



Appeal Decision

Site visit made on 17 October 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023.

Appeal Ref: APP/V2255/W/23/3320427

St Saviours Church, Whitstable Road, Faversham, ME13 8BD

- 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 Ms Romana Bellinger against the decision of Swale Borough Council.
 - The application Ref 21/506027/FULL, dated 8 November 2021, was approved on 1 November 2022 and planning permission was granted subject to conditions.
 - The development permitted is "Section 73 - Application for removal of condition 8 (noise levels) pursuant to application 21/503772/FULL for - Section 73 - Application for Variation of condition 2 (permanent change of use), 4 (to allow external lighting) and 7 (to allow music to cease Sun-Thu at 10 PM Fri-Sat at 11 PM) pursuant to application 18/501494/FULL for - Change of Use of the space to reinstate it's previous early historical use for the local community and as a centre for the local cultural arts and to provide food and drink".
 - The conditions in dispute are Nos 1, 7 and 8 which state that: (1) Prior to the continued use of the venue, details of any mechanical ventilation system that are to be installed shall be submitted to and approved by the Local Planning Authority and upon approval shall be installed, maintained, and operated in a manner that prevents the transmission of odours, fumes, noise and vibration to neighbouring premises; (7) No recorded or live music or singing shall be permitted on the premises after 10pm on any day; and (8) Prior to the continued use of the venue, a noise management plan shall be submitted for assessment and approval by the local planning authority. The management plan shall include but not be limited to: The number of events per calendar year, the time period between each event, the type of event that is suitable for the venue, the termination time of any event, how sound levels will be assessed during any event, how this will be recorded, the actions taken if sound levels are found to be too high, what the threshold for taking action will be, the provision of information on the events program to residents, provision of contact details for residents in case of complaint, how complaints will be responded to and actioned as necessary, recording of complaints, provision of records to the council on request, triggers for update of the management plan.
 - The reasons given for the conditions are: 1 and 8 in the interests of residential amenity; and 7 in the interests of the amenities of the area.
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Decision

1. The appeal is allowed and the planning permission Ref 21/506027/FULL for Section 73 - Application for removal of condition 8 (noise levels) pursuant to application 21/503772/FULL; for - Section 73 - Application for Variation of condition 2 (permanent change of use), 4 (to allow external lighting) and 7 (to allow music to cease Sun-Thu at 10 PM Fri-Sat at 11 PM) pursuant to

application 18/501494/FULL for - Change of Use of the space to reinstate it's previous early historical use for the local community and as a centre for the local cultural arts and to provide food and drink at St Saviours Church, Whitstable Road, Faversham, ME13 8BD granted on 1 November 2022 by Swale Borough Council, is varied by deleting conditions 1, 7 and 8 and substituting for conditions 7 and 8, the following conditions:

7. No recorded or live music or singing shall be permitted on the premises after 11pm on any day.

8. Within 2 months of the date of this decision, a noise management plan shall be submitted to and approved by the Local Planning Authority. The management plan shall include but not be limited to: how sound levels will be assessed during any event; how this will be recorded; the actions taken if sound levels are found to be too high; what the threshold for taking action will be; the provision of information on the events programme to residents; provision of contact details for residents in case of complaint; how complaints will be responded to and actioned as necessary; recording of complaints; provision of records to the council on request; and triggers for update of the management plan. Following the approval of the noise management plan by the Local Planning Authority the use shall not be carried out other than in accordance with the plan.

Background and main issues

2. Temporary planning permission for the use of 'The Hot Tin' as a community café and arts centre was granted pursuant to reference 18/501494/FULL on 20 July 2018. That permission expired in July 2021. Immediately prior to that expiry of permission, an application was made under section 73 (of the Town and Country Planning Act 1990, reference 21/503772/FULL, to make it a permanent change of use (and in respect of 2 other conditions that need not be of concern at this point). Permanent permission was granted on that application, subject to conditions.
3. Following that grant of permission under reference 21/503772/FULL, an application to remove condition 8 was submitted, and permission granted under reference 21/506027/FULL, which is the subject of this appeal. The 3 conditions are set out in the banner heading above – the 2 new conditions 1 and 7, and the varied condition 8.
4. The main issues in this case follow from the 3 conditions imposed on that permission: i) whether condition 1 meets the 6 tests set out in paragraph 56 of the National Planning Policy Framework (the Framework); ii) the effect of removing condition 7 on the amenities of the area; and iii) the effect of removing condition 8 on the residential living conditions of neighbours.

Reasons

The appeal site and its surroundings

5. 'The Hot Tin' in Faversham is a community café and arts centre located within the St Saviour's church building. St. Saviour's is located at the junction of Whitstable Road and Cyprus Road within the Faversham Conservation Area. The building, comprising the main body of the church, the south porch and the

living quarter/hall at the northwest corner of the church, is listed Grade II (List Entry No.1240313).

6. Whitstable Road is the B2040 and is a main road through the area. However, at this point it is passing through a primarily residential area. The immediate surroundings comprise rows of terraced housing dating to the turn of the 20th Century to the northeast, later 20th century semi-detached housing to the north and an area of recently completed development to the west. Opposite the site is a recreation ground and immediately to the west and north of the site are car parking areas associated with adjacent housing.

Condition 1 - whether it meets the 6 tests set out in the paragraph 56 of the Framework

7. The council's explanation for condition 1 in its appeal statement is that it will ensure that, if mechanical ventilation were to be installed on the building, details would be submitted prior to its continued use, so that the details could be assessed; the re-wording of this condition has not changed the fact that if no mechanical ventilation is proposed, then no details need to be submitted.
8. Since the use of the venue is continuing under a permanent permission, I cannot make sense of the wording of this condition. It is not possible to do something prior to the start of something that has already started under a permanent permission. As I understand the evidence, the use has lawfully continued since its inception. For this reason the condition must be deleted since it does not meet any of Framework paragraph 56 tests.

The effect of removing condition 7 on the amenities of the area

9. There have been previous noise nuisance complaints, and monitoring by the council's Environmental Protection Team has produced evidence of unreasonable noise, but this did not constitute a Statutory Nuisance bearing in mind the infrequency and short duration of these events.
10. The appellant largely denies that the venue is responsible for noise nuisance and emphasises the careful control that is exercised. The point is also made that the viability of the venue is at risk. I fully understand the last point, and that the upkeep of a listed building is of importance and that a successful business use is a way of enabling that to be achieved.
11. The council, whilst making clear points about potential noise nuisance, have not explained why 10pm was the chosen time throughout the week, and I note that condition 6 allows for the use of the premises to continue until 11pm, seven days a week. I have also decided, when dealing with the next issue – the disputed condition 8 concerning a Noise Management Plan – that a revised condition should be put in place requiring such a plan. In the light of that, which will enable the council to ensure that a plan is in place to deal with noise, I am satisfied that varying condition 7 to allow the upper limit of use to be 11pm, is justified.

Condition 8 - the effect of removal on the residential living conditions of neighbours

12. I can see the need for a Noise Management Plan (NMP) since the venue has been found to produce a short term nuisance due to noise on at least one occasion, and the nature of the 'tin' construction of the building means that it

has no significant sound proofing. This problem is exacerbated by its listed status, which is likely to restrict the installation of any effective sound proofing.

13. However, the appellant points to a number of difficulties that the venue would have in meeting some of the requirements of the condition as imposed. The following specific elements of the condition are of concern.

i. "The number of events per calendar year" - The Hot Tin is a café hosting live music in an intimate setting; it is not a dedicated music event akin to a concert hall or arena. Events are often booked on a flexible basis as opportunities for artists to perform present themselves. It is unreasonable to expect the venue to set out the number of events per calendar year that it will host. If the condition required an approximate number of events that could at least be estimated, however complying with this would be challenging. A strict 'maximum' number of events is likely to be too prohibitive given the need for the venue to be flexible and agile with regards to booking events.

ii. "The time period between each event" - It is unreasonable to require these details. There may be opportunities to host multiple performances in one day, or consecutive days, as artists schedules and the type of event allows.

iii. "The type event that is suitable for the venue" - Events vary in nature from artist performances, some incorporating music and/or singing, some which do not. Artistic creativity may give rise to a different 'type of event' not previously considered. It is not necessary for The Hot Tin to define what 'type' of events may take place.

14. I can understand the difficulties which I consider can be overcome. It is important that there should be an agreed noise management plan, but the essential point is that it should focus on managing noise. The need for a specified number of events per year and a time period between events is questionable, since the aim should be to avoid noise nuisance, rather than have a limit on the number of occasions when noise nuisance may occur and the interval between them. And the requirement for specifying the type of suitable event is imprecise.
15. Turning to the other elements, the following seem to me to be reasonable requirements: *how sound levels will be assessed during any event, how this will be recorded; the actions taken if sound levels are found to be too high; what the threshold for taking action will be; the provision of information on the events program to residents; provision of contact details for residents in case of complaint; how complaints will be responded to and actioned as necessary; recording of complaints; provision of records to the council on request; and triggers for update of the management plan.*
16. This leaves one other requirement of the council's list that I have not mentioned. This is the termination time of any event. The first point about this is that, since the NMP covers a substantial period of time, the termination time for any event would be multiple different times; that does not seem to me to be a practical requirement. Secondly, I have indicated above that, with a NMP in place, the hours of use can be extended to 11PM. Therefore, I do not consider that the termination time of any event is necessary in the NMP.

17. There is a further matter regarding the text of the NMP condition. As it was imposed, the condition requires a NMP to be submitted, "Prior to the continued use of the venue", but has no requirement for it to be put into effect. Both of these points need to be rectified. The first is the same problem that I have dealt with in respect of condition 1, in paragraph 8 above. However, in the case of condition 8, I consider that it is possible for the preliminary clause to be reworded to stipulate a time in the future by which the NMP must be submitted. Whilst this necessarily means that it cannot 'bite' during that period, for the long term the condition will be in place.
18. It seems reasonable to me for the condition to require the submission of the NMP to the council within 2 months of the date of my decision. Since the submission and approval of an NMP cannot be instant, I judge that 'within 2 months' is reasonable, considering both the fact that, as now, the neighbouring occupiers will be without the protections given by the plan, and what length of time is reasonable for the MMP to be drafted.
19. As to ensuring that the condition is put into effect, this can be achieved by adding the requirement: following the approval of the NMP by the council, the use shall be conducted in accordance with the provisions of the plan.

Conclusions

20. For the reasons set out above, I will grant planning permission varying the existing permission by deleting conditions 1, 7 and 8 and substituting new conditions 7 (to require no music or singing after 11pm) and condition 8 (to require a noise management plan to be submitted and put into effect with fewer component parts).
21. As I have indicated in paragraph 8 above, condition 1 is deleted since it does not meet any of Framework paragraph 56 tests.
22. The 2 revised conditions are required for the following reasons: 7 - in the interests of the amenities of the area; and 8 - in the interests of residential amenity.
23. Since the appeal site is within Faversham Conservation Area, I am required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, to have regard to the general duty - *"....special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area"*. In this case I am satisfied that the matters that I have dealt with above will have a neutral effect on the conservation area.

Terrence Kemmann-Lane

INSPECTOR