



**APPEAL STATEMENT IN RELATION TO SCOTTISH BORDERS COUNCIL'S REFUSAL OF:
PLANNING APPLICATION FOR THE CHANGE OF USE FROM INDUSTRIAL (CLASS 4, 5
AND 6) TO FUNCTIONAL FITNESS GYM (CLASS 11)**

UNIT B, WHINSTONE MILL, NETHERDALE INDUSTRIAL ESTATE, GALASHIELS, TD1

3EY

APPLICANT: LIANNE WALLACE

JANUARY 2022

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Core Documents

Author	Date
Lucy Moroney	05.01.22
Approved	Date
Sam Edwards	05.01.22

1. Executive Summary

- The proposed use offers a vital and viable use for the building with future growth in the business projected, providing a stable income for both the appellant and security for the landlord. Our client has invested significantly in the gym, and this is her livelihood.
- The proposal is Galashiels only Functional Fitness and Olympic lifting facility. Daily classes specialise in Olympic lifting, powerlifting and gymnastics run by highly qualified and experienced staff. There are no other gyms that offer the same facilities and approach that the appellant offers, within Galashiels or Scottish Borders that the appellant is aware of. The gym already has 80 clients who benefit from the facility, which is a real testimony to the offering that the appellant has created and the demand for that service.
- The proposal provides significant community benefits as we have highlighted through the client testimonials, improving both the physical and mental well-being of those attending, as well as providing an important social hub.
- The proposed use complements the wider employment use of the area, providing potential gym facilities for existing employees of the area, students and staff of the neighbouring Borders College and Heriot Watt Campus, as well as attracting future businesses to the area.
- The flexibility of classes, and location makes it ideal for other businesses coming into the area, benefiting their staff and will assist those working in Galashiels to achieve a healthier lifestyle.
- The Council have already approved numerous applications on other designated employment sites for alternative uses, including gyms. These gyms are broadly similar in size, and one is smaller.
- There has been one gym approved on the same industrial estate (TriFitness), which was previously a nursery, showing that Netherdale is becoming increasingly more mixed use in nature. A few of the other applications for gyms have also been approved, where existing gyms were in operation demonstrating that they can all fulfil different client demand.
- Two applications for gyms have been approved contrary to Policy ED1, on 'Strategic Employment Sites', those more rigorously protected than the 'District' employment sites which this appeal site sits in. Both (RDAS CrossFit, Tweedbank and Omnifitness, Calvary Park) were seen as a complementary use which enhanced the quality of the business parks as an employment location. Arguably, the same can be said for this proposal, to allow this appeal.

- Both permissions were subject to a planning condition which means the unit would revert to employment use once the gym use ceased. The appellant is happy to accept the same conditions in this case should SBC require it.
- Our research shows there are several other industrial opportunities within Galashiels, including units on the market and ready to move into, potential sites that could be brought to market as they currently appear vacant, and land for redevelopment. Further land is also being allocated as part of Local Development Plan 2 in Galashiels. The use of this modest industrial unit as a gym, will therefore not have a significant impact upon long term supply in our view.
- The proposed gym activities demand unique building requirements, which means that a warehouse unit of this specific size and scale is ideally suited to delivering the proposed development. Identifying such an opportunity within a town centre, where the availability of such suitable sized warehouse units is limited, is therefore challenging.
- The proposals make a direct contribution to national planning objectives. The emerging NPF4 Policy 14 (Health and Wellbeing) which states that, 'Local development plans should aim to create vibrant, healthier and safe places and should seek to tackle health inequalities particularly in places which are experiencing the most disadvantage. The provision of health and social care facilities and infrastructure to meet the needs of the community should be a key consideration'.
- There are extenuating circumstances for allowing the gym to continue that meet all the criteria of Policy ED1, as well as several material planning considerations that weigh in its favour, not least the significant health and well-being benefits for the residents of Galashiels. We respectfully request that this appeal is therefore allowed on that basis.

2. Introduction

- 2.1 This statement is submitted on behalf of Lianne Wallace ('the appellant') and sets out the grounds of appeal against the decision of Scottish Borders Council (SBC) to refuse planning application LPA ref: 21/01270/FUL by delegated decision on 8th October 2021.
- 2.2 The application sought the consent for the '**Change of use from Industrial (Class 4,5,6) to a Functional Fitness Gym (Class 11)**' at Unit B Whinstone Mill, Netherdale Industrial Estate Galashiels, TD1 3EY.
- 2.3 The site is identified on the location plan below. The proposal does not seek to make alterations to the façade of the building, solely the change of use of the property.

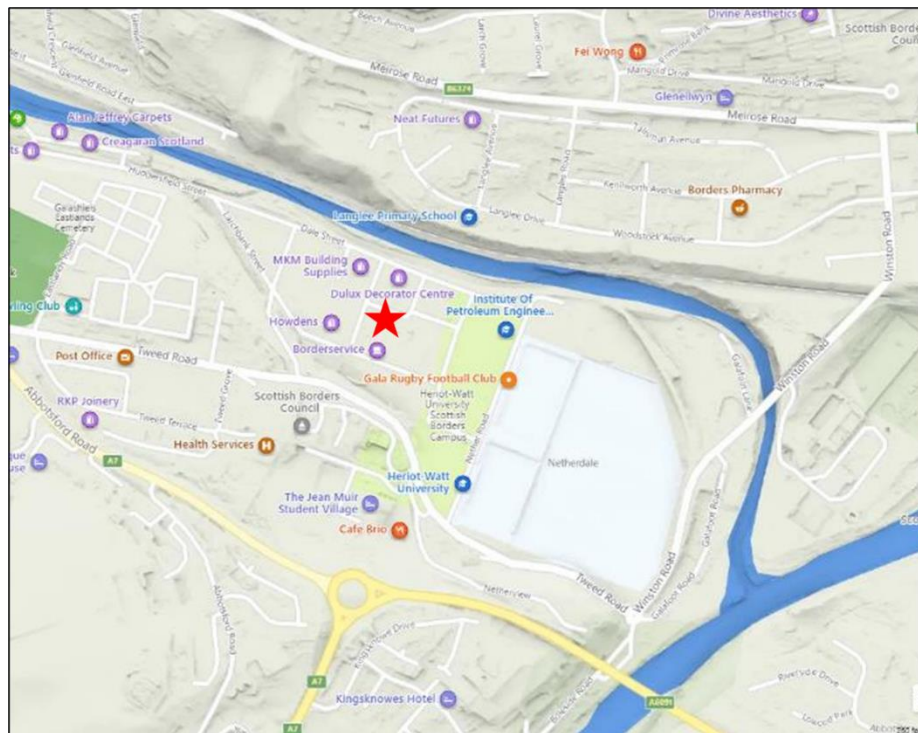


Figure 1: Location of Appeal Site (Marked by red star)

- 2.4 The appellant opened the gym (known as 'Braveheart Gym') in October 2021. Before acquiring the unit, they had offered personal training to clients from their home. The appellant had always started their successful personal training business, with a view to achieving a longer-term goal of opening a gym. So, when Unit B at Whinstone Mill was offered to them, they took the opportunity to fulfil this career aspiration. The appellant signed the lease, in advance of seeking planning permission, so this was sought retrospectively. The appellant has invested significantly into the business since, and it would be a heavy personal loss to cease

operations now. The gym provides the appellant with a secure and sustainable income, which cannot be achieved through personal training alone.

- 2.5 Despite only operating for a short time, the gym has attracted a considerable membership. The proposal is Galashiels only Functional Fitness and Olympic lifting facility. Daily classes specialise in Olympic lifting, powerlifting and gymnastics run by highly qualified and experienced staff. There are no other gyms that offer the same facilities and approach, within Galashiels or Scottish Borders that the appellant is aware of. It provides significant community benefits, encouraging an active lifestyle with benefits for both physical and mental well-being as well as an important social hub for like-minded residents.
- 2.6 The gym is a complementary facility to both the employment uses within the industrial park, but also a range of businesses in the wider area and students and staff alike at Scottish Borders College and Heriot Watt University students given its proximity.
- 2.7 It is acknowledged gyms can have potential noise impact on neighbouring uses with music and weightlifting. Together with the unique characteristics of the premises that are required for a gym of this nature outlined later in this document, the proposal is best suited in an industrial area.
- 2.8 SBC's reason for the refusal of the application LPA ref 21/01270/FUL was:

"The development would be contrary to Policy ED1 of the Local Development Plan 2016 in that it would result in the loss of floorspace allocated for Classes 4-6 and the exception criteria within the policy are not satisfied. The loss of floorspace allocated for Classes 4-6 will have an adverse impact on the development of businesses within these Classes seeking to locate within the industrial estate. Other material considerations are not sufficient to outweigh the harm resulting from the incremental loss of allocated floorspace".

- 2.9 Other than the reason for refusal above, and the Business Development Officer comments, the other technical consultees raised no objection to the proposed development, as summarised below:

Consultee	Comment
Roads Planning	No objection
Contaminated Land Officer	No objection
Business Development Officer	Provided evidence on the current supply and demand of industrial space.
Community Council	No objection

- 2.10 On all other grounds, the application was acceptable.

2.11 The remaining sections in this appeal statement comprise:

- A description of the appeal site and surrounding context (Section 3).
- A summary of relevant development plan policy and other material considerations (Section 4).
- Response to the Council's reasons for refusal and our grounds for appeal (Section 5).
- Summary of the appellant's case and conclusion in respect of the appeal proposal (Section 6).

Supporting Documents

2.12 This appeal statement should be read with all the supporting documents and drawings submitted as part of the original planning application listed below.

Document
Site Location Plan
Planning Application Form
Planning Officers Report and Decision Notice

Application process

2.13 This appeal is made to the Local Review Body on the basis it was a local application, which was determined by delegated powers. For the reasons outlined in this statement, we conclude that the development is in accordance with relevant development plan policies and supported by significant material considerations.

2.14 On that basis, we respectfully request that this appeal is allowed to enable planning permission for the change of use from Industrial (Class 4, 5 and 6) to a functional Fitness Gym (Class 11).

3. Site Context and Planning History

- 3.1 The appeal site is a 1.5 storey workshop/warehouse unit measuring approximately 203sqm (2,185sqft), located within the Netherdale Industrial Estate, to the south-east of Galashiels.
- 3.2 The unit is in the centre of the estate and forms part of a larger former mill building, as shown in the image below. The units have their own yard, and they are bound by security fencing, with gated access from the estate road to the west.



Figure 2: Image of Unit B, Whinstone Mill (Source: Sales Particulars, Edwin Thompson)

- 3.3 The estate is described in the sales particulars, as previously predominantly in industrial use, but noted as becoming increasingly more mixed use in nature.
- 3.4 In terms of accessibility, the site is approximately 0.8 miles southeast of Galashiels town centre which offers a range of services and facilities, along with onward public transport with rail services to Edinburgh City Centre. The site is within walking distance to the college, university, town centre and residential area resulting in a high footfall of potential customers on the doorstep.

Planning History

- 3.5 Referring to the Scottish Borders Council planning application search online, there have been no other planning applications for this unit.
- 3.6 Within the surrounding area, we note the following:

Location	Ref/Description	Decision
Unit 1B Gymnasium Netherdale Industrial Estate Galashiels Scottish Borders TD1 3EY	21/01182/FUL Change of use from daycare nursery to gymnasium/aerobics studio	Approved 16th September 2021 Approved contrary to Policy ED1 on the grounds that the original unit was not within class 4-6 use and would therefore not result in the loss of an industrial unit. It was noted noise from a Class 5 use could be greater than a class 11 use, minimising the potential land use conflict within the vicinity.

- 3.7 The above application clearly demonstrates that Netherdale Industrial Estate offers more than industrial use. Unit 1B, which measures approximately 369.5sqm has already been permitted to provide both a day nursery and now more recently a gym, both non-industrial uses and strictly contrary to the policy designation.
- 3.8 Both occupiers of this unit, sets a clear precedent for the acceptability of alternative uses on the estate and should be a significant material consideration in the determination of this appeal.

4. Planning Policy Context

- 4.1 This section outlines the principal planning policy and material considerations which provide the context for the consideration of this appeal.
- 4.2 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.
- 4.3 The Development Plan in this case, comprises the Southeast Scotland Strategic Development Plan, SESplan, (2013) and the Scottish Borders Local Development Plan (2016).
- 4.4 The emerging Local Development Plan 2 for the Scottish Borders is at an advanced stage and was presented to the full council on 25th September 2020. The formal consultation period on the Proposed Plan ended on 25th January 2021.

Scottish Borders Local Development Plan (2016)

- 4.5 As shown on the proposals map below, the site is situated within the Netherdale Industrial Estate (ZEL40) which is designated as a 'District' employment site, where Policy ED1 seeks the retention of employment uses (Classes 4-6).

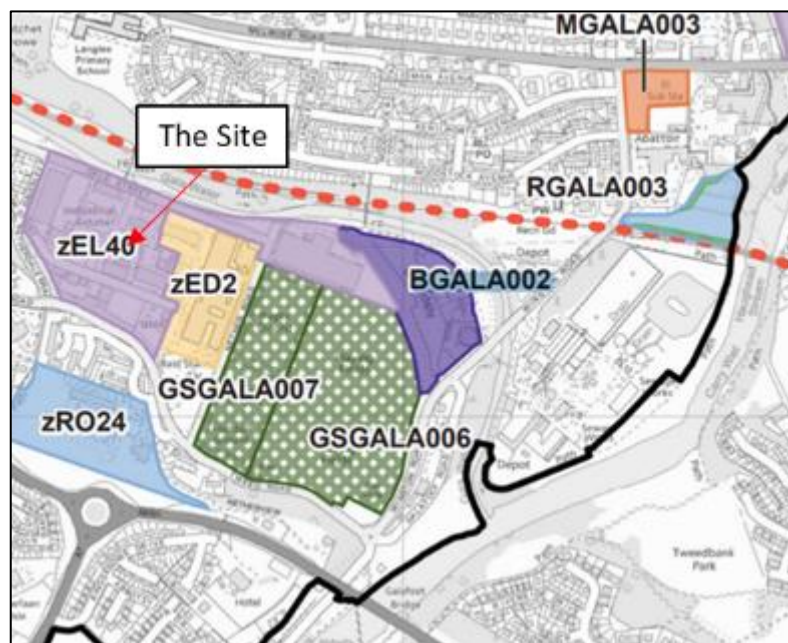


Figure 3: Extract from SBC LDP Proposals Map

4.6 The Council's reasons for refusal focused upon the 'District Sites' section in Policy ED1, in refusing this application. We have therefore focussed our assessment on these criteria only.

Policy ED1: Protection of Business and Industrial Land (Part 2 – District Sites)

4.7 **Policy ED1** states that, there will be a presumption in favour of the retention of industrial and business use on strategic and district sites.

4.8 The Council acknowledge that the district sites do not merit the same level of stringent protection as Strategic sites. However, there remains a preference to retain these within employment uses.

4.9 Policy ED1 recognises that there may be "extenuating circumstances" which would allow consideration of development of other uses and provides several criteria by which non-Class 4, 5 and 6 may be accepted. These are:

- a) The loss of business and industrial land does not prejudice the existing and predicted long term requirements for industrial and business land in the locality, **and**
- b) The alternative land use is considered to offer significant benefits to the surrounding area and community that outweigh the need to retain the site in business and industrial use, **and**
- c) There is a constraint on the site whereby there is no reasonable prospect of it becoming marketable for business and industrial development in the future, **or**
- d) The predominated land uses have changed owing to previous exceptions to policy such that a more mixed-use land use patten is now considered acceptable by the Council.

5. Grounds of Appeal

- 5.1 SBC refused the application for the following reason.
- 5.2 *“The development would be contrary to Policy ED1 of the Local Development Plan 2016 in that it would result in the loss of floorspace allocated for Classes 4-6 and the exception criteria within the policy are not satisfied [Part 1]. The loss of floorspace allocated for Classes 4-6 will have an adverse impact on the development of businesses within these Classes seeking to locate within the industrial estate [Part 2]. Other material considerations are not sufficient to outweigh the harm resulting from the incremental loss of allocated floorspace [Part 3]”.*
- 5.3 To aid clarity in our response to the issues raised in the reason for refusal, we have split it into three parts **[as noted in bold]**, along with our responses to them.

Reason for Refusal - Part 1

- 5.4 The development would be contrary to Policy ED1 of the Local Development Plan 2016 in that it would result in the loss of floorspace allocated for Classes 4-6 and the exception criteria within the policy are not satisfied.

Appellant’s Response

- 5.5 Policy ED1 seeks to protect industrial estates but recognises that there may be “extenuating circumstances which would allow consideration of development of other uses”. The policy also recognises that there are “certain uses that can co-exist on an industrial estate”. Acceptable uses are those that are “complementary but would not conflict with existing employment uses”.
- 5.6 Policy ED1 also provides four ‘exception criteria’ a)-d) for non-Class 4/5/6 uses on employment sites. We address a), b) and d) as is required (c/d are interchangeable) in turn below, to show that this proposal does in fact satisfy these requirements.

Policy ED1 2 Part a) - The loss of business and industrial land does not prejudice the existing and predicted long term requirements for industrial and business land in the locality.

- 5.7 There is no definition of ‘locality’ but consider that the five designated ‘District’ sites within Galashiels and two designated ‘Strategic’ business and industrial sites in Tweedbank, as set out in the Local Development Plan, could arguably be deemed ‘local’.
- 5.8 We undertook a site visit on Monday 29 November and have researched the available letting websites online. Through this search, it is evident there does appear to be several vacant units and sites as summarised below.

Site Name	Vacancies
North of Tweedbank Drive (zEL59)	Industrial warehouse, No. 3 Tweedside Park (719sqm) (Edwin Thompson) Agent confirmed since let on 04/01
Tweedbank Industrial Estate (zEL39)	Units 1-2, Block 12 (234sqm-468sqm) (Ryden) (Available on 04/01) Block 10, Unit 3 (347sqm) (MSeven Real Estate) (Available on 04/01)
Site Name	Vacancies
Easter Langlee Industrial Estate (zEL38)	Vacant warehouse and car park – see plan and photos below. Building c.2067sqm. Previously advertised via Edwin Thompson with wider land for further development available. Agent confirmed since let on 04/01
Galafoot Industrial Estate (BGALA002)	Former gas works – now vacant. Currently subject of an SBC feasibility study regarding its suitability as a gypsy/traveller site – SBC Committee 16/12/21 .
Huddersfield Street Mill (zEL41)	Appears to be a vacant unit (size unknown) based on site visit.
Langhaugh (BGALA003)	No sites available.
Netherdale Industrial Estate (zEL40)	Appears to be a vacant warehouse/development site – see plan and photos below. Building c.230sqm/Site c.3805sqm as measured on promap.
Wheatlands Road (zEL42)	Appears to be a vacant unit (size unknown) based upon site visit.
TOTAL FLOORSPACE AVAILABLE	Recently Let: 2,786sqm (zEL59 and zEL38) Available 04/01/22: 815sqm (zEL39)

	<p>Vacant Buildings 04/01/22: 1,045sqm (zEL39 and zEL40)</p> <p>*The above figures do not take into account potential land at Huddersfield St Mill, Wheatlands Road and expansion land associated with site at Easter Langlee), nor the former gas works site at Galafoot.</p>
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Easter Langlee Industrial Estate



Figure 4: Vacant building at Easter Langlee outlined in red and photograph (Source: BingMaps)

Netherdale Industrial Estate



Figure 5: Vacant building and yard at Netherdale (Source: BingMaps)

Huddersfield Street Mill Industrial Estate



Figure 6: Location of vacant unit at Huddersfield St (Source: BingMaps)

Wheatlands Road Industrial Estate



Figure 6: Location of vacant units at Wheatlands Road

- 5.9 The appellant acknowledges the Business Development Officers comments submitted during the consultation period of the original planning application (LPA ref: 21/01270/FUL) in relation to the supply and demand of industrial units within the Borders.
- 5.10 However, it is evident from our own search above, that there are several opportunities within Galashiels on the market for those looking for industrial land, including units on the market and ready to move into, potential sites that could be brought to market as they currently appear vacant, and land for redevelopment.
- 5.11 The Business Development Officer noted that there was significant demand for smaller units of 2500sqft (232sqm) or less, of which the appeal site was one, and that there are no sites currently available.

- 5.12 We have identified two units of this scale at Tweedbank Industrial Estate. There is another unit that even appears to be of this scale at Netherdale, albeit it is a poor state. However, the employment land does exist.
- 5.13 The above comments neither considers the possibility for vacant larger units to be split up into smaller units to accommodate for the stated shortage of units below 2,500sqft.
- 5.14 Furthermore, the Council's latest Employment Land Audit (2020) identifies that there is 20.4ha of employment land available immediately within the wider 'Central HMA' area within which Galashiels sits, with a further 50.1ha available in the medium-long term. The Employment Land Audit does not identify a shortage of space within the Central HMA.
- 5.15 Going forward, the Employment Land Audit suggests that the Proposed Local Development Plan provides further land in the Central HMA and so the Proposed Plan identifies a new business and industrial site in Galashiels (Ref BGALA006). This comprises 2.53ha of land at Winston Road, which is a former abattoir and refuse site, where the principle of redevelopment for industrial and business use has been considered acceptable by SBC in their 'full site assessment' which accompanies the proposed LDP.



Figure 7: Extract from SBC Proposed LDP Proposals Map

- 5.16 It should also be noted that whilst there was interest in the appeal site, from a mixture of uses including another gym, storage, and workshop uses, only two of these enquiries, one of which was our client, resulted in a viewing. The landlord

chose our client because they were seeking a sustainable and viable use for their unit, following experience with struggling tenants through the Covid pandemic, and they had confidence in her long-term business strategy.

5.17 It is therefore considered the change of use of Unit B, away from business and industrial land, does not prejudice either the existing or predicted long term requirements for industrial and business land in the locality.

5.18 Should the Council still have concerns about the loss of the industrial unit, the appellant is willing to accept a personal planning consent which in the event the unit ceases operation as a gym, it will return to Class 4, 5 and 6 use. Upon review of the planning portal, we note a similar agreement has been consented at Unit 5 Elm Court Cavalry Park Peebles (LPA ref: 18/01756/FUL) and Unit 8, Tweedside Park (LPA Ref: 21/01109/FUL)

5.19 Overall, we consider the proposal to be compliant with policy ED1 2 Part a).

Policy ED1 2 Part b) - The alternative land use is considered to offer significant benefits to the surrounding area and community that outweigh the need to retain the site in business and industrial use.

5.20 The proposal seeks to offer a fitness gym to build a happy, supportive and thriving community. The overall vision of the gym is to provide a family-friendly and inclusive environment to promote health and well-being throughout the industrial Estate, the wider community of Galashiels and beyond.

5.21 The appellant has already achieved an established clientele even in the short time the gym has been operational, with 80 members with a monthly subscription that is continuing to grow.

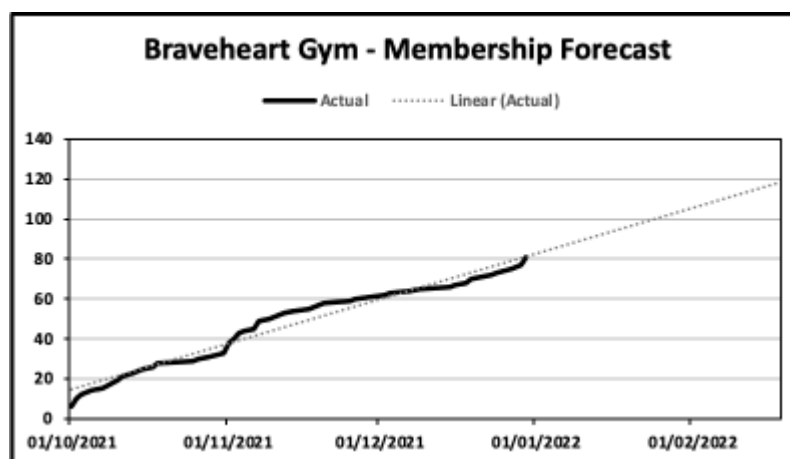


Figure 8: Projected growth of gym - provided by Appellant.

5.22 The appellant is now at the stage where she is now looking to employ more coaches to support the business. In addition to this, the appellant has attracted over 750 social media followers, less than two months after launching the gym, further highlighting the community demand for this type of facility.

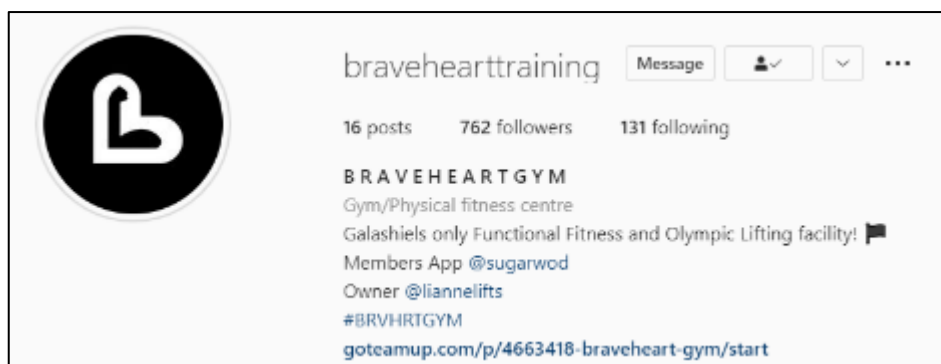


Figure 9: Gym's Instagram page showing social media followers - Dec 2021.

5.23 Our client's gym offer is considered to stand out from others in the market as the daily classes specialise in Olympic lifting, powerlifting and gymnastics run by highly qualified and experienced staff. There is no other facility like this in Galashiels, or the Scottish Borders.

5.24 The gym prides itself as being inclusive and provides members the opportunity to interact, log and track progress with each other through the membership app.

5.25 It is understood there is a distinct lack of female business owners within the leisure sector and particularly within the area that our client seeks to specialise in. The appellant therefore considers this business provides a positive and unique selling point. Through market research the appellant has undertaken, it is considered there is gap in the market for a gym of this nature which understands specific needs of women in a training environment and the obstacles that they face. Customer feedback has shown this to be a key reason for becoming a member.

5.26 The proposals introduce new and unique recreational facilities to Galashiels and wider Scottish Borders. The demand for our client's offering is demonstrated through the client testimonials she has received. We include these in full in a Private and Confidential Appendix, and a summary of the feedback below:

- "Braveheart would provide everything that I felt was missing from previous gym memberships".
- "A good community of like-minded people, amazing coaching and tailored workouts to suit all abilities"
- "I love the social aspect of training at Braveheart. It's a real community".

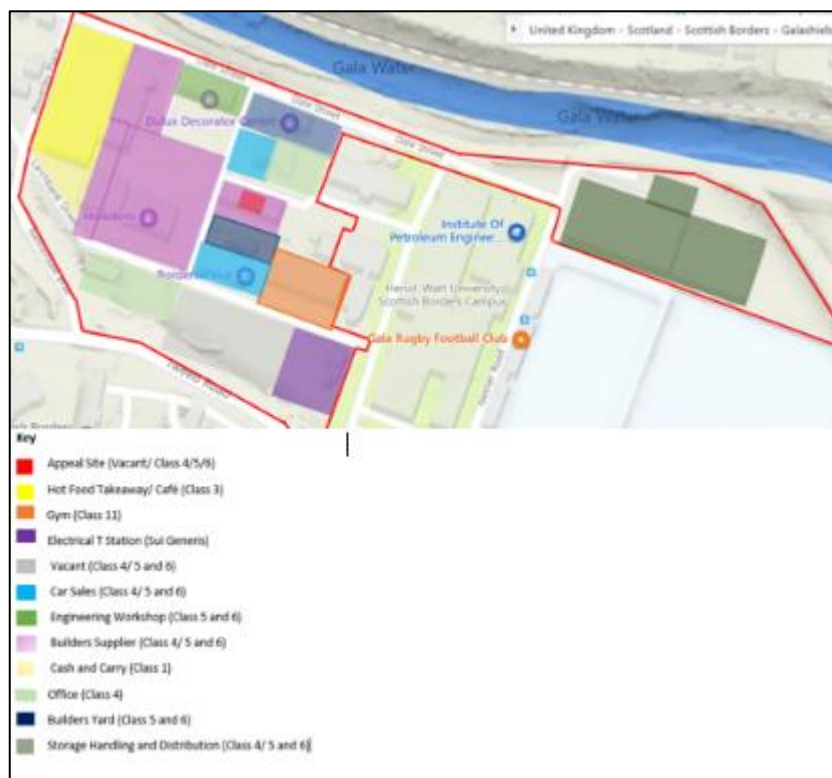
- “I have been able to meet up with many old friends and some amazing new ones as well who are all extremely encouraging and supportive
- “I chose to try Braveheart after receiving personal training from Lianne for a year before and it has changed my life. Braveheart is the most friendly and welcoming gym I have ever been to and makes me feel at home”.
- “My physical fitness levels have improved tenfold. I enjoy going to the gym, I enjoy the workouts, I am pushed consistently to do my best, improve and move better, lift a heavier weight or run faster”.
- “I am much more confident within myself after being pushed and encouraged by Lianne and her team and overall, in a much better place, both physically and mentally”.
- “The gym opened at the time of year when motivation lacks due to dark nights and winter blues. It has let me also meet new faces within the fitness world and has allowed me to push within my limits to become physically fitter and a better version of myself!”
- “Location suits me as I live in the same town as Braveheart, come summer months I will be able to walk to the gym”.
- “Braveheart Gym has brought me back into the realm of training that has been missing for nearly 2 years since the closure of many facilities due to COVID-19. It is great to get back into this type of training with like-minded people”.
- “I’ve chosen the gym above others in the area because of the people. It’s a very safe and encouraging atmosphere and as I had lost a bit of confidence in my training the last year it’s the perfect fit for me. I feel like I came on leaps and bounds in such a short space of time and it’s been a much-needed boost”.
- “Lianne's own fitness journey inspires me as I know it inspires so many others”.
- “I love the flexibility of the classes too and being able to train at 6am is a must for me. I wouldn’t be able to train at any other time of day”.
- “As a shift worker, with Braveheart gym offering “open gym” memberships which means I can train late into the day when my shift ends. This helps my personal mental well-being, helping de-stress after a long day”.
- “Class sizes are limited means you effectively are getting small group personal training at an affordable price - something that regular gym classes can’t achieve due to class sizes”.
- “The location of Braveheart gym was also one of the reasons that it appealed to me and helped make my decision to join. As a paramedic I drive a lot for work. I also spend a lot of my time indoors or in the ambulance, often on Nightshift too. Going to and from work in the dark in the winter. Due to the location, I am able to walk to and from the gym. This means I

don't have to take the car and I can get outside for a brisk walk on the days I'm on shift - helping my mental well-being and the environment too! Double bonus!"

- 5.27 Overall, it is considered the site proposal is compliant with Policy ED1 2 Part b) with the gym providing a significant community benefit, helping members improve their physical and mental wellbeing.

Policy ED1 2 Part d) - The predominated land uses have changed owing to previous exceptions to policy such that a more mixed-use land use pattern is now considered acceptable by the Council.

- 5.28 Having reviewed the online planning portal and undertaken a site visit to Netherdale Industrial Estate, it is evident there have been predominant land use changes towards a more mixed-use area within the estate.
- 5.29 This is reflected in the mix of uses on the site which includes, trade counters, offices, TriFitness, an operating gym, and a burger hut. Previously there was also a children's nursery on the site.
- 5.30 To the immediate east of the site, are education uses including Borders College and Heriot-Watt University, and beyond this lies the football and rugby club. These uses are illustrated on the map below.



- 5.31 TriFitness demonstrates a Class 11 gym is acceptable within this location, clear precedent for the Council permitting this type of exception to the policy, and acceptance for a greater mix of uses contributing to a more mixed-use land use pattern. Prior to this, the above unit was in use as a children’s day nursery, again demonstrating that the estate is no longer purely an industrial estate.



Figure 10: Photograph of TriFitness Gym

- 5.32 As such, we consider the proposed gym will offer another complementary use and contribute to the mix of uses on the site in accordance with Policy ED1 2 Part d). It is again worth highlighting that the proposal will assist in providing an ancillary use for the industrial estate, promoting a healthy lifestyle, supported by the draft NPF4 for employees of the estate and the wider community to enjoy.

Reason for Refusal – Part 2

- 5.33 *The loss of floorspace allocated for Classes 4-6 will have an adverse impact on the development of businesses within these Classes seeking to locate within the industrial estate.*

Appellant’s Response

- 5.34 We have addressed this matter in response to Part 1. We consider there to be available units, vacant buildings, and land for redevelopment throughout Galashiels as illustrated above.

Reason for Refusal – Part 3

5.35 *Other material considerations are not sufficient to outweigh the harm resulting from the incremental loss of allocated floorspace.*

Appellant's Response

5.36 We consider there are several material considerations, which provide significant support for this development.

Availability of Suitable Premises

5.37 Activities within the gym require large span spaces and volumes. The prospective building must therefore fulfil a unique set of requirements to allow our client to operate. These comprise:

- The building should be a minimum of 200sqm
- The building should have a minimum ceiling height of 3m
- The building should have ceiling height entrance doors
- The internal space should be a 'large open box' to allow for group classes to take place
- The site should provide a purpose-built warehouse (i.e., not land)
- The unit should have a level concrete floor
- The unit should be detached or terraced, but with no upper floor neighbours to prevent any impact on others amenity from the noise
- The unit should have water and toilet amenities
- There should be good transport links to the site and parking facilities

5.38 The location of the unit should also allow for workouts which include outdoor running, which would not be possible in the centre of town. The above requirements are why most similar gyms/CrossFit gyms are situated in industrial units.

5.39 The Local Development Plan seeks to direct commercial leisure uses to town centres. Policy ED3 states that:

“The council will support a wide range of uses appropriate to a town centre. Proposals for shopping developments and other town centre developments will generally be approved within defined district centres provided that the character vitality, viability and mixed-use nature of the town centre will be maintained and enhanced. The council will apply the preferred order of locations set out within the LDP generating significant footfall, including commercial leisure uses. It will also ensure that different uses are developed in the most appropriate locations.”

5.40 We have reviewed local letting agents to identify properties that are currently on the market within Galashiels Town Centre. Those available are illustrated within the table below.

Town Centre			
Property	Existing use	Size	Why not appropriate for the proposed use
52 Bank Street, Galashiels	Commercial Property	47.37 sqm	Too small Amenity impact the proposed gym may have on adjacent to residential properties, retail shops and offices.
81 High Street, Galashiels	Commercial Property	77.12 sqm	Too small Amenity impact the proposed gym may have on adjacent to residential properties, retail shops and offices.
40 Abbotsford Road, Galashiels	Commercial Property	Unknown	Former hotel (including 10 bedrooms and 6 bathrooms), unsuitable for gym conversion
TD1 Galashiels (exact address not published)	Restaurant/ Café	Unknown	Former pub, unsuitable for gym conversion
Unit 3 Gala Water Retail Park Huddersfield Street Galashiels Scottish Borders TD1 3AP	Recently consented for Class 11 use (Ref 21/01169/FUL)		Too large / outwith price range.
Out of Centre			
Island Street, Galashiels	Former bathroom and tile showroom		Too large / outwith price range.

Mill Retail Park, Comely Bank, Galashiels	Former retail unit next to Curry's.		Too large / outwith price range.
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- 5.41 With reference to above, it is deemed the properties available on the market within Galashiels Town Centre are not suitable for the proposed gym use due to the size, nature of the property and potential impact on the neighbouring amenity. It is therefore considered the proposal cannot be located within the Town Centre where Policy ED3 seeks to located leisure uses.
- 5.42 We have considered out of centre locations, but the two vacant warehouse units available are both too large to accommodate the client's proposals.
- 5.43 Given the unique characteristics of the appellant's business and site search criteria outlined above, there are very limited options within a traditional town centre, where typically leisure uses are directed by policy, to accommodate such a use.
- 5.44 The nature of the business lends itself to a warehouse, which are typically found in industrial locations. The gym can be noisy because of the use of large weights and music associated with classes. The benefit of locating such a use within an industrial location, means that any noise would not have an impact upon neighbouring residential and business units.
- 5.45 As such, Unit B Whinstone Mill is the most suitable location within the current market to accommodate the proposed use.

Precedent Applications

- 5.46 Recent approvals of class 11 use within designated industrial estates set out below are considered to set a clear precedent for the acceptability of such use within Netherdale Industrial Estate and should be a considerable material consideration.
- 5.47 Table 3 below identifies planning applications within the Scottish Borders for the Gyms. These are in addition to the TriFitness Gym, within the Netherdale Industrial Estate which is noted above.

Address	Proposal	Status	Reason for approval
Unit 8 Tweedside Park Tweedbank	21/01109/FUL Change of use from Class 4 (office) to Class 11 gym (retrospective)	Allocated as a ' <u>strategic high</u> <u>amenity</u> <u>safeguarded</u> <u>business</u> and <u>industrial site</u> '	Approved Aug 2021 Approved contrary to Policy ED1 on the grounds that the gym had a local demand, and a gym was considered to

<p>(Unit Size: 283sqm GF/ 98sqm 1F)</p>			<p>contribute to the efficient functioning of the Business Park. Note this was despite there being another gym in proximity at Tweedbank Sports Complex.</p> <p>Subject to a planning condition requiring Unit to revert to Class 5 use once the gym use ceases.</p> <p>Known as RDAS Crossfit</p>
<p>3 Rowan Court Suite 3 Cavalry Park</p> <p>(Unit Size: 200sqm)</p>	<p>21/00486/FUL</p> <p>Part Change of Use of ground floor to Class 10 (day centre for the elderly) and alterations to form additional office space from attic floor</p>	<p>Cavalry Park, Peebles is designated as a <u>'strategic high amenity safeguarded business and industrial site'</u>.</p>	<p>Approved Oct 2021</p> <p>Approved contrary to Policy ED1 by the LRB, because proposal demonstrated a clear local need for the Class 10 use in the area and there would be a complementary relationship between the proposal and other uses within Cavalry Park.</p> <p>Subject to a planning condition requiring Unit to revert to Class 5 use once the Class 10 use ceases.</p>
<p>Unit 5 Elm Court Cavalry Park Peebles Scottish Borders EH45 9BU</p>	<p>18/01756/FUL</p> <p>Change of use from storage (Class 6) to form</p>	<p>Cavalry Park, Peebles is designated as a <u>'strategic high amenity safeguarded</u></p>	<p>Approved Feb 2019</p> <p>Approved contrary to Policy ED1 on the grounds that the gym is a complementary use</p>

<p>(Unit size: 100sqm)</p>	<p>gymnasium (Class 11) (retrospective)</p>	<p><u>business and industrial site</u>’.</p>	<p>which enhances the quality of the business park as an employment location.</p> <p>Subject to a planning condition requiring Unit to revert to Class 5 use once the gym use ceases.</p> <p>Known as Omni Gym / Omnifitness.</p>
<p>Unit 2, Wheatlands Mill (Unit Size: 536sqm)</p>	<p>18/01020/FUL Change of use from Class 5 (general industry) to Class 11 (gym)</p>	<p>Wheatlands Mill is allocated as a <u>‘District’</u> site where there is a preference to retain employment uses.</p>	<p>Approved Sept 2018</p> <p>Approved contrary to Policy ED1 because the economic team did not object to the loss of this unit and its contribution to the economic land supply. Though we note, that in fact, there was no comment made about the land supply at all.</p> <p>A gym was also considered acceptable as the other units were already in non-employment use.</p> <p>Known as Titan 365.</p>
<p>Eyemouth Leisure Centre North Street Eyemouth Berwickshire TD14 5ET</p>	<p>16/01093/FUL Change of use from Class 4 (light industry) to Class 11 (fitness studio)</p>	<p>The site is located outwith the Eyemouth Town Centre Boundary and Conservation Area. The site is part of allocated</p>	<p>Approved Oct 2016</p> <p>Approved contrary to Policy ED1 because it would contribute to a mixed use and provide community benefit</p>

		employment site zEL47 (Acredale Industrial Estate).	through provision of additional gym facilities in the local area. Again, it was noted that there was already another gym in existence too. Operated by LIVE Borders.
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5.48 The evidence above clearly shows that gyms have been approved on protected industrial sites across the Scottish Borders.

5.49 We highlight the recent consent at Tweedside Park specifically, which permitted a CrossFit gym which has similar location/unit requirements to the appellant on the grounds that there was “a local demand” and it “contributed to the efficient functioning of the Business Park”. It is notable that the proximity of another gym close by was not a factor that detracted from this justification.

5.50 The example at Calvary Park is also highly relevant, permitted on the basis that the gym would enhance the quality of the business park.

5.51 There is no reason, in our view, why this appeal should not be allowed on the same grounds, given the evidence set out in this statement.

5.52 We note that both applications were subject to a planning condition, which allows for the units to revert to their previous lawful employment use when the gym use ceases. The appellant is willing to accept a similar planning condition in this case.

National Planning Guidance

5.53 The Scottish Government has just released their draft National Planning Framework 4. Once approved, and adopted by Scottish Ministers, this plan will become part of the statutory development plan and will directly influence planning decisions.

5.54 The amended Town and Country Planning (Scotland) Act 1997 directs that the National Planning Framework must contribute to a series of six outcomes. One of these, is ‘improving the health and wellbeing of our people’.

5.55 Under the section ‘lifelong health, wellbeing and safety’, the Government states clearly that the planning system should support development that reduces health

inequality and creates an environment that promotes active and healthier lifestyles.

- 5.56 Policy 14: Health and Wellbeing states that, 'Local development plans should aim to create vibrant, healthier and safe places and should seek to tackle health inequalities particularly in places which are experiencing the most disadvantage. The provision of health and social care facilities and infrastructure to meet the needs of the community should be a key consideration.
- 5.57 Our appeal statement makes clear, the significant contribution that our client's business makes to this achieving this objective, not least demonstrated by the level of demand, and support she has received from the local community since opening. We believe this is a positive material consideration and why this appeal should be allowed.

6. Conclusions

6.1 The submitted appeal, supported by this statement, seeks the Council's approval for the **'Change of use from Industrial (Class 4, 5 and 6) to a functional Fitness Gym (Class 11)' at Unit B Whinstone Mill, Netherdale Industrial Estate Galashiels, TD1 3EY**, for the reasons outlined in this statement and summarised below.

6.2 In summary:

- The proposed use offers a vital and viable use for the building, providing a stable income for both the appellant and security for the landlord. The appellant has invested significantly in the gym, and this is her livelihood.
- The proposal is Galashiels only Functional Fitness and Olympic lifting facility. Daily classes specialise in Olympic lifting, powerlifting and gymnastics run by highly qualified and experienced staff. There are no other gyms that offer the same facilities and approach that the appellant offers, within Galashiels or Scottish Borders that they are aware of. The gym already has 80 clients which is a real testimony to the offering that the appellant has created and the demand for that service.
- The gym is projecting growth, allowing them to grow their staff numbers, not only via direct employment but also indirectly using local suppliers.
- The proposed use offers significant community benefits, and unique fitness, health and wellbeing facilities for Galashiels and the wider area as is evidenced through the client testimonials.
- The proposal will complement the increasingly mixed-use nature of Netherdale Industrial Estate and offer a beneficial use to local workers and wider area. It will have no adverse impact on any residential amenity, given its location.
- The proposal supports and contributes to a national policy direction through the emerging NPF4 to deliver healthier places and improving people's wellbeing.
- The Council have already consented a gym at Netherdale Industrial Estate. They have also consented several gyms, across other designated employment sites in Galashiels due to local demand and community benefits. There is significant precedent therefore for supporting this application on those same grounds.

- There are no other suitable opportunities within the preferred town centre locations which are available or suitable for the nature and unique characteristics of the proposed use. It is not feasible for the occupier to build their own unit, as the costs would be prohibitive.
- The loss of this unit will not have an adverse impact upon long term industrial land supply within the locality. There are several units vacant, as well as number of sites within existing designated industrial areas that are underutilised and could be repurposed or developed. Further land is being allocated as part of the Proposed Local Development Plan.
- The applicant is willing to accept a planning condition that allow for the unit to revert to industrial use once the gym use ceases.

6.3 There are extenuating circumstances for allowing the gym to continue that meet all the criteria of Policy ED1, not least the significant community benefits. We consider that the proposal therefore complies with the development plan.

6.4 There is a presumption in favour of applications that accord with the development plan unless there are significant material considerations that indicate the development plan should not be followed.

6.5 There are no material considerations that outweigh this decision, in fact there are significant material considerations that support this appeal and the LRB is therefore respectfully requested to allow this appeal.

Appendix 1 – Core Documents

Core Document 1: Decision Notice / Officer's Report

Core Document 2: Site Location Plan

Core Document 3: Client Testimonials (Private and Confidential)