



Appeal Decision

Site visit made on 10 July 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 4 August 2017

Appeal Ref: APP/R0335/W/17/3171831

414 Yorktown Road, College Town, Sandhurst, Berkshire GU47 0PR

- 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 Mr Martin Weller against the decision of Bracknell Forest Borough Council.
 - The application Ref 16/01122/FUL, dated 14 November 2016, was refused by notice dated 23 February 2017.
 - The application sought planning permission for erection of a two storey side and single storey rear extensions to form enlarged gym (at ground and first floor level) new ground floor shop and new 2 bedroom flat at first floor level with car parking to rear involving removal of existing detached building to rear without complying with a condition attached to planning permission Ref 00/00539/FUL, dated 14 September 2000.
 - The condition in dispute is No 14 which states that: The gym as proposed to be extended shall not open to customers outside the following times 11:00 to 21:00 hours Monday to Friday and 11:00 to 18:00 hours on Saturdays.
 - The reason given for the condition is: In the interests of the amenities of the occupiers of nearby residential premises.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The contested condition in this appeal, No 14, was repeated as condition 9 in a subsequent permission (ref 02/0108/FUL) for the erection of a two storey side extension forming dance studio at first floor level with existing access to car park, and car parking below. The appellant states that the application that is the subject of this appeal also sought removal of condition 9 from this subsequent permission. This position is supported by the planning statement that accompanied the application. Given that the two permissions relate to use of the same building, and in the absence of adverse comment from the Council regarding this approach, I have accordingly dealt with the appeal on this basis. For ease of reading though I shall refer to condition 14 in the reasoning to this decision.
3. The application has been dealt with by the Council as an application 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 appellant's appeal statement though makes reference to the gym currently being open until 10pm

Monday to Thursday - in breach of the contested condition. However, no substantive evidence has been submitted that demonstrates that these opening hours commenced before the planning application that is the subject of this appeal was made. As a consequence, I have dealt with the appeal under section 73 of the Act rather than section 73A.

Main Issue

4. At present the opening hours of the gym are restricted by condition 14 to 11:00 to 21:00 hours Monday to Friday and 11:00 to 18:00 hours on Saturdays. The appellant seeks the deletion of this condition to allow the gym to open twenty fours a day, seven days a week. If the appeal was successful, a new permission would be created without condition 14 and but with new conditions attached to control noise. The main issue in this appeal is whether condition 14 is reasonable and necessary in order to protect the living conditions of neighbouring residents from noise and disturbance.

Reasons

5. The appeal property is a two storey building that forms part of a parade of shops on Yorktown Road. The shops have flats above them. Car parking for the gym is located to the rear next to Cavendish Park which is a mobile home park.
6. Saved policies EN20 and EN25 of the Bracknell Forest Borough Local Plan are relevant. Policy EN20 states that in determining planning applications regard will be had to not adversely affecting the amenity of surrounding properties. Policy EN25 requires that development does not generate unacceptable levels of noise that would adversely affect the amenities of the occupiers of buildings. The National Planning Policy Framework ('the Framework') is also an important consideration. A core planning principle of the Framework is that planning should always seek to secure a good standard of amenity for occupants of buildings.
7. An acoustic report has been carried out. It is common ground between the Council and appellant that, subject to its recommendations regarding noise insulation measures and other controls, noise from within the gym would not cause noise and disturbance to neighbouring residents. Given that these measures and controls could be required by condition, I have no reason to disagree with that position.
8. However, the acoustic report did not assess noise generated by customers arriving or leaving. During the day, with daytime levels of traffic along Yorktown Road and general activity, background noise levels are likely to be such that noise from use of the car park located to the rear of the gym is unlikely to be intrusive or disturbing to nearby residents. However, when I visited the car park after 9pm in the evening traffic levels along Yorktown Road were low and the area was generally quiet and peaceful. In such conditions, which are likely to continue through the night to the next morning, the sound of car doors opening and closing, and engines starting stood out.
9. Mobile homes in Cavendish Park are located only a few metres away from the gym car park and are clearly visible over the boundary wall that separates the two. Given the close proximity of the car park to these homes, the low height of the boundary wall, which limits its value as a noise barrier, and the lightweight construction of mobile homes, such noise is likely to be readily audible within these dwellings.

10. In terms of accessing the gym late in the evening, overnight or early in the morning, there is no convincing evidence that gym users would walk or cycle in preference to driving. Indeed, the gym car park was in heavy use when I visited.
11. The view of the appellant is that only a few customers visit the gym from 11pm to 5am and that if members, contrary to gym rules, did not enter and exit quietly their membership would be terminated. He also notes that the Council's Environmental Health Officer did not object to twenty four hour a day opening. Nevertheless, customers, within the range of what could be considered to be reasonable behaviour, could cause noise problems by unwittingly closing car doors heavily as well as by starting their vehicle engines and moving away. In my judgement, even the small number of predicted customers using the gym overnight therefore could quite realistically result in noise and disturbance that would be readily audible within the mobile homes and disturb sleep.
12. A condition has been suggested by the appellant requiring that the car park is kept closed from 11pm to 6am each day. However, this would not address noise from the car park that would occur before 11pm when mobile home residents may reasonably be sleeping, nor would it address noise from use of the car park from 6am onwards when such residents may reasonably still be asleep, especially at weekends and on bank holidays. On the basis of the appellant's graphs, use of a gym open twenty fours a day picks ups significantly from 6am onwards.
13. Other decisions have been referred to where, on appeal, permission has been granted for unrestricted gym opening hours¹. In none of these decisions though were the gyms located next to residential mobile home parks which, by virtue of the lightweight construction of the dwellings, are far more vulnerable to noise and disturbance. As a result, reference to these other decisions has not altered my findings in relation to this appeal.
14. I am aware that the recommendation from the officers was to grant planning permission, however, for the reasons set out above I have found that the operation of the gym for twenty four hours a day would have a significant adverse effect on living conditions.
15. Taking all these matters into account, I therefore conclude that granting a new permission, removing condition 14 to allow the gym to have unrestricted opening hours, is likely to result in prominent and intrusive noise that would unacceptably harm the living conditions of the residents of Cavendish Park. This would be contrary to saved policies EN20 and EN25 of the Bracknell Forest Borough Local Plan and a core planning principle of the Framework. Condition 14 is therefore reasonable and necessary. I find that this condition also complies with the remaining tests of paragraph 206 of the Framework and the advice in Planning Practice Guidance on the use of conditions.

Conclusion

16. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe Inspector

¹ APP/C5690/A/13/2207484, APP/X1925/W/15/3141317, APP/C4235/W/16/3149868