
Appeal Decision

Site visit made on 4 November 2025

by **L Wilson BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 November 2025

Appeal Ref: APP/U2750/W/25/3372354

The Barn, 70 Sherburn Street, Cawood, Selby YO8 3SS

- 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 Richard Mawson against the decision of North Yorkshire Council.
 - The application Ref is 2019/1008/COU.
 - The development proposed was originally described as change of use as requested by planning department 2019/0218/MWCU.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of barn to children's day care facility and associated works at The Barn, 70 Sherburn Street, Cawood, Selby YO8 3SS in accordance with the terms of the application, Ref 2019/1008/COU subject to the conditions in the attached schedule.

Preliminary Matters

2. On the application form the appellant confirms that the change of use has already occurred and the building works have been completed. I noted on my site visit that the road facing side elevation contained a window, which I understand was formerly a timber hatched door. This window is not shown on the drawings. Thus, for the avoidance of doubt, I have assessed the appeal proposal and based my decision on the plans before me.
3. The development for which planning permission is sought was described on the application form as "change of use as requested by planning department 2019/0218/MWCU". The Council's decision notice described the development as "retrospective change of use of barn to children's day care facility and associated works". In the formal decision I have used this description as it is a more precise and accurate reflection of the development for which permission is sought. However, I have removed reference to the word "retrospective" because that does not amount to an act of development.
4. The main parties were given the opportunity to comment on the schedule of conditions. In reaching my Decision, I have taken into account their comments.

Main Issue

5. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings, with particular reference to potential for noise, disturbance and traffic generation.

Reasons

Background

6. It appears that a childminding business, which included caring for up to 6 children, has been operating at the site since at least April 2013. Therefore, the initial enforcement investigation concluded that planning permission for a change of use was not required given the level of use. However, since that investigation, the intensity of the use has increased.
7. The appellant states that the use of the subject building for childcare is now lawful having been in place for more than 10 years, and thus immune from enforcement action. No certificate of lawfulness has been applied for. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether the proposed development requires planning permission as questioned by the appellant. However, I shall consider the evidence as to whether permission is required so far as it is material to this appeal. If the appellant wishes to ascertain whether the development is lawful, they may make an application under the relevant part of the Act.

Living conditions

8. The appeal building is a former barn which was previously used for residential purposes ancillary to the main house (70 Sherburn Street). The site benefits from vehicular access from Chestnut Road. Adjacent to the site is a footpath which runs from Sherburn Street to Chestnut Road. The surrounding area is residential in character.
9. The use typically gives rise to noise from children playing and road traffic. There are numerous dwellings in the vicinity of the appeal site. Westgates has side elevation windows that face towards the site. The footpath provides a modest gap between the appeal site and Westgates. The outdoor play area is adjacent to 70 Sherburn Street's rear garden. 68 Sherburn Street's rear garden is also in close proximity. The rear gardens of dwellings which front onto Sherburn Street are relatively long.
10. My attention has been drawn to the Early Years Provision regulations which sets out that it is mandatory to provide daily access to outdoor spaces. Furthermore, Policy CS3 of the Selby District Local Plan (2005) (LP) requires adequate outdoor space for children's play to be provided. Residents state that noise from particularly the outdoor play area causes harm, and it has been highlighted that many neighbours are retired.
11. At the time of my site visit there were no children present. I also noted that there was very limited background noise, but my site visit was only a snapshot in time. I observed that the play area contained numerous items and therefore appears to be a used area. The size of the play area limits the number of children that can use the space at a given time, and the area may be used less on some days due to factors such as the weather.
12. Residents have questioned the number of children attending the day care facility and there is conflicting information regarding the operating hours. Nonetheless, the evidence presented outlines the operating hours of the childcare setting as 07:30 – 17:30 Monday – Friday, and staffing levels. It also states that the number of

children across the day varies but it appears that the number of children on site at any one time does not exceed 9. As a consequence, the Council has suggested planning conditions which restrict operating hours and the number of children.

13. Whilst there may have been instances where more than 9 children have attended the setting and longer operating hours, ultimately the appellant does not object to the suggested conditions. Moreover, the appellant would be at risk of enforcement action if they breached the conditions.
14. The Environmental Health Officer sets out that the current boundary treatment is providing negligible noise mitigation. Although it appears they have not visited the site, I have no clear evidence before me which demonstrates that the existing boundary treatment provides adequate noise mitigation. As highlighted in the consultation response, the perimeter of the play area could be treated with acoustic screening to reduce the noise so far as is reasonably practicable for the use. This could be a wooden fence or brick wall construction, should be of close boarded construction, be free from holes, sealed at the base and have a minimum mass of 10kg/m². The appellant has concerns with the Council's suggested condition relating to an acoustic barrier. Nonetheless, a re-worded condition could be attached.
15. Chestnut Road is relatively narrow, does not contain a pavement and has limited on-street parking. Road traffic noise, associated with the use, is primarily at drop off and pick-up times. These periods are relatively short-lived and given the scale of the development, the traffic generation is not significant. However, I recognise that residents have highlighted that driveways are blocked daily due to parking issues with the use, and photographic evidence has been provided to support this. The drawings show parking at the site and highways have not objected to the proposal or the number of parking spaces. As pointed out by the planning officer, the parking within the site is a more recent addition since objection comments were initially submitted.
16. Given the hours of operation, the noise would not be at unsociable times of the day and not on weekends. Furthermore, taking into account the nature of the proposal, the scale of the use and the likely frequency use of the play area, the noise would not be significant. Additionally, the number of children being cared for on site, at any one time, is not significantly more than when the childminding business was established (and when planning permission was not required). Therefore, the noise, general disturbance and traffic generation would not be substantially different. I am satisfied that conditions limiting operating hours, number of children, requiring details of acoustic fencing and relating to the parking area would adequately mitigate the impacts of the development.
17. For these reasons, the proposal does not have an unacceptable effect on the living conditions of the occupiers of neighbouring dwellings (including the occupiers of 70 Sherburn Street themselves), with particular reference to potential for noise, disturbance and traffic generation. Consequently, it complies with Policies ENV1, ENV2, EMP6 and CS3 of the LP and Policies SP13 and SP19 of the Selby District Core Strategy Local Plan (2013). These collectively seek, amongst other things, to ensure proposals do not have a significant adverse effect on local amenity. They also state that proposals for development which would give rise to unacceptable levels of noise and nuisance will not be permitted unless satisfactory remedial or preventative measures are incorporated.

18. The proposal also accords with Paragraph 187(e) of the National Planning Policy Framework (the Framework). This states, amongst other things, that decisions should prevent new development from contributing to unacceptable noise pollution.
19. The reason for refusal also refers to the Noise section of the Planning Practice Guidance (PPG) and the Noise Policy Statement for England (NPSE). The PPG supports the Framework and provides clarity on the practical application of policy. The NPSE seeks to promote good health and a good quality of life through the management of noise. It is unclear which specific part of the PPG and NPSE the Council consider the proposal would conflict with. Nonetheless, I am satisfied that the proposal accords with them.

Other Matters

20. I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as the site is located within the Cawood Conservation Area (CA). There have been limited external changes to the building to facilitate the use. Having said that, the vivid colours of the artificial grass and extent of play equipment is visible from Chestnut Road. This draws the eye and detracts from the CA. Furthermore, the acoustic fencing could further cause harm to the character and appearance of the CA.
21. The level of harm would be at the low end of the spectrum of less than substantial harm. Nonetheless, mindful of my statutory duties, this is a matter to which I attach considerable importance and weight. The proposal provides public benefits such as providing jobs, and contributing to the rural economy and supporting the rural community. When applying the balancing exercise set out in the Framework, the less than substantial harm to the CA is clearly outweighed by identified public benefits. The proposal would therefore comply with the relevant development plan policies and the Framework, in this regard, and my findings in relation to this matter are consistent with the Council.
22. In addition to concerns relating to the above matters, local residents have raised a number of matters in their objections. They consider that the proposal fails to provide safe or sufficient parking for a business of this nature. They state the parking arrangements are unsafe, impractical, and contrary to planning policy, causing regular disruption on a narrow residential road, and have never observed three vehicles using the parking area. Highways have confirmed that the indicated three parking spaces would be sufficient for the size of the development. There is no robust evidence before me to take an alternative view to the highways officer's latest consultation response, or the findings set out in the delegated report. Taking into account the scale of the development, I am satisfied that the proposal would have an acceptable effect on highway safety, including considering parking and the safety of children.
23. Other matters raised relate to the drawings, lack of engagement and consultation, retrospective, de-value dwelling, frustrations with the Council, and Ofsted inspections. Concerns relating to these matters would not justify withholding planning permission. I am also satisfied that appropriate acoustic fencing would not cause other harms, as suggested, such as visibility.
24. The Council did not refuse the planning application on the concerns raised within the other matters. Subject to appropriate planning conditions, there is no credible

evidence before me that would lead me to an alternative conclusion to the Council on the other matters raised, or that could justify the dismissal of the appeal on these grounds.

Conditions

25. I have assessed the Council's suggested conditions, and those suggested in consultation responses. In light of guidance found in the PPG, where necessary the wording of the conditions have been amended for clarity and precision.
26. It is necessary to attach a condition specifying the approved plans as this provides certainty. A condition relating to the parking area is necessary to provide for adequate and satisfactory provision of off-street parking for vehicles in the interest of safety and protecting residential amenities.
27. Conditions relating to hours of operation, number of children, and acoustic boundary treatment are necessary to limit impacts of noise and disturbance on the nearby residents and in the interests of protecting residential amenities. To ensure that an acceptable scheme for a flood warning and evacuation is in place, a condition relating to a scheme for a flood warning and evacuation plan is necessary.
28. Conditions 5 and 6 have a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of these matters before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met.
29. I have not included the unexpected contamination condition suggested by the Council as there is no clear evidence of contamination at the site. For this reason, and given the nature of the proposal, and taking into account the requirement for acoustic boundary treatment, such a condition would not meet the tests set out in paragraph 57 of the Framework.

Conclusion

30. I realise that this decision will come as a disappointment to those who objected against the proposed development. However, taking everything into account, there is no compelling reason to withhold planning permission in this case. Consequently, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal succeeds.

L Wilson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: JM_01 (Floor Plan), JM_02 (Elevations), and 3196-01-01C (Location Plan, Block Plan and Site Plan).
- 2) The parking area shown on drawing 3196-01-01C (Site Plan) shall be kept clear of obstruction and shall be kept available at all times for the parking of vehicles.
- 3) The use hereby permitted shall only operate between the following hours: 07:30 to 17:30 Mondays – Fridays, and shall not operate on Saturdays, Sundays or on Bank or Public Holidays.
- 4) The number of children being cared for on site shall not exceed 9 at any one time for the lifetime of the development hereby permitted.
- 5) Unless within 3 months of the date of this decision a scheme for the acoustic boundary treatment to be installed to the perimeter of the play area, including exact location, appearance and technical specification, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) Unless within 3 months of the date of this decision a scheme for a flood warning and evacuation plan is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.