

22/00002/RREF

CHANGE OF USE FROM INDUSTRIAL (CLASS 4,5,6) TO A FUNCTIONAL FITNESS GYM (CLASS 11)

UNIT B WHINSTONE MILL NETHERDALE INDUSTRIAL ESTATE

With reference to the above Review and the Local Review Body's request dated 22nd March, the following is a combined response on behalf of the Planning Officer and Business Development Officer.

The Local Review Body have requested a response to Paragraphs 5.8 and 5.40 of the appellant's supporting Appeal Statement (Ferguson Planning January 2022).

Each paragraph is considered in turn:

5.8

This comprises a table that the appellant considers is evidence that there are/were several vacant units and sites available within the area, based on a site visit undertaken on 29th November.

We would comment as follows:

1. The status of units will be constantly changing. It is unreliable to base an assessment of the availability of vacant land and property based on one search on one day. A number of the units referred to have since been let, as acknowledged in the table. The level of demand and availability of premises represent what is captured at a particular point in time. A single day's search is not sufficient to demonstrate the availability of premises on the market.
2. We would maintain that there is significant demand for smaller units of 2500sqft or less, and there are no premises of the appropriate size currently available. Moreover these smaller units do not often come on the market.
3. The table in 5.8 illustrates units that are too small; need to be split; are potentially contaminated (gasworks); occupied (Huddersfield Street); require investment; or not available/on the market.
4. Furthermore, dividing industrial workshops into smaller units is not always straightforward as utilities and metering need separated, and there is the possible cost of constructing additional toilet and kitchen facilities
5. Developing premises can also require significant investment and time where sites and land for redevelopment are concerned.
6. Ultimately, this table does not, in our view, represent anywhere near a compelling argument that the availability of industrial premises in the area justifies their incremental loss to non-compliant uses.

5.40

This comprises a table indicating properties that were on the market within and around Galashiels town centre when the statement was produced

We would comment as follows:

1. As with Paragraph 5.8, it is unreliable to base an assessment of the availability of suitable properties based on a snapshot such as this. The availability of town centre properties is, as with industrial land, constantly changing. As with 5.8, this is a retrospective, fleeting assessment of the availability of other premises.
2. It is accepted that the size, cost and particular operational requirements of the appellant will clearly impact on the suitability of any property. However, so do those same requirements impact on the suitability of premises for any industrial or storage/distribution operator. Indeed, the requirements of a Class 5 or 6 use, in particular, will seriously constrain their available market of properties even more than that of a gym operator, not least since Policy ED2 of the Local Development Plan 2016 directs such uses to properties within allocated sites. A gym operator has, at least, a choice that extends outside allocated estates that industrial operators generally do not.
3. The amenity impacts are noted in the table as reason to discount a number of properties. It is accepted that gym noise and vibration can have impacts on residential properties and other businesses that could be significant. This will render many properties in and around the town centre unsuitable. However, it is to be noted that the town centre has been subject to several Planning Permissions granted in the past for the operation of gyms, so town centre properties cannot be ruled out in principle.
4. Further to that, it is relevant to note that the Use Classes (Amendment)(England)Regulations 2020 recently placed gyms within the same use class, in England, as other town centre uses including shops, restaurants and professional services. It is accepted this is not directly material to applications in Scotland, but it is an acknowledgement that gyms can be compatible with other uses in town centres.
5. It is physically possible to limit music/speech noise breakout, and the noise and vibrations associated with classes and weight training. However, it is fair to expect that this will not be possible in every case, particularly where a building is below or alongside residential properties and other businesses. The costs associated with mitigation (if capable at all), and the limitations that a planning consent might apply could seriously undermine the suitability of the premises. However, the appeal statement's reference that an amenity impact 'may' result is not evidence in itself that this cannot be overcome in every case.
6. The particular specialism of the applicant's gym as regards weight lifting is acknowledged, and that will be a factor in discounting properties under or alongside other uses. However, if consent is granted by the Local Review Body, it will be for a gym, not this particular business, unless the LRB considers that a planning condition can reasonably control it on that basis. Without such control, any gym could operate under the prospective consent, regardless of whether it provides a specialist service or not.
7. In any case, if it is accepted that this particular gym operation should be approved here because of the limitations on finding premises outside allocated employment land sites, this will require to be clearly reasoned as an overriding material consideration, given the potential for such a case to be referred to as precedent relevant to other similar cases. The LRB may be aware that a planning application for a gym in the adjacent unit has recently been refused under planning reference 22/00127/FUL. It would be open for any gym operation to make a similar case to follow that presented in paragraph 5.40. The cumulative effect would be to seriously undermine the

requirement of the Local Development Plan 2016 to safeguard employment land for Use Classes 4-6.

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25.03.22