



Appeal Decision

Site visit made on 24 September 2019

by **Chris Baxter BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 October 2019

Appeal Ref: APP/C4235/W/19/3233474

175 Didsbury Road, Heaton Mersey, Stockport SK4 2AE

- 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 Mrs M Feeley against the decision of Stockport Metropolitan Borough Council.
 - The application Ref DC/071712, dated 18 October 2018, was refused by notice dated 8 April 2019.
 - The application sought planning permission for building extension, partial conversion and change of use from Class C3 (Residential Dwelling) to Class D1 (Non-Residential Institution) pre-school and day nursery without complying with condition 17 attached to planning permission Ref DC/062694, dated 17 March 2017; and the retention of children's natural play area to rear of existing Nursery site.
 - The condition in dispute is No 17 which states that: "*The number of children attending the premises at any one time shall not exceed 34.*"
 - The reason given for the condition is: "*To ensure that the scale of activities remains appropriate to the location of the nursery in compliance with Policy CDH1.6, "Day-Care Nurseries", of the Stockport Unitary Development Plan Review.*"
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Decision

1. The appeal is allowed and planning permission is granted for the retention of children's natural play area to rear of existing Nursery site and planning permission Ref DC/062694 for building extension, partial conversion and change of use from Class C3 (Residential Dwelling) to Class D1 (Non-Residential Institution) pre-school and day nursery at 175 Didsbury Road, Heaton Mersey, Stockport SK4 2AE, is varied by deleting condition 17 and substituting for the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mrs M Feeley against Stockport Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. At the time of my site visit the proposed children's play area to the rear of the nursery had been implemented. I have dealt with the appeal accordingly.

Background and Main Issue

4. The proposal seeks to vary condition 17 to allow an increase in the number of children that can attend the premises at any one time up to a number of 45 children. The proposal also seeks to retain an external children's play area to the rear of the existing nursery site. The main issue is the effect of the proposals on the living conditions of occupiers of neighbouring properties with regard to noise and disturbance.

Reasons

5. The appeal site is an established children's nursery which is restricted to opening hours of between 0800 hours and 1800 hours from Monday to Friday only. The site is located on Didsbury Road and surrounded by residential properties. There is an existing play area immediately to the rear of the nursery in addition to the play area proposed to be retained as part of this appeal.
6. The increase in the number of children from 34 to 45, around a 33% increase, would not be a significant rise. Noise levels may rise given the increase in children numbers and other associated factors such as traffic movements, pedestrian coming and goings and additional staff numbers. However, given the existing noise levels in the area which includes traffic noise from Didsbury Road, the proposal for up to 11 additional children would not intensify noise levels to an extent which would adversely affect the living conditions of neighbouring occupiers.
7. The proposed play area, which contains various items including a large swing, a slide, rubber tyres, a wendy house; is located adjacent to neighbouring properties and garden areas. This is similar to the existing arrangement with neighbouring properties being close to the existing play area immediately to the rear of the appeal property. The proposed play area is only a small space and is not used at all times of the day, and noise emanating from this area is not to a level that detrimentally effects the living conditions of the occupiers of neighbouring properties or their gardens.
8. I note that the Council's Environment Noise Team have not raised any objections to the proposals. The increase in the number of children allowed to attend the premises and the addition of the proposed play area, along with other activities associated with these proposals including traffic and pedestrian movements, would not give rise to noise and disturbance which would unduly harm the living conditions of nearby residential occupiers.
9. I have had regard to objections raised by local residents including concerns that the proposals would result in loss of privacy and that the existing extension is overbearing. Given the proximity to neighbouring properties and their gardens along with various boundary treatment and planting that is currently present, the proposals would not have an adverse effect on neighbouring occupiers with respect of privacy and overbearing effects.
10. The proposals would therefore not have a harmful effect on the living conditions of occupiers of neighbouring properties in respect of noise and disturbance. The proposal would be in accordance with Policies CDH1.2 and CDH1.6 of the Stockport Unitary Development Plan Review 2006 (DP), Policies CS8 and SIE-3 of the Stockport Metropolitan Borough Council Local

Development Framework Core Strategy DPD 2011 and the Supplementary Planning Guidance Day Care Nurseries (SPG) which seek, amongst other things, to safeguard the environment and to ensure day care nurseries are of an appropriate scale in terms of number of children, noise and general disturbance to neighbours.

11. Policy CDH1.6 of the DP and the SPG provide guidance that nurseries in residential areas should operate at an upper level of about 30 child places. This number is only a guideline and it is further stated that properties may be suitable to accommodate more than 30 child places depending upon factors such as the proximity of neighbours dwellings and the spaciousness of the nursery's grounds. Given the size of the nursery and the distance with neighbouring dwellings, I am satisfied that an increase in child places up to 45 is acceptable and would not harm the living conditions of neighbouring occupiers and thus accord with Policy CDH1.6 and the SPG.

Other matters

12. Concerns have been raised regarding traffic associated with the nursery, including parking provision, effects on Didsbury Road and air contamination, as well as breaches in the original planning permission, light pollution, the loss of trees and shrubbery and the effect on biodiversity and protected species. There is minimal evidence before me to suggest that the proposals are, or would, have a harmful effect on the surrounding environment and neighbouring occupiers in respect of these matters. The Council have also not raised any concerns with regards to these matters.
13. I have also had regard to other matters raised including damage to boundary walls, assertions that the nursery is not at capacity, financial ambitions of the appellant and that the original nursery scheme proposed up to 50 child spaces. These matters do not result in the proposals having a harmful effect on the surrounding area including neighbouring occupiers and are not sufficient reasoning to withhold planning permission.

Conditions

14. A new planning permission is being granted which is separate from the original permission. Any conditions attached to the original permission will not be automatically carried over. I have therefore considered whether any of the previous conditions should be imposed along with any new conditions.
15. The standard time limit condition is not necessary given the premises is in use. Condition 1 relates to the approved plans and is necessary in the interests of certainty. Condition 9 is the modified condition relating to the number of child places and is necessary to ensure that the scale of activity remains appropriate to the surrounding area.
16. It has been implied that conditions on the original planning permission have been discharged. I have no clear evidence before me of the details that were submitted in order to discharge those conditions or whether all the necessary conditions have been discharged. Therefore, as I consider some of the original conditions relevant, I have imposed them, although in a modified manner for the sake of clarity and given the development has been implemented. In the event that some of these conditions have been discharged, it is a matter which can be addressed by the parties.

17. Some of the conditions are drafted in a particular form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters because the development has already taken place. The purpose and effect of the conditions are therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.
18. Condition 2 relates to parking and access arrangements and is necessary in the interests of highways safety and to promote accessible modes of transport. A condition for a travel plan is necessary in order to promote accessible modes of transport. I have imposed conditions relating to boundary treatment and existing and proposed landscaping in the interests of the character and appearance of the area and to safeguard living conditions of neighbouring occupiers.
19. In the interests of safeguarding the living conditions of neighbouring occupiers and the users of the appeal property I have also imposed conditions relating to contamination, opening hours, obscure glazing and restriction on the introduction of additional windows. Condition 6 relates to badgers and is necessary in order to safeguard a protected species.
20. I note that the Council have suggested conditions relating to acoustic fencing. I have found that the proposals are acceptable and do not harm the living conditions of neighbouring occupiers irrespective of the installation of acoustic fencing. Therefore, the installation of acoustic fencing is not necessary to make the proposals acceptable and this condition has not been imposed. Nevertheless, I do acknowledge there is some intention from the appellant to erect acoustic fencing given it is included within Drawing No PL08. Details of acoustic fencing including any requirements to safeguard protected species can be sought through condition 12.

Conclusion

21. I therefore conclude, for the reasons given above, that the appeal is allowed.

Chris Baxter

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: PL01; PL02; PL03; PL04A; PL05B; PL08.
- 2) Unless within 3 months of the date of this decision a scheme for the sites access arrangement, parking facilities, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site shall cease 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 remain in use.

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.

- 3) No existing tree within the site shall be cut down, topped, lopped, uprooted, wilfully damaged or wilfully destroyed without the prior written approval of the local planning authority, with the exception of those indicated otherwise on the approved plan. Any hedgerows, woody plants or shrubbery removed without such consent or dying or being severely damaged or being seriously diseased, within 5 years of the date of the original planning permission Ref DC/062694, shall be replaced within the next planting season with trees of such size and species as may be approved in writing by the local planning authority.
- 4) Unless within 3 months of the date of this decision a scheme for all proposed tree planting, including the intended dates of planting, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site shall cease 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 remain in use.

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.

- 5) The landscaping/planting scheme as shown on Drawing No PL08, shall be implemented within 3 months of the date of this decision. Any trees, plants or grassed areas which within a period of 5 years from the date of

planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size, species and quality unless the Local Planning Authority gives written approval to any variation.

If the approved landscaping/planting scheme is not carried out then the use of the site shall cease until such time as the scheme is implemented.

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 Badger Method Statement and Badger Survey, is submitted in writing to the local planning authority for approval, and unless the measures detailed in these documents are implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a Badger Method Statement and Badger Survey are approved and any such measures identified in these documents are implemented.

If no Badger Method Statement and Badger Survey in accordance with this condition are approved within 6 months of the date of this decision, the use of the site shall cease until such time as Badger Method Statement and Badger Survey are approved by the local planning authority and any such measures identified in these documents are implemented.

Upon implementation of any approved measures detailed in the Badger Method Statement and Badger Survey specified in this condition, those measures shall thereafter remain in use.

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.

- 7) Unless within 3 months of the date of this decision a scheme for an investigation and risk assessment into contamination and detailed remediation scheme, are submitted in writing to the local planning authority for approval, and unless the recommendations for remedial action detailed in these documents are implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme for an investigation and risk assessment into contamination and detailed remediation scheme are approved and any such remedial actions identified in these documents are implemented.

If no scheme for an investigation and risk assessment into contamination and detailed remediation scheme in accordance with this condition are approved within 6 months of the date of this decision, the use of the site shall cease until such time as scheme for an investigation and risk assessment into contamination and detailed remediation scheme are approved by the local planning authority and any such remedial works identified in these documents are implemented.

Upon implementation of any approved remedial works detailed in the scheme for an investigation and risk assessment into contamination and

detailed remediation scheme specified in this condition, those measures shall thereafter remain in use.

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.

- 8) Within 3 months of completion of any and all remediation measures as identified in condition 7, a validation report assessing the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority. The report shall specify any further remediation measures necessary and indicate how and when these measures will be undertaken.

If no validation report is approved within 6 months of the date of this decision, the use of the site shall cease until such time as a validation report is approved by the local planning authority and any further remedial works identified in these documents are implemented.

Upon implementation of any further approved remedial works detailed in the validation report, those measures shall thereafter remain in use.

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.

- 9) The number of children attending the premises at any one time shall not exceed 45.
- 10) No part of the nursery/pre-school premises shall be open for use except between 0800 hours and 1800 hours, Monday to Friday only.
- 11) No part of the dwelling hereby approved shall be occupied other than by the proprietor or an employee of the business use operating on the ground floor of the premises and a member of the family of such person living with him/her. The operation of the business at ground floor shall not commence until the first floor flat is occupied by the proprietor or an employees of the business.
- 12) Unless within 3 months of the date of this decision a scheme for all screen and boundary walls, fences or other means of enclosure, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site shall cease 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 remain in use.

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.

- 13) Unless within 3 months of the date of this decision a scheme for the provision of a 1.8m high privacy screen along the western edge of the approved two storey rear extension, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site shall cease 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 remain in use.

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.

- 14) The development shall not be occupied or brought into use until the proposed upper floor windows on the west elevation of the two storey rear extension hereby approved, have been fitted with obscure glass of or equivalent to "Pilkington" Level 4 or 5. The obscure glazing shall subsequently be retained.
- 15) Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no additional windows, doors or openings of any kind shall be inserted above ground floor level in the west elevation of the development.
- 16) Within 3 months of the increase in child places being brought into use a Travel Plan for the site shall have been submitted to and approved in writing by the Local Planning Authority and have been brought into operation. The approved travel plan shall be operated at all times that the use is in operation and shall be reviewed and updated on an annual basis in accordance with details that shall be outlined in the approved plan. The Travel Plan and all updates shall be produced in accordance with current national, regional and local best practice guidance and shall include details on the method of operation, appointment of a Travel Plan Coordinator, targets, infrastructure to be provided, measures that will be implemented, monitoring and review mechanisms, procedures for any remedial action that may be required and a timetable for implementing each element of the plan. In addition it shall include details of what measures will be implemented and how the business will operate so to maximise the number of children cared for at the nursery that live within the local area, to maximise the number of children and staff that will travel to the site by foot, cycle or public transport and measures to best manage the drop off and pick up of children at the nursery.