



Appeal Decision

Site visit made on 29 November 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2023

Appeal Ref: APP/A3655/W/21/3285715

Twisted Stone Golf Club, Pyrford Road, Pyrford, Woking GU22 8UE

- 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 (as amended) (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Twisted Stone Golf Club against the decision of Woking Borough Council.
- The application Ref PLAN/2021/0621, dated 25 May 2021, was refused by notice dated 29 September 2021.
- The application sought planning permission for the construction of an 18 hole pay and play golf course, alterations and extension to the existing farmhouse to form clubhouse and provision of associated car parking accessed from Pyrford Road and the creation of an additional footpath without complying with a condition attached to planning permission Ref PLAN/95/1044, dated 23 June 1997.
- The condition in dispute is No.15 which states that: The use of the clubhouse building hereby permitted shall be ancillary to and only used in association with golf course use and shall not be open to customers between 23.00 hours on any day and sunrise the following day and during these hours it shall be clear of all customers and locked.

Decision

1. The appeal is allowed and planning permission is granted for the construction of an 18 hole pay and play golf course, alterations and extension to the existing farmhouse to form clubhouse and provision of associated car parking accessed from Pyrford Road and the creation of an additional footpath at Twisted Stone Golf Club, Pyrford Road, Pyrford, Woking GU22 8UE in accordance with the application Ref PLAN/2021/0621 dated 25 May 2021, without compliance with condition number 15 previously imposed on planning permission Ref PLAN/95/1044 dated 23 June 1997 and subject to the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by Twisted Stone Golf Club against Woking Borough Council. This application is the subject of a separate Decision.

Background

3. The appeal site, which comprises a clubhouse and car park serving a golf course, benefits from a planning permission granted by a previous Inspector's appeal decision issued in 1997¹ ('the 1997 Appeal Decision'), subject to 20 conditions. Condition 15, the focus of this appeal, restricts the use of the clubhouse to purposes ancillary to and in association with the golf course use, between 2300 and sunrise the following day. Planning permission has

¹ T/APP/A3655/A/96/272396/P2

previously been sought to vary condition 15 to permit non-ancillary uses of the clubhouse until midnight, which resulted in another Inspector dismissing an appeal in 2017² ('the 2017 Appeal Decision').

4. The appellant seeks to vary condition 15 to enable the establishment of a café/restaurant to serve customers other than golfers. The appellant does not seek to vary the hours between which customers are allowed within the clubhouse. The wording initially proposed to vary condition 15, as provided in the application form, was as follows:

'The clubhouse building shall not be open to customers between 23.00 hours on any day and sunrise the following day and during these hours shall be clear of all customers and locked'.

5. Prior to the application being determined by the Council, the appellant provided amended wording proposed to vary condition 15, as follows:

'The use of the clubhouse building hereby permitted shall be ancillary to and only used in association with golf course use. In addition a maximum of 285 square metres of gross internal floorspace at ground floor level which may be used for unrelated purposes only within the meaning of Schedule 2, Part A, Class E (b) of The Town and Country Planning (Use Classes) Order 1987 (as amended) together with alcohol (and any order(s) amending and/or re-enacting that Order with or without modification(s)) (that is, use, or part use, for the sale of food and drink principally to visiting members of the public where consumption of that food and drink together with alcohol is mostly undertaken on the premises) and for no other purpose(s) within Schedule 2, Part A, Class E of The Town and Country Planning (Use Classes) Order 1987 (as amended) together with alcohol (and any order(s) amending and/or re-enacting that Order with or without modification(s)) and for no other purpose(s) otherwise permitted by the provisions of Article 3, Schedule 2, Parts 3 and 4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (and any order(s) amending and/or re-enacting that Order with or without modification(s)). The clubhouse building shall not be open to customers between 23.00 hours on any day and sunrise the following day and during these hours it shall be clear of all customers and locked'.

6. The Courts have established³ that an application under section 73 of the Act may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, that is, the description of the development for which the original permission was granted. The amended wording proposed to vary condition 15 would conflict with the operative part of the planning permission, and as such I do not consider it possible to amend the condition in that manner through this appeal. The wording originally proposed to vary condition 15 would not conflict with the operative part of the planning permission and I shall therefore proceed to assess the appeal based on that wording initially proposed.
7. As part of the 1997 Appeal Decision, the previous Inspector found that the car park would not give rise to unacceptable levels of aural and visual intrusion as

² APP/A3655/W/16/3161629

³ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council & Energiekontor (UK) Limited [2019] EWCA Civ 1868; [2020] JPL 524

to justify the refusal of planning permission. This was due to the distance of the car park from neighbouring houses, landscaping, existing background noise, and the ability to limit the use of the clubhouse to 2300 each day. The previous Inspector concluded the clubhouse would not unacceptably affect the reasonable rights of those living nearby, subject to its use and hours of use being limited, as it would not be run as a form of social club.

8. As part of the 2017 Appeal Decision, another previous Inspector found the identity of people using the clubhouse would make no difference in terms of impact on neighbouring residents.
9. My attention has not been drawn to any relevant material changes in circumstances concerning the impact of the golf course, car park and clubhouse on the living conditions of nearby residents since the 2017 Appeal Decision. I am, however, aware that the golf course has recently reduced in size from an 18-hole course to a 9-hole course, and that an enforcement notice is in effect in relation to an unauthorised use of a small part of the car park, which requires the cessation of the unauthorised use of that land.

Main Issue

10. Taking the above into account, the main issue is the effect that varying the condition would have on the living conditions of nearby residents.

Reasons

11. The golf course is an existing commercial activity with a large car park and clubhouse on the edge of a residential area. The Council's appeal submissions describe the clubhouse as being located a significant distance from the nearest neighbouring dwellings. Those submissions state activity within the clubhouse has a limited impact on the environment and general amenity resulting from noise and other disturbance. The Council has no records of complaints of that nature, although I note comments from neighbouring residents which suggest late night events at the appeal site have resulted in disturbances.
12. I concur with the Council's reasoning that the distance of the clubhouse from neighbouring houses would ensure that any potential activity within the clubhouse resulting from the proposed variation of condition would not result in any unacceptable noise and disturbance affecting the living conditions of neighbouring residents.
13. The Council's concerns relate to noise and disturbance which it claims would be generated by customers accessing and leaving the premises and increased traffic flow into and out of the appeal site if condition 15 is varied to enable a 'restaurant-type' use. This is because it is claimed additional uses of the clubhouse would result in an intensification of the appeal site's use.
14. At present, the clubhouse is free to be used for a range of events ancillary to, and in association with, the golf course use up until 2300 each evening. The evidence suggests that such events are not a particularly common occurrence during evening hours at present, but the extant planning permission would allow them to take place up until 2300 on any day. There is no evidence which demonstrates the proposed variation of condition would result in a more intense use of the car park, even if part of the clubhouse was to be used for restaurant-type purposes without bringing about a material change of use of the land. I am unconvinced that the proposed variation of condition would

- create a more intense or noisier use of the car park compared to how it could be used at present, as authorised by the 1997 Appeal Decision.
15. The proposed variation of condition 15 would not permit any material change of use of the land. The primary use of the appeal site would need to remain in accordance with the description of development authorised by the 1997 Appeal Decision to avoid creating a breach of planning control. The proposed variation of condition would therefore be unlikely to result in significantly different impacts, including any on the living conditions of neighbouring residents.
 16. The Council has suggested that 1 Lees Farm Cottage is closer to the car park than stated in the 1997 Appeal Decision, and its occupants' living conditions would therefore be likely to be adversely affected by the proposal. The Council's measurement of approximately 14 metres between the car park and that dwelling appears to be consistent with the submitted plans, and although the appellant has disputed this measurement, no alternative measurements have been provided. The appellant has, however, clarified that the car park is laid out in accordance with the planning permission granted by the 1997 Appeal Decision.
 17. The entirety of the car park is free to be used ancillary to the golf course use. The proposed variation of condition would not relax any controls over the use of the car park. It may slightly increase the intensity of the use of the car park compared to its current level of use, as the golf course seeks to attract new customers, but it would not significantly increase the intensity at which the car park could already be used in accordance with the planning permission granted by the 1997 Appeal Decision.
 18. The clubhouse currently benefits from a bar and serves alcohol to visitors. I am unconvinced by claims from neighbouring residents that the proposal would lead to increased noise or disturbance from customers who have consumed alcohol, compared to customers associated with the current operation of the golf course and its clubhouse. It would also be unreasonable to conclude that the proposal would result in fireworks regularly being used at the appeal site, when these are not prohibited by the current commercial use of the appeal site and are unlikely to be regularly used if condition 15 is varied as proposed.
 19. Policy DM7 of the Council's Development Management Policies Development Plan Document (2016) (DMP) requires noise generating forms of development or proposals that would affect noise-sensitive uses to be accompanied by a statement detailing potential noise generation levels and any mitigation measures proposed to ensure that all noise is reduced to an acceptable level. I have been referred to a Noise Monitoring Report⁴ (NMR) relating to an elderly person's birthday party within the clubhouse some time ago.
 20. As the NMR relates to a single event which is unlikely to be typical of the potential future operation of the clubhouse set out in the proposal, and as it refers to only 2 noise measurement positions at the southern end of the appeal site, I find its contents to be of limited relevance to the proposal. However, it demonstrates there were no observed or detectable effects on health and quality of life caused by noise generated by the party, when relying on 2 noise measurement positions close to neighbouring houses and the car park entrance. I note its suggestion that the golf club could adopt noise and

⁴ By Michael Sugiura Limited, Ref: 509/17, dated November 2017

complaint management plans, but the extant planning permission does not require such plans to be produced or adhered to.

21. The use of the clubhouse for parties similar to that described in the NMR are not prohibited by the current wording of condition 15, provided that they are ancillary to, and in association with the golf course use. The proposed variation of the condition would allow similar parties within the clubhouse where they are not in association with the golf course use without authorising a material change of use. The Council would remain capable of considering enforcement action if an unauthorised material change of use of the land took place.
22. I am therefore satisfied that the proposed variation of condition 15, as set out in the application form, would not necessitate any mitigation measures to ensure that noise is reduced, and would accord with Policy CS21 of the Woking Core Strategy (2012), Policies DM3 and DM7 of the DMP, Policy SCS1 of the Pyrford Neighbourhood Plan 2016 – 2027 (2017), and the advice of the National Planning Policy Framework (the Framework).
23. Policy CS21 explains that development should, amongst other things, be designed to avoid significant harm to general amenity resulting from noise. Policy DM3 states that the intensification of use of existing outdoor sport and recreational facilities will be permitted where the development is of an appropriate scale relative to its intended use and surrounding area and will not generate unacceptable activity or give rise to loss of amenity by virtue of noise, traffic or other general disturbance, amongst other things. The requirements of Policy DM7 are set out above. Policy SCS1 states that the provision of additional community facilities and services will be supported where they demonstrate they would not generate noise or disturbance that would harm neighbouring occupiers, amongst other things.
24. The Framework advises that planning decisions should ensure new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions, and that new development should avoid noise giving rise to significant effects on health and the quality of life. I have had regard to this, and I have found that the proposed variation of condition would not result in any significantly different impacts on nearby residents compared to activities already authorised by the planning permission granted by the 1997 Appeal Decision.

Other Matters

25. There is significant opposition to the proposal from neighbouring residents. In addition to the matters addressed above, many of the objections suggest the proposal would lead to the appeal site being used regularly as a party or wedding venue, increasing parking stress, and increasing risk of highway dangers in the locality. Other concerns relate to increased litter, reduced property values, and statutory nuisances resulting from the proposed variation of condition.
26. The proposed variation of condition would not authorise a materially different use of the appeal site. It would be a matter for the Council to consider taking enforcement action if a party or wedding venue is created which brings about a material change of use of the land.

27. The proposal would not increase the size of the car park, which currently provides 115 spaces. The appellant has explained that the Council's Parking Standards Supplementary Planning Document (2018) (SPD) specifies maximum car parking standards of 1 space per 0.3 holes for golf courses, and 1 space per 6 square metres of floorspace for A3 uses⁵. The primary use of the appeal site would remain as a golf course, with 9 holes. It is clear that the existing car park would provide sufficient space to meet the maximum parking standards set out in the SPD. I therefore consider it extremely unlikely that the proposal would result in any increased vehicle parking stress locally.
28. The County Highway Authority has confirmed⁶ that it undertook an assessment of the proposal in terms of the likely net additional traffic generation, access arrangements and parking provision. It concluded that the proposal would not have a material impact on the safety and operation of the adjoining public highway. Based on the evidence presented and taking the existing use of the appeal site and size and layout of the car park into account, I reach the same conclusion.
29. There are separate provisions relating to the control of noise and statutory nuisances. In this case, allowing the appeal would not prevent the local authority from taking action against any statutory nuisance at the appeal site. It would be a separate matter for the local authority to consider whether it would be appropriate to grant any licences for the sale of alcohol at the appeal site subject to any further controls, as suggested by some neighbours.
30. I have not been provided with sufficient information which convinces me the proposal would be likely to result in increases in litter or changes in property prices locally. There is no evidence that such matters would create planning considerations relevant to the proposed variation of condition.

Conditions

31. As set out in the Council's committee report, the majority of the 20 conditions attached to the 1997 Appeal Decision related to the initial construction of the golf course, which was completed some time ago. This leaves 5 conditions from the 1997 Appeal Decision which remain relevant to the authorised use and reasonable and necessary for the same reasons explained by the previous Inspector. I shall therefore re-impose those conditions, amended to reflect current circumstances.

Conclusion

32. There are no material considerations which indicate my decision should be made other than in accordance with the development plan. For the reasons outlined above, I therefore conclude that the appeal should be allowed and condition 15 of the 1997 Appeal Decision should be varied in the terms set out in the attached Schedule of Conditions.

L Douglas

INSPECTOR

⁵ As previously defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) as use for the sale of food and drink for consumption on the premises

⁶ Surrey County Council consultation response dated 21 June 2021

Schedule of Conditions

- 1) All sightlines relevant to any vehicular access and parking area shall be kept permanently clear of obstructions and parking areas shall only be used for the parking and manoeuvring of vehicles once the course opens for play.
- 2) The clubhouse building shall not be open to customers between 2300 on any day and sunrise the following day and during these hours shall be clear of all customers and locked.
- 3) No amplified or other music shall be played in the premises outside 0800 and 2300 Monday to Saturdays and 1000 and 2300 on Sundays.
- 4) No deliveries shall be taken or dispatched from the site outside 0800 and 2100 nor at any time on Sundays.
- 5) No new greens, tees, bunkers or other course features shall be constructed subsequent to the completion of the course without the prior written permission of the local planning authority.