

Appeal Decision

Site visit made on 16 September 2014

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 October 2014

Appeal Ref: APP/X5990/A/14/2221933

17-21 Northumberland Avenue, London WC2N 5EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by The Gym Limited against the City of Westminster Council.
 - The application Ref 14/01103/FULL, is dated 6 February 2014.
 - The development proposed is 'change of use of vacant members club (Sui Generis) to health and fitness use (Use Class D2)'.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 30 September 2014.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of the lower ground, ground and mezzanine levels from vacant members club (Sui Generis) to health and fitness use (Use Class D2) at 17-21 Northumberland Avenue, London WC2N 5EA in accordance with the terms of the application, Ref 14/01103/FULL, dated 6 February 2014, subject to the conditions in the schedule attached to this decision.

Procedural Matters and Main Issue

2. It is clear from the application drawings that the appeal proposal relates to lower ground, ground and mezzanine floor levels of 17 to 21 Northumberland Avenue (No 17 to 21), a building with nine floors including its basement/lower ground floor and roof levels. Neither the address nor the description of the proposal set out on the application form identify which parts of the Nos 17 to 21 the proposed use would relate to, however, the description of the proposal used on the appeal form refers to the relevant parts of the building. I have therefore made reference to the floors subject to the proposed change of use in my formal decision.
 3. The Council's appeal case does not state a readily identifiable putative reason for refusal, however, its submissions suggest that it is concerned by the appropriateness of the proposed use within the area. I therefore consider the main issue is whether the proposed use would be appropriate to the Westminster Core Central Activities Zone (CCAZ) and the character or appearance of the Trafalgar Square Conservation Area (the CA).
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Reasons

4. No 17 to 21 is a substantial, multi floor, mid terrace building, which for the most part is occupied by as a hotel. The appeal premises comprise No 17 to 21's lower ground floor and part of the ground floor, together with a mezzanine level. The premises were previously occupied by The Commonwealth Club, a private members club allied to The Royal Commonwealth Society. The club closed in 2013, having ceased to be a venue for the exclusive use of its members in 2011. The club's 2011 operational changes having been a response to declining membership and its closure in 2013 coincided with the club's disbandment.
5. The appeal proposal would involve the change of use of the appeal premises to a Class D2 health and fitness gymnasium (gym), operating between 06.00 and 22.00 hours, seven days a week. The proposed use would involve no external alterations to the appeal building and on that basis I find that the appearance of the CA would be preserved.
6. Northumberland Avenue is mixed use in character with hotels, restaurants, offices, meeting space, high commission/embassy and residential premises being present, a range of uses that I find to be consistent with this street's location within the CCAZ. The extensive CA has a diverse land use character¹ with a variety of commercial and leisure and assembly uses being present, together with Charing Cross Station and some residential accommodation. The focus of the CA being Trafalgar Square, a tourist and leisure destination in its own right. The proposed gym use is one that I find would both complement the area's mixed use character, as well as adding to its inherent diversity, providing a facility that I envisage could equally be used by hotel guests and those working in the area on a day to day basis.
7. The Council contends that a gym would not amount to a new use of 'international and/or national importance' within the CCPZ and that its provision would therefore be at odds with the objectives of Policy S27 of Westminster's City Plan: Strategic Policies (2013) (the City Plan). However, I find nothing within Policy S27's wording to indicate that the establishment of a gym would be at odds with the CCPZ's character. I therefore find that no development plan policy has been drawn to my attention that specifically seeks to preclude the establishment of gyms within the CCPZ.
8. The appellant's marketing evidence indicates that the appeal premises were offered to let for a range of leisure uses² on an open market basis for a period of a year, with the landlord's joint agents using a variety of means to advertise the premises' availability. The marketing evidence suggests, amongst other things, that the premises have been found to be unsuitable for: gallery or theatre users because of their size and/or floor to ceiling height; and other leisure related uses because of their location. I find nothing about the available marketing evidence, including the rental sought, to suggest that the marketing campaign was not conducted in a manner to generate the widest possible interest.

¹ As recognised in the Council's Trafalgar Square Conservation Area Audit

² Restaurant, bar, private club, gallery and leisure uses

9. For the reasons given above I find that the establishment of a gym at No 17 to 21 would be a complementary use within the CCAZ. I also find that proposed use would preserve the diverse character of the CA. I therefore conclude that there would be no conflict with the provisions of Policy S27 of the City Plan or section 12³ of the National Planning Framework (the Framework).

Conditions

10. The Council has suggested various conditions and I have considered their imposition having regard to the provisions of the Framework and the Planning Practice Guidance⁴. I have amended the wording of the suggested conditions where necessary and/or amalgamated some of them in the interests of precision and enforceability.
11. Other than the standard time limit condition, I find it necessary that the development should be carried out in accordance with the submitted plans in the interests of the proper planning of the area and I have therefore imposed a condition to this effect.
12. In the interests of safeguarding the living conditions of the occupiers of neighbouring properties I consider conditions should be imposed that address the following matters: the opening hours for the gym; the hours during which any building works associated with establishing the proposed use are undertaken; customers' access to the premises; and the storage of waste within the premises.
13. With respect to the control of noise, the Council has suggested wording for a condition (condition 6) that seeks compliance with various specific sound/noise levels. The application is however accompanied by an acoustic report⁵, which promotes the adoption of a range of sound insulation and vibration control measures, and I note the Council's environmental health department neither raised an objection to the proposed use nor sought the imposition of suggested condition 6. It is unclear to me where the wording for condition 6 originates from, given its technical nature, and whether it would provide protection for adjoining residents or hotel guests in the intended manner.
14. The Council's suggested conditions 7 and 9 relate to controlling: the playing of music that would be audible outside the appeal premises; and the generation of vibration, which are matters also covered by the appellant's acoustic report.
15. The appellant's acoustic report demonstrates that there is a need for a mixture of sound insulation and vibration control measures to be implemented, involving physical works to the premises and the adoption of day to day management controls. Given the identified need to control the generation of noise and vibration and, having sought the appellant's and Council's views, I consider it more appropriate to impose a single condition requiring compliance with section 5 of the appellant's acoustic report.

³ 'Conserving and enhancing the historic environment'

⁴ This guidance has superseded, with the exception of Appendix A, the advice contained within Circular 11/95 'Use of conditions in planning permission'

⁵ Clark Saunders Associates Acoustic Insulation Scheme (January 2014)

16. The Council has suggested a condition restricting the number of gym attendees to 200 at any one time in the interests of safeguarding the living conditions of the occupants of other properties in the area. However, no explanation has been provided for the suggested limit of 200 attendees and with the imposition of conditions relating to the hours of use and controlling the point of ingress and egress to the premises, I am not persuaded of the need to impose a condition setting an attendee limit. With the imposition of the aforementioned conditions and a condition requiring the implementation of acoustic works to the premises, I am also unpersuaded of the need for a condition restricting the use of the premises to that of a gym and no other use under Class D2.
17. The appeal premises are located within an area that is very well served by public transport and with: the proposed use being one that will be complementary to other CCAZ uses; and public cycle parking facilities being available in the area, I am not persuaded of the need for the imposition of a condition requiring the provision of on-site cycle parking.

Conclusion

18. For the reasons set out above, I conclude that the appeal should succeed.

Grahame Gould

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans Z406-01: 001; 002; 101B; and 102C.
- 3) Any building works associated with implementing the change of use hereby permitted shall not be undertaken outside the following times; 08.00 to 18.00 hours Mondays to Fridays; and 08.00 to 13.00 hours on Saturdays. No building works shall be undertaken on Sundays, bank holidays and public holidays.
- 4) The use hereby permitted shall not be open to customers outside the following times: 06.00 to 22.00 hours Mondays to Sundays inclusive.
- 5) Customers entering and exiting the premises shall only use the main entrance on Northumberland Avenue. Any other access into the premises shall only be used in the event of an emergency.
- 6) The use hereby permitted shall not be commenced until the scheme for sound insulation and vibration control specified in section 5 of the Clark Saunders Associates 'Acoustic Insulation Scheme' (January 2014) has been implemented. The measures comprised within the approved scheme of sound insulation and vibration control, whether they constitute physical works to the premises or operational controls, shall be retained or performed for the duration of the permitted use.
- 7) The development hereby permitted shall not be commenced until details of a scheme for the storage of refuse, including the storage of refuse materials that are to be recycled, has been submitted to and approved in writing by the local planning authority. The use hereby permitted shall not be commenced until the approved refuse storage arrangements are available for use and thereafter these storage arrangements shall be retained for the duration of the use.