
Appeal Decision

Site visit made on 4 January 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 12 January 2017

Appeal Ref: APP/E5900/W/16/3158430

5 Hertsmere Road, Tower Hamlets, London E14 4AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Pure Gym Limited against the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/15/02390 is dated 21 August 2015.
 - The application sought planning permission for change of use of ground floor unit from comprising 1510 sq m of A1 (food retail) to D2 (health club and gym) without complying with a condition attached to planning permission Ref PA/99/0498, dated 6 August 1999.
 - The condition in dispute is No 2 which states that: The use hereby permitted shall not be carried out other than between the hours of 6 am and 10 pm Mondays to Fridays and between the hours of 7 am and 7 pm on Saturdays and Sundays.
 - The reason given for the condition is: To safeguard the amenity of the adjoining premises and the area generally.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor unit from comprising 1510 sq m of A1 (food retail) to D2 (health club and gym) at 5 Hertsmere Road, Tower Hamlets, London E14 4AN in accordance with application Ref PA/15/02390 dated 21 August 2015, without compliance with condition numbers 02 and 04 previously imposed on planning permission Ref PA/99/0498 dated 6 August 1999 and subject to the following conditions:
 - 1) No music shall be played within the premises so as to be audible from outside the premises.
 - 2) The development hereby approved shall be carried out in accordance with the following plan: 1:1250 red edged location plan(Ordnance Survey map reference TQ3780NW).
 - 3) The plant operations shall operate at all times to a level of 10db below the lowest measured background noise (LA90, 15 minutes) as measured one metre from the nearest affected window of the nearest affected residential property. The assessment of the background noise shall be made in the absence of all operating plant that services the premises that is the subject of this planning application.
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The proposed plant shall not create an audible tonal noise nor cause perceptible vibration to be transmitted through the structure of the building.

Application for costs

2. An application for costs was made by Pure Gym Limited against the Council of the London Borough of Tower Hamlets. This application is the subject of a separate Decision.

Main Issue

3. Whilst this is an appeal against the failure of the local planning authority to determine the planning application within the statutory determination period, the Council has nonetheless submitted an appeal statement and hence it has been possible for me to establish what I consider to be the main issue.
4. The main issue is the effect of the proposed extended hours of operation upon the living conditions of the occupiers of neighbouring residential properties in respect of levels of noise and disturbance from vehicles and pedestrians.

Reasons

Site and proposal

5. The appeal site comprises ground floor accommodation used as a health and fitness gym. It falls within a mixed use area which includes commercial properties (bars, restaurants, a museum and a cinema) and apartments (there are apartments opposite the appeal site). There is a 24 hour multi storey car park to the rear of the site and there are parking controls in place (ie double yellow lines) on Hertsmere Road.
6. It is proposed to operate a health and fitness gym from the site on a 24 hours per day, seven days per week basis. This would accord with the business model of Pure Gym Limited which has a number of other gyms in other parts of the country, including London. The existing planning permission for the site currently restricts the use of the gym between the hours of 6 am and 10 pm Mondays to Fridays and between the hours of 7 am and 7 pm on Saturdays and Sundays.

Living Conditions

7. The appellant submitted a revised noise assessment (prepared by Red Acoustics Limited) at planning application stage. Even if the plant were to operate at full capacity during the extended hours of operation, it indicates that complaints would be unlikely from the occupiers of residential properties. I note that the Council do not dispute these findings and I have not been provided with any objective evidence which would lead me to reach a different view.
8. The Council has raised concerns about the number of vehicular and pedestrian movements that would arise during the extended hours of use and contend that this would lead to significant disturbance and noise for the occupiers of the nearby residential accommodation. I note that whilst the existing gym is restricted in terms of its hours of use, there is no evidence of any historic complaints being made to the police or to the Council about noise and disturbance from vehicular or pedestrian activity during existing opening hours. I acknowledge that the other Pure Gym Limited sites referred to by the

appellant relate to different areas and that such sites are not identical to the appeal site. However, based on the evidence submitted by the appellant, such sites do appear to be in similar, built up urban environments. The data supplied by the appellant does give a useful indication of travel behaviour and provides the only evidence available to me of estimates of the number of visitors that would likely attend the gym during the extended hours.

9. In respect of vehicular activity, I note that there are parking controls on Hertsmere Road (double yellow lines). Therefore, I consider that any visitors arriving at the gym by car would more than likely use the 24 hour multi-storey car park (about 500 spaces) that is immediately to the rear of the appeal site. Based on data provided from other Pure Gym Limited premises, the appellant states that during the week an average maximum of 5 visitors per hour would arrive by private motor vehicle during the extended hours period. This would reduce to an average maximum of 3 visitors per hour arriving by private motor vehicle during the weekend. The appellant states that this would be a "*worst case scenario*" in that a number of these visitors would likely be drawn from the local catchment and hence would arrive on foot. Data provided from the appellant relating to other Pure Gym Limited premises (Lambeth, Oval and Hammersmith) suggests that 52% arrive on foot.
10. As public transport provision (including the Docklands Light Railway) ceases to operate in the early hours of the morning, I do consider that it is likely that at this time some customers would arrive at the site by private motor vehicle. However, the Council (including the Highways Authority) do not dispute the data / estimated visitor numbers provided by the appellant. There is certainly no contrary objective evidence before me. Based on the estimated number of vehicles and visitors that would likely arrive at the site (and leave) during the proposed extended hours of use, and the fact that vehicles would likely be parked in the multi-storey car park (away from most of the nearby residential properties), I do not consider that the proposal would give rise to unacceptable levels of noise or disturbance for existing residents.
11. I acknowledge the comments made about existing bars and restaurants in the area closing in the early hours of the morning. Hence, it is reasonable to conclude that the locality will become quieter during these periods than during the day time and late evening hours. However, and based on the evidence submitted, the estimated scale of pedestrian and vehicular activity associated with use of the gym during the extended hours of use would likely be relatively low. Use of the pavements and roads by a relatively low number of people would not reasonably interfere with the peaceful enjoyment of the area or disturb residents when sleeping.
12. I do not consider that visitors would spend long periods of time looking for areas to park freely, as the immediate area is the subject of parking controls (for example double yellow lines). This is a point that appears to have been acknowledged by the Highway Authority in its emails dated 28 April 2016 and 8 June 2016. It is likely that visitors using a private motor vehicle would simply drive into the multi-storey car park and then walk the very short distance to the gym. Taking into account this route, coupled with the likely average number of pedestrians and vehicles that would arrive and leave the area during the extended hours of use, I do not consider that the proposal would give rise to unacceptable levels of noise and disturbance for the occupiers of nearby residential accommodation. The provision of bicycle storage facilities would

have the effect of reducing reliance on the private motor vehicle (particularly during periods when public transport services are not as frequent) and this in turn would also minimise the very limited amount of noise/disturbance that would arise from the use of the local highway network (ie engine noise) by customers arriving and leaving the site by private motor vehicle.

13. For the collective reasons outlined above, I conclude that the proposal would accord with the amenity and sustainable transport aims of policies 7.15 of the London Plan 2016; Policies SP03 and SP10 (4) of the Tower Hamlets Core Strategy DPD 2010 and Policies DM22 and DM25 of the Tower Hamlets Managing Development Document DPD 2013.

Other Matters

14. Comments have been made about the potential for anti-social behaviour arising out of use of the gym for 24 hours a day. I note that neither the police nor the Council's Environment Health service have any evidence of historic complaints being made about anti-social behaviour which is linked to the use of the appeal site as a gym. I accept that the proposal is for extended hours of use, but I cannot see why users of the gym would engage in any anti-social behaviour.
15. I note that the appeal site falls within the West India Dock Conservation Area (CA). Given the nature of the planning application proposal (ie the proposal does not seek to make any external alterations to the building) and the number of visitors that would likely visit the appeal site during the extended hours of use, I do not consider that the proposal would cause harm to the character or appearance of the CA.
16. I have taken into account the representations made by other interested parties. A number of the comments made have already been addressed in this decision. Whilst Pure Gym Limited may not always have staff in the premises (customers have use of a key fob), I do not consider that there is any compelling evidence before me to suggest that this would or does cause harm to the living conditions of the occupiers of surrounding properties. For the reasons outlined in this decision, the evidence before me indicates that subject to the imposition of planning conditions, the proposal would not have a detrimental impact upon the quiet enjoyment of the area by residents.
17. None of the other matters raised outweigh my conclusion on the main issue.

Conditions

18. I am not certain whether or not the existing development has been carried out in accordance with approved plans. The guidance in the Planning Practise Guidance makes it 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 already been discharged. As I have no information before me about the status of the original plans condition, I shall impose it again. In the event that this has been discharged or complied with, that is a matter which can be addressed by the parties. The condition which I have imposed is, however, more precise than the one suggested by the Council in so far that it lists the relevant drawing.
19. I note that as part of the determination of the planning application the Council agreed that condition No 04 of PA/99/0498, which requires dedicated car parking to be provided as per drawing No 9557(20.1)22.2, is not reasonable or

enforceable. Neither of the parties has been able to locate this plan, and it would appear, in any event, that the gym has always operated on the basis of not having its own dedicated car parking area. The Highway Authority do not raise an objection to the removal of condition No 04, and I note that there has been no record of complaints about any illegal on-street car parking or traffic congestion issues in the locality. Given that there is a 24 hour per day car park to the rear of the site which can be used by members of the public, and car parking controls exist within the immediate area, I do not consider that it would be necessary or reasonable to impose condition No 04 again.

20. As there are residential properties in the locality, I consider that it is necessary to continue to apply condition No 03 of PA/99/498 which prohibits any music from being played in the premises which would be audible from outside. Furthermore, and as the premises are proposed to be used during periods when residents would likely be asleep, it is necessary and reasonable to impose the Council's suggested noise planning condition. However, the Red Acoustics "Plant Noise Impact Assessment" 2016 concludes that there is no requirement for any remedial measures. In this respect, I have therefore amended the Council's suggested noise condition.
21. The Council has suggested a planning condition which would allow the premises to operate 24 hours a day. However, this is not a necessary planning condition as the absence of an hours of use condition would automatically mean that the use could operate on a 24 hours per day and seven days per week basis. As the original development has been started, it is not necessary to impose a time limit condition.
22. In the interests of encouraging more sustainable travel choices, rather than the use of the private motor vehicle, the Council suggested the imposition of a planning condition relating to the provision of bicycle stands. However, I do not consider that this condition is necessary as the proposal would be unlikely to lead to a significant increase in the number of people using the gym, and the Council did not impose such a condition in respect of the original proposal. Furthermore, the Council has not disputed the appellant's comment that *"there is cycle parking available to Hertsmere Road that provides space for 14 bikes, as previously confirmed to the LPA"*.

Conclusion

23. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Daniel Hartley

INSPECTOR