
Appeal Decision

Site visit made on 13 December 2016

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 30 December 2016

Appeal Ref: APP/B1550/W/16/3155848

Fitzwimarc Secondary School, 72 Hockley Road, Rayleigh Essex SS6 8EB

- 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 the Fitzwimarc School against the decision of Rochford District Council.
 - The application Ref 15/00321/FUL, dated 15 May 2015, was refused by notice dated 7 March 2016.
 - The development proposed is construction of an external 3G artificial turf pitch (ATP) with fencing, floodlighting and a storage container.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have used the name of the school as the appellant in the heading above, as this is used on the decision notice and the appeal questionnaire.

Main Issue

3. The main issue is the effect of the development on the living conditions of occupiers of neighbouring dwellings with particular regard to noise and disturbance, and artificial light.

Reasons

Noise

4. The appeal site is a very large rectangular playing field located between buildings of Fitzwimarc school on its western side, and the rear gardens of dwellings on Ruffles Road, Victoria Road, Helena Road, Graysons Close and Mill Field Close, and the frontages of dwellings on Byford Close, on its other three sides. There are two trees protected by Tree Preservation Orders located within the field, which on the occasion of my visit also contained markings and goals for a rugby pitch, two football pitches and as well as permanent athletics facilities.
 5. When I visited the site a small group of children was active on the rugby pitch in the south-west corner of the site, playing on the half of the pitch closest to the school. Standing adjacent to the rear garden boundaries of dwellings on Helena Road, I could clearly hear the instructions to the children and the noise of the whistle was particularly shrill. When the pitch was no longer in use,
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there was very little ambient noise, and I could hear only birdsong. However, I recognise this is a snapshot in time.

6. The development would comprise the construction of a sports pitch with floodlighting to allow use outside daylight hours, and which could house up to four mini pitches for younger players or one full-sized pitch for older players and adults. One of the aims of the development is to facilitate use in the evenings and throughout the winter¹ so that the facility reaches its full potential, from which statement I deduce that the hours of use of the playing field would significantly increase.
7. The Council refused permission on the grounds of the proposed increased use and the associated noise and disturbance. The hours of use would be 0800 – 2200 hrs Monday to Friday, 0800 – 2000 hrs on Saturdays and 0900 – 2000 hrs on Sundays and Bank Holidays². The school's projected timetable³ indicates that for 32 weeks between August and April, there would be a fairly consistent use of all four mini pitches every weekday evening up to 2100 hrs, with less frequent use up to 2200 hrs. Weekend use in this period is projected to be mainly between 1000 hrs and 1700 hrs. The projected use for the summer and holiday period is less intensive, but has a similar spread across the day.
8. However, whilst I recognise that these are projected timetables, the hours of allowed use in planning terms would be as I have outlined above; there would be no planning mechanism to restrict use to the times outlined in the projected timetable, were the appeal to be allowed.
9. Planning Policy Guidance⁴ (PPG) requires decision making to take account of the acoustic environment as outlined in the Noise Policy Statement for England (NPSE). This identifies levels of perception and the outcomes of those perceived noise levels on health, behaviour and quality of life for the receptors. The levels of effect range from no observed effect to significant observed adverse effect, and the NPSE also states that it is not possible to have one single objective noise-based measure to define these effect levels as they are likely to be different for different noise sources, for different receptors and at different times. The PPG also outlines a noise exposure hierarchy linked to the observed effect levels, which identifies specific examples of behaviour and attitude along a continuum of increasing noise.
10. There are quantitative guidelines to use for noise assessment in both the British Standard⁵ (BS) and from the World Health Organisation⁶. The BS states that levels of steady external noise sources in amenity spaces should not exceed 50 dB $L_{Aeq,T}$ ⁷. The acoustic report⁸ notes that a level of 50 dB $L_{Aeq,T}$ is considered moderately annoying by the WHO in outdoor living areas. Within dwellings, the WHO criteria suggest that to enable casual conversation, external noise levels should be no more than 50 dB $L_{Aeq,T}$ 1 metre from the building's façade.

¹ Design and Access Statement

² These are the hours agreed were the appeal to be allowed, Statement of Case 4.16

³ Statement of Case, Tab 12

⁴ Ref ID 30-004-20140306

⁵ BS 8233:2014

⁶ Guidelines for Community Noise

⁷ There is an upper level of 55 dB $L_{Aeq,T}$ used for noisier environments but given the low levels of ambient noise I experienced on my visit, I consider the lower level to be more appropriate.

⁸ Acoustic Consultants Limited, February 2015, Table 1

11. The appellant has provided modelling to estimate the levels of noise likely to be experienced by occupiers of nearby dwellings when the pitch was in use. This indicates that the estimated noise levels within the gardens, and extending to almost all of the dwellings bounding the site, would be between 45 – 50 dB $L_{Aeq,(1\text{ hour})}$. The acoustic report also notes that there is an error margin of some 3 dB $L_{Aeq,(1\text{ hour})}$ in the modelling. The modelling, including the error margin, indicates that estimated noise levels in adjoining gardens would be likely to approach and possibly slightly exceed the 50 dB $L_{Aeq,(T)}$ threshold given in the BS and noted as being moderately annoying by WHO.
12. The WHO threshold for outdoor noise levels to enable sleeping indoors with the windows open is 45 dB $L_{Aeq,(T)}$. As the projected level for indoor noise levels is measured by deducting 15 dB $L_{Aeq,(T)}$ ⁹, I conclude that people sleeping when the pitch was in use would experience noise levels of 35 dB $L_{Aeq,(T)}$, which is in excess of the WHO guidelines for bedrooms, at 30 dB $L_{Aeq,(T)}$. Although I recognise that the use of the pitch would be restricted beyond 2200 hrs on weekdays, small children are likely to be in bed earlier, as are shift workers.
13. As such, I conclude that the noise levels likely to be generated would be very close or slightly above the recommended maxima given in the BS and WHO, and above the WHO threshold for nights.
14. Furthermore, modelling cannot measure the qualitative effect on receptors of the unpredictability of noise associated with a sporting event which would combine voices, whistles and the impact of balls on boundary surfaces, albeit dampened. In addition, the PPG shows that the annoyance associated with noise is a continuum and increases as noise increases. Consequently, I disagree with the conclusion of the acoustic report that the development would be acceptable because sound levels would be below given BS and WHO thresholds. The modelling shows that the projected noise levels could be very near or slightly above the thresholds, which would indicate to me that annoyance levels would be close to, or at a moderate level. I appreciate that the appellant notes that the estimates given in the modelling are pessimistic. Nonetheless, this is the data before me.
15. The existing use of the playing fields will generate noise, and occupiers of nearby dwellings will be used to similar noise levels to those predicted. However, the appellant states that current levels of use are modest, whereas the development proposed could generate noise continuously for up to 16 hours per day in the week, including after dark, and for 11 hours per day on Sundays. In the summer months, when residents are more likely to be using their gardens, this would be particularly irritating, especially given the underlying low level of ambient noise when the playing field is not in use.
16. Consequently, I conclude that the current level of noise and disturbance, necessarily limited by daylight hours, would not be as acceptable to occupiers of nearby dwellings when extended across considerable periods of time on a daily basis, and after dark. Furthermore, the unpredictable nature of the noise, would perhaps be more annoying than a steady state and predictable level of noise. Given that the modelling shows that that noise levels could approach or even exceed a level recognised as causing moderate annoyance, I am not satisfied that this is acceptable for prolonged periods of time.

⁹ Acoustic Report, 4.1

17. Whilst the noise levels would not be sufficiently high to have a significant observed adverse effect, where health is affected, I conclude that the development would change the acoustic character of the area and would have the potential to cause small changes in behaviour such as closing windows, not sitting in the garden, or speaking more loudly. This would constitute an observed adverse effect. The recommended planning action in this case is mitigation and reduction. A small adjustment to the proposed hours of use was agreed during the original application. However, I am not satisfied that such a reduction would be sufficient to mitigate the effects of the development particularly as the noise and disturbance would extend beyond the actual hours of operation to allow for users to arrive and disperse, as well as setting up and removing equipment. Furthermore, there would be a significant number of dwellings and residents affected by the development.
18. To conclude, whilst I appreciate that occupiers of dwellings adjacent to the playing field are subject to a level of noise and disturbance at the current time, the hours of use would be significantly increased. This would be likely to cause irritation and annoyance beyond a level I consider reasonable, which would be to the detriment of the living conditions of those occupiers.
19. The evidence before me indicates that two earlier applications for artificial pitches, including one which went to appeal, had a condition imposed prohibiting the use of floodlighting in order to restrict hours of use¹⁰. Since that appeal more houses have been built on the site's boundary at Millfield Close. I conclude that there has been a consistent concern on the part of the Council and a previous Inspector, that extended hours of use of the playing field would have a detrimental effect on the living conditions of occupiers of nearby dwellings. I see no reason to disagree with those views in this instance.
20. The Council's decision notice cites Policy DM1 (ix) of the Local Plan¹¹ (LP) with regard to noise and disturbance, but this states that development must address overlooking, ensure privacy and promote visual amenity. These issues are not of relevance to this appeal. However, the development would be contrary to one of the core planning principles enshrined in Paragraph 17 of the National Planning Policy Framework (the Framework) which states that planning should seek to ensure a good standard of amenity for all existing and future occupants of land and buildings.

Lighting

21. LP Policy DM5 states that development should refer to environmental zone within which a development is proposed when considering lighting, and minimise the impact of light pollution on residential and commercial areas. The policy states that areas located within development boundaries, as in this case, are classified as Environmental Zone 3. Light trespass into windows in this zone is required to be below 10 Ev (lux).
22. The evidence before me indicates that light trespass for all the dwellings adjacent to the playing field would be 2 Ev (lux). As such, the development would comply with the policy's recommendations by a significant degree and would not be contrary to LP Policy DM5 (iii) which requires consideration to be

¹⁰ Council's Statement of Case, Section 5.3

¹¹ Rochford District Council, Development Management Plan, adopted December 2014

given to local residents. The evidence before me also indicates that floodlighting proposed would meet the criteria set by the Campaign for Dark Skies.

23. Consequently, I find no harm in respect of floodlighting associated with the development. I appreciate that some occupiers of nearby dwellings may be particularly sensitive to light but even with the floodlights on, the light levels would be considerably lower than those of a summer's evening and I conclude that to address those situations, measures such as black-out curtains would need to be in place anyway.

Other matters

24. Some representations have raised a concern with regard to the protected trees sited on the playing field. However, a retaining wall would be used in place of an embankment to avoid encroachment into the root area of the tree closest to the proposed pitch. Were the appeal to be allowed, I am satisfied that conditions could be imposed to mitigate the effects of the development and as such I do not consider this to be of particular concern.
25. The Council has included a suggested condition to require a community use agreement to be drawn up to ensure community access is secured. However, there is nothing in the evidence before me to indicate that this would be secured by a Section 106 agreement and as such, it is not something I can take into account.
26. A proportion of third party representations have supported the scheme, and I acknowledge that it would provide a high quality all-weather facility for both school and community use. However, the Council's survey of local facilities¹² indicates that whilst mini and junior football pitches are in short supply in Rayleigh at peak times, there is a surplus of adult pitches at those times and the survey concludes that those adult pitches could be re-designated and refurbished to accommodate the demand from younger players. Although the survey also notes that generally there are insufficient outdoor sports facilities in Rayleigh, the development would primarily address the needs of football. Consequently, I conclude that there is not a significant undersupply of football facilities in Rayleigh and whilst this is not a determinative factor, it reinforces my concern in relation to the increased and changed nature of use of this particular playing field.
27. A concern has also been raised in respect of surface water flooding. The appellant has proposed bunding to collect surface water and although I am not entirely satisfied that this would provide a continuous barrier, particularly in the area of the protected trees, it could be addressed through condition, were the appeal to be allowed. Furthermore, the Council is satisfied that the development would not exacerbate or add to local flooding issues. As such, I see no reason to disagree with the Council in this regard.
28. Third parties have also raised the potential for bad language. I acknowledge that the behaviour of people using the pitch is not a material planning concern, but it reinforces my view that local residents would experience disturbance and annoyance beyond what would be considered reasonable limits. Although the

¹² Rochford District Council Playing Pitch Strategy, Supplementary Planning Document, April 2012

appellant notes that a Code of Conduct would be drawn up, it would be difficult to enforce.

29. I appreciate that the development will provide a specialist sports facility for use by the school and the community, and that there will be benefits in terms of health and sociability for those using the facility. However it is evident that its use is primarily aimed at those who enjoy football, and the pitch surface would not be necessarily be suitable for other sports. The appellant argues that the economic benefits of the pitch would include increased employment in the area. However, there is no further evidence to support this assertion and as such I give it little weight.
30. The appellant argues that foliage has not been taken into account when estimating the likely levels of noise. However, my experience is that foliage is not an effective acoustic barrier and as such I give this argument little weight.
31. Paragraph 7 of the Framework states that there are three dimensions to sustainable development, social, economic and environmental. Whilst I concur that there would be some limited social and economic benefits for those individuals using the pitch and benefitting from any associated revenue streams, these benefits would not outweigh the harm to occupiers of nearby dwellings with regard to the increased exposure to noise and disturbance.
32. The appellant has argued that Members' grounds for refusal are weak and I agree that there is limited analysis of the technical data supplied. However, a decision notice has been issued that sets out the Council's concerns and its relevant policies, and which has allowed me to identify the key issues. Consequently, I give this argument little weight.

Conclusion

33. For the reasons given above and taking all matters into account, I conclude that the development would be contrary to the relevant policies of the Council's Local Plan and that therefore the appeal should be dismissed.

Amanda Blicq

INSPECTOR