



Appeal Decision

Site visit made on 7 June 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2022

Appeal Ref: APP/H0738/C/22/3295706

2 Malham Grove, Ingleby Barwick, Stockton-on-Tees TS17 0UE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Tracy McNulty (Wells) against an enforcement notice issued by Stockton-on-Tees Borough Council.
- The enforcement notice was issued on 4 March 2022.
- The breach of planning control as alleged in the notice is The erection of a garden structure to the rear of the Land for the sole purpose of a commercial childcare business without planning permission.
- The requirements of the notice are (i) Cease operating the commercial childcare business from the rear garden structure; (ii) Remove all associated childcare equipment, furniture and fixtures and fittings from the garden structure associated with the commercial childcare business; (iii) Ensure that the garden structure shall not be used other than for incidental purposes to the residential dwelling of 2 Malham Grove; (iv) Ensure that the commercial childcare business operates as an ancillary use to the residential dwelling 2 Malham Grove by; a. ensuring that no more than 6 children are cared for through the ancillary use of the dwelling and that there is only one member of staff associated with the business; (v) Remove from the Land all the resultant debris/materials associated with complying with points (i) and (ii) above.
- The period for compliance with the requirements is 3 (three) months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Procedural Matter

1. It is essential that an enforcement notice specifies the alleged breach of planning control accurately, as this forms the basis of the deemed planning application, and therefore the relevant material planning considerations that need to be weighed in the balance.
2. The parties agreed that the alleged breach of planning control should be accurately stated as *"Without planning permission, the unauthorised material change of use to a mixed use comprising residential and commercial childcare business and erection of a garden structure associated with the childcare business"*.
3. I am satisfied that the notice could be corrected accordingly without resulting in injustice to any of the parties.

The appeal on ground (c)

4. The appeal on ground (c) is that the matter alleged does not constitute a breach of planning control. The burden of proof rests with the appellant, with the standard of proof being the balance of probability.
5. In accordance with Article 3, Schedule 2, Part 1, Class E(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development, subject to various provisos. An incidental use is one that has a functional relationship with, but is not integral to, the primary use of the planning unit.
6. The appellant's case is essentially that the garden structure was erected as permitted development in December 2018, and is used for both residential purposes and in connection with the childcare business. However the appellant says that the level of childcare, being limited to six children and only during the school term time, would be incidental to the residential use of the property. It is accepted by the appellant that use is made of the main dwelling in connection with the business. However they say that the scale of the operation means there has not been a material change of use of the property.
7. The Council's case is that the structure was built, and remains, solely for the purposes of facilitating a child-minding business, and as such the structure would not have been permitted development in the context of the GPDO.
8. I have considered the various representations on this matter. These include that the appellant's pre-application enquiry was based on the purpose of the structure being to provide childcare services; also there are references on 'Facebook' pages, associated with the business, to this being the purpose of the structure.
9. The appellant has referred to the garden structure also being used for purposes incidental to the use of the dwelling, when not used in connection with the business, and photographs are provided of various adults in the building. During my visit, I noted that the structure had been fitted out with a small kitchenette, chairs and tables of a size suited to accommodate small children, various types of play equipment and learning materials. I was left with the impression that this was a space devoted to the childcare business and that, whilst it may be used by the occupiers of the house and other members of the extended family and their children from time to time, it had not been furnished in a way that is primarily designed to facilitate incidental residential use.
10. Also of relevance is that the childcare business is operated by the appellant's daughter, who now lives away from the appeal property. This further dilutes the argument that the purpose of the structure is 'incidental to the enjoyment of the dwelling', given that the functional link between the occupiers of the dwelling and the users of the structure is weakened.
11. Drawing the above considerations together I find, on the balance of probability, that the primary use of the garden structure is in connection with the childcare business. By contrast the information provided to support the argument that the building is used for purposes incidental to the enjoyment of the dwelling is

insubstantial and simply not compelling. The building would not therefore have been permitted development in accordance with Class E(a) of the GPDO.

12. The business would lead to additional comings and goings to and from the property associated with the delivery and collection of children and also the attendance of the childminder (business owner), who lives away from the property. Irrespective of whether these movement patterns are acceptable, it seems to me that their effect, even allowing for the possibility of staggered arrival and departure times, would at least be noticeable within the surrounding residential environment, and would therefore be material. There is no dispute between the parties that the childcare activity is focussed in the garden structure and utilises facilities within the main dwelling, such as a toilet and other rooms to allow for resting. There is also no suggestion that a separate planning unit has been created as a result. Drawing these considerations together I conclude, on the balance of probability, that a material change of use has occurred to a mixed use comprising two primary uses, namely the residential one and the childcare business. The ground (c) appeal fails.
13. I have had regard to the appeal decision drawn to my attention by the appellant, where an appeal relating to a childminding business succeeded on ground (c)¹. However it seems to me that the circumstances of that case can be distinguished from the present appeal. Notably, it would appear that the childminder in that case was the occupier of the appeal premises.
14. There is no dispute between the parties that the garden structure would comply with the physical limitations set out in paragraph E.1. of Class E of the GPDO, albeit that the Council considers that guttering associated with the structure encroaches on neighbouring property and that as such the development would not be entirely within the curtilage of the dwelling. The Council therefore says that the structure would also not be permitted development for this reason. Irrespective of whether this is the case, it would not change the conclusion I have already reached above.

The appeal on ground (a)

15. The appeal is that planning permission should be granted for the alleged development. The main issues are the effect of the childcare business on (i) the character of the surrounding residential area and (ii) the living conditions of nearby residential occupiers with particular regard to noise and activity.

Reasons

Character

16. The appeal site is part of an extensive residential housing estate. The Council has expressed concern that the childcare business would be out of character with its residential surroundings. To my mind, however, the Council has failed to identify how the development would harm that character.
17. The principle of providing childcare facilities within a residential area would not be an unusual or alien concept. Indeed, in principle, the provision of accessible childcare services would be consistent with the sustainable development of healthy communities.

¹ Appeal Refs: APP/Y2736/C/14/2227687 & 8

18. In terms of detailed design the building, though a relatively large garden structure, would be substantially screened from outside the property by boundary fencing. It is contained beneath a flat roof; is substantially constructed in vertical boarding and glazing, with a side access door and associated gravel path that no longer appear to be in use. I consider that the design and scale of the development would not draw the eye as appearing dominant or obtrusive in relation to surrounding dwellings.
19. I conclude that in terms of principle and detailed design the development would not result in harm to the character of the area. It would not therefore conflict with Policy SD8 of the Stockton-on-Tees Borough Council Local Plan 2019 (LP) or with the National Planning Policy Framework (the Framework) insofar as they seek to promote high quality sustainable design that responds positively to its surroundings.

Noise and Activity

20. In this regard concerns are about disturbance associated with general comings and goings to and from the site in connection with the business, and disturbance associated with children playing and interacting.
21. The appeal site is located at the entrance to a cul de sac, and is adjoined by two neighbouring dwellings. There are other houses on the opposite side of adjacent roads. In terms of comings and goings, it is proposed to limit the business to the provision of care for no more than six children, with no more than a single member of staff in attendance. The operating hours of the business would allow for staggered arrival and collection times, and it is therefore unlikely that clients would gather at the premises simultaneously. In addition any interactions associated with the delivery and collection of children are unlikely to be inherently noisy or to endure for very long.
22. Whilst I accept noise associated with children interacting may be audible, the number of children in attendance could be restricted (to no more than six), as could the opening hours of the business, through the imposition of appropriately worded conditions. I consider at this scale the number of children interacting would not be inconsistent with that of a large family, and not therefore inappropriate in this established residential location. Furthermore the proposed operating times of the business means that no additional noise would be experienced at weekends and during early mornings and late evenings.
23. I have also taken into account that, in accordance with the requirements of the notice, the Council raise no objection to the principle of six children being cared for, albeit that they consider the garden structure should not be utilised for this purpose. However I find no compelling reason why the use of the property as a whole for the business, including the garden area and garden structure, in accordance with the aforementioned limitations, would result in material harm to the living conditions of nearby residents, with particular regard to noise from children.
24. Drawing the above considerations together I conclude that the development would not result in harm to the living conditions of nearby residential occupiers with particular regard to noise and activity. It would therefore conform with Policy SD8 of the LP and with the Framework insofar as they seek to protect the living conditions of residents.

Other Matters

25. A number of further issues have been raised by third parties. With regard to highway and pedestrian safety, I note the absence of parking restrictions in the locality. There would likely be space for short-term on-street parking close to the appeal site, when also considering that arrival and collection times would probably be staggered. Given that the business would serve the local community it is also likely that a number of clients would attend the site on foot. It would also be possible to widen the driveway to accommodate the childminder's vehicle and potentially those of visiting clientele. I conclude that the development would not result in harm to highway and pedestrian safety.
26. The occupiers of No 7 Fountains Avenue have referred to the structure as having an overbearing effect. However I am not persuaded that its location adjacent to part of the side elevation of that property would result in any significant sense of enclosure.
27. Concerns were raised about an absence of guttering on the building causing rainwater to drain onto the adjoining property, at No 7 Fountains Avenue. Whilst, on the basis of information provided, the absence or effectiveness of guttering would not be a strong enough reason to refuse planning permission, I noted during my visit that guttering appeared to now be in place along this boundary. The question of the encroachment of guttering beyond land ownership boundaries would be a legal matter, rather than for consideration as part of the planning merits of the case.
28. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.

Conditions

29. I have considered the Council's suggested conditions in the event that planning permission is granted. Conditions controlling the opening hours of the childcare business and the number of children and staff in attendance are required in the interests of the living conditions of residents. I see no reason why such conditions would not be enforceable, particularly in view of the limited scale of the business. A condition to require an extended driveway in order to facilitate additional parking is required in the interests of highway safety.
30. Conditions requiring that the childcare business is not used for any other commercial use and preventing the sub-division of the planning unit which includes the residential dwelling are required in order to protect the living conditions of residents. For the avoidance of doubt the wording of the 'use' condition would not prevent the use of the garden structure for purposes incidental to the enjoyment of the dwellinghouse.

Conclusion

31. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice, as corrected. The appeal on ground (f) does not fall to be considered.

Formal Decision

32. It is directed that the notice be corrected by deleting the wording describing the alleged breach of planning control in paragraph 3 in its entirety, and substituting the following wording instead:

"Without planning permission, the unauthorised material change of use to a mixed use comprising residential and commercial childcare business and erection of a garden structure associated with the childcare business."

33. Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use to a mixed use comprising residential and commercial childcare business and erection of a garden structure associated with the childcare business at 2 Malham Grove, Ingleby Barwick, Stockton-on-Tees TS17 0UE as shown on the plan attached to the notice and subject to the conditions in the schedule below.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The use shall not be open to children attending the childcare business outside the following hours: 07:30 to 18:00 Mondays to Fridays; and shall not be open to children attending the childcare business at any time on Saturdays, Sundays and Bank or Public Holidays.
- 2) At no time during the hours of operation specified in Condition 1 above shall there be more than six children attending the childcare business and no more than one member of staff.
- 3) Notwithstanding the details hereby submitted, within three months of the date of this decision the existing vehicular hardstanding shall be extended to the north-west of the existing driveway to a total width of 9.6 metres and by a total depth of 6 metres and the parking provision shall thereafter be retained for the lifetime of the development. The hardstanding shall be constructed from porous / permeable materials or provision made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwelling house.
- 4) The development hereby approved shall be retained as part of the planning unit which includes the residential dwelling known presently as 2 Malham Grove, Ingleby Barwick.
- 5) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) no part of the premises shall be used for any purpose within Use Class E, with the exception of use for the childcare business hereby approved.

END OF SCHEDULE OF CONDITIONS