



Appeal Decision

Hearing Held on 21 May 2019

Site visit made on 21 May 2019

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 24 June 2019

Appeal Ref: APP/E5330/W/18/3212320

13 Glenesk Road, Eltham SE9 1AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Willow Park Children's Nurseries Ltd against Royal Borough of Greenwich Council.
 - The application Ref 18/1376/F, is dated 24 April 2018.
 - The development proposed is change of use of dwelling (C3) to Nursery (D1).
-

Decision

1. The appeal is dismissed.

Main Issue

2. The Council did not reach a decision on the proposal before me. It is, however, a matter of agreement between the main parties (Statement of Common Ground (SofCG)) that had the Council been in a position to determine the application they would have refused the application for the putative refusal reason set out at point 11 of the SofCG.
3. The SofCG also confirmed that the Council do not object to the proposed single storey side / rear extension or in terms of the capacity of the local highway network in accommodating the proposed development or capacity to make appropriate provision for refuse storage at the appeal property a matter of dispute between the two main parties.
4. Thus, having regard to the above, the main issue is the effect of the proposed development on the living conditions of occupiers of neighbouring and nearby properties, with particular regard to noise and disturbance.

Reasons

5. Glenesk Road is a residential street, typically consisting of generously proportioned detached dwellings within large garden plots. The appeal property is a two storey detached property, occupied largely as a dwelling but with an attached single storey structure to the side within which operates a baby care nursery. The nursery currently provides care for up to 10 babies under the age of 2 years.
6. Access to the baby unit is taken, via a door at the front of this side element, from the twin-access forecourt at the front of No. 13. I saw during my visit to the site that the baby unit is presently self-contained within this side element, with access to an outdoor play area at the rear with a timber panel fence on

- two sides sub-dividing No. 13's garden to create an outdoor space for the baby unit and a larger garden area currently associated with the residential use of No. 13. The appeal property is flanked by residential properties on both sides, with external ground levels at No. 15 being elevated slightly above those at Nos. 13 and 11.
7. With an extension to the rear of the existing garage on the other side of the host building, the proposal seeks to change the use of the whole building to a nursery and baby care unit. The appellant also operates a nursery for older children¹ at a property on a nearby residential street² and the proposal would allow the appellant to relocate that element of the business to the appeal property, bringing both together under one roof and to rationalise the business.
 8. Glenesk Road is a suburban residential street. The road is wide and, although providing a point of access from Bexley Road to intersecting residential streets and access to Eltham Park South, it is nonetheless a pleasant, quiet residential street away from the traffic of Bexley Road. I saw from my visit to the site that, to the rear of the properties, the garden environment is relatively tranquil, the substantial buildings providing further screening from background traffic noise on nearby streets. It is not, however, a silent environment, and it was agreed at the hearing that background noise sources included traffic noise and from children playing at the nearby school³.
 9. At the time of my visit to the appeal property and No. 15, a number of the babies at the baby unit were outside in the enclosed yard area at the rear of the baby unit. There were also two members of staff outside with them. Although clearly audible from the remaining garden area at No. 13, and from the patio area at the rear of No. 15, voices and noises were no more than might be expected from a family house with family members outside enjoying the garden and pleasant weather.
 10. As part of my visit, I was also able to visit the appellant's premises at Glenlyon Road. There, the nursery caters for older children between the ages of 2 and 4 years old. I saw that the operation there was on a larger basis with more children, more classrooms within the building, and the whole of the terraced rear garden dedicated to various forms of play area. A small group of children were playing outside at the time of my visit, whilst others remained in two of the classrooms within the premises.
 11. They were, as might be expected of older children, more active, more mobile, boisterous and noisier than the younger babies at the appeal property. The appeal proposal would result in the bringing together of the existing baby unit with up to 10 children present, with nursery provision for up to 30 older children. Thus, there could be up to 40 children between the ages of 0 and 4 at the appeal property.
 12. The Council and neighbours are concerned about the implications of the proposal in terms of noise generation and transmission within the local noise environment. Understandably, this concern relates to noise arising from play and activities in outdoor areas. However, there are also concerns regarding break-out noise from within the building.

¹ 2 years old to 4 years old

² Willow Park Montessori Nursery at 19 Glenlyon Road

³ St Mary's Catholic Primary School, Glenure Road

13. The appellant⁴ and neighbours⁵ rely on noise assessments to support their cases. There is considerable disagreement between the parties and their respective assessments regarding the methodologies employed and the conclusions reached in terms of quantifying noise levels and identifying mitigation. What was agreed however was that there is no recognised noise assessment criteria with regard to noise from a children's nursery. Thus, predicted noise levels for outdoor play and activity⁶ and noise breakout⁷ from within the building were based on previous measurements for other children's nurseries.
14. In an attempt to mitigate levels of activity and, inevitably, noise generated as a consequence of the increased numbers of children present within the site, it was indicated that access to the outdoor play areas would be staggered. Such an approach would, it was suggested, limit the times that children would be present within the outdoor play area. It would also limit the overall numbers and the lengths of time that outdoor play would be incorporated into the nursery day.
15. It was not clear, however, how such arrangements would operate or be monitored. Moreover, there was continued uncertainty over the exact the numbers of children and staff that would be outside at any one time under these staggered arrangements. What was clear however was that, within this context, it would be likely that there would be occasions, perhaps frequent, where the numbers of children outside would be likely to exceed the levels adopted as a basis in the HA Acoustics (HAA report) assessment.
16. From the evidence available therefore, I cannot be certain that the proposal, and particularly the levels of noise generated by excitable and active children, would be able to be effectively mitigated in the manner in which the HAA report recommends. Moreover, whilst I accept that the younger children within the baby unit would display a differing type of play within, and access to, the outdoor area than the older children, I was nonetheless able to observe (and hear) the nature of the noises arising from their play. In itself, such noise and activity may not be beyond the realms of family play and activity in a residential environment, but less predictable noises, laughter and crying from those younger children would combine with those of the more active and adventurous older children in a manner that I am not persuaded that the HAA report accurately models.
17. The conclusions reached by the HAA report also, it seems to me, fail to recognise the nature of the relationship between the appeal premises and the neighbouring property at No. 15. Whilst it may well be the case, as the appellant suggested, that the dwelling at No. 15 is set at a higher ground level than the bungalow that previously occupied the site, I have to consider the proposal in the context of the surroundings as they currently exist.
18. The rear of No. 15, including the patio area immediately at the rear of that dwelling, are set at a higher level than No. 13. Thus, the yard wall between the baby unit's outdoor area and No. 15, which appears to be a reasonable height from the appeal property side, is considerably less so when viewed from

⁴ HA Acoustics 'Noise Impact and Breakout Assessment' Doc Ref: HA/AA141/V1 & HA/AA141/V2

⁵ Adnitt Acoustics 'Review of Acoustic Report' Ref: E18004/PRF/R1-A-17 July 2018 & E19004 190404 CT F1-A-10 May 2019

⁶ Paragraph 6.4 – HA Acoustics 'Noise Impact and Breakout Assessment' – Document Reference: HA/AA141/V2

⁷ Paragraph 6.7 – HA Acoustics 'Noise Impact and Breakout Assessment' – Document Reference: HA/AA141/V2

- No. 15. The effectiveness of the acoustic screening proposed as a mitigation measure by the HAA report, itself based on disputed assumptions and calculations, would be reduced by the higher ground levels at No. 15.
19. Moreover, the appellant accepted that the HAA report considered only the nearest noise sensitive receptor (NSR) at No. 15, the ground floor window nearest to the baby unit. It did not consider other NSRs at the rear of the building, particularly those on upper elevations including rear dormer windows. Although further from the baby unit, outdoor areas and proposed classrooms than the NSR identified in the HAA report, I am inclined to believe that the acoustic fence proposed as a mitigation measure would not be as effective in respect of upper floor NSRs as it might be in respect of the NSR identified in the HAA report.
20. The appellant was keen to stress that the proposed use would not impinge upon evenings and weekends, instead being limited to 'conventional working hours' for 48 weeks a year. However, I heard that increasingly working patterns are less predictable, whether that is in terms of working hours or work base. The notion of the office commute and 9 to 5 working day as the norm is increasingly blurred, as I saw with the neighbour's home office at No. 15. It cannot be assumed, particularly given the residential nature of Glenesk Road, that residents will not be present during the working day. And if they are, nor can it be assumed that they, or indeed the nursery, will not have open doors or windows at particular times during the day, and during the year.
21. The HAA report considered break-out noise from the classroom and was assessed using No. 13's existing dining room (with conservatory) as a worst-case example for noise break-out. However, the appeal property and No. 15 are both broadly west facing and, although there are mature trees present between gardens on Glenesk Road and Greenholm Road, the rear facades of both properties benefit from an open and sunny aspect. It does not therefore seem reasonable to me that either the appeal property, or neighbouring properties, would maintain closed internal environments to mitigate noise at the expense of ventilation and fresh air. The extent to which the building envelopes of No. 13 and its neighbours provide effective mitigation would vary according to season and weather patterns and the extent of mitigation provided by closed doors and windows cannot be relied upon.
22. I do not doubt the appellant when it was stated that there had not been any noise complaints regarding existing operations at either Glenesk Road or Glenlyon Road. However, the proposal would represent a substantial intensification of the use of the appeal premises for nursery and childcare provision at a level and manner not currently associated with either No. 13 or the property at Glenlyon Road. Moreover, it is clear that the nature of the use, and the activities associated with the older age group that the proposal seeks to accommodate at No. 13, would result in a level of intensification of use, with particular regard to noise and disturbance, at the appeal property that would be harmful to living conditions in a quiet, suburban residential environment.
23. Policy E(a) of the Royal Greenwich Local Plan (RGLP) states that planning permission will not normally be granted where the proposed development would have a significant adverse effect on the amenities of adjacent occupiers. It goes on to state that this is especially so where proposals would be likely to result in unacceptable emission of, amongst other things, noise. The measures

that the appellant sets out seek to minimise the level of noise generated, such that it could not be construed as unacceptable or result in a significant adverse effect on amenities. However, for the reasons I have set out above and on the basis of the available evidence, I am not persuaded that the proposal would not result in the levels of emissions or harm that RGLP policy E(a) seeks to prevent. The proposal is contrary to RGLP policy E(a) and London Plan policy 7.15 in that it has not been demonstrated that the proposal would adequately manage noise.

Other Matters

24. The proposal would, in the appellant's words, allow the rationalisation of the nursery business which currently operates between two sites at Glenesk and Glenlyon Roads. Although it was stated that the proposal would ensure the viability and continued provision of a care service in the area, I have no further information before me from which to adduce the effect of the proposal upon the viability of the business and so I give this matter limited weight.
25. It was also stated that there are presently waiting lists for places at both Glenesk Road and Glenlyon Road nurseries and that the rationalisation of the facilities would allow the business to respond to the demand for such facilities. Although I have not been provided with any evidence of such matters, I have no reason to doubt the appellant's claims in this respect, noting that the Council have not sought to directly challenge this matter. I do not doubt the social role that the nurseries play in the lives of local residents and the children (and families) who benefit from the care provided by the appellant's nurseries. This is a positive factor weighing in support of the proposal but is not something that I can give more than moderate weight to, and which does not overcome the harm to living conditions of neighbouring residents that I have identified above.
26. The appeal property benefits from a double access to the sizeable forecourt area at the front of the property. Other than a small area of land adjacent to the front wall, and plant borders on either side of the front door of No. 13, this area is entirely paved. In this sense, it is not unique and I saw that many properties had similar frontage arrangements.
27. Although there are parking restrictions present along Glenesk Road, these appear to prevent all-day parking and would not therefore unduly restrict the pick-up or drop-off of children to the appeal property. The road is wide and, whilst not produced for such purposes, the snap-shot of travel patterns to both Glenesk Road and Glenlyon Road facilities demonstrates a mix of car-borne and pedestrian access to the both premises. Moreover, those trips appear to be spread over an extended period in the morning and afternoon. Whilst the data provided presents just a snap-shot on a particular day, I have no reasons to believe that they are not broadly representative of travel patterns associated with the existing facilities. I appreciate that some of the forecourt space is, and would be should the appeal succeed, taken up by buggy, cycle and refuse storage but I am satisfied that there would be sufficient space for parking for several of vehicles.
28. I note that the Council did not object to the proposal on highways grounds, including trip generation and parking demand and, whilst carefully considering the concerns of local residents regarding such matters, I am not persuaded that the proposal would be prejudicial to highway safety or the free flow of

traffic or would place unacceptable demands upon the parking provisions of the site or Glenesk Road.

29. The existing baby unit is housed in an attached annex to the main dwelling at No. 13. The proposal would result in the loss of an existing dwelling and, whilst it is stated that the proposal would allow the reversion of the appellant's Glenlyon Road property to residential use, I have no means before me of ensuring that such an event occurs

Conclusion

30. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jeannie McMahon

Director, Willow Park Children's Nursery

Maura McMahon

Owner / Founder, Willow Park Children's Nursery

FOR THE LOCAL PLANNING AUTHORITY:

Aaron Lau

Team Manager

Lesley Agyekumaa-Sasu

Planning Officer

INTERESTED PARTIES:

Neal Thompson

Robinson Escott Consultants

Chris Turner

Principal Consultant, Adnitt Acoustics

Chris Heywood

Local resident

Councillor Charlie Davis

Ward Councillor Eltham North

Member of Planning Committee

DOCUMENTS SUBMITTED DURING THE HEARING

DOC 1	Record of Attendance
DOC2	Policy H(a) 'Protection of Existing Housing' Extract from Royal Greenwich Local Plan: Core Strategy with Detailed Policies

DOCUMENTS SUBMITTED AFTER THE HEARING

DOC5	
DOC6	
DOC7	