



Appeal Decision

Site visit made on 22 April 2022

Decision by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 28 July 2022

Appeal Ref: APP/H5960/W/21/3289455

1 Holbeach Mews, London SW12 9QX

- 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 Justin Sangster against the decision of Wandsworth Council.
 - The application Ref 2021/3135 dated 29 June 2021, was refused by notice dated 27 October 2021.
 - The application sought permission for the variation of conditions 2 (approved drawings) and 5 (restricted to spin cycle studio only) of planning permission dated 10/04/2017 ref 2017/0592 (Alterations in connection with change of use from storage and distribution (Class B8) to fitness studio (Class D2)) to allow use of premises as fitness studio for activities including spinning, high intensity interval training, barre, yoga and boxercise and the provision of an ancillary ground floor café without complying with conditions attached to planning permission 2019/2306 dated 2 December 2019.
 - The condition in dispute is No. 3, which states that:
The premises shall not be open to customers other than between the hours of 07:00 to 20:00 Monday to Friday, 08:00 to 20:00 on Saturdays and 11:00 to 16:00 on Sundays and bank holidays, and at no other times.
 - The reason given for the condition is:
To safeguard the amenities of the neighbourhood, in accordance with Council policy DMS1.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission 2019/2306 allows use of the premises as a fitness studio and ancillary ground floor café, subject to conditions. This includes condition 3 limiting the opening hours. The reason for this condition was to safeguard the amenities of the neighbourhood.
3. Planning permission 2019/3608 was granted on 2 December 2019. It varied condition 3 such that the opening hours were temporarily extended to 06:30 to 22:00 Mondays to Fridays, 08:00 to 20:00 on Saturdays and 08:00 to 18:00 on Sundays and bank holidays until 1 August 2020. Planning permission 2020/1893 then extended this temporary period until 27 July 2021.
4. The appeal seeks to vary condition 3 of permission 2019/2306 to allow for permanent opening hours of 06:30 to 22:00 Mondays to Fridays, 08:00 to 20:00 on Saturdays and 08:00 to 18:00 on Sundays and bank holidays.

5. The main issue is therefore whether the disputed condition is reasonable and necessary, having regard to the living conditions of occupiers of surrounding dwellings, with particular regard to noise and disturbance.

Reasons

6. Balham High Road is a busy and vibrant street, characterised by a range of commercial uses at ground floor and residential premises above. It adjoins Harberson Road where some commercial use continues in proximity to the junction. However, Harberson Road is primarily residential. Although my visit is a snapshot in time, I noted that activity, footfall and vehicular traffic along it is considerably less than Balham High Road. Due to its largely residential character, the nature and level of ambient noise is notably quieter.
7. The appeal site has the capacity for multiple customers at once throughout the day for a variety of fitness classes, simultaneous use of multiple fitness machinery, and the playing of music. The extension of opening hours at the site would therefore inevitably result in a level of noise during the times proposed due to the nature of the premises. The appellant has stated that certain mitigation measures are in place to reduce the impact of this on surrounding residents. Schedule changes have been made, insulation is installed, and planning conditions state that the first and second floor windows of the appeal property shall remain closed.
8. However, the additional noise would not be solely as a result of the studio and café, but also the comings and goings of staff and customers, including any noise spill when entering and exiting the premises. This increased activity both inside and outside the premises would be noticeable within the otherwise largely residential street, creating additional disturbance for nearby occupiers.
9. The premises previously operated under the proposed hours for a trial period. As COVID-19 pandemic reduced the opening of the premises during this period, an extension was provided by the Council. Even with national restrictions limiting customers at this time, complaints were received by residents, indicating the property is in a noise sensitive location. It is acknowledged that these complaints were received during a time when ambient noise levels would have been reduced, with more residents at home during the day. However, the proposal would not change the daytime hours of the premises. Rather it would affect early morning and late evening or weekend times, precisely when many residents will likely be home and ambient noise levels reduced.
10. As such, while the proposed change is modest, it would extend activity at the premises into times when residents would expect limited commercial activity and a level of peace and quiet. Even with the proximity of Balham High Road it is reasonable of occupiers of Harberson Road to have this expectation due to its residential character. The operation of the fitness studio and café, with the ability to operate at full capacity post-COVID, along with the associated comings and goings would have the potential to introduce significant noise and disturbance, exacerbated by the ambient conditions at these times.
11. The appellant has not commissioned a Noise Impact Assessment, Noise Management Plan, or provided substantive evidence that the resulting impact on surrounding living conditions as a result of noise and disturbance would not be significant, either permanently or for an additional fixed term. In the absence of such information and based on my observations on site, I conclude

that the proposal would give rise to unacceptable levels of noise and disturbance, which would significantly impact the living conditions of surrounding occupiers.

12. For the reasons given above, condition No. 3 attached to planning permission 2019/2306 is necessary and reasonable having regard to the living conditions of occupiers of surrounding dwellings, with particular regard to noise and disturbance. As such, the proposal would fail to comply with Policy DMS1 of the Wandsworth Local Plan Development Management Policies Document (2016), Policy IS4 of the Wandsworth Local Plan Core Strategy (2016) and policies D13 and D14 of the London Plan (2021), which seek to ensure adequate living conditions and to avoid significant adverse noise impacts.

Other Matters

13. No resident complaints have been received since August 2021. In any event, the temporary extended opening hours ended in July 2021 and objections to the planning application were received by the Council. Consequently, the lack of complaints is not sufficient to outweigh the harm identified above.
14. I acknowledge the appellant's personal circumstances, whereby the proposed extension of opening hours is required for the business to be viable. Nevertheless, no substantive evidence or information on this point has been provided such that limited weight can be attached to this point. In any event, personal circumstances will seldom outweigh planning considerations and, on the limited information provided, it is not considered that this would outweigh the harm identified above.
15. The appellant further states that the business assists in the health and wellbeing of its customers. While this is noted, due to the modest change in opening hours proposed, limited weight is attached to this.
16. Reference has been made to similar development within the area that does not have opening hours restricted in the same manner as the appeal property. However, limited information on these properties, or their comparability to the appeal property, has been provided. In any event, each appeal is determined on its own site specific circumstances and reference to development elsewhere carries limited weight.

Conclusion

17. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
18. For the reasons above, the appeal is dismissed.

C Rafferty

INSPECTOR