



Appeal Decision

Site visit made on 6 October 2020

by J Hunter BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Appeal Ref: APP/Z4718/W/20/3255824

Woodhouse Farm, Holmfirth Vineyard Ltd, Woodhouse Lane, Holmbridge, Holmfirth HD9 2QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Holmfirth Vineyard Ltd against Kirklees Metropolitan Borough Council.
 - The application Ref 2020/90026 is dated 6 April 2020.
 - The application sought planning permission for erection of extension to and rebuilding of fire damaged winery without complying with conditions attached to planning permission Ref 2016/62/9400/W, dated 29 March 2017.
 - The conditions in dispute are No 5 and No 6 which state that: The use hereby permitted shall not be open to customers outside the hours of 09.00 to 23.00 Monday to Sunday inclusive.
 - Prior to the development being brought into use a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include: Times of operation (internally and externally). How and when staff will patrol external areas to ensure guests are not noisy and that no excessive noise is escaping from the function room; Doors and windows to the function room remaining closed during regulated entertainment; The placement of signage around the function room and external areas requesting that guests are quiet and respect neighbours; Arrangements with local taxi firms regarding being quiet on late night collections and no sounding of horns; Provision of noise limiter within the function room; Telephone numbers and names of those in charge on the night of functions(in case of complaint) The development shall thereafter be undertaken in accordance with the approve Noise Management Plan
 - The reasons given for the conditions are: In the interests of residential amenity and to accord with Policy EP4 of the Kirklees Unitary Development Plan.
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Decision

1. The appeal is dismissed and the application is refused.

Background and Main Issue

2. A winery is now trading at the appeal site. The appellant wishes to extend the opening hours from those originally imposed to between 0900 and 2400 Thursday to Sunday and Bank Holidays. The main issue is the effect that these proposed opening times would have on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

3. The appeal site is located in an elevated rural location overlooking the village of Holmbridge. The immediate surrounding area is characterised by open fields interspersed with farms and single residential properties.
4. The submissions refer to two main causes of noise related to the appeal site- the internal noise linked to the indoor function space for weddings and celebrations etc and the outdoor noise and disturbance linked to the comings and goings of guests attending such events. The main parties agree that the existing noise management plan and previously installed mitigation appears to control the internal noise and therefore the main area of dispute is in relation to the external noise.
5. Both of the main parties acknowledge that external noise caused by the comings and goings of guests, staff and vehicles is difficult to control. I consider it likely given the elevated open position of the site and the very low background noise levels that intermittent noise such as car doors banging and late night conversations out in the open could give rise to a significant amount of disturbance, particularly late at night. The cumulative impact of hosting late night events until midnight over an entire bank holiday weekend for example, could have a very substantial effect on the living conditions of surrounding residents.
6. I note that the venue has, in the past been granted temporary licenses for later opening hours in line with the proposed hours of use subject to this appeal. However, the planning and licensing regimes involve the consideration of different, albeit related regimes. The licensing regime does not take account of planning policies or objectives.
7. The appellant has kept a detailed log of activities at previous late night events and has put in measures to try and curtail and resolve neighbour complaints. Despite this, the Council has recorded several complaints linked to external noise although neither of the main parties have supplied any evidence in the form of external noise readings taken during previous late night events.
8. The submitted MZA Acoustics letter outlines the environmental noise climate at the appeal site. The data relates to the background noise levels noting that there is only a small decrease in background noise levels between the hours of 2300 and 0100. This suggests that the external noise produced by customers leaving events would not be much more noticeable at midnight or 0100 than it is at the current closing time of 2300.
9. Notwithstanding the above, it is not unreasonable to assume that the level of noise neighbours would tolerate at 2300 would be greater than that they would deem acceptable at 0100 because it is likely that they would expect to be able to settle to sleep before midnight and not be disturbed by patrons exiting the appeal premises. I accept that the prolonged opening hours would allow for the staggered egress of customers however, I do not agree that it would reduce the potential for noise and disturbance overall. This is because in an open rural area with undisputedly low background noise levels, even small numbers of loud conversations, car doors banging and/or cars revving after 2300 hours on Thursdays to Sundays, potentially week after week and on Bank Holidays would be likely to harmfully disturb nearby residents.

10. Consequently, the noise and disturbance that could occur due to the proposed longer opening hours would be likely to unacceptably harm the living conditions of nearby occupiers. The proposal therefore conflicts with the amenity requirements of Policies LP24 and LP52 of the Kirklees Local Plan 2019. Furthermore, it would fail to accord with Section 15 of the National Planning Policy Framework which seeks to avoid noise giving rise to significant adverse impacts on health and wellbeing.
11. I conclude that condition 5 is necessary and reasonable in its current form in order to protect the living conditions of neighbouring residents having regard to noise and disturbance. Condition 6 is intrinsically linked to condition 5 in that it specifies the permitted hours of opening and is therefore also necessary and reasonable in its current format.

Other Matters

12. I accept the appellant's submission that the appeal site is a successful tourist venue that boosts the local economy and I sympathise with the appellant's desire to further enhance the business. Nonetheless these matters do not outweigh the harm that I have identified with reference to the main issue.

Conclusion

13. Accordingly, for the reasons outlined above and taking into account all other matters raised I conclude the appeal should be dismissed and the application refused.

J. Hunter

INSPECTOR