



Appeal Decisions

Site visit made on 22 August 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Appeal A Ref: APP/M4320/C/22/3312110

2 Stanley Park, Litherland, Liverpool L21 9JT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Brendan Davenport against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The notice was issued on 2 November 2022.
- The breach of planning control as alleged in the notice is without planning permission and within the last ten years the change of use of the property from residential to a mixed use of residential and gym - commercial personal training facility.
- The requirements of the notice are to: Cease the use of the land as shown cross hatched on the attached plan for a gym – commercial personal training facility.
- The period for compliance with the requirement is: 28 days.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed, the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/M4320/W/22/3306975

2 Stanley Park, Litherland, Merseyside, L21 9JT

- 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 Mr Brendan Davenport against the decision of Sefton Metropolitan Borough Council.
- The application Ref DC/2022/01085, dated 24 May 2022, was refused by notice dated 9 September 2022.
- The development proposed is the conversion of garage into a gym.

Summary of Decision: The appeal is dismissed.

The Notice

1. The enforcement notice (the notice) alleges the use of the property for a mixed use of residential and a gym.
2. Paragraph 1 of the notice states that there has been a breach of planning control falling within section 171A(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act), which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'.
3. Whilst the notice refers to 'the use of the property' it does not allege that a material change in the use of the property has occurred. It therefore follows

that the allegation in the notice would not constitute development for the purposes of section 55(1) of the 1990 Act.

4. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.
5. However, having regard to the appellant's case and their appeal under ground (a) they have clearly understood that the allegation was intended to refer to a material change of use. As such, I am satisfied that a correction of the notice to include reference to a material change of use would not cause injustice in this case.
6. Furthermore, the requirement in paragraph 5 of the notice does not refer to the cessation of the mixed use of the property, which is the alleged breach of planning control. In the interests of clarity, I am satisfied that a correction of the notice to include reference to cessation of the mixed use would not cause injustice in this case.

Appeal A - The ground (a) appeal and the deemed planning application; and Appeal B

Main Issue

7. The main issue is the effect of the development on the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance.

Reason

8. Stanley Park is a predominantly residential road comprising large, semi-detached dwellings. The dwellings are set back from the highway with driveways to the front. The set back position of the dwellings and the numerous trees on the footway and in front gardens contribute to the pleasant, peaceful, suburban residential character of the area.
9. The appeal property is a three-storey dwelling with an attached garage. The garage has been converted into a gym, which includes numerous exercise machines. The gym is used on an appointment basis. The road is very quiet and there is a residential property, 2a/2b Stanley Park, within close proximity to the gym. Therefore, neighbouring residents, in particular the occupants of No 2a/2b, would be sensitive to noise generated from non-residential activities.
10. The appellant confirms there is a maximum of three clients at any one time. Due to the size of the gym and the amount of equipment contained within it, it is reasonable to conclude that it is unlikely that the gym could accommodate many, if any, more clients at any one time.
11. Notwithstanding the limited number of people using the gym at any one time, the users of the gym would be conversing with each other, at times with raised voices, for example when the personal trainer is giving direction to/encouraging clients. Also, it is typical for loud music to be played whilst exercising. Due to the proximity of the gym to No 2a/2b, this would significantly detract from the occupants of these properties' peaceful

enjoyment of their home, particularly, during the early hours and in the late evenings.

12. Moreover, the gym is open between 0600 and 2000 Monday to Friday. Given the extensive opening hours, there would be a large number of clients coming and going throughout the day. These clients would likely generate noise and disturbance through car doors opening and closing, engines running and people conversing outside the property waiting for their appointment/leaving their appointment. Such noise and disturbance would further detract from occupants of neighbouring residents' peaceful enjoyment of their homes.
13. I acknowledge that it may be possible to implement measures that could mitigate some of the noise generated, for example acoustic insulation and restricting opening hours. However, no such details are before me to demonstrate that such measures would sufficiently mitigate the harm caused. In any event, I am not satisfied that it would be reasonable or enforceable to restrict how clients arrive at the property or prevent them from loitering outside the property whilst waiting for their appointment.
14. I note the appellant's contention that they have not been given the opportunity to discuss potential mitigation measures. However, such measures could have been presented as part of the appeal submissions.
15. I find therefore, the development significantly harms the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance. As such, it is contrary to Policy HC3 of the Sefton Council Local Plan 2017, which states that non-residential development will be permitted in residential areas provided that it will not have an unacceptable impact on the living conditions of neighbouring properties.

Conclusion on the Appeal A ground (a) appeal and the deemed planning application; and Appeal B

16. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to either the ground (a) appeal against the enforcement notice and deemed application, or to the Section 78 appeal against the refusal of permission. Therefore, Appeal A on ground (a) fails, as does Appeal B.

Formal Decision

Appeal A

17. It is directed that the enforcement notice is corrected by:
 - a) The deletion of the words "change of use" under paragraph 3 and substituting "material change of use".
 - b) The deletion of the requirement under paragraph 5 and substituting "Cease the mixed use of the land as shown cross hatched on the attached plan for residential and a gym – commercial personal training facility by ceasing the gym use."
18. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

19. The appeal is dismissed and planning permission is refused.

Alexander Walker

INSPECTOR