The Planning Inspectorate

Appeal Decision

Site visit made on 29 November 2016

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 19 December 2016

Appeal Ref: APP/N2739/W/16/3158099
Land forming part of the curtilage of Lumby Hall, , Butts Lane, Lumby, Selby LS25 5JB

- 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 Liam Condon against the decision of Selby District Council.
- The application Ref 2015/0289/COU, dated 16 March 2015, was refused by notice dated 9 March 2016.
- The development proposed is use of land for residential and a function and events venue

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal relates to the change of use of an existing building. Events have been held within the building in the past. However, the appeal documents indicate that the site has not been used for events since March 2016. I will thus treat the appeal scheme as a proposed change of use.

3. The appellant has submitted an additional plan with the appeal statement Existing and proposed Ceiling Plans (Drawing no. 11142-DB3-B01-GF-DR-A-20-01) that shows the type of sound proofing that could be deployed to the roof of the appeal building. As the Council has made comments on this drawing and the content of the appeal statement to which it relates, I am satisfied that my consideration of it would cause no prejudice to any party in my assessment of the appeal.

Main Issues

4. The appeal site is within the Green Belt, consequently, I consider the main issues to be firstly, whether or not the proposed development would be inappropriate development for the purposes of national and local policy; secondly, the effect of the development on the character of the area; and thirdly, the effect of proposed development on the living conditions of the occupants of adjacent residential buildings at The Mews and Cass Lane Cottage in terms of noise and disturbance.

Reasons

The appeal site, surroundings and proposal

5. Situated at the edge of Lumby, a small settlement of a deeply rural character clustered around Butts Lane, and the lanes that run from that, the appeal building is a large stone-clad, steel-framed garage structure with a pitched roof covered in lightweight roof panels. The appeal building is adjacent to Lumby Hall a substantial house in its own grounds, and a portion of it adjoins the flank, and part of the rear wall of 4 The Mews to the rear.

6. The wider surroundings of the appeal building and its host property are with the exception of the dwellings to its north and east principally open agricultural fields. Buildings within Lumby are in the main residential with some agricultural structures and uses also abutting Butts Lane. Its lanes are narrow and winding.

7. The appeal scheme would see the change of use of the appeal building to provide an events space. Documents indicate that this would be used for around 20 events a year such as weddings and christenings for between 80 and 100 guests. Live and recorded amplified music would be an integral element of the use and the appeal building already benefits from a licence for the use of the premises from 10am until 1am. A service area facilitating this use would be provided in a yard to the side of the space with staff parking in an area immediately in front of that. 50 temporary car parking spaces would be provided on either side of the long drive which accesses Lumby Hall and the appeal building. The entirety of the property would remain in residential use when not being used for events.

Whether or not inappropriate development

8. The appeal site is within the Green Belt. The National Planning Policy Framework (the Framework) establishes that the Government attaches great importance to retaining the openness and permanence of Green Belts. With limited exceptions the construction of new buildings is inappropriate within the Green Belt. The proposed use would take place within an existing building and its grounds with no other proposed extensions or developments. Whilst the proposed development would increase the amount of parked vehicles on the site, this would be temporary, and would not lead to a material depletion of the Green Belt's openness. Consequently, as the proposed development would preserve the openness of the Green Belt, and not conflict with its purposes it is common ground between the appellant and Council that it would meet the exception given in paragraph 90, bullet 4 of the Framework, namely "the re-use of buildings provided that the buildings are of permanent and substantial construction". Thus the appeal scheme would not comprise inappropriate development for the purposes of Green Belt policy expressed in the Framework, no relevant development plan policies have been brought to my attention in this regard.

Character

9. Whilst the proposed development would have only a minimal effect on the appearance of the area, arising chiefly from cars parked in the temporary spaces, its effects on the settlement's character go beyond the merely visual effects of the proposal. I conducted my site visit in the mid-morning. At this

time, whilst the distant hum of traffic was a constant background noise, this blended into the otherwise quiet rural environment of Lumby and its surroundings. Traffic was extremely light through Lumby itself, and the most predominant noises were birdsong, the occasional vocalisation of a sheep, and the sound of some limited construction activity in the middle distance. My findings in this regard are lent weight by the observations of the Council, which also found that the very limited background noise in the village gave it an intrinsically quiet rural character. Whilst the hum of the A roads in the surroundings of the site mean that during the day the settlement falls outwith the definition of tranquil for the purposes of the Framework and the Government's Planning Practice Guidance (PPG), the lack of significant commercial, industrial or leisure premises and uses in its vicinity would tend to limit human created sound within the environment, particularly at night.

10. The proposed use would introduce a considerable amount of additional activity in and around the appeal building both during the day, but more critically during the night and early morning, affecting a substantial proportion of weekends in the year. This would include, but not be limited to, the arrival of staff; the making of deliveries; activity with unloading deliveries in the service yard at the rear; the arrival of guests, which would be predominantly by car due to the remoteness of the location; and the sound of the events themselves. At the end of an event, the dispersal of guests and staff would be another source of sound, including voices, car doors opening and closing, and the sound of engines.

11. Taken together, these additional and substantial sources of noise would harm the surrounding noise environment and character of the settlement, to the detriment of its amenity and thus would conflict with Policies SP13 D and SP15 of the Selby District Core Strategy (adopted October 2013) (the Core Strategy); and Policies ENV1 and EMP 8 of the Selby District Local Plan (adopted February 2005) (the Local Plan). Taken together, and amongst other matters, these Policies seek to ensure that new economic developments in rural areas are sensitive to the character and quality of the surrounding local environment, and are consistent with the objective of the Framework given at paragraph 17 that planning should recognise the intrinsic character of the countryside.

Living Conditions

12. The appellant submitted a Noise Impact Assessment (the Assessment) with the planning application that led to the appeal that considered the effects of the use of the venue on 4 The Mews and Cass Lane Cottage. The Assessment was based on the Noise Council document *Code of Practice on Environmental Noise Control at Concerts* (the Code).

13. In terms of 4 The Mews, however, I am not persuaded that the Code is directly relevant to the proposed development as it makes clear in its introduction that "This Code is not designed to address the question of environmental noise arising from discotheques, clubs and public houses, nor environmental noise affecting noise sensitive premises which *are structurally attached the venue"* (my emphasis). Moreover, the noise assessment focussed on the effects of the internally generated noise from the appeal building, and contained no explicit consideration of the effect of traffic noise, use of the service yard or general comings and goings from the venue.

14. Whilst I note that in another case within the district that the Council accepted the use of the Code in terms of the assessment of noise effects, there are clear material differences between that proposal and the appeal scheme, not least that the other proposal is located in a town centre with a generally louder existing noise environment, and the building concerned is not structurally attached to a dwelling.

15. I note too that even within the parameters of the Code, Note 5 of Table 1 makes clear that for indoor venues used up to about 30 events per year that a music noise level (MNL) not exceeding a background by more than 5dB(A) over a fifteen minute period is recommended for events finishing no later than 2300. Events at the appeal building would finish at 1am. Moreover, the Assessment found in the case of the monitoring location closest to 4 The Mews that the noise breakout would exceed the background level by around 5dB (A). Furthermore, noise measurement location 3 is a considerable distance from 4 The Mews, and thus I consider that the 'No Event Background' recorded there to be of less relevance than the levels recorded at the property itself by the Council.

16. I have had regard to the findings of the Sound Insulation Tests (the Tests) document submitted with the original planning application. This establishes that the relevant requirements of the Building Regulations, as expressed in Approved Document E- Resistance to the Passage of Sound are met in the party wall between the appeal building's WCs and 4 The Mews. I am conscious that the Council considers that this document does not apply to this proposal. In any event I can find no substantive evidence in the Tests document to suggest that the portion of party wall between the proposed main events space and No 4 has been subjected to a similar test. Neither does the document address the potential for noise breakout through the appeal building's roof, which due to its extremely close relationship with No 4, and the lightweight nature of its cladding could be a medium through which sound between the two properties travelled.

17. Given the lightweight nature of the appeal building's roof and its proximity to No 4 particularly its bedroom window, the potential for music noise to cause significant disturbance to the dwelling's occupiers within both the dwelling's habitable rooms and its garden are considerable. In this regard data recorded by the Council in the garden of No 4 is more persuasive in these terms than the observations from the monitoring points given in the Assessment. This data showed that the difference between the no event background level in the garden of 33 dB, and the event MNL of 50.9 dB would at 17.9 dB be considerable, and in excess of both of the thresholds suggested in the Code.

18. Whilst I had regard to the proposed roof insulation measures included with the appeal documents, I have been supplied with no substantive evidence to suggest what level of mitigation would be delivered by these, and how this could address the harm that would be caused to the occupiers of No 4. As a result I attach only limited weight to their content in my assessment of the appeal scheme as it is not clear whether a good standard of amenity could be achieved as a result of the measures.

19. Moreover, the Council in its observations noted noise in the service area, including a number of bottles being tipped into a receptacle as being particularly noticeable. I saw that the proposed service area was in a close

physical relationship to 4 The Mews and consequently noise arising from its use would be likely to exacerbate the harmful effects the proposed development would cause to the living conditions of the occupants of No 4.

20. Taking these matters together, and combined with evidence from the occupiers of No 4 that their behaviour has changed as a result of former uses of the site for events, including closure of windows, and spending weekends away when events were on, I consider that the proposed development, in holding 20 events a year would be likely to affect a considerable proportion of weekends, the noise and disturbance of which would cause cumulative and substantial harm to the living conditions of the occupants of No 4 in this regard.

21. In terms of Cass Lane Cottage, the noise measurement location chosen as a basis for the Assessment was sited at a distance from that dwelling and close to the roadside. Thus passing traffic, which would be more audible from the measurement location than from within the grounds of Cass Lane Cottage or the dwelling itself, could have influenced the recorded 'No Event Background Level'. Consequently, in these regards, the Assessment does not conclusively establish that a lack of harm would occur to the occupants of Cass Lane Cottage in terms of noise and disturbance from the events venue itself.

22. Moreover, the potential for disturbance for the cottage's occupiers arising from the comings and particularly goings of event attendees is considerable. Due to the proposed closing time for events, the dispersal of guests and staff, and the comings and goings of taxis are likely to be ongoing for a considerable time after one o'clock, with the concomitant closing of car doors, sound of engines, and voices of around 80 to 100 guests. These noises cumulatively and taken together would be significantly in excess of the background noise at the early hours of the morning and a source of considerable disturbance to the occupiers of Cass Lane Cottage, which would be of harm to their living conditions. Whilst I am cognisant that the appellant would encourage guests and others to exit the site to the right, and thus avoid Lumby more generally, this would be difficult to enforce, and would not, in any event, reduce the amount of noise and disturbance to the occupants of Cass Lane Cottage to any material degree.

23. For the reasons given above, due to the harm the proposed development would cause to the occupants of 4 The Mews and Cass Lane Cottage through noise and disturbance, it would conflict with Policy SP19 (k) of the Core Strategy ; and Policy ENV 2 of the Local Plan. Taken together, and amongst other things, these policies seek to ensure that new development avoids harmful effects to the living conditions of the occupiers of adjacent dwellings. These policies are also broadly consistent with the Framework, insofar as it requires planning to seek to ensure good standard of amenity for all existing and future occupants of land or buildings, and to ensure that new development avoids noise that would have significant adverse impacts to quality of life.

Other Matters

24. The proposed use would generate some employment. The appellant suggests that this could create up to 20 part-time staff to support events. However, given the number of events proposed, I am not persuaded that the number of hours available to potential employees over the course of a year would be of a magnitude to weigh in favour of the proposed development to anything but a modest degree. A lack of more substantive evidence in these regards further limits the weight I attach to this matter in the overall planning balance.

25. It may be in the interests of organisers of events to maintain the attractive visual environment around the Lumby Hall to encourage its use. However, in this respect this is merely indicative of a lack of harm in these regards, and in the overall planning balance, would clearly be outweighed by the considerable harm to the character of the appeal site's surroundings caused by the noise created by the events.

26. I am aware that the appeal building has been used to host charity events in the past, and that, as the area is lacking in community facilities more generally that such a use is welcomed. However, the proposal before me is of a different scale and degree to previous uses of the building. Each planning proposal has to be considered on its own merits, and I have found that in this case, the harmful effects caused by the proposed use would be contrary to local and national planning policies.

27. Similarly, whilst Lumby Hall may have had domestic staff and hosted parties in the early twentieth century, I have no substantive evidence to suggest that the effects of these in terms of noise and disturbance would be comparable to the proposed development.

28. Whilst I note responses regarding the quality of the events generally, the attractiveness of the venue, and the competence of the staff and management, these matters would not outweigh the substantial harms that the proposed use would cause.

29. I note that sewerage and highways safety matters could be dealt with adequately by way of conditions. Moreover, correspondence from the Environment Agency suggests that there would be no necessity to attach conditions in respect of drainage. However, the potential lack of harm caused by the proposed development in these regards would not outweigh the considerable harm that it would cause to the area's character, and the substantial harm to the living conditions of the occupiers of adjacent property.

30. I am aware of the appellant's intention to exercise permitted development rights to erect a marquee within the appeal property's grounds should this appeal be unsuccessful. However, I have been supplied with no substantive evidence in the form of a lawful development certificate to suggest that such an operation would indeed be permitted development, or whether related changes of use such as car-parking and so forth would be necessary to facilitate the use. Moreover, as there would be a material difference in the quality and offer of an event held in a marquee as opposed to one within a more substantial building, I consider that this would not constitute a realistic alternative to the proposed development. For these reasons, I am not persuaded that this proposal would constitute a genuine fallback scheme, and thus attach only limited weight to it in the overall planning balance.

31. I have had regard to the appellant's comments that the Council's environmental health and housing officers are not qualified to determine noise matters. However, I note that within the officer report on the scheme that the officers that undertook investigations near the site are both experienced and have relevant qualifications.

Conclusion

32. Whilst the proposal would not constitute inappropriate development in the Green Belt for the purposes of the Framework, this is a matter of only neutral weight. It is thus clearly outweighed in the overall planning balance by the harm that the proposed development would cause to the living conditions of the residents of adjacent and adjoining dwellings, and to the character of its surroundings.

33. The noise and disturbance of the proposed development would cause considerable environmental and social harms, matters to which I attach substantial weight in the overall planning balance. Consequently, these harms would clearly and demonstrably outweigh the proposed development's modest economic and social effects. In this way the proposed development would not comprise sustainable development for the purposes of the Framework, or Policies SP1, SP13 (c), or SP15 of the Core Strategy and would also conflict with the other policies of the development plan insofar as they have been brought to my attention. As no material considerations would outweigh this conflict, I conclude, for the reasons given above, and having regard to all other matters raised, that the appeal should be dismissed.

G J Fort

INSPECTOR