



Appeal Decisions

Hearing Held on 1 October 2020

Site visit made on 5 October 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 05 January 2021

Appeal A: Ref APP/K1935/C/18/3215086

18B Boulton Road, Stevenage, Hertfordshire SG1 4QX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Alex Game (No Bull Fitness) against an enforcement notice issued by Stevenage Borough Council.
 - The enforcement notice was issued on 2 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the premises from Office (Use Class B1(a)) to Gymnasium (Use Class D2).
 - The requirement of the notice is to cease the use of the premises as a gymnasium.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B: Ref APP/K1935/W/18/3215085

18B Boulton Road, Stevenage SG1 4QX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Alex Game (No Bull Fitness) against the decision of Stevenage Borough Council.
 - The application Ref 18/00045/FP, dated 8 February 2018, was refused by notice dated 12 September 2018.
 - The development is retrospective change of use from training centre (D1) to gym (D2).
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Decisions

1. It is directed that the enforcement notice be corrected by the deletion of the words "from Office (Use Class B1(a))" in paragraph 3.
2. Subject to this correction, Appeal A is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the change of use of the premises to Gymnasium (Use Class D2) at 18B Boulton Road, Stevenage, Hertfordshire SG1 4QX subject to the conditions in the attached schedule.
3. Appeal B is allowed and planning permission is granted for change of use from training centre (D1) to gym (D2) at 18B Boulton Road, Stevenage SG1 4QX in accordance with the terms of the application, Ref 18/00045/FP, dated 8 February 2018, subject to the conditions in the attached schedule.

Applications for costs

4. Applications for costs were made at the Hearing by Mr Alex Game (No Bull Fitness) against Stevenage Borough Council in respect of Appeals A and B. These applications are the subject of separate Decisions.

Preliminary matters/the enforcement notice

5. Subject to the clarifying paragraphs below, the material change of use which the enforcement notice seeks to address (to which Appeal A relates) is the development for which the retrospective planning application was made (to which Appeal B relates). The reasons for enforcement given in the notice are the same as the reasons for refusal given by the Council in its decision notice on the planning application.
6. One of the Council's reasons for refusal/enforcement was its concern that the change of use to a gym affected the supply of employment space when there was likely to be a demand for office and commercial floorspace to accommodate the growth of Stevenage over the emerging local plan period. That concern had been based on its view that the lawful use of the appeal premises was an office (Class B1(a) of the UCO¹) and that the new gym caused harm through a lower employment density at the site and this harm was not outweighed by the gym's benefits.
7. However, the Council has since obtained legal advice (which included consideration of evidence of past use submitted by the appellant) and has confirmed that it is now satisfied that the lawful use prior to the appeal development was as a training centre within Class D1. Accordingly, and as it does not dispute the appellant's argument that the material change of use from D1 to D2 does not result in a material loss of employment space, the Council has also confirmed that it will not be pursuing this issue further in opposing the development. I have seen nothing in the evidence to contradict or conflict with the undisputed view of the parties that the development does not cause harm in this regard. Further, as the matter is no longer a principal important controversial issue between the parties, it does not form a main issue in these Decisions.
8. For the above reasons, and as I have a duty to put the notice in order, I use my powers to correct it to remove reference to Office (Use Class B1(a)) from the allegation in paragraph 3. It is well-established law that an enforcement notice addressing an alleged material change of use does not need to include the 'base' use, and as the parties now agree that the 'base' use is not as stated in the notice it causes no injustice to any party by removing reference to it.
9. The UCO has been recently amended by legislation² that makes changes to use classes. The amending legislation provides that as the planning application and deemed planning application subject to these appeals were submitted prior to 1 September 2020, they must be determined by reference to the uses or use classes referred to in those applications.
10. Since the refusal/enforcement notice, the emerging plan has been adopted by the Council as the Stevenage Borough Local Plan 2011-2031 (2019) (LP) which replaces the Stevenage District Plan Second Review 1991-2011 (2004).

¹ The Town and Country Planning (Use Classes) Order 1987

² The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Main Issue

11. The main issue in respect of both appeals is whether or not it has been demonstrated through the 'sequential test' that the development could not be accommodated in any available premises within town centre sites, edge of centre sites or other sequentially preferable sites.

Reasons

12. The appeal property is a detached building within the Pin Green Employment Area, set in fairly generous external space affording 41 off-road parking places, located over 3km from Stevenage Town Centre. Both main parties agree that the current use as a gymnasium constitutes a main town centre use, and that the site is located in neither a town centre or an edge of centre location for the purposes of the LP and National Planning Policy Framework (the Framework).
13. The Framework seeks to ensure the vitality of town centres (Chapter 7) and requires that decisions should support the role that town centres play at the heart of local communities. I place significant weight, in favour of the appeal development, upon the fact that the Council's evidence does not clearly identify any planning harm caused by the change of use within this context. Indeed, the Council confirms that the gymnasium is limited in its overall size and scale and as such is likely to have a negligible impact on the town and would not have an adverse impact on the town centre regeneration proposals or future planned investment for the town centre.
14. Notwithstanding the above, the appellant conducted a sequential analysis in pursuit of the requirements of paragraph 86 of the Framework and Policy TC13 of LP. Within that analysis, and subsequent to it, detailed consideration was given to a range of sequentially preferable sites including those suggested by the Council. There is ample evidence of the appellant actively engaging with the Council in what I consider to be a systematic and genuine evaluation of potential re-location possibilities. I am in no doubt that the analysis was proportionate and appropriate in the circumstances, as required by National Planning Practice Guidance (the NPPG)³, particularly given the nil or negligible impact on the town centre stated by the Council.
15. The Council argues the appellant did not adequately consider a fuller range of properties. However, I am satisfied that the appellant demonstrated the flexibility required by the NPPG, adequately exploring options within a range of property formats and sizes reaching reasonably below and above the 465 square metres of the appeal property. I accept the appellant's submission that, outside of the range selected, property would either be unsuitable for the gym's operations or else so uneconomical to rent and fit-out so as to be unviable. As acknowledged in the committee report, in considering the suitability of alternative sites it is necessary to have regard to the characteristics of any site that must be met in order to satisfy the applicant's business model. The sequential test is directed at what the developer is proposing, not some other proposal. In this regard, I accept the appellant's conclusions rejecting inappropriate properties. These include sites without a reasonable amount of nearby free parking since I am persuaded that the market for the business generally demands free car-parking for gym users and that a failure to make such provision would affect its viability. Further, and

³ 'Town Centres and Retail', Published 3 March 2014

notwithstanding elements of mitigation that might be effective if viable, I also accept that noise and disturbance from use of a gym operating broad opening hours over 7 days/week, involving the dropping of weights and comings and goings, renders some of the sites assessed as unsuitable particularly those within settings exhibiting close relationships between commercial units and/or with residential properties.

16. The NPPG indicates that viability is a factor in the sequential test. The Council argues that more effort should have been made by the appellant to negotiate rents in the Town Centre and other sequentially preferable locations but I place significant weight that the NPPG advises that local planning authorities need to be realistic and flexible in applying the test since promoting new development on town centre locations can be more expensive and complicated than building elsewhere⁴. While relocation would not necessarily involve building operations, other than fitting-out as required for gym use, it is clear that town centre locations can be more expensive to buy or lease regardless of the extent of building works involved in the development. The appellant's business is said to have a £60,000 annual turnover. Given this it was not unreasonable in the circumstances for the appellant to have refrained from rental negotiations over town centre properties, considering his assessment that the rent for secondary frontage units was unviable at more than £92,000 per year for an equivalent floor area as exists at the appeal property.
17. Further, the appeal building occupies a site which is accessible and reasonably well-connected to the town centre. As highlighted by the appellant, and as I experienced on my site visit, a bus stop on Great Ashby Way is within ready walking distance of the appeal property giving access to the No 7 bus route with a regular service to the town centre throughout the day. While a short section of footpath linking Boulton Road to Great Ashby Way runs through a narrow section of wooded area there is reasonable natural surveillance from the highways. I am unpersuaded that the local environment makes public transport modes to and from the town centre uninviting. There is a network of lit footpaths and cycle routes, and notwithstanding the Council's comments about the movements of large vehicles amid the partly industrial character of the wider surrounding area, the Highways Authority has not raised any objections to the development on highway safety grounds. While a distance of over 3km to the town centre locates the site beyond its edge, given the public transport modes available it is by no means a distance which renders it poorly connected from it.
18. For all of the above reasons, I find it has been demonstrated through the 'sequential test' that the development could not be accommodated in any available premises within town centre sites, edge of centre sites or other sequentially preferable sites. As such there is no conflict with Policy TC13 of the LP which seeks to ensure the 'sequential test' demonstrates this. I also find that the appeal site, as an out-of-centre site, is well connected by multi-modal means to the town centre in accordance with Policy TC13. For the same reasons, the development accords with Chapter 7 of the Framework (including paragraphs 86, 87 and 90).
19. Appeals A and B are successful and I will grant planning permission on each, with conditions.

⁴ Paragraph: 013 Reference ID: 2b-013-20190722.

Conditions

20. I am attaching a condition on each permission to restrict the use of the premises to use as a gymnasium so it cannot be used for any other purpose. This is because the appeal development is being given permission on the basis of the 'sequential' analysis and findings specific to its use as a gymnasium and not for any other use. Another use, including one which otherwise might be lawful through the exercise of change of use rights, might have an impact on the vitality and viability of Stevenage Town Centre and therefore it is necessary and reasonable to impose a condition to withdraw such rights in these circumstances.
21. I am attaching a condition to each permission requiring a scheme for cycle parking facilities for staff and customers to be submitted, approved, implemented and retained. This is necessary in ensuring that the appeal site has adequate cycle parking which facilitates its connection to the town centre and meets the Council's standards in relation to provision. This condition is imposed so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
22. The Council has suggested a condition requiring that the 41 car parking spaces of the appeal site are included and retained. While I have seen no evidence to suggest that there is any intention to remove parking spaces, planning practice guidance requires that planning conditions meet 6 tests which includes one of necessity. I am not persuaded that it is necessary for the site to include and retain 41 car parking spaces to make it acceptable in planning terms. The committee report determined that a maximum of 30 spaces would be required (under the Council's Parking Standards SPD (2012)) to ensure that vehicles do not park on the highway which would have a detrimental impact on highway safety. Accordingly, I am attaching a condition to each permission that requires that no fewer than 30 car parking spaces are included and retained.

Conclusions

23. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted. The enforcement notice is corrected before being quashed.
24. For the reasons given above I conclude that appeal B should be allowed.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alex Game, Appellant (Director and joint owner, No Bull Fitness)
Martin Friend (Director, Vincent and Gorbing Planning Consultants)

FOR THE LOCAL PLANNING AUTHORITY:

James Chettleburgh (Principal Planning Officer)
Jayd Al-Jawad (Assistant Director of Planning and Regulation)

DOCUMENTS received at the Hearing

- 1 Costs applications by the Appellant

Schedule of conditions - Appeal A: Ref APP/K1935/C/18/3215086

- 1) The premises shall be used for a gymnasium (Use Class D2) and for no other purpose (including any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 2) Unless within 3 months of the date of this decision a scheme for cycle parking facilities for staff and customers is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be permanently retained and maintained for the parking of cycles only.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) The site shall include and retain no fewer than 30 off-street parking spaces to be used for the parking of motor-vehicles associated with the use hereby permitted and shall not be used for any other purposes.

Schedule of conditions - Appeal B: Ref APP/K1935/W/18/3215085

- 1) The premises shall be used for a gymnasium (Use Class D2) and for no other purpose (including any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 2) Unless within 3 months of the date of this decision a scheme for cycle parking facilities for staff and customers is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be permanently retained and maintained for the parking of cycles only.

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