



Appeal Decision

Site visit made on 8 January 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/D2320/C/23/3322896

Land at Tipis at Riley Green, Riley Green Marina, Bolton Road, Hoghton, Preston PR5 0SP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr John Yates on behalf of Riley Green Marina against an enforcement notice issued by Chorley Borough Council.
- The enforcement notice was issued on 25 April 2023.
- The breach of planning control as alleged in the notice is that on 31st May 2019 planning permission was granted by the Council under reference number 19/00106/FUL for the erection of a tipi from 1st May to 1st October each year to be used as an outdoor activity centre and wedding/events venue with associated car parking, subject to conditions. One of those conditions, condition 4, was that the playing or reproduction of music shall cease by 11pm each day and guests must vacate the site (as defined by the red edge on the approved site plan received 5th March 2019) by 11.30pm each day. It appears to the Council that the condition has not been complied with because music has consistently been played after 11pm and guests have not been vacating the Land by 11.30pm.
- The requirements of the notice are: You must stop playing and/or reproducing music after 11pm each day and ensure that guests have vacated the Land by 11.30pm each day.
- The period for compliance with the requirement is seven days.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matter

1. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published and this is a material consideration which should be taken into account from the date of its publication. I have therefore determined the appeal in light of the revised Framework. As there is no change in the revised Framework relevant to the appeal, it has not been necessary to seek comments from the parties on the revised version.

The ground (a) appeal and the deemed planning application

Main Issue

2. The main issue is the effect of varying the condition on the living conditions of the occupants of the neighbouring residential properties, with regard to noise.

Reasons

3. The appeal site is located within a rural location comprising open fields, which are interspersed with sporadic dwellings and small clusters of development. Notwithstanding the rural location, the M65 motorway is located within proximity of the site, the constant noise from which is readily audible from the site and immediate surroundings.
4. A Noise Impact Assessment (NIA), dated July 2023, carried out by PDA Acoustic Consultants accompanies the appeal submission. A background noise survey was conducted in February 2023, when the tipi was not in situ, to establish the ambient noise climate and typical background sound level in the vicinity of the nearby sensitive dwellings, whilst no weddings/events were taking place on the site. The survey found that road traffic on the M65 dominated the local noise climate with some intermittent contribution from the road traffic on the A675.
5. A further survey was conducted in July 2023 whilst a wedding was taking place on the appeal site. The results of the survey found that between the hours of 2300-0030 the dominant noise source in the vicinity of the noise sensitive dwellings was road traffic, with music noise from the site being only faintly audible on occasion. During the survey, the music was played at the maximum level that the installed sound limiter (limited to 85 dB) would allow before the music cuts out. Overall, the conclusion of the NIA is that the music noise levels would be between 5-7 dB below the background noise level. Within the bedrooms of the worst affected dwellings within the vicinity of the appeal site, noise would on occasion only just be audible, but not at a level that would significantly affect the acoustic character of the area such that there is perceived change in quality of life.
6. I acknowledge the site is within a rural setting, where one would typically expect it to be peaceful and quiet during the night. However, the M65 already generates a level of noise that contradicts this expectation, with traffic noise from the motorway continuing throughout the night, albeit at lower levels than during the daytime. Whilst the A675 may well experience lulls in traffic, particularly at night, lulls in traffic on the motorway are likely to be less frequent.
7. There is no dispute that noise generated by the appeal development is audible from the nearby dwellings. The question is whether that noise is at such a level that it would unacceptably harm the living conditions of the occupants of these properties during the hours of 2300-0030. The results of the NIA indicate that it does not and there is no substantive evidence before me to the contrary.
8. Whilst the NIA only involved the survey of a single event taking place on the site, there is nothing to suggest that this was not typical of such an event or that another event held on the site would generate more noise. Moreover, the NIA confirms that music was played at the maximum level permissible (85 dB) during the July survey. Therefore, I am satisfied the survey was a typical representation of the events carried out on the site.
9. I note the comments received from numerous local residents providing anecdotal evidence of the effect the noise created by the development has on them. However, the results of the NIA confirm that when music is

played/reproduced at the maximum permissible level (85 dB) in accordance with condition 5 of planning permission 19/00106/FUL up until 0000 hours there would not be any unacceptable harm to their living conditions. Were the development to operate outside these conditions then it is open to the Council to undertake any further enforcement action they deem necessary.

10. Notwithstanding the above, condition 4 attached to planning permission 19/00106/FUL states 'Playing or reproduction of music shall cease by 11pm each day and guests must vacate the site (as defined by the red edge on the approved site plan received 5th March 2019) by 11.30pm each day.' Effectively, this condition prevents the playing or reproduction of music between 2300 hours and 0000 hours. With 0000 hours being the time at which each day begins, the wording of this condition, or any others attached to planning permission 19/00106/FUL would not prevent music being played or reproduced between the hours of 0000 and 2300 each day. The condition only prevents music being played or reproduced for a single hour each day. Whilst this may not have been the Council's intention when the condition was imposed, it is the nevertheless the way in which the condition has been worded.
11. Therefore, even if I did find that noise generated between the hours of 2300 and 0030 would have a harmful effect on the living conditions of the neighbouring residents, the existing condition does not prevent music being played between the hours of 0000 hours and 2300 hours.
12. I find therefore, varying condition 4 as proposed would not result in any unacceptable harm to the living conditions of the occupants of neighbouring residential properties, with regard to noise. As such, it complies with Policy BNE1 of the Chorley Local Plan 2015, which seeks to protect residential amenity.

Other Matters

13. Reference is made to condition 6 of planning permission 19/00106/FUL. However, the appeal before me relates only to condition 4 and that is all I am considering. Also, the issue of whether or not the development is inappropriate development in the Green Belt is irrelevant to my consideration of this appeal as planning permission has already been granted for it.

Conditions

14. Where an appeal is allowed on ground (a) in respect of a notice which alleges a breach of condition, s177(1)(b) and s177(4) of the 1990 Act provide that the disputed condition may be discharged and new conditions may be substituted on the original permission, while the deemed planning permission granted under s177(5) of the 1990 Act would amount to a fresh permission and be granted subject to the same conditions.
15. As I have referred to above, the wording of condition 4 only prevents the playing or reproduction of music for 1 hour each day. However, allowing music to be played or reproduced beyond midnight would likely have an unacceptable harmful effect on the living conditions of neighbouring residents. Consequently, condition 4 on planning permission 19/00106/FUL will be discharged and a new condition will be imposed limiting the hours in which the playing or reproduction of music can take place to between 1100 hours and

midnight, and all guests must vacate the site by 0030 hours. This condition is necessary in the interests of protecting residential amenity.

Conclusion

- 16.** For the reasons given above, having regard to the development plan as a whole and all material considerations, I conclude that the appeal should succeed on ground (a) and that the enforcement notice should be quashed. I propose to discharge the condition the subject of the notice, and to grant planning permission, on the application deemed to have been made, for the development previously permitted without complying with the condition enforced against, but subject to the condition as indicated above.

Formal Decision

- 17.** The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, Condition No 4 attached to the planning permission dated 31 May 2019, Ref 19/00106/FUL, granted by the Chorley Borough Council is discharged and the following new condition is substituted. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for "Erection of a tipi from 1st May to 1st October each year to be used as an outdoor activity centre and wedding/events venue with associated car parking, at Land at Tipis at Riley Green, Riley Green Marina, Bolton Road, Hoghton, Preston PR5 0SP" without complying with the said condition but subject to the other conditions attached to that permission and to the following new Condition 4:

4. The playing or reproduction of music shall only be allowed between 1100 hours and midnight and guests must vacate the site (as defined by the red edge on the approved site plan received 5th March 2019) by 0030 hours each day.

A Walker

INSPECTOR