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# Appeal Decision

Site visit made on 7 October 2011

by **C J Leigh** BSc(Hons) MPhil(Dist) MRTPI

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

Decision date: 26 October 2011

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**Appeal Ref: APP/Q1445/A/11/2156318**  
**3 Scott Road, Hove, East Sussex, BN3 5HN**

- 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 Lisa Southon, against the decision of Brighton and Hove City Council.
  - The application Ref BH2010/02383, dated 26 July 2010, was refused by notice dated 6 May 2011.
  - The development proposed is described as 'to extend the childminding services from 9 to 18 children between 8am and 6pm Monday – Friday using the ground and first floor, the second floor will be used as a self-contained residential unit'.
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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issue in this appeal is the effect of the proposed development on the living conditions of adjoining occupiers, with particular reference to noise and disturbance.
  3. The property currently has permission for use of the ground floor as a Day Nursery between 8.00am and 6.00pm Monday – Friday, with the property being used as a dwelling at other times, and a condition restricting the number of children to 9 (granted permission in January 2010, ref. BH2009/02405). The submitted drawings in this appeal show the first floor in childcare use, the ground floor and garden to be used for childcare in the daytime, and the self-contained flat having a kitchen, bathroom and bedroom area. The hours of childcare are to be unchanged, with an increase in children at the property to 18.
  4. The appellant has undertaken an acoustic report to determine background noise levels. This was taken during a period of children playing in the premises and, based on this report, the appellant submits that adequate acoustic mitigation measures could be undertaken to ensure no noise transfer and consequently no disturbance to neighbouring properties. However, I share the concerns of the Council's Environmental Health Officer that the short measurement period has not covered the typical and inevitable noise of children during the day that one might expect at a property used to this degree for childcare: crying, banging, shouting, music, singing, screaming, etc. These types of noise can be particularly intrusive and unpredictable throughout the hours of operation for the business, and evidence from neighbouring residents
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explains that there is currently disturbance and intrusion from such noise within their homes throughout much of the day.

5. The proposals would see the first floor of the property used for childcare and, since this area adjoins what would be expected to be quiet rooms of the neighbouring houses, it is important to ensure there would not be unreasonable noise transmission to the these properties. The evidence submitted does not provide reassurance that the typical noise arising from the use of the property for childcare to the degree proposed could be adequately mitigated to provide the level of quiet internal environment to which the neighbours in the terrace are entitled; the location of the terrace close to commercial properties does not diminish the fact that a quiet internal environment can be expected by occupants.
6. Furthermore, the increased use of the premises for childcare, particularly at first floor, would lead to increase in noise from children during the summer via open windows at first floor, which may be heard in the garden or in adjoining properties that also have their windows open. As pointed out by the Environmental Health Officer, that matter is not assessed in the submitted acoustic report. Again, neighbouring residents inform me that the current use of the property leads to noise from the premises. Based on the information submitted the noise is likely to increase through a more extensive, and intensive, use of the premises for childcare. This would be appreciable from neighbouring gardens and within properties, to the determinant of living conditions.
7. I understand that not all the children will be outside in the garden at any one time and, based on the submitted evidence and observations at the site visit, it is likely that any increase in the activities in the garden will be little greater than currently exists with the lawful permission. Thus, noise from garden play is unlikely to be materially different to at present.
8. Despite my comments above relating to the use of the garden, it is the increase in noise arising from the wider use of the premises for childcare and the more intensive use of the property that leads me to conclude the proposed development would lead to an increase in noise and disturbance for adjoining occupiers. This would be to the determinant of their living conditions, and so conflict with Policies SU10 and QD27 of the Brighton and Hove Local Plan 2005, which seek to protect the amenity of existing residents and to minimise the impact of noise on the occupiers of neighbouring properties.
9. I note the demand for childcare in the area and the support for the proposal. I also note the granting of permission for other facilities. However, I have determined this proposal on its own merits and, for the reasons given, found that the harm arising on the main issue outweighs other matters. The appeal is therefore dismissed.

*C J Leigh*

INSPECTOR