

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

by **N McGurk** BSc (Hons) MCD MBA MRTPI,
an Inspector appointed by the Judicial Greffe

Site visit made on 6 March 2023. Hearing held on 8 March 2023.

Reference: P/2022/0874

Pirouet House, Union Street, St Helier, JE2 3RF

- The appeal is made under Article 108 against a decision made under Article 19 to refuse planning permission.
 - The appeal is made by Steve Thorne against the decision of the States of Jersey.
 - The application Ref P/2022/0874 by Steve Thorne, dated 10 August 2022, was refused by notice dated 9 November 2022.
 - The proposed development is change of use of existing third floor from Class C – Office to create 2no. 1bed and 1no. 2bed residential units. Minor alterations to the ground, first and second floor.
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Recommendation

1. I recommend that the appeal be dismissed.

Procedural Matters

2. The Bridging Island Plan, adopted on the 25th March 2022, is referred to in this Report as "*the Island Plan*."
3. This Report refers to the Planning Department as "the Department."
4. The electronic application form does not include a dated declaration. The Department's Officer Assessment Sheet shows an application "Valid Date" of 10 August 2022 and this is the date referenced in the information set out above.
5. A previous application¹ for the same proposed development was refused. The appellant states that this "previous refusal is no longer relevant as technical matters arising from this application were resolved."

The Case for the Appellant

6. The appellant states that no objection has been provided by the Environmental Health Department and no objections provided by any other Department and considers that the application has no technical objections and is in accordance with the Island Plan.
7. The appellant points out that the acoustic specialist for the planning application provided a noise assessment which outlined the existing site condition and the mitigation measures required to provide suitable residential accommodation, free from potential vibration and noise pollution.

¹ Reference: P/2022/0191.

8. The appellant considers that the Department's approach fails to deal with the technical noise assessment prepared in support of the planning application the subject of this appeal.
9. The appellant states that a post-installation noise survey should be a matter of course in line with Jersey Building Byelaws. In addition, the appellant considers that the management of the gym and internal layout adjustments are not a planning consideration and should not be conditional or impact on the planning decision.
10. The appellant considers that, if the noise consultant's recommendations are implemented, then the existing gym will not impact residents and therefore, regardless of any future rearrangement of the gym or night-time monitoring, residents will not be impacted by the gym in terms of noise and vibration.
11. The appellant states that the gym would be monitored remotely, by camera and would include the capability to communicate with gym patrons and to contact emergency services if required.
12. The appellant states that the proposed noise and vibration mitigation measures include: upgrading the separating floor between the gym and the proposed flats; cladding steel columns; speakers not to be mounted on columns or walls, unless on hangers; music limited to 85dB LAeq; gym to be suitably ventilated to reduce the need to open windows; gym lobby system; resilient mats; and signage.
13. The appellant considers that, even if the noisiest class is positioned under an apartment, music levels will be suitably controlled and notes that a music limiter has been recommended.
14. The appellant states that nuisance and noise is a matter that should be addressed through complaints to the Environmental Health Department.

The Case for the Department

15. The Department states that, whilst the proposal is in a sustainable location and would contribute to meeting the Island's housing needs, the vibration and noise pollution from the existing ground, first and second floor gym would result in unreasonable harm to the amenities of future occupiers of the proposed residential units.
16. The Department states that the Environmental Health Department's "no objection" position is subject to the imposition of three planning conditions, two of which – those measures relating to gym layout and gym management - cannot be adequately monitored and cannot be reasonably conditioned.
17. The Department states that conditions in respect of the layout of the gym, including moving noisier equipment in and around and ensuring that there would be management on site during the night, would not be reasonable, enforceable or precise.
18. The Department states that, taking into account the consultation comments received and the noise assessment submitted, the appeal should be dismissed.

19. The Department states that the Environmental Health Department has set out that, in its view, if the gym layout were to change, or new equipment be installed, then the predicted noise profile and impacts would be subject to change.
20. The Department considers that it has not been demonstrated that the gym, which operates 24 hours a day, would not result in the occupants of the proposed flats being exposed to unreasonable harm by way of noise and vibration and that therefore, the proposal does not accord with the Island Plan.

Main Issue

21. The main issue in this case is whether the proposed development would provide for acceptable living conditions for future occupiers, with regards to noise and disturbance.

Reasons

22. The appeal property is a tall mid-terrace commercial building, located in St Helier town centre.
23. The majority of the ground, first and second floor of the appeal property comprises a 24-hour gym, with a ground floor café and offices to part of the second floor. The top level third floor has an existing office use and during my site visit, I noted that it appears partly in use for purposes related to offices and/or the gym.
24. It is proposed to convert the third floor office space into two apartments. Office to residential conversions comprise a common form of development, enabling best use to be made of space and in St Helier's case, provide for the efficient delivery of new homes to meet the Island's needs.
25. However, the appeal property's predominant use as a 24-hour gym set over three floors would mean that future occupiers of the proposed apartments would be sharing the building with a very different use to say, three floors of offices.
26. The very nature of gyms is that they attract comings and goings – and in the case of a 24-hour gym, comings and goings at any time of day or night – along with physical on-site activities including the potentially noisy use of equipment and studios, for training, classes and social interaction.
27. During my site visit, I observed the proposed location of the apartments and each of the floors of the 24-hour gym, along with the proposed access arrangements.
28. I noted that the use of the gym gives rise to significant scope for noise and disturbance and that there is potential for such noise and disturbance to arise in many different ways and at very different levels, across different parts of the building.
29. Sources of noise include the use and manoeuvring of free weights and the use and manoeuvring of heavy equipment and machines. These uses afford significant scope for noise and vibrations to arise from the banging of metal-on-

metal, the dropping of heavy weights, the movement of weights and machinery, the physical exertions and encouragement of gym users and so on.

30. I also noted that noise and vibrations can arise from the use of studios and gyms for a variety of uses including spin and fitness classes, potentially involving the gathering of groups, the use of machines, the shouts and encouragement of instructors, music and so on.
31. Further, whilst a gym might provide for solitary use, it is also a social environment, giving rise to noise and disturbance from gatherings and social interaction in doorways, lobbies, corridors and changing rooms, as well as within the active use areas. In this case, the 24-hour nature of the gym gives rise to the potential for noise and disturbance at any time of day or night, including late at night and during the early hours of the morning, when ambient noise levels are at their lowest.
32. The proposed apartments would be located above the gym, within the same building.
33. Given this and all of the above, I am mindful that the scope for noise and disturbance to occur is significant. I also note that the application the subject of this appeal is the second proposal for the same use at the same site to have been refused in recent times by the Department, both refusals being on the basis that the proposal would give rise to harmful levels of vibration and noise pollution.
34. In order to provide for the Island's needs, it is recognised that some degree of harm to residential amenity arising from new development, particularly in the Built-up Area, is likely to be acceptable.
35. However, the Island Plan seeks to reach an appropriate balance between safeguarding the amenities of Jersey's residents and meeting Jersey's development needs. To achieve this, Island Plan Policy GD1 ("*Managing the health and wellbeing impact of new development*") recognises that some degree of harm to residential amenity, particularly in the Built-up Area, is likely to be acceptable, but only supports development where it:
- "...will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents..."*
36. Thus, in determining whether or not to support a development which impacts upon residential amenity, the appropriate test for the decision-maker is not whether such development will result in harm, but whether or not such harm would be *unreasonable*.
37. In support of the proposed development, a noise assessment has been submitted. However, in refusing the proposed development, the Department referred explicitly to unreasonable harm from noise *and* vibration (my emphasis).
38. As noted above, a 24-hour gym gives rise to considerable scope for significant levels of vibration, whether through the use of heavy weights and machines, gym classes, coming and goings or other activities.
39. In respect of vibration, the submitted noise assessment states:

“Consideration of vibratory impacts associated with the gymnasium is beyond the scope of this report, and therefore no vibration-related targets have been given.” (1.2.1, Page 5, Noise Assessment, 27 June 2022)

40. The noise assessment goes on to set out recommendations to “*suitably*” reduce impacts from gym use. However, given that vibratory impacts have not been assessed, it is not possible for me to conclude that arisings or impacts associated with vibration would be - or can be - mitigated to such a degree that no unreasonable harm would arise.
41. In this regard, I cannot reasonably conclude that the proposal would not result in vibratory impacts that would have an unacceptable effect on the living conditions of future occupiers.
42. Further to the above, in respect of noise, the findings of the noise assessment do not appear conclusive and suggest to me that, even if recommended works are carried out, targeted noise levels in the proposed apartments could still be exceeded.
43. In particular, the noise assessment appears to rely upon all windows in the gym being permanently closed. During my site visit, I observed that the gym has opening windows across its front and rear facades to all floors. The noise assessment notes that “*windows were closed during noise surveys*”² and recommends that opening windows should remain fully-closed at all times. This is regardless of the time of year.
44. Thus, even in the height of summer when gym-goers are undertaking intense physical exercise, whether individually or in high-intensity fitness classes, all opening windows would need to remain fully-closed.
45. This recommendation in the noise report is of some considerable concern as it would appear to be a difficult requirement to control in a gym with many opening windows, even in a gym where managers are on-site at all times. The appellant points out that the gym in the appeal building does not and would not, have managers on-site during its 24-hour operation, but instead relies and would rely on remote, off-site management.
46. The noise assessment provides a series of “*predicted internal noise levels*” to clearly demonstrate that target noise levels would be exceeded during day and night were windows even to be “*partially open.*” To address this, the noise assessment suggests that, in the summer months, gym spaces should be “*suitably ventilated through building services.*”³ No indication of what such suitable ventilation must be is provided.
47. Further to the above, the general recommendations set out in the noise assessment are also of some considerable concern. These include recommendations such as advising that gym users should be asked not to drop weights. Again, the recommendations would appear to be testing requirements to control, even for gyms with managers on-site at all times.
48. In this case, taking all of the above into account, I find that a 24-hour gym without management on-site at all times runs the very real risk of giving rise to

² Reference: 7.3, Page 18, Noise Assessment.

³ Reference: *ibid.*

harmful levels of noise and vibration – most notably during the late evening and the small hours of the morning, when ambient noise levels are at a minimum and when residents could rightly expect their living environment to be quiet and peaceful.

49. The Environmental Health Department suggested that the proposed use would be acceptable subject to the implementation of conditions relating to on-site management and to ensuring that the layout of the gym will not change. This formed an area of discussion at the public hearing.
50. Neither the appellant nor the Department consider the imposition of such conditions as practical or acceptable and in this regard, I concur with the Department's stated view that the suggested conditions are imprecise, unreasonable and unenforceable. Consequently, they do not meet the necessary tests for a planning condition.
51. Further to consideration of the above, the Environmental Health Department accepted that the suggested conditions could not be imposed and confirmed that its previously stated position of "no objection subject to the imposition of conditions" no longer stood.
52. In conclusion, the current use of the appeal property as a 24-hour gym gives rise to considerable scope for significant levels of noise and disturbance. Having considered all of the evidence before me, I cannot reach the conclusion that the proposed development would mitigate the harm arising from this to the extent that future occupiers would not be subject to unreasonable levels of and disturbance.
53. Taking this and all of the above into account, I find that the proposed development would not provide for acceptable living conditions for future occupiers, with regards to noise and disturbance. Consequently, the proposed development would be contrary to Island Plan Policies GD1 and H1, which together amongst other things seek to protect residential amenity.

Other Matters

54. I recognise that the proposed development would make use of unoccupied space for residential use within the Built-up Area. This is a factor in favour of the proposal, but it does not overcome the unreasonable harm identified.
55. In support of the proposal, the appellant referred to other uses in St Helier, such as pubs, that are responsible for managing levels of noise and disturbance and referred to the scope for the enforcement of statutory nuisance controls should harmful levels of noise arise from the proposal.
56. In respect of this, I note that statutory nuisance measures would comprise a reaction to harm after it has occurred and I am also mindful of comments made by the Environmental Health Department in respect of the time and resource-consuming processes involved in the process. Most importantly, the Island Plan seeks to prevent unreasonable harm from occurring, rather than allow unreasonably harmful development to take place and then seek to, retrospectively, address any harm arising.

57. During the course of the public hearing, the appellant stated that the imposition of a condition to prevent second floor windows from opening would be acceptable. However, there is nothing before me to demonstrate that, amongst other things, this would prevent harmful noise levels arising from open windows at ground or first floor level.

Conclusion

58. For the reasons given above, I recommend to the Minister that the appeal be dismissed.

Nigel McGurk BSC(HONS) MCD MBA MRTPI

PLANNING INSPECTOR