

APPLICATION: MA/13/0737 Date: 26 April 2013 Received: 30 April 2013
APPLICANT: Mr Anthony Hayes
LOCATION: PARNHAM HOUSE, NORTH STREET, HEADCORN, KENT, TN27 9NN
PARISH: Headcorn
PROPOSAL: Variation of condition 7 of application MA/12/2075 (any activity in connection with the use of the premises shall only take place between the hours of 09:30-19:00 Monday - Saturday and 09:00-17:00 on Sundays and Bank Holidays) to change opening hours to 07:00-22:00 Monday to Friday, 09:30-19:00 on Saturday and 09:30-17:00 on Sundays and Bank Holidays as shown on details received 29/04/13.

AGENDA DATE: 29th August 2013

CASE OFFICER: Kathryn Altieri

The recommendation for this application is being reported to Committee for decision because:

- It is contrary to views expressed by the Parish Council.

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: CF14
- Government Policy: National Planning Policy Framework

2. HISTORY

- MA/12/2075 - Change of use of building to gymnasium with parking including single storey extension, alterations to fenestration and associated works and installation of outside bike store/shelter – approved/granted with conditions

3. CONSULTATIONS

3.1 **Headcorn Parish Council:** Wishes to see the application refused;

3.1.1 *"It is accepted by all parties that this site historically did not have activity beyond normal working hours and this current application is therefore a*

departure from the basis on which MBC originally allowed this application. We note the original advice from the planning officer regarding opening hours was not consistent with the hours of operation of the original use. It concluded that some extension to those hours was acceptable something which the residents and Headcorn PC did not find acceptable. If you also then factor in that this site has not been in use for circa 10 years, then surely the argument for restricting rather than extending opening hours is much stronger, we therefore expect MBC to honour their original recommendation on opening hours and not change condition 7.

3.1.2 *The area to the rear of the residential properties in North Street is the most quiet and peaceful part of the conservation area, residents are used to the noise and activity at the front of their properties during the day time, which substantially reduces in the evenings, this existence of noise and activity should not be used as an excuse to introduce the same to the rear of these properties. Allowing the activity this gym will bring to Parnham House to be extended will turn what will be a just tolerable living condition in to an intolerable living condition.*

3.1.3 *Finally we are very suspicious of the motive for this application, what has changed in such a short time that makes the applicants business plan now not viable? We would suggest nothing could have changed in the financials of this development since the granting of permission of the original application. Therefore it is not unreasonable to conclude that the original hours of operation were simply used to get permission and once achieved the true ambitions for this development are now coming to light, we hope that MBC are not hood winked by these tactics."*

3.2 Environmental Health Officer:

3.2.1 *"When commenting on the previous application for this site, MA/12/2075, Environmental Health noted that the new owners of the facility need to "minimise unnecessary noise by keeping all windows and doors shut and by introducing a noise policy to users of the facility to minimise unnecessary noise whilst leaving the facility and in the car park". I can find no record of any noise complaints regarding this site on Environmental Health and Environmental Enforcement's complaints system, and so I have no objections to the proposed extension of hours. However, I feel the starting time on Sundays and Bank Holidays should be restricted to after 09:30hrs. However, I also still feel that an informative regarding a noise policy for the users of the facility would be prudent in order to help minimise disturbance and preserve amenity for local residents.*

3.2.2 The Environmental Health Officer has recommended an informative stating that the owners of the facility should be advised to have a noise policy for users of their car park and building in order to minimise unnecessary noise.

4. REPRESENTATIONS

4.1 5 neighbours have made representations raising concerns over;

- General noise and disturbance resulting from extended hours
- The use is not viable in this location
- Loss of privacy
- Highway safety
- Loss of property value
- Noise policy for gymnasium users is not enforceable
- Right of way over accesses

5. CONSIDERATIONS

5.1 Background information

5.1.1 This application was deferred at Planning Committee on the 8th of August to negotiate further with the applicant to revise the proposed hours to;

- Mon-Fri 8am-9pm
- Sat, Sun and B/hols to be as proposed by the applicant.

5.1.2 The applicant has not agreed to these revised hours and so the application has been brought back to Planning Committee for a decision to be made.

5.2 Site description

5.2.1 'Parnham House' is a modern detached building set back and accessed from North Street. It is brick built with a plain tiled barn-hip roof, there is already a single storey (flat roofed) extension projecting from the western elevation; and at the time of my site visit was vacant but last used as a builder's merchant. There is an area of hardstanding to the front (east) and side (north) of the site; and the site is enclosed by a small dwarf wall to the north, a five-bar entrance gate, and 1.8m high close boarded fencing to the south and east. A parking area is found beyond, to the north of the site (believed to serve local residents); and the closest residential properties are to the east and south of the site, fronting onto North Street and Church Walk.

5.2.2 The vehicle access from North Street (A274), which is also used by local residents, is flanked by residential properties to the south and a small commercial unit to the north; the western side of North Street along this stretch

does have double yellow lines; there is on street parking available on the eastern side; and the speed limit here is 30mph.

5.2.3 The application site is in the defined village envelope and Conservation Area (article 4 directive) of Headcorn; and is in the Low Weald Special Landscape Area (policy ENV34) as shown by the Maidstone Borough-Wide Local Plan 2000 (MBWLP).

5.3 Proposal

5.3.1 Planning approval MA/12/2075 granted permission to change the use of the building to a gymnasium. Condition 7 of this permission states;

"Any activity in connection with the use of the premises shall only take place between the hours of 09:30-19:00 Monday - Saturday and 09:00-17:00 on Sundays and Bank Holidays;

Reason: To safeguard the enjoyment of their properties by nearby residential occupiers. This is in accordance with policy CF14 of the Maidstone Borough-Wide Local Plan 2000 and the National Planning Policy Framework."

5.3.2 The applicant now seeks to change these operating hours to as follows;

- 07:00hrs –22:00 hrs: Mondays to Fridays
- 09:30 hrs – 19:00 hrs: Saturdays
- 09:30 hrs – 17:00 hrs: Sundays and Bank Holidays

5.3.3 Please note that the applicant has agreed to change the hours of opening on Sundays and Bank Holidays to 09:30hrs to be more in line with the Saturday opening time, as recommended by the Council's Environmental Health Officer.

5.4 Relevant policy and guidance

5.4.1 The principle for 'Parnham House' to be used as a gymnasium has already been approved under planning permission MA/12/2075. This application is to consider the impact of the proposed change of operation hours only.

5.4.2 The relevant local and national policy guidance was set out in the previous report for MA/12/2075, and I do not consider it necessary to go through it all again. However, as an overview of the relevant policy and guidance, the National Planning Policy Framework (NPPF) states that there should be a presumption in favour of sustainable development whilst protecting existing communities. In addition, the NPPF also seeks to support the rural economy, *"...in order to create jobs and prosperity by taking a positive approach to sustainable new development."*

5.4.3 Moreover, the most relevant saved Local Plan policy relating to development of this type is saved policy CF14 of the MBWLP. This policy permits proposals for D2 (assembly & leisure) uses outside the core shopping area provided that the criterion set out in this policy is met. Gymnasiums are classified as a D2 use.

5.4.4 In summary, policy CF14 will permit D2 uses in areas outside the core shopping area provided that;

- It does not under-mine the vitality and viability of the existing village;
- It improves the attractiveness and functioning of the village, both socially and economically;
- It does not have a significant detrimental impact on neighbour amenity;
- It does not result in any significant highway safety issues;
- It is in a sustainable location with adequate parking provision;

5.5 Assessment

5.5.1 The main issue to consider under this application is whether or not the proposed extension to the hours would result in unacceptable harm to the amenity of the near-by residential properties.

5.5.2 The parameters of the previous hours of use condition imposed under MA/12/2075 were set in line with what the applicant had stated; and was to prevent the potential for vehicles to be coming and going from the site in the early hours of the morning. I am of the view that the proposed extension of these hours now for consideration would continue to prevent this.

5.5.3 The applicant's associated car park is a good distance from neighbouring properties; and it is adjacent to an existing (larger) car park that uses the same access from North Street. This existing car park already generates a certain level of vehicle movements along this access, and these movements are not restricted to certain times of the day. Putting it into context, the gymnasium approved is not of a large scale with only eight further parking spaces being provided; and it will make use of an existing vehicle access that already serves a car park. I cannot argue that the additional vehicle movements and general comings and goings of patrons using 'Parnham House', for the proposed opening hours, would be any more significantly disturbing to neighbours when compared to existing uses around the site and what the site was previously in use as.

5.5.4 Noise from within the building will continue to be mitigated against by a condition stating that all openings are to be shut during hours of operation; and the applicant will also continue to be reminded by way of an informative to have due consideration for local residents, and as far as is practicable to reduce the

transmission of amplified sound. I am also satisfied that the air conditioning units, as approved under MA/12/2075, would continue to not have a significant noise impact on the occupants of nearby residential properties.

- 5.5.5 The applicant has also produced a 'noise policy' for patrons of the gymnasium. This document will be presented to Planning Committee Members prior to the meeting, and it demonstrates how due consideration for the amenity of local residents could be put into practice. Please note that no formal reconsultation was undertaken on this matter as it does not form a key part of the application and cannot be formally conditioned.
- 5.5.6 If the situation changes in terms of the possible future impact upon local residents with regards to noise, the occupants of 'Parnham House' would have to comply with Environmental Health legislation; and the Council's Environmental Health Team have the powers to take action if deemed necessary and justified.
- 5.5.7 With everything considered, I am of the view that the proposed change in operational hours for 'Parnham House' would not have a significant detrimental impact upon the residential amenity of any neighbouring property and so would not be contrary to policy CF14 of the Maidstone Borough-Wide Local Plan 2000. In my opinion, it would be unreasonable to refuse this application on these grounds.

5.6 Other Matters

- 5.6.1 The principle has been accepted for the building to be used as a gymnasium and for it to be extended. This application is concerned only with the change of the operational hours set under MA/12/2075. I do not therefore consider it necessary or reasonable to further discuss the issues of highway safety; parking provision; loss of privacy; ecology; private rights of way; landscaping; drainage/flooding; alternative sites for a gymnasium in Headcorn; and visual impact.

6. CONCLUSION

- 6.1 The main issues raised by Headcorn Parish Council and the neighbour representations have been dealt with in the main body of this report. However, I would like to add that any applicant has the right to apply to vary or remove conditions imposed on planning permissions. The hours of operation now put forward have been considered in the same way as if they had of been proposed under MA/12/2075. Moreover, loss of property value, or the fact that the application site (which is previously developed land) has not been in use for a period of time cannot be material planning considerations in the determination of this application.

6.2 Therefore, for the reasons outlined above, it is considered that the proposal is acceptable and in accordance with the Development Plan and the National Planning Policy Framework, and so I recommend conditional approval of the application on this basis.

6. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development shall not commence until, written details and samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted, which shall include, inter alia, bat tubes, have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials;

Reason: To ensure a satisfactory appearance to the development and mitigate against any loss of bat habitat.

3. All windows and doors (except for the main entrance door) are to remain shut during hours of operation;

Reason: In the interest of residential amenity.

4. The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 and the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

5. There shall be no discharge of foul or contaminated drainage from the site into either groundwater or any surface waters, whether direct or via soakaways;

Reason: To prevent pollution of the water environment.

6. Any activity in connection with the use of the premises shall only take place between the hours of 07:00-22:00 Monday-Friday, 09:30-19:00 on Saturdays, and 09:30-17:00 on Sundays and Bank Holidays;

Reason: To safeguard the enjoyment of their properties by nearby residential occupiers.

7. The development hereby permitted shall be carried out in accordance with the following approved plans: proposed block plan received 20/11/12 and proposed elevations and floor plans received 30/01/13 under MA/12/2075;

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers.

Informatives set out below

The applicant is advised to have due consideration for local residents and as far as is practicable reduce the transmission of amplified sound.

Clearance and burning of existing woodland or rubbish must be carried out without nuisance from smoke etc to nearby residential properties. Advice on minimising any potential nuisance is available from the EHM.

Vehicles may only arrive, depart, be loaded or unloaded within the general site between the hours of 0800 hours and 1900 Mondays to Fridays and 0800 to 1300 hours on Saturdays and at no time on Sundays and Bank Holidays.

Adequate and suitable provision in the form of water sprays should be used to reduce dust from the site.

Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed.

Attention is drawn to Sections 60 & 61 of the COPA 1974 and to the Associated British Standard COP BS 5228: 2009 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the EHM regarding noise control requirements.

Plant and machinery used for demolition and construction shall only be operated within the application site between 0800 hours and 1900 hours on Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays and at no time on Sunday and Bank Holidays.

The operator is advised to encourage members of the gym to use other modes of transport other than the private motor car.

If protected species, including bats, are found during the course of works, all works should cease and appropriate mitigation be implemented.

Note to Applicant

In accordance with paragraphs 186 and 187 of the NPPF, Maidstone Borough Council (MBC) takes a positive and proactive approach to development proposals focused on solutions. MBC works with applicants/agents in a positive and proactive manner by:

Offering a pre-application advice and duty desk service.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the committee and promote the application.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000) and there are no overriding material considerations to indicate a refusal of planning consent.