

Name of meeting: **PLANNING SUB-COMMITTEE (HUDDERSFIELD AREA)**

Date: **26 FEBRUARY 2015**

Title of report: **LOCAL PLANNING AUTHORITY APPEALS**

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the Council's Forward Plan ?	No
Is it eligible for "call in" by Scrutiny ?	No
Date signed off by <u>Director</u> & name	17 February 2015 Jacqui Gedman
Is it signed off by the Director of Resources?	No financial implications
Is it signed off by the Acting Assistant Director - Legal & Governance?	No legal implications
Cabinet member portfolio	Cllr. P. McBride

Electoral [wards](#) affected: Colne Valley, Newsome, Ashbrow, Lindley, Holme Valley North

Ward councillors consulted: No

Public or private: **Public**

1. **Purpose of report**
For information
2. **Key points**
 - 2.1 2013/60/93791/W - Outline application for erection of 2 dwellings at Croft Farm, Croft, Linthwaite. (Committee's Decision in accordance with officer recommendation) (Dismissed)
 - 2.2 2014/62/92296/W - Erection of first floor pitched roofed extension above existing kitchen (within a Conservation Area) at 24, Springwood Street, Springwood, Huddersfield. (Officer) (Dismissed)
 - 2.3 2014/62/90646/W - Erection of 2 storey rear extension at 48, Central Avenue, Fartown, Huddersfield. (Officer) (Dismissed)

- 2.4 2014/62/90048/W - Erection of single storey extension to create dwelling (Listed Building within a Conservation Area) at 128, Trinity Street, Huddersfield. (Officer) (Dismissed)
- 2.5 2014/65/90049/W - Listed Building Consent for erection of single storey extension to create dwelling (within a Conservation Area) at 128, Trinity Street, Huddersfield. (Officer) (Dismissed)
- 2.6 2013/62/92286/W - Change of use from office to nursery, play gym and associated facilities, lowered external area to front with new timber decking, stairs and secure gate/railings, fence to existing front wall and hand rail to existing stair at 14a, Holly Bank Road, Lindley, Huddersfield. (Committee's Decision contrary to officers recommendation) (Allowed)

3. Implications for the Council
Not applicable

4. Consultees and their opinions
Not applicable

5. Next steps
Not applicable

6. Officer recommendations and reasons
To note

7. Cabinet portfolio holder recommendation
Not applicable

8. Contact officer and relevant papers
Simon Taylor – Head of Development Management

9. Director responsible
Jacqui Gedman

Appeal Decision

Site visit made on 20 December 2014

by Michael R Moffoot DipTP MRTPI DipMgt MCMi

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

Decision date: 15 January 2015

Appeal Ref: APP/Z4718/A/14/2226604

Croft Farm, Croft, Linthwaite, Huddersfield HD7 5TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Hinchliffe against the decision of Kirklees Metropolitan Council.
 - The application Ref: 2013/60/93791/W, dated 27 November 2013, was refused by notice dated 29 May 2014.
 - The development proposed is residential development.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was made in outline form with all matters other than access and layout reserved for future approval.

Main Issues

3. The main issues in this case are:
 - (i) whether the proposal would be inappropriate development in the Green Belt for the purposes of the *National Planning Policy Framework* ('the Framework');
 - (ii) the effect of the proposed development on the openness and visual amenity of the Green Belt and the character and appearance of the area;
 - (iii) the effect of the proposal on highway safety; and
 - (iv) if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development

4. The main body of the appeal site lies to the rear of residential development on Church Lane and comprises a rectangular parcel of grazing land associated with the adjacent Croft Farm. Housing lies to the north of the site and the farmhouse and a range of agricultural buildings lie to the south-east, whilst open fields extend to the south-west.

5. Paragraph 89 of the Framework states that the construction of new buildings should be regarded as inappropriate development in the Green Belt with the exception of certain specified categories of development, including limited infilling in villages. Policy D13 of the adopted *Kirklees Unitary Development Plan* (UDP) normally permits infill development within existing settlements in the Green Belt where, amongst other things, the site is small and is largely surrounded by development. The supporting text to the policy states that "*development will only be appropriate where it is genuinely small scale and will occupy a small gap in a definable frontage or a small site largely surrounded by development*".
6. No formally defined village or settlement boundary for Linthwaite has been referred to by the main parties. Ribbon housing development on the south side of Church Lane extends into the open countryside with only No 1 Croft to the rear of 14a departing from this linear pattern of housing. Given this form of development I do not consider that the appeal site, which lies to the rear of the housing, can reasonably be regarded as lying within the village. As such, the proposal does not constitute infill development within an existing settlement as referred to in policy D13 or limited infilling in a village as described in the Framework. It follows that the proposed housing would be inappropriate development which the Framework states is, by definition, harmful to the Green Belt.

Effect on the openness and visual amenity of the Green Belt and the character and appearance of the area

7. Residential development on the appeal site, in whatever form, would clearly involve a loss of openness, which is one of the essential characteristics of the Green Belt according to the Framework. In addition, it would conflict with one of the five purposes of including land in the Green Belt, namely to assist in safeguarding the countryside from encroachment.
8. The proposal would also result in development in depth, which would be incompatible with the prevailing pattern of housing and result in harm to the visual amenity of the Green Belt and the character and appearance of the area contrary to relevant objectives in policies D13 and BE2 of the UDP and the Framework.

Highway safety

9. The parking and turning space to serve the proposed dwellings would be satisfactory but the width of the drive adjacent No 14 would be inadequate to enable vehicles to pass. This would be likely to result in conflict between incoming and exiting vehicles at the access point on to Church Lane to the detriment of pedestrians and road users. There would also be conflict within the site between vehicles generated by the new development and manoeuvres undertaken by those associated with the existing dwelling.
10. For these reasons, and on the basis of the plans before me, I conclude that the proposed development would materially harm highway safety. As such, it would be contrary to UDP policies BE1 and T10 which seek to reduce hazards to highway users and do not permit development which would create or materially add to highway safety problems.

Other Considerations

11. The appellant has put forward a number of other considerations which, in his view, justify the scheme. It is submitted that the proposed development would contribute to the identified shortfall of housing land in the Borough and meet Government aspirations to boost significantly the supply of housing as described in the Framework. However, the scheme would make a very modest contribution to housing land supply and I give this minimal weight in favour of the proposal.
12. The site may be in a sustainable location with good access to services and facilities, including public transport, but this factor attracts only very limited weight in support of the proposed development.

The Green Belt balance

13. The proposal would amount to inappropriate development in the Green Belt which is, by definition, harmful and substantial weight is to be attached to such harm according to the Framework. There would also be loss of openness, encroachment and harm to the visual amenity of the Green Belt and the character and appearance of the area. There are no other considerations which clearly outweigh the totality of harm that would arise as a result of the development, and the very special circumstances necessary to justify the proposal do not therefore exist.

Other Matters

14. In coming to these findings I have taken into account the erection of the dwelling at 14a Chapel Lane. However, that scheme involves a small site within an otherwise continuously built-up frontage as provided for in policy D13, and comparison with the appeal proposal is therefore of very limited relevance.
15. Other concerns raised locally include residential amenity, surface water drainage and ecology, but they do not add to my reasons for dismissing the appeal.

Conclusions

16. For the reasons set out above, I conclude that the proposal is unacceptable and the appeal should fail.

Michael R Moffoot

Inspector



Appeal Decision

Site visit made on 7 January 2015

by Beverley Doward BSc BTP MRTPI

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

Decision date: 15 January 2015

Appeal Ref: APP/Z4718/D/14/2228292

24 Springwood Street, Huddersfield , HD1 4BE

- 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 Ms N Khan against the decision of Kirklees Metropolitan Council.
 - The application Ref 2014/62/92296/W was refused by notice dated 17 October 2014.
 - The development proposed is first floor pitched roofed extension above existing kitchen.
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Decision

1. The appeal is dismissed.

Main issue

2. The main issue in this case is whether the proposal would preserve or enhance the character or appearance of the Springwood Conservation Area.

Reasons

3. The appeal site is a stone built terraced house located within a predominantly residential area. Although a mid-terraced property it is on a corner plot with the existing single storey rear extension and garden extending out at 45 degrees to the main building. The appeal site lies within the Springwood Conservation Area which is characterised by stone built terraced properties.
4. The proposal seeks to introduce a first floor extension with a pitched roof above an existing single storey rear extension which, due to the angles of the adjoining properties, follows an irregular shape with a sloping roof. The extension would be constructed of matching materials to those of the existing house and the fenestration would be sympathetic to the existing. The Council indicates that the size of the extension would be acceptable being subservient to the existing building and I see no reason to take an alternative view. However, it contends that although the proposed roof form may be acceptable in principle, if the roof was built at the angle proposed it would be higher than the existing ridge of the roof on the host dwelling and would represent a visually incongruous feature which would harm the character and appearance of the host dwelling and Springwood Conservation Area.
5. The roof ridge of the host dwelling is at a lower level than that of the adjoining dwelling at no 26 and due to the angles formed by the host dwelling and no 26, a pitched roof to the proposed extension would form a complicated feature to tie in with the existing roof form. It is not clear from the evidence, including the original drawings submitted with the planning application and an additional plan which was submitted at the request of the Council purporting to detail the

roof layout, whether the roof form to the proposed extension would result in it being at a higher level than the existing ridge of the host dwelling. Therefore, notwithstanding that there are various roof forms on a range of rear extensions to dwellings in the vicinity of the appeal property, I cannot be satisfied from the evidence before me that the proposed roof form would satisfactorily relate to the host dwelling and form a balanced composition with both the host dwelling and the adjoining property so as not to appear as an incongruous addition and compromise the character of this terrace of properties.

6. Although the proposed extension would be at the rear of the host dwelling it would be visible from the public realm on Back Cecil Street and from the rear of the properties on Spring Street which are also within the Springwood Conservation Area. Accordingly, it would not preserve the character or appearance of the Springwood Conservation Area. However, having regard to the limited impact the development would have within the street scene and the conservation area in general, any harm to the conservation area would be "less than substantial" as set out in paragraph 134 of the National Planning Policy Framework (the Framework). Whilst I appreciate the personal circumstances of the appellant in seeking to provide extended living accommodation for a growing family, this does not amount to public benefits sufficient to outweigh such harm.
7. To conclude therefore, the appeal proposal would not accord with policies BE1, BE2 and BE5 of the Kirklees Unitary Development Plan which seek to ensure that development is of good quality design and in keeping with surrounding development and also in respect of that aspect of policy BE5 which reflects the statutory duty to ensure that development proposals within conservation areas preserve or enhance the character or appearance of the area. These policies are broadly consistent with the Framework's principles of requiring good design and of conserving and enhancing the historic environment.
8. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Beverley Doward

INSPECTOR

Appeal Decision

Site visit made on 20 January 2015

by Mark Caine BSc (Hons) MTPL MRTPI

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

Decision date: 22 January 2015

Appeal Ref: APP/Z4718/D/14/2219248
48 Central Avenue, Huddersfield, HD2 1DA

- 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 Mrs Leila Najih against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2014/62/90646/W, dated 25 February 2014, was refused by notice dated 23 April 2014.
 - The development proposed is a two-storey rear extension.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposal on the character and appearance of 48 Central Avenue.

Reasons

3. The appeal property is a two-storey semi-detached pitched roof dwelling which is located in a predominantly residential area.
4. It is acknowledged that the proposal would provide additional family living space at first floor level. I also appreciate that the existing dormer extension within the rear roof plane of no 48 would restrict the formation of a pitched roof to a two-storey rear extension. Nonetheless the proposal's bulky rectangular box shaped appearance would be at odds with the pitched roof form of the original dwelling. This would have an unsympathetic and awkward relationship with no 48 and fail to integrate satisfactorily with it. Although the proposal would not be visible in the street scene, it would be prominent from the rear gardens and first floor windows of several houses in the vicinity.
5. I therefore conclude that the proposal would have a harmful effect on the character and appearance of 48 Central Avenue. As such it would conflict with Policies D2, BE1, BE13 and BE14 of the Kirklees Unitary Development Plan 2007 (UDP). Amongst other matters these require all development to be visually attractive, not prejudice visual amenity and to respect the design features, including the roof, of the existing house and adjacent buildings.
6. The appellant has referred to a number of other matters in support of her case. These include the lack of objection from the residents of neighbouring properties and that a flat roof single-storey extension can be erected without

the need of planning permission. However these factors do not overcome or outweigh the harm that I have identified above.

7. It has also been put to me that the Council has approved similar extensions elsewhere. Nonetheless, I have not been provided with any details of these examples, and did not see any similar extensions on my site visit, so cannot be certain that they would be directly comparable to the appeal proposal. In any case, I have determined the appeal based on its own merits.
8. For the reasons given above, the appeal is dismissed.

Mark Caine

INSPECTOR

Appeal Decisions

Site visit made on 27 January 2015

by Nicholas Taylor BA (Hons) MRTPI

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

Decision date: 10 February 2015

Appeal A Ref: APP/Z4718/E/14/2222672

128 Trinity Street, Huddersfield HD1 4DT

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Gary Wilson against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2014/65/90049/W, dated 3 December 2013, was refused by notice dated 19 May 2014.
 - The works proposed are extension to the side to provide an attached residential unit. Including demolition of the existing single storey double garage.
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Appeal B Ref: APP/Z4718/A/14/2222665

128 Trinity Street, Huddersfield HD1 4DT

- 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 Mr Gary Wilson against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2014/62/90048/W, dated 3 December 2013, was refused by notice dated 19 May 2014.
 - The development proposed is extension to the side to provide an attached residential unit. Including demolition of the existing single storey double garage.
-

Decision

1. Both appeals are dismissed.

Main Issue

2. The main issues in both appeals are whether the proposed works and development would preserve the Grade II listed building known as 128 Trinity Street or any features of special architectural or historic interest it possesses and whether the character or appearance of the Greenhead Park / New North Road Conservation Area would be preserved or enhanced.

Reasons

3. The appeal property comprises a large semi-detached house, currently occupied as two flats, on a main radial route close to the town centre. The proposed works and development would comprise demolition of an existing garage and construction of a single storey extension to the side to create a small, self-contained dwelling.

4. The property is listed together with its adjoining pair and a further, adjacent pair of houses. It is a stone-faced, double-fronted house, incorporating attractive stone detailing to the front elevation in particular, which is referred to in the listing description. The imposing proportions – approximately balanced either side of the pedimented central bay with its elaborate, arched entrance - fine detailing and traditional materials are very characteristic of its period and the area and contribute significantly to its historic significance.
5. The extensive conservation area mainly comprises stone Victorian terraces, villas, public buildings and churches, and is focussed on two radial roads and a large, Victorian park. The contribution of the appeal property to the significance of the conservation area as a heritage asset is enhanced by its prominent position overlooking, and viewed from, the park.
6. I acknowledge that the appellant has been in discussion with various Council officers and that, notwithstanding the reasons for refusal, the officer reports and correspondence provided to me indicate a degree of acceptance of some aspects of the proposed scheme. However, in considering whether to grant listed building consent or planning permission, Sections 16(2) and 66(1) of the relevant Act¹ require me as the decision maker in this case to have special regard to the desirability of preserving the building or its setting. In addition, S72(1) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
7. Paragraph 128 of the *National Planning Policy Framework* (the Framework) empowers local planning authorities to require an applicant to describe the significance of any heritage assets affected by a proposal, in a level of detail proportionate to the asset's importance and sufficient to understand the potential impact on significance. In this case, the submitted heritage statement is very brief and neither it nor the drawings of both the existing and proposed building indicate an adequate appreciation of its significance or clarity of proposals. Listed buildings are heritage assets of national significance and it is rarely appropriate to accept an inadequate survey and poorly detailed proposals on the assumption that fundamental concerns can be resolved by imposition of conditions.
8. Having said that, my principal concern in this case is the scale and design of the proposed development. The existing garage, which would be replaced, does not make a positive contribution to the listed building but it has the merit of being fairly small in scale, set back from the frontage and only attached to the listed building by a narrow archway.
9. The excessively large and bulky appearance of the proposed extension would be exacerbated by its position, only slightly set back from the front of the of the listed building on its downhill side, where the considerable slope would ensure that it would be particularly prominent when viewed from the main road and the park opposite. Although flat-roofed extensions to traditional buildings are not unknown in the area, an attempt to take a more contemporary approach, as in this case, would have to be much more carefully proportioned and detailed than the current proposal in order to be successful. Of particular concern are the proportions, positioning and detail of the proposed fenestration, the appearance of the parapet and the use of render. In as much as these features are discernible from the submitted drawings, they would be

¹ The Planning (Listed Buildings and Conservation areas) Act 1990

wholly at odds with the character and appearance of the listed building and are too fundamental to be left to be resolved by conditions.

10. Overall, therefore, I conclude that the proposed development would fail to preserve the significance and special architectural interest of the listed building. Due to its prominent location, it would also fail to preserve the character or appearance of the conservation area. As a result, it would conflict with the requirements of the relevant Act, referred to above.
11. Paragraph 132 of the Framework states that when considering the impact of a proposal on a designated heritage asset, great weight should be given to the asset's conservation. In this case, there would be conflict with the Framework in terms of impact on both the listed building and the character and appearance of the conservation area. The development would also conflict with the objectives of Policies BE1, BE2, BE5 and BE13 of the Kirklees Unitary Development Plan.
12. I consider that the harm to the significance of the listed building and the conservation area would be less than substantial, in terms of paragraph 134 of the Framework. This requires that the harm should be weighed against the public benefits of the proposal. The proposal would make a very modest contribution to the supply of housing in the town but I have not been provided with any strong evidence to suggest that there is an overriding need for the type of dwelling proposed in this location or that, without the proposed scheme, the continued viability of the listed building would be threatened. Consequently, set against the harm which I have identified, consideration of the Framework's presumption in favour of sustainable development does not indicate that permission should be granted in this case. Overall, the public benefits have not been demonstrated to outweigh the significant harm to designated heritage assets.
13. Even though the harm would be less than substantial in this case, the overarching statutory duty must be given considerable importance and weight, indicating that the appeals should be dismissed.

Conclusion

14. For the reasons set out above, both appeals should be dismissed.

Nicholas Taylor

INSPECTOR

Appeal Decision

Site visit made on 16 December 2014

by Jonathan Hockley BA(Hons) DipTP MRTPI

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

Decision date: 6 January 2015

Appeal Ref: APP/Z4718/A/14/2219188

14 Holly Bank Road, Huddersfield HD3 3JE

- 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 Joanne Perkins against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2013/62/92286/W, dated 12 July 2013, was refused by notice dated 3 December 2013.
 - The development proposed is described as 'change of use from office to a nursery, play gym and associated facilities. Lowered external area to front with new timber decking, stairs and secure gate/railings. New timber fence to existing front wall. New hand rail to existing stair'.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from office to a nursery, play gym and associated facilities. Lowered external area to front with new timber decking, stairs and secure gate/railings. New timber fence to existing front wall. New hand rail to existing stair at 14 Holly Bank Road, Huddersfield HD3 3JE in accordance with the terms of the application, Ref 2013/62/92286/W, dated 12 July 2013, subject to the conditions set out at the end of my decision.

Main Issues

2. The main issues in this case are as follows:
 - The effect of the proposed development on highway safety.
 - The effect of the proposed development on the living conditions of nearby residents, with particular reference to noise and disturbance.

Reasons

3. The proposal seeks to convert an existing empty office building into a nursery and play gym. The building is a substantial attractive three storey stone property, with double gable features to the front. The appeal site is sited on Holly Bank Road, a primarily residential street, but is close to the street's junction with Lidget Street, an attractive bustling small retail area.

Highway Safety

4. The building at present has a small parking area located to the side of it which can accommodate 6 cars. There is also a car park located on the opposite side of the road which has around 20 parking spaces. Parking is free in this car park but restricted to 2 hour stays. On street parking is available on the

majority of both sides of Holly Bank Road. Close to opposite the site is a junction with George Street, a one way street which serves various residential properties as well as Lindley Junior School. It was clear on my site visit that the area is a busy, bustling area, with many comings and going and associated vehicle movements.

5. A highway statement (the HS) was submitted with the planning application to address Council concerns over the possible intensification of the use of the site caused by the proposed use over and above the current legitimate use as an office, and subsequent increased demand for parking. The Council raise several concerns over the data used in this HS for the traffic generation of the permitted office use and the statement's view on certain matters such as sustainable travel and numbers of movements. However, I note that the Council state that they do not dispute the findings of the TRICS data used for the assessment of previous office use traffic generation. Furthermore, the HS appears to have been produced following and during discussions with the Council's Highways Officer, who concluded that on the basis of the evidence provided that the scheme would have an acceptable impact on highway safety, provided conditions were imposed concerning the adjacent parking spaces and a restriction on numbers using the facilities.
6. The proposal seeks to provide nursery space for up to 18 children, with a maximum of 20 children using the play gym. A maximum of 10 staff would be on site at any one time. The appellant considers that this would generate a parking demand of 5 spaces for staff, with other staff members predicted to travel sustainably given the sites location in a generally sustainable built up area. This would effectively leave 1 parking space on site, with all other parents/carers dropping off, collecting or entering the play gym parking in other locations or themselves travelling sustainably to the site.
7. One concern for the Council and local residents is the congestion present in the area at school drop off and pick up times. Evidence is submitted by a local resident illustrating this. However, aside from extra curricular activities and clubs, school drop off and pick up times are fairly rigid; children have to be at the school for a certain time and hence congestion is likely around these times. However, a nursery use would generate movements at differing times; some parents/carers may drop off children earlier on their way to school, whilst some may drop off after school entrance time. Whilst some parents may combine drop off for school and nursery if they have more than one child, it is equally possible that some parents/carers will deliberately choose to drop their children off at times that do not coincide with the school times for the precise reason of their knowledge of congestion occurring at that time.
8. The proposed play gym would be open 0930 to 1830 Monday to Saturday and 1000 to 1600 on a Sunday. The gym would therefore open only after school children had entered the school, and although it would remain open during pick up time, this would not have a significant effect based on the example provided of the reasonably nearby Magical Forest play gym, and when considering the reduced size of the proposed facility when compared to the Magical Forest. I visited this site as part of my site visit, and although I note that there is no school close by, this facility is located a short way off a busy road, and much of the road has residents only parking on it. It also appears reasonable to me to halve the survey results for the proposed facility, given that it is proposed to have half the capacity of the Magical Forest. Such a capacity can be ensured

- by condition. Traffic movements to a play gym are likely to be through the day where less congestion is prevalent nearby, and again, parents or carers are likely to avoid visiting the play gym at school pick up times when they know local road conditions are likely to be busier or when experience has told them that the gym is likely to be full.
9. Concerns are raised over traffic effects for the proposed weekend openings of the nursery and play gym, particularly bearing in mind parking associated with the Lindley Band and nearby recreation ground. However, the submitted HS states that the play gym would generate around 5 vehicle movements during the busiest hours when fully occupied, and the parking survey submitted indicates that spaces are available for car parking, either in the opposite car park or on the roadside on the Saturdays surveyed.
 10. The end of the car park survey submitted by the appellant fell within the Whitsun school holiday, with two of the surveyed days of a total of eight falling within this period. However, of these two days only one time surveyed (15:50, 28/05/14) would potentially be a fairly similar time to school closing time. The survey also reasonably demonstrates the availability of spaces both within and outside of school term time. The Council raise concerns over some of the breadth and timings of the survey; however, I note that this survey was carried out in accordance with details provided by the Council's Highways Officer.
 11. There is disagreement between the parties concerning the accuracy of the catchment distances shown within the transport statement. However, notwithstanding these disagreements I note that the appeal site is located in a sustainable area, with regular bus services in evidence on Lidget Street, and a large number of residential properties within walking distance of the site. Whilst the proposed 6 parking spaces would not comply with Policy T19 of the Kirklees Unitary Development Plan 1999 (the Development Plan), I also note that the current use would not comply with the Council's recommended car parking levels for an office use with medium public transport accessibility. Furthermore, I note that these parking standards are stated to be maximum levels, and that lower levels will be appropriate where the proposed use can still operate efficiently, unless there would be significant adverse consequences for road safety or traffic management.
 12. I do not consider therefore that the impact on highways movements of the proposal would be significant. Additionally, there is no direct evidence that the limited extra movements that the proposal may generate over and above the amount likely for an office use would create a risk to highway and pedestrian safety. The Council have submitted details of 9 accidents in the local area that have occurred since the beginning of 2010. However, I note that these accidents are all described as 'slight', and that 4 of them occurred at the other end of Holly Bank Road, at the junction of this road and Halifax Road. Only 2 of them occurred at times likely to be associated with the nearby school and one of these appears to not be associated with school traffic. I also note the 3 complaints received by the Highways Department. These complaints all appear to relate to inconsiderate parking associated with the school run but all date from 2011-2012. I do not consider that the effect of the proposed development, as demonstrated by the HS, would significantly alter these conditions.

13. I therefore conclude that the proposed development would not have an adverse effect on highway safety. The proposal would comply with policies D2 and T10 of the Development Plan which state that permission will be granted for development which does not prejudice highway safety, and that permission will not be granted for development which cannot be served adequately by the existing highway network and by public transport.

Living conditions of nearby residents

14. There are residential properties close to the appeal site, with No 16 Holly Bank stated to be around 10m to the east of the site and Nos 25 and 27 Holly Bank Road on the opposite side of the road. The proposed use would introduce differing noise to that which might be expected from the existing permitted use. In particular, a small outside play area is proposed at the front, lower level, of the property. A new acoustic fence is proposed to help shield some of the noise emitted from this area. The Council agree that a submitted noise assessment demonstrates that the noise arising from the direct operation of the site would be acceptable.

15. The Council note that local residents currently experience a low level of disturbance from the existing B1 use in a predominantly residential area. Whilst I consider the area directly surrounding the appeal site to be predominantly residential, its proximity to Lidget Street shopping area, the retail uses sited adjacent to the site and the proximity of both the school and the car park means the area has a mixed use feel as well.

16. The proposed use would have wider hours of use than the likely normal hours of a B1 use, with the proposed nursery open on a Saturday and the play gym open on a Saturday and Sunday. Concern is raised over the noise and disturbance caused to local residents by the manoeuvring of cars, opening and closing of doors and general conversations from parents and children. This noise would be added to cumulatively by the noise from the play area, the Council submit.

17. However, I noted on my site visit that the appeal site environs is a busy, bustling area. Comings and going to the area to park on the street or in the opposite car park to use the retail area on Lidget Street are frequent. The proposed times of opening uses during the week (cumulatively 0730 to 1830) would not be uncommon or markedly different to those that might be expected for a modern B1 use. Whilst the proposed uses may generate more movements, and movements at the weekend, these would be in the context of the general ambience of the area, which is already busy.

18. I do not consider that the manoeuvring of cars and general conversations would significantly adversely affect the amenity of neighbouring properties. Nor do I consider that the proposal would lead to 'constant starting and stopping of engines'. Whilst visits would overlap, users of the play gym would stay in the gym for a while after having paid to secure entry and, given the residential nature of much of the surrounding area, many users may walk to the proposed use. Furthermore, the Council's environmental services department has acknowledged that the acoustic fence proposed would satisfactorily mitigate the noise of children using the external play area. In relation to noise from the play gym, there are no windows on the eastern elevation of the building and none are proposed.

19. I therefore conclude that the proposed development would not have a significant adverse effect on the living conditions of nearby residents, with particular reference to noise and disturbance. The proposal would comply with policies D2, EP4 and EP6 of the Development Plan, which together seek to ensure that new development does not prejudice residential amenity, or adversely affect the occupiers of existing noise sensitive development.

Conditions

20. I have imposed conditions ensuring that the development is carried out within 3 years and in accordance with the proposed plans, in the interests of proper planning and for the avoidance of doubt. I have also imposed conditions restricting the numbers of children allowed to use the proposed day nursery and play gym, along with restrictions on the times of use allowable. This is in accordance with the details suggested by the Council, and as agreed to by the appellant, and is required in the interests of the living conditions of nearby residents and highway safety.
21. I have also imposed a condition restricting the use of the upper floors of the building to the play gym use only within Class D2 of the Use Classes Order. Planning Practice Guidance states that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. However, given other uses which could fall within Class D2 and which could potentially have significantly different levels of visitors and patterns of attendance I consider in this case that such a condition is justified, particularly when considering the detailed highway statement that has been submitted to justify the specific proposed D2 use.
22. I have also imposed a condition concerning details of the proposed acoustic fence to enclose the external play area, although I have merged the Councils proposed two conditions concerning this fence together into one in the interests of conciseness. This condition is required to ensure that the acoustic fence is constructed as proposed, and is required in the interests of the living conditions of nearby residents and of the character and appearance of the surrounding area. Finally, I have imposed a condition to ensure that the parking area as shown on the submitted drawings is constructed as proposed, in the interests of highway safety, and that such spaces are retained solely for parking use.

Conclusions

23. I note the strong feelings of many local residents over the proposed development. However, given the existing permitted use of the site and the general nature of the area, I consider that the proposed development would not have a significant adverse effect on highway safety, nor on the living conditions of nearby residents.
24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jon Hockley

INSPECTOR

SCHEDULE OF 7 CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: EX01 rev A; AL10 Rev B; AL11 Rev C; AL12.
- 3) The D1 use (day nursery) hereby permitted as located on the lower ground floor of no 14a Holly Bank Road only, and as shown on drawing number AL10 Rev B shall provide nursery facilities for a maximum of 18 children at any one time. The use shall not be open for customers outside the hours of 0730 to 1830 Monday to Friday and 0800 to 1700 Saturdays.
- 4) The D2 use (play gym) hereby permitted as located on the upper ground floor and first floor of no 14a Holly Bank Road only, and as shown on drawing number AL10 Rev B and AL11 Rev C shall provide play gym facilities for a maximum of 20 children at any one time. The use shall not be open for customers outside the hours of 0930 to 1830 Monday to Saturday and 1000 to 1600 Sundays.
- 5) The upper ground floor and first floor of the premises shall be used for a D2 Play Gym only and for no other purpose (including any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 6) An acoustic fence shall be erected to enclose the external play area, in accordance with the recommendations (para 4.24 and 6.04) of the Noise Report by ENS Environmental Noise Solutions Limited, dated 9th July 2013 and as shown on drawings AL11 Rev C and AL12. The fence shall be erected prior to the external play area first being brought into use, and shall be stained dark brown/black within one month of erection. The fence shall be retained and maintained in the dark brown/black colour and in accordance with the noise report throughout the lifetime of the development.
- 7) A scheme detailing how all areas, indicated to be used for parking as shown on drawing AL11 Rev C, will be marked into parking bays for use by the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before development commences. The approved scheme shall be fully implemented before the development is first brought into use. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any Order revoking or re-enacting that Order with or without modification) the parking spaces shall be retained free of obstructions and available for the parking of vehicles for the lifetime of the development.