

Appeal Decisions

Site visit made on 21 December 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2023

Appeal A: APP/M1520/C/22/3293797 & 3293798 Land at 3 Roland Lane, Canvey Island, Essex SS8 9DW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Gina Warren and Mr Kevin Warren against a notice issued by Castle Point Borough Council.
 - The notice was issued on 3 February 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission,
a material change to residential and as a child-minding facility.
 - The requirements of the notice are:
(1) Permanently cease the use of the land as a child-minding facility.
 - The period for compliance with the requirements is 5 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: APP/M1520/W/22/3293796 3 Roland Lane, Canvey Island, Essex SS8 9DW

- 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 Gina Warren against the decision of Castle Point Borough Council.
 - The application Ref 21/0810/Ful, dated 16 August 2021 was refused by notice dated 22 December 2021.
 - The development proposed is described as *'side and rear extension to the existing garage with associated change of use to use as a child minding facility (retrospective)'*.
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Formal Decisions

Appeal A

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended for the development already carried out, namely the material change in the use of the land to residential and as a child-minding facility referred to in the notice on land at 3 Roland Lane, Canvey Island, Essex SS8 9DW, subject to the conditions set out in the attached Schedule.

Appeal B

2. The appeal is allowed and planning permission is granted for a side and rear extension to the existing garage with associated change of use to a child-minding facility (retrospective) subject to the conditions set out in the attached Schedule.

Application for costs

3. An application for costs has been made by Mrs Gina Warren against Castle Point Borough Council. This application is the subject of a separate decision.

Background

4. Roland Lane is a small cul-de-sac, a private road not under the management of the local highway authority. The property's detached garage building has been extended and adapted for the purpose of facilitating a child minding facility. The dwellinghouse itself remains in full residential use.
5. There is room for four cars to be parked on-site.
6. A maximum of 15 children are looked after on the premises at any one time and the appellant has provided an 'Indicative Weekly Timetable' showing that the childrens' arrival at the premises is staggered at different times. Three full-time members of staff are employed, working 7.30am to 6.30pm, four days per week. In addition, one part time employee works 9am to 4pm, three days per week.
7. All details have been confirmed by the appellants.

Appeal A on ground (a)/the deemed planning application (DPA), and Appeal B.

Preliminary Matter and Main Issues

8. Regarding Appeal B, the Council, in refusing planning permission, has not raised objections to the garage's extension. I agree with this approach and, in the circumstances, the main issues for both appeals are identical. These are:
 - 1) Whether the development results in conditions prejudicial to highway safety;
 - 2) The effect of the development on the living conditions of neighbouring occupiers, with particular regard to any resultant noise and disturbance;
 - 3) The effect of the development on the character of the area; and
 - 4) Whether the development could potentially be affected by its location within Flood Zone 3.

Reasons

Highway safety

9. Whilst I understand, out of convenience, it is desirable that the child-minding staff, as far as is possible, should park on-site it is not ideal that children be dropped off and picked up in Roland Avenue itself. Notwithstanding that this is a private road it is likely to regularly lead to inconsiderate short-term parking, potentially prejudicial to both pedestrians and other vehicles alike. I have given due regard to the written objections of local residents in this regard.

10. Although the evidence is disputed by the appellants I note the findings of the site visit by Council officers during a monitoring session between 8.19am and 10.20am on 14 December 2021. Here, it was noted that all parents/guardians dropping off children to attend the facility at the appeal site parked within Roland Lane. Some parked in front of no.3's entrance gates thereby blocking this end of Roland Lane, and to the detriment of other road users. There is also photographic evidence from a nearby resident showing a car placed over a dropped kerb.
11. I also note the illustrative matrix and detailed findings provided and, in the absence of any compelling parking survey to suggest otherwise, I afford the Council's empirical evidence considerable weight.
12. Paragraph 111 of the National Planning Policy Framework (the Framework) says that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety and instances of such might have arisen.
13. From my site visit observations, during the late morning, Beatrice Avenue, immediately beyond Roland Lane, has unrestricted kerbside parking and there was a significant amount of spare kerbside capacity. Admittedly, this is only a snapshot in time but, given the general absence of vehicles parked at the kerbside, and the fact that a number of dwellings have on-site parking provision, I am satisfied that if cars taking children to the nursery parked in Beatrice Avenue, and then later did the same when picking children up, there would likely be little, if any, objection from local residents as to the safety issue compromised by drivers of vehicles attending the premises.
14. In the circumstances, and as the appellants have already acknowledged the importance of staggering arrivals and departures by drawing up the Indicative Weekly Timetable, further work needs to be done by the management to direct cars away from Roland Avenue. It would be helpful if, where possible and convenient, the appellants could firmly encourage that the children are accompanied to and from the premises on foot. Accordingly, such an initiative could be incorporated into a child-minding facility management plan.
15. When consulted on the planning application relating to Appeal B the local highway authority LHA), Essex County Council raised no objection to the proposal, indicating that adequate off-street parking is retained for the dwelling within its curtilage. The LHA headed its letter of response with the wording of the proposal itself and mentions the loss of the garage from its previous purpose, and thereby must have reasonably taken into account the introduction of the child-minding use.
16. The appellants say that Roland Lane has sufficient manoeuvring room in accordance with the Essex Design Guide. This might be possible in terms of dimensions, but this does not take into account the actual circumstances or the vehicular obstructions which the use has apparently given rise to in Roland Lane. The implication from the appellants that the current situation is adequate and such parking practice should continue is a rather irresponsible approach and would only perpetuate the situation. Moreover, although this is covered by civil law, and is outside the scope of the planning acts, there is no right to park on a private road; this right is only held by the owner(s). Accordingly, failure to observe this amounts to trespass.

17. Policy T8 of the Council's adopted local plan (LP) incorporates parking standards which have not been updated since 2009. As the dwelling at no 3 has more than two bedrooms a minimum of two on-site spaces are required. With space for four vehicles two spaces would be available for use by the child-minding staff. On the face of it, whilst the use is not precluded by the availability of off-street parking space, the problems arise from people driving their vehicles into Roland Lane in their attempt to park short term, and this practice needs to stop if the child-minding use was to be considered appropriate in its setting.

Living conditions

18. LP policy EC3 serves to guard against developments which would have significant adverse effects on the amenities of neighbouring residential occupiers, and this is reflected in the guidance from paragraph 185 of the Framework.
19. There has also been objections from neighbouring occupiers as to resultant noise disturbance arising from the use. When widening the local context I note the close proximity of St Joseph's Catholic Primary School. This is accessed from Vaagen Road, and its playing fields beyond lie immediately to the rear of the properties at the end of Roland Lane. Given this proximity, and with over 200 children attending the school, it would be most surprising if the source of any noise disturbance was mainly attributable to the children at the child-minding facility.
20. Besides, at my site visit the owner of no 3, in showing me round the premises, explained that the small area of rear garden beyond the left-hand side of the garage, used by the children, was also used in a staggered fashion to minimise noise breakout that might potentially arise. Whilst the garage building itself will provide attenuation in this regard the management plan should incorporate details of such. With a considerate rota the propensity for impacting on the living conditions of neighbouring occupiers would significantly lessen.

Character

21. It is not unusual for registered child-minding facilities to operate from residential properties. From my findings here, though, I would suggest that the character of the appeal property and its immediate surroundings has been altered due to the unrestricted operation of the child-minding use. The consequences, either real or perceived, has almost certainly impacted on some local residential occupiers which has brought about the objections to the development.
22. That said, accommodating a maximum of 15 children within the extended former garage, need not result in adverse impacts if it was managed with vehicles parked short-term in a more considerate fashion and, moreover, outside of Roland Lane. Such a measure could be actively encouraged and monitored by the appellants.
23. The enforcement notice refers to local signage in evidence to promote the local use. Whilst I did not witness this first hand – and it is indicated that the child-minding facility is now somewhat established – I would question the need for such.
24. Accordingly, having regard to Paragraph 130 of the Framework which advises that new development should function well and be sympathetic to local character, despite the introduction of such a use into Roland Lane I am satisfied that with effective management local character need not be compromised and the intended mixed use with the dwelling occupied as a single family dwellinghouse need not cause local detriment.

Flood risk

25. The Environment Agency (EA) has requested a Flood Response Plan in readiness for any such event. I note the EA's comments and, in the circumstances, I am satisfied that, given the Zone 3 location, such a plan is a necessary requirement here.

Other Considerations

26. Notwithstanding the letters from local residents raising concerns as to the resultant consequences of the child-minding facility operation I have also had regard to the various letters of support from interested parties.
27. The appellant refers to a child-minding service having been approved recently by the Council at Sydervelt Lodge, Sydervelt, which is in the locality. I have no direct knowledge of this case and the particular circumstances involved. Besides, each proposal should turn on its individual planning merits and/or impacts, and parallels are not easily drawn. Accordingly, I attach little weight to this earlier planning permission.

Conclusions and Conditions

28. Having examined all the evidence and visited the premises I consider the fact that the child-minding facility has been operating to date without restrictions that one would normally expect has largely contributed to the local opposition to the use. In particular, this is seemingly proven in terms of the inconsiderate practice of visitors parking within Roland Avenue. Further, and as a consequence this likely leads to the perception that the child-minding use is significantly responsible for disturbance to the living conditions of neighbouring occupiers.
29. In other words the use would appear to have been poorly managed insofar as the consequences highlighted have not been effectively addressed. The appellants might think otherwise but the evidence suggests that is the reality of the situation. Its continuation, without appropriate planning restrictions, would therefore be likely to give rise to continuing adverse impacts. The fact the use is already operating is likely the reason why the Council has not suggested that the use should continue subject to a time limitation condition in order that its operation can be further monitored.
30. However, an alternative approach is to require that comprehensive details as to the management of the use should be contained in a plan, incorporating the restrictions recommended by the Council, and are submitted for the authority's subsequent written approval. The Council can adjudge and determine whether the details and intentions are adequate. If they are then the use will need to be operated in accordance with these so as to ensure that measures of mitigation are employed in a clear attempt to alleviate problems previously experienced. Should the approved details not be observed then the Council holds regulatory powers to enforce this.
31. Given the circumstances and the clear local need for the child-minding facilities – indeed, this is the case nationally – in reaching my decision I have attempted to balance out the above and the potential disruption this would cause the children, whilst also looking to employ measures to protect the living conditions of residential occupiers within Roland Lane.

32. I sympathise with those local residents who have had genuine cause for concern. However, if I was to dismiss the appeal and refuse planning permission then, in the absence of any ground (g) appeal, the use would cease in five months time.
33. Whilst this might be seen by some as a solution to past problems it would be final, and would not take into account that highway safety problems can be potentially ameliorated. From my site visit observations I am not convinced, if managed correctly, that the child-minding facility cannot satisfactorily co-exist with the surrounding residential uses. There are many examples where co-existence works. That said, if the problems evident from photographic evidence provided persist then, as mentioned, remedial measures can be employed by the Council.
34. As regards conditions, in addition to a restriction on the number of children present at any one time and the hours of use, the said management plan and also a flood response plan (as considered necessary by the Environment Agency), as part of a retrospectively worded condition, are both required.

Timothy C King

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The child-minding facility, hereby permitted, shall be accommodated within the property's former garage and not within the dwelling itself, shall operate with no more than 15 children in attendance at any one time.
- 2) The use hereby permitted shall not operate outside the hours of 07:30 – 17:30, Monday to Friday only, and at no other times whatsoever.
- 3) The use of the building as a child minding facility, hereby permitted, shall cease within two months of the date of failure to meet any of the following criteria:
 - (i) Within three months of the date of this decision, a child minding facility management plan, providing details of how the use will be managed in its entirety, with any updates in the 'Indicative weekly timetable' incorporating a parking strategy thereto, and also a flood response plan, shall both be submitted to the local planning authority for subsequent written approval.
 - (ii) Within nine months of the date of this decision both the management plan and the flood response plan shall have been approved in writing by the local planning authority or, if the local planning authority refuses to approve the details or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State.
 - (iii) If an appeal is made pursuant to (ii) above, that appeal shall have been finally determined and the details approved by the Secretary of State. If the appeal is dismissed, then the use shall cease within two months, accordingly.
 - (iv) The approved scheme shall have been implemented in accordance with the approved timetable and operated accordingly with the approved details thereafter.