



Appeal Decision

Site visit made on 11 April 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2023

Appeal Ref: APP/M3645/W/22/3295508

32 Verdayne Gardens, Warlingham CR6 9RN

- 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 Ms Louise McGuckin against the decision of Tandridge District Council.
 - The application Ref 2021/1636, dated 8 September 2021, was refused by notice dated 16 December 2021.
 - The development proposed is mixed use of the dwelling for residential and childminding purposes.
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Decision

1. The appeal is allowed and planning permission is granted for mixed use of the dwelling for residential and childminding purposes at 32 Verdayne Gardens, Warlingham CR6 9RN in accordance with the terms of the application, Ref 2021/1636, dated 8 September 2021, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. As indicated on the application form, the appeal property has been used for childminding since May 2014. Therefore, at time of my site visit the proposal had been implemented and the childminding use of the site was operational.

Main Issue

3. The main issue in this appeal is the effects of the proposal on the living conditions of the occupiers of neighbouring dwellings, with particular regard to noise and privacy.

Reasons

4. The appeal property is a semi-detached dwelling located on a residential street. The appellant operates a childminding service from the ground floor rooms and rear garden of the appeal property. The appeal property continues to function as a dwelling and retains the appearance of a dwelling within the street scene, with no external indication of a business use. The proposal involves no external alterations to the dwelling but seeks its change to a mixed use which reflects the characteristics of the childminding business which I understand has grown in scale over time.
5. The rear garden of the appeal property is modest in size and comprises a patio and an all-weather turf area. From my site visit I noted the garden space includes a climbing frame, football goal, and a range of outdoor toys. The garden therefore appears capable of providing play opportunities for multiple

children at the same time. Where excessive noise levels arise from use of the garden by many children at once, those neighbours who share a boundary with the rear garden would be most greatly affected, namely the occupants of Nos 28, 30 and 34.

6. The garden is surrounded by a tall, close-boarded fence along its perimeter which generally restricts overlooking and provides a good standard of privacy between the appeal property and neighbouring dwellings. However, the climbing frame marginally exceeds the height of the fence and is positioned at the rear corner of the garden, close to the side and rear boundaries with Nos 34 and 28. Opportunities to overlook gardens and rooms at those properties would arise when children climb onto the upper sections of the climbing frame above the height of the fence.
7. Representations made by local residents suggest the number of children playing in the rear garden sometimes generates unacceptable levels of noise, throwing of toys has resulted in damage to property, and the use of the climbing frame by children creates a loss of privacy from overlooking of rear gardens and habitable rooms. Some residents have complained of feeling unable to use their gardens due to disturbance caused by the childminding facility. Based upon my observations and the comments provided by neighbours, I consider the operation of the childminding facility adversely impacts upon the living conditions of occupants of neighbouring dwellings.
8. The appellant indicates that the facility has staffing levels sufficient to care for up to 18 children at the same time, whilst comments from neighbours suggest that at times more than 20 children have been cared for on site at once. In addition, whilst the appellant has provided details of its operational hours, some neighbours have complained of noise from the garden at unsociable times. Whilst there is disagreement between parties, the evidence nonetheless suggests the intensity and duration of the use of the rear garden as part of the childminding operation contributes significantly to harm to the living conditions of neighbours.
9. Paragraph 55 of the National Planning Policy Framework (the Framework) requires decision-makers to consider whether otherwise unacceptable development could be made acceptable through use of conditions. The Council's Environmental Health Officer recommended that noise be controlled through imposing a maximum limit on the number of children cared for and restricting use of the garden to 5 children at any one time, along with protocols for staff to deal with noisy children. The appellant has expressed they would welcome the imposition of a condition to this effect.
10. In its delegated report, the Council suggests that even if such a condition were imposed, the use would erode the residential character of the area. However, an element of noise and overlooking is not uncharacteristic within residential areas and is not necessarily harmful, for example, small numbers of children playing outdoors or through natural overlooking of gardens. Furthermore, small-scale childminding operations are relatively common in residential areas and can normally be provided without need for planning permission.
11. I therefore consider that the excessive noise and harm to privacy which I have identified above can be curtailed to acceptable levels through imposition of planning conditions, namely through managing use of the outdoor play space

and by specifying the childcare facility's hours of operation. Accordingly, I have attached such conditions to my decision.

12. In addition, concerns were raised by the Council and by neighbours regarding the number of vehicle movements and the effects of stopping vehicles on living conditions for occupants of nearby properties. Whilst the carriageway is relatively narrow, during my site visit I noted that on-street parking is not restricted along Verdayne Gardens. Dwellings are set back from the carriageway by pedestrian footways, grass verges, and modest front gardens and driveways. A dropped kerb spans the full width of the appeal property, and its driveway provides parking for three vehicles. In addition, a public car park serving a recreation ground is located a short distance from the appeal property. Therefore, whilst the childminding service would generate vehicle movements from visiting parents/carers or staff throughout its operational hours, and vehicle movements would be visible from nearby properties, I do not consider this would amount to harm to living conditions. However, to secure the site's parking provision, I have attached a condition to my decision requiring the driveway remains available for vehicle parking in perpetuity.
13. Subject to the conditions attached to this decision, I consider that the proposal would not harm the living conditions of neighbouring dwellings, with particular regard to noise and privacy. The proposal would therefore comply with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7 of the Tandridge District Local Plan: Part 2 – Detailed Policies 2014 which together require proposals to not significantly harm the amenity of the occupiers of neighbouring properties by reason of overlooking, noise and disturbance.

Other Matters

14. Some residents suggested that the childminding facility would be better suited to commercial premises elsewhere. However, the conditions I have imposed in respect of the use of the outdoor play space and operational hours will ensure the facility is compatible with a residential area.
15. Whilst some comments raised concerns regarding the effects of the proposal on property values, this is not a matter relevant to my decision. It was also suggested that approval of the proposal may encourage other residents to create businesses from home. However, the proposal relates to the specific circumstances of an existing childminding business. I am satisfied that the proposal would not introduce an unwanted precedent for other development elsewhere in the area, and any future applications submitted in the area, should be considered on their own merits by the Council.

Conditions

16. In the interests of certainty, I have attached a condition specifying the approved plans. In addition, the Council has supplied suggested conditions which I have considered against the Framework's tests.
17. To limit noise to acceptable levels and to provide adequate privacy for occupants of neighbouring properties, I have attached to my decision the Council's suggested condition requiring a Play Space Management Plan be submitted and approved in writing. Since the proposal has already been implemented, I have required the management plan be submitted within 3 months of the date of this decision. Based upon the recommendation of the

Environmental Health Officer, I have reduced the limit for the maximum number of children permitted to use the outdoor play area at any one time.

18. In addition, to ensure adequate living conditions for occupants of neighbouring dwellings, I have included a condition which specifies the operational hours of the childcare facility. This precludes use of the garden for childminding purposes during early mornings, evenings, weekends, and public holidays.
19. To ensure that vehicle movements associated with the childcare facility are not detrimental to the living conditions of occupants of neighbouring properties or to highway safety, I have included a condition requiring the existing parking area be retained for this purpose.

Conclusion

20. For the reasons given above, having regard to the development plan taken as a whole, and all other relevant material considerations, I conclude the appeal should be allowed.

E Dade

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawings nos. P01; (--) 03 Rev E; (21) 02 Rev C.
- 2) Within 3 months of the date of this decision, a Play Space Management Plan shall be submitted for the written approval of the local planning authority and will demonstrate that no more than 5 children will play outside at any one time and will include a strategy to manage the behaviour of children using the outdoor play space. Thereafter, use of the outdoor space should be managed in accordance with the approved management plan.
- 3) The childminding facility is to be operated between the hours of 07:30 to 18:30 Mondays – Fridays only and shall not be operated at any time on Saturdays, Sundays or Bank Holidays. Children using the facility are only to use the outdoor play area from 09:00 -18:00 Mondays - Fridays.
- 4) The existing on-site parking area shall be retained and kept available at all times for the parking of vehicles.

End of Schedule