



Appeal Decisions

Site visit made on 21 March 2023

by Nichola Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2023

Appeal Ref: APP/D3125/W/22/3303822

Owls View, Shipton Road, Milton Under Wychwood, Oxfordshire OX7 6JT

- 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 Calum Taylor (Taylor Made Training) against the decision of West Oxfordshire District Council.
 - The application Ref 22/00417/S73, dated 10 February 2022, was refused by notice dated 10 June 2022.
 - The application sought planning permission for change of use for existing stables and gym (part retrospective) and construction of manege for commercial use, alterations to access track to allow passing bay and increase in entrance width, erection of four field shelters without complying with a condition attached to planning permission Ref 13/1451/P/FP, dated 06 December 2013.
 - The condition in dispute is No 8 which states: the gym building shall not be used for any commercial purposes outside of the hours of 9am to 6pm Monday to Saturday or 9am to 2pm on Sundays at no time on Bank Holidays, Good Friday, Easter Sunday or Christmas Day.
 - The reason given for the condition is: in the interest of the amenity of nearby residents (Policies BE2 and H2 of the West Oxfordshire Local Plan 2011).
-

Decision

1. The appeal is dismissed.

Background and Main Issues

2. Planning permission has been granted for the change of use for existing stables and gym (part retrospective) and construction of manege for commercial use, alterations to access track to allow passing bay and increase in entrance width, erection of four field shelters. That permission was subject to a number of conditions. Condition 8 specified the hours in which the gym building can be used for commercial purposes. The appellant wishes to vary this condition and replace it with a condition which amends the hours in which the gym building can be used for commercial purposes to between 0700 to 2100 Monday to Friday and 0700 to 1300 on Saturday and Sunday.
3. I also have been appointed to determine an appeal following the refusal of planning permission for the erection of a fitness studio building and I carried out a joint site visit. This appeal relates to a variation of condition only and is a different development on a different part of the same site. I am required to determine the appeal on this basis, and I have therefore dealt with the appeals separately.

4. The original condition was imposed for reasons of 'the amenity of nearby residents'. In their reason for refusal the Council has alleged that there could also be impacts on the Cotswolds Area of Outstanding Natural Beauty (AONB). Therefore, the main issues are the effect that the variation of the condition would have on the living conditions of the occupiers of neighbouring properties with particular regard to noise, and the effect on the AONB.

Reasons

Living conditions

5. The proposal involves a variation in the hours of operation of the gym which would result in an increase of up to 23 hours a week. This would comprise an additional 5 hours of operation on week days, an additional hour of operation on Sundays and 3 fewer hours of operation on a Saturday, with the additional hours of operation predominantly on week day mornings and evenings. The proposal is not supported by a noise assessment and does not include any details of how transfer of noise would be minimised.
6. At my site visit I observed that the site and surrounding area were subject to other noise sources, including vehicle noise from Shipton Road. Nonetheless, and despite the lack of complaints, it is apparent that nearby residents including those who neighbour the site have concerns about noise levels from the gym on the basis of their experience of living close to the site. Notwithstanding the fact that the gym uses a standard residential music system, during the extended opening times there would be noise generated by the premises including music played within the gym studio, as well as vehicle movements and noise generated by people entering and leaving the premises. These activities would be introduced during the evening and early morning when residents are more likely to be at home and can reasonably expect quieter conditions in which to sleep and relax. Whilst it may well be the case that the appellant's property would be most affected by noise associated with the operation of the gym and that there has been no enforcement action taken regarding the current use of the premises, nonetheless, over these extended opening hours, the noise from the operation of the gym and the coming and going of gym users has the potential to cause disturbance to the occupiers of neighbouring properties.
7. I have given careful consideration to whether a further condition restricting the noise levels during the extended hours of operation could overcome harm to the living conditions of the occupiers of neighbouring properties, however I cannot be satisfied that such a condition would satisfactorily overcome these adverse effects and thus it would fail to meet the tests set down in the Planning Practice Guidance (PPG).
8. For the above reasons, the condition is necessary in order to protect the living conditions of the occupiers of neighbouring properties. Therefore, the proposal would result in harm to the living conditions of the occupiers of nearby properties and thus conflicts with those aims of policy OS2 and of the West Oxfordshire Local Plan (2031) (LP) which require that development should be compatible with adjoining uses and not have a harmful impact on the amenity of existing occupants. I also find conflict with the Framework insofar as it requires planning decisions to avoid significant adverse impacts and to mitigate noise impacts and reduce to a minimum. Whilst referred to by the Council in

the reason for refusal I find no conflict with LP policy E2 which relates to new small employment sites and new buildings.

Effect on the AONB

9. The appeal property is located within the Cotswolds AONB, which is designated for its natural beauty and is characterised by its tranquil setting. The gym is a single storey building which forms part of a farm complex which includes a dwelling, stables, stores, a manege and a gravelled parking area. The site is bordered by residential and agricultural buildings and Shipton Road runs to the south of the site. Agricultural land surrounds the site to the north.
10. The gym building is seen in the context of the existing cluster of buildings and the adjacent road. The proposal does not introduce an additional light source, and I have not been provided with any particular evidence that lighting associated with this extended use, including light associated with vehicles accessing the site, would be particularly harmful to the tranquillity of the AONB or its characteristic dark skies.
11. The extended hours of operation would increase the number of clients and instructors visiting the site which would result in increased traffic to and from the site. However, I have not been presented with any particular evidence that any increase in noise levels during the extended opening hours would adversely affect the tranquillity or the wider setting of the AONB in this location.
12. In light of the above, any light or noise associated with the proposed extended hours of operation would not be harmful to the character and tranquillity of the AONB. I therefore find no conflict with those aims of LP policy EH1 which require that great weight is given to conserving and enhancing the area's natural beauty, landscape and countryside. I also find no conflict with those aims of the Cotswolds Conservation Board Management Plan 2018-2023 (2018) which, amongst other matters, require regard to be had to the dark skies of the AONB. I also find no conflict with the guidance in the Framework which requires that great weight be given to conserving and enhancing landscape and scenic beauty.

Other Matters

13. I note that the relevant development plan policies do not preclude limited development in rural areas which maintains the vibrancy and the rural life of those communities. I have given due consideration to the potential positive effects the additional customers would have on the appellant's business and the local rural economy, as well as the potential for job creation and the benefits to health and social wellbeing, all of which would contribute to meeting national and local planning objectives. Whilst these benefits weigh in favour of the proposal, nonetheless they do not outweigh the harm I have identified to the living conditions of the occupiers of neighbouring properties.

Conclusion

14. Despite finding no harm to the character and appearance of the AONB, the harm to the living conditions of the occupiers of neighbouring properties is the prevailing consideration. I have found that the proposal conflicts with the development plan when read as a whole and there are no other considerations, including the Framework, that outweigh this conflict. Having considered all

other matters raised; I therefore conclude that the appeal should be dismissed.

Nichola Robinson

INSPECTOR