



Appeal Decision

Site visit made on 16 November 2021

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2022

Appeal Ref: APP/V4250/W/21/3280138

The Busy Athlete, Horton Street, Wigan WN6 7TF

- 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 Mahoney against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/20/90489/VAR, dated 8 December 2020, was refused by notice dated 5 February 2021.
 - The application sought planning permission for change of use to gymnasium (D2 Use Class) without complying with conditions attached to planning permission Ref A/20/89598/CU dated 22 July 2020.
 - The conditions in dispute are Nos 3 and 4 which, respectively, state that:
 - 3. The use hereby permitted shall only be carried out during the following hours:
Monday to Friday - 07:00 to 20:30
Saturday - 08:00 to 13:30
Sunday and Bank Holidays - 09:00 to 11:30
 - 4. The level of noise emitted from the site shall not exceed the following LAeq,t (A Weighted Equivalent Continuous Sound Level over a measurement time period t) levels measured at residential properties on Horton Street and Woodhouse Lane:
07:00 to 20:30 50 LAeq,1hr dB(A)
 - The same reason given for each of these conditions are: *To safeguard the amenities of the adjoining premises and the area generally, having regard to Policy CP17 of the Wigan Local Plan Core Strategy.*
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal site comprises of a gymnasium which was granted planning permission (LPA Ref A/20/89598/CU) in October 2020. Conditions were imposed that restricted the hours the permitted use could operate and controlled the level of noise emitted from the site. The application which is the subject of this appeal seeks to vary these conditions to allow an additional hour of use in the morning from 6am (Monday to Friday) and a corresponding update to condition 4 to reference the 6am time rather than 7am.

Main Issue

3. The main issue is whether the restriction on the hours of use is necessary and reasonable having regard to the living conditions of the occupiers of neighbouring residential properties, with particular reference to noise and disturbance.

Reasons

4. The appeal property is situated in an area that contains a mix of uses. These include a variety of employment premises, the nearest of which are to the north and south of the appeal site, as well as a short terrace row of residential properties fronting Woodhouse Lane but situated on the junction of Horton Street. The conditions at issue were imposed due to the location of the approved gymnasium and its proximity to nearby residential properties.
5. The Council have raised a number of concerns on the variation of the conditions, including the potential for the breakout of internally generated noise to give rise to adverse impacts. The appellant has submitted Acoustic Assessments (November 2020 and July 2021), the former of which considered internal sound levels that would be produced by the use. It set out additional attenuation measures in the form of a double-glazed window and door to the front of the unit, which the appellant states would reduce the facade sound level at the nearest residential property on the corner of Horton Street/Woodhouse Lane below existing background sound levels.
6. Whilst I have no reason to doubt that when closed the door and window would reduce sound emanating from the appeal premises, including during the times of the currently permitted operating hours, I have not been provided with further details of how this measure would operate in the context of the gymnasium use. Whilst the appeal involves a small scale gymnasium that operates with a limited number of people and the appellant would run one class between 6am – 7am, I am not convinced that it would be possible to control the timing of arrival of attendees as stated. Despite the ability to lock the door, late comers could arrive after the start of an exercise session.
7. The Council also note that the double glazed door and window on the front elevation of the property are the only ones serving the appeal property and it would not be possible to ensure the door remains closed all the time as the door is required for access. I am further not clear on whether the window would be openable and how ventilation would be addressed. Although it would be possible to see whether the door is open or shut and in this respect enforceable, it would not be reasonable to require the door to remain closed, particularly if required to ventilate the property. As such, given the Acoustic Assessment (November 2020) predicated sound levels at the façade of the nearest property based on the attenuation provided by the double-glazed window and door, I am not persuaded that the measures would be effective for the reasons set out or would necessarily result in an improved attenuation over the approved gymnasium. The Council in their Delegated Report have indicated that the noise levels within the Acoustic Assessment (November 2020) should be lower between the times of 6am-7am but have not stated why and I have not been provided with further information on this.
8. The Council have also identified the movement of vehicles and parking along Woodhouse Lane to be detrimental to neighbouring amenity. I note Woodhouse Lane is a cul-de-sac and there are no traffic calming measures in place along it. The July 2021 Acoustic Assessment considered the effect of this vehicular activity based on 8 patrons, in addition to a trainer. Some of this parking would take place within the appeal site, but the remainder is likely to be on street along Horton Street as well as Woodhouse Lane to the front of commercial units. I consider this to be reasonable as it is likely that residents would be

parked outside their own properties at that early time of the morning between 6am and 7am. The Acoustic Assessment (July 2021) demonstrates that sound levels from vehicles at the façade of the nearest property would be lower than background sound levels. There would be further sources of noise, some of it unpredictable such as patrons talking when arriving at the gymnasium, but I consider it likely that patrons would move directly into the premises to begin their exercise at that early time.

9. Nevertheless, I conclude that the said conditions are necessary and reasonable, having regard to the effect that the additional hour of operating would have on the living conditions of neighbouring residential occupiers due to potential noise disturbance. In this respect the proposal would conflict with Policy S1E of the Wigan Replacement Unitary Development Plan and Policy CP 17 of the Wigan Local Plan Core Strategy Development Plan Document, which seek to ensure, amongst other matters, that development does not unduly affect the amenity of nearby residents. It would also be contrary to Paragraphs 130 and 185 of the National Planning Policy Framework, which seek to avoid noise giving rise to significant adverse impacts on health and the quality of life.

Other Matters

10. Various references have been made to the operating hours of neighbouring commercial uses. Whilst many of these are historical uses without planning conditions restricting operational hours, the Council have set out that the nearby businesses open from 8am. I have not been provided with the full planning history of all these nearby commercial properties, but the Council's evidence is largely uncontested. I accept, as the appellant sets out, that there may be some activity prior to this from one of the local commercial uses, but it appears that the arrival of people to a neighbouring site is just before 7am to receive deliveries or to load vehicles. I have not been provided with any information on the intensity of these activities and note in particular that there are no operations commencing as early as 6am which is sought here by the appellant.
11. I have taken into consideration that the appellant lives in the corner property on Horton Street, but this may not always be the case. I also noted that complaints that had been made previously may not have been investigated and that the updated Acoustic Assessment (July 2020) was not responded to by the Council's Environmental Health section. None of these matters would however lead me to a different decision.
12. The appeal use provides an important local service in improving and maintaining people's physical and mental wellbeing. The proposal would support the business, enabling it to supplement its income. In addition to these social and economic benefits, the proposal could result in a lowering of energy costs and the carbon footprint of the building. Whilst recognising these benefits, they would be significantly off-set by the likely adverse impact upon the neighbouring residential occupiers.
13. The appellant has referenced the previous motor vehicle use at the appeal site or other B2 use which would give rise to greater levels of noise than would be the case here. Whilst the previous motor vehicle use may not have had a restriction on its operating hours, given the nature of that use, it is likely that it would have operated after 7am. In any event, the Council have stated that following the implementation of the permission (LPA Ref: A/20/89598/CU), any

reversion to the previous use would require planning permission and an assessment of noise that would be experienced by neighbouring residential occupiers. I therefore give this fallback position limited weight.

Conclusion

14. For the reasons set out above I conclude that the appeal should be dismissed and the conditions retained in their present form.

F Rafiq

INSPECTOR