



Appeal Decision

Site visit made on 6 January 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2022

Appeal Ref: APP/D0840/W/21/3280706

Chycara House, Chyreen Lane, Carnon Downs, Truro TR3 6LN

- 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 David White against the decision of Cornwall Council.
 - The application Ref PA20/06568, dated 24 August 2020, was refused by notice dated 11 February 2021.
 - The application sought planning permission for change of use of approved covered store to function room (retrospective) without complying with conditions attached to planning permission Ref PA18/06110, dated 25 February 2019.
 - The conditions in dispute are Nos 2 and 3.
 - Condition 2 states that: The venue hereby permitted can be used for no more than 25 functions in any calendar year. Informative: A function includes wedding receptions, parties/celebrations and other gatherings.
 - Condition 3 states that: All amplified music within the approved venue shall cease at 11pm.
 - The reason given for both of the conditions is: To ensure that the noise does not unacceptably effect the living conditions of neighbouring occupiers in terms of noise and disturbance, which would reduce the enjoyment of their properties and their quality of life, in accordance with Policies 12 (2), 13 (5) and 16 (1) of the Cornwall Local Plan Strategic Policies 2010-2030, and paragraphs 170 and 180 of the National Planning Policy Framework 2019.
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Decision

1. The appeal is allowed insofar as it relates to disputed condition 2 and planning permission is granted for change of use of approved covered store to function room (retrospective) at Chycara House, Chyreen Lane, Carnon Downs, Truro TR3 6LN in accordance with application Ref PA20/06568, dated 24 August 2020, without compliance with condition number 2 previously imposed on planning permission Ref PA18/06110, dated 25 February 2019, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The application leading to this appeal sought, in effect, to vary the disputed conditions numbered 2 and 3. In the submissions, the appellant has stated that this appeal does not relate to the Council's decision in respect of condition 3. As such, my decision focuses on the disputed condition number 2.

Background and Main Issue

3. In effect, the proposal seeks permission for the use of the subject building as a function room but with different limitations to those set out in the disputed

condition 2. The appellant initially proposed an amendment which would allow an increase in the number of functions in any calendar year from 25 to 32. As part of the appeal the appellant has revised the scheme so as to set the maximum number of events to 30 in any calendar year. This would last for a temporary period of 2 years from the date of any decision after which the maximum number of events would return to 25 per year.

4. The modification to condition 2 presented through the appeal documentation is different to that sought by the original planning application and considered by the Council. However, it does not change the fundamental aspects of the proposal and the number of events now proposed is less than that originally consulted upon. As such, I am satisfied no injustice would be caused by assessing the appeal on the basis of a proposed revision to condition 2 which would allow a maximum of 30 events for a temporary 2 year period.
5. The main issue is the effect of the proposal on the living conditions of occupants of nearby residences in terms of noise and disturbance.

Reasons

6. The appeal site lies in a fairly tranquil countryside location. The subject building is set back from the road in the grounds of Chycara House. The nearest dwellings outside the control of the appellant lie on the opposite side of the road and out of sight from the appeal building.
7. The function room use has the potential to generate noise that may cause disturbance to nearby residents. However, by granting the original planning permission, the Council has accepted that it would avoid unacceptable nuisance for 25 events each year, subject to other planning conditions. It is noteworthy that the original permission allows the permanent use of the building as a function room.
8. Conditions of the existing permission require amplified music to cease by 11pm, played music adhering to various mitigation measures and noise insulation works to be carried out to the building. Through the granting of the original planning permission, the Council has already determined that these conditions ensure the function room use causes no unsatisfactory disturbance to nearby residents. In the absence of any technical evidence to the contrary, there is no reason for me to arrive at a different view on this matter. Also, I am mindful that, regardless of this appeal decision, the initial planning permission would remain and the function room use could lawfully continue with 25 events each year.
9. There is limited explanation provided as to how any extra events above those already allowed would have an unacceptable effect on the living conditions of nearby residents, particularly as the events would be the subject of the same restrictions on noise generation. Moreover, the proposed condition would only allow additional events for a period of 2 years. As such, it would be in line with advice in the Planning Practice Guidance (PPG)¹ which states a temporary permission may be appropriate where a trial run is needed to assess the effect of development on an area. The temporary nature of the proposed condition

¹ Use of planning conditions section of planning practice guidance, Paragraph: 014 Reference ID: 21a-014-20140306 revision date: 06 03 2014

would enable interested parties to monitor the impact of 30 events per calendar year on the living conditions of nearby residents.

10. Concerns have been raised regarding noise generated by events at the function room in terms of vehicle movements and people talking outside. However, the Council has previously found the use to be acceptable and granted planning permission without conditions that seek to restrict or control such activities. As such, there are no substantive grounds to consider the development would be unacceptable in these terms.
11. For these reasons, I conclude the development subject to the varied planning condition 2 as suggested by the appellant would not harm the living conditions of occupants of nearby residences in terms of noise and disturbance. In these regards, it would accord with policies 12, 13 and 16 of the Cornwall Local Plan Strategic Policies 2010 to 2030. These aim, amongst other things, to prevent unreasonable noise disturbance to residents.

Conditions

12. The PPG states that decision notices for the grant of planning permission under Section 73 should repeat relevant conditions from the original planning permission unless they have already been discharged. I have taken into account the Council's comments on conditions.
13. I have re-imposed condition 1 although included within its wording the list of approved plans as set out on the original planning permission. This is required in the interests of clarity.
14. To ensure the development does not unacceptably effect the living conditions of nearby residents, the original condition 2 is included but amended as proposed to allow up to 30 events in a calendar year for a 2 year period. For the same reasons, the original conditions 3, 4 and 5 have been re-imposed. The Council suggest condition 5 should be amended to refer to modifications to the building specified in a different noise impact assessment. However, no clear explanation has been provided as to why this change is required and so condition 5 remains as included on the original planning permission. I have no information about whether all the works required by this condition have been completed and so it has been reinstated.

Conclusion

15. For the above reasons, I conclude the appeal should be allowed.

Jonathan Edwards

INSPECTOR

Schedule of Planning Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following plans: Proposed Letter from Applicant received 15/10/18, Proposed APPENDIX 1b Lodge Layout Plan received 15/01/19, Proposed 2243.04 received 29/06/18, Site/location Plan 2243.01 A received 11/07/18, Block Plan 2243.02 A received 11/07/18, Proposed 2243.03 received 29/06/18, Existing 1820.05 E received 11/07/18, Existing 1820.06 D received 11/07/18.

- 2) The venue hereby permitted shall be used for no more than 25 functions in any calendar year save for the period from the date of this decision to 2 years from the date of this decision when the venue hereby permitted shall be used for no more than 30 functions in any calendar year. A function includes wedding receptions, parties/celebrations and other gatherings.
- 3) All amplified music within the approved venue shall cease at 11pm.
- 4) Any person playing music at the venue hereby permitted shall be required to comply to the following:
 - Adhere to all reasonable requests of the Venue in respect of limiting noise emissions;
 - Use all amplified sound reinforcement systems provided by the Venue;
 - No standalone amplification shall be used under any circumstances;
 - Adhere to the LAeq,1-minute 90 dB limit, as enforced by the limiting system; the system will shut off if you exceed this level;
 - Limit the use of acoustic instruments and, where possible, mute horn/brass instruments; and
 - Drums to be played using 'hot sticks', with a dampened bass drum head.

A digital sound level meter (VLikeLC VL6708, 30dB-130dB) shall be used at each function to monitor and record sound levels on a minimum of 3 occasions during each event/performance. This information will be kept and made available on request of the Council's Environmental Protection Officer.
- 5) The physical improvements proposed to the function room building hereby approved, as set out in a letter from 'Chycara House' to the Council on 15th October 2018, shall be undertaken before any events take place. These works include the modification of the roof with insulation, additional glazing and doors to terraced areas and automatic door closers.