



Appeal Decision

Site visit made on 6 December 2022

by Emma Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2023

Appeal Ref: APP/B1930/W/22/3299703

34 Sun Lane, Harpenden AL5 4HA

- 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 Mr E Morris on behalf of Three Little Birds Nurseries against the decision of St Albans City Council.
 - The application Ref 5/2021/2879, dated 14 October 2021, was refused by notice dated 30 November 2021.
 - The development proposed is a new single storey building installed within garden of existing property.
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Decision

1. The appeal is allowed and planning permission is granted for a new single storey building installed within garden of existing property at 34 Sun Lane, Harpenden AL5 4HA in accordance with the terms of the application, Ref 5/2021/2879, dated 14 October 2021, and the plans submitted with it, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are i) the effect of the proposed development on the living conditions of the occupiers of 36 Sun Lane (No 36), having particular regard to outlook from the garden; ii) the effect of the proposed development on the living conditions of the neighbouring residential properties with particular regard to noise and disturbance; and iii) the effect of the development on highway safety, having regard to parking provision.

Reasons

Outlook

3. The proposed outbuilding would be sited parallel to the side boundary of the appeal site shared with No 36. It would be single storey in scale, with a shallow pitch and an eaves height of 2.75m adjacent to the site boundary. As such it would be greater in height than the existing boundary fence between the properties.
4. As a consequence of the length of the proposed building it would run along a significant part of the boundary between the properties. However, a greater proportion of the shared boundary would remain open beyond the footprint of the building. Moreover, the proposed outbuilding would be partly screened by an existing outbuilding at No 36 which lies adjacent to its boundary with the appeal site, as well as boundary planting within the garden of No 36.

5. For these reasons, whilst the proposed outbuilding would be visible from the rear garden of No 36, it would not appear as an unduly dominant feature. I therefore conclude that it would not give rise to harm to the living conditions of the occupiers of No 36, having regard to outlook from the garden.
6. In that regard the proposal would not conflict with Policy 65A of the St Albans District Local Plan Review 1994 (LP) which seeks to ensure that such development does not have an adverse impact upon the amenity of neighbouring property, LP Policy 69 in so far as it requires development to achieve high standards of design, having regard to context and LP Policy 72 which seeks to safeguard amenity and paragraph 130 of the National Planning Policy Framework (the Framework).

Intensification of use

7. The appeal site lies in a predominantly residential area, with adjoining residential properties to both sides and the rear. It includes a detached, 2 storey property which was previously a dwelling, which operates as a day nursery. The proposal would increase the number of children attending the day nursery from 29 to 49 and members of staff from 9 to 12, which would include 9 full time and 5 part time employees. The hours of operation of the nursery would remain as 0730 to 1830 Monday to Friday only and could be controlled by the imposition of a condition if I am minded to allow the appeal.
8. I note the Council's view that the imposition of planning conditions suggested by the EHO to limit the amount of time each child spends in the garden, in order to minimise noise and disturbance, would not be reasonable as it would be unduly restrictive and would not be appropriate given the existing use as a nursery. However, I am told that the current nursery schedule operates on a similar basis, with a maximum of twelve children plus staff in the outdoor area at any one time, with early years children have in 45 minutes of garden time in the morning and 2 pre-school groups each having 45 minutes of garden time twice a day.
9. A Noise Impact Assessment (NIA) has been carried out by the appellant and is submitted as part of the appeal. It includes an assessment of the front of the site having regard to vehicular movements associated with drop-off and pick-ups and the area to the rear of the building where the outdoor play activity takes place. It concluded that noise from the increase in vehicle movements in association with the proposal would be virtually imperceptible at the closest receptors.
10. The NIA indicates that it is recognised that there are no approved guidelines or standards for the assessment of play area activity noise. Based on the World Health Organisation (WHO) thresholds it sets out that any external sound level equal to or below 50dB L should provide suitable amenity to both internal and external receptors. The Council do not dispute this, and I have no reason to disagree.
11. The proposal would potentially increase the number of children in the outside space to the rear of the property at any one time from 12 to 20. The NIA concludes that, any increase in noise associated with the proposed number of children would fall within the levels recommended by WHO for external amenity areas. As such, subject to suitable conditions, including that the development should be carried out in accordance with a Noise Management Plan to mitigate

and minimise any potential adverse impacts, any additional noise generated, including from within the building, would be unlikely to be perceptible.

Furthermore, whilst the proposal may have a marginally greater effect on the acoustic character of the area, this would not lead to a perceived change in quality of life. I have not been presented with any substantive evidence that this would not be the case. I therefore conclude that the proposal would not harm the living conditions of the occupiers of the neighbouring residential properties having regard to noise and disturbance.

12. Accordingly, I find no conflict with Policy 65A of the LP, which requires, among other things, states that planning permission will be granted if there is no materially adverse impact on the amenity of neighbouring properties in terms of noise and disturbance, or the high quality design aims of LP Policy 69 which requires regard to be had to all relevant policies and Policy 72, in so far as it seeks to safeguard amenity and paragraphs 130 and 185 of the Framework.

Highway safety

13. The proposed increase in the number of children attending the nursery would result in additional vehicle trips to the appeal site. However, pick-ups and drop-offs of children are likely to be somewhat staggered. There would be no increase to the existing parking area on land to the front of the nursery, which provides 7 parking spaces. Concerns regarding the visual impact of the car parking to the front of the property are noted, nevertheless, this is an existing arrangement which it is not proposed to alter as part of the appeal proposals. The Council's Revised Parking Policies and Standards (January 2002) indicate that for nursery schools/playgroups, 1 parking space should be provided per 4 pupils, which would equate to 12 spaces for 49 pupils, however, these are maximum parking standards.
14. I note comments by interested parties that the existing nursery car park is often full, with vehicles queuing to enter the site and parking across adjoining driveways despite parking restrictions on Sun Lane. Whilst I have no reason to doubt these reports, the Highway Authority do not share these concerns and have not raised an objection to the proposal.
15. An Accessibility Assessment carried out on behalf of the appellant indicates that the site is located in a highly accessible location with a good level of pedestrian, cycle and public transport infrastructure. In light of this and given the proximity to the surrounding residential development, it is reasonable to expect that some visitors to the site would travel by means other than the private car. This is encouraged by the nursery through the provision of a cycle and buggy store on-site and the promotion of travel information to parents. Moreover, further surveys also confirm that the predicted parking demand as a result of the proposal could be met by the existing parking facilities and that there was no evidence of inappropriate parking off-site on Sun Lane, suggesting the existing parking restrictions are effective.
16. For these reasons, I am not persuaded that the number of parking spaces within the appeal site would not be adequate to serve the nursery with the increased number of children. I therefore find that the proposed parking provision would not lead to an increase in congestion or on-street parking that would adversely affect the flow of traffic such that it would harm highway safety. Accordingly, the proposal would accord with LP policy 65A which requires that car parking shall normally comply with Policy 39, which requires

sufficient parking to be provided for the long-term needs of the development, and paragraphs 110 and 111 of the NPPF.

Other Matters

17. I acknowledge concerns expressed by interested parties regarding the effect of the development on the character and appearance of the area, including the loss of garden area to serve the nursery, as well as the proximity of the appeal site to the Conservation Area. However, the Council conclude that the proposed development is considered acceptable in terms of its compatibility to the appearance of the site and I have no reason to disagree.
18. Furthermore, I have not been presented with any evidence that the proposal would lead to increased levels of pollution in the area or generate levels of rubbish that would not be manageable. The matter of access to allow for maintenance of the boundary fence is not a determinative factor in the appeal.

Conditions

19. The conditions set out in the accompanying schedule are based on those suggested by the Council in their appeal statement should the appeal be allowed. The appellant was given the opportunity to comment on them. I have amended the wording, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance. In addition to the standard condition relating to the commencement of development, it is necessary to specify the approved plans to provide certainty.
20. Conditions regarding the materials to be used in the external surfaces of the proposed outbuilding and to secure the provision of cycle storage are necessary to ensure the development is visually satisfactory and to encourage the use of sustainable means of transport. In order to safeguard the living conditions of the nearby residential properties, conditions are necessary to ensure the building includes suitable noise mitigation measures and to secure an appropriate Noise Management Plan. For the same reason a condition to restrict the hours of operation of the development to the existing operating hours is necessary. The Council's suggested condition, which seeks to restrict outdoor activity solely to lunchtime is not reasonable or necessary given the findings of the Noise Impact Assessment and taking into account the other conditions which would be imposed.
21. The Fire and Rescue Service have suggested a condition to secure details of a sprinkler system to ensure the development includes appropriate measures for fire safety. However, conditions must not be used to control matters that are subject to other primary legislation and this matter is covered by Building Regulations.

Conclusion

22. For the reasons set out above, the appeal is allowed.

Emma Worley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 9528-06 Rev D and 9528-09 Rev C.
- 3) The external surfaces of the building hereby permitted shall be constructed only of materials, the type and colour of which match exactly those of the existing building or as otherwise specified in the application form or the plans hereby approved.
- 4) Prior to the first use of the development hereby permitted, a scheme for the short stay and long stay parking of cycles, including details of the design, level and siting shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented before the first use of the development and shall thereafter be retained for this purpose for the lifetime of the development.
- 5) Prior to the first use of the building hereby permitted details of noise reduction measures such as sound insulation, double glazing and adequate ventilation to prevent windows from being open shall be submitted to and approved in writing by the local planning authority. The approved measures shall be fully implemented prior to the first use of the building and shall remain operational for the lifetime of the development.
- 6) Prior to the first use of the development hereby permitted, a Noise Management Plan, in accordance with the recommendations set out in the Noise Impact Assessment Technical Report Ref. 38142-R2 by Sound Solution Consultants Limited dated May 2022, shall be submitted to and approved in writing by the local planning authority, The approved Noise Management Plan shall be fully implemented prior to the first use of the building and shall be adhered to for the lifetime of the development.
- 7) The premises shall not be used as a children's day nursery between the hours of 1830 and 0730 on the next following day, and not at all on Sundays or Bank Holidays.

*******end of conditions*******