



TO: Planning Committee North

BY: Head of Development

DATE: 02 June 2020

DEVELOPMENT: Variation of Condition 4 of previously approved application WN/40/85 (Removal of condition 1 on WN/5/83 and c/u of 2nd floor massage room and gym in association with dance studios) to allow for a change to the opening times of the premises to 6.30 - 21.30 Monday to Friday, 8.30am to 21.30 Saturday and 9.00 - 18.00 on Sunday

SITE: Bodywise Gym and Studios 16 Church Street Warnham Horsham West Sussex RH12 3QW

WARD: Itchingfield, Slinfold and Warnham

APPLICATION: DC/19/2574

APPLICANT: **Name:** Ms Aida Pecelyte **Address:** c/o Agent, ITPS, Springfield Road Horsham, RH12 2PD

REASON FOR INCLUSION ON THE AGENDA: More than 8 persons in different households have made written representation raising material planning considerations that are inconsistent with the recommendation of the Head of Development.

RECOMMENDATION: To resolve to grant planning permission subject to expiration of the public consultation period and delegation to the Head of Development to consider any representations received as a result of that consultation.

1. THE PURPOSE OF THIS REPORT

To consider the planning application.

DESCRIPTION OF THE APPLICATION

- 1.1 The application seeks permission to extend the existing opening hours of the premises, as set out below:-

Existing		Proposed	
Monday to Friday	08:30 to 21:30	Monday to Friday	06:30 to 21:30
Saturdays	08:30 to 21:30	Saturdays	08:30 to 21:30
Sundays	No opening	Sundays	09:00 to 18:00

- 1.2 The application would therefore result in an additional two hours each morning Monday to Friday, Saturday opening to remain as existing, with new opening between 08:00 and 18:00 on Sundays.

DESCRIPTION OF THE SITE

- 1.3 The application site relates to the commercial premises known as Bodywise Gym at 16 Church Street, Warnham and is located within the built up area boundary of the village. The site is also located within the wider Warnham Conservation Area and there are a number of Grade II listed properties within the vicinity. The site is set over three storeys and is accessed via a courtyard area fronting onto Church Street. The surrounding area is made up of a mixture of residential and commercial properties and all benefit from varying designs and built forms. To the rear of the site is a major housing development by Shanley Homes which is currently being built out. The building is configured in an 'L' shape and is made up of stock brick, timber framed and UPVC fenestrations and a tiled roof as well as a flat roof area.
- 1.4 The lawful use of the entire premises is as a gymnasium (within Use Class D2) with associated ancillary facilities, *which include a café and hairdressers*. In addition the existing lawful opening hours are between the hours of 08:30 and 21:30 Monday to Saturday (inclusive) and at no times on Sundays. This use and opening hours were confirmed as being lawful through a recent certificate of lawfulness, ref: DC/19/1689.

2. INTRODUCTION

STATUTORY BACKGROUND

- 2.1 The Town and Country Planning Act 1990.

RELEVANT PLANNING POLICIES

The following Policies are considered to be relevant to the assessment of this application:

2.2 **National Planning Policy Framework**

2.3 **Horsham District Planning Framework (HDPF 2015)**

Policy 32 - Strategic Policy: The Quality of New Development

Policy 33 - Development Principles

Policy 34 - Cultural and Heritage Assets

Policy 40 - Sustainable Transport

Policy 41 - Parking

Policy 41 - Community Facilities, Leisure and Recreation

RELEVANT NEIGHBOURHOOD PLAN

2.4 **Warnham Neighbourhood Plan (2017-2031)**

Policy W5: Design of residential development (insofar as criteria (b) of this policy relates to neighbouring amenity).

PLANNING HISTORY AND RELEVANT APPLICATIONS

DC/19/1689

Application to confirm the continuous use of the entire premises for (D2 Use Class) purposes as a gymnasium with associated and ancillary facilities for a period in excess of ten years and to confirm the opening hours for the entire premises of 8:30 - 21:30 Monday to Saturday inclusive and at no times on Sundays. (Certificate of Lawful Development - Existing)

Application Permitted on
19.11.2019

3. OUTCOME OF CONSULTATIONS

3.1 Where consultation responses have been summarised, it should be noted that Officers have had consideration of the full comments received, which are available to view on the public file at www.horsham.gov.uk

INTERNAL CONSULTATIONS

3.2 **HDC Conservation:** No objection.

3.3 **Environmental Health:** No objection. However, in order to mitigate any adverse environmental impacts suitable controls are necessary to minimise noise, and conditions are recommended.

OUTSIDE AGENCIES

3.4 **WSCC Highways:** The LHA does not consider that this proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 109), and that there are no transport grounds to resist the proposal.

PARISH COUNCIL

3.5 The Parish Council recommend that a 12 month temporary permission is granted.

PUBLIC CONSULTATIONS

3.6 Thirteen (13) representations have been received objecting to the proposal for the following reasons:-

- Noise disturbance;
- Parking issues;
- Light pollution;
- Commercial use not appropriate to the surrounding area.

3.7 Two representations have been received supporting the application for the following reasons:-

- The gym is part of the local community;
- The earlier opening would allow people with full-time jobs to attend.

4. HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS

4.1 Article 8 (Right to respect of a Private and Family Life) and Article 1 of the First Protocol (Protection of Property) of the Human Rights Act 1998 are relevant to this application, Consideration of Human rights forms part of the planning assessment below.

5. HOW THE PROPOSAL WILL HELP TO REDUCE CRIME AND DISORDER

5.1 It is not considered that the development would be likely to have any significant impact on crime and disorder.

6. PLANNING ASSESSMENTS

- 6.1 The application premises occupies a backland site located between existing residential properties, with the access derived from Church Street and a courtyard style arrangement surrounded by residential dwellings. The existing premises has an established lawful use as a gymnasium (and ancillary related uses) with opening hours between 08:30 and 21:30 Monday through Saturday. The proposal would allow for earlier opening from 06:30 on Monday to Friday, with Saturday opening remaining as existing, and new opening on Sundays between 09:00 and 18:00. As a result of the existing relationship between the site and surrounding properties the proposed extended opening hours have potential to create noise and disturbance for occupants of surrounding properties, and this is the key issue of consideration.
- 6.2 Policy 33 of the HDPF, Development Principles, seeks to ensure that proposals avoid unacceptable harm to the amenity of occupiers/users of nearby property and land, for example through overlooking or noise, whilst having regard to the sensitivities of surrounding development.
- 6.3 It is acknowledged that the nature and location of the commercial use has potential to cause noise and disturbance for adjoining residents, with such impacts arising from both the use of the premises and access and egress arrangements.
- 6.4 It is considered that noise from within the premises is controllable and that hard measures are possible to reduce the potential for noise spillage. The Council's Environmental Health Team has advised that measures to restrict the hours during which amplified noise can be played within the premises and to ensure that windows are kept closed, should be secured. It is therefore considered that amplified noise can be restricted so that it can only be played between the hours of 08:00 to 21:30 Monday to Friday; 10:00 to 21:30 on Saturdays; and 10:00 to 18:00 on Sundays. In addition, a further condition is recommended to require the window openings to the gym and studio areas to be kept fixed shut at all times. It is considered that this approach would minimise the potential for noise and disturbance from the use during the extended opening hours being sought, and that the extended opening hours would not as a matter of course be expected to result in such an increase in noise and disturbance as to result in an unacceptable impact on amenity.
- 6.5 The gym use also includes outdoor equipment at ground floor level. It is considered the use of this equipment during the extended times being sought would potentially create an unacceptable impact on neighbouring amenity. A condition is therefore recommended to prevent outdoor activities, except for access and egress, except between the hours of 08:00 to 20:00 Monday to Friday; 10:00 to 18:00 on Saturdays; and 10:00 to 16:00 on Sundays. These hours are considered acceptable, having regard to the scale of the outdoor equipment, to minimise the potential for unacceptable harm to neighbouring amenity.
- 6.6 It is acknowledged that the need to access and egress the premises also has potential to impact on neighbouring amenity, and that controlling this activity is more difficult than preventing noise from spilling out the building. It is though considered that the scale of the premises and the additional opening hours being sought would not result in a magnitude of impact which would warrant a refusal of planning permission. A condition is recommended to secure a noise and light management plan, with the aim to secure a series of measures to minimise the potential for unacceptable impacts from activities to the front of the premises.
- 6.7 The existing lawful use of the premises creates a demand for travel, and in particular parking, which cannot be catered for within the site boundaries. The Highway Authority has been consulted on the application and advised that there are comprehensive parking

restrictions in the vicinity of the site which would prohibit parking in places which would be detrimental to highway safety; this is reflected by no recorded injury accidents in the vicinity of the site over a 5-year period. While the premises generates a need for on-street parking there is no evidence to suggest the existing use creates a level of demand which is detrimental to either highway safety or neighbouring amenity, or that the extended hours would materially alter this. The Highway Authority has advised that the proposal would not have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network. There are considered to be no reasons to take a different view and as a result there are considered to be no transport grounds to resist the proposal.

Conclusion

- 6.8 It is considered that the impact of the proposed extended opening hours can be mitigated through a number of conditions relating to operating practices both within and outside the premises, and that subject to these conditions no unacceptable harm to neighbouring amenity would result from the proposal. It is though recognised that despite the conditions put forward the relationship of the application site to adjoining properties is such that impacts may persist. In recognition of this the applicant has suggested a temporary planning permission may be an appropriate way forward, in that it would allow the new business hours to take place and the resulting impacts to be monitored. This approach is supported by the Council's Environmental Health Team.
- 6.9 It is considered, having regard to the nature of the site and on the basis of the consultations and representations received, that it would be reasonable to grant a temporary period of 12 months. This would allow the extended opening hours, and related restrictions secured through condition, and give the applicant an opportunity to carry out noise monitoring prior to any submission of a subsequent application for a permanent extension of the opening hours. This approach would allow the Local Authority to assess any complaints and establish whether the premises is suited to the proposed hours on a permanent basis. It is therefore recommended that planning permission be granted on a temporary 12-month basis and subject to the conditions set out in Section 7 below.

7. RECOMMENDATIONS

- 7.1 It is recommended that planning permission is granted subject to the following conditions -
1. **Time Condition:** The opening hours hereby permitted, and as set out in condition 3, shall cease on the date of 12 months from the granting of this permission, after which the previously approved operational hours under of 08:30 – 21:30 Monday to Saturday with no opening on Sundays shall be restored and thereafter complied with.

Reason: In order to monitor noise impacts during the extended operational time periods and in the interests of the amenity of the occupiers of nearby dwellings, in accordance with Policy 33 of the Horsham District Planning Framework (2015).

2. **Regulatory Condition:** Within 2 months of the date of this decision a noise and light management plan shall be submitted to the Local Planning Authority for its written approval. The plan shall set out measures to minimise the potential for noise and disturbance from access and egress to the premises and to ensure internal and external lighting is minimised. The measures set out the approved plan shall be adhered to throughout the duration of the opening hours hereby permitted.

Reason: To safeguard the amenities of neighbouring properties in accordance with Policy 33 of the Horsham District Planning Framework (2015).

3. **Regulatory Condition:** The premises shall not be open for trade or business except between the hours of:-

06.30 and 21.30 Monday to Friday;
08:30 and 21:30 on Saturdays; and
09:00 and 18:00 on Sundays.

Reason: To safeguard the amenities of neighbouring properties in accordance with Policy 33 of the Horsham District Planning Framework (2015).

4. **Regulatory Condition:** No amplified or other music shall be played in the premises outside the following times:-

08:00 to 21:30 Monday to Friday;
10:00 to 21:30 on Saturdays; and
10:00 to 18:00 on Sundays

Reason: To safeguard the amenities of neighbouring properties in accordance with Policy 33 of the Horsham District Planning Framework (2015).

5. **Regulatory Condition:** No outdoor activities, other than access and egress, shall take place outside of the following times:-

08:00 to 20:00 Monday to Friday;
10:00 to 18:00 on Saturdays; and
10:00 to 16:00 on Sundays

Reason: To safeguard the amenities of neighbouring properties in accordance with Policy 33 of the Horsham District Planning Framework (2015).

6. **Regulatory Condition:** The windows to the gym and studio areas, as identified on drawing nos. AP1 and AP2, shall be kept shut at all times.

Reason: To safeguard the amenities of neighbouring properties in accordance with Policy 33 of the Horsham District Planning Framework (2015).

Background Papers: DC/19/2574
DC/19/1689