



Appeal Decision

Site visit made on 29 July 2024

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2024

Appeal Ref: APP/G5180/W/23/3335281

105A Station Road, West Wickham, Bromley BR4 0PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Mohamed Tarakji, Cuddly Bear Day Care Ltd against the decision of the Council of the London Borough of Bromley.
- The application Ref is DC/23/00972/FULL1.
- The development proposed is addition of another floor to existing single storey nursery.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has submitted an amended proposed floor plan and elevation plan with the appeal which alters the first floor layout with the corridor, staff room and a partition wall removed. Given the nature and extent of the changes, the amendment would not result in a development substantially different from that applied for. Accepting the plans would not deprive those who were entitled to be consulted on the application of the opportunity to make any representations that, given the nature and extent of the changes proposed, they may have wanted to make on the application as amended. I conclude that no one would be prejudiced and accept the amended plans.

Main Issues

3. The main issues are:
 - the effect of the proposal on the living conditions of the occupants of the nearby properties,
 - whether the need for the additional nursery spaces has been demonstrated,
 - whether the quality of the provision provided by the proposal would be acceptable for users; and,
 - the effect of the proposal on the character and appearance of the area.

Reasons

Living conditions

4. The appeal building is in use as a children's nursery following the approval of planning permission from the Council¹. This previous approval allowed for 44 children to attend the nursery. The proposal seeks to erect a first floor

¹ Council ref: 19/05336/FULL1

extension to provide additional floor space to increase the size of the nursery for an additional 16 children to attend. A first floor outdoor play area would also be created.

5. The appeal site is situated behind the buildings which front Glebe Way and Station Road, and it directly abuts the rear gardens of some of the houses in Oak Grove. It is also adjacent to Peacock House which is a block of flats. A residential development is under construction within the land adjacent to the front of the site and also at the rear of the site at the library site. Although the wider character of the area is mixed, there are residential properties close by.
6. The residential properties nearest to the proposed first floor outdoor play area are 10 and 12 Oak Grove. The existing ground floor outdoor play area use is authorised by the previous consent. Nevertheless, an increase in the number of children attending the nursery would result in more children playing outside at both the ground and first floor and may well lead to an increase in the amount of noise generated at the appeal site which, if not mitigated, could travel unsatisfactorily beyond the site.
7. The number of children able to use the first floor outdoor play area at any one time would be restricted by the size of the space. However, children playing and interactions between staff and children would generate noise at an elevated level close to the gardens of the properties in Oak Grove. This noise would particularly be noticeable when residents are using their gardens. If conditions restricting the number of children within the play area at any one time and the hours in which the outdoor area could be used were to be imposed, I cannot be certain that this would meet the appellant's needs, so would not be reasonable.
8. The submitted Noise Impact Assessment² (the NIA) recommended that the composite fencing around the first floor outdoor play area be replaced with a solid fence as a noise control measure. The NIA predicts that assuming a noise control barrier is introduced, the noise levels are not expected to increase at the nearest sensitive receivers which includes the existing properties in Oak Grove and at Peacock House and the proposed residential development. Whilst the Council's Environmental Health Officer did not object to the proposal, they commented that there should not be any significant adverse noise impacts arising from the proposal provided that the fencing around the first floor outdoor play area can be replaced with an acoustic barrier.
9. The submitted proposed elevational drawings show composite fencing around the first floor outdoor play area. I do not have any specific details regarding the fencing in terms of its design in order to make an informed judgement on whether this proposed fencing would act as an acceptable acoustic barrier and would be successful in satisfactorily mitigating the noise and disturbance. Given the lack of detail in this regard, I am not convinced that this could be resolved by planning condition as changes to the design of the fencing could result in a more dominating and imposing structure altering the design of the building.
10. In the absence of noise mitigation measures, the noise and disturbance through the introduction of an additional outdoor play area, in close proximity to 10 and 12 Oak Grove would have a significant adverse impact on the living conditions of these residents.

² Noise Impact Assessment – Reference: 10251/PPR

11. The proposal would result in extra comings and goings. However, this additional activity would largely take place via the existing entrance to the nursery which is down the side of the building. The nursery is within a District Centre where comings and goings from commercial uses are to be expected.
12. The additional noise generated from staff arriving and leaving and the dropping off and collection of the additional children would be unlikely to result in a significantly harmful increase compared to the existing situation. There are also no changes proposed to the previously consented opening hours. I am therefore not persuaded that, in terms of the increased comings and goings, the proposal would cause material harm to the living conditions of occupiers of nearby properties.
13. The proposed extension would follow the same footprint as the ground floor and would not project beyond the extent of the existing footprint of the building. The existing gap between the rear elevation and the adjacent rear boundary treatment would remain. The extension would be most visible from the rear gardens of 10 and 12 Oak Grove. However, by virtue of its relatively modest size and bulk and because it would be set away from the boundary, the extension would not be unduly imposing on the outlook from these rear gardens to a degree that would tangibly diminish these occupants' enjoyment of their rear gardens.
14. Whilst I have found that the proposal would not give rise to an unacceptable level of comings and goings or harm the outlook from the rear gardens of the properties in Oak Grove, it has not been demonstrated that the noise and disturbance from the first floor outdoor play area would be adequately mitigated against. I therefore conclude that the proposal would cause adverse harm to the living conditions of the occupants of 10 and 12 Oak Grove with respect to noise and disturbance. Accordingly, the proposal conflicts with Policy 37 of the Bromley Local Plan 2019 (the Local Plan), which amongst other things, expects development to respect the amenity of occupiers of neighbouring buildings and ensuring they are not harmed by noise and disturbance.
15. The reason for refusal refers to Policy 4 of the Local Plan. This policy applies to housing development and is therefore not determinative in the context of this main issue.

Need

16. Policy 20 of the Local Plan aims to ensure the provision, enhancement and retention of appropriate social infrastructure. It goes on to state that development which meets an identified need for such facilities will be encouraged and will normally be permitted provided that it is accessible to members of the community it is intended to serve.
17. The appellant has provided details regarding the number of children on their waiting list and the waiting lists at other nurseries in the wider area. Whilst the Council maintain that the ward does not have a shortage of nursery spaces, Policy 20 does not stipulate the area in which this need must be identified. Based on the appellant's evidence, I am satisfied that increasing the size of the nursery would meet an identified need.

18. I therefore conclude that the need for the additional nursery spaces has been demonstrated and complies with Policy 20 of the Local Plan, the purposes of which have been set out above.
19. The reason for refusal refers to Policy 37 of the Local Plan. This policy relates to the design of development and is therefore not determinative in the context of this main issue.

Quality of the provision

20. Although there are building works taking place around the appeal site, these are temporary works and will end once the developments have been completed. The use of the building as a children's nursery has already been found acceptable by the Council, despite its location.
21. The proposed first floor extension would provide an additional floor area in excess of 100 square meters. There would be a WC and the facilities on the ground floor would easily be accessible. My attention has not been drawn to any adopted policies in the development plan or supplementary guidance which set the standards for the size of the internal space and outdoor areas that are required for nurseries.
22. The appellant asserts that the resultant size of the nursery and outdoor play area would be sufficient to accommodate the proposed increase in the number of children when considering the guidelines set out in the Statutory Guidance for Nurseries published by the Department of Education. Whilst this does not form part of the development plan, the Council does not dispute the appellant's assessment against this guidance. The Council's concerns regarding this aspect of the proposal have therefore not been supported by any robust evidence in relation to the planning merits of the case and I am therefore unable to identify any harm in this regard.
23. I therefore conclude the quality of the provision provided by the proposal would be acceptable for users. The proposal therefore complies with the aims of Policy 37 of the Local Plan, which amongst other things, expects the layout of the development proposal to be of a high standard.

Character and appearance

24. The appeal site comprises a single storey building with a flat roof. The surrounding buildings are generally two and three storeys tall of varying design. Whilst the more recent buildings are predominately brick-built, across the area there is a mixture of brickwork and render present.
25. The proposed extension would add an additional floor to the building effectively creating a two storey building. This would not be out of keeping with the local context, given that two storey buildings are part and parcel of the immediate character of the area. Whilst the height of the building would be increased, the building would remain to be shorter than some of the neighbouring buildings. The flat-roof form and set-back from the side elevation to create the outdoor play area would also help to break up some of the massing and bulk of the extension.
26. The extension would extend across nearly the full width and length of the ground floor. However, this would not result in a disproportionately wide form of development, as it would replicate the existing footprint of the building. The

size of the extension would therefore be relative to the scale of the existing building, and it would not be an incongruous addition.

27. The window proportions would generally match the existing windows and would be consistent with the contemporary design of the building. Decorative composite cladding would be added around one of the ground floor windows and to some of the first floor windows as well as changes to the colour of the decorative brickwork around the other existing windows. These features and detailing would add some visual interest to the building.
28. The use of white render on the external elevations would match the existing building and would also tie in with the external elevations of the nearby buildings. The design of the proposal would therefore be a coherent response to the appearance of the surrounding buildings and would assimilate well. The proposal would comply with the Urban Design Supplementary Planning Document 2023 in this regard.
29. As the appeal site is surrounded by buildings, it already has a relatively hemmed-in feel. The extension would not be close enough to Peacock House or the library building to have a significantly enclosing effect on these buildings. The extension would be visible from the surrounding buildings. However, it would be viewed in a varied context of other buildings, some of which have a bigger size and scale than the appeal proposal.
30. For these reasons, I conclude that the proposal would not cause harm to the character and appearance of the area. Accordingly, it would comply with Policy 37 of the Local Plan, which amongst other things, expects development to be of a high standard of design that complements the scale, proportion, form and materials of adjacent buildings and positively contributes to the existing street scene.
31. The reason for refusal refers to Policy 4 of the Local Plan which is not determinative in the context of this main issue.

Planning Balance

32. The site is located within a District Centre, is accessible by public transport and would comply with other policies of the development plan. The proposal would offer social and economic benefits in terms of nursery provision and employment opportunities. However, given the scale and nature of the development, these benefits would not outweigh the harm I have identified nor the conflict with the development plan.
33. 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.

Conclusion

34. For the reasons given above the appeal should be dismissed.

L Reid

INSPECTOR