



Appeal Decision

Site visit made on 17 September 2024

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2024

Appeal Ref: APP/M4320/W/24/3339834

25 Botanic Road, Southport, Sefton PR9 7NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Miss Stephanie Brough of Little Sparks Southport Limited against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2023/00374 was approved on 1 September 2023 and planning permission was granted subject to conditions.
 - The development permitted is removal of condition 7 and variation of conditions 8 and 9 pursuant to planning permission DC/2021/02153 approved on 22/03/2022 to allow the rear garden to be used by customers/children, increase the opening hours to include the occasional Sunday from 10.00am to 16.00pm and increase the number of children on the premises to 20.
 - The condition in dispute is no. 4 which states that:
"The rear garden must not be used at any time by customers/children associated with the business operation."
 - The reason given for the condition is:
"To protect the living conditions of the neighbouring occupiers."
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission ref DC/2021/02153 is for the change of use of the property from a printers to a play based learning space/cafe (Class E). It is subject to several conditions, including condition 7 which states that the rear garden must not be used at any time by customers/children; condition 8 relating to the permitted opening times; and condition 9 restricting the maximum number of children. A Section 73 application to remove condition 7 and vary conditions 8 and 9 was granted in September 2023. Although the Council varied conditions 8 and 9 to extend the opening times and increase the maximum number of children permitted, it did not remove condition 7 but instead re-imposed it as condition 4. The appellant seeks to remove this condition so that the rear garden can be used by customers and children.
3. Therefore, the main issue is the effect that the removal of the condition would have on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

4. The appeal site is a two-storey property which operates as a play café. It includes a single storey rear extension beyond which there is a rear garden.

The surrounding area is of mixed character with a range of different uses nearby, including dwellings, a takeaway, retail premises and a church.

5. The rear garden of the appeal property is bordered by neighbouring residential properties. It is particularly close to the rear elevations of 3 and 5 Churchgate which are separated from the site by a narrow pathway/patio areas. These properties both contain rear windows and doors facing directly towards the garden of the appeal property. The rear gardens of 21, 23 and 27 Botanic Road and 7 Churchgate are also within close proximity.
6. During my site visit I observed that the rear garden of the appeal property is an enclosed and quiet space with the only discernible noise being vehicles passing along Botanic Road. While only a snapshot in time, I have no reason to suppose that this situation was not representative of the typical noise environment in the area.
7. It is unlikely that the outdoor play space would be in constant use by the maximum number of children permitted at the premises. However, taking into account the confined nature of the rear garden and its proximity to the nearby properties and their gardens, the concentration of a potentially large number of children within this space, even if they were supervised, would cause significant harm to the neighbours' living conditions, by way of noise and disturbance. The impact would be exacerbated during warmer weather when the neighbours are more likely to have their windows open or spending time in their gardens. The effects would be particularly harmful to the occupiers of Nos 3 and 5 given their proximity and orientation towards the site.
8. While the appellant's business model is to use the outdoor space for a limited number of sessions of specified duration each day, and the number of children would be restricted to a maximum of 15, this would still result in potential noise and disturbance from a large number of children for around three and a half hours per day in an otherwise relatively quiet environment.
9. The appellant's noise report has assessed the external noise level in the garden and concludes that likely noise levels at neighbouring properties would be within the World Health Organisation (WHO) Guidelines for Community Noise. However, it is possible that children could at times be closer to No 3's window than the 5m distance quoted in the report, and the noise levels at this property may therefore have been underestimated. Moreover, the predicted noise level outside No 3 would still be around a level that would indicate 'moderate annoyance' according to the WHO guidelines.
10. The findings of the noise report are predicated on the fences around the garden being maintained to a high standard, ensuring there are no gaps. The low fence to the rear of Nos 3 and 5 is unlikely to sufficiently mitigate noise. Raising the height of the fence on this boundary could provide noise mitigation but in turn would lead to an enclosing effect on the rear windows and patios of Nos 3 and 5, resulting in a loss of outlook to these properties. Consequently, the noise report does not provide sufficient clarity and robustness to enable me to conclude that the neighbours' living conditions would be protected.
11. Accordingly, I find that the disputed condition is necessary to safeguard neighbouring occupiers' living conditions and ensure that the proposal complies with Policy EQ4 of A Local Plan for Sefton (2017) and paragraph 135

of the National Planning Policy Framework, which seek to protect the amenity of neighbouring occupiers including in respect of noise.

Other Matters

12. The rear garden is currently overgrown and untidy, but it could be improved and maintained without being used for outdoor play. I sympathise with the appellant's aim to sustain and grow their business which appears to be valued by members of the local community with children. However, these matters do not outweigh the harm I have identified.
13. I note the appellant's reference to other businesses in the local area that use their outdoor spaces. However, I do not have the details of the planning history of these, or their specific contexts, and the appeal property has a particularly close relationship with surrounding dwellings. Accordingly, the other examples referred to do not justify the harm in this case.
14. While some neighbours are in support of the proposed use of the rear garden, others have submitted objections. Therefore, this is not a determinative matter in favour of the proposal.
15. Although I acknowledge the appellant's frustration with the Council's handling of the application, this is a procedural matter which does not impact on my assessment of the planning merits of the case.

Conclusion

16. For the above reasons, I conclude that the removal of the condition is unacceptable and the appeal should, therefore, be dismissed.

M Ollerenshaw

INSPECTOR