

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 21/01169/FUL

APPLICANT : Threadneedle Property Unit Trust

AGENT : Montagu Evans LLP

DEVELOPMENT : Change of use of from retail (Class 1) to assembly and leisure (Class 11)

LOCATION: Unit 3
Gala Water Retail Park
Huddersfield Street
Galashiels
Scottish Borders
TD1 3AP

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
G201054-H09-01	Location Plan	Approved
G201054-A01-01	Existing Plans	Approved

NUMBER OF REPRESENTATIONS: 3
SUMMARY OF REPRESENTATIONS:

- Three objections have been submitted, the key points raised, in basic summary, being:
- o There is no need for further gyms, there are already plenty in the area, and a large chain would undercut others
 - o Loss of key retail space. This would be better as a clothing or food outlet
 - o Further damage to the high street and local businesses
 - o Conflict with the Local Development Plan
 - o 24 hour noise and traffic pollution

Consultations

Roads Planning Service: No great issue with the principle, the main issue is parking availability. It would be beneficial for the applicant to confirm what they deem the peak user numbers would be, and this would then determine the number of spaces the RPS would deem appropriate, and compare with the overall space available. Cycle parking should also be provided.

Community Council: No reply

Contaminated Land Officer: Appears to be a possible historic use of the land as a mill within the vicinity of this application. Recommends an informative

Environmental Health Service: Further information is required. The hours of the use are important due to the proximity of residential flats. The applicant should also indicate if they have undertaken any surveys in relation to the building envelope and its sound attenuation properties as a noise impact assessment may be required. They expect the application can be based on its specific use within Class 11 and conditioned to that effect.

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016

PMD2, PMD5, ED3, HD3, EP1, IS7, IS8, IS9, IS13

SPG Waste Management 2015

Recommendation by - Carlos Clarke (Lead Planning Officer) on 7th October 2021

This application seeks consent to convert a vacant retail unit in the Gala Water Retail Park to a Class 11 use, with specific reference being made to a gym. I note no proposed floor plan has been submitted though, for the purposes of this application, that is not necessary.

As a gym is specifically referred to, this assessment is wholly based on that and no other uses within Class 11. A condition can be imposed that qualifies that permission would be for a gym use only, if consent were to be granted. This condition can also allow for its reversion to retail without the need for a further planning application, if the gym use were to cease.

Principle

The unit is within the town centre and its existing retail use is not safeguarded by the LDP. Policy ED4 relates only to the core activity area within the town centre, and this proposal is not within it. That said, Policy ED3 does apply a general requirement that uses maintain the vitality, viability, character and mixed use nature of the town centre. A gym use is an appropriate commercial leisure use within the town centre generally, and will contribute positively to its mixed use nature and viability and viability. However, the proposal would be sited within a prime retail location within a dedicated retail park, and the loss of such a prime retail unit to a non-retail use would, potentially, undermine the principal retail function of the town centre. Though I acknowledge concerns from objectors regarding the number of gyms in the area; competition between them; and the effect of large businesses on smaller ones, none of these are planning considerations this assessment would be entitled to account for. The key issue here is whether the gym would detract from the vitality and viability of the town centre to the extent it would conflict with Policy ED3.

A gym would clearly contribute to footfall within the town centre and be a suitable accompaniment to existing retail and café etc uses. However, it would not fulfil the primary retail function of the town centre directly. That said, the role of town centres is evolving, and it is widely acknowledged that their primary retail purpose is becoming less viable, whereas the service element of town centres is becoming more and more important. Account must be had too for the current vacancy of the unit, since this will be having a negative effect on the contribution of the retail park to the town centre. Policy guidance with respect to the core activity area (Town Centre Pilot Study) acknowledges that the vacancy of a unit is a consideration when determining its suitability for non-retail uses, and that consideration would be equally valid here. The applicants were asked, therefore, to provide information on the vacancy and its marketing. In response, the following key issues, in summary (as the information provided by the agent is commercially sensitive) are apparent -

- o Marketing of the unit began in early 2020 when the occupiers gave notice of their intention to vacate in August 2020. This marketing has continued ever since
- o The marketing is understood to have been circulated to all retailers and agents active in the retail warehouse sector and, though approaches were made before and after the interest shown by the gym operator, ultimately, the outcome of attempting to attract a retail operator was not successful
- o The applicant's agents contend that there is no retailer with a need for this size of unit that has not already been given the opportunity to acquire it and none has shown any real interest in it.

I have no evidence to contradict the explanation of the marketing undertaken, and note it was direct to retailers that would be expected to be interested in a unit of this size. Given a vacancy of more than six months is ordinarily a cause for concern (as noted in the pilot study referred to above), the fact this key unit has been vacant for over a year is a significant material consideration. The vacancy period is, of course, aligned with the Covid pandemic and related lockdowns and impact on retail trade across the country. That

fact cannot be disregarded and, therefore, the absence of retail interest during that period is to be expected. However, on the other hand, it must also be accepted that the unit's continued vacancy will be harmful to the town centre as it attempts to recover, whereas this proposal represents a serious means of addressing this in a way that will not just complement the retail function of the town, but also provide a significant contribution to its service functions. It is not a policy requirement to protect the retail use, but rather ensure the proposed use will contribute positively to the town centre. Therefore, I consider that, having balanced the various considerations referred to above, this proposal will comply with Policy ED3 since it will contribute positively to its character, mixed use nature, vitality and viability in its reuse of this vacant premises.

Land use conflict and amenity

The proposal has the potential to cause noise and vibration (from dropped weights etc), not just for residential properties, but adjacent businesses. In the latter regard, it is presumably within the scope of the owner to regulate conflict between their tenants since the units are within their ownership. To some extent, it would be reasonable to leave that issue with the owner. However, a supporting acoustic report does acknowledge that internal mitigation will be required by way of wall and floor specifications in order to protect the adjacent retail unit from noise and vibration. Given this clear recommendation and, in this case, the fact that there is a planning policy interest in ensuring no conflict with the adjacent unit that could undermine its viability to retailers, a condition could be imposed to require this mitigation.

As regards residential amenity, the same acoustic report (which was submitted in response to the EHS's concerns noted above) recommends an internal sealed lobby to provide noise attenuation. This mitigation is accepted by the EHS. The acoustic report is, however, based on data up until 22:00 hours and, though the application makes reference to 24 hour use of the gym, it appears to be reasonably necessary to require that classes cease at that time (as this is how the acoustic report has accounted for the noise effects), and, by turn, amplified music and speech. The gym would otherwise be operational as the occupiers require for general, individual gym use outwith that period. This being the case, there should be no unreasonable impacts on neighbouring amenity. Comings and goings generally are not a concern raised by the EHS, which is accepted given the town centre location and the distance between the unit and the nearest residential neighbours.

Parking

The unit benefits from the parking area alongside it. In response to the RPS's initial concern noted above, the applicant responded with a Transport Statement that contends that existing parking will be sufficient and the RPS agrees with its findings

A condition can require a scheme of cycle parking that reflects the TS's recommendation of five spaces, and this would meet the RPS's request which they made following consideration of the TS.

Contamination

An informative can be applied per the CLO's advice

Services

Mains services are understood to be in operation.

Ecology

There should be no issues in this regard

Flooding

The site is potentially at risk of flooding, however, the proposal is in the same land use vulnerability classification under SEPA's guidance as the existing retail use

Visual impact

No external alterations are proposed. An informative can refer to Advertisement Consent requirements

Waste storage

The existing unit has bin storage arrangements already and a gym use should not have any requirements in this regard that would exceed those of a retailer

REASON FOR DECISION :

Subject to compliance with the schedule of conditions, the development will accord with the relevant provisions of the Local Development Plan 2016 and there are no material considerations that would justify a departure from these provisions.

Recommendation: Approved - conditions & informatives

- 1 The approved use shall be limited to a gymnasium, and there shall be no permitted change to any other use within Class 11 of the Use Classes (Scotland) Order 1997 (as amended) unless a planning application for the same has been submitted to and approved by the Planning Authority. In the event that the approved gym use ceases, the lawful use of the unit shall revert to its previous lawful use (Class 1 retail)
Reason: The development has been considered specifically with respect to the merits of the gym being operated from within the retail park against the Local Development Plan 2016 and no other uses within Class 11 have been assessed
- 2 No classes or amplified music or speech shall be permitted between 22:00 hours and 07:00 hours.
Reason: To ensure the use does not have an unreasonable impact on the amenity of nearby residential properties
- 3 No development shall commence until a specification for a sealed lobby that complies with the mitigation requirements identified in Acoustic Feasibility Report 11174.RP01.001.0 Revision 0; 26 August 2021 RBA Acoustics has been submitted to and been approved in writing by the Planning Authority. The development shall be operational only with the implementation of the approved sealed lobby, and the provision of wall and floor mitigation measures recommended by the same acoustic report (referred to in Sections 5 and 7) to minimise potential effects on the adjacent retail operator
Reason: To ensure the use is compatible with other business operators within the retail park and does not have an unreasonable impact on the amenity of nearby residential properties
- 4 The development shall not become operational until cycle storage has been implemented in accordance with a scheme of details that has been submitted to and approved in writing by the Planning Authority. The cycle storage shall be maintained free for the storage of cycles throughout the operational use of the development
Reason: To ensure adequate provision of cycle facilities and thereby minimise the need for car travel

Informatives

It should be noted that:

- 1 The former use of the site is potentially contaminative and may have resulted in land contamination. The land is not currently identified as contaminated land and the Council is not aware of any information which indicates the level of risk the potential contamination presents. The historic use of the site is recorded within a Council database. This database is used to prioritise land for inspection within the Council's Contaminated Land duties. Should the applicant wish to discuss these duties their enquiry should be directed to the Council's Environmental Health Service

2 Advertisements that are not exempt under the Control of Advertisements (Scotland) Regulations 1984 (as amended) will require a separate application for Advertisement Consent.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.