

Appeal Decision

Site visit made on 25 July 2017

by C Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 14 August 2017

Appeal Ref: APP/D0840/W/17/3172815

Land at the Sports Field, Newquay View Resort, Trevelgue Road, Newquay TR8 4AS

- 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 Newquay View Resort Ltd against the decision of Cornwall Council.
 - The application Ref PA16/10001, dated 24 October 2016, was refused by notice dated 2 March 2017.
 - The development proposed is change of use of land from sports and recreation to camping and touring use, together with landscaping, the construction of one reception and facilities building and associated infrastructure (including access tracks, porous hard surface pitches, electricity, water and foul water connections).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - whether the site provides a suitable location for the proposed development having particular regard to noise and disturbance.
 - the effect of the proposal on the character and appearance of the area.

Reasons

Noise

3. The appeal site is a grassy field associated with Newquay View Resort, a large holiday park near Porth beach. It occupies the bottom of a valley and is currently used for sports and recreation purposes. The proposal involves using the site for camping and touring use. Apart from caravan pitches, it is also proposed to construct a building in the northern part of the site which would accommodate an office as well as bathroom and laundry facilities. The plans show new access tracks and extensive landscaping works.
4. One of the core principles listed in paragraph 17 of the National Planning Policy Framework (the Framework) is to always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. With this in mind, the Council argue that the amenity of visitors staying on the proposed campsite would be harmed by the sound of dogs barking in the St Francis Home for Animals, a kennels located to the west of the site.

5. Paragraph 005 of the National Planning Practice Guidance (the PPG) lists a number of factors that may influence whether noise is a concern. Amongst other things, this includes the maximum level of noise experienced, the number of noise events and times at which they occur. The PPG also advises that noise is a complex technical issue and it may be appropriate to seek specialist assistance when applying policy.
6. The appellant's Amenity Statement refers to the physical characteristics of the appeal site and the surrounding noise receptors. These include Beaver Lodge (said to be approximately 30 metres from the kennels) housing in Trevelgue hamlet (approximately 190 metres from the kennels) and Porth Beach Holiday Park (approximately 200 metres from the kennels).
7. Although it is accepted that the dogs can be heard from some distance away, the appellant argues that there has never been a noise nuisance complaint against the kennels from any of the surrounding occupiers. It is further argued that there is already a baseline level of noise as a result of other activity in the area, including from the visitor facilities in Newquay View Resort which has a nightclub with a late licence. However, while this may be the case, I am conscious that the nearest part of the proposed campsite would be 80 metres from the kennels and would be situated directly above the nearest pitches on the southern part of the appeal site. This is substantially closer than the other noise receptors considered by the appellant, apart from Beaver Lodge which is understood to be in same ownership as the kennels.
8. It seems to me that visitors using the proposed campsite would be likely to spend a substantial amount of time outdoors, especially during the summer months. Furthermore, I agree with the Council that visitors sleeping in tents or caravans are unlikely to benefit from the same level of noise insulation as those in permanent buildings. Indeed, my attention has been drawn to reports from guests staying at Porth Beach Holiday Park that dogs were heard barking. The nearest part of this campsite is more than twice the distance from the kennels than the appeal site is. I recognise that these reports are few and far between and are drawn from an informal source (the Trip Advisor website). Nonetheless, it indicates that at least some campers are sensitive to barking emanating from the kennels.
9. I am informed that there have been no complaints of dogs barking from guests staying at the Newquay View Resort. However, the permanent accommodation area is approximately 400 metres from the kennels and the Ten Acre area (used for camping in July and August) is approximately 320 metres away. Considering that these sites are much further from the kennels than the appeal site, it may be expected that they would experience less noise from barking. Although it is suggested that the noise experienced in the Ten Acre area would be greater than in the appeal site if there was a westerly wind, little technical evidence has been provided to help substantiate these claims.
10. I appreciate that the Council's Environmental Health team commented that noise modelling would be difficult as it would depend on the type and number of dogs in the kennels. Nonetheless, there is relatively limited information before me to help gauge typical noise levels within the site, the usual frequency of dog barking incidents, the times of day they normally occur, or other relevant variables set out within paragraph 005 of the PPG.

11. Based on the evidence presented and my observations of the site, I consider it likely that the close proximity of the kennels to the appeal site has potential to harm the amenity of future campers. The level of noise experienced within the site would clearly be dependent on a combination of variables, including the wind direction and the number and type of dogs housed within the kennels. However, the worst case scenario would be that the kennels are fully occupied, all the dogs bark at the same time and the wind direction carries the sound directly towards the nearest pitches. In my estimation, such an event would be highly disruptive to visitors, especially if barking incidents were prolonged or took place during normal sleeping hours.
12. With reference to the table in paragraph 004 of the PPG, I consider that the noise experienced by future campers would lead to a material change in behaviour. There is potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Hence, the quality of life for the visitors would be harmed. As such, the noise would be "noticeable and disruptive" in terms of the PPG and would constitute a "significant observed adverse effect" as defined within the Noise Policy Statement for England Explanatory Note. The Framework indicates in paragraph 123 that planning decisions should avoid noise from giving rise to significant adverse impacts on health and quality of life.
13. The appellant argues that if the noise from the kennels gives rise to significant adverse impacts, it follows that there is potential for a complaint to be made under the Environmental Protection Act 1990 from the surrounding occupiers whether the site is developed or not. However, it is not necessarily the case that other noise receptors would experience the same level adverse effects, given their distance from kennels in comparison to the appeal site. Notwithstanding this, the appellant argues that in the event of a complaint being made, the local authority may issue an abatement notice requiring that the noise is stopped or mitigation is put in place. As a result, the noise within the vicinity may be reduced to the extent that the adverse effects within the appeal site would no longer be significant.
14. The Council argue that such a scenario would jeopardise the viability of the kennels and draw my attention to legal advice indicating that the defence of "best practical means" could not be relied upon. I understand this to mean that the kennels would have to prove that they have used all reasonable means to reduce the effect of the noise but would not necessarily be required to cease their activities. In response, the appellant refers to case law¹ indicating that that the kennels could use the defence of best practical means and therefore the viability of the operation would not be in question. It is further argued that the kennels have the resources to implement effective mitigation measures such as acoustic fencing, which would help to reduce noise levels within the appeal site without threatening the existence of the kennels.
15. Whether the defence of best practical means could be used is primarily a legal matter and I find the evidence to be inconclusive. Nevertheless, even in the theoretical event of a complaint being made and an abatement notice being issued, there is only limited evidence to indicate exactly what form mitigation might take place or what effect it might have on noise levels within the

¹ Manley v New Forest District Council [2000] EHLR 113
Manley v New Forest District Council [2007] EWHC 3188 (Admin)

campsite. Consequently, there can be no certainty that noise levels could be mitigated to the extent that it would make the appeal proposal acceptable.

16. Overall, the evidence presented in support of the proposal fails to demonstrate that the site could be developed without causing unacceptable harm to the living conditions of the campers. I therefore conclude on this issue that the site does not provide a suitable location for the proposed development with regard to noise and disturbance. There would be conflict with Policies 12, 13 and 16 of the Cornwall Local Plan (the Local Plan). These policies all aim to avoid the adverse effects of noise.

Character and appearance

17. The site is a grassy field which has been levelled for sports use and occupies the bottom of a shallow valley. It has an open and undeveloped appearance and adjoins other undeveloped land. Despite pockets of development, the local landscape maintains a distinctly verdant and semi-rural appearance, which the appeal site directly contributes to. Due to the topography of the area and the surrounding hedgerows, the site is not very conspicuous from longer distance vantage points. It is most clearly seen from Trevelgue Road when approaching from the coast. This road is elevated above the site on the side of the valley and allows expansive views into the site from elevated ground. There is also a public right of way which crosses through the site.
18. I accept that the proposed office and bathroom building would not be especially prominent given its location in the northern corner of the site. However, although the access tracks and associated infrastructure would maintain the openness of the field, they would lead to it assuming a more developed appearance which would be emphasised by vehicles, caravans, tents and associated paraphernalia. This more intensive use would clearly alter the character of the site, diminishing its semi-rural qualities. The impact of this would be clearly perceived by walkers using the public footpath running through the site, which I understand to be a relatively well used route.
19. The plans indicate that there would be extensive planting, with the pitches being divided into clusters, each surrounded by banks of vegetation. There would also be additional planting around the boundaries of the site to help improve the overall level of screening. Once established, this would help to give the campsite a relatively leafy appearance and would help to screen views into the interior site from certain vantage points, including near the site entrance. Whilst boundary planting along the more elevated parts of Trevelgue Road would potentially screen direct views into the site from these vantage points and would create a leafy street scene, this would be at the expense of the open vista that contributes to the distinctive qualities of this area. It would also be dependent on the vegetation reaching full height at maturity.
20. The scenic quality of the area is also experienced from the private domain and the proposed campsite would be visible from private residences as well as other elevated land surrounding the site, including the Ten Acre area of Newquay View Resort. While the screening would help to obscure some parts of the campsite, the land would nonetheless assume a distinctly developed appearance, further eroding the open and rural characteristics of the valley. However, I accept that the campsite would not appear as a continuous block of development extending to the coast as a gap would be retained between the site and Porth Beach Holiday Park.

21. Therefore, even though the landscaping scheme would help to moderate the visual impact of the development, I conclude on this issue that the proposal would harm the character and appearance of the area. There would be conflict with Policies 2, 12 and 23 of the Local Plan. These all seek to protect local character. I am aware that the Newquay Neighbourhood Plan is in the process of being prepared, but as this is at an early stage of preparation its policies only carry limited weight.

Planning balance

22. The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development, of which there are three dimensions; economic, social and environmental. With this in mind, I am aware that paragraph 28 of the Framework aims to support the sustainable growth and expansion of all types of business and enterprise in rural areas. This includes supporting the provision and expansion of tourist and visitor facilities in appropriate locations. The appellant argues that the proposal would help to achieve these objectives by providing a much improved tourist offering and fulfilling an unmet demand for "super pitches". It is also suggested that the development would benefit the local economy and would lead to job creation. I have been given relatively few details of the exact impact on the local economy and hence it is difficult to gauge the extent of these benefits. Nonetheless, I recognise that the proposal would be likely to play a positive role in this regard and give the economic benefits of the proposal a good deal of weight in my decision. I also note that there would be some small ecological benefits as a result of the proposed planting.
23. However, balanced against this is the harm to the living conditions of future occupiers of the site as a result of noise pollution and the harm to the character and appearance of the area. On the basis of the evidence before me, the benefits of the proposal do not outweigh the totality of the harms that I have identified. Therefore the proposal is not the sustainable development for which the Framework says that there is a presumption in favour.

Conclusion

24. For the above reasons, and having regard to all other matters raised, the appeal should therefore be dismissed.

C Cresswell

INSPECTOR