
Appeal Decision

Site visit made on 11 April 2019

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Appeal Ref: APP/P1235/W/18/3218488

Mercury Dance Academy, Chapel Lane, Weymouth DT3 5NA

- 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 Ms Glover against the decision of Weymouth & Portland Borough Council.
 - The application Ref WP/18/00270/VOC, dated 21 December 2017, was refused by notice dated 21 June 2018.
 - The application sought planning permission for use of rear extension of existing dance studio for residential purposes without complying with a condition attached to planning permission Ref WP/13/00153/FUL, dated 16 April 2013.
 - The condition in dispute is No 3 which state that: *"The occupation of the unit of residential accommodation hereby approved, shall be limited to a person solely or mainly employed or last employed in the business operating at the application site, or a widow or widower of such a person, or any resident dependants"*.
 - The reason given for the condition is: *"The relationship of the dwelling to the business use is such that a separate, independent dwelling would not be acceptable as the amenity of occupiers would be adversely affected and as such would be contrary to Policy D3 of the adopted Weymouth and Portland Local Plan 2005"*.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal property is a former church building which has most recently been used as a dance academy studio. Planning permission was granted in April 2013 for use of a rear extension to the building for residential occupation. Given the close physical relationship between the residential unit and the dance studio, that permission was subject to a condition which limits residential occupation to a person solely or mainly employed or last employed in the business operating at the application site, or a widow or widower of such a person, or any resident dependents.
3. The appellant now wishes to offer the residential part of the building for rent on the open market and seeks removal of the constraints imposed by the condition. The main issues are therefore whether the condition remains reasonable and necessary having regard to the effect that its removal would have on:
 - the living conditions of future occupiers with respect to noise, disturbance, privacy and amenity space; and

- the availability of car parking, highway safety and the operation of the highway network.

Reasons

Living conditions

4. The rear, residential, part of the building comprises a kitchen, bathroom and bedroom at ground floor with living room space above on the first floor.
5. I saw on my site visit that this part of the building is segregated from the main commercial space only by an internal door and wall with windows above. Consequently, the residential and studio spaces are very closely related in physical terms.
6. As such there would be considerable potential for future occupiers of the residential part of the building to be exposed to unacceptable noise and disturbance from adjoining commercial activities. I note in this regard that there is no dispute between the main parties that the permitted dance activities would be incompatible with unrestricted residential occupation with the current internal configuration of the building.
7. The appellant has indicated an intention for the nature of the business to evolve with a shift away from dance and fitness classes taking place in a single, large studio towards lower intensity activities. Specifically, a number of small studio spaces and one-to-one rehabilitation and treatment rooms for activities such as Pilates, osteopathy, massage and rehabilitation are proposed. A main studio space featuring dance classes would be retained, albeit with fewer participants and hours of operation.
8. Whilst the appellant's statement refers to noise associated with the commercial element of the property being limited to business hours of 9.00am – 5.00pm Monday to Friday, I note that contradicts their Design and Access Statement which refers to activity on Saturdays and later evening operating hours on Mondays and Wednesdays. Regardless of the hours of operation, however, I am mindful that such uses could in any event lawfully further evolve in ways not currently envisaged and these could include a reversion to noisier uses in the future. For that reason, I am not persuaded that the proposed re-configuration of the internal studio space or a restriction on hours of operation would provide adequate safeguard to ensure future activities would not give rise to unacceptable noise and disturbance to the residential occupiers of the building.
9. Although the planning application sought solely to remove the restriction on the residential occupation of the building under condition No 3, the appellant has also proposed works to remove the connecting internal door and upgrade the acoustic performance of the dividing wall between the studio and residential accommodation.
10. However, no technical evidence has been provided which would indicate the standard to which acoustic insulation works would be necessary to successfully safeguard against noise and disturbance. Therefore, if I were to allow the appeal, I could not be certain that such alterations would be achievable, viable or effective in mitigating the harm.

11. I acknowledge that business and residential units often co-exist for example in high street shops. Be that as it may, it is nevertheless necessary for me to consider the case before me on its individual planning merits.
12. Turning to matters of privacy and amenity space, the Council has not elaborated on its contention that harm would arise in this respect. I note that the residential accommodation has its own dedicated access to the rear of the building, together with an area of garden which is segregated from the public external circulation space. I therefore see no good reason to find that the removal of the occupancy condition would give rise to any harm to the future occupiers of the residential unit in terms of privacy or enjoyment of this amenity space.
13. In conclusion on this main issue, I find that whilst there would be no harmful effect on future residential occupiers of the building in terms of privacy and amenity space, there would be potential for unacceptably harmful noise and disturbance. This would conflict with the adopted West Dorset, Weymouth and Portland Local Plan (2015) (the Local Plan) Policy ENV16. That Policy establishes that development will only be permitted where it would not generate a level of activity or noise that would detract significantly from the quiet enjoyment of residential properties.

Parking and highways

14. The Council cited conflict with car parking as a reason for refusal, although did not explain further what the likely nature of the harm would be. It is likely that the concern relates to additional pressures on the existing car parking spaces to the front of the appeal building. This could give rise to parking stress on surrounding streets, with potential for interruption to the road network and/or harm in terms of highway safety.
15. However, the submitted evidence shows there are currently seven car parking spaces and I have seen no information to suggest that parking demand would be materially higher as a result of the occupation of the residential unit by persons other than the appellant. Similarly, no evidence has been brought to my attention to indicate any pre-existing parking problems in the local area. I note that the highway authority identified no harm in this respect, and I see no good reason to take a different view.
16. I therefore conclude that the proposal would not give rise to harm with respect to parking, highways and highway safety matters and would therefore accord with Local Plan Policy COM7. Whilst not cited by the Council in its refusal notice, that policy sets out that development will not be permitted where residual effects on the efficiency or safety of the road network are likely to be severe.

Other Matters

17. It is not disputed that the appeal site lies in the urban area of Weymouth where there is an ongoing need for housing and the efficient use of land. However, the benefits associated with the removal of a restriction on residential occupation of the appeal premises would be limited and would not outweigh the harm I have identified.

Conclusion

18. For the reasons given, and having regard to all other matters, the appeal is dismissed.

Ian Bowen

INSPECTOR