
Appeal Decision

Site visit made on 16 February 2016

by G Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 March 2016

Appeal Ref: APP/K2420/W/15/3137291
40D Ratby Lane, Markfield, Leicestershire LE67 9RJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Andrea Bailey against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 15/00186/COU, dated 27 February 2015, was refused by notice dated 21 October 2015.
 - The development proposed is partial change of use from a games room to a childcare facility employing two childcare assistants.
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Decision

1. The appeal is allowed and planning permission is granted for partial change of use from a games room to a childcare facility employing two childcare assistants at 40D Ratby Lane, Markfield, Leicestershire LE67 9RJ in accordance with the terms of the application, Ref 15/00186/COU, dated 27 February 2015, and subject to the conditions in the schedule to this decision.

Procedural Matter

2. For clarity, I have slightly modified the description of development. The description on the original application is as follows: "Partial change of use from a games room to able to run a childcare facility employing two childcare assistants. The no. of children able to attend due to the floor area in accordance with the DFE stat. framework for early years foundation stage. Under 2's 3.5m² per child/2 years 2.5m² each/3-5 years 2.3m² per child. The age range will be predominantly 0-4 years unless after school care is required. To ensure minimal disruption on the shared drive different drop off/ collection times will be arranged. Otherwise parents will be asked to park on Ratby Lane and collect on foot."

Main Issue

3. The main issue is the effect of the appeal scheme on the living conditions of neighbouring residents in respect of noise and disturbance arising from traffic movements.

Reasons

4. The appeal property is one of four substantial dwellings set back from a cul-de-sac known as Victoria Gardens. Located within a generous plot, the appeal property has gardens to the side and rear and a substantial area of
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hardstanding to the front for parking. The cul-de-sac is accessed between 40 and 42 Ratby Road. The appeal property's garden is bounded to the rear by 17 and 19 Link Rise. Another dwelling is to the eastern boundary of the appeal property, and Launde Road is to the west.

5. The appeal proposal would secure the change of use of the room at the side of the appeal property which faces the garden and Launde Road to a childcare facility employing up to two assistants. An area of garden would be used by this facility for outdoor play, and is separated from the rest of the appeal property's garden by a fence of around 2m in height. I noted at my site visit that the room is currently in use for childcare purposes, although within the limit on the number of children allowed to be cared for according to the rights arising from The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
6. The use would increase vehicular traffic along the private access that serves 40D and its three neighbours. An assessment prepared by the appellant during the course of the original planning application suggested that the use would generate in order of 6 to 8 additional traffic movements a day. The appellant also submitted evidence to suggest that pick up and drop off times would be staggered to mitigate any adverse effects of multiple movements at peak times, and to fit in with the working patterns of parents using the facility.
7. Whilst I note that the assessment only covers an example of potential users of the facility, and that circumstances could change over time, I do not consider that the number of additional car journeys would be excessively over and above the level of trips generated by a large family residing in a substantial dwelling such as this. Moreover, demand for the facility, and overall traffic movements generated by it, will vary from term-time to other times in the year. I also consider that the amount of additional vehicular movements would not be significantly greater than those arising from the currently authorised childcare use. Furthermore conditions limiting the number of children using the facility and its times of operation would help to keep the number of additional trips within reasonable limits.
8. At my site visit, I noted that from within the cul-de-sac generally the traffic noise generated by Launde Road, a busy highway with a speed limit of 40 miles per hour, was an almost constant feature. No doubt the sound of vehicles travelling along the cul-de-sac would be different to those using Launde Road. However, given the existing noise environment, and the low speed in which cars would have to travel to negotiate the access I do not consider that the sound of the limited number of additional vehicles accessing the proposed use would cause significant harm to the living conditions of occupiers of neighbouring properties. Similarly, although there would be more opening and closing of car doors, this would be intermittent and not constant, and in any event would not be in unsociable hours. Consequently, I can apprehend no material harm arising in these regards either.
9. I considered whether other disturbance would arise from these increased highways movements such as headlight glare. Due to the layout of the cul-de-sac, the beams of headlights would only indirectly affect Nos 40B and 40C. The property with most potential to be affected by headlights is No 40A, across from the appeal property, however, its front elevation is angled away from No 40D's driveway and the cul-de-sac, meaning that any glare would be indirect.

Furthermore, this effect would only be noticeable with a limited amount of traffic movements in mornings and evenings in parts of autumn and winter. These considerations lead me to the view that there would be no materially harmful effects arising to the living conditions of the occupiers of No 40A in this regard.

10. Consequently, as the proposed use would not cause significantly harmful effects to the living conditions of the occupiers of adjacent properties arising from the additional traffic movements, I can discern no conflict with Policy BE1 of the Hinckley and Bosworth Local Plan (adopted February 2001) or Policy DM10 of the emerging Site Allocations and Development Management Policies Development Plan Document. Taken together, and amongst other things, these Policies seek to ensure that development proposals do not cause material harm to the living conditions of the occupiers of their neighbouring properties.

Other Matters

11. I assessed whether the additional noise arising from the use of part of the garden for childcare purposes would have a harmful effect on the living conditions of adjacent properties. The proposed area set out for play is separated from the rest of the garden by a fence of around 2m in height, and is close to 40D, separated around 8m from the boundary with the adjacent properties on Link Rise. I noted that within this area the sound of traffic from Launde Road was very audible. The use of the facility for outdoor play would be for a limited amount of children, and its use would vary both throughout the year, and from day to day. In any event, the sound of a small number of children playing within the garden of a substantial dwelling would be neither unusual nor unreasonable. Moreover, the noise generated would not be significantly in excess of the noise arising from the current operation of the permitted childminding use. Consequently, given the likely level of additional sound and in the context of the existing noise environment, I do not consider that significantly harmful effects would arise to the living conditions of the occupiers of the adjacent Link Rise properties in this regard.
12. I considered whether the proposed use could exacerbate the noise caused by dogs within the appeal property. However, the barking of dogs is something that is only marginally related to the development proposed, and as such I have attached only limited weight to the matter in my determination of this appeal.
13. Respondents raised concerns with regard to highway safety. The limited number of additional traffic movements proposed, coupled with the layout of the access, which would tend to deter higher speeds, would indicate that any effects on highway safety would be marginal. I also note the lack of objections in this regard from the Local Highways Authority. Whilst concern has been expressed about accidents occurring on the lane, a lack of substantive evidence about the nature of these events, and how the limited amount of additional traffic movements could contribute to similar occurrences leads me to attach only limited weight to these considerations in my determination of the appeal.
14. I considered the adequacy of the existing on-plot parking arrangements for the proposed use. The appeal property benefits from a large area of hard standing to the front, which would provide a reasonable amount of off street parking to handle the picking up and dropping off children at the site.

15. The additional wear and tear on the unadopted road caused by vehicle movements arising from the proposed use would be difficult to quantify. In any event, the maintenance of the unadopted road is a private matter. Accordingly, the effect of the proposal in this regard is a matter to which I have only attached limited weight in my assessment of the appeal.
16. Whilst I have had regard to the suggestion that there is an overprovision of childcare facilities in the locality generally, this is essentially a commercial consideration and has thus not been instrumental in my reasoning on this case.
17. I have considered concerns regarding the health and safety of the children in respect of adequate marshalling points in case of emergency. I am persuaded, however, that the facility would have to make adequate arrangements in these regards for the purposes of its OFSTED accreditation, and accordingly have attached only limited weight to these matters in arriving at my decision.

Conditions

18. The Council supplied a suggested suite of conditions should the appeal be allowed, and I have assessed these against the criteria set out in paragraph 206 of the National Planning Policy Framework (the Framework).
19. I have attached a condition specifying the approved plans in the interests of certainty and for the avoidance of doubt.
20. A number of conditions are attached to ensure that the development respects the living conditions of adjacent occupiers. Firstly, I have attached a condition to ensure that the childcare use remains ancillary to the wider residential use of the property. Secondly, I have attached a condition limiting the childminding use to the ground floor area as shown on the approved plan. Thirdly, a condition restricts the amount of children onsite at any one time to 9. Fourthly, I have attached a condition controlling the business's hours of operation. Finally, a condition is attached that limits the times when the garden can be used for outdoor play.

Conclusion

21. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

G Fort

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Nursery Floor Plans M288/13/03A received by the Local Planning Authority on 2 March 2015; Site Location Plan (Scale 1:1250) received by the Local Planning Authority on 2 March 2015; and Garden Plan Drawing received by the Local Planning Authority on 24 April 2015.
- 3) The use hereby permitted shall be carried on only by the occupants of 40D Ratby Lane, Markfield, Leicestershire LE67 9RJ and the use shall not be run independently from the dwelling.
- 4) The childcare use hereby permitted shall not be carried on in any part of the dwellinghouse at 40D Ratby Lane other than the ground floor nursery room and sitting area as identified on the Nursery Floor Plans M288/13/03A received by the Local Planning Authority on 2 March 2015.
- 5) No more than 9 children shall be cared for in the use hereby permitted at any one time.
- 6) The use hereby permitted shall only take place between the following hours: 0700 to 1800 hours Mondays to Fridays and shall not operate at any time on Saturdays or Sundays.
- 7) The use for of the garden area identified in the Garden Plan Drawing received by the Local Planning Authority on 24 April 2015 in connection with the use hereby approved shall only take place between the following hours: 0900 to 1700 hours Mondays to Fridays and shall not operate at any time on Saturdays or Sundays.