

# Appendix A

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# Appeal Decision

Site visit made on 3 April 2014

**by Les Greenwood MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 25 April 2014**

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**Appeal Ref: APP/C5690/A/13/2207484**

**Unit 2B, Birdwood Avenue, Lewisham, London SE13 6UR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Actilife Ltd against the decision of the Council of the London Borough of Lewisham.
  - The application Ref DC/13/83517, dated 13 May 2013, was refused by notice dated 7 August 2013.
  - The development proposed is the use of the site as a 24 hour gym.
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## Application for Costs

1. An application for costs was made by Actilife Ltd against the Council of the London Borough of Lewisham. This application is the subject of a separate decision.

## Decision

2. The appeal is allowed and planning permission is granted for the use of the site as a 24 hour gym in accordance with the terms of the application Ref DC/13/83517, dated 13 May 2013, subject to the conditions set out in the attached Schedule.

## Main issue

3. The main issue is the effect of the proposal on living conditions at neighbouring residential properties, with regard to potential noise and disturbance from late night and early morning use of the appeal premises.

## Reasons

4. Unit 2B is large ground floor unit within a block of residential flats, surrounded mainly by other blocks of flats. The unit has an existing planning permission for Class D2 (Assembly and Leisure) uses, limited to opening hours of 07:00 to 23:00 each day in order to safeguard the amenities of adjoining residents. The appeal proposal is for use as a gymnasium (which would be within Use Class D2), to be open 24 hours a day, 7 days a week.
  5. The appellant's noise report recommends noise limits for the use and these can be set by planning conditions. Therefore the use of the building itself should
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not cause any nuisance or disturbance to neighbours, including those living above the gym. The Council's main concern, however, relates to the comings and goings of patrons at unsocial hours and potential anti-social behaviour outside the premises. Much is made in the appellant's submissions of the light use of such gyms during late nights/early mornings and the difference between this particular use and other potential uses in Class D2.

6. I accept that the proposed use as a gym would be very unlikely to generate more than a trickle of patrons during unsocial hours. I agree that it would be significantly different in this respect to some other potential uses falling within Class D2. This small number of visitors, spread out through the night, should not be significant within such a densely built-up residential area where there must be occasional comings and goings to and from the flats as well. I see no reason why gym patrons would be particularly prone to committing acts of anti-social behaviour.
7. Subject to the noise control conditions referenced above and to another condition limiting use of the premises to a gym as proposed, I conclude that the proposal would not unduly affect living conditions at neighbouring residential properties. The proposal therefore accords with the aims of Policy ENV PRO11 of the Lewisham Unitary Development Plan (2004) and Policy DM26 of the proposed submission version of the Development Management Local Plan (2013), to protect sensitive uses from excessive noise and to resist development that would lead to unacceptable levels of noise. This is also in line with the National Planning Policy Framework's emphasis on preventing existing development from being adversely affected by unacceptable levels of noise pollution. I furthermore find no conflict with the more recently published National Planning Practice Guidance.
8. Local residents have also raised concerns about security, traffic and parking. I see no significant evidence suggesting that these issues would be materially affected, particularly given the anticipated light usage of the proposed gym during the hours not already permitted.
9. Turning back to the matter of conditions, I also impose a condition listing the approved plans, for the avoidance of doubt and in the interest of proper planning. I have amended the Council's suggested wording in places in the interest of clarity and concision.
10. The appellant has requested that any condition limiting the use to a gym should allow the premises to revert to other Class D2 uses if the 24 hour gym use ceases. I am sympathetic to this request. However, implementation of this permission would appear to supersede the previous permission and no wording has been suggested which would adequately provide such flexibility while also protecting the amenity of local residents. The condition as imposed therefore limits use to a gym, as proposed.
11. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should succeed.

*Les Greenwood*

INSPECTOR

[Schedule of Conditions follows]

#### SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: LON104-001 and D10517-C.
- 3) The rating level of the noise emitted from fixed plant and from the premises on the site shall be 5dB below the existing background level measured as 37dBA and detailed in the submitted Report AA479/11/12/12. The noise levels shall be determined at the façade of any noise sensitive property. The measurements and assessments shall be made in accordance with BS4142:1997.
- 4) No music shall be played or amplified sound system used which is audible outside of the premises or within adjoining buildings and no music shall be played (other than through earphones or headphones) or amplified sound system used between the hours of 23:00 and 07:00, 7 days a week.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any Order revoking, re-enacting or modifying that Order, the premises shall only be used as a gymnasium and for no other purpose including any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order.