
Appeal Decision

Site visit made on 16 September 2016

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 19 October 2016

Appeal Ref: APP/T3725/W/16/3149112

Unit 3, Cattell Road, Cape Industrial Estate, Warwick CV34 4JN

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Richard Gibson (Fitness Worx) against the decision of Warwick District Council.
 - The application Ref W/15/2148, dated 21 December 2015, was refused by notice dated 25 February 2016.
 - The application sought planning permission for a change of use from Use Class B8 to a gym (Use Class D2) without complying with a condition attached to planning permission Ref W/12/1481, dated 18 January 2013.
 - The condition in dispute is No 2 which states that: *The use of the premises for the purposes hereby permitted shall be restricted to the hours of 17:00 and 04:00 and the premises shall not be open to visiting members of the public outside of these times.*
 - The reason given for the condition is: *To ensure that adequate parking is available in the interests of highway safety in accordance with Policy DP8 of the Warwick District Local Plan 1996 - 2011.*
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from Use Class B8 to a gym (Use Class D2) at Unit 3, Cattell Road, Cape Industrial Estate, Warwick CV34 4JN in accordance with application Ref W/15/2148 made on the 21 December 2015 without compliance with condition number 2 previously imposed on planning permission Ref W/12/1481 dated 18 January 2013, but subject to the following new condition:
 - 1) The use of the premises for the purposes hereby permitted shall be restricted to the hours of 17:00 and 04:00 and the premises shall not be open to visiting members of the public outside of these times, except for the purposes of one-to-one personal training only, to be carried out between the hours of 05:00 and 17:00 on an appointment-only basis limited to a maximum of 7 persons on the premises at any one time.

Procedural Matters

2. The original application form (Ref W/15/2148) stated that the application site address was "Unit 2, Cattell Road, Cape Road Industrial Estate,". However, the content of the submitted drawings, the Council's officer report and decision
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notice and the appellant's subsequent appeal documentation all refer to the site address as "Unit 3, Cattell Road, Cape Road Industrial Estate,". The planning permission to which the dispute condition relates to also refers to "Unit 3".

3. The appellant has subsequently confirmed that although the lease for the unit in question refers to "Unit 2", the postal address refers to "Unit 3". Having regard to the above, and in the interests of consistency in relation to the previous application reference W/12/1481, I am satisfied that the submitted plans sufficiently identify the application site as being "Unit 3", and I have determined the appeal accordingly.
4. Planning permission¹ was granted in 2013 (the 2013 permission) for the change of use of Unit 3, Cattell Road from a use falling within Use Class B8 to a gym (Use Class D2). That permission was subject to a condition restricting the hours of use of the premises to 17:00 and 04:00, and that the premises shall not be open to visiting members of the public outside of those times.
5. I understand that both main parties take the wording of condition No2 of the 2013 permission to mean that the premises can only be open to members of the visiting public between the hours of 17:00 and 04:00. The appellant now seeks to vary the wording of the condition No2 of the 2013 permission so as to also allow the use of the premises between the hours of 05:00 and 17:00 for the purposes of a one-to-one personal training studio with a maximum usage of up to 7 persons (staff and clients) per hour to be on site during those hours of 05:00 to 17:00 for the purposes of one-to-one personal training sessions.
6. Whilst I note that the appellant's appeal statement also refers to "*between the hours of 06:00 and 17:00*", the application and appeal are quite clearly couched in terms of seeking to vary condition No2 to allow the use of the premises for the purposes and level of usage stated, between the hours of 05:00 to 17:00. I have therefore dealt with the matter in the terms made.

Main Issue

7. Thus, the main issue in this appeal is the effect that varying the condition, and therefore extending the opening times, would have on highway safety within the Cape Industrial Estate, Cattell Road and surrounding roads.

Reasons

8. The appeal site is a small industrial unit located within a block of four units. A further three units are located in two similar, but separate, buildings, all facing towards a car parking court accessed directly off Cattell Road. Cattell Road itself leads to a number of other small industrial units before terminating in a cul-de-sac.
9. The Council acknowledge that the main operating hours of the surrounding industrial units tend to be until approximately 17:00. They note that the previous applicant, in respect of the 2013 permission, submitted a parking survey which indicated that after 17:00 there was greater availability of parking spaces. This, I am advised, was the reason for the hours of operation set out in the disputed condition.

¹ W/12/1481

10. At the time of my visits (I was able to carry out two visits, on an unaccompanied basis, in the early and mid-afternoon periods) I observed that parking spaces were in short supply along Cattell Road, with various parking restrictions and residential parking permit zones in force on Cattell Road, Cape Road and nearby roads. Whilst I noted that there were lengths of unrestricted on-street parking within Cattell Road there were, at the time of my visits, no available spaces in these on-street parking areas.
11. It is stated that 7 car parking spaces in the parking forecourt at the front of units 1 – 7 are now reserved for the exclusive use of users of Unit 3. Whilst I have not been provided with formal evidence of any such arrangements, I noted that the only parking spaces available at the time of my visits were those spaces indicated as being for the exclusive use of clients of the appellant's business. Whilst the Council note that the previous applicant (for the 2013 permission) stated that only 5 spaces were available for the use of Unit 3, I have not been given any reason to doubt that it is now the case that 7 spaces are available.
12. Whilst that may be so, that level of provision would fall below the requirement set out in the Council's Vehicle Parking Standards Supplementary Planning Document (the SPD) for a gymnasium, and it was clear from my observations that there are distinct parking pressures evident in the area surrounding the appeal site that unrestricted use of the appeal site would add to. However, the Council nonetheless appear to accept that 7 spaces are indeed available to the appellant's business.
13. Further, as these 7 spaces are for the exclusive use of users of Unit 3, the Council has not sought to challenge the appellant's contention that if the business continues to operate within the terms of the disputed condition, then the spaces would not, in any event, become available for visitors to, or users of, other units. It therefore follows that the proposed variation to the hours of operation would not increase parking stress, or otherwise prejudice highway or pedestrian safety, in the vicinity of the appeal site. Indeed, I note that the County Highway Authority raised no objection to the proposal and recommended a condition restricting the numbers of clients and staff on the premises during the additional hours that are sought.
14. Paragraph 203 of the National Planning Policy Framework (the Framework) states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Paragraph 206 of the Framework sets out the circumstances in which planning conditions should be imposed, known as the "six tests". One of the six tests set out in paragraph 206 of the Framework is the test of whether a condition is enforceable.
15. In relation to the enforceability of a condition, Planning Practice Guidance (the Guidance) advises that the key consideration is whether it would be practicably possible to enforce the condition. It goes on to advise that unenforceable conditions "include those for which it would, in practice, be impossible to detect contravention".
16. The personal training sessions that the appellant seeks to operate during the extended hours that have been sought are based around the availability of the 7 car parking spaces, on an appointment-only, one-to-one basis, with the number of clients and staff on site at any one time limited to no more than 7.

Further, it is stated that the timing, and length, of the appointment-only training sessions would be such as to ensure that earlier clients had left before clients in the next session arrive.

17. Although the Council have expressed concern about the practicality of monitoring a condition of the nature suggested by the appellant, a condition supported by the local highway authority, to the extent that they consider such a condition to be unenforceable, I disagree. The appellant has set out details of the computerised entry system in operation and the basis upon which the one-to-one personal training sessions are arranged including the length of sessions. Furthermore, evidence has been submitted to demonstrate that the system is capable of recording and logging the number of clients on any particular day, the example being given relating to the date that purportedly related to the Council's site visit in relation to the determination of the application.
18. None of these factors have been challenged, but it seems to me that they provide the means by which a condition that seeks to limit numbers within the premises between certain times could be adequately monitored and enforced. In any event, a simple visit to the appeal site at any reasonable hour to observe the number of clients and staff present at any one time would also serve the same purpose. Either way, a variation to the disputed condition, along the lines sought, would not I find, be unenforceable to the extent that it would be impossible to detect contravention.
19. For the reasons set out, I conclude that a condition restricting the terms of use of Unit 3 remains necessary given the parking pressures that I found to still be evident in the surrounding area. However, I am satisfied that this can be achieved by an appropriately worded condition in a manner that would be enforceable having regard to the six tests set out in the Framework and the advice set out within the Guidance.
20. Thus, the proposed extended hours of operation of the appeal premises for the purposes of providing one-to-one personal training on an appointment-only basis would not have an adverse impact upon the amenity of nearby uses in terms of availability of parking spaces, or otherwise cause harm to highway safety. There would be no conflict with policies DP2, DP6 or DP8 of the Warwick District Local Plan as a consequence. In reaching this conclusion, I have had regard to the consultation response of the County Highway Authority who raised no objection to the proposal, subject to a condition restricting the numbers of clients and staff on the premises during these hours.

Conclusion

21. For the reasons set out above, and having considered all other matters raised, I conclude that the appeal should be allowed with a revised condition.

Conditions

22. In allowing the appeal, I have had regard to the "six tests" applicable to the use of planning conditions set out in the Framework, and the further guidance and advice set out in the Guidance. I have, therefore, modified condition No2 to allow for the operation of the premises for the purposes of personal training between the hours of 05:00 and 17:00 with not more than 7 persons on the premises at any one time between those hours.

23. As the change of use granted by the 2013 permission has already been implemented, it is not necessary for me to impose a time limit condition.

Graeme Robbie

INSPECTOR