



Appeal Decision

Site visit made on 16 January 2024

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2024

Appeal Ref: APP/F1040/W/23/3325086

Shortwood Farm, Green Lane, Overseal, Swadlincote DE12 6JP

- 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 James Robert Hall against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2021/0394, dated 4 March 2021, was refused by notice dated 19 June 2023.
 - The development is described as a detached garage/outbuilding renovated for change of use to a personal training studio/gym.
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Decision

1. The appeal is allowed and planning permission is granted for a detached garage/outbuilding renovated for change of use to a personal training studio/gym at Shortwood Farm, Green Lane, Overseal, Swadlincote DE12 6JP in accordance with the terms of the application, Ref DMPA/2021/0394, dated 4 March 2021, subject to the following conditions:
 - 1) The development shall be carried out in accordance with the following approved plans: SK2816SW and 2021-59-01
 - 2) The development hereby permitted shall not be used until the access, parking and turning facilities have been provided in accordance with that shown on drawing number 2021-59-01. This provision shall be maintained for use thereafter.
 - 3) The gym hereby permitted shall only operate between the hours of 06:00 and 21:00 Monday to Friday, and between 08:00 and 21:00 on Saturdays. The gym shall not operate on Sundays.
 - 4) The gym hereby permitted will only operate for a maximum of 10 people at any given time.
 - 5) No amplified noise equipment shall be used outside of the gym building at any time and no part of any sessions shall take place outside of the gym building before 07:00 on any given day.

Preliminary Matters

2. At the time of my visit the development had already taken place and the gym was operational. The appeal therefore seeks retrospective permission for the development, and I have determined the appeal accordingly.
3. The description of development in the header above has been taken from the planning application form. In order to ensure the clarity of the description, superfluous details have been removed.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of nearby occupiers.

Reasons

5. The appeal building is a small former outbuilding associated with the house at Shortwood Farm. It is set within a large residential curtilage which includes areas of lawn, hardstanding and parking. The site is located at the end of Sealwood Lane in a rural area between two settlements. During my observations on site, I noted a number of dwellings along Green Lane and Sealwood Lane. From the submissions before me I also understand that there are a number of agricultural and commercial uses on and around these lanes. In particular, my attention has been drawn to a building contractors, dog kennels and a dog racing business.
6. The gym building, as noted above, has already been converted and although a class wasn't running at the time of my visit, it is operational. I understand from the submissions before me that the classes operate outside of typical working hours with the earliest classes starting at 05:30 and the latest finishing at 19:45.
7. Given the uses on and around Green Lane and Sealwood Lane, the potential for a significant number of vehicular movements throughout the day already exists. In particular, these would largely stem from the various comings and goings associated with the residential dwellings, the dropping off, and picking up, of dogs from the kennels and the movement of plant and goods to and from the farm units. I understand that the dog kennels operates from 07:00 to 20:00 on weekdays and 09:00 to 17:00 over the weekend and during this time it is likely that there would be an audible level of dog noises, such as barking. Agricultural businesses often operate very early in the morning and late into the night to make the most of the daylight or dry days. It is also not uncommon for people to be up from 06:00 on a weekday and to stay up until at least 21:00. I therefore find that between, at least, the hours of 06:00 and 21:00 there would background noises associated with residents, motor vehicles and commercial operations.
8. Between these times therefore, I find that the increase in noises from vehicular movements associated with the development would not be so significant over and above the existing, as to be detrimental to the living conditions of neighbouring occupiers. However, I find that journeys to and from the site before 06:00 or after 21:00 would have the potential to detrimentally affect the living conditions of neighbouring occupiers. Lacking any substantive evidence to the contrary, and although the sound of passing vehicles would be short-lived, I find that the repetitive noise of up to 10 motor vehicles traveling to the 05:30 sessions would be disruptive in the quiet hours when residents are more likely to be sleeping.
9. Nevertheless, I find that a suitably worded condition could be imposed to ensure that the hours of operation are restricted to between 06:00 and 21:00 in order to limit the impact of vehicles traveling passed nearby properties.
10. Any light pollution from the headlights of vehicles passing properties would be very modest given the distance of the properties from the carriageway. I do

not find that the level of light pollution associated with the increase in vehicular movements to be so great as to unacceptably affect the sleep or general living conditions of neighbouring occupiers. Similarly, although there are a limited number of passing places along Green Lane and Sealwood Lane, I do not find the number to be so low as to unduly affect the living conditions of neighbouring occupiers.

11. Given its location on a public right of way and at a walkable distance between two settlements, it is possible that some clients may walk to and from the gym. However, I cannot be certain of how many, if any, clients would regularly walk to the gym. Given the nature of the road and the lack of street lighting along the whole route I find that, particularly during the hours of darkness and inclement weather, clients would be disinclined to walk. Similarly, although clients may car share, this may again be an irregular occurrence. Therefore, in my considerations above I have assumed all 10 clients driving separately.
12. By way of the scale of the development and the existing background noise levels, the increase in noise levels associated with the gym is not detrimental to the living conditions of neighbouring occupiers. The development therefore complies with Policies BNE1, INF2 and E7 of the South Derbyshire Local Plan Part 1 which, amongst other matters, require developments to not have any undue adverse or detrimental impacts on the amenity of nearby occupiers.

Other Matters

13. I note the concerns raised by local residents as to the safety of the road network and the impact of the development on this safety. Green Lane and Sealwood Lane are narrow roads which, for the most part, only allow a single vehicle to pass at any one time. However, during my observations on site I noted a number of opportunities for vehicles to pass where the carriageway widens. I find that these would be sufficient to allow the safe flow of traffic along both roads and to accommodate the increase in traffic levels associated with the development. Although there are concerns about road speeds, I consider that motorists would drive at a speed safe for the context of the road up to the 30mph limit that covers the relevant parts of both lanes. I note that the Highway Authority have also found that there is no highway safety harm stemming from the development.

Conditions

14. I have had regard to the conditions suggested by the Council and the advice on planning conditions set out by the Framework and the Planning Practice Guidance. In the interests of clarity and enforceability, I have made some changes to the wording.
15. As the development has already commenced, it would not be necessary to set out the timescale for the commencement of development. However, a condition is necessary, for certainty and enforceability, requiring that the development is carried out in accordance with the approved plans.
16. Given the lack of any on-street parking within the surrounding area it is necessary to attach a condition requiring that parking is provided and retained for the use of clients at the gym. This would ensure that the safety and useability of Sealwood Lane is protected.

17. As I have found that daytime vehicle movements associated with gym do not cause any unacceptable living conditions impacts, restricting the hours of operation during the day would be unnecessary. However, to ensure that the living conditions of neighbouring occupiers are protected overnight, it is necessary to attach a condition restricting the hours of operation to 06:00-21:00 during the week. As people are often not up as early on a weekend I find a smaller window, between 08:00 and 21:00 would be more appropriate for Saturdays. As background noise levels would be even lower on Sunday, and lacking any substantive evidence to the contrary, I find that it is necessary to restrict operations completely on this day. In the interest of living conditions and highway safety, it would also be necessary to restrict the number of clients on site at any one time.
18. It is likely that any voices and music amplified outside of the gym building would be audible from nearby residential properties and their gardens. Similarly, during the quieter hours of the morning, I find that non-amplified voices and music would also be audible from these properties given the lower background noise levels. However, given the nature of the gym building, the use of amplification within it would not be audible from neighbouring properties. Therefore, whilst I consider it would be necessary to control the operation of amplified noises and the operation of sessions outside, I have altered the condition from that suggested by the Council.
19. The Environmental Health team have suggested a condition be applied requiring the submission of a Noise Management Scheme. However, I do not find this would be necessary given the scale of the development and its distance from the nearest residential properties.

Conclusion

20. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

Samuel Watson

INSPECTOR