
Appeal Decision

Site visit made on 7 February 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 28th February 2017

Appeal Ref: APP/Q2371/W/16/3163195

**Brockholes Nature Reserve , Preston New Road, Salmesbury, Preston
PR5 0AG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by the Wildlife Trust for Lancashire, Manchester and North Merseyside against the decision of Lancashire County Council.
- The application Ref LCC/2016/0029, dated 18 March 2016, was approved on 25 May 2016 and planning permission was granted subject to conditions.
- The development permitted is the construction of a visitors centre to include café, retail unit, offices, education facilities, exhibition space and conference centre, car park and overflow car park along with bike store and toilet block, biomass boiler, fuel store and septic tank, remodelling of existing site compound and fence, creation of footpaths and boardwalks, hides and emergency access including boat launch point.
- The conditions in dispute are:

No 5 which states that: *"There shall be no playing of amplified music outside of the buildings within the visitor centre at any time.*

The playing of amplified music shall be contained within the buildings and shall not take place outside of the hours of 09.00–24.00 on Fridays and Saturdays and 09.00–23.00 on other days"; and

No 6 which states that: *"There shall be no playing of amplified music at the site after 23.00 hours until noise attenuation measures have been installed in accordance with a scheme and programme to be first submitted to and approved in writing by the County Planning Authority.*

The scheme and programme shall provide details of the following:-

- (a) Details of a noise limiting device to be fitted to any PA or amplification equipment used at the site*
- (b) Details of the noise level to which the noise limiting device shall be set. The noise level used shall be based upon a background noise level survey undertaken on the southern boundaries of the Brockholes Wildlife Site between the hours of 23.00 hours and 24.00 hours. The survey shall be undertaken according to the methodology in BS4142 and shall be undertaken on a Friday or Saturday night.*

The level used for the limiting device shall ensure that the noise from the site in each octave band between 63 Hz and 4 Hz shall not exceed the background noise level when measured at any noise sensitive property.

- (c) The procedure to be followed in the event that there is a complaint about noise from the site including reviewing the levels used on the noise limiting device.*

The noise limiting device shall be employed at any time when PA or amplification

equipment is used at the site and shall be set at the level identified under part (b) of this condition or any alternative level subsequently approved under the requirements of (c)".

- The reasons given for the conditions are:

Condition 5: *"In the interests of the amenities of the area and to conform with Policy 17 of the Central Lancashire Core Strategy".*

Condition 6: *"In order to control noise in the interests of the amenity of local residents and to conform with Policy 17 of the Central Lancashire Core Strategy"*

Decision

1. The appeal is allowed, in part, and the planning permission LCC/2016/0029, dated 18 March 2016 for the construction of a visitors centre to include café, retail unit, offices, education facilities, exhibition space and conference centre, car park and overflow car park along with bike store and toilet block, biomass boiler, fuel store and septic tank, remodelling of existing site compound and fence, creation of footpaths and boardwalks, hides and emergency access including boat launch point at Brockholes Nature Reserve , Preston New Road, Salmesbury, Preston PR5 0AG, granted on 25 May 2016 by Lancashire County Council, is varied by deleting condition 6 and substituting for it the following condition:

(6) There shall be no playing of amplified music at the site after 23.00 hours until noise attenuation measures have been installed in accordance with a scheme and programme to be first submitted to and approved in writing by the County Planning Authority.

The scheme and programme shall provide details of the following:-

- (a) Details of a noise limiting device to be fitted to any PA or amplification equipment used at the site*
- (b) Details of the noise level to which the noise limiting device shall be set. The noise level used shall be based upon a background noise level survey undertaken on the southern boundaries of the Brockholes Wildlife Site between the hours of 23.00 hours and 24.00 hours. The survey shall be undertaken according to the methodology in BS4142 and shall be undertaken on a Friday or Saturday night.*

The level used for the limiting device shall ensure that the noise from the site in each octave band between 63 Hz and 4 Hz shall not exceed the background noise level when measured at any noise sensitive property.

- (c) The procedure to be followed in the event that there is a complaint about noise from the site including reviewing the levels used on the noise limiting device.*

The noise limiting device shall be employed at all times when PA or amplification equipment is used at the site on Fridays or Saturdays and shall be set at the level identified under part (b) of this condition or any alternative level subsequently approved under the requirements of (c)".

Procedural Matter

2. The decision notice in respect of planning permission Ref LCC/2016/0029, dated 25 May 2016, is headed: 'Application for removal of condition 4 and the variation of condition 5 of permission 06/12/0695'. Similarly, the decision

notice for planning permission Ref 06/12/0695 is headed: '*Variation of condition 8 of permission 06/09/0311*'. However, the effect of both of these decisions was to grant a new planning permission for the construction and use of the visitor centre and associated works for which approval was first granted under planning permission Ref 06/09/0311. In the interests of clarity I have adopted the original description of development, as set out in permission Ref 06/09/0311, as providing the most accurate description of development for the purposes of the appeal.

Background and Main Issues

3. The nature reserve was established following the closure of a former quarry. Planning permission for the visitor centre and associated facilities was granted in April 2011 (Ref 06/09/0311). Condition 8 of that permission limited the opening hours of the visitor centre to 10.00 to 17.00 Mondays to Fridays and 09.00 to 18.00 on Saturdays, Sundays and Public Holidays.
4. A new planning permission was granted, in December 2012 (Ref 06/12/0695), with extended opening hours for the visitor centre. Condition 4 of that permission specified that the visitor centre shall not be open to the public outside of the hours of 06.00 to 24.00 Mondays to Sundays. Condition 5 stated that there shall be no amplified music outside of the buildings at any time and that the playing of amplified music shall be contained within the buildings and shall not take place outside of the hours of 09.00 and 23.00 on Mondays to Saturdays.
5. The appealed application sought a further revision to the permission for the visitor centre incorporating the removal of condition 5 from planning permission Ref 06/12/0695 and the revision of condition 6 to permit the playing of amplified music within the building from 09.00 to 01.00 Mondays to Sundays. The permission issued by the Council (Ref LCC/2016/0029) provides for extended opening hours, from 06.00 to 01.00 on Monday to Sundays, but is subject to conditions 5 and 6 as set out above. The appellant argues that, as a result of these additional conditions, the Council has granted something less than what was applied for. It is also contends that the requirement, in condition 6, that a noise limiter be used at all times is a more onerous restriction than the conditions attached to the earlier permission granted in 2012.
6. Accordingly, the main issues are whether the proposed extended hours for the playing of amplified music would give rise to unacceptable adverse effects on the living conditions of the occupiers of nearby residential properties and whether conditions 5 and 6 are necessary to mitigate the risk of such adverse effects.

Reasons

7. The appellant states an awareness of 2 past complaints about noise disturbance but asserts that these were not substantiated by an independent noise assessment by Lancashire County Council or South Ribble Borough Council. However, the evidence suggests that there was no need for such an assessment since the appellant acknowledged that music had been played outside of the permitted hours and explained that this had been due to a misunderstanding by on-site staff as to what the permitted hours of operation are.

8. These past complaints, together with the evidence in the third party representations that other complaints have been made directly to the visitor centre management, indicate a need for the appellant, when proposing extended hours for the playing of amplified music, to demonstrate that this would not have an unacceptable effect on the living conditions of the occupiers of the nearest residential properties on the opposite side of the river. The noise assessment submitted by the appellant fails to provide clear evidence that no such effects would ensue.
9. The submitted assessment is based on background noise measurements recorded between 23.08 and 23.58 hours on a weekday evening only. No measurements were recorded after 24.00 hours. The volume of traffic on the M6 motorway and the A59 is likely to reduce after midnight and background noise levels are likely to be lower between 24.00 and 1.00 than in the hour before midnight. As background levels have not been measured at this time no evidence is available to demonstrate that the playing of amplified music between 24.00 and 01.00 hours would not have any significant adverse effect on the living conditions of nearby residents. Hence, the original proposal to extend the hours for the playing of music until 1.00 AM cannot be supported.
10. The nearest residential properties are within about 300 metres of the visitor centre and the intervening landscape bund was constructed to provide visual rather than noise screening of the quarrying activities. Due to its location, some distance from the source of amplified noise within the visitor centre, the bund is unlikely to have a significant effect in noise attenuation terms. A potential for noise disturbance does clearly exist and residents living nearby are entitled to expect a quieter noise environment in the evenings during the normal working week. I agree with the Council that, although an extension of hours might be acceptable on Friday and Saturday evenings, allowing the playing of loud music on all evenings of the week would be excessive. For these reasons I consider the limitations imposed by condition 5 to be both necessary and reasonable.
11. The noise report assessed the potential effects of amplified music in the period 23.08 to 23.58 hours. It concluded that the playing of 'medium level' disco music would not have a significant adverse effect at the nearest residential properties. However, its findings show that a louder disco or live band would generate noise levels above the limiting criterion and would result in a likelihood of noise disturbance to the occupiers of nearby dwellings and that mitigation would be required.
12. The background noise measurements were recorded in the churchyard rather than at the façade of the nearest residential properties (which the acoustic consultant accepted to be less than ideal), and the wind direction at the time of the survey was from the south/ south east. In the context of these limitations, the survey findings confirm the need for appropriate mitigation for any loud disco or live band music played in the visitor centre after 23.00 hours.
13. Paragraph 206 of the National Planning Policy Framework (the Framework) requires that planning conditions should only be imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects.
14. The 'alternative' mitigation measures set out in the noise assessment, such as requiring a member of staff to monitor noise levels outside the venue and then

to turn down the volume and/or close doors and windows, would be impractical to implement. Such measures would not satisfy the tests of precision and enforceability. I consider that the fitting of a noise limiter to all amplification equipment used in the visitor centre would be the only practicable means of ensuring that problems of noise disturbance are avoided.

15. Once the additional assessment, required under condition 6, has been carried out a specified noise limit would be agreed between the appellant and the County Planning Authority and the noise limiter would be set to this agreed level. This would provide the best opportunity for ensuring that the agreed noise limits are met at all times. The necessary means of ensuring that those agreed limits are met are clear and precise for all those involved in the management of events. Compliance with those requirements would be readily capable of being monitored and enforced by the Council.
16. For these reasons I find that, with the exception of the final paragraph, the wording of condition 6 meets the paragraph 206 requirements with regard to necessity, precision and enforceability. The final paragraph requires that a limiter be used at all times when PA or amplification equipment is in use. This requirement is more onerous than the current restriction and is inconsistent both with the noise evidence that the need for additional mitigation arises only after 23.00 hours and with condition 5 which states that amplified music can be played after 23.00 hours only on Fridays and Saturdays. As currently worded that final part of condition 6 is unnecessary to achieve acceptable noise levels and unreasonable in terms of the additional burden it places on the appellant.
17. Careful consideration needs to be given to how the wording should be amended to provide for an appropriate level of control on Fridays and Saturdays. The appellant suggests that a noise limiter should only be required after 23.00 but, having considered the views of both parties, I find that such an arrangement would be impracticable. In reaching that view I am mindful that evening functions, such as birthday or other celebrations are likely to extend over four or five hours and that wedding celebrations are likely to run from early afternoon until late in the evening.
18. Under the arrangement proposed by the appellant the protection of residents from noise disturbance would be dependent upon the DJ, a band member, or a member of the visitor centre staff, carefully monitoring the time and turning on the noise limiter at the stroke of 23.00 hours. It would be necessary for that person to connect the limiter to the amplification equipment at the start of the even and to turn it on at the appropriate time. Given the strong likelihood that the nominated person would have a number of other duties/ responsibilities during the event it is unrealistic to expect that he or she would always remember to perform those actions. There would, therefore, be a high risk that the limiter would either be turned on after the appointed time or would not be turned on at all. Certainly, if the limiter had not been connected to the equipment at the start of the event the need to interrupt the music to do this at 23.00 would be likely to cause significant problems for those managing the facilities.
19. In my judgement such an arrangement would not meet the tests of precision and enforceability and would not provide adequate mitigation of the potential harm to living conditions. A greater certainty that the desired noise levels are not breached after 23.00 hours is required. I consider that the most

practicable way to achieve this, whilst removing the unduly onerous restriction, is by rewording the final part of the condition to require the employment of a noise limiter at all times when amplified music is used at the visitor centre on Fridays and Saturdays but not on other days. An amended wording on these lines would result in condition 6 being consistent with all of the six tests set out in paragraph 206 of the Framework.

20. The nature the visitor centre's use has changed considerably since permission was first granted and the relaxations already granted, in terms of its operating hours and the hours at which music can be played, have added significantly to the flexibility in the use of these on-site facilities. I accept that the revenue from commercial lettings may be important in helping to fund the running of the nature reserve but the Trust's needs must be balanced with the need to protect the living conditions of residents who live close to the nature reserve. The further relaxation of the planning conditions as proposed by the appellant would not achieve an appropriate balance.
21. The alignment of the condition limiting the hours at which amplified music can be played with the hours set out in the premises licence may make it easier for all those working at the visitor centre to know what the restrictions are. However, that is a matter of convenience rather than necessity and any benefit to be derived from such alignment would not override the need to protect the living conditions of nearby residents.

Conclusions

22. For the reasons set out above I find that the playing of amplified music at the visitor centre after 23.00 hours on Sundays to Thursdays would give rise to an unacceptable adverse effect on the living conditions of the occupiers of nearby residential properties in Salmesbury and that the restrictions imposed by condition 5 are necessary. The appeal in respect of condition 5 is, therefore, dismissed.
23. In relation to condition 6, I find that the fitting and use of a noise limiter is necessary to provide for acceptable noise levels after 23.00 hours. I also find that, in order to ensure the effectiveness of this means of control, it is reasonable to require that a limiter be deployed at all times when amplified music is played at the visitor centre on Fridays and Saturdays. A requirement that a limiter be used on other days of the week, when the playing of amplified music after 23.00 is precluded by means of condition 5, is, however, unnecessary and unreasonable. For these reasons the appeal is allowed in respect of condition 6 and condition 6 is replaced by a new condition with a suitably amended wording.
24. All other conditions attached to planning permission Ref LCC/2016/0029, dated 25 May 2016, remain in force.

Paul Singleton

INSPECTOR