



Appeal Decision

Site visit made on 23 August 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 17 October 2023

Appeal Ref: APP/A0665/W/23/3318895

Chester Boughton Hall Cricket Club, Boughton Hall Avenue, Chester CH3 5EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Chester Boughton Hall Cricket Club Ltd against the decision of Cheshire West and Chester Council.
- The application Ref 21/04972/FUL, dated 30 November 2021, was approved on 7 February 2023 and planning permission was granted subject to conditions.
- The development permitted is siting of marquee for a temporary period from 01/04/2023 to 30/09/2023.
- The condition in dispute is No 5 which states that: *"The marquee hereby permitted shall be used only between the hours of 11:00 to 21:00 inclusive."*
- The reason given for the condition is: *"In the interests of residential amenity."*

Decision

1. The appeal is allowed and the planning permission Ref 21/04972/FUL for the siting of marquee for a temporary period from 01/04/2023 to 30/09/2023 at Chester Boughton Hall Cricket Club, Boughton Hall Avenue, Chester CH3 5EL granted on 7 February 2023 by Cheshire West and Chester Council, is varied, by deleting condition No. 5 and substituting for it the following condition:
 - 1) The marquee hereby permitted shall only be used between the hours of 11:00 to 21:00 Monday to Thursday, 11:00 to 23:00 Friday and Saturday; and 11:00 and 22:30 on Sunday.

Preliminary Matters and Main Issue

2. Planning permission¹ was granted for the siting of a marquee for a temporary period subject to a condition specifying the permitted hours of use, amongst other conditions. The council indicated in the delegated report that it has received complaints regarding noise from music being played at the venue and in general marquees provide very little noise mitigation, let alone from noise that has been amplified. The council received confirmation that there would be no live music or entertainment within the marquee. The council therefore considered that temporary permission would be acceptable subject to conditions to mitigate the effect of noise generated by the venue. One of these conditions was the restriction on operating hours.
3. Condition No. 7 attached to the planning permission required a scheme for the management of noise to be submitted to and approved by the local planning authority. Subsequently the council has formally approved submitted details to discharge Condition No. 7². The approved details include a commitment that

¹ Ref 21/04972/FUL

² Ref 23/00473/DIS

there shall be no amplified sound or music played in the marquee, amongst other controls on noise generated by activity associated with the use of the marquee.

4. During my site visit I observed a marquee which matched the design shown on the application plans, installed in the position shown on those plans. I will therefore refer to the marquee as existing development throughout my decision.
5. Taking the above background into account, the main issue is whether Condition No. 5 is reasonable and necessary in the interest of protecting the living conditions of occupants of properties on Boughton Hall Avenue, Boundary Court, Boughton Hall Drive and Hunts Close, with regard to noise and disturbance.

Reasons

6. The marquee is adjacent to the clubhouse and two of the cricket pitches. It is sited on land surrounding the clubhouse which is slightly raised when compared to the nearby sport pitches. Next to the marquee on two sides, are benches which are used in conjunction with the clubhouse, including by people watching sport, consuming food and drink, and attending events. This is in addition to the first floor external terrace of the clubhouse, which is used for similar reasons.
7. There is little to no intervening development between the marquee and neighbouring properties on Boughton Hall Drive and Hunts Close. These properties are bounded by tall dense vegetation, with occasional gaps to allow access between the gardens of the properties and the sport pitches. Other than the clubhouse there is very little intervening development between the marquee and properties on Boughton Hall Avenue and Boundary Court. These properties are separated from the cricket club by a low picket fence.
8. The marquee operates as an extension to the bar and restaurant of the clubhouse and is use by members of the club as well as being rented out for events. Given the agreed restriction on the use of amplified sound and music the marquee would primarily be used for the consumption of food and drink and by people watching sports on the neighbouring pitches.
9. Activities associated with the existing clubhouse, including the use of the first floor terrace and outside areas would generate noise. The appellant contends that these spaces are permitted to be used within the hours they specify within the proposed amended condition wording. The council do not dispute this, albeit they indicate that the licence permits internal events only. Based on the evidence before me, amplified sound and music could be played in the clubhouse throughout the permitted operating hours. I am unaware of any restrictions on the use of external areas during these times or the opening of accesses or windows of the clubhouse whilst this amplified sound or music is being played.
10. The marquee provides shelter during inclement weather and into the evening when the temperature drops, this may encourage increased footfall at events within the clubhouse. The additional activity associated with an increased footfall would lead to increased noise. Nonetheless, the additional noise generated by an increasing number of people consuming food and drink, and

watching sport would be hard to distinguish when compared to the background noise of amplified sound and music from the clubhouse. Whilst the marquee provides very little noise insulation, by its very nature there is no noise insulation between people using external areas and neighbouring properties.

11. Although the surrounding area is residential in nature, and different to a city centre location, the marquee is located next to the clubhouse which is permitted to be used beyond 21:00. The noise generated by the extended use of the marquee is balanced between it being in a residential area and against the existing noise generated by the clubhouse.
12. Whilst the planning permission does not restrict the marquee from being rented to third parties, this use would be subject to the same conditions as when it is being used by the club and/or its members. As such, the council would have the same power to enforce these conditions during those events.
13. Neighbouring residents have indicated that the noise generated by the venue is unacceptable and has escalated in recent years. The noise experienced in first floor rooms of surrounding properties is also highlighted as a concern, as these rooms are often above the intervening boundary treatment, and therefore have less noise insulation between them and the clubhouse. These objections identify noise generated from amplified sound and music as being the primary source of disturbance. As per the approved scheme for the management of noise, no amplified sound or music can be played in the marquee. Therefore, the proposed extended hours of use would not increase disturbance from amplified sound or music.
14. The council only supported a temporary permission for a six month period due to concerns with the adequacy of the noise assessment. Amending the wording of condition No. 5 would not alter the temporary nature of the permission. It would also not prejudice the council from requesting an amended noise assessment as part of any future application for a marquee at the appeal site for a longer period. Also, interested parties have alleged that the actual noise levels generated by the use of the marquee is in excess of those specified in the assessment. Nonetheless, no substantive evidence has been put before me to indicate this.
15. I conclude that the original wording of condition No. 5 is not reasonable or necessary in the interest of protecting the living conditions of occupants of neighbouring properties with regard to noise and disturbance as it was overly restrictive and did not match the use of the neighbouring clubhouse. However, the imposition of a condition specifying extended operating hours is reasonable and necessary to protect neighbouring residents' living conditions, I have therefore amended the wording of condition No. 5 accordingly.

Other Matters

16. There is no dispute between the main parties concerning a lack of a harmful effect to the character and appearance of the area nor to the setting of the adjacent Boughton Hall Conservation Area and the Chester Canal Conservation Area. Based on the evidence before me and my observations on site, I have no reason to consider otherwise.
17. The council has indicated that it is disappointed that the appellant decided to appeal the decision rather than submit an application to amend the wording of

the disputed condition. The conduct of the appellant and the chosen process has not altered my assessment on the acceptability of the appeal proposal.

18. Concerns have been raised in relation to the adequacy of the business plan. I have concluded that the extended use of the marquee is acceptable and would not have a harmful effect. My decision is not predicated on the benefit of the ongoing vitality of the club outweighing any harm. As such, the adequacy, or otherwise, of the business plan has had little influence on my assessment of the appeal proposal.
19. Interested parties have also raised concerns with the ongoing enforcement of the use of the clubhouse and marquee by both the council and the club itself. My decision concerns the permitted use of the marquee and the amended condition wording before me only and is without prejudice to any ongoing or future enforcement on the use of the site. Likewise, it has been alleged that two marquees were previously erected without planning permission; regardless my decision concerns the existing marquee only.
20. I acknowledge concerns relating to the effect of noise generated by the marquee on neighbouring house prices. Nonetheless, planning is concerned with land use in the public interest rather than the protection of private interests such as the impact of a development on the value of a neighbouring property. Therefore, the effect of the marquee on neighbouring house prices neither weighs in favour or against the appeal proposal.
21. It has been alleged that occupants of properties on Boughton Hall Drive were not consulted upon the appeal by the cricket club. These occupants have been consulted as part of the appeal process and therefore in the interest of fairness have been provided with an opportunity to comment on the proposals.

Conditions

22. A condition specifying operating hours of the marquee to match the adjacent clubhouse is required in order to protect the living conditions of neighbouring residents, in respect of noise and disturbance.

Conclusion

23. For the reasons given above, I conclude that the planning permission should be varied as set out in the formal decision.

J Hobbs

INSPECTOR