

Appeal Decision

Site visit made on 17 September 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2024

Appeal Ref: APP/R2330/W/24/3342974

Crown Ground, Livingstone Road, Accrington, Lancashire BB5 5BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr D Burgess [Accrington Stanley Football Club] against the decision of Hyndburn Borough Council.
 - The application Ref is 11/23/0060.
 - The development proposed is demolition of existing building and associated turnstiles, entrances and temporary buildings to rear of South Stand; construction of new hospitality areas, supporters bar and new high level television camera gantry.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr D Burgess [Accrington Stanley Football Club] against Hyndburn Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. Planning permission was granted in 2020 for 'the demolition of existing building and associated turnstiles, entrances and temporary buildings to rear of south stand; construction of replacement/upgraded player and manager areas, offices, hospitality areas, supporters bar and turnstiles and new high level television camera gantry¹.'
4. The Council advises that the subsequent development was found to not be in accordance with the approved plans with regard to its internal layout and build specification. Specifically, the Council advise that the roof construction was not built to the noise reducing specification set out within the Miller Goodall Noise Assessment submitted to accompany the proposal. In addition, the floor area as built, now solely provides for hospitality space. It has increased from approximately 533sqm as originally approved to approximately 1,040sqm², enabling a significant increase in the number of patrons it can

¹ Planning application reference 11/20/0172 Major Full as set out on page 4 of the Council's officer report.

² As cited by the Council at paragraph 3.10 of its statement of case.

accommodate. Given that the south stand building is substantially complete and in use, retrospective permission is sought.

5. Whilst the development appears to accord with the submitted plans in terms of its overall size and position, there are minor deviations in relation to the position of some internal doorways and some external elevation treatment. Having had regard to the overall scale of the proposed development, I am satisfied that there is sufficient detail on the plans provided, to properly assess the impact of the proposal on the living conditions of neighbouring residents. In reaching my decision I have assessed the development as shown on the submitted plans and not as built on site.

Main Issue

6. The main issue in relation to this appeal is the effect of the proposal on the living conditions of neighbouring residents, with regard to noise and disturbance.

Reasons

Background

7. The Crown Ground is a football stadium which provides the home venue for Accrington Stanley Football Club (ASFC). It is closely juxtaposed with residential development to the north, south and west where dwellings back onto the grounds of the stadium.
8. Paragraph 180e) of the Framework sets out that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of amongst other things, noise pollution.
9. It goes on to advise that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should mitigate and reduce to a minimum, potential adverse impacts from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life³.
10. I visited during the week on a non-match day. Although a snapshot in time, the area whilst not silent, appeared to be typical of a quiet residential area with birdsong clearly audible and occasional low-level traffic noise. It was a pleasant, peaceful atmosphere.
11. Football stadiums are by their nature likely to be active, noisy venues when in use for their intended purposes including human conversation, singing, cheering and the use of public address systems. The provision of hospitality on match days could reasonably be considered to be part and parcel of the stadium use. However, this would be limited to those occasions during the football season when ASFC are playing home matches. Local residents accept

³ Paragraph 191 and 191a) of the Framework.

that they will experience some noise and disturbance arising from the stadium use. I find that they are not unreasonable in expecting the quiet enjoyment of their homes outside of this period.

The Proposal

12. The new building as constructed contains hospitality space including the 1968 Lounge and Coley's Bar. As well as offering pre and post-match hospitality, the venues offer live music, themed nights, as well as private parties and weddings. It is these event uses outside of match days, that would continue late into the evening, which are a cause for concern. The evidence suggests that the appellant's objective appears that such events would take place on an unrestricted basis, such that they could occur on any night of the week, on any number of occasions throughout the year. The nature of such events is that piped, amplified and loud music would be common, along with the associated comings and goings of people enjoying the events or celebrations.
13. The Council explains that in order for a nuisance to exist, noise would unreasonably and substantially interfere with the use or enjoyment of a home or other premises, or interfere with a person's life such that they are unable to carry out normal and reasonable daily activities. Verification that a statutory nuisance has occurred indicates that the noise is likely to significantly impact upon residential amenity.
14. From the evidence before me, the parties do not dispute that since construction, both the 1968 Lounge and Coley's Bar have been used for night-time functions and that these events have generated complaints from local residents in respect of noise and disturbance, particularly as a result of loud music late at night. This has affected residents ability to relax within their homes, as well as sleep.
15. Following the identification of statutory noise nuisances, a noise abatement notice (NAN) was served on 4 October 2022. The Council's evidence that the NAN has been breached a number of times is clear and unequivocal,⁴ and is not challenged by the appellant.
16. The main matter of dispute between the parties is whether the use of the hospitality facilities for events could be adequately controlled by planning conditions. I understand that due to deficiencies in the appellant's Noise Management Plan (NMP) and subsequent supporting information⁵, the Council commissioned an acoustic consultant to provide independent advice. This was with the agreement and cooperation of the appellant.
17. The subsequent Hann Tucker Planning Review and Technical Report (The Hann Tucker Report) indicates that noise monitoring was conducted during 3 events in October and December 2023⁶. This included surveys within both of the venues, internally within neighbouring dwellings and at the boundaries between the two. At least 2 of the events were audible within the surveyed dwelling with the windows shut, such that could be perceived as a nuisance.

⁴ As set out within table 2 of the Council's statement of case.

⁵ Wardell Armstrong letter 19 September 2023.

⁶ An ppm-pah band with amplified music in between sets in Coley's Bar on Friday 13 October 2023; a private 80's disco event with amplified music in the 1968 Lounge on Saturday 14 October 2023 and private Christmas parties with amplified music in both venues on Friday 1 December 2023.

The report is clear that the very low background noise at the appeal site increases the risk of music, amongst other things, becoming a nuisance to nearby residents.

18. It also considers that it was unreasonable to place a reliance on nearby residents keeping their windows closed, given that the change in the acoustic environment has arisen from the development. I agree. Rather it is for the agent of change i.e. the appellant, to address and mitigate any potential adverse effects that are identified⁷.
19. Based on the levels measured at the residential receptors both internally and externally, the Hann Tucker Report recommends maximum noise levels within the venue of 75dB in Coley's Bar and 80dB in the 1968 Lounge. Other noise management measures were recommended including the provision of door staff to manage access/egress, provision of an alternative smoking location and installation of a house system with noise limiter to control the noise output of amplified systems. These were transposed into conditions attached to the officer report which recommended approval of the proposal. Nonetheless, the planning committee refused the proposal as they were not satisfied amongst other things, that the conditions would protect the living conditions of neighbouring residents.
20. It seems to me that some of the measures require effective management. For example, the system not being tampered with to increase music levels, or staff limiting the opening of the exterior doors. I am concerned that staff may not be able to control the arrival or departure times of guests without this causing conflict. Noise would escape from the building when the doors are opened that whilst potentially short lived and intermittent, would nonetheless cause disturbance to nearby residents, particularly if it is late at night.
21. Local residents point to ineffective management measures during an event held on Friday 18 July 2024 and also to noise generated from guests leaving the venues. This does not appear to be robustly addressed by any of the submitted reports or suggested conditions. The effectiveness of the management regime is therefore uncertain. Furthermore, the proposed smoking areas do not appear to have been identified or their potential noise generation taken into account.
22. The hospitality venues are both open to the roof with exposed ducting as part of the aesthetic treatment of the internal spaces. The Hann Tucker Report is clear that the building structure does not provide suitable acoustic mitigation for noisy events. The roof is understood to be the primary path for noise breakout⁸. The Hann Tucker Report is clear that without acoustic enhancement to the building fabric, it advises against live band performances within Coley's as a minimum, as the noise output cannot be effectively managed.
23. I am advised that sound deadening infrastructure was to be installed on 16 September 2024 subject to the availability of materials, with the programme of works scheduled to take place for approximately 4 weeks⁹. At the time of

⁷ Planning Practice Guidance Paragraph: 009 Reference ID: 30-009-20190722.

⁸ Paragraph 8.1 of the Hann Tucker Report.

⁹ Email from Daniel Connolly of Connolly's Planning and Development Limited dated 23 August 2024

my site visit, no such works were evident. In any event, the precise nature of the works is not before me. Nor do I have compelling evidence of the likely impact the works would have on the noise breakout from the building subsequently. Indeed, the appellant does not appear to be certain that the works would be successful¹⁰.

24. I acknowledge that the recommendations of the Hann Tucker Report with regard to noise management approaches were accepted by the appellant and that the proposal was recommended for approval subject to conditions by the planning officer. However, there is no substantive evidence before me to demonstrate that the venues can operate in accordance with the suggested conditions.
25. To the contrary, the Council has advised that had the conditions been in place, the appellant would have been in breach of the recommended noise limits. Verified noise complaints have also confirmed that a statutory nuisance has occurred on at least 1 occasion since the refusal of the application, again in breach of the NAN¹¹. This has not been challenged by the appellant.
26. Although it is suggested that I should not take into account the extant noise abatement documentation, it forms part of the Council's evidence such that I am obliged to consider it. This includes email evidence that at an England euro qualifier event during the summer, the appellant considered the noise level of 85dB was impossible to keep to with 180 guests and the volume of TV's, such that the installed noise limiter was disconnected¹². This is concerning.
27. The appellant's admission in this email that the limits previously agreed via the Hann Tucker Report are in the main unachievable is also troubling. It, along with the tampering of the noise limiter, does not provide me with confidence that if applied, the conditions would not be breached straight away by the operation of the venues. This is a concern I note is shared by neighbouring residents. I am mindful of the Hann Tucker advice that as there is no clearly defined method in determining what constitutes a noise nuisance, the operational noise levels should be viewed as a 'way forward/starting point'¹³.
28. In light of the continued breaches of the NAN which have given rise to neighbour complaints and the lack of firm proposals to address the poor acoustic performance of the venues, I find that the Council's suggested conditions would not wholly mitigate the impact of the development. Thus, they could not be considered to meet the test of reasonableness¹⁴. Whilst Policy ENV7 of the Hyndburn Core Strategy (CS) 2012, does suggest nuisances could be controlled, this is only where those nuisances would not give rise to unacceptable adverse impacts. That is not the case here.
29. The appellant suggests that the Council can pursue breaches of controls or a statutory nuisance via other relevant legislation. Be that as it may, the development plan, PPG and the Framework are clear that new development

¹⁰ Page 2 of the appellant's email to the Council dated 27 June 2024.

¹¹ As set out within table 3 of the Council's statement of case.

¹² Email from the appellant to the Council dated 27 June 2024.

¹³ Paragraph 6.2 of the Hann Tucker Report.

¹⁴ As set out in paragraph 55 of the Framework and PPG Paragraph: 003 Reference ID: 21a-003-20190723.

should not adversely affect the living conditions of existing residents at the point that a planning decision is made. Moreover, I have no substantive evidence before me to demonstrate that breaches could be adequately and appropriately dealt with via other legislation and that the living conditions of other residents would not be unacceptably harmed in the meantime. Clearly to attach conditions that the appellant would not be able to adhere to would be perverse and/or unduly constrain the activities that could take place.

Conclusion – Living Conditions

30. Taking everything together I find that the suggested conditions would not in isolation, mitigate the adverse effects of the operation of the proposed development. Intervention into the building fabric, specifically the roof would also be required and these details are not before me. Given the propensity for noise and disturbance to occur it would be preferable for a NMP to be considered as part of the decision-making process, so that the effectiveness of any proposed management measures could be duly contemplated before permission is granted. Consideration may also need to be given to limiting the number of late-night events per year, or restricting events to those that do not include live/amplified music. This would be a matter for the parties.
31. In the absence of a comprehensive package of measures, the proposed development would significantly and unacceptably harm the living conditions of neighbouring residents, with specific regard to noise and disturbance. In this way the terms of Policy ENV7 of the CS and Policy DM29 of the Hyndburn Development Management DPD (2018), would be compromised as the amenity of existing residents would not be protected and unacceptable impacts with regard to noise and other nuisances cannot be properly controlled. Conflict is also found with paragraph 191 of the Framework as set out above.

Other Matters

32. The Framework places significant weight on the need to support economic growth and productivity. In this regard, I recognise that the proposed hospitality venues provide an opportunity to expand the facilities of ASFC. The proposed development would contribute to the local economy through increased employment, including bookings of entertainment providers or musicians. However, other than the employment of an events coordinator, such benefits are likely to be limited to those occasions when events are held. These benefits therefore attract moderate weight.
33. Upgrading the building fabric and installing measures to comply with any control mechanisms would undoubtedly involve investment. It is usually more cost effective to install acoustic attenuation at the point of construction and it appears that the appellant chose to build something different to what they had permission for.
34. I do not doubt that ASFC has a positive role in the wider community. It has been put to me that the community interests ASFC supports and funds relies upon functions taking place. However, there is no evidence to suggest that such functions were taking place prior to the development being constructed. Neither I have been provided with a financial appraisal to demonstrate that the income from additional events outside of match day activities, is

fundamental to ASFC or its community interests. This attracts no more than limited weight.

35. I have taken into account Article 8(1) of the European Convention on Human Rights as enshrined in the Human Rights Act 1998 which states that everyone has the right to respect for his private and family life. As I am dismissing the appeal, the human rights of neighbouring residents would not be interfered with by my decision. It will be for the appellant and the Council to consider the next steps with regard to a revised scheme or possible enforcement action if deemed expedient.

Planning Balance and Conclusion

36. Paragraph 12 of the Framework is clear that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted.
37. The proposed development would result in significant injurious harm to the living conditions of neighbouring residents, with particular regard to noise and disturbance. This would not be outweighed by the moderate economic and employment benefits of the proposal, or the limited weight attached to the income generation for ASFC. The proposal would fail to comply with the development plan, and there are no material considerations to indicate a decision should be made other than in accordance with it. The appeal is dismissed.

M Clowes

INSPECTOR