



# **PLANNING COMMITTEE REPORT**

**TO:** Planning Committee North

**BY:** Head of Development

**DATE:** 9th January 2018

**DEVELOPMENT:** Removal of condition 6 to previously approved application DC/07/0272  
(Change of use from retail warehouse to fitness centre)

**SITE:** Evolution Fitness Gladstone Road Horsham West Sussex RH12 2NN

**WARD:** Horsham Park

**APPLICATION:** DC/17/2123

**APPLICANT:** **Name:** Mrs Sam Stocker **Address:** Evolution Fitness Gladstone Road  
Horsham West Sussex RH12 2NN

**REASON FOR INCLUSION ON THE AGENDA:** More than 8 representations have been received  
of a contrary view to the Officer recommendation

**RECOMMENDATION:** To permit subject to conditions

## **1. THE PURPOSE OF THIS REPORT**

1.1 To consider the planning application.

### **DESCRIPTION OF THE APPLICATION**

1.2 The application seeks the removal of condition 6 of planning permission DC/07/0272:-

- 6 *"The use hereby permitted, including the use of the back room only as a changing room and in connection with the instruction of the weight loss programme, shall be undertaken in accordance with the details submitted in the applicants email sent on 20th March 2007 ref. application DC/07/0272. No material changes to the nature of activities shall be undertaken unless details of proposed amended activities have been submitted to and approved in writing by the Local Planning Authority.*

*Reason: In the interests of the amenities of the locality and in accordance with policy EDC13 of the Horsham District Local Plan 1997."*

1.3 At the time that planning permission was granted, the rear 'room' was separated from the front part of the building by way of a wall but with no separating door. It would appear that at some time prior to the current occupiers taking over the lease in 2016, this partition wall was removed to open up the space, along with other internal partitions having been removed along the northern side of the building. The use of the gym was therefore being carried out throughout the building, thus resulting in a 'material change' from the approved nature of activities.

- 1.4 The application has been submitted following Planning Compliance investigations which identified that while the overall use was as permitted, the back room referred to in condition 6 was being used as part of the gym rather than as a changing room and weight-loss management. The application therefore seeks to regularise the existing layout by removing the above condition.
- 1.5 The existing occupants of the premises are 'Evolution Fitness', which offer fitness and stretching / Pilates classes. The applicant stated at the site visit that the premises lease allows opening times between 08:00hours to 20:00hours. It would appear that there are predominantly 2 classes offered each day with occasional teen classes in the afternoons, typically running between 09:30 - 11:30 and 16:00 - 20:00, and with Saturday morning opening only.

#### DESCRIPTION OF THE SITE

- 1.6 The application site comprises a narrow building that lies between residential properties on the northern side of Gladstone Road. The building was previously in commercial use, prior to a change of use being granted in June 2007, as a fitness centre (DC/07/0272).
- 1.7 Internally, the building comprises a single open room with a couple of small rooms to the front forming a store and WC. There are uPVC double glazed windows and a door along the eastern side elevation, which lead out onto a narrow access alleyway, alongside the garden of No.1 Gladstone Road.

## 2. INTRODUCTION

#### STATUTORY BACKGROUND

- 2.1 The Town and Country Planning Act 1990.

#### RELEVANT PLANNING POLICIES

The following Policies are considered to be relevant to the assessment of this application:

#### 2.2 National Planning Policy Framework

#### 2.3 Horsham District Planning Framework (HDPF 2015)

Policy 1 - Strategic Policy: Sustainable Development  
Policy 2 - Strategic Policy: Strategic Development  
Policy 3 - Strategic Policy: Development Hierarchy  
Policy 12 - Strategic Policy: Vitality and Viability of Existing Retail Centres  
Policy 13 - Town Centre Uses  
Policy 32 - Strategic Policy: The Quality of New Development  
Policy 33 - Development Principles  
Policy 42 - Strategic Policy: Inclusive Communities  
Policy 41 - Community Facilities, Leisure and Recreation

#### RELEVANT NEIGHBOURHOOD PLAN

- 2.4 The Horsham Blueprint Neighbourhood Forum Plan is still at an early stage

#### 2.5 PLANNING HISTORY AND RELEVANT APPLICATIONS

DC/07/0272	Change of use from retail warehouse to fitness centre	Application Permitted on 02.07.2007
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### **3. OUTCOME OF CONSULTATIONS**

- 3.1 Where consultation responses have been summarised, it should be noted that Officers have had consideration of the full comments received, which are available to view on the public file at [www.horsham.gov.uk](http://www.horsham.gov.uk)

#### **INTERNAL CONSULTATIONS**

3.2 **HDC Environmental Health:** Comment:-

- This Service sees no fundamental reason why noise or vibration from the gym cannot be adequately prevented from impacting the amenity of adjacent domestic properties, given appropriate controls are put in place and maintained. Such measures have been discussed at length with Applicant previously, through other complaint-led interventions that Environmental Health & Licensing have undertaken with the business;
- To this end, this Service recommends that a Noise Management Plan is submitted to and approved but the Authority within a suitable timeframe, should the Application be permitted. This should be secured by Condition, and include the requirement to implement and maintain the procedural controls identified in the approved Plan.

#### **PUBLIC CONSULTATIONS**

3.3 **Denne Neighbourhood Council:** Comments:-

- Noted that the applicant has taken steps to address noise issues;
- No obvious noise issues noted on two separate occasions when the premises was visited by PC;
- PC supportive of local businesses and the provision of a local fitness facility, balanced with the rightful quiet enjoyment of homes by local residents;
- PC would support the re-wording of the condition, if possible, to take account of practical needs of fitness centre whilst minimising noise and disturbance to neighbours;
- Would object to the entire removal of the relevant condition which may allow the continuance of unacceptable harm to the amenity of nearby users / occupants.

3.4 15 letters of objection have been received raising the following concerns:-

- parking along Galdstone Road preventing residents from parking near homes;
- Breaches by current owner since 2016 - Curves gym did not lead to any complaints;
- concern that current gym breaches other criteria expressed in e-mail of 20th March 2007 on which the previous approval was based, eg not running classes;
- complaints of weights being dropped and thrown leading to vibrations in adjoining homes;
- Matting stated to be used on the flooring only achieves a muffling of noise;
- more appropriate locations for such uses would be industrial estate or rural location;
- Removal of condition is not warranted - serious noise concern to neighbours over last 20 months;
- more weights dropped as recently as 4th October 2017;
- inappropriate use of premises in a residential area;
- Windows from gym looking into adjacent gardens - particularly when their doors are open;

- change in character from a ladies weight loss centre (not a gym) to a fitness centre with a 'reputation for punishing workouts';
- single skin brick wall to the adjoining residential annexe;
- premises being used out of hours (20:15);
- roof tiles fallen off premises into adjoining gardens likely arising from vibrations of use within.

3.5 4 letters of support have been received:-

- Evolution Fitness are respectful of local residents / neighbours and do not cause any issues;
- having visited the gym, the weights are stored and lifted near the front entrance while the back area is used for pull-ups, press-ups to keep noise to a minimum;
- Good gym to be a member of with a good ethos;
- last class finishes by 8pm;
- measures in place as part of gym to ensure no weights are dropped, no weights are used in rear part of building;
- neighbour works from home on cars - similar noise issues arising;
- changing rooms have always been at the front while rear part has always operated as an integral part of gym / for exercise;
- parking in Gladstone Road restricted during the daytime by permit.

#### **4. HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS**

- 4.1 Article 8 (Right to respect of a Private and Family Life) and Article 1 of the First Protocol (Protection of Property) of the Human Rights Act 1998 are relevant to this application, Consideration of Human rights forms part of the planning assessment below.

#### **5. HOW THE PROPOSAL WILL HELP TO REDUCE CRIME AND DISORDER**

- 5.1 It is not considered that the development would be likely to have any significant impact on crime and disorder.

#### **6. PLANNING ASSESSMENTS**

- 6.1 A planning condition is required to meet 6 tests as set out by paragraph 206 of the NPPF (2012):

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.

- 6.2 The existing condition was considered to meet the above 6 tests when it was imposed on the original change of use consent in 2007, as it was reasonable to restrict use of the rear room in order to seek to mitigate potential noise impact / transference to neighbouring residential properties. It is considered that the condition, at the time of granting the original permission, was precise, as it referred to the 'back room' which was clearly defined at the time given the presence of a dividing wall between the spaces and the simple layout otherwise of the premises.

- 6.3 Since the permission being granted internal alterations have taken place resulting in the removal of a partition, in effect removing the 'back room' referred to in the condition and creating an open plan layout. There are no restrictions on physical internal alterations being carried out to the building, which do not require planning consent, and so the removal of the internal wall has, in itself, not breached any planning control. The key issue of consideration is whether the nature of the use, which differs from that envisaged by condition 6 but remains within the permitted D2 use class, has negatively impacted upon neighbouring amenity.

#### **Amenity Impacts:**

- 6.4 HDPF Policy 33 requires that development avoids unacceptable harm to the amenity of occupiers / users of nearby property and land, for example through overlooking or noise.
- 6.5 A number of objections were received at the time of the original 2007 application with concerns raised over noise from music, parking, late opening times. The proposed removal of condition has also raised a number of concerns over noise and neighbour amenity impact.
- 6.6 The Council's Environmental Health Team has actively been addressing some of the noise-related concerns raised as part of this planning application. Statutory Nuisance monitoring has taken place at the premises relating to the amplified music and the likelihood of vibrations from the gym equipment, in order to inform whether a disturbance is 'materially and unreasonably affecting a person's use of enjoyment of their property'. As a result of this monitoring the following measures have been implemented to assist in limiting the potential neighbour disturbances:-
- Thick rubber matting laid throughout the gym floor;
  - Hollow 'step-up' boxes have been internally filled to decrease the resulting noise;
  - Music played only during exercises and at a limited volume with non-openable secondary glazing fitted to the eastern side openings and ensuring doors and windows remain closed during use;
  - More 'Spotters' used to assist when weights are used to prevent them being dropped;
  - Use of 'Deadlift Deadeners' ;
  - The use of weights limited to the central part of the premises;
  - Use of weighted gym balls no longer bounced against the walls at the far end, only in the central part of the building.
- 6.7 The Environmental Health Team has advised that the above measures have, in general, resulted in a reduction in noise related issues and that the agreed measures remain enforceable (under non-planning legislation).
- 6.8 As part of this planning application a condition is recommended to ensure a Noise Management Plan, which would require the applicants to submit details and measures which would seek to limit the noise transference to neighbouring properties. This plan would reinforce the measures agreed separately with the Environmental Health Team and this approach would mitigate any potential impact on neighbouring amenity from the gym use. It is considered that subject to this condition the removal of condition 6 from permission DC/07/0272 would not lead to any significant harm to amenity for occupants of adjoining properties.

#### **Conclusions and Planning Balance:**

- 6.9 The internal layout of the premises has changed and as such the wording of condition 6 of DC/07/0272 is no longer relevant or enforceable. A replacement condition is therefore recommended, in lieu of this condition, to ensure that the lawful use of the premises can

continue to operate in a way that is appropriate to its proximity to neighbouring residential properties whilst seeking to minimise any undue neighbour harm. For the avoidance of doubt the conditions from the existing planning permission have been included in the recommendation in Section 7 (below).

## **7. RECOMMENDATIONS**

### **7.1 To permit subject to conditions**

#### **1 List of Approved Plans**

- 2 Regulatory Condition:** Within 2 months of the date of this permission, a Noise Management Plan shall be submitted to and approved in writing, by the Local Planning Authority, setting out details and measures by which noise and vibrations from the premises shall be limited. Following approval of the Noise Management Plan, any measures agreed shall be implemented and maintained in accordance with the approved details unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of neighbour amenity in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 3 Regulatory Condition:** No external lighting or floodlighting shall be installed without the prior written approval of the Local Planning Authority. Any that is installed with the permission of the Local Planning Authority shall be maintained in accordance with the approved details.

Reason: In the interests of the amenities of the locality and in accordance with policy 33 of the Horsham District Planning Framework (2015).

- 4 Regulatory Condition:** The premises shall not be open for trade or business except between the hours of Monday- Friday 8am to 8pm and Saturdays 9am to midday

Reason: To safeguard the amenities of neighbouring properties in accordance with policy 33 of the Horsham District Planning Framework (2015).

- 5 Regulatory Condition:** The building shall be used for a maximum number of 20 clients at any one time unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the amenities of neighbouring properties in accordance with policy 33 of the Horsham District Planning Framework (2015).

Background Papers: DC/17/2123  
DC/07/0272