



Appeal Decision

Hearing held on 17 December 2025

Site visit made on 17 December 2025

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2026

Appeal Ref: APP/V4630/W/25/3372783

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by The Little Ripley Day Nurseries Ltd against Walsall Metropolitan Borough Council.
 - The application Ref is 25/0420.
 - The development proposed is change of use of vacant restaurant and cafe (Class E(b)) to Class E(f)) children's nursery (up to 130 children) and associated access, parking and landscaping (resubmission of refused Appeal ref: APP/V4630/W/24/3348824).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of vacant restaurant and cafe (Class E(b)) to Class E(f)) children's nursery (up to 130 children) and associated access, parking and landscaping (resubmission of refused Appeal ref: APP/V4630/W/24/3348824) at 520 Simons Restaurant, Chester Road, Walsall, Aldridge WS9 0PU in accordance with the terms of the application, Ref 25/0420, subject to the conditions in the attached schedule.

Applications for costs

2. Applications for costs have been made by The Little Ripley Day Nurseries Ltd against Walsall Metropolitan Borough Council and Walsall Metropolitan Borough Council against The Little Ripley Day Nurseries Ltd. These applications are the subject of separate decisions.

Preliminary Matters

3. The appeal follows the Council's failure to determine the application within the prescribed period. However, the Council has indicated in its statement, that had the Council determined the application, it would have refused planning permission. The substance of the Council's statement has informed the main issues of the appeal.
4. As part of the appeal, the appellant has submitted a planning obligation pursuant to s106 of the Town and Country Planning Act (as amended) in the form of a unilateral undertaking. I have had regard to the unilateral undertaking dated 17 December 2025 in my decision.

Main Issues

5. The main issues are the effect of the proposed development on:
- highway and pedestrian safety with regard to;
 - whether the introduction of a second splitter/pedestrian refuge island would result in unnecessary duplication of highway features and result in potential confusion for both drivers and pedestrians, and
 - whether the proposed development would provide a robust, site-specific travel plan demonstrating how sustainable travel measures will be promoted, and
 - whether there is a suitable mechanism to secure Biodiversity Net Gain (BNG).

Reasons

Highway and pedestrian safety

whether the introduction of a second splitter/pedestrian refuge island would result in unnecessary duplication of highway features and result in potential confusion for both drivers and pedestrians

6. The proposed development includes a pedestrian island that would allow for crossing of the road to a ramped entrance to the appeal site, enabling an accessible entrance to the appeal site.
7. The appeal was accompanied by a Stage 1 Road Safety Audit which considered that with regard to the proposed pedestrian refuge island, that if the proposed island varies in appearance and specification to others nearby, this could heighten the risk of kerb strikes and vehicle loss of control; particularly if the new island is less conspicuous than other islands during the hours of darkness. The recommendation was therefore that the specification of the new island is consistent with existing islands on Chester Road, in terms of appearance and the safety features provided.
8. Notwithstanding the findings of the Stage 1 Road Safety Audit, the Council consider that the proposed refuge island would be unacceptable due to the duplication of highway features which could result in confusion for drivers and pedestrians. In addition, it could encourage informal pedestrian crossing and reduce protection for vehicles waiting to turn right into Ellsmore Meadow. The Council consider that the appellant is attempting to approve their own submission through the Stage 1 Road Safety Audit.
9. It is clear from the Council's evidence and through discussions during the hearing that the principle of a pedestrian refuge island is generally supported, however, the key issue is that the submitted design is not supported by the Council. The Council consider that the final design should be approved before a Section 278 agreement can be entered into.

10. I note the Council's view on the Stage 1 Road Safety Audit and concerns over the design of the proposed pedestrian refuge island. However, the appellant's Stage 1 Road Safety Audit is an independent assessment of the proposed pedestrian refuge island and there is very little evidence from the Council to suggest that subject to the recommendations of the report that their concerns would not be overcome.
11. There is no dispute that the final design of the pedestrian island should be submitted to and approved by the Council prior to the S278 agreement being entered into. However, there is no reason why this could not be achieved through a suitably worded planning condition, particularly in light of the minor changes that have been recommended by the Stage 1 Road Safety Audit.
12. I therefore conclude that the proposed development would not result in unnecessary duplication of highway features that could result in potential confusion for both drivers and pedestrians. In this regard, there would be no unacceptable harm to highway and pedestrian safety. I find no conflict with Policies GP2, T7 and T13 of the Walsall Unitary Development Plan Adopted by the Council on 7 March 2005 (DP), Policy TRAN2 of the Black Country Core Strategy Adopted February 2011 (CS) and Paragraph 116 of the National Planning Policy Framework. Amongst other things, these seek to ensure that there is not an unacceptable impact on highway safety.

whether the proposed development would provide a robust, site-specific travel plan demonstrating how sustainable travel measures will be promoted

13. There is no dispute that a site-specific travel plan is required in order to demonstrate how sustainable travel measures will be promoted, implemented and monitored. However, the Council consider that this would need to be secured by a S106 agreement that was not entered into during the consideration of the application.
14. The Council refer to guidance contained within the Customer Guide to Completing Planning Obligations, which has a section that refers specifically to travel plans. The guidance states that where a travel plan requires ongoing monitoring and linked to an increase in performance it will need to be secured by a S106.
15. The appeal site has been subject to a previous appeal decision¹ where it was found that a planning condition, which could suitably incorporate monitoring/review measures, would constitute an appropriate mechanism to secure a travel plan. The previous appeal decision was discussed at the hearing whereby it was clear that there is very little difference when compared to the scheme before me.
16. I note that it is the Council's preference for a travel plan to be secured by a legal agreement and I appreciate the Council's particular concerns in relation to the on-going monitoring and review of the travel plan. However, I am satisfied that a planning condition would be sufficient to secure a travel plan and the Council could ensure that requirements to monitor and review the travel plan are imbedded within the document.

¹ APP/V4630/W/24/3348824

17. The appellant's UU that was submitted during the course of the appeal secures a travel plan. However, for the reasons I have outlined, I find that the UU does not pass the tests outlined in Paragraph 58 of the Framework, particularly in relation to being necessary in order to secure the travel plan. Notwithstanding this, the UU also secures payment of a travel plan monitoring contribution which I find does pass the tests outlined in Paragraph 58 of the Framework.
18. I therefore conclude that, subject to an appropriately worded planning condition that the proposed development would provide a robust, site-specific Travel Plan demonstrating how sustainable travel measures will be promoted. In this regard, there would be no unacceptable harm to highway and pedestrian safety. There would be no conflict with Policies GP2, GP3, T7 and T13 of the DP, Policy TRAN2 of the CS and guidance contained within the Customer Guide to Completing Planning Obligations. Amongst other things, these seek to ensure that development does not have an unacceptable impact on the environment, attach conditions in preference to the use of obligations and ensure that proposals provide a level of accessibility and safety by all modes of transport.

BNG

19. There is no dispute that BNG can be provided, however, a planning obligation was not provided with the planning application that secured 30 years of habitat management as well as any associated management fees.
20. Under the statutory framework for BNG, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.
21. I note the Council's concern, however, a planning obligation to secure these could be secured during the discharge of the biodiversity gain condition. As such, the absence of a legal agreement is not a sufficient reason to refuse the development and there is no reason why, if necessary, this could not be secured during the consideration of the biodiversity gain condition, and this would need to be satisfied before any development could take place.
22. Notwithstanding the above, the appellant has provided a completed UU which secures 30 years of habitat management as well as the associated fees for monitoring. I note that the Council have concerns over the wording, which specifically relate to reference to off-site biodiversity, however, I find it clear that the BNG will be provided on site and the UU does not prevent this, instead the wording only follows the Biodiversity Gain Hierarchy outlined within Planning Practice Guidance². The UU is therefore acceptable in this regard and passes the tests outlined in Paragraph 58 of the Framework.
23. I therefore conclude that subject to appropriately worded planning conditions, that the proposed development would provide BNG. I find no conflict with Policies ENV1 and ENV23 of the DP which amongst other things, seek to ensure that the potential for enhancement of the natural environment is taken account of and development within the Black Country will safeguard nature conservation, inside and outside its boundaries.

² Paragraph: 008 Reference ID: 74-008-20240214

Other Matters

24. I note that concerns have been raised in regard to the number of cars that would be associated with the proposed development, speed of vehicles as well as the overall safety of the roads and footpaths. There is little evidence to support these concerns and the Council have not found harm to highway safety with regard to these particular matters. I have no reason to conclude otherwise that, subject to the travel plan and changes to the pedestrian island that the proposal development would not harm highway safety.
25. The Council have raised concern with the Annex 1 plan attached to the UU, specifically that they consider that plan does not accurately identify the land to be bound by the obligation or distinguish adjacent highway land. However, I find that the UU clearly identifies the land in which the person entering into the obligation is interested and the relevant obligations, which I find meet the tests in Paragraph 58 of the Framework would be enforceable.

Conditions

26. Condition 1 is the standard condition that relates to the commencement of development and condition 2 specifies the approved plans for the avoidance of doubt. Condition 3 is necessary to secure a construction environmental management statement to be submitted to and approved by the Council in order to ensure that development is carried out in an acceptable way that protects the living conditions of neighbouring occupiers and highway safety. Condition 4 is necessary in order to ensure the tree protection plan and arboricultural method statement are complied with in the interests of protecting the trees within the site and the character and appearance of the area. Condition 5 is necessary in order to secure BNG.
27. Condition 6 is necessary in order to ensure that a construction method statement is submitted to and approved by the Council, detailing the construction methods to be used to ensure the satisfactory protection of retained trees, shrubs and hedgerows during the lifetime of the development in the interests of the character and appearance of the area.
28. Condition 7 is necessary in order to ensure that details of the proposed highway works are submitted to and approved by the Council. The wording of this condition was discussed at the hearing and I have found it necessary to word the condition as a Grampian condition in order to ensure that the Council approve details of the highways works prior to the commencement of development.
29. Condition 8 is necessary to secure an acoustic mitigation scheme to be submitted to and approved by the Council in order to protect the living conditions of neighbouring occupiers. Condition 9 is necessary in order to secure adequate waste provision for future users of the appeal site. Condition 10 is necessary in order to secure details of a travel plan in order to ensure sustainable modes of transport for future users of the appeal site. Condition 11 is necessary in order to secure details of a traffic management plan in order to ensure that pick up and drop off times are staggered in the interests of highway safety and protecting the living conditions of neighbouring occupiers.

30. Condition 12 is necessary to secure details of cycle parking and condition 13 is necessary to ensure that the car parking provision is implemented in accordance with the approved details in order to secure sufficient parking for cycles and vehicles. Condition 14 is necessary to ensure the landscaping scheme is implemented in accordance with the approved details in the interests of the character and appearance of the area.
31. Condition 15 is necessary to ensure that no external lighting is installed other than in accordance with the approved details to protect the living conditions of neighbouring occupiers. Condition 16 is necessary to restrict the use of the appeal site as a nursery and conditions 17 and 18 restrict the number of children that can be at the nursery at the same time as well as certain outdoor areas to protect the living conditions of neighbouring occupiers.
32. Planning Practice Guidance states that care should be taken when considering using pre-commencement conditions. In this regard, I have found clear justification that conditions 3 through to 7 are necessary to be pre-commencement conditions as the agreement of details for these matters are needed prior to the commencement of development as they will form part of the initial works.
33. I have not imposed a condition that requires the materials to be in accordance with the General Materials Note as this is a duplication of condition 2 which specifies this already. I have also not imposed a condition requiring electric vehicle charging points as this is a building regulation requirement and electric car charging facilities are already shown on the approved plans. I have also not imposed a condition restricting when vegetation clearance can take place as this is covered by separate legislation.

Conclusion

34. For the reasons given above the appeal should be allowed and planning permission granted.

D Wilson

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the plans listed below:
 - Location Plan, drawing no. 08
 - Proposed Floor Plans, drawing no. 14
 - Proposed Elevations, drawing no. 13
 - Proposed Site Plan, drawing no. 15 rev. A
 - Proposed Landscape Plan, drawing no. 16 rev. A
 - Street Scenes, drawing no. 17
 - Proposed Means of Enclosure, drawing no. 18
 - General Material Notes, prepared by Bi-Design
3. a. Prior to the commencement of development a Construction Environmental Management Statement shall be submitted in writing to and approved in writing by the Local Planning Authority. The Construction Environmental Management Statement shall include:
 - Details of hours of construction and deliveries;
 - the provision made for the parking of vehicles by contractors, site operatives and visitors;
 - a HGV routing plan;
 - the storage of plant and materials used in construction of the development;
 - A scheme for recycling/disposing of waste resulting from construction works;
 - the erection and maintenance of security hoarding;
 - measures to control the emission of noise during construction;
 - measures to control the emission of dust and dirt during construction;
 - details of how the site will be drained during construction
- b. The development hereby permitted shall not be carried out otherwise than in accordance with the approved Construction Environmental Management Statement and the approved Construction Environmental Management Statement shall be maintained throughout the construction period.

4. Prior to the commencement of development, the details contained within the Tree Protection Plan and included Arboricultural Method Statement shall be fully complied with prior, in particular, but not limited to:
 - a) Prior to commencement of any work on site associated with the development, including preparatory tree work, a tree protection meeting shall take place attended by FLAC, the tree contractor and the demolition & construction contractors. This meeting shall inform demolition/construction personnel on requirements for tree protection during the site's redevelopment, and shall identify any requirement for additional access facilitation pruning and/or tree tying. A written specification for all such tree work shall subsequently be prepared, and submitted to the Local Planning Authority for approval, prior to any works being undertaken.
 - b) Prior to any ground re-modelling, demolition or construction work on site, the tree works as approved under (1) above shall be undertaken by a competent and experienced tree contractor (not upskilled personnel).
 - c) Following completion of the enabling tree works, physical tree protection measures (barriers and ground protection) shall be installed in accordance with the provisions of Paragraph 7 of the submitted Tree Protection Plan and Arboricultural Method Statement (drawing ref: 45-1005.01).
 - d) Following the installation of the tree protection in accordance with (c) above the Council's arboricultural officer shall be notified to allow a full inspection of the protection measures.
5.
 - a. Prior to the commencement of development a Biodiversity Gain Plan in accordance with the Biodiversity Net Gain assessment dated 3rd April 2025 and the Statutory Metric Calculation dated 20th March 2025, shall be submitted in writing to the Local Planning Authority and approved in writing by the local planning authority. The Biodiversity Gain Plan shall include a Habitat Management and Monitoring Plan (HMMP). The HMMP shall include provision for the management and monitoring of the site for at least 30 years after the development is completed (or in accordance with a revised period set out in and future relevant regulations enacted by the Secretary of State). The Biodiversity Gain Plan shall be implemented in accordance with the approved details.
 - b. Prior to the occupation of the development hereby permitted, the landscaping phase of the development shall be undertaken in accordance with the submitted Landscape and Ecological Management Plan dated March 2025 and approved Biodiversity Gain Plan.
 - c. Notice in writing shall be given to the Council when the:
 1. HMMP has been implemented; and
 2. Habitat creation and enhancement works as set out in the HMMP have been completed in accordance with the approved Biodiversity Gain Plan.
 - d. Monitoring reports shall be submitted to local planning authority in writing and approved in writing in accordance with the methodology and frequency specified in the approved HMMP.

6. No development, including any site works or operations relating to the development hereby permitted, shall commence until a Construction Method Statement, detailing the construction methods to be used to ensure the satisfactory protection of retained trees, shrubs and hedgerows during the lifetime of the development has been submitted to, and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Statement.
7. No development shall commence until details of the Highways Works as indicated on the Proposed Site Plan, drawing no. 15 rev. A which may be subject to minor modification as part of the Section 278 Technical Approvals process, have been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the agreed Highway Works have been completed in accordance with the approved details.
8.
 - a. Prior to the occupation of the development hereby permitted, an Acoustic Mitigation Scheme, shall be submitted in writing to and approved in writing by the local planning authority.
 - b. The development hereby permitted shall not be carried out otherwise than in accordance with the approved acoustic mitigation scheme and the approved acoustic mitigation scheme shall thereafter be retained for the lifetime of the development.
 - c. Prior to the development coming into use, a validation statement confirming that the measure of the Acoustic Mitigation Scheme have been carried out shall be submitted in writing and approved in writing by the Local Planning Authority.
9. Prior to the occupation of the development details of a waste collection scheme that makes adequate provision for storage and collection of waste shall be submitted to and approved in writing by The Local Planning Authority. The development shall be carried out in accordance with the approved scheme.
10. Prior to the occupation of the development, a travel plan, comprising details on how to increase walking mode share, walking and cycling information, increasing cycle mode share, increasing public transport mode share, sustainable travel events, promoting and facilitating car sharing and promotion of electric vehicle usage shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved travel plan.
11.
 - a. Prior to the occupation of the development hereby permitted, a traffic management plan shall be submitted in writing to the Local Planning Authority and agreed in writing which sets out details of how drop off and pick up times will be staggered, managed and enforced.
 - b. The approved Traffic Management Plan shall thereafter be enforced for the lifetime of development.

12. Prior to the first use of the development details for the secure cycle parking facility shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be retained in good repair thereafter for the lifetime of the development.
13. a. Prior to the development first coming into operation, the car parking provision shall be laid out within the curtilage of the site, in accordance with the approved plans which shall be properly consolidated, surfaced and drained, in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

b. These areas shall not thereafter be used for any other purpose than the parking of vehicles.
14. The approved Landscaping Scheme as shown on drawing no. 16 rev. A shall be implemented in full in the first planting season following the occupation of the development. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in accordance with the approved scheme and timetable; and any plants which within a period of five years (ten years in the case of trees) from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter be retained for at least the same period.
15. a. No external lighting shall be installed on the site unless details of the lighting including the intensity of illumination and predicted lighting contours have first been submitted in writing to and approved in writing by the Local Planning Authority.

b. No external lighting shall be installed on the site otherwise than in accordance with the approved details.
16. Notwithstanding the provisions of Class E of the Town and Country (Use Classes) Order 1987 (as amended) or any subsequent re-enactment thereof the premises shall only be used as a crèche or day nursery for the care of children under Use Class E(f).
17. The Nursery shall operate with no more than 130 children on site at any one time.
18. No more than thirty children shall be permitted to use the external activity areas at any one time.

End of Schedule

Appearances

FOR THE APPELLANT:

Matthew Roe	Marrons
Brian Mullin	Marrons
Simon Station	Shakespeare Martineau
Nathan Hanks	TPA Associates

FOR THE LOCAL PLANNING AUTHORITY:

Gemma Meaton	Group Manager
Sean Hewitt	Principal Planning Officer
Andrew Tyrer	Development Monitoring Officer
Kevin Gannon	Development Control and Public Rights of Way Manager
Sammy Pritchard	Principal Ecology Officer
Waheeda Sheikh	Planning Solicitor

DOCUMENTS SUBMITTED AT THE EVENT:

1. Draft Unilateral Undertaking dated 17 December 2025

DOCUMENTS SUBMITTED AFTER THE EVENT:

2. Signed Unilateral Undertaking dated 17 December 2025
3. Appellant's final comments on their application for costs dated 19 December 2025
4. Appellant's response to the Council's application for costs dated 19 December 2025
5. The Council's final comments on their application for costs dated 23 December 2025.