



Appeal Decision

Site Visit made on 7 September 2021

by Sarah Manchester BSc MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 29th September 2021

Appeal Ref: APP/W4325/W/21/3272847

Golf Sign Co, 65-69 Old Chester Road, Birkenhead CH41 9AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Martin Mckane (Titans Gym Ltd) against Wirral Metropolitan Borough Council.
 - The application Ref APP/20/00886, is dated 4 July 2020.
 - The development proposed is change of use of the existing building from a sign shop with B1 and B2 use to a gym and fitness centre with D2 leisure and assembly use.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr Martin Mckane against Wirral Metropolitan Borough Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The appeal relates to the Council's failure to determine the planning application within the prescribed time limits. In its evidence to the appeal, the Council states that if it had been in a position to determine it, it would have refused permission on grounds relating to highway safety.
4. The revised National Planning Policy Framework (the Framework) was published in July 2021. The parties were provided with the opportunity to comment on the implications of it to their cases. I have had regard to it, and any comments made, in my determination of the appeal.

Main Issue

5. Therefore, the main issue is whether the proposal would include adequate parking provision, with particular regard to the safe and efficient operation of the highway and residential amenity.

Reasons

6. No 65-69 is a detached 2 storey building with a vacant ground floor commercial premises and residential accommodation above. It is immediately to the rear of the footway on Old Chester Road, which is part of the strategic road network. A vegetated verge with trees separates the side and the rear of the building from the Pembroke Court footway. It is in a Primarily Residential Area characterised

- by predominantly flatted developments. Other uses in the wider area include commercial premises and car parks.
7. The proposal would be a gym and fitness centre over 2 floors. The main gym area and cardiovascular equipment would be on the ground floor with separate rooms for lever machines and Dojo classes at first floor level. Six car parking spaces were originally proposed, but this was subsequently amended to 5 spaces including one disabled person's parking space.
 8. The sequential test considered and discounted commercial premises, either listed for sale or rent on Rightmove, in retail centres in the appellant's catchment area. This appears to be based on a single search of the Rightmove website and it did not include local property agent listings. However, the Council accepted that there were no suitable and available sequentially preferable sites. There is no reason for me to disagree.
 9. Nevertheless, to be acceptable in primarily residential areas, non-residential uses must be compatible with neighbouring uses. The parties agree that 24 hour opening, 7 days a week including weekends and bank holidays, would result in unacceptable noise and disturbance to neighbouring residential occupiers. While they disagree in relation to what opening hours would be acceptable, this is a matter that could be addressed by planning condition.
 10. Proposals are also expected to make adequate provision for car parking and servicing requirements in order to avoid harm to highway safety and residential amenity. The Council's Supplementary Planning Document SPD4 – Parking standards Adopted June 2007 (the SPD) sets out maximum levels of parking provision, and minimum disabled person's parking spaces, to serve new development or changes of use. The proposed 5 parking spaces appear to be below the standards, but the location is accessible by alternative forms of transport such that a lower provision may be acceptable. However, while the appellant has approached the landowner, who is the Council, with a view to acquiring the land to the rear of the building, he does not own it. Therefore, there would be no parking provision including disabled person's car parking.
 11. I note the suggestion that the parking provision be addressed by condition. On the basis that the proposal would not be acceptable without it, it would need to be subject of a pre-commencement condition. However, and with reference to the Planning Practice Guidance, it has not been demonstrated that a condition requiring parking provision to be delivered on third-party land would meet the tests set out in paragraph 56 of the Framework. Therefore, I am not satisfied it is a matter that could be satisfactorily addressed by condition.
 12. The appellant suggests that the proposal could instead be considered on the basis that no parking would be provided. Given the accessible location, a proportion of people such as those living closest to it would travel by non-car transport modes. However, the appellant would not be able to prevent people from travelling by car for reasons including disability, convenience and during inclement weather and hours of darkness. Staff and customers travelling by car would necessarily park on surrounding streets.
 13. Old Chester Road is a busy through route subject to waiting restrictions. Nearby Quigley Street is densely developed and, while some residents have private parking, others appear to rely on on-street parking. There are some parking spaces to the rear of the Pembroke Court flatted developments,

although it is not clear this is sufficient to avoid overspill street parking. Pembroke Court, including to the rear of the appeal building, is a narrow road without waiting restrictions. In the past, it has come under high on-street parking pressure due to proximity to the railway station and the overflow Merseytravel car park on nearby Chamberlain Street.

14. At the time of my visit, the Chamberlain Street car park was not full, there was no overspill parking from it and there was a low level of on-street parking on Pembroke Court. While this might suggest that additional roadside parking could be accommodated, I cannot be certain that this level of activity would be representative of busier times such as mornings and evenings or weekends.
15. Moreover, while there would be a maximum of 10 concurrent gym sessions, this would represent only a part of the activity associated with the proposal. The 2 first floor Dojo rooms would allow for simultaneous classes with multiple instructors. There would be 1 full time equivalent employee and other visitors including servicing and deliveries. There is little information about the timing of sessions or classes, but it seems likely that there would be change over periods when people would be leaving and arriving at roughly the same time.
16. Consequently, there is considerable uncertainty in relation to the maximum number of people who might want to park outside the building. In the absence of substantive evidence such as a parking survey, I cannot be certain that the unknown number of vehicles generated by the proposal could be safely accommodated without detriment to residential amenity or potential conflict between road users, including vehicles and vulnerable pedestrians.
17. The appellant's business, which has 400 members, previously operated from a site on Thomas Street under a kilometre away. Most of the members live in the local area and they walked to the former premises. However, I cannot be certain that they walked from their homes rather than parking on nearby streets and then walking to the premises. The appellant's first gym in Tranmere was apparently approved without car parking provision. The limited information before me does not demonstrate that either of these are directly comparable to the appeal proposal, including in terms of capacity or surrounding context. They do not provide a justification for it.
18. The Framework advises that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety. It also states that development should address the needs of people with disabilities and reduced mobility, creating places which minimise the scope for conflicts between pedestrian, cyclists and vehicles, and that allow for the efficient delivery of goods and access by service and emergency vehicles. Moreover, development should function well and to add to the overall quality of the area, creating places with a high standard of amenity for existing and future users.
19. Therefore, I conclude that the absence of parking provision, and the resulting on-street parking pressure, would harm the safe operation of the highway and residential amenity. The proposal would conflict with saved policy HS15 of the Wirral Borough Council Unitary Development Plan Adopted February 2000. This requires proposals to make adequate provision for off-street parking, to avoid harm to the operation of the highway and to neighbouring uses in respect of on-street parking. It would conflict with the SPD, including that proposals with lower levels of parking provision should demonstrably avoid overspill parking detrimental to safety or amenity of residents.

Other Matters

20. There appears to be at least 1 mature tree in the verge to the rear of the appeal building which would be felled to facilitate the parking arrangements. The Framework emphasises the important contribution that trees make to the character and quality of urban environments and to climate change mitigation and adaption. Existing trees should be retained wherever possible. In this case, the impact of tree removal does not appear to have been considered including in terms of the character and appearance of the area, biodiversity or climate change. However, as I am dismissing the appeal for other reasons, I have not considered this further.

Conclusion

21. For the reasons set out above, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict.
22. Therefore, I conclude the appeal should be dismissed.

Sarah Manchester

INSPECTOR