



Appeal Decision

Site visit made on 14 May 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2024

Appeal Ref: APP/P4605/W/23/3333293

179 Lordswood Road, Quinton, Birmingham B17 9BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Harjinder Nagra against the decision of Birmingham City Council.
 - The application Ref is 2023/02792/PA.
 - The application sought planning permission for a change of use of ground floor from residential use (C3) to child care use (D1) without complying with conditions attached to planning permission Ref 2018/02557/PA, dated 18 June 2018.
 - The conditions in dispute are Nos 2 and 3 which state that:
"2. *The day nursery hereby approved shall accommodate a maximum number of 18 children on the premises at any one time.*"
"3. *The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawing numbers 01, 04 and 101 Rev A ('the approved plans').*"
 - The reasons given for the conditions are:
"2. *In order to define the permission and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Policy PG3 of the Birmingham Development Plan 2017 and saved Paragraph 8.14 of the Birmingham UDP 2005 and the National Planning Policy Framework.*"
"3. *In order to define the permission in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.*"
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of ground floor from residential use (C3) to child care use (D1) at 179 Lordswood Road, Quinton, Birmingham B17 9BP in accordance with the application Ref 2023/02792/PA, without compliance with condition number 3 previously imposed on planning permission Ref 2018/02557/PA dated 18 June 2018 and subject to the conditions in the attached schedule.

Background

2. Planning permission was originally granted in 2015 for the change of use of the ground floor of the building to a children's nursery. This permission limited the use to having a maximum of 12 children. In 2018 planning permission was granted under section 73 to increase the capacity to 18 children. The appellant now seeks permission to increase the capacity further to 27 children. In addition the appellant seeks to regularise the outbuilding in the rear garden of the property by including it in the plans.

3. It does not appear that the increase in the number of pupils at the site is related to the provision of the outbuilding. The Council raise no objection to the outbuilding, or the amendments to the approved plans to regularise it. As such my reasoning below focusses on the effects of increasing the number of children at the site restricted by condition 2.
4. At the time of my site visit, the nursery was closed while the building was being redecorated.

Main Issue

5. The main issues are the effect of the development on highway safety and the living conditions of neighbouring occupiers with respect to noise and disturbance.

Reasons

Highway safety

6. Vehicular access to the site is via a slip road which runs parallel to Lordswood Road. This slip road serves the row of 8 dwellings within which the appeal site sits. The slip road is not wide enough comfortably for two way traffic. I saw at my site visit that parking along the road involves cars mounting the pavement outside the houses. There is also evidence of cars driving over the grass verge which separates the slip road from the main carriageway. Parking wholly on the road would inhibit the free flow of vehicular traffic on the slip road.
7. The two accesses to the slip road from the main carriageway are also only wide enough for one car. There is no formal one-way system in place so it would be feasible that vehicles pulling off the main carriageway would encounter vehicles trying to join the main road. This could result in vehicles needing to wait on, or reverse back onto, the main carriageway. This would inhibit the free flow of traffic on Lordswood Road and be a risk to highway safety.
8. Turning to parking, the Council's Parking Supplementary Planning Document identifies that for day nurseries within Zone C there should be 1 space per 2 staff and also parking available within 100m of the site for one space per 5 pupils.
9. The development would result in a total of 9 staff being employed at the site, including two who live on the first floor of the building. This generates a need for 5 spaces. Though I understand it may be physically possible to park 5 cars within the site, they would necessarily be parked very close together which may inhibit access to the nursery by children and their parents. It is more likely therefore that some staff parking may take place off site.
10. There would need to be suitable on-street provision for 6 parking spaces for parents dropping off and collecting children. With the exception of a few spaces at the end of the slip road, outside No. 191, any on street parking would involve parking on the grass verge or mounting the pavement. This would inhibit pedestrian use of the pavement, particularly for those with pushchairs.
11. There is parking available in the wider area such as in Gilmorton Close. Although that is within a 100m radius of the site, the pedestrian route from here would be longer than that, and so would also not be attractive, particularly for parents with small children wishing to walk. There is parking

along Elm Tree Road and Woodville Road but, as acknowledged by the appellant's Transport Statement, parking there would necessitate parents and children crossing the busy Lordswood Road which, although served by a pedestrian crossing, may discourage the use of these roads. It is more likely, therefore, that parents would park on the slip road; either parking on the grass verge, parking partly on and obstructing the pavement, or parking wholly on the slip road and obstructing traffic flow.

12. I accept some children will be walked to the nursery and that the amount of time that cars are parked near the site, particularly for dropping off children, will be limited which would reduce the likelihood of many cars being there simultaneously. However this is reflected in the ratio of 1 space for 5 pupils. If it was assumed that all children would be driven and all car visits would coincide, 1 space for 5 children would be an inadequate ratio.
13. I recognise there is a bus stop very close to the site which may also account for some pupil and staff journeys. But this would not be likely to be a significant number. Indeed only one existing pupil was recorded as arriving by bus in the Transport Statement.
14. Though I understand some of the additional nursery places may be taken up by siblings of existing pupils, and hence potentially minimising any increase in traffic, there would be no way to ensure this.
15. Overall, the increase in capacity would result in an increase in vehicular movements to and from the site and increased pressure for parking close to the site. The inadequate width of the slip road and the accesses to it, and the lack of suitable parking near the site means the development would have an adverse effect on highway safety. It would therefore conflict with policy TP44 of the Birmingham Development Plan (BDP) which promotes the effective and safe use of the transport network, and policy DM9 of the Development Management in Birmingham (DMB) document which says that day nurseries should not have an unacceptable impact on parking or highway safety.

Living conditions

16. The property is semi-detached with the other half of the building being wholly in residential use. Indeed all the neighbouring properties are dwellings.
17. The rear garden is bounded to both sides by close-boarded fences around 2m in height and some trees. However clear views toward the neighbouring gardens are possible, particularly from the decking area immediately outside the building. The rear boundary is more heavily planted with a tall and thick hedge behind the outbuilding.
18. The business accommodates babies, toddlers and pre-school children. They would be in separate rooms within the building, but would have free use of the large rear garden. Were all 27 children in the garden simultaneously which, given the size of the garden would not be unfeasible, there would be potential for the noise from their play to be disturbing for neighbouring residents when in their own gardens or when in their own homes with windows open.
19. The appellant's noise assessment measures the noise level with no children playing in the rear garden, then 6 children in the garden, and then calculates the noise generated by 10 children in the garden. It concludes that the increase

in noise resulting from 10 children would not be significant and so suggests a limit of 10 children at a time in the garden.

20. The Council's Environmental Pollution Control unit suggest a condition limiting the use of the garden to a maximum of 8 children would address their concerns. The Environmental Pollution Control unit were justified in suggesting the condition for sound reasons. However I agree with the Council that it would not be reasonable to impose such a condition whether it refer to 8 or 10 children. Not only could it affect the business operationally, in terms of staffing or the structure or organisation of the nursery day, but could result in separating friends or siblings, or denying children outdoor play for reasons which they may not understand. As such, a condition of this nature would not be reasonable and so would not meet the tests for conditions set out in paragraph 19 of the National Planning Policy Framework. I understand a condition of this nature has been applied to a planning permission for a nursery in Calthorpe Road, but I do not have details of that condition, or the reasoning behind it, to enable me to consider the two cases are comparable.
21. Without such a condition in place there would be no limit on the children playing outside. Although I recognise it would be highly unlikely for all 27 to be outside at the same time, it is very possible that significantly more than the 10 modelled in the noise assessment could be outside together, and the impact of that on the neighbouring residents has not been assessed. As such I can only conclude that noise from the development could have an unacceptably disturbing effect on the living conditions of neighbouring residents.
22. I acknowledge that the nature of the noise may not be disturbing to some people, that it would only occur during weekday daytimes and that there will always be staff on hand to discourage noisy behaviour. Nonetheless, such noise for much of every weekday, and despite the best intentions of staff, could still be disturbing to neighbours.
23. In summary, the development would fail to accord with policy PG3 of the BDP which aims to ensure development has regard to its local area context. It would also conflict with policy DM9 which says that day nurseries should not have an unacceptable adverse impact on local amenity; and DMB policy DM6, which states that any adverse impact from noise generating development should be mitigated.

Other Matters

24. I recognise the development would provide an economic benefit to the appellant and to the wider economy by allowing parents to return to work. I also understand that there is a high demand for places, including from parents employed at the nearby hospital. Nonetheless this does not outweigh the harms identified.
25. A number of other nurseries in the local area which have a higher capacity than that proposed have been drawn to my attention. Nonetheless it would not be appropriate for other operations elsewhere in the city to justify allowing this development which, I consider, would have harmful effects on the living conditions of nearby residents and on highway safety.
26. The appellant suggests a smaller increase or a temporary consent may be appropriate. However no detailed proposals of this nature have been provided

and I see no reason why consent for even a temporary period would be justified based on the harms that would result.

Conditions

27. As set out above, the Council raise no objection to the provision of the outbuilding and the amendments to the drawings to regularise it. To account for that alteration a new planning permission is created. The Planning Practice Guidance advises that, for clarity, decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.
28. I have imposed conditions limiting the opening hours and the number of children in the interests of protecting the living conditions of neighbouring residents. Conditions specifying the approved plans and the permitted use of the land are also necessary in the interests of certainty, with the latter referring to the updated version of the Town and Country Planning (Use Classes) Order in which day nurseries now fall under Class E.

Conclusion

29. The proposed increase in pupil numbers would fail to accord with the development plan as a whole, but no harm results from the provision of the outbuilding and the alterations to the drawings to account for it are acceptable. Therefore for the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed. A new planning permission is granted with a new version of condition 3, referring to the revised drawings, but with all other conditions, including condition 2, as previously imposed, repeated.

A Owen

INSPECTOR

Schedule of conditions

- 1) The use hereby approved shall only take place between the hours of 08:00-18:00 Monday to Friday.
- 2) The day nursery hereby approved shall accommodate a maximum number of 18 children on the premises at any one time.
- 3) The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawing numbers 001, 002, 003, 004 and 005.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), the ground floor of the premises shall be used for a Day Nursery and for no other purpose (excepting Class C3 use(residential)) including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (or in any provision equivalent to that Class in any statutory instrument amending, revoking and/or re-enacting that Order with or without modification).