

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**8 JANUARY 2024**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** **REFERENCE NUMBER:** 23/01352/FUL

**OFFICER:** Euan Calvert  
**WARD:** Kelso and District  
**PROPOSAL:** Change of Use from Class 4 (Business), Class 5 (General Industrial) and Class 6 (Storage or Distribution) to Gym and fitness studio (Class 11 – Leisure)

**SITE:** Units 8 And 9, Carlaw Road, Pinnaclehill Industrial Estate, Kelso

**APPLICANT:** Borderline Athletics  
**AGENT:** Edwin Thompson LLP

**PLANNING PROCESSING AGREEMENT**

A processing agreement is in place to allow the application to be determined by Committee in January 2024.

**SITE DESCRIPTION**

The application site is a newly developed industrial unit (21/01894/FUL) located on Plots 15 and 16, Carlaw Road, within the extended Pinnaclehill Industrial Estate, Kelso. This is a corner site forming a junction with Carlaw Road and Solomon Way. The building is located to the rear of the plot with parking to the front, located behind a hedged boundary. The building is a standard steel portal framed building comprising nine individual units, each featuring a roller shutter and pedestrian door on the southeast elevation. The existing building is finished in box profile cladding.

**PROPOSED DEVELOPMENT**

Full Planning Permission is sought for a change of use of Units 8 and 9 (located towards the northern end of the building) to Class 11 (Assembly and Leisure) for use as a gymnasium. No physical changes to the exterior of the building are proposed. Sports massage and sales of sports clothing are to be offered ancillary to the proposed Crossfit gym.

The primary use of the existing building is restricted by condition to Class 4 (office, research and development or light industry), Class 5 (general industry) or Class 6, (storage and distribution) of Schedule of The Town and Country Planning (Use Classes) (Scotland) Order 1997 only.

**DETERMINATION BY PLANNING AND BUILDING STANDARDS COMMITTEE**

The application requires to be determined by the PBS committee under the Council's scheme of delegation as a substantial body of opposition exceeding five objections from separate households has been received each containing material planning considerations.

## **PLANNING HISTORY**

- 21/01894/FUL - Erection of 9 no industrial units, new access and associated parking – Approved
- 22/01618/CLPU - Operation of Bulking Station – Approved
- 22/01997/FUL - Provision of a 2.4m high perimeter fence and double gates, weighbridge and weighbridge office, covered glass storage bay, installation of perimeter lighting, alterations to existing building and general site layout - Approved

## **REPRESENTATION SUMMARY**

A total of 179 representations have been received comprising 36 objections and 143 support comments.

The principal grounds of objection can be summarised as follows.

- Contrary to Local Plan
- Increased traffic
- Over provision of facility in Kelso - potential closure of local businesses
- The business should be directed to neighbouring towns
- The location of this proposal is detrimental to neighbouring business
- Removal of condition would limit development of light industry/ Inhibit other businesses looking for units in an industrial area
- No adequate parking
- Adverse impact on town centre - retail operation in an industrial estate.
- Sets a precedent to other corporate enterprises/ franchises.

Support comments raise the following points:

- Support health and well-being
- Proposals will benefit the local economy and local area
- Proposals will save additional travelling, being close to employment in the surroundings.

## **APPLICANT'S SUPPORTING INFORMATION**

In support of the application, the following were submitted:

- Supporting statement
- Town Centre First Assessment

## **DEVELOPMENT PLAN POLICIES:**

### **National Planning Framework 4 (NPF4)**

Policy 1 – Sustainable places

Policy 2 – Climate mitigation and adaptation

Policy 9 – Brownfield, vacant and derelict land and empty buildings

Policy 13 – Sustainable transport

Policy 14 – Design, quality and place

Policy 26 – Business and industry

Policy 27 – City, town, local and commercial centres

## **Scottish Borders Local Development Plan 2016**

PMD1 – Sustainability

PMD2 – Quality standards

ED1 – Protection of business and Industrial Land

HD3 – Protection of residential amenity

IS7 – Parking provision and standards

IS9 – Wastewater treatment standards and SUDS

### **OTHER PLANNING CONSIDERATIONS:**

Supplementary Planning Guidance:

Placemaking and Design (2010)

### **CONSULTATION RESPONSES:**

Please note that full responses have been published online but for the purposes of brevity; consultee responses are summarised below.

#### **Scottish Borders Council Consultees**

**Roads Planning Service:** No objection. There is existing off-street parking, and the proposed change of use is unlikely to generate an amount of traffic which would negatively affect the nearby public roads.

**Forward Planning Section: First response:** Further information required. It is not considered that the applicant has satisfactorily demonstrated that there are no suitable alternative sites within Kelso. As set out above, Policy ED1 states that employment generating uses other than Classes 4,5 and 6 can only be considered where no suitable alternative site(s) are available. Furthermore, Policy 27 contained within NPF4, requires that such proposals must be consistent with the town centre first approach.

**Second response:** No objection subject to condition that the consent is limited to a gymnasium only (Class 11) for this specific end user. It may also be worthwhile considering that this is issued as a temporary consent.

### **KEY PLANNING ISSUES:**

The key planning issue is whether the proposed development in this location constitutes appropriate development in accordance with the National planning Framework 4 (NPF4) and the Scottish Borders Local Development Plan 2016, particularly as regards to whether the proposal will contribute to the efficient functioning of the allocated site and will be compatible with the neighbouring business and industrial uses.

### **ASSESSMENT OF APPLICATION:**

#### **Policy Principle**

##### *Local Development Plan 2016*

The wider employment site (zEL206) is allocated as a 'strategic business and industrial site' under Policy ED1 of the Local Development Plan 2016. Policy ED1 distinguishes between 'strategic high amenity sites' and 'strategic business and industrial sites'. Policy ED1 states

that 'There is a presumption in favour of the retention of industrial and business use on strategic and district sites' such as Pinnaclehill.

On that basis, development proposals must satisfy the following policy requirement: (b) "Development for uses other than Classes 4, 5 and 6 on strategic business and industrial sites in the locations identified in Table 1 will generally be refused. Uses other than Classes 4, 5 or 6 can be considered if clearly demonstrated as contributing to the efficient functioning of the allocated site". The proposed use does not fall within Class 4, 5 or 6 of the Use Classes Order and, therefore, conflicts with the first requirement. A gym will not directly contribute to the functioning of the estate per se but the particular contribution to the running of the estate, is accounted for in the service to employees of the surrounding businesses. As regards whether the proposal could be considered an alternative use that would be compliant with ED1 (as a use that would contribute to the efficient running of the allocated site), a gym is currently operating on this industrial estate (approved under planning application 20/00520/FUL), having located here throughout the covid pandemic. No adverse impacts have been identified to be arising from this previous approval. In addition, Policy ED1 recognises that there are certain uses that can co-exist on an industrial estate and in the immediate surroundings there are veterinary and dental practice's also operating under recent planning approvals. It is therefore argued that this previous dilution of business and industrial uses on Pinnaclehill now allows a more mixed use to be considered.

There have been significant numbers of representations to this planning application which is evidence that there is substantial local demand for the proposed change of use to a gymnasium. The counter argument arising in the objections is primarily that there is presently adequate provision of Class 11 use in Kelso (there is said to be six gyms currently operating in Kelso) and that the Planning Authority should resist further provision. It is not for the Planning Authority to mediate in the provision of gyms. This is a commercial decision for the operator and one for the market to regulate. The total number of gyms operating in any given location is not a material planning consideration in the determination of this application and Members will be aware that Planning Authority may only consider the land use principle, character, amenity and the compatibility of the proposed gym with neighbouring business and industry in this case.

The significant body of support must however be weighed against the potential impacts arising from the loss of industrial land. These impacts are identified as the reduced availability of industrial land supply and consequential loss of employment opportunities for the town. Gym use is a service industry and not necessarily employment generating in the sense of business and industry. There are undeveloped business and industrial allocations at Pinnaclehill however these are not currently serviced by road/water/electricity. There is a new allocation of business and industrial land identified in Local Development Plan 2020 but again this is not yet serviced. Members should be aware that this unit is one of few limited opportunities for serviced business and industrial land available within Kelso presently. It must be emphasised that employment land supply is constrained and approving partial change of use to this building may blight future opportunity for employment uses on the wider planning unit as a whole. Members will note, from the history of the site, that the units were approved to be a Biffa bulking station in relation to the operation of a national DRS (Deposit Return Scheme).

#### *National Planning Framework 4*

The application is also required to be considered by National Planning Framework 4 specifically Policy 26 – Business and industry and Policy 27 – City, town, local and commercial centres.

Policy 26 aims to encourage, promote and facilitate business and industry uses. Criteria (c) states that 'Other employment uses will be supported where they will not prejudice the primary function of the area and are compatible with the business/industrial character of the area'.

Policy 27 aims to encourage, promote and facilitate development in our city and town centres. Criteria (b) (ii) states that 'Development proposals will be consistent with the town centre first approach. Proposals for uses which will generate significant footfall, including commercial, leisure, offices, community, sport, and cultural facilities.... will not be supported outwith those centres unless a town centre first assessment demonstrates that:

- All centre and edge of centre options have been sequentially assessed and discounted as unsuitable or unavailable,
- The scale of development cannot reasonably be altered or reduced in scale to allow it to be accommodated in a centre, and
- The impacts on existing centres have been thoroughly assessed and there will be no significant adverse effect on the vitality and viability of the centres.

Policy 27 states that the town centre first assessment should be applied flexibly and realistically for proposals, including leisure facilities, so that they are easily accessible to the communities they are intended to serve.

The Town Centre First Assessment has been accepted by Forward Planning officers and the proposals are now considered to be in accordance with National Planning Policy. No other suitable premises are identified in the town centre that could accommodate the intended use. A condition is recommended to ensure the proposed use reverts to business and industry when/ if the gym function ceases to operate. A second condition is also proposed to isolate the proposed use to a gymnasium only (and not other uses within Class 11). Following submission of the town centre first assessment and having regard to the supporting statement and planning history on the wider employment site, it is concluded that the proposed Class 11 use will not be incompatible with the neighbouring business and industrial uses. It is accepted that there will be no adverse impact on the vitality or viability of the town centre and the proposed gymnasium will not prejudice the primary function of the industrial area.

Members will note that the Forward Planning team also suggested that a temporary consent be granted in this case. However, accounting for other consented uses on this employment site, and in particular the existing fitness centre approved under 20/00520/FUL it is felt that this is not necessary. A condition requiring the use to revert back to Use Classes 4, 5 and 6 will ensure that, in the event the gym ceases to operate, it cannot be used for any other use without the prior written consent of the planning authority.

The proposal is for only part of a building and other units within the same building will remain under the planning condition restricting Class 4, 5 and 6 use only and will be available for business and industrial use.

### **Residential Amenity**

There are no nearby residential properties so there should be no adverse effects in that regard. It is considered that any potential increase in noise and activity generated by the proposed business can be accommodated in this industrial location.

### **Visual impact**

No external alterations are proposed under this application.

## **Services**

It is understood existing water and drainage services are in place to serve the development. These were approved under the earlier planning consents to erect the existing building.

## **Waste Storage**

It is considered that the proposed use will generate less waste than a lawful use of the building for industrial purposes so waste storage is not a concern for this application. However, the plans submitted with the application do not show proposals for waste storage. Further details are required and this can be covered by suitably worded planning condition.

## **Road safety and Parking**

The Council's Roads Planning Service (RPS) raise no concerns with regards to the existing access and the parking arrangements. The site benefits from existing off-street parking and the proposed change of use is unlikely to generate a level of traffic that would negatively affect the nearby public roads.

## **Conclusion**

Following the submission of additional supporting information, the proposed development is now considered to be in compliance with NPF4 and LDP 2016 in that the town centre first approach has demonstrated there are no suitable alternative premises located within Kelso town centre that can accommodate the applicant's gym business. The loss of employment floorspace can be mitigated by ensuring future use of the units are safeguarded by condition, and where the proposed leisure use ceases to operate, the building should return to its original (approved) use. The proposed use as a gymnasium should not prejudice the long-term provision of industrial land and buildings in Kelso. No adverse impacts are identified on neighbouring businesses or those seeking to locate to the industrial estate. The gym can be termed a complimentary use to its surrounding uses without any identified detrimental impacts nor being a deterrent to attracting further industrial operators.

An increase in noise and activity generated by the business can be accommodated in this industrial location and is preferential in the interests of protecting neighbouring residential amenity.

## **CONCLUSIONS**

The development will accord with the relevant provisions of the Development Plan and there are no material considerations that would justify a departure from these provisions. The development is considered to be a justified exception within an existing business and industrial area (ED1 of the Local Development Plan) with increasingly mixed use, providing gym facilities for which there is an identified demand. Subject to conditions ensuring the units are used for the intended gym use only and reversion to business and industrial uses should the gym cease to operate, the application is, on balance, considered acceptable.

## **RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:**

I recommend the application be approved subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Local Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
3. The approved use shall be limited to a gymnasium only and there shall be no permitted change to any other use within Use Class 11 (Assembly and Leisure) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended) unless a further planning application has been submitted to and approved by the Planning Authority.  
Reason: The development has been considered specifically with respect to the merits of the gymnasium against Policy ED1 of the Local Development Plan 2016 and no other uses within Use Class 11 of Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended).
4. In the event that the approved gymnasium use ceases, the lawful use of units 8 and 9 (approved under application 21/01894/FUL and marked red on the plans hereby approved) shall revert to its previous lawful use (Classes 4-6) under the Town and Country Planning (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.
5. The use of units 8 & 9 (marked red on the plans hereby approved) as a gymnasium shall not commence until further details of commercial waste storage facilities are submitted to and approved in writing by the planning authority. The use hereby approved shall not commence until the agreed waste storage facilities are in place. The waste storage facilities shall remain in perpetuity for the duration of operation of the gymnasium.  
Reason: To ensure appropriate facilities are in place for the storage of refuse.

## DRAWING NUMBERS

Location/Site Plan - 11567.202

### Reports

Supporting Statement  
Town Centre First Assessment

### Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

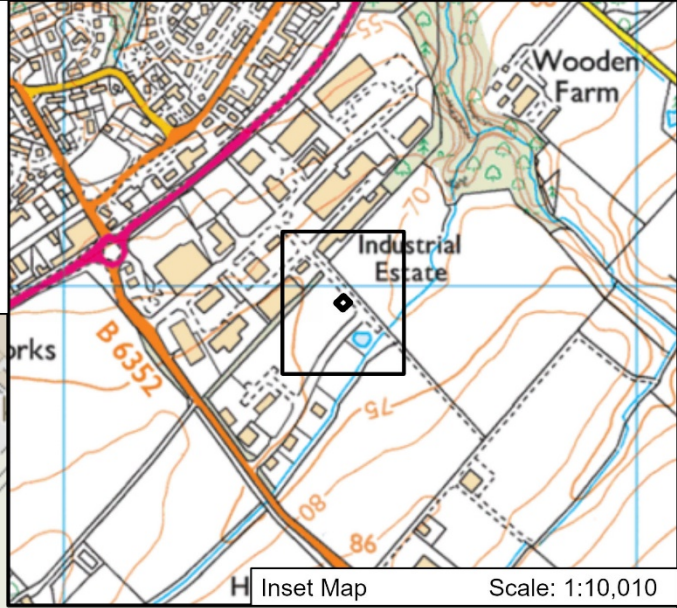
The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

### Author(s)

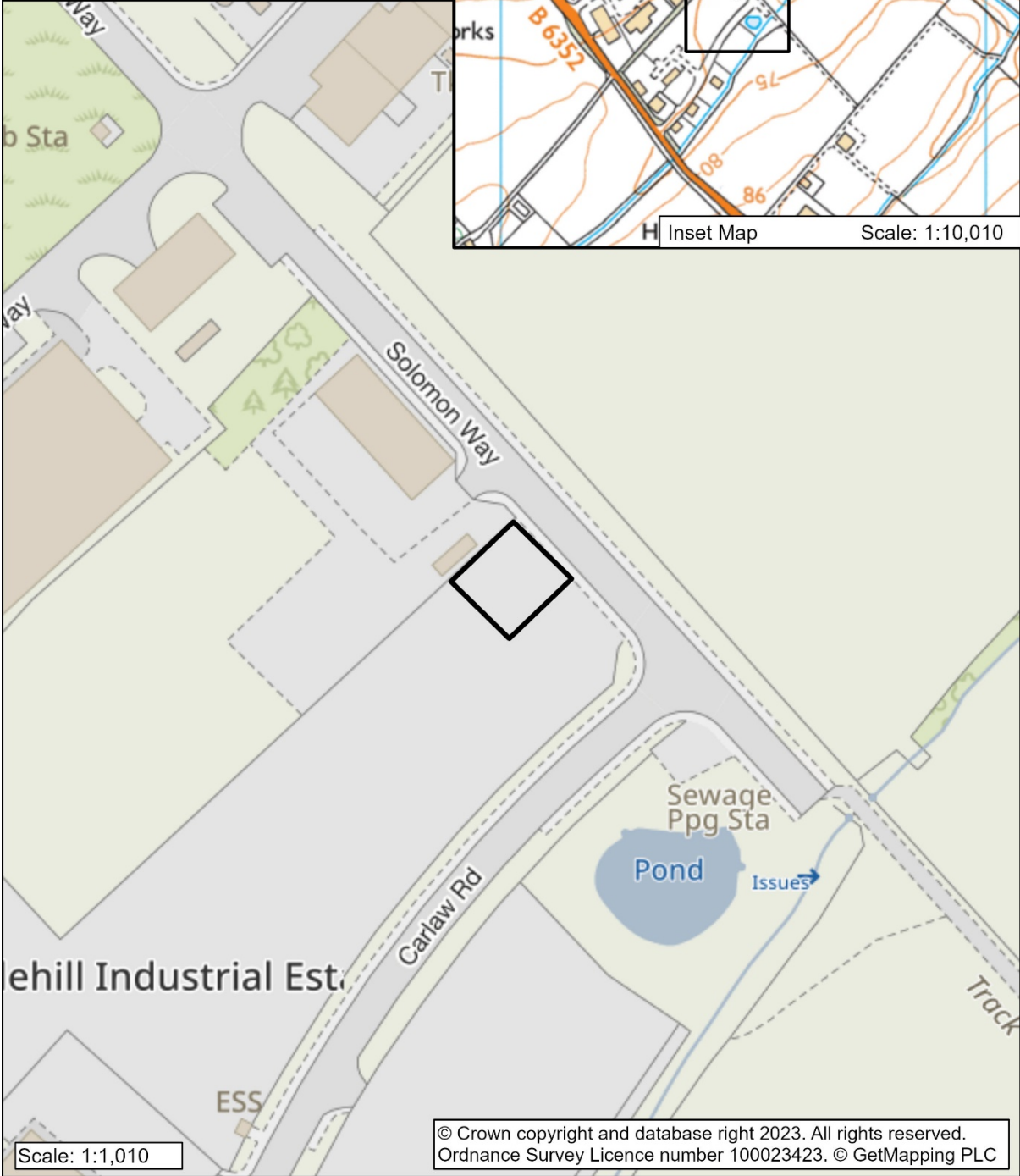
Name	Designation
Euan Calvert	Assistant Planning Officer



23/01352/FUL  
Units 8 And 9  
Carlaw Road  
Pinnaclehill Industrial Estate  
Kelso



Inset Map Scale: 1:10,010



Scale: 1:1,010