



Appeal Decision

Hearing held on 3 and 4 December 2024

Site visit made on 4 December 2024

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2024

Appeal Ref: APP/V4630/W/24/3348824

Simons Restaurant, 520 Chester Road, Aldridge, Walsall WS9 0PU

- 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 The Little Ripley Day Nurseries Ltd against the decision of Walsall Council.
 - The application Ref is 23/1380.
 - The development proposed is change of use of vacant restaurant and café (Class E(b)) to Class E(f) childrens nursery with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by The Little Ripley Day Nurseries Ltd against Walsall Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The Hearing was originally scheduled to last a single day. However, with the agreement of the main parties, the Hearing was adjourned at the conclusion of the opening day and reopened the following day on site. This reopening of the event allowed for further discussions to take place solely with respect to intended groundworks and any associated effects upon highway safety and protected trees.
4. Revised plans¹ have been submitted at appeal stage. I am conscious that the appeal process should not be used to evolve a scheme. However, the revised plans, which incorporate minor tweaks to the proposed site layout and a small number of additional annotations, are essentially the same as those considered by the Council at planning application stage. I am satisfied that no party with a potential interest in the outcome of the appeal is prejudiced by the revised plans being accepted for consideration. I am also content that no disadvantage is caused by a proposed means of enclosure plan² (which was the subject of a recent application for a lawful development certificate³ at the same site) being treated as a plan for determination here.

¹ Ref: 05F; 09C; 10C

² Ref: 12

³ Ref: 24/0392

5. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024 and thus after the closing of the Hearing. On the basis that the latest revisions have no material implications for the outcome of this appeal, it has not been considered necessary to request any related observations from the main parties.

Main Issues

6. The main issues are:

- Whether or not the proposal represents inappropriate development in the Green Belt, including consideration of openness effects;
- The effect upon the character and appearance of the area;
- Whether or not the site offers a suitably accessible location for the proposed use;
- The effect upon highway safety;
- Whether or not the proposed use would have an acceptable effect upon the living conditions of surrounding residential occupiers, having particular regard to noise; and
- The effect upon protected trees.

Reasons

Whether inappropriate development

7. Paragraph 154 of the Framework sets out that development in the Green Belt shall be regarded as inappropriate unless one of a list of stated exceptions applies. These exceptions include the re-use of buildings provided that the buildings are of permanent and substantial construction, and provided the development preserves the Green Belt's openness and does not conflict with the purposes of including land within it. In this instance, the on-site building is of permanent and substantial construction. It thus falls for me to consider openness effects.
8. The proposal involves minor operations associated to the intended re-use of the appeal building as a day nursery with a maximum capacity of 130 children, such as the provision of some limited new areas of hardstanding and the erection of various new boundary treatments. These new enclosures would include an acoustic fence to run along part of the site's western edge and additional fencing to enclose an outdoor play area to be newly established upon a portion of the site's current car park.
9. The acoustic fence would run immediately alongside an existing boundary fence of comparable height and would occupy a discreet location set away from both Chester Road and Ellsmore Meadow. Meanwhile, the new fencing intended to the perimeter of the play area would also be setback from publicly accessible vantage points and enclose an area of previously developed land that is already part-enclosed by low-level brick walling. To my mind, subject to final specifications being secure via condition, no material loss of openness would arise from the installation of boundary treatments as proposed.

10. The Council has raised concerns with respect to an alleged intensified use of outdoor space when compared to current circumstances. However, of pertinence here, the proposed outdoor play area would replace part of an existing car park. Even though the appeal building is presently vacant, the site's car parking facilities, as currently laid out, would be reasonably anticipated to accommodate recurrent manoeuvring/parked vehicles should an active lawful use of the appeal building recommence. As a further note, as outdoor play would take place within a designated enclosed space, opportunities to experience such activities, and any associated paraphernalia, would be highly constrained.
11. Considering all relevant factors, I am content that the intended re-use of the building (and associated minor operations) would preserve the Green Belt's openness and would not conflict with the purposes of including land within the Green Belt. I thus find that the proposal would not represent inappropriate development. Very special circumstances do not therefore need to be demonstrated in order to justify the scheme.
12. The proposal accords with saved Policy GP2 of the Walsall Unitary Development Plan (March 2005) (the UDP), Policy CSP2 of the Black Country Core Strategy (February 2011) (the BCCS), and GB1 of the Walsall Site Allocation Document (January 2019) (the WSAD) in so far as these policies set out that Green Belt boundaries will be maintained and protected from inappropriate development. Further, the scheme does not conflict with the Framework in so far as it affirms that inappropriate development is, by definition, harmful to the Green Belt.

Character and appearance

13. Whilst the appeal site occupies a countryside location and falls within the Green Belt, there are varying instances of differing developments/land uses in proximity. For example, various buildings, including dwellings, are situated westward of the site and a large garden centre with associated car parking is situated to the south. The proposal, which is principally centred upon a change of use, would necessitate limited external alterations to include the installation of some new openings and the reconfiguration of selected parts of the site's outdoor space.
14. Whilst I shall come on to consider separately any effect upon protected trees, I am satisfied that, subject to full details of external facing materials, hard/soft landscaping works and boundary treatments being secured via condition, the proposal would not have an adverse effect upon the character or appearance of the area. The scheme accords with saved Policies GP2 and ENV7 of the UDP in so far as these policies promote that development proposals have an acceptable effect on the environment of the countryside and Green Belt.

Whether a suitably accessible location

15. The site is distanced from significant/populous residential areas, and the most direct route to Aldridge is via an unlit/unbound footpath unlikely to be utilised on a day-to-day basis for the purposes of attaining site access. Whilst there are various bus stops in the locality, the closest stops fully accessible via footway and offering regular services (to and from destinations such as Aldridge, Walsall and Sutton Coldfield) are situated considerable walking distances from the site. Further, Chester Road accommodates traffic travelling at speed and does not incorporate any specific facilities for cyclists. In the

context just set out, it is highly likely that the large majority of future trips to and from the site would be undertaken by private car.

16. It is relevant, however, that the appeal building has a lawful restaurant use that could, in theory, generate a high number of vehicular trips. Moreover, through reference to the Trip Rate Information Computer System (TRICS), the appellant has calculated that traffic generation for the existing land use could exceed that forecast for the proposed development. This is especially so given that the intended nursery would not open at weekends (an operating restriction that could be conditioned in the event the appeal be successful). Nevertheless, on the basis that the appeal building has lain vacant for a considerable period and there is no information before me to clearly indicate that a reopening at (or near) full capacity is likely at any point in the near future, I have treated this fallback position with some caution and apportion it merely moderate weight.
17. That said, there are other factors relevant to my considerations. For example, it is likely that a noteworthy proportion of parents would choose the proposed nursery facility for their children on the basis they anticipate passing (or travelling close by) on a day-to-day or regular basis in any event. This is fair to anticipate in lieu of the site's immediate proximity to a classified route and the range/extent of built-up areas that prevail in the wider locality.
18. Furthermore, intended off-site highway works involving the provision of elements of footway and a formalised tactile-paved crossing (incorporating an existing refuge island) over Chester Road to link in with a new on-site pathway would promote – to some meaningful degree – the safe accessibility of bus services on foot. There exists the potential for such off-site works to be suitably secured via Grampian condition in the event the appeal be successful. On this basis, even though bus stops would continue to be situated in excess of 400 metre walking distances, I do not accept any assertion made that the proposal would necessarily exclude disadvantaged families without access to a car. In addition, a further new on-site pathway without steps is intended to connect to Ellsmore Meadow for the purposes of catering for persons with disabilities and/or mobility constraints.
19. It is also the case that a Travel Plan could be secured in the interests of promoting sustainable travel options. Whilst it has been suggested that the site's sustainability credentials would not allow for a credible Travel Plan to be produced, I do not share this view. Indeed, the future behaviour of staff, and to a lesser extent parents, would be fairly anticipated to be influenceable by initiatives (including sustainable travel events and car sharing/electric vehicle usage schemes) if robustly implemented. Although it is the Council's preference for a legal agreement to be utilised for the purposes of securing a Travel Plan, I am content that a planning condition, which could suitably incorporate monitoring/review measures, would constitute an appropriate mechanism in the circumstances before me.
20. All related matters considered, I am satisfied that the site offers a suitably accessible location for the proposed use. There is satisfactory compliance with saved Policies GP2, GP5 and GP6 of the UDP, Policies TRAN2, TRAN4 and TRAN5 of the BCCS, and Policies T4 and T5 of the WSAD in so far as these policies promote accessibility and a shift towards using sustainable modes of transport.

Highway safety

21. The proposal would lead to increased traffic on the highway network during peak times, coinciding with the periods when children would typically be either dropped off at or picked up from the facility. Even so, highway capacity analysis based on 2023 surveyed traffic flows indicates that, even with anticipated future growth accounted for and sensitivity testing applied, development traffic would not have any significant impact upon queues or delays at the junction where Chester Road meets Ellsmore Meadow. This is a position accepted by the Highway Authority and, in the context of the opening hours of the neighbouring garden centre not coinciding with expected peak drop-off and pick-up periods, I have no clear reason to arrive at a different finding. I also note here that good levels of vehicular visibility prevail at this junction.
22. Concerns have been raised that safety could be prejudiced upon Ellsmore Meadow due to parents being forced to (or choosing to) park/wait on this private access road as opposed to within the bounds of the appeal site itself. However, various time-limited drop-off spaces would be provided adjacent to the appeal building in locations considerably set back from Ellsmore Meadow. These spaces would comprise part of a total of 35 on-site spaces and submitted cumulative parking analysis indicates this to constitute a reasonable number to cater for expected demand. There is no clear reason for me to find otherwise, especially in the context of drop-offs and pick-ups being anticipated to occur on a staggered basis to suit the requirements of individuals as opposed to at precisely defined times.
23. Furthermore, opportunities for vehicles to queue for short periods within the site without preventing egress for others would avail if necessitated during peak periods and an operation management plan (or similar) would be securable via condition. Thus, when also noting the presence of double yellow lines (albeit not the subject of a Traffic Regulation Order), I do not consider the scheme likely to lead to vehicles parking or waiting on Ellsmore Meadow.
24. Whilst the neighbouring garden centre is served by off-road servicing opportunities, instances of large lorries parking on Ellsmore Meadow have been highlighted by interested party parties. Nevertheless, it has not been clearly demonstrated that the regularity or extent of such instances represents a legitimate cause for safety concerns in view of the development proposed. Moreover, as corroborated through the appellant's survey efforts, any HGV movements related to the garden centre's use can be fairly anticipated to be limited in number and to occur at low speeds adjacent to the site. As an additional note, it was confirmed at the Hearing that waste collections from the site would be undertaken on a private basis such that Council refuse vehicles would not be required to service the site.
25. For the above reasons, the proposal would have an acceptable effect upon highway safety. The scheme accords with saved Policies GP2 and GP6 of the UDP, Policy TRAN2 of the BCCS, and Policy T4 of the WSAD in so far as these policies promote safe movement and adequate parking facilities.

Noise

26. It was confirmed by the Council at the Hearing that its noise concerns relate solely to the effect from the proposed outdoor play area during operational

weekday hours (0700-1800) upon the living conditions of neighbouring residential occupiers at the Coach House. Indeed, it is a matter of agreement between the main parties that noise created by the movement of vehicles due to additional traffic arising from the proposal would be of no practical concern, and that plant noise and required building sound insulation could be dealt with via planning condition.

27. The dominant noise source in the locality of the site is road traffic noise from Chester Road. Noise survey work undertaken at the western edge of the site in a location set to the rear of the appeal building has indicated a daytime noise level that is close to the upper guideline of 55dB for external amenity areas. It is not the case, therefore, that the immediate locality can be accurately described as particularly quiet or peaceful, which provides important context.
28. The appellant, in predicting noise levels from the proposed outdoor play area, has used source noise data taken from the outdoor play area of an existing nearby nursery with a comparable capacity. The highest noise levels recorded during any 15-minute period were used for the purposes of assessment. When accounting for the mitigating influence of an acoustic barrier intended to be installed along part of the site's western boundary, the appellant's 3D noise model calculates noise levels within neighbouring external amenity space serving the Coach House would be beneath 50dB and that the highest predicted noise level incident on any neighbouring residential window would be 44dB.
29. The noise-related evidence produced by the appellant follows a logical methodology and offers a strong indication that adverse effects upon neighbouring living conditions could be avoided subject to planning conditions being imposed to secure the details and subsequent implementation/retention of various mitigation measures. It nevertheless remains that vocal noise, along with other incidental noise associated with play activities, could be difficult to effectively mitigate for due to its random nature. Indeed, it is acknowledged within the appellant's evidence that children's voices may be considered sounds with a specific character which could attract attention.
30. Thus, given the changeableness of vocal noise and the immediacy of the site's relationship with the Coach House, it would be reasonable, in my view, to place a restriction upon the number of children able to access the outdoor play area at any one time in the event planning permission be granted. A limit of 30 children, as suggested by the appellant at the Hearing, would, to my mind, secure adequate noise impact assurances whilst not prejudicing the practical day-to-day operation of the facility. A condition to this effect would be monitorable and satisfactorily enforceable, particularly in view of the clearly defined nature of both the proposed outdoor play area itself and the intended operational daytime hours.
31. For the above reasons, having particular regard to noise, the proposed use would have an acceptable effect upon the living conditions of surrounding residential occupiers. The scheme satisfactorily accords with saved Policies GP2 and ENV10 of the UDP in so far as these policies guard against any unacceptable adverse effect in terms of noise.

Trees

32. The Council's fourth reason for refusal alleges a detrimental impact upon the long-term health of three trees that are the subject of a Tree Preservation Order⁴ - two Sycamores (T6 and T44, referenced as surveyed) and one Yew (T42). All three are mature specimens that contribute positively to the arboreal character and general amenity of the area. This is especially so regarding T42, which occupies a prominent position adjacent to Chester Road and exhibits a large and verdant crown.
33. The newly proposed on-site footpath providing a direct connection to Chester Road would run very close to the main stem of T42. It is important to note that a distinct levels difference is at play in this location, whereby the land level on-site is noticeably higher than the ground level of the adjacent off-site grass verge. As depicted upon plans before me for determination, this levels difference would be negotiated via stretches of retaining wall and a set of on-site steps situated approximately two metres in from the site's eastern boundary. On this basis, it is inevitable that a considerable extent of ground excavation would be necessitated at or close to the heart of T42's root protection area. This work would be highly likely to have a detrimental effect upon the root system and thus the health and value of T42.
34. A possible alternative approach to providing pedestrian access into the site at the same location across a level threshold was discussed at the Hearing. Such a solution would involve the utilisation of no-dig construction techniques on-site in association with the delivery of a ramped footway off-site. However, notwithstanding a stated intention to implement a piled method of construction, there is insufficient detail before me to allow a proper assessment of the potential implications of a ramped structure inside the calculated root protection area of T42. It is also highly doubtful that such an approach could be supportable from a highway safety standpoint, especially given the high-speed nature of Chester Road and the proximity that would avail between the closest junction and an above-ground structure upon the highway verge. Moreover, given the absence of clarity in these respects, no prospect of highway works being delivered off-site in the alternative manner suggested has been satisfactorily demonstrated. As such, this possible alternative approach cannot be reasonably or appropriately conditioned.
35. Turning to T6, it was accepted by the Council on site that the finer details of a no-dig solution could be conditioned with respect to the intended reconfiguration of hardstanding areas close to the tree. In the absence of any abrupt levels change in this part of the site and given the intention to retain a fair degree of separation from the tree's trunk, I have no reason to disagree.
36. However, as regards T44, a new on-site pathway is proposed to run immediately alongside it. Even if to be installed with no-dig construction methods and to a mere 1.2 metre width adjacent to the tree, direct conflict with the main stem and associated buttress roots could not be ruled out. This was readily apparent upon close inspection. Whilst there may exist the potential to realign said path, this could have implications for the useability of the immediately adjacent vehicular access route. Accordingly, it is unclear whether required changes would materially evolve the scheme as depicted upon the plans now before me for determination. In this context, even should

⁴ Ref: Walsall Tree Preservation No. 12, Order, 1991

an Arboricultural Method Statement and full details of on-site groundworks be secured via condition, there would likely be material adverse implications for the long-term health of T44.

37. I acknowledge that a lawful development certificate has recently been granted by the Council for the same arrangement of enclosures that are now proposed. However, as legislation relating to tree protection overrides permitted development rights, this matter is of little relevance to my considerations here.
38. For the above reasons, the proposal would be likely to have an adverse impact upon the long-term health of protected trees T42 and T44 which would result in significant harm being caused to the verdant character and general amenity of the area. The scheme conflicts with saved Policies ENV18 and GP2 of the UDP in so far as these policies set out that development will not be permitted if it would damage or destroy trees or woodlands protected by Tree Preservation Order.

Planning Balance

39. As indicated in the Framework, it is important that a sufficient choice of early years childcare/education places is available to meet the needs of existing and new communities. Indeed, the delivery of early years childcare would offer social benefits by providing an important service to local people as well as economic benefits, including through creating employment opportunities and facilitating a return to work for working parents.
40. It is common ground that there is a need for additional early years childcare spaces across Walsall when considered as a whole, and it is fair to predict that demand is likely to increase moving forwards in view of recent changes to free early years childcare entitlements as well as realistically anticipated future housing growth in the area. Thus, even though the greatest need for additional spaces would appear to be identifiable within other parts of the Borough, the provision of 130 additional early years childcare spaces at this site would offer benefits attractive of considerable weight. This is especially so when factoring in that the proposal would make effective use of previously developed land.
41. However, whilst I have found the proposal to be acceptable in a variety of guises, significant harm is identifiable by virtue of the scheme's likely adverse effect upon high-value protected trees. This harm would not be outweighed by the scheme's benefits and is the overriding consideration in this case. Moreover, the proposal conflicts with the development plan when read as a whole and material considerations do not lead me to a decision otherwise.

Conclusion

42. For the above reasons, the appeal is dismissed.

Andrew Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Brian Mullin	Partner, Marrons
Nathan Hanks	Transport Planning Associates
Clive Bentley	Sharps Acoustics

FOR THE LOCAL PLANNING AUTHORITY:

Leah Wright	Senior Planner
Gemma Meaton	Group Manager Planning
Kevin Gannon	Highways – Development Control and Public Rights of Way Manager
John Grant	Environmental Protection Manager
Cameron Gibson	Tree Officer

DOCUMENTS RECEIVED DURING THE HEARING

Agreed Statement of Common Ground – Noise, dated 3 December 2024

Google Streetview image – Chester Road, submitted by the appellant

Public Right of Way map, submitted by the Council

Statement of Credentials – John Grant, submitted by the Council

Consolidated list of draft conditions, submitted by the appellant

Written application for costs made on behalf of the appellant, dated 3 December 2024

DOCUMENT RECEIVED AFTER THE HEARING

Written response to the appellant's costs application, submitted by the Council on 6 December 2024