



Appeal Decision

Site visit made on 22 January 2025

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th February 2025

Appeal Ref: APP/C2741/W/24/3347910

71 Osbaldwick Village, Osbaldwick, York, YO10 3NP

- 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 Mrs T Brooks against the decision of City of York Council.
 - The application Ref is 23/01696/FUL.
 - The development proposed is change of use from dwellinghouse (C3 use) to children's day nursery (E Use) and associated minor external alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. Any reference to the Framework in this decision is to the most recent version and its new paragraph numbers.
3. The decision notice refers to various policies in the emerging City of York Local Plan – Publication Draft (February 2018) as modified 2023 (eLP). As this has not yet been adopted, I cannot afford it full weight. Nevertheless, it is a material consideration in my determination of this appeal.

Background and Main Issues

4. The proposed change of use would not result in the creation of a new nursery business but the expansion of an existing facility that has been operating from the adjoining premises since 2004. The main issues are therefore the effect of the increased size of the nursery business on highway safety, and on the living conditions of occupiers of adjacent residential premises with regard to noise and disturbance.

Reasons

Highway safety

5. I visited the site, unannounced, and observed the traffic and parking around the nursery between the hours of 07:30 and 09:50. Whilst I appreciate that what I observed is only a snapshot in time, it enabled me to experience the effect of the existing nursery business, on the local highway network, at peak drop off time. Due to the time of year, the weather was cold, dark, wet and misty. Despite the poor weather, a substantial number of children arrived on foot, in pushchairs, and in bicycle trailers and seats. It is reasonable to assume that in better daylight and weather, more parents may choose to leave their cars at home if they live relatively close by. However, I am also mindful of the fact that unlike schools, that

tend to cater primarily for children living within a specific catchment area, nurseries are often also used by those travelling from further afield and dropping children off closer to their place of study or work.

6. During my visit, I saw several cars entering and leaving the car park to drop children off, although most drivers dropping off staff or children parked on the road outside of the nursery. I also saw a supermarket delivery van enter and leave the site in forward gear. The busiest time was between 08:15 and 08:45. The car park gates were closed just before I left at 09:50. Drop offs were staggered and were quick, with most parents returning to their cars and leaving within about 5 minutes of arriving. I appreciate that pick-ups may take slightly longer as children are unlikely to be ready at the door with their belongings when parents arrive to collect them. Even so, cars collecting children are unlikely to be parked outside the nursery for more than about 10 minutes, and times would again be staggered. I also noted that several parents/carers were dropping off more than 1 child at a time, including those arriving on foot and by bicycle. The same is likely to occur with pick-ups.
7. Traffic passing the site was neither heavy nor constant. Despite the 20mph speed restriction, traffic speeds appeared to be slightly higher at quieter times when there were no parked cars outside of the nursery. When multiple cars were parked outside the nursery this caused some minor inconvenience to other drivers waiting to pass in opposite directions, including to the buses that passed in both directions approximately every 15 minutes. This inconvenience did not however cause any heavy congestion, long delays, or road safety issues, and is typical of most built up areas, and areas close to schools and nurseries, at peak travel times.
8. I did not see any cars parking on pavements or blocking private driveways. Most of the cars that I saw parked opposite Osbaldwick Village Green, to the west of the site, were present for the duration of my visit and appeared unconnected to the nursery. Very few cars were parked along Murton Way to the east of the site, where most properties are set well back from the highway with generous off street parking and turning space.
9. Overall, I am satisfied that what I observed is most likely to be typical of that generally experienced by local residents, based upon the current situation with regards to staff and child numbers. I am also satisfied that what I observed reflects the findings of the survey submitted by the appellant.
10. The nursery currently provides places for up to 58 children and employs 19 staff, albeit no more than 14 staff are present on site at anyone time. The proposed expansion would increase the maximum number of children to 73 and the maximum number of staff on site at anyone time to 17. This would result in a 25% increase in the total number of people potentially on site at a time.
11. The bungalow proposed to be converted has its own vehicular access track that runs across the common land of Osbaldwick Village Green, a garage and one external parking space. No increased use of this access is proposed. The garage would be converted to an office and one staff parking space would be provided, which would be of suitable size for a disabled user should such a need ever be required.
12. There is an existing vehicular access off Murton Way and sufficient space on site to park about 7 cars. The parking layout for 8 cars plus cycle parking shown on the

existing approved plans for the nursery has been reduced to accommodate an external play area behind the original school building. Contrary to the existing and proposed plans submitted, Google images shown in various submitted reports show that the external play area extends inline with the edge of the outbuilding used for office, storage and laundry purposes. I have not been provided with a copy of the previous planning permission relating to the site or advised that the car or cycle parking spaces, layout or child numbers previously approved are controlled by any conditions or that any enforcement action has been taken due to any harm being caused by the minor changes made.

13. The main site access would remain as existing and a H bar is proposed to be painted on the road to prevent its obstruction, albeit I did not see this occurring. It is proposed to mark the car park out with 9 car parking bays, and to provide bicycle stands to accommodate 4 cycles. This would be in addition to the disabled parking space in the extended part of the site. Although the submitted evidence shows that manoeuvring would be possible, it would be quite difficult getting in or out of some spaces, and this may deter or prevent the full use of the proposed parking bays. Proposed parking bay 9 would obstruct vehicles entering and leaving the site at the same time, which I observed does occur, resulting in vehicles potentially reversing back out over the footway and into the carriageway. I did observe one car reversing out of the car park during my visit. Bay 9 would also obstruct visibility within the site for those crossing the car park between classrooms whilst the access gates are open, and cars are entering and leaving the site.
14. Notwithstanding my concerns regarding the car park layout, car parking is not necessary for all 17 members of staff. I am advised that not all existing staff can drive or have cars, and some will arrive by bus, on foot, by bicycle, be dropped off, or car share. I did observe staff arriving on foot and being dropped off outside the site. The Council has no adopted car parking standards, and those referred to, which are out of date, refer to maximum not minimum requirements. Significantly increasing the amount of car parking on site would encourage travel by car, which is unnecessary in this sustainable and accessible location. I acknowledge that the car park is only intended for staff and that as such larger parent and child size parking bays are not necessary. Furthermore, should the carpark be restricted to use by staff, some tandem parking may be acceptable, as colleagues would be aware of each other's vehicles and working hours, and able to occasionally move cars if necessary. In the event that there was insufficient space in the car park for all staff members travelling to work by car, staff could park in the nearby free public car park, which I saw is accessible along a street lit footway and is less than a 10 minute walk from the site. This would keep the road outside of the site clear for child drop offs and collections. Any additional or revised cycle parking arrangements necessary for staff could be controlled by condition given the size of the site.
15. Based upon the evidence submitted and my own observations, I am satisfied that there would be sufficient onsite car parking for staff that drive to work following the expansion, even though the off street parking space would not really be practically improved or increased above that previously approved for the existing use.
16. I acknowledge that there would be no off street car parking for nursery customers, only staff. It is however normal practice for nurseries and schools to only provide

onsite parking for staff, not parents and carers. The same applies to much larger schools where all drop offs and collections are at the same time.

17. On street parking outside of the nursery would continue to be staggered and for short periods of time, twice per day, Monday to Friday at peak time periods for drop offs and pick ups. Given the accessible location of the site, it is highly unlikely that the additional 15 child spaces would generate an additional 15 cars dropping off and picking up. Some of the additional places may well be filled by siblings or it is likely that children will continue to arrive by means other than car. As previously noted there is also a free public car park nearby although I accept this would not be particularly convenient for those with babies or very young toddlers.
18. Given the number of children being dropped off in cycles with trailers, additional onsite cycle parking space would be beneficial for these, which could be required by condition given the size of the site.
19. Whilst I agree with the LPA that the proposed car and cycle parking arrangements shown would not work, and that the car park would only realistically and safely be suitable to accommodate 8 staff cars, including the disabled space in the grounds of the bungalow, I consider that this level of off street parking would be sufficient having regard to the nature of the proposal, the accessible location of the site and the availability of on street parking and a nearby public car park.
20. Utilising the bungalow plot, the layout of outdoor play areas, cycle and car parking areas could potentially be rearranged to accommodate further off-street parking. However, I have made my decision based upon the information before me. In reaching my decision I have had regard to the fact that no accidents have been recorded since the nursery use commenced over 20 years ago, however, I also acknowledge that expanding the business by 25% would increase traffic and on street parking around the site at peak times.
21. Based upon the evidence before me, I conclude that the expansion of the nursery business would not generate a significant increase in traffic movements and that there is sufficient on street parking capacity to safely accommodate the increased drop offs and pick ups at peak times. Accordingly, the proposal would not be detrimental to highway safety and would accord with paragraph 116 of the Framework, which states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe, taking into account all reasonable future scenarios. I also find no conflict with Policies T1 and T7 of the eLP, which are material considerations. These emerging policies require new development to be located where it minimises the need to travel, and require proposals that would have a significant impact on the transport network to be supported by a Transport Statement or Assessment and Travel Plan to demonstrate, amongst other things, that traffic generated by the new development can be accommodated on the local and strategic highway network.

Noise

22. The adjoining site has been in use as a nursery for many years and before that I understand it was a village school and a library. As such it has always been in community use but has evolved and grown. There are residential properties and gardens immediately adjacent to the site, most notably 3 Murton Way to the east, 73 Osbaldwick Village to the west and two large gardens to the north. Opposite the

existing nursery there is a church and further residential properties that are set well back from the road.

23. I note that the dwelling at 3 Murton Way has its main garden areas to the front, close to an existing outdoor play area, and to the side, adjacent to the proposed outdoor play area in the expanded site. The side garden contains two outbuildings, which I am advised are used as a summerhouse and home office.
24. 73 Osbaldwick Village has lawned areas to the front and side that are adjacent to the highway with no privacy, and a small, enclosed yard to the rear. The rear yard is adjacent to an existing outdoor play area and the original main nursery building. However, as this outdoor area is proposed to be reduced to improve the car parking layout, the number of children using it is unlikely to increase. The proposed expansion of the nursery into the neighbouring bungalow and the use of its rear garden as a play area, is unlikely to have a significant adverse effect on this property.
25. The proposal would remove a noise sensitive property by changing it to part of the nursery. However, this bungalow and its rear garden do not directly adjoin any existing outdoor play areas and benefit from intervening outbuildings and a high solid brick boundary wall. Expanding the business use into No.71 moves the noise source closer to other residential properties and increases the scale of the business and thus the noise associated with it. The proposal would also lower the height of the existing solid brick wall and planting that runs along the northern boundary between the existing site and the bungalow, removing an existing noise barrier.
26. As no children were playing outdoors at the time of my visit, I have relied on the evidence submitted by the parties and the experiences reported by occupiers of nearby residential properties. I am advised that complaints have been made to the Council in the past regarding noise and disturbance caused by the existing business. I do not have the details of these previous complaints but the Council state that there is no evidence that the level of noise currently experienced amounts to a statutory noise nuisance.
27. Paragraph 198 of the Framework requires that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions. It states that decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.
28. The staff car parking area is small and little change is proposed to it. I note the complaints about noise from car doors banging at drop off and pick up times, but this only occurs over a short period of time each morning and afternoon. Customers mainly park on the highway and nearby dwellings are set back from the road. As such I do not consider that the increase in traffic and parking on the highway at peak nursery drop off and pick up times would result in any unacceptable increase in noise and disturbance to occupiers of nearby residential properties, particularly from indoors or from any principal garden areas, over and above that which currently occurs and the existing background noise of passing traffic at peak times.

29. I have no reason to doubt that children play outside or that nursery building windows are opened to let in fresh air, all year round. Whilst this may be for shorter periods of time when the weather is very bad, in good weather it is likely that windows and doors would be open, and that children would be able to play outdoors, most of the time. Likewise, neighbours are more likely to have their windows and doors open, and to be enjoying their outdoor space and outbuildings, in good weather.
30. The appellant's noise assessment states that there would be little change in the noise levels experienced from the site as a result of the nursery expansion. However, the evidence before me is that the existing nursery business already causes noise and disturbance to the neighbours. The submitted noise contour map also shows that the primary garden area of 3 Murton Way would be in the orange and red zones with predicted noise levels of 50-55dB. Furthermore, given the inconsistent and unpredictable nature of the noise generated by children playing, these levels could be exceeded. I am also mindful of the fact that the neighbouring garden area most affected is most likely a more peaceful area, due to being set back from the road, away from traffic noise, and partially enclosed by landscaping.
31. The proposal would result in a new additional external play area being created closer to this principal garden area of 3 Murton Way and the bungalow would be opened up internally, into essentially one large open plan space, except for the cloakroom and WC, and a new entrance lobby. The existing two large rear windows are proposed to be replaced with two large bi-fold doors opening onto the external play area and facing the side garden of 3 Murton Way. When the children are playing outdoors in the garden, or indoors with the doors open even just a little bit, this will inevitably change and increase the noise experienced by the neighbours both when in their garden and garden buildings, and when inside their dwelling with their windows open.
32. The difference between the existing permitted use of the site as a modest 2-bed residential bungalow and domestic garden, compared to its proposed use as a large open plan nursery classroom, with large openings and an outdoor play area, would in my view be significant in relation to noise. Furthermore, it is unclear how many children may be accommodated within this new building and play area at a time, and what age range those children will be. Although the information submitted suggests that an additional 15 spaces would be created for children aged 9 months to 2 years old, and 3 staff, child to staff ratios are 3 to 1 for babies and children under the age of 2. Babies also require less outdoor space. It is therefore likely that older children will be situated in the expansion, resulting in two large outdoor play areas for older children, who are likely to spend more time playing outdoors, being located on the boundary with 3 Murton Way. The increase of 15 children across the whole nursery site does not necessarily mean that the maximum number of children in the expanded part will be limited to 15.
33. I have considered whether a condition could be imposed to restrict the number of children that can play outdoors in the new garden area at any one time, but this would not reduce the additional noise coming from inside the building when the windows and doors are open, or the cumulative noise coming from existing nursery buildings and outdoor play areas. Such a condition would also be difficult to enforce given that the number of children playing in the new outdoor space would not be visible from outside of the site.

34. I have no noise mitigation proposals before me except for the construction of a 1.8m high close-boarded fence on the eastern boundary of the site, which I have no acoustic details of. A Noise Management Plan, setting out physical and procedural mitigation measures, such as acoustic barriers and planting, layout changes to accommodate quieter uses in the most noise sensitive areas of the site, mechanisms to enable doors and windows to noisy areas facing sensitive receptors to be minimised or kept closed, an enforceable plan setting out controls as to when the different outdoor play areas can be used, maximum numbers of children allowed in each outdoor play area at a time, drop off and collection routines, how complaints will be recorded, monitored and responded to, and how often the plan shall be reviewed, may have assisted in alleviating concerns and informing future noise predictions, having regard to the primary garden area, summer house and office at 3 Murton Way.
35. I acknowledge that schools and nurseries are generally expected to be in residential areas where they best serve local residents and communities, and where they can be safely accessed by means other than car. I also acknowledge that the nursery is not open evenings or weekends, albeit unlike schools, nurseries are open all year round. I understand that the nursery would cater for a mix of ages from 0 -5 years, and that babies are unlikely to be outside very often, and that other age groups would not all be playing outside, in the same areas, or at the same time. Given the ages of the children, they would also be supervised by adults at all times whilst playing outdoors.
36. However, the proposal would result in additional noise from a location where it is not currently experienced from and in closer proximity to the main garden area of 3 Murton Way. The change in noise from a domestic garden to a play area for 15 or more pre-school age children, would be particularly noticeable and taken together with the noise already experienced from the existing nursery business would have a moderate to significant annoying adverse effect, particularly on the occupiers of 3 Murton Way when using their primary garden area and buildings within it or when they have windows open. Although the level of noise would fluctuate, some noise would be likely to be experienced relatively frequently throughout week days at most times of the year. Based upon the plans and information before me, and in the absence of an enforceable noise management plan, I am not satisfied that my concerns could be mitigated by planning conditions.
37. I therefore conclude that the cumulative effect of the existing nursery and the proposed expansion would result in harm to the living conditions of occupiers of neighbouring properties with regard to noise and disturbance. Consequently, the proposal is contrary to paragraph 198 of the Framework, which seeks to mitigate and reduce to a minimum, adverse noise impacts from new development. The proposal would also conflict with Policies EC3 and ED6 of the eLP, which are material considerations. These emerging policies seek to ensure extensions to existing businesses in residential areas would not significantly harm the amenity of the surrounding area and that where appropriate site layouts will be altered to relocate harmful uses further away from residential areas. Enhanced education facilities are supported where these would not have a significant adverse impact on the amenities of neighbouring property. However, I find no conflict with Policy D11 of the eLP or Paragraph 135 of the Framework, which relate to design considerations.

Balance and Conclusion

38. The proposed development would not be detrimental to highway safety and would accord with the Framework and eLP Policies in respect of such matters. However, the development would result in harm to the living conditions of the adjoining occupiers at 3 Murton Way with regard to noise and disturbance.
39. I acknowledge the support of the Education Authority, the demand for childcare spaces in the area including the waiting list for this particular nursery and for babies, and the planning policies that seek to support the provision of community and educational facilities and the growth and expansion of existing businesses. These matters weigh in favour of the proposal, notwithstanding the presence of other nursery and childcare facilities in the area, which I am advised also have waiting lists and each have different things to offer. I also afford moderate weight to the additional nursery places and jobs that would be created by the expansion of the business.
40. I am aware that the existing nursery provides a valuable community facility, employment for local people, and when closed allows its car park to be used by the church opposite. The good reputation of the existing nursery business and its outstanding Ofsted reports are also noted. There is no reason why this should not continue to be the case regardless of the outcome of this appeal and as such I afford these matters limited weight.
41. However, the social and economic benefits of the proposal would not outweigh the harm the expansion to the business would cause to living conditions or the conflict with the Framework and eLP in terms of noise.
42. For the reasons outlined above and having had regard to all other matters raised, the appeal should be dismissed.

R Bartlett

INSPECTOR