

Appeal Decisions

Site visits made on 20 January and 7 February 2015

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 April 2015

Land at Old Hall Farm, French Drove, Thorney, Peterborough PE6 OPE

Appeal A Ref: APP/J0540/C/14/2215066

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Nigel Simons against an enforcement notice issued by Peterborough City Council.
- The Council's reference is 13/00438/ENFACC.
- The notice was issued on 12 February 2014.
- The breach of planning control as alleged in the notice is: "Without planning permission there has been a material change of the use of the land from agricultural land to use of the land as an outdoor activity centre. On 25 July 2011 a temporary Planning Permission ('The Permission') was granted (ref. 11/00950/FUL) for two years until 28 October 2013. Condition C1 of that Permission states: 'The permission is temporary and shall end 2 years after the date of grant of planning permission. On the date the permission ends the use shall stop and the land shall be returned to its original state'."
- The requirements of the notice are:
 - i. Cease the use of the land as an outdoor activity centre.
 - ii. Remove from the land all equipment associated with the outdoor activity centre.
 - iii. Remove all temporary structures purpose built for the outdoor activity centre.
 - iv. Remove from the land all debris, equipment and materials associated with compliance of (i), (ii) and (iii).
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Appeal B Ref: APP/J0540/A/14/2215067

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 for change of use from agricultural to Battlefield Live Outdoor Activity for which a previous planning permission was granted for a limited period.
- The appeal is made by Mr Nigel Simons against the decision of Peterborough City Council.
- The application Ref 13/01585/WCPP is dated 27 October 2013.
- The application sought planning permission for change of use from agricultural to Battlefield Live Outdoor Activity granted planning permission for a limited period Ref 11/00950/FUL, dated 28 October 2011.
- The permission is subject to a condition requiring the end of the use and the restoration of the land to its original state at the end of 2 years after the date of the grant of permission.

- The reason given for the condition is: To enable the impact of the development to be assessed and in accordance with policy LT12 of the Adopted Peterborough Local Plan (First Replacement) and Planning Policy Guidance Note 24.

Summary of Decision: The appeal is dismissed.

The enforcement notice

1. As worded the notice indicates that the breach of planning control is a material change in the use of the land. I consider that the description is incorrect. A time-limited planning permission was granted for the use of the land as a Battlefield Live outdoor activity centre. The date of the permission was 28 October 2011, not 25 July 2011 as stated in the notice. The continuation of the use after the expiry of the permission does not amount to development. Therefore the notice should allege a breach of the condition that required the use to end after a two year period. It follows that in the introductory paragraph of the notice the correct paragraph of section 171A(1) of the Act should be (b) and not (a).
2. The appellant and the local planning authority were consulted on these proposed corrections and I am satisfied that no injustice will be caused by amending the notice as described. The notice will be corrected and the terms of the deemed application will be clarified. Therefore the deemed planning application under section 177(5), by analogy with section 73A(3)(b), is for the development originally permitted but without the condition breached. The permission, if granted, would be with effect from the day following the date when the limited period expired.

Main Issues

3. In both Appeal A and B the matter at issue is whether permission should be granted for the use of the land as an outdoor activity centre without a condition that requires the use to cease and the removal of all equipment and structures associated with the use after a specified time period. In order to inform a conclusion, the main issues for consideration concern the effect of the outdoor activity centre on:
 - the living conditions of nearby residents, having particular regard to noise and disturbance,
 - the character and appearance of the site and surrounding rural area,
 - the rural economy, and
 - the provision of outdoor recreation facilities in the area.
4. In terms of the policy context for assessing these issues, the development plan for the area includes the Peterborough Core Strategy (the CS) and the Peterborough Planning Policies Development Plan Document (the DPD). The National Planning Policy Framework (the Framework) is an important consideration.

Reasons

5. The Battlefield Live outdoor activity centre is a competitive team-oriented combat game. The activity primarily takes place in an enclosed area where

there are low level structures. Typically a group of competitors form into two teams who 'battle' over one of two sites. The teams fire at each other with custom built guns that emit and detect infra-red beams. A condition on the 2011 permission limited the hours of game play to between 1000 and 1700 hours. As operated, there are two sessions a day, one in the morning and one in the afternoon. Each game lasts about 90 minutes. The appellant reported that in 2013 the average number of participants was 20 per session. The site identified for the use is approximately 1.68 hectares (ha) within a total area of some 4.8 ha of land owned by the appellant, although the area currently occupied for game play is some 0.75 ha.

Living conditions

6. Old Hall Farm is in the open countryside where built development is sparse within the flat fenland landscape. The activity area is sited to the south of French Drove, set back away from the highway and to the east of a group of farm buildings. Two barns have been converted to dwellings, one of which is occupied by the appellant. Otherwise, the nearby residential development comprises the cottages fronting French Drove. Oak Lodge is estimated to be some 140 metres (m) away and Old Hall Cottages some 520 m away. On Bell Drove, the road to the east, Bluebell House and Bluebell Cottage lie 310/315 m from the site.
7. The test set in Core Strategy Policy CS18, and Policies PP3 and PP8 of the DPD, is that the development must not have an unacceptable adverse impact on the occupiers of nearby properties. The evidence is that the impact through noise and disturbance is the key factor for consideration. The Framework states that the aim should be to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. The surrounding area is described as a quiet location associated with the open countryside character. However, the Council has not identified it for protection as an area of tranquillity, which because of lack of noise disturbance, is prized for its recreation and amenity value.
8. The temporary permission was an opportunity for a trial run and for sufficient evidence to be gathered to give greater certainty over the character and effect of a use that may be potentially detrimental to existing uses nearby. No detailed logs were kept by residents, the appellant has not provided detailed information on the frequency and attendance at events and there is no record of a series of visits by Council officers. Therefore the evidence base is less comprehensive than it could have been.
9. Nevertheless, the representations from the appellant and interested parties include a lot of detailed comment on a range of matters, including the nature of the noise disturbance, the issue of complaints and the noise assessments that have been carried out. The majority of residents living near the site have objected to continuation of the use because of the noise and disturbance they have experienced. As may be anticipated, the effect is localised, with a lack of objections due to noise from the wider community. Based on the policy context, the issue is whether any adverse impact would be unacceptable and would significantly affect health and the quality of life of residents.
10. The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. I made an unaccompanied visit when a session was taking place to gain some idea of the

effect. Having considered all the evidence, I regard the following factors to be the most relevant.

11. The background noise level is low¹. Identified noise sources include tractors and farm vehicles, aircraft flying overhead, shotgun blasts, passing cars and distant traffic and birdsong. Even so, the prevailing character is of a very quiet rural area, mainly because of the open fenland landscape, the lack of commercial or industrial premises and the low levels of traffic on the minor rural roads. The likelihood is that new noise sources, which would not normally be expected to be heard in the countryside, would be very noticeable.
12. The permission has allowed the activity to take place every day of the week, throughout the year. In practice, the venue is most popular at weekends, public holidays and when the weather is better. These times of the week and year are when residents are most likely to be outside in their gardens. The representations indicate that in the first year of operation, the bad weather contributed to a low number of bookings and therefore it was the second year when most impact was experienced.
13. Noise from the use is not sustained throughout the day. Its occurrence is for short periods and on current practice a total period of 3 hours is the maximum from two sessions. The main noise source resulting from the activity is from the participants rather than the use of the equipment. This noise is of competitors shouting, interacting and so on. The levels of noise vary during a session and are affected by the number of competitors and whether they are children or adults. Children participating generally cause greater disturbance than adults. These impact sounds are not constant or consistent and by their nature and character can be intrusive and annoying. The distance the noise carries is affected by the weather especially the prevailing wind.
14. The standards BS4142 and BS8233 and the World Health Organisation Guidelines² are based on average noise levels and are not directly applicable to the circumstances of the development by reason its nature and location. Consequently they provide only an indication of the possible response from receptors to the type of noise associated with the outdoor activity centre. The Council's Pollution Control Officer was of the opinion a more subjective assessment is required. I have viewed the results of the noise assessment submitted by the appellant within this context.
15. The appropriate approach is set out in the Framework and which is more fully explained in the Noise Policy Statement for England (the NPSE) and the Planning Practice Guidance. The appellant's acoustic report, using the NPSE impact criteria, concluded that the impact is at either the No Observed Effect Level or Lowest Observed Adverse Effect Level (LOAEL) in the noise exposure hierarchy. With mitigation in place in the form of an acoustic fence the impact was considered to be more likely the former. However, these conclusions were derived from a comparison of the predicted noise levels at residential properties against the chosen BS and WHO guidance, rather than a

¹ The Acoustic Report submitted by the appellant gave the average background noise level as L_{a90T} 34 dB(A). The residents' noise consultant argued that the lowest measured level of 32 dB(A) should have been used in assessing impact.

² World Health Organisation Noise Guidance levels, British Standard BS4142:1997 Method for Rating Noise affecting mixed use residential/industrial areas, British Standard BS8233:1999 Sound Insulation and Noise Reduction for Buildings – A Design Guide.

- consideration of the perceived change in the quality of life and the degree of change in the behaviour and/or attitude of residents.
16. Neighbours have stated that they have been unable to enjoy the peace and quiet when in their gardens because of the annoying and intrusive noise, which was likened to a football game or playground noise with screaming and shouting. More specifically, one resident stated they tended to go away at weekends to avoid the noise. Another family described how on warm days when windows are open the noise interferes with concentration and so windows have been closed. Valued rest and relaxation when at home from work has been affected. Visitors have preferred to sit inside with windows closed. The occupiers of the nearest house said they couldn't sit outside and relax due to the noise from the battlefield and that they still were able to hear the noise with windows shut. The noise from the guns was audible. Another resident stated that the home was chosen for the quiet and isolation. Having been ill, the home was a sanctuary and the resident was concerned that hearing the sounds of warfare would impact on their mental health.
 17. There is inconsistency between residents' experience and the appellant's description of the activity. Mr Simons maintained that noisiest moments were very short lived, such as at the end of a game when there were cheers from the winning team. Otherwise participants were encouraged to use stealth and not to shout because that gave their position away to the opposing team. He also made the point that noise is not concentrated in the playing area and Battlefield Live is not a spectator activity. On his evidence noise above ambient level would be concentrated and very short lived. Even allowing for the fact that the occurrence and impact of the activity centre on living conditions are much affected by several variables, the evidence of residents' indicates that at the least there has been a perceived adverse change in the quality of life and a change in certain behaviours. The use falls within the LOAEL and at times the boundary is crossed to a significant observed adverse effect level (SOAEL). The policy implication is that the use should be avoided, unless mitigation would be able to reduce adverse effects to a minimum.
 18. The appellant's noise assessment recommended an acoustic fence as the most effective mitigation measure. The barrier was estimated to reduce levels by between 4dB and 7dB. The appellant drew attention to a 50 m length of close boarded fencing 2 m high that was erected along the northern boundary between the site and Oak Lodge. No objections were received from the occupiers of that property. However, the Council considered that such a scheme would not adequately address the noise impacts arising from the use. The residents' noise consultant also maintained that a barrier would have limited effectiveness due to the spatial relationship to the participants within the playing area. The noise evidence is inclusive. Furthermore, the acoustic barrier is indicated to be erected along the boundaries to the gaming areas rather than the site. As a result the north eastern part of the site would be outside the barrier. No condition excluding the area from future use was proposed. This raises issues about the siting of the proposed barrier and its effectiveness over the long term and the reasonableness of imposing a condition limiting the extent of the activity area. The visual impact of an acoustic fence also raises concern, as explained below.
 19. A second form of mitigation recommended by the acoustic report was based on management of the activity, whereby competitors would be asked to refrain

from bad language and to keep their voices at a reasonable level when the games are not in progress. This control measure could not be attached as a planning condition because it would not be reasonable or enforceable. Therefore this mitigation measure has no weight.

20. The 2011 permission imposed two conditions to minimise the risk of noise disturbance. Condition 3 required the game play weapons to be electronic in nature, not to fire physical objects and the use of pyrotechnics on the site was not permitted. Apart from the nearest residence, the use of gaming equipment was not a significant contributor to noise intrusion and therefore little additional mitigation would be provided. Condition 5 limited the hours of game play to between 1000 and 1700 hours. The Council has proposed the number of games be restricted to a maximum of two per day within that time period and that the number of participants at any one time should not exceed 30. These controls would prevent intensification of the activity but would not significantly reduce the existing effects.
21. No condition has been proposed on the days of operation. Consequently the activity would be able to take place seven days a week. More frequent use than has occurred to date could be expected with expansion and success of the business. The evidence indicates that the weekend is the most popular time with visitors. Therefore to exclude use on a Sunday, when residents could reasonably expect to enjoy quiet, would not be compatible with the nature of the activity and the opportunity offered to the community for recreation.
22. I conclude that the use would cause significant adverse impacts on health and quality of life. It has not been demonstrated that the harm to living conditions would be satisfactorily mitigated. The development fails to comply with Policy PP3 (criterion (c)). There is conflict with an objective of national policy that aims to avoid such an adverse impact.

Character and appearance

23. The site is located in the Peterborough Fens. The distinctive characteristics are a flat extensive and open landscape with wide views beneath a large sky. The arable farmland has a rectilinear field pattern that reflects the artificial drainage systems. Tree cover is limited and away from the settlements built development is sparse.
24. The activity area has been developed within a field to the east of a cluster of farm buildings. A number of structures were introduced, mainly formed of timber and recycled materials to serve as mock buildings and to create such features known as the octagon, the village and a compound. There is a hard surfaced area for car parking and a metal, flat roofed container-like structure is used for changing facilities. At first one of the barns was used. The games area is now partly enclosed by a close boarded fence, with post and rail fencing along the remainder of the perimeter. Planting with a mix of native species has been carried out to create a hedge along the boundary.
25. The landscape is a valued resource. The development has not had an impact on individual landscape elements, the field or settlement pattern and the sense of enclosure. Boundary planting with appropriate species has the potential to improve biodiversity. The change of land use relies on an outdoor setting and has not introduced permanent buildings. The loss of openness, a characteristic associated with the arable farmland, is limited to a small area. A perceived

- sense of remoteness has not been significantly eroded due to the small scale of the facility, although the activity occasionally interrupts the calm and peaceful surroundings. Overall, the development has not modified key characteristics of the landscape and the identified harm is slight and confined to a small area.
26. The activity area is functional and has no visual merit. Nevertheless the small scale structures are low in height and camouflaged, which reduces their visual presence within their surroundings. When viewed from the surrounding roads the structures interrupt the level field surface but individual features are not apparent, the layout is permeable and they are seen against a backdrop of buildings, including a grain store and barn. Views from French Drove are interrupted by roadside hedging. The visitor facilities provided are minimal. The portable structure housing the basic changing facilities is not of a standard sought for a permanent use. The presence of parked vehicles would be confined to the duration of the sessions and would be viewed in the context of the farm buildings.
 27. Groups of people, or receptors, would probably respond to the visual effect differently. Residents of the nearby dwellings, who would have a high degree of sensitivity, consider the visual amenity of their surroundings has been harmed, more particularly by the appearance of the structures in the activity area. In contrast visitors to the centre would be less sensitive and probably would not be bothered. It appears that Thorney Parish Council did not receive adverse comments from villagers or the wider community. My conclusion is that the activity area detracts from the appearance of the countryside to a limited degree.
 28. These considerations indicate that the development would not significantly harm the landscape character of the surrounding area, although it would not make a positive contribution to the visual amenity of the local area. There would be no conflict with the requirements of Policy CS20 and in terms of Policy PP2, the effect would be neutral. However, this preliminary conclusion is subject to the effect of the proposed acoustic barrier being taken into account.
 29. The appellant emphasised in his supporting planning statement that the fencing and natural materials used around the site conformed with existing landscape features and did not intrude into the flat fenland landscape. He stated great care was taken to retain traditional post and rail fencing but with adequate screening from the main access road. The October 2013 noise statement identified control measures as some fencing, a natural planting regime and a margin of arable land between local neighbours and the activity. An acoustic barrier, as now proposed, is contrary to those objectives.
 30. The current position is that the amount of existing solid fencing is limited to the northern boundary. The close boarded fencing appeared not to be of the standard recommended in the acoustic report. In contrast the recommended acoustic barrier would be a dense solid overlapping form of construction that would extend along a much longer length of boundary. It would be particularly visible in views from the east. Such a type of boundary treatment would be an alien feature within the open landscape and be visually intrusive. The inclusion of the barrier would result in the proposal being contrary to Policy PP2 and lead to a conflict with Policy CS20 in that the design would not be sensitive to its landscape setting.

Rural economy

31. The Framework supports a prosperous rural economy, including sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors. Policy PP8 of the DPD recognises the important benefits that development for leisure uses may bring to villages and the countryside.
32. The appellant has stated that the business has shown profitable trading over the two years that it has been established. It has created three new part time jobs, including two youth employment positions and another two part time roles could be created within 12 months. The business has the capacity to be viable on a long term basis. Demand for the facility has been good and is growing – there is no similar venture within a 50 mile radius. Additional visitor numbers are able to be accommodated without further site development. The centre allows access to the Fens and has attracted tourist revenue.
33. These statements have not been substantiated by detailed information. The information available on visitors and user groups suggests that the facility is used by people, educational establishments and community groups based and living in the wider area, rather than being a tourist attraction. For instance, the majority of visitors are said to come from within a 30 minute driving distance. There is nothing to suggest that the business is a form of diversification or that it contributes to the overall viability of a farming concern. There is no business plan to illustrate the numbers of visitors and level of use to support the viability of the business in the longer term. The new employment is a benefit. Overall the evident contribution to the rural economy is limited.

Recreation

34. The centre provides an outdoor recreation facility for use by adults, families and children. It has been popular with schools, youth groups and sports clubs for team building. Sessions have also been run for students from a pupil referral unit that have found it difficult to source alternative outdoor activities. The appellant has confirmed that the flat physical terrain enables participation by people with disabilities and the partially sighted and that the game play is highly suitable for anyone on the autistic spectrum. The representations show that visitors find the sessions very enjoyable and regard Battlefield Live as an excellent opportunity for outdoor exercise.
35. The Framework acknowledges that opportunities for recreation can make an important contribution to the health and well-being of communities. The outdoor activity centre is such an opportunity serving the area around Peterborough and this consideration provides support for the facility.

Other matters

36. The access to the site via French Drove is adequate to cater for the amount of traffic likely to be generated by the activity centre. The development would not result in an unacceptable impact on any element of the transportation network including highway safety. In those respects there is compliance with Policy PP12. On-site parking provision is sufficient to meet the requirements of Policy PP13. Having considered the concerns of local residents, I agree with

the Council there are no objections on grounds of highway safety or traffic generation.

37. The Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. This is reflected in the criterion in Policy PP8 of the DPD where the objective is for the location to be easily accessible, preferably by public transport. This is the relevant criterion because it is specific to leisure development in the rural area, as opposed to the criterion in Policy CS18³ which applies across the whole of the Peterborough area. In view of its location off the main highway network some 4 km (2.5 miles) from the nearest settlements of Thorney and Crowland, the probability is that most people would travel by car. There is no evidence to demonstrate that visitors use the option of a combination of public transport and taxi, as described by the appellant. However, because pre-booking is encouraged there is the potential for car sharing and use of minibuses for groups. On balance there is no significant objection on the grounds of accessibility, a conclusion that is consistent with the Council's decisions.

Conclusions

38. Policy CS1 allows for development in the countryside which is demonstrably essential to the effective operation of outdoor recreation. Policy CS18 and Policy PP8 encourages the development of new leisure and tourism facilities, provided certain criteria are met. The activity centre is a small scale development that improves the range of outdoor recreation facilities on offer in the Peterborough area. Balanced against this positive factor is the unacceptable adverse impact on the occupiers of nearby residential properties. It has not been demonstrated that the impact is able to be overcome satisfactorily by the use of planning conditions. There is no clear support from the development plan.
39. At the heart of the Framework is a presumption in favour of sustainable development. On the available evidence, the economic contribution of the development is limited. More significant is the social role and the opportunity for recreation through provision of an outdoor activity that caters for people of all ages and ability. However, the location of the facility is in a generally very quiet rural area. This is an important constraint and the use significantly reduces the quality of life for local residents. Reasonable and acceptable forms of mitigation would not adequately reduce the adverse effects.
40. The Framework and the NPSE emphasise that noise impact should not be treated in isolation in any particular situation and that the economic social and other environmental dimensions must be taken into account. My conclusion in this case is that the overall balance is against the development.

DECISIONS

Appeal A Ref: APP/J0540/C/14/2215066

41. It is directed that the enforcement notice is corrected by:
- In paragraph 1 of the notice delete 'within paragraph (a) of Section 171A(1)' and substitute 'within paragraph (b) of Section 171A(1)'

³ The criterion is 'Be accessible by a choice of sustainable transport modes'.

- In paragraph 3 delete the descriptive text and substitute "On 28 October 2011 Planning Permission was granted for a change of use from agricultural to Battlefield Live Outdoor Activity (ref. 11/00950/FUL). Condition C1 of that permission required the use to cease at the end of 2 years after the date of grant of planning permission and the land to be returned to its original state. It appears to the Council that the condition has not been complied with in that the use of the land as an outdoor activity centre continues."

42. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/J0540/A/14/2215067

43. The appeal is dismissed.

Diane Lewis

Inspector