



Appeal Decision

Site visit made on 10 October 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Appeal Ref: APP/N0410/W/22/3313746

The Wyke, 16 Marsham Way, Gerrards Cross, Buckinghamshire SL9 8AD

- 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 NSS V (PROPERTIES 2) LLP against the decision of Buckinghamshire Council.
 - The application Ref PL/22/3141/FA, dated 13 September 2022, was refused by notice dated 11 November 2022.
 - The development proposed is Change of use from former care home (Class C2) to nursery (Class E) with associated car and cycle parking, and landscaping works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposals included an application for planning permission, submitted in parallel with an advertisement consent application. The proposal subject of this appeal is the planning application only. An advertisement consent is a separate consenting process principally set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Therefore, I have had regard to the signage as being indicative only.
3. The Council's second reason for refusal in its decision notice does not specify which occupiers and neighbouring properties it is alleged would be affected by the proposal. Therefore, I have had regard to the evidence before me and what I observed at my visit in setting out the relevant main issue below.
4. On 5 September 2023 the government published the revised National Planning Policy Framework (2023) (the Framework). The only substantive revisions relate to national policy for onshore wind development. In-light of the issues for consideration in the determination of this appeal, I have not sought the Council's or appellant's comments upon the changes.

Main Issues

5. The main issues are the effect of the proposed development upon:
 - highway safety;
 - the living conditions of the occupiers of Nos 14, 18, 35 and 37 Marsham Way and Nos 5, 7 and 9 Fulmer Way with particular reference to noise and disturbance; and,

- the character and appearance of the area including the Gerrards Cross Centenary Conservation Area (the CA).

Reasons

Highway safety

6. Marsham Way is a two-way single carriageway with double yellow lines in front of the site, and some marked parking bays and intermittent white lining over dropped kerbs. In the bays restrictions apply Monday to Saturday, 08:00 – 18:00 with parking allowed for 1 hour. Parking surveys indicate between 23% and 54% restriction stress on Marsham Way and 19% to 42% of Fulmer Way. This is within the range of what I saw, although parking was markedly higher towards Packhorse Road. Observed free spaces were between 142 – 148 and 99 – 110 on the survey days although it encompasses areas up to around 400m from the site.
7. The care home is understood to have had 12 ensuite bedrooms and 2 self-contained flats, estimated to typically generate 28 -30 trips per day. The Highway Authority's (HA) data suggests 214 or 287 movements depending upon whether floorspace or 111 pupil numbers are used, whereas the appellant's Transport Statement (TS) suggests approximately 140 movements. It has not been fully explained why there are such large differences.
8. The appellant's subsequent modal split data for suburban nursery travel, suggests 48.2% of people travel to nursery by sustainable modes, 21.4% travelling alone in a vehicle and 30.4% travelling with multiple people in a vehicle. There is little explanation of these figures, for example whether there are two nursery age children in the multiple person vehicles, which would make a significant difference to the expected number of movements. I am also not clear whether the figures are appropriate to apply to what appears to be a generally very low-density area.
9. While I am provided with some details of public transport, noting the nature, routes and distances to access, there is little further substantive demonstration that non-car transport uptake would be significantly increased at this appeal site via a Travel Plan. Neither party has provided unequivocal justification for or against their trip rates, so I have had regard to either measure.
10. The on-site parking spaces could be restricted to use for dropping-off and picking-up only. The trip generation data patterns indicate that, unlike a primary school, drop-off and collection activity often takes place over an extended period. While there are generally the greatest movements coinciding with typical parental/carer working hours, they are relatively spread out.
11. Based on the Council's application its standards for a primary school, there would be a shortfall of 21 on-site spaces. However, trip patterns suggest this is not an appropriate standard. The proposed ratio of spaces is not inconsistent with the operator's experience elsewhere, and the Countywide Parking Guidance Policy (2015) (the CPGP) indicates un-allocated highway spaces can appropriate to accommodate the needs of a development.
12. Based upon the appellant's trip figures and the lower figures of the Council, the patterns and modal splits, a significant proportion of vehicles would be able to park within the site. Given the suggested availability of on-street parking that could be lawfully used there is likely to be numerically sufficient convenient

parking. Therefore, while there might be a conflict with the Council's application of the CPGP, the combination of off-street and on-street parking suggests it would be sufficient.

13. From what I saw and the evidence before me, traffic flows were steady but relatively limited around the site. However, these would increase to be much busier at certain times, with 25 – 29 movements suggested by the appellant at peak times and a steadier rate over the rest of the day. However, the proposal would result in a material increase in the use of the crossovers. There would be quite a high turnover of spaces, and it appears inevitable that vehicles would need to reverse either onto to or off the site parking.
14. For the carriageway, the Council suggests a visibility splay of 2.4m x 43m based upon the Manual for Streets (2007) (MfS) having regard to a safe stopping distance at 30mph and traffic flows. The site could only achieve 2m x 12m and 14m for some spaces on land within the appellant's control. For the X distance of 2m, standard vehicles would need to protrude into the public highway in a forward gear and it would be a much greater distance in reverse.
15. The X distance of 2m is a minimum figure for lightly trafficked slow-speed situations. I have no surveys demonstrating either is applicable to this part of Marsham Way. The road is straight and has double yellow lines, suggesting vehicles will not be at low speeds and there could be frequent disruption to traffic flows. The proposal would result in a relatively intense form of use with frequent comings and goings from spaces in a driveway layout. There will be significant periods of higher traffic flows and turnover of site spaces. Opposite both accesses when in use the parking bays narrow the highway, and they are likely to be used at peak hours.
16. Given the likely frequency and nature of manoeuvres, speed of vehicles and nature of the highway the MfS splays represent an appropriate and safe standard. The appellant's visibility splays would result in vehicles protruding onto the highway and little stopping distance in what at times would become a much busier area of highway. This would be likely to result in frequent potential for highway user conflict and would be prejudicial to highway safety.
17. The intentions for a Travel Plan and other conditions in respect of matters such as on-site car and cycle parking and buggy shelters are noted, but it is not demonstrated the conditions suggested would adequately mitigate the harm. I cannot concur with the appellant that it is demonstrated the proposal is compliant with paragraph 111 of the Framework and that it would not have an unacceptable impact upon highway safety.
18. Therefore, the proposed development would be prejudicial to highway safety. It would conflict with Policy TR5 of the South Bucks District Local Plan (adopted March 1999, consolidated September 2007 and February 2011) (the LP) which expects developments shall comply with appropriate standards and not compromise the safe movement and free flow of traffic or the safe use of the road by other users.
19. It would also conflict with paragraph 111 of the Framework (the relevant provisions of which I have set out above), Policy 17 of the Local Transport Plan 4 (2016) (the LTP4) and Guidance 1 and 5 of the Highways Development Management Guidance (2018) (the HDMG). Amongst other things these seek to ensure developments provide safe and suitable access, protect the safe and

convenient use of the highway and minimise impacts upon the existing transport network.

20. Though there is a conflict with Policies TR5 and TR7 of the LP, the LTP4, Guidance 20 of the HDMG, the Framework and the CPGP, in respect of on-site spaces, this does not alone result in harmful effects, so I have not concluded against the relevant parts of those policies.

Noise and disturbance

21. Background noise levels (dB, $L_{A90,15min}$) were measured between 34 – 42 dB(A) (Mode 38 dB(A)) and equivalent noise levels ranging between 38 – 55 dB(A) (Mode 45 dB(A)). The nursery (Use Class E) would accommodate up to 111 children and associated staff, operating no earlier than 07:00 and no later than 19:00hrs Mondays – Fridays.
22. The rear play area space is relatively compact, abutting neighbours' gardens on three sides. The Noise Assessment (NA) suggests that averaged noise levels associated with 56 children using the playground (worst-case scenario) would generate a noise level at 61 dB(A)¹, applying data obtained from another nursery. Applying IMEA² guidance for the change in noise level³, suggests there would be 27 – 35 dB ($L_{Aeq(7)}$), or 37 dB $L_{Aeq,1hr}$ ⁴ of noise experienced at the most affected residential facades (a +0 dB change), 31.9 dB(A) within the gardens, and a level of 22 dB $L_{Aeq,1hr}$ internally⁵.
23. Having noted the views of the Council's specialist adviser and the appellant to various points I have concerns about how the noise levels experienced at the nearest neighbouring properties have been calculated and whether or not the values set out would reflect the noise effects that would be experienced. Aside of the pupil numbers, the full details of the noise data from another nursery are not explained, such as the play area size, use of play equipment and duration of survey. Therefore, it is not clear the noise levels can be considered directly comparable to the appeal proposal.
24. I am informed there is no specific guidance for the assessment of noise from children playing outdoors. Acoustic of Schools: A Design Guidance (11/2015) relates to the design of educational spaces for the users, not the impact on neighbouring land uses. The figure of 70 dB(A)⁶ refers to a raised voice and speech intelligibility between teachers and students, although the appellant's spectra analysis suggests a figure of 66.5dB(A). Though young children might not be as loud as those at a primary school, it is probable there will be some playful shouting, which 11/2015 suggests might be 80 dB(A) at 1m. It also seems inevitable there will be some noise peaks from play equipment such as bouncing balls and hoops. This suggests noise sources could be louder than could have been calculated.
25. The noise level has been calculated over a typical continuous 1-hour period, which I am informed averages the noise to a continuous level. It does not reflect the frequent peaks that will occur. I am concerned there is not a

¹ Table 5 of the Noise Assessment by Acoustic Consultants Limited dated 25 August 2022 (Ref 9731/JL Rev C).

² Institute of Environmental Management and Assessment (IEMA) Guidelines for Environmental Noise Impact Assessment, v1.2 (November 2014).

³ Table 7 of the Noise Assessment by Acoustic Consultants Limited dated 25 August 2022 (Ref 9731/JL Rev C).

⁴ 9731/JL – Reply to 10th October 2022 EHOs Comments Acoustic Consultants Limited dated 20 October 2022.

⁵ *ibid*.

⁶ Supplementary report by Acoustic Consultants Limited dated 20 October 2022.

sufficient analysis of the noise properties associated with several high excursion noise events, and the evidence does not set out a detailed analysis of or reference to maximum sound pressure levels (L_{MAX}). Maximum sound pressure levels have been considered in the assessment of the existing noise levels, yet not meaningfully for the anticipated noise levels. Such noise would be inherent and an inevitable consequence of a playground used by several young children.

26. While IEMA guidelines might be used to assess sports pitches, due to its size, and the number and age of users, the appeal site has the potential to be much more intensely used and for multiple games or activities at once. Given my concerns, and that BS8233:2014 and the WHO guidelines⁷ are not primarily seeking to demonstrate the impact of noise from new land uses on existing amenity, the appellant's finding that the levels would be below the 16-hour exceedance levels also attracts limited weight. The Noise Policy Statement for England (2010) (NPSE) does not specifically refer to either document or their absolute thresholds. The NPSE seeks to avoid significant adverse impacts on health and quality of life. I cannot be satisfied the noise is reflective of what would be experienced by neighbouring occupiers, and there would not be significant adverse effects.
27. There would be frequent comings and goings particularly around common drop-off and collection times, with several vehicles manoeuvring, car door noise, and some general chatter. The likely emissions and effects are not adequately accounted for, and such emissions are likely to result in highly frequent noise and disturbance. The view that peak movements would take place generally over a 30-minute period is significantly at odds with the TS⁸ and my findings.
28. Though the appellant has suggested the use of planning conditions in respect of both management of the use and physical measures, without a sufficient understanding of the noise levels and effects, I cannot be certain mitigation could be sufficient to reduce noise to a minimum, or acceptable levels⁹. It is not clear whether restricting times and numbers of activities outside would be compatible with Ofsted standards. It might also entail acoustic fencing markedly higher than existing, or other physical measures, which constitute a significant change outside the scope of this scheme.
29. The sound levels generated within the building and the mitigation of partly open windows appears reflective of what could be experienced and the rationale for the appellant's findings appears clear¹⁰. Having regard to BS4142+A1:2019, the NA provides assurances there is scope for sufficient controls to be imposed by planning conditions in respect of plant. The evidence suggests, subject to the imposition of suitably worded planning conditions, noise levels could be adequately mitigated to avoid harmful living conditions to neighbouring occupiers. However, this is a neutral matter and does not mitigate the other significant concerns I have.
30. For the reasons set out above, I cannot be certain the proposed development would not result in significantly harmful effects upon the living conditions of the occupiers of Nos 14, 18, 35 and 37 Marsham Way and Nos 5, 7 and 9 Fulmer

⁷ World Health Organization Guidelines for Community Noise (1999)

⁸ Paragraphs 5.17 – 5.22 of the Transport Statement by ttp consulting (August 2022).

⁹ Section 3 of 9731/JL – Reply to 10th October 2022 EHOs Comments Acoustic Consultants Limited dated 20 October 2022.

¹⁰ Section 2 of 9731/JL – Reply to 10th October 2022 EHOs Comments Acoustic Consultants Limited dated 20 October 2022.

Way with reference to noise and disturbance. Therefore, the proposal would conflict with the aims of Policy EP3 of the LP, which seeks that development does not harm the amenities of neighbouring properties by reason of noise.

The CA

31. Within the CA there is a statutory duty under section 72 of the Planning (Listed Buildings & Conservation Areas) Act 1990 (LBCAA) to pay special attention to the desirability of preserving or enhancing its character or appearance. Paragraph 199 of the Framework requires that when considering the impact upon the significance of a designated heritage asset, great weight should be given to the asset's conservation, and harm to its significance requires clear and convincing justification (paragraph 200).
32. The CA includes the railway station, part of the commercial area along Packhorse Road and sizeable extents of residential areas east and west of it. Gerrards Cross underwent significant expansion with the coming of the railway and opening of the station in 1906. The commercial centre was constructed to serve the existing settlement and wider new garden village. The character, appearance, and significance of the CA derives from the high quality primarily Edwardian arts and crafts style buildings, the planned garden village inspired layout, including the distinction between the commercial and residential areas. The latter of which includes with a prevalence large detached high-quality arts and craft style houses in spacious plots.
33. Within the vicinity of the appeal site the CA is characterised by the consistent character of large, detached houses arranged in plan-form. Many have retained many of the original arts and crafts influenced forms and features, and are set within spacious gardens often with mature vegetation, echoing the garden city and garden suburb movements that influenced the purpose-built low density residential environment.
34. The appeal site is a relatively short distance from the commercial area. However, in contrast to it, there are relatively low levels of activity in this part of Marsham Way. While noting the contributors to existing noise levels, it is a suburban and comparatively quiet area, which is residential in character consistent with the predominant and historic land use. As a large, detached building in the vernacular style consented for a low-key use that retains its arts and crafts influenced forms, the appeal site contributes positively to and is in keeping with the character and appearance of the CA.
35. Even based upon the appellant's vehicle movements, the proposal would result in a significant intensification of use and activity. The effects would include a significant increase in comings and goings by a variety of transport modes, associated activity, noise from people travelling to, entering and leaving the premises. There would also be increased peaks in noise levels and activity from day-to-day use such as groups of children playing or learning outside when weather allows and maintenance. The activity levels and associated effects would be significantly at odds with the character of the CA and the area.
36. Matters such as the hours of use and the noise emissions of plant could be controlled by means of suitably worded planning conditions. However, the level of noise, disturbance and activity would be significantly out of keeping with the residential character and would be significantly harmful to the character and significance of the CA.

37. There would be modifications including some replacement doors, rooflights, re-glazed windows, and window removal. All could be the subject to suitably worded planning conditions to ensure appropriate materials. Noting the limited new built development and the position of much of it to the rear of the frontage, this would not result in harmful effects. The plans suggest the play area could be designed to retain trees that contribute positively to the WCCCA. It might also be possible to secure a minor positive benefit compared to the existing signage at the appeal site. Overall, it is possible there might be some minor benefits to appearance, but these do not mitigate or outweigh the harm.
38. While it would not be out of keeping with the appearance of the area, the proposed development would be significantly harmful to the character of the area and the character and significance of the CA. The level of harm would be less than substantial harm. Nevertheless, it would conflict with Policies EP3 and C1 of the LP. In combination and amongst other things these expect a use should be compatible with and not detrimental to the character and amenities of the locality and should preserve or enhance the character of conservation areas. It would also conflict with paragraph 130c) of the Framework which expects development to be sympathetic to local character and history.

Other Matters

39. The Chiltern and South Bucks District Councils Infrastructure Delivery Plan (2020) recognises the Council's duty to provide early years education through private sector development and the joint Chiltern and South Bucks Economic Development and Employment Topic Paper (2019) recognises that expansion demand for nursery staff is to be among the greatest. These documents give some indication of a need in those joint former authority areas but provide little detail of pre-school place and floorspace need in the appeal site vicinity.
40. The appellant's survey of 7 nurseries in the area suggest all were either full with waiting lists, or full on some days. The location of these and the proportion of any geographical area or provision they represent, is not clear, but it indicates a shortage of spaces at that time. Given the limited information, the future effect upon provision of the approved 77 place facility at Station Approach¹¹, is simply not clear. I have noted various other issues raised by interested party representations, however, as I am dismissing this appeal for the substantive reasons above, and no permission will be forthcoming because of my decision, I have not considered these in detail.

Heritage Balance

41. The proposed development would result in less than substantial harm to the character and significance of the CA. Paragraph 202 of the Framework states where a development would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits. However, great weight should be given to an asset's conservation, and less than substantial harm should not be equated with a less than substantial planning objection.
42. The proposal would result in the refurbishment and renewal of a historic building that would bring back and retain a community use, integrating some sustainable energy and resource efficient construction. There would be a

¹¹ Ref. PL/22/3387/FA.

moderate temporary economic benefit during construction. Once in operation, there could be significant sustained benefits to the local economy including through the provision of employment, spend in the local economy, and facilitating parents taking-up or continuing in employment. There would also be some significant social benefits through up to an additional 111 childcare places, including through such matters as child learning and development.

43. There might be considered, at best to be a minor benefit to the appearance of the area and the CA. It is possible the proposal could integrate scope for a biodiversity net gain. However, there is nothing of substance to suggest this would be anything other than a limited benefit. Overall, the public benefits of the proposed development attract significant weight in favour of the scheme.
44. Compliance with policies such as those in respect of matters such as the general location, use, internal and outdoor space standards, sustainable transport provision and facilities, arboriculture, drainage and flood risk, and the absence of harm in respect of matters such as parking provision, are neutral matters.
45. Overall, the public benefits constitute a significant public benefit. Consequently, when giving great importance and weight to the special regard I must have to the desirability of preserving or enhancing the character or appearance of the CA, I find that the harm that would arise from the appeal scheme would not be outweighed by its public benefits. Accordingly, there would be a conflict with paragraph 202 of the Framework as the harm to a designated heritage asset would not have a clear and convincing justification. This attracts great weight.

Planning Balance & Conclusion

46. The proposed development would be prejudicial to highway safety, and I cannot be certain the proposed development would not result in significantly harmful living conditions to the occupiers of neighbouring properties, which attract significant weight against the scheme. The proposed development would also have an adverse effect upon the character of the CA in conflict with the development plan and the Framework read as a whole, which is a matter that attracts great weight. Therefore, the policy compliance and benefits of the development do not outweigh the harm.
47. The development would conflict with the development plan and the Framework read as a whole. There are no material considerations advanced that indicate the decision should be made other than in accordance with the development plan or the Framework. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR