
Appeal Decision

Site visit made on 16 May 2022

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 May 2022

Appeal Ref: APP/D1265/W/21/3285629

Land Opposite Churchfield Close, Verwood BH31 6HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr J Atkins of NHDH Ltd against the decision of Dorset Council.
 - The application Ref 3/20/0689/FUL, dated 7 April 2020, was approved on 28 July 2021 and planning permission was granted subject to conditions.
 - The development permitted is to construct a single storey detached building to use as a children's nursery (D1) with parking, bin and cycle storage.
 - The conditions in dispute are Nos 15 and 16 which state that: (15) No outdoor play area shall be used outside of the following times: 10:00 to 11:00; 13:30 to 14:30; 16:00 to 17:00. (16) During the outdoor play times under condition 15 above, no more than 20
 - children in total shall be outside of the building.
 - The reason given for the conditions is: To protect the amenity of the locality.
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Decision

1. The appeal is allowed and the planning permission Ref 3/20/0689/FUL to construct a single storey detached building to use as a children's nursery (D1) with parking, bin and cycle storage at Land Opposite Churchfield Close, Verwood BH31 6HT granted on 28 July 2021 by Dorset Council, is varied by deleting conditions 15 and 16.

Main Issue

2. The main issue is whether the disputed conditions are necessary and reasonable, having regard to the effect that use of the outdoor play areas would have on the living conditions of occupants of adjacent dwellings in relation to noise-related disturbance.

Reasons

Background

3. Planning permission for a children's day care nursery on the site described as being for up to 60 children was granted at appeal in 2016. Conditions were imposed including restrictions covering opening times, the times the outdoor play area could be used, and the number of children who could be outdoors at these times. As annotated on the approved plan, the outdoor play area covered all external space in the rear half of the site. The conditions in dispute directly mirror those imposed on this previous planning permission.
4. The scheme subject of this appeal differs insofar as it would provide a building of different design that would cater for up to 81 children, with slightly longer

opening hours, and 2 smaller enclosed outdoor play areas located immediately to the rear.

Conditions 15 and 16

5. The site is an overgrown and apparently unused space. It is located adjacent to a number of bungalows, some of whose back gardens abut the site boundary. The approved use of the site would give rise to a change in the noise environment, as would most any active use. Given the baseline this would have some inevitable potential for disturbance of occupants of adjacent dwellings. In this context conditions 15 and 16 would not prevent such disturbance from occurring, but insofar as use of the outdoor play areas attached to the nursery would represent one source of noise, they would restrict its duration.
6. As outlined above, conditions 15 and 16 replicate conditions imposed on the previous planning permission. Within that context they served to require compliance with a schedule proposed by the then appellant. To what extent that schedule was based on any quantified evidence related to noise is unclear, as no such evidence has been set before me. The rationale behind the timings is also uncertain. Somewhat unusually, these appear to exclude scope for a lunchbreak. Given the above, and given the significant differences between the two schemes in terms of attendance and layout, the soundness of the conditions is clearly open to doubt.
7. Based on attendance by 60 children the previous planning permission implied 20-minute rotas for playtimes, with a maximum of 1-hour outdoor play per child over the course of a 10.5-hour day. Based on attendance by 81 children within the scheme subject of this appeal, the implied rota for use of the play areas would fall to around 15 minutes, with a maximum of around 45 minutes use per child in every 12-hour day. How many children would benefit from the full 45 minutes is unclear. It is however hard to see how this high level of restriction on the use of outdoor play areas could be compatible with the normal function of a nursery facility, or the essential need within this context for children to exercise.
8. Small play areas set well away from the site boundaries, and enclosed by acoustic fencing, would otherwise be far more effective in containing noise than the larger undefined play area running to the site boundaries permitted by the previous planning permission. Even based on a rota system, this would give rise to considerable differences in the potential for disturbance of neighbours.
9. The site also contains other outdoor space. As drafted, conditions 15 and 16 would not prevent its use for play by an unlimited number of children at any time of the day other than those listed in condition 15. To what extent use of such space would occur in practice is unclear. Nonetheless, as the planning permission stands scope would exist for noise related to outdoor play to arise on site throughout the 12-hour day, regardless of the restriction placed on use of the play areas. The conditions would not therefore be wholly effective, even if they were reasonable in all other regards.
10. My findings above thus indicate that conditions 15 and 16 are unreasonable and imprecisely drafted. As such both conditions fail the tests set out in paragraph 56 of the National Planning Policy Framework.

Alternatives

11. The appellant proposes deletion of conditions 15 and 16. In the absence of restriction, noise related to use of the play areas might arise throughout the day. It is however logical to presume that the character of noise would greatly differ from that generated within a rota system, given that the latter would give rise to highly intense periods of activity, whereas unrestricted access would see use of the play areas spread out across the day. Even if it was practical, it is highly improbable that all 81 children aged 3-5 years would at any time seek to simultaneously access the play areas, or that all or a large proportion would spend most of their day outside. It is far more likely that the play areas would see an ongoing low level of use that would generate relatively low levels of noise. Considered overall and in combination with the proposed layout, this would be less likely to cause disturbance of neighbours than restricted playtimes.
12. The appellant has submitted a noise report to help further demonstrate that there would be no unacceptable effect on internal living conditions for occupants of adjacent dwellings. Though this lacks specific identification of the source data used, the figures are consistent with measurements taken at a much larger site operated by the appellant. The Council has pointed out some further limitations. However, in so doing it has acknowledged the lack of recognised standards for assessing noise generated by people, and provided no evidence to substantiate a need for the restrictions imposed by conditions 15 and 16. Here the Council's Environmental Health Officer instead proposes the provision of a management plan.
13. The alternative condition drafted to secure the plan does not specify what form the plan should take, and thus provides no indication of what management might entail. The purpose of management as opposed to simple restrictions and/or measures achieved by design, would presumably be to both minimise the potential for the generation of loud noise, and to set out procedures to deal with it when it occurred. In the absence of any clear parameters, the submitted noise report indicates that peak events could relate to episodes of children shouting, and presumably also to children screaming. In this regard it is not immediately apparent how young children could be prevented from screaming and shouting if they chose. Whilst this could be discouraged, exactly how such childcare practices would then be enforced by the Council is again unclear.
14. I am also mindful that aside from the fact that conditions 15 and 16 allow largely unrestricted use of the broader site for outdoor play, no restriction exists, and no management would be required in relation to the amount of screaming and shouting that groups of 20 children could engage in on rota during the intensive 3-hour period currently allowed for use of the play areas.
15. As such, and having already found that removing limitations on access would reduce the overall potential for noise-related disturbance, it has not been demonstrated that a management plan would serve a necessary, or necessarily enforceable purpose. I thus share the appellant's view that conditions 15 and 16 should be simply deleted.
16. For the reasons outlined above I conclude that the disputed conditions are neither necessary nor reasonable having regard to the effect that use of the outdoor play areas would have on the living conditions of occupants of adjacent dwellings in relation to noise. The deletion of Conditions 15 and 16 would not

therefore give rise to conflict with saved Policy DES2 of the East Dorset Local Plan 2002 which states that developments which will impose unacceptable impacts on existing land uses in terms of noise.

Other Matters

17. Interested parties have raised a number of additional concerns which include traffic generation, highways safety, parking pressure, opening hours, the building position and the potential for alternative use of the site for housing. These are however issues unrelated to the subject matter of conditions 15 and 16, and so not directly relevant to determination of this appeal. As such they do not alter my findings above.

Conclusion

18. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR