



Appeal Decision

Site visit made on 5 October 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/L5240/W/22/3310397

174 Norbury Crescent, Norbury, Croydon, London SW16 4JY

- 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 Chet Panchal against the decision of the Council of the London Borough of Croydon.
 - The application Ref 22/03180/FUL.
 - The development is described as no change of use. Seeking to employ 2 x part time childminding assistants.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The above description of development is taken from the application form. However, the Council has described the development as a change of use of the site from a dwelling (C3) to a dwelling and day nursery for up to 12 children (sui generis). This represents a more accurate description of development and I note that the appellant has entered a similar description onto the appeal form. I have dealt with the appeal on this basis.
3. The appeal site was being used as a day nursery at the time of my visit. I have therefore determined the appeal on the basis that planning permission is being sought retrospectively for the change of use.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring occupiers, with regard to noise and disturbance.

Reasons

5. The appeal site is a mid-terrace dwelling with four bedrooms, a large garden, outbuilding and a small front parking area. It is surrounded by residential properties. Due to parked cars encroaching on the pavement, there can be limited pavement space along Norbury Crescent for pedestrians, particularly parents with prams.
6. The ground floor, rear outbuilding and garden is used as a day nursery, although outside of business hours the site reverts back to use as a dwelling. The rear outbuilding is used as a study, play and activities area, with the majority of the remaining garden space being used as an outdoor play area. The garden is bordered by walls, which are unlikely to significantly reduce noise from the garden area due to their limited height.

7. The nursery operates between 8am to 6pm between Monday and Friday. The nursery cares for up to 12 children per day, aged between 1 and 5 years. Many children stay for shorter periods and may not be present for the entire 10-hour day and there may also be periods of the day when children are napping. Nonetheless, even taking this into account, the number of children present is significantly above what one might reasonably expect at a property of this size when being used as a family dwelling.
8. There is already a significant level of background noise from vehicle movements on Norbury Crescent. However, the use of the site as a day nursery will have led to a significant change in the type and level of noise from the appeal site. It will have introduced sounds associated with lessons, food preparation, children playing, and staff movements. Even with noise mitigation measures such as double glazing, the noise from the nursery is likely to escape into neighbouring gardens, especially during warmer months when doors are likely to be open. Outdoor play will further increase noise levels, particularly during the summer when children are more likely to be outside. As such, the increased noise and activity levels from the nursery will significantly affect neighbouring properties, especially on hotter days when residents are more likely to have their windows open.
9. While many residential properties in the vicinity may be unoccupied during business hours when the appeal site is in greatest use, this does not apply to all neighbouring occupiers, as some might be at home during those times. These residents will experience a high level of disruption, particularly given the long duration of the operating hours throughout the week. Consequently, this will result in a significant detriment to the living conditions of the occupiers of neighbouring dwellings.
10. The appellant has suggested structuring play sessions to limit the number of children outside at any one time to a maximum of 6 children. However, I am not persuaded that such a restriction is enforceable, as it would be challenging for the Council to verify compliance. Additionally, it is unlikely to be reasonable as a form of mitigation, as the overall duration of outdoor activities would be prolonged, resulting in continuous disturbance throughout the day.
11. Although the parties do not agree on the Public Transport Accessibility Level of the appeal site, a bus stop is located directly in front of it. This suggests that parents could use the buses for transport if necessary. While there is limited space for pedestrians with prams on the pavement during busy periods, this is unlikely to result in significant disruption for local residents. However, even if all parents travelled to the site on foot or by bus, the high number of children means that pick-up and drop-off times still generates significant noise and disturbance. This includes, children playing, conversations among parents and caregivers, doors opening and closing, and children crying or yelling. This heightened level of activity around the appeal site during nursery pick-up and drop-off times results in disturbance for neighbouring occupiers.
12. The evidence refers to other childcare nurseries in the surrounding area. However, I am not aware of the full circumstances of those other cases and the appellant has indicated that they have more capacity than the development. This suggests that the operational dynamics and potential impacts of those nurseries are likely to be different from the appeal site. Larger facilities may have more robust infrastructure and better mitigation measures to handle

increased capacity, which may not be feasible for the appeal site. In any event, each scheme must be considered and determined on its individual merits.

13. In conclusion, the appeal scheme harms the living conditions of neighbouring occupiers, with regard to noise and disturbance. Accordingly, it would not comply with Policy DM10 of the Croydon Local Plan (2018), which requires development to protect the amenity of the occupiers of adjoining buildings. It would also fail to put in place adequate measures to manage the new noise impacts for neighbouring residents, contrary to Policy D13 of the London Plan (2021).

Other Matters

14. The appellant has noted that 11 neighbours did not object to the development and that 1 neighbour has responded with support. While community feedback is an important aspect of the planning process, the lack of objections and the presence of a supportive response do not, on their own, justify the development. They have also noted that Ofsted have approved the appeal site to accommodate up to 18 children. While Ofsted's approval indicates that the site meets certain standards for childcare provision, this does not necessarily equate to compliance with local planning policies. Therefore, these considerations do not negate the adverse impacts which I have assessed above.
15. The development increases the number of available childcare services in the area, which could enable siblings to attend the same nursery. It also participates in government schemes to help parents with childcare costs. Additionally, by being located in the local area, it helps to facilitate parents taking their children through local parks and other family orientated places. However, having taken these considerations into account, I find that the benefits are relatively limited. Given the scale and nature of the development, these considerations neither outweigh the harm I have identified nor the conflict with the development plan.
16. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010. The Act sets out the relevant protected characteristics which includes age. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the Act. I acknowledge the negative impacts of dismissing the appeal, including the loss of additional nursery places and a facility to provide care for children. Having due regard to this consideration and the need to eliminate discrimination and promote equality of opportunity, and in light of the well-established aim to protect living conditions, I conclude that dismissing the appeal in accordance with the development plan is a proportionate and legitimate response in this case.

Conclusion

17. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

S Lo

INSPECTOR