



Appeal Decision

Site visit made on 22 September 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2021

Appeal Ref: APP/Y1138/W/21/3274393

Duval Priory, Road From Black Cat Cross To Halfpenny Cross, Bampton EX16 9EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Joy Underhill of Oakford Trout against the decision of Mid Devon District Council.
 - The application Ref 20/01789/FULL, dated 22 October 2020, was refused by notice dated 15 April 2021.
 - The development proposed is described as *'Currently the Large Function Hall has Planning permission for use for large functions i.e. a Wedding Reception Venue. The proposal is to have an additional use of a Multi-Function Hall, thus enabling socially distanced events to take place. These being ones of relatively small numbers which under current guidance cannot take place safely in smaller halls'*.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of hall solely for use by holiday makers to public use at Duval Priory, Road From Black Cat Cross To Halfpenny Cross, Bampton EX16 9EG under the terms of the application Ref 20/01789/FULL, dated 22 October 2020, and in accordance with the conditions in the attached schedule.

Application for Costs

2. An application for costs made by Joy Underhill of Oakford Trout against Mid Devon District Council is the subject of a separate decision.

Procedural Matters

3. In my decision, I have taken the description of development from the appeal form and the decision notice as it is the most accurate that I have before me.
4. Since the appeal was submitted the Government has published a new National Planning Policy Framework (the Framework). The main parties have had the opportunity to provide comments on the revisions therein and I have therefore had regard to the new Framework without prejudice to the main parties.

Main Issue

5. The main issue is the effect of the proposal on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

6. Duval Priory is a former farmstead converted into a holiday park, occupying the Exe valley floor. The valley contains sparse, dispersed housing but the acoustics of the valley create the potential for noises to travel long distances.

7. The appeal relates to a former farm building granted permission for its current use as a function hall at appeal in 2014¹ (the Subject Building). The Subject Building is restricted to use by up to 130 patrons, all of whom must be staying on site, pursuant to conditions 1 and 13 of the 2014 permission. There is also a smaller function room to the south of the Subject Building granted permission for that use in 2019². A condition of the permission for that building restricts its use as ancillary to the Subject Building when the Subject Building is in use.
8. The appellant wishes to secure a different arrangement for the Subject Building, with up to 30 external customers able to attend Duvale Priory and use the function hall on occasions when the holiday accommodation is not in use. In terms of the use of the Subject Building itself by this much reduced quantum of patrons, the noise effects would logically be equivalent or less by comparison.
9. The Council and interested parties are also concerned for noise and disturbance linked to people arriving at and leaving Duvale Priory. However, I noted at my visit that the parking area that would logically be used is well within the Duvale Priory complex and largely enclosed by buildings, which would serve to mitigate noise effects. Also given the small number of trips that would likely take place, and the expert advice of the Council's Environmental Health Officer on this matter, any noise and disturbance experienced by neighbours as a result of such comings and goings would be very limited, if observed at all.
10. It is clear that the Inspector in 2014 was similarly exercised about the potential effect of noise and disturbance on neighbours as a result of people being drawn to the site to attend functions within the Subject Building. However, the Inspector's assessment related to a significantly different context of a potential 130 users, not the 30 now proposed. As such, the previous Inspector's reasoning in this matter is of limited weight in my own assessment.
11. I recognise that there are previous enforcement investigations and legitimate noise complaints associated with events inside the Subject Building. However, I also understand that these have all but ceased since the granting of permission for the event space and the associated conditions in 2014. I see no reason why, with conditions similarly employed, the current, conciliatory relationship between the site and neighbouring properties would change for the worse.
12. Consequently, I conclude that the proposal would have an acceptable effect on the living conditions of neighbouring residents with particular regard to noise and disturbance. It would accord with the residential amenity aims of Policies DM1, DM4 and DM22 of the Mid Devon Local Plan 2013- 2033 (adopted 2020) (MDLP) and the Framework.

Other Matters

13. Concerns have been raised with regard to flooding owing to the presence of the site within Flood Zone 3. However, with less people in the Subject Building, it follows that the flood risk implications of its use would be less. The same logic applies to comments made about any increased risk of the transfer of infectious diseases such as Coronavirus disease 2019. The standard of maintenance of designated flood escape routes is a potential enforcement matter separate to and beyond the scope of my assessment of the appeal.

¹ Appeal Ref APP/Y1138/A/14/2213224

² Ref 19/01062/FUL

14. Whilst I understand that there have been previous road traffic incidents along this stretch of the A396, there is no evidence before me of accidents associated with the access into the site. The increase in traffic owing to the proposal would be very small and would not materially prejudice the safe or efficient use of the network. Concerns raised about the structural integrity of the building and its suitability under the Building Regulations are a matter for those regulations. The building already stands and is already in lawful leisure use in any event.

Conditions

15. In addition to the standard time condition, a condition is needed to define the approved plans in the interest of certainty. In the interest of the living conditions of neighbours, it is essential that the extant conditions imposed in 2014 are reflected by this permission, albeit modified to take account of details already agreed. A condition preventing external music is not, however, necessary as the red line of the appeal site is now drawn tightly around the Subject Building.
16. It is necessary for a condition to reflect the proposed alternate arrangements of guest or external public use. The enforceability of such a condition has been questioned. However, this can reasonably be achieved with typical investigatory conduct that is proportionate to the Council's enforcement responsibilities in my view, such as research of the marketing of the venue and/or by attending the site when the Subject Building is open to the public beyond Duvale Priory.
17. The appellant has questioned the Council's suggested condition 14, which seeks to control the 130-user limit through the keeping and potential disclosure of guest records, due to concerns about enforceability and data protection. Whilst the GDPR reforms make such a condition more challenging to enforce, they do not go so far as to make it unenforceable in my opinion. The same worded condition is extant at the site pursuant to condition 13 of the 2014 permission in any case.

Conclusion

18. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be allowed.

Matthew Jones

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2018-01, 2018-03.
- 3) The development hereby permitted shall not be used other than as a function hall by:
 - a. the occupiers of the holiday accommodation at Duval Priory, for a maximum of 130 people at any one time; or
 - b. a maximum of 30 people at any one time who are not occupiers of the holiday accommodation at Duval Priory.
- 4) Subject to conditions 5 and 6 below, the function hall shall not be used other than at the following times:

06:00 to 00:00 Monday to Thursday

06:00 to 01:00 Friday and Saturday

06:00 to 23:00 on Sunday
- 5) On New Year's Eve the function hall may be used between 06:00 and 02:00.
- 6) Any use of the function hall between 06:00 and 09:00 on any day shall be without live or amplified music.
- 7) Noise from the building shall not exceed Laeq (15 min) 42 dB in the daytime (07:00 to 23:00) and Laeq (5min) 42dB in the night-time (23:00 to 07:00) as measured at the boundary of any neighbouring noise sensitive premises.
- 8) When the function hall is being used for any event involving music, the doors and windows shall remain closed at all times other than to achieve access to and from the building.
- 9) Internal music noise levels shall not exceed LAeq (5 min) 90dB during daytime hours and LAeq (5 min) 87dB during night time hours.
- 10) The following noise attenuation measures, previously approved in relation to planning permission 13/00701/FULL, shall be retained and maintained in good order, in relation to the operation of the development hereby permitted:
 - (a) the wooden doors to the rear of the bar shall have close fitting rubber seals fitted to them and threshold reveals fitted to close existing gaps;
 - (b) the external and internal lobby doors shall have close fitting rubber seals and automatic door closers fitted; and
 - (c) ventilation and existing holes within the fabric of the building shall be fitted with acoustic vent covers or sealed if not required.
- 11) The development hereby permitted shall be operated in accordance with the approved Flood Risk Management Plan (FRMP), (dated 11th August 2014 - prepared by Robson Liddle Ltd).

- 12) The pedestrian emergency access and escape routes, and associated signage, detailed within the approved Flood Risk Management Plan, (dated 11th August 2014 - prepared by Robson Liddle Ltd), shall be permanently retained and maintained in good order, in relation to the operation of the development hereby permitted.
- 13) The owners and/or operators of Duvale Priory shall maintain an up-to-date register of the names of all occupiers of the holiday accommodation on the site that use the function hall, including their arrival and departure dates and their main home addresses. This register shall be made available for inspection at all reasonable times by the Local Planning Authority.