

Report to: PLANNING COMMITTEE

Date of Meeting: 01 May 2019

Report from: Assistant Director of Housing and Built Environment

Application Address: 22 Theaklen Drive, St Leonards-on-sea, TN38 9AZ

Proposal: Change of use for existing first floor from B1/B2 to D2 (gymnasium)

Application No: HS/FA/18/01041

Recommendation: Grant Full Planning Permission

Ward: WISHING TREE 2018
Conservation Area: No
Listed Building: No

Applicant: Mr Cheema per Adams John Kennard Ltd The Old Court House North Trade Road Battle, East Sussex. TN33 OEX

Public Consultation

Site Notice:	Yes
Press Advertisement:	No
Letters of Objection:	5
Petitions of Objection Received:	0
Letters of Support:	0
Petitions of Support Received:	0
Neutral comments received	0

Application Status: Not delegated - 5 or more letters of objection received

1. Site and surrounding area

The site comprises the first floor level of a large, modern, two-storey steel clad factory unit situated on Theaklen Drive in the Ponswood Employment Area. The application unit measures approximately 1000 sqm and the last use of the first floor was as a telephone call centre. The call centre stopped trading in October 2017. The ground floor of the building is currently occupied by Photonic Science & Engineering Ltd, a Hi-tec business for the design and manufacture of delicate scientific detector instruments. The adjoining, neighbouring unit is occupied by Bausch and Lomb who make contact lenses. Asda petrol station is sited to the rear of the application site, although this cannot be accessed via Theaklen Drive.

Other businesses in the surrounding area include two garages, Screwfix, Toolstation, Airtemp, DHS bathrooms.

The premises have 18 allocated parking spaces in the building basement car park. Parking restrictions do apply on Theaklen Drive, which is a clearway between 6am to 6pm Monday to Friday.

Hastings Borough Council (HBC) is the landlord for this property.

Relevant site constraints

- Historic landfill 250m buffer – Theaklen Drive

2. Proposed development

The proposal is for change of use of the first floor from B1/B2 Business / Industrial use to D2 recreational use (gymnasium). The internal layout will provide for a reception area, office, staff room, kitchen, store, changing areas and the main gymnasium. There is no material change to the external appearance of the building proposed. The proposed gymnasium would use the existing door and stair access, as well as the existing toilet facilities.

The proposed use is stated to generate 4 full time and 6 part time employees, equating to 7 full time equivalent employees

The application is supported by the following documents:

- Design and Access Statement
- Building Photograph
- Noise, Vibration and Club Usage Overview Statement
- Waste Management Statement
- Supporting Letter
- Marketing information

Relevant planning history

HS/FA/83/00226 Erection of four factory units.
GRANTED 25 May 1983

National and Local Policies

Hastings Local Plan – Planning Strategy 2014

Policy FA1 - Strategic Policy for Western Area
Policy SC1 - Overall Strategy for Managing Change in a Sustainable Way
Policy E1 - Existing Employment Land and Premises

Hastings Local Plan – Development Management Plan 2015

Policy LP1 - Considering Planning Applications
Policy DM1 - Design Principles
Policy DM3 - General Amenity
Policy DM4 - General Access
Policy DM6 – Pollution and Hazards

Other policies/guidance

Sussex Air Quality and Emissions Mitigation Guidance 2013
Supplementary Planning Document (SPD) - Employment Land Retention

National Planning Policy Framework (NPPF)

Paragraph 11 sets out a general presumption in favour of sustainable development and states that development proposals which accord with the development plan should be approved without delay.

Paragraph 12 of the NPPF states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Three dimensions of sustainability given in paragraph 8 are to be sought jointly: economic (by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation); social (providing housing, creating high quality environment with accessible local services); and environmental (contributing to, protecting and enhancing natural, built and historic environment) whilst paragraph 9 advises that plans and decisions need to take local circumstances into account, so they respond to the different opportunities for achieving sustainable development in different areas.

Paragraph 127 of the NPPF requires that decisions should ensure developments:

- Function well;
- Add to the overall quality of the area for the lifetime of that development;
- Are visually attractive in terms of:
 - * Layout
 - * Architecture
 - * Landscaping
- Are sympathetic to local character/history whilst not preventing change or innovation;
- Maintain a strong sense of place having regard to:
 - * Building types
 - * Materials
 - * Arrangement of streets
- Optimise the potential of the site to accommodate an appropriate number and mix of development;
- Create safe places with a high standard of amenity for future and existing users

Paragraph 92 states that to provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- a) plan positively for the provision and use of shared spaces, community facilities (such as

local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;

- b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;

Paragraph 80 states that Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.

3. Consultation comments

East Sussex County Council (Highways) - **no objection**

Following initial objections regarding car and cycle parking provision and the submission of amended details, the Highway Authority are now satisfied that the proposal is acceptable subject to conditions regarding car and cycle parking. (Conditions 5, 6 and 7)

Hastings Borough Council (Estates) - **no objection**

Support this application by the prospective tenant.

Hastings Borough Council (Environmental Health) - **no objection**

Environmental Health recommend planning conditions to be attached to ensure that noise and vibration should not give rise to nuisance. (Conditions 3 and 4)

Hastings Borough Council (Planning Policy) - **no objection**

Consider that given the site has been actively marketed in line with Local Plan policy, and it is the upper floor only that will be subject to the change of use, the proposal is acceptable in this particular instance. The use will generate some employment albeit not in the B1-B8 capacity.

4. Representations

Following the display of a site notice at the premises, 5 letters of objection have been received from 5 different people/organisations. The comments made are summarised as follows:

- Building should be retained for light industrial uses
- Ground floor business would be negatively affected by increased levels of vibration and noise (current use is sensitive to vibrations)
- Parking facilities do not support the proposed use
- Works required will disturb existing uses during construction

Non-material objections

- Competition from a nearby gymnasium
- Will limit existing business' potential for expansion

5. Determining issues

The main planning issues in determining this application are the principle of development, the loss of the existing employment use on this established estate, the impact on the amenity of neighbouring uses, access and parking.

a) Principle

The unit is part of a large industrial unit situated in the Ponswood Employment Area and is located close to the Asda Superstore at the busy junction of Sedlescombe Road, London Road and Battle Road in an area where industrial use, retail use and residential use are all located in relatively close proximity to each other and in an area of the town that is easily accessible. The site is therefore in a sustainable location and the application is in accordance with policy LP1 Hastings Local Plan - Development Management (2015) in this respect and acceptable in principle subject to other local plan policies.

b) Loss of existing use

Policy E1 of Hastings Planning Strategy seeks effective use of existing employment land and premises and retention of premises currently or last used for employment uses, including B1, B2 and B8 uses or uses of similar character. However, where continued employment use is demonstrated to be unviable, a mixed-use enabling development will be considered first, after that the extent to which any proposed new use generates new employment will be taken into account.

The associated Supplementary Planning Document (SPD) - Employment Land Retention allows for consideration of changes to other alternative employment generating uses, outside of 'B' use classes when the 'B' use is no longer viable and an enabling mixed-use development is not a financially viable option. To evidence that 'B' uses are not viable, the SPD requires a marketing campaign to be undertaken to determine whether there is any demand and the premises should be actively marketed for at least 12 months.

In this case Hastings Borough Council, as Landlord, has actively marketed the premises on its Estates website as an open plan office facility with a number of smaller offices/conference rooms and advertised the rateable value (£32,250). The premises have been marketed for more than 12 months and continue to be marketed. Given that an adequate marketing campaign has been undertaken and evidenced, employment uses are to be retained on the ground floor level (thereby providing a 'mixed use' for the building), and that the equivalent of 7FTE jobs are to be created, it is considered that the proposed change of use meets the requirement of Policy E1 of the Hastings Planning Strategy and cannot be refused on the grounds of loss of B1-B8 uses.

c) Impact on neighbouring residential amenities and neighbouring uses

Policy DM3 of Hastings Development Management Plan requires new development to avoid any adverse impact on the amenity of neighbouring properties. Policy DM6 of the same Plan states that planning permission will only be granted where noise and odour that is detrimental to neighbouring amenity is kept to a practical minimum and that appropriate means of assessment may be required. In this case the proposed gymnasium would be situated on the first floor above an existing light industrial Hi-tech business (Photonic Science and Engineering Ltd) and representations have been received from that business that their business involves the design and manufacture of high precision electro optics, which requires a low vibration environment. They state that it is essential that their workplace is quiet to allow for the work of the design engineers to work in peace. The Environmental Health Team have been consulted and their received comment is that they have no basic objection, however they recommend planning conditions to avoid noise and vibration nuisance; for details of a noise report to BS4142:2014 standard; and for the carrying out of any mitigation works required (conditions 3 and 4).

The applicant has submitted a supporting sound level and vibration statement that advises that it is very normal for Snap Fitness 24/7 clubs to be adjacent to other businesses, as well as above and below housing and apartment blocks. They argue that various techniques during the fit out are employed to combat any disturbance to neighbouring tenants. These include, but are not limited to the following:

- Separation between the flooring and slab, in the form of timber build up to assist in transferring the load and forces that would transfer through the slab.
- The types of flooring tiles used to minimize noise/vibration include 15mm Shock Pad, 63mm Ecore Smashtile.
- Placing shock absorbers on the cardio equipment feet
- Walls, ceiling and columns would be a MF ceiling system with 150mm + Insulation and double skinned acoustic plasterboard, fully taped and jointed to minimize noise/vibration.

Taking account of the above considerations, particularly in light of comments from Environmental Health, it is considered that on balance, noise and vibration nuisance may be suitably addressed and mitigated through the imposition of planning conditions (conditions 3 and 4).

The proposed use intends to be open 24 hours a day. Whilst this may initially raise concern in terms of impact on amenity, this is becoming a common factor in more modern gym establishments. It is important to note that the application site is not within a residential area, and most of the businesses will be shut during unsociable times, limiting any impact of the opening hours on other nearby businesses or occupiers. No objection is therefore raised in this regard.

d) Air quality and emissions

Having regard to guidance contained within 'Air Quality and Emission Mitigation' 2013 produced by Sussex Air Quality Partnership, the proposed development will not exceed statutory guidelines for airborne pollutants and Environmental Health Officers have no objection in this respect. No external lighting is proposed and residential amenities are not harmfully affected. The D1 use development will not give rise to ground or surface water pollutions.

e) Highway safety/parking

Trip generation and impact

The applicant has submitted additional information relating to the floorspace of the gymnasium. The previous application stated a site area of 1002sqm, however the additional plan submitted shows that the floorspace of the actual gym area is only 510sqm. Having undertaken a TRICS assessment (data analysis for transport movements) for a private fitness club, 510sqm of D2 floorspace has the potential to generate approximately 155 daily vehicle movements, with 7 movements in the AM peak and 18 in the PM peak. The applicant has confirmed though that peak usage is generally in the evenings and they would not expect more than 15 people at any one time. Taking account of the TRICS assessment and the applicant's supporting information, the Highway Authority are now satisfied that the increase in traffic movements from the development would not result in a severe impact on the highway and surrounding transport network.

Access

As the development will result in an intensification of the site, it is imperative to ensure that the access is safe and secure to accommodate additional vehicle movements. The Highway Authority are satisfied that adequate visibility can be achieved at the junction with Theaklen Drive. Whilst the vehicular access into the basement car park is single width, the revised floorspace information would mean that the total number of movements at any one hour would be half what was previously predicted (even during peak times), and the corresponding number of parking spaces is not expected to be dissimilar to the previous use of the site. Therefore, whilst it is recommended that the access is widened, the Highway Authority would not provide a standing objection should this not be possible. As such, a refusal of permission could not be justified, as it has not been demonstrated that there is an unacceptable impact on highway safety, as required by the National Planning Policy Framework (paragraph 109). An additional informative is proposed however, to advise the applicant of this point to enhance traffic safety (informative 3).

Parking and cycle provision

In accordance with ESCC parking guidance for non-residential developments, the proposed gymnasium is required to provide approximately 50 spaces. The submitted plans show 18 spaces in the basement car park, which is substandard of the requirement set out in the guidance. However, it is noted that this parking guidance relates to swimming pools, ice rinks and sports centres which would require greater levels of parking compared to a private fitness club. Additionally, a plan has been submitted demarcating available unrestricted car parking within the vicinity of the site. Furthermore, the TRICS data demonstrates that the maximum number of trips in any hour would be 18 during the PM peak. Therefore, in this instance the Highway Authority do not consider that an objection on this basis could be justified.

Car parking spaces should also measure 2.5m x 5m with a minimum distance of 6m behind each space for turning and manoeuvring, in line with the County Council's standards. It would appear that the spaces provided in the basement are substandard with regard to the required dimensions, however it is noted that the parking layout is existing and not proposed to be changed. Therefore, it is not reasonable to require an alternative parking layout given the previous use of the parking area.

In terms of cycle parking provision, County standards require 1 space per 50sqm. Therefore, the revised information regarding floorspace would require the development to provide 10 cycle spaces. The applicant stated that the previous requirement of 20 cycle spaces was unreasonable, however it is argued that the provision of further cycle spaces is essential, especially considering the reduced levels of parking. Therefore, a condition is proposed that requires details of safe, secure and covered cycle parking to serve the development, in order for this proposal to be granted permission. This is required by condition 6.

Taking the above into account, subject to the submission of additional cycle parking information that can be secured by condition, the proposal is in accordance with the requirements of Policy DM4 of the Hastings Development Management Plan, which requires safe access into developments and cycle and parking provision appropriate to the scheme.

f) Waste storage and collection

Waste storage and disposal will utilise the existing arrangements for the building and will be disposed of by a private contractor in accordance with commercial waste disposal requirements.

g) Environmental Impact Assessment

The National Planning Practice guidance (Paragraph: 017 Reference ID: 4-017-20170728) states that "Projects which are described in the first column of Schedule 2 but which do not exceed the relevant thresholds, or meet the criteria in the second column of the Schedule, or are not at least partly in a sensitive area, are not Schedule 2 development."

This development is not within a sensitive area as defined by Regulation 2 (1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and does not exceed the thresholds of schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

h) Screening of application under Habitats Regulations 2017 - impact of development on Ashdown Forest Special Area Conservation (SAC)

The Council undertook an Air Quality Impact Assessment in 2018. The purpose of the assessment was to identify likely significant effects of planned housing and employment growth in Hastings Borough on the conservation objectives of Ashdown Forest Special Area of Conservation (SAC) from 2017 to 2033. The assessment took account of the traffic growth expected on roads within the vicinity of the Ashdown Forest SAC/Special Protection Area (SPA), not just arising from development within Hastings, but also, compliant with the requirement of the Conservation of Habitats and Species Regulations 2017, in combination with the anticipated growth arising from the development plans of other neighbouring authorities. The focus of the Assessment was on Ashdown Forest SAC and SPA.

It was not considered necessary to consider air quality implications of growth in Hastings Borough on the Pevensey Levels SAC and Ramsar site or the Lewes Downs SAC. In respect of Pevensey Levels SAC/Ramsar site the interest feature of this SAC (*Anisus vorticulus* - aka.

a snail) is not affected by nitrogen from vehicle emissions. Lewes Downs SAC is too far removed to be affected. Nitrogen deposition from additional traffic beyond that modelled would have to be four times that currently expected from all traffic to exceed critical load at this location.

The Council has modelled the expected growth in Hastings to 2033 including the Local Plan, existing planning permissions and demonstrated that development will not result in an adverse effect on the integrity of Ashdown Forest either alone or in combination with other plans or projects. As such the proposed development is considered to be within the allowances made within the strategic modelling and is not considered to harm the special conservation objectives of Ashdown Forest, Pevensy Levels or Lewes Downs Special Areas of Conservation.

6. Conclusion

The proposed change of use is considered to provide a viable use for an existing redundant commercial premises in one of the town's established employment areas. Subject to controls over noise, vibrations and cycle parking, the part use of the building for a D2 gymnasium is considered acceptable in this instance. The assessment has demonstrated that the proposals comply with the Development Plan in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

The Human Rights considerations have been taken into account fully in balancing the planning issues.

7. Recommendation

Grant Full Planning Permission 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.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

CHE2732-01, CHE2732-02, CHE2732-03, CHE2732-04, CHE2732-05 and CHE2732-06
3. Prior to the operation of the proposed use a full noise report covering the whole site in accordance to BS 4142: 2014 shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, noise shall include that arising from all mechanical or electrical equipment used in the premises.

Any noise mitigation measures recommended in the submitted noise report shall be installed prior to the commencement of the proposed use and shall be retained thereafter.

4. Details, including acoustic specifications of all fixed plant machinery and equipment associated with air moving equipment, including fans, ducting and external openings, installed within the site which has the potential to cause noise disturbance to any noise sensitive receivers, shall be submitted to and approved in writing by the Local Planning Authority prior to installation.
5. No part of the development shall be occupied until the car parking has been constructed and provided in accordance with the approved plans. The areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.
6. No part of the development shall be occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved in writing by the Local Planning Authority. The areas shall thereafter be retained for that use and shall not be used other than for the parking of cycles.
7. No part of the development shall be occupied until the vehicle turning space has been constructed within the site in accordance with the approved plans. This space shall thereafter be retained at all times for this use.

Reasons:

1. This condition is imposed in accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt and in the interests of proper planning.
3. To prevent potential noise nuisance from the activities that are to take place in the proposed fitness centre.
4. To prevent potential noise nuisance from the activities that are to take place in the proposed fitness centre.
5. To provide car-parking space for the development.
6. To provide alternative travel options to the use of the car in accordance with current sustainable transport policies.
7. In the interests of road safety.

Notes to the Applicant

1. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.
2. Statement of positive engagement: In dealing with this application Hastings

Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraph 38 of the National Planning Policy Framework.

3. The applicant is advised that the access into the basement car park should be widened to avoid conflicting movements that may occur given the current single access width.

Officer to Contact

Mrs S Wood, Telephone 01424 783329

Background Papers

Application No: HS/FA/18/01041 including all letters and documents