

Committee Report

Application No:	DC/18/01154/FUL
Case Officer	Joanne Munton
Date Application Valid	22 November 2018
Applicant	Mr Chris Hannant
Site:	83 Whaggs Lane Whickham Newcastle Upon Tyne NE16 4PQ
Ward:	Whickham North
Proposal:	Construction of single storey building in rear garden and change of use from dwellinghouse (C3 Use) to a mixed use of dwellinghouse and yoga studio (sui generis) (retrospective) (description amended 12.03.2019)
Recommendation:	GRANT
Application Type	Full Application

1.0 The Application:

1.1 This application was deferred at the meeting of the Planning and Development Committee on 13 March 2019 to allow the Committee to visit the site. Members visited the site on 28 March 2019. The report below has been updated from that which was previously considered to include reference to additional representations that have been received.

1.2 DESCRIPTION OF SITE

The application site on the location plan is a dwelling and its curtilage. The site has a larger rear garden, approximately 55m long and, particular to this application, includes an existing single storey building at the western end.

1.3 The building is timber clad, is 8.1m wide, 4.9m deep and, with a monopitch roof, measures between 2.6m high at the rear and 3m high at the front.

1.4 DESCRIPTION OF APPLICATION

The application is retrospective and proposes a single storey building at the western end of the garden and a change of use of this building to a yoga studio, which would be a gym and therefore would fall within use class D2 (assembly and leisure). The rest of the land would remain in residential use.

1.5 Therefore the proposal is for the change of use from a dwellinghouse (C3) to mixed use dwellinghouse and yoga studio (sui generis).

1.6 RELEVANT PLANNING HISTORY

DC/07/00486/FUL - Raising of roof height to provide first-floor level and construction of pitched roof over existing flat roofed garage and kitchen at side
- Granted 01.05.2007

DC/12/00365/HHA - Erection of single storey extension to the rear of dwellinghouse - Granted 22.05.2012

2.0 Consultation Responses:

None

3.0 Representations:

3.1 Neighbour notifications were carried out in accordance with formal procedures introduced in the Town and Country Planning (Development Management Procedure) Order 2015.

3.2 Councillor Peter Craig has requested that the application be reported to Planning Committee.

3.3 8 objections from residents have been received, raising concerns regarding:

- Clarification of use proposed in the application;
- Has been operating without planning permission;
- Lack of detail regarding hours of business and parking provision;
- Building is up against rear garden fence rather than near the dwelling at no.83;
- Increased noise, disturbance and nuisance at nearby residential properties;
- Potential for classes outside in the summer and increase in noise/disturbance;
- Loss of privacy and security at neighbouring properties from clients walking through the garden of no.83;
- Impact of external lighting shining into neighbouring properties;
- Parking demand leading to increased on-street parking on Whaggs Lane, subsequent difficulty for footpath users, access to buses, visibility issues at neighbouring driveways and impact on highway safety;
- No other commercial uses on the road and application site is not a suitable location for the proposed use;
- Potential for use to take place elsewhere/a more suitable commercial area;
- Impact on Area of Special Character and residential character of the street;
- Potential for use early in the morning and late at night and/or increased number of classes per week, and subsequent worsening of issues;
- Potential for classes to be run/classes currently area being run by external people (ie. Not living at no.83) and for responsibility and control of the business to be diluted;

- Impact on property values;
- Some property deeds restrict certain uses of land.

3.4 A further objection has also been received on behalf of two objectors, making the following additional comments to those outlined above:

- Letters of support are from users of the facility rather than necessarily being immediate neighbours;
- Neighbours are already experiencing noise and disturbance from the yoga studio and customers accessing the studio over and above what would be typical of a residential area;
- Inadequate car parking provision and impact on highway safety;
- If application was approved, the commercial use should be restricted;
- Residents find noise disturbance after 8pm unacceptable;
- The condition restricting the number of sessions each day would allow for an increase in sessions that the current situation, which would have a significant impact on the site and area, and if four classes are permitted on weekdays the length of classes should be restricted;
- There should only be two classes allowed on Saturdays, Sundays, Bank Holidays;
- Specific details relating to background noise levels when the yoga studio is not operating should be required by the noise management plan (under recommended condition 7);
- Potential for overlooking at neighbouring properties and requested to impose condition requiring classes to only operate within the building itself and not within the rear lawn of 83 Whaggs Lane;
- The evidence required to support a commercial use in this location has not been provided or assessed;
- A maximum of four sessions per day (under recommended condition 6) would allow for more sessions than the four sessions per week as proposed by the applicant, and would impact on amenity.

3.5 Additionally, 27 letters of support for the application have been received, commenting on the following:

- the use is beneficial to health and mental and physical wellbeing;
- the facility provides a smaller environment for clients who do not wish to/do not feel they can attend larger classes elsewhere;
- the classes are quiet and noise and disturbance from the use if minimal;
- clients are respectful of neighbours if parking on street and Whaggs Lane is a wide and busy road in any event;
- parking demand is minimal in terms of small and infrequent classes and as some patrons walk;

- the quality and welcoming, supportive nature of the classes and the value of the business;
- the class sizes are small and a larger venue would not be viable;
- concern if the use was to stop;
- the use contributes to national and local objectives for healthier lifestyles and wellbeing.

4.0 Policies:

NPPG National Planning Practice Guidance

NPPF National Planning Policy Framework

RCL5 District and Local Centres

DC2 Residential Amenity

ENV3 The Built Environment - Character/Design

ENV25 Areas of Special Character

ENV61 New Noise-Generating Developments

CS7 Retail and Centres

CS13 Transport

CS14 Wellbeing and Health

CS15 Place Making

GPGSPD Gateshead Placemaking Guide SPG

5.0 Assessment of the Proposal:

5.1 The key considerations to be taken into account when assessing this planning application are the principle of the proposal, visual amenity, residential amenity and highway safety and parking.

5.2 PRINCIPLE

The application proposes a main town centre use outside of a retail centre, as defined by saved policy RCL5 of the UDP and policy CS7 of the CSUCP. As such, the applicant has submitted a statement addressing why the use is proposed in this location and not in a retail centre.

5.3 The detail submitted clarifies that the building is also used personally by the applicant and family and that the proposed D2 use, whilst considered to be at such a level to require planning permission (rather than being an ancillary use), would run on a small scale basis. The website for the business associated with

the subject building confirms that there are also classes available in larger venues, and that classes in the proposed yoga studio are intentionally more intimate, which, as in the submitted statement, appeals more to particular clients.

- 5.4 The submitted detail states that the nature and frequency of the proposed use would render locating in a permanent commercial unit unviable, although no data/evidence has been submitted with the application to demonstrate this.
- 5.5 It is considered that sequential opportunities are limited and on the basis of the described nature and frequency use that it would be unlikely for alternative suitable central premises providing for the same specific requirements of the building would be available.
- 5.6 It is recommended that conditions be imposed restricting the number of customers on site, restricting the number of sessions per week, and restricting hours of operation of sessions.
- 5.7 It is acknowledged that the proposed D2 use definition encompasses other uses rather than just specifically relating to a gym. Whilst it is considered that the size and design of the building would itself limit the potential for some alternative uses within class D2 on site, the proposed use, setting and the reasoning for the use outside of the retail centre are so specific that it is recommended that condition 2 be imposed restricting the use to that proposed (yoga studio) and no other use within the broader D2 use class.
- 5.8 Therefore, it is considered that the principle of the proposed use would be acceptable and would comply with the aims and requirements of saved policy RCL5 of the UDP and policy CS7 of the CSUCP.
- 5.9 VISUAL AMENITY
The site is within an Area of Special Character and the proposal would not have an adverse impact on the specific main characteristics of low density housing, dense coverage of mature trees and long, well-established gardens. The rear garden of the property is large and the proposed building itself would appear neither untypical nor overly dominating in this residential context.
- 5.10 It is considered that the proposal would respect the character of the area and would comply with the aims and requirements of saved policies ENV3 and ENV25 of the UDP, policy CS15 of the CSUCP and the Gateshead Placemaking SPD.
- 5.11 RESIDENTIAL AMENITY
Paragraph 91 of the NPPF requires that planning decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, are safe and accessible, and enable and support healthy lifestyle.
- 5.12 Policy CS14 of the CSUCP states that the wellbeing and health of communities will be maintained and improved by requiring development to contribute to creating an age friendly, healthy and equitable living environment through:

- i. Creating an inclusive built and natural environment,
- ii. Promoting and facilitating active and healthy lifestyles,
- iii. Preventing negative impacts on residential amenity and wider public safety from [amongst others] noise,
- iv. Providing good access for all to health and social care facilities, and
- v. Promoting access for all to green spaces, sports facilities, play and recreation opportunities.

- 5.13 In terms of potential future uses of the building, specifically, the yoga studio would provide an intentionally small facility promoting active and healthy lifestyles, appealing to certain customers more than larger venues. Generally, the proposed D2 use would contribute to recreation opportunities and meeting socially as a small group. It is considered that the proposed use would contribute to creating an age friendly, healthy and equitable living environment and would promote social interaction.
- 5.14 Saved policy DC2 of the UDP requires that new development should not cause undue disturbance to nearby residents or conflict with other adjoining uses, safeguards the enjoyment of light and privacy for existing residential properties, and ensures a high quality of design and amenity for existing and future residents.
- 5.15 In terms of existing residents, concerns have been raised from objectors regarding the increase in noise and disturbance and impacts on privacy and security at neighbouring properties resulting from the proposed use.
- 5.16 As above, it is recommended that the D2 use of the garden building be limited to the use proposed rather than within the broader D2 use class definition. It is considered that with this recommended limitation and further appropriate conditions detailed below, the proposed use could operate without resulting an unacceptable level of noise or disturbance or unacceptable loss of privacy or sense of security.
- 5.17 In this particular location on Whaggs Lane the gardens are large and long, with the rear garden at no.83 being approximately 55m long. These gardens, by virtue of their size, allow space for lots of outdoor activity, be this gardening, fitness or social gatherings. Consideration is also given to the potential for a building or swimming pool incidental to the enjoyment of the dwellinghouse under residential permitted development rights at these properties.
- 5.18 Whilst there would be members of the public accessing the rear garden of no.83, in a garden of such a size it would be reasonable to expect a certain level of activity, social gatherings and guests visiting associated with the residential use in any event, particularly in the summer months.
- 5.19 It is recommended that a condition be imposed restricting hours of operation to between 09.00 and 21.00 on any day (condition 4). It is considered that provided the number of customers and sessions, and the potential for amplified music are controlled, the recommended operating hours would be appropriate,

and it therefore would not be necessary or reasonable to restrict hours of operation further.

- 5.20 It is recommended that conditions be imposed restricting the number of customers on site to a maximum of ten people, restricting the operation of the use to the building only (as opposed to garden land outside of the building), and restricting the number of sessions to four per day (Conditions 3, 5, and 6). Whilst this latter restriction would not limit the length of classes, it would ensure that the movements through the garden to/from the building would not result in an unacceptable level of disturbance or perceived loss of privacy and/or security at neighbouring properties.
- 5.21 It is considered that it would not be necessary to restrict the length of sessions as the recommended conditions would ensure appropriate levels of noise and movements that would not have an unacceptable impact on residential amenity. Similarly, it is also considered that it would not be reasonable or necessary to restrict the number of sessions on a weekend and Bank Holidays further than weekdays, or the number of sessions to only four per week.
- 5.22 Additionally, it would be reasonable to expect a yoga studio to involve an amplified sound system, and it is recommended that conditions be imposed requiring that from the date of the decision, before such a system is used in the building, a noise management plan be submitted to the LPA for consideration, and requiring implementation of the approved plan (conditions 7 and 8).
- 5.23 Subject to conditions, it is considered that the proposal would facilitate active and healthy lifestyles without having an unacceptable impact on the residential amenity of neighbours. The proposal would comply with the aims and requirements of saved policy DC2 of the UDP, policy CS14 of the CSUCP and the NPPF.
- 5.24 HIGHWAY SAFETY AND PARKING
The proposal would result in customers travelling to and from the site, and therefore would generate a level of parking demand. Conditions are recommended to restrict the number of customers, sessions and hours of operation. Whaggs Lane is wide and unrestricted in this location, some customers would walk/cycle to the site, and it is considered that the parking demand could be accommodated on street/in the vicinity without resulting in an unacceptable impact on highway safety.
- 5.25 The proposal would comply with the aims and requirements of saved policy CS13 of the CSUCP and the NPPF.
- 5.26 OTHER MATTERS
Property values/saleability and the quality of the service provided are not a material planning consideration.
- 5.27 Granting a planning permission also does not affect other legal requirements/obligations landowners may have.

- 5.28 It is not recommended that the permitted use be restricted to this particular applicant, therefore, there is potential for other people to operate the use. It is considered that the recommended conditions would ensure that the use would not have an unacceptable impact on residential amenity.
- 5.29 In terms of external lighting, it would be reasonable to expect this to be part of residential properties, and if this was to be included on the single storey building in the garden in an excessive way, this would be a matter to be dealt with through Environmental Health legislation.
- 5.30 **COMMUNITY INFRASTRUCTURE LEVY**
On 1st January 2017 Gateshead Council became a Community Infrastructure Levy (CIL) Charging Authority. This application has been assessed against the Council's CIL charging schedule and the development is not CIL chargeable development.

6.0 CONCLUSION

- 6.1 The proposal would provide an intentionally small facility supporting active and healthy lifestyles and promoting social interaction, without having an unacceptable impact on the residential amenity of neighbours, subject to appropriate conditions.
- 6.2 It is considered that the proposed development is acceptable in principle and in terms of visual and residential amenity, highway safety and parking, and would comply with the aims and objectives of the NPPF, and the relevant policies of the UDP and the CSUCP.
- 6.3 Therefore, it is recommended that planning permission be granted, subject to the below conditions.

7.0 Recommendation:

That permission be GRANTED subject to the following condition(s) and that the Service Director of Development, Transport and Public Protection be authorised to add, vary and amend the planning conditions as necessary:

1

The development shall be carried out in complete accordance with the approved plan(s) as detailed below -

01.A4

02.A1

Any material change to the approved plans will require a formal planning application to vary this condition and any non-material change to the plans will require the submission of details and the agreement in writing by the Local Planning Authority prior to any non-material change being made.

Reason

In order to ensure that the development is carried out in complete accordance with the approved plans and any material and non-material alterations to the scheme are properly considered.

2

The D2 (assembly and leisure) part of the mixed use hereby approved shall be limited to use as a yoga studio, including sessions for yoga, pilates, and health and wellbeing workshops, and no other use within class D2.

Reason

To ensure appropriate use of land in the interests of amenity of the residents of no.83 and residential neighbours, in accordance with saved policy DC2 of the UDP, policy CS14 of the CSUCP and the NPPF.

3

Sessions associated with the operation of the yoga studio part of the mixed use hereby approved shall be restricted to the single storey garden building as shown on plan no 02.A1 only.

Reason

To ensure appropriate use of land in the interests of amenity of the residents of no.83 and residential neighbours, in accordance with saved policy DC2 of the UDP, policy CS14 of the CSUCP and the NPPF.

4

Sessions associated with the yoga studio part of the mixed use hereby approved shall only be open to the public between 09.00 and 21.00 on any day.

Reason

To ensure appropriate use of land in the interests of amenity of the residents of no.83 and residential neighbours, in accordance with saved policy DC2 of the UDP, policy CS14 of the CSUCP and the NPPF.

5

The number of customers on site associated with the yoga studio part of the mixed use hereby approved shall be limited to a maximum of ten people at any time.

Reason

To ensure appropriate use of land in the interests of amenity of the residents of no.83 and residential neighbours, in accordance with saved policy DC2 of the UDP, policy CS14 of the CSUCP and the NPPF.

6

The number of sessions associated yoga studio part of the mixed use hereby approved shall be limited to a maximum of four sessions each day.

Reason

To ensure appropriate use of land in the interests of amenity of the residents of no.83 and residential neighbours, in accordance with saved policy DC2 of the UDP, policy CS14 of the CSUCP and the NPPF.

7

From the date of this decision, no amplified sound system or similar equipment associated with the yoga studio part of the mixed use hereby approved shall be used on site until details of a noise management plan (including timescales) have been submitted to and approved in writing by the Local Planning Authority.

Reason

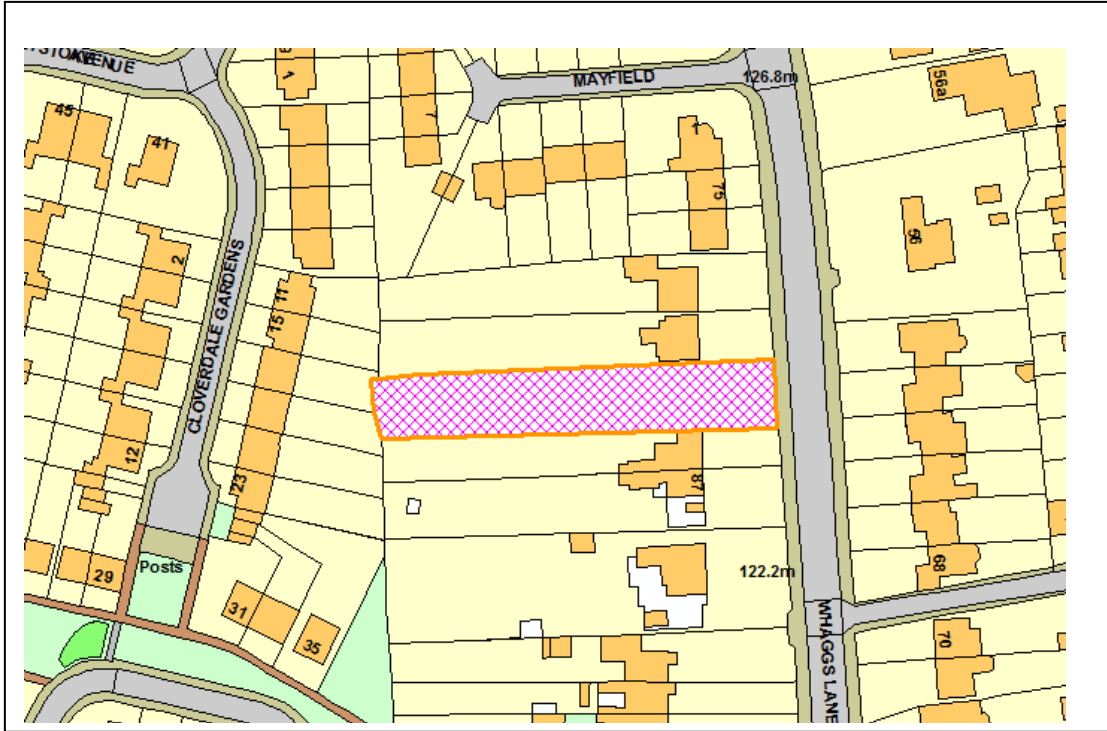
To ensure that the use would not result in an unacceptable level of noise/disturbance to neighbouring properties, in accordance with Saved Policies, DC2 and ENV61 of the Unitary Development Plan, Policy CS14 of the Core Strategy and Urban Core Plan and the National Planning Policy Framework.

8

The details approved under condition 7 shall be implemented and maintained in accordance with the details and timescales approved and retained as such for the lifetime of the development.

Reason

To ensure that the use would not result in an unacceptable level of noise/disturbance to neighbouring properties, in accordance with Saved Policies, DC2 and ENV61 of the Unitary Development Plan, Policy CS14 of the Core Strategy and Urban Core Plan and the National Planning Policy Framework.



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