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App No : 17/07892/FUL App Type : FUL
Application for : Change of use of ground floor unit from a flexible use (A1/A2/A3/A4/B1) to a gym (Class D2) use
At The Caitlin Building, Corporation Street, High Wycombe, Buckinghamshire
Date Received : 17/11/17 Applicant : KMP Fitness Ltd
Target date for decision: 12/01/18

1. **Summary**

- 1.1. This application is being reconsidered following a recent judicial review decision.
- 1.2. The application relates to the ground floor of the Caitlin Building on Corporation Street. The ground floor unit has entrances via Corporation Street and Castle Street.
- 1.3. The ground floor is vacant but has permission for a flexible A1 / A2 / A3 / A4 / B1 use in the form of two units. Residential use exists on floors one to five. Parking is within the basement. Planning permission is sought for the change of use of the ground floor as a 24 hour gym.
- 1.4. The principle of the proposed gym use is considered to conform to the NPPF, being a main town centre use that will contribute toward the local economy. It is noted that there are a number of similar uses in the locality, however commercial competition is not a planning matter.
- 1.5. The site is well located with regards to public car parking facilities. Although there are residential properties within the area a number of operating management practices will ensure that there is no adverse impact upon residential amenity.
- 1.6. The application is recommended for conditional permission.

2. **The Application**

- 2.1. The Caitlin Building as constructed was approved in 2006 on the former site of a church. The approved development comprised the erection of 2 x 1-bed, 1 x 3-bed & 21 x 2-bed flats above ground floor, with a commercial use (A1/A2/A3/A4/B1) approved for the ground floor.
- 2.2. The application proposes the change of use of the ground floor as a 24 hour gym, the floor space of which is 555 sqm. The entrance to the upper floors residential use is via Corporation Street. It is proposed to retain the Castle Street entrance to the ground floor unit as the primary entrance for the gym, with the three Corporation Street entrances shown as means of escape. No alterations will be made to the existing "shopfront".
- 2.3. The only external works proposed are the installation of 6 sheffield cycle hoops on the Castle Street forecourt.
- 2.4. The application is for Snap Fitness and is part of the Lift Brands family, which is a wellness franchise operation that incorporates six fitness brands, including Snap Fitness. Lift Brands has 3000 clubs open or in development in 15 countries. They have an operating management procedure to ensure that a 24 hour gym does not impact upon nearby residential uses.
- 2.5. Snap Fitness have experience operating within urban areas, below residential properties and in hotels. The gym is only open to members, with access being locked at all times, with members gaining access via an electronic security tag system. It is

staffed for 60 hours per week. All lighting is sensor operated and will therefore automatically turn off when there are no members in the gym.

- 2.6. A similar gym is in operation west of the site, at Oakley Hall, 8 Castle Street, but with a different operator.
- 2.7. The site is located in the High Wycombe Town Centre, within the Primary Shopping Area. It is neither located within the Conservation Area nor within the Primary or Secondary Shopping Frontage. It is however within non-residential Zone 1 in relation to the Buckinghamshire Countywide Parking Standards.
- 2.8. The application is accompanied by a Planning Statement and Environmental Statement in relation to potential noise impact.
- 2.9. This application was originally permitted under delegated powers in February 2018. This lawfulness of this decision was however challenged on six grounds, summarised below:-
 1. The Council failed to take account of material planning considerations.
 2. The Council took matters into account it should not have done, and gave weight to matters it should not have. The Council arrived at an irrational decision.
 3. The Council incorrectly applied the presumption in favour of sustainable development. The application should have been refused as it conflicted with the Development Plan.
 4. The Council failed to attach reasonable conditions.
 5. The Council did not act consistently with its determination of the present planning consent with how it considered and determined the planning application of an underground 24-hour gym in the adjacent property.
 6. The absence of proper consideration of the application by failure to give adequate reasons.
- 2.10. Rather than oppose the challenge the Council accepted that one of the grounds has merit and therefore agreed (consented) to the High Court quashing the decision. The High Court therefore ordered, by consent, that the Claimant's application for judicial review (CO/1096/2016) be allowed. Planning permission 17/07892/FUL was therefore quashed on 10th July 2018, as summarised:

1. The Planning Authority consented to the quashing of the application in respect of Ground 4; that the Council failed to attach reasonable conditions.
2. The Planning Authority acknowledged that there was a failure in granting the planning permission without attaching necessary conditions to address issues of noise. The applicant's environmental statement highlighted the need for conditions to address noise issues. The planning officer report relied upon particular operational matters to address such noise issues, however, these were not secured by way of an appropriate condition to safeguard residential amenity in the decision notice.
3. It was noted that the Claimant's objection in respect of Ground 4 included other considerations such as amenity: the lack of 24 staffing and security, and also potential access to common areas such as lobbies and residents hallways and car park by others. These other elements of ground 4 were not accepted by the Planning Authority and were not conceded.
4. The Claimant did not make an application to the Court requesting a reconsideration of any of the grounds included in the claim for which permission was not granted. The Defendant does not however concede these.
5. The parties agreed that no purpose would be served in continuing to argue

these matters in the context of this litigation.

- 2.11. The previous decision was therefore quashed and the application has been returned to the Planning Authority for re-determination. Since the application was returned for redetermination additional plans were received detailing the specification of the cycle stands to be erected. A full re-consultation on the application has also taken place.

3. Working with the applicant/agent

- 3.1. In accordance with paragraph 38 of the NPPF2 Wycombe District Council (WDC) approach decision-taking in a positive and creative way taking a proactive approach to development proposals focused on solutions and work proactively with applicants to secure developments.
- 3.2. WDC work with applicants and agents in a positive and proactive manner by offering a pre-application advice service, and as appropriate updating applications/agents of any issues that may arise in the processing of their application.

4. Relevant Planning History

Oakley Hall, 8 Castle Street

- 4.1. 16/07011/FUL: Subdivision of former retail premises and part change of use to a gym / fitness centre (D2) at Oakley Hall. Application permitted. 18/10/16.

Caitlin Building (former First Church of Christ Scientist)

- 4.2. 06/08009/FUL. Demolition of existing church building & erection of 2 x 1-bed, 1 x 3-bed & 21 x 2-bed flats above ground floor commercial use (A1/A2/A3/A4/B1), creation of new access, associated car parking & landscaping (application site). Application permitted. 16/3/07.
- 4.3. 06/05913/FUL. Demolition of existing church building & erection of 2 x 1-bed & 22 x 2-bed flats above ground floor commercial use (A1/A2/A3/A4/B1), creation of new access, associated car parking & landscaping (application site). Application permitted. 1/9/06.

5. Issues and Policy considerations

Principle and Location of Development

CSDPD: CS1 (Overarching principles - sustainable development), CS2 (Main principles for location of development).

DSA: DM1 (Presumption in favour of sustainable development), DM5 (Scattered Business Sites), DM6 (Mixed-Use Development), DM7 (Town Centre Boundaries), HWTC1 (Delivering the Town Centre Vision), HWTC2 (Town Centre Environment), HWTC4 (Economy).

New Local Plan (Submission Version): CP1 (Sustainable Development), CP3 (Settlement Strategy).

- 5.1. Policy DM7 states that, "Within the town centre... ..main town centre uses are acceptable in principle." This is in part to protect the vitality and viability of town centres but also in recognition that town centres will be the most sustainable location for high traffic attractors such as retail and leisure uses.
- 5.2. As concluded with the application at 8 Castle Street, due to the central location, the potential for linked trips, the availability of public transport, and the availability of public parking, it is considered that no specific parking provision should be required. Likewise, mindful of the baseline potential level of traffic associated with a re-use of the premises for retail use, it is not considered that the proposal will have any significant traffic impacts.
- 5.3. The adopted Delivery and Site Allocations Plan contains a number of more detailed policies relating to the overall strategy for High Wycombe Town Centre (the HWTC policies). In terms of uses, the strategy seeks to strike a balance between protecting traditional retail uses and promoting growth of other economic activities alongside

fostering the town centre as a place to live and to work.

- 5.4. While the premises has permission for a mixed use, including retail, alternative non-retail town centre uses are also acceptable. Indeed it is noted that previous planning permissions were granted in 2002 and 2005 for an entirely residential scheme with no retail, and the previous use of the site was as a church (Class D1 – non-residential institutions).
- 5.5. The contribution of this development to the wider strategy in HWTC1 is perhaps minimal. Although from an economic perspective (HWTC4) it is recognised that the ground floor unit has been vacant since construction. Occupation of the ground floor unit with a health and fitness centre, which is recognised in the NPPF as a main town centre use, will contribute toward the local economy.
- 5.6. There have been objections to the proposal for a gym mainly on the basis that the town centre is over provided with this type of facility, including the recent fitness centre at 8 Castle Street. However it is a well-established principle that consideration of commercial competition is not planning matter. It remains necessary therefore to consider the specific impacts of the proposal in its context.
- 5.7. Concern has also been raised in relation to the proposal conflicting with policy DM5 (scattered business sites). In particular it has been suggested that the building has not been properly marketed. The existing permission allows a flexible range of potential uses, A1 (shops), A2 (Financial and professional services), A3 (Restaurants and cafes), A4 (Drinking establishments) or B1 (Business) rather than just a specific B1, B2 or B8 employment use.
- 5.8. In addition paragraph 6.30 to 6.31 of the supporting text to the policy states that, “In line with the NPPF this policy allows for the Council to respond to market signals in determining applications for alternative uses on these sites and as such the policy allows a degree of flexibility and responsiveness to market conditions. Redevelopment of these sites for uses that are employment generating or for community uses would be acceptable.” The principle of a gym use (Class D2) is therefore considered acceptable.
- 5.9. The proposal will still result in a mixed use of the building and therefore complies with policy DM6. The proposal also complies with policy DM7 as it is a main town centre use.

Transport matters and parking

ALP: T2 (On – site parking and servicing), T4 (Pedestrian movement and provision), T5 and T6 (Cycling), T7 (Public transport), T8 (Buses), T12 (Taxis), T13 (Traffic management and calming),

CSDPD: CS16 (Transport), CS21 (Contribution of development to community infrastructure)

DSA: DM2 (Transport requirements of development sites)

New Local Plan (Submission Version): DM35 (Placemaking and design quality)

- 5.10. The Highway Authority considering the nature of the proposed works and the sites town centre location do not consider the application detrimental to the safety and convenience of the highway network.
- 5.11. They have raised no objections and do not require any conditions with respect to highway issues.
- 5.12. The specification of the cycle storage has now been shown and the location of the stands is detailed on the submitted drawings.

Amenity of existing and future residents

ALP: G8 (Detailed design guidance and local amenity)

CSDPD: CS19 (Raising the quality of place shaping and design)

New Local Plan (Submission Version): DM35 (Placemaking and Design Quality),

- 5.13. The building has residential properties on floors 1 – 5 above the ground floor. In addition, there are a number of residential properties around the site.
- 5.14. An Environmental Statement has been submitted with the application to assess potential noise disturbance. The assessment exams the structure and demonstrates that a good level of noise abatement at present. Although additional measures are proposed to improve noise abatement.
- 5.15. As already set out in this report concerns have been raised, by means of both an initial objection and subsequent Judicial Review, in respect of the potential impact of noise on neighbouring residential amenity.
- 5.16. The operator states that they employ a number of control measures and techniques to mitigate against any impact on buildings or properties within the surrounding area:
- The loud bass beats typically associated with most gyms, rather the proposed gym will have low volume background music, which is set and locked by the manager in the office.
 - All gyms have control equipment that sets music to levels that do not exceed approved levels.
 - All cardiovascular equipment has individual television screens and members wear headphones to listen to the sound.
 - High impact resilient rubber flooring will be used in the free weights area to absorb the impact of weights onto the surface and to mitigate any potential noise.
 - Night time usage i.e. 11pm to 5am is very low. Typically less than 2 members per hour.
 - Noise from ingress and egress of members during night time is considered to be limited given that doors close automatically.
 - All windows are non-openable and fixed shut at all times.
 - The audio/visual equipment will be fitted with volume limiters to restrict sound to an acceptable level.
 - No classes are undertaken between 11pm and 7am to reduce the potential of large groups to arrive at or leave the premises at the same time.
- 5.17. When the application was originally considered Environmental Services reviewed the application submissions and did not concluded that any mitigation measures were necessary. They raised no objections and no conditions were recommended. As a result of the Consent Order they have reconsidered the application.
- 5.18. They have identified that the potential issues relevant to planning are:-
- Noise breakout from air conditioning or associated air handling machinery
 - Noise breakout from gym activities, including but not limited to instructed gym training sessions, live or recorded music.
- 5.19. It is recognised that there will be noise sources from the proposed development these include air-conditioning and air handling plant. A noise impact assessment has been completed specifying an adequate noise reduction protect neighbouring property from this noise source.
- 5.20. Concern has been raised as to noise breakout from gym activities taking place as part of the daily operations of the premises. These activities are not defined but should be controlled so as not to cause a nuisance. Therefore preventing the possible loss of amenity to neighbour properties including any tranquil areas associated with them.
- 5.21. The proposals outlined in the Environmental Statement (dated the 18/10/2017)

should be adopted and are required by means of a proposed condition. This scheme includes controls to prevent noise breakout from the daily activities of the Fitness Centre).

Building sustainability

CSDPD: CS18 (Waste, natural resources and pollution)

DSA: DM18 (Carbon reduction and water efficiency)

New Local Plan (Submission Version): DM41 (Optional Technical Standards for Building Regulations Approval)

- 5.22. Following the Adoption of the Delivery and Site Allocations Plan (July 2013) and in particular policy DM18 (Carbon Reduction and Water Efficiency) it would have previously been necessary to impose a condition to secure the required 15% reduction in carbon emissions as well as reducing future demand for water associated with the proposed dwelling. However, this was superseded in October 2016 by ministerial policy to transfer the issue to Building Regulations. It is only considered necessary to condition water efficiency.

Infrastructure and Developer Contributions

CSDPD: CS21 (Contribution of development to community infrastructure)

DSA: DM19 (Infrastructure and delivery)

New Local Plan (Submission Version): CP7 (Delivering the infrastructure to support growth)

- 5.23. As there is no new floor space created, there is no CIL payment due.

Weighing and balancing of issues – overall assessment

- 5.24. This section brings together the assessment that has so far been set out in order to weigh and balance relevant planning considerations in order to reach a conclusion on the application.

- 5.25. In determining the planning application, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In addition, Section 143 of the Localism Act amends Section 70 of the Town and Country Planning Act relating to the determination of planning applications and states that in dealing with planning applications, the authority shall have regard to:

(a) Provision of the development plan insofar as they are material,

(b) Any local finance considerations, so far as they are material to the application (in this case, CIL), and,

(c) Any other material considerations.

- 5.26. As set out in this report it is considered that the proposed development would accord with the development plan policies in relation to impact on the town centre, character of the area and parking. Furthermore, subject to conditions seeking to mitigate any potential noise nuisance, no undue harm to residential amenity will result.

Recommendation: Application Permitted

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (As amended).

- 2 The development hereby permitted shall be built in accordance with the details contained in the planning application hereby approved and plan numbers 6402(P)100 (Site Location); 6402(P)101 (Block Plan); 6402(P)102 (Existing site and plans); 6402(P)103 (Proposed); 6402(P)202 (Existing Elevations); 6402(P)203 (Proposed Elevations); WDC2 (Sheffield cycle stands) unless the Local Planning Authority otherwise first agrees in writing.
Reason: In the interest of proper planning and to ensure a satisfactory development of the site.
- 3 Prior to commencement of the use hereby approved a scheme of noise insulation works shall be submitted to and approved by the Local Planning Authority. For clarity the scheme shall include the proposals in the Environmental Statement submitted (dated 18/10/2017), in particular section 4. The approved scheme shall be implemented and retained in perpetuity unless otherwise agreed in writing with the Local Planning Authority.
Reason: In order to safeguard the amenities of the existing residents.
- 4 Prior to commencement of the use hereby permitted, further details of the cycle storage shall be submitted to and approved in writing by the Local Planning Authority. For clarification the scheme shall include bicycle parking provision which is covered, in accordance with the Buckinghamshire Countywide Parking Guidance (Sept 2015). The approved details shall be implemented and made available before the use hereby permitted is commenced and retained in perpetuity thereafter.
Reason: To provide satisfactory cycle storage on site.

INFORMATIVE(S)

- 1 In accordance with paragraph 38 of the NPPF2 Wycombe District Council (WDC) approach decision-taking in a positive and creative way taking a proactive approach to development proposals focused on solutions and work proactively with applicants to secure developments. WDC work with the applicants/agents in a positive and proactive manner by offering a pre-application advice service, and as appropriate updating applications/agents of any issues that may arise in the processing of their application.

The application has been re determined following the advice of Counsel. Additional plans were received detailing the specification of the cycle stands to be erected. A full re-consultation has taken place on the application.