
Appeal Decision

Site visit made on 18 September 2023

by **E Worley BA (Hons) Dip EP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26.10.2023

Appeal Ref: APP/C3430/W/23/3316243

Springhill House, Springhill Lane, Lower Penn, Staffordshire WV4 4TJ

- 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 The Old Station Nursery against the decision of South Staffordshire District Council.
- The application Ref 22/01049/VAR, dated 10 November 2022, was refused by notice dated 30 January 2023.
- The application sought planning permission for the construction of a new building for use as a D1 nursery (part retrospective) drainage works to the rear of the nursery (retrospective) and associated works without complying with a condition attached to planning permission Ref. 19/00048/FUL, dated 21 April 2021.
- The condition in dispute is No 5 which states that: *The nursery building hereby approved shall maintain a maximum operating capacity for 105 children, unless otherwise agreed in writing by the local planning authority.*
- The reason for the condition is: *In the interests of highway safety and management of the road network.*

Decision

1. The appeal is dismissed.

Background and main issues

2. Planning permission for the nursery (Ref. 19/00048/FUL) was granted on appeal (Ref. APP/C3430/W/20/3253111) and included condition 5, which restricts the number of children at the nursery to a maximum of 105. The reason for the condition in the banner heading is taken from the Inspector's decision. The appellant wishes to vary the condition to increase the maximum operating capacity of the nursery by an additional 45 children to a maximum of 150.
3. The Council consider that, given the scale of the increase, the proposed proposal does not constitute a minor material amendment, and therefore falls outside the scope of Section 73 of the Town and Country Planning Act 1990 (the Act). Although the Act does not include a statutory definition of a 'minor material amendment', the Planning Practice Guidance sets out that there is no statutory limit on the degree of change permissible to conditions under Section 73, but the change must only relate to conditions and not to the operative part of the permission.
4. The variation of the condition sought, to increase the number of children attending the nursery, would not result in a change to the description of

development, nor would it change the description of the development placed on it by a condition. Consequently, as it would not result in a substantially different development, I therefore conclude that the change proposed would constitute a minor material amendment to the approved scheme and, as such, falls within the scope of Section 73 of the Act.

5. Therefore, the main issues are:

- the effect of the proposed increase in the number of children on the living conditions of the neighbouring residents, with particular regard to noise and disturbance;
- whether the proposal would incorporate appropriate foul drainage provision to meet the needs of the proposed development; and
- highway safety, having regard to parking provision and access.

Reasons

Noise

6. The appeal site includes a detached children's day nursery building, enclosed play area, ancillary outbuildings, storage compound, and car park. It is located on the edge of an existing residential area, adjoining the open countryside, which contributes to its semi-rural and relatively tranquil setting. It sits immediately to the rear of the residential properties fronting Springhill Lane and is separated from the dwellings to the side in Springhill Grove and Foxhills Road by a parcel of agricultural land.
7. In granting the planning permission for the nursery the Council considered noise levels associated with the use to be acceptable. In allowing the appeal the Inspector considered a condition was necessary to restrict the operational hours of the nursery to protect neighbouring residential amenity. Whilst the condition to which the appeal relates was imposed in the interests of highway safety, the outcome of the appeal would allow the operation of the nursery with a significant increase in the number of children. Representations made by interested parties report current significant levels of noise when the children play outside and both local residents and the Council's Environmental Health Protection Officer have expressed concern regarding the effect of the proposed variation of the condition upon noise generated at the site.
8. The site lies on the edge of the settlement, where there are moderately low levels of background noise. I note the appellant's comment that the nursery is 50m from the nearest residential property, however, the increase in capacity would nevertheless result in a large nursery close to residential properties. Despite the fact the nursery's main outdoor play area separated from the surrounding dwellings by the intervening nursery building, car park and agricultural land, given the site context and its proximity to neighbouring dwellings, I find that the proposal would give rise to an increased level of noise that would be discernible to local residents. This would likely be particularly noticeable during outdoor activities. In the absence of a noise assessment, I cannot be satisfied that the degree of separation is adequate to mitigate any harm that might arise as a consequence of noise generated by the proposed increase in capacity at the nursery.

9. Whilst I note the appellant's concerns regarding the additional expense of a noise assessment, I have not been presented with any evidence that the cost of such would be prohibitive or economically unviable.
10. For the foregoing reasons, there is no clear evidence that the increase in the number of children at the nursery would not give rise to unacceptable harmful effects to the living conditions of the occupants of neighbouring residential properties from noise generated. The proposal would therefore fail to accord with Policy EQ9 of the South Staffordshire Council Core Strategy adopted December 2012 (CS) which requires development proposals to take into account the amenity of any nearby residents, with regards to factors such as noise.

Foul drainage

11. The appeal submissions indicate that foul water from the development is currently disposed of via a biomass waste-water treatment system. However, details of a foul drainage system to serve the development are yet to be formally agreed, in accordance with condition 9 of the earlier appeal decision.
12. Nevertheless, the Environment Agency has expressed concern regarding the use of a private non-mains foul drainage system due to the associated increased risk of failures which may lead to pollution of the water environment. Such arrangements are only acceptable where it is not reasonable to connect to a public sewer, in accordance with advice in the Planning Practice Guidance. Moreover, the appeal submissions suggest that there is a public sewer near the site.
13. I note the appellant's willingness to ensure there is a long-term plan for the management and maintenance of foul drainage for the nursery. However, there is no indication that connection to the nearby public sewer has been explored or that in the event this cannot be achieved, an environmental permit would be granted. Consequently, there is nothing before me to demonstrate that a suitable foul drainage system, taking account of the proposed increase in capacity at the nursery and local constraints, could be agreed through a suitable planning condition.
14. As such, the proposal would fail to incorporate appropriate foul drainage provision to meet the needs of the proposed development and to safeguard against any adverse effects on controlled waters. In that regard the proposal would fail to accord with Policy EQ7 of the CS which supports proposals where they would not have a negative impact on water quality, either directly through pollution of surface or groundwater or indirectly through overloading of Wastewater Treatment Works. It would also fail to reflect the aims of paragraph 183 of the National Planning Policy Framework with regards to safeguarding the natural environment from risk of contamination.

Highway safety

15. Vehicular and pedestrian access to the site is via a private driveway from Springhill Lane, the driveway has a dedicated footpath which connects to the existing footway along Springhill Lane. The nursery car park has 51 formal off road parking spaces, which exceeds the 49 spaces on the approved plans. Due to the proximity of the site to the surrounding residential development, it benefits from a degree of accessibility by means other than the private car,

including by foot and bicycle, as well as public transport links. At the time of my site visit, which took place during the middle of the day, there were only a small number of vehicles parked in the car park.

16. The appellant suggests there is capacity for up to 60 dedicated parking spaces at the site, however these include tandem parking spaces, which are not always practical and therefore may not consistently be available for use. Appendix 5: Parking Standards of the CS sets out the current recommended car parking standards for new developments within the district. For nursery schools the requirement is 1 space per member of teaching staff and 1 drop-off space per 10 children. Whilst there is some uncertainty regarding the precise number of staff employed at the nursery, the maximum number of staff indicated by the appellant is 43. However, there is no distinction as to whether these are full time equivalent posts, or if this includes part time staff and whether they are specifically teaching staff.
17. Nevertheless, using the figure of 43 members of staff being present at any one time as a worst-case scenario, the proposed increase in the number of children at the nursery would trigger a requirement for a total of 58 spaces, in accordance with the car parking standards in Appendix 5 of the CS. Consequently, the existing parking provision would represent an overall shortfall of 7 spaces.
18. The practical consequence of this during busy periods would be a queue of parents' cars within the car park or parents parked indiscriminately within the car park or access road for short periods. However, given the separation distance between the car park and the public highway and the width of the private driveway, if this did occur, parked cars would be unlikely to be displaced onto Springhill Lane.
19. I note the Highway Authority's concern regarding the methodology used in the appellant's car parking accumulation assessment and that this should be based on actual vehicles in the car park over the day not comings and goings to the site. However, in the absence of any evidence to the contrary, for the reasons set out above, the proposed parking provision would be unlikely to give rise to any demonstrable harm to highway safety, in particular the traffic flow on Springhill Lane.
20. There is nothing before me to demonstrate that the existing operation of the nursery causes particular problems with regards to highway safety. The appellant contends that relevant data indicates that there are no existing road safety issues identified within the immediate vicinity of the site and this is not disputed by the Highway Authority.
21. I note concerns expressed by the Highway Authority regarding the effect of additional traffic movements at the junction of the site with Springhill Lane and that this should be assessed having regard to existing traffic flows. However, the appellant's Transport Note by Evoke dated 7 November 2022 indicates a modest increase of an additional 2-3 vehicular movements every five minutes during peak times. As such, in the absence of any evidence to the contrary, I find that the proposal would not have a significant effect on the operation of the surrounding highway network. Moreover, any impact would be likely to be limited to additional traffic queuing within the site while vehicles wait to re-join Springhill Lane.

22. I acknowledge concern expressed by interested parties regarding the perceived effects of the proposal on the highway network. Nevertheless, there is no compelling evidence to demonstrate the proposed increase in capacity at the nursery and associated traffic movements would cause unacceptable harm to highway safety, having regard to parking provision and access.
23. In light of the shortfall in parking spaces, the proposal would fail to accord with Policy EV12 of the CS in so far as it requires appropriate provision to be made for off street parking in development proposals in accordance with adopted parking standards. Nonetheless, for the foregoing reasons, I have found that the proposal would not give rise to any tangible harm to highway safety.

Other Matters

24. I note that the nursery is currently operating at full capacity, with families waiting for spaces, which indicates that it is a much-needed facility in the area. There is no compelling evidence to suggest otherwise. As well as providing childcare so parents and carers can work, it also offers economic benefits in terms of local employment opportunities for staff. These benefits carry significant weight. I appreciate that increasing the operating capacity would ensure the business is financially secure. However, there is no substantive evidence that the business is not viable without the additional revenue generated by the increase in capacity. As such, this carries limited weight.
25. Concerns have also been expressed by interested parties regarding light pollution, however the Council did not object to the proposal on these grounds. I have not been presented with any evidence that leads me to disagree with this view.
26. Whether or not the development has been carried out in accordance with the approved plans is a matter to be resolved between the parties outside of the appeal process.

Conclusion

27. The proposal would offer social and economic benefits in terms of nursery provision and employment opportunities, it would also offer benefits in terms of the ongoing financial stability of the business. In addition, there would be no tangible harm to highway safety, which is a neutral matter in the planning balance.
28. Set against this, in the absence of any evidence to the contrary, the proposal would have an adverse effect upon the living conditions of the neighbouring residential properties through an increase in noise. It would also fail to demonstrate that adequate measures could be secured to ensure that there would be no adverse impacts arising from the arrangements for wastewater disposal. The proposal would therefore conflict with the development plan as a whole and material considerations, including the provisions of the Framework, have not been shown to carry sufficient weight to indicate that a decision should be taken otherwise than in accordance with it.
29. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

E Worley INSPECTOR