

Planning Policy Comments 73450/APP/2023/431

Description of Development

Use as a creche, day nursery or day centre is listed under Use Class E. This is not a Sui Generis use. If the applicant wishes to restrict the use of the site to E(f) to avoid the need for sequential test related to main town centre uses, then this should be achieved via condition. The description of development therefore also needs to be amended.

Sequential Test (Flooding)

The application site is located within Flood Zones 2 and 3. In addition, the application site is also liable for surface water flooding (High, Medium and Low risk). The site is also located within the environment agency's 20 metre bank top protection area. The site therefore has a mixture of a high and medium risk of flooding. In line with Annex 3 of the NPPF (2021), development proposals for nurseries are classified as a 'more vulnerable use'.

Paragraph 159 of the NPPF (2021) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). The paragraph also outlines that where development is necessary in areas liable for flooding, the development should be made safe for its lifetime without increasing flood risk elsewhere.

Policy EM6 of the Local Plan: Part 1 states that the Council will require new development to be directed away from Flood Zones 2 and 3. Furthermore, Policy DME1 9 of the Local Plan: Part 2 outlines that development proposals in Flood Zones 2 and 3a will be required to demonstrate that there are no suitable sites available in areas of lower flood risk.

It is agreed by the applicant that the proposal would be required to pass the sequential test and the subsequent exceptions test. It should be noted that in line with the PPG, the proposal is required to pass the sequential test first to be considered under the exceptions test. In this regard, it is recognised that the application has only been reviewed in relation to the sequential test and the relevant specialist should have been consulted on the exceptions test, if the application would have been considered to pass the sequential test. Details with regard to the sequential test have been submitted as a part of the application.

Engagement Prior to Submission

National policy and guidance is clear that parties should work proactively and engage on providing proportional evidence to allow for the determination of schemes. The local planning authority provided advice prior to the submission outlining the need for a sequential test for the proposal. If this was passed, an exception test would then also be needed. The local planning authority also highlighted that there was no known need for this type of development in this location and that, due to the likely existence of alternative options/sites for delivering an uplift in early childcare provision, it was unlikely that one could demonstrate that the proposal could not be provided on a reasonably available site at lower risk of flooding. In the event the applicant did want to pursue an application, the local planning authority indicated that they should engage with the Council first to establish agreed parameters. Prior engagement on the parameters were not sought prior to submission and hence they are not agreed.

It is also noted that within the application forms it appears to be the same agent which has been dealing with the pre-application and this application and given this, it is considered reasonable that the agent is aware of these concerns raised at pre-application state with regard to the flood risk.

Methodology

When considering the methodology for the sequential test for flooding, it is noted that Paragraph 159 of the NPPF (2021) outlines that development in areas at risk of flooding is inappropriate and should be avoided. It should be noted that the application would first be required to pass the sequential test and if the sequential test is passed, the development would also be required to pass the exceptions test, which considers the wider sustainable benefits on the site.

1. The applicant has outlined a number of requirements which would be considered to make a site reasonably available, which includes being deliverable and developable. The council does not dispute these definitions, however it is noted that given the uses that are allowed within use class E, that sites currently within class E use should also have been included within this as these are likely to be considered deliverable and developable. However, when reviewing the sites selected by the applicant it is not clear that all available sites within Use Class E have been considered. In this regard, it is noted that the Council is aware of a number of sites within use class E that could be deemed appropriate, however these are not included by the applicant.
2. It should be noted that the applicant has agreed with the Council that the sequential test should be council-wide. Regardless of this however, the applicant has gone on to assess the perceived need on a much smaller scale, which therefore creates gaps in the overall methodology for both the sequential test and the exceptions test. There is a clear disconnect between what has been proposed and the sequential test that has been undertaken.
3. The applicant has not provided any information about alternatives to the proposed development. Given this, it is not clear what alternatives which do not involve a new site have been considered by the applicant. For example, the applicant has not considered if there are any vacancies within the existing nurseries or possibilities for the existing nurseries to expand, either operationally or through extensions to existing sites.

As previously stated, the proposal is for a day nursery (Use Class E). The Design and Access Statement sets out that the proposal would accommodate a maximum of 80 children. It is noted that there are a number of nurseries operating within the locality, including the following within the immediate area alone:

- 4 Street Nursery, HA5 2HX
- Honey Bears Montessori, HA5 2QU
- Haydon Hall Montessori, HA5 2EG
- Rise Montessori Nursery, HA5 2SH

Given this and the number of spaces provided, it is likely that it could be met through the optimisation of these sites. This optimisation could be operational in terms of accommodating the maximum number of children or physically through extending these, and other, sites that are at lower risk of flooding.

4. The applicant has set out the following parameters for the site in relation to the sequential test:
 - a. The site is located in flood zone 1-3;
 - b. Risk of flooding from rivers and sea very low to High, Pluvial Very low to high, Groundwater negligible.

The council agrees with the sites flood risk assessment of the site in terms of the flood zones and risks from other types of flooding. However, the applicant has also provided a sequential test methodology which has been considered by the Council to be very restrictive with regard to the available sites identified and their flood risk in relation to the sequential test. Specifically, regarding criterion 6, 8 and 9 of the methodology, where a number of sites should have been explored in further as a part of the sequential test. These criteria will be discussed in further detail below.

5. In regard to the local need for an additional nursery, the applicant has undertaken a feasibility report. The scope of the report is based on travel times with car or public transport within a 15-minute distance of the site, and 800 metres of walking, this includes a significant number of locations outside the council boundary, including Rickmansworth, London Borough of Ealing and London Borough of Harrow. This area does not cover the same area as the sequential test and therefore is not comparable.
6. The report suggests that there is a shortfall of 20,742 nursery spaces and concludes that the 80 spaces would make up for only 0.3% of the suggested shortfall. However, the Council disagrees with the methodology and the overall findings. The report only appears to rely on estimates. When considering the estimates, no clear methodology has been provided which demonstrates how these numbers have been reached.

On page 4 of the feasibility report, it sets out the perceived lifestyle of the families within the catchment area and how often families are using nurseries. The report sets out that a full breakdown is available upon request however, not such breakdown has been provided to the Council. This is expanded further with regard to local context on page 5 of the feasibility report. It should be noted that the report has only identified 130 households in relation to how frequently these are using nurseries, however the report does not give a clear indication of how these 130 households have been selected or how this study has been carried out.

On page 5 of the feasibility report the mapping shows that the majority of the families believed to use nurseries all day, every day are not residents of Hillingdon, and instead residents of other London boroughs or authorities outside London. The applicant has not considered how far would be reasonable for these households to take their children to nursery. It is the council's position that the feasibility report does not consider the resident's travel and movement patterns. For example, a family living in harrow is deemed unlikely to travel to the proposed site, particularly in the absence of any employment clusters on route.

Furthermore, the applicant's report outlines that households closest to the site mainly uses nannies for their children. As such, if that data would be accurate, it is questioned if the nursery should not be placed closer to an area identified with every day and most day users of nurseries. Overall, it is not clear why the applicant has selected a location where it appears through their own reports that only a minority would use the nursery on a daily basis and not closer to households that would use the nursery facilities on a more regular basis. However, as previously set out, a large majority of these households identified are located outside the council boundary and would not be limited to securing early years childcare from this site alone.

Overall, when identifying nurseries within the area the applicant has considered the 15-minute travel time from the site, and not 15 minutes travel time in each direction from the households which are likely to utilise the nursery and as previously set out no consideration has been given to the likely travelling route to and from their homes to the nursery. Given this it is deemed very likely that the results for the overall survey

are not accurate or satisfactory and likely skewing the results towards a more favourable outcome for the applicant site. Furthermore, it has also been brought to the councils attention through the public consultation process that there tends to be a surplus of spaces within the local nurseries.

Criterion 6

The applicant's criterion 6 of the sequential test for flooding sets out the following:

'The Site is 0.39 ha. A minimum size of land for consideration to compare against the Site was set based upon the Site plans provided using a nominal allowance. The maximum and minimum areas were calculated as follows: Size of Site: (0.39 ha. / 3900 m²) Maximum: 4680 m² (0.47 ha. – Site area plus 20%) Minimum: 3120 m² (0.31 ha. – Site area minus 20%)'.

As set out at pre-app stage the council has concerns with regard to limiting the scope in this manner. Furthermore, the methodology of the feasibility study is questionable, and it is considered that there are a significant number of sites that should be included within the sequential test, which the applicant has disregarded only due to their size. Overall, the 20% on each side of the application site is considered arbitrary and no clear and convincing evidence has been provided to why this would be a reasonable scope for the sequential test, regardless of if there could be a demonstrated local demand or not.

Given this it is considered that there are a significant number of sites available which would require further assessment which the applicant has removed due to criterion 6.

Furthermore, the applicant argues that there is an under provision of nurseries within 15 minutes of the site, but the study does not provide any clarifications with regard to the number of visits a week and duration of each visit, and how these play into the overall provision within the locality of the site.

Regardless of this, if there is an outstanding need for additional nursery places in this locality or not, due to the capacity of the proposal it is likely that these numbers could be met through the optimisation of the sites in the vicinity. This optimisation could be operational in terms of accommodating the maximum number of children or physically through extending these, and other, sites that are at lower risk of flooding. This has not been addressed by the applicant.

In addition, no justification has been provided as to why these 80 places cannot be accommodated within existing nurseries or within of existing Use Class E buildings in areas at lower risk of flooding in this locality, which could reasonably be utilised for a nursery.

Criterion 8 and 9

The applicant's criterion 8 of the sequential test for flooding sets out the following:

'Any alternative sites at High risk of surface water flooding will be discounted from the search'.

For this criterion, it is noted that a number of sites have been discounted regardless of the overall flood risk and overall function of the site. The relevant PPG sets out that all types of flooding should be considered. For example, the application site is considered partly at high risk of surface water flooding as well as being located in Flood Zone 2 and 3. However, sites that are at high risk of surface water flooding which are located within Flood Zone 1 have been disregarded within the sequential test under criterion 8 set out by the applicant. Given this, it is argued the sites which are located in Flood Zone 1 and 2 but subject to high risk of surface water flooding should not have been discounted automatically and a more detailed

assessment should have been done to establish why the applicant considers these are at the same or higher risk of flooding than the site. Overall, it is the Council's view that sites which are at risk for surface and ground water flooding should have been included within the sequential test and not disregarded under criterion 8 and 9, on the premise that they are likely to be at a lower overall risk of flooding than the proposed site.

Further, surface water flooding as shown on map stems from two different sources. The first is from known drainage problems where there are capacity constraints resulting in surcharges in high intensity rainfalls; the risk is therefore associated with a flow path that may occur offsite and may be at a sub catchment level. The second relates to the fact that lidar mapping shows parts of sites to be at a lower level than others; in effect localised ponding or puddling. The first issue is more complex to address for developers in most instances because the source of flooding is most likely to be offsite; mitigation for this would be complex and therefore any development solutions would be about reducing the risk and not removing it. The second issue is not overly complicated and would be subject to more manageable forms of mitigation that could result in the removal of the risk. It is therefore inappropriate to equate every area of surface water flooding to river flooding. This would need to be looked at on a case-by-case basis and agreed with the Local Planning Authority.

Conclusion

It is clear that the applicant has not applied the sequential test to an acceptable standard and has been overly restrictive with regard to the criteria applied. As set out at pre-application stage, it was deemed highly unlikely that the applicant will be able to demonstrate that the proposal is necessary in this location and could not be provided on a reasonably available site in an area with a lower risk of flooding. It is considered that the application fails to adequately address the sequential test for flooding and the local need due to a number of issues:

1. Criterion 6 is overly restrictive and is considered to be arbitrarily in place to limit the number of sites explored under the sequential test.
2. Criteria 8 and 9 fail to fully explore a number of sites further and fails to consider and compare flood risk from different sources, by virtue of excluding sites of for example a high risk of surface water flooding but located within flood zone 1.
3. The evidence provided to demonstrate there is a local need if taken at face value would mean that the application would only meet 0.3% of the local need. However, the Council questions the methodology to assess the local need and feasibility, both in terms of how assumptions have been made and as to if this site would meet need derived from some of the stated areas.
4. The applicant has not considered other appropriate alternatives such as vacancies within existing nurseries, operational and physical expansions to existing nurseries and utilising existing vacant Class E buildings.
5. The submitted feasibility report, if taken at face value, raises the issue of why other sites in other boroughs have not been explored in line with the findings of the feasibility study.
6. No clear and convincing evidence has been submitted by the applicant to demonstrate that there is a local need for the proposed development or that there are no other suitable sites available.

Overall, it is considered that the applicant has not sufficiently applied the sequential test. The Council maintains its position that if the sequential test would have been applied to an adequate or exceptional standard that the development is unlikely to have passed.

Furthermore, it is considered unlikely that the site would be able to pass the exception test, in the unlikely event a sequential test is passed.

Open Space

Public Open Space in the Local Plan: Part 1 is defined as all open spaces of public value, including not just land, but also areas of water such as rivers and canals which offer important opportunities for sports and recreation and can act as visual amenity. The definition also covers a broad range of types of open spaces within the borough, whether in public or private ownership and whether public access is unrestricted, limited or restricted.

The London Plan (2021) defines open space as:

'all land in London that is predominantly undeveloped other than by buildings or structures that are ancillary to the open space use. The definition covers the broad range of types of open space within London, whether in public or private ownership and whether public access is unrestricted, limited or restricted.'

It is considered that the application site should be defined as open space and as such it is considered that the policies relating to open space within the Development Plan are relevant.

Policy G4 of the London Plan outlines that the development proposal should not result in the loss of protected open space. In this regard, it is noted that the proposed development would result in the loss of a protected open space, as the site meets the definition held within the the Local Plan: Part 1 and 2 and triggers the associated protective policies.

Policy EM4 of the Local Plan: Part 1 states that the council seeks to safeguard, enhance and extend the network of open spaces and informal recreation. The policy also sets out that *'there will be a presumption against any net loss of open space in the Borough'*.

The Local Plan: Part 2, policy DMCI 3 outlines that:

'development of private open space is not permitted where there would be a significant individual or cumulative loss of open space/open aspect and/or where there would be a significant impact on amenity, character and appearance, biodiversity, ecological connectivity, cooling effect and/or flood alleviation effect.'

In addition to this, paragraph 7.28 of the Local Plan: Part 2 states that the Council will seek to protect open space provision in the Borough. Overall, it appears that the applicant has not provided any information and evidence with regard to the definition of the existing space. The applicant has however set out in paragraph 2.6 of the design and access statement that:

'the site is a vacant site situated on the corner of Fore Street and High Road, Eastcote. It lies behind a small area of public open space and is bound by the river Pinn to the northwest and the petrol station at Eastcote to the northeast. The site perimeter contains multiple TPO trees and vegetation which screen the site from public view. The site is private land and has never been in public use'.

Furthermore, in paragraph 6.23 of the design and access statement the applicant sets out that:

'it is the hedges and mature trees or key features that directly contribute not the semi-rural character and not the private open space within the site – which is hardly visible

from the public street-scene. Overall, the character of the area is that of a high-quality suburb dominated by open spaces, extensive natural landscaping and trees’.

In this paragraph the applicant has argued that the application site is considered private open space. However, overall, it is not clear how the proposal would comply with Development Plan policies, including Policy EM 4 of the Local Plan: Part 1 (2012), Policy DMCI 3 of the Local Plan: Part 2 (2020) and Policy G4 of the London Plan (2021).