



Appeal Decision

Site visit made on 5 November 2019

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 January 2020

Appeal Ref: APP/W4325/W/19/3235583

Unit 7, The Curve, 139 Telegraph Road, Heswall CH60 7SE

- 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 HW Fitness Ltd against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/18/01642, dated 18 December 2018, was approved on 31 May 2019 and planning permission was granted subject to conditions.
 - The development permitted is 'Change of use of vacant existing retail Unit No. 7 (Class A1 use) at first floor level, to use as a health and fitness centre including gymnasium use (Class D2 use), to operate 24 hours a day 7 days a week. Including addition of roof mounted air conditioning units'.
 - The condition in dispute is No 4 which states that: 'The use hereby permitted shall only be open to all users between 7am and 1130pm Monday to Saturday and between 8am and 10pm on Sundays and Bank Holidays'.
 - The reasons given for the condition is: 'To protect the amenities of the occupiers of nearby properties, particularly in Castle Drive, having regards to Policy SH1 (v) of the Wirral Unitary Development Plan'.
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Decision

1. The appeal is allowed and the planning permission Ref APP/18/01642 for change of use of vacant existing retail Unit No. 7 (Class A1 use) at first floor level, to use as a health and fitness centre including gymnasium use (Class D2 use), to operate 24 hours a day 7 days a week, including addition of roof mounted air conditioning units at Unit 7, The Curve, 139 Telegraph Road, Heswall CH60 7SE granted on 31 May 2019 by Wirral Metropolitan Borough Council, is varied by deleting conditions 3, 4 and 5, and substituting for them the following conditions:
 - 3). *Prior to the first use of the development hereby approved, a scheme of sound insulation to protect the residential amenity of neighbouring dwellings shall be submitted to and approved by the Local Planning Authority. The scheme approved shall implemented before the business becomes operational and retained thereafter in accordance with the approved details.*
 - 4). *Prior to the first use of the development hereby approved, a lockable gate or barrier shall be installed at the entrance to the car park access ramp from Castle Drive, the details of which shall beforehand be submitted to and approved in writing by the Local Planning Authority. The barrier or gate shall be retained and maintained in an operational state in perpetuity in accordance with the approved details. The car park shall be closed and*

locked at 2300 hours each evening and shall not reopen before 0600 hours the following morning. During the hours the car park is required to be closed customer access to the development shall only be permitted via the Telegraph Road entrance to the building.

- 5). *Prior to the first use of the development hereby approved, a Site Management Plan shall be submitted to and agreed in writing by the Local Planning Authority. The Site Management Plan shall include, but not be solely restricted to, details of the how the following issues will be addressed:*

i) Use of the car park, including installation of an ANPR system and ensuring that the car park would not be available for use overnight in accordance with Condition 3.

ii) Signage, including how customers will be directed to the Telegraph Road entrance between 2300 and 0600 the following morning.

iii) Security, including CCTV coverage and monitoring arrangements.

iv) Management of noise, including that arising from music and gym equipment.

v) Provision of induction material for gym members.

vi) Complaints and resolution procedure.

The use hereby approved will be operated in accordance with the approved Site Management Plan thereafter.

Background and Main Issue

2. Planning permission has been granted for a change of use of the premises to a private members' health and fitness centre and gymnasium. The appellant seeks permission to carry out the development without complying with condition 4 which restricts the opening hours, so that the gym can be used by members 24 hours a day.
3. The main issue is whether the disputed condition is necessary and reasonable in the interests of protecting the living conditions of the occupants of neighbouring residential properties with particular regard to noise.

Reasons

4. The appeal site is a vacant unit formerly used for retail purposes within use class A1, occupying most of the upper floor of a two-storey building which also contains offices, shops and a café bar. It sits within Heswall, designated a Key Town Centre by the 2000 Wirral Unitary Development Plan (the UDP). Adjacent and nearby premises at the front of the site along Telegraph Road, Pensby Road, and the closest part of The Mount contain a variety of commercial and leisure uses, some of which operate late at night, consistent with the town centre location. To the rear is a residential area, with the nearest homes on Castle Drive and The Mount around 15-20m from the site boundary.

5. The unit has its own car park at first floor level, accessed via a ramp from Castle Drive, which in turn gives access to the unit's main entrance. There is another pedestrian access from Telegraph Road at the front of the building.
6. The Council states that over the years it has had a high volume of complaints from local residents relating to noise and other disturbances late at night, although to the extent that they can be linked to specific uses these would seem mainly to be related to the various licenced and late night food premises. The Council acknowledges that the gym would be unlikely to lead to the same amenity issues, but although the original application sought permission for 24 hour operation a condition was attached to the permission restricting the opening hours.
7. I agree that the overnight use of the car park at the rear of the unit would give rise to unacceptable noise impacts on those residents of Castle Drive and The Mount closest to the appeal site. This would be from the use of the car park itself rather than because of any particular expectation of anti-social behaviour by gym users. The appellant has stated that they expect night time usage of the gym to be low, with an average of around 4 users per hour between 23.00 and 05.00 the following morning. Nonetheless, the recurring noise of engines as cars climb the car park ramp, the opening and shutting of car doors, car engines starting and vehicles driving off would cause an unacceptable disturbance to the nearest residents and would be harmful to their living conditions. The elevated position of the car park would reduce the chances of disruptive noise being diffused or otherwise attenuated before reaching the living rooms and bedrooms of the nearest dwellings a short distance away on Castle Drive and The Mount.
8. I consider that these harmful effects could be overcome by preventing night time use of the car park and rear access, and requiring customers to use the Telegraph Road entrance to the gym between 23.00 and 06.00 the following morning. Night time access to the unit would therefore be via an entrance in the commercial part of the town centre furthest from the neighbouring residential area. Night time customers would have to use on-street and other public parking, which is available close to the site and where spaces are likely to be found overnight. I note also that, in responding to the development proposals, many residents of Castle Drive and other nearby dwellings indicated that their objections to 24-hour operation could be overcome if the car park was closed overnight and access restricted to Telegraph Road entrance during night time hours.
9. I therefore consider that condition 4 should be amended so that, rather than restricting the operating hours of the gym, it instead requires the car park and rear pedestrian access to be physically closed and locked at night time. This would allow the gym to be available to its customers 24 hours a day while minimising the risk of disruption being caused to nearby residents by the noise of vehicles and pedestrians arriving and departing.
10. The appellant proposed the submission of a Site Management Plan to address various operational and 'good neighbour' matters, to include a commitment to delivering measures including closing the car park and rear pedestrian access between 2300 and 0600 the following morning. This was subsequently required to be submitted to the Council ahead of the development's first use by Condition 5 attached to the planning permission. That condition continues to be

necessary to ensure that the development can operate in a way which protects the living conditions of nearby residents, although it should be rewritten to ensure that it complies with the requirements of paragraph 55 of the National Planning Policy Framework (the Framework). For the same reasons Condition 3, which requires a scheme of sound insulation to be approved and installed before the health and fitness centre begins operating, should also be redrafted.

11. I conclude therefore that the restriction on the operating hours of the gym is not necessary or reasonable to protect the living conditions of the occupants of neighbouring residential properties with particular regard to noise. It should be replaced by the amended condition 4 set out in my decision above. The new condition would ensure compliance with Policy SH1 of the UDP, by permitting a use appropriate to the town centre location to take place without causing nuisance to neighbours or leading to loss of amenity as a result of noise and disturbance. Conditions 3 and 5 should also be amended to ensure that they comply with the requirements of the Framework.

Other matters

12. Interested parties have expressed concern that the 24-hour use of the site would be likely to result in increased criminal activity and anti-social behaviour. However, no substantive evidence has been put forward to demonstrate why this would be a likely outcome, or why it would be any more likely than with any other lawful use of the site. As it is currently vacant, the re-use of the premises would in fact be likely to improve the general natural surveillance of the site and the surrounding area due to the presence of people using the gym.
13. Concerns have also been raised that a 24-hour use is out of character with the area. From my site visit, my impression of Heswall is that it is a pleasant and vibrant town centre. I observed a number of different businesses locally which are open into the evening and late night and which are likely to contribute to a diverse character, even if none is open for the full 24 hours. However, given that the proposed development would bring a vacant large upper floor unit back into use and would be likely to attract relatively small numbers of users overnight, I consider that it would not cause unacceptable harm to the character of the area.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting for it an amended Condition 4 as stated in my decision. Conditions 3 and 5 are also deleted and replaced with amended conditions to comply with the requirements of the Framework.

M Cryan

Inspector