



Appeal Decision

Site visit made on 17 January 2023

by Ann Veevers BA(Hons) PGDip (BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2023

Appeal Ref: APP/F5540/W/22/3307974

First floor, 227-229 Chiswick High Road, Chiswick W4 2DW

- 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 Lee Parker, Proudfit Limited, against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00248/227-229/P15, dated 8 July 2022, was refused by notice dated 1 September 2022.
 - The application sought planning permission for the change of use from holistic health and beauty clinic with training to dermatology clinic with ancillary practitioner training without complying with a condition attached to planning application Ref. 00248/227-229/P10, dated 9 December 2009.
 - The condition in dispute is No.4 which states: *The use hereby permitted shall not be carried out outside the following times: 9am to 8pm – Monday to Friday 10am to 6pm - Saturday and Sunday.*
 - The reason given for the condition is: *In order to safeguard the amenities of the adjoining residential properties and to ensure that the proposed development does not prejudice the amenities of the locality in accordance with ENV-B.1.1 New Development and ENV-P.1.5 Noise Pollution.*
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from holistic health and beauty clinic with training to dermatology clinic with ancillary practitioner training at First floor, 227-229 Chiswick High Road, Chiswick W4 2DW in accordance with the terms of the application Ref: 00248/227-229/P15, dated 8 July 2022, without compliance with condition 4 previously imposed on planning permission Ref. 00248/227-229/P10, dated 9 December 2009 and subject to the conditions in the schedule at the end of this decision.

Preliminary Matters

2. An Acoustic Assessment has been provided by the appellant at the appeal stage and the Council and third parties have had the opportunity to comment upon it. I am satisfied that no prejudice would occur to any party as a result of my consideration of its content and have determined the appeal on that basis.

Background and Main Issue

3. The appeal site comprises of a first floor pilates and yoga studio which was granted planning permission by virtue of application ref 00248/227-229/P10 in December 2009 (the 2009 permission). There were no restrictions imposed on the 2009 permission preventing a change of use within the same Use Class.

Although that permission was for use of the premises as a dermatology clinic with ancillary practitioner training, due to amendments that came into force on 1 September 2020 to the Town and Country Planning (Use Classes) Order 1987 (as amended), a pilates studio would now fall within the same Use Class E. Therefore, whilst the proposal is intended to benefit a particular business, if allowed, the use would not be restricted to any particular operator within Use Class E. The decision is made with that in mind.

4. A condition was imposed on the 2009 permission that restricted the hours the permitted use could operate (Condition 4). The application which is the subject of this appeal seeks to vary this condition to allow the premises to be used between the hours of 06:30 to 22:00 every day of the week.
5. Since the appeal was submitted, my attention has been drawn by both parties to a recent planning permission at the appeal site for a 'Variation of condition 4 (opening hours) to be changed to 07.30 to 21.30 on Mondays to Fridays and 08.00 to 18.00 on Saturdays, Sundays and Public Holidays of planning permission 00248/227-229/P10 approved 09/12/2009 for the change of use from holistic health and beauty clinic with training to dermatology clinic with ancillary practitioner training.' I have been provided with a copy of the permission, which was approved on 25 November 2022 (the 2022 permission).
6. Effectively this means that the opening hours of the first-floor premises have been extended from the 2009 permission.
7. Notwithstanding the 2022 permission, I am required to reach conclusions based on the individual circumstances of the current appeal, which I have assessed on the evidence before me.
8. The main issue is the effect that varying the opening hours imposed on the 2009 permission would have on the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

9. The appeal site is located above a restaurant and beauty salon at the corner of Chiswick High Road and Linden Gardens. Chiswick High Road contains predominantly shops, cafes and other typical town centre uses within the immediate vicinity of the site, whereas Linden Gardens is a residential street. The rear elevation of the appeal building faces the side elevation of 7 Linden Gardens and the main front elevations of 8, 9a and 9b Linden Gardens. The side elevation of 1 Duke Road is also close to the appeal site. Lying between the appeal site and these properties is a narrow pedestrian footpath known as Linden Passage, which provides access to the main front door to 8, 9a and 9b Linden Gardens.
10. The condition at issue was imposed due to the location of the commercial use and its proximity to these nearby residential properties.
11. The entrance to the appeal site is located on the side of the building facing Linden Gardens, opposite a commercial property. It leads up to the first floor which contains two studios, two small treatment rooms, changing rooms and other ancillary spaces. The appellant states that classes would generally involve no more than 18 clients (should two classes have maximum capacity at the same time) along with 4 members of staff.

12. No private parking area is provided for the users of the appeal premises. Chiswick High Road and the streets immediately surrounding the site have limited pay and display periods or are restricted to permit holders at certain times of the day. In view of the close walking distance to public transport, it is likely that most staff and visitors to the appeal site would arrive on foot. This would limit any noise or disturbance arising from that associated with vehicle manoeuvring or the opening and closing of vehicle doors.
13. The entrance door is close to the facade of residential properties on Linden Gardens, particularly No.7. Due to the proximity of Chiswick High Road, which includes shops, cafes, restaurants and other commercial businesses, a significant level of noise and disturbance is already likely to be experienced at certain times by the residents of these dwellings. Nevertheless, this remains a noise sensitive environment in which the potential for and effect of any additional noise and disturbance must be carefully considered.
14. The appellant has submitted an Acoustic Assessment (September 2022). The findings have been considered against the British Standard 8233:2014 (as amended) *Sound insulation and noise reduction for buildings – Code of practice*. An acoustic survey was conducted in Linden Passage between 06:30–09:00 and 20:00–22:00 on Thursday 15 September and Friday 16 September 2022 following the measurement procedure in BS4142:2014. Measurements were also taken in one of the pilates studios during a class.
15. In terms of people arriving at or leaving the premises, the assessment indicates the sound pressure level at the façade of the nearest residential property from passing vehicle noise attributable to the proposal would be very limited. However, no assessment of noise associated with the opening and closing of vehicle doors, or the congregation of people outside the premises was assessed. Nonetheless, having regard to the distance and orientation to nearby residential properties and the position of the access door to the first floor, even if the premises was used to capacity, I am unpersuaded that impact of activity created by visitors arriving at and leaving the premises at the hours proposed would be unacceptably adverse in relation to noise and disturbance to local residents throughout the week and on a Saturday.
16. However, no acoustic assessment has been provided by either party for a Sunday or Bank/Public Holiday. Chiswick High Road and the surrounding area is likely to be quieter on a Sunday and Bank or Public Holiday as commercial premises in the vicinity of the appeal site would generally have more restricted hours of opening. In such an environment it is reasonable for nearby occupants to expect a level of peace and quiet, particularly early in the morning and at night time. As a result, activity generated by visitors to the premises as early as 06:30 when many other businesses in the area are likely to be closed, would be particularly noticeable to occupiers of residential properties close to the entrance doors, namely 7, 8, 9a and 9b Linden Gardens, particularly in summer when windows may be open.
17. At this hour, there would be fewer public transport services and traffic movements in the area would be lower than on weekdays and a Saturday. Even if not used to capacity, the arrival of staff and clients at the premises earlier than 08:00 would be readily apparent to nearby occupiers. For this reason, I find the 06.30 opening time on a Sunday and Bank or Public Holiday would be harmful to the living conditions of neighbouring residents by reason

- of noise and disturbance from the comings and goings of people arriving by car.
18. However, background noise levels in the evening are likely to be more elevated, particularly having regard to the opening times of the ground floor restaurant and public houses on nearby Chiswick High Street. As such, I consider the proposed closing time of 22:00 reasonable.
 19. In reaching this view, I have also had regard to a previous planning permission for the use of the appeal site as an 'escape room', also now a Class E use. Although this use has not been implemented and was restricted to be used only as an 'escape room', it is nonetheless pertinent to note that the condition imposed with regards to closing hours was restricted to 22:30, half an hour later than now proposed. Furthermore, even though there are no ground floor windows or doors directly facing the residential properties to the rear of the appeal building, I also acknowledge the 23:00 closing time of the ground floor restaurant at the site.
 20. In terms of the effect of noise and disturbance from within the appeal building, the Acoustic Assessment suggests that there would be zero decibels of sound escaping from a pilates class when measured from the boundary of the appeal site. Having regard to the approximate 6m distance from the building to the façade of the closest residential properties (appellant's measurement), even when windows are open in the residential properties, there would be no audible noise over and above existing background levels.
 21. Ambient and background sound levels indicated in the Acoustic Assessment are fairly consistent at 47.24_{LA90} to 49.63_{LA90} between 06:30 and 23:00 but much lower outside of these hours, meaning that any increase in noise would likely to be more noticeable at these times. As the proposed hours would not be within the quieter period, I find the effect of noise emanating from the proposed use would be limited in this respect. Moreover, the Council have not provided any contrary evidence to convince me otherwise.
 22. Although the appellant confirms that the two studios do not face residential properties along Linden Gardens, the internal arrangement of rooms could be altered without the need for planning permission. Indeed, the submitted layout plan is indicated as illustrative only. Furthermore, a building can only provide good sound insulation if it is reasonably airtight because noise will escape through any air path. However, the playing of amplified music within the rooms facing Linden Gardens could be restricted through the imposition of a condition.
 23. Concerns have been raised regarding the potential for extractor fans positioned at the rear of the site to give rise to adverse noise impacts. However, from my observations on site I saw that, with the exception of a fire door and staircase with a modest size fan above it, all other mechanical plant was located at ground floor level, screened by a brick wall and timber fence. To prevent any adverse effect upon noise through use of the mechanical heating/cooling system, a condition could be imposed to ensure it is switched off when the business is closed.
 24. For the reasons given above, with the exception of the opening times on Sundays and Bank/Public Holidays and subject to planning conditions, I find the proposal to vary the opening hours imposed on the 2009 permission would not have a significant adverse effect on the living conditions of the occupiers of

neighbouring residential properties, with particular regard to noise and disturbance. It would therefore comply with Policy CC2 and Policy EQ5 of the Hounslow Local Plan which, amongst other matters, seek to reduce the impact of noise-generating uses on the amenity of users of surrounding land. For the same reason the development would accord with the Framework's requirements to ensure new development does not give rise to unacceptable levels of noise pollution or adverse impacts on health and the quality of life.

Other Matters

25. Nearby residents express concern that there would be the potential for light pollution from windows at the rear of the building during the extended hours and the use of black-out blinds within these rooms is suggested. These windows face the front windows of residential properties along Linden Passage. However, whilst the first-floor half-moon shaped windows on the building are large, they are obscurely glazed and no restriction requiring blinds was imposed on the original permission, nor on the latest permission to extend opening hours. I consider that it would be unreasonable to require such a condition.
26. Whether or not the use is taking place at present in contravention of the approved hours of use is not a matter within my jurisdiction in determining this appeal.
27. The site is within the Chiswick High Road Conservation Area (CA). I have taken into account the duty, set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character and appearance of heritage assets. In this regard, as no external alterations are proposed, the amended operating hours would preserve the character and appearance of the CA and would not result in harm to its significance as a designated heritage asset.

Conditions and Conclusion

28. I have had regard to Paragraph 56 of the Framework and the Planning Practice Guidance¹ (PPG) in terms of the use of planning conditions. The PPG makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have therefore repeated the condition specifying plans as this provides certainty. I have also repeated the condition that windows on the rear elevation be retained as obscurely glazed as this remains relevant and necessary to protect the living conditions of neighbouring residential properties with regard to privacy.
29. In addition, given the scope of control needed to ensure that the development is acceptable in respect of its effect upon the living conditions of the occupiers of neighbouring residential properties in respect of noise and disturbance, I consider that it is necessary to set out the permitted opening times. Conditions restricting hours for the playing of amplified music within rooms closest to residential properties, switching off the extraction fan when the business is closed and keeping windows closed are also necessary in the interests of safeguarding the living conditions of neighbouring residential occupants. Both main parties have had the opportunity to review the proposed conditions.

¹ PPG Paragraph: 003 Reference ID: 21a-003-20190723; revision date: 23 07 2019

30. Subject to the conditions listed in this decision, the proposal would not have a significantly adverse effect upon the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise and disturbance. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should therefore be allowed.

Ann Veevers

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) This permission relates to the originally submitted details and specification and to the following drawing, except where indicated otherwise by a condition attached to this consent, in which case this condition shall take precedence: Location Plan (At a scale 1:1250)
- 2) The use hereby permitted shall only take place between the hours of 06:30 and 22.00 Monday to Saturday and 08:00 and 22:00 hours on a Sunday and Bank or Public Holiday.
- 3) Amplified sound or music shall only be played in rooms with a window on the rear elevation facing Linden Gardens between the hours of 08:30 and 20:00.
- 4) The extractor fans to the first-floor rear elevation of the building shall not operate between the hours of 22:00 and 06:30 Monday to Saturday and 22:00 and 08:00 on a Sunday and Bank or Public Holiday.
- 5) The windows and fire escape door at the rear shall be closed and remain closed at all times, except in the case of an emergency.
- 6) The obscured glass currently formed in the windows on the first-floor elevation overlooking Linden Gardens shall be retained. Any replacement glass consequent upon refurbishment shall be obscured and maintained as such thereafter.

END