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## Appeal Decision

Site visit made on 2 February 2022

**by Andrew Owen MA BA(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 February 2022**

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**Appeal Ref: APP/Y0435/W/21/3279944**

**44 Old Groveway, Simpson, Milton Keynes MK6 3AA**

- 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 Sarah Kershaw of Little Bears Day Nursery Ltd against the decision of Milton Keynes Council.
  - The application Ref 20/03226/FUL, dated 9 December 2020, was refused by notice dated 4 February 2021.
  - The development proposed was originally described as a two storey rear extension and alterations; variation of condition 2 (no. of children), condition 3 (no. of children permitted outdoors) and condition 4 (outdoor play time) attached to planning permission 02/00288/FUL to increase number of children to 55, increase the number of children permitted to play outdoors to 15 and increase outdoor playtime; variation of condition 7 to increase hours of operation to 07:00 to 18:30 Monday to Friday.
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### Decision

1. The appeal is allowed and planning permission is granted for a two-storey rear extension and alterations, and a change of use from residential accommodation (Use Class C3) to day nursery (Use Class D1) at 44 Old Groveway, Milton Keynes, MK6 3AA in accordance with the terms of the application, Ref:20/03226/FUL, dated 9 December 2020 without compliance with conditions 3, 4 and 7 previously imposed on planning permission 02/00288/FUL dated 23 April 2002, but subject to the conditions in the attached schedule.

### Preliminary Matters

2. Part of the proposal was to vary some of the conditions on the original planning permission. This part is effectively an application under section 73 of the Town and Country Planning Act. The national Planning Practice Guidance (PPG) advises that the original planning permission will continue to exist whatever the outcome of an application under section 73. Any approval would therefore create a whole new planning permission. In this case: the use of the site as a day nursery, but subject to a new suite of conditions. My decision above is therefore made in those terms.
3. The Council raise no objection to the two-storey rear extension. I have no reason to disagree and so my decision focusses on the conditions in dispute.
4. During the appeal the appellant offered amended versions of the proposed conditions: increasing the number of children to 50 instead of 55; increasing the hours for outdoor play to 2 hours in the morning and afternoon instead of 2½ hours in the morning and afternoon; and increasing the opening hours to 07.30 to 18:30 instead of to 07:00 to 18:30. As these increases are more

limited than originally applied for I consider no parties would be prejudiced by me considering the appeal on this basis.

## **Main Issues**

5. The main issues are the effect of the development on highway safety and on the living conditions of neighbouring residents in terms of noise and disturbance.

## **Reasons**

### *Highway safety*

6. The plans indicate that there is room for six cars to park on site in front of the building. At the time of my early afternoon site visit there were four cars parked here, which correlates with the number suggested by the appellant for current staff vehicles. The application forms show that there are six full-time staff and two part-time staff currently employed at the site.
7. Due to the proposed increase in the total number of children from 30 to 50, there would be two additional full-time staff and two part-time staff<sup>1</sup>. The Council's parking standards require one space per full time equivalent (FTE) of staff which equates to a requirement of 10 staff parking spaces in total. Based on the fact that, at present, four cars are generated by seven FTE, I would anticipate that the proposal would not be likely to result in 10 staff vehicles being at the site. Nonetheless, even accounting for a proportion of staff walking or using the nearby public transport links, it is likely that the increase in staff would lead to an increase in parking at the site such that there would be little, if any, room for parent parking on site.
8. The parking surveys from August and September 2020 show that in both the evening and morning peaks there are times where there are six or seven cars in the car park and additional arrivals necessitated parking on the road in front. Indeed, if the car park is full, it is possible that some parents may have parked further away, such as in front of nos. 42 or 43, and so may not have shown up on the surveys at all. An increase in staff and children could only exacerbate the need for on-street parking.
9. The site is located on a short cul-de-sac which, aside from the appeal property, accommodates three houses. There is a pavement along the north side of the road and grass verges on the south side, where the appeal site and neighbouring houses are. Though it would be possible to park along the road, this would narrow the effective width of the road to barely more than a single cars width. Indeed, there is evidence of cars driving over the grass verge in front of the site and to the east, which suggests it is necessary to park on the verge to maintain sufficient room for cars to pass easily. There is space for parking in front of 42 and 43 Old Groveway, in front of Charles Warren school, and in the bays behind the site.
10. At the time of my visit the space for on-street car parking outside Charles Warren school was mostly occupied by cars. At school peak drop-off and pick-up times, I would anticipate on-street parking would occupy much of the surrounding roads too, even if not outside the appeal site.

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<sup>1</sup> Though these staff numbers were indicated when a limit of 55 children on site was proposed, it has not been suggested that a reduction to 50 children would affect the number of staff required.

11. Figures provided by the appellant from a survey in January this year, show the peak times for the nursery are before 8.00am and between 5.00pm and 6.00pm. This pattern is consistent with that shown by corresponding figures taken in January 2020, before the start of the Covid-19 pandemic. I accept that the peak times of nursery traffic do not precisely correlate with the peak times for school traffic. Nonetheless there is still a significant amount of traffic generated by the nursery at traditional school peak times, particularly in the mornings between 8.30am and 9.00am.
12. An increase in children and staff at the site would inevitably result in an increase in cars parking on the road outside and nearby the site. The availability of such parking is already limited, particularly at peak times, and so more cars may result in cars parking unsafely, for example, in positions which could obscure visibility. This would be an unacceptable risk to highway safety, especially in an environment where young children are prevalent.
13. Though the intention to discourage parents from driving is applauded, parents often need to drive so they can continue onto their place of work. I would not expect this aim would have any material effect on the amount of extra traffic generated by the proposal.
14. Increasing the opening hours by 30 minutes in the evening may mean traffic is spread out more in the evenings. But not materially so, and in any case it is during the morning peak that the increase in cars and limited availability of parking would be most acute.
15. In summary, the proposed increase from 30 to 50 children would be likely to compromise highway safety. Therefore, in this regard, the proposal would conflict with policies CT10 and CC5 of Plan:MK (2019) which together aim to ensure that childcare facilities have suitable car parking provision.

#### *Living conditions*

16. The outdoor play area is to the rear of the building. There are close-boarded fences to the side and rear boundaries around 2 metres in height. At present only 10 of the 30 children are permitted to be outside at any one time, and only for one hour in the morning and one hour in the afternoon. The doubling of the hours of outdoor play and an additional five children being outside would be a substantial increase and could generate greater volumes of noise than at present.
17. However, the local environment is not of a wholly quiet residential area. At my visit I heard noise from traffic on Marlborough Street, just to the west, and of children playing, coming from the direction of Charles Warren school. Fifteen children outside at any time would not be a significant number and four hours a day means that for most of the day no noise would be generated from the outdoor area at all. Consequently, an increase in the number of children outside and the hours of outdoor play would not be likely to be disruptive to nearby residents.
18. Any extra traffic generated in the additional 30 minutes in the evening would not be likely to be disturbing to neighbours, even if cars ended up parking outside neighbouring houses at nos. 45 – 47 as these houses are set well back from the road. I have already considered the increase in children overall to be

harmful so I need not further consider the effect of that increase on the living conditions of neighbours.

19. In summary, increasing the number of children permitted to play outside and the hours of that outdoor play would not be likely to be noisy or disturbing to the occupiers of nearby dwellings such that their living conditions would be unacceptably harmed. Similarly the effect of extending the opening hours from 6.00pm to 6.30pm would also not be likely to be disturbing. As such, in this respect, the proposal would accord with Plan:MK policy D5 which aims to ensure development provides a good standard of amenity for surrounding areas, and policies CC5 and CC2 which seek the same but with specific reference to community facilities and childcare facilities respectively.

### **Other matters**

20. The support that a facility with a greater capacity could lend to the local economy is noted. I also note the support given by the National Planning Policy Framework (the 'Framework') in making more effective use of sites that provide community services. Overall, I give these benefits modest weight. The appellant's assertion that the development would meet a local need including that of vulnerable families and children, are not substantiated. Therefore, I can give little weight to this or the support in the Framework for providing a range of school places.

### **Conditions**

21. By allowing this appeal a new planning permission is created. The PPG advises that, for clarity, decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.
22. In the interests of certainty, I have added the standard condition relating to the commencement of the development. Conditions specifying the approved plans and the permitted use of the land are also necessary in the interests of certainty, with the latter referring to the updated version of the Town and Country Planning (Use Classes) Order.
23. The Council suggested a condition requiring the materials to be used in the extension shall be those specified on the plans. As no materials are specified on the plans, I have altered the condition so that the materials to be used shall match the existing building, which was what was suggested on the application forms. This is necessary to protect the character and appearance of the area.
24. Condition 5, relating to the number of children overall, is repeated from the original planning permission for the reasons given above. Conditions 6, 7 and 8 are imposed as proposed. All four of these conditions are necessary in order to protect the amenity of neighbouring residents.
25. I have not imposed conditions relating to the parking or the access which were attached to the original permission as these have clearly already been complied with. However, it is necessary to add a condition requiring that the acoustic fence provided along the side boundaries, as required by condition 9 of the original permission, is retained to protect the amenity of the neighbours.

## **Conclusion**

26. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed and a new planning permission granted with new versions of conditions 3, 4 and 7, as previously imposed, attached, but with condition 2, as previously imposed, repeated.

*Andrew Owen*

INSPECTOR

## **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The two-storey rear extension hereby permitted shall be carried out in accordance with the following approved plans: JJ/2019-12/01, JJ/2019-12/02, JJ/2019-12/03, JJ/2019-12/04, JJ/2019-12/05, JJ/2019-12/06, JJ/2019-12/07 and JJ/2019-12/08.
- 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.
- 4) The premises shall only be used as a day nursery and shall not be used for any other purpose within Use Class E nor any other Use Class specified in the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that class in any Statutory Instrument revoking and re-enacting that Order.
- 5) The number of children on the premises at any one time for the purposes of the permitted use shall not exceed 30.
- 6) The maximum number of children using the outdoor areas of the premises at any one time shall be limited to 15.
- 7) The maximum duration of outdoor play time shall be a period of 2 hours in the morning and 2 hours in the afternoon.
- 8) The use hereby permitted shall only take place between the following hours: 0730 - 1830 Mondays – Fridays, and at no time on Saturdays, Sundays or Bank Holidays.
- 9) The existing acoustic fences along the two side boundaries of the site to the rear of the building shall be retained as such in perpetuity.