



Appeal Decision

Site visit made on 8 November 2023

by **S Brook BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 January 2024

Appeal Ref: APP/Z4718/W/23/3318114

Playworld, Westbourne Road, Marsh, Huddersfield, HD1 4LF

- 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 Balraj Uppal of Playworld against the decision of Kirklees Metropolitan Council.
 - The application Ref 2022/62/92839/W, dated 20 August 2022, was refused by notice dated 14 December 2022.
 - The development proposed is described as 'Retrospective full planning application following alleged breach of opening hours and unauthorised outdoor seating area at Playworld. This application is to seek to regularise what had already been built, ie Approx. 2250 high paladin fencing and gates for security to the children, New portacabin for storage, Artificial grass with activity toys and inflatable bouncy castle, 5no 45Watts LED spotlighting across the side façade of the building assists to illuminate the external area in the hour of darkness (light angle adjusted to avoid glare onto adjacent properties), Integral external picnic seating tables, chairs and parasols, Proposed 3no separate advertisement panels located on the corner of the existing building when approaching along Imperial Street. The small advertisement panels on the corner of building along imperial Street are interchangeable to provide seasonal, one off events and festive advertisements'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development on the application form and set out in the banner heading above includes reference to advertisements, as the form submitted to the Council sought both planning permission and advertisement consent. However, the appeal form sets out that the appeal has been made in relation to decision reference 2022/62/92839/W, which considered only the development requiring planning permission. I have not therefore considered any advertisements as part of this decision.
3. The development had been completed at the time of my site visit. Nevertheless, I have determined the appeal based on the plans before me.
4. Notwithstanding the description as set out above, the plans before me provide details of both a shipping container and a portacabin within the appeal site and the Council's description of development reflects this. I have therefore considered the appeal on this basis.
5. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. This has not raised any new matters which are determinative to the outcome of this appeal.

Main Issues

6. The main issues are the effect of the development upon (a) the living conditions of occupiers of nearby residential properties, with specific regard to noise and disturbance, and lighting, and (b) the character and appearance of the area.

Reasons

Living Conditions

7. The appeal site comprises an area of land directly to the south of Playworld, a building containing a children's play gym and skating rink, with food and drink available. The appeal scheme seeks to change the use of this land for outdoor play and seating associated with this existing business. The appeal site contains welded mesh fencing to its perimeter, a shipping container and portacabin, artificial grass, tables and chairs, and external lighting. A mix of commercial uses lie to the south and southeast along Westbourne Road, which is a main route into the town centre. The area to the west and north is predominantly residential in character.
8. Use of the outdoor play and seating area could commence from 9am each day. The appellant has amended the time when use of the area would cease to correspond with the premises license. The Council indicates that this would be 6pm Sunday to Thursday, and 7pm on Friday's and Saturday's.
9. The appeal site lies close to dwellings, particularly those at 2-16 New Hey Road. Occupiers of these properties would be sensitive to any change in the surrounding noise environment. Whilst I appreciate that there are a number of existing noise sources at this location, including road traffic and nearby commercial premises, which will influence background noise levels, the appeal scheme has the potential to generate additional noise for sensitive receptors, with differing characteristics.
10. I note the appellant's confirmation that no outdoor music would be played and that any outdoor pumps or generators could be enclosed. Suitable conditions could be imposed to secure such measures. Outdoor seating has also been reduced which would limit capacity, for eating and drinking at least. However, the main source of noise is likely to result from raised voices, particularly of children. Whilst the intended hours of use have also been reduced from those originally sought, this outdoor area could still be operational for a significant proportion of the day, every day of the week.
11. I appreciate that the frequency of use would be influenced by the weather and it may be less popular during school time. Nevertheless, without a robust Noise Impact Assessment (NIA) which considers the likely noise resulting from such a use and how this relates to existing background noise levels, along with any reduction achievable through mitigation, I am unable to conclude that the appeal scheme could operate whilst maintaining satisfactory living conditions for occupiers of nearby dwellings.
12. I note an intention to erect advertisement boards and artificial planting to the existing mesh fencing. However, there is no substantive evidence before me to demonstrate that such measures would mitigate noise levels from the development to an acceptable standard. The plans before me also indicate internal works to the existing building to create a lobby, as a measure to

further reduce noise breakout from within the existing building. However, this does not address the concerns I have identified above.

13. The appellant raises concerns with the prohibitive cost of an NIA, as well as whether such an assessment would provide reliable conclusions, and instead suggests a trial period of 12 months. Planning Practice Guidance advises that a temporary permission may be appropriate where a trial run is needed in order to assess the effect of a development on an area. However, given the lack of evidence relating to noise and the resulting level of uncertainty relating to the potential harm to the living conditions of occupiers of neighbouring properties, a temporary permission of this duration would not be appropriate in the circumstances of this case.
14. Consequently, the proposal would harm the living conditions of occupiers of neighbouring properties, with regard to noise and disturbance. It would conflict with policies LP16, LP24 and LP52 of the Kirklees Local Plan (LP)¹, which collectively and amongst other matters, seek to ensure that new development considers matters of noise and disturbance appropriately in order to provide a high standard of amenity for neighbouring occupiers, including through the provision of evidence to show that the impacts of pollution have been evaluated and measures have been incorporated to prevent or reduce it, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level.
15. The proposal would also conflict with paragraphs 135 and 191 of the Framework, which require new developments to function well and add to the overall quality of an area, provide a high standard of amenity for existing users, and ensure that new development is appropriate for its location, taking into account the likely effects of pollution on health and living conditions.
16. The use of external lighting is also raised in relation to the living conditions of occupiers of neighbouring properties and there is dispute between the main parties as to whether a Lighting Assessment is necessary. However, the appellant's submission confirms an intention to remove all light fittings recently installed. Consequently, there would be no external illumination of the area and a condition to this effect could be imposed. On this basis, it is not necessary for me to consider this matter further.

Character and Appearance

17. Dispute between the main parties relates to the shipping container and portacabin positioned within the appeal site for storage purposes. The Council has raised no objections to the fencing and gates, or the seating and play equipment that would be associated with the proposed use and from my own observations of the site and its surroundings, I have no reason to disagree.
18. The shipping container and portacabin are positioned between existing buildings to the north and south and so they are not particularly visible from public routes along Syringa Street or Westbourne Road. Public views are mainly possible from a relatively short section of the highway to the east, where the portacabin presently screens views of the shipping container. Whilst set back

¹ Kirklees Local Plan Strategy and Policies, Adopted 27 February 2019

from the highway, the portacabin remains visible, given that the type of fencing installed allows views across the appeal site.

19. The shipping container and portacabin are of a typical appearance, box-like in shape, with plain elevations and a grey/white colour finish. They contrast with the traditional muted sandstone terraced buildings to the west and south in both style and materials. The host building is more commercial in appearance and it includes a squared-off clad feature to its front elevation. However, the colour finish of this cladding is similarly muted, with stone and brick materials to the remainder of the building. As such, in public views from the east, the appearance of the portacabin does not assimilate with, but rather is at odds with the surrounding built form, which results in harm to the character and appearance of the area.
20. The Council indicates that with a different colour finish, the shipping container and portacabin would have less of a visual impact, sufficient to justify granting planning permission on a temporary basis. The appellant has not disputed a condition suggested by the Council that would secure an alternative finish. A more muted colour finish would allow the shipping container and portacabin to assimilate somewhat more successfully into this setting. Nevertheless, their overall appearance would remain at odds with surrounding development and their physical condition could deteriorate over time, and so I agree with the Council that any permission would need to be temporary only.
21. However, while the appellant's Statement of Case makes some reference to the temporary nature of the recently sited shipping container², this is not specified within the description of development. There is no additional information from either party relating to the duration required for either the shipping container or portacabin, sufficient to allow me to impose a suitable condition to this effect that would meet the relevant tests.
22. The appeal scheme proposes artificial planting along parts of the portacabin and to perimeter fencing. Whilst this could provide some screening to the shipping container and portacabin, as well as the site generally, I have concerns as to the effectiveness of this mitigation over time, as its physical condition could also deteriorate, particularly as it would be exposed to inclement weather.
23. To conclude, the development would result in harm to the character and appearance of the area. The appeal scheme therefore conflicts with LP Policy LP24, which amongst other matters, seeks to achieve good design by requiring that the form, scale, layout and details of all new development respects and enhances the character of the townscape. Further, the proposal would conflict with paragraphs 131 and 135 of the Framework, which require new developments to create high quality buildings and places that are visually attractive and sympathetic to the surrounding built environment.

Other Matters

24. The appeal scheme would allow a small business to expand and diversify, at a time when the appellant indicates the Covid pandemic and increased fuel prices globally have impacted financially. Any resulting economic benefits could help to sustain employment and assist in building maintenance.

² Albeit Drawing No.101 suggests it is the larger portacabin that is newly sited, not the shipping container

25. The proposed use of the site would encourage outdoor play for children in a safe environment, meeting the requirements of the Framework in terms of promoting healthy lifestyles and well-being. The proposed use would improve opportunities for social interaction and enhance this existing facility which provides a social and recreational facility to meet community needs. The intention to run an art competition for school children could assist in social and cultural well-being.
26. The appellant refers to the site formally as wasteland, with issues of litter, graffiti and anti-social behaviour. Therefore, enclosing the site and putting it to a positive use would be an additional public benefit. Collectively, I afford these benefits of the proposal limited weight, given the small scale of the development.
27. The appeal scheme has not raised any technical, biodiversity or heritage issues. These are neutral matters that do not carry weight for or against the development.
28. A number of local residents have expressed a range of concerns in addition to those relating to the main issues, including, but not limited to: parking issues, road safety, loss of privacy and anti-social behaviour. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reasons for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
29. As part of this decision, it is not for me to comment on the behaviour of the Council at the application stage.
30. These other matters do not outweigh the harm that I have identified in relation to the main issues.

Conclusion

31. For the reasons outlined above, the appeal scheme would conflict with the development plan, and there are no other material considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

S Brook

INSPECTOR