



Appeal Decision

Site visit made on 27 November 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 18th December 2017

Appeal Ref: APP/P5870/W/17/3179973

**War Memorial Sports Ground, Colston Avenue, Carshalton,
Surrey SM5 2PW**

- 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 Mr Paul Dipre, Carshalton Athletic FC, against the decision of the Council of the London Borough of Sutton.
 - The application Ref C2016/75992/FUL, dated 13 December 2016, was approved on 1 February 2017 and planning permission was granted subject to conditions.
 - The development permitted is the demolition of existing single-storey pre-fab building and erection of a new single-storey club house building.
 - The conditions in dispute are Nos 3 and 4 which state that:
(3) The club house shall not be used before 09:00 hours of after 24:00 hours on Monday to Saturdays and 09:00 to 21:00 on Sundays and Public Holidays, unless agreed in writing
(4) No music or amplified sound shall be played within the proposed building at a volume whereby it is audible in adjoining premises and/or dwellings.
 - The reasons given for the conditions are:
(3) To safeguard the amenities of the surrounding residential occupiers, and
(4) To safeguard the amenities currently enjoyed by the occupants of adjoining premises and/or dwellings.
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Decision

1. The appeal is allowed and the planning permission Ref C2016/75992/FUL for the demolition of existing single-storey pre-fab building and erection of a new single-storey club house building at the War Memorial Sports Ground, Colston Avenue, Carshalton, Surrey SM5 2PW, granted on 1 February 2017 by the Council of the London Borough of Sutton, is varied by deleting conditions 3 and 4.

Application for costs

2. An application for costs was made by Mr Paul Dipre, Carshalton Athletic FC, against the Council of the London Borough of Sutton. This application is the subject of a separate Decision.

Background and Main Issue

3. Carshalton football ground is surrounded by allotments and a wood on two sides, a school on the third and a park on the fourth. Behind one of the terraces of the ground, opposite the allotments, stands a range of low-scale club buildings. The Council gave planning permission to replace one of these single-storey buildings, the club house, with a slightly larger single-storey
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building in approximately the same position. The appellant seeks to remove conditions 3 and 4 of the permission which the Council applied to safeguard the amenities of surrounding occupiers, which he considers are unnecessary and unreasonable.

4. The main issue is therefore whether the development has an adverse impact on the living conditions of surrounding occupiers, with particular regard to noise and disturbance, and whether conditions 3 and 4 are necessary and reasonable.

Reasons

Condition 4 – music or amplified sound

5. The Council does not offer any evidence that the proposal would adversely impact on the living conditions of surrounding occupiers. On the contrary, its delegated report concludes that there will be no change in terms of the impact of noise from the proposed club house and that no significant harm would be caused through noise or disturbance. Moreover, the Environmental Health Section who was consulted on the application, sought only a condition for a construction management plan rather than a condition addressing noise or hours of operation.
6. I have taken into account the representations on the appeal from neighbours who appear to refer to glaring lights and loud music unnecessary for playing football. However, these appear to concern noise from the public address system, flood-lights, and noise from areas outside the club house such as the stadium as well as anti-social behaviour around the ground. Whilst I do not doubt the voracity of these complaints, I am not convinced that they can be attributed to the use of the club house rather than to other uses on the site, and this appears to be borne out by the complaints record. I also note that, of the 362 neighbouring occupiers the Council notified of the planning application, no objections were reported.
7. I saw that there is a function room on the site close to the club house which is not subject to a similar condition. The nearest houses are 80m distant and separated by outbuildings on the boundary of the football ground as well as allotments between the ground and the gardens of the houses. The separation distance of the club house from its neighbours, the buildings and planting in the terrain between them, the lack of substantive evidence on the risk of noise from the club house, and the lack of noise complaints against the use of the club house are significant factors. They suggest that the absence of the condition would not lead to harm to the living conditions of surrounding occupiers. On this basis, there is no evidence that the condition is necessary or relevant to the development.
8. Moreover, its drafting appears imprecise in referring to *adjoining* premises or dwellings. The only adjoining building I saw was Carshalton High School for Girls, which is less likely to be occupied when the club house is in use, than the nearest houses, which are not adjoining. More significantly, aside from the practical implications of having to enter inside adjoining premises to make the assessment which the condition requires, the audibility of sound varies from person to person. The drafting of the condition does not provide a sufficiently objective method by which to measure compliance. In this respect, the condition is insufficiently precise and is unenforceable.

9. Paragraph 206 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they meet six tests. These are that the condition should be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I conclude that condition 4 is not necessary, relevant to the development, enforceable or precise. Its omission would be unlikely to result in harm from the development to the living conditions of surrounding occupiers or to place it in conflict with policy DM2 of the Site Development Policies Development Plan Document 2012 (DPD) or the Framework in so far as they protect the living conditions of surrounding occupiers. Accordingly, I have deleted the condition and do not consider that an alternative is required.

Condition 3 – hours of use

10. The condition is not entirely clear as to the hours when the building cannot be used on Sundays and Public Holidays. Notwithstanding its drafting, the appellant complains that restricting the use of the building until after 09h00 will prevent its reasonable use as, for instance, a soccer school, which involves parents dropping-off children before 09h00. He is also concerned that 21h00 is unnecessarily early and will prevent football teams using the club house after their matches end on the pitch at 20h00. Finally, the appellant contends that for the last 100 years the Club has managed a club house without requiring a closing hour and that its social club on the same site has no similar condition.
11. I appreciate that it is common practice to restrict operating hours, not least to protect surrounding occupiers from disturbance directly related to the use of the building, for example from the noise or lights of cars leaving the site late at night. However, this case concerns a replacement building, similar to the previous one. There was no operation restriction on the previous club house, and no evidence that there have been any material noise or disturbance complaints against it. I also take into account that no hours restriction was placed on the social club which is beside an outdoor seating area on a raised deck, as well as the substantial distance of the neighbouring houses, and the planting and buildings between them and the club house.
12. I understand the Council's point that the planning application form indicated similar hours of opening to those it applied, however that does not justify the imposition of a condition controlling the hours of use. There is no evidence for me to conclude other than that condition 3 is unnecessary and not relevant to the development.
13. Its omission would be unlikely to result in harm from the development to the living conditions of surrounding occupiers or to place it in conflict with DPD policy DM2 or the Framework. Accordingly, I have deleted this condition too, and do not consider that the circumstances warrant an alternative.

Conclusion

14. For the reasons given above, and taking account of all matters raised, I conclude that the appeal should be allowed.

Patrick Whelan

INSPECTOR