



Appeal Decision

Site visit made on 17 August 2023

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 27 September 2023

Appeal Ref: APP/M4320/W/23/3318186

Chatterbox Nursery, 18 Avondale Road, Southport PR9 0ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Taylor against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2022/01460, dated 18 July 2022, was refused by notice dated 15 September 2022.
 - The original application sought planning permission for the change of use from a hotel to a day nursery on the ground floor and owners' accommodation on the upper floors (Ref: 93/0672/N). The appeal relates to a subsequent planning permission (Ref N/2004/0467) for the variation of condition 5 attached to planning permission 93/0672/N. The application sought variation of conditions to allow for a maximum of 26 children on the premises without complying with some of the conditions attached to planning permission Ref N/2004/0467, dated 22 June 2004.
 - The conditions in dispute are Nos 3, 4 and 5 which state that: (3) The total number of children/babies shall not exceed 26. (4) The development hereby granted shall be carried out strictly in accordance with the details and plans hereby approved and shall not be varied other than by prior agreement in writing by the Local Planning Authority. (5) The premises shall not open for business outside the hours of 07:30 - 18:00 on weekdays, and 11:00 - 15:00 on Saturdays and at no time on Sundays or Public Holidays.
 - The reasons given for the conditions are: (3) In order to protect the character and residential amenity of surrounding properties/occupiers. (4) To ensure a satisfactory development. (5) To ensure that nearby properties are not adversely affected by the development and to comply with Sefton UDP Policy H15.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a hotel to a day nursery on the ground floor and owners' accommodation on the upper floors, as varied by planning permission Ref N/2004/0467 dated 22 June 2004, at Chatterbox Nursery, 18 Avondale Road, Southport PR9 0ND in accordance with the application Ref DC/2022/01460, without compliance with conditions Nos 3, 4 and 5 previously imposed on planning permission Ref N/2004/0467 dated 22 June 2004, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr & Mrs Taylor against Sefton Metropolitan Borough Council. This application is the subject of a separate Decision.

Background and procedural matters

3. The appeal property was originally granted planning permission in 1994 for the change of use from a hotel to a day nursery on the ground floor and owners' accommodation on the upper floors (Ref: 93/0672/N). Condition No. 5 of that permission stated that the total number of children shall not exceed 20.
4. In 2004, planning permission was granted for the variation of Condition No. 5 attached to planning permission 93/0672/N to allow for a maximum of 26 children on the premises (Ref: N/2004/0467). In summary, conditions Nos. 3, 4 and 5 of the 2004 permission stated that the total number of children/babies shall not exceed 26; the development granted shall be carried out strictly in accordance with the approved details and that the premises shall not open for business outside the hours of 07:30 - 18:00 on weekdays, and 11:00 - 15:00 on Saturdays and at no time on Sundays or Public Holidays.
5. The appeal application sought planning permission to vary conditions Nos. 3, 4 and 5 of planning permission No. N/2004/0467 to allow for 36 children/babies to be on site, allow the installation of an external fire escape (and use of first floor), and to limit the use of the premises to 07:30 and 18:00 on weekdays only and at no time on Saturdays, Sundays or Public Holidays.
6. The Council's Officer Report and Appeal Statement identifies that there is no objection to the proposed variation to condition No. 4. This would enable the use of first floor accommodation to provide two childcare rooms and the installation of an external emergency fire escape stair on the rear elevation, subject to the imposition of an appropriate planning condition requiring the provision of sound insulation.
7. Furthermore, there is no dispute between the main parties regarding the proposed variation of condition No.5 regarding operating hours which would remove the current ability of the nursery to open on a Saturday.
8. The evidence before me suggests that the Council does not object to the proposed increase in the number of children attending the nursery in so far as they are accommodated in the building. The Council's reason for refusal of the application is quite specific in defining the sources of noise that may affect the living conditions of local residents. This relates to the noise arising from a proposed increase in the number of children that would use the existing rear play area of the nursery.

Main Issue

9. The main issue is whether the variation of conditions 3, 4 and 5, pursuant to planning permission N/2004/0467, would be reasonable or necessary in the interests of the living conditions of the occupants of neighbouring properties, with particular regard to noise and disturbance.

Reasons

10. The appeal premises comprises a large Victorian semi-detached property, located on the north-western side of Avondale Road. It currently accommodates three childcare rooms at ground floor level, together with bathroom, kitchen facilities and an internal play room. The first floor is occupied by staff welfare, office and storage space. The existing external play area is located to the rear of the property and is approximately 62 sqm in area. This is enclosed by a brick wall, approximately two metres in height, and contains children's play equipment.
11. The surrounding area is predominantly residential in character with the attached property (No. 16 Avondale Road) having been converted into residential flats. Semi-detached dwellings and buildings sub-divided into flats are prevalent in the surrounding area.
12. There are currently no existing restrictions on how many children can occupy the external play area at any time. Whilst this technically means that all 26 children could currently occupy the play area at once, the Appellant's evidence sets out why this is never the case. In particular, for safety reasons the 0-2 years age group are not allowed to use the external play area at the same time as the 2 or 3+ age groups. Therefore, currently the external play area can only be used at a single time by up to 11 children in the 0-2 age group, or up to 15 children in the 2 and 3+ age groups.
13. The Appellant further indicates that the external play area is not used every day due to weather conditions. The 0-2 age group only use the area during warmer months with the other age groups typically using it for up to 3 sessions each day for approximately 30 minutes per session. Therefore, the existing external play area is typically used for approximately 3 hours per day. I have no contrary evidence to suggest that the numbers of children, or period of time that the age groups use the external play area, may be incorrect.
14. The appeal proposal would enable 9 additional children in the 2+ age group to be accommodated at the nursery with one additional place being allocated to the 0-2 age group. I accept the Appellant's view that the additional child proposed to join the 0-2 age group would not have anything more than a negligible effect upon any noise or general disturbance that may be generated by the other existing 11 children in this age group.
15. The proposed increase in the 2+ age group would amount to a total of 24 children. In my view, the external play area is insufficient in size to reasonably accommodate 24 children and supervisory staff in an external play session at any one time. In this regard, I accept the Appellant's proposal that the safe and sensible approach would be to sub-divide these children into two groups of 12 children and to run separate outdoor play sessions for each group. I have no contrary evidence to suggest that the typical frequency and duration of the external play sessions, as set out by the Appellant, would not be maintained. Thus, the play area would typically be used for 4.5 hours per day.
16. There are a number of residential dwellings which share a common boundary with, or are located in close proximity of, the external play area. However, the Council has not identified that the use of the existing external play area has given rise to any complaints regarding noise or disturbance arising from its use by children. Whilst a single objection to the appeal proposal was received

at the planning application stage, this was in respect of concerns regarding the potential impact on highways safety and local living conditions arising from the dropping off and picking up of children attending the nursery. This matter is considered later in this decision. Therefore, I have no evidence to suggest that the current use of the existing external play area has given rise to any unacceptable impacts on the living conditions of nearby residents.

17. The external play area has currently no restrictions on the hours that it may be used during the operational period of the nursery, as set out in condition No. 5 of planning permission No. N/2004/0467, nor any restrictions on the number of children who may use it at any one time within that period. The submitted evidence suggests that the proposed additional children are unlikely to result in a material change in the number of children that would use the external play area at any one time from that which currently occurs, albeit there would likely be an increase in the number of hours per day that it would be used.
18. Notwithstanding the Council's Statement of Case, I have taken into account the fact that the Council's Environmental Health Manager raised no objections to the appeal proposal. However, I recognise that this was in the context of the Appellant's proposed additional planning conditions and in particular a restriction on the use of the external play area to no more than 26 children at any one time. In this regard, I have taken into account some of the conditions suggested by the Appellant. In particular, the suggested conditions relating to a restriction in the number of children using the external play area at any single time, a restriction in its use to the hours between 10:00 and 16:00, and the submission of a management plan for the use of the external play area. In my view, the suggested conditions that seek to impose the above restrictions are capable of being monitored, are precise, reasonable and enforceable within the context of paragraph 56 of the National Planning Policy Framework (the Framework).
19. Whilst I recognise that no technical noise assessment has been produced by the Appellant, I have no technical evidence from the Council either regarding the potential for noise and disturbance. It is clear that the Council's internal technical consultee raised no objections to the proposal. I recognise that the potential for noise disturbance arising from children's voices exists. However, as a consequence of the similarities between the numbers of children using the external play area at any one time currently and the number proposed in the appeal scheme, I do not consider that the potential noise arising from the use of the external play area would likely to be any greater than that which currently occurs, albeit it may extend over a slightly longer period.
20. In my view, the proposed conditions, particularly in respect of the removing of Saturday opening would be to the betterment of neighbouring living conditions. Furthermore, there is no evidence that the current use gives rise to complaint regarding noise disturbance. In any event, there are also other statutory powers that can control any unlikely noise nuisance.
21. I have also taken into account the previous appeal decision in respect of a proposed increase in the number of children by 16 places (Ref: APP/M4320/A/09/2100473). However, I have no details of the evidence that was presented in that case regarding the use of the external play area. Furthermore, there are fundamental differences in the current appeal regarding the number of children places and the suggested restrictions now proposed by

the Appellant regarding the operation of the play area and the removal of Saturday opening. Consequently, I have determined the appeal before me on its own individual merits.

22. I have no compelling reasons to suggest that the appeal proposals would result in noise and disturbance of an extent that would be detrimental to the living conditions of the occupants of neighbouring properties, particularly in respect of the enjoyment of rear gardens or the extent to which windows may be opened. Furthermore, the suggested planning conditions would provide some degree of control over the use of the external play area beyond that which currently exists.
23. Taking the above factors into account, there would be no conflict with the relevant parts of Policy HC3 of the Local Plan for Sefton. This policy, amongst other matters, requires that non-residential development in Primarily Residential Areas should not have an unacceptable impact on the living conditions of neighbouring properties.

Other matters

24. I have taken into account the considerable support submitted by local residents in response to the appeal notification. Although no objections were received following this notification, I have also taken into account the concern of a nearby resident, submitted in response to the Council's consultation on the planning application, regarding the potential impact on highways safety and local living conditions arising from the dropping off and picking up of children attending the nursery.
25. The Council's Highways and Development Design section identified that the site has off-street car parking facilities for four vehicles fronting the building and that some on-street parking space is generally available on Avondale Road. It confirms that there is no recorded history of transport problems in the local area associated with the use of the nursery. Furthermore, the TRICS database has been reviewed which forecasts that the proposal would likely result in one additional vehicle trip movement every 15-20 minutes during the weekday morning (08:00 – 09:00) and afternoon peak hours (17:00 – 18:00).
26. Although the level of on-site parking provision falls short of the Council's required parking standards, the Highways and Development Design section identified that the proposal would not be expected to cause an unacceptable impact on highway safety or a cumulative impact on the local road network. I observed at my site visit that there was opportunity for on-street parking along most of the length of Avondale Road.
27. Taking into account the Council's assessment of the increase in the number of vehicular movements and the corresponding highway impact that the proposed development would likely cause, I concur that the proposal would be unlikely to cause an unacceptable impact on highway safety. Therefore, although this matter has been carefully considered, it does not alter the main issue which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council has not objected to the appeal scheme for this other reason.

Conditions

27. The advice contained within the Planning Practice Guidance (PPG) makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission. In allowing this appeal and granting planning permission I have considered the conditions imposed on the 2004 (Ref: N/2004/0467) planning permission. I shall impose all those conditions that I consider remain relevant and meet the advice contained within paragraph 56 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the PPG.
29. In addition to the standard time limit, I have imposed a condition (No. 2) relating to the approved plans in the interests of certainty. In order to protect the living conditions of local residents, a condition is also necessary to ensure that the appeal premises are used for a day nursery and for no other purpose (No. 3).
30. Also to protect the living conditions of nearby local residents, conditions are necessary requiring the submission and implementation of a sound insulation scheme (No.4), opening hours of the nursery (No. 5), restrictions on the number of children attending the nursery (No. 6). In the interests of promoting sustainable travel to the premises by means other than a motor vehicle, conditions are necessary requiring the submission of a Travel Plan and provision of cycle parking facilities (Nos. 10 and 11).
31. The Appellant has also suggested a number of additional conditions that were not contained within the original planning permission and were not agreed with the Council. In the interests of protecting the living conditions of nearby local residents, I consider that a condition restricting the use of the external play area to 26 children would meet the requirements of relevant guidance and would be consistent with the current permission which restricts the use of the premises to 26 children (No. 7). For the same reasons and justification, conditions limiting the hours of use of the external play area and the submission and implementation of a management plan for the use of the external play area are reasonable and necessary (Nos. 8 and 9).
32. The Appellant also suggested conditions restricting the use of the external play area for a period of 3 hours on any day and that play sessions shall not exceed 30 minutes. However, I agree with the Council these suggested conditions would likely be difficult to enforce. In any event, any additional controls on the use of the external play area can be secured through the submission and implementation of the management plan set out above. Consequently, I have not imposed these additional conditions suggested by the Appellant.

Conclusion

33. For the above reasons, taking into account the development plan as a whole, based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

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 approved shall be carried out in accordance with the following approved plans:
2020-110-P110 – Proposed Site Plan;
2020-110-P111 – Proposed Floor Plan;
020-110-P112 – Proposed Elevations.
- 3) The ground floor and first floor shall be used for a day nursery and for no other purpose (including any other purpose in Class E Commercial, Business and Service (formerly Class D1) of Schedule 2 Part A of the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, or any subsequent Order or statutory provision revoking or re-enacting that Order.
- 4) Prior to the first use of the first floor for providing childcare accommodation, a scheme of sound insulation for the first floor accommodation shall be submitted to, and approved in writing by the local planning authority. The approved scheme shall be implemented in full prior to the first use of the first floor for providing childcare accommodation and shall be retained thereafter.
- 5) The premises shall not open for business outside the hours of 07:30 – 18:00 on weekdays and at no time on Saturdays, Sundays or Public Holidays.
- 6) The total number of children/babies shall not exceed 36.
- 7) No more than 26 children shall be allowed to use the external play area to the rear of the building at any single time, other than in the event of an emergency.
- 8) The external play area shall not be used outside the hours of 10:00 and 16:00 on any day.
- 9) Prior to the nursery accommodating more than 26 children/babies, a management plan for the use of the external play area to the rear of the nursery shall be submitted to, and approved in writing by, the local planning authority. The management plan, amongst other matters, shall provide a fixed weekly timetable for the use of the play area. Use of the external play area shall only be undertaken in accordance with the approved management plan.

- 10) Prior to the first use of the first floor for providing childcare accommodation, a Travel Plan shall be submitted to, and approved in writing by, the local planning authority to encourage sustainable access to the site. The Travel Plan shall be implemented in accordance with a timescale approved in writing by the local planning authority. The use of the premises shall be undertaken in accordance with the approved Travel Plan.
- 11) Prior to the first use of the first floor for providing childcare accommodation, a scheme for cycle parking facilities shall be submitted to, and approved in writing by, the local planning authority. The approved cycle parking scheme shall be implemented in full prior to the first use of the first floor for providing childcare accommodation and shall be retained thereafter.