



Appeal Decision

Site visit made on 18 November 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 December 2019

Appeal Ref: APP/K0235/W/19/3233873

Hot Gates Crossfit, 80 College Street, Kempston MK42 8LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by JDS Saunders Co. Ltd against the decision of Bedford Borough Council.
 - The application Ref 18/02740/S73A, dated 31 October 2018, was approved on 1 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is change of use from Use Class B1 'Light Industrial' to Use Class D2 'Assembly and Leisure' to allow continued use of building as gym.
 - The conditions in dispute are Nos 2, 3, 4, 5 and 7 which state that:
 - 2) The use hereby permitted shall cease on or before 25th February 2020 and within 3 months of that date all equipment brought onto the land in connection with the use shall be removed.
 - 3) Within two months of the date of this permission, a noise limiter shall be installed and attached to the music/amplifier system. The system must be calibrated so that internal reverberant noise levels do not exceed LAeqT = 72 dB with the roller shutter door closed. The noise limiter must not include a manual override facility and shall remain in use for the length of the consent hereby permitted.
 - 4) The roller shutter door in the side elevation of the unit shall not be open between the hours of 06:30 – 08:30 Monday to Friday.
 - 5) Amplified music cannot be played outside of the following hours: 06:30 – 21:00 Monday to Friday and 08:00 – 12:00 on Saturdays, Sundays and Bank Holidays. At all times when amplified music is being played it shall be no louder than specified in condition 3 of this permission and all doors (excluding the roller shutter door) and windows are to remain closed. For the avoidance of doubt, the roller shutter door shall still remain closed during the hours of 06:30 – 08:30 Monday to Friday as required by condition 4 of this permission.
 - 7) Within two months of the date of this permission a scheme of measures to provide for (1) the provision of restrictions on parking/loading on the carriageway on College Street to ensure safe movement of traffic and the satisfactory operation of access junctions; and (2) a timetable of implementation, shall be submitted to and approved in writing by the Local Planning Authority. The provisions of the scheme thereby approved shall be implemented within the approved timescales and complied with in full.
 - The reasons given for the conditions are:
 - 2) To enable the Local Planning Authority to reassess the impact of the proposed development after it has been in operation for the specified period and to ensure compliance with saved Policy BE30 of the Bedford Borough Local Plan 2002 and Policy CP21 of the Core Strategy and Rural Issues Plan 2008.
 - 3, 4 and 5) To safeguard the amenities of the adjoining occupiers (or others) and in accordance with saved Policy BE30 of the Bedford Borough Local Plan 2002 and Policy CP21 of the Core Strategy and Rural Issues Plan 2008.
 - 7) In the interests of the avoidance of congestion and of highway safety and in accordance with Policy BE30 of the Bedford Borough Local Plan 2002.
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Decision

1. The appeal is allowed and the planning permission Ref 18/02740/S73A for change of use from Use Class B1 'Light Industrial' to Use Class D2 'Assembly and Leisure' to allow continued use of building as gym at Hot Gates Crossfit, 80 College Street, Kempston, MK42 8LU, granted on 1 March 2019, by Bedford Borough Council, is varied, by deleting condition Nos 2, 3, 4, 5 and 7 and substituting them with the following conditions:
 - 1) Amplified music cannot be played outside of the following hours: 06:30 – 21:00 Monday to Friday and 08:00 – 12:00 on Saturdays, Sundays and Bank Holidays.
 - 2) At all times when amplified music is being played, all doors (excluding the roller shutter door) and windows are to remain closed. The roller shutter door in the side elevation of the unit shall not be open between the hours of 06:30 – 08:30 Monday to Friday when amplified music is being played.
 - 3) Within two months of the date of this permission, a noise limiter shall be installed and attached to the music/amplifier system. The system must be calibrated so that at all times when amplified music is being played, the internal reverberant noise levels shall not exceed LAeqT = 72 dB. The noise limiter must not include a manual override facility and shall be retained permanently thereafter.

Main Issues

2. The main issues are whether the conditions are necessary and reasonable, having regard to:
 - The temporary nature of the permission;
 - The effects of the proposal on neighbouring occupiers with particular regard to noise; and
 - The effects of the proposal on the safe movement of traffic on the highway.

Reasons

Temporary permission

3. Although the gym has been operating from the appeal site since around 2015, the most recent planning permission for the change of use was granted with a condition requiring the use to cease after a year. The reason for the condition, as set out above, is to enable the Council to reassess the impact of the development after a 'trial run', largely in the context of the effects of noise on neighbouring occupiers.
4. Since the temporary permission was granted earlier in 2019, progress has been made with some aspects that were subject to undisputed conditions, i.e. the obscuring of windows in the rear elevation. Whilst I have limited information in this regard, it also appears that an application has been made to address the vehicle and cycle parking scheme condition through the submission of a scheme, which is yet to be implemented if, and when approved.

5. The nature of the use has not diverted from that granted in 2015 or in 2019 and the principle of development and other relevant matters have not materially changed since that time. As such, subject to other necessary conditions, and cognisant of the advice in the Planning Practice Guidance that further temporary permissions will rarely be acceptable, I do not consider that it is necessary to restrict the business to a temporary period.

Noise

6. The appeal building is within a mixed commercial/residential area and is also opposite a railway line and close to a waste processing plant. There are many uses that generate other intermittent noises and at times, much louder noises, i.e. the frequent passing of trains.
7. The appellant seeks to replace conditions 3, 4 and 5 specified above with a single condition only limiting the playing of amplified music to within the hours of 06:30 and 23:00 provided that the noise level does not exceed $L_{EqT}=72$ dB and that providing that the roller shutter door remains closed until 07:00.
8. I observed during my site visit that music was playing from a number of surrounding units and that the roller shutter doors of these units were open at the time. However, the music was being played at a tolerable volume during the working day which is to be expected to some degree or another.
9. The appeal premises generates music noise at times of the day that are typically quieter, i.e. when other business activities are not ordinarily operational. In addition to this, any instructions from coaches that need to be heard above the music, combined with any noises from the movement and dropping of heavy equipment would add to the noise generated within the building that may be experienced by neighbouring occupiers. The roller shutter door helps to contain these noises during the early daytime hours in order to limit the likelihood of them being heard outside of the premises.
10. The current use of the music/amplifier system involves the user observing a dB limit which is detailed in writing on the system itself and also on posters on the wall next to it. From the evidence, this specified dB limit has been calibrated by an acoustician to observe the maximum conditioned noise levels. However, given the absence of a noise limiter, given the frequency with which the system volume is adjusted by numerous personnel in order to conduct classes and motivate participants, the system has the capability of easily being turned to louder volumes, even if unintentionally.
11. Whilst the suggested alternative condition would specify the maximum noise limit for the dominant music noise generated by the use, there appears to be a much greater likelihood of these levels being exceeded in the absence of a specific control, such as a limiter. There can be no guarantees that the information signs advising users on the noise limits would be maintained nor any guarantee that adjustments in the system or placement of the speakers would unintentionally alter the levels. As such, a noise limiter is a necessary measure to limit the predominant noise source from the premises in order to protect the living conditions of neighbouring occupiers.
12. In terms of the playing of music and the roller shutter door restrictions, the current conditions ensure that the roller shutter door is closed between 06:30 and 08:30 Monday to Friday with music capable of being played on these days

from 06:30 through until 21:00. There is no stipulation on the roller shutter door being closed during the weekends or on Bank Holidays, although the hours that music can be played on these days is restricted to between 08:00 and 12:00. The hours that music may be played with the roller shutter doors open are similar to those conditioned to apply to temporary construction activities within a residential area. These hours are generally reflective of a typical working week, when noisy activities are set against a stereotypically higher background noise level and when noise is more tolerable.

13. Notwithstanding the noise assessment findings or the comments of the Council's Environmental Health Officer, the early start of 07:00 and finish time of 23:00 are at the extreme ends of a normal 'daytime'. To allow for the roller shutter door to potentially be open from, and until such time on any given day, and potentially also Bank Holidays, would be likely to harm the living conditions of neighbouring occupiers. It does not seem unreasonable to expect for the roller shutter door to stay closed until the current time of 08:30 which is more likely to coincide with noises from other commercial activities commencing within other surrounding units.
14. Whilst the imposition of noise-related conditions went beyond the recommendations of the planning officer in the original report to the Planning Committee, it is clear that the proposal has not been without its impacts on neighbouring occupiers and that consequently, these conditions were justly imposed. There may not have been a restriction on the playing of amplified music from the appeal building when it operated as a B1 light industrial unit, but it was being used for purposes typical of its location and conditions are not devised to be exhaustive.
15. As such, I consider that conditions 3, 4 and 5 are reasonable and necessary in the interests of the living and working conditions of neighbouring occupiers and businesses in order to comply with saved Policy BE30 of the Bedford Borough Local Plan 2002 and Policy CP21 of the Core Strategy and Rural Issues Plan 2008¹. Read together, these Policies seek to safeguard the living conditions of neighbouring occupiers and the surrounding community. However, I agree that there is a degree of unnecessary repetition within the conditions and some unnecessary restriction on the roller shutter door being closed even if amplified music is not being played. Therefore, I have undertaken some editing of the conditions without making them more onerous than they are at present.

Highway effects

16. College Street is a no-through road which provides access to a number of dwellings at its western end, and a range of commercial units thereafter. The nature of businesses in the area is wide ranging but many are car repair garages. Some units towards the northern end of the road are more diverse and necessitate deliveries and collections by larger heavy goods vehicles (HGVs).
17. I appreciate that congestion on the estate road can cause an interference with the free flow of HGV and car movements. However, College Street is a no-through road and appears to be sufficiently wide to accommodate some parking on the highway with some areas for passing between parked vehicles. The accesses to the individual units would not appear to be obstructed at any

¹ Bedford Borough Council Core Strategy and Rural Issues Plan – adopted April 2008

time and although the parking provision for the appeal site and its neighbours is modest, there is some provision for employees and users.

18. The appellant has not raised any issue with the need to provide delineation of the six car parking spaces and covered cycle storage subject to condition 8 which is being addressed separately. I do not intend to alter this condition and anticipate compliance therewith in due course.
19. In terms of Condition 7 and the requirement for details of the parking and loading restrictions on College Street, I do not consider that this is reasonable or necessary in relation to the appeal proposal. Any restrictions on parking and loading detailed by the appellant on any signage would not be capable of being enforced by the appellant given that the highway is not within his ownership or control. Should the Council seek to operate any parking restrictions on the highway, any users of the gym or employees of units in the area that park along College Street would be displaced to surrounding streets or may consider alternative modes of transport to avoid this issue.
20. In view of this issue, condition 7 is not considered necessary or reasonable in relation to the appeal proposal and is consequently deleted.

Conclusion

21. For the reasons given above I conclude that the planning permission should be varied as set out in the formal decision above.

Hollie Nicholls

INSPECTOR