
Appeal Decision

Site visit made on 20 December 2016

by Michael Boniface MSc MRTPI

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

Decision date: 12th January 2017

Appeal Ref: APP/Z1510/W/16/3158483

Rivenhall Oaks Golf Centre, Forest Road, Witham, Essex, CM8 2PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Mr Simon Brice against Braintree District Council.
 - The application Ref 16/00245/VAR is dated 12 February 2016.
 - The application sought planning permission for operational development comprising new tees, greens, mounds, bunkers and lakes to facilitate a revised golf course layout; clubhouse extension to accommodate reception, function/event room, office and associated floor space; car park extension, adventure golf facility; hardstanding for turning head and all ancillary development without complying with a condition attached to planning permission Ref 15/00926/FUL, dated 11 January 2016.
 - The condition in dispute is No 10 which states that: *No external lighting shall be provided at any part of the Golf Course including the Adventure Golf Course. Details of any additional lighting proposed in association with the extended club house and car park shall be submitted to, and approved in writing by, the local planning authority prior to installation. The details shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles, luminaire profiles and energy efficiency measures). All lighting shall be installed, maintained and operated in accordance with the approved details. There shall be no other sources of external illumination.*
 - The reason given for the condition is: *To minimise pollution of the environment and to safeguard the amenities of the locality and the appearance of the development.*
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Decision

1. The appeal is allowed and planning permission is granted for operational development comprising new tees, greens, mounds, bunkers and lakes to facilitate a revised golf course layout; clubhouse extension to accommodate reception, function/event room, office and associated floor space; car park extension, adventure golf facility; hardstanding for turning head and all ancillary development at Rivenhall Oaks Golf Centre, Forest Road, Witham, Essex, CM8 2PS in accordance with the application Ref 16/00245/VAR dated 12 February 2016, without compliance with condition number 10 previously imposed on planning permission Ref 15/00926/FUL dated 11 January 2016 but subject to the other conditions imposed therein (and set out in the attached Schedule), so far as the same are still subsisting and capable of taking effect, and subject to the new condition 10 contained in the attached Schedule.

Application for costs

2. An application for costs was made by Mr Simon Brice against Braintree District Council. This application is the subject of a separate Decision.

Background

3. The appellant seeks to amend the wording of condition 10 so as not to preclude external lighting at the adventure golf course and to refer to comprehensive lighting details for that area, along with the extended club house and car park. A minor change is also suggested to avoid ambiguity in respect of existing external lighting on the site.

Main Issue

4. The main issue is the effect of replacing condition 10 on the character and appearance of the area, with particular regard to light pollution.

Reasons

5. Condition 10 was attached to the original planning permission to ensure that inappropriate external lighting was not installed at the site, in the absence of any detailed lighting specifications accompanying the application. This application now contains a comprehensive lighting scheme for the site. The Council raises no objection to the car park, club house and adventure golf course being lit subject to an appropriate specification. It also confirms that there are no outstanding concerns with respect to neighbours' living conditions or ecological interests.
6. The proposed lighting scheme involves modern LED lighting that would be attached to lighting columns surrounding the car park area and adventure golf course, at a height of 6m and 5m respectively. Down lighters are proposed on the external elevations of the building to light the club house. Detailed information has been provided with regards to the means by which light would be directed to the task areas, minimising spillage and the Council accept that the submitted details demonstrate a good level of control of horizontal light spills. It also accepts that, on the whole, the proposed lighting design would comply with the main principles of the Council's external lighting policy.
7. The professional lighting advice submitted by the Council provides a critique of the proposed lighting scheme and suggests a number of areas where improvement might be made. However, much of this is predicated on the assertion that the area might be classified as environmental zone E1 (intrinsically dark). Whilst the site is located in countryside, it is reasonably close to residential development, including a new development under construction off Forest Road. Furthermore, the Council accept that the existing driving range benefits from lighting, as does the existing car park area. Therefore, I am satisfied that the appellant's position in classifying the area as environmental zone 2 is appropriate.
8. A series of recommendations are made to reduce and limit the amount of light on the site but it is unclear what harm is expected to arise from the lighting scheme proposed in the application. The Council acknowledge that there is extensive woodland and hedgerow planting on the site and that the facilities are visually well contained by perimeter planting. In this context, it is difficult to see that the sensitively designed lighting proposed would be harmful to

landscape character, having only very modest and localised effects. This is particularly so, when considering the proposed times at which the lights would be switched off, meaning that light from the adventure golf course would cease at 21.30 and other lighting at midnight when on-site activity ends.

9. Whilst it may be the case that alternative lighting schemes are available and that other mitigation could be incorporated, it seems to me that the proposed scheme has been carefully designed with consideration for impacts on character and appearance, whilst ensuring that the needs of the appellant and the business are met. Under these circumstances, I find no conflict with Policy RLP 65 of the Braintree District Local Plan Review (July 2005) given that the lighting is integral to the scheme, utilises low energy technology, incorporates measures to reduce light spillage whilst providing adequate levels of light for the development and that no harm is anticipated to neighbours' living conditions or natural ecosystems. Nor do I find any conflict with Policies CS5, CS8 and CS9 of the Local Development Framework Core Strategy, which seek to protect the countryside, natural environment and biodiversity and ensure good design that protects and enhances the built and historic environment.
10. I attach very limited weight to Policy LPP 68 of the Draft Local Plan (June 2016) given its early stage of preparation and the fact that it has not been independently examined. The Council itself attaches only limited weight. Furthermore, whilst the Council outlines the criteria at paragraph 216 of the National Planning Policy Framework (the Framework) for when weight might be attached to emerging policies, no evidence is given in relation to matters such as the number and nature of any unresolved objections. The fact that this policy follows a similar policy in the Site Allocation and Development Management Plan, which was also untested, is of little consequence in these circumstances.
11. The principle of the proposed development has already been firmly established by the Council's grant of planning permission and there is no dispute other than in respect of condition 10. Under the circumstances I have set out, it cannot be said that the Council's suggested condition is necessary to make the development acceptable in planning terms and so it fails the tests for conditions contained within the Framework and Planning Practice Guidance. The condition sought by the appellant is appropriate however, ensuring compliance with the submitted lighting scheme, which I have found to be acceptable. I have slightly amended the wording of the condition to ensure its precision and to restrict the hours of operation in line with those sought by the appellant in the interests of certainty and to mitigate the impact of light on the area when the golf facility is not in use. It is not necessary to reference existing lighting on the site, namely the driving range, as this planning permission neither grants permission for the existing lighting nor seeks to prevent it.
12. The Council has provided a list of conditions in the event that planning permission is granted and these generally reflect those attached to the original planning permission, including the time period for commencing development. The wording of a number of the conditions has been altered from the original permission, apparently reflecting the fact that details have been submitted and approved so that the condition is discharged. However, the submitted details are not before me and many of the Council's conditions are ambiguous in that they do not specify the particular documents approved along with any

reference number or date. Some also seek to introduce additional requirements as a result of such information, unrelated to condition 10. Under these circumstances the proposed conditions would not be sufficiently precise to meet the relevant tests discussed above or are unreasonable. Where this is the case, I have attached the condition from the original planning permission. In the event that any condition has been discharged already, this is matter to be resolved between the parties.

13. In light of the above, and having considered all other matters, the appeal is allowed.

Michael Boniface

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 11 January 2019.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 15001_01 Version: D; 20140191-01; 20140191-02 Version: A; 15001_03 Version: D; 15001_04 Version: A; 1245/001; SM/3879; SM3877; ACORNS PAR3 COURSE; OAKS COURSE; ADVENTURE GOLF Version: 04; BARREL Version: 05 A; BOX Version: 02 A; GOLD MINE; RAFT; CAVE; ROCKY RAPIDS; STORY BOARDS; STRUCTURAL SECTION COURSE; STRUCTURAL SECTION WATERSYSTEM; TEPEE; TOTEM POLES; WATER STONE; VISUAL IMPACT ASSESSMENT; PHS 1 & 2 ECOLOGY SURVEY; and ARBORICULTURAL REPORT.
- 3) The external materials and finishes shall be as indicated on the approved plans and/or schedule unless otherwise agreed in writing by the local planning authority.
- 4) No development or preliminary ground works of any kind shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the local planning authority.
- 5) Prior to the use of the development hereby approved a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall incorporate a detailed specification including plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying where appropriate.

All areas of hardstanding shall be constructed using porous materials laid on a permeable base unless otherwise agreed in writing by the local planning authority.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in the first planting and seeding seasons after the commencement of the development unless otherwise previously agreed in writing by the local planning authority.

Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.
- 6) The development shall be carried out in accordance with the approved Tree Survey, Arboricultural Impact Assessment _ Tree Protection Plan listed above, undertaken by Hayden's Arboricultural Consultants dated 15/7/15.
- 7) No tree/scrub removal required to facilitate the proposals shall take place between 1st March and 31st October.

- 8) Prior to the commencement of development, a wildlife protection plan shall be submitted and approved by the local planning authority identifying appropriate measures for the safeguarding of protected species and their habitats. The plan shall include:
- a) an appropriate scale plan showing protection zones where any construction activities are restricted and where protective;
 - b) measures will be installed or implemented;
 - c) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
 - d) capturing and translocation of common lizards and slow-worms away from these areas will be implemented to mitigate injury or destruction. The plan will identify the receptor site. The capture and translocation of animals will be undertaken following best practise guidelines;
 - e) a timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife could be harmed (such as the bird nesting season);
 - f) a person responsible for:
 - (i) compliance with legal consents relating to nature conservation;
 - (ii) compliance with planning conditions relating to nature conservation;
 - (iii) installation of physical protection measures during construction;
 - (iv) implementation of sensitive working practices during construction;
 - (v) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and
 - (vi) provision of training and information about the importance of "Wildlife Protection Zones" to all construction personnel on site.
- All construction activities shall be implemented in accordance with the approved details and timing of the plan unless otherwise approved in writing by the local planning authority.
- 9) Prior to the first use of the golf course once remodelled, as hereby approved, details shall be submitted of the ongoing management arrangements for the area of land indicated on the location plan within the blue line between the outlying edges of the Forest Road Growth Location and the Golf Course will be managed following the completion of the development hereby approved.
- 10) No external lighting shall be provided to any part of the site, except for the Adventure Golf Course, the extended club house and the car park which shall be provided strictly in accordance with It Does Lighting drawings, all numbered. P109-01 and the associated Design Notes, Risk, Energy and Environmental Information. All lighting shall be installed, maintained and operated in accordance with the approved details. The external lighting associated with the Adventure Golf Course will not operate after 21.30. The external lighting associated with the club house and car park will not operate after midnight.
- 11) No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved

Statement shall be adhered to throughout the construction period. The Statement shall provide for the following all clear of the highway:

- safe access to/from the site
 - the parking of vehicles of site operatives and visitors
 - loading and unloading of plant and materials
 - storage of plant and materials used in constructing the development
 - wheel and underbody washing facilities
 - the safe-guarding of Public Rights of Way during construction.
- 12) No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following times:-
- Monday to Friday 0800 hours - 1800 hours
 - Saturday 0800 hours - 1300 hours
 - Sundays, Public and Bank Holidays - no work
- 13) Prior to the occupation of the development the details of the number, location and design of a covered parking facility for powered two wheelers and bicycles shall be submitted to and approved in writing by the local planning authority. The approved facility shall be provided prior to occupation and retained at all times.