



Appeal Decision

Site visit made on 15 October 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 NOVEMBER 2024

Appeal Ref: APP/G5180/W/24/3336484

109 Crofton Road, Orpington BR6 8HU

- 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 Little Elms Daycare Nursery Crofton against the decision of the Council of the London Borough of Bromley.
- The application reference is DC/12/02182/RECON.
- The application sought planning permission for the erection of a single storey outbuilding for use as two offices in association with existing nursery without complying with a condition attached to planning permission reference DC/12/02182/FULL1, dated 2 October 2012.
- The condition in dispute is No 2 which states that:
"No more than 90 children shall be accommodated at the day nursery at any one time."
- The reason given for the condition is:
"In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the amenities of nearby properties."

Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey outbuilding for use as two offices in association with existing nursery at 109 Crofton Road, Orpington BR6 8HU in accordance with the application reference is DC/12/02182/RECON, without compliance with condition numbers 1 and 3 previously imposed on planning permission reference DC/12/02182/FULL1, dated 2 October 2012 and subject to the following conditions:
 - 1) The materials to be used for the external surfaces of the building shall be as set out in the planning application forms and/or drawings unless otherwise agreed in writing by the Local Planning Authority.
 - 2) The use of the premises as a day nursery shall be limited to Mondays to Fridays inclusive between the hours of 7.30am and 6.30pm.

Procedural Matters

2. The site address was given on the application form as "109 Crofton Road, Orpington BR6 8HU", and on the appeal form as "Little Elms Nursery, 109A Crofton Road, Orpington BR6 8HU". For consistency with the original planning permission, I have used the first of these in the banner heading and my formal decision above.
3. The appellant's submissions indicated they considered the Council had behaved unreasonably, and they would be seeking an award of costs.

However, no application for an award of costs has been made, so there is no related Costs Decision.

Background and Main Issue

4. A certificate of lawfulness was granted in 2011 for the proposed change of use of the appeal property to a children's day nursery, it having been a doctors' surgery up to that point¹. Planning permission was granted later in 2011 for a single-storey side and rear extension to the building², then in 2012 for the erection of an outbuilding for use as staff offices. A condition imposed on the 2012 permission limited the number of children to be accommodated within the nursery at any one time. The application to remove that condition, which is the subject of this appeal, was refused by the Council because it considered that to do so "would be significantly harmful to the amenities of neighbouring properties [and] to highway, traffic and parking conditions...".
5. The main issue is whether the disputed condition is necessary, relevant to the development permitted, and reasonable in all other respects, with regard to the living conditions of the occupants of neighbouring residential properties, and to highway safety.

Reasons

6. The appeal property is a detached building on a prominent site at the corner of Crofton Road and Pound Court Drive in a predominantly residential, suburban area. Crofton Road, which runs westwards from Orpington town centre and railway station, is an A-road forming part of London's Strategic Road Network; Pound Court Drive gives access to the mid-20th century housing estate to the south of the appeal site.
7. The use of the building as a doctors' surgery dated from around 1948, without there being any restriction on the number of patients or staff allowed to be on the site; there is no provision for imposing conditions on a certificate of lawfulness of proposed use or development. When determining the 2011 application for an extension to the nursery (which at that point was yet to open) it was stated that its total capacity would be raised from 77 to 83 children. The Council considered comments relating to the potential increase in traffic at that time but concluded that it "would not result in a significant loss of amenity to local residents nor impact detrimentally on the character of the area", and no condition limiting numbers was imposed.
8. When the 2012 application was being determined it was stated that the Ofsted-regulated³ capacity of the premises was 90 children⁴. The Council noted that the scheme was supported by its Education and Care Services team, which had commented that it would provide "a space where staff may talk to parents/carers confidentially, as well as an area for staff to take breaks away from the children" in line with Ofsted guidance. Objections from local residents were acknowledged, with particular reference to "further issues with parking and traffic in and around the site". However, the Council considered that the outbuilding would "not [...] result in an unacceptable impact upon the amenities of the neighbouring residents", and that as "the purpose of the

¹ LPA Ref: 10/03536/PLUD

² LPA Ref: 11/00512/FULL1

³ The Office for Standards in Education, Children's Services and Skills

⁴ 2023 information from Ofsted gives the total number of places at the nursery as 95

outbuildings is to provide additional office space for the existing staff [...] it is unlikely that this development would cause an increase in the volume of vehicles attending the application site". Notwithstanding these observations, the disputed condition restricting the number of children at the nursery was imposed on the planning permission, though it appears that this may have been at the request of the planning committee.

9. Part of the Council's case is that the application to remove the disputed condition was not accompanied by details of "the management of traffic generated by the nursery either associated with the arrival and departure of parents with children, associated deliveries of food/supplies/collection of waste/ travel strategies for staff such as phasing of journeys, alternative methods of travel to work by foot, train, private car, shared journey or by cycling or on site cycling storage capacity for members of staff wishing to cycle to and from the site". However, in the light of the Council's 2012 observations it is not clear why that information would be required for the proposed development.
10. The Council also referred again to a large number of "local objections", including those related to the absence of a designated drop-off/pick-up area, and comments that parking restrictions are often ignored. I have also had regard to submissions made directly during the appeal by interested parties in similar terms. While I did not see any significant traffic or parking issues in the vicinity of the appeal site, that may be at least partly a consequence of my visit having taken place during a relatively calm period in the middle of the working day. I recognise that a well-used day nursery is likely to have some impact on traffic or parking in the area at other times. However, there is no substantive evidence before me to demonstrate that the reported problems in this respect are, or would be, a direct consequence of the additional space permitted by the 2012 permission; one respondent attributed parking problems to users of Orpington station and to schools in the area generally, as well as to the nursery.
11. Policy on the use of planning conditions is set out in Paragraphs 55 and 56 of the National Planning Policy Framework ("the Framework"); Paragraph 56 states that conditions "should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects". It will be apparent from my observations in the preceding paragraphs that I am not satisfied that the disputed condition is either necessary or relevant to the development permitted; those tests have not therefore been met.
12. Although the number of places at a nursery is regulated by Ofsted, there may be times when it is appropriate (in planning terms) for a condition limiting numbers to be imposed. Although the Planning Practice Guidance ("the PPG") states that conditions should not be used to require compliance with other regulatory regimes⁵, I do not therefore agree with the thrust of the appellant's argument that such a condition would not, as a matter of principal, be relevant to planning. The enforceability and reasonableness tests, however, are not met because the condition is not relevant to the development permitted. The condition's precision, which is not disputed, is therefore of little consequence; the PPG is clear that conditions must satisfy all six of the Framework's tests⁶.

⁵ Paragraph: 005 Reference ID: 21a-005-20190723

⁶ Paragraph: 003 Reference ID: 21a-003-20190723

13. Other comments were made by interested parties, including in respect of deliveries to the nursery kitchen, lighting, littering, and noise from the nursery being "intolerable and inappropriate for a residential area" (though what kind of noise was not specifically explained). These also do not relate directly to the provision of what is a relatively limited amount of additional staff space on the appeal site. They do not justify my dismissing this appeal.
14. I conclude that the disputed condition is not relevant to the development permitted, with regard to living conditions of the occupants of neighbouring residential properties and to highway safety; as a result it is also neither necessary nor reasonable in all other respects. It should therefore be removed.

Conditions

15. The PPG makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. With the development complete, I have deleted Condition 1 of the original permission as the standard time limit for the commencement of development is no longer necessary. I have reimposed Condition 2 of the original permission relating to materials as it continues to have effect – this is now Condition 1. I have also reimposed what was Condition 4 relating to operating hours (it is now Condition 2) as it is not in dispute.
16. The Council invited me, in the event of my allowing this appeal, to impose two further conditions, relating to the provision of details of cycle parking, and to the submission, approval and compliance with a service and delivery plan. These conditions were proposed following comments from Transport for London, which observed that "as there is no proposed limit on the number of children above the conditioned 90, any assessment must be based upon the absolute worst-case scenario of how many children could physically fit into the building at any one time".
17. However, as I have already described in addressing the main issue, the development to which this appeal relates was not, and is not, predicated on increasing the numbers of staff or children on the site. Although it appears that numbers of children at the nursery *have* increased since 2012, the evidence before me does not demonstrate that this is a direct consequence of this development. The matters addressed by those two suggested conditions are not related to the development permitted in this case, and the conditions would not meet the Framework tests; I have therefore not imposed them.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed. I will therefore grant a new planning permission without either the disputed condition or the "time limit" condition, which is no longer relevant, and with the two conditions which are still subsisting and capable of taking effect restated.

M Cryan

Inspector