
Appeal Decision

Site visit made on 5 September 2016

by **G J Fort BA PGDip LLM MCD MRTPI**

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

Decision date: 29 September 2016

Appeal Ref: APP/L5240/W/16/3149983

Shirley High School, Shirley Church Road, Croydon CR0 5EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by The School Governors against the decision of the Council of the London Borough of Croydon.
 - The application Ref 15/00432/P, dated 2 February 2015, was approved on 19 November 2015 and planning permission was granted subject to conditions.
 - The development permitted is a 2 storey 6th Form Building and associated Air Conditioning units.
 - The conditions in dispute are Nos 2 and 10 which state that:
 - (2) The electrical units labelled "A/C" on plan 9036-103 Rev B hereby approved shall not be used except between 0640 hours and 1900 hours on Mondays to Fridays and between 0840 hours and 1200 hours on Saturdays.
 - (10) The building hereby permitted shall be used for the provision of education only, and shall only be used between the hours of 0700 and 1900 hours Monday to Friday and between the hours of 0900 and 1200 hours on Saturdays. The building shall only be used between the hours of 1900 and 2100 hours Monday to Friday on two occasions per year.
 - The reasons given for the conditions are:
 - (2) To prevent noise disturbance to neighbours and thereby comply with Policy EP1 of the Croydon Replacement Unitary Development Plan (The Croydon Plan) Saved Policies 2013 and Policy 7.15 of the London Plan (2011)
 - (10) To prevent use for another purpose which may generate greater noise disturbance to neighbours and thereby comply with Policy EP1 of the Croydon Replacement Unitary Development Plan (The Croydon Plan) Saved Policies 2013 and Policy 7.15 of the London Plan (2011).
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Decision

1. The appeal is allowed and the planning permission Ref 15/00432/P for a 2 storey 6th form building and associated air conditioning units at Shirley High School, Shirley Church Road, Croydon CR0 5EF granted on 19 November 2015 by the Council of the London Borough of Croydon, is varied by deleting conditions (2) and (10) and substituting for them the following conditions:
 - (2) The electrical units labelled "A/C" on plan 9036-103 Rev B hereby approved shall be operated only between the following hours
0640 and 2100 on Mondays to Fridays
0840 to 1200 on Saturdays, and not at any time on Sundays.
 - (10) The building hereby permitted shall be used for the provision of

education only, and that use shall only take place between the following hours:

0700 to 2100 Mondays to Fridays

0900 to 1200 on Saturdays, and not at any time on Sundays.

Procedural matters

2. This appeal is made directly against conditions imposed on a planning permission. I have thus determined the appeal in terms of section 78 of the Town and Country Planning Act 1990 (as amended).
3. As 'retention' is not an act of development for the purposes of the 1990 Act I have omitted the phrase "retention of" from the description of development given in the banner heading above.

Background and Main Issue

4. The appeal building (hereafter 'the building') is in use as a Sixth Form in connection with Shirley High School. The appellants wish to extend the hours of opening of the building from those imposed on the permission to between the hours of 0700 and 2100 Monday to Friday and between the hours of 0900 and 1200 on Saturdays. Due to the proposal to extend the sixth form's opening hours the appellants also wish to extend the operational hours for the air conditioning units at the site from those imposed by the permission to between 0640 hours and 2100 hours on Mondays to Fridays and between 0840 hours and 1200 hours on Saturdays.
5. Consequently, I consider the main issue in this appeal to be the effects of these proposed opening times, and the proposed operational hours of the air conditioning units on the living conditions of the building's neighbouring residents, particularly in terms of noise and disturbance.

Reasons

6. The building is a two storey, flat-roofed rectangular structure. The building's long rear elevation is close to the boundary of the school grounds. Along that elevation there are 20 air conditioning units at ground floor level, although a tall acoustic fence separates these from the boundary of the site. At first floor level on this elevation there are 6 windows, 4 of which serve a corridor, and two are within the walls of classrooms. The sixth form building's side wall, marked as the 'north elevation' on the submitted plan, features two windows, one at ground and one at first floor both of which serve classrooms. I noted that all of the windows in these elevations are obscured glazed and saw that their opening is restricted.
7. At the time of my site visit all of the air conditioning units were on. Whilst I was there during the day, traffic and other ambient sounds were reasonably quiet at the time of my site visit. However, stood immediately next to the air conditioning units I noticed that their operating volume was very low; and stood outside of the acoustic fencing the sound of them was barely audible. My findings in this regard are given further weight by conclusions of the *Cole Jarman Memorandum* ("the Memorandum") submitted by the appellants in respect of the noise effects of the scheme. The Memorandum found that the plant noise limit of 33dB set for the air conditioning units would be below the

- minimum background level of 43dB recorded within the hours proposed within the school's environs.
8. I am mindful that the noise environment may be quieter at night time than at the time of my site inspection. However, I consider that the proposed hours of operation of the air conditioning units combined with the mitigation provided by the acoustic fencing would not lead to any material harm to the living conditions of the occupiers of adjacent properties in terms of noise and disturbance. Whilst I acknowledge that over time the sound created by the air conditioning units could increase, I have been supplied with no substantive evidence to suggest that it would do so to a material degree, and thus attach only limited weight to this consideration in my assessment of the case.
 9. In terms of the proposed sixth form opening times, the appellant's statement makes clear that this would allow sixth form students to continue quiet study within the building within the times stated, allow staff to work within these hours, and facilitate meetings with parents. I saw at my site visit that the entrance to the building is situated on the other side of the building than the long elevation that faces the rear of the site, and thus quite a substantial distance from the boundary of the rear gardens of 101 and 103 Shirley Church Road, and a still greater distance to the dwellings themselves. The entrance is also a substantial distance from the rears of 93 and 95 Shirley Church Road, which face the short north elevation of the site.
 10. Consequently, due to the separation distance from dwellings to the appeal building's entrance, and the limited number of students likely to be there later in the evening, what comings and goings there are after school hours are unlikely to be either of significant frequency or audibility. Moreover, I saw that the fencing close to the building's entrance would tend to limit the areas where people would congregate, away from neighbouring dwellings and towards the front of the building. Consequently, I consider that no significant harm would arise to the living conditions of the occupants of adjacent residential properties in these regards.
 11. I have considered effects of the use of the building itself during the later hours proposed. Whilst I am mindful of the varying amount of screening provided by trees over the seasons, the amount of mature trees along and adjacent to the school's boundaries, combined with the limited size of the building's windows and taken together with the distance achieved to adjacent properties, would tend to limit any unduly harmful effects in terms of disturbance arising from the light emanating from these windows. Moreover, whilst I note that current practice means that the windows are generally kept closed, I saw that in any event their opening was restricted, and the type of activities that proposed including quiet study, parents' evenings, or even teaching, would be unlikely to be a source of noise that would be of material harm to the occupants of adjacent dwellings. Consequently, the proposed increased hours would not cause significant harm to the living conditions of the occupants of 93, 95, 101 or 103 Shirley Church Road in terms of noise or disturbance.
 12. I note concerns about additional traffic visiting the site, however, due to the limited amount of students being likely to use the building outside of school hours I am not persuaded that this would be to such a significant degree that would cause material harm either to the living conditions of the occupants of

adjacent dwellings or to highway safety or restrict the availability of parking more generally.

13. Thus the activities proposed in the hours suggested would create limited additional noise and disturbance that would cause no significant harm to the living conditions of adjacent residents. In these respects, I can discern no undue infringement of the right to peaceful enjoyment of property arising from Protocol 1, Article 1 of the European Convention on Human Rights. The proposed variation would also accord with Policy EP1 of the *Croydon Replacement Unitary Development Plan* ; Policy 7.15 of the *The London Plan: The Spatial Development Strategy for London Consolidated with alterations since 2011*; and the National Planning Policy Framework. Taken together, and amongst other things, these policies seek to ensure that development does not lead to significant noise and disturbance that would be of material harm to the living conditions of the occupiers of adjacent properties.

Conditions

14. The proposed extension of opening hours would create only limited additional noise and would not cause significantly harmful disturbance to adjacent occupiers. Consequently, I have attached conditions varying the hours of opening, and those of the hours of operation of the air conditioning units as suggested by the appellant. These are necessary to ensure that what minimal additional noise created by the use does not occur in the later hours of the evening when a generally much quieter noise environment could be expected.

Other Matters

15. As I find no significant harm to the living conditions of adjacent residents would be caused by removal of the disputed conditions, the question of whether or not it is necessary to use the building in these hours has not been substantially determinative in my consideration of the merits of the appeal.
16. I acknowledge that there are concerns relating to the planning history of the building; however, these matters have not carried significant weight in my assessment of the planning merits of the disputed conditions which are the subject of this appeal.
17. I note the suggestion that my site inspection could have included the properties of adjacent residents, and concerns about me being accompanied by representatives of the school. Whilst as the site is a private one I had to arrange access to it, I conducted the visit in a completely independent manner, accompanied only when I was entering the building and exiting the site, and as is convention in such appeals not discussing the merits of the case. Moreover the access that I had both to the school grounds, and to the green route over its boundary, which separates those grounds from Nos 101 and 103, helped to inform a comprehensive assessment of the proposal's effects without the necessity of visiting adjoining properties.

Conclusion

18. For the reasons given above, and in respect of all other matters raised, I conclude that the appeal should succeed.

G J Fort INSPECTOR