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## Appeal Decision

Site visit made on 22 October 2018

**by I Radcliffe BSc(Hons) MRTPI MCIEH DMS**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 November 2018**

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**Appeal Ref: APP/D1835/W/18/3197578**

**Worcester Glamping, Manor Farm, Malvern Road, Worcester WR2 4BS**

- 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 T Bennett against the decision of Worcester City Council.
  - The application Ref P17C0446, dated 4 September 2017, was approved on 14 December 2017 and planning permission was granted subject to conditions.
  - The development permitted is erection of an 8.80m x 20.55m x 3.69m high temporary yurt style marquee, a log and earth acoustic wall, storage container and external hard standings for use as an events venue.
  - The conditions in dispute are Nos 6, 7, 8 and 9 which state:
  - No 6: Notwithstanding the submitted detail there shall be no amplified music after midnight and there shall be no live amplified music at any time.
  - No 7: Notwithstanding the submitted detail there shall be no more than 4 events per week between the hours of 9am and 7pm.
  - No 8: Notwithstanding the submitted details there shall be no more than 12 events taking place after 7pm within any year.
  - No 9: Notwithstanding the submitted detail the marquee hereby approved shall not be used outside of the hours of 9am to midnight.
  - The reason given for the conditions is: For the avoidance of doubt and to secure a satisfactory form of development which safeguards the amenities enjoyed by neighbouring residents in accordance with policy SWDP 21 of the South Worcestershire Development Plan and aims and objectives of the National Planning Policy Framework.
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### Decision

1. The appeal is allowed and the planning permission Ref P17C0446 for erection of an 8.80m x 20.55m x 3.69m high temporary yurt style marquee, a log and earth acoustic wall, storage container and external hard standings for use as an events venue at Worcester Glamping, Manor Farm, Malvern Road, Worcester WR2 4BS granted on 14 December 2017 by Worcester City Council, is varied by deleting conditions 6, 7, 8 and 9 and substituting for them the following conditions:
  6. Notwithstanding the submitted detail, there shall be no amplified music or amplified voice(s) after midnight.
  8. Notwithstanding the submitted detail, there shall be no more than 12 events involving the use of amplified music or amplified voice(s) taking place after 7pm within any year.
  9. Notwithstanding the submitted detail, events on any day within the marquee shall only be open between 9am and midnight.

## **Main Issue**

2. The marquee has been in use on the site for events since 2016 with planning permission granted in late 2017. The appellant wishes to delete or modify conditions that prevent the playing of live amplified music and which limit the number of events that take place during the day and in the evening. He also wishes to remove or modify a condition that prevents use of the marquee until after 9am.
3. The concern of the Council is that less restricted use of the marquee for events could result in noise that would harm the living conditions of residents, the nearest of whom live in houses approximately 130m away (with the nearest part of the garden serving Lyttleton significantly nearer than this).
4. The main issue in this appeal is therefore the effect that deleting or modifying conditions in the manner sought would have on the living conditions of nearby residents with regard to noise and disturbance.

## **Reasons**

5. Condition 2 of the permission requires that the development is carried out in accordance with the noise management plan (NMP) submitted by the appellant at application stage. The NMP was reviewed by the Council who determined that adherence to it would mean that noise from amplified music in the marquee should be at a level that should not cause a statutory noise nuisance. This plan requires that all amplified music is strictly controlled. For events running up to 11pm this means that amplified sound shall be no more than 15d(B)A above background at the boundary of Manor Farm with neighbouring developments. Between 11pm and midnight the NMP requires that such sound is inaudible at the boundary. After midnight it states that all amplified sound is to cease.
6. The first part of condition 6 re-states that there shall be no amplified music after midnight. In my judgement, although this repeats part of the NMP this control is of central importance in defining the duration of events and protecting the living conditions of neighbours. As a result, it is necessary that it forms a stand-alone condition. However, the second part of the condition in preventing live amplified music at any time unreasonably differentiates between recorded music and live music. This is because the correct application of the limits in the NMP would mean that at the boundary of the farm live amplified music would not be louder than recorded amplified music. As a consequence, I shall modify this condition by deleting its second part. In the interests of precision, the condition also needs to refer to amplified voice(s) so that events with public address systems are also covered.
7. Condition 7 would allow up to four daytime events (9am to 7pm) in a week. With higher background noise levels during the day, and with people less likely to be sleeping, a given level of noise from use of the marquee during the day would be less intrusive than the same level of noise in the evening and night time. Moreover, on the basis of the information before me it is reasonable to assume that events during the day are unlikely to involve amplified music. Events that do could be controlled in the manner described in the NMP. As a result, there is insufficient justification for this condition. Condition 7 is therefore unnecessary and should be deleted.
8. In relation to condition 8, the appellant seeks its modification so that 'events' are re-defined as 'noise polluting events as defined in the approved Noise

Management Plan'. However, the submitted Noise Management Plan does not define a noise polluting event. It is clear though from this plan that such events involve amplified music. As a result, I have assessed the proposed modification on this basis.

9. Evenings are particularly valuable in amenity terms and this is when events with amplified music are most likely to occur. Whilst such events controlled by the NMP should not be loud enough to cause a statutory noise nuisance they have the potential to be annoying, especially on a warm summer's evening when nearby residents may be making use of their gardens or have their windows open. As a result, whilst it is unreasonable and unnecessary to limit all events after 7pm, the opposite is true in relation to events with amplified music. As a result, such events should be limited to no more than 12 events a year. Condition 8 therefore needs to be modified accordingly. For the same reason given in relation to condition 6, the condition also needs to refer to amplified voice(s).
10. Turning to condition 9, in order to ensure that use of the marquee does not adversely affect living conditions it is necessary that the hours of use of the marquee is restricted. However, it is important that this does not prevent event organisers setting up the marquee for events. Such activity, as the Council notes, arguably does not constitute use of the marquee and so condition 9 is not necessarily as restrictive as the appellant believes. However, in accordance with the position of the Council, this matter can be clarified by altering the words of the condition so that it makes clear that an event in the marquee is only to be open between 9am and midnight. This modification would allow setting up of the marquee to occur outside of these hours, as sought by the appellant, without the risk of an event opening as early as 7am as would be the case with the appellant's suggested modification.
11. For the reasons given above, I therefore conclude that condition 7 is unreasonable and unnecessary and so should be deleted. In order to comply with policy SWDP 21 of the South Worcestershire Development Plan which seeks to protect residential amenity, and in order to better reflect the requirements of Planning Practice Guidance, I also conclude that conditions 6, 8 and 9 should be modified in the manner described above. The modified conditions together with the other conditions attached to the permission are reasonable, necessary and comply with the remaining tests in paragraph 55 of the Framework and the advice referred to in Planning Practice Guidance on the use of conditions.

### **Other matters**

12. At application and appeal stage objections from local residents have been raised to the development. However, in assessing the application the Council considered the arguments for and against the development and decided to grant planning permission with conditions. This was a matter of planning judgement and there was nothing fundamentally flawed in the Council's decision. As a result, there are insufficient grounds to reverse the Council's decision and refuse permission. With the conditions to the permission modified in the manner detailed in this decision acceptable living conditions for local residents should be maintained.

### **Conclusion**

13. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be allowed with condition 7 deleted and conditions 6, 8 and 9 modified in the manner described above.

*Ian Radcliffe*

Inspector