The Planning Inspectorate

Appeal Decision

Site visit made on 21 February 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 31 March 2020

Appeal Ref: APP/A1910/C/19/3234332
Boxmoor Lodge, London Road, Hemel Hempstead, Hertfordshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Rickett against an enforcement notice issued by Dacorum Borough Council.
- The enforcement notice was issued on 25 June 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a marquee in the approximate position marked with a cross on the attached plan.
- The requirements of the notice are:
  Remove the marquee and all fixtures and fittings used in its construction from the site.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a)(g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

Procedural Matter

2. Although not ticked as a ground of appeal on the appeal form, the appellant has questioned the length of time allowed for compliance which falls within ground (g). However, as the Council has commented upon this issue, I am able to address this ground without causing injustice to any party.

The ground (a) and the deemed planning application

3. The main issues are (i) the effect of the development on the character and appearance of the area and (ii) the effect of the development upon the living conditions of nearby occupiers at Laurel Bank and Box Lane with regard to noise.

Character and Appearance

4. Boxmoor Lodge Hotel is on the junction of London Road and Felden Lane. The marquee, the subject of the notice, is attached to the rear of a building which is separate from the main hotel building and extends from the rear of the building into the garden area of the appeal site. Rear gardens of two of the dwellings on Laurel Bank back onto the eastern boundary of the appeal site with Oaklands on Felden Lane being side on to the remainder of the eastern boundary. The garden of 1 Box Lane which is set in a large plot is to the other side of the

southern boundary. There is largely extensive mature hedging and trees along the boundaries with the gardens of dwellings.

5. The Council indicates that the marquee takes up around a third of the garden space and refers to its size and design being in contrast to the surrounding dwellings. Nevertheless, the position of the development to the rear of the appeal site does mean that views of the marquee from the main roads are very limited. Any views from nearby dwellings and their gardens are also likely to be limited due to the mature hedging and fences to the boundaries of the appeal site and the marquee is not as tall as surrounding dwellings. With regard to appearance, the marquee is largely white canvas with a steel frame. On balance, given the relatively secluded location of the marquee, I do not consider that it does cause harm the character and appearance of the area.

6. I therefore find no conflict with Policy CS12 of the Dacorum Core Strategy (Adopted September 2013)(the Core Strategy) with regard to visual intrusion and respecting adjoining properties in terms of matters such as scale and layout, materials and design.

Living conditions of nearby occupiers

7. The marquee is used for events including weddings. The Council is concerned about the use of live or amplified music and use of the public address system. Whilst no details are provided of the number of events, the note provided of a meeting in June 2018 referred to around 100 events per year with weddings being booked 2 to 3 years in advance. The nature of wedding events is that music and entertainment will be provided. Noise is more prevalent at evenings, nights and weekends when events are more likely to take place in the marquee and occupiers of nearby dwellings are more likely to be at home to experience noise issues. Incident sheets for the summer of 2018 indicate that bass noise is an issue and also the volume of the PA system. Nearby residents also refer to disruptive behaviour in the marquee garden, having to close windows and doors in summer and limited garden time. The Council's case is that whilst noise is not of sufficient level to be a statutory nuisance, it does cause harm to nearby residential occupiers.

8. Whilst the appellant has referred to discussions with the Council with regard to noise measures, those discussions largely relate to earlier permissions. Conditions were attached to the planning permission granted in 2010 for a period of 5 years which included restricting use of the garden after 9pm. Although the permission came to an end in 2015, the marquee use did not cease. The appellant has referred to responding quickly to direct telephone complaints and a desire to work with neighbours to resolve any noise issues, however, limited details are provided. Whilst the note of the meeting in June 2018 refers to investigating the use of a different PA system with noise limiting features, there is no later evidence before me as to whether that has been installed or is still being investigated.

9. On the evidence before me, I do consider that the development does cause harm to the living conditions of nearby occupiers of Laurel Bank and Box Lane with regard to noise. I have considered whether conditions could overcome the harm that I have found but, on the evidence before me, there is insufficient information for me to impose suitable conditions. Whilst local residents have suggested noise levels not exceeding 50 or 48 decibels at the boundary, no noise assessments have been carried out by any party to assess whether or not

this is an appropriate level. Neither of the conditions suggested by the Council, were I minded to allow the appeal, pass the statutory tests required to be met prior to imposing a condition. I do not, for example, consider that a condition banning all music and a PA system from the marquee would be reasonable. The alternative proposed condition assumes that a suitable noise control scheme can be designed and approved which is uncertain in view of the lack of any expert noise evidence from any party to date.

10. The development does therefore conflict with Policy CS12 of the Core Strategy which, amongst other things, refers to avoiding disturbance to surrounding properties. It would also conflict with Paragraph 180 of the Framework which refers to development avoiding giving rise to significant adverse impacts on quality of life.

Conclusion on ground (a)

11. Although I have not found harm to the character and appearance of the area, I have found harm to the living conditions of the nearby occupiers of Laurel Bank and Box Lane with regard to noise. The appeal upon ground (a) therefore fails.

The appeal under ground (g)

12. An appeal under ground (g) is that the time allowed for compliance is that the period for compliance specified in the notice falls short of what is reasonable. The Council has allowed a compliance period of 12 months. The appellant considers that 12 months is insufficient time as weddings are booked up to three years in advance and he would be letting down brides- to-be and local people. The Council states that twelve months was discussed at a meeting in June 2019 as being sufficient time.

13. I note that discussions between the parties were cut short when the Council served the enforcement notice to avoid the development acquiring immunity from enforcement after a four year period. Nevertheless, the lengthy compliance period does allow discussions to continue and, if considered appropriate, to submit a planning application with expert noise evidence with proposed noise measures. A compliance period in excess of 12 months would usually only be justified in exceptional circumstances, particularly where harm to living conditions of nearby occupiers are involved. I do therefore consider 12 months is a reasonable period and the appeal on ground (g) therefore fails.

Other Matters

14. The appellant has referred to a hotel in Bridgwater, Somerset which was granted planning permission for a marquee by its local Council. However, in the absence of any further information about the other site, I do not find it to be comparable with the appeal site which, in any event, has to be assessed on its own merits.

15. I note that Boxmoor Lodge Hotel is a privately owned business that employs around 30 people locally and also supports local businesses and two employees have separately indicated their support for the development. Nevertheless, these matters do not individually or collectively overcome my finding of harm.

Conclusion

16. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

E. Griffin

INSPECTOR