
Appeal Decision

Site visit made on 9 January 2017

by H Butcher BSc (Hons) MSc MRTPI

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

Decision date: 27 January 2017

Appeal Ref: APP/M3645/W/16/3158173

Michaels Commercial, East Park Lane, Newchapel, Surrey, RH7 6HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Michael Vaughan against the decision of Tandridge District Council.
 - The application Ref TA/2016/422, dated 11 March 2016, was refused by notice dated 21 June 2016.
 - The development proposed is a change of use from B8 to a mixed use consisting of fitness centre (use class D2) and tattoo parlour (Sui Generis).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council issued a split decision when determining the application. The change of use to a tattoo parlour was granted planning permission but the change of use to a fitness centre was refused. This appeal therefore only relates to the change of use to a fitness centre.
3. The appeal site is located in the Green Belt. However, as the appeal concerns only a change of use of an existing building it would not be inappropriate development. Accordingly, there is no need to address matters pertaining to Green Belt in any further detail.

Main Issues

4. The main issues are: (i) The effect of the change of use to fitness centre on the living conditions of occupiers of neighbouring properties in terms of noise and parking arrangements, and; (ii) Whether, having regard to local and national planning policy, the appeal site is a sustainable location for a fitness centre.

Reasons

Living Conditions

5. The building concerned forms part of Michael's Commercial which is a small industrial park located in a predominantly rural area away from surrounding settlements. However, there are residential properties immediately adjacent and to the north of the site. The industrial park comprises a number of converted buildings formerly used for agricultural purposes but now mainly in light industrial and storage use. It is accessed via a shared drive from East
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- Park Lane. At the time of my site visit the change of use to a fitness centre had already taken place. The proposal therefore seeks to continue this use.
6. The fitness centre is spread over two floors. Music playing at a high volume is often a fundamental part of activities carried out in fitness centres and music was playing at the time of my site visit. From outside this was only slightly audible to the front of the building. However, all the windows were closed at this time.
 7. The Council have raised concern in respect of noise from open windows. Whilst I note there is air conditioning installed at the fitness centre, in my experience, people will still open windows to get what is perceived as a more immediate response to high temperatures, particularly when engaging in physical activity. Notwithstanding my findings on my site visit, having windows open at the fitness centre when music is playing would mean it could be heard at neighbouring properties. I note that neighbours have complained about music and shouting coming from the fitness centre.
 8. Music can cause annoyance, distraction, interference or intrusion to persons who are receiving no immediate or direct benefit from it. Hearing it second hand can also mean much of the tune can be lost leaving only a rhythmic beat or bass line which can be hard to tolerate for prolonged periods. People are generally more tolerant of noise during working hours but outside of these times it can become a real problem.
 9. The hours of opening are 06:15-20:00 Monday to Friday and 07:30 – 12:30 on Saturdays. The early starts fall outside of the waking hours of most people meaning music from the fitness centre could disrupt the sleep of occupiers of the neighbouring properties which would be an unacceptable intrusion on their living conditions. 8pm is also sufficiently late to cause aggravation to neighbours who could reasonably expect higher levels of peace and quiet at the end of the working day, particularly during the summer months when people are more inclined to use their gardens. I therefore find harm to the living conditions of occupiers of neighbouring properties in respect of noise due to music played at the fitness centre
 10. The appeal building currently has permission for B8 use (storage and distribution). The Council consider that the fitness centre attracts a greater number of traffic movements than a B8 use which creates noise and disturbance to occupiers of the adjacent residential properties. However, the appellant points out that a B8 use could be changed to B1 business use without the need for planning permission. This would likely generate a greater number of workers and visitors to the site than a B8 use. In which case, there would be little difference in the overall number of traffic movements on site between B1 use and a fitness centre. In any event, noise of this nature is intermittent and short-lived. I therefore find no harm to the living conditions of neighbouring occupiers in respect of traffic movements associated with the fitness centre.
 11. There are no formal car parking spaces laid out on the industrial park. However the application forms states that there are six parking spaces. No substantive evidence has been provided by the Council to suggest this is insufficient, and with a formal parking layout the parking on site could be increased. I therefore find no reason to conclude that the parking

arrangements for the fitness centre cause significant inconvenience to other users of the industrial park or occupiers of neighbouring properties.

12. To conclude on living conditions, whilst I find no harm in respect of the parking arrangements, or noise from traffic movements, I do find harm from music played at the fitness centre at anti-social hours. The change of use therefore conflicts with Policies CSP 18 of the Tandridge District Core Strategy (2008) and DP7 of the Tandridge Local Plan (2014) which require development to not significantly harm the amenities of the occupiers of neighbouring properties by, amongst other things, noise or other general disturbance.
13. The appellant suggests limiting the number of classes and people attending using conditions but this would not sufficiently mitigate the harm I have found. Whilst I note that the Council's Environmental Health Officer suggested a condition requiring sound proofing, this would also not overcome my concerns given my findings above.
14. In coming to the above conclusion on living conditions I note that the appeal site is located under the Gatwick flight path. However, traffic noise such as that from overhead planes is, as previously noted, intermittent, short-lived and therefore less intrusive than a persistent beat of music over an extended period of time.

Sustainable Location

15. Policy CSP1 of the CS aims to direct new development to existing built up areas to minimise the need to travel by car. The National Planning Policy Framework (the Framework) also requires new development to make the fullest possible use of public transport, walking and cycling. The appeal site is not easily accessible other than by private car given its rural location. However, as noted above, the building in question has the potential to attract a similar level of traffic movements to that of a fitness centre. The proposal also promotes a mixed used development creating multiple benefits from the industrial park which is encouraged in the Framework. On balance, therefore, I find no harm in respect of the location of the fitness centre and conclude it is a sustainable location in this case.

Other Matters

16. The Council finds no harm in respect of visual amenity to the setting of the adjacent East Park Farmhouse which is Grade II listed. Nevertheless, I have a statutory duty to have special regard to the desirability of preserving the setting of this listed building. Noise from the fitness centre could adversely affect its character and this does not appear to have been specifically considered by the Council. However, in light of the limited evidence before me in this respect, and as I am dismissing for other reasons, I am not pursuing this matter further.
17. I note that one of the units on site has no limits on operating hours, but its use is materially different to that which is before me, therefore, this does not justify the proposed change of use given the harm I have found. There is no substantive evidence before me to suggest the appeal unit would become vacant in the long-term as a result of withholding planning permission therefore I can only afford this matter limited weight.

Conclusion

18. I have found that the location of the fitness centre would be sustainable. In respect of the parking arrangements, and noise from the traffic movements associated with the fitness centre, I find no harm to the living conditions of occupiers of neighbouring properties. I do, however, find harm in respect of music played at the fitness centre, which, given the opening hours proposed and the close proximity of adjacent residential properties, would cause significant harm to the living conditions of their occupants by reason of noise. I have had regard to all matters raised, including the economic and social benefits of the proposal but conclude that these do not override this harm. Consequently the appeal is dismissed.

Hayley Butcher

INSPECTOR