



Appeal Decision

Site visit made on 6 June 2023

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal Ref: APP/C3430/W/22/3306579

Hilton Hall, Hilton Lane, Essington, WOLVERHAMPTON WV11 2BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Hilton Hall Entertainments Ltd against the decision of South Staffordshire District Council.
 - The application Ref 22/00169/FUL, dated 28 January 2022, was refused by notice dated 19 August 2022.
 - The development proposed is Erection of marquee to be used for hosting of events (retrospective application).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant supplied financial information to the Council which was not supplied at appeal until requested. Having now reviewed that evidence I am satisfied that its inclusion would not be prejudicial to other interested parties.
3. There is a discrepancy between the company name of the applicant and the company name on the appeal form. I see no reason to doubt that the two are not one and the same, but I have used the applicant's company name in the banner above.

Main Issues

4. The main issues are:
 - Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - The effect of the development on the openness of the Green Belt;
 - Whether the development would preserve the Grade I listed Hilton Hall, the Grade I listed Conservatory, and the Grade II listed Coach House and Stable Block or any features of special architectural or historic interest which they possess, including settings;
 - The effect of the development on the living conditions of occupiers of neighbouring dwellings and businesses, with particular regard to noise and disturbance; and,

- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Green Belt

5. It is not disputed that the development constitutes inappropriate development in the Green Belt. I see no reason to disagree. As such, the development would be harmful to the Green Belt and contrary to the purposes of including land within the Green Belt, as set out in Paragraph 138 of the Framework.

Openness

6. The marquee has dimensions of around 55 by 30 metres, is about 6 metres tall overall and has transparent openings on its southern end to provide daylight. It provides a venue for up to 650 guests. Located to the north-east of Hilton Hall (the Hall), it is separated from the Hall by maintained gardens and banks of mature vegetation, as well as a large car park. As it is nestled between groups of trees and other mature vegetation, the marquee's full extent is partially concealed when approaching the Hall's eastern elevation and main entrance.
7. It is generally accepted that the meaning of openness in relation to the Green Belt means a lack of development or activity. It has also been found by the courts that the loss of openness may have both visual and spatial elements. The marquee is a very large structure, and consequently its massing and bulk diminishes the spatial dimension of openness in the Green Belt. Moreover, its south-western corner and entrance are visible from the car park and block further views. There is therefore moderate harm to openness with regard to both spatial and visual elements of openness in the Green Belt.
8. Paragraph 148 of the Framework, sets out that harm to the Green Belt arising from inappropriate development should be given substantial weight. There is also a loss of openness, which reinforces the substantial weight to the harm arising from inappropriate development.
9. As such, the marquee conflicts with the aim of protecting the Green Belt, particularly with the Framework's stated purpose of safeguarding the countryside from encroachment. There would also be conflict with Policy GB1 of the Local Plan (LP). However, as this policy is more restrictive than the Framework with regard to development in the Green Belt, and predates the Framework, I give conflict with that policy minor weight only.

Heritage assets

Hilton Hall

10. The current Hilton Hall (Hall) dates from the early 18th century, was built for the locally prominent Vernon family and was subsequently extended and altered in the early 19th century. The Hall is believed to have been built on the platform of a former medieval moated manor house, and two limbs of the former moat remain a prominent feature of the parkland and are a notable feature in the foreground when viewing the Hall from the south and west

11. The Hall's southern, and former principal elevation, faces the moat on slightly elevated ground and presents an imposing three storey red brick façade punctuated by tall sliding sash windows, stone quoins, keystones and cills, and a dentilled cornice above the first floor level. The former entrance is centrally located within a broad stuccoed recess, and has a classical door surround and an elaborate pediment with urns at parapet level. A porte clochere on the Hall's eastern elevation reflects remodelling of the original building to relocate the main entrance to a position adjoining the former carriage drive. This remains the main entrance for the Hall's current business use.
12. The Hall has a distinctive H-shaped footprint but a more informal layout of ranges to its rear indicates the addition of service wings within more utilitarian structures. There is also evidence of a former water gate which provides the base for one of the ancillary structures, and which reflects the former extent of the moat.
13. The significance of the Hall arises from its high quality classical facades with intact historic fabric, which have considerable aesthetic and historic value. The relocation of the main entrance has enabled the southern elevation in particular to retain a direct visual and spatial relationship with the moat, and early drawings of the Hall indicate that appreciation of the Hall from this angle is largely unchanged from the 18th century. There is also associative value from the links to the Vernons, who were local landowners.
14. The eastern elevation also has significance arising from its aesthetic and historic value. However, the proximity of the car park and its access roads detract from immediate appreciation of what would have been the former formal carriage entrance. Internally, it appears that interventions including the removal of doors and other features has removed historic fabric.
15. The heritage assessment suggests that the alterations carried out in the 19th century, as well as the loss of evidence of the original moated manor have had a negative impact on the Hall's significance. However, I see no reason why this should be so. Each alteration contributes to an understanding of the Hall's evolution and its former uses and functions.

Coach House and Stable Block

16. The red brick Coach House and Stable Block (stable block) were built around 1830, probably around the same time as the addition of the second floor at the Hall, and other extensions. The buildings are arranged around a courtyard, entered through a formal arched entrance surmounted by a clock turret and timber dome, some 50 metres to the north of the porte clochere.
17. The significance of the stable block is derived from its largely unaltered historic fabric, its utilitarian appearance and plan form. The ornamentation of its arched entrance reflects its spatial relationship with and proximity to the Hall and the carriage drive.

Conservatory

18. The circular conservatory or forcing house is built on a limestone plinth with a cast iron frame, and was restored around 10 years ago. It is situated some 100 metres to the west of the Hall in a pleasant and informal garden setting. It has a distinctive and highly attractive form, and significance arises from its aesthetic and historic value, and its intact historic fabric as well as evidential

value reflecting horticultural practice and its former functional relationship with and contribution to running of the wider estate.

Grounds

19. The listing map shows a linear series of ponds and pools to the west of the moat, which is usually indicative of fisheries associated with medieval manors. This reinforces the understanding that the origins of the estate predate the building of the current Hall and its other 18th and 19th century features.
20. The approach to the Hall from the north winds through a former walled garden and banks of established trees and shrubberies, giving glimpsed views of buildings and the moat before arriving at the Hall's eastern frontage and the car park. The grounds near the Hall have an attractive verdant character and appearance, consistent with the establishment of pleasure grounds and parkland in the Hall's heyday, and the grounds retain a distinctive and recognisable character as historic parkland. This is reinforced by the presence of ancillary buildings such as the listed Conservatory and stable block, as well as the listed gate 18th century gate piers which frame a former southern approach and the Portobello Tower, now detached from the estate. There is also evidence of other original features such as earthworks and revetments.
21. As such the grounds, particularly in the immediate vicinity of the Hall, the Conservatory and stable block make a highly positive contribution to the settings of those listed buildings and are an integral component of their significance.

Proposals

22. The marquee is located beside a large shrubbery, and consequently its full extents are partially concealed from the eastern approaches to the Hall and the car park. It is also separated from the Hall and the stable block by planting and grass. Nonetheless its visible southern portion has a prominence, scale and functional appearance which is out of keeping with this historic setting and which detracts from the settings of the Hall, the stable block and to a lesser extent, the Conservatory.
23. There is an impermanence inherent in the presence of marquees and there would be no permanent ground works. To some extent, the car park, although sympathetically designed between planted strips, also detracts from the Hall's setting. Nonetheless I conclude that the marquee intrudes into the Hall's setting and diminishes appreciation of its former grounds, leading to a loss of significance and amounting to less than substantial harm. Although the courts have found that there is no need to assess the magnitude of less than substantial harm, I conclude that is a minor to moderate degree of less than substantial harm arising from the marquee.
24. Paragraph 202 of the Framework sets out that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of that proposal, including where appropriate, securing its optimum viable use.
25. A previous temporary planning permission gave consent for the erection and use of a smaller marquee for six months each year, for a period of five years. Some of the revenue stream generated from the marquee's use augmented funding from Historic England (HE) to restore the Conservatory. This was an

arrangement set out in a legal agreement, funded specific works and ended with the restoration of the Conservatory.

26. The argument is advanced by the appellant that the current marquee provides about 25% of the Hall's income and that this could be used to fund urgent maintenance works. A dilapidations report concludes that immediate works costing £640,000 are required, with close to £100,000 required annually to fund a combined one year and five year maintenance cycle. The anticipated annual rent from the marquee would fund less than 10 per cent of the cost of immediate repairs, or about half of the subsequent combined annual maintenance costs. As such, although I appreciate that all revenue streams could make a contribution to urgent works, the marquee's rental income would make only a very minor contribution to the funds required. Consequently, the ongoing use of the marquee would not in itself secure the future of the Hall and other heritage assets. Nor is there anything before me to identify the source of the other funds required.
27. Furthermore, the dilapidations report begins with many disclaimers regarding timescale and access, and it is unclear whether the author has specific building surveying or conservation experience. The report is mainly copies of best practice guidance and insofar as it includes cost estimates, these appear to be ball-park figures rather than being based on actual rates and schedules of works. This generates some doubt as to its accuracy.
28. Planning Practice Guidance (PPG) states that putting heritage assets to a viable use is likely to lead to the investment necessary for their long-term conservation. The Hall is used as office accommodation and for events. The marquee complements this use. However, the evidence sets out the difficulties of funding a public venue through COVID lockdowns and the ongoing financial burden of the Hall's maintenance. There is some financial information before me, although this comprises only a record of rent payments by the marquee company and a list of monthly cash balances for the Hall for a few months over the summer of 2022.
29. In the absence of audited accounts, accounts over a longer period or a business plan, it is difficult to verify current turnover, compare it with pre-COVID times or to gain any insight into whether a recovery might be likely. As such, there is a lack of clarity and verification which limits the weight I can give to the financial information. It also limits the weight I give to the argument that the current business use of the Hall and the associated marquee represents the Hall's optimum viable use.
30. Furthermore, although I acknowledge that the marquee draws upon local businesses to support events, there are no quantifiable details against which to judge those benefits. In any case, these businesses are from Walsall, Wolverhampton and Birmingham and it seems more than likely that even if demand from the Hall declined, they would be available to supply other venues. Accordingly, I give minor weight only to the public benefits arising from the use of the marquee as an events venue and the provision of local employment
31. The figures provided indicate that the marquee revenue would make a very small contribution only to the immediate urgent repairs, to the extent that it would take more than 12 years for that income to offset the costs of those works. Consequently, the marquee would not facilitate the long term

conservation of Hiton Hall and the other heritage assets. Nor would the limited public benefits arising from the marquee outweigh the less than substantial harm identified above.

Enabling development

32. HE's guidance¹ with regard to enabling development sets out that enabling development is development that would not be in compliance with local or national planning policies and would not normally be given planning permission except for the fact that it would secure the future conservation of a heritage asset. This is further clarified in Paragraph 202 of the Framework which states that conflict with planning policies may be justified if the development proposed would secure the future conservation of the assets and the wider benefits outweigh the disbenefits of not adhering to those policies.
33. In principle, the hypothecation of the marquee's revenue stream could represent public benefits sufficient to outweigh the less than substantial harm to the setting of the listed building. However, notwithstanding that the proposals before me do not meet the methodology for suggested actions set out in Paragraph 29 of HE's guidance, the revenue stream would be insufficient to make a meaningful contribution to the scale of works required.
34. Moreover, as noted above, there is an underlying brevity, vagueness and generality to the evidence before me, which does not add weight to the appellant's argument. Nor could my concerns be addressed through condition.
35. Consequently, I conclude that the marquee fails to preserve the settings of the Hall, the Conservatory and the stable block and I am unable to conclude that that harm would be outweighed by public benefits. As such, there is conflict with S66 of the Planning (Listed Buildings and Conservation Areas) Act (the Act) as well as Section 16 of the Framework which is concerned with safeguarding heritage assets.
36. There would also be conflict with LP Policy EQ3 which is concerned with the conservation, preservation and protection of heritage assets, and to a lesser degree with LP Policy EQ11, insofar as this requires development to respect and relate to its historic context.

Living conditions

37. The appeal statement notes that it was not possible to commission a noise assessment following the Environmental Health Officer's comments during the application's determination period. However, noise attenuation proposals were provided during the determination period. This suggests that either the noise survey had been undertaken but not provided to the Council, or that the noise attenuation proposals are not based on actual survey data.
38. It was proposed that a noise survey be submitted late in the appeal process but this request was declined as the request was made well past the date for the submission of evidence, and its submission could have prejudiced the interests of both the Council and interested parties. Moreover, the promotion of the noise attenuation proposals indicates that the appellant accepts that the use of the marquee is having an adverse impact on local residents and

¹ Historic England June 2020

businesses. As such, my primary concern is the efficacy and appropriateness of those proposals.

39. It is proposed to line the marquee with a sheet material with acoustic insulation properties. What is provided is a generic technical specification sheet for an Italian product. There are no installation instructions or accompanying details to show how the insulation would be installed or fixed. The technical specification sets out that noise volume would be reduced by 17dB but this appears to be a performance specification reached under controlled conditions. There is nothing before me to indicate that such a reduction could be achieved here or what the insulation's exact performance would be under these particular circumstances.
40. A brief inspection of the marquee revealed that its sides are only loosely affixed to the ground supports and to be effective the insulation would need to have a continuous seal. There is also nothing before me to show how the entrance would be dealt with. The sheet insulation is also opaque which would result in the loss of the glazed windows, which would make the marquee a less attractive space to be in.
41. The evidence indicates that the insulation was to be installed last year but there was no evidence of it at my visit.
42. Consequently, whilst I conclude that the application of sheet insulation could reduce noise levels emanating from the marquee, I am unable to conclude that it would contain noise sufficiently to mitigate the effects on local occupiers or businesses. Nor is the evidence regarding the proposed insulation sufficiently compelling with regard to installation or efficacy, for me to impose a condition in this regard.
43. It is also proposed that the sound systems are turned off at 11pm. However, although I was aware of the faint hum of traffic on the nearby motorway at my visit, this is a rural area and it is not unreasonable for residents to expect tranquillity in the evenings and at weekends. Even if the hours of operation were reduced to between 12 noon and 11pm, if there are events most weekends this would be a very long period to experience annoyance from noise. Even if activities cease at 11pm, this may be well after the time that some residents, including children, might wish to be sleeping. I accept that it is not unusual for outdoor events and festivals to be held in rural locations, but these tend to be occasional rather than regular occurrences.
44. It is also proposed that amplification controls are put in place to limit the loudness of the sound systems. Whilst I appreciate that this could have an effect, there is limited and non-specific information before me in this regard and as such I give this proposal only minor weight.
45. It is suggested that the complaints with regard to noise are unfounded. However, I see no reason why interested parties should fabricate complaints over a sustained period of time, and the evidence suggests that there were no such complaints associated with the former, smaller and lawful marquee. In any case as set out above, the suggested noise reduction to be achieved by amplifier controls, hours and the insulation membrane indicate that there is an acceptance that the complaints are at least partly justified.

46. The holding of a premises licence does not remove the need for the Council to consider the development against the local development plan.
47. It seems likely that the combination of amplifier controls, frequency of events, time restrictions and insulation could result in the frequency and amplitude of noise disturbance being reduced to levels that would be less intrusive for nearby residents. However, a combination of such controls could undermine the attractiveness and thus the viability of the events business. Moreover, the absence of specific information also leads me to conclude that this is not something that could be controlled by condition.
48. Consequently, I conclude that the development has an adverse effect on the living conditions of nearby occupiers and businesses, and therefore there is conflict with LP Policy EQ9 and Paragraph 130 of the Framework, which taken together are concerned with the protection of residential amenity.

Other matters

49. Although not set out in the description, the evidence suggests that the appellant would be open to a temporary permission of five years. However, given the harm identified above I have concluded that a temporary permission would be inappropriate.
50. The appellant has drawn my attention to an appeal where the inspector concluded that the public benefits arising from the erection of an outdoor kitchen would outweigh the less than substantial harm to a listed building². However, in that case the outdoor kitchen was not inappropriate development in the Green Belt and no concerns were raised with regards to noise and disturbance. As such, that appeal is not comparable to what is before me.

Planning balance and conclusion

51. I have concluded that there is harm arising from the development arising from inappropriate development and loss of openness in the Green Belt, harm to the setting of listed buildings, and noise and disturbance for local residents and businesses. Great weight is expected to be given to harm to the Green Belt and to heritage assets.
52. The appellant advances the argument that the use of the current marquee is required to fund ongoing maintenance at the Hall and to secure its future, and that this would constitute other considerations sufficient to amount to very special circumstances. There would be considerable public benefits associated with this argument, which could in principle outweigh the harm identified above in relation to the setting of the Hall. However, as I have set out above, there is a lack of financial clarity in the evidence, and such information as there is suggests that the marquee's revenue would not make any more than minor inroads into the substantial sums needed for immediate works and ongoing maintenance. As such, whilst in principle I see no reason to disagree with this premise, on the basis of what is before me I give this argument little weight.
53. Moreover, even if I concluded that the use of the marquee's revenue could lead to heritage benefits sufficient to outweigh the harm arising to the heritage assets and the Green Belt, this would not alter my reasoning with regard to harm to living conditions. As such there are no other considerations of such

² APP/T0355/C/21/3284003

magnitude to outweigh the harm to the Green Belt, the heritage assets and residential amenity, and very special circumstances do not exist.

54. The development is contrary to the Act, the Framework, and the local development plan and there are no material considerations of such weight to lead me to conclude otherwise. The appeal is dismissed.

A Edgington

INSPECTOR