



Appeal Decision

Site visit made on 14 July 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2022

Appeal Ref: APP/W1850/W/21/3271872

Crumplebury Farm, from Norton Lane to Whitbourne Hall, Whitbourne WR6 5SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 Edward Evans against the decision of Herefordshire Council.
 - The application Ref:194408, dated 22 December 2019, was refused by notice dated 12 November 2020.
 - The application sought planning permission for demolition of 5no. existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16no. Accommodation Suites without complying with conditions attached to planning permission Ref:163902, dated 3 August 2017.
 - The conditions in dispute are numbers 4 and 16 which state that:
 - (4) The premises shall be used for restaurant, guest accommodation and a conference centre and for no other purpose (including any other purpose in Classes A3, C1 and D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
 - (16) No amplified or other music shall be played in the premises outside the following times: 12.00hrs to 23.00 hrs.
 - The reasons given for the conditions are:
 - (4) The local planning authority wish to control the specific use of the land/premises, in the interest of local amenity and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.
 - (16) In order to protect the amenity of occupiers of nearby properties and to comply with Policy SD1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of 5no. existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16no. Accommodation Suites at Crumplebury Farm, from Norton Lane to Whitbourne Hall, Whitbourne WR6 5SG, in accordance with the terms of the application Ref 194408, dated 22 December 2019, subject to the schedule of conditions attached to this Decision.

Preliminary Matters

2. A third party asserts that the incorrect ownership certificate was served in respect of the planning application. However, that was the signed declaration from the appellant and the application was accepted as being valid and processed by the local planning authority ('LPA'). Moreover, land ownership issues do not go to the planning merits of this case, and any rights associated with them are unaffected by my Decision.
3. The LPA has confirmed that the development approved under planning permission Ref:163902 ('the 2017 permission') has been completed and on the information before me, I have no strong reasons to dispute that this has not been lawfully implemented. I have determined the appeal on that basis.

Background and main issues

4. Paragraph 56 of the National Planning Policy Framework ('the Framework') states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
5. The Planning Practice Guidance ('PPG'), also sets out the following six tests for conditions: 1. necessary; 2. relevant to planning and; 3. to the development to be permitted; 4. enforceable; 5. precise and; 6. reasonable in all other respects. The PPG goes on to state that any proposed condition that fails to meet any of the 6 tests should not be used. The PPG advises that there are clear specific circumstances where conditions should not be used, which includes any condition which may, unreasonably impact on the deliverability of a development.
6. Planning permission was granted for demolition of 5no. existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16no. Accommodation Suites. Disputed condition 4 seeks to limit the use of the appeal premises for restaurant, guest accommodation and a conference centre and for no other purpose.
7. The appellant asserts that based on the description of the development approved under the 2017 permission there is clear tension between the uses expressly permitted by the planning permission, which includes a function suite, and the restrictions imposed by condition 4 and that if this condition were to remain in its current form there are parts of the permitted development that could not be undertaken, namely the use of the function suite. Consequently, the proposal seeks to remove condition 4.
8. By replacing the disputed condition 16 the proposal seeks to allow the playing of amplified or other music within the premises at the following times: 12.00hrs to 24.00hrs.
9. The Council's reasons for refusing the proposal relate to the living conditions of neighbours and highway safety.
10. Against the above background, the main issues are whether disputed conditions 4 and 16 are necessary or reasonable in respect of: i) safeguarding the living conditions of neighbours; and ii) highway safety.

Reasons

Living conditions

11. The Council and third parties are concerned that removing condition 4 would result in the use of the appeal premises for all manner of events, in particular weddings, which would give rise to noise and disturbance to the detriment of the living conditions of neighbours and is therefore necessary.
12. Whilst there is no specific information which identifies that the appeal premises was also intended for weddings, the description of the approved development includes events facilities in the form of a function suite. This is also shown on the approved layout plan (1821 3000 A). It is also apparent from the information before me that the appeal premises was intended for multi-use as an events and functions venue.
13. Therefore, I am satisfied that the appellant was seeking the use of the appeal premises for events and functions other than just conferences which would also include weddings. In particular, it would not be unreasonable to expect this type of multi-use venue to require the use of the function suite. As such, condition 4 limits the use of the appeal premises, for which it was originally intended and impacts on the deliverability of the development and is therefore unreasonable.
14. Furthermore, the extent to which an event or function effects the living conditions of neighbours with regard to noise and disturbance, largely relates to how these and the premises are managed rather than the type of event or function taking place. To this end, condition 14 of the 2017 permission requires provisions to be made for the control of noise emanating from the site. Indeed, based on the Council's Delegated Decision Report for the 2017 permission, it appears that the request by the Council's Environmental Health Officer for a Noise Management Plan ('NMP') was due to concerns over the use of the appeal premises as a wedding venue. The imposition of condition 14 also highlights that some noise and disturbance from the approved development was anticipated.
15. Accordingly, regardless of the type of event taking place at the appeal premises, including a wedding or other private function, if the NMP can safeguard the living conditions of neighbours, condition 4 would not be necessary or relevant to planning, insofar as this relates to safeguarding the living conditions of neighbours.
16. As part of this appeal the appellant has submitted an updated NMP, dated 25 March 2021, this sets out measures to mitigate noise and disturbance. This includes limiting the playing of amplified music after 20:00hrs to the Grand Hall, which is fitted with a volume limiting system. This system cuts off power to amplified music when it exceeds a pre-set volume. This system includes a traffic light system which enables performers to test and calibrate equipment prior to performances. The ventilation and heating system in the Grand Hall ventilates this space without needing to open doors. In addition, acoustic curtains can also be installed along parts of the Grand Hall. The NMP also states that no amplified music shall be played outside.
17. The appellant's noise assessment concludes that the acoustic curtains achieve a 6dB reduction in noise at 1m from the outside of the Grand Hall and that

these should be used in all instances where a live band is playing at night. The calculation supplied in the assessment finds that with the acoustic curtains in place, noise levels emanating from the premises would be significantly below the background noise level of 27-30db for the nearest houses in a quiet rural area between 23:00-07:00. The assessment also includes an allowance for observed tonality and impulsivity of any music at any receptor and is for an outdoor or balcony receptor position. The assessment adds that any indoor receptor levels would be another 15db lower, even with windows open.

18. Notwithstanding the review of the appellant's noise assessment, undertaken by Clear Acoustic Design on behalf of third parties, I am satisfied that the appellant's noise assessment was undertaken by a competent person and the standards and methodology applied in this were agreed with the Council's Environmental Health Officers.
19. The Council's Environmental Health Officers have also visited the appeal site to evidence the noise mitigation in place and to listen to the amplified music on and off the site including from some local residences. The observations of the Council's Environmental Health Officers are broadly consistent with the conclusions of the submitted noise assessment. Although the noise listening exercise was undertaken in the afternoon, I concur with Council officers that this is a locality where background noise levels are low during the day and night. Furthermore, the LPA and some third parties advise that the implementation of noise mitigation measures at the building have resulted in improvements.
20. To limit the extent of external activity, the updated NMP identifies an outdoor terrace as the only area where guests would be able to congregate in the evenings beyond 21:00hrs. This is of a limited size, sunken and in part, shielded and separated by the main building from nearby properties. Therefore, the use of this area is unlikely to cause any unacceptable noise and disturbance to neighbours.
21. Whilst the appellant has acknowledged that at one event, the band circumvented the sound limiter system, I have no technical evidence to support allegations that this system is incompatible with live performances. Similarly, in the absence of any technical evidence, I cannot be certain that the temperature within the Grand Hall cannot be regulated without opening doors.
22. Since the appeal premises was operational under the 2017 permission, in March 2019 and subsequently complaints have been made to the Council. These relate to audible music, guests singing and shouting, and band leader announcements being heard and a noisy external air conditioning unit. However, on the basis of the information before me, these mainly relate to the failure to implement the NMP properly, which is a matter of enforcement.
23. Most notably and despite the site's tranquil setting, the approved premises already incorporates restaurant and conference facilities, which allow the playing of amplified or other music till 23.00hrs. I attach considerable weight to this. It also appears that despite the Covid-19 pandemic, a range of events have taken place at the appeal premises, some of which have not resulted in complaints.
24. I acknowledge there is activity and noise associated with guests and staff leaving the premises at night, including the movement of vehicles over cattle

grids. However, this type of activity would continue from the site even if this appeal were to be dismissed. Moreover, on the information before me and my findings on the other main issue, I am not persuaded that the removal of condition 4 would unacceptably change this over and above the use of the premises in association with the extant permission.

25. Drawing on the above reasons, in my judgement, if effectively enforced, the provisions of a NMP are capable of safeguarding the living conditions of neighbours in respect of noise and disturbance from the appeal premises, and this could be secured by a condition if the appeal were to succeed. In reaching this conclusion, I am mindful that the proposal before me incorporates additional measures, such as the acoustic curtains, management of clean-up operations and greater controls over the use of fireworks from the site which also weigh in its favour.
26. However, the proposed change to the wording of condition 16 would allow an additional hour of amplified music or other music to be played in the appeal premises, and this would result in a later departure time from the site. This would include guests chatting and shouting and vehicle engines revving, car doors closing or slamming and the movement of vehicles. Given the sites setting, this area and its neighbours, would be more sensitive to noise and disturbance, during late night hours when residents would be sleeping and therefore tend to be more susceptible to noise disturbance, particularly if windows are open.
27. Therefore, and despite the provisions of the NMP and the Council's licensing requirements, it has not been clearly shown that the activity associated with a later departure time from the site, would not harm the living conditions of neighbours. Condition 16 of the 2017 permission is therefore necessary and reasonable for safeguarding the living conditions of neighbours. Accordingly, the proposal to change condition 16 would be in conflict with the aims of Policies SD1 and RA6 of the Herefordshire Local Plan – Core Strategy ('CS') with regard to safeguarding the living conditions of neighbours from unacceptable noise.
28. Nonetheless, for the above reasons and having regard to the Framework, the Noise Policy Statement for England and the Planning Practice Guidance in respect of noise and subject to ensuring compliance with a revised NMP, condition 4 is not reasonable or necessary and its removal would not be in conflict with the aims of Policies SD1 and RA6 of the CS with regard to safeguarding the living conditions of neighbours. Notwithstanding this, it is necessary in the interests of certainty, to impose a condition to ensure that the use of the appeal premises is consistent with the proposal.
29. Although the Council's first reason for refusal refers to Policy LU9 of the Whitbourne Neighbourhood Development Plan, this Policy relates to environmental considerations in respect of the landscape and built environment and therefore is not directly relevant to living conditions.

Highway safety

30. The Council contends that Condition 4 was also intended to be a way of capping the use of the site and thereby limiting vehicle trips for reasons of sustainability and safety.

31. Access to and from the appeal site is via Norton Lane (also known locally as Parish Road). When approaching from the west this is gated and its junction to the A44 has substandard visibility in both directions and a poor geometric layout which results in vehicles unable to turn left into Norton Lane or right out of Norton Lane in one movement. Whilst the appellant may have advised that the gate would be removed, there are no requirements for this under the 2017 permission. From the east, access is via the B4203, the junction to this road also has substandard visibility. Nevertheless, these are the existing arrangements that will continue to serve the development even if I dismiss this appeal.
32. Norton Lane is a lightly trafficked single-track road and there are some places to allow vehicles travelling from opposite directions to pass. Although it does not appear that a Section 278 agreement has been completed, the appellant is in the process of creating two new passing places along this road. This will improve travel along Norton Lane. Notwithstanding this, I acknowledge there may be situations where a vehicle may have to reverse to allow another to pass and in the context of a rural area, such arrangements are not uncommon.
33. In particular, the local highway authority are concerned about the use of the premises to host weddings. The appellant's Highways Technical Note concludes that there are likely to be about 1.8 trips per delegate for conferences and a maximum of approximately 1.2 trips per guest for weddings. Most notably, that arrivals, and particularly departures, to weddings and similar private functions are usually staggered and at times that do not coincide with peak flows on the surrounding road network. Based on the numbers of people attending wedding events and space requirements for these, it is unlikely that the conference facilities at the appeal premises would be simultaneously available for other uses. Therefore, the proposal is unlikely to result in an intensification of traffic movements.
34. Also, conferences can take place from the appeal premises, and there are no limitations on the number of visitors that could attend such events or visit the restaurant. In fact, the only limitation is the capacity of the appeal premises which would not be increased by the proposal. Furthermore, as already stated, a range of events have been hosted from the appeal premises and there is nothing to suggest that these have resulted in any significant highway safety issues.
35. Although the LPAs second reason for refusal cites the variation of condition 16, I have not been given any cogent reason why this would harm highway safety.
36. I have also taken account of the Transport Appeal Statement prepared by Cotswold Transport Planning on behalf of third parties. Nevertheless, there is nothing in this which leads me to a different conclusion.
37. Based on the above reasons, the proposal is unlikely to have any significant adverse effect on highway safety. Consequently, the removal of condition 4 and replacement of condition 16 would not have any unacceptable effect on highway safety and are therefore not necessary or reasonable. As such, the proposal would not be contrary to CS Policy SD1 which seeks to create safe and accessible environments, the highway safety aims of policy MT1 of the CS, and Policy RA6 which amongst other things supports proposals that do not generate traffic movements that cannot be safely accommodated within the local network.

Other matters

38. Legal opinions have been submitted on behalf of the appellant and third parties, given the scope of these; they do not alter my findings on the planning merits of the proposal before me.
39. Third parties have raised concerns about matters relating to nearby heritage assets, the landscape and ecology/biodiversity. These matters were addressed in the Council's report to the Planning and Regulatory Committee, dated 20 November 2020. I have also considered these and based on the scope of this appeal and the main issues; I have no reason to disagree with the Council's findings. The alleged effects of the proposal on property values and the incomes of businesses do not alter the planning merits of this case.
40. The 2017 permission only seeks to control external lighting through condition 18, which has been discharged. The removal of condition 4 would not have any adverse effect on light pollution. Furthermore, although the acoustic curtains are intended for noise mitigation, when in use these would offer the added benefit of limiting light spillage from the building.
41. I have noted the concerns about firework displays and the effects of these. Notwithstanding, the details set out in the updated NMP, the appellant has subsequently confirmed that no fireworks displays would be undertaken from the appeal site and this could be dealt with by a condition.
42. On the information before me there is no clear reason to suppose that the use of the appeal premises raises any fire safety concerns. In any event, this and any concerns about anti-social behaviour can be dealt with through other legislation. Matters relating to any undischarged conditions on the extant planning permission and breaches of planning control are for the LPA.

Conditions

43. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 of the Act should also repeat the relevant conditions from the 2017 permission unless they have already been discharged. Since construction of the development that is the subject of the original permission has been completed, it is not necessary to attach the original condition 1, which set a time limit for commencement of the development.
44. Based on the Council's report to the Planning and Regulatory Committee, dated 20 November 2020, conditions 3, 9, 11, 14, 17, 18 and 22 of the 2017 permission have been discharged. As I am not certain that some of these have been complied with, I have restated most of them to reflect this. Where works have already been undertaken in accordance with discharged conditions these could be agreed between the main parties. I have also restated those undisputed conditions that are still subsisting and capable of taking effect.
45. The submitted NMP refers to the display of fireworks from the site and contains no information about managing clean-up activities. Therefore, it is necessary to specify a condition requiring a revised NMP in the interests of safeguarding the living conditions of neighbours. Also, in the interests of safeguarding the living conditions of neighbours I have imposed a condition prohibiting the use of fireworks and Chinese lanterns from the site. For the reasons set out above, it is necessary to impose a condition specifying the approved uses.

46. Where necessary and in the interests of clarity and precision, I have altered some of the suggested conditions to better reflect the relevant guidance
47. The appellant has questioned the requirement for condition 5 of the 2017 permission. However, the appeal before me does not specifically relate to this condition and in any event, I have not been provided with sufficient information and reasons to support the appellant's assertion that this condition does not pass the 6 tests.

Conclusion

48. I have found that the proposal would not have an adverse effect on highway safety. I have also found that the removal of condition 4 would not harm the living conditions of neighbours. However, condition 16 of the 2017 permission is necessary and reasonable to safeguard the living conditions of neighbours. Accordingly, I conclude that the appeal should only succeed in respect of the removal of condition 4 but with the retention of condition 16 of the 2017 permission.

M Aqbal
INSPECTOR

Schedule of Conditions

- 1) The development shall be in accordance with the approved plans (Drawing nos.1821/1000 Rev A, 1821/1100, 1821/3000 Rev A, 1821/3100 Rev A, 1821/3601, 1821/3602 and 1821/9001), except where otherwise stipulated by conditions attached to this permission.
- 2) The appeal premises shall be used as a Function Suite, Restaurant, Conference Centre and Guest Accommodation and for no other purpose (including any other purpose in Classes A3, C1 and D1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- 3) The approved accommodation block building shall be used for holiday accommodation only and for no other purpose including any other purpose within Class C of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- 4) Within one month of this Decision, a revised Noise Management Plan ('NMP') including a timescale for its implementation shall be submitted for approval in writing by the local planning authority. The revised NMP shall be based on the updated Noise Management Plan, dated 25 March 2021 and shall include the following: a) Measures to control noise including amplified or other music emanating from the premises (including details of maximum noise levels and the management of internal spaces and external doors); b) A process for recording and managing complaints relating to noise and disturbance; c) The management of visitors leaving the approved premises and clean-up operations, and d) A mechanism to monitor noise levels from the approved premises and to monitor and review the NMP annually. Thereafter, the appeal premises shall be operated in accordance with the approved NMP for the life of the development.
- 5) This permission shall ensure for the benefit of Mr J & Mrs K Evans only and not for the benefit of the land or any other persons interested in the land.
- 6) Within one month of this Decision the approved car parking area shall be laid out, consolidated, surfaced, marked out and drained in accordance with the approved plans. Thereafter, the car parking area shall be retained for this purpose for the life of the development.
- 7) Within one month of this Decision the provision of passing places on Norton Lane (Parish Lane) shall be provided in accordance with the details approved under discharge of condition letter P180280/XA2 dated 27 July 2018 and subject to a Section 278 agreement.
- 8) Within one month of this Decision, details including a timescale for the provision of works to improve visibility for traffic joining Parish Lane after leaving the site, in an easterly direction, shall be submitted to and approved in writing by the local planning authority. Thereafter, the works shall be carried out in accordance with the approved details and timescale. Nothing shall be planted, erected or sited within the approved visibility splay.

- 9) Within one month of this Decision, details including a timescale for the provision of new signage along the A44 and B4203 shall be submitted for approval in writing by the local planning authority. The signs shall be installed in accordance with the approved details.
- 10) The development shall be completed in accordance with the materials approved under discharge of condition letter P181140/XA2 dated 30 April 2018.
- 11) The soft landscaping shall be completed in accordance with the details approved under discharge of condition letter P181441/XA2 dated 26 July 2018.
- 12) The foul and surface water drainage arrangements shall be provided in accordance with details approved under the discharge of condition letter P180280/XA2 dated 27 July 2018.
- 13) The floodlighting and external lighting shall be completed in accordance with the details approved under discharge of condition letter P181441/XA2 dated 26 July 2018.
- 14) No amplified or other music shall be played in the premises outside the following times 12.00hrs to 23.00hrs.
- 15) There shall be no use of fireworks or Chinese lanterns on the development site at any time.
- 16) The approved soft landscaping shall be maintained for a period of 5 years. During this time, any trees, shrubs or other plants which are removed, die or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the local planning authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 10-year maintenance period.
- 17) None of the existing trees and or hedgerows on the site (other than those specifically shown to be removed on the approved drawings) shall be removed, destroyed or felled without the prior approval in writing from the local planning authority.
- 18) The ecological protection, mitigation, working methods and biodiversity enhancements as recommended in the Preliminary Ecological Report by Focus Ecology dated October 2016 shall be implemented in full as stated unless otherwise approved in writing by the local planning authority.
- 19) The Protected Species (Bats) protection, mitigation and working methods and compensation scheme with required European Protected Species Licence, as recommended in the detailed bat report by Focus Ecology dated June 2017 shall be implemented in full as stated unless otherwise approved in writing by the local planning authority.
- 20) The loading and unloading of service and delivery vehicles together with their arrival and departure from the site shall not take place outside the hours of 08.00hrs to 18.00hrs Mondays to Fridays and 08.00hrs to 13.00hrs on Saturdays nor at any time on Sundays, Bank or Public Holidays.