



Appeal Decision

Site visit made on 2 September 2019

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2019

Appeal Ref: APP/U5930/W/18/3219107

Ground Floor 628-632 High Road Leytonstone, Leytonstone E11 3DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr John Graham of PureGym Ltd against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref: 183069, dated 5 September 2018, was refused by notice dated 23 November 2018.
 - The development proposed is change of use from Class 1 (retail) to Class D2 (24-hour gymnasium) with minor external alterations.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from Class 1 (retail) to Class D2 (24-hour gymnasium) with minor external alterations in accordance with the terms of the application, Ref: 183069, dated 5 September 2018, subject to the conditions on the attached Schedule A.

Procedural Matters

2. The address in the banner heading above is taken from the appeal form as it is more precise than that shown on the application form.
3. The emerging Waltham Forest Local Plan 2020-2035 has not yet been submitted for Examination in Public and I do not know the extent of any unresolved objections. This means that I give the emerging plan little weight. The policies of the Waltham Forest Core Strategy (2012) (CS) and Waltham Forest Development Management Policies (2013) (DMP) therefore constitute the development plan for the purposes of the appeal. I will determine the appeal on this basis.

Main Issue

4. The main issue is the effect of the proposal on the vitality and viability of Leytonstone District Centre.

Reasons

5. The appeal site is a ground-floor clothing shop. It is located within the No.616-638 High Road Leytonstone Secondary Shopping Frontage (SSF) of Leytonstone District Centre, as defined in Schedule 6 of the DMP. Above the

- site, a snooker club is situated on the first floor and residential accommodation is on the second floor.
6. The proposal would reduce the proportion of the SSF's ground floor frontage length which is in retail class A1 use from approximately two thirds to less than half. The Council is concerned that the proposal would result in an unacceptable loss of an A1 retail unit and over-concentration of non-A1 retail uses in the immediate area.
 7. Policy CS14 of the CS seeks to consolidate the role of District Centres, including Leytonstone, through provision of appropriate local shopping, leisure and community facilities to make them the hub of everyday life for the communities they serve. Part B) of Policy DM25 of the DMP adds that it seeks to maintain and encourage retail class A1 shops at ground floor level. Part B)ii of Policy DM25 of the DMP allows for the possibility of other uses appropriate to a shopping centre, within a SSF, provided that the 'proportion of the frontage length does not exceed 50%', and subject to the contribution the proposal can make to the vitality and viability of the proposed frontage and the centre generally.
 8. The main parties differ in their interpretation of 'proportion of the frontage length', in applying Part B)ii of Policy DM25 of the DMP. If the phrase 'proportion of the frontage length' is taken to mean that which is simply in non-A1 use, the proposed development would fall around 5% below the 50% threshold, and thus conflict with part B)ii of the policy. If, alternatively, the phrase is taken to mean that which is specifically in other main town centre uses including, but not necessarily limited to, the Class D1 uses referred to in the policy wording, the proposal would not fall under the 50% threshold, and thus would not conflict with part B)ii of the policy.
 9. I consider that Part B)ii of Policy DM25 is not sufficiently explicit in defining 'proportion of the frontage length' to exclude either of the above interpretations put forward in this case. Given this, I find that the proposal would thus satisfy the frontage proportion threshold requirement of Part B)ii of Policy DM25 of the DMP, or, at most, underachieve against it to a minor extent.
 10. Part Biii) of Policy DM25 of the DMP seeks to avoid three or more adjoining standard size shop units in non-retail use. Whether or not the proposal would result in such a non-retail grouping is disputed. The appellant considers it would not, on the basis that they regard the site as having operated as a single larger unit for over 10 years. However - be that as it may, and whilst acknowledging that the site appeared to be operating as one larger unit at the time of my site visit - the absence of a certificate of lawfulness for a single planning unit leads me to count the appeal site as three units, in relation to Policy DM25. It follows that three adjoining standard size shop units in the SFF would be in non-retail use, thus conflicting with Part B)iii of the policy.
 11. Nevertheless, the proposed gym would fall within a main town centre use, as defined in the Glossary of the National Planning Policy Framework¹ (the Framework), and paragraph 85 of the Framework encourages a positive approach to the adaptation of town centres. As such, it is questionable whether Part B) of Policy DM25 has the flexibility required by the Framework.

¹ Published on 19 February 2019.

12. I saw during my site visit that the SSF and the area of High Road Leytonstone in its vicinity appears generally vibrant, with many units occupied, and a diverse mix of shops and businesses. The Council is concerned that without an element of A1 use, the proposal would provide a 'dead frontage' with little activity, within the District Centre. However, the proposed development would leave six of the 13 units in the SSF in A1 retail use, along with two 'sui generis' bookmakers and two A3 takeaway businesses. Within this context, the proposed gym would diversify the mix of the SSF and its customer base, with associated additional custom for other businesses within the District Centre, from linked trips by the gym's regular customers.
13. Moreover, the proposed 24-hour operation of the gym would bring customer activity and vitality to the SSF substantially beyond the operating hours of the existing retail business. The proposed proportion of glazing within the development's frontage would, furthermore, allow perception of the gym activity within it, from the street.
14. Concerns that the proposed development would provide competition to other gym businesses in the area, and to the D2 use snooker club on the first floor of the appeal building are noted. However, there is no substantive evidence before me that the proposed increased choice and diversity of business would be harmful to the District Centre. Moreover, representations from a variety of businesses on High Road Leytonstone indicate that they consider the proposal would provide a positive stimulus to the street and District Centre. Furthermore, representations from local residents indicate that the proposal would provide accessible and flexible workout and exercise class provision, which would appeal to a variety of age groups. It would also encourage local residents who state that they currently travel outside Leytonstone to access gym facilities, to bring their custom to the High Road and the District Centre.
15. The above, together, leads me to find that the proposal would, overall, bring more diverse local custom to High Road Leytonstone and thus 'breathe new life' into, and increase the resilience, vitality and viability of the District Centre.
16. It is acknowledged that the proposal would result in loss of a larger than average length of A1 retail frontage within the SSF, and increase the amount of non-A1 retail uses in the immediate area. However, the above factors, in combination, lead me to find that the proposal would not result in an unacceptable loss of an A1 retail unit and over-concentration of non-A1 retail uses in the SSF. Accordingly, the proposal would not harm the vitality of the Leytonstone District Centre. As such, the proposed development would not harm the viability and core retail character of the District Centre.
17. The proposal would also - through its 24-hour operation and attraction of gym customers currently travelling outside Leytonstone - stimulate the daytime, evening and night-time economy of the area. As such, while the proposal would not accord with Part B)iii of Policy DM25 of the DMP, its conflict with Part B)ii of the policy would be minimal, if at all. Moreover, the proposal would not conflict with Policy CS14 of the CS. Together the policies seek to ensure that district centres have an appropriate balance of facilities to provide viable hubs for the communities which they serve.
18. The proposal would also increase the choice of fitness facilities in the locality, in an accessible location, and thereby promote healthier lifestyles in accordance with Policy CS13 of the CS, which seeks to create healthy communities.

19. Taking the above together, I conclude that the adverse impacts of the proposal would not be significant, and would be outweighed by the planning benefits.

Conditions

20. The conditions suggested by the Council have been considered against the tests of the Framework and advice provided by Planning Practice Guidance. They have mostly been broadly found to be reasonable and necessary in the circumstances of this case. I have made some minor drafting changes to suggested conditions in the interest of precision.
21. In addition to the standard commencement condition, a condition is necessary requiring that the development is carried out in accordance with the approved plans, in order to provide certainty. I attach conditions relating to use as a gym and delivery hours to safeguard the living conditions of residents. A condition requiring a Travel Plan is necessary in the interests of sustainable transport.
22. The appellant's Noise Control Report Revision B, which was submitted after the Council's decision on the appeal proposal, is acknowledged. Notwithstanding this, a condition is attached regarding sound insulation and noise management, to safeguard neighbouring properties from excess noise. Furthermore, I have made minor drafting changes to the two suggested conditions on this issue, and amalgamated them into one condition, for coherence.
23. It is acknowledged that the site has a good level of public transport accessibility by train and bus, and is accessible on foot from surrounding residential areas. Moreover, on-street cycle parking stands and a small secure cycle locker are available in the vicinity of the site. Nevertheless, given the proposed 24-hour gym use, I have no certainty that there would be adequate provision for staff or users to sufficiently securely park their bicycles for the duration of their visits to the proposed gym, including during night-time hours when 'natural surveillance' is likely to be less. Therefore, part a) of condition No.7 below is necessary in the interests of sustainable transport.
24. The appellant's view that the proposed gym's demand for servicing and waste collection facilities would be minimal, compared to the existing Class A1 use, is noted. However, given the lack of detail before me regarding the servicing and waste collection facility needs of the proposed development, part b) of condition No.7 below is required to safeguard living conditions of residents. As no external lighting is proposed, suggested part c) of the condition is not necessary. In the light of the above, condition No.7 is attached, with suggested part c) removed, for the reasons described.
25. A suggested condition regarding shopfront colour coating is not necessary as this matter is adequately addressed in the proposed front elevation drawing. A suggested condition relating to external plant is not required as the matter would be subject to a separate planning application.

Conclusion

26. For the reasons given above I conclude that the appeal should be allowed.

William Cooper

INSPECTOR

Schedule A) Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: 001 Existing Ground Floor Plan; 002 Proposed Ground Floor Plan; 003 Rev A Existing Elevations; 004 Rev A Proposed Elevations; 005 Rev A Location & Site Plans; 006 Existing Roof Plan; 007 Proposed Roof Plan.
- 3) The use hereby approved shall only operate within Use Class D2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) as a gym. No change of use of this premises that would otherwise be permitted by the Town and Country Planning (Use Classes) Order 1987 (as amended) or the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) or any order revoking and re-enacting that order, shall be carried out without planning permission having first been obtained from the Local Planning Authority.
- 4) Deliveries shall be taken at or despatched from the site only between the hours of 08:00 and 23:00 Mondays to Saturdays, and not at any time on Sundays or on Bank or Public Holidays.
- 5) Prior to occupation of the development hereby permitted, there shall have been submitted to and approved in writing by the local planning authority a Travel Plan. The Travel Plan shall cover the following: Travel Plan coordinator; travel surveys and the method of implementation; measures to encourage walking, cycling, use of public transport and reduced car travel by staff; monitoring and review mechanisms; implementation programme. The Travel Plan as approved shall be implemented in accordance with the approved programme and maintained thereafter.
- 6) Prior to commencement of the development hereby permitted, there shall have been submitted to and approved in writing by the local planning authority a sound insulation and noise management scheme. The scheme shall include: details of sound insulation to be installed to safeguard neighbouring residential and commercial properties from disturbance from excess noise from within the premises; and proposed hours of operation of amplified music and sound equipment. The measures as approved shall be implemented before the use of the building begins and retained thereafter.
- 7) Prior to the commencement of the development hereby permitted, there shall have been submitted to and approved in writing by the local planning authority a detailed scheme for a) secure cycle storage and b) refuse and recycling facilities. The measures as approved shall be implemented before the occupation of the development begins and retained thereafter.