



Appeal Decision

Site visit made on 20 February 2018

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2018

Appeal Ref: APP/U1620/W/17/3181954
133 Bristol Road, Gloucester GL1 5SS

- 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 James Harris of Harris Fitness Ltd. and S & D Investment Property Ltd. against the decision of Gloucester City Council.
 - The application Ref 17/00196/COU, dated 23 February 2017, was refused by notice dated 3 August 2017.
 - The development proposed is change of use from D1 (non-residential institution) to D2 (assembly and leisure) to open an Anytime Fitness Gym operating 24 hours a day, 7 days a week.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from D1 (non-residential institution) to D2 (assembly and leisure) to open an Anytime Fitness Gym operating 24 hours a day, 7 days a week at 133 Bristol Road, Gloucester GL1 5SS in accordance with the terms of the application, Ref 17/00196/COU, dated 23 February 2017, subject to the conditions in the attached Annex.

Procedural Matters

2. In light of the recent adoption of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (the JCS), the Council has clarified that policies FRP.10, FRP.11 and BE.21 of the Gloucester Local Plan Second Stage Deposit Local Plan 2002 referred to in its decision notice have been superseded. I also note that the emerging JCS policy SD15 referred to in the Council's decision notice is now numbered as policy SD14 in the adopted JCS, but otherwise that the policy remains unchanged from the previous Adoption version. I have determined the appeal on that basis.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of the residents of neighbouring properties in respect of noise and disturbance.

Reasons

Main issue

4. The building concerned is currently vacant but previously operated as a construction training centre, albeit that the Council raise doubt as to whether it

was lawfully implemented as such. It has an existing car park at one end which is surrounded by the building on one side, screen walls on those boundaries shared with residential properties on two other sides, and a low wall with pillars and railings at the front with a railing style access gate. As well as those residential properties nearby in Linden Road and Lysons Avenue, the backs of some residential properties in Cecil Road directly face the car park end of the site, albeit with the intervening combined width of the road and non-built up land to the rear of St Stephen's Church.

5. The building has limited openings, the main glazed areas being at the Bristol Road end. However, any internally generated noise could be mitigated by ensuring, through conditions, that any music audible outside of the premises or within adjoining buildings is prevented, and that external doors and windows are kept shut. The existing vehicle access point into the building at the car park end would also be closed off.
6. The proposal would utilise the existing car park and there is no substantive evidence to indicate that it would generate substantially more comings and goings than any previous or potential future lawful use of the site. The main difference is that there is clear intent for 24 hour opening, regardless as to whether or not there have been any past restrictions. However, the appellant has indicated a willingness to close the car park over-night and in this respect has not raised any objections to the Council's suggested condition for its closure at 10pm and for it not to re-open until 7am on weekdays or 10am on Saturdays, Sundays and public holidays.
7. Such a restriction would prevent any vehicle movements and associated engine noise, slamming of doors, mobile phones ringing and conversations taking place in that car park area during the late evening, through the rest of the night and in the early morning. That would be likely to prevent noise and disturbance to the rear of those adjacent properties that would otherwise be close by and unexpected, particularly with windows open to rear facing rooms.
8. Customers during the night arriving by car would have to park on the surrounding streets. However, the appellant has provided evidence to indicate the likelihood that the numbers would be significantly less during the night and it could also be reasonably expected that any of those customers living nearby might choose to walk or cycle in any case. There is also unrestricted on-street parking space on Linden Road adjacent to and opposite the site prior to reaching the residential part of the street. Although that could not be guaranteed to be available, cars having to be parked on the streets in front of residential properties during the night would be likely to be both few in number and well dispersed. Such activity would therefore be unlikely to be materially greater than might otherwise be expected in a residential area in terms of comings and goings and vehicle movements.
9. The main focus of associated pedestrian activity at night time with the car park closed would also be likely to be towards the Bristol Road frontage where the main entrance into the building would be located, and therefore well away from dwellings to the east of that road. Bristol Road is a well used through traffic route which also has several non-residential uses fronting it nearby, including a restaurant next to the site and a small supermarket beyond that with a late night opening hot food takeaway use opposite. It is therefore unlikely that the nearest dwellings fronting Bristol Road would be exposed to significantly more

noise and disturbance than currently occurs, particularly as they are also not directly opposite the site and are separated from it by the through road.

10. The proposals would include air conditioning units positioned on the elevation facing the car park. However, any noise output from these could be appropriately controlled to acceptable levels in relation to the nearby residential properties, based on the evidence submitted, including the appellant's Acoustic Plant Noise Assessment. They would also be at the furthest point on that elevation from the rear boundaries of Lysons Avenue properties and facing the blank side elevation of the adjacent dwelling on Linden Road, No 5 across the width of the car park. Furthermore, the units would be closely surrounded by a timber fence and a screen wall fronting Linden Road that would be likely to provide further sound proofing.
11. For the above reasons the proposed development would be unlikely to cause unacceptable harm to the living conditions of the residents of neighbouring properties in respect of noise and disturbance. As such it would accord with policy SD14 of the JCS which, in respect of this issue, requires new development to cause no unacceptable harm to local amenity including that of neighbouring occupants and to result in no unacceptable levels of noise. It would also accord with the National Planning Policy Framework which in paragraph 17 sets out that planning should, amongst other things, always seek to secure a good standard of amenity for all existing and future occupants of land and buildings, and in paragraphs 120 and 123 sets out the need to prevent unacceptable risks from pollution and that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life.

Other matters

12. I have had regard to concerns about the proposal causing parking and traffic congestion problems in the area, also having regard to other local non-residential activities taking place such as at the church opposite. However, there is no substantive basis to consider that the car park would not generally be able to accommodate the demand for customer parking. At times when it would be closed, the appellant's submitted evidence indicates that car numbers would be likely to be low. It is also unlikely that the level of vehicular activity in the neighbouring streets at any one time would be significantly greater than is currently the case, or would be the case with any lawful occupancy of the premises, particularly if customers come and go at variable times. The proposed provision for cycle parking would also be likely to contribute to minimising car use. For these reasons, it is unlikely that the proposal would cause or exacerbate parking and traffic congestion problems.
13. With regard to concerns about increased light pollution, the main glazed area would be at the front and so not directly opposite any existing residential properties. Furthermore, it would be unlikely to generate substantially more light onto Bristol Road than existing street lighting. Any light generated by headlights from cars using the car park would cease after 10pm and in any case, the existing screen walls would be likely to prevent any significant direct light spill to the adjacent properties. Other external lighting could be controlled by condition to prevent unacceptable light spill to neighbouring residential properties.

14. In respect of concerns over the proposal attracting criminal activity and anti-social behaviour, there is no substantive basis put forward to demonstrate that this would be a likely outcome, including during the night, or any more likely than with any other lawful use of the site. The car park would also be locked during the night when natural surveillance of that space would otherwise be lessened. If anything, due to the current vacancy, the re-occupancy of the premises would be likely improve the general natural surveillance of the site and its vicinity due to the associated activity. There is also no substantive basis to consider that the health and safety of night time customers of the gym would be at risk without any staff supervision.
15. Claims have been made that there is no need for another gym in the area and that it would affect the viability of those existing gyms. However, it would be located in a fairly sustainable location at the edge of the city's Central Area and close to potential customers in the surrounding residential neighbourhood. In any case, I have received no substantive evidence to demonstrate that there is already a saturation of such facilities locally.
16. Concerns have also been raised over a 24 hour use being out of character with the area. However, I note that there are a range of different uses locally which contribute to a diverse character, even if there are currently none which stay open for the full 24 hours. Notwithstanding those other associated factors relating to 24 hour opening addressed above, I therefore consider this factor in itself would not cause unacceptable harm to that local character.

Conditions

17. The Council has suggested ten conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of advice in the Government's Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wordings and amalgamated two conditions.
18. The standard time condition is required in this case, and for the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans is also required.
19. In the interests of protecting the living conditions of neighbouring residents, conditions would be necessary: to prevent all night use of the parking area on the site; to control the use of the premises, particularly relating to its specific nature and likely way it would be used by customers including during the night; to secure appropriate air conditioning units in accordance with the submitted Cass Allen Acoustic Plant Noise Assessment (ref. RP01-17412); to prevent music from within the building being audible outside or within adjoining buildings; to prevent any external lighting other than in accordance with an approved lighting scheme; and to ensure that all external windows and doors are kept shut other than when people are entering or leaving the building.
20. In the interests of ensuring the provision of appropriate levels of on-site vehicle parking so as to prevent inconsiderate or obstructive off-site parking, and to maintain adequate on-street provision for existing nearby occupiers, a condition would be necessary to ensure that the on-site area labelled as 'Parking' on the approved layout plan is set out and retained as approved for use for parking and bin storage only.

Conclusion

21. For the above reasons, I conclude that the appeal should be allowed.

Andrew Dawe

INSPECTOR

Annex

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1250 scale Location Plan; Proposed layout (including elevations A and B) dated 20/06/2017.
- 3) The car park, labelled as 'Parking' on the approved Proposed layout plan, shall be closed and locked at 2200hours each evening. It shall not reopen before 0700hours the following morning on weekdays, or before 1000hours on Saturdays, Sundays and public holidays (including bank holidays).
- 4) The premises shall be used as a private gymnasium only and for no other purpose (including any other purpose in Class D2 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 5) Prior to the first use of the gymnasium hereby approved, the external air-conditioning units (along with the noise-reducing timber fence enclosing them) shall be designed, built and installed on the building's rear (south-eastern) elevation in accordance with the Cass Allen Acoustic Plant Noise Assessment (ref. RP01-17412) (the APNA) and the approved plan entitled 'Proposed layout' dated 20/06/2017. The units shall at all times be maintained in accordance with the approved APNA and the approved plan.
- 6) No music (whether live or recorded) that is audible outside the premises or within adjoining buildings shall be played or performed at any time.
- 7) No external lighting, including any floodlights, shall be installed until a scheme of external lighting within the application site has been submitted to, and approved in writing by, the Local Planning Authority. The details shall include the lighting fixtures, their location on the site/on the buildings, and the extent of illumination and glare, including details of measures to prevent any unacceptable impacts of this on the living conditions of residents of neighbouring properties. The approved lighting scheme shall be implemented in accordance with the approved details and thereafter maintained as such.
- 8) Before the development hereby permitted is first brought into use, the car parking area on the site shall be completed in all respects in accordance with the approved Proposed layout plan and shall be maintained as such thereafter and solely as a parking area for cars, motorcycles and bicycles, and for the storage of bins.
- 9) Except when people are entering or leaving the building, the building's external windows and doors shall be kept shut at all times.