

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING  
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL  
REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

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**Local Review Reference:** 22/00002/RREF

**Planning Application Reference:** 21/01270/FUL

**Development Proposal:** Change of use from Industrial (Class 4, 5, 6) to a Functional Fitness Gym (Class 11)

**Location:** Unit B Whinstone Mill, Netherdale Industrial Estate, Galashiels

**Applicant:** Miss Lianne Wallace

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**DECISION**

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice, subject to conditions and an informative as set out below.

**DEVELOPMENT PROPOSAL**

The application relates to change of use from Industrial (Class 4, 5, 6) to a Functional Fitness Gym (Class 11) (retrospective) at Unit B Whinstone Mill, Netherdale Industrial Estate, Galashiels. The application drawings and documentation consisted of the following:

**Plan Type**

**Plan Reference No.**

Site/Location Plan

**PRELIMINARY MATTERS**

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 21<sup>st</sup> March 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report; b) Papers referred to in Officer's Report; c) Additional Information; d) Consultation Replies; e) General Comments; f) Further

Representations and g) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to a set of customer testimonials and also to a list of claimed vacant industrial and other available premises within local industrial areas and Galashiels town centre at paragraphs 5.8 and 5.40 of the applicant's Review Statement. After consideration, Members agreed that this information was new, met the Section 43B test and that it could be considered, given it was material to the applicant's case and, therefore, to the determination of the Review.

However, Members decided that there was a requirement for further procedure in the form of written submissions to enable the Appointed Officer and Economic Development Service to respond to the details of the vacant and available industrial and commercial premises list provided by the applicant. The Review was, therefore, continued to the Local Review Body meeting on 18<sup>th</sup> April 2022 where the Review Body considered all matters, including the response from the Appointed Officer/Economic Development Service and the applicant's reply to that response. The Review Body then proceeded to determine the case.

## **REASONING**

The determining issues in this Review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD2, PMD3, ED1, ED3, HD3, IS7, IS8, IS9 and IS13

### Other Material Considerations

- SBC Supplementary Planning Guidance on Waste Management 2015
- Draft National Planning Framework 4
- SBC Employment Land Audit 2020

The Review Body noted that the proposal was for change of use from Industrial (Class 4, 5, 6) to a Functional Fitness Gym (Class 11) (retrospective) at Unit B Whinstone Mill, Netherdale Industrial Estate, Galashiels.

Members firstly considered the principle of the development under Policy ED1. They noted that the unit had previously been within industrial use but that the gymnasium had now been implemented within the unit. The application at Review was, therefore, noted to be retrospective and Members acknowledged the reasons given by the applicant for this.

Members noted that the unit lay within an area allocated as a District industrial and employment site in Policy ED1 in the Local Development Plan and that, whilst Class 4-6 uses were preferred, other uses could be considered, provided three criteria set down in the Policy were met. Members then considered these criteria and were of the opinion that three were met by the proposal.

Firstly, the Review Body noted the submissions from the Appointed Officer, Economic Development and applicant which revealed disagreements over the potential impacts of the

loss of the unit on industrial land supply. However, Members welcomed the re-use of the unit and noted that a number of gyms had been approved in the locality and in other industrial estate settings. The Review Body also noted that the future use of such units had been safeguarded by conditions seeking reversion to industrial use should the approved gym uses cease. Subject to the same condition being applied to the current proposal, Members were content that approval would not be prejudicial to the long term requirements of industrial land and buildings in the area

The Review Body also recognised that there were employment and community benefits to allowing a gym use within the unit, noting that the operator had invested in the facility which now employed 10 staff and had a customer base of 80 clients. With the additional benefits of improvements to community health and the importance of gyms as a response to the pandemic, Members welcomed the proposal and considered that it met the second criterion of Policy ED1, representing significant community benefits which outweighed the necessity of keeping the unit in industrial use.

The Review Body then considered the remaining criteria within Policy ED1 and noted that there was no evidence to suggest the building was constrained in providing accommodation for industrial uses, Members also accepting that gym uses had a more flexible choice of locations and premises available to them, compared to industrial operators. However, in terms of the final criterion relating to a changing land use pattern of more mixed uses, the Review Body noted the different examples of gym uses allowed in the vicinity and in other industrial and Business Park settings in the Borders. Members considered that precedents had already been set for allowing a more mixed use in such locations, to allow specifically for gym uses. Subject to the use being limited by condition to gym usage only and not any other use within Use Class 11, the Review Body were satisfied that a context of more mixed usage had occurred, partly as a result of previous exceptions granted to Policy ED1.

The Review Body finally considered other material issues relating to the proposal including amenity, access, parking, future use of the premises, land use conflict, waste, flooding and potential contamination. Members did not consider these issues to be material in their determination of the application and were of the opinion that appropriate conditions and an informative, where relevant, could address them satisfactorily. The Review Body concluded the gym to be a complimentary use to its surrounding uses without any identified detrimental impacts nor being a deterrent to attracting further industrial operators.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD3 and ED1 of the Local Development Plan. The development was considered to be a justified exception within an industrial area with increasingly mixed use, providing gym facilities for which there was a proven demand. Subject to conditions ensuring gym use only and a reversion to industrial uses should the gym use cease, the application was approved.

## **CONDITIONS**

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.

Reason: The development has been considered specifically with respect to the merits of the gym against Policy ED1 of the Local Development Plan 2016 and no other uses within Class 11.

2. In the event that the approved gym use ceases, the lawful use of the unit (Unit B) shall revert to its previous lawful use (Classes 4-6) under the Use Classes (Scotland) Order 1997 (as amended).

Reason: The development has been considered specifically with respect to the merits of the gym against Policy ED1 of the Local Development Plan 2016 and no other uses within Class 11.

## **INFORMATIVES**

1. The Council's Contaminated Land Officer advises the following:

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 Environmental Health.

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 "Code of Practice for Noise and Vibration Control on Construction and Open Sites".

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

### **Notice of Initiation of Development**

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

### **Notice of Completion of Development**

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD  
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA  
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU  
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND  
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA  
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL  
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH  
THUS, Susiephone Department, 4<sup>th</sup> Floor, 75 Waterloo Street, Glasgow, G2 7BD  
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

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**Notice Under Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.**

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

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Signed...Councillor S Mountford  
Chairman of the Local Review Body

Date 27 April 2022

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