



Appeal Decision

Site visit made on 15 October 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/E5330/W/24/3343692

12-13 Victory Parade, Plumstead Road, Greenwich, Woolwich SE18 6FY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Pure Gym Limited against the decision of the Council of the Royal Borough of Greenwich.
- The application Ref 22/3211/SD sought approval of details pursuant to condition No 8c of a planning permission Ref 21/0798/F granted on 30 July 2021.
- The development proposed is partial change of use from Class A1 (part unit 5) as approved under app ref 15/3372/F dated 23/12/2015 and change of use from A1/A2/A3/A5/B1/D1 (units 6a & 6b) as approved under app ref 11/2382/O dated 09/03/2012 to combine to change to use Class E.
- The details for which approval is sought are in respect of a post completion assessment.

Decision

1. The appeal is allowed at 12-13 Victory Parade, Plumstead Road, Greenwich, Woolwich, SE18 6FY in accordance with the terms of the application, Ref 22/3211/SD and the plans and details submitted with it, so far as relevant to that part of the development hereby permitted.

Background and Main Issues

2. Planning permission 21/0798/F, for change of use of part of unit 5 and units 6a and 6b to a use falling under use Class E, was approved on the 30 July 2021, subject to a number of conditions, including the condition subject of this appeal.

3. Condition 8 on the permission stated: "*a. Prior to commencement of works for uses with class E(d) (gym), a noise and vibration assessment shall be undertaken to demonstrate there will be no adverse impacts on existing noise sensitive receptors. The assessment should address but not limited to:*

Free weights/cardio machines

Group exercises

Airborne noise breakout

Flanking transmission

Impact/structure borne noise transmission

b. Details of the noise and vibration assessment and proposed sound insulation scheme to be implemented between the development and the adjoining premises shall be submitted to and approved by the Local Planning

Authority. The sound insulation scheme shall be designed to ensure that noise from within the building does not cause a disturbance to surrounding occupiers. Sound insulation should be at least 10dB above the Building Regulations requirement.

c. Prior to occupation of the development a post completion assessment shall be submitted to the satisfaction of the local planning authority and shall demonstrate that the noise mitigation measures agreed have been installed. The noise attenuation shall be permanently maintained thereafter."

4. The reason for condition 8 was as follows: *"To ensure that the use is compatible to the site and ensure compliance with Policy D14 of the London Plan (2021), Policies DH(b) and E(a) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (adopted July 2014)."*
5. The details submitted for part a) and part b) of condition 8 were agreed as acceptable by the Council under reference 22/0409/SD on the 6 July 2022, along with details of a number of other conditions. The appeal before me relates to part c) of condition 8.
6. Given the above, the main issues are whether the post completion assessment is satisfactory and whether it demonstrates that the noise mitigation measures agreed have been installed.

Reasons

7. The appeal site is the ground floor of part of 12-13 Victory Parade. At the time of my visit the property was in use as a gym. Above the ground floor are residential flats. I visited the gym and observed the internal layout, gym equipment, studio room and the flooring, which is broadly as indicated on the submitted layout plan. Around the appeal site is a busy mixed use area with commercial units on the ground floors and residential above. Plumstead Road is a busy road with two rows of traffic in each direction.
8. The assessment of the effect of noise from all the listed relevant gym activities was carried out for part a) of condition 8. Mitigation measures, including flooring treatments, to ensure that the dropping of weights would not cause excessive noise disturbance were approved by the Local Planning Authority under part b) of condition 8. These details were reviewed and agreed, as part of the consideration of parts a) and b), by the Council as not adversely affecting existing noise sensitive receptors. Once parts a) and b) have been complied with and approved there is no requirement to submit further details in respect of those matters. Neither is there any requirement to revisit the issue of sound insulation under the terms of condition 8.
9. Part c) of condition 8 is in three parts. The first requires the submission of a post completion assessment to the satisfaction of the Local Planning Authority. The second requires that the assessment demonstrates the agreed noise mitigation measures have been installed. Finally, it, thereafter, needs to be retained.
10. Both main parties have confirmed that the mitigation measures agreed under part b) have been installed and, consequently, the requirement under the second part of c) has been met. Additional mitigation measures have been provided by the appellant in an attempt to overcome the noise complaints that the Council has received. The addition of mitigation measures, over and above

those previously agreed, would not require planning permission and, therefore, would not require the appellant to submit a new application for parts a) and b) of condition 8. Neither would additional mitigation result in a breach of those parts of the planning condition, providing the agreed mitigation measures had not been removed.

11. Although part c) of condition 8 requires the submission of a post completion assessment there is nothing within part c) which defines what should be provided within such a document. Part c) as written does not require a new noise and vibration assessment for the gym equipment, or an assessment of the noise and vibration levels following completion of the mitigation measures. It also does not require demonstration that the noise mitigation measures agreed under parts a) and b) have prevented any noise and disturbance for adjacent residential occupiers.
12. The planning permission is clear and unambiguous, when considered against the Shepway judgment and condition 8 is lawful and reasonable when taking account of the Mixnam's and Newbury judgments referred to by both main parties. However, part c) and specifically the requirement for the post completion assessment to be to the satisfaction of the Local Planning Authority adds a degree of uncertainty and lacks clarity as to what is required of the appellant for this part of condition 8.
13. Even considering the advice set out in the Trump International Golf Club judgment and the DB Symmetry Ltd judgment, it would be unreasonable to suggest that a reasonable reader would reach the conclusion that part c) of the condition requires the submission of a full noise and vibration assessment, as that was covered under part a).
14. Unlike parts a) and b) which clearly set out the nature of the necessary assessment, part c) only requires a post completion assessment. As part c) is written to require the submission of this prior to occupation of the gym it can only have intended to require an assessment that the noise and vibration works approved under parts a) and b) have been completed. However, by the time the details required by part c) were submitted, the Council had received complaints about noise and vibration arising from how the gym was actually operating, that it is now seeking to resolve.
15. Nevertheless, there is nothing within the detail of part c) that would allow the Council to continue to request additional mitigation measures to resolve complaints that should be considered through other means and controls. Moreover, there is nothing in that part of the condition that allows me to revisit the merits of the assessment approved under parts a) and b). In my judgement such an interpretation of the condition would be unreasonable. Furthermore, to require a further noise and vibration assessment under the first clause of part c) would conflict with the requirement under part a) and also risk conflicting with the second part of c), which requires confirmation that the mitigation approved under part b) has been provided.
16. For the above reasons, I find that the details submitted for part c) of condition 8 are acceptable and demonstrate that the noise mitigation measures approved by the Local Planning Authority under parts a) and b) have been installed.

17. As this matter relates to a procedural issue rather than whether the submitted details comply with any relevant Policies in the Royal Greenwich Local Plan Core Strategy with Detailed Policies, adopted July 2014, there is no need for me to assess whether the details submitted for part c) comply with the adopted policies.

Conclusion

18. The appeal is allowed, and the details submitted in pursuant to condition No 8, attached to planning permission reference 21/0798/F, in accordance with the application reference 22/3211/SD and the details submitted with it are approved.

K Townsend

INSPECTOR