm Drive, Holmes Chapel CW4 7QA in accordance with the terms of the application, Ref 20/5479C, dated 7 December 2020, and the plans submitted with it, subject to the following conditions set out in the schedule attached to this decision.

Applications for costs

2. An application for costs was made by Mrs Foden against Cheshire East Council. This application is the subject of a separate Decision.

Procedural Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. In the interests of natural justice both main parties have had the opportunity to make representation. In reaching my decision I have had regard to the revised Framework.
4. I have also had regard, and in accordance with Paragraph 30 of the Framework in this appeal decision to the Holmes Chapel Neighbourhood Plan, Final Version (2016-2030) made 18 April 2017 (HCNP), which the Council provided as part of their appeal submission.
5. The application form indicates that the change of use has started, and the Council confirm that the application was made retrospectively following investigations of up to 9 children being cared for. Although, I only observed 6 children at the premises at the time of the site visit the proposal is for up to 12, from the evidence before me, I shall therefore deal with the appeal on the basis of it being retrospective.

Main Issue

6. The main issue is the effect of the change of use on the living conditions of nearby residents, with particular reference to the potential for noise and disturbance, and the availability of on-street parking.

Reasons

7. The appeal site comprises of a 4-bedroom detached two-storey dwelling within a predominantly residential area. The appeal property fronts onto Elm drive and has enclosed private garden to the rear and to the front consists of landscaped gardens and a driveway for up to 4 vehicles. There are neighbouring properties both to the east and west and directly behind the site is a recreational area with a children's playground.
8. The childcare facility is known as '*Little Monkeys*' and has been established since 2014. The proposal seeks the change of use of the dwelling to allow for the mixed use of the property for a childminding business for up to 12 children at any one time. The appellant's evidence indicates that the facility is open Monday to Friday 07:00hours to 18:00hours and provides employment for a total of up to 4 members of staff, including the appellant who resides at the property.
9. The childcare is provided to children aged between 9months – 3 years, with additional wrap-around care provided associated with local schools. To facilitate the 12 children there are no physical alterations to the property with two of the bedrooms at first floor being used for sleeping / napping and at ground floor one room and the conservatory used as playrooms.
10. The Council's officer report sets out that childminding can be an acceptable ancillary use in a residential area and can provide a useful and helpful facility to local residents. In support of the application there were a considerable amount of interested party representations, including that of previous and current users within the locality of the site, this appears to indicate that there was / is a demand and need for such a facility within the community.
11. The Framework at paragraph 93 considers that to provide services the community needs, planning decisions should plan positively for the provision and use of community facilities and other local services to enhance the sustainability of communities and residential environments; take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community; guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day-needs; ensure that established facilities and services are able to develop and modernise, and are retained for the benefit of the community; and ensure an integrated approach to considering the location.
12. The proposal is within a residential area with existing detached dwellings on both sides. I acknowledge that the use of the property for childcare has intensified and the change of use has inevitably resulted in an increase in noise and disturbance from the property due to the increase of numbers of children. This would appear to have been particularly noticeable by the use of the garden/outdoor area, and from the noise and disturbance of vehicles as children are dropped off or collected.

13. Nevertheless, it appears that the use of the outdoor space would be restricted to two sessions in the morning and then in the afternoon. The appellant has also agreed that as part of the proposal, the number of children outside at any one time would be restricted to 6. Whilst the overall numbers of proposed children are higher than normally expected in a domestic setting the small numbers that would use the outdoor space at any one time would not be unusual as children playing in a garden is normal noise associated with a domestic use. The sessions and hours put forward would be a reasonable use of the space for children to play outside and it would be likely that during the winter months, the use of the garden would be somewhat limited.
14. Furthermore, there were no objections from the Council's Environmental Protection, and I observed at the time of the site visit there was noise generated by children playing in other nearby gardens. I also noted that the recreational area and playground were in use by both adults and children. As such, given the location, proximity of the recreational area and playground to the rear of the appeal site there would already be a level of noise associated with those uses from adults and children of all ages.
15. Moreover, it would appear to me that the existing tree line along the side of the playground and behind the fence line of properties did little to prevent the travelling of noise or protection from disturbance of children playing within the recreational area into those rear gardens along Elm Drive. As such, it would be difficult to sustain the exact nature of where noises from people were originating from, and that it was solely from the appeal site.
16. The appellant has pointed out that a change of use could take place for a childminding facility of up to 6 children without the need for planning permission. If this were the case, there would then be no restrictions in place and 6 children would be able to use the garden area at any time. There is a reasonable prospect that the business would continue if the appeal is dismissed. I have not seen any evidence to the contrary. Therefore, I give the fallback position considerable weight.
17. The Planning Practice Guidance (PPG)¹ advises that when used properly, conditions can enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. Objectives of planning are best served when the power to attach conditions is exercised in a way that is clearly seen to be fair, reasonable and practicable.
18. The Council's officer report states that such conditions restricting the use of the garden area would meet tests within the PPG, and that it is accepted that they are commonly used. Moreover, the appellant has provided examples and an appeal decision² in which a similar condition was imposed. The matter of monitoring the condition, including any 'cohort surveillance' would be for the Council and their enforcement team. There are also other mechanisms outside the planning regime relating to statutory nuisance. Therefore, the proposal in terms of noise and disturbance from outdoor play has limited harm to the living conditions of nearby occupiers.

¹ Paragraph: 001 Reference ID: 21a-001-20140306 Revision date: 06 03 2014

² APP/L5240/A/04/1138379

19. It is acknowledged that the increase in children likely results in additional vehicle trips to the appeal site. However, it would appear that the Council's highway officer raised no objections to the proposal or had concerns for highway safety and the property offers a private driveway for up to 4 vehicles. This would provide sufficient provision for staff to park. If the driveway were to be unoccupied in part, I see no reason why people dropping off or picking up children would not utilise any free space.
20. Furthermore, Elm Drive has no parking restrictions, houses are provided with off road parking along the estate, the width of the carriageway is sufficient for parking and vehicles can easily pass parked cars in the opposite direction. I observed at the time of the site visit there was considerable gaps/spaces available between properties and their driveways including those immediately in the vicinity of the appeal site for on street parking and there was unrestricted access along neighbouring roads of the estate.
21. The dropping off and collecting of children is staggered times throughout the day, and it is unlikely that 12 children would be at the premises at any one time and for the full duration of the day, whilst not all children are driven to the property. As such, I find that there is sufficient provision of on street parking to facilitate the proposal and it is not too a degree that causes harm to the living conditions of neighbouring occupiers or nearby residents. Moreover, if vehicles were parked illegally or causing an obstruction for existing occupiers, this would be a matter for the Council or other regulatory Authority.
22. There are some economic benefits as the appellant currently employs members of staff, providing local jobs and apprenticeships. The childcare business is a needed and used community facility enabling suitable ratios for childcare provision and is governed by Ofsted. The use is small in scale, and close proximity of walking to local schools, and in my judgement, the living conditions of nearby residents can be protected by the imposition of planning conditions to control the business.
23. I conclude that the change of use does not cause harm to the living conditions of nearby residents, with particular reference to noise and disturbance, and the availability of on-street parking. It would comply with Policies SD2, SE1, SE2 and CO2 of the Cheshire East Local Plan, Local Plan Strategy 2010-2030, 2017; Policies GR6 and GR17 of the Congleton Borough Local Plan, First Review, 2005. Amongst other things taken together these policies have regard to sustainable development principles, and consider relationships to neighbouring properties; being socially inclusive and, where suitable, integrate into the local community; travel and parking; efficient use of buildings; being well connected and accessible and permits proposals adjoining or near to residential properties that would not have an unduly detrimental effect on their amenity due to environmental disturbance, traffic generation, access and parking.
24. It would also not conflict with Policies TT1, TT3 and CW4 in the HCNP, insofar these policies relate to protect the living conditions of neighbouring residents, sufficient parking and that childcare facilities remain, and new childcare facilities will be supported.
25. Moreover, it would be in accordance with the provisions set out in the Framework, particularly in meeting social and economic objectives, having regard to paragraphs 92, 130(f) and 185.

Other Matters

26. Interested parties have raised concerns over precedent, without information about the circumstances relating to other childcare facilities in the area I am unable to give significant weight to the issue of precedent. In regard to catching Covid-19 from children and staff, whilst I understand health concerns due to the pandemic, I have no evidence before me that the proposal would significantly increase the risk of Covid-19 infection. The condition of the fence, derogatory comments, gestures and ongoing neighbour disputes are private matters outside the scope of the appeal.
27. The fact that the change of use has taken place without permission is not a reason in itself to dismiss the appeal. The proposal should be judged against material planning considerations. When I visited the site, it appeared to be reasonably well co-ordinated and suitable provision was available within the property and outside areas to facilitate the childcare business.
28. In coming to my decision, I have had regard to the appeal decision³ which has been brought to my attention, although there are similarities with the proposal before me, and I concluded that there was no harm to living conditions. The individual circumstances of that case differ including the property type, location and development plan policy. In any event, the appeal needs to be determined on its individual merits on the basis of the evidence before me.

Conditions

29. I have considered the conditions suggested by the Council, and in light of the PPG. The appellant has made clear which conditions are deemed to be acceptable. For clarity, precision and to ensure compliance with the PPG, I have undertaken some minor editing and rationalisation.
30. It is necessary to ensure that the change of use is carried out in accordance with the approved plans for the reason of certainty. In the interests of protecting living conditions of nearby occupiers and to define and control the childcare facility, it is important to impose the operating hours of the business (2) and the maximum number of children at any one time is restricted to 12 (3). Conditions (4) and (5) restrict the outdoor setting to 6 children, with the times of the sessions restricted to 2 hours, I do not consider that it is appropriate to finish the outdoor session at 18:00 hours, as this would be the same time as the business operating hours.

Conclusion

31. The change of use does not unduly harm the living conditions of neighbouring occupiers and would not conflict with the development plan and the Framework, taken as a whole. There are no other material considerations that would indicate that the proposal should be determined other than in accordance with the development plan. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

K A Taylor

INSPECTOR

³ APP/V4630/W/19/3238011

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Schedule of conditions attached to planning permission

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plans 2583/100, Existing & Proposed Floor Plan 2583/101.
- 2) The use shall not be open to children attending the day care facility outside the following hours 0700 to 1800 Monday to Fridays and not at any time on Saturdays, Sundays and Bank or Public Holidays.
- 3) At no time during the hours of operation specified in Condition 2 above shall there be more than 12 children attending the day care facility.
- 4) The rear outside garden area for the day care facility shall only be used for children's play between the hours of 10:00 to 12:00 and 15:30 to 17:30 Monday to Fridays and not at any time on Saturdays, Sundays and Bank or Public Holidays.
- 5) At no time during the hours of operation specified in Condition 4 above shall there be more than 6 children at any one time in the rear outside garden area.