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## Appeal Decision

Site visit made on 9 October 2017

by **Diane Fleming BA (Hons) MRTPI**

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

Decision date: 07 November 2017

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### **Appeal Ref: APP/B5480/C/17/3167617 (Appeal A) and APP/B5480/C/17/3167618 (Appeal B)**

#### **Raw Inc, Crow Metals Estate, Crow Lane, Romford, Essex RM7 0EE**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Mr Tom White (Appeal A) and Mrs Chloe White (Appeal B) against an enforcement notice issued by the Council of the London Borough of Havering.
  - The enforcement notice was issued on 12 December 2016.
  - The breach of planning control as alleged in the notice is without the benefit of planning permission, material change of premises occupied by Raw Inc from B1, B2 and B8 use to D2 (Gym activities). This operation results in a breach of conditions No 2 and 13 of planning permission ref P0962.11. Condition No 2 states *The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans and specifications.* Condition No 13 states *No operation/activities shall be carried out on the site outside the hours of 09.00 and 18.00 Mondays to Fridays and the hours of 08.00 and 15.00 on Saturdays. No operations shall be carried out at any time on Sundays, Bank or public holidays.*
  - The requirements of the notice are
    1. Cease the use of the unit occupied by Raw Inc; and
    2. Cease the use of the forecourt for outdoor gym facilities; and
    3. Remove all equipment and accessories associated in connection with the unauthorised use; and
    4. Remove all rubbish, building materials, rubble and other accumulated items from the site.
  - The period for compliance with the requirements is three months.
  - The appeals are proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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### **Decisions**

1. The appeals are allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of three months and the substitution of six months as the period for compliance. Subject to this variation the enforcement notice is upheld.

### **The ground (g) appeal (Appeals A and B)**

2. The appeals concern the use of a unit and forecourt on an industrial estate as a gym. Access is from Crow Lane where there are a number of residential properties juxtaposed with commercial premises. In the vicinity of the appeal site there are some detached dwellings situated in large plots and near the appeal site cars are parked on the street.

3. The ground (g) appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the time necessary to carry out those requirements.
4. The appellants request that the three month period be increased to six months. This is because following the receipt of the notice in December 2016 they decided not to lodge an appeal on ground (a) and therefore began searching straight away for new premises. As most of their clients and staff are Romford based they decided to try and relocate within the borough in order to protect and preserve the business. Suitable premises were found within two weeks and, despite some setbacks, an application was submitted to the Council in April 2017 for the material change of use of the site to facilitate their gym use. At the time of the appeal submissions the outcome of the application is unknown. Based on their experience so far of trying to relocate, they therefore submit that three months is an unreasonable period of time for compliance.
5. The Council state that a longer compliance period prolongs the harm caused by the unauthorised use. The gym is used from either 0600 or 0800 to 2200 when loud music is played and there are also outdoor activities which harm the living conditions of nearby neighbours. The use has also resulted in a loss of parking which has led to overspill parking onto the street. It is submitted that this affects the safety and efficiency of the highway network. They have issued the notice because they considered it was expedient to do so and that decision has not been challenged.
6. As there is no appeal on any other ground, it has been virtually inevitable, since the appeal was lodged on 20 January 2017 that the unauthorised use of the property would have to cease. By making this limited appeal the appellants have already delayed the date when the notice will come into effect, knowing that its requirements to cease the use will be upheld
7. In cases involving business operations it is necessary to weigh the interests of the business, its employees and customers against the harm caused by the activities the subject of the notice. The appellants run a small business and have occupied the appeal site for four years. They provide a useful service that contributes to the local economy and employ several staff. It would be a serious issue for the employees if a requirement to comply with the notice led to them losing their jobs. The closure of the business entirely or even for a short time would not accord with the Government's commitment to secure economic growth.
8. In their dealings with potential landlords the appellants state that they are looking to pay no more than £60 000 in rent and rates per annum. Whilst they have not submitted any details to show that they have 1500 members, their search requirements would appear to indicate that their business must involve a substantial number of members to cover running costs and salaries. Since the appeal was lodged I consider that they have demonstrated that they have taken active steps to relocate, as detailed in the appendices to their Statement of Case.
9. The Council submit that there is no need to employ a trade person to ensure compliance. However, I consider that this would not be the case as the building has been fitted out as a gym and some of the equipment is large and fixed to the floor. Time would be needed to arrange for its removal and

storage elsewhere if the appellants do not succeed in finding alternative premises.

10. On the other hand, the use enforced against seriously harms the living conditions of nearby occupiers along Crow Lane and has led to concerns about highway safety and additional on street parking. Taking all these matters into account I conclude that the period for compliance is unreasonable and a period of six months would strike the appropriate balance between these conflicting interests. To this limited extent the appeal on ground (g) succeeds.

### **Conclusion**

11. For the reasons given above I conclude that a reasonable period for compliance would be six months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeals under ground (g) succeed to that extent.

*D Fleming*

INSPECTOR