
Appeal Decision

Site visit made on 30 November 2021

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2022

Appeal Ref: APP/Y5420/W/21/3276068

Cypress House, Ground Floor Unit A, Coburg Road, Wood Green, London N22 6UJ

- 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 Andreas Christoffi Michli against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2020/3141, dated 20 November 2020, was refused by notice dated 28 April 2021.
 - The application sought planning permission for *change of use of part of the ground floor to a gymnasium* without complying with a condition attached to planning permission Ref HGY/2001/1596, dated 19 December 2001.
 - The condition in dispute is No.3 which states that *'the use hereby permitted shall not be operated before 0800 or after 2200 hours on any day'*.
 - The reason given for the condition is *'this permission is given to facilitate the beneficial use of the premises whilst ensuring that the amenities of adjacent residential properties are not diminished'*.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal, the revised National Planning Policy Framework (July 2021) (the Framework) was published. I consider that there have been no fundamental changes relevant to the main issue in this appeal and therefore no party by my having regard to it.

Main Issue

3. The main issue is whether the condition is necessary with regards to the living conditions of occupiers of adjacent properties.

Reasons

4. The appeal site comprises one ground floor unit of a converted five storey commercial building. The unit currently operates as a gym. There is a gated parking area to the front of the building accessed from Coburg Road. The area contains a mix of commercial uses alongside residential properties on Mayes Road, which is a busy arterial road.
5. Whilst that context will generate a certain level of background noise, the gardens of several dwellings which front Mayes Road back onto the side

elevation of the appeal building (and are therefore susceptible to experience localised noise arising from activities at the gym). The removal of control of opening hours would allow the gym to operate 24 hours a day, as sought by the appellant. Occupiers of these adjacent properties would be affected by increased noise and disturbance, including from gym equipment and activities from inside the building. Although the car park is located to the front of the appeal building, there would still be some additional noise from comings and goings, noise from car engines and car doors opening and closing as well as conversational noise from people entering and leaving the gym.

6. Under the controls of the existing condition, these effects would already be felt into night-time hours, albeit for a duration commensurate with many commercial uses. I understand there is an enforcement history regarding operating hours of the gym, although there is limited information before me on this matter. Although there would be some existing noise from the commercial activities of the area, the potential for these issues to occur during the early morning hours when residents can reasonably expect a degree of peace and quiet could only make that situation worse, encroaching further into more unsociable hours throughout the year.
7. The appellant argues that the gym already operates 24 hours. Be that as it may, I have not been made aware of a certificate of lawful development. Similarly, although the appellant states they are planning to install sound insulation to lessen the effects of the operation of the building in this manner, I have no information before me to assess baseline noise and any resulting effects from mitigation.
8. I have had regard to the supporting comments of users of the gym and the appellant. I do not dispute that the flexibility of 24-hour opening alongside the general benefits of physical activity are of benefit to some people. Moreover, I am informed the gym has a defibrillator on site. I agree this would be of additional benefit for those in need of the equipment in an emergency. These matters are attributed some positive weight in the planning balance.
9. Although it is argued that the longer opening hours would deter anti-social behaviour, I have nothing substantive before me to indicate how this would occur. In any event, these positive aspects of the proposal must be balanced against the harm to living conditions of occupiers of nearby properties which I have identified. The benefits do not outweigh the harm in this case.
10. For the above reasons, the proposal to remove the condition would lead to harm to the living conditions of occupiers of nearby residential properties with regards to noise and disturbance (noting that there are other conditions attached to permission HGY/2001/1596 which also aim to minimise disruption to those nearby). This would be contrary to Policies DM1 and DM23 of the Haringey Development Management DPD (adopted July 2017), SP10 of the Haringey Local Plan Strategic Policies 2013 - 2026 (adopted March 2013) and D14 of the London Plan (adopted March 2021). These seek to address issues of noise, among other things, likely to arise from the use and activities of the development.

Conclusion

11. For the reasons given above I conclude that the condition is necessary to control the matters subject to this decision. Further, they ensure the

development would accord with the policies I have cited. The appeal should therefore be dismissed.

C McDonagh

INSPECTOR