



# Appeal Decision

Site visit made on 7 August 2023

by **L Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 14 August 2023**

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## Appeal Ref: APP/F4410/W/23/3316622

### 41 Lower Pasture, Finningley, Doncaster DN9 3RF

- 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 V Aldridge against the decision of Doncaster Metropolitan Borough Council.
  - The application Ref 22/01126/FUL, dated 6 May 2022, was refused by notice dated 30 September 2022.
  - The application sought planning permission for running of child-minding business from residential property (retrospective), without complying with a condition attached to planning permission Ref 21/02966, dated 10 December 2021.
  - The condition in dispute is No. 5 which states that: *"No more than 16 children shall be cared for at the premises at any given time. A weekly register of those registered children shall be maintained and made available for inspection on request by the Local Planning Authority for the lifetime of the development. No less than six consecutive months' worth of registers shall be available for inspection."*
  - The reason given for the condition is: *"To prevent the over-intensification of the business in a residential area, in accordance with policies 10 and 46 of the Local Plan."*
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## Decision

1. The appeal is dismissed.

## Background and Main Issues

2. The child-minding business was retrospectively approved in December 2021. Condition 5 of that permission requires no more than 16 children to be cared for at the premises at any given time. The appellant identifies that there have very regularly been up to 21 children cared for since 2013, including at present.
3. The proposed amendment to condition 5 is:  
*"No more than 21 children shall be cared for at the premises at any given time. A weekly register of those registered children shall be maintained and made available for inspection on request by the Local Planning Authority for the lifetime of the development. No less than six consecutive months' worth of registers shall be available for inspection."*
4. The amendment to the condition would thus authorise an additional 5 children to be cared for, and in effect allow the existing position to continue.

5. The main issues are the effect of the development on:

- the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance; and
- highway safety, with particular regard to increased vehicular movements and risk of highway obstructions.

## **Reasons**

### *Living Conditions*

6. The appeal site comprises a detached two-storey dwelling, with a rear garden and parking for 4 vehicles within its frontage. It is sited at the start of a short cul-de-sac section of Lower Pasture, which has detached dwellings with minimal separation. On this cul-de-sac section the front property boundaries are separated from the highway only by a small strip of block paving, with extremely limited on-street parking.
7. Nearby residents raised objections during the original application's determination period, based on noise and disturbance including parking issues. Residents have objected to this appeal on the same basis, citing disturbance to sleep patterns, car damage to their property, and queues of cars blocking the cul-de-sac. Noise is stated to be generated by children playing in the garden and journeying to and from school, by car engines running and car doors opening and closing, and from conversations on handovers. Disturbance also includes car headlights, and difficulty accessing the street due to parked cars or car manoeuvres and queues. The business is allowed to open from 0715, which is a relatively unsociable hour for such disturbance to occur.
8. The Council's Environmental Health (EH) team consider there is insufficient evidence to suggest that the running of the business is causing harm to neighbouring amenity. However, they have received a number of formal complaints about nuisance caused from the business since 2013, including 1 noise complaint since the permission. One resident identifies that they have not made formal complaints to Environmental Health since the permission on the basis that previous complaints were not taken into account. The complaints over this whole period therefore relate to the impact from 21 children.
9. The general operation of the appellant's business model mitigates noise and disturbance to some degree. This includes not all the children being present all day, sibling groups picked up together meaning that numbers drop quickly, staggered pick-ups and the use of the parking spaces in rotation, swift pick-ups, children being respectful of neighbours when coming and going from the property, and the outdoor play space tending to be used by different age groupings at different times.
10. However, notwithstanding these practices to minimise disturbance, and the EH opinion, the permission runs with the land. Child groupings are therefore likely to alter over time, and any future business owner could have significantly different practices. Whilst unlikely based on the above information, as a worst case scenario there could be 21 children dropped off or collected in individual vehicles during a similar time period, and 21 children playing in the garden all day. There are no conditions on the permission or other reasonable conditions which could be imposed which could restrict this. The restriction of the overall

number of children is the only mitigation method to control noise and disturbance.

11. Although the impact of 5 child places in this regard is difficult to precisely quantify, in numerical terms it is a sizeable difference compared to that permitted. In consideration of all the above aspects, restricting the places to 16 would be very likely to noticeably reduce impacts from noise and disturbance.
12. In conclusion therefore, the effect of 21 children being cared for at the premises instead of 16 children would be harmful to the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance. This would conflict with the Doncaster Local Plan 2015-2035 (DLP) (2021) Policies 10 and 46. These require development to not have unacceptable negative effects upon the amenity of neighbouring land uses, and in particular in residential policy areas for non-residential uses only to be permitted where they would not cause unacceptable loss of residential amenity through excessive traffic or noise.
13. It would also conflict with Paragraphs 130 and 185 of the National Planning Policy Framework ('the Framework') (2021) regarding the need to ensure that developments function well, to create places which have a high standard of amenity for existing and future users, and to mitigate and reduce to a minimum, potential adverse impacts resulting from noise. Condition 5 is therefore necessary and reasonable in this regard.

#### *Highway Safety*

14. The property has 4 parking spaces within its frontage, and condition 3 of the permission requires 2 of these to be reserved exclusively for the drop-off and collection of children.
15. The applicant's agent advises that in their monitoring of a specific drop off time slot, no traffic issues were identified. There are staggered drop off and pick-up times, some vehicles carry multiple children, and some children walk. However, as discussed above, there are no reasonable conditions which could ensure this takes place. I therefore have to consider the worst case scenario. This would be up to 21 potential vehicles visiting the premises in a short space of time.
16. Even at a more realistic and current level, neighbouring residents have cited vehicle queues, and access into properties being difficult due to parking. Although there are no double yellow line parking restrictions, the street layout within and immediately outside of the cul-de-sac is not capable of easily accommodating significant numbers of vehicles. The Council also suggests that obstructions could prevent an emergency vehicle from accessing dwellings at the cul-de-sac end.
17. Furthermore, children are less aware of the risks of car manoeuvres than adults, are less visible to drivers, and are more susceptible to head injuries resulting from collisions. There is no pavement around the cul-de-sac, and a lack of safe parking places. As a result, the more children using the setting, and in turn the more vehicle visits, the more these risks would be heightened.
18. The potential 5 additional vehicles on daily visits to the premises, would altogether cause undue pressure on the local road network and heighten highway safety issues.

19. Overall, the effect of 21 children being cared for at the premises instead of 16 children is harmful to highway safety, with particular regard to increased vehicular movements and risk of highway obstructions. This conflicts with the DLP Policy 13, which requires developments to not result in an unacceptable impact on highway safety. It also conflicts with the Framework for the same reason, with particular regard to paragraph 111. Condition 5 is therefore necessary and reasonable in this regard.

### **Other Matters**

20. The retention of condition 5 would provide a specific benefit to users and future users of the child-minding business, and a more general community benefit in terms of child-care provision allowing parents and carers to attend work. It would also be a private financial benefit for the appellant. However, I have not been provided with evidence of a severe lack of other child-minding facilities in the area, or that the continuation or viability of the business overall would be at risk if only 16 children can be present.

21. Matters relating to the appellant's lack of knowledge that planning permission would be originally required, or that they believe the imposition of the condition was an administrative error, has not been determinative to my decision. Any OFSTED permissions for the business are similarly not determinative, as they are not based on the same factors as those under consideration for this appeal.

### **Planning Balance and Conclusion**

22. The proposed amendment to condition 5 would harm the living conditions of occupiers of neighbouring occupiers by allowing for increased noise and disturbance, and have a harmful effect on highway safety. I give these aspects substantial weight. The benefits outlined to the users and the general community I give only minor weight. The proposal conflicts with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I therefore conclude that the appeal is dismissed.

*L Hughes*

INSPECTOR