



Appeal Decision

Site visit made on 26 March 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH April 2024

Appeal Ref: APP/H1033/W/23/3327515

58a Surrey Street, Glossop, Derbyshire SK13 7AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Robert Sonczak (Fit Factory Glossop Ltd) against the decision of High Peak Borough Council.
 - The application Ref HPK/2023/0055 was approved on 11 July 2023 and planning permission was granted subject to conditions.
 - The development permitted is Retrospective change of Use from F1(a) - Industrial training facility to E(d) Gymnasium.
 - The condition in dispute is No 2 which states that:
Notwithstanding the details submitted on the Application Form, the use of the building as a gymnasium shall only be carried out strictly within the following times:
07:00 – 21:00 Monday – Friday
09:00 – 15:00 Saturdays & Sundays
 - The reason given for the condition is:
In the interests of preserving residential and public amenity in accordance with Policies EQ6 and EQ10 of the High Peak Local Plan 2016 and relevant paragraphs under Chapter 12 of the NPPF.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission has been granted for the change of use of the appeal property to a gymnasium. Condition 2 imposed on the permission prevents the use of the building as a gymnasium before 07:00 Monday to Friday. The appellant objects to this condition and seeks its amendment to allow the use to commence at 06:00 on those days. The main issue is the effect that such a change would have on the living conditions of the occupiers of nearby dwellings, with particular reference to noise and disturbance.

Reasons

3. A number of representations objecting to the change of use were made at both planning application stage and during the course of this appeal. As the use was operating prior to the submission of the planning application, its effects would have been apparent before a decision was made. It would appear that the use from 06:00 on weekdays has continued subsequent to the granting of the planning permission. The representations are consistent in terms of setting out the impact that arises from early morning opening, given the close proximity of the dwellings to the appeal site. This includes reference to noise from the

- activities taking place in the building and from vehicles and people arriving at the site.
4. There is a condition imposed on the planning permission which restricts noise levels from sound (including music) attributable to any sound-amplifying equipment, loudspeaker and public address system utilised within the premises. Its requirements could be extended to cover the period between 06:00 and 07:00 and the appellant states that they would be amenable to reducing the permitted noise level further and to having no music on until 07:00. The enforcing of that condition should allow for any noise emanating from the building to be restricted to a level that would not cause harm to the living conditions of the occupiers of the nearest residential dwellings. However, the condition would not control noise generated by vehicles and people arriving at the site.
 5. An opening time of 06:00 means there is potential for classes to begin at, or around, that time, in addition to people arriving at the premises just to use the gym. Indeed, the appellant states that classes would start at 06:00. It is likely that people would seek to arrive at the site in advance of this time. The justification put forward by the appellant alludes to there being a demand for opening at this time as it allows people to attend before work. The proposed change to the permitted hour of opening would therefore result in people arriving at the site around or before 06:00. Given the size of the facility and the suggested demand, this could entail the arrival of a substantial number of people via vehicle at the same or a very similar time, and there is nothing before me to suggest that this would not regularly be the case.
 6. The parking area is located between the appeal building and Surrey Street. On the opposite side of the street there is a terrace of dwellinghouses whose front elevations face onto the road. Whilst there is a high wall on the frontage of the appeal site, there are windows at first floor level on the dwellings which are likely to serve habitable rooms such as bedrooms. The wall would do little to attenuate noise reaching those rooms. The collective noise from a number of vehicles and people arriving at the same or a very similar time, at an early hour in the morning when the surrounding noise environment is likely to be quieter and when there is an expectation that many people would be asleep, would lead to disturbance.
 7. This would include noise from the movement and manoeuvring of the vehicles themselves, noise from the closing of car doors and noise from people talking. It is probable that this noise would be audible in those rooms of the dwellings that face onto Surrey Street, in particular in the warmer months when windows are more likely to be open. This would not be controlled by the existing sound level condition that is on the planning permission, and indeed I cannot see that it would be reasonably possible to prevent such noise via a planning condition. Such noise at an early hour would result in significant harm to the living conditions of the occupiers of those dwellings.
 8. My attention has been drawn to other gyms in Glossop where it is said that opening is permitted from 06:00 or earlier. The appellant contends that all of the gyms referred to are similar in terms of their relationship to housing. However, I do not have specific details of those gyms before me or any details of the factors that might have been up for consideration during the course of any planning application that was needed in order for them to operate. And in

any event, the opening hours of those other gyms would not justify my permitting of a change in the hour of opening at the appeal premises when I have found that to do so would result in harm.

9. In conclusion, the proposed variation to the weekday opening hour would result in harm to the living conditions of the occupiers of nearby dwellings from noise and disturbance. The proposed variation put forward by the appellant would therefore fail to accord with Policies EQ6 and EQ10 of the High Peak Local Plan 2016 which seek to protect living conditions. It would also conflict with the aims of the National Planning Policy Framework (the Framework) in the same respect. The condition is therefore reasonable and necessary to safeguard living conditions, and I am satisfied that it accords with the 6 tests set out in paragraph 56 of the Framework.

Other Matters

10. The appellant sets out that the extra hour of opening makes a huge financial impact on their ability to compete with other facilities in the area. It is suggested that many members will leave and join another gym if it is not permitted. However, there is nothing substantive before me to show that the viability of the business would be at risk if the appeal is not successful. Therefore, whilst there would be some economic benefit from the extra hour of opening and this carries weight in its favour, this consideration does not justify the harm that would be caused to the living conditions of the occupiers of nearby dwellings.
11. Interested parties have raised other matters relating to the operation of the business. However, the matter before me relates only to the appellant's appeal against the weekday opening hour. Therefore, I have confined my consideration of the appeal to that issue.

Conclusion

12. For the reasons given above, the appeal should be dismissed.

Graham Wraight

INSPECTOR