
Appeal Decision

Site visit made on 7 June 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 19 June 2017

Appeal Ref: APP/N5090/C/16/3160002

Land at 8 Lytton Road, Barnet, London EN5 5BY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Adam Wallace against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 1 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the use of the property as a gym.
 - The requirements of the notice are:
 1. Cease the use of the property as a gym.
 2. Permanently remove all gym / workout equipment from the property.
 - The period for compliance with the requirements is 3 Months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld as corrected.

The enforcement notice

2. No 8 is a ground floor commercial unit on Lytton Road. No 8A comprises residential accommodation above. The use of land by itself does not amount to development but rather a material change in the use of that land. It is undisputed that the unit was in Class A1 retail use prior to the current alleged use. For clarity, the notice will be corrected accordingly by virtue of powers in s176(a) of the 1990 Act.

The appeal on ground (b)

3. The issue under ground (b) is whether the breach of planning control alleged has occurred as a matter of fact. It is one of the "legal" grounds of appeal. Consequently, the burden of proof is on the appellant to show on the balance of probabilities that the use of the premises as a gym has not occurred. I am unable to take into account the planning merits of the gym use.
 4. It is asserted that the premises are not used as a gym in the generally accepted sense of the word but as "a community based club promoting health and wellbeing", where clients come for advice on nutrition and personal fitness.
 5. Dictionary definitions of "gym" often treat the word as an abbreviation of gymnasium, definitions for which include: "a large room or hall equipped with
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bars, weights, ropes etc, for games or physical training” (Collins English Dictionary, 12th Kindle Edition). Other definitions distinguish “gym” as for example, “a place, typically a private club, providing a range of facilities designed to improve and maintain physical fitness and health”.¹

6. The appellant on his own admission runs a club with fee-paying “clients” or “customers” involving on occasion group activities of up to six people. I saw that the premises were full of equipment designed for physical fitness, including a large variety of weights, a cross-trainer, treadmill, stationary bikes, and several large exercise or “medicine” balls. There were also exercise rings suspended from the archway between the front and back areas of the open plan ground floor. Two more stationary bikes were in the garden to the rear. Signs on the window and inside the unit advertise the place as “Big Joe’s Gym”.
7. I do not doubt that the intention of the club is as the appellant states, to promote health and well-being, and build confidence and self-esteem. It also appears that motivational sessions are held with groups that may not be exclusively connected with physical exercise. Laudable though these purposes may be it is nevertheless clear to me as a matter of fact that the single main use of the premises is to all intents and purposes a gym. Such a use fits with “a gymnasium or other area for indoor sports or recreation” within Class D2 (Assembly and leisure) of the Town and Country Planning (Use Classes) Order 1987 as amended.
8. The appeal on ground (b) must therefore fail.

The appeal on ground (c)

9. The issue on ground (c) is whether the use as a gym amounts to a breach of planning control. Ground (c) is also a “legal” ground of appeal and so it has to be shown on the balance of probabilities that the gym use is not a breach of planning control.
10. A report by Council officers made before the notice was issued, referred to a complaint that the premises were being used as a gym. This view was adopted by the Council after a visit in May 2016. The report is not disputed, nor what was found during the visit except, by implication the correct description of those activities which is a matter I have already dealt with on ground (b).
11. Use as gym is a use that is materially different in character to a shop and therefore development has taken place that requires planning permission. The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the “GPDO”), permits a change of use to take place from Class A1 retail use to Class D2, however this is provided a prior notification procedure is followed as set out in the order.² No such procedure has been initiated and therefore no permission for the gym currently exists under the GPDO. Nor is there any express planning permission for the use.
12. I conclude that the change of use of the appeal property to a gym was carried out without the necessary planning permission and therefore constitutes a breach of planning control. The appeal on ground (c) therefore fails.

¹ Oxford Dictionary of English, second edition, revised and published in 2005.

² GPDO, Schedule 2, Part 3 (Changes of Use), Class J. See J.2—(1) and Class W (Procedure for applications for prior approval under Part 3).

Conclusion

13. For the reasons given above I conclude that the appeal does not succeed. I shall uphold the enforcement notice as corrected.

Formal decision

14. It is directed that the allegation of breach of planning control in the notice be corrected as follows:

- After “without planning permission, the” insert “material change of use of the property from Class A1 retail use to”

15. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Grahame Kean

INSPECTOR