



Appeal Decision

Site Visit made on 13 October 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2021

Appeal Ref: APP/C5690/W/21/3270536
59 Daneby Road, Catford, London, SE6 2QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Ms S Dervis of Building blocks day care Catford Ltd against the London Borough of Lewisham.
 - The application Ref DC/20/119606 is dated 14 December 2020.
 - The application sought planning permission for change of use from residential (Use Class C3) to Day Nursery (Use Class D1) to provide day care for up to 18 children without complying with a condition attached to planning permission Ref APP/C5690/W/16/3143361, dated 23 May 2016.
 - The condition in dispute is No 6 which states that: The maximum number of children accommodated at any one time within the day nursery hereby permitted shall not exceed 18.
 - The reason given for the conditions is: In the interests of the living conditions of neighbouring residents.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant proposes to increase the maximum number of children at the day nursery from 18 to 27.
3. Whilst the appeal is against non-determination of the application, the Council indicates that it would have refused permission on the grounds of insufficient information relating to the impact on neighbouring occupiers relating to noise and highway safety. The appellant has submitted a Noise Impact Report and a Transport Note with the appeal, but the Council has maintained its objection to the proposal.

Main Issues

4. The main issues are whether the condition is necessary and reasonable in relation to:
 - (a) noise and disturbance for the occupants of neighbouring properties and
 - (b) the impact upon the highway network and on vehicular and pedestrian safety.

Reasons

Noise

5. The appeal relates to a converted semi-detached house paired with no.57 in a road of similar properties. There is a large back garden used for children's play with high fences to both side boundaries. The front garden is hard surfaced and available for the setting down and collecting of children at the nursery.
6. The Noise Impact Report¹ (NIR) refers to data collected from monitoring positions to the rear of the external play area and on the front drive. The report concludes that, taking appropriate guidance into consideration, the estimated sound impact for the increase in the number of children would be negligible when compared to the absolute World Health Organisation Guidelines for Community Noise (WHOgcn). A figure of 48.8dB LAeq,16hour from children playing in the rear garden is predicted against the lower limit for moderate annoyance of LAeq,16hour 50dB(A) but the report's subjective assessment section applied no penalties in relation to the 'impulsivity' or 'tonality' of noise.
7. The evidence before me from representations from neighbouring occupiers is that it is the variability of the noise from children combined with its duration for the permitted hours of outdoor play, heard from both outside and inside the houses that has resulted in objections to the proposal. At the time of my visit, I heard the loud squeals as children were released into the garden, and then as a child cried, before noise levels settled down. Even if the number of children allowed in the garden at any one time is restricted to 10 as the appellant indicates, the overall length of outdoor play time is likely to increase with a rise from 18 to 27 children.
8. The NIR concludes vehicle noise would be likely to be audible from the nearest houses during pick-ups and drop-offs in the front garden, but that assessment against background noise levels indicates that predicted noise levels would have a low impact. No mitigation measures are recommended.
9. My findings are that the increase to 27 children would not be likely to result in noise nuisance from parking but would be likely to result in increased levels of disturbance for neighbouring occupiers. Whilst the proposal may not result in absolute noise levels that would breach recognised WHOgcn levels, the nature of the noise from children and its perception by adjoining occupiers would be likely to result in disturbance which could be regular and persistent. The proposal would therefore be contrary to DM Policy 42 of the Lewisham Development Management Local Plan (2014) (DMLP) requiring applicants for day nurseries to consider the impact on local residential amenity, including from noise.
10. The NIR comments that in the event of it being deemed necessary to reduce the impact from children's noise, that older children could be moved to the rear section of the garden to increase distances from neighbouring houses. Furthermore, a noise management plan is recommended to encourage best practice and respectful behaviours in relation to noise. In my judgement, a planning condition to require provision and implementation of these measures would be difficult to enforce. It would therefore be unlikely to be effective in reducing disturbance from the increase in the number of children.

¹ Noise Impact Report by "Soundtesting acoustic consultancy" 22 June 2021

Highway safety

11. There is a regular pattern along Daneby Road of adjacent vehicle crossovers serving a garage or parking area to the side of the semi-detached houses. The crossover at no.59 has been switched to be adjacent to no.57, the attached house. This is a single width crossover. Whilst the width of the front garden is hard surfaced, and capable of parking two cars, the crossover is only aligned for one parking space.
12. The appellant's evidence on the frequency of drop-offs and pick-ups in the front garden and the short length of these stays indicates that one space has generally been adequate for the number of children travelling by car in the past and may also be with an increase to 27 children. But representations from interested parties refer to incidents of indiscriminate parking. The appellant comments a contract with parents includes a zero tolerance of blocking of neighbours' drives and double parking, but also that *"we have ourselves been blocked on numerous occasions by visitors of both our neighbours"*.
13. At the time of my visit in the early afternoon on a weekday, this part of Daneby Road was heavily parked with few kerbside spaces available near the site, although the front garden was available for parking. But this is just one snapshot in time. The Transport Note refers to a visit in June 2021 between 8:00am and 9:00am, the nursery's peak drop-off period, in which it was noted *"that the western end of Daneby Road was heavily parked but that the eastern end of the street was less busy with numerous opportunities to park"*. The site is centrally positioned in Daneby Road. The evidence indicates that kerbside parking may not always be available near to the site which could be an inconvenience for visitors subject to time constraints. The appellant's transport submissions indicate that the proposal should be accepted but I am not satisfied that there is sufficient evidence on parking availability at all times the nursery is open, and on parking practice at the site, to confirm the proposal's acceptability on highway grounds.
14. Whilst there is a travel plan in place that encourages walking to the site and the use of public transport, it would appear that vehicular activity at and near to the site has been at a greater intensity than commonplace for most domestic dwellings and has resulted in some nuisance. The proposal would result in a 50% increase in the maximum number of children able to use the site. From the evidence before me, it is likely that the proposal would result in additional parking pressures which could cause nuisance and be hazardous to pedestrian and highway safety. The proposal would thereby be contrary to Policy 14 of the Core Strategy (2011) on sustainable movement and transport and Policy 42 on the DMLP on nurseries and residential amenity.

Conclusion

15. I acknowledge that the appellant's small family run business provides a valuable community service, and that the proposal has sought to make this more cost effective. However, for the reasons given above, I conclude that the condition imposed on the previous appeal should be retained. The appeal therefore should be dismissed.

Rory MacLeod

INSPECTOR