
Appeal Decision

Site visit made on 20 March 2017

by Andrew Owen BA(Hons) MA MRTPI

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

Decision date: 12 April 2017

Appeal Ref: APP/D0840/W/16/3163868

Falmouth School, Trescobeas Road, Falmouth TR11 4LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 J Wallis of Falmouth School against the decision of Cornwall Council.
 - The application Ref PA16/06362, dated 8 July 2016, was refused by notice dated 31 August 2016.
 - The application sought planning permission for construction of new all-weather 3G sports pitches (including fencing, floodlighting, etc), new sports pavilion building (including educational and community functions), new/alterd internal access roadways, new vehicle parking areas and associated external works, without complying with conditions attached to planning permission Ref PA16/00703, dated 8 June 2016.
 - The conditions in dispute are Nos 8 and 9 which state that:
 - "8. *The 3G pitch hereby permitted shall not be used outside of the hours of 9:00 to 20:30 Monday to Friday; 9:00 to 17:00 Saturdays and 9:00 and 16:00 on Sundays.*"
 - "9. *The floodlighting to the 3G pitch shall only be switched on when the pitch is use, and shall be switched off no later than 20:30 Monday to Friday; 17:00 on Saturdays and 16:00 on Sundays.*"
 - The reason given for conditions 8 and 9 is: *"In the interests of residential amenity and in accordance with paragraph 17 of the National Planning Policy Framework 2012."*
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Decision

1. The appeal is allowed and planning permission is granted for construction of new all-weather 3G sports pitches (including fencing, floodlighting, etc), new sports pavilion building (including educational and community functions), new/alterd internal access roadways, new vehicle parking areas and associated external works at Falmouth School, Trescobeas Road, Falmouth TR11 4LH in accordance with the application Ref PA16/06362 dated 8 July 2016, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by Mr J Wallis of Falmouth School against Cornwall Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect that varying the permitted hours of use would have on the living conditions of the occupiers of neighbouring properties with respect to noise and glare.
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Background

4. The original planning application, Ref PA16/00703 initially proposed that the use of the 3G pitch and its floodlights would cease at 22.00 hours on Monday to Friday. Following negotiations, the Council's Environmental Health Officer recommended that the use of the pitch and floodlights stops at 21.30 hours Monday to Friday, and that an acoustic fence is provided. This was the proposal presented to the planning committee. At the planning committee it was resolved to grant planning permission subject to a condition requiring the use of the 3G pitch and its floodlights to cease at 20.30 hours Monday to Friday. Through this appeal, the appellant is seeking a planning permission which allows the 3G pitch and floodlights to remain in use until 21.00 hours on Monday to Friday.

Reasons

5. The 3G pitch and four of the eight floodlights would be around 30 metres from the nearest dwellings on Trescobeas Road. Trescobeas Road falls west to east, whereas the playing field does not and as such the ground level at the eastern end of the development site is around two metres higher than the adjacent part of Trescobeas Road. Trescobeas Road is one of the main routes into Falmouth and was regularly used by vehicular traffic at the time of my visit, which I conducted between 20.30 and 21.00 hours.
6. The appellant's Environmental Noise Report measured the existing noise environment at the site between 20.33 and 21.33 hours, when the existing playing field would not have been in use. Noise was measured as being 54 dB $L_{Aeq} (1 \text{ hour})$ corrected to 57 dB $L_{Aeq} (1 \text{ hour})$ so as to be able to compare it to predicted façade levels at the houses opposite. By definition this is an equalisation of noise across the hour, and the report confirms that the maximum measured background noise was 71 dB, and that at its quietest background noise was 39dB. However to enable a comparison with the predicted noise, a calculation of L_{Aeq} is appropriate.
7. The report makes an estimation of the level of noise that would be experienced at the properties opposite the site. The report states that, with a 2.4 metre high acoustic fence in place, noise at the front facades of these houses would be 48 dB $L_{Aeq} (1 \text{ hour})$. It calculates that this would result in an increase in noise above the existing background of 0.5dB at the nearest properties, which it considers would equate to a slight impact. The report suggests this means it would be below the Lowest Observed Adverse Effect Level as described in the Noise Policy Statement for England (NPSE) and so would constitute a noticeable but not intrusive noise as defined in the Planning Practise Guidance (PPG).
8. In addition, noise from the development would accord with the World Health Organisation (WHO) recommendations that noise above 50 dB in outdoor living areas would be considered a moderate annoyance. Furthermore, the report predicts noise inside the houses, with their windows open, would be 33 dB $L_{Aeq} (1 \text{ hour})$ at ground floor level and 34 dB $L_{Aeq} (1 \text{ hour})$ at first floor level, both of which are below the 35dB WHO recommendation for noise inside buildings. Though the predicted noise only just meets these recommendations, the evidence is clear that the proposal would accord with this advice.

9. I note that the report does not take account of the variation in topography which is particularly prevalent at the eastern end of the site. However it has not been suggested to me that this necessarily means the noise experienced at the nearby houses would be any different to that indicated in the report. Also the report does take account of the fact that the local environment is made up of grass and roads and it applies a ground absorption level of zero for those hardsurfaced areas. As such I consider it is sufficiently robust.
10. I accept WHO standards suggest outside noise at night time shouldn't exceed 45dB externally and 30dB internally. However the proposed hours of would be before what is generally considered to be night time and it would be unlikely to disturb the sleep of neighbouring residents. Furthermore I do not consider the expectations of residents, with regard to their living conditions, at 20.30 would be materially different from that at 21.00.
11. With regard to glare from floodlights, the appellant's Lighting Assessment follows the guidance in the Institution of Lighting Professional's (ILP) Guidance Notes for The Reduction of Obtrusive Light and identifies the existing environment as being rural or a dark outer suburban location. I consider this is robust considering the existing street lighting along Trescobeas Road. In such an environment the guidance suggests that at the windows of the nearest residential properties, light intrusion should be below 5 lux and luminaire intensity should be below 7500 candelas. The Assessment predicts light intrusion would be less than 2 lux and luminaire intensity would be a maximum of 3049 candelas at the nearest properties. Therefore the proposal would be unlikely to cause unacceptable glare into the houses opposite the site.
12. Although this Assessment does not take account of the topography of the site, it is robust, the predicted impacts would be well within the ILP standards and I have no evidence to suggest that the topography would materially affect the conclusions of the report. Also although the Assessment refers in some places to a site at the University of Wolverhampton, the critical information does relate to the appeal site.
13. In summary, I consider that noise and glare resulting from the development being open a further 30 minutes on Monday to Friday would be within acceptable limits and would not unacceptably harm the living conditions of the occupiers of the properties opposite the site.
14. As such Conditions 8 and 9 are unnecessary in their current form and so do not meet the tests in the National Planning Policy Framework (the 'Framework'). By imposing the suggested conditions which allow the 3G pitch and the floodlights to be used until 21.00 hours I consider the amenities of the nearby occupiers would be maintained and therefore the development would accord with Policies 12, 13 and 16 of the Cornwall Local Plan which all seek to protect residents from unacceptable impacts of development, and paragraph 17 of the Framework which seeks a good standard of amenity for all existing occupants of buildings.

Other matters

15. I have been directed to the guidance within the Football Association's Football Facilities in Schools document suggests that facilities within 65 metres of residential buildings may lead to planning challenges. However this does not suggest development within this distance would necessarily be unacceptable

and, as I have concluded above, I consider the appellant has sufficiently demonstrated that the development would not cause harm to the living conditions of neighbouring residents.

16. I note the concerns that the proposal would result in the whole complex being open later into the night. However that is not restricted by the extant planning permission and I see no reason to impose a condition to restrict this now.
17. The development would constitute sustainable development as the increase in the hours of operation does not lead to any adverse environmental effect, and the social and economic effects are comparable to the development subject of the extant planning permission.

Conditions

18. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
19. I have altered the standard condition relating to the commencement of the development as the PPG states that a planning permission granted under section 73 cannot extend the time limit within which a development must be started.
20. I have imposed Conditions 8 and 9 as proposed by the appellant for the reasons set out above. I have also amended Condition 15 so that the acoustic barrier is constructed before the development is brought into use to protect the amenity of the residents opposite, as previously only the submission of details of the barrier were required before the development was brought into use.
21. Condition 2 is required in the interests of providing certainty, conditions 3 and 4 are required to ensure the satisfactory drainage of the site, conditions 5 and 6 are imposed in the interests of securing benefits for the wider community, and conditions 7, 11, 12, 13 and 16 are necessary in the interest of the character and appearance of the area. Conditions 10 and 18 are imposed in order to protect the living conditions of the nearby residents, condition 14 is necessary in the interest of highway safety and condition 17 is needed to ensure the protection of wildlife.

Conclusion

22. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed.

Andrew Owen

INSPECTOR

Schedule

1. The development hereby permitted shall be begun before 8 June 2019.
2. The development hereby permitted shall be carried out in accordance with the following plans: Proposed SSL1950 01 00 received 03/02/16, Proposed SSL1950 02 02 received 03/02/16, Proposed SSL1950 04 01 received 03/02/16, Proposed SSL1950 06 01 received 03/02/16, Site/location Plan 15094.3.0001 A received 09/03/16, Existing 15094.3.0002 A received 09/03/16, Existing 15094.3.0003 received 23/01/16, Existing 15094.3.0004 received 23/01/16, Proposed 15094.3.0010 A received 09/03/16, Proposed 15094.3.0011 A received 09/03/16, Proposed 15094.3.0012 A received 23/01/16, Proposed 15094.3.0013 received 23/01/16 and Illustrative Purposes only 15094.3.0015 received 23/01/16.
3. No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management and foul water treatment has been submitted to and approved in writing by the Local Planning Authority. The details shall include:-
 - A description of the drainage system operation
 - Details of the final drainage scheme including calculations and layout
 - Confirmation from South West Water Ltd that the foul network has sufficient capacity to cater for this development
 - Details of the drainage provision during the construction phase
 - Provision for exceedance pathways and overland flow routes
 - A timetable of construction including a plan indicating the phasing of development
 - A construction quality control procedure
 - Confirmation of who will maintain the drainage systems and a plan for the future maintenance and management, including responsibilities for the drainage systems and any overland flow routes
 - Timetable for implementation of the drainage systems

Thereafter, the approved scheme shall be implemented in accordance with the details and timetable so agreed and the scheme shall be managed and maintained in accordance with the approved details. Details of the maintenance schedule shall be kept up to date and be made available to the Local Planning Authority within 28 days of the receipt of a written request.

4. Foul drainage from the development (and no other drainage) shall be connected to the public foul or combined sewer.
5. Prior to the first use of the development hereby permitted, a community use management scheme shall be submitted and approved in writing by the local planning authority. The scheme shall include for provision for wider community use for sporting activities, management of the letting system for wider community use of the facilities outside of school hours; management of the car parking areas; management of events and a programme for communication with local residents, together with a programme for periodic review of the scheme. The development shall be operated thereafter in accordance with the approved scheme.

6. Before the 3G AGP is brought into use, a Management and Maintenance Scheme for the facility including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to and approved in writing by the Local Planning Authority [after consultation with Sport England]. For Artificial Grass Pitches add measures to ensure the replacement of the Artificial Grass Pitch within a specified period. The measures set out in the approved scheme shall be complied with in full, with effect from commencement of use of the 3G AGP.
7. No development shall commence on the pavilion building hereby permitted, until details of the materials to be used in the construction of the external surfaces of that building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
8. The 3G pitch hereby permitted shall not be used outside of the hours of 9:00 to 21:00 Monday to Friday; 9:00 to 17:00 Saturdays and 9:00 and 16:00 on Sundays.
9. The floodlighting to the 3G pitch shall only be switched on when the pitch is use, and shall be switched off no later than 21:00 Monday to Friday; 17:00 on Saturdays and 16:00 on Sundays.
10. The car park areas and access roads hereby permitted shall not be used until details of any lighting of the car park areas and access road have been submitted in writing and approved by the local planning authority. Such details shall include hours of illumination and levels of illumination. The development shall be carried out in accordance with the approved details.
11. No development shall commence until a scheme of landscaping has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall provide planting plans with written specifications including:
 - Details of all existing trees and hedgerows on the land, showing any to be retained
 - Full schedule of plants
 - Details of the mix, size, distribution and density of all trees/shrubs/hedges
 - Cultivation proposals for the maintenance and management of the soft landscaping

All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner. Notice shall be given to the Local Planning Authority when the approved scheme has been completed.

Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.

12. Prior to the commencement of any works associated with the development a scheme depicting the method by which trees shall be protected during the course of the development shall be submitted and approved in writing by the Local Planning Authority. The scheme shall identify a Root Protection Area (RPA) that will be enclosed by tree protection fencing which will be erected in accordance with the specification given in the British Standard BS 5837. The tree protection fencing will be erected prior to commencement of any works associated with the development and be retained and maintained until the completion of the development. At no time shall any works in connection with the development, including storage, access, cement mixing, bonfires, excavations or other level changes occur within the protected area. The development shall be implemented in strict accordance with the agreed tree protection methods.
13. Prior to the commencement of development other than that required under condition 12 (Tree Protection) details of the proposed roadway which shall be raised with the surface being suspended above the ground in order to avoid the root protection area of tree 31 shall be submitted to and approved in writing by the Local Planning Authority. The roadway shall be constructed in accordance with the approved details.
14. Before any of the development hereby permitted is brought into use, parking and turning areas shall be laid out and constructed in accordance with approved plan and the said areas shall not thereafter be obstructed or used for any other purpose.
15. Before the development hereby permitted is brought into use, details of the proposed acoustic barrier along the southern perimeter of the pitch shall be submitted to and approved in writing by the Local Planning Authority. The acoustic barrier shall be constructed in accordance with the approved details before the development is brought into use and shall not thereafter be altered or removed other than by necessary replacement.
16. Notwithstanding the approved plans, before the development hereby permitted is commenced, details of the proposed height, siting, appearance and construction of all boundary treatments (means of enclosure) shall be submitted to and approved in writing by the Local Planning Authority. The approved boundary treatment (means of enclosure) shall be completed in accordance with the approved details prior to the use hereby approved is commenced and notice shall be given to the Local Planning Authority when the approved scheme has been completed.

The boundary treatment (means of enclosure) shall not thereafter be altered or removed, other than by necessary replacement.
17. The development hereby approved shall be carried out in accordance with the recommendations as detailed within sections 5 of the Extended Phase One Habitat Survey by Spalding Associates dated 29 January 2016.
18. No sound-amplifying equipment, loudspeakers, or public address system shall be installed or operated on the premises hereby approved.