



Appeal Decision

Site visit made on 9 December 2024

by **Gary Deane BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 December 2024

Appeal Ref: APP/Z4310/W/24/3347864 19A West Derby Village, Liverpool L12 5HJ

- 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 Mark Johnson against the decision of Liverpool City Council.
 - The application reference is 24F/0707.
 - The development is described as the submission of existing granted (passed) application 16F/2327 - 19A Almonds Green, with retrospective application for amends to original submitted drawings to include additional frosted glass windows and doors and additional garden amenity with boundary fence.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The address of the site is referred to as both 19A Almonds Green and 19A West Derby Village. To avoid confusion, I shall refer to it hereafter as No 19A.
3. In 2016, the Council granted planning permission for the use of the appeal property as a children's day nursery with associated works. The permitted scheme was implemented although not fully in accordance with the approved drawings or all the conditions. As a result, the Council requested that planning permission be sought retrospectively for certain works that had not previously been approved with reference made to obscure frosted glass windows and doors; provision of garden space with new boundary fencing; and render applied to the appeal property. It is primarily these works that form the appeal scheme before me.
4. From what I saw, the upper front elevation of No 19A and its foremost sidewalls had been rendered and painted, as sought. Additional front and side windows had also been introduced to the building, which appeared to be broadly consistent with the submitted plans. I observed that the land proposed as garden was not in use for this purpose, nor was the associated boundary fencing in place. On that basis, I have assessed the development sought as partly retrospective.
5. On 12 December 2024, a revised National Planning Policy Framework (the Framework 2024) was published. The Framework 2024 does not raise any new matters that are determinative to the outcome of this appeal.

Main issue

6. On balance, the Council raises no objection to the render that has been applied to parts of the appeal property. From the evidence before me, I have no reason to

reach a different conclusion on this matter. Overall, I share the view of the Council and its Heritage Officer that the character and appearance of the West Derby Village Conservation Area, within which the site falls, is preserved as a result. I shall, therefore, focus on the garden proposed for use as children's outdoor play space and the openings that have been introduced to the main building.

7. Consequently, the main issue is the effect of these elements of the appeal scheme on the conditions of the occupiers of 39 and 41 Almonds Green with particular regard to potential noise and general disturbance, and privacy.

Reasons

Potential noise and general disturbance

8. To one side of No 19A is a narrow passageway beyond which is a 2-storey building at 39 Almonds Green that is occupied by West Derby Funeralcare on the ground floor, with, I am advised, a flat above. This passageway provides access from the road to the side and rear of No 39 and allows coffins to be taken in and out of the premises discreetly. The passageway also leads an area of unused land, part of which is proposed as a small garden for use as outdoor play space for children attending the day nursery. Of the properties closest to the site, it is the occupiers of No 39 and the dwelling just beyond it at 41 Almonds Green that are most likely to be affected by this part of the proposal.
9. There are conditions imposed on the existing planning permission that limit the operation of the day nursery. Its opening hours are restricted to between 0600 and 2000, Monday to Friday, and the number of children accommodated on the premises is limited to no more than 100. I am advised that the current capacity of the day nursery is well below the maximum level. Many children may not stay for the entire day or attend throughout the whole week. Even so, the total number of children present on the premises during the week could still be considerable.
10. In that context, it is likely that there would be some noise from the day-to-day operation of the day nursery through, for instance, the use of the existing outdoor play space towards the back of the building or if windows to the main building are left open. During my late morning site visit, some background noise from passing traffic using Almonds Green was also apparent from the proposed garden area. Nevertheless, the proposal would introduce an additional outside area for children's play just to the rear of No 39 and close to the rear garden of No 41.
11. This arrangement would further increase noise levels particularly during the warmer months when children are more likely to be outside. Given their position close to the new garden, the increased noise and activity levels from children's play outdoor would be likely to significantly affect the occupiers of the flat above No 39 and No 41. This impact would be most pronounced on hotter days when existing residents may open their windows for ventilation and, in the case of No 41, reasonably expect to enjoy their rear garden. Children shouting or crying immediately outside the side and rear of No 39 could also be unsettling to some visitors to the neighbouring funeralcare premises, such as the recently bereaved.
12. The appellant has suggested that the use of the proposed garden could be restricted to between the hours of 1000 and 1600 and to a maximum of 10 children. Based on these restrictions, the Council's Environmental Health Officer finds the proposal acceptable. I also understand that similar limits have been applied to the

use of outside space of other day nurseries. However, I am not persuaded that such a restriction is enforceable, as it would be challenging for the Council to verify compliance. In this case, it would not be an appropriate form of mitigation given that the duration of outdoor activities within the garden could give rise to disturbance continuously for 6 hours, on every weekday.

13. Few details of the boundary fencing to enclose the new garden have been provided. In my experience, conventional fencing is highly unlikely to significantly reduce noise from children using the proposed outdoor play space as the sounds would carry largely unabated beyond this boundary feature.
14. Reference is made to other childcare nurseries in the local area. However, I am not aware of the full circumstances of these cases and so I cannot be sure that their circumstances are the same or very similar to those of the proposal. In any event, each scheme must be considered on its individual merits, as I have done.
15. At the pre-application stage, the Council confirmed that the principle of a new play area was acceptable. However, that guidance was subject to receipt of a noise assessment with appropriate mitigation measures. In the absence of this information, I am unable to conclude that noise levels from the proposed garden would be within acceptable limits. On the evidence before me, I consider that the proposal would cause harm to the conditions of the occupiers of Nos 39 and 41.

Privacy

16. The inclusion of obscure glazing would overcome overlooking problems from the upper side windows of No 19A towards the back garden of No 41. This measure would also prevent oblique views from the ground floor side window of No 41 being carried along the adjacent passageway that some people would find inappropriate especially for young children. To be effective, all these side windows would also need to be non-opening.
17. Requirements that the side windows of No 19A be fixed shut and include obscure glazing could be covered by a condition. However, these restrictions would have an obvious and significant impact on the outlook from, natural light reaching to, and the ventilation of, rooms that these windows serve. These are important considerations for the use of most buildings let alone those where the welfare of young children is paramount. From the information provided, I am not persuaded that such measures would be appropriate in this instance. Furthermore, these measures would do little to diminish the perception of being overlooked, as it is experienced from the back garden of No 41.

Conclusion on the main issue

18. On the main issue, I conclude that the side windows of No 19A and proposed garden would harm the conditions of neighbouring occupiers. Accordingly, the proposal conflicts with Policies SP2, SP5 and H7 of the Liverpool Local Plan 2013-2033 and the advice within the Council's Supplementary Planning Guidance Note 4, *Child Care Facilities*. These policies and guidance broadly aim to safeguard the amenity of existing and future users of buildings.

Other matters

19. Once in place, the proposed garden would offer a further opportunity for children of the day nursery to play outside with associated benefits for their health and well-

being. It would also allow the land to be maintained and kept free of vermin. However, these considerations do not outweigh the harm that I have identified.

20. From my inspection of the plans, the render element of the proposal is not clearly severable from those components of the development that are objectionable. Consequently, I have not issued a split decision that grants planning permission solely for the rendered elevations.
21. That part of the site falls outside the ownership or control of the appellant and the passage between Nos 19A and 39 is unadopted are noted. Nevertheless, an appellant does not have to own or control a site to seek planning permission. I also acknowledge the concerns of others in relation to works that they say have been carried out by or on behalf of the appellant on or around the area proposed as garden. However, my remit is solely to determine this appeal.

Conclusion

22. Overall, the development conflicts with the development plan, when read as a whole. There are no material considerations, including the policies of the Framework 2024, which indicate that the decision should be taken other than in accordance with the development plan.
23. For the reasons set out above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR