



Appeal Decision

Site visit made on 20 November 2023

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd December 2023

Appeal Ref: APP/F3545/W/23/3321361

All Saints Hotel, The Street, Fornham St Genevieve, Suffolk IP28 6JQ

- 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 David Harris against the decision of West Suffolk Council.
 - The application Ref DC/22/1378/FUL, dated 3 August 2022, was refused by notice dated 12 April 2023.
 - The development proposed is described as 'installation of outdoor gymnasium with open sided exercise shelter and moveable exercise equipment'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Notwithstanding the description of the development on the application form, an outdoor gymnasium and an acoustic fence have already been installed. There is no plan indicating what was present on the site before these were installed but the evidence indicates that this was a woodland clearing. My appeal decision is based on the plans before me which show a proposed storage container, open shelter, various gym equipment and an acoustic barrier fence. There is reference to an 'acoustic fence extended as necessary to meet with imaginary line' but it is unclear whether this is proposed, and I have not taken this to be part of the application. However, I have also had regard to what I observed and heard of the operation of the gym on my site visit.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the living conditions of the neighbouring occupiers, with particular regard to noise; and
 - protected woodland.

Reasons

Living conditions

4. The appeal site is within the large grounds of a country hotel in a quiet rural location. It sits on higher ground than the suburban housing estate to the east where some houses lie close to the hotel grounds. The site is surrounded by trees which contain a rookery.
5. Permission was sought to operate the gym every day from 08.00-19.00 hours with some additional classes early in the morning in the summer, with a

- maximum number of 20 people in attendance. Some classes would be accompanied by music.
6. The gym has been operating for some time and it is evident from representations from local residents that they are experiencing noise disturbance from its operation. This arises from instructors encouraging class participants, thuds and banging from use of equipment, and music, including in the early mornings, evenings and weekends. Despite the acoustic barrier and the partially cushioned gym surface, the instructor's voice and use of some gym equipment was clearly audible at the boundary of the nearest houses during my daytime site visit which coincided with a class.
 7. There is some distant background traffic noise and occasional noise from the rooks. However, these are very different from the sudden loud sounds, shouting, and projection of exercise style music generated from the gym which are more intrusive. These noises associated with the operation of the gym are causing significant disturbance to local residents, disrupting sleep and making their gardens less pleasant places to be.
 8. A letter from the appellant's acoustics consultants (the acoustics report) includes noise measurements taken from close to the boundary of the nearest house on Park Avenue before, during and after an early morning class in June 2022, with music being used during part of the session.
 9. The acoustics report assesses the sound levels based on BS8233:2014 (BS8233). It finds that there is no significant increase in sound levels during the gym session, with a result of $L_{Aeq,T}$ 45dB compared to a desirable upper level of $L_{Aeq,T}$ 50dB for external noise in amenity spaces. Nevertheless, the acoustics report concludes that use of the facility will be heard during lulls in ambient noise and during periods of quiet indoor noise levels and sets out some potential measures to mitigate this. However, BS8233 is normally used for assessing ambient/traffic noise sources for new residential developments and is not intended to apply to sounds associated with an outdoor gym. Therefore, the acoustics measurements carry little weight in the assessment of harm to nearby residents.
 10. One potential measure to mitigate this harm would be a 'silent disco.' Although such equipment has recently been installed, there is no suggestion that the proposed gym would operate on this basis.
 11. It is also suggested that the height and distance of the acoustic fence would be extended. However, there is no evidence that this would overcome the harm to the living conditions of nearby residents.
 12. Concerns about early morning and evening workout classes with music could be addressed by conditions restricting the hours of operation. However, early morning classes are frequently popular with gym users and no alternative operating hours have been suggested from those set out in the application.
 13. Further, the suggested condition on boundary noise levels indicates that there is doubt whether an extended acoustic fence would be sufficient to satisfactorily reduce sound levels to the occupants of residential properties close by, and that additional steps to mitigate noise impacts may be needed. In addition, the baseline level against which to measure the sound level reduction of at least 5dB at noise sensitive receptors is not specified and there is no

clarity on whether this relates to fluctuating, average, maximum or other periods for measuring sound levels. As such, it would be insufficiently precise.

14. The noise mitigation measures were agreed in consultation with the Council's Environmental Health Officer who states that it is unlikely that the outdoor gym has an adverse impact on residents in the vicinity. However, I find that the evidence fails to demonstrate that local residents are not adversely affected by the operation of the gym due to the nature of the noise from it and the times that it operates. Further, the proposed conditions would not provide suitable mitigation because they would still allow the gym to operate at times which would cause noise disturbance to nearby residents and not provide sufficient certainty of sound level reductions.
15. Consequently, I conclude that the proposal harms the living conditions of the neighbouring occupiers, due to unacceptable noise disturbance. It is contrary to Policy DM2 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document 2015 (DMPD) where it requires development to not adversely affect residential amenity, including by reason of noise. It also conflicts with the Framework where it requires potential adverse impacts resulting from noise from new development to be mitigated and reduced to a minimum and to avoid noise giving rise to significant adverse impacts on the quality of life.

Protected woodland

16. The appeal site is within a well-established, wooded location within the grounds of the hotel which creates a verdant natural environment. The mature trees are protected by two Tree Preservation Orders which both constitute woodlands made up of mixed species.
17. The Council's second reason for refusal refers to the gym facility having resulted in the loss of protected woodland on the site which is an important landscape feature of the area but the appellant states that the gym is sited in an existing clearing. Regardless of whether any protected trees have previously been felled, the plans do not show the proposed removal of any trees.
18. The hardstanding, acoustic fencing and storage container are very close to some existing protected mature trees. Nevertheless, the Arboricultural Impact Assessment (AIA) finds that the timber acoustic fence only has a minor influence on the root protection area of one retained tree. The AIA also notes that the tarmac encroaches within the root protection areas of two retained trees but as this is a permeable top dress layer, it is not considered to be a substantial issue. The wooden sleepers under the container prevent compaction of the ground and reduce pressure on the roots of the adjacent tree, thereby ensuring that the health of the tree is not harmed.
19. The AIA includes a commitment to regularly monitor the potentially affected trees upto 2026 and to produce a report following reinspection providing a record of any improvement or deterioration. Given that the AIA does not find issues in terms of the relationship of the proposed development with the existing trees and that monitoring measures are proposed which could be secured by a suitably worded condition, I am satisfied that the proposal does not adversely affect the existing trees and is not likely to lead to future pressure to have further trees removed.

20. Therefore, I conclude that the proposed development does not harm protected woodland. It complies with Policies DM2 and DM13 of the DMPD where they require development to not adversely affect important landscape characteristics and features. It also accords with the Framework which requires decisions to protect valued landscapes and recognise the intrinsic character of the countryside, trees and woodland.

Other Matters

21. Having gained the support of officers, I appreciate that the appellant was disappointed that the Council's members chose to reject the scheme. However, I have considered the proposal afresh having regard to all the information presented to me and have found it to be unacceptable.
22. The appellant refers to a planning permission for holiday lodges on part of the golf course within the hotel grounds which was recently allowed on appeal¹ but this has limited relevance to the current proposal.

Planning Balance and Conclusion

23. The proposed facility provides recreation and health benefits in accordance with local and national planning policies, and several users support the proposal. Furthermore, the gym is accessible by bus, cycle and on foot. These are factors in favour of the scheme. I find no harm to protected woodland, so this is a neutral factor in the planning balance. However, the proposal harms living conditions. Therefore, the benefits of the proposal do not outweigh the harm to living conditions.
24. For the reasons given above, the proposal conflicts with the development plan as a whole and there are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is dismissed.

A Wright

INSPECTOR

¹ APP/F3545/W/22/3301432