



Appeal Decisions

Site visit made on 29 April 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 13th May 2022

Appeal A Ref: APP/M1595/C/21/3276523

Claylands, 186 Branksome Avenue, Stanford Le Hope, Essex, SS17 8DF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Victoria Jarosz against an enforcement notice issued by Thurrock Borough Council.
 - The notice was issued on 13 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from C3 residential dwellinghouse to a dual use C3 residential dwellinghouse and Class E(f) day nursery.
 - The requirements of the notice are:
 - (i) The cessation of the unauthorised dual use of the Land as a C3 residential dwellinghouse and E(f) day nursery; and
 - (ii) To resume the use of the Land to Use Class C3 residential dwellinghouse use.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Appeal B Ref: APP/M1595/W/21/3272444

Claylands, 186 Branksome Avenue, Stanford Le Hope, Essex, SS17 8DF

- 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 Victoria Jarosz against the decision of Thurrock Borough Council.
 - The application Ref 20/01680/FUL, dated 5 October 2020, was refused by notice dated 19 March 2021.
 - The development proposed is described as 'I am currently an Ofsted Registered Childminder, and I am wanting to change to Childcare on Domestic Premises in order to take on extra staff to help with special needs children who already attend my setting'.
-

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the deletion of requirement (i) and its substitution with:
 - (i) The cessation of the unauthorised dual use of the Land as a C3 residential dwellinghouse and Class E(f) day nursery

Subject to the correction Appeal A is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. Appeal B is dismissed.

The Notice (Appeal A)

3. The alleged breach of planning control refers to a dual use as a C3 dwellinghouse and Class E(f) day nursery use. However, requirement (i) refers to E(f) day nursery. This can be corrected by the addition of the word 'Class' without causing injustice to either the Council nor the appellant.

Background

4. The appellant responded to a Planning Contravention Notice (PCN) in October 2020. She confirmed that at that time up to 9 children were receiving care at the site at any one time and childcare was being provided between 7.30am and 18.30pm Monday to Friday. The notice was served several months after the response to the PCN and the appellant refers to caring for up to 10 children at any one time in her statement. I have considered Appeal A on this basis and will refer to the childminding facility for 10 children as Appeal Scheme A.
5. The appellant says that she submitted the planning application following the Council's investigations and that at that time she was considering expanding the use to provide a childminding service for up to 20 children. This was the basis upon which the planning application was made. As part of her appeal submissions the appellant states that she now wishes to expand to provide for a maximum of 15 children.
6. The Council has not commented on this change in its response to the appellant's submissions. However, it is clear from the Council's statement for Appeal A that it finds the lesser number of 10 children unacceptable. Therefore, it follows that a reduction in the proposed maximum of 20 children to 15 children would not overcome the Council's objections. I shall refer to the proposed childminding provision as Appeal Scheme B.
7. Since the appeals were submitted a second vehicular access has been provided at the site. The Council has confirmed that these works do not affect the submissions which it has made in respect of both appeals.

Appeal A Ground (b)

8. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
9. The appellant says that she runs a childminding business which is different to a day nursery use which the Council has described on the notice. The differences which she describes relate to guidance provided by OFSTED in respect of the two childcare settings. However, the appellant has not set out why she considers the two uses to be different in planning terms and there is no evidence before me to show that the alleged use does not fall within Class E(f) of the Town and Country Planning Use Classes Order 2015 as amended.

10. For the reasons set out above the appellant has not demonstrated that the breach of planning control has not occurred and as a result the appeal under ground (b) fails.

Appeal A Ground (a), the deemed planning application (DPA) and Appeal B Main Issues

11. The Council's reasons for serving the notice and its reasons for refusing planning permission are broadly aligned. Therefore, the main issues in both appeals are as follows:
- The effect of the development on:
 - the character of the site and the surrounding area; and
 - the living conditions of the occupiers of neighbouring dwellings, with particular regard to the potential for noise and disturbance.
 - Whether the development makes acceptable provision for access, manoeuvring and parking of vehicles.

Reasons

Character of the site/surrounding area

12. 185 Branksome Avenue (No. 185) is a two storey detached house in an established residential area. The area is characterised by what appear to be single family dwellings, there is little evidence of multiple occupancy or non-residential uses.
13. There was a steady flow of traffic on Branksome Avenue at the time of my visit, but generally the ambiance of the area was of a quiet residential estate despite the urban scale of development. The only noticeable noise sources were traffic and the trains running on a nearby railway line.
14. On the basis of the Appeal Scheme A there could be 10 children on site at any one time and this could increase to 15 if Appeal Scheme B was permitted. Even at 10 children, the amount of coming and going associated with dropping off and collecting children and activities associated with the use such as outdoor play and the arrival and departure of staff members, affects the character of the site and the surrounding area. Given the dual use, the normal range of coming and going, deliveries and service visits associated with the use of the dwelling house would remain in addition to the activities associated with the childcare use.
15. In the light of the quiet nature of the area and the absence of any obvious non-residential uses, the effects of the dual dwelling house and day nursery use, even restricted to 10 children, has a harmful effect on the area. It follows that if up to 15 children were being cared for at the site, the impacts would be more acute and significantly harmful.
16. I conclude that the development is harmful to the character of the surrounding area. Therefore, the dual use is contrary to Policies CSTP22 and PMD2 of the Core Strategy and Policies for Management of Development (as amended) (2015) (the Core Strategy and PMD) These policies require new development to respond positively to the site context and character and to effectively

address the particular sensitivities and capacity of the place within which it occurs.

17. For the same reasons the development does not accord with the National Planning Policy Framework (the Framework) as it relates to the achievement of well-designed places.

Living Conditions

18. No. 186 is close to the junction of Fourth Avenue. Combined with the shape of its garden which is shorter and wider than some other gardens in Branksome Avenue, this results in its rear garden being close to a number of other rear gardens serving neighbouring dwellings. All of the neighbouring properties appear to be in use as single family dwelling houses and it is reasonable to assume that the occupiers would expect to have a good standard of amenity in their private spaces.
19. The Council identifies two sources of noise and disturbance, drop off and pickups from the site frontage and that associated with the childminding activities.
20. In respect of use of the access and parking area to the site frontage since the addition of the second access customers would be able to drive on and off the premises without the need for complicated manoeuvres. Whilst this would have a positive effect on noise and disturbance, even under Appeal Scheme A there would be 10 children being dropped off and picked up each weekday.
21. In common with my observations of the effects in the character of the area, the noise and disturbance arising from the use of the driveway would be in addition to the comings and goings associated with the dwellinghouse element of the dual use.
22. The parking and turning area shares its boundary with two neighbouring properties and fronts Branksome Road which I have already described as having a steady flow of traffic. The spaces between the buildings and the road frontage are commonly used for parking.
23. Whilst there would be noise and disturbance associated with use of any parking areas at nearby properties, the additional comings and goings associated with the childminding activities would be much greater on the basis of the arrival and departure of 10 children for Appeal Scheme A and 15 in respect of Appeal Scheme B.
24. At either of these levels, given the quiet residential context, the noise and disturbance to neighbours would be harmful, particularly given the hours of operation of the childcare use including early morning drop offs. In the case of Appeal B this would be at a level so as to be significantly harmful.
25. The rear garden serving No. 186 is surrounded by other rear gardens of varying size and shape. The presence of an outbuilding, sheds and a covered seating area provides an additional level of privacy over the fences which lie on the boundaries.
26. The garden was in use as part of the childminding business at the time of my site visit. The appellant explained that she did not currently use the outbuilding

following complaints from neighbours, but it contained toilets, play equipment and other items which could be used to entertain children.

27. The regular use of the rear garden by 10 children in the case of Appeal Scheme A and 15 in Appeal Scheme B would create considerable noise. The appellant says that she could limit the number of children using the outdoor space to six and that the outdoor space would be seldom used in the winter months. However, a restriction limiting numbers of children using the outside space, if secured by planning condition, would not be enforceable and it would be unreasonable to require that the garden is not used in winter months.
28. The appellant also observes that given the operating hours of the business, neighbours would not be disturbed by the use of the garden in the evenings and at weekends when they would be more likely to be outside. Whilst that is a logical argument to make, there are a number of private gardens close to the site and it is unreasonable to curtail the quiet enjoyment of those spaces during weekdays.
29. Drawing all these points together I conclude that the dual use has a harmful effect on the living conditions of the occupiers of neighbouring dwellings, with particular regard to the potential for noise and disturbance. The development is therefore contrary to Policy PMD1 of the Core Strategy and PMD which requires that development does not have an unacceptable effect on the amenity of others.

Access, Manoeuvring and Parking

30. Policy PMD2 of the Core Strategy and PMD requires amongst other things that development provides easy and safe access and that land uses and all modes of transport are integrated with pedestrians and cyclists being given priority.
31. There are several dropped kerbs providing access to parking spaces along Branksome Avenue and it is reasonable to expect that pedestrians and cyclists would be alert to the possibility of vehicles crossing the pavement. Also, visibility along the road is good as a result of its straight alignment.
32. The Council states in the minutes for the committee meeting which considered the planning application that the concerns of the highway authority were in relation to accessibility and number of parking spaces and pick-up facilities. This is confirmed by the comments from Highways Development Control.
33. Works have been carried out to the frontage of the site since the appeals were submitted. On the basis that the access and egress to the site are kept clear, the second access provides the opportunity for vehicles to enter and leave the site in forward gear.
34. Policy PMD8 of the Core Strategy and PMD requires that all development complies with the Council's car parking standards. The dual use of the site generates a need for parking provision associated with both the childminding activities and the single dwellinghouse. The Council states that on the basis of 20 children, six parking spaces for staff would be required. However, the appellant says that reducing the maximum number to 15 for Appeal Scheme B results in fewer staff being required and that four spaces would be sufficient. The Council also requires three spaces to be available for use by the occupiers of the dwelling.

35. There are two hard standings and a garage which provide parking space clear of the drop-off area. The appellant operates the child minding business and lives in the property. Consequently, there is potential for double counting in terms of the required number of spaces to meet demand. Nevertheless, as it stands there appears to be no space for any other members of staff to park in respect of Appeal Scheme B.
36. The appellant says that two further car parking spaces could be provided on a grassed area behind the front boundary. However, there is no plan to show that such spaces could be provided in practice and whether vehicles parked in them would affect the use of the drop-off area.
37. The appellant suggests that through a contract with her customers she could establish a fixed time slot for drop off and pick up, however the sanctions for not complying with the contract are not set out. Such an arrangement would also not be enforceable as a planning condition. Furthermore, such a condition would not address the effects of the lack of parking provision for staff on the availability of the drop off and pick up space.
38. The appellant also suggests that a Travel Plan could be implemented including retaining cycle parking for staff and encouraging walking and the use of public transport. However, this has not been shown to address the concerns which the Council has about access and car parking, which I share.
39. Whilst taking account of the improvements to access and manoeuvring of vehicles on the site, it has not been demonstrated that sufficient car parking provision could be made to serve the dual use in the case of Appeal Scheme B. Inadequate provision of car parking could result in the drop off area being used for parking which would compromise its effectiveness as a clear access to and egress from the site.
40. In relation to Appeal Scheme A, the appellant says that in addition to herself and one member of staff who lives at the site, there would be two staff attending the site, but on different days/times. Although the likelihood of parked vehicles used by staff blocking the drop off area would be reduced, there would still be some potential for that situation to arise.
41. I conclude that it has not been demonstrated that either Appeal Scheme A nor the Appeal Scheme B makes acceptable provision for access, manoeuvring and parking of vehicles to serve the dual use. The developments are contrary to Policies PMD2 and PMD8 of the Core Strategy and PMD.
42. For the same reasons the development does not accord with the Framework as it relates to the creation of places which respond to local character and minimise the scope for conflict with vehicles.
43. Policy PMD9 of the Core Strategy and PMD which relates to the Road Network Hierarchy does not appear to be relevant to this main issue on the basis of the evidence before me.

Other Matters

44. There is no dispute between the parties that the development would contribute toward meeting a need for childcare in the area and that it accords with Policy CSTP12 of the Core Strategy and PMD which seeks to ensure the provision of facilities to meet current and future educational needs. The supporting text to

the policy makes it clear that other policies within the Core Strategy and PMD need to be taken into account. Nevertheless, support in terms of Policy CSTP12 is a point in favour of allowing the appeals.

45. The appellant says that she currently provides apprenticeships/employment for two local people which is also a matter to be weighed in favour of the appeals.
46. The appellant refers to other childminding businesses operating from dwellings in the area, including those who have assistants. In allowing these businesses to continue the appellant argues that the Council is adopting an inconsistent approach. However, the appellant has not provided any details of the location or scale of these other facilities, therefore, I am unable to conclude that they are directly comparable to the appeal schemes, and they attract no weight in my determination of the appeal.
47. The appellant refers to the potential fallback position in which she could operate a childminding business looking after up to 6 children. She says that this is commonly acknowledged in case law and has referenced two appeal decisions although there is no detail of them.
48. I am not aware of any caselaw on this issue, however, government guidance¹ has referenced childminding complying with standard recommended ratios as an example of working from home for which planning permission is not required. This policy guidance is no longer current, but it provides some assistance in determining at what level a childminding business may be carried out without affecting the character of a dwelling house.
49. The appellant says that the relevant ratio is 6 children to one childminder. Thus, in terms of the number of children a fall-back position of reducing the number of children to 6 may be open to the appellant. However, a judgment would still have to be made regarding the effect of the operation of the business on the character of the dwelling which would involve matters such as whether staff were employed to meet the individual needs of the children. This information is not before me.
50. The appellant has not provided any evidence to demonstrate that she has obtained informal advice from the Council that planning permission would not be needed for the operation of a childminding business for up to six children or a formal determination in the form of a certificate of lawfulness. To that extent there is no certainty that the fallback position is realistic as opposed to a theoretical prospect.
51. On the basis of the evidence before me, the fallback position attracts limited weight. Even if a childminding business for a maximum of 6 children could be established, the appellant has failed to show that an increase of 4 additional children in the Appeal Scheme A scenario would not result in the harm to the character of the area and the noise and disturbance which I have found.
52. Drawing all of these points together I have not found that that the material considerations outweigh the harm which I have identified in respect of Appeal Scheme A or Appeal Scheme B or lead me to conclude that the appeals should be determined other than in accordance with the development plan.

¹ Planning Policy Guidance 4: Industrial, commercial development and small firms

Conclusion

53. For the reasons given above, I conclude that the appeals should not succeed. In respect of Appeal A I shall uphold the enforcement notice with a correction. and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. With regard to Appeal B, the appeal is dismissed.

Ground G

54. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of 3 months is too short because it provides insufficient time for apprentices to find new employment and for families to make alternative arrangements for childcare, particularly in view of the demand for care in the area.
55. The appellant has not provided any evidence to support her contention that alternative employment and childcare arrangements could not be found within the 3 month compliance period. I am mindful that it is reasonable to expect that during the summer months the use of the outdoor space would have a greater effect on the amenity of neighbours. Given the date of this decision the current compliance period would run approximately through May, June, and July.
56. In the absence of any evidence to substantiate the appellant's request for an extension of the compliance period and taking into account the particular effects on neighbours, resulting in ongoing harm throughout the summer months, I find that the 3-month period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeal on ground (g) should fail.

Sarah Dyer

Inspector