



Appeal Decision

Site visit made on 19 September 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2023

Appeal Ref: APP/K3605/W/23/3315393

Queensgate House, South Road, Weybridge, Surrey KT13 9JX

- 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 Dominic Manser of Queensgate Asset Management Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2022/2846, dated 15 September 2022, was refused by notice dated 10 November 2022.
 - The development proposed is the change of use to Office (Class E(g)(i) and/or Day Nursery Class E(f)).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use to Day Nursery (Class E(f)) at Queensgate House, South Road, Weybridge, Surrey, KT13 9JX in accordance with the terms of the application, Ref 2022/2846, dated 15 September 2022, subject to the attached schedule of conditions.

Preliminary Matters

2. On the application form, the description of development refers to the change of use from Office (Class E(g)(i)) to Office (Class E(g)(i)) and/or Day Nursery (Class E(f)). The application plans and supporting documentation refer to the proposed use of the appeal site for a day nursery. Given the existing office use of the appeal site, the Council have determined the application based on development comprising the change of use to a day nursery. I have determined the appeal accordingly and amended the description of development in the decision above to reflect this approach.
3. The appellant has submitted additional information with the appeal relating to acoustic boundary fencing. Whilst this detail does not involve a substantial difference or fundamental change to the application, I have considered whether accepting the additional information would cause procedural unfairness to interested parties. Due to the nature of the acoustic fencing and the number of representations made on the application, I am concerned that accepting the additional information at this stage would deprive those entitled to be consulted on an application the opportunity to make a representation. To clarify, my decision is based on the development proposals before the Council when the application was determined.

Main Issue

4. The main issue is the effect of the proposed change of use on the living conditions of occupants of adjoining residential properties, with particular reference to noise.

Reasons

5. The appeal site includes a two-storey detached building, an area of hardstanding used for parking and an area of grass adjacent to the building. Although vacant at the time of my site visit, the appeal site was previously occupied by an office. The proposed development comprises the change of use of the site to a day nursery for up to 70 children.
6. A Noise Impact Assessment¹ (NIA) prepared by a suitably qualified expert was submitted with the application. The NIA includes a baseline noise survey which captures the existing background noise levels over the proposed opening hours of the day nursery, taken at the office building facades closest to the nearest residential properties on The Square and High Pines Close. The baseline noise survey established the lowest average external ambient noise level was closest to The Square, measuring 41dB $L_{Aeq,15min}$. Given the office building is currently vacant, the existing background noise levels recorded represent the lowest possible levels on the site.
7. The area surrounding the appeal site has a mixed-use character, with commercial and residential uses located nearby. During my visit, I observed background noise relating to vehicle movements along Queens Road, and to a lesser extent South Road, as well as the occasional aeroplane whilst on the site and in the gardens of several properties nearby. The change of use of the site to a day nursery would result in a change in the type of noise generated inside the building as well as outside when the external play space is in use. Noise from vehicle movements, including from engines, stereos, the opening and closing doors, and conversations of children and parents/carers at drop off and pick up times would also be generated.
8. Using noise measurements obtained at an existing nursery with appropriate corrections applied to reflect the proposed class sizes, the NIA sets out the worst-case scenario noise levels likely within the various proposed nursery rooms and in the external play space. From this, the NIA predicts the noise levels anticipated from internal and external spaces of the nearest residential properties on The Square and High Pine Close. British Standards BS8233:2014² recommends that internal ambient noise levels should be below 35dB $L_{Aeq,16hour}$ in bedrooms and living rooms between 07:00 and 23:00. Based on noise travelling through the open windows of the day nursery and into the nearby houses, the NIA calculates the worst-case noise levels would be below the recommended BS8233:2014 noise levels. Furthermore, the largest increase in predicted noise levels from the baseline survey would fall into the 'none/not significant'³ category as per the IEMA's Guidelines for Environmental Noise Impact Assessment⁴.
9. In terms of noise levels in the external play area, the NIA predicts the average play area noise level based on a maximum of 40 children playing outside at any one time. Taking into account the distance to the nearest properties on High Pines Close and the existing close board boundary fence, the predicted noise levels reaching the bedrooms would not exceed the aforementioned BS8233:2014 recommendation.

¹ Prepared by Acoustics Plus Ltd dated 7 September 2022

² BS8233:2014 – Sound insulation and noise reduction for buildings

³ Less than a 2.9 dB L_{Aeq} change

⁴ Institute of Environmental Management and Assessment, Version 1.2 (November 2014)

10. World Health Organisation (WHO) Guidelines for Community Noise 1999 recommends that to protect the majority of people from being moderately annoyed during the daytime, outdoor sound levels should not exceed 50dB L_{Aeq}. When experienced at the centre of the nearest garden space on High Pines Close, the NIA confirms that the attenuation provided by the existing fence and applying the appropriate distance correction, 50dB L_{Aeq} would not be exceeded. Furthermore, even if residents of neighbouring properties consider that the levels will be intolerable, the NIA concludes that the increase from existing baseline levels would be 'none/not significant' based on IEMA standards. Whilst I am sympathetic to the desires of nearby residents to enjoy their homes and gardens in peace and quiet, I am also mindful of the existing permissible use of the site and its location within a mixed-use area. That being the case, it is reasonable to expect there would be noise from and associated with the activities on and surrounding the site should the building be used as office space, as permissible.
11. In the Officer Report and statement, much of the Council's concerns with the NIA relate to the lack of additional information provided beyond what was submitted as part of previously refused applications⁵. However, although the proposed development is unchanged from the refused schemes, based on the evidence before me, the NIA was completed correctly, and all relevant matters were taken into account. Furthermore, the Council has not disputed the methodology nor the findings of the NIA. Although assumptions were made as part of the NIA relating to the hours of operation, number of children and use of the play area, conditions can be attached to the grant of planning permission to ensure these elements are not exceeded. As there is no substantive evidence to suggest that the technical calculations in the NIA or its conclusions are incorrect, unreliable or lack detail, I have no clear reason to disagree with the findings of the NIA.
12. Consequently, I conclude that the proposed change of use would not cause unacceptable harm to the living conditions of occupants of adjoining residential properties, with particular reference to noise. It would accord with Policy DM5 of the Elmbridge Local Plan Development Management Plan (the Local Plan). This policy expects all development that may result in noise emissions to incorporate appropriate attenuation measures to mitigate the effect on existing and future residents.
13. Policy DM2 of the Local Plan is also listed on the decision notice. Whilst this includes matters relating to the amenity of adjoining occupiers, these are limited to outlook, daylight, sunlight and privacy. No reference is made to noise in this policy or its supporting text. Therefore, this policy is not determinative in my decision.

Other Matters

14. Representations have been made by several interested parties, including concerns about the increase in traffic due to the proposed development and the methodology followed within the Transport Statement⁶ which accompanied the application. No issues were raised in this statement relating to pedestrian safety, access for emergency services and the availability of turning space near the site, with the conclusion that the impact on the road network would be less

⁵ Council refs 2021/1879 (and subsequent appeal APP/K3605/W/21/3289310) and 2022/1036

⁶ Prepared by Transport and Traffic Consultancy dated August 2022

than the permissible use of the site for offices. Interested parties have also highlighted the on-street parking situation on South Road near the appeal site, particularly between 08:00-10:00. I visited the site within this timeframe and observed that, whilst the majority of on-street parking spaces were occupied, there was sufficient room for vehicles to travel safely along the narrow road. I saw no evidence of illegal or dangerous parking, and the on-street parking restrictions were clear.

15. I also note that the County Highway Officer (CHO) accepts that the revised Transport Statement provides a more thorough assessment, additional modelling and justification to overcome the highway concerns on the previously refused applications. Moreover, no concerns were raised by the CHO regarding the methodology of the revised Transport Statement including the anticipated modes of transport parents/carers would use to travel to the day nursery. As such, I have no substantive evidence before me to dispute the conclusions set out within the statement.
16. My attention has also been drawn to views from interested parties that the area around the appeal site is already overdeveloped and the site is unsuitable for the proposed use. However, offices and day nurseries fall within the same use class (Class E) of the UCO⁷ and therefore, in accordance with the provisions of the GPDO⁸, changing from office to day nursery use would be permitted development. Given this and the mix of uses surrounding the site and its proximity to Queens Road, I see no reason to conclude that the location would be unsuitable for the proposed use, nor that the area is overdeveloped.
17. No external alterations to the existing building are proposed as part of the appeal scheme. As a result, I am satisfied that any disturbance during the implementation of the change of use would be short-term. Given the existing boundary features, including high brick walls, close board fencing and mature trees, the proposed development would not cause harm to the privacy of neighbouring residents. I also have no evidence before me to conclude that the proposed development would lead to surrounding occupiers experiencing smells which would be detrimental to their living conditions. Whether or not a sufficient area of outdoor play space is provided per child attending the day nursery is a matter for other regulations outside the planning regime.
18. Reference has been made to the ownership of the land between the entrance to the site and South Road. Notwithstanding the lack of evidence of ownership before, this is a civil matter that falls outside the planning regime. The financial motive of the appellant or the availability of spaces in other day nurseries in the area are also not determinative factors of the appeal.

Conditions

19. In addition to the standard time condition, I have imposed a condition requiring that the development is carried out following the approved plans, for the avoidance of doubt and in the interests of certainty.
20. Two conditions have been imposed that specify the operation and management of the nursery use to ensure adverse impacts from noise on the health and quality of life of neighbouring occupiers are avoided. These restrict the operating day, time and capacity of the nursery and external play area, and

⁷ Town and Country Planning (Use Classes) Order 1987 (as amended)

⁸ Town and Country Planning (General Permitted Development) (England) Order 2015

require the implementation of the approved operational practices, as per paragraph 185 of the Framework and the Noise Policy Statement for England 2010.

21. To ensure the safety of users and visitors to the nursery, the visual amenity of neighbouring occupiers and the protection of the mature tree⁹ on the site, I have imposed a condition requiring details of the hard and soft landscape works to be agreed with the Council. To ensure satisfactory refuse and recycling facilities are provided for future users, I have imposed a condition requiring details of a bin store to be agreed upon with the Council.
22. To prevent the proposed use from prejudicing highway safety or causing inconvenience to other highway users, I have imposed two conditions requiring a Travel Plan and a car and cycling parking scheme to be agreed with the Council. These also satisfy Policy DM7 of the Local Plan, Policy CS25 of the Core Strategy and Section 9 of the Framework.
23. The conditions relating to landscape works, a bin store, a Travel Plan and a parking scheme are required to be implemented before the first operation of the appeal site as a nursery.
24. Finally, I have imposed a condition restricting the permitted development rights on the site which limits the use of the site, without written approval from the Council, to either Day Nursery (Class E(f)) or Office (Class E(g)(i)) in the interests of the living conditions of neighbouring occupiers.
25. The Council have suggested a condition requiring details of acoustic boundary fencing to be agreed upon. However, I have concluded that the proposed change of use would not cause unacceptable harm to the living conditions of surrounding occupiers with respect to noise without such a fence. Therefore, this condition is not necessary to make the proposed development acceptable.

Conclusion

26. For the reasons given above, and taking into account all relevant matters raised, I conclude that the appeal should be allowed.

Juliet Rogers

INSPECTOR

⁹ Subject to a Tree Preservation Order

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:
 - MTG-LP-00A Rev A – Location Plan
 - MTG-BP-005 Rev A – Block Plan Layout
 - PR005-004 – Proposed Elevations
 - MTG-P-006 Rev A – Ground Floor Proposed Layout
 - MTG-P-007 Rev A – First Floor Proposed Layout
- 3) The use hereby permitted shall only take place as follows:
 - open for operation between the following days and hours: Monday to Friday 0730 to 1830.
 - the maximum number of children attending the nursery at any time must not exceed 70.
 - the external play areas shall only be used on the following days and between the following times: Monday to Friday 0945 to 1645.
 - the maximum number of children using the external play areas at any time must not exceed 40.
- 4) The use hereby approved shall be carried out in accordance with the operational practices and mitigation measures set out in the approved Operational Noise Management Plan unless otherwise agreed in writing by the local planning authority.
- 5) Prior to the first operation of the approved use, details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. The works shall include, as a minimum, the positions, height, design, materials and type of boundary treatments. The landscaping works shall be carried out in accordance with the approved details and any agreed implementation programme. The completed scheme shall be managed and maintained as approved.
- 6) Prior to the first operation of the approved use, a Travel Plan shall be submitted and approved in writing by the local planning authority. The Travel Plan shall include, as a minimum: measures to promote sustainable modes of transport to users and visitors of the use; and provisions for the maintenance, monitoring and review of the Travel Plan. The Travel Plan shall be implemented in accordance with the approved details and any agreed timetable therein.
- 7) Prior to the first operation of the approved use, details of a car and cycle parking scheme shall be submitted to and approved in writing by the local planning authority. The car and cycle parking scheme shall be carried out in accordance with the approved details and any agreed implementation programme. The completed scheme shall be retained and maintained as approved.

- 8) Prior to the first operation of the approved use, details of a bin store shall be submitted to and approved in writing by the local planning authority. The bin store shall be carried out in accordance with the approved details and any agreed implementation programme and shall be retained and maintained as approved.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the premises shall be used as a Day Nursery (Class E(f)) or an Office (Class E(g)(i)) and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)).

End of Schedule