



Appeal Decision

Site visit made on 28 July 2011

by David Kaiserman BA DipTP MRTPI

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

Decision date: 3 August 2011

Appeal Ref: APP/R4408/A/11/2151467

Noah's Ark Nursery, 14 Victoria Road, Barnsley S70 2BB

- 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 S Baxter against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2010/1172, dated 14 September 2010, was refused by notice dated 9 November 2010.
 - The application sought planning permission for the change of use of offices to private day nursery with enclosed play area at rear, without complying with a condition attached to planning permission Ref B/98/0536/BA, dated 24 July 1998.
 - The condition in dispute is No 5, which states: *The use hereby permitted shall be carried on only between the hours of 8.00 am to 6.00pm Mondays to Fridays, and at no time on Saturdays, Sundays or Bank Holidays.*
 - The reason given for the condition was: *in the interests of the amenities of the occupants of adjacent properties.*
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is necessary to safeguard the living conditions of nearby residents, especially in relation to any noise and disturbance.

Reasons

3. The appeal property is a large detached Victorian building in a street of similar properties close to Barnsley Town Centre which are in a mixture of residential and office uses. Near to the site, no 12 is occupied by an accountancy business, while nos 16 and 18 are dwelling houses.
 4. In November 2001, another Inspector dismissed an appeal for the variation of condition 5 to permit opening of the nursery on Saturdays and occasional Bank Holidays (Ref: APP/R4408/A/01/1070390). He considered that nearby residents had an expectation that they could enjoy relative peace and quiet outside the Monday to Friday working period, and that the outdoor play area at the rear of the premises would be likely to be the source of disturbance in those terms. He concluded: *"...while I recognise the desirability of providing a service...for parents*
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who work at weekends and on Bank Holidays, this should not be at the expense of the principles of good neighbourliness". In his view, the relaxation of condition 5 in the way proposed was unacceptable having regard to Unitary Development Plan policy HB8.

5. Given this background, the main issue before me is to consider whether, as the appellant suggests, there are any changes in material circumstances since 2001 which might result in a different conclusion being reached. Having read the various representations, and acknowledging that the present appeal would not involve any Bank Holiday operation, I have decided that the outcome should be the same.

6. While there may be anecdotal evidence that parents in the local community are increasingly relying on the availability of nursery facilities to allow them to work, shop or take their leisure (and I have noted expressions of support from existing patrons of the nursery) I have been given no information which might suggest there is currently a deficiency of child care in the Barnsley area. There has been no change in planning policy since the 2001 decision: UDP policy HB8 has been saved for the purposes of Schedule 8 to the Planning and Compulsory Purchase Act 2004.

7. I am not convinced that any of the more recent changes will have had the effect of removing the risk of noise and disturbance identified by my colleague, or of mitigating it to any measurable degree. This includes the resurfacing of the car park and the children's play area at the rear; the installation of double glazing; and a wooden fence on top of the blockwork wall which forms the boundary with no. 16 Victoria Road. I take a similar view of the value of the acoustic survey. In my experience, with juxtapositions of this kind, what matters more than absolute levels of noise experienced by adjoining residents is its character; and children naturally can be boisterous or upset when involved in outdoor play, leading to a particularly intrusive form of disturbance.

8. More significantly, I take the view that the threshold of what is reasonable to be required to tolerate in a residential environment is properly set higher at times outside the normal working week. The appellant's comments about changing social trends (which might be said to apply equally to Sundays) is not of itself any justification for ignoring the reasonable expectations of neighbouring occupiers at such times. The very intimate relationship between the rear play area and the rear garden of no 16 Victoria Road remains as it was when permission was first granted, and the risk of noise and disturbance to its occupiers is therefore still present.

9. Most of the other matters raised by the appellant are either unchanged since the original grant of planning permission or are not directly relevant to my consideration of the merits of her appeal (such as her criticisms of the way the Council dealt with her application). I should add that I am not able to take into account her stated willingness to make modifications to the fabric of the building or to the way the business might operate, nor do I have any particular reason to believe that failure to allow the appeal might result in its closure, as she suggests.

10. I have therefore concluded that condition 5 remains necessary to safeguard the living conditions of nearby residents, and so have dismissed the appeal.

David Kaiserman

INSPECTOR