



Appeal Decision

Site visit made on 16 January 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2024

Appeal Ref: APP/H5390/W/23/3327144 24-32 Vanston Place, Fulham SW6 1AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 JM Fitness Enterprises Limited against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The application Ref 2022/02875/VAR, dated 5 October 2022, was refused by notice dated 12 April 2023.
 - The application sought planning permission for change of use of the ground floor at 24-32 Vanston Place from Use Class A3 (restaurant and café) to flexible Use Class D2 (assembly and leisure) and A3 (restaurants and café); alterations to the front elevation and installation of new plant within existing roof top plant area without complying with conditions attached to planning permission Ref 2019/03581/FUL, dated 27 January 2020.
 - The condition in dispute is No 3 which states that: "No customers shall be on the premises in connection with the D2 use hereby permitted during the hours of 21:00-07:00 Mondays to Fridays, or during the hours of 16:00-07:00 on Saturdays, Sundays or bank holidays. No customers shall be on the premises in connection with the A3 use hereby permitted during the hours of 23:00-7:00 Mondays to Saturday, or during the hours of 23:00-08:00 on Sundays or bank holidays."
 - The reason given for the condition is: "To ensure that the amenity of occupiers of the development site/surrounding premises is not adversely affected by noise from activities or people at or leaving the site, in accordance with Policies TLC5 and CC11 of the Local Plan (2018)".
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the ground floor at 24-32 Vanston Place from Use Class A3 (restaurant and café) to flexible Use Class D2 (assembly and leisure) and A3 (restaurants and café); alterations to the front elevation and installation of new plant within existing roof top plant area at 24-32 Vanston Place, Fulham SW6 1AX in accordance with the application Ref 2022/02875/VAR, dated 5 October 2022, without compliance with condition Nos 1 to 15 previously imposed on planning permission Ref 2019/03581/FUL dated 27/01/2020 and subject to the conditions in the schedule at the end of this decision.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated in December 2023, during the course of this appeal. However, insofar as the contents are relevant to this appeal, the Framework has not changed.

Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to comment on the new Framework.

3. Following changes to the Town and Country Planning (Use Classes) Order 1987 introduced on 1 September 2020¹, the former A3 and D2 Use Classes now fall within Use Class E (Commercial, Business and Service). The description in the original permission in this appeal cannot be changed. However, although the wording of the description of development is out of date in this respect, this does not affect my consideration of the proposal to vary conditions.
4. The application that is the subject of this appeal sought to vary condition No 4 of planning permission Ref 2019/03581/FUL, as well as the disputed condition No 3. The Council raised no concern with the proposed variation to condition No 4 and, on the evidence before me, I see no reason to disagree.

Background and Main Issue

5. There is a gym trading at the appeal site. The Council granted two planning permissions² allowing a fitness gym to operate from the site from 0600, seven days a week. The first was granted for a temporary period of 18 months and the second extended this for a further 18-month period, which has since elapsed. These permissions were subject to conditions requiring testing of noise impacts following the installation of sound insulation measures.
6. Permission Ref 2019/03581/FUL is permanent and includes condition Nos 7 and 8 requiring testing of noise impacts. Both these conditions were discharged in August 2022, following submission of noise survey data.
7. The appellant wishes to extend the opening hours of the gym from those originally imposed on it under permission Ref 2019/03581/FUL. The proposed opening hours are between 0600 and 2100 Mondays to Fridays and between 0600 and 1600 on Saturdays, Sundays and bank holidays. No change is sought to the opening hours of the permitted restaurant/café use.
8. The Council is concerned the proposed change in opening hours would cause noise disturbance to the occupants of the flats above the gym early in the morning. The main issue in this appeal is therefore the effect of the proposed change in opening hours on the living conditions of neighbouring residents, with particular reference to noise and disturbance.

Reasons

9. The appeal site is in Fulham town centre, which is a busy part of inner London with relatively high levels of activity and traffic during much of the week. There is background noise in the vicinity of the site, from a variety of sources.
10. The fitness activities at the gym include use of exercise equipment and exercise classes with amplified music and speech emitted through several loudspeakers. These activities generate impact noise, structure-borne noise and vibration and can take place on any day of the week and at any time the gym is open.
11. According to the appellant's Noise Impact Assessment by ACA Acoustics dated July 2023 (NIA), a sound level survey carried out in November 2021 and witnessed by a Council Environmental Health Officer demonstrated that music

¹ Via the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

² Ref 2019/02435/FUL dated 25 October 2019; and Ref 2021/00397 dated 6 April 2021.

and operational noise transmission from the gym to the adjoining flats was at least 7dBA below the agreed acceptable level of LAeq 30dB. This level is consistent with guidance in British Standard 8233:2014. There had been iterative testing of noise levels and installation of a music volume limiter prior to this test. The Council discharged condition Nos 7 and 8 based on this survey. I understand that since that survey the loudspeakers in the studio have been changed to reduce low-frequency (bass) sound levels.

12. A subsequent survey in July 2023 found that sound levels inside the gym during a fitness class were around 2dBA lower than at the time of the witnessed survey in November 2021, with bass octave band sound levels set between 3dB and 8dB lower. The NIA concludes that sound transmission into the flats will have reduced to an equivalent degree. The later survey also found no noticeable change in the overall sound level outside the front façade of the fitness studio between the hours 0600 and 0700, taking account of background noise levels in the area and patrons of the gym coming and going. There is no pertinent evidence before me to demonstrate noise levels would be any worse than those set out in the NIA.
13. I accept that many residents would expect to sleep undisturbed between the hours of 0600 and 0700. It has also been put to me that background noise levels are lower at this time of day so noise from the gym would be more noticeable, particularly when residents are attempting to sleep. However, I am persuaded on the evidence summarised above that there would be little material difference in background noise levels at the appeal site between 0600 and 0700.
14. I understand that, since it discharged condition Nos 7 and 8, the Council has received noise complaints about the gym, including about early morning classes. I also note the comments from third parties about the planning application that is the subject of this appeal. Nevertheless, there is little before me to substantiate these concerns or the content, frequency or volume of complaints made to the Council. Moreover, the Council appears to suggest this is a matter for its planning enforcement team to pursue, subject to obtaining sufficient evidence. Consequently, this evidence is not sufficiently compelling to persuade me that a significant adverse impact from noise would result from the proposed change in opening hours, bearing in mind the survey data before me.
15. Taking all this together, I am satisfied that the noise emitted from the fitness studio has been mitigated to reduce adverse impacts with the result that it does not have a significant adverse effect on the health and quality of life of the occupiers of the flats above it. I am also satisfied that there would be no material increase in noise levels from the fitness studio experienced by the occupants of those flats as a result of the proposed earlier opening time.
16. I therefore conclude that the proposed change to opening hours would not have a harmful effect on the living conditions of neighbouring residents, with particular reference to noise and disturbance. Accordingly, I find no conflict with Policies TLC5 and CC11 of the Hammersmith & Fulham Local Plan 2018 (HFLP). These Policies state that, where a leisure use will impact on local amenity, the Council may set an appropriate start time; and they resist noise generating development if it would be liable to materially increase the noise experienced by the occupants of existing noise sensitive uses in the vicinity. I also find no conflict with the Framework, where it states that development

should mitigate and reduce to a minimum adverse impacts resulting from noise and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Other Matters

17. The appeal site is within the Walham Green Conservation Area (CA), which comprises much of Fulham town centre and some nearby residential streets. Parts of the street layout and some of the older buildings in the CA provide a link to the history of the area as a smaller settlement that evolved to become part of the capital city during the 19th and early 20th centuries. These elements and the busy character of the town centre contribute to the significance of the CA as a heritage asset. The proposed variation to opening hours would not materially change the level of activity or noise in this part of the town centre, which is already busy early in the morning. Therefore, the proposal would have a neutral effect on both the character and the appearance of the CA, which would be preserved. Consequently, there would be no harm to the significance of the CA as a designated heritage asset.
18. The terms of the gym operator's lease are a private matter between the relevant parties. Accordingly, this matter has had little material bearing on my assessment of the planning issues in this appeal.
19. Planning permission Ref 2019/03581/FUL allows a restaurant or café to operate from the site. This appeal does not affect that aspect of the permission.

Conditions

20. I have considered the conditions imposed on the original permission and imposed updated conditions to address the matters that remain relevant. I invited comments from the parties about the new conditions in the interests of fairness and have taken these comments into account.
21. Conditions relating to the commencement of development and construction logistics are not necessary as the development has started and is operational. However, I have replaced the previous condition No 4 to specify the approved plans in the interests of certainty.
22. I have updated the conditions referring to Use Classes to reflect the amendments to the Town and Country Planning (Use Classes) Order 1987 that came into effect on 1 September 2020. The condition restricting uses permitted within Use Class E remains necessary because of the specific circumstances of the site and to accord with Policies CC11 and T1 of the HFLP. The condition on opening hours, as amended by this appeal decision, is necessary to protect the living conditions of neighbouring occupiers. I have amended the format of the condition from that used by the Council for clarity.
23. Conditions controlling works to the shopfront are necessary to ensure a satisfactory external appearance, to protect the living conditions of neighbouring occupiers and in the interests of highway safety. A condition requiring on-going compliance with the approved Delivery and Servicing Plan is necessary to protect highway safety.
24. Where pre-commencement conditions were originally imposed and have been discharged, conditions remain necessary to secure the retention and/or maintenance of the approved works or details. I have therefore imposed these

in relation to insulation works, plant and machinery, cycle stands, refuse storage, ventilation systems and boilers.

25. Given the flexibility within the permission for food and drink to operate from the site, a condition requiring approval of odour abatement and extraction equipment remains necessary to protect the living conditions of neighbouring occupiers. The condition I have imposed reflects the wording of condition No 15 in the original decision notice. However, given details would need to be approved by the Council, I have omitted reference to the Council's Planning Guidance Supplementary Planning Document 2018.

Conclusion

26. For the reasons set out above, I conclude the appeal should be allowed.

C Carpenter

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 3037/001.1 Existing ground floor plan; 3037/001.2 Existing elevations; 3037/003.1 Proposed shopfront perspectives; 3037/005.1 Proposed ground floor layout plan; 3037/005.2 Proposed layout plan – Reception; 3037/005.3 Proposed layout plan – Gym; 3037/009 Proposed elevations; 3037/009.1 Shopfront elevations – RHS; 3037/009.2 Shopfront elevations – LHS; 2027/0014 Proposed signage & shopfront section; 4331-01A Proposed mechanical services layout ground floor.
- 2) The premises shall be used for purposes specified within this permission, and for no purpose other than those in Use Class E(d) or E(b) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). The dual use permission can be used flexibly and interchanged.
- 3) The Class E(d) use hereby permitted shall only be open for customers between the following hours:
0600-2100 Mondays to Fridays
0600-1600 Saturdays, Sundays and bank holidays.
The Class E(b) use hereby permitted shall only be open for customers between the following hours:
0700-2300 Mondays to Saturdays
0800-2300 Sundays and bank holidays.

- 4) With the exception of the shopfront, no alterations shall be carried out to the external elevations of the existing building, including the installation of mechanical ventilation plant or equipment, water tank(s), enclosures or other structures, that are not shown on the approved plans, without planning permission first being obtained. Any such changes shall be carried out in accordance with the approved details.
- 5) Notwithstanding condition No 1, the shopfront windows shall not be mirrored, painted or otherwise obscured, and no revolving or intermittently illuminated lights shall be displayed at the premises.
- 6) The approved building sound insulation works implemented prior to use of the development shall thereafter be permanently retained.
- 7) The external sound level emitted from plant, machinery or equipment at the development shall remain lower than the lowest existing background sound level by at least 10dBA to prevent any adverse impact. Any assessment shall be made in accordance with BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity.
- 8) The cycle stands as approved shall be permanently retained.
- 9) The refuse storage, including provision for the storage of recyclable materials, as approved shall be permanently retained.
- 10) The mechanical ventilation system as approved shall be permanently retained and maintained. The maintenance and cleaning of the systems shall be undertaken regularly in accordance with the manufacturer specifications and shall be the responsibility of the primary owner of the property.
- 11) The Ultra-Low NOx Gas fired boilers as approved shall be permanently retained and maintained.
- 12) The development hereby permitted shall be implemented in accordance with the approved Delivery and Servicing Plan. The measures/scheme shall be thereafter permanently complied with and maintained in line with the agreed Plan.
- 13) Prior to commencement of any Class E(b) use, details shall be submitted to and approved in writing by the Council of the installation, operation and maintenance of the odour abatement equipment and extract system, including the height of the extract duct and vertical discharge outlet. The approved odour abatement equipment and extract system shall be installed prior to commencement of the use and thereafter operated and maintained in accordance with the submitted details for so long as the use continues.