



Appeal Decision

Site visit made on 7 January 2020

by J Gibson BUEP MPIA

an Inspector appointed by the Secretary of State

Decision date: 17 February 2020

Appeal Ref: APP/H1515/W/19/3238098

17-19 Kings Road, Brentwood, Essex CM14 4DJ

- 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 Mr Nick Lodge against the decision of Brentwood Borough Council.
 - The application Ref 19/00403/FUL, dated 20 March 2019, was refused by notice dated 24 May 2019.
 - The application sought planning permission for a Change of Use from B1 (Business) to D2 (Assembly and Leisure) and installation of air conditioning unit at the rear without complying with a condition attached to planning permission Ref 18/01833/FUL, dated 22 February 2019.
 - The condition in dispute is No 3 which states that: *The premises shall not be open for customers outside the following hours: 07:00-20:00 hours Monday to Friday, 07:00-20:00 hours Saturday and 08:00-18:00 hours Sunday/Bank holidays.*
 - The reason given for the condition is: *To safeguard the living conditions of nearby residents.*
-

Decision

1. The appeal is allowed and planning permission is granted for a Change of Use from B1 (Business) to D2 (Assembly and Leisure) and installation of air conditioning unit at the rear at 17-19 Kings Road, Brentwood, Essex CM14 4DJ in accordance with the application Ref 19/00403/FUL dated 20 March 2019, without compliance with condition number 3 previously imposed on planning permission Ref 18/01833/FUL, dated 22 February 2019, and subject to the conditions contained in the attached schedule.

Procedural Matters

2. The appellant has submitted a Noise Impact Assessment (NIA) Report from an acoustic consultant as part of their appeal documentation. The NIA was not submitted for consideration during the application process. Although the NIA is primarily intended to address another condition on the original planning permission it is nevertheless relevant to the Council's reasons for refusal. The Council have acknowledged the NIA in their statement of case and have therefore had the opportunity to provide comments on its contents. I am satisfied that the parties which should have been consulted on the NIA have not been deprived the opportunity of such consultation. I have therefore determined the appeal with regard to it.

Background and Main Issue

3. The appeal site is a former printworks known as Westbury Press and has been vacant for a number of years. Planning permission was granted for the change of use to a gym. The use has not yet commenced but works are underway. Condition 3, the subject of this appeal, limits the opening hours of operation during which customers are allowed on the premises.
4. The appellant is seeking to revise the opening hours for customers which would enable earlier and later opening hours extending between 0600-2100 Monday to Friday. On Saturdays, the appellant is seeking earlier opening and closing times between 0630-1800. No changes have been proposed to the opening hours on Sundays and Bank Holidays, remaining between 0800-1800. This condition was imposed to protect the living conditions of occupants at neighbouring residential properties.
5. On this basis, the main issue is the effect that varying the opening hours would have on the living conditions of neighbouring occupiers, with regard to noise and disturbance.

Reasons

6. The appeal site fronts onto Kings Road and forms part of the Brentwood Town Centre. Kings Road is a busy main road characterised by a variety of business types including food outlets, retail and commercial services with a range of opening hours, and residential uses at the first floor level. The area immediately west of the appeal site is predominantly characterised by residential development.
7. The surrounding context and characteristics remain consistent to when planning permission was originally granted for the gym. Under the original permission the Council considered the relationship with surrounding residential development and imposed conditions to protect the living conditions of nearby occupiers. Condition 3 is just one of those contributing conditions, and worked in combination with three other conditions limiting internal music (Conditions 4-5) and external noise levels (Condition 6). Accordingly, it is important to determine whether there would likely be an increase in the level of noise or disturbance experienced by residential occupants during the revised hours proposed.
8. Activities associated with the permitted use would be limited to within the building, with only staff accessing the external areas at the side and rear of the building. Customer access would accordingly be restricted to the main entrance along Kings Road, which is already subject to a degree of noise and disturbance from traffic and commuters travelling to the Brentwood Train Station, and other businesses. As such, any potential noise and disturbance arising from the revised opening hours would be indistinguishable from the existing levels experienced.
9. I note that the Council's Environment and Health Officer had no objection to the proposed hours of operation given that there are already conditions prescribing specific noise level restrictions to protect the living conditions of neighbouring residential properties. The levels specified include the revised hours for customers proposed under this appeal, and as such would still need to be complied with.

10. Based on my review, the submitted NIA demonstrates that the levels prescribed by condition 6 of the original planning permission would be achieved by the proposal. As such, I am satisfied that the proposed hours of operation would not introduce unacceptable levels of noise and disturbance to the occupiers of nearby residential development.
11. Accordingly, the principle of requiring a condition to control opening hours remains necessary, relevant and reasonable. However, I find that the proposed revision to the opening hours for customers would not result in unacceptable harm to the living conditions of neighbouring occupiers with regard to noise and disturbance. It therefore complies with Policy CP1 of the Brentwood Replacement Local Plan (adopted August 2005) and Paragraph 170 of the National Planning Policy Framework. These policies seek, amongst other things, to protect the living conditions of neighbouring occupiers from any unacceptable levels of noise or disturbance that development may generate.

Other Matters

12. Concerns have been raised regarding the privacy and security of neighbouring residential properties. I note that planning permission for the use has already been granted, and as such this appeal is limited to the disputed conditions.

Conditions

13. The Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should repeat the relevant conditions from the original planning permission, unless they have already been discharged. No evidence has been put before me to indicate whether any of the original conditions have been discharged, so I shall impose all the conditions of the original planning permission. If the requirements of some of the conditions have already been discharge, this may be sorted out between the parties outside of the appeal process. The PPG also indicates that a grant of planning permission under section 73 should not extend the time period for implementation. I have amended condition 3 for the reasons set out above.

Conclusion

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

J Gibson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of the original permission LPA Ref 18/01833/FUL, dated 22 February 2019.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the following approved drawing(s) and specifications: 17KR-COU-001A; Air condition unit details; Air conditioning unit image; Site Location plan.
- 3) The premises shall not be open for customers outside the following hours: 06:00-21:00 hours Monday to Friday, 06:30-18:00 hours Saturday, and 08:00-18:00 hours Sunday/Bank Holidays.
- 4) No music shall be played within the fitness Studio other than background music at any time.
- 5) All entrance/exit doors and windows serving the sound proofed studio shall be kept closed when the Background music within the Fitness Studio is playing.
- 6) No use of the building shall commence until the following details has been submitted to and approved in writing by the Local Planning Authority: A noise assessment showing that noise from the site including the air conditioning unit shall not exceed at the nearest residential property a daytime level of 35 dB (16hrs) within living rooms between 07.00 and 23.00 hours, and a night-time level of 30 dB LAeq (8hrs) within bedrooms between 23.00 and 07.00 hours, using the methodology advocated within BS 8233:2014.
- 7) The site preparation and construction works shall be carried out between the hours of 08:00 to 18:00 Mondays to Fridays and between the hours of 08:00 to 13:30 Saturdays and at no time on Sundays, Public or Bank Holidays without the prior written consent of the Local Planning Authority.
- 8) Any waste material arising from the site preparation and construction works shall not be burnt on site but shall be kept securely in containers for removal to prevent escape into the environment.
- 9) No security lights or floodlights shall be erected on site without the submission of details to, and written approval from, the Local Planning Authority to ensure a lighting environment of low district brightness at residential properties.