

Delegated Report (Member's Briefing)		Analysis sheet		Expiry Date:		24/09/2010	
		N/A / attached		Consultation Expiry Date:		17/09/2010	
Officer				Application Number(s)			
Rob Tulloch				2010/4185/P			
Application Address				Drawing Numbers			
37-63 Fortune Green Road London NW6 1UJ				See decision notice			
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature				
Proposal(s)							
Variation of condition 18 (restricted opening times of the gymnasium and Class A3 units) as attached to the outline permission granted on appeal (dated 17th February 2005, ref. APP/X5210/A/03/1135364, Council ref 2003/1858/P) in order to allow for the 24 hour operation of the gymnasium (Class D2).							
Recommendation(s):		Grant Planning Permission Subject to a Section 106 Legal Agreement (Deed of Variation)					
Application Type:		Variation or Removal of Condition(s)					
Conditions:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	64	No. of responses No. electronic	01 00	No. of objections	00
Summary of consultation responses:		64 adjoining occupiers were notified and a site notice displayed from 27/08/2010. 5 Ranulf Road comment that the gym does not need to open 24 hours a day.					

CAAC/Local group comments:

West Hampstead Amenity & Transport object that it is a residential area and there is potential for noise nuisance from cars starting and slamming doors, and there are almost no spare parking spaces so residents arriving late in the evening may not be able to find a parking spot, particularly vulnerable members of the community.

Gondar & Agamemnon Residents Association also object that the proposal would increase noise and disturbance through additional late night car movement.

Officer response: It is anticipated that few gym users would visit by car. As there is parking stress in the area it is unlikely that the same spaces would regularly be taken up by gym users. The current permission allows the gym to operate until 23:30 hours and it is not considered that a significant number of residents would be returning after this time. Gym visits are usually limited in time therefore it is not considered that local residents would suffer regular parking problems in the night.

Site Description

The site was formerly a car showroom/garage with petrol filling station, parade of shops and a public house located on the west side of Fortune Green Road. The land is surrounded on 3 sides by Fortune Green public open space. The permission for a part 4 and part 5-storey building of residential flats with basement parking and shops and a gym at ground floor/part basement has been substantially completed. The site is not located within a conservation area.

Relevant History

Outline permission was granted 17/02/05 on appeal following an inquiry for a part 4, part 5 storey building plus basement & sub-basement to provide a gym (Class D2) at part basement & part ground floor, 5 ground floor commercial units (Class A1, A2 or A3 use), 22 affordable residential units at 1st-3rd floors & 50 private residential units at 1st-4th floor levels, plus 82 ancillary parking spaces on the site comprising 37-63 Fortune Green Road. (2003/1858/P). The approval is bound by an accompanying Unilateral Undertaking securing affordable housing; car capped housing; travel plan; contributions for education, highways works and additional planting for the adjacent public open space.

Reserved matters being design, external appearance, landscaping and access, were granted 30/06/2006 (ref. 2006/1705/P).

Approvals of details have since been issued in respect of conditions 4 (slab levels); 5 (facing materials), 6a (layout of flats and detailed elevations); 6c (signage); 6d (planting fixed to building); 6e (glazing); 6f (parapets); 6g (balconies); 6h (roofs); 6i (boundaries); 6j (entrances), 6k (gate to service area); 6l (shopfronts); 6n (staggered apex); 8 (tree survey); 9 (tree protection); 10 (tree planting); 12 (site access and visibility splays); 13 (route for construction traffic); 15 (residential parking); 16 (vehicular ramp); 17 (cycle parking); 24 (archaeological investigation); 25 (details of site investigation); 26 (waste storage and removal); 27 (surface and foul drainage), 28 (site drainage) and 30 (noise insulation). During construction revised details in respect of 6a have been approved relating to the retail frontage (2008/0118/P) and glass block fake window panels and courtyard elevations (2007/2341/P).

Revised details in respect of condition 6a have been submitted at various stages to reflect minor changes to the scheme as it progresses, the latest being approved on 24/07/2009 under ref 2009/0509/P (relating to flat layouts, elevational design details and a lift overrun).

2009/5835/P Variation of condition 19 (delivery times to the Gymnasium and Class A1 and A3 Units) as attached to the outline permission granted on appeal (dated 17th February 2005, ref.

APP/X5210/A/03/1135364, Council ref 2003/1858/P) in order to allow deliveries to the commercial units within the development to extend to Sundays and public holidays between the hours of 10:00 and 16:00 hrs. Granted subject to a S106 Agreement 02/02/2010

Approval of details are still outstanding in respect of conditions 6b (lighting), 29 (sound insulation of gymnasium) and 31 (ventilation and fume extraction) and require submission.

Relevant policies

Camden Replacement Unitary Development Plan 2006

SD6 Amenity for occupiers and neighbours

SD7 Light, noise and vibration pollution

T9 Impact of Parking

Camden Planning Guidance

LDF Core Strategy and Development Policies

DP19 Managing the impact of parking

DP26 Managing the impact of development on occupiers and neighbours

CS5 Managing the impact of growth and development

The Inspector's Report into the Camden Local Development Framework Core Strategy and Development Policies Development Plan documents ("DPD"s) was published on 13th September and found the policies in the DPDs to be sound.

This means "considerable weight" can now be given to these LDF policies even though at this stage they have yet to be formally adopted by the Council. Where there is a conflict between UDP policies and these LDF policies the Planning Inspectorate would consider it reasonable to follow the latter .

However prior to formal adoption UDP policies should still be taken into account as the Council's adopted Development Plan.

Assessment

Permission was granted on appeal (reference 2003/1858/P) for a mixed use development comprising 72 flats on the upper floors with a gym (Class D2) at part basement & part ground floor and five ground floor commercial units. Condition 18 states:

"The gymnasium and any Class A3 unit hereby approved, shall not be open for business between 23.30hrs and 06.00hrs the following day, and no sound emanating from these premises shall be audible within any adjoining premises between these hours."

The proposal seeks to vary the condition to allow the gym to be open on a 24 hour basis. The main issues are the impact of the extended opening hours on the amenity of adjoining occupiers.

Noise

The applicants have submitted a noise impact assessment to demonstrate that no noise from the gym will be audible outside the premises. To facilitate this the gym will not incorporate a dance studio or hold step/aerobic type classes, and will only play low level background music with speaker mounts installed on anti-vibration mounts. The Council's Compliance and Enforcement Team are satisfied that the mitigating measures in place would ensure no noise disturbance occurs to the occupiers of the flats above the gym.

Notwithstanding the above, the original condition 18 sought to prevent any noise from the gym and A3 units being heard outside the premises, and the proposal seeks to retain this element of the condition. Therefore, as the varied condition will prevent any noise from the premises being heard outside, and

allow the Council to take action against any breach of condition, it is not considered that noise emanating from the premises would harm the amenity of adjoining occupiers.

Concern has been raised over potential noise from car users visiting the premises throughout the night. It is not anticipated that a significant number of gym users will arrive by car as the gym aims to appeal to local people, particularly residents of the flats above, and the applicants do not anticipate a large number of clients overall throughout the night. Based on gyms located in similar catchment areas the applicants expect 180,500 visits over a 12 month period, or approximately 495 a day. Of these visits an average of 3.25% (16) would attend between 22.00 - 00.00, about 1.5% between 00.00 and 04.00am (7) and about 3.25% between 04.00 and 06.00 (16).

The surrounding streets such as Weech Road, Ingham Road, Burrard Road and Ajax Road suffer from parking stress whereby overnight demand exceeds 90% of the maximum kerbside spaces. Therefore any available car parking spaces would be spread out and it is unlikely that the same spaces would be regularly available to cause noise nuisance to particular residents.

As such it is considered that the proposal would not harm the amenity of local residents in terms of noise nuisance in line with policies SD6 and SD7 of the UDP and DP26 of the Local Development Framework.

Transport

There are two Controlled parking Zones around the site. Fortune Green Central CA-P(a) to the east of the site which operates Monday to Friday from 08:30 -18:30 hours and Fortune Green West CA-P(c) to the south and north which operates Monday to Friday from 10:00 – 12:00 hours.

The current permission allows the gym to operate until 23:30 hours, the proposal would permit the gym to additionally open between 23.30 hours and 06.00 hours the following day. As the majority of night time users of the gym are expected to arrive on foot, the anticipated number of users visiting by car would not be considered to add to parking stress or harm the flow of traffic. Furthermore, gym visits usually last less than one hour therefore it is not considered that a significant number of residents would suffer from being deprived of a parking space as result of the proposal due to the limited number of expected car users, their limited stay, and the late opening hours being applied for.

Therefore it is considered that the proposal would not harm local parking conditions or the highway network and would comply with policies T9 of the UDP and DP19 of the Local Development Framework.

Recommendation: It is recommended that condition 18 is removed and the following replacement condition is imposed:

Any Class A3 unit hereby approved shall not be open for business between 23:30 hours and 06:00 hours the following day. No sound emanating from any of the A3 or D2 units shall be audible within any adjoining premises.

The existing S106 would require a Deed of Variation in order to accommodate the new condition.

DISCLAIMER

Decision route to be decided by nominated members on Monday 20th September 2010.

For further information see

<http://www.camden.gov.uk/ccm/navigation/environment/planning-and-built-environment/planning-applications/development-control-members-briefing/>