



Appeal Decision

Site visit made on 22 August 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2023.

Appeal Ref: APP/A1720/W/23/3314632

Land adjacent to No.8 Northway, Titchfield, Fareham PO15 5EE

- 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 Andrew Martin (Amey Defence Services on behalf of Defence Services Infrastructure) against the decision of Fareham Borough Council.
 - The application Ref P/22/0550/FP, dated 12 April 2022, was refused by notice dated 14 July 2022.
 - The development proposed was described as 'proposed play area for age groups 0-12 years old'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development was carried out prior to the planning application. After the Council's decision the play area was closed pending the outcome of the appeal.
3. After the appeal was lodged, the Council adopted the Fareham Local Plan 2037 (the LP). The appellant has considered the LP in final comments. The main parties agree that Policies DSP2 and DSP3 of the Fareham Local Plan Part 2 June 2015, cited in the Council's decision notice, have been superseded by LP Policy D2. I have, therefore, determined the appeal on this basis.
4. The Government published a new National Planning Policy Framework on 5 September 2023 (the Framework). The changes to national policy are not relevant to this appeal.

Main Issue

5. The main issue in this appeal is the effect of the play area on the living conditions of the existing occupiers of neighbouring houses including Nos.7 and 8 Northway in respect of noise and associated disturbance and, additionally, with regard to privacy at Nos.7 and 8.

Reasons

6. The play area is situated towards one corner of a large square of mostly open grassland. It is 225m² in area and play equipment includes swings, a track rider, slide, seesaw, carousel and two towers with climbing frame or raised platform suitable for children up to age 12. It is enclosed by a 1m high galvanised fence with two picnic tables and bench seats next to it. The grassland and play area is owned and maintained by the Ministry of Defence (MoD) as a public open space (PoS). It is surrounded by family sized houses, some occupied by MoD service personnel and others privately owned.

Some of these houses directly face the play area or towards it, some are side on to it and others back onto it. Albeit a snapshot, at my visit the play area is in a largely tranquil residential area.

7. Though not part of the development plan, the Council's adopted Design Guidance Supplementary Planning Document December 2015 (the SPD) is engaged in this appeal and referred to in the explanatory text to LP Policy D2.
8. The SPD sets out in words that play equipment in public spaces should be located a minimum distance of 20m from residential properties to avoid disturbance to neighbouring homes. While the appellant has referred to this dimension as between 'play equipment' and 'habitable rooms' the text of the SPD states 'properties', which in my view includes gardens. The relevant illustration in the SPD appears to show this dimension from the edge of a play area to the edge of a property boundary. This would reflect that children could play across the entire soft safety surface of the play area, beyond the position of the individual items of play equipment inset on it.
9. By this measure, and according to the red line defining the appeal site in the location plan¹, the edge of the play area (excluding the access path) is 20m from the ends of the back gardens of houses to the north and further from their rear elevation windows. A narrow 1m strip down the length of the back garden of the house to the east is 19m from the edge of the play area and windows in this house are at least 20m away, though the picnic area is some 3m closer. The play area is between 10m to 15m from the open plan front gardens of the houses to the southwest, south and southeast (including part of the back garden of the house to the southeast). Only the house to the south has front elevation windows within 20m (19m) of the play area.
10. However, the dimensions of the play area in the Komplan Ltd 'Titchfield Estate Play Area' plan² (the layout plan) show a materially different size and extent for the play area in relation to the PoS and some adjoining properties. As a result, there are significantly reduced distances to some or all the neighbouring houses or gardens that I refer to in the paragraph above. There is no definitive topographic site survey plan of the play area in relation to these properties. In these circumstances and bearing in mind that the distances set out above are already below, at or very near 20m, I cannot be certain about the appellant's claims in this regard. Nor about exactly how far, or not, the play area infringes the 20m SPD guideline in relation to these houses or gardens.
11. Notwithstanding the above, in both plans the play area is at most 5m from the side elevation and the closest parts of the front and rear elevations and back garden of No.8 Northway. In the site location plan it is 12m from the closest parts of the front and rear elevations and back garden of No.7 Northway, which forms the other half of this semi-detached pair of houses. According to these plans both properties are, therefore, substantially closer to the play area than the 20m SPD guideline, especially No.8.
12. It has not been suggested that the play equipment is inherently noisy in operation. The play area would not likely be used by any children for a large part of weekdays during school term times. However, it is a good sized, useable area with level access, contains a wide range of good quality play

¹ Dated 9 March 2022

² Drawing number CAS-109959-VOC7F3 Revision A

equipment and is conveniently located as part of the PoS. There is provision for parents who want or need to sit or supervise their children and it is in plain sight of some nearby dwellings.

13. This safe environment for play would therefore likely be popular and well-used by children who could walk or cycle from nearby houses or slightly further afield. There will be periods of quieter activity or laughter that adds positively to the ambience of the local area. But it is inevitable, in my experience, that some exuberant activity including shouting, screeching and screaming, or crying and conflict, is an integral part or consequence of play by most young children up to age 12. While these circumstances might mirror what could happen in individual private back gardens, it would not have the same cumulative localised focus as in the play area.
14. As a result, there is a high likelihood of distinctive noise and associated disturbance generated by children in or next to the play area during the week after school, in late afternoon or early evening. Also, at weekends and in school holidays, including during longer summer daylight hours and over this more prolonged school holiday period.
15. The play area is not lit and a nearby streetlamp would not likely cast any appreciable light over it, so mitigate against its proper use by younger children during dusk or darkness. But it is at least possible that these conditions could attract older teenage children to gather at or in the play area for reasons or purposes other than play, with a distinctly different presence or atmosphere. Even if this occurred infrequently and did not result in actual anti-social behaviour, the proximity and secluded nature of such activity would likely give rise to a tangible, disagreeable perception of anti-social behaviour or uncertainty about intent.
16. Accordingly, there is clearly scope for significant sustained or intermittent intrusive noise and associated disturbance to be generated because of the play area. There is no evidence that the control of any such noise or associated disturbance would be in the remit of the Council's statutory nuisance powers or a matter for the Police unless criminal in nature. Anyway, adverse effect on residential amenity can occur in circumstances below statutory nuisance.
17. While the side windows in No.8 are not for habitable rooms, opening these windows for ventilation or fresh air, including on warm days, would allow noise or disturbance to permeate into this house, including main living areas. Furthermore, open front and rear facing windows in Nos.7 and 8 are also so close that noise would enter directly into habitable rooms and also across the back gardens. Activity in or next to the play area in such proximity would, therefore, have an unacceptable adverse impact on the internal and external living conditions of the occupiers of Nos.7 and 8 and potentially on some or all the occupiers of the other neighbouring houses that I have referred to above which may be within 20m of the play area.
18. This would include times of the day or evening and at weekends when residents would ordinarily anticipate more peaceful or uninterrupted enjoyment of their properties for normal domestic activity, such as relaxing or entertaining. These conditions would not be conducive to normal expectations for satisfactory living conditions and appreciably undermine people's enjoyment of their properties.

19. The PoS can be used for informal children's play and this would continue irrespective of the outcome of this appeal, including potentially on that part where the play area is now situated. This could have a detrimental effect on the living conditions of the occupiers of neighbouring houses, especially Nos.7 and 8, but this possibility is long-standing. Furthermore, there is no evidence that such activity was, or would be, at the same intensity or nature of use as at the play area or necessarily on this same part of the PoS. It is, on the face of it, no more likely to be used for informal play or other activity than most of the rest of the PoS including more central parts.
20. Some service personnel and their families might occupy some of the nearby houses for quite short periods, including Nos.7 and 8. However, there is no apparent reason why this means, as the appellant suggests, that while they are living here they are intrinsically less sensitive or susceptible to the effects of noise and disturbance from the play area. The adverse impacts on living conditions would be the same as that experienced by private occupiers of houses. Local and national planning policy and the SPD does not differentiate between tenure types in this respect and nor do I. Unsatisfactory living conditions would be experienced while service personnel were in occupation.
21. After the appeal was lodged the MoD erected a 1.8m high close boarded fence around the back gardens of Nos.7 and 8 to replace low-level wire mesh fences. There is no evidence that they are acoustic fences or would significantly reduce noise or disturbance. However, they do prevent overlooking of both back gardens at ground level next to the play area, thus also from in the play area. The raised platforms and climbing frames did not appear to me to be sufficiently high or near enough that children up to age 12 (or older children or even adults) would have unduly intrusive views into these back gardens over the fences. Such views would anyway likely be mostly fleeting or glimpsed in nature. Some views from these positions towards other neighbouring houses or gardens would be appreciably more distant so not unduly intrusive.
22. There is no scheme or clear explanation that additional screening and boundary treatments around the appeal site, which could be secured by a condition, would mitigate potential noise or disturbance and no objective evidence that soft landscaping attenuates transmission of noise or disturbance. Nor that that additional fencing, including an acoustic fence, could be installed in an appropriate way that achieved tangible noise or disturbance mitigation without restricting use of the play area or detriment to the character or appearance of the area. A planning condition to control use of the play area to certain times of the day or days of the week would not be reasonable or enforceable.
23. I appreciate that strict application of the 20m SPD guideline may mean that there is nowhere in the PoS that the current layout and configuration of the play area (or any equipped play area) could be sited and not infringe this measure. However, there is no objective evidence before me to confirm this. Nor to suggest that there is a local circumstance or exceptional reason to depart from this guideline, or by how much might be justified, such as a noise assessment prepared by a suitably qualified professional. In these circumstances the play area as it currently exists and positioned is fundamentally too close to No.7 and, especially, No.8 as well as potentially to other neighbouring houses or back gardens.

24. I have been referred to a play area near the site redeveloped for housing following outline planning permission granted by the Council³. It was close to some existing houses and contained some play equipment, but it is not clear (including from the plan provided) what sort and if enclosed or screened in whole or in part by any fence or wall. In any event, the Council's decision was in the context of a different development plan and national planning policy and, in particular, before the Council adopted the SPD. This case is not, therefore, directly comparable to the current appeal which I have determined on its individual planning merits.
25. Taking all the above into account, I find the appellant has not demonstrated that the play area has no unacceptable adverse impact on the living conditions of the existing occupiers of neighbouring dwellings to the north, east and south in respect of noise and associated disturbance. Even if there was no such harm, there is significant harm to the living conditions of the existing occupiers of Nos.7 and 8 Northway in respect of noise and associated disturbance. There is no harm to the living conditions of the existing occupiers of these two properties regarding privacy. Nonetheless, the play area is contrary to LP Policy D2. This policy requires development to ensure good environmental conditions for all existing neighbouring occupants of buildings and users of external space.

Other Matters

26. I have had due regard to the appellant's retrospective community consultation exercise and to the many residents comments at application and appeal stages. This includes people who live close to the play area as well as others further away, including objection and support. It also likely includes people with and without resident dependent children. There is no prevailing consensus of public opinion and not in itself unusual or a determinative factor in my decision. I have considered the appeal in the wider public interest and on matters of acknowledged planning importance.
27. A planning condition could ensure appropriate provision and maintenance of litter and dog waste bins, including for the picnic area. The effect of development on the value of private property is not a material planning consideration and there is no right to a private view. Alleged damage to private property is a civil matter between the respective parties or the Police, as is alleged speeding vehicles or inconsiderate drivers.
28. The Council did not object to the play area for reasons of accessibility by children using or crossing local roads, including on cycles, nor did the Highway Authority (HA); nor for reason of inadequate on-street parking if vehicles take some children to and from the play area. Warning signs or markings on the road would be a matter for the HA if on the public highway or the landowner if on private roads. Alleged non-compliance with health and safety legislation is a matter for the relevant public body. Aside from anecdote or speculation, no matter how well informed, there is no substantive evidence to the contrary in these regards.

Planning Balance

29. The Council did not object to the principle of a play area in the PoS but, in essence, to the precise location and arrangement of this play area in relation to

³ P/10/0970/OA

neighbouring houses or gardens. I have no reason to doubt that a significant public cost has likely been expended by the MoD to establish this community facility and with the best of intentions. Despite play areas elsewhere in the vicinity of the site there is inadequate provision of children's play space in the Borough and the play area is not far from where one was previously provided. The play area is in the best interests of children's health, physical and social development and their well-being including friendships and life skills. It is aligned with objectives of the Framework to promote social interaction (including in this case parents), community cohesion and enable healthy lifestyles, including by provision of shared spaces with recreational facilities for outdoor physical activity. As such, I consider that these social and economic benefits have significant weight in support of the play area.

30. However, the play area has resulted in a largely unexpected, appreciable negative change to the living conditions of the existing occupiers of Nos.7 and 8 Northway and potentially at other neighbouring houses. The presence of the play area would likely be a factor in a decision by a prospective future resident to live near it. But existing established residents do not have that discretion, other than that some may decide it is necessary to take drastic action to sell their house or vacate a tenancy and move away. In this case, even these outcomes may not be available to service personnel and their families who may be reliant on assignment to living accommodation or have little or no personal choice in such matters. In any event, and albeit in this case that it may apply to a relatively small number of residential properties, existing residents should not have to take, or endure, unduly punitive remedial measures, such as closing windows or changing behaviours in response to new development.
31. Accordingly, in my view, the harm from the play area to the living conditions of existing residents and their lives is a paramount factor, consistent with objectives of the Framework to achieve well-designed places that function well with a high standard of amenity for existing users. Additionally, to ensure safe places so that crime and disorder, and the fear of crime, do not undermine quality of life or the health and well-being of existing residents. I therefore give substantial weight to these social and environmental considerations against the play area.
32. The benefits of the play area do not, therefore, outweigh the harm.

Conclusion

33. The play area does not accord with the development plan taken as a whole and conflicts with relevant provisions of the Framework. There are no other material considerations which override these findings.
34. Consequently, for the reasons given above the play area is unacceptable and the appeal does not therefore succeed.

Robin Buchanan
INSPECTOR