

Appeal Decision

Site visit made on 19 August 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2024

Appeal Ref: APP/G5180/W/24/3338135

Little Cherubs Nursery, 50-52 Shortlands Road, Bromley BR2 0JP

- 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 Ms Percy (Little Cherubs Nursery) against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/23/02371/FULL1.
 - The development proposed was described as 'construction of a flat roofed extension to form a new third floor in order to provide an additional nursery room and an increase in the number of nursery spaces to 80'.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 16 September 2024

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development in the banner above is taken from the application form and was used in the appeal form. The as proposed plans and a materials schedule show new brick and fenestration colours in ground and first floor elevations as part of the justification for the proposal. I have, therefore, determined the appeal on this basis. This is consistent with how the Council considered the application and made its decision, including the description of development in its decision notice which additionally refers to external alterations.

Main Issues

3. The main issues in this case are:
 - the effect of the proposal on the character and appearance of Nos.50-52 Shortlands Road (the building) and on the Shortlands Conservation Area (the CA), including the streetscene; and
 - the effect of the proposal on the living conditions of existing occupiers of nearby dwellings that border the site, having regard to noise and general disturbance.

Reasons

Character and appearance

4. The building was a pair of circa 1960s semi-detached two-storey dwellings, previously extended and combined as a children's day nursery. Dark brown concrete tiles form the dual, low pitched gable ended roof with mainly red brick elevations, including some first floor white horizontal cladding at the front, likely uPVC to match fenestration and fascias. A single storey felt covered, flat roofed extension either side includes a front porch. It is in the CA, facing Shortlands Road which is a main throughfare and axis of the CA. The significance of the CA includes large, mainly detached late Victorian and early twentieth century two and three storey residential properties along this road¹. Though varied in architectural detailing and design, these buildings are compatible in form, style and materials and are of inherent quality. The building is more modest in size and of its time, so has a neutral effect on the character and appearance of this part of the CA and the CA overall.
5. It has more in common visually with similar dwellings next to it in Bromley Grove, but these face away and are not in the CA. There is otherwise little to suggest that fundamental change to the building by extension or alteration, as in this appeal, must reflect its intrinsic design or materials. The template for the proposal is the recently built block of apartments on one side of the building at No.54 Shortlands Road, also in the CA, which replaced a 1960s detached house. The Council granted planning permission for that development including because although next to a more typical and representative (of the CA) large Victorian property (No.56 Shortlands Road), the contemporary design, materials and detailing proposed were acceptable in this part of the CA². Also in scale and massing, subservient to No.56 and in harmony with the streetscene, including the building.
6. However, the success of No.54 is not just high quality materials, but also flows from great attention to high quality design and detailing carried through to build stage. This gives a coherent integrity, including derived from replacement without compromise of an existing building, as opposed to constraint by extension or alteration of an existing building. Whereas, in this appeal there are apparent inconsistencies between the proposed elevation, floor and roof plans; for example in the position of some new and existing windows and a pitched roof over the porches. The elevation plans best show the intended appearance of the resulting building.
7. The third storey would use the same grey contemporary external materials as No.54 (the appellant submitted a copy of the materials schedule used in the planning application for that development). But narrow soffits would not overhang or project far, if at all, so not finish the flat roof or define this upper part of the building in a robust or convincing way. The square windows would occupy a small proportion of these elevations, which would not be articulated in any other meaningful way or set behind any intervening feature, such as a parapet or balustrade. Though inset from edges (and with no cross-section plan) the majority, if not all of the exposed floor to ceiling height and width of these mainly blank, contiguous symmetrical elevations

¹ Council's Shortlands Road Conservation Area Supplementary Planning Guidance

² 19/00230/FULL1 – officer report

would be at the same level. The extension overall would therefore appear as a bland, discordant box-like adjunct to this most elevated and conspicuous part of the resulting building.

8. Despite also grey, the square windows would not reflect the shape or proportions of most of the (presumably) replaced white fenestration below, which would retain a predominant horizontal emphasis. Nor would these windows vertically align with each other in a precise way. The haphazard placement and arrangement would be unbalanced and detract from the appearance of the building.
9. The first floor and most of the ground floor elevations would incorporate the same yellow brick used at No.54. Also, it appears, with some similar horizontal banding; though while stone was included in the materials schedule at No.54, this important detail has not been annotated as such in the appeal plans nor made plain in writing. The Council has suggested that the yellow bricks would be a 'brick facing'. No doubt the uPVC cladding could easily be removed but the appellant has given no explanation about how the existing red brickwork would be altered, perhaps intended to be replaced or rebuilt, or covered over (faced) by the proposed bricks. Comparison of the as existing and proposed plans shows no discernible change to external dimensions of these parts of the building and there is no scale cross-section plan to confirm what is intended.
10. Some parts of the ground floor elevations would not receive yellow brickwork. While these parts of the building are not particularly, or at all, visible in public view because of boundary fences or other features, this patchwork finish would result in an innate lack of visual integrity and cohesion in the external fabric of the building overall. Other than the projecting front porches, there would be little significant articulation to the main front elevation of the resulting building, including because there would be no stone framing around fenestration or floor to ceiling height windows other than entrance doors, with a large expanse of yellow brickwork over two storeys on a uniform plane.
11. Though different in form, and with what might be intended as a small increase in height of the first floor elevations (there is no cross-section plan), the flat roofed third storey, including over a first floor rear extension, would in part replace the main roof structure, inset on each face. So albeit taller, the height, scale and massing of this part would not be over-dominant or out of scale with the parts of the building below and as a whole. It would also give a suitable stepped transition of building heights in the gently sloping road, including between No.56, No.54 and the first of the houses in Bromley Grove, which is side on to Shortlands Road separated by a long back garden. In this sense, the proposal would not jar in the streetscene.
12. A building in concept and execution as the apartments at No.54 could be suitable in principle on the site of the building. It could also give a complementary progression to the character and appearance of built form along this side of Shortlands Road and in this part of the CA. However, even though the proposed materials would be high quality, I am not satisfied the appellant has demonstrated that there would be high quality design and detailing. The proposal lacks refinement, without sufficient conviction and

I have little confidence in the as proposed plans or that the extension and alterations could be carried out with necessary finesse at a construction stage. Though of necessity smaller in overall size, the resulting building in this appeal would convey a rudimentary, superficial impression of the apartments at No.54 so not be 'very' similar and all the materials would not 'match exactly' as the appellant suggests. A somewhat disparate juxtaposition with No.54 would plainly be observed in long and short distance public views in the Shortlands Road streetscene. Once constructed the resulting building would to all intents and purposes be a permanent feature in the CA.

13. The proposal in this current appeal addresses some of the issues identified by a previous Inspector in a dismissed appeal for a roof extension to the building³. However, albeit similar in some respects, it was a materially different proposal so is not directly comparable to the current proposal. The considerations outlined earlier above are relevant to the prospect of successful, compatible development in a Conservation Area, so to a decision to grant planning permission. They cannot therefore be relegated to a condition, such as for approval of more detailed plans and because I cannot be certain these matters can be successfully reconciled.
14. Taking account of all the above, I find that the proposal would have a negative effect on the CA and adversely affect and undermine the significance of the CA overall, so fail to preserve or enhance the character or appearance of the CA⁴. Consequently, it conflicts with Policies 37 and 41 of the Bromley Local Plan January 2019 (BLP)⁵ and Policy D3 of the London Plan March 2021 (LP). These policies include that extensions should be high standard in design with good quality architecture that pays attention to detail, appropriate in appearance to distinctive context, attractive to look at, positively contribute to the streetscene and preserve and enhance the character and appearance of a Conservation Area.

Living conditions

15. The nursery would expand from 46 to 80 children and 12 to 19 staff by increasing the number of both on the first floor and the remainder in the new second floor. First floor rear windows already face towards nearby windows and gardens of dwellings that border the site (Nos.1 to 3, including 1a, b and c Bromley Road and the apartments at No.54) and beyond, as would new second floor rear elevation windows. The outside children's play area also borders these same dwellings and would not be altered in size.
16. The appellant's Noise Impact Assessment (NIA)⁶ is informed by noise monitoring in the rear garden of No.3 Bromley Grove, next to the play area, including at times when the nursery was open, at capacity and the play area in use. This established baseline background, continuous average and maximum noise levels from all sources. For some purposes the NIA has set out a 'worst case' assuming all 80 children to be present in the existing first floor and new second floor.

³ APP/G5180/20/3244809

⁴ Section 72(1) - Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

⁵ As informed by the Council's Urban Design Guide Supplementary Planning Document July 2023

⁶ Ref 9282/JL/BL Rev A - Acoustic Consultants Ltd, 6 June 2023

17. Despite the 6 June 2023 date of the NIA, the noise monitoring that underpins it was captured well over a year earlier, between 7 and 8 March 2022. This has been used for the noise modelling and predictions, taking account of windows open in the nursery and at the nearby dwellings and the use of rear gardens. Photographs and plans in the NIA show the previous house at No.54 in situ. However, the appellant's Design and Access Statement⁷ was part of the 19 June 2023 appeal application. It contains a photograph of the apartments at No.54 at least by then completed, though also appears occupied, even if only in part.
18. There was already, anyway, no apparent justification for the NIA to assert that the most sensitive residential receptors are to the rear, along Bromley Grove, given that elsewhere it considered the closest dwelling was No.54. But, in particular, the NIA has plainly taken no account of the apartments then already at No.54, including in the noise modelling and noise predictions and the scenario maps are based on the house at No.54.
19. The apartments occupy the same plot as No.54 but there are now five new homes where there was one. There is no evidence that the NIA has considered this material change, including the comparative siting of this respective living accommodation, the position and extent of fenestration and outdoor private or communal living space or any balconies. I am required to determine this appeal on the basis of circumstances as they are, not what they were over two years ago. There is no apparent reason why the NIA was not updated. This omission somewhat erodes the integrity and credibility of the NIA in this regard.
20. Notwithstanding the above, the variation in monitored baseline noise levels starts at 12:30 and finishes at 09:30. Though open from 07:30 it does not therefore cover the majority (3 hours) of the morning when the nursery is usually in operation, including any morning use of the play area at this time. The absence of this baseline monitoring data is not explained.
21. Even though the logarithmic average calculation for nursery play area noise modelled and predicted in isolation has taken account of octave bands, it is not clear that it has used or is based on the most appropriate 2 hour period. The NIA inconsistently states that the play area is used as and when required throughout the day, but that this calculation is based on a 2 hour period when nursery staff advised children were in the play area and the most intense use is said to be at lunchtime. But the 2 hour period that has been used is not disclosed. Nor is it claimed that it doesn't matter which 2 hour period is used, or if numbers of children in the period that was used was representative or matters to the noise modelling and predictions.
22. Furthermore, at the times when the nursery was in use on the monitoring day (ordinarily weekdays between 07:30 and 18:00) the baseline continuous average noise levels already exceeded 50dB and on occasions exceed 55dB, while maximum noise levels exceeded 60dB. Despite a predicted relatively modest plus 3dB change overall in respect of play area noise (so no progression from one 5dB wide 'colour' interval or bracket to another) the predicted as proposed noise scenario maps confirm 59.9dB at the monitoring point in the garden of No.3 Bromley Grove and between 50dB and up to

⁷ Beacon Hill Planning

55dB elsewhere in this garden. This same spread was also predicted in the garden of what was the closest house at No.54 (and some of the apartments may still be the closest dwelling). The NIA refers to the World Health Organisation Guidelines 1999. But even on that basis and the values outlined above, some baseline and modelled predictions in the NIA cause noise at a level sufficient to result in between moderate and serious annoyance during daytime in outdoor living areas (gardens).

23. Noise that is audible is not necessarily intrusive. But even if up to 50dB or up to 55dB noise levels were not actually breached, this does not mean planning amenity impacts should be discounted until this threshold is reached. Moreover, the NIA is caveated to a tolerance of plus or minus 3dB. Even the predicted 3dB increase could therefore be up to 6dB and potentially sufficient to shift predicted noise levels into a higher 5dB bracket, with either moderate or major short term impacts and minor to major long term impacts. The NIA has not recommended mitigation measures to account for this scenario. This also, therefore, leaves some uncertainty about claimed adherence to other standards, such as the Noise Policy Statement for England and Institute of Environmental Management and Assessment.
24. My concerns in these regards also broadly apply to the predicted noise levels at facades of the dwellings shown in the scenario maps (including the absence of the apartments at No.54) and to the indoor nursery use noise breakout assessment.
25. The appellant considers that use of the play area could be limited to 10-12 children at a time and be a betterment over the existing situation, including because a strategy to 'manage the behaviour' of children using the outdoor play space could be secured by a condition. However, there is no apparent evidence that the NIA has considered this alleged mitigation. It may physically be possible for all existing 46 children to be present in the play area at once or even use it for play. But there is no evidence that such intense use and activity would meet any relevant regulatory requirements, such as for outside space standards, health, safety or welfare and staff supervision. Nor that it is actually currently regularly used in this way as opposed to on special occasions or events when all children and staff might gather at once.
26. I have already outlined above that it is not clear how many children already use the play area at a time. Nor from the NIA, when the play area is actually used at present and if limited to a two hour session(s) or if the number of children is a determining or relevant factor in the level of noise that has actually been monitored and predicted in the NIA.
27. In the absence of evidence to the contrary, allowing 10 children outside at a time for up to a 2 hour play period, set against the proposed 80 children nursery capacity, is likely to result in significantly extended, possibly all day long duration of noise. This would be materially different, and on the face of it significantly more harmful to residential amenity, than living near a school where outside play is limited to set times and for a relatively short duration in the school day, which generally speaking ends by 15:00. Nor has it been justified that such regimented, regulated behaviour of children at the nursery would be reasonable or conducive to the children or more likely

possible or practical considering the young age of some, let alone be managed or supervised by staff, acceptable to parents or easily be monitored by the Council. In these circumstances, a 'play space management plan' could not be controlled by a condition (or a planning obligation, and no such suggested obligation is anyway before me).

28. At my site visit, a number of cars sequenced through the in/out dual access to park (with engines off) in the front forecourt at the nursery, or in Shortlands Road, including at times 'stacked' in this road (with engines running) waiting for the forecourt to clear. These vehicles arrived and departed at low speed and with little noise, particularly the electric vehicles. While over a reasonably long period, in the main they were at the nursery for a few minutes while children were collected. There was also a notable number of collections by parents on foot.
29. Even taking the appellant's out of date Transport Statement⁸, there would be a significant increase in vehicle movements to and from the nursery, with a perception of increased noise and disturbance. However, although mainly compressed into the beginning and end of the day, I do not consider, nor does the NIA show, that this would cause actual unacceptable material noise or disturbance, including beyond that already experienced due to passing traffic on Shortlands Road.
30. I have had due regard to two previous dismissed appeal decisions⁹. The oldest sought an increase from 32 to 60 children at the nursery, though during that appeal the starting point was established to be 46 children. There was no objective noise impact assessment report in that case. The more recent appeal sought an increase from 46 to 76 children and was supported with a noise impact assessment. However, amongst other things, this report did not contain any site specific noise monitoring data, so modelling and predictions were not informed by such information. As such, neither decision particularly assists me on this main issue. I have, anyway, considered the current appeal on its individual planning merits.
31. Considering all the above, I am not satisfied the appellant has demonstrated that this significant influx of people, especially children, would not have a significant, unacceptable adverse impact on the living conditions of existing occupiers of all nearby dwellings that border the site, having regard to noise and general disturbance. Accordingly, the proposal does not comply with BLP Policies 37 and 119 or with LP Policy D14. These policies include that development should respect the amenity of the occupiers of neighbouring buildings and not be harmed by noise or disturbance and minimise impacts with appropriate mitigation. The National Planning Policy Framework (NPPF) seeks to ensure that development promotes health, well-being and a high standard of amenity for existing users.

Heritage Balance

32. The NPPF also aims to conserve the historic environment and achieve well-designed beautiful buildings and places with development that is sympathetic to local character and maintains a strong sense of distinctive places to live

⁸ Ref L466 – PFA Consulting, July 2019

⁹ APP/G5180/A/11/2144186 and APP/G5180/W/20/3244809

and visit. The building is not a statutory or locally listed building but it is in the CA, which is a designated heritage asset¹⁰. These are an irreplaceable resource to be conserved in a manner appropriate to their significance.

33. The CA is not large and mostly a linear corridor along a main road, so small changes can have significant intrinsic or conspicuous outcomes. The proposal would have an unacceptable impact on the significance of this part of the CA and of the CA overall, so would detract from the way in which this designated heritage asset is experienced or understood. This effect would be limited in relation to the entire CA, so the overall harm to the CA would be less than substantial. This harm should be weighed against the public benefits of the proposal.
34. I have not been informed that the increase in child places sought is necessary for viable continuance of the nursery, which was last rated 'outstanding' by Ofsted. In the absence of evidence to the contrary, the nursery would operate irrespective of the outcome of this appeal.
35. Notwithstanding the total capacity for childcare in the borough, there is a local Shortlands Ward need for additional childcare places. The Council encourages providers to expand 'if they are able to'; including therefore subject to planning permission where required. BLP Policy 20 supports such development in principle. The nursery has a full waiting list and 75% of parent enquiries are not offered a place, or unless or until a sibling departs for school. Though not all children aged 0-4 would attend nursery, 935 children of this age in this ward, set against existing provision of 374 childcare places results in a low 0.4 childcare ratio in this area.
36. The proposal would provide opportunity for more children to acquire social and learning skills at this age. Also, release or relieve parents from childcare for reasons such as to work or well-being. It would create or sustain short term employment during construction works and longer term employment for new staff, so support the local economy. These would be important public benefits and as such have notable weight in support of the proposal.
37. However, the resulting building would not be entirely compatible with this part of the CA or the CA overall. The proposal would undermine the Council's relevant development plan objectives for the CA, which are broadly consistent with the aims of the NPPF outlined above. The NPPF requires that great weight should be given to the conservation of a designated heritage asset irrespective of the level of harm. Accordingly, the public benefits of granting planning permission in this case do not outweigh the loss of significance and heritage harm. In these circumstances there is no clear and convincing justification for the proposal.

Other Matters

38. As well as those who supported the proposal, a large number of local residents, including the Shortlands Residents Association, also objected to the proposal for other reasons. I have had due regard to these submissions, but the Council did not refuse permission in these respects and I am not persuaded there is sufficiently compelling evidence to find otherwise.

¹⁰ NPPF Annex 2: Glossary

Planning Balance and Conclusion

39. The proposal does not comply with the most relevant policies of the development plan and there is conflict with relevant policies in the NPPF. There are no other material considerations to indicate that the decision should not be made otherwise than in accordance with the development plan taken as a whole¹¹.
40. Consequently, for the reasons given above the proposal is unacceptable so the appeal does not succeed.

Robin Buchanan

INSPECTOR

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended) and NPPF paragraph 12