

PLANNING AND BUILDING (JERSEY) LAW 2002

**Appeal under Article 109 against a notice served under Article 47(2) to
enforce conditions of a planning permission
Planning application submitted to vary conditions of a planning permission**

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellants/Applicants:

Transform Together Fitness

Reference numbers:

ENF/2022/00011 and RC/2023/0376

Site address:

Transform Together Fitness, AC Gallie Warehouse, Longueville Road, St. Saviour
JE2 7WF

Details:

ENF/2022/00011

This is an appeal against a Breach of Condition Notice dated 2 May 2023 alleging a failure to comply with the opening hours specified in Conditions 2 and 3 of planning permission P/2018/1125.

P/2018/1125 grants planning permission to convert a store and office into a wellness centre.

Conditions 2 and 3 are as follows:

"2. The times of operation and parking arrangements detailed in the Design Statement must be adhered to, unless otherwise agreed in writing with the Department of the Environment.

3. The gym shall not be open to the public on Sundays or Bank Holidays unless otherwise agreed in writing with the Department of the Environment."

Conditions 2 and 3 were imposed in order to safeguard the amenities of the occupants of the adjoining properties.

The Breach of Condition Notice requires Conditions 2 and 3 to be complied with within 7 days of the effective date of the Notice.

The appeal against the Breach of Condition Notice is proceeding on the ground set out in Article 109(2)(i), namely that Conditions 2 and 3 should be discharged.

RC/2023/0376

This is a Planning Application validated on 16 May 2023 which is proceeding on the basis that permission is being sought to vary Conditions 2 and 3 of planning permission P/2018/1125 by:-

- (i) changing the approved opening times on Mondays to Fridays from 06:45-18:45 hours to 06:15-19:45 hours;
- (ii) changing the approved opening times on Saturdays from 06:45-18:45 hours to 07:00-19:45 hours; and
- (iii) permitting opening on Bank Holidays from 07:00-19:45 hours.

Inspector's site visit date:

2 October 2023

Hearing date:

4 October 2023

Background and procedural matters

1. The appellants/applicants seek the variation of Conditions 2 and 3 to permit extended times of operation/opening times, rather than the complete discharge of the Conditions. The parties are agreed that the term "times of operation" in Condition 2 means the times the gym is open to customers.
2. If the Planning Application is approved, Conditions 2 and 3 will continue in force with variations to the opening times and subject to any new conditions that may be imposed. The appeal against the Notice should then be dismissed, since the Conditions cannot be discharged in their entirety because they will still be required in order to control the new opening times and the parking arrangements.
3. Condition 1 will be unchanged. This requires all details contained in the Design Statement relating to sound insulation of walls and floor to be completed and maintained. There are no other conditions. All three conditions were imposed in order to safeguard the occupants of the adjoining properties in accordance with Policy GD1 of the Island Plan 2014.
4. Several representations have been submitted about the use of the on-site parking facilities which the appellants/applicants share with the building's residents and with the other businesses on the site. The parking arrangements are set out in the Design Statement and on the approved plans. They are not at issue in this report, because the Notice and the Planning Application relate solely to the opening times of the gym. This report has therefore been limited to the new opening times, but in reaching my conclusions I have considered whether the new opening times could affect the use of the parking facilities in a way that might affect the amenities of residents in the building and nearby.

Description of the premises and its surroundings

5. The premises are a sizeable modern building on the southern side of Longueville Road, St Saviour. The front part has a two-bay warehouse on the ground floor with four apartments above it on part of an upper storey. There is also a large attached single-storey retail outlet on the eastern side at the front. The pedestrian entrance to the gym is on the western side here and the entrance to the apartments is in the centre. There is a basement storage unit at the rear on the eastern side of the building. A parking and manoeuvring area exists between the building and the road.
6. The gym itself is in the western part of the basement. A service road leads downhill on the eastern side of the building, where the entrance to the storage unit is situated, before turning to run alongside the rear of the building, where the gym has vehicular and pedestrian entrances and secure bike parking for customers and staff. The gym has the usual range of gym equipment and also an area that is set aside as a boxing ring.
7. Drawing No. 641-005 Revision A shows the parking arrangements that were approved when planning permission P/2018/1125 was granted. Eleven spaces are reserved at the front for the gym to use up to 07:45 hours and after 18:00 hours. Four spaces are approved at the rear of the building next to the gym at the end of service road, two of which are allocated as staff spaces and the other two for "Daytime Customer" use. There are no restrictions on the hours of use of the staff spaces.
8. Longueville Road is a main road, part of the A3 connecting Gorey and St Helier. Here, there are extensive commercial and industrial premises opposite the building and adjoining its western boundary; residential properties adjoin the service road at the side and rear of the building.

The main issues

9. The main issues are: the impact of the extended opening hours on residential amenities because of noise; the advantages to the gym and its users of being open for the extended opening hours; and whether planning conditions could be imposed that would reconcile tensions between these matters.

Applicable Bridging Island Plan policies

10. The building is in the defined local centre of Bagot-Longueville and is within the built-up area. Policy PL3 of the Plan states that development within local centres will be supported where it contributes to maintaining and enhancing sustainable local communities.
11. Policy CI5 supports the provision of gyms in the built-up area. The supporting text at page 244 of the Plan places an emphasis on development that supports Islanders to become more active and at page 246 it states: "*Access to the provision of smaller-scale local facilities for sport and active leisure remains important in helping to create healthy and sustainable communities, and these will continue to be supported throughout the island's built-up areas.*" These provisions build on the Plan's strategic placemaking policy, which aims to positively influence community health and wellbeing outcomes, and in addition build on other strategic Island priorities.

12. Policy GD1 of the Bridging Island Plan “Managing the health and wellbeing impact of new development” deals with residential amenities. The applicable provisions are:

“All development proposals must be considered in relation to their potential health, wellbeing and wider amenity impacts, and will only be supported where:

1. the development will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents, and in particular, will not:

...

d. adversely affect the health, safety and environment of users of buildings and land by virtue of emissions to air, land, buildings and water including ... noise, ...”

Case summaries

13. The appellants maintain that the extended opening hours are vital if the gym is to thrive, since the core demand is from customers who wish to attend the gym early in the morning and then go home before travelling to work or on to other activities, with the same pattern occurring in reverse in the evening. The gym is also used by the Jersey Boxing Academy to coach young people in boxing; they have explained that the extended hours are needed to fit in with school times. The appellants have put forward proposals which they state will minimise disturbance.
14. The Infrastructure and Environment Department refer to the proximity of nearby dwellings and the existence of the apartments on the top floor of the building itself. The Department are particularly concerned that residents will be unreasonably disturbed by the earlier opening times. The Department have accepted that mitigation measures could be put in place.
15. Complaints have been received from some nearby residents about noise associated with the use of the gym, but there have been a large number of supporting comments from gym users, many of whom have referred to the benefits of the gym to their health and wellbeing and have stated that they need the extended opening hours because of their work or other commitments.

Inspector's assessments and conclusions

16. When planning permission P/2018/1125 was granted for the gym in January 2019 the Decision Notice recorded that it was considered that it would “not have an unreasonable impact on neighbouring uses over and above the existing use of the site, given the conditions imposed”, which as well as Conditions 2 and 3 included Condition 1 relating to sound insulation of walls and the floor. The previous tenant had had the use of this unit at all hours, using a forklift truck to load and unload goods at the rear entrance, which is near to residential properties. It has been confirmed that there are no hours-of-use restrictions on any of the current commercial occupiers of the other parts of the building.
17. The provisions of the Bridging Island Plan set out in paragraphs 10 and 11 above support the continued success of the gym. I agree that its viability will

be in serious doubt if the application to extend the opening hours is not approved. The gym's closure would lead to the loss of facilities that are valued by the community and to the displacement of the boxing training facility that provides an important service to young people.

18. However, these factors should be considered alongside the impact that the extended opening hours could have on residential amenities because of noise. Noise could arise at the front of the building, at the rear entrance to the gym and from within the gym itself. Policy GD1 set out in paragraph 12 above states that residents' amenities should not be "unreasonably" harmed.
19. At the front of the building, gym users are permitted to park in designated spaces in the car park at the times when the new opening hours would operate in the morning and the evening and on Bank Holidays. Most of these spaces are next to a busy main road. A high boundary wall is alongside them where they are next to the adjoining bungalow. The apartments on the upper floor of the building are a considerable distance away. Only the earlier opening hours could have a noticeable effect on these residents. If gym users keep to the designated parking spaces and make their way from them to the front entrance to the gym, the earlier opening hours should not harm their amenities.
20. The rear entrance to the gym is close to residential properties, although it is at a lower level and out of sight. The two designated customer parking spaces here are marked for daytime use. If gym users park at the rear of the gym or use the rear entrance at the earlier opening hours, the nearest residents are likely to be disturbed by noise.
21. Condition 1 does not deal with the 'break-out' of noise from the gym, which may be disturbing to nearby residents. In addition, the information available to me suggests that the sound insulation of the walls and the floor of the gym carried pursuant to Condition 1 may not be adequate to protect residents in the apartments from noise. These matters should be addressed if the application is approved, since existing deficiencies will be exacerbated by extending the opening hours.
22. I have given detailed consideration to the possible ways in which residents' amenities could be protected if the new opening hours are approved. I have taken into account the observations made by the parties and interested persons in this respect and the principles that planning conditions should be fair and reasonable and be enforceable without excessive supervision. I have concluded that the new additional conditions set out in paragraph 23 below will allow the gym to operate within the new opening hours without unreasonably harming the amenities of any residents.

Inspector's recommendations

RC/2023/0376

23. I recommend that planning application RC/2023/0376 is approved and that Conditions 2 and 3 of planning permission P/2018/1125 are varied as follows:-
 - (a) by the addition at the end of Condition 2 of the following words:-

“except that the approved opening times on Mondays to Fridays shall be from 06:15 hours to 19:45 hours, the approved opening times on Saturdays shall be from 07:00 hours to 19:45 hours and opening shall be permitted on Bank Holidays from 07:00 hours to 19:45 hours.”;

(b) by the removal from Condition 3 of the words “or Bank Holidays”; and

(c) by imposing the following new additional conditions:-

“4. Rear entrances to the gym shall be kept closed until 08:00 on every day unless in use by staff or in an emergency.

5. Customers shall not be permitted to access the gym via its rear entrances before 08:00 hours on any day.

6. Customers shall not be permitted to park at the rear of the gym before 08:00 hours on any day, including parking in the spaces marked “Daytime Customer space 1” and “Daytime Customer space 2” on Drawing No.641-005 Rev A approved by planning permission P/2018/1125.

7. No sound-amplifying equipment shall be operated in the gym so as to be audible at the boundary of any residential property.

8. Notwithstanding the provisions of Condition 1 of planning permission P/2018/1125, the use of the premises as a gym shall cease within one month of the date of a failure to comply with any of the following requirements:-

(i) within one month of the date of these variations, full details of a scheme specifying the measures to be taken to control noise (including impact noise and sound transfer) emanating from the gym, together with a timetable for the implementation of the scheme, shall be submitted in writing to the Chief Officer for written approval. The scheme shall include details of the gym equipment and exercise facilities to be provided (including details of their siting, design, fixing and mounting) and the steps to be taken to minimise the transmission of sound (including details of the sound-insulation to be applied to the gym and its structure and the floor covering to be provided).

(ii) all measures comprised in the approved scheme shall be completed as approved in writing and in accordance with the approved written timetable. The measures shall thereafter be retained as approved in writing and the gym shall only be used in accordance with the approved scheme or any modification thereof approved in writing by the Chief Officer.

9. Within one month of the date of these variations, weatherproof notices shall be displayed in prominent positions at the entrances to the gym setting out the conditions that must be observed by customers as regards the use of parking space, the gym opening times and the restrictions on the use of the rear entrances. The notices shall be retained in position at all times thereafter.”

24. Reasons for Conditions 4 to 9:- To protect the amenities of nearby residents pursuant to Policy GD1 of the Bridging Island Plan.

25. The plans approved by RC/2023/0376 are:-

1. Site Location Plan Drawing No.641-001 dated February 2023
2. Proposed Plans Drawing No.641-100 Revision B dated March 2023.

ENF/2022/00011

26. I recommend that the appeal is dismissed.

Dated 15 November 2023

D.A.Hainsworth

Inspector