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## Appeal Decisions

Site visit made on 5 August 2024

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 23 August 2024**

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### **Appeal A Ref: APP/A0665/C/23/3334057**

#### **157 Hermitage Road, Saughall, Chester, Cheshire CH1 6AF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr David Bell against an enforcement notice issued by Cheshire West and Chester Council.
- The notice was issued on 7 November 2023.
- The breach of planning control as alleged in the notice is without planning permission a material change of use of the Land from a domestic garage to use as a commercial gym / fitness and well being studio ["the Unauthorised Development"].
- The requirements of the notice are to:
  - i. Cease the use of the garage as a commercial gym / fitness and well being studio.
- The period for compliance with the requirement is one month.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). 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.

**Summary of Decision: The appeal is dismissed, the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.**

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### **Appeal B Ref: APP/A0665/W/23/3331875**

#### **157 Hermitage Road, Saughall, Chester, Cheshire West and Chester CH1 6AF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr D Bell against the decision of Cheshire West and Chester Council.
- The application Ref is 22/03455/FUL.
- The development proposed is the use of outbuilding as fitness and well being studio.

**Summary of Decision: The appeal is dismissed.**

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### **Appeal A – The Notice**

1. Regardless of the outcome of the appeal, I have a duty to get the enforcement notice (the notice) in order. The allegation set out in paragraph 3 of the notice states '...a material change of use of the Land from a domestic garage to use as a commercial gym/fitness and well being studio...'. However, the red edged area on the plan attached to the notice encompasses the entirety of 157 Hermitage Road, including the dwelling and garden. As such, there is a mixed use taking place on the Land, comprising the commercial gym/fitness and well being studio and the residential use. The notice is defective in that respect.
2. Therefore, I shall correct the allegation to read 'Without planning permission a material change of use of the Land from a residential use to a mixed use

comprising a commercial gym/fitness and well being studio and residential use' as this correctly identifies the use of the site. As a consequence of this correction, the requirement of the notice also needs to be corrected to reflect the allegation.

3. The parties raise no objection to this proposed correction. As it is only the commercial gym/fitness and well being studio component of the mixed use that the Council seek to enforcement against, I am satisfied no injustice would be caused to any parties in making these corrections.

### **Appeal A - The ground (a) appeal and the deemed planning application; and Appeal B**

#### *Main Issues*

4. The main issues are the effect of the development on:
  - the vitality and viability of existing designated town centres; and
  - the living conditions of the occupants of neighbouring residential properties, with particular regard to noise and disturbance;

#### *Location*

5. The appeal site is located within an enclave of residential properties just outside the settlement of Saughall. The site is within the open countryside as defined in the Cheshire West and Chester Local Plan (Part One) 2015 (LP1).
6. The appeal building comprises a modest sized, single-storey outbuilding located to the rear of the garden of 157 Hermitage Road. Vehicular access is via a shared driveway with No 157, through a gate directly off Apsen Grove. Attached to the gym is a bar room used in connection with No 157. A door links the two rooms.
7. Policy ECON 2 of the LP1 sets out a sequential approach for proposals for town centre uses to ensure the long-term vitality and viability of the borough's town centres. Town centre uses should be located in town centres and then in edge of centre locations and only if suitable sites are not available will out of centre sites be considered.
8. The appellant describes the use as a fitness and wellbeing studio and states it is not a commercial gym. Nevertheless, the room where the use takes place contains numerous equipment one would typically find in a gym, including free weights, weightlifting machines and a treadmill. The personal training sessions that take place unarguably involve exercising as one would in a gym. Given the nature and amount of training equipment, it is reasonable to conclude that the exercise and training will be quite intensive when the sessions are taking place. I accept that the use does not operate in the same way as a conventional gym does, in that it is by appointment only and involves personal training. However, I nevertheless find that it falls within the 'more intensive sport and recreation uses...(including...health and fitness)' use category of town centre uses as defined in the explanatory note to Policy ECON 2 and in the Glossary to the National Planning Policy Framework (the Framework). Neither of these definitions refer to the scale of the use.
9. There is no evidence to indicate why it would not be practical or viable to locate the use in a town centre. I acknowledge the appellant lives on the site and

utilising an existing outbuilding would have been a financially preferable option to renting/purchasing a property in a town centre. However, these personal circumstances are irrelevant in the application of the sequential approach. If there happened to be a small, vacant unit in a town centre that could accommodate the use, in the event I allow the appeal the unit would remain vacant and therefore have a harmful effect on the vitality and viability of the town centre.

10. I note the argument made that nearby houses and garages, including a recent residential development<sup>1</sup>, do not require a countryside location. However, Policy ECON 2 relates to town centre uses. Residential uses do not fail within the main town centre uses as defined in the development plan nor the Framework. Accordingly, I give no weight to this argument.
11. Notwithstanding the above, paragraph 93 of the Framework states that the sequential approach should not be applied to applications for small scale rural offices or other small scale rural development. Therefore, there is a significant inconsistency between Policy ECON 2, which requires all town centre uses to undertake the sequential test, and the Framework. The site lies within the countryside as defined in the development plan and given the character of the area it is reasonable to conclude that it is a rural location. The Council consider Policy R1 of the Cheshire West and Chester Local Plan (Part Two) 2019 (LP2), a policy titled 'Development in the rural area', to be relevant to the proposal. Therefore, it is reasonable to conclude the Council also consider the site is within a rural location.
12. In addition, the scale of the use is limited by the small size of the appeal building. As such, I consider the development is a small scale rural development and therefore, in accordance with the Framework, the sequential test in Policy ECON 2 should not be applied. Given the LP1 is significantly older than the latest revision of the Framework, which is the most up-to-date reflection of national planning policy, I attribute limited weight to the conflict with Policy ECON 2.
13. Policies STRAT 2 and STRAT 8 of the LP1 supports new development at local service centres. Policy R1 of the LP2 identifies Saughall as a local service centre. The appeal site is located in the countryside, outside of this local service centre. Nevertheless, Policy STRAT 9 of the LP2 allows certain forms of development in the countryside, one of which is that it must have an operational need for a countryside location. Based on the evidence before me, it has not been demonstrated there is a need for the use to be in a countryside location. Nevertheless, another limitation is the reuse of a rural building, particularly for economic purposes. I have not been provided with a definition of what a 'rural building' is for the purposes of Policy STRAT 9. Taking a logical and rational approach, it is reasonable to consider that it simply means a building in a rural location. On this basis, the development falls within this as it involves the material change of use of an existing building in a rural location for economic purposes, ie a business. Accordingly, it satisfies the requirements of Policy STRAT 9.
14. In terms of the accessibility of the site, it is within close proximity of a bus stop that provides direct access to Blacon and Chester. The Council confirms this is a limited bus service. Nevertheless, given the distance of the site from the

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<sup>1</sup> Council ref: 18/00756/FUL

nearest settlements of Saughall and Blacon, including a large number of dwellings in between located on Hermitage Road, walking is a reasonably realistic alternative to the use of a private car. The use of a bicycle to access the site is also reasonably realistic. Therefore, it is reasonable to conclude that the site is accessible by alternative modes of transport to the private car. Consequently, in this respect, it would accord with Policy STRAT 1 of the LP1, which seeks to 'Provide for mixed-use developments which seek to provide access to homes, employment, retail, leisure, sport and other facilities, promoting healthy and inclusive communities whilst reducing the need to travel.'

15. Policy SOC 5 of the LP1 supports new development that provides health facilities, including supporting improved links to healthcare in rural areas. The development would clearly comply with this policy, providing a healthcare facility in a rural location.
16. I find therefore, the development would not conflict with Policies STRAT 1, STRAT 2, STRAT 8, STRAT 9 and SOC 5 of the LP1 nor Policy R1 of the LP2. However, in failing to apply the sequential test, it has not been demonstrated that it would not have an unacceptable harmful effect on the vitality and viability of designated town centres. As such, it would fail to comply with Policy ECON 2 of the LP1.
17. In their reasons for refusal of planning permission and issuing the enforcement notice, the Council cite Policy ECON 3 of the LP1, which relates to the visitor economy. Given the nature of the use in that it operates on an appointment basis only and it is of a small scale, I do not consider that it materially contributes to the visitor economy, even if it was located in a town centre. Accordingly, I do not consider this policy is relevant to the appeal development.

#### *Noise and Disturbance*

18. Aspen Grove is a residential cul-de-sac with properties lining either side in a linear pattern. The relatively few dwellings served by the road and its rural location provides a pleasant, peaceful, suburban residential setting.
19. The appellant contends that the personal training is carried out on a 1-2-1 basis. However, monitoring records provided by the Council indicate that the use has operated on a 1-2-2 and 1-2-3 basis with the sessions generally being in the early morning, from as early as 0600 hours, or in the evening, up to 2030 hours. The appellant does not dispute these records.
20. Customers arriving so early in the morning will likely arrive by private car. Given the peaceful nature of the residential road, neighbouring residents would be particularly sensitive to noise in the early hours of the morning and in the late evening. Car engines running when parking or engines starting when leaving; car doors closing; and people conversing outside on arrival or when leaving would all likely be perceptible to neighbouring residents, particularly those in 2 Aspen Grove, as they are very close to the appeal building. I note that customers generally park on the roadside, outside neighbouring residents' properties, rather than within the appeal site. The activities above are therefore not contained to the appeal site but spread out along the road.
21. Moreover, the use of the exercise equipment and instructors giving instructions, as well as people conversing inside the building would also likely

be perceptible to neighbouring residents, resulting in them being awoken early in the morning by the noise. Given that there could be up to three customers in addition to the instructor, the noise and disturbance generated would have a significantly harmful effect on the neighbouring residents, likely disturbing their sleep during hours when they should reasonably expect peace and quiet in such a peaceful, residential area.

22. I note the appellant's willingness to insulate the building to limit noise emanating from the activities carried out within it. However, particularly during warm weather, it is reasonable to conclude that windows and doors would be opened to provide suitable ventilation, which would negate the effectiveness of the insulation.
23. I have had regard to the imposition of appropriately worded conditions to alleviate these concerns. Suitable glazing could be provided to insulate the building to reduce the noise emanating from it. Amplified music could also be restricted. However, I am not satisfied that a condition restricting the opening and closing of the windows and doors would be enforceable. The door would need to be opened to allow access/egress and therefore such a condition would be constantly breached. Once opened, sound would escape from the building and likely cause harm to neighbouring residents, by way of noise and disturbance. Moreover, as I have referred to above, during warm weather, there would likely be significant temptation to open the windows and doors to cool the room down. This would likely be compounded by the installation of double-glazed windows as the room would become better heat, not just sound, insulated.
24. A condition could restrict the hours the use operates to ensure it only operates during sociable hours. It is suggested the hours of operation could be 0800 hours to 2000 hours Monday to Friday (excluding Bank Holidays). The start time of 0800 hours is considered to be a reasonable, sociable time. However, given the peaceful, residential setting and the proximity of 2 Aspen Grove to the appeal building, the comings and goings of customers and noise generated by the use up to 2000 hours would unacceptably disturb the neighbouring residents during the evening at a time when they should expect to enjoy the peace and tranquillity of their own home. I have considered reducing the time the use could operate until. However, on the evidence before me, the use operates on the basis that customers generally attend sessions before and after their '9-5' jobs. Therefore, reducing the closing hours to a sociable hour that would not unduly harm the living conditions of neighbouring residents would likely have an unacceptable effect on the viability of the use. Accordingly, the imposition of such a condition would be unreasonable.
25. I therefore find the development significantly harms the living conditions of the neighbouring residents, with regard to noise and disturbance. This harm could not be sufficiently mitigated through the imposition of conditions. As such, it fails to comply with Policy SOC 5 of the LP1 and Policies DM 2 and DM 30 of the LP2, which amongst other things, seek to ensure development protects residential amenity.

### **The Planning Balance**

26. The development conflicts with Policy ECON 2 of the LP1 as the sequential test has not been carried out and therefore it has not been demonstrated that the development does not harm the vitality and viability of town centres, as set out

in the development plan. However, I have found that Policy ECON 2 is inconsistent with the Framework, with the difference in approach to the application of the sequential test for small scale rural development being considerable. Consequently, the modest conflict with Policy ECON 2 in respect of the vitality and viability of town centres carries only limited weight.

27. Policy ECON 2 of the LP 1 is one of most important policies for determining the appeals as it sets out the sequential test, directing where town centre uses should be focused. Given its considerable inconsistency with the Framework's approach, I consider the policies which are most important for determining the application are out-of-date. Therefore, in accordance with paragraph 11 d)ii of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
28. The development provides benefits in terms of improving the well being and health of its customers and providing a service to a rural area. However, given the scale of the use, I attribute these benefits only modest weight.
29. The modest harm I have found with regard to the vitality and viability of town centres, which is due to the conflict with Policy ECON 2, is attributed only limited weight. However, I have also found harm to the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance. Given the proximity of the appeal building to 2 Aspen Grove and the potential noise and disturbance generated by the comings and goings of customers and by the use itself during unsociable hours on this quiet, peaceful residential road, I attribute this harm significant weight. I find this harm significantly and demonstrably outweighs the benefits.
30. Thus, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The development consequently does not benefit from the presumption in favour of sustainable development. Accordingly, in accordance with paragraph 11d)ii of the Framework, planning permission should not be granted.

### **Conclusion on the Appeal A ground (a) appeal and the deemed planning application; and Appeal B**

31. The proposal conflicts with the development plan as a whole. Furthermore, the Framework indicates that planning permission should not be granted. No other material considerations indicate that my decision should be taken otherwise than in accordance with the development plan.
32. For the reasons given above, having regard to the development plan as a whole and all material considerations, planning permission should not be granted in response to either the ground (a) appeal against the enforcement notice and deemed application, nor to the Section 78 appeal against the refusal of permission. Therefore, Appeal A and Appeal B fail.

### **Formal Decision**

#### *Appeal A*

1. It is directed that the enforcement notice is varied by:

- a) The deletion of paragraph 3 and substituting "Without planning permission a material change of use of the Land from a residential use to a mixed use comprising a commercial gym/fitness and well being studio and residential use".
  - b) The deletion of requirement (i) under paragraph 5 and substituting "Cease the mixed use of the Land comprising commercial gym/fitness and well being studio and residential use by ceasing the use of the garage as a commercial gym/fitness and well being studio"
2. Subject to the corrections, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Appeal B*

3. The appeal is dismissed.

*A Walker*

INSPECTOR