



Appeal Decision

Site visit made on 4 August 2020

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/P0119/W/20/3252440

Sports Ground Aek Boco, Greenbank Road, Hanham, Bristol, South Gloucestershire BS15 3RZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) 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 Mr John Winter, AEK-BOCO Football Club against South Gloucestershire Council.
- The application Ref P19/13268/RVC is dated 10 September 2019. The application sought planning permission for the installation of 4 no. floodlights and associated electrical equipment. Erection of two 50 seat stands and installation of 1.8m high fence without complying with conditions attached to planning permission Ref P19/0994/F, dated 25 July 2019.
- The conditions in dispute are Nos 2 and 4 which state that:
(2) The lighting hereby permitted shall only be used for the duration of the Toolstation Western League matches and shall not be illuminated other than within the following periods:
November 1st to March 31st (inclusive)..... 07:30 - 22.30
April 1st - April 30th07:30 - 20:30
May 1st - May 31st07:30 - 21:00
June 1st - July 31st07:30 - 21:30
August 1st - August 31st07:30 - 20:30
September 1st - October 31st07:30 - 19:30

(4) Notwithstanding the submitted plans, the perimeter fencing and gates shall not exceed 1.2 metres in height. Prior to the installation of the 1.2m high mesh fencing, details of the proposed external finish for the fencing shall be submitted to the Local Planning Authority for approval in writing. The development shall then be carried out in accordance with the approved details and thereafter retained as such.
- The reasons given for the conditions are:
(2) To avoid causing disturbance to local residents during anti-social hours and to avoid any significant negative impact on the local bat population, to accord with Policies PSP8, PSP19 and PSP21 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (Adopted) November 2017

(4) To ensure a satisfactory standard of external appearance and to accord with Policy CS1 of the South Gloucestershire Local Plan: Core Strategy (Adopted) December 2013; and the National Planning Policy Framework.

Decision

1. The appeal is allowed and planning permission is granted for the installation of 4 no. floodlights and associated electrical equipment. Erection of two 50 seat stands and installation of 1.8m high fence at Sports Ground Aek Boco, Greenbank Road, Hanham, Bristol, South Gloucestershire BS15 3RZ in accordance with the application P19/13268/RVC dated 10 September 2019, without compliance with condition numbers 2 and 4 previously imposed on planning permission Ref P19/0994/F dated 25 July 2019 and subject to the conditions in the attached Schedule.

Procedural Matter

2. The appellant seeks an increase in height of the fence, from the 1.2 metre (m) height which was imposed by condition 4 of the previous planning permission, to 1.83m. However, the description of development specifically refers to the height of the fence being 1.8m. As such, any increase over and above this would conflict with the description of the development that was previously granted planning permission and thus is beyond the scope of an application under Section 73 of the Act. As such, I have considered the appeal on the basis of the proposed height of 1.8m, as was originally proposed. The consideration of the matters of the timing of the lighting is, in my view, a matter that falls within the scope of Section 73 and I have proceeded on this basis.

Main Issue

3. The main issue is whether the conditions are reasonable and necessary, having regard to (i) in respect of condition 2, the living conditions of the occupiers of neighbouring properties, with particular regard to disturbance, and (ii) in respect of condition 4, the character and appearance of the area.

Reasons

Background

4. As set out above, the appellant has appealed against the failure of the Council to make a decision on an application made under Section 73 of the Act. The Council have indicated that had the appeal not been submitted, they would have granted planning permission. The Council's Statement of Case sets out the conditions subject to which it would have granted approval. I have had regard to these when making my decision.

Condition 2 - Living conditions

5. The erection of the floodlighting has already been approved by the previous grant of planning permission, the matter before me is solely the times and frequency of the floodlights being in operation.
6. I note that the originally imposed condition limited their operation to only during league matches, as well as preventing use at unsociable hours. I accept that such a limitation on the frequency of use would diminish the benefit of the facility to the community as it would prevent wider use of the football pitch. However, I am also conscious that there are residential properties within close proximity to the site and that the effect on the living conditions of the occupiers of these properties must be considered.

7. Given the times during which the lighting is proposed to be operated, I am satisfied that the lighting duration would be acceptable, as it would not extend into unsociable hours during the night. Despite this, I am conscious however that without a limitation on the number of nights during the week that the lighting can be utilised, that there is potential for matches and/or events to take place at the sports ground every night. This would result in significant potential for disturbance to nearby residents, through noise. Albeit, the current restriction is in my view overly restrictive.
8. With this in mind, I consider that it is necessary to limit the number of nights during any given week that the lighting can be utilised. The Council has suggested that the operation of lighting be limited to Saturdays and two other nights of the week only. In my view, to allow the lighting to be utilised for three nights during the week would strike an appropriate balance between the benefits to the users of the sports ground and ensuring acceptable living conditions for nearby occupiers. However, I see no basis to restrict the lighting to a Saturday plus two other nights. A condition allowing the lighting to be utilised for any three nights during the period of a week, but not for more than two consecutive nights would ensure that there is no unreasonable effect on the occupiers of nearby properties. On this basis, I find that a condition drafted in the terms I have described above would be reasonable and necessary, in the interests of the living conditions of neighbouring occupiers.
9. Subject to this condition, the scheme would comply with policies PSP8 and PSP21 of the South Gloucestershire Local Plan: Policies, Sites and Place Plan (2017), insofar as they seek to ensure development does not create unacceptable living conditions for the occupiers of nearby properties and that development avoids unacceptable levels of light.

Condition 4 - Character and appearance

10. The site lies within an existing sports ground and is set back from the adjacent road, as well as being positioned behind the club building. Whilst the pitch can be viewed at an elevated position above the level of the adjacent road and adjoining football pitch, it is not viewed in isolation. Rather, it forms part of the wider sports field, as well as being against a backdrop of existing dwellings. Moreover, there are mature and substantial trees along Greenbank Road, which serve to filter views of the appeal site. Within this context, I consider that a fence, to a height of 1.8m would not be an alien addition. Such fencing would be a lightweight feature through which views would be possible, and a commonplace feature of sports pitches and likewise at this location would be an appropriate addition that would not be incongruous given its setting. Thus, I find that it is not necessary to restrict the height of the proposed fence to 1.2m.
11. It would be necessary however, in my view, to seek to control the appearance of the fence, including its colour, to ensure that what is ultimately erected does not harm the appearance of the area. I have therefore replaced condition 2 with a revised wording. Subject to this, the proposal would not harm the character or appearance of the area and would comply with policy CS1 of the South Gloucestershire Local Plan: Core Strategy (2013), insofar as it requires development to respect the character and amenity of a site and its context.

Other Matters

12. There is no substantive evidence before me to show that the lighting, subject to the limitations I have referred to above, would have an adverse effect on biodiversity, in particular bats. In any event, I note that there was no objection on this basis from the Council Ecology Officer, subject to the stated lighting times, which have not been amended.
13. Reference is made to matters including noise from the site, an increase in the use of the site, anti-social behaviour, the principle of lighting and fencing at the appeal site and the existence of an alternative site that can be used. However, as set out above, planning permission has already been granted for the development. The issue before me is only that of the conditions to which it has been granted. As such, these matters have little influence on my consideration of the appeal. In respect of parking problems, I note that a condition requiring a Travel Plan is also included within the existing permission and as such, should address this concern.
14. There has also been concern raised in respect of the process of the planning committee considering the application as well as a possible data breach. These are matters for the council and not for me when considering the merits of the proposal. Further reference is made to restrictions included in the lease to the land. I have no further information in this regard and, in any event, any restrictions in a private lease would not be affected by my determination of this appeal. These matters therefore have little bearing on my decision.
15. I note matters relating to the importance of free access to open space as well as concern over the possible prevention of use of the field by the public. I am conscious however that the planning permission includes a condition preventing the locking of gates other than during specific football matches. Thus, there would be no prevention of access to the site at other times.

Other Conditions

16. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

17. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Martin Allen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun on or before 25th July 2022.
- 2) The lighting hereby permitted shall be illuminated only for a maximum of three nights and for no more than two consecutive nights, during any Monday to Sunday period. However, at no point shall the lighting be illuminated during the following times:
 - November 1st to March 31st (inclusive) 22:30 - 07:30
 - April 1st - April 30th 20:30 - 07:30
 - May 1st - May 31st 21:00 - 07:30
 - June 1st - July 31st 21:30 - 07:30
 - August 1st - August 31st 20:30 - 07:30
 - September 1st - October 31st 19:30 - 07:30
- 3) Prior to the installation of the floodlights, details of the proposed external finish and colour of the floodlighting columns shall be submitted to the Local Planning Authority for approval in writing. The development shall then be carried out in accordance with the approved details and thereafter retained as such.
- 4) Prior to the installation of the mesh fencing hereby approved, details of the proposed external finish, to include details of colour, for the fencing shall be submitted to the Local Planning Authority for approval in writing. The development shall then be carried out in accordance with the approved details and thereafter retained as such.
- 5) The concrete path to be constructed around three sides of the football pitch shall not exceed 1 metre in width.
- 6) Prior to the first use of the floodlights and football stands, a 'Travel Plan' comprising immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car use shall be prepared, submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed Travel Plan targets to the satisfaction of the Council.
- 7) Any gates included within the areas of mesh fencing shall only be locked shut for the duration of Toolstation Western League football matches. The gates shall remain locked open at all other times.
- 8) No development shall commence until surface water drainage details including SUDS (Sustainable Drainage Systems e.g. soakaways if ground conditions are satisfactory), for flood prevention; pollution control and environmental protection have been submitted and approved by the Local Planning Authority.
- 9) The development shall be carried out in accordance with following plans submitted for P19/0994/F:
 - Site Location Plan (Drawing no. GRPAEKBOCO 001 A)
 - Existing Block Plan (Drawing no. GRPAEKBOCO 002)
 - Floodlight Elevations (Drawing no. GRPAEKBOCO 003)
 - Proposed Works Plan (Received by Local Authority 28th January 2019)
 - Proposed Block Plan (Drawing no. GRPAEKBOCO 002 B)
 - Proposed Plans and Elevations (Drawing no. GRPAEKBOCO 008)
(Received by Local Authority 10th April 2019)