



Appeal Decision

Site visit made on 17 December 2021

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2021

Appeal Ref: APP/D0650/W/21/3271453

21 St. Annes Road, Widnes WA8 6RB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 ('the Act') against a refusal to grant planning permission.
 - The appeal is made by Mrs Louise Roberts against the decision of Halton Borough Council.
 - The application Ref 20/00397/COU, dated 22 July 2020, was refused by notice dated 9 October 2020.
 - The development proposed is a change of use of the rear garden to a mixed use, comprising a child-minding business for up to 6 children and residential use at 21 St Annes Road Widnes Cheshire WA8 6RB.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of the rear garden to a mixed use, comprising a child-minding business for up to 6 children and residential use at 21 St Annes Road Widnes WA8 6RB in accordance with the terms of the application, Ref 20/00397/COU, dated 22 July 2020, subject to the following conditions:
 - 1) The childminding use hereby permitted shall only take place between 08:00 – 18:00 Mondays – Fridays and not at any time on Saturdays, Sundays or on Bank or Public Holidays.
 - 2) The property shall be used as a mixed residential use and childminding for up to 6 children at any one time and for no other purpose.

Background and Preliminary Matters

2. Prior to the current appeal, the Council served an Enforcement Notice (EN) relating to *'the unauthorised material change of use of the property a mixed use, comprising a childminding business for up to 12 children and residential use'*. The EN was subsequently subject of an appeal on the grounds of Section 174(2)(b), (c), (f) and (g) of the Act. The appeal decision upheld the EN subject to minor corrections. The EN required the cessation of childminding business activities at the property within 6 months (17 January 2021), but the use of the property for child minding on some scale has continued and this was the case at the time of my site visit.
3. However, paragraph 7 of the appeal decision states that *"Grounds (b) and (c) are known as legal grounds of appeal. The appellant asserts that the Council has offered no evidence for any of the alleged harms. However, the appellant has not appealed under ground (a) so I cannot consider planning merits and policy considerations are not relevant."* Ground (a) relates to the planning merits and it was not a matter before the Inspector. Hence, there was no

assessment against planning policy as suggested by the Council. Therefore, whilst views were expressed by the Inspector in considering ground (c) about noise and additional comings and goings, these relate to whether, as a matter of fact and degree, that there was a material change of use of the dwelling house to a mixed use comprising a residential use and child-minding use. This is not the same as an assessment of those matters on their planning merits against Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Act 1990 which is how I have considered this case.

4. The description of development set out above has been taken from the planning application form, but I have omitted parts of the stated description which relate to the merits of the case. The scale of the proposal before me relates to 'up to 6 children under 8 years old' and nothing more. This is different to the EN which related to 'up to 12 children'. Although I note Ofsted have assessed the appeal property to be suitable for the care of 12 children, my findings relate to up to 6 children as this is what planning permission has been applied for.

Main Issue

5. The main issue is the effect of the proposal on the living conditions of nearby residents and the amenity of the local neighbourhood, having regard to parking provision, traffic movements, noise and outlook.

Reasons

6. The semi-detached appeal property is in an area characterised by residential semi-detached properties with modest sized front and rear gardens. Properties do allow for 1 or 2 vehicles to park off the road, but there is still a reliance to park on the road which means that the carriageway is narrowed even if vehicles park partly on the footway. This arrangement leads to drivers needing to manoeuvre past parked and moving vehicles along the road. Spaces were available on the road at the time of my site visit, but these are likely to be filled when most occupiers are at home, for example at night. This would generally accord with the observations of the Council and the Inspector in the EN appeal decision in that demand for on-street parking is high on the road.
7. Policy TP12 of the Halton Unitary Development Plan (UDP) requires appropriate levels of off-street car parking as part of new development in the interests of highway safety. Appendix I sets out the Council's maximum parking standards. Despite some similarities, a childminding use with the appellant as the sole trader is not exactly the same as a Creche, Day Nursery or Day Centre which typically involve greater numbers of children and/or staff. The off-street parking space at the property is only ever likely to serve the residential part of the mixed use, given that the dwelling offers family accommodation. Thus, any vehicles linked to the child-minding use need to park on the road.
8. In this context and compared to if the property was solely used as a family dwelling, a child-minding business for up to 6 children would generate extra comings and goings from drop offs and pickups and additional noise from activity relating to the child-minding use whether it be on the property or in relation to drop offs and pickups. I note that my view here is consistent with the opinion of the Inspector in the EN appeal decision.
9. UDP Policy H8 explains that development other than Class C3 (dwelling houses) should not detract from the character of the area or the amenity of residents.

UDP Policy BE1 goes onto say in respect of amenity, that proposals must avoid unacceptable loss of amenity to occupiers or users of adjacent land or buildings, by virtue of, noise disturbance and traffic generation and it must not overload the capacity of the surrounding highway network nor be detrimental to highway safety.

10. The worst-case scenario is that every child is dropped off by vehicle, and there are six unrelated children. However, equally, this may not always be the case and it is likely to fluctuate depending on the children. With opening times of 08:00 to 18:00 Monday to Friday, the main effect of the vehicle movements is likely to be at the start and end of those days. In my experience drop offs and pickups do not happen all at the same time. They tend to be relatively quick, with persons/vehicles not staying long. The appellant encourages staggered drop offs and pickups to mitigate the impact at these times. This is difficult to enforce, but a welcome step.
11. Vehicles linked to the child-minding business seem to have and could potentially cause tension with residents particularly if people do not park responsibly. Based on the evidence these issues seem to have arisen with a higher number of children. Irresponsible parking can affect resident's amenity and highway safety, including the use of the footway. However, other vehicles using the road park on the footway and inhibit its full width. Thus, it is not an issue that solely relates to the proposal and there are enforcement options available to stop this. Persons dropping off and collecting children are advised to park responsibly. This is to be encouraged, but impossible to control with a planning condition due to the lack of parking restrictions on the road. However, the operational hours during the day and the proposal's scale are such that an unacceptable loss of amenity is not likely, even though I recognise that the extra vehicle movements and noise and disturbance from them would be greater than if the appeal property was solely used as a family dwelling.
12. There is also no substantive evidence to indicate that the additional traffic has, despite the road's characteristics, been detrimental to highway safety or the capacity of the highway network. Movements along the road would, regardless of the proposal, be at a lower speed due to the vehicles that park along it, the resultant carriageway width, and the need to allow vehicles to pass.
13. Noise from the use itself is audible to neighbouring occupiers especially if the children are playing outside or neighbouring occupiers themselves are within their rear gardens. This would be greater than that of a typical family home and spread across five days a week and potentially from 08:00 to 18:00. The importance of amenity spaces, whether they be public or private has been highlighted in recent times, but be as that may, I do not consider that neighbouring occupant's enjoyment of theirs would be unacceptably affected based on up to 6 children during the daytime. Planning conditions could be imposed to control both, and thus the impact caused.
14. I am of the view that the proposal does not cause harm to residents' outlook given the layout and use of the appeal property and its relationship to neighbouring properties.
15. I conclude that the proposal accords with saved UDP Policies BE1, TP12 and H8 which jointly, among other things, seek to ensure developments offer appropriate levels of off-street car parking, do not detract from the character of the area or cause unacceptable loss of amenity of residents to occupiers or

users of adjacent land or buildings, by virtue of, noise disturbance and traffic generation and it must not overload the capacity of the surrounding highway network nor be detrimental to highway safety.

Other Matters

16. Whilst a retrospective planning application may not have been invited, it was up to the appellant whether they wished to submit one and evidently the Council considered and determined it in any event. Although timely decision making is encouraged and decisions ought to be made within the statutory period, the fact that a decision was not made in time on this occasion does not alter my assessment of the planning merits of the case.
17. I note the Council's points about the appellant's compliance with the EN, but this is a matter that lies outside the scope of this appeal.
18. Comments are made about the boundary fence to the front of the property impeding the use of parking at neighbouring properties, and the removal of wrought iron gates. However, there is no substantive evidence before me about this and, in any event, the removal of private property is a civil matter, and the fence seems to be within the extent of the appeal property.
19. Even if the site notice was taken down as alleged, the proposal has been advertised through direct letters to neighbouring properties. It is also clear that the local community has been aware of the proposal based on the representations received.

Conditions

20. The Council have not suggested any planning conditions and I note its opinion that the harm identified cannot be overcome by planning conditions. For the reasons set out I do not agree with the Council's assessment of harm, but I am mindful of the planning history, resident's amenity, highway safety and the character of the area and the potential for harm to be caused. Thus, conditions to control the use of the property and the hours of the childminding use are necessary. I have based these on the submitted evidence.

Conclusion

21. The proposal would accord with the Development Plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this.
22. For the reasons given above I conclude that the appeal should be allowed.

Andrew McGlone

INSPECTOR