



Appeal Decision

Site visit made on 23 January 2024

by N Bromley BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2024

Appeal Ref: APP/P4605/W/23/3327598

49 Woodway, Birmingham B24 0AH

- 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 Marvadhha Foolchand against the decision of Birmingham City Council.
 - The application Ref 2023/02719/PA, dated 25 April 2023, was refused by notice dated 8 June 2023.
 - The development proposed is use of ground floor to operate childminding service.
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Decision

1. The appeal is allowed and planning permission is granted for the use of the ground floor to operate a childminding service at 49 Woodway, Birmingham, B24 0AH in accordance with the terms of the application, Ref 2023/02719/PA, dated 25 April 2023, subject to the conditions set out in the attached schedule to this decision.

Preliminary Matters

2. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
3. The appellant has submitted a Noise Impact Assessment (NIA), dated 8 August 2023. The NIA was prepared after the Council's decision, and while it was included with the appeal statement, I cannot be certain that those who did not comment on the application or those who may have supported the proposal are aware of the NIA. Therefore, they would not be aware of the findings and the possible mitigation measures and the implications of those. The appeals procedural guide¹ makes it clear that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. To do otherwise could unacceptably prejudice the interests of parties and on this basis, I have determined the appeal without taking the NIA into consideration.
4. The description of development in the banner heading above is different to the description specified on the planning application form, but this was agreed by the main parties during the application process and is reflected on the Council's

¹ Procedural Guide: Planning Appeals – England (2023)

decision notice. I have determined the appeal based on the revised agreed description.

Main Issue

5. The main issue raised by this appeal is the effect of the proposed development on the living conditions of occupiers of neighbouring properties with particular regard to noise and disturbance.

Reasons

6. 49 Woodway is a two-storey detached dwelling located on a suburban residential street. The site is bounded by dwellings and gardens to either side and to the rear. The position of the plot means that the frontage parking area is within close proximity to a number of neighbouring properties. The rear of the appeal property has a generous size, which extends down the side of the property and includes outdoor play equipment, and a range of outdoor toys.
7. The appellant operates a childminding service from the ground floor rooms and garden of the property. Based on the evidence six children attend. The building continues to function as a dwelling and retains the appearance of a house within the street scene, with no external indication of a business use.
8. Policy DM9 of the Development Management in Birmingham Development Plan Document 2021 (DPD), sets out the preferred locations for day nurseries and early years provision. Proposals for development outside these locations will be considered favourably where, amongst other things, it will not have an unacceptable adverse impact on local amenity. The policy's supporting text at paragraph 3.19 of the DPD indicates that if someone is using their dwelling for childcare provision and more than seven children are minded then planning consent is required. The implication of this is that up to seven children may be minded at the property without permission. The appellant takes this view and firm evidence to the contrary has not been provided. As such, I have no compelling reasons to take an alternate stance in applying the policy. Accordingly, I shall consider the potential impacts of the scheme in the context that a seventh child could be registered at the site without consent needed.
9. In this instance, the proposal seeks to increase the childminding service for up to nine children. One additional staff member would also be at the property during the intended hours of operation, which would be between the hours of 7:30am to 5pm from Monday to Friday.
10. The proposed intensification of the childminding service by the additional children and one additional staff member, would increase comings and goings to the property. However, while I acknowledge that the additional trips would increase the frequency of vehicular movements, people entering and leaving the site, and general talking and engine noise, the business operates staggered drop off and pick up times which would mitigate the effect of the additional trips and any associated noise and disturbance.
11. Additionally, in a residential street such as this, the other properties on the street are likely to have associated trips during these times also, as occupiers travel to work and school. Therefore, a reasonable amount of activity during these times can be expected and comings and goings at these times would not be unusual.

12. In the context of the site and its surroundings, the increased comings and goings of the additional children and one staff member, particularly from the use of motor vehicles at the property, would not be readily discernible.
13. A representation received from a neighbouring resident suggests that noise from children playing in the garden would be too much. However, it is not uncommon for a number of children to be out playing in a garden at any one time in residential locations such as this. In this instance, the proposal would result in a small increase in the additional number of children potentially within the rear garden at any one time. This would only be during certain times of the day when the business is operating. Furthermore, the appellant suggests that the children would be split into two age groups which would use different parts of the ground floor at different times of the day. This would also be the same for time spent in the garden, which would also be time restricted. I have no reasons to doubt this. Moreover, the additional staff would provide additional monitoring of the children both inside and outside of the building and thus be able to manage the children's activities appropriately.
14. The Framework, at paragraph 55, requires decision-makers to consider whether otherwise unacceptable development could be made acceptable through use of conditions. It further identifies at paragraph 56 that conditions should only be imposed where they meet six tests, which include being enforceable.
15. The Council's Environmental Pollution Control officer do not raise objections to the application, but they do recommend a number of conditions. In particular, a restriction on the hours of operation and the proposed use only accommodating 9 children at any one time.
16. The suggested restriction on the hours of operation to between 8am to 5pm is different to the hours that the business seeks permission for. I am content that 7.30am is an acceptable time for the reasons outlined previously. To impose a different time to those applied for is therefore not reasonable or necessary in this instance. Nevertheless, a condition to control the hours of operations is necessary in the interests of neighbour amenity. For the same reasons, I have imposed a condition limiting the maximum number of children. A condition which requires the living accommodation to be occupied solely in conjunction with the use of the premises is necessary in the context of the site and its surroundings, to ensure that the living conditions of neighbouring occupiers are protected from potential noise and disturbance.
17. While a condition which seeks to restrict the number of children in the garden at any one time has been suggested by the parties, it is not clear how this could be suitably managed. Therefore, in the absence of any compelling evidence to the contrary, I am not satisfied that the condition would be enforceable. However, given the likely impacts arising from the additional children registered at the property, such a condition would not be necessary.
18. Subject to the conditions identified in this decision, I conclude that the proposed development would not be unacceptably harmful to the living conditions of occupiers of neighbouring properties with particular regard to noise and disturbance. Therefore, the proposal would not conflict with Policies DM2 and DM9 of the DPD, or the objectives of the Framework, which together and amongst other things, seek development that is appropriate for its location

that does not result in unacceptable adverse impacts on the amenity of neighbours.

Other Matters

19. A representation from a neighbouring occupier has raised concerns about loss of privacy. The Council have raised no concerns in this respect, and I observed at my site visit that the rear garden is bounded by fencing which would protect privacy of neighbouring occupiers. Given my findings above, and the suggested conditions by the Council, I have found no justification to dismiss the appeal in regard to this matter.

Conditions

20. The Council has suggested several conditions, some of which I have amended for the sake of clarity and precision. I have also had regard to the Framework and the Planning Practice Guidance. In addition to the conditions set out in the main issue, and the standard time limit condition, it is necessary to impose a condition that requires the development to be carried out in accordance with the approved plans for certainty.

Conclusion

21. For the reasons given above, the development accords with the development plan as a whole and there are no material considerations to lead me to determine the appeal other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal is allowed.

N Bromley

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 permitted shall be carried out in accordance with the following approved plans, numbered; DWG1 and DWG2A.
- 3) The childminding facility hereby permitted shall accommodate a maximum number of 9 children on the premises at any one time.
- 4) The childminding facility hereby permitted is to be operated between the hours of 7:30am to 5pm Mondays to Fridays only.
- 5) The occupation of the living accommodation within the site shall be limited to a person or persons solely or mainly employed in the business within the site, and to any spouse, partner, or resident dependants.