

Appeal Decision

Site visits made on 27 September 2016 & 3 October 2016

by David Spencer BA(Hons) DipTP MRTPI

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

Decision date: 05 October 2016

Appeal Ref: APP/T2215/W/16/3150630

217 London Road, Stone, Kent DA9 9DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Nicole Scott of Beefs and Babes Gym against the decision of Dartford Borough Council.
 - The application Ref DA/15/01452/VCON, dated 22 September 2015, was refused by notice dated 20 November 2015.
 - The application sought planning permission for change of use of from factory/warehouse to Gymnasium (Class D2) (Permanent) without complying with a condition attached to planning permission Ref DA/09/00701/COU, dated 4 September 2009.
 - The condition in dispute is No. 6 which states that: "The use shall not be carried on outside of the hours of 07.30 to 21.30 Mondays to Thursdays inclusive, and 07.30 to 20.00 hours on Fridays, 08.00 to 18.00 hours on Saturdays, 08.00 to 16.00 hours on Sundays and 10.00 to 16.00 hours on Bank Holidays and at no time on Christmas Day or New Years Day unless otherwise agreed in writing by or on behalf of the Local Planning Authority."
 - The reason given for the condition is: "To avoid unreasonable disturbance outside normal working hours to nearby residential properties contrary to Policies B1 and H12 of the adopted Dartford Local Plan."
-

Decision

1. The appeal is allowed and planning permission is granted to extend the current opening hours of the gymnasium to 06:00 to 23:00 Mondays to Fridays inclusive and 08:00 to 20:00 on Saturdays and Sundays and 10:00 to 18:00 hours on Bank Holidays and at no time on Christmas Day or News Years Day at 217 London Road, Stone, Kent DA9 9DQ in accordance with application Ref DA/15/01452/VCON, dated 22 September 2015, without compliance with Condition No.6 previously imposed on planning permission Ref DA/09/00701/COU, dated 4 September 2009 and subject to the conditions in the schedule at the end of this decision.

Procedural matter

2. In order to assess the ambience at the appeal location at the additional times sought by the appeal proposal I visited the location before 07.30 hours on 27 September 2016 and again after 21:30 on 3 October 2016.
3. Following the Local Planning Authority's (LPA) decision the appellant has undertaken a noise assessment¹. I note that the Council's Environmental

¹ Noise Assessment by Peter Moore Acoustics Ltd May 2016 (Report Ref 160502/1)

Health service have considered this assessment and share its conclusions that a noise limiter to control internal volumes could be secured by condition. However, noise from the Gym remains of concern to local residents. I also note that notwithstanding the potential effectiveness of a noise limiter the LPA remains concerned regarding external noise and disturbance from users of the Gym as they arrive and depart.

Background and Main Issue

4. The appeal relates to the site and buildings used by "Beefs and Babes" a gymnasium and fitness centre situated in former factory and warehouse premises fronting on the A226 London Road between the turnings for Acacia Road and Oak Road. These roads are two short residential side-streets which are cul-de-sacs ending onto a large recreation ground to the south. Elsewhere along the London Road frontage at the appeal location is Lantern Court, a modern apartment development between Acacia Road and Elm Road and offices and yard for a property maintenance company and a bathroom showroom around the Oak Road junction.
5. The change of use was granted in 2009 subject to various conditions a number of which related to noise control and parking. These conditions were the subject of a separately approved discharge of conditions application in 2010². The change of use was subject to a condition restricting hours of use to "normal working hours", imposed in the interests of the amenities of nearby dwellings. The appellant seeks to vary the condition in order to extend the opening hours to cover early morning and late evening periods on weekdays, extended evening hours on both Saturdays and Sundays and longer opening hours on Bank Holidays. The changes sought would result in the premises operating approximately for an additional 2-3 hours each day with the exception of an additional 4½ hours on Fridays and 4 hours on Sundays.
6. The main issue is whether the condition is reasonable or necessary having regard to the living conditions of the occupiers of nearby dwellings with particular reference to noise and disturbance.

Reasons

7. The gymnasium occupies a former factory and warehouse building principally clad in various sheeting with its main openings on its principal façade onto London Road with the exception of a small steel roller door on the gable end onto Acacia Road. To the rear of the main gym building is a taller two storey commercial building. Beyond this to the south are two storey terraced dwellings. These properties have very small spaces between the footway and front elevations such that their doors, ground floor bay windows and two first floor openings are very close to the street. Similar properties are positioned a short distance to the west on Oak Road.
8. Immediately to the east of the appeal site on the junction of Acacia Road and London Road is the recent development of flats at Lantern Court, comprising of three and two storeys elements with openings and balconies facing directly towards the gym building. I understand that this development was approved after the appeal site was originally permitted and operational.

² DA/10/00327/CDNA

9. On both my site visits music was audible from within the appeal site on Acacia Road, particularly during the evening visit. I note the appellant's noise survey evidence and the submissions that the roller door onto Acacia Road has been insulated. Nonetheless, emanating music was perceptible at the perimeter of Lantern Court and within Acacia Road to a depth parallel to where there is terraced housing on either side (approximately Nos. 11 & 12).
10. I noted the background levels arising from traffic flows on the A226 and whilst my site visits can only represent a snapshot I am satisfied that the A226 functions as a busy arterial route. Accordingly, during the period preceding 07:30 it carries a notable volume of traffic, particularly in the Dartford direction. The traffic generates a dominant background noise in those parts of Acacia and Oak Road closest to the appeal site. Consequently, I am satisfied that the internal use of the building, subject to a condition limiting the noise level, during the earlier morning hours proposed would not be significantly harmful on the nearby residential environment.
11. In the late evening I observed that traffic levels on the A226 were more intermittent, with lulls in the flow of traffic. Accordingly, whilst background traffic noise remains an appreciable aspect of the late evening audial environment surrounding the appeal site, it was notable that when there were breaks in the traffic both the volume and pulsating syncopation of the music from the gym were jarring against the wider background hum of traffic further afield. Consequently, in my view, without suitable mitigation, the extended evening hours would be harmful to the amenities of nearby residents due to noise and disturbance arising from amplified music from within the appeal site.
12. I note that there have been a small number of noise complaints in the seven years since the Gym opened. However, I have no reason to doubt that a noise limiter on the music system to ensure inaudibility at the nearest residences would be an effective and enforceable form of mitigation. Therefore, subject to an appropriate condition to secure such, I find that there were not be significant harm to nearby residential amenity during the late evening hours proposed from the internal use of the building.
13. In relation to noise from customers parking and being outside the premises I note that there is off-road parking in front of the Gym as well as ample, handy unrestricted on-road parking along the A226 at the appeal location. The A226 is of a generous width such that on-road parking forms a convenient, safe and attractive option for the gym users.
14. I observed that Acacia Road and Oak Road provide on-street parking on both sides without restrictions and with width for a vehicle to pass in-between. On both site visits the on-street parking was near fully occupied leaving little room for visitors. Additionally, neither road has an attractive or dedicated turning point, making for difficult manoeuvring. Accordingly, I am not persuaded that either road provides an attractive alternative to the on-site parking bays accessed from London Road or on-street parking on the A226. I also noted signs at the Gym discourage parking in these side-streets. Consequently, I do not find that on-street parking in the residential areas would be significant or that parking and customer comings and goings more generally in and around London Road would be intrusive on the nearby residential environment in the context of the traffic flows and noise from the A226.

15. I therefore conclude that, subject to a condition on a noise limiter for the amplified music, varying the opening hours of the gym would not result in unacceptable harm to the living conditions of the occupiers of the neighbouring properties, with particular reference to noise and disturbance. Accordingly, the amenity considerations set out in Policies B1 and H12 of the Dartford Borough Local Plan 1995 and Policy DP7 of the emerging Dartford Development Policies Plan Document, which seek amongst other things to protect residential amenity from noise and disturbance, would remain uncompromised. It would also accord with the objective of the National Planning Policy Framework by securing a good standard of amenity for all existing and future occupants of land and buildings.
16. Accordingly, and taking into account all other matters, it is concluded that the appeal should succeed. I have therefore granted a new permission and have imposed a condition to reflect the extended opening hours sought. I have also imposed an additional condition requiring the installation of a sound limiting device, the parameters of which must be approved in writing by the LPA, before the extended opening hours come into operation. Both of these conditions are necessary in the interests of protecting the amenities of nearby residential properties for the reasons set out above.
17. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have been discharged. I have evidence that the LPA has discharged conditions 3, 4, 5 and 11 on application ref: DA/09/00701/COU. Notwithstanding the discharge of conditions 3 and 4 (noise) with the new permission arising from this appeal the appellant would need to comply with the new condition 3 below regarding the noise limiter. I have no other information before me about the status of the other conditions imposed on the original planning permission and so I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

David Spencer

Inspector.

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The use hereby permitted shall not be open to customers outside the hours of 06:00 to 23:00 Mondays to Fridays inclusive and 08:00 to 20:00 on Saturdays and Sundays and 10:00 to 18:00 hours on Bank Holidays and at no time on Christmas Day or New Years Day.

- 3) A sound limiting device shall be installed on the music system of the gym in accordance with details to be submitted to, and approved in writing by, the Local Planning Authority. The details shall include two trigger levels covering the period 21:30 and 07:30 with the levels switching to be via a pre-set timer. The limiting device shall be installed in accordance with the approved details prior to the extending opening hours being brought into operation and shall be subsequently maintained as such.
- 4) The car parking spaces and means of access shown on the approved plans shall be kept available for such use during the times specified and no development, whether permitted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended) or not, shall be carried out on that area of land or to preclude vehicular access thereto.
- 5) The number of work stations shall be restricted to a maximum of 60 and shall subsequently be maintained as such unless otherwise agreed in writing by the Local Planning Authority.
- 6) The use hereby permitted shall be only for the gym and no other uses, including any other falling within Class D2 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, (or any order amending, revoking or re-enacting that Order).
- 7) Apart from for access and egress, all doors and windows shall be kept closed at any time the gym and associated facilities are in use.

Schedule ends.