



Appeal Decision

Site visit made on 4 April 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH APRIL 2024

Appeal Ref: APP/A2335/C/23/3331473

Land at Forgewood Cottage, Low Road, Halton, Lancaster, Lancashire LA2 6PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr A Shaw against an enforcement notice issued by Lancaster City Council.
 - The enforcement notice was issued on 14 September 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a mixed use of residential (C3) and the use of the garage and outside areas as a fitness/training facility for commercial purposes.
 - The requirements of the notice are to cease the use of the garage and outside areas as a fitness/training facility for commercial purposes.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at Forgewood Cottage, Low Road, Halton, Lancaster, Lancashire, LA2 6PA, as shown on the plan attached to the notice, for the material change of use of the land to a mixed use of residential (C3) and the use of the garage and outside areas as a fitness/training facility for commercial purposes subject to the following conditions: -
 - 1) In respect of the approved fitness/training facility, a maximum of five clients shall be on the land at any one time.
 - 2) The approved fitness/training facility shall operate no more than 18.5 hours per week.
 - 3) Unless within 1 month of the date of this decision a scheme for the provision of five car parking spaces for the approved fitness/training facility and improvements to vehicular access sightlines, has been submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site as a fitness/training facility shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the site as a fitness/training facility shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained/retained as approved.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

4) The fitness/training facility hereby approved shall be run/operated only by a residential occupier of Forgewood Cottage and/or a family member connected with an occupier of Forgewood Cottage. The fitness/training facility building hereby approved shall not be occupied, sold, disposed of, or otherwise let, as a separate unit, or run/operated by any other individual other than as detailed above.

5) No retail sales shall be undertaken from any part of the building(s) or any part of the site to which this permission relates.

Procedural Matter

2. The National Planning Policy Framework was amended on 19 December 2023 (the Framework). However, it has not been necessary for me to seek comments from the main parties about the implications of the updated Framework. This is because there are no material changes in respect of the deemed planning application main issue below.

Reasons

Ground (c) appeal

3. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.
4. The claim made by the appellant is that when the notice was issued, use of the garage and outside areas as a fitness/training facility was incidental to the primary use of the land at Forgewood Cottage as a dwellinghouse. Section 55 (2) (d) of the Act states that the '*use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such*' shall not be taken for the purposes of this Act to involve development of the land. The appellant therefore considers that the breach of planning control does not amount to development requiring planning permission.
5. The evidence is that when the fitness/training facility was first established in 2019, it was being operated from a garage on the land (approximately 34 square metres) by the appellant who is the son of the occupiers of Forgewood Cottage. At this time, the evidence is that the appellant was living with his parents at Forgewood Cottage. The training sessions were run solely by the appellant, and he had no staff. He had 18 clients, worked five days per week and the hours worked each day ranged from two to five hours. Training

sessions were either on a one-to-one basis or up to a maximum of five in a group on the land at any one time ranging in duration from 45 minutes to 1 hour and 15 minutes.

6. The appellant states that since May 2023, and hence prior to the notice being issued, the activity has been scaled back *'in a bid to remedy the breach. This offer/remedy, which allows for 14 sessions across a 4-day week, has been tabled to the planning authority'*. There is no suggestion that the business changed in any other way relative to the 2019 fitness/training facility. However, the evidence is that the appellant no longer lives at Forgewood Cottage, albeit that he still lives in the local area. The evidence is not entirely clear in terms of when the appellant moved out of Forgewood Cottage to a residence elsewhere.
7. It is necessary that I consider the ground (c) appeal based on the fitness/training facility that was being undertaken when the notice was issued. For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. In addition, for it to be demonstrated that the training/fitness use is incidental to the primary use of the land as a dwellinghouse (i.e., Forgewood Cottage) it should be functionally related to that primary use.
8. On the evidence that is before me, I find that the land comprises two separate areas which are occupied for different and unrelated purposes. The evidence is that when the notice was issued, the training/fitness centre was not being used for a functionally related residential use as part and parcel of use of Forgewood Cottage as a dwellinghouse.
9. The appellant may or may not have lived in the dwellinghouse at this time, but this is not a determinative matter. Indeed, the evidence is that different members of the public, unconnected with the occupation of Forgewood Cottage, visited the training/fitness centre from one day/week to the next. The evidence demonstrates that the appellant runs the training/fitness facility as a business and a significant number of clients do visit the property each day/week.
10. Whether I consider the 2019 or the May 2023 fitness/training activity, or indeed whether I factor in the appellant living in Forgewood Cottage or not, I find, as a matter of fact and degree, that owing to the number of visitors to the training/fitness centre, and associated comings and goings, the breach of planning control has significantly changed the character of the activity on the land from what has gone on previously.
11. I therefore conclude that use of the garage and outside areas as a fitness/training facility, in respect of the details outlined above, is not incidental to the use of Forgewood Cottage as a dwellinghouse. I find that the breach of planning control has resulted in a mixed-use planning unit. A material change of use of the land has taken place which constitutes development for which there is a need for planning permission.
12. For the above reasons, I conclude that the ground (c) appeal fails.

Ground (a) appeal and the deemed planning application

13. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issue is whether the fitness/training facility is in a sustainable location having regard to local and national planning policies.
14. The appeal site falls outside the defined settlement of Halton. It is nonetheless within convenient walking distance of the settlement, albeit that pedestrians would have to cross Low Road to reach the footpath. Halton is identified in the development plan for the area as being a '*sustainable settlement*'. The local planning authority (LPA) does not consider that the fitness/training facility is a main town centre use. I have no reason to disagree with this conclusion noting that the definition of a main town centre use in the Framework relates to '*more intensive sport and recreation uses*.' The scale and intensity of the fitness/training facility is such that I do not find that it is a main town centre use. Consequently, policy DM16 of the Local Plan for Lancaster District – Part Two (2011-2031): Review of the Development Management DPD (LP) is of no relevance.
15. Policy DM15 of the LP states that the Council will support the creation of '*small businesses*' within the district subject to one of three criteria being met. Criterion iii states that small businesses will be supported if '*the proposal is for the conversion or re-use of suitable existing buildings in accordance with all other relevant policies within this document*'.
16. There is no suggestion from the LPA that the garage is not a suitable building for use as a training/fitness centre. I was able to view the building as part of my site visit and find that it is suitable for the use. Policy DM15 does not define what is a '*small business*.' In my judgement and based on the number and frequency of clients visiting the fitness/training facility, the breach of planning control does amount to the creation of a '*small business*'. In respect of this policy, it does not specifically exclude small businesses in areas outside of settlements. Indeed, and while not policy, the reasoned justification to policy DM15 states, at paragraph 5.15, '*policy DM15 will seek to encourage the sustainable growth of new business and emerging economic sectors in both urban and rural locations*.'
17. Policy DM60 of the LP states that the Council will '*seek to ensure that development proposals, particularly those that will generate significant footfall and motorised vehicle journeys, are located where sustainable travel patterns can be achieved*'. In this case, I do not consider that the fitness/training facility is at a scale which can reasonably be said to generate significant footfall and motorised journeys in policy DM60 terms. The appellant has confirmed his willingness to restrict hours of opening for the training/fitness centre to no more than 18.5 hours per week. I recognise that without the imposition of a condition to control the number of clients that could be on the site at any one time and the number of hours that it is open per week, there is potential for the fitness/training facility to move into the category of '*significant*' in policy DM60 terms. The appellant has indicated his agreement to the imposition of several conditions, and, in this respect, I am satisfied that the fitness/training facility would not generate significant footfall and motorised journeys.

18. In addition to the above, I do not doubt the appellant's evidence that most of his clients come from settlements which are very close to the appeal site. This includes Halton. The LPA does not dispute that many arrive on foot, by bicycle, car share or jog to the site. The evidence is that there are no other facilities of this kind within the immediate local area (including Halton). Hence, without the facility it is likely that many would have to travel much further afield. In this context, I consider that it is likely that more would seek to make use of a private motor vehicle. In other words, the appeal facility has the potential, overall, to reduce or minimise the number and length of private motorised trips from a health and fitness point of view.
19. I note the comments made by the LPA that those arriving on foot would have to cross Low Road, where a 60mph speed limit is in force. However, and noting that my site visit was only a snapshot in time, I find that subject to the imposition of a condition relating to improved vehicular sightlines and owing to the modest frequency of vehicles passing the site, the development would not have an unacceptable impact on highway or pedestrian safety.
20. In the context of the above, I am satisfied that the training/fitness facility is in an area where sustainable travel patterns can be achieved. In reaching this finding, I have also had regard to paragraph 109 of the Framework which states that '*opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making*' and that '*significant development should be focussed on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes*'. In this case, and subject to conditional control, I do not find that the training/fitness facility would constitute significant development.
21. The training/fitness facility was separately and recently considered by the LPA in respect of the submission of a retrospective planning application¹. While planning permission was refused, neither the LPA nor the Highway Authority raised any objection to the fitness/training facility in highway safety terms, subject to improving vehicular access sightlines at the entrance to the site and the provision of five dedicated car parking spaces for the training/fitness facility. I do not disagree with the conclusions reached about these matters and it is noteworthy that the appellant agrees to the imposition of a condition relating to these matters. In this regard, I do not find any conflict with the highway safety or car parking requirements of policies DM60 or DM29 of the LP, or the Framework.
22. Furthermore, I am satisfied that subject to a condition which ensures that the fitness/training facility is only run/operated by either an occupier of Forgewood Cottage or an associated family member, and is not let or sold off as a separate unit from Forgewood Cottage, coupled with restrictions relating to the maximum number of clients that can be on the land at any one time and maximum operating hours per week, the fitness/training facility would not cause harm to the living conditions of the occupiers of Forgewood Cottage from a noise or disturbance point of view. In addition, with such controls in place, and factoring in the location of the land and its relationship with other residential properties, harm would not be caused to the living conditions of the occupiers of any nearby neighbouring properties.

¹ Planning application ref No 22/01216/FUL refused on 4 August 2023

23. In conclusion, I find that subject to the imposition of the conditions detailed below, the fitness/training facility is sustainably located. In this regard, the breach of planning control does not conflict with the sustainable development requirements of policies DM15, DM29 and DM60 the LP, or the Framework. I therefore conclude that the ground (a) appeal succeeds.

Ground (a) appeal conditions

24. In the interests of highway safety, and to ensure that dedicated car parking is provided on site to minimise the potential for car parking on Low Road in the interests of the free flow of traffic, it is necessary to impose a condition relating to the approval of a scheme for the provision of safe vehicular sightlines at the site access and on-site car parking.
25. In the interests of the living conditions of the occupiers of Forgewood Cottage, it is necessary to impose a condition relating to the maximum number of fitness/training facility clients that can be on the site at any one time (i.e., no more than five) and to restrict the hours that the training/fitness centre operates each week to no more than 18.5 hours. These conditions are also necessary to ensure compliance with policies DM15 and DM60 of the LP.
26. The Council has suggested the imposition of a condition which permits operation of the building by only an occupier(s) of Forgewood Cottage. This level of additional control is necessary to reasonably safeguard the living conditions of the occupiers of Forgewood Cottage from a noise and disturbance point of view. However, the evidence indicates that while the person running the training/fitness facility is related to the owner(s) of Forgewood cottage (i.e., the son), he now lives away from the site. I have therefore amended the wording of the Council's suggested condition so that it permits operation of the fitness/training facility by either a residential occupier of Forgewood Cottage, or by a family member who may live away from the site. This condition has been agreed by the main parties.
27. The Council has suggested an hours of use condition for the fitness/training facility. I have considered the representations made by the appellant about the imposition of such a condition. Subject to a condition which restricts the maximum number of fitness/training facility clients that can be on the land at any one time, coupled with conditions restricting the hours of operation each week and ensuring that the fitness/training facility is only run/operated by a residential occupier of Forgewood Cottage and/or a family member connected with an occupier of Forgewood Cottage, I do not consider that it is necessary to impose the Council's suggested hours of opening condition. In other words, the other imposed conditions ensure that the living conditions of the occupiers of Forgewood Cottage are suitably protected.
28. To ensure that the proposal is acceptable in terms of the Council's development plan strategy for the area, it is necessary to impose a condition prohibiting retail sales from the site.
29. I note that when the LPA considered a planning application for the same training/fitness facility on the site, it raised a concern about the enforceability of some of the conditions. I am satisfied that all the imposed conditions would be enforceable. In fact, all the conditions meet the tests as laid out in paragraph 56 of the Framework.

Conclusion

30. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeals made on grounds (f) and (g) do not therefore need to be considered.

D Hartley

INSPECTOR