



Appeal Decision

Site visit made on 15 August 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 January 2024

Appeal Ref: APP/L3625/W/23/3316695

44 Beechen Lane, Lower Kingswood, Surrey KT20 6RY

- 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 Angela Williams against the decision of Reigate and Banstead Borough Council.
 - The application Ref 22/02082/CU, dated 10 June 2022, was refused by notice dated 23 November 2022.
 - The development proposed is change of use from ancillary residential outbuilding/summerhouse to a dual use for use as a day nursery and ancillary residential outbuilding.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from ancillary residential outbuilding/summerhouse to a dual use for use as a day nursery and ancillary residential outbuilding at 44 Beechen Lane, Lower Kingswood, Surrey KT20 6RY in accordance with the terms of the application, 22/02082/CU, dated 10 June 2022, subject to the attached schedule of conditions.

Preliminary Matters

2. The National Planning Policy Framework (2023) (the Framework) was updated in December 2023, and accordingly for the purposes of this decision I have referred to the latest version of the Framework. The content of the Framework has not been materially altered in respect of the main issues which I have considered. Therefore, it has not been necessary to seek further views of the main parties in this instance.
3. Part of the Council's reason for refusal relates to insufficient information being provided to demonstrate that the development could not be located within the existing stock of community premises within the Borough, as required by Policy INF2 (a) of the Reigate and Banstead Development Management Plan (2019) (DMP).
4. The appellant has provided further evidence on this as part of the appeal and the Council have confirmed that they are satisfied that it has now been demonstrated that there is a local need for the facility and agree that it could not be located within the existing stock of community premises, and as such there is no conflict with Policy INF2 (a). I have nothing before me to dispute the evidence provided or the findings of the Council and therefore I have not found it necessary to consider this matter further.

5. An application for costs was made by Ms Angela Williams against Reigate and Banstead Borough Council. This application is the subject of a separate decision.

Main Issue

6. The main issue is the effect of the development on the living conditions of the occupiers of neighbouring properties with particular reference to noise, disturbance and increased on-street car parking.

Reasons

Noise and disturbance

7. The appeal site comprises an end of terrace house, located on a street defined by small terraces of houses which are similar in design. Beechen Lane has a quiet residential character. The appeal site, and adjoining properties have relatively long, but narrow rear gardens. A single storey outbuilding is located to the rear of the appeal site's garden, and its footprint spans across the majority of the width of the garden. The outbuilding is in use as a day nursery, and access is provided via a separate side gate to the property and across the dwelling's garden.
8. The nursery operates between 09.00-15.00 Monday to Friday, during term-time only. This equates to 38 weeks per year. The children attending the nursery are between 1 and 4 years old. The appellant indicates that typically 9 children are on site at any one time, however permission is sought for a maximum of 12 children at any one time. The number of children and staff on site generally varies across the week.
9. Throughout the week, the children are taken to a number of off-site activities such as visiting woodlands, the park, soft-play, library sessions, a toddler group and music groups. However, there would be times when up to 9 children would be present on the site, supervised by 2 or 3 staff members, noting that this could also rise to a maximum of 12 children.
10. The garden will not be used for outdoor learning or free play at any time. The appellant has indicated their acceptance to the imposition of a planning condition to ensure that the garden is used only for the personal enjoyment of the occupiers of the dwelling and to provide access to the outbuilding. This would reduce the potential for harmful levels of noise associated from the nursery.
11. During my site visit, whilst the nursery was not operating, I experienced the rear gardens of properties on this side of Beechen Lane to be quiet, peaceful spaces, particularly as they adjoin an open green space to the rear. The front of properties on Beechen Lane, experience the normal comings and goings of residents and visitors associated with a residential area.
12. Neighbouring residents are likely to experience some limited noise when the garden is used for access to the outbuilding when children are dropped off and collected. There will also be limited periods of noise at times when the children are taken to the various off-site activities. Whilst peaks in noise from these activities will be limited and short-lived, across the week they represent an intensification in both noise and activity over that which would commonly be associated with a residential garden for a property of this size.

13. The outbuilding has a number of windows. During colder weather these are likely to be closed and will provide a level of insulation from the sound generated by activity within the building. However, it seems likely that the windows will be open during warmer weather to provide ventilation, allowing higher levels of noise to reach neighbouring properties.
14. There is no acoustic report before me and I have no objective means of quantifying the noise impacts across the day. Nevertheless, it is logical to assume that the volume will vary according to how many children are within the outbuilding.
15. Children undertaking activities within the outbuilding are likely to create a level of noise which is greater than would be commonly expected within a quiet residential property or from a small-scale domestic childminder. Due to the compact nature of the site and the proximity of the neighbouring gardens and sensitive rear windows, particularly at 42 and 46 Beechen Lane, the additional noise is likely to have a harmful impact on neighbouring occupiers. Overall, in the absence of substantive evidence to demonstrate otherwise, I find that the development, due to its intensification of the site and proximity to neighbouring residential properties, causes a harmful level of noise and disturbance to neighbouring occupiers.

Parking

16. The Council's appeal documents include an additional consultation response from Surrey County Council, who are the Highway Authority (HA). This is dated 28 November 2022, and appears to have been received after the determination of the planning application. The HA raise no objection to the development on parking grounds.
17. The Council identify parking standards as described in Annexe 4 of the DMP as 0.75 of a space per member of staff and 0.2 of a space per child. This would require a maximum of two spaces for staff and two spaces for children.
18. Parking is provided as a mix of off-street and on-street provision. The existing dwelling has three off-street spaces to the front of the property. One of these spaces is used by the appellant, the second by a staff member, whilst the third is available for drop-offs and pick-ups.
19. Pick-ups and drop-offs are staggered, and there are informal arrangements between parents to share pick-ups, thereby reducing the number of visitors to the property across the day. Likewise, of the three staff, the appellant advises that two arrive together, and the third usually walks.
20. While I acknowledge the shortfall in parking against the standards, the Council confirm these are a guide which can be varied at the discretion of the Council. The development's operational hours are such that pick-up and drop-offs, which only last a number of minutes duration, are likely to take place around 09.00 and 15.00 and there is unrestricted kerbside parking in the immediate vicinity.
21. On my visit, which I acknowledge is a snapshot in time, I noted that there was sufficient on street parking available to accommodate demand for parking over and above that provided on the site. Consequently, I am satisfied that the proposed parking provision is adequate to serve the nursery use, and that in the event that there was further demand arising beyond that provided on the

site, this would not cause unacceptable congestion or other harm to highway safety.

22. The development results in an intensification in the number of vehicle movements to the property. However, this area of Beechen Lane already experiences frequent comings and goings associated with the residential properties on the street. For this reason, the front of neighbouring properties are likely to be less sensitive to noise and disturbance than the rear elevations and gardens which likely experience lower levels of ambient noise. Consequently, the additional vehicle movements do not have a harmful impact on neighbouring occupiers' living conditions.
23. Whilst I have not found that the development would cause harm as a result of increased parking demand and additional vehicle movements, I have found that the intensification of the site within the residential area causes harm to the living conditions of the occupiers of adjoining properties with reference to additional noise and disturbance. I therefore find that it would conflict with Policies DES 1 and INF2 of the Reigate and Banstead Development Management Plan (2019) (DMP) which requires that new development should not result in harm to the living conditions of neighbouring occupiers and that new community facilities will be supported where they would have no adverse impact on residential amenity. The development is also contrary to those principles within paragraph 135 f) of the Framework that promote health, well-being, and a high standard of amenity for existing and future users.

Other Matters

Best Interests of the children

24. Article 3 of the United Nations Convention on the Rights of the Child requires childrens' best interests to be a primary consideration. Although a primary consideration, the best interests of a child are not a determinative planning issue, but no consideration must initially be regarded as more important or, in advance of the subsequent assessment of the individual circumstances, be given greater weight.
25. The Planning Practice Guidance advises decision-makers need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, it similarly advises they will want to ensure the approach is proportionate. Decision-makers need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community.
26. The appeal scheme would continue to provide childcare for up to 12 children, and this would be in their best interests. I have, therefore, given great weight to their best interests, which have been kept at the forefront of my mind, and assessed whether an adverse impact of any decision on the interests of the child is justified and proportionate.
27. Lower Kingswood is identified as an area of some deprivation, and the appellant currently supports children eligible for Funded Early Education for Two year olds (FEET), designed to support the most vulnerable children at risk of financial, social, and developmental disadvantage. Surrey County Council

Early Years Commissioning Team confirm that the take up of FEET funding places locally has been steady in recent years.

28. Surrey County Council's Early Years Commissioning Team also confirm that the appellant is the only provider offering an extended day pre-school model within Lower Kingswood, the next nearest being 1.5 miles away and therefore not within walking distance for families with young children and not serving the same community. Given the lack of appropriate alternative childcare facilities, there is no guarantee that, in the event that this appeal were dismissed, that the children would be able to enrol at another nursery.
29. I have also had regard to the appellant's extensive search and difficulties finding an appropriate site for the nursery, and understand that using her own property for the nursery was a last resort.
30. The appellant indicates that, in the event that the appeal is dismissed, three Early Years providers would be unemployed, and a loss of childcare for parents of children at the nursery could, in turn, prevent them from working.
31. Consequently, the collective merits of the case presented are such that I afford the benefits of this development to the best interests of the children, including the most vulnerable children at risk of financial, social, and developmental disadvantage, substantial weight.
32. A large number of letters were submitted in support of the development by local residents and the Lower Kingswood Residents Association. Many of these emphasise that neighbouring residents have not been affected by noise and disturbance, and welcome the nursery as a highly valued local childcare facility. There is no doubt that the value placed on the provision of local childcare is important, and this is a consideration to which I have attributed moderate weight.

Other issues

33. I note the neighbouring occupiers' concerns in relation to the loss of privacy. However, the side boundaries are marked by approximately 1.8m wood panel fencing and mature vegetation. Consequently, I do not consider that the nursery use would result in any additional loss of privacy than the ancillary residential use of the outbuilding and garden. As I have found that there would not be a loss of privacy, I have not been provided with substantive evidence that the development would detract buyer interest or harm the value of neighbouring properties.
34. The concerns expressed regarding the Council's conduct during the processing of the planning application fall outside of the remit of this decision.

Planning Balance

35. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 states that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
36. Consequently, notwithstanding that the scheme would be contrary to the development plan as a whole and would not thereby be a sustainable development, the question remains whether there are material considerations

which would warrant a decision in this instance other than in accordance with the development plan.

37. These material considerations need to be balanced against the location of the nursery within a quiet residential area where residents have a reasonable expectation of peace and quiet within their gardens and houses. I have found that a small number of neighbouring occupiers' living conditions would be harmed, as a result of the localised impacts from the noise and disturbance from the nursery.
38. The extent of noise and disturbance is tempered by the limited numbers of children attending the nursery, and the limited operation hours across the week and outside school holiday periods. However, I have found that the development conflicts with Policies DES 1 and INF2 of the DMP as it causes moderate harm to the nearest neighbouring occupiers' living conditions. I attach significant weight to this harm to living conditions.
39. Set against this harm is the considerable benefit that the development affords to current and potential future children, and their parents, through the provision of childcare within an area with very limited alternative provision. I attach substantial weight to these considerations.
40. The use of the site would meet many of the economic and social aspects of sustainable development. Indeed, paragraph 97 of the Framework notes that planning decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.
41. In the overall planning balance, the benefits of the proposal as outlined above, including that the development would provide a much needed childcare facility, are sufficient in this case to outweigh the harm to residential amenity.

Conditions

42. I have had regard to the Planning Policy Guidance on conditions. A condition limiting the hours of operation and number of children in attendance is necessary in the interests of neighbouring occupiers' living conditions. Thirty minute grace periods to allow staggered pick ups and drop offs are factored into the hours of operation condition. I have imposed the appellant's suggested condition which prevents the use of the garden other than for access to the outbuilding. This is also in the interests of neighbouring occupiers' living conditions.
43. As I have found that the proposal would not cause harm as a result of increased parking demand and additional vehicle movements, I do not consider the condition requiring the submission of a Travel Statement to be necessary. Consequently, I have not imposed the condition.

Conclusion

44. For the reasons given above, I conclude that the appeal should be allowed.

B Pattison

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) There shall be no more than 12 children attending the nursery on the site at any one time.
- 2) The nursery shall only be open to children between the hours of 08:30 and 15:30 Monday to Friday and not at any time on Saturdays or Sundays.
- 3) The nursery shall operate only within the outbuilding and, other than for access purposes, there shall be no use of the garden by children attending the nursery.