



Appeal Decision

Site visit made on 16 December 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th January 2022

Appeal Ref: APP/D5120/W/21/3273307

11 Upton Close, Bexley, Kent DA5 1HJ

- 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 Mrs G Micallef against the decision of London Borough of Bexley.
 - The application Ref 20/02458/FUL, dated 28 September 2020, was refused by notice dated 7 January 2021.
 - The development proposed is change of use of the detached building in the rear garden for use as a gym (Class E) and storage area.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the Council's Decision Notice as this is more precise.
3. The development has been undertaken. I am therefore considering the appeal retrospectively.

Background

4. Although not specified in the reasons for refusal, the Officer Report makes it clear that the Council consider that the location of the development is neither suitable nor sustainable for the use.

Main Issues

5. The main issues therefore are 1) whether the development represents a sustainable form of development with regard to its location and development plan policy, and 2) the effect of the development on the living conditions of occupants of surrounding residential properties with regard to noise and disturbance.

Reasons

Sustainable development

6. The detached building subject to the change of use in this appeal is located in the rear garden of 11 Upton Close, which is a two-storey end of terrace residential property. Upton Close is a small cul-de-sac of residential properties. At the head of the cul-de-sac is a notable roundabout feature that serves as a turning area.

7. The use subject to the appeal is a gym (Class E). Planning Practice Guidance (PPG) outlines that Class E (Commercial, Business and Service) includes a broad and diverse range of uses which principally serve the needs of visiting members of the public and/or are suitable for a town centre area.
8. Policy CS01 of the Bexley Core Strategy (2012) sets out how the Council will seek to achieve sustainable development. One such principle is to preserve and enhance the existing network of town centres, including their role as a focus for new services, whilst enhancing the role and contribution of local neighbourhood centres. Policy CS02 of the Core Strategy specifically covers the Bexleyheath geographic region which the appeal site is within. This policy outlines that the vision for the area will be achieved by, amongst other things, in terms of employment growth, primarily focussing on development opportunities in and around Bexleyheath town centre and support leisure facilities that are located mainly in and around Bexleyheath town centre, but also, if appropriate, within the neighbourhood centres of the geographic region. The aims of the above policies are echoed in Policy CS15 of the Core Strategy that promotes sustainable travel.
9. The appeal site is within a predominantly residential area and is not within a recognisable town or neighbourhood centre. From the Council's case and my own observations on site it appears to have relatively poor public transport accessibility, and I am not presented with any substantive evidence to the contrary. For this reason, users of the facility will, for the most part, be reliant on travel by car. The facility, by reason of its location and poor accessibility, will therefore fail to contribute to reduce the need to travel by private car.
10. The use therefore represents the creation of an unsustainable form of development, and it conflicts with the sustainability aims, including the need to reduce travel by car, as outlined in Policies CS01, CS02 and CS15 of the Bexley Core Strategy (2012).

Living conditions

11. The appeal property is located on a residential cul-de-sac. It lies adjacent to the A2 major road. Although this forms the dominant noise source in the area, it is less noticeable from within the frontage, where the physical presence of the dwellings offers a degree of screening. At the time of my visit, I observed that the cul-de-sac was relatively quiet, and by nature of its design, has no through traffic, although the evidence refers to increased use in accessing the neighbouring school at the beginning and end of the school day.
12. The evidence shows that the operating hours and days vary, but generally extend from 0600 to 2030. It is generally for one-to-one training, with occasionally being up to four people together. It is also suggested that the hours could be limited to commencement at 0730 across 5 days and limited to one-to-one training.
13. The use of the premises as a commercial gym involves the repeated comings and goings of customers and their vehicles calling at the appeal property. Customers are required to access the facility via a side gate and path, and then cross the rear garden of the property. The potential for noise and disturbance arises from customers vehicles, engines, doors slamming, car radios and conversations and accessing the building. This is notwithstanding any noise

- breakout from the internal use of the building in terms of equipment, voices and music.
14. Although many of the potential sources of noise and disturbance are not in themselves uncommon in a residential area, I consider that the intensity and frequency of the use mean that it is highly noticeable, particularly during the early morning and later evening hours when surrounding residents may reasonably expect there to be a quieter and less active environment around them.
 15. The appellant has outlined that parking for customers is available on their own private driveway and that capacity is available on-street. The appellant has also outlined that they are able to access off-street parking at a neighbour's property. There is no dispute that the use does not create conditions that are prejudicial to highway safety, and I have no reason to form a different view. Although the plans suggest three vehicles may park on the private driveway, in practice, to allow for manoeuvrability and access to the front door and side path, it is more likely that two vehicles are reasonably able to park on the driveway. Regardless, any parking on the driveway is in addition to the parking needs of the dwelling. There is nothing before me that would bind the use of the neighbour's driveway to any planning consent, and ultimately, I consider that it is inevitable that parking on-street occurs as a result of the use.
 16. Although, as agreed, this does not prejudice highway safety, I consider that such repeated parking on street by various different vehicles coming and going throughout the day, would, in addition to the identified noise concerns, cause a high level of disturbance. It exceeds what would be typically associated with a residential dwelling in a clearly identifiable residential street.
 17. I acknowledge that support has been received for the development and that this suggests that the use currently operates without causing unreasonable levels of noise and disturbance. I am however mindful that one person's perception of what constitutes unreasonable noise and disturbance is different from another, and that surrounding residents may indeed change over time. I am also mindful that the nature and intensity of the use could change over time. Additionally, the fact that representation has been received referring to unreasonable levels of disturbance also paints a less than certain picture. Therefore, although I have had regard to the representations, they do not lead me to conclude that the appeal should be allowed.
 18. I have had regard to the submitted noise readings. These lack the strength of evidence of a professional noise survey. They have been taken over a period of 2 minutes on an unspecified date, with unspecified conditions, and I cannot be certain that this is a true reflection of the typical noise environment. Collectively, for these reasons, I give them limited weight in the appeal. Either way, they do not account for the other forms of disturbance I have identified.
 19. I therefore conclude that the development has an unacceptable impact on the living conditions of occupants of surrounding residential properties in terms of noise and disturbance. I do not consider that the imposition of conditions as suggested would make the development acceptable in planning terms. It is therefore contrary to Policy CS01 of the Bexley Core Strategy (2012) and Policies ENV39 and H3 of the Bexley Unitary Development Plan (2004) which require, amongst other things, that development in residential areas should be

compatible with the character of the area and must not have an unreasonable effect in terms of noise.

Other Matters

20. The appellant considers that there is no discernible difference between the use of the building as a gym, incidental to the enjoyment of the dwelling, or by non-incidental means. I acknowledge that the building may indeed be used as a gym on a basis incidental to the enjoyment of the dwelling, but this would be under the umbrella of the residential use of the site, and not constituting a separate use and not requiring planning permission.
21. Whether or not permission is required for the use, based on the nature of the operation, is not the matter before me in the appeal, and there are other mechanisms available to the appellant to present this argument if they consider it would constitute a use incidental to the enjoyment of the dwelling or be lawful by some other means. What is before me in the appeal is the creation of an entirely separate use, which as a matter of fact and degree, is materially different to the incidental operation of what would otherwise be a home gym.
22. Although it is theoretically possible that the use on an incidental basis by family or invited friends could occur on a daily basis at unrestricted times, in reality this is unlikely to be the case. Therefore, on this basis I give the suggested fallback limited weight in the appeal.
23. I acknowledge the personal circumstances put forward by the appellant and the implications should the use not be permitted. As unfortunate as the implications may be, I do not consider that they, or the other personal circumstances, should be used as a means of justifying unacceptable development. They do not outweigh the harm I have identified.
24. I am referred to the fact that since the appeal was made, the Council served, and then subsequently withdrew a breach of condition notice (BCN). I have assumed this is in relation to the conditions of the planning consent for the building in which the gym is operated, namely that no business shall be carried out, and that it shall not be severed from the main dwellinghouse. The BCN is an entirely separate matter to the appeal before me. The fact that it was served, and subsequently withdrawn, does not alter my consideration of the planning merits of the appeal. I therefore give it limited weight in the appeal.
25. Reference is made in the appellants statement to two court judgements¹. I have not been provided with copies of either of these judgements to give them significant weight in the appeal.

Conclusion

26. For the reasons given above, and having had regard to all other matters raised, I conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

A M Nilsson INSPECTOR

¹ Mansell [2017] EWCA 1314 and Hertfordshire CC V SSCLG [2012] EWHC 277