



Appeal Decision

Site visit made on 20 January 2009

by **J D S Gillis** BA(Hons) MRTPI

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

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Decision date:
27 January 2009

Appeal Ref: APP/N1350/A/08/2088166

4 Middleton Lane, Middleton St George, Darlington, County Durham, DL2 1BW

- 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 a condition subject to which a previous planning permission was granted.
- The appeal is made by Hazel Tarakji against the decision of Darlington Borough Council.
- The application Ref 08/00445/FUL, dated 20 May 2008, was refused by notice dated 4 August 2008.
- The application sought planning permission for change of use of first floor to nursery without complying with a condition attached to planning permission Ref 07/00537/CU, dated 30 August 2007.
- The condition in dispute is No 4 which states that: *The number of children within the site at any one time shall not exceed the upper limit of 38 without the prior written permission of the local planning authority.*
- The reason given for the condition is: *In the interests of residential amenity and highway safety.*

Preliminary matters

1. The application sought to vary condition No. 4 in order to raise the maximum number of children within the site at any one time to 60. I shall consider the appeal on that basis.
2. The site is within a designated Conservation Area but the Council has not indicated that the proposal would affect the character or appearance of the Area.

Decision

3. I dismiss the appeal.

Main issues

4. I consider that the main issues in this case are the effect of the proposed variation of the condition on the safety of highway users in the area and on the living conditions of occupiers of nearby properties in relation to noise and disturbance.

Reasoning

5. The appeal premises comprise a detached, mainly two-storey, building situated at the corner of Middleton Lane and Chapel Street. Both roads are quite narrow and Middleton Lane has a pedestrian path only on the side where the appeal premises are located. Just to the north Middleton Lane has a major

junction with Neasham Road, which I noted on my site visit is very busy, especially at the end of the school day.

6. In addition to having somewhat narrow carriageways the junction of Chapel Street and Middleton Lane has very poor sightlines. This situation is aggravated by on-street parking along both roads which further restricts the width of the carriageways and the visibility for drivers of vehicles entering or leaving Chapel Street. The bus stop outside the appeal premises on Middleton Lane further restricts visibility when it is occupied.
7. Information relating to parking has been provided by the appellant, the local planning authority and local residents, including the results of two traffic surveys. At the time of my site visit I observed one vehicle parked on Chapel Street outside the appeal premises and another 5 immediately opposite. All of these vehicles were parked partly on the footpaths but nevertheless the available carriageway width was very restricted and it was not possible for vehicles converging on the junction from different directions to pass one another. One of the parked vehicles was positioned on the junction and another vehicle was parked on Middleton Lane only some 3 metres from it. Thus visibility at the junction was extremely limited.
8. From the information supplied on behalf of the appellant I observed that 2 of the vehicles parked on Chapel Street opposite the nursery belonged to staff employed there.
9. I noted that the off-street parking area attached to the appeal premises could accommodate up to 3 vehicles, although it was unused at the time of my inspection. Signs indicated that it was not to be used for parking but reserved as a "drop off" point for the nursery. Access to and from the easternmost vehicle space is somewhat restricted by a telegraph pole/street lighting column located in the adjacent pavement. In addition, a high wall severely restricts sightlines between this vehicle area and the lane that provides access to the rear of properties in Middleton Lane, Chapel Street and Dinsdale Close. Many of these properties have garages accessed from the rear.
10. In addition to restricting the carriageway width the vehicles parked in Chapel Street also severely restricted the footpath, especially where shrubbery overhands the wall of 5 Middleton Lane. At the time of my inspection this footpath was impassable because of the parked vehicles thus forcing pedestrians to cross the road close to the junction.
11. Taking into consideration all the above circumstances, including the traffic surveys, it is clear that there is already a high degree of harm to the safety of highway users in this area.
12. I note that the proposed increase in the number of children accommodated in the nursery is not considered to require the employment of extra staff and that some of the additional children are likely to be related to existing attendees and would not generate additional vehicular movements. Some may also use public transport as there is a bus stop outside the nursery and the railway station is quite close [although fewer than half of the trains are timetabled to stop at this station].

13. Nevertheless the proposed increase in the number of children to be accommodated is more than half the existing maximum permitted figure. I consider that it is highly likely that a significant proportion of the additional children would generate additional vehicular traffic and parking in this already congested area where highway safety problems already exist.
14. In these circumstances I conclude that the variation of the condition proposed would result in significant further harm to the safety of highway users in the area contrary to saved policies T12 and T24 of the Borough of Darlington Local Plan, adopted in 1997.
15. In relation to the impact on living conditions of nearby occupiers, the additional traffic and parking would be likely to result in further noise and disturbance, particularly to occupiers of dwellings adjacent to the nursery and its "drop off" provision. There would also be disturbance arising from restricted ability to gain safe and convenient access to homes in the rest of Chapel Street together with other properties served from the rear access lane. Thus the proposed variation of the condition would be contrary to saved policy H15 of the adopted Local Plan.
16. I note that the nursery has an outdoor play area to the rear and additional use of this might be generated by an increase in the number of children attending the premises. However, given its size and location, I do not consider that such additional use would lead to significant harm to the living conditions of occupiers of nearby properties.
17. I have had regard to all other matters raised including the value of the service provided by the nursery to the local community and the fact that Local Plan saved policy R25 seeks to encourage the provision of community facilities, subject to the impact on the surrounding area and its residents. However, neither these nor any of the other matters raised are sufficient to outweigh those that have led to my decision.
18. I conclude that the proposed variation of the condition would result in significant harm to the safety of highway users in the area and detract from the living conditions of occupiers of nearby property. Hence the proposal is unacceptable and the appeal is dismissed.

J D S Gillis

Inspector

