



Appeal Decision

Site visit made on 1 August 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2023

Appeal Ref: APP/G5180/W/23/3314762

Pilgrim House, Unit 2, Cray Avenue, Orpington, Bromley BR5 3PU

- 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 Matthew Wythers of The Gym Group Ltd against the decision of the London Borough of Bromley.
 - The application Ref DC/22/02350/FULL1, dated 10 June 2022, was refused by notice dated 8 December 2022.
 - The development proposed is removal of the existing mezzanine of 188.3 square metres and installation of a new mezzanine within the unit providing 460 square metres of floorspace for Class E use associated with the Class E use of the ground floor premises.
-

Decision

1. The appeal is allowed and planning permission is granted for removal of the existing mezzanine of 188.3 square metres and installation of a new mezzanine within the unit providing 460 square metres of floorspace for Class E use associated with the Class E use of the ground floor premises at Pilgrim House, Unit 2, Cray Avenue, Orpington, Bromley BR5 3PU in accordance with the terms of the application, Ref DC/22/02350/FULL1, dated 10 June 2022, subject to conditions set out in the attached schedule.

Main Issues

2. The main issues are:
 - Whether the proposal would be inappropriate development within the Strategic Industrial Location (SIL); and
 - Whether there would be a sequentially preferable location for the development.

Preliminary Matters

3. In September 2020 the Town and Country Planning (Use Classes) Order 1987 (UCO) was amended and, amongst other changes, a number of use classes were revoked and grouped under a new Class E (Commercial, Business and Service) use. This included Class E(d) which effectively replaced Class D2 (Gymnasiums and indoor recreation). There are various references through the application and appeal documentation to B Class uses, some of which are also now included within Class E. However, use Classes B2 (Industrial) and B8 (Storage or distribution) were unaffected by the 2020 changes.

4. The main parties agreed during determination of the planning application that the application site benefits from planning permission for Class E use, including Class E(d) (Indoor sport, recreation and fitness).
5. The appeal submission includes email correspondence from a commercial property agent, additional vitality and viability information and an update to a sequential assessment. None of this evidence was before the Council at the time of its decision. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
6. In this case, the additional evidence provides further information to respond to the Council's reason for refusal rather than any amendments to the proposal. For this reason, I consider that there would be no prejudice to any party by considering the additional evidence. I have therefore determined the appeal on the basis of the additional evidence.

Reasons

Strategic Industrial Location

7. The appeal property is located within the Sevenoaks Road/Cray Avenue Strategic Industrial Location (SIL). It is currently vacant, but was previously in use as a Class E retail unit. The property has an existing mezzanine which was installed under planning permission DC/16/02804/FULL1. A condition on that permission restricts the use of the mezzanine to storage purposes and staff facilities ancillary to the main retail use only. Part of the reasoning for this was to enable the Council to assess the impact of any future increase of retail floorspace on the viability and vitality of the nearby centres.
8. A Certificate of Lawfulness granted in October 2022 (Ref: DC/22/02313/PLUD) confirmed that the proposed gym use would fall within Use Class E and therefore planning permission would not be required to change from retail to gym use. Indeed, the gym use could operate from the appeal site without any further planning permission, albeit the mezzanine is required to provide essential additional space principally for changing rooms, staff support accommodation and further space for fitness areas.
9. Policy 81 of the Bromley Local Plan (2019) (BLP) outlines that within SILs B Class uses will be safeguarded, and proposals on sites where non Class B operations are already in existence should seek to provide Class B uses. Proposals involving non Class B uses on these sites should provide employment generating uses that reinforce the role of the SIL.
10. As the appeal property does not have an existing industrial use the proposal would not result in the loss of any industrial floorspace. Nor does the proposal result in the introduction of a new Class E use within the SIL. The appeal relates solely to the installation of a new mezzanine, and there is no evidence before me to suggest that the site would not remain in Class E use in the event that this appeal were to be dismissed.
11. The Council indicate that 24 hour, 7 day per week gym models are based upon a partly self-service approach which allows access and the use of facilities outside of staffed hours when the gyms are monitored externally, and that consequently, the additional floorspace would not be a significant employment generating use. However, the proposed mezzanine, by enabling the operational

requirements of the gym, would contribute to generating 15 full-time equivalent jobs in a range of roles from manager and deputy manager to support staff. Noting the site's previous use under Class E, the gym would therefore be an employment generating use, reinforcing the role of the SIL. Whilst an alternative industrial occupier may generate a greater number of full-time equivalent jobs, I have no substantive evidence to demonstrate that such a use would come forward if this appeal were to fail.

12. Indeed, the appellant has confirmed that, when marketed, the only interest received was from food retailers and gym operators, both of which are Class E uses. Furthermore, the unit is part of a wider single building containing two adjacent units which share a small rear service yard. Some limited evidence has been provided which demonstrates that it would not be desirable for a Class B use to share this space. However, noting the site's location within the wider SIL, I have given this suggestion only modest weight.
13. The gym use would be complimentary to the employment activities in the area, providing a facility for local workers and other members of the public. The use of the gym, which itself would operate 24 hours daily, would not compromise the operation of nearby B class uses or affect the integrity of the wider SIL. The use of a planning condition would ensure that the mezzanine can only be used for Class E(d) uses only. This would prevent the use of the area for any other purpose within Class E, including retail use.
14. Overall, whilst the proposal would not provide a new B Class use, noting its previous use under Class E, it would not significantly undermine the aims of Policy 81 of the BLP, in so far, as it seeks to provide employment generating uses that reinforce the role of the SIL. For the above reasons, I conclude that the proposal would not be inappropriate development within the SIL. I therefore find that it complies with Policy 81 of the BLP, which is described above.

The sequential test

15. Policy 91 of the BLP, Policy SD7 of the London Plan (2021) (LP) and Paragraphs 87 and 88 of the National Planning Policy Framework (2023) (the Framework) require proposals for new main town centre uses outside of existing centres to undergo a 'Sequential Test'. They outline that main town centre uses should be located in town centres, then in edge of centre locations and, only if suitable sites are not available in those locations, out of centre. Flexibility should be demonstrated on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
16. The appellant's evidence includes an initial sequential assessment submitted with the planning application and a sequential assessment update submitted with the planning appeal. This considered potential premises between 840 square metres and 2,500 square metres within a 3 mile area. Sites without car parking were not discounted. I consider that this represents sufficient flexibility on issues such as format and scale as required by the Framework.
17. The Certificate of Lawfulness confirms that the use of the site's existing 840 square metres floor area for a gym use would not require planning permission. As such, it is appropriate that the sequential assessment does not consider premises with floorspace below 840 square metres, as this operation could be

accommodated lawfully within the existing building without a requirement for planning permission.

18. I understand that the appellant has gyms within their portfolio which operate within smaller floor areas. However, these smaller gyms have been trialled and launched on a limited basis and amount to 7 of the operator's 230 premises across the country, only in specific locations where market and demographic criteria support them. I understand that each potential gym location has its own specific locational, market, demographic and competition characteristics which dictate the floor area required for that gym to create a viable operation.
19. The appellant's evidence includes details of trading characteristics and sets out that a large regular shaped ground floor area of at least 600 sqm is required to accommodate the main gym use including the gym equipment. The gym should also have its own dedicated entrance with a visible street frontage easily identifiable and accessible for visiting members of the public. Overall, I am satisfied that the gym could not be operated within the appeal site without the additional floor area provided by the mezzanine.
20. The High Court Judgement in Aldergate¹ is quite clear that, except in what would be likely to be specific and limited circumstances, the likely occupier of a site subject to sequential testing should be disregarded. However, in this instance I am satisfied that the trading characteristics identified in the appellant's evidence are based on the requirements that would be common to any budget gym operator, rather than being particularly individual to the appellant.
21. The sequential assessment confirms that there are no available units within the Petts Wood local centre which meet the minimum size requirements.
22. The sequential assessment identifies 5-7 The Walnuts Shopping Centre in Orpington town centre which is currently available and, at 1,236 square metres is within the range of area required by the appellant. The appellant suggests that the unit's small ground floor area and insufficient street frontage would not provide the required level of visibility for members of the gym. Concerns in relation to the proximity to residential occupiers, given the proposed 24 hour operation of the site are also raised by the appellant. In any event, the agents acting on behalf of the shopping centre confirmed that the landlord will not grant long term leases, as they are considering developing the centre and wish to retain flexibility for redevelopment. Furthermore, due to a lease restriction related to an existing gym operator within the shopping centre, the landlord would not be willing to grant a lease for an additional gym operator. On this basis I am persuaded that there is robust justification that this site is not appropriate.
23. In accordance with paragraph 87 of the Framework the appellant considered sites which would potentially become available within the near future. This included three further units within the Walnuts Shopping Centre. However, I am satisfied that the evidence indicates that none of the units would be available within an appropriate timeframe.
24. 208-212 High Street, Orpington was identified in the initial sequential assessment. However, the appellant's sequential assessment update confirms

¹ Aldergate Properties v Mansfield DC [2016] EWHC 1670 (Admin)

that the unit has been removed from the market and that a planning permission has been granted for a residential-led redevelopment of the site. Whilst there would be retail space in the redevelopment, this only amounts to 450 square metres, which is too small to accommodate the gym. On this basis I am persuaded that there is robust justification that this site is not appropriate.

25. Paragraph 90 of the Framework refers to requiring an impact assessment for retail and leisure development outside town centres which are not in accordance with an up-to date plan. This applies if the development is above a locally set threshold or the national default of 2,500 square metres gross floorspace. LP Policy SD7 requires an impact assessment on proposals for new, or extensions to existing, edge or out-of-centre development for retail, leisure and office uses that are not in accordance with the Development Plan. The supporting text confirms that this applies to development greater than a locally set floorspace threshold, or 2,500 sqm if a local floorspace threshold has not been set. My attention has not been drawn to any locally set floorspace threshold. As a result, whilst the proposal could result in some diversion of trade from town centre gyms, there is no policy requirement to provide an impact test assessing the vitality or viability of town, district or local centres within the area. Nor is there a requirement for the appellant to demonstrate that there is need for the additional Class E (d) floor area to be located at the site.
26. In conclusion, it has been demonstrated that there are no sequentially preferable sites available within the town centre or edge of centre or locations close to the town centre. The proposal would therefore comply with BLP Policy 91, and LP Policies SD6 and SD7. Collectively these policies require main town centre uses to be located within designated town centres and that, only if suitable sites are not available in town centres or edge of centre locations, should out of centre sites be considered.

Other Matter

27. The Council confirm that the site has a Public Transport Accessibility Level (PTAL) rating of 3/4 and therefore has moderate accessibility to public transport. Other local policies may direct health facilities to town centre locations which are easily accessible by public transport. However, as I have found that sequentially preferable sites are not available in the town centres, this does not alter my findings on the main issue.

Conditions

28. I have had regard to the planning conditions that have been suggested by the Council. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
29. In addition to the standard time limit, I have imposed an approved plans condition in the interests of certainty.
30. I have imposed the Council's suggested condition requiring that the proposal remains in Class E (d) use to prevent it from changing to an inappropriate use within the SIL. However, I have modified the condition so that it specifically refers to the new mezzanine and is therefore specific to the development.

Conclusion

31. For the above reasons, and having had regard to all other matters raised, I conclude that the proposed development would accord with the development plan and the Framework. The appeal is therefore allowed.

B Pattison

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Z830-001-EXISTING (Existing Plan); Z830-100-GA (Proposed General Arrangement Plan) and Site Location Plan.
- 3) The mezzanine floorspace approved within this application within Unit 2 Pilgrim House shall only be used as Class E (d) and for no other purpose (including any other purpose within Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). There shall be no change of use of the approved mezzanine floorspace whether allowed by the Town and Country Planning (Use Classes) Order 1987, the Town and Country Planning (General Permitted Development) (England) Order 2015 or any Order amending, revoking and re-enacting these Orders.

END OF SCHEDULE