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## Appeal Decision

Site visit made on 3 August 2016

by **R M Pritchard MA PhD MRTPI**

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

Decision date: 19 August 2016

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**Appeal Ref: APP/R3325/W/16/3148876**

**The Lawns Children's Nursery, Hardy House, 32 Chubbs Lawn, Middle Path, Crewkerne, Somerset, TA18 8BH**

- 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 Mr and Mrs J Sherman against South Somerset District Council.
  - The application Ref 14/01532/FUL, is dated 1 April 2014.
  - The development proposed is a single storey side extension to a children's nursery.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. I consider the main issues to be the effects of the proposed development on –
  - i. The living conditions of the occupants of neighbouring residential properties, especially in Belle Vue Terrace; and
  - ii. Parking pressures in the area with consequences for highway safety.

### Reasons

#### *Background*

3. The appeal site comprises a building, formerly owned by the National Health Service (NHS), which was sold in 2011 and converted to a children's nursery. As the former and current uses are within the same use class (Use Class D1), planning permission was not required for the conversion.
4. The building is single storey with rendered walls and a slate roof. A garden occupies the eastern half of the site at the rear of the building. It stands on the east side of Middle Path opposite Crewkerne Hospital and just to the north east of the Crewkerne Health Centre. The building currently has no vehicular access and no dedicated parking. Immediately to the south, running at right angles to Middle Path is a terrace of residential properties, Belle Vue Terrace and there are other dwellings to the north and east. The appeal site is outside the Crewkerne Conservation Area, which however includes Belle Vue Terrace and the Hospital to the south and west respectively.
5. Middle Path is a narrow road with a footway on one side only. Serving the Hospital and health centre it is heavily used. It has limited parking restrictions

and at the time of my site visit – late morning on a working day – every space was occupied and there were cars apparently waiting for a space to become available. There are three disabled-only spaces adjacent to the appeal site – all were occupied at the time of my visit. Moreover, as the Highway Authority has commented, the scale of on-street parking reduces much of Middle Path to a single track road.

6. The proposed development, which is an amendment to a proposal refused permission in January 2014 (Council Ref 13/02128/FUL), would add a single storey extension to the south side of the building. The extension would be in materials to match the existing. Four parking spaces would be provided at the front facing Middle Path. The extension would add something over 65m<sup>2</sup> of floorspace and would allow the numbers of children to be accommodated to increase from the present 21 to a potential 36<sup>1</sup>.
7. I accept that there are a range of current Government policies to encourage the provision of child care for children under school age, including the general entitlement that every child from the age of 3 should have a funded early education place. I have also received representations from the County Council's Support Services for Education and a number of residents commenting that there is a need for further such places in Crewkerne. The former has also pointed out that The Lawns has recently been graded as 'good' by Ofsted. These are all material considerations in favour of the proposed development.

*The living conditions of the occupants of neighbouring residential properties*

8. Policy EQ2 of the adopted South Somerset Local Plan 2006-2028 sets a number of criteria to be applied to all proposals for development. In respect of those criteria which require development to respect local character and appearance, I have no difficulties with the proposal. It would not represent over-development of the site and the design and materials of the extension would match those of the existing building. I conclude that in these terms, the proposal is acceptable. Nor would it result in any material harm to the setting of the adjacent heritage asset represented by the Conservation Area.
9. However, also among the criteria included in Policy EQ2 is a requirement that proposed development should not harm the amenity of neighbouring residents and the principal concern of both the Council and local residents is the increase in noise and disturbance that would arise from almost doubling the numbers of children using the Nursery.
10. Noise from indoor use could be mitigated by both planning conditions and building regulations to ensure that appropriate insulation is installed. However, it is noise and disturbance from the use of the garden at the rear of the Nursery that has the potential to cause unacceptable levels of noise and disturbance. The garden is surrounded by residential properties, the facades of many of which are within less than 10 metres of its boundaries.
11. There have already been complaints in 2014 and 2016 from neighbours about noise emanating from the Nursery's garden<sup>2</sup>. The Council's Environmental Protection Officer investigated the former, as a result of which a series of

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<sup>1</sup> There were earlier suggestions that the Nursery's capacity might be 41, but I accept the appellants' explanation in their final comments that because of the age balance intended, the practical limit would be 36.

<sup>2</sup> It is not clear whether the two complaints were made by the same or different neighbours.

measures to reduce the noise impact were successfully put in place. In respect of the latter complaint, Council officers concluded that there were no grounds for action under the Environmental Protection Act 1990. Furthermore, I have no doubt that the garden is an essential requirement for the nursery. Playtime is an essential activity contributing to a child's wellbeing and development and Ofsted requires that all children's nurseries have an outdoor play area.

12. Nevertheless, virtually doubling the number of children using the Nursery must raise the question as to whether unacceptable additional noise and disturbance would occur that could not be mitigated. The appellants have commented that the outcome would be unlikely to be a statutory nuisance. That might be so but planning policies can, and frequently are, concerned with levels of noise and disturbance that may result in unacceptable annoyance below the conditions that may create a statutory nuisance.
13. The appellants acknowledge this by suggesting a number of planning conditions to alleviate concerns about noise and disturbance from children playing in the rear garden, including 'staggering' outdoor playtimes, restricting the hours when the Nursery is open, and installing a rubber-coated or similar surface to the outside play area.
14. However, the Council has commented that although it accepts that restricting the hours of operation of the Nursery and the total numbers of children it can accommodate are reasonable, any attempt to restrict the numbers playing outside at any one time would be unenforceable. The condition would, in its view, fail one of the tests set out in Paragraph 206 of the Government's National Planning Policy Framework ('the Framework') and elaborated in the Planning Practice Guidance (PPG). Notwithstanding that comment, the Council has put to me a condition, which it would wish to see imposed on any permission I granted, that would require 'a scheme' to restrict the numbers of children using the garden area to 20. However, I am unclear what form such a scheme might take, how effective it could be or whether it could be satisfactorily monitored and enforced.
15. I therefore conclude that the expansion of the Nursery that would result from the proposed extension would result in additional noise and disturbance to adjacent residents contrary to Policy EQ2 and that this could not be sufficiently alleviated by the imposition of planning conditions that were reasonable and enforceable.

*Parking pressures in the area with the consequences for highway safety*

16. Policy TA5 of the adopted Local Plan deals with the transport impact of new development. Not only does it seek to secure safe and convenient access by all means of transport but it also requires the volume of traffic and parking generated by proposed developments not to compromise the safety of the local road network and to provide car parking at levels appropriate to the development proposed and its location. The policy also refers to Policy TA6 that provides the umbrella within which adopted parking standards are set, although there are no formal standards for a Nursery.
17. I accept that there is no record of accidents in Middle Path and I agree with the appellants that this may well be due to the slow speeds that are all that can be achieved. However, I am slightly sceptical about accident statistics in this context. Only 'serious' accidents (i.e. those reported to the police) are

recorded and I have no knowledge of the incidence of minor 'shunts' resulting in vehicle damage but no personal injury. Not only do I consider such accidents are likely in circumstances such as Middle Path but I see no reason why proposed developments should create conditions to make them more likely.

18. That there are parking pressures along Middle Path is indisputable. The combination of the Hospital and health centre draws in patients during working hours and although there is a public car park within five minutes walk in West Street, it is chargeable. Those using the health facilities are, perhaps not unexpectedly, apparently exceptionally unwilling to park any further away than is absolutely feasible.
19. If almost doubling the number of children at the Nursery might lead to an increase in noise and disturbance, it would certainly lead to an increase in the number of journeys to drop-off and collect children. Furthermore, whilst some clients of the Nursery walk, a significant number, especially from outside Crewkerne, come by car. The survey of current movements to and from the Nursery, unsurprisingly, demonstrates a concentration in morning, midday and evening peaks – the Nursery operates two-shift, morning and afternoon sessions – when children are being delivered or picked up.
20. Four parking spaces are proposed for the site, but the appellant's submitted Travel Plan suggests that these would be likely to be used by employees of the Nursery. I accept that this is feasible given the precedent of the now lapsed permission to erect a pair of semi detached dwellings on the site (Council Ref 11/00897/FUL). (I also agree with both the Council and the Highway Authority, however, that the very different pattern of traffic movements associated with the Nursery means that the current proposal must be assessed on a very different basis.)
21. Furthermore, I agree with the Council that the provision of a dedicated drop off and collection zone outside the Nursery is both impractical and inadvisable. Apart from the need for a Traffic Regulation Order (TRO), such a zone would be likely to lead to the loss of some, if not all, adjacent disabled parking spaces. That would, in my view, be unacceptable and the public disadvantages would seem to me to equal or indeed outweigh any private benefits to the appellants.
22. The appellants' case therefore largely rests on the mitigation that they believe would be produced by the submitted Travel Plan for the Nursery. I agree with the Highway Authority that the Plan has many elements that should be welcomed. However, I also agree that the Plan is over optimistic in the degree to which it anticipates achieving a significant modal shift in the means by which clients travel to and from the Nursery. Travel Plans are most effective when they seek to influence journeys over which the applicant has some control, e.g. when it deals with employees: I do not consider that would be the position here.
23. The crux of the Plan is a proposal that clients dropping off or collecting in the middle of the day would be required to park in the West Street public car park and would have their costs (currently estimated as 80p) reimbursed by the Nursery, perhaps through the issue of season tickets. The appellants have suggested that this could form the basis of a planning condition.

24. This is an ingenious proposal but one which I am not persuaded would be sufficiently effective. It would not operate in the morning and evening peaks – where the appellants suggest that walking from the car park would be unacceptable for those, significant parts of the year, when these times would be in the hours of darkness. I am also sceptical that such a condition could be drafted so as to pass the tests set out in the Framework and PPG. In particular, I have doubts that it would be enforceable and that it would be reasonable in all other respects. Planning conditions are normally imposed on applicants on the assumption that they have the power to ensure they are complied with. The Nursery would have to impose this requirement through some form of contractual arrangement. I am unclear whether this would be possible or acceptable. Moreover, the Council has not put to me a condition in this form that it presumably believes would work in these circumstances.
25. I have also noted that, not only does the Highway Authority remain opposed to the proposed development, despite the Travel Plan, but that the neighbouring health centre has objected to it.
26. I therefore conclude that the effect of the proposed development would be to create greater parking pressures in Middle Path, to result in more instances where, admittedly, temporary obstructions occurred and, probably, to produce more, minor, accidents. That combination seems to me to make the proposed development contrary to the provisions of adopted Policy TA5.

#### *The Planning Balance*

27. As the Council points out, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires all planning decisions to be made in accordance with the development plan, i.e. here the adopted South Somerset Local Plan, unless material considerations indicate otherwise.
28. As I have argued above, the proposed development is, in my view, clearly contrary to both Policies EQ2 and TA5 of the adopted Local Plan. The appeal should therefore be dismissed. The most substantial material consideration that might point to an alternative decision is the plethora of policies requiring and encouraging the provision of pre-school places for all children. I do not dismiss that consideration lightly but it does not seem to me to be sufficient to set aside the material harm that would result from virtually doubling the size of this facility. In this context, I note that Crewkerne Town Council has chosen to oppose the development.
29. Both the appellants and the Council have also put before me other proposals for the extension of children's nurseries in the area that are cited in support or against their respective positions. However, I take the view that the issues associated with the proposed expansion of The Lawns have to be assessed on their own merits in the context of the characteristics of the area and it is in that context that I have concluded that the appeal should be dismissed.

#### **Conclusion**

30. For the reasons given above I conclude that the appeal should be dismissed.

*R M Pritchard*

INSPECTOR