

Section 42 application for erection of marquee, ancillary services and use of land for parking without compliance with condition 1 (temporary period) of planning permission (ref. APP/2020/2216)

Elsick House, Newtonhill, Aberdeenshire

The Trustees of the 3rd Duke of Fife's Will Trust

Online Scotland eplanning ref. 100654333-001

Planning Statement

18 December 2023

1.0 Introduction

- 1.1 This statement has been prepared on behalf of The Trustees of the 3rd Duke of Fife's Will Trust (the "applicant") to accompany an application to Aberdeenshire Council ("the council") under section 42 of the 1997 Act to develop land without compliance with conditions attached to the planning permission (ref. APP/2020/2216) for the erection of a marquee, ancillary services and use of land for parking at Elsick House, Newtonhill, Aberdeenshire.
- 1.2 The marquee supports the event/function operation at Elsick House. Following the COVID-19 pandemic, demand for functions at Elsick House throughout the year has increased steadily which is expected to continue. The enterprise supports six rural full-time equivalent positions and local suppliers.
- 1.3 Condition 1 of the planning permission (ref. APP/2020/2216) limits the erection of the marquee for a temporary period expiring on 10 January 2024. Continued use of the marquee will allow the estate to offer a complementary space for the main house providing greater flexibility and additional capacity to meet demand. Therefore, to address this condition, the focus of this section 42 application is to review the temporary nature of the development and consider not applying a time limit (i.e. a permanent permission) or failing that, allow at least a further five years.
- 1.4 To guide the council's consideration of this section 42 application, this planning statement considers the proposal against the development plan as well as other considerations, including Scottish Government Circular 4/1998 – 'The Use of Conditions in Planning Permissions'.

2.0 Procedural matters

- 2.1 Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended, relates to "applications to develop land without compliance with conditions previously attached". In other words, it is an application for a new planning permission for a development but with different conditions from those attached to a previous permission for that development.
- 2.2 In determining such an application, consideration is confined to the question of the conditions subject to which any planning permission should be granted. In this particular case, although

the application is directed at condition 1 attached to the planning permission APP/2020/2216, it is open to the planning authority to attach different (or no) conditions if appropriate.

- 2.3 The effect of granting permission for a section 42 application is such that a new and separate permission exists for the development with different conditions attached. The previous planning permission in principle remains unaltered by, and is not varied by, the decision on the section 42 application.

3.0 Background

Site and surroundings

- 3.1 Elsick House is situated in a rural location almost 2km west of Newtonhill, and over time, will be surrounded by the Chapelton new settlement which is currently being constructed on land to the south. The nearest residential properties which are not under the ownership of Elsick Estate are located approximately 425 metres to the north east of Elsick House.
- 3.2 Following planning permission in 2014, Elsick House is currently in use as a holiday let/event/function venue. This historic Aberdeenshire venue offers accommodation and facilities predominantly for weddings but also for corporate and private hire for holidays or parties. As part of these events, since early 2019, the outdoor marquee situated immediately to the west of the main house, is often used to support the event/function operation. Over the last two years there have been 76 wedding events, the majority of which have used the marquee. The enterprise supports six rural full-time equivalent jobs and local suppliers, including food and drink.
- 3.3 The marquee is a single storey modular structure finished in white coated PVC. It has a footprint of 36metres by 12metres with a pitched roof rising to approximately 4.5metres to its ridge. There are also smaller ancillary structures adjacent to the marquee, including a standalone toilet block. To the north of the marquee is a triple garage which serves as its entrance.
- 3.4 Parking arrangements exist in the grounds of Elsick House, mainly to the north of the marquee. The additional 'temporary' car parking area amounting to 24 spaces is located to the northeast of Gardeners Cottage.

Planning history

Planning permission APP/2014/3779

- 3.5 In December 2014 planning permission (APP/2014/3779) was granted for the change of use of Elsick House from a dwellinghouse (Use Class 9) to a holiday let/event/function venue including formation of parking. The permission was implemented.

Planning permission APP/2019/0116

- 3.6 In April 2019, planning permission (APP/2019/0116) was granted for the erection of a marquee (April to September), ancillary services and change of use of land for additional parking at Elsick House for use in association with the use of the main house for events and

functions. A Noise Assessment (CSP Acoustics, 7 June 2018) accompanied the application. The approved marquee is the same one which currently exists on the site.

- 3.7 Condition 1 limited the permission for only two years (i.e. until 4 April 2021) to enable the impact of the temporary development on the amenity of the surrounding area to be reviewed. Condition 3 restricted the operation of the development to between 09:00 to 00:30 hours the following day, and from April to September inclusive. Other planning conditions limited noise levels (condition 4) and ensured a noise complaints process (condition 5).

Planning permission APP/2020/2216

- 3.8 Subsequently, on 11 January 2021, planning permission APP/2020/2216 was granted to retain the marquee along with ancillary structures and services and the use of land for parking. The application was accompanied by a Noise Management Plan (SRL, 10 September 2020). No further noise assessment was requested by the council with that application.
- 3.9 Condition 1 of the planning permission APP/2020/2216 limits the permission for a period of three years (i.e. until 10 January 2024), which like the earlier permission APP/2019/0116 was imposed to enable the impact of the temporary development on the amenity of the surrounding area to be reviewed.
- 3.10 Condition 3 imposed the same restriction as the previous planning permission on hours of operation (09:00 to 00:30 hours) but the limitation on months was not repeated. Other planning conditions reimposed limitations on noise levels (condition 4) and the operation of a noise complaints process (condition 5).
- 3.11 Elsick House has operated as an events/function venue since around 2015. The marquee, which has been used in association with Elsick House has been subject of two planning permissions and has been in place for almost 5 years. During this period there have been few complaints from local residents about the use of the marquee. Any complaints which have been made to the venue have been positively dealt with.

4.0 Proposal

- 4.1 The focus of the section 42 application is the time period for the erection of the marquee, ancillary services and use of land for parking. For reasons set out in this report, approval for either a permanent planning permission (i.e. no conditions on limiting the time period) or, failing that, attaching a condition which extends the period for at least a further five years is considered justified. Other planning conditions, which exist on the extant planning permission, and deal with hours of operation, noise levels and a noise complaints process, can be attached to a new planning permission in order to protect the amenity of the area.
- 4.2 The application is accompanied by the Noise Assessment (CSP Acoustics, 7 June 2018) and the Noise Management Plan (SRL, 10 September 2020) which were submitted with previous planning applications (see planning history above). The CSP Acoustics Noise Assessment was submitted with the 2019 application (APP/2019/0116) and the SRL Noise Management Plan (NMP) was submitted with the 2020 planning application (APP/2020/2216). The purpose of

the NMP was to support the management of noise from events so that there is minimal disturbance to the nearby noise sensitive properties, both on and off Elswick Estate.

5.0 Development Plan and Other Material Considerations

5.1 The development plan comprises the fourth National Planning Framework (NPF) and the Aberdeenshire Local Development Plan 2023 (the LDP). Given the reason for condition 1, the main consideration for this section 42 application is the effect that the continued use of the marquee for events would have on the residential amenity of the surrounding area, by reason of potential noise disturbance.

5.2 **NPF Policy 23 (Health and safety)** does not support development proposals that are likely to raise unacceptable noise issues. A Noise Impact Assessment may be required where the nature of the proposal or its location suggests that significant effects are likely.

5.3 **LDP Policy P4.1 (Hazardous and Potentially Polluting Developments and Contaminated Land)** does not support development proposals if there is a risk that it could create a significant nuisance (through impacts on noise).

6.0 Planning assessment

6.1 Section 42(2) of the 1997 Act consideration of this application is confined to the question of the conditions subject to which any planning permission should be granted. Although the application is directed specifically at condition 1 attached to the planning permission (APP/2022/2216), it is open to the planning authority to attach new or different conditions if appropriate.

6.2 The determining issues in this application are whether condition 1 accords with the provisions of the development plan, meet the policy tests set out in Circular 4/1998, "The Use of Conditions in Planning Permissions" and whether there would be any unacceptable impact on the residential amenity of the area.

Impact on residential amenity

6.3 The closest residential properties to Elswick House and the marquee are under the ownership of Elswick Estate, with staff residing in some of them. Many of these staff will be involved in running events at Elswick House. The nearest residential properties that are not under the ownership of Elswick Estate, such as Chapelton Lodge and Chapelton Grove, are located approximately 425 metres to the north east of Elswick House.

Noise

6.4 The main source of noise will be from amplified music at events. The noise assessment (CSP Acoustics, 7 June 2018) which accompanied the 2019 planning application (APP/2019/0116) considered the impact of noise on nearby dwellings after agreeing the scope of the assessment with Aberdeenshire Council officers. The assessment concludes that music levels arising at the nearest residential properties are likely to meet with the agreed noise limit

within residential properties. There has been no change in circumstances and these conclusions remain robust.

- 6.5 To protect the amenity of nearby residential properties from any event held within the marquee, condition 4 on the extant permission (APP/2022/2216) identifies nearby properties and sets noise limits at each. Condition 5 outlines a robust complaints procedure to deal with any noise complaints made to the planning authority by local residents. These conditions have operated effectively over the last five years with few complaints and if permission is granted then they can be attached to the new permission.
- 6.6 In addition, the submitted Noise Management Plan (SRL, 10 September 2020) sets out a 9-point Noise Management Plan (NMP) which Elsick House Management makes clients aware of before accepting any bookings. It also includes a process for dealing with complaints. This NMP would continue to be applied. NMP contains various measures including to:
- make clients aware that music must not be played in the grounds, including within the marquee, outside of the hours of 09:00 – 00:30;
 - there shall be no amplified music played outside after 20.00 hours;
 - provisions for noise monitoring during an event; and
 - a dedicated contact number given to local residents for an events manager at Elsick House responsible for managing noise complaints during each event.
- 6.7 Since planning permission was granted in 2021, internal acoustic panels have been installed across half of the marquee's roof and one gable. These significantly reduce the noise emanating from the marquee. A noise limiter has also been fitted which is calibrated annually and helps to monitor noise by way of two information panels, one which can be seen by a band playing and another located at the bar for the events staff to monitor. The noise limiter has been set below the noise levels set out in conditions.
- 6.8 Controls have operated effectively over the last five years with few noise complaints. Where complaints have been made to the venue, actions have been taken to address any issues. The previous planning application was found to be acceptable by the council's Environmental Health team.
- 6.9 Given the experience of the operation of the marquee over the last five years or so, the conclusions of the previous noise assessment and the ongoing control via planning conditions of the hours of operation, noise levels and complaints procedure the proposal would not result in unacceptable effect on residential amenity by reason of noise impact. The Noise Management Plan provides additional control. Noise nuisance which does arise can also be controlled via other legislation.
- 6.10 On this basis, a condition which limits the time period of the development is unnecessary, and the continuation of the marquee on a permanent basis will operate satisfactorily without causing an unacceptable impact on residential amenity. Failing that, extending the time period for at least five years is considered acceptable.

7.0 Conclusion

- 7.1 Elsick House is situated in a rural area west of Newtonhill and following planning permission in 2014 has been used for almost ten years as an events and function venue contributing successfully to the local economy by way of creating employment opportunities for local people and supporting local traders and suppliers. In 2019, planning permission (APP/2019/0116) was granted for a marquee to be temporarily sited on land adjacent to Elsick House and used in association with the historic venue. A further planning permission was granted in 2021 (APP/2020/2216) to allow the marquee to continue in use until January 2024.
- 7.2 This section 42 planning application seeks planning approval for the continued use of the marquee in association with events and functions at Elsick House. The marquee has operated for almost five years with measures in place, including via planning conditions, to control and manage noise levels. Few complaints have been made by local residents during this period and where complaints have been made, action has been taken to address issues.
- 7.3 For the reasons set out in this statement, subject to ongoing noise controls and management, the continued use of the marquee in association with functions and events at Elsick House would not cause an unacceptable impact on residential amenity and would comply with development plan policies, notably **NPF Policy 23 (Health and safety)** and **LDP Policy P4.1 (Hazardous and Potentially Polluting Developments and Contaminated Land)**.
- 7.4 On this basis, it is therefore appropriate for a new planning permission to be granted for the same development as approved in 2021 (APP/2020/2216), with the same conditions except without a limit on the time period (i.e. a permanent permission). Failing that, permission is sought for the development to be in place for at least a further five years.

Turnberry Development Management Ltd
18 December 2023

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