



Appeal Decision

Site visit made on 25 October 2022

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2022

Appeal Ref: APP/X1165/W/22/3298680

Combe Pafford School, Steps Lane, Watcombe, Torquay TQ2 8NL

- 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 Combe Pafford School against the decision of Torbay Council.
 - The application Ref P/2021/1148, dated 11 October 2021, was refused by notice dated 19 January 2022.
 - The application sought planning permission for formation of synthetic sports pitch with associated fencing without complying with a condition attached to planning permission Ref P/2018/0996, dated 7 May 2019.
 - The condition in dispute is No 3 which states that:
The sports pitch shall only be used for sports between the hours of 09.00 and 18.00 Mondays to Fridays; and between the hours of 09.00 and 13.00 on Saturdays, with no sports use on Sundays, Bank or Public Holidays.
 - The reason given for the condition is:
In the interests of neighbouring amenity and in accordance with Policy DE3 of the Torbay Local Plan.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The planning permission that gives rise to the disputed condition allowed the formation of a synthetic sports pitch surrounded by fencing. The condition in dispute limits the hours of use, as set out in the banner heading, to protect the residential amenity of the occupants of nearby houses. The application to vary the condition proposed an increase in the hours of use. It is proposed that the pitch should be allowed to be used for sports between the hours of 09:00 and 20:00 seven days a week.
3. The appellant has suggested that, if I conclude that the proposed hours are unacceptable, an alternative proposal should be considered, whereby the use of the pitch on Saturdays and Sundays would be restricted to 09:00 to 13:00. However, my consideration of the alternative proposal would deny those who should have been consulted through the planning application process the opportunity of such consultation. I have therefore determined the appeal on the basis of the proposal submitted to the Council.
4. The main issue in this appeal is, therefore, the effect that varying the condition would have on the living conditions of neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

5. The appeal site comprises an astro-turf sports pitch measuring approximately 50 X 40 metres, surrounded by 3-metre-high mesh fencing. It is within the grounds of Combe Pafford School, and lies alongside Moor Lane, close to its junction with Steps Lane. The school buildings lie to the south. There are two other schools in the immediate vicinity, one borders the site to the west, and the other lies on the opposite side of Moor Lane to the northeast. There is also a park with a grass football pitch to the east. So, this is an area that has a significant concentration of community facilities. However, there are also residential properties nearby, on the opposite side of Moor Lane and at Kingdom Court, which lies close to the eastern boundary of the site.
6. No expert evidence has been submitted to identify the existing background noise levels at various times of the day. However, I saw that Moor Lane carried moderate levels of traffic at mid-morning, and that there was little other background noise. I am mindful that my visit coincided with the half-term holidays, so there was limited activity at the schools. Nevertheless, what I witnessed was likely to be representative of the level of activity in the area outside of school hours. Indeed, traffic levels are likely to be lower in the evenings and at weekends. Consequently, from what I saw, and in the absence of a noise report, I conclude the area would have a relatively quiet residential character outside school hours.
7. Against this relatively tranquil background, the noise from sporting activities on the pitch would be a noticeable feature in the evenings and at weekends. The noise generated by players shouting, balls hitting the perimeter fencing, and perhaps whistles from referees or trainers would be concentrated in a confined area close to the houses in Kingdom Court. The pitch is only about 13 to 17 metres from the boundary fences of the rear gardens of these properties. As they have small back gardens, the noise would be within 20 metres of the primary windows in the rear elevations. At such short distance, the noise is likely to be intrusive in the gardens and within the houses, particularly during the summer evenings and weekends, when occupants will have windows open, or will be relaxing outside. The occupants do not have any alternative outdoor amenity space, as the area to the front of the houses is almost entirely taken up by hard-surfaced car-parking. Consequently, the increase in noise and disturbance in the evenings and weekends would be harmful to the residential amenity of the occupants of these houses.
8. In arriving at this conclusion, I am mindful that the school and playing field pre-dated the houses, so occupants would have been aware that some noise would be inevitable. However, that noise would be expected to be largely limited to the daytime activities of the school. Residents should reasonably expect a degree of tranquillity in the evenings and at weekends. It is contended that 20:00 is not late, but it is well beyond the time when most people will have completed their working day, and can expect to relax in their house or garden. The prospect of intrusive noise seven days a week until this time would not be reasonably foreseeable or acceptable.
9. The appellants contend that the previous grass playing field was not subject to any limitations on its hours of use, so could have been used in the summer evenings and weekends, when the surface would have been suitable. Consequently, it is argued that the additional hours of use now proposed,

would only result in additional activity in the winter, when the occupants of Kingdom Court would be less likely to be in their gardens. However, the proposal would allow the pitch to be used seven days a week until 20:00, in all weather, and for a variety of sports. The evidence does not indicate that the grass playing field was used as intensively as this during the summer evenings and weekends. It is therefore likely that varying the condition would result in a significant increase in noise and disturbance in the evenings and weekends at all times of the year.

10. The pitch is not large enough for adult 11-a-side football, and the appellant argues that it is only suitable for supervised groups. Examples of requests to hire the facility include children's football training, and over 60s walking football. Consequently, it is contended that significant levels of noise and foul language are unlikely. However, no mechanism has been suggested whereby the use of the pitch would be limited to any particular supervised user-group. Furthermore, I saw no reason why the pitch would be unsuitable for use by adults for 5-a-side football, hockey, or a range of other outdoor sports. I am not, therefore, persuaded that the noise generated by the facility would necessarily be regulated by its size.
11. It has been put to me that the football pitch and children's play area in the park on the opposite side of Steps Lane are a greater source of noise than the appeal site. However, the nearest part of the football pitch is some 60 metres away from the houses, and the closest piece of children's play equipment about 35 metres. Consequently, they lie at a greater distance from the houses in Kingdom Court than the astro-turf pitch. Furthermore, they lie to the front, so any noise generated does not have the same impact on the private back gardens and the primary windows in the rear elevations. The presence of these facilities does not, therefore, diminish the harmful impact that noise from the astro-turf pitch would have on the residential amenity enjoyed by the occupants of Kingdom Court.
12. There are benefits that need to be weighed against the harm that I have identified. Paragraph 92 of the National Planning Policy Framework (the Framework) seeks to enable and support healthy lifestyles through the provision of, amongst other things, safe and accessible sports facilities. The extended hours would enable wider use of the facility by a greater number of people, which would contribute to this aim, whilst also bringing individual benefits to the health and wellbeing of the participants. Furthermore, the additional income generated by the hire of the pitch over an extended period would subsidise the additional educational needs of the pupils at the school. These benefits, in combination, attract moderate weight.
13. However, the Framework also seeks to achieve well-designed places, with a high standard of amenity for existing and future users. Policy DE3 of the Torbay Local Plan 2012-2030 (the Local Plan) says that, where necessary, in order to limit the impact of new development, the Council may seek to restrict hours of operation to preserve amenity. The evidence indicates that the condition in dispute was imposed on the original planning permission to ensure an appropriate balance between the community benefits of the new all-weather surface on the one hand, and the potential harm to the living conditions of adjacent occupants on the other. The extended hours would bring increased benefits, but they would not outweigh the additional harm to the living conditions of the occupants of the houses in Kingdom Court.

14. For the above reasons, I conclude that varying the condition would have a harmful impact on the living conditions of the occupants of Kingdom Court, through the introduction of intrusive noise and disturbance at times when residential occupants should expect a reasonable degree of tranquillity. The proposal would, therefore, be contrary to Policy DE3 of the Local Plan, which seeks to ensure that development does not unduly impact upon the amenity of neighbouring and surrounding uses.

Conclusion

15. For the reasons given above, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR