



Appeal Decision

Site visit made on 20 December 2010

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 28 January 2011

Appeal Ref: APP/H1033/A/10/2133699

Chapel House, 25 Market Place, Chapel-en-le-Frith SK23 0EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dr Donna Dallas-Skerry against the decision of High Peak Borough Council.
 - The application Ref.HPK/2010/0108, dated 3 March 2010, was refused by notice dated 28 April 2010.
 - The development proposed is change of use from offices to childcare facility (ground floor/first floor only).
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Decision

1. I dismiss the appeal.

Main Issue

2. This is the effect of the proposal on the living conditions of local residents with regard, in particular, to the potential for noise and disturbance.

Reasons

3. A similar proposal was dismissed at appeal in a decision dated 5 January 2010 (APP/H1033/A/09/2112714). In simple terms, having regard to Policy CF4 of the High Peak Local Plan that deals with childcare facilities, the Inspector accepted the principle of the proposed change of use but acknowledged the potential for noise and disturbance that might adversely affect the living conditions of local residents. The barrier to allowing the appeal was uncertainty around whether and how conditions could be used to manage that effect. A subsequent application was made which contained further information intended to address the concerns of the previous Inspector. This was again refused planning permission and is the subject of the appeal before me.
4. Policy CF4 is permissive of childcare facilities where they would be readily accessible by public and private transport, cyclists and pedestrians; appropriate provision is made for the safe circulation and parking of vehicles; a reasonable level of internal and external play/exercise space would be provided; and the amenities of neighbouring residents would not be adversely affected.
5. Chapel House is in a town centre and readily accessible. Circulation might be rendered awkward by the narrow streets but traffic generated by the proposal need not cause problems in terms of highway safety or parking provision. The Highway Authority raises no objection subject to, amongst other things, a 'meet and greet' facility and monitoring through the grant of a temporary permission. There is a garden that would provide adequate play space.

6. The appeal turns on whether the final criterion of Policy CF4 can be satisfied. Chapel House shares party walls with two properties, and the rear garden is in relatively close proximity to dwellings. This means that use of Chapel House itself, and the rear garden, as a childcare facility, could adversely affect the living conditions of local residents through noise and disturbance generated within and without the premises. The appellant suggests that conditions could be used to keep any such effects within reasonable bounds and, given the town centre location of the site, I agree with that, in principle.
7. In terms of noise and disturbance that might be generated from the comings and goings of parents or carers and children and the use of the garden, the submissions that accompanied the application made a series of suggestions. These include a restriction on access through staged drop-off and collection times, limits on the number of children using the facility overall, and the rear garden, fixed opening times (0800 to 1800 Monday to Friday only), and limitations on times when the garden can be used. The appellant has also suggested a temporary permission as a trial run.
8. Aspects, like opening times and when the garden could be used, could be dealt with by conditions, relatively easily, and would significantly limit the impact of comings and goings, and the use of the garden, on local residents. In terms of the number of children using the facility and the garden, the information that accompanied the application suggested 28 children overall and 12 using the garden at any one time. The appellant offered to amend these numbers to 22 and 8 respectively and says in the grounds of appeal that a grant of permission with any number of children inside or outside would be acceptable.
9. There seems to be an inherent lack of precision in this approach but numbers of children using the facility and the garden, and other aspects including the drop-off, collection and 'meet and greet' arrangements, could be dealt with through a condition requiring a management scheme to be submitted to and approved by the local planning authority and for the childcare facility to be operated in accordance with that scheme. That, coupled with a trial run, as suggested, would allow the impact of any undue noise and disturbance that might be generated from the comings and goings of parents or carers and children and the use of the garden to be effectively managed, and the local planning authority to properly gauge any impact on the living conditions of local residents. Paragraph 111 of Circular 11/95: *The Use of Conditions in Planning Permissions* does say that where an application is made for permanent permission for a use which may be 'potentially detrimental' to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run.
10. There is also noise and disturbance that might be generated from within the premises to consider. It is accepted that the party walls will require sound insulation but no great detail has been forthcoming of the proposed construction and whether it would offer adequate protection to the neighbours. Chapel House is a Grade II listed building and a sound insulation scheme that included the erection of stud walls, as suggested, would affect its character as a building of special architectural and historic interest and almost certainly require listed building consent. Section 66(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 places a statutory duty upon me to pay special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.

11. Without details of exactly what is proposed and how it would affect the structure, room proportions and interior features of the building, it is not possible to conclude that an effective sound insulation scheme could be achieved in a manner that preserved the building, or any features of special architectural or historic interest which it possesses, and secure a grant of listed building consent. In that context, and having regard to paragraph 35 of Circular 11/95, it would be unreasonable to apply a condition requiring a scheme of sound insulation to be submitted to and approved by the local planning authority, and implemented, before the use commenced, when such a scheme may not be possible to achieve. The condition might well nullify the benefit of permission. Paragraph 35 of Circular 11/95 says that in such circumstances, it will be necessary to refuse permission altogether.
12. In that overall context, while conditions could be used to manage and assess aspects of the proposal in terms of potential noise and disturbance, it has not been shown that a condition could be used to keep the impact of noise and disturbance on neighbours, from inside the premises, within reasonable bounds. As a consequence, the proposal fails to fully accord with Policy CF4.
13. I accept that there may be a demand for such facilities in the area and I note the examples of facilities said to be similar that have been drawn to my attention. However, demand does not serve to justify a proposal that might have harmful impacts and notwithstanding the examples referred to, the proposal before me has to be considered on its own merits.
14. I also accept that the change of use proposed would preserve the character and the appearance of the Chapel-en-le-Frith Conservation Area provided that any new boundary treatments felt necessary within the garden area were properly designed; something that could be secured by condition. However, this does not alter my conclusion on the main issue identified.
15. For the reasons given above I conclude that the appeal should be dismissed.

Paul Griffiths

INSPECTOR