

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 22/00471/FUL

APPLICANT : Mrs Annette Oliphant

AGENT :

DEVELOPMENT : Part change of use from vehicle workshop to form gymnasium

LOCATION: J&K Business Units
2 Station Yard
Traquair Road
Innerleithen
Scottish Borders
EH44 6PD

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
	Location Plan	Approved
PLAN 1	Proposed Plans	Approved
PLAN 2	Proposed Plans	Approved

NUMBER OF REPRESENTATIONS: 10

SUMMARY OF REPRESENTATIONS:

Supporting representations have been submitted which contend the gym should be supported as travel outside the village is required to use a gym now, and that it would be a huge asset to the community. No objections have been submitted.

Consultations

Environmental Health Service: Do not object, subject to conditions covering the following:

- o Hours of use shall be restricted to 07:00 to 19:00, daily.
- o Hours of servicing (including vehicles) shall be restricted to 07:00 to 19:00, Monday to Saturday.
- o No amplified music or vocals shall be permitted at any time.
- o All doors (including the vehicular access on the north façade) shall remain closed at all times.
- o The property shall be restricted to the use of a gym only with no change to any other use within class 11 without further planning consent.

Contaminated Land Officer: The requirement for a full site assessment and potential remediation may not be practical or proportionate given the nature of the application and it is recommended that the applicant is advised of potential land contamination issues by way of an Informative Note.

Roads Planning Service: Whilst the proposed recreational use is slightly at odds with the industrial nature of the development site, it is recognised that the peak user times are unlikely to clash with each other. Given the relatively small scale of proposed gym area, they do not feel there is sufficient concern from a roads planning perspective to object to this application.

Economic Development Service: Originally noted that the gym would contribute to healthy living, and reduce travel miles, and that there may not be an alternative suitable property in Innerleithen for the use. However, they noted their reluctance to support the application given there is significant unmet demand for business premises in Innerleithen and Peebles, especially for Classes 4-6. They noted that the landlord stated that three additional units are in the process of being built, and they sought further information on this and demonstration that they will be soon available on the open market.

In response to this, the property owner clarified that only two units are actually scheduled, comprising a relocated use under 21/00634/FUL and a bus maintenance depot (20/00297/FUL). Following this response, however, the EDS further advise that the loss of the unit from its intended use, and the creation of a gym, is much regretted as there is demand for industrial units from Peebles to Galashiels. However, it is recognised that this application is unique in that it would provide a local community facility where presently there is none and on this basis only they do not object.

In addition, this concerns only one unit and approval of this application should not be considered as a precedent for similar proposals in industrial units - gyms needing additional staff resource tend to engage self-employed personal trainers on an hourly basis, so there can be a significant loss of local job opportunities, especially the possibility of apprenticeships, in industrial units. As a result further loss of industrial units to gyms, or similar non industrial or employment uses, would be a concern.

Community Council: No reply

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016

PMD2, PMD3, ED1, HD3, IS7, IS8, IS9, IS13

SPG Waste Management 2015

Recommendation by - Carlos Clarke (Lead Planning Officer) on 6th May 2022

This application seeks consent to convert part of an industrial unit (Class 5) within the Station Yard industrial estate to a gym. The building was built as an extension to a vehicular repair workshop under 09/01186/FUL.

Principle

The site is within an area safeguarded by Policy ED1. It is a 'District' site within which Policy ED1 seeks the retention of employment uses (Classes 4-6). Other uses can be accepted if meeting criteria a-d, whereby criterion (a) and (b) are both met, as well as either criterion (c) or (d).

As regards criterion (a), this requires that the loss of business and industrial land does not prejudice existing and predicted long term requirements. The application contains no information to suggest it will not, though I note the Economic Development Service advise there is significant unmet demand for this type of floorspace for Classes 4-6. However, I also note the follow-up advice from the EDS where they accept the loss because of the benefit of what would be a facility of value to the community where none currently exists. This does not imply the loss is acceptable in itself as regards business space requirements, but does suggest it can be overridden, in this particular case, by the benefits of providing a local facility that does not exist now. Though it is not impossible to site a gym elsewhere, it can be very difficult to do so. The EDS's balanced

consideration does not specifically mean criterion (a) is satisfied, but does reflect the scope available to make this balanced judgement under criterion (b).

As regards criterion (b), this allows for an alternative use to be accepted that offers significant benefits to the surrounding area and community that outweigh the need to retain it in business and industrial use. There are clearly benefits to be had from providing local fitness facilities where none exist (as I understand to be the case here), and the scope to site a gym elsewhere is very limited. Given the EDS has stated that the proposal can be accepted on this basis, this suggests this criterion is satisfied. To accept the proposal on this basis, however, it is fundamental to note the EDS's qualification of their support to this one unit, on the basis of the circumstances of this specific case.

Criterion (c) requires there be a constraint on site such that it has no reasonable prospect of becoming marketable for business and industrial development in the future. That is not the case here. Criterion (c) is not satisfied

Criterion (d) allows for a more mixed use pattern to be considered acceptable where the predominant land uses have changed owing to previous exceptions to policy. This is not the case within this estate. Criterion (d) is not satisfied.

Policy ED1 is, ultimately, not satisfied, since whether meeting the requirements of criteria (a) and (b) or not still requires the proposal satisfy criteria (c) or (d), which it does not. Policy PMD3, however, allows for departures from land use allocations (as applied by ED1), where a proposal meets its own exceptions. In this case, those within PMD 3's criteria a) and b) are not met. However, taking the case above that the alternative use offers significant community benefits that outweigh the need to retain the proposed use, then criterion (c) is met, fundamentally and wholly on the basis described by the EDS i.e. this is one unit lost to a gym required to serve the community where none currently exists. Any other proposed use to lose further industrial units within the estate should not benefit by approval of this proposal, given the specifics of the acceptance by the EDS. Criterion (d) is covered generally elsewhere in this report.

Ultimately, therefore, the proposal does not comply with ED1, but given the acceptance by the EDS, it can be considered that the benefits outweigh the need to retain the lawful use in this particular case, thus allowing for a departure from ED1 as permitted by PMD3. Compliance with PMD3, therefore, supersedes the departure from ED1.

In consenting the use, it should be subject to a condition that allows for its reversion to its lawful use in the event the gym use (whether the same operator or a different operator) ceases.

Land use conflict and amenity

A gym use can generate noise from amplified music and speech and vibration and noise from dropped weights that could undermine adjacent uses and residential amenity. Though this is an existing industrial building, the activity within a gym can generate different types of noise impacts. The building's northerly elevation includes a vehicular door that faces neighbouring residential properties in relatively close proximity, and keeping these doors open during operation of the use could lead to noise impacts on those neighbours. The EHS's recommendations are all, therefore, accepted as reasonably necessary. Though I recognise the implications for the operation of the gym, it is on this basis (based on the current information), that the EHS can endorse the proposal.

Other businesses can be affected by noise from a gym, though with the controls in place to protect residential amenity (notably the limitation on amplified music/speech) it is not considered nearby businesses here would be undermined, and no other business has made representation to suggest otherwise.

Flood risk

The site is potentially at risk of flooding, but the proposed use is within the same land use vulnerability classification as the existing use.

Services

It is understood that mains services exist

Waste

Given the lawful industrial use of the premises, the level of waste associated with a gym is likely to be less. Therefore, no control on bin storage is considered necessary.

Parking/road safety

As noted above, the RPS is content with the proposal in these regards

Contamination

An informative note can be applied as recommended by the CLO.

Visual impact

No alterations are proposed to the exterior of the building, so there are no concerns in this regard

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 5)
Reason: The development has been considered specifically with respect to the merits of the gym against the Local Development Plan 2016 and no other uses within Class 11 have been assessed, and in order to safeguard the employment land allocation in the event the gym use is no longer operational
- 2 The development shall operate in accordance with the following limitations:
 - a) The use shall operate only between 07:00 and 19:00 hours daily
 - b) Deliveries and servicing vehicles and activities shall be carried out only between 07:00 and 19:00 hours daily
 - c) There shall be no amplified music or vocals at any time
 - d) All external doors shall remain closed at all times during the operation of the use, with the exception only where temporarily open for access/egressReason: To limit potential effects on the amenity of neighbouring residential properties

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.

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