



Appeal Decision

Hearing Held on 5 June 2019

Site visit made on 5 June 2019

by C L Humphrey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th June 2019

Appeal Ref: APP/A4710/W/18/3209395

Greenglades, Denholme Gate Road, Hipperholme, Brighouse HX3 8HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr R Preston (Hipperholme Private Day Nursery) against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 17/01513/VAR, dated 14 December 2017, was refused by notice dated 23 May 2018.
 - **The application sought planning permission for 'first floor and ground floor extensions; bin store screening' without complying** with a condition attached to planning permission Ref 13/00200/FUL, dated 18 April 2013.
 - The condition in dispute is No 1 which states that: Unless otherwise agreed in writing by the Local Planning Authority the maximum number of children present in the nursery at any one time shall be 67.
 - The reason given for the condition is: To ensure the Local Planning Authority retain control over the use having regard to the need to provide adequate parking for the proposed use and to avoid parking on Denholme Gate Road and to ensure accordance with policy T18 of the Replacement Calderdale Unitary Development Plan.
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Decision

1. The appeal is allowed and planning permission is granted for first floor and ground floor extensions; bin store screening at Greenglades, Denholme Gate Road, Hipperholme, Brighouse HX3 8HX in accordance with the application Ref 17/01513/VAR dated 14 December 2017 without compliance with condition number 1 previously imposed on planning permission Ref 13/00200/FUL, dated 18 April 2013, and subject to the conditions set out in the attached Schedule.

Background

2. The day nursery occupies a detached building set back from and at a lower level to the west side of the A644 Denholme Gate Road. There are residential properties opposite and bounding the site to the north, west and south, and a mix of residential, commercial and educational uses in the wider area. The nursery car park is to the north side of the building, and to the rear there is a garden which is arranged as a series of small terraces, following the fall of the land to the south and west.

3. Planning permission was granted in 1999 for alterations and extensions to the appeal property to form a day nursery, and several subsequent permissions have increased both the size of the building and the number of children allowed to be present in the nursery.
4. An application for first floor and ground floor extensions and bin store screening was granted planning permission in 2013. Condition 1 of this permission stipulates that **"the maximum number of children present in the nursery at any one time shall be 67"**. The application which is the subject of this appeal sought to increase that number to 98.

Main Issue

5. It was agreed at the Hearing that the main issue in this appeal is the effect of the proposal to increase the number of children at the nursery upon the living conditions of the occupants of neighbouring dwellings, with particular regard to noise and disturbance.

Reasons

6. The nursery presently operates between 07:00 and 19:00 Monday to Friday, and there are no restrictions on the use of the garden between those hours.
7. It is apparent from the evidence that the existing operation of the nursery has an adverse effect on the living conditions of neighbouring residential occupiers, particularly in terms of noise generated by children and staff using the nursery garden. Residents gave examples of being able to hear children playing even when indoors with the windows closed, of having to turn the television or radio on to mask the noise and of being forced to retreat indoors when children and staff were outside rather than being able to use their private garden.
8. The National Planning Policy Framework (Framework) requires that planning 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'. **The Framework** refers to the Explanatory Note to the Noise Policy Statement for England¹ (NPSE) as relevant guidance. However, paragraph 2.22 of the Explanatory Note to the NPSE states that 'It is not possible to have a single objective noise-based measure that defines Significant Observed Adverse Effect Level (SOAEL) that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times.' Moreover, it acknowledges that further research is required to increase our understanding of what may constitute a significant adverse impact on health and quality of life from noise.
9. In that context, and based on the evidence before me, it is apparent that measuring the noise made by children, which is characterised by unpredictable and inconsistent peaks, and assessing the human reaction to that noise, is not an exact science.
10. The submitted Noise Impact Assessment (NIA) predicts that the proposal would result in a minor increase in noise and defines the impact of this, measured at the boundary with neighbouring residential properties, as being of slight to moderate significance. The NIA noise model assumes that up to 40 children

¹ Noise Policy Statement for England (Department for Environment, Food and Rural Affairs, 2010)

currently use the garden at any one time and that, applying the proposed percentage increase in the overall number of children, the proposal would see this rise to 58 children using the garden.

11. However, it was apparent upon my inspection of the appeal site that the **garden's** modest size would restrict the number of children who could use it at any one time. Moreover, because it is sub-divided into a series of terraced spaces it naturally lends itself to being used by small groups of children. The appellant explained at the Hearing that the ratios of staff to children are higher than at school, and that trained staff lead and supervise play, exploration and learning through planned outdoor activities **within these 'learning zones'**.
12. Thus, an increase in the number of children at the nursery would not be likely to result in a similar percentage increase in the number of children in the garden because there are physical and operational constraints which would limit its use.
13. As such, I consider that the noise model set out in the NIA overestimates the number of children likely to be using the garden at any one time. Indeed, at the Hearing, the appellant confirmed that the proposal would be likely to result in an increase in the number of children using the garden during a typical session from about 30 to up to 40. Therefore, whilst the proposal would result in a larger number of children potentially using the outdoor space, the noise impact is not likely to be as great as that set out in the NIA.
14. Nevertheless, I accept that an increase in the number of children playing outside may well lead to an increase in the amount of noise generated at the appeal site, however well supervised the children are. In order to mitigate against any increase in noise, the appellant has put forward a package of mitigation measures in a Noise Management Plan (NMP).
15. Physical mitigation proposed includes an acoustic fence along the north, south and west boundaries of the nursery garden. At the Hearing, the Council acknowledged that an acoustic fence would act as a barrier, absorb noise and reflect it back in the direction it came from. Therefore, whilst it would not remove all noise, such a fence could help to reduce its impact on neighbours. The installation of appropriate acoustic fencing could be secured by condition.
16. The NMP also proposes '**procedural**' mitigation. This includes the imposition of conditions to control the times when the garden could be used and the number of children using it. I am satisfied that a restriction on the times children can play outside would be enforceable, and I note that such a condition has been imposed by the Council on another scheme in the Borough² and at appeal³. It would not be possible to see how many children were using the garden from outside the site. However, I am satisfied that, in the particular circumstances of this case, such a condition could be enforced using footage from the CCTV system at the nursery which the appellant described at the Hearing, details of which could be set out in a Noise Management Plan secured by condition.
17. Overall, I find that the benefits of providing an acoustic fence around the site and introducing greater control over use of the garden would mitigate and reduce to a minimum the potential adverse impact on neighbouring residents resulting from any increase in noise.

² Planning permission 17/00910/COU

³ APP/B5480/W/17/3177814 and APP/Q1255/A/13/2203771

18. I therefore conclude that the proposal to increase the number of children at the nursery would not have a harmful effect upon the living conditions of the occupants of neighbouring dwellings, with particular regard to noise and disturbance. As such, it would accord with the amenity protection aims of Policies BE2, EP8 and CF8 of the Replacement Calderdale Unitary Development Plan (RCUDP), Policies BT2 and EN3 of the emerging Calderdale Local Plan (Publication Draft) and paragraphs 170 and 180 of the Framework.

Other Matters

19. Residents have raised concerns about the effect of increasing the number of children at the nursery upon parking, traffic congestion and highway safety. I note that there is an off-street car park and turning area within the appeal site which provides more parking spaces than the RCUDP Policy T18 requirement. Drop-off and collection times at a nursery tend to be spread over a much longer time period than at a school, and I have no evidence to suggest that the proposal would lead to any significant increase in congestion in the local area. Moreover, I have no evidence, for example accident records, to demonstrate that the existing nursery operation has a harmful effect on highway safety or that the proposal would do so. However, I note the Highway Authority's comments that the car park and turning area could be laid out and managed better; this could be secured by condition.
20. The development that was subject to the original permission Ref 13/00200/FUL included bin store screening. I noted at my site visit that this has not been completed and that bins are stored externally in a corner of the car park. Representations from neighbouring residents state that the bins are unsightly and not secure in windy conditions. Installation of the bin store and its subsequent retention could be secured by condition.
21. At the Hearing, concern was expressed regarding the exposure of nursery children to diesel particulates when they are taken on walks out of the nursery. However, I heard that it is the existing practise of the nursery to regularly take children out. There is no substantive evidence before me regarding the levels of air pollution the children are currently exposed to, or which demonstrates that the appeal proposal would result in harm in this respect.
22. Several residents have queried the need for an increase in child places at the nursery and whether there is enough space within the building to accommodate the proposed number of children. The appellant advised the Hearing that the introduction of 30 hours of funded childcare has led to an increase in demand and that whilst there were other childcare providers in the area they differed in terms of their offer, so there was a need for further places; this was identified **in the Council's** childcare sufficiency assessment in January 2019.
23. Furthermore, I note that the Council has raised no objections to the principle of the proposal, and that RCUDP Policy CF8 is generally supportive of proposals for **children's** day care facilities provided they are well located in relation to the community, have adequate internal and external facilities and do not cause unacceptable adverse impacts.
24. The nursery is well located in the settlement of Hipperholme. The appellant confirmed at the Hearing that the nursery has substantially more internal space than Ofsted requires, and, in any event, I note that this is a matter for other regimes. There is good access to external facilities on site and in the local area.

I have not identified any unacceptable adverse impacts in relation to the main issue or other matters set out above. Accordingly, I have not considered the matters of need or space in further detail since they would not alter my conclusion on the merits of the appeal.

Conclusion

25. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Conditions

26. As set out in the Planning Practice Guidance (PPG), to assist with clarity, decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73, the PPG goes on to state that the decision maker may also impose new conditions provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.
27. In allowing the appeal and granting planning permission I have replaced the disputed Condition No 1 with a condition relating to the maximum number of children allowed to be present in the nursery. A condition restricting the days and hours of operation was not suggested by the Council or appellant, however, I do not consider it to be contentious given the same restrictions were imposed on previous planning permissions, and so have imposed it in this case. I have also imposed conditions restricting the times the garden area can be used and the number of children permitted to use it at any one time. These conditions are all necessary in the **interests of neighbours' living conditions**, as are the conditions I have imposed requiring approval and implementation of a Noise Management Plan and installation of acoustic fencing.
28. In the interests of certainty have imposed a condition specifying the relevant drawings. A condition relating to the pram store materials is necessary in the interests of the character and appearance of the area. Although not suggested by the Council or appellant, in order to safeguard the character and appearance of the area and the living conditions of neighbouring residents, it is reasonable and necessary to impose a condition requiring the bin store to be installed prior to any increase in the number of children at the nursery. Finally, to achieve the satisfactory arrangement and operation of the car park, I have imposed conditions relating to the car park layout and Management Plan.

CL Humphrey

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Roger Lee	Roger Lee Planning Ltd
Darren Lafon-Anthony	Enzygo Environmental Consultants
Gill Holden	Gill Holden Consultancy Ltd
Robert Preston	Co-owner of Hipperholme Private Day Nursery
Mona Jensen	Co-owner of Hipperholme Private Day Nursery

FOR THE LOCAL PLANNING AUTHORITY:

Sara Johnson	Planning Officer, Calderdale MBC
Ryan Carroll	Environmental Health Officer, Calderdale MBC
Anita Seymour	Senior Planning Officer, Calderdale MBC
Claire Dunn	Senior Planning Officer, Calderdale MBC

INTERESTED PERSONS:

David Oliver	Local Resident
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DOCUMENTS SUBMITTED AT THE HEARING:

1. Transcript of address to Hearing by David Oliver, with appended Ofsted inspection reports in respect of the Hipperholme Private Day Nursery and Bramley Grange Childcare.
2. Copy of Policies EN3, BT2, IM5 and Annex 1: Car and bicycle parking standards from the emerging Calderdale Local Plan (Publication Draft), referred to in the Statement of Common Ground.

SCHEDULE OF CONDITIONS

- 1) The maximum number of children present in the nursery at any one time shall be 98.
- 2) The nursery shall only operate between the hours of 07:00 and 19:00 Monday to Friday and not at all on Saturday, Sunday, Bank or other Public Holidays.
- 3) The rear garden area shall only be used between the hours of 09:00 and 18:00 Monday to Friday and not at all on Saturday, Sunday, Bank or other Public Holidays and the maximum number of children present in the rear garden area at any one time shall be 40 plus adult supervisors.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Existing and Proposed Plans Ref 1 & 2.
- 5) Prior to an increase in the number of children present in the nursery from 67 a Noise Management Plan shall be submitted to and approved in writing by the local planning authority. The Noise Management Plan shall include undertakings and procedures for:
 - i) The control and use of outside areas;
 - ii) Recording of complaints and response to those complaints;
 - iii) The annual review of the approved Noise Management Plan and, if necessary, the submission and approval of a revised Noise Management Plan.

Thereafter the approved Noise Management Plan shall be implemented and/or followed at all times the nursery is in use.

- 6) Notwithstanding Condition 4, prior to an increase in the number of children present in the nursery from 67 an acoustic boundary enclosure shall be erected in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority and shall be so retained thereafter.
- 7) Prior to an increase in the number of children present in the nursery from 67 a Car Park Management Plan which shall describe how parking will be distributed and managed on the site shall be submitted to and approved in writing by the local planning authority. Thereafter the approved Car Park Management Plan shall be implemented and/or followed at all times the nursery is in use.
- 8) Notwithstanding Condition 4, prior to an increase in the number of children present in the nursery from 67 the car park shall be marked out in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority and shall be so retained thereafter for use by the nursery visitors and staff.
- 9) Notwithstanding Condition 4, prior to an increase in the number of children present in the nursery from 67 a bin store enclosure shall be erected in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority and shall be so retained thereafter.
- 10) Notwithstanding Condition 4, the facing and roofing of the pram store shall not begin until details of the proposed facing and roofing materials of the pram store have been submitted to and approved in writing by the local planning authority. Before the pram store is brought into use it shall be constructed in accordance with the details so approved and shall be so retained thereafter.