

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No: 2017/62/93474/W

Site Address: Lean And Mean Fitness, 2, Abb Street, Marsh,
Huddersfield, HD1 4PA

Description: Change of use from vacant unit to exercise facility

Recommending Officer: William Simcock

DECISION – Full Conditional Permission

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Neil Bearcroft

AUTHORISED OFFICER

Date: 21-Dec-2017

Officer Report

Site Description

The site consists of a two-storey stone building with a hipped tile roof measuring approximately 11m by 9m externally, and associated land used for car parking. The site is on a corner plot and is surrounded by a metal post and rail fence on the west and north sides, bordering on Abb St and Syringa St respectively. The building itself is located towards the south-west corner of the site. To the south is a narrow servicing yard which adjoins the backs of a row of commercial properties along Westbourne Road. To the east there is a free-standing building which appears to be used for storage or business purposes. The wider area is mainly residential on Syringa St and commercial (part of the Marsh Local Centre) on Westbourne Road further to the south.

Description of Proposal

The proposal is for the change of use of the property to an exercise facility. Proposed hours are 0700 until 2100 Mon-Fri and 0830 to 1700 Saturdays. This is a renewal of the previous permission 2016/93466 which was granted for a 12-month period.

The reason for the temporary permission was to allow any possible impacts of the proposed use on nearby residential properties arising from noise disturbance, and any possible impacts on highway safety arising from parking associated with the use, to be monitored during this period and to accord with the aims of Policies EP4 and T10 of the Unitary Development Plan.

History of negotiations/amendments received

None.

Relevant Planning History

2014/90236 – Change of use to martial arts centre. Approved (12 month temporary consent) and implemented.

2016/93466 – Change of use from vacant unit to fitness / exercise facility. Approved for a 12 month period.

Representations

Final publicity date Expires: 13-Nov-2017

No representations made.

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the Assessment section of the report, where appropriate):

- Environmental Health – no objections
- Highways Development Management – no objections.

Policy

The statutory development plan comprises the Kirklees Unitary Development Plan (saved Policies 2007).

The statutory development plan is the starting point in the consideration of planning applications for the development or use of land unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004).

The Council is currently in the process of reviewing its development plan through the production of a Local Plan. The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

The site is unallocated on the UDP Proposals Map and without designation on Kirklees Publication Draft Local Plan.

Kirklees Unitary Development Plan:

- **D2** – Unallocated land
- **B4** – Change of use of business and industrial sites
- **T10** – Highway safety
- **T19** – Parking provision
- **EP4** – development and noise

Kirklees Publication Draft Local Plan (PDLP):

- **PLP 8** – Safeguarding employment land and premises
- **PLP13** - town centre uses
- **PLP 22** – Parking

- **PLP 50** – Sport and physical activity
- **PLP 52** - Protection and improvement of environmental quality

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 27th March 2012, together with Circulars, Parliamentary Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Core Planning Principles
- Section 1 – Building a strong, competitive economy
- Section 2 - Ensuring the vitality of town centres
- Section 7 – Requiring good design
- Section 11 – Conserving and enhancing the natural environment

Assessment

The following matters are considered in the assessment below –

- 1) Principle of development
- 1) Impact on visual amenity
- 2) Impact on residential amenity
- 3) Impact on highway safety
- 4) Other matters
- 5) Representations

1 – Principle of development: The site is without notation on the UDP Proposals Map and Policy D2 (development of land without notation) of the UDP states “planning permission for the development ... of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]”.

Other Policies of relevance are B4 (change of use of employment sites should be considered having regard to a number of factors including their continued suitability for business and industrial use), EP4 (potential impact of noise-generating on noise-sensitive development to be assessed at the planning stage), S1 (town and local centres to remain the focus for commercial development) and T10 and T19 (development should not create or materially add to highway safety problems, and consideration should be given to the recommended maximum parking standards set out in UDP Appendix 2).

Within the NPPF, it will be assessed having regard to the advice to drive sustainable economic development and to support existing business sectors in “Core planning principles” and “Building a strong competitive economy”.

Finally any impacts of potential noise on noise-sensitive premises should be taken into account as specified by Policy EP4 and by NPPF Policy 11.

PLP 8, 22 and 50 are considered relevant as they do not attract significant unresolved objections. Of these, PLP 8 and 22 cover similar concerns to UDP Policies B4 and T19; PLP 50 states that the Council will seek to protect, enhance and support new outdoor and indoor sport and leisure facilities where appropriate. PLP13 (town centre uses) attracts significant unresolved objections and so little weight will be placed on it.

All these considerations are addressed later in this assessment

1A – Economic sustainability and compatibility with Policy B4: At the time of the 2014 application the applicant was able to provide documentary evidence that the property had been marketed since November 2011 using all forms of recognised marketing, but without success. Officers concluded that it was doubtful the premises were viable for business or industrial use. The same approach was taken in assessing the 2016 application and as the policy context for assessing this type of application has not changed, the applicant will not be required to provide any further evidence.

The site is on the edge of Marsh Local Centre. A sequential test was not demanded for the 2014 or 2016 application – this was not considered a proportionate approach given that the use by its nature would require a lot of floorspace. Being on the edge of Marsh Local Centre it would be likely to encourage linked trips and support the viability of the Local Centre.

In summary it is considered that the proposal would be compatible with the aims of sustainable economic development in the NPPF.

2 – Impact on visual amenity: No external physical alterations to the building or its grounds are proposed. It is therefore considered that no impact on visual amenity would arise.

3 – Impact on residential amenity: The site is surrounded by residential development to the north and west. A number of conditions were attached to the original permission, requiring no amplified sound, weight contact surfaces to be rubberised, and the hours limited. Notwithstanding this, a temporary permission was considered appropriate so that in the unlikely event of it giving rise to noise problems, it could be discontinued.

The premises have only been operational since late September 2017. The Environmental Health Officer's view is that this has not given Council officers sufficient opportunity to assess the impact on residential amenity; the noise-generating potential is higher during the summer, partly because of windows being open for ventilation. On account of this Environmental Health do not recommend a permanent permission unless a number of other prescriptive conditions are attached, including that all doors and windows must remain closed during sessions, and no shouting of instructions in the car park. The first of these would affect the comfort and safety of people using the premises

during warm weather unless the applicant chose to undergo the expense of installing mechanical ventilation, and could be deemed unreasonable. The second of these is in principle reasonable as the applicant has made it clear that his intention is to strictly limit numbers and to run the facility in such a way as to minimise noise, but from a planning point of view would probably be impossible to enforce.

The applicant has, in response, said that the premises would not be used during the summer because he would be holding fitness sessions outdoors in Greenhead Park as they are now. In theory a condition could be imposed allowing the building to be used only September through April but this would be manifestly unreasonable as it would prevent the building from being fully used, including potentially by other clubs or enterprises in the D2 use class.

One solution to the problem of noise leaking through windows would be to allow only the south-facing ones to be opened as these face the backs of commercial properties on Westbourne Road which do not appear to have any residential use above. These are small and high-level but the applicant has stated that this will probably be sufficient.

It is also noted that the premises were used as a martial arts studio under temporary permission 2014/90236; the Environmental Health officer who assessed it at the time concluded that the potential for noise disturbance was negligible. This is also a noise-generating activity. The application was given a 12-month temporary permission because of highway safety concerns only. It has not given rise to any recorded complaints during the time it was operational.

It is considered on balance that given the nature of the use and the history of the site, the possibility of the use giving rise to noise disturbance is low. It is recommended that a permanent permission can be granted. This should be subject to the same conditions relating to anti-noise measures should be applied as before and in addition that all windows except the south-facing ones must remain closed at all times.

Subject to this it would accord with the aims of Policy EP4 of the UDP, Policy PLP40 of the PDLP and Policies in Chapter 11 of the NPPF.

4 – Impact on highway safety: The original permission required that the car park would be marked out into bays before the use was commenced. In correspondence with the case officer at the time of the 2016 application, the applicant said that he did not think that it would be necessary to provide parking at the premises for a number of reasons: it might encourage parking on the highway by people who arrive late, his existing clients are already comfortable with having to walk up to 300m to the facility rather than park there, and numbers will be strictly limited by a booking system.

At the time of the case officer's most recent site visit, the parking spaces had still not been marked out.

The facility, it appears, has been able to function without causing parking problems in the approximately 9 or 10 weeks it has been running. The Highways Officer has stated that they have no records of complaints being made.

It is considered therefore that the marking out of the parking space is not essential and no conditions relating specifically to highway safety or parking are required.

5 – Other issues: The development would support the aims of PLP 50 states that the Council will seek to protect, enhance and support new outdoor and indoor sport and leisure facilities where appropriate. It is not considered to raise any further issues of planning significance.

Conclusion

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

Recommendation – CONDITIONAL FULL PERMISSION

Decision Authorisation - Delegated Powers

Application Number: 2017/93474

Officer Recommendation: CONDITIONAL FULL PERMISSION

Conditions and Reasons

1. No amplified music, sound or speech shall be used on the premises.

Reason: To ensure that the proposed use does not give rise to loss of amenity to nearby residential properties by reason of exposure to excessive noise or disturbance at unsociable hours, and to accord with the aims of Policy EP4 of the Kirklees Unitary Development Plan and Policy PLP52 of the Kirklees Publication Draft Local Plan.

2. No free weights or weight machines shall be used on the premises unless the weight and weight contact points are rubberized to reduce the potential for impact noise. The floor areas where weights are to be used shall have rubberised matting installed – which shall be in accordance with the details submitted with this application – before any activities involving weights first commence, and this shall be thereafter retained.

Reason: To ensure that the proposed use does not give rise to loss of amenity to nearby residential properties by reason of exposure to excessive noise or disturbance at unsociable hours, and to accord with the aims of Policy EP4 of the Kirklees Unitary Development Plan, Policy PLP52 of the Kirklees Publication Draft Local Plan and Policies in Chapter 11 of the National Planning Policy Framework.

3. No weights or other equipment with the potential to generate impact noise shall be used in the external areas of the premises.

Reason: To ensure that the proposed use does not give rise to loss of amenity to nearby residential properties by reason of exposure to excessive noise or disturbance at unsociable hours, and to accord with the aims of Policy EP4 of the Kirklees Unitary Development Plan, Policy PLP52 of the Kirklees Publication Draft Local Plan and Policies in Chapter 11 of the National Planning Policy Framework.

4. All windows within the building, except those within the south elevation, shall be kept closed at all times when the building is in use.

Reason: To ensure that the proposed use does not give rise to loss of amenity to nearby residential properties by reason of exposure to excessive noise or disturbance at unsociable hours, and to accord with the aims of Policy EP4 of the Kirklees Unitary Development Plan, Policy PLP52 of the Kirklees Publication Draft Local Plan and Policies in Chapter 11 of the National Planning Policy Framework.

5. The proposed use shall not operate except between the hours of 07:00 to 21:00 Monday to Friday, and 08:30 to 17:00 Saturday, with no opening on Sundays or Bank Holidays. No exercise or fitness activities shall take place within the external areas of the premises before 0900 Monday to Saturday or

at any times on Sundays or bank Holidays. **Reason:** To ensure that the proposed use does not give rise to loss of amenity to nearby residential properties by reason of exposure to excessive noise or disturbance at unsociable hours, and to accord with the aims of Policy EP4 of the Kirklees Unitary Development Plan, Policy PLP52 of the Kirklees Publication Draft Local Plan and Policies in Chapter 11 of the National Planning Policy Framework.

6. No more than 20 patrons shall be permitted to be on the premises at any time.

Reason: To ensure that the proposed use does not give rise to loss of amenity to nearby residential properties by reason of exposure to excessive noise or disturbance at unsociable hours, and to accord with the aims of Policy EP4 of the Kirklees Unitary Development Plan, Policy PLP52 of the Kirklees Publication Draft Local Plan and Policies in Chapter 11 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form			10-Oct-2017
Location plan			10-Oct-2017
Information of exercise equipment			10-Oct-2017
Supporting Infor Regarding Operation of Use			20-Dec-2017

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The case officer sought further information regarding the operation of the use which was considered to be acceptable.

Report Dated: 20/12/2017

