



Appeal Decision

Site visit made on 21 January 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2020

Appeal Ref: APP/G3110/W/19/3237618

The Black Swan, 11 Crown Street, Oxford, OX4 1QG

- 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 Barry Davies against the decision of Oxford City Council.
 - The application Ref: 19/00050/FUL dated 6 December 2016, was approved on 21 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is "Erection of shelter in pub garden" (Retrospective).
 - The conditions in dispute are Nos. 3, 4 and 5 which state that:
 - 3) *The building/structure shall not be used for performing of live music or dance or playing of recorded music.*
 - 4) *No additional lighting or means of illumination shall be installed at the hereby approved structure or the pub garden.*
 - 5) *The structure hereby approved shall only be used between the hours of 10am and 9pm every day.*
 - The reasons given for the conditions are:
 - 3) *To safeguard amenities for neighbouring residential uses.*
 - 4) *In the interests of amenity and in the absence of information, in accordance with policies CP1, HE6 of the Adopted Oxford Local Plan 2001-2016 and policy CS18 of the Oxford Core Strategy 2026 and HP13 and HP14 of the Sites and Housing Plan.*
 - 5) *To safeguard neighbouring residential amenities in accordance with the requirements of Policies CP1 and CP10 of the Oxford Local Plan 2001-2016.*
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant stated there is already lighting present at the shelter/building and the appeal against the imposition of condition no. 4 is for clarity. On my site visit there were lights within the structure in the form of multiple lights on a metal gantry type structure surrounding the building floor/stage.
3. The copies of the application plans submitted by the appellant do not contain reference numbers to allow cross-referencing with those plans listed on the Council's decision notice. Having sought copies of the plans from the Council, they have advised they were unable to provide the plans listed. There is no dispute between the parties in respect of the plans submitted by the appellant, therefore I have considered the appeal based upon these plans.

Main Issues

4. The main issues are:

- whether condition no. 3 is relevant to planning, reasonable and necessary, in the interests of the living conditions of neighbouring occupiers with particular reference to noise and disturbance;
- whether condition no. 4 is reasonable and necessary in the interests of the living conditions of neighbouring occupiers with particular reference to light pollution; and,
- whether condition no. 5 is reasonable and necessary in the interests of the living conditions of neighbouring occupiers with particular reference to noise and disturbance.

Reasons

Condition No 3 – Performing or playing of music

5. The appeal site building lies to the rear of a yard area serving the public house (PH) where there is seating for customers to sit outside. The yard and appeal site appear bound on three sides by the boundaries of the gardens of neighbouring residential properties. To the north and south they are bound by walls and fencing to around 2m high. It was not possible to view the boundary treatment on the eastern side behind the building. The gardens adjoining the yard area appear between approximately 10m – 20m in depth serving mostly terraced dwellings on Bullingdon Road, St. Mary's Road and Crown Street. There is a sense of close proximity between the appeal site and yard area, in relation to the rear facades of those adjoining and nearby dwellings.
6. When permission was sought for the building, it was primarily for use as an 'Aunt Sally' area (a game the appellant suggests is loosely akin to bowls) as well as an outdoor shelter for patrons. The appellant also proposed to use the building for music and cultural events 4 – 6 times per year.
7. The Council has referenced the sensitivity of nearby properties with reference to previous enforcement issues and complaints, although the detail of these are not before me. However, there were a number of representations submitted in response to the planning application and appeal, some citing previous noise from music as a ground for opposing the proposals. The Council has confirmed the imposition of condition no. 3 as ensuring consistency with the licencing restrictions. The appellant also advises the matter of playing music outside would be controlled by the premises licence.
8. Paragraph 55 of the National Planning Policy Framework (2019) (the Framework) expects planning conditions be kept to a minimum. Paragraph 21a-005-20190723 of the National Planning Practice Guidance advises that conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. The Council has provided correspondence with the Licensing Team and the premises licence, stating live music is controlled by the licence. However, this does not appear to include playing recorded music, and so without condition no. 3, there might be no controls on recorded music or dancing as part of the proposed events. Therefore, based upon the information before me, the condition is relevant to planning.

9. Due to the close proximity of neighbouring properties the proposed events would be likely to cause significant levels of disturbance for a prolonged duration. This would make the enjoyment of nearby dwellings very difficult during those events, particularly into the evening for those households with younger children. The appellant refers to the events as being sedate and likely to attract occupiers of nearby properties. There is no information before me setting out how the events would be controlled (e.g. noise limitations) and the attendance of nearby occupiers cannot be guaranteed.
10. The appellant and some representations refer to a previous shelter being used for music events under temporary licences. However, the nature, frequency and duration of these events have not been provided to me. The previous undertaking of events does not justify allowing such activities to recommence, where they could be likely to result in harmful living conditions to the occupiers of neighbouring residential properties. Such occupiers are likely to expect some increased noise and disturbance during evenings and weekends. However, the playing of music at outside events, in such close proximity to residential properties, is likely to result in harmful living conditions for the occupiers during those events.
11. Therefore, the condition is considered relevant to planning, reasonable and necessary to protect the living conditions of neighbouring occupiers in respect of noise and disturbance, required by Policies CP1 and CP10 of the Oxford Local Plan 2001-2016 (2005) (the Local Plan). In combination and amongst other things, these require that development adequately safeguards local amenity. There would also be conflict with paragraph 127(f) of the Framework which requires decisions should ensure developments promote health and well-being, with a high standard of amenity for existing and future users.

Condition no. 4 – Lighting

12. Condition no. 1 of the permission requires the development shall be constructed in complete accordance with the specifications in the application and approved plans listed. Condition no. 4 requires that no additional lighting beyond that on the approved plans is installed at the shelter. No lights are shown on the structure on the plans provided by the appellant, referenced in the application form, or the Design & Access Statement. The lights that I witnessed on my visit comprised a number of lights pointing in various directions set out on a gantry within the structure, and some small lights around the side of the yard.
13. The appellant suggests the lights are required to participate in the Aunt Sally league which runs until 22:00hrs, and the lights are of a similar character to those in a previous structure. I have no details of either the previous lights before me, or the current lights such that they could be incorporated into any planning condition.
14. There were multiple large lights present on the gantry pointing in different directions. Whilst the roof provides some cowling to the lights, there is potential for significant light spillage horizontally from the structure towards the rear windows of properties fronting Crown Street and St. Mary's Road. Given the amount of lighting, and the proximity and direction of residential properties, there is not sufficient evidence before me to ensure that the development would not be harmful to the living conditions of neighbouring residential properties, by reason of light pollution.

15. Therefore, for the reasons set out above, the condition is reasonable and necessary. I cannot be certain the lighting would not conflict with Policy CP1 of the Local Plan and Policy CS18 of the Oxford Core Strategy 2026 (2011) (the Core Strategy). In combination and amongst other things these expect development to safeguard local amenity and respond appropriately to its surroundings. There would also be conflict with paragraph 127(f) of the Framework, the relevant provisions of which I have referred to above. The appellant has referred the development being compliant with Policy CP20 of the Local Plan as it would not involve unacceptable light pollution. However, for the reasons I have set out above, the appellant has not demonstrated that light pollution would be acceptable, which results in some conflict with Policy CP20.
16. The Council's reasoning refers to Policy HE6 of the Local Plan and Policies HP13 and HP14 of the Sites and Housing Plan 2011 – 2026 (2013) (the SHP). Whilst I have had regard to these policies, they are not directly relevant to the dispute in this appeal. Therefore, they are not determinative in the main issue/dispute with this condition.

Condition no 5 – hours of use

17. The planning application expresses that the shelter is specifically required for participation in an Aunt Sally league. This is understood to be played between 20:00hrs – 22:00hrs. It would necessitate use of the shelter for an additional hour in the evenings that it is played, which is suggested to be Wednesday evenings between May – September. It is understood the proposed hours of use would also relate to any music events.
18. I note the general format of Aunt Sally as outlined by the appellant (being akin to bowls but based upon a shy arrangement). However, there is little further information of how the game is played, the implements used and intensity of the games. It appears to me that it would have the potential for sharp peaks of noise resulting from the contact between implements, and significant noise from numbers of participants and spectators enjoying the game.
19. I am informed that the premises has participated in this event for some 78 years in some form. It is suggested that a previous shelter was used and future participation of the premises' team in the league is in doubt. However, there is little substantive information before me to make explicit what the game entails, what league participation requires, or the potential for noise mitigation to minimise this. Without such information, I cannot be sure the proposed development would not result in significant and frequent disturbance for an additional hour in the evenings, that would result in harmful living conditions to the occupiers of nearby residential dwellings.
20. Therefore, on the basis of the limited information before me, for the reasons set out above, the condition is considered reasonable and necessary, in accordance with the requirements of Policies CP1 and CP10 of the Local Plan. In combination and amongst other things, these require that development adequately safeguards local amenity.
21. It is suggested the proposals are compliant with Policy CS20 of the Core Strategy, which seeks to protect and enhance existing cultural and community facilities. Furthermore, that Aunt Sally and the events that would take place are a valued part of local culture. The proposals might contribute to enhancing the activities taking place at this community facility, which could be a benefit of

the development. However, there is no evidence before me that the participation in the Aunt Sally league could not take place within the premises, or at another venue.

22. The appellant suggests the impact upon amenity should be balanced against the requirements of criteria f) of CP1 of the Local Plan. This requires where necessary development proposals must retain important open spaces of recreational or amenity value. However, there is no substantive evidence before me that dismissing this appeal would result in the appeal site being lost as an outside space.

Other Matters

23. There is no evidence before me that the development would be rendered entirely unusable by not allowing this appeal, or that the outcome of the appeal is important to the survival of the PH. The use and activities facilitated by the proposals might result in some increased custom or revenue, which would be a benefit of the proposals. However, the extent of this benefit has not been set out in the evidence before me. Furthermore, there is no substantive evidence that dismissing this appeal would result in doubts over the future viability of this community asset.
24. Some representations advise of the good character of the proprietors and that many of the allegations set out in objections are unfounded. I have determined this appeal on its planning merits only. The development might increase the number of live music venues in Oxford. However, I see no evidence that there are insufficient live music venues in the city. In any event, these benefits, do not outweigh the harm I have found above.
25. The appellant has referenced compliance with Circular 01/2006. However, this Circular was withdrawn and replaced by the National Planning Practice Guidance over 5 years ago.

Conclusion

26. I conclude that the proposal would be contrary to the development plan and the Framework and there are no other considerations, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR