

West Area Planning Committee

9th June 2015

Application Number: 15/00106/VAR

Decision Due by: 10th March 2015

Proposal: Variation of condition 4 (hours of use of garden) of planning permission 95/00761/VTH to allow the garden to be used by nursery children for a maximum of 4 hours per day.

Site Address: 17 Lathbury Road, **Appendix 1**

Ward: St Margarets Ward

Agent: Mr Simon Handy

Applicant: Mrs Louise Brooks

Application Called in – by Councillors –Royce, Wilkinson, Fooks and Gotch for the following reasons – effect on adjoining properties, privacy, noise and disturbance

Recommendation:

APPLICATION BE APPROVED

For the following reasons:

- 1 The Council considers that the proposal accords with the policies of the development plan as summarised below. It has taken into consideration all other material matters, including matters raised in response to consultation and publicity. Any material harm that the development would otherwise give rise to can be offset by the conditions imposed.
- 2 Officers have considered carefully all objections to these proposals. Officers have come to the view, for the detailed reasons set out in the officers report, that the objections do not amount, individually or cumulatively, to a reason for refusal and that all the issues that have been raised have been adequately addressed and the relevant bodies consulted.

subject to the following conditions, which have been imposed for the reasons stated:-

- 1 Personal permission/max 24 children
- 2 Opening hours
- 3 Use of garden
- 4 Residential accommodation for applicant or staff only

Main Planning Policies:

Oxford Local Plan 2001-2016

CP1 - Development Proposals
CP10 - Siting Development to Meet Functional Needs
CP19 - Nuisance
CP21 - Noise
HE7 - Conservation Areas
ED2 - Nursery Ed & Childcare Facilities in Res Dwellings

Other Material Considerations:

- National Planning Policy Framework
- Application site lies within the North Oxford Victorian Suburb Conservation Area.
- Planning Practice Guidance

Relevant Site History:

- 58/06820/A H - Conversion of single dwelling house into self contained maisonettes. PER 8th April 1958.
- 91/00717/NFH - Change of use of ground floor from residential to day nursery. REF 15th October 1991.
- 91/01287/NFH - Change of use of ground floor flat from residential to day nursery. PER 25th February 1992.
- 94/00331/VFH - Variation of condition 3 of planning approval NFH/1287/91 to allow continued use as day nursery by proprietor under her married name and to allow increase in number of children from 15 to 24. SPL 25th May 1994.
- 95/00761/VTH - Retention of use of ground floor as day nursery. Variation of condition 3 of VHF/331/94 to allow increase in number of children from 15 to 24. Allowed on appeal 21st November 1995.
- 12/00633/FUL - Erection of timber canopy to rear. PER 22nd May 2012.
- 13/01313/VAR - Application to vary condition 4 (garden use) of planning permission 95/00761/VTH to allow removal of restrictions on time limit for use of garden. REF 5th July 2013.

Representations Received:

19, 23, 6, 18, 11, 1, 19, 21, 24 Lathbury Road, 24 Merrivale Square, 16, 14, Staverton Road, 126 Woodstock Road and Lathbury Road Residents' Association:

Summary of Comments:

- Noise from 24 children playing can be very intrusive and screaming and shouting are not discouraged.

- Find proposal totally unacceptable.
- Would be an intolerable intrusion and the quality of lives would be adversely affected.
- The daily noise that comes from the Nursery during the morning and afternoon breaks causes substantial disruption already as it is impossible to ignore.
- the extension of play time from 45 minutes to four hours will further damage the ecology of what should be a peaceful residential area.
- The present outdoor playtimes at The Nursery cause an unacceptable level of noise and inconvenience to neighbours.
- Would be made worse if the times were increased.
- Nothing has changed since the 2013 application to justify removal or relief of the restriction, which is itself already perfectly reasonable for a nursery school.
- suggest that the school can take the children to local parks and play areas where the noise would not disturb residents and make their life unbearable.
- We all like to enjoy peace in our own homes and gardens.
- Much in favour of outdoor activity for children, but am also aware of the need to take neighbours' wellbeing into account.
- The noise emitted from a nursery playground in premises where the building is semi-detached and attached to a dwelling-house, also sited in a largely residential street of semi-detached houses, would constitute a statutory nuisance under section 79(1)(g) of the Environmental Protection Act if the noise was not restricted by time to the presently allowed 90 minutes per day
- Vary Condition 4 so that the times when the garden may be used are restricted to specific periods i.e. between 11:00am and 11:45am and between 3:00pm and 3:45pm.

Statutory Consultees:

No comments received.

Issues:

- Potential for noise and disturbance
- Residential Amenity

Officers Assessment:

Background

1. The nursery has a history of planning applications and consent was granted(after an initial refusal) for the change of use from residential use to a day nursery in 1991. That consent was restricted by conditions, one of those being that the maximum number of children should be limited to 15 in order to limit the impact of the use onthe surrounding area.
2. An application to increase the numbers of children from 15 to 24 maximum was refused in 1994, but was allowed on appeal. A factor that the Inspector took into account when allowing the appeal was that the garden use was restricted by a condition.The inspector stated:

“Noise arising from children playing in a garden is often irregular in character and this can cause annoyance to people living nearby. Although the maximum noise level may not increase, I consider that there is likely to be a greater number of peaks with a further 9 children using the garden. I was, however, told that the children only played in the garden for up to 45 minutes in the morning and a similar period in the afternoon and that these sessions were closely supervised by members of staff. The impact of the proposal would therefore be limited to a relatively short period during the day.

Taking account of these circumstances, I am satisfied that noise from within the garden would not be unduly harmful to adjoining residential occupiers.”

3. A condition was added by the Inspector to restrict the use of the garden to 90 minutes each day (condition 4). The full text of the appeal decision is attached as **Appendix 2** to this report.
4. A subsequent application was submitted in 2013 (13/01213/VAR) to remove this condition to allow unrestricted use of the garden. This was refused for the following reason:

“The proposed removal of the restrictive condition on the time limit for use of the garden is considered to exacerbate the existing problem of noise and would create a significant adverse impact by way of unacceptable noise levels from the children playing in the garden for unlimited periods to the detriment of residential amenity of the adjoining neighbouring properties. The proposal is contrary to policies CP1, CP10, CP19, CP21 and ED2 of the Oxford Local Plan 2001-2016”.

Site Description

5. The application site comprises a three storey (third storey in the roof) semi-detached dwelling located on the southern side on Lathbury Road. The dwelling is currently used as a Nursery and has been since 1992.

Proposal

6. The application is seeking permission to vary condition 4 of appeal ref.: T/APP/G3110/A/96/267013/P7 (LPA ref: 95/00761/VTH refused and allowed on appeal) to allow the use of the garden by children attending the nursery to be restricted to a maximum of 4 hours each day. Condition 4 currently restricts the use of the garden to a maximum of 90 minutes each day.

Assessment

7. As the existing use as a nursery has existed for many years, then some noise from that use will have been experienced during those years as part of the local noise environment. As such the determining issue in this regard is the potential impact of increasing the times when the garden could be used and any resultant impact on the residential amenity of the neighbouring

properties in terms of noise disturbance.

8. The nursery has opening hours of 0800 to 1730 Monday to Friday with the children arriving from 0830 onwards. It is not open during the evenings and at weekends which the Inspector described as "*the times when residents may reasonably expect a quieter environment*". The number of children attending the nursery will not be increased as a result of this application.
9. Within this context the establishment of what constitutes a reasonable level of noise from the nursery, and for what numbers of hours is a matter of judgement. However the applicant has indicated a willingness to restrict the number of hours when the outdoor accommodation may be used for children's activities in order to address concerns and in the interests of neighbourliness.
10. Local residents who have raised concerns appear to be reasonably accepting of the current arrangements but feel an extension from 90 minutes to 4 hours each day would not be acceptable. However since the nursery started operating the Council has received one complaint only regarding noise. Environmental Development officers who have visited the site whilst garden areas are in use confirm that levels of noise could at times be irritating, but that it would not constitute a "statutory nuisance" and are not suggesting refusal of planning permission on those grounds.
13. Currently the children play in the garden for 45 minutes in the morning and 45 minutes in the afternoon. This is on an informal basis as the planning condition does not specify the subdivision of the 90 minutes in this way, only that it be restricted to a maximum of 90 minutes each day. Following a dialogue with the applicant, it was suggested that if permission were granted for longer hours, that these should be specified so that neighbours are aware of those times when the garden was in use. The applicant/agent has suggested the times are as follows:
 - 09:00 am – 10:00 am
 - 11:00 am – 12:00 noon
 - 13:30 pm – 15:30 pm
14. This does not necessarily mean that these hours would always be used to the maximum permitted each day however, as clearly during cold or poor weather for example it is unlikely to be appropriate. Also, the applicant feels that a continuous two hour slot in the morning would be impractical in any event and that it would be preferable to break the teaching and play sessions up as suggested instead. On balance the time periods suggested are considered reasonable and can be enforced via an appropriately worded condition.

Conclusion:

15. Whilst the concerns of neighbours are noted, it is also noted that there has been only one complaint received by the Council to the existing nursery use. Officers feel it is reasonable therefore to extend the total number of hours, but to specify them so that all parties are aware of the arrangements. Committee is recommended to support the proposals subject to the conditions indicated.

Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant planning permission, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Officers have also considered the interference with the human rights of the applicant under Article 8 and/or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the rights and freedoms of others and to control the use of property in accordance with the general interest. The interference is therefore justifiable and proportionate.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to grant planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Background Papers: 15/00106/VAR

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Date: 28th May 2015