



Appeal Decision

Site visit made on 27 September 2022

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/N2739/W/22/3296132

Maisy Moos Day Nursery, Station Road, Wistow, Selby YO8 3UZ

- 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 Helen Marshall against the decision of Selby District Council.
 - The application Ref 2021/1529/FUL, dated 9 December 2021, was refused by notice dated 4 March 2022.
 - The development is the erection of a side shelter over play area.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During my site visit I noted that the development had already been implemented. I have determined the appeal on this basis and with regard to the plans before me. Having visited the site, I am satisfied that the plans appear to accord with what is on the ground. I have omitted the term 'retrospective' from the description of development in the banner heading above as this is not a form of development.
3. The Council argues that the area beneath the retrospective side shelter is not an authorised play area. However, that is not a matter before me in respect of this appeal against a refusal of planning permission.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Reasons

5. The nursery is situated within a residential area to the west of the village centre. The building was converted from a dwelling to a day nursery in 2015 and forms part of a linear arrangement of residential properties fronting Station Road. In dealing with a previous appeal, an Inspector noted the relatively quiet nature of the area, a position accepted in the appellant's Environmental Noise Assessment (ENA), and this was also the case at the time of my visit, so appears to be representative of daytime conditions.
6. The lean-to side shelter is attached to the west elevation of the nursery building. Patio doors open out into it. The open side of the shelter is enclosed by a low timber fence and the combined effect of enclosure on the other sides has created the impression of an outdoor room. This more weatherproof area

could be readily used in conjunction with the connecting room identified on the approved plans as a toddler eating area and for messy play.

7. Even if I were to accept that this outdoor area could legitimately be used for outdoor play, the lean-to has effectively become an extension of that indoor room and its construction, floor covering and the range of activities that could take place would focus the children within a more confined area within the playground and suggest a more intensive use than other outdoor areas, regardless of the weather. As noted by the previous Inspector, this is likely to mean that children are using this area for a greater period of time and the noise and disturbance would be materially different from general outdoor play.
8. The shelter directly adjoins a narrow side garden to Marshland and this dwelling has a large three pane window with top opening lights close to and facing towards it. While the ENA confirms this to be a bedroom, it can't be assumed that the room is not in use during the day. For the occupants at Marshland there would be no certainty of when a disturbance would occur, for how long and how often.
9. The ENA finds that the highest noise impact and corresponding change in noise impact occurs at Marshland. It concludes that whilst this property experiences relatively high levels of noise compared to other nearby properties, the change in average and maximum noise levels, due to the construction of the shelter, are not of significance.
10. I have noted that the Council has provided no quantitative evidence to counter the noise assessment report. Indeed, neither the Council's Environmental and Housing Officer nor the occupiers of Marshland have raised objection to the proposal. Nor is there evidence of complaints, other than directly in response to the application, relating to the operation of the nursery. However, the Council does identify concerns in the ENA methodology.
11. I note that the data was derived from a database rather than as a result of noise monitoring on site. The source and circumstances surrounding the collection of the data on which the predictions are based is also not specified. Moreover, it does indicate that at numerous times per hour acceptable residential tolerances of noise at the boundary of a play area are likely to be breached. Because of this close proximity to Marshland, the noise and disturbance is likely to have a significant adverse effect both within the property and garden area.
12. The Noise Policy Statement for England (NPSE) and The Planning Practice Guidance on Noise (PPG) require the adverse effect from the noise to be balanced against the economic and social benefits of the proposal. The appeal scheme provides a more diverse form of learning, provides a greater area of supervised space, will assist in delivering the curriculum, and has been, and continues to be, a benefit in relation to learning practices during the recent pandemic. This accords with the Framework's requirement to provide social facilities which benefit the community. However, given the size of the shelter, and the fact that this area is already used as a play area, the economic and social benefits over and above those associated with the existing childcare facilities are limited. I therefore consider that these benefits carry limited weight in support of the appeal.

13. I therefore conclude that the development has a harmful effect on the living conditions of neighbouring occupiers with particular regard to noise and disturbance. There is conflict with Policies ENV1(1) and ENV2(A) of the Selby District Local Plan (2005) and Policies SP13(D) and SP19(K) of the Selby District Core Strategy Local Plan (2013). These seek to ensure a good standard of amenity of adjoining occupiers and ensure that new development does not result in unacceptable levels of noise. There is also conflict with the provisions of the Framework to require a high standard of amenity for existing and future users and with the provisions of the PPG and NPSE.

Conclusion

14. Based on my findings, I conclude that the material harm to living conditions and conflict with the development plan as a whole would outweigh the social and economic benefits of the proposal. There are no material considerations of sufficient weight to justify a decision other than one in accordance with the development plan.
15. For the reasons outlined above and having regard to all other matters raised, the appeal is dismissed.

G Bayliss

INSPECTOR