

Parish: East Wittering And Bracklesham	Ward: East Wittering
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**EWB/19/00934/FUL**

<b>Proposal</b>	Change of use from B1 to D2 to create fitness facilities.		
<b>Site</b>	Unit J Hilton Park East Wittering Chichester West Sussex PO20 8RL		
<b>Map Ref</b>	(E) 480123 (N) 97798		
<b>Applicant</b>	Mr Ben Price	<b>Agent</b>	

**RECOMMENDATION TO REFUSE**



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## **1.0 Reason for Committee Referral**

- 1.1 Red Card: Cllr Barrett - on the basis that there is an exceptional level of public interest.
- 1.2 **This application was deferred at the meeting on 04.09.2019 for further consultation.**

## **2.0 The Site and Surroundings**

- 2.1 The application site is a warehouse type building situated within Hilton Industrial Park, accessed from Church Farm Lane, which leads off Church Road. The building is a blue coloured, corrugated metal structure of regular rectangular shape, two-storeys in height. It is attached to a building of similar appearance and business use, as are the remainder of buildings within the business park. A modest parking area is provided to the front of the building, in the same manner as parking provided for other business buildings within the area.
- 2.2 The wider area, around the business park, is predominantly rural in character; being outside the defined settlement boundary, i.e. within the countryside. Some nearby dwellings and a care home are, however, located roughly 25m to the north and west of the site. The settlement of East Wittering is less than half a kilometre to the south.

## **3.0 Proposal**

- 3.1 The application seeks retrospective consent for the change of use of a building to a gym (Use Class D2).
- 3.2 No external alterations are proposed.

## **4.0 History**

93/00817/FUL	PER	L.P. Gas Cylinder Storage Depot with small associated building.
98/00963/FUL	PER	Deletion of condition 5, thereby allowing the use of the permitted factory units by a single occupier.
19/01800/PRELS	PCO	Erection of new building comprising 3 no. B1(c) units, B1(a) units and a storage unit.
19/00022/CONCO U	PLNREC	Enforcement Enquiry

## 5.0 Constraints

Listed Building	NO
Conservation Area	NO
Rural Area	YES
AONB	NO
Tree Preservation Order	NO
EA Flood Zone	Flood Zone 1
Historic Parks and Gardens	NO

## 6.0 Representations and Consultations

### 6.1 Parish Council

No objection.

### 6.2 WSCC Highways

The proposal to change the use of the existing B1 use into a D2 Leisure use has been considered by WSCC as the County Highway Authority. No objection is raised subject to any conditions attached.

The site will occupy the ground floor of Unit J, and will offer fitness services to the local community. The site will still operate as B1 use on the upper floors of the building, and car parking is provided for directly outside the unit.

WSCC Car Parking standards for D1 use is 1 space for every 22sqm. The fitness club will require 9 of these car parking spaces and at least one of these spaces should be designated for a disabled user.

The site is located on an industrial park and access into the site is from Church Farm Lane a 30mph access road into the business park. Given its close proximity to the Witterings, and flat semi-rural setting, cycling to the site could be promoted and therefore cycle storage should be provided, if not already. Guidance on this should be in the range of 3-6 spaces for staff and visitors.

Fitness clubs tend to be busier early in the morning and later in the daytime as such it is considered these operating times will complement the other uses on the site. Given the small size of the club, any associated trips are not considered to cause any material capacity impacts to highway safety or capacity.

### 6.3 CDC Environmental Protection

Thanks for the opportunity to comment on this application. As you know the premises is currently operating as a gym. I have been to the site and met with the operator to better understand the business and the structure of the building.

The property is not attached to any residential development – it is approximately 10-15 metres from the nearest dwellings which are at the rear. There are fire doors on the rear façade which faces the dwellings to the rear. Typical noise associated with a gym could include:

- traffic and car parking
- impact noise from equipment such as weights,
- music and shouting used to entertain and motivate customers,
- plant noise such as air conditioning, heating

Weights are dropped onto resilient pads to reduce impact noise. Motivational music is played during operation. I asked them to operate the music at a typical volume, which appeared to me to be a realistically loud level, while I made some observations. The music was audible outside the building to the rear, in front of the closed fire exit doors which are clearly the acoustically weak points. This was a crude test and not a full noise assessment. However it indicated that while there is potential for noise problems, music can be controlled by the business and is capable of being kept at a level that would be unlikely to disturb neighbours. There are no noise complaints on record, so in typical operation it seems unlikely there will be a negative impact. I did not witness a class or other gym operations so cannot comment on vocal or impact sounds that may typically occur. They plan to continue to operate during "office" hours and not a night time or late evening operation. The business would no doubt aim to expand and develop. Limiting operational hours to those proposed would be appropriate to avoid more noise-sensitive hours.

I would highlight some risks that should be addressed if permission is granted.

If the fire doors are opened, for example, to ventilate, then there would be no barrier to noise transmission between the Unit and the dwellings to the rear. This would be likely to affect the dwellings. In the absence of any noise assessment from the operator this cannot be quantified. However, if permission is granted it would be prudent to apply a suitably worded condition to ensure all doors are shut during operation of equipment or music.

There was no provision for Air Conditioning plant, and no details within the application. In the event that the operator needs to increase the ventilation to the premises by mechanical means, and this is not subject to a separate application, then this should be contingent on the submission of a noise assessment to, and approval by the planning authority. You may wish to apply a condition to this effect.

#### 6.4 CDC Economic Development

We do not support this application.

The premises are intended for light industrial use and we are keen to retain the use of these type of premises for this purpose.

Changing the use of these premises could have a knock-on effect to other neighbouring business properties, which may also come under pressure to have their planning designations changed. This could result in an overall reduction in light industrial capacity in the area, which would not be good for the local economy

The demand for affordable B1 properties is typically high. No marketing evidence has been put forward to support that demand for B1 is no longer required in this area

## 6.5 Third Party Representations – Initial Consultation Period

22 Third Party letters of support have been received outlining the following issues

- a) provides a positive and unique facility for those in the surrounding area
- b) provides a community facility
- c) provides a much needed independent gym for the area; limited other gyms nearby
- d) does not impact on the amenity of neighbouring uses
- e) health and fitness benefits
- f) provides employment opportunities
- g) claims the industrial park is underused
- h) no/minimal traffic on the estate due to peak times being outwith working hours

2 Third Party letters of objection have been received identifying the following issues:

- a) the nearest gym is less than a mile from the application site, not in Chichester as suggested
- b) nearby Harbour Way Gym employs over 25 people; which should be taken into account
- c) nearby gym is award winning, and not the application site as suggested
- d) wishes to see conditions limiting noise and external activities should the application be approved

## 6.6 Third Party Representations – Following Re-Consultation Period

**Following re-consultation with additional nearby properties, an additional 3 Third Party comments have been received. These comprise 1 letter of support and 2 letters of objection.**

**The support letter outlines the following issues:**

- a) good local facility**
- b) fewer cars on the road, as users would not need to travel to Chichester for gym**

**The objection letters outline the following issues:**

- a) the business has not adhered to planning rules by virtue of establishing without planning consent and placing signage in the surrounding area without advertising consent**
- b) outlines the comprehensive facilities at the nearby Harbour Way Gym**

- c) concerned approval would set a precedence for the loss of other business uses
- d) considers the gym use would generate additional traffic and noise
- e) suggests units within this business park are in demand

## 7.0 Planning Policy

7.1 The Development Plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029 and all made neighbourhood plans.

### Chichester Local Plan: Key Policies 2014-2029

7.2 The principal planning policies relevant to the consideration of this application are as follows:

- o Policy 1: Presumption in Favour of Sustainable Development
- o Policy 2: Development Strategy & Settlement Hierarchy
- o Policy 30: Built Tourist and Leisure Development
- o Policy 39: Transport, Accessibility & Parking
- o Policy 44: Development around the Coast
- o Policy 48: Natural Environment

### National Policy and Guidance

7.3 Government planning policy now comprises the National Planning Policy Framework (NPPF) 2019, with the sections relevant to this application and considered being: 2, 4, 6, 8, 9 & 15.

7.4 Section 2 (Achieving sustainable development), paragraphs 10 and 11 state:

*"So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development..."*

*"...For decision-taking this means:*

- c) approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*

7.5 Section 4 (Decision making), Section 6 (Building a strong, competitive economy), Section 8 (Promoting healthy and safe communities), Section 9 (Promoting sustainable transport), and Section 15 (Conserving and enhancing the natural environment) should also be considered generally.

## Neighbourhood Plan

7.6 There is no made neighbourhood plan for the area at this time.

## Other Local Policy and Guidance

7.7 The following local policy and guidance is considered to be relevant:

- Appendix E of the Chichester Local Plan: Key Policies 2014-2029

7.8 The aims and objectives of the Chichester in Partnership Community Strategy 2016-2029 which are relevant and material to the determination of this planning application are:

- Maintain low levels of unemployment in the district
- Support local businesses to grow and become engaged with local communities
- Encourage and support people who live and work in the district and to adopt healthy and active lifestyles
- Support and promote initiatives that encourage alternative forms of transport and encourage the use of online services
- Influence local policies in order to conserve and enhance the qualities and distinctiveness of our area

## **8.0 Planning Comments**

8.1 The main considerations are as follows:

- i) Principle of development, including loss of B1 use
- ii) Design, scale, character and countryside impact
- iii) Amenity of neighbouring properties and uses
- iv) Highways impact and parking
- v) Other matters and material considerations

- i) Principle of development, including loss of B1 use

8.2 The site is located outside of the settlement boundary, which is referred to the rest of the plan area within Policy 2 of the Local Plan. Policy 2 states: 'development in the rest of the plan area outside the settlements listed is restricted to that which requires a countryside location or meets an essential local rural need'. Policies 2 and 3 of the Local Plan are supportive of employment generating uses, whilst policy 26 of the Local Plan requires that alternatives to B1, B2 and B8 employment uses will be permitted on business sites only where it has been demonstrated that the site is no longer required and is unlikely to be re-used or redeveloped for business of similar uses. The method and framework for undertaking this assessment is set out in Appendix E of the Local Plan (Appropriate Marketing Guidance).

- 8.3 The lawful use of the building is B1(c) Use (light industrial), as approved and restricted through condition as part of permission 92/02094/FUL. However, it is apparent that the site has been used most recently for storage and distribution purposes (Use Class B8); with the upper floor still being used as storage for an adjacent business. Nevertheless, the loss of both B1 and B8 floorspace are resisted under Local Plan Policy 26, and require marketing to take place in order to justify any loss of such uses. The lawful use of the building is B1(c) and therefore the application should be assessed in relation to the resultant loss of this use.
- 8.4 The Design and Access Statement and representations received purport that the benefits of using this unit as a gym are; increased employment, improved health and well-being, and increased local business networking and revenue; within what is considered to be an underutilised business park.
- 8.5 Notwithstanding the circumstances and perceived benefits outlined by the applicant, and the public representations in support of the proposed development, the proposal would involve the loss of a B1 use, which is safeguarded within by Policy 26 of the Local Plan, unless it can be demonstrated, through appropriate marketing evidence, that there is no longer a demand for such a use. As outlined within Appendix E of the Local Plan, proposals for alternative uses to B1, B2 or B8 must be accompanied by evidence to demonstrate that the site has been appropriately marketed for a minimum period of two years.
- 8.6 The evidence requirements are set out in Appendix E of the Local Plan which state that where a planning application may lead to the loss of an existing site currently in business use class (B1-B8) or similar sui generis uses to alternative uses (without satisfactory provision for replacement land/floorspace or relocation of existing businesses) supporting information will also be required to demonstrate that:
- The site/premises has been vacant for some time and has not been made deliberately unviable;
  - The site/premises has been actively marketed for business or similar uses at a realistic rent/price for a minimum of 2 years or a reasonable period based on the current economic climate;
  - Alternative employment uses for the site/premises have been fully explored; where an existing firm is relocating elsewhere within the District, maintaining or increasing employment numbers will be acceptable.

8.7 It is acknowledged that the proposed change of use would allow for an additional non-business user to occupy the site immediately which would provide some associated employment with the leisure use. However this is not as preferable to the continued use of the site for dedicated employment purposes. Based on all the evidence and information provided in support of the application, it is considered that it has not been demonstrated that the site is unlikely to be re-used or redeveloped for employment purposes and proposals would not meet the requirements of Policy 26 and Appendix E for the following reasons:

- The site has not been actively marketed for business or similar uses for a minimum of 2 years, nor is there any evidence to suggest it has been marketed at all.
- The existing site is not and was not vacant prior to occupation.
- Although the proposed use would offer health and well-being benefits to the users of the facility and would provide employment for the gym's members of staff, this is not considered to outweigh the conflict with the Development Plan regarding the appropriate safeguarding of existing B1, B2 and B8 uses, as required by the Policy.
- Whilst there has been a suggestion that the proposed change of use would make the occupation of other surrounding units for business purposes more attractive (as a result of providing health benefits to existing employees and complementing the deemed underutilised business park) no evidence has been presented to support this assertion. Similarly the wider community health benefits likely to be realised through the provision of the gym could be met through other gym facilities in the area or the provision of the use in a location that would not result in the loss of a business use.
- Whilst the gym use would also generate some employment, this is not typically equivalent to the level of employment generated by B1-B8 uses.
- There is no evidence to suggest the business park generally is underused.
- Throughout the application process additional evidence of marketing for a B1-B8 uses has been requested from the applicant, however no additional information has been provided.

8.8 On this basis, it is concluded that the proposed development would result in the unacceptable loss of B1 premises, which has not been justified through an appropriate marketing and viability assessment. Furthermore, CDC Economic Development was consulted and object to the application on the basis that a B1 use, considered to be in high demand, would be lost. The proposal is, therefore, contrary to Policy 26 of the Chichester Local Plan 2014-2029 and the guidance contained within Appendix E (Appropriate Marketing Guidance) of the Local Plan.

ii) Design, scale, character and countryside impact

8.9 The proposal is for the change of use of the building only, and does not provide for any external changes or associated signage. As a result, there is not any material change of appearance of the building or visual impact on the surrounding area or countryside. Further applications are likely to be required for any external changes or advertisement.

### iii) Amenity of neighbouring properties and uses

- 8.10 The proposed opening hours of the gym use would be 0615 – 1945, however the times of greatest use of the gym would be outside the typical operating hours of the surrounding businesses, it is therefore considered unlikely that the proposed use would conflict with the other commercial businesses within the industrial park.
- 8.11 There are, however, nearby dwellings and a care home which lie roughly 25 metres to the north, north-east and west of the site. It is understood that the gym has been operating for almost a year and there have been no apparent noise complaints from neighbouring properties. The orientation and construction of the building also aids in reducing any noise, with limited openings and no windows. There are no openings on the northern or north-western parts of the building facing the residential properties. From visiting the site there was no notable audible disturbance coming from the gym which was in operation at the time. Music was playing inside, but this could not be heard a matter of metres from the building or over the general noise level of the business park. It is noted that this may not necessarily be the case earlier in the morning or later in the evening. A Noise Management Plan could be conditioned to ensure activities and noise are controlled through the planning process; in addition to environmental health legislation.
- 8.12 Taking the above into account, and subject to conditions, the proposed use of the building as a gym is not considered to result in any significant impacts on the amenity of neighbouring residents or uses.

### iv) Highways impact and parking

- 8.13 No parking provision is provided within the application site, nor is parking provision indicated elsewhere in the business park. However, it is evident that there is sufficient car parking to the east of the site and throughout the business park to accommodate the proposed use. Officers visited the site during late afternoon on a weekday, there did not appear to be any obvious issues with regards to parking; with a significant number of spaces available for use. It is therefore considered that continued use of the existing shared car parking for the property and business park would be acceptable; particularly given the nature and peak times of gym use typically being early morning and late afternoon/evening, thus not conflicting with the parking demands during the business park hours.
- 8.14 There is no change to the existing access arrangements, and the number of additional vehicle journeys likely to be generated by a gym is not deemed to be materially different to what could be expected for a light industrial building, or storage and distribution or other similar business use.
- 8.15 The Highway Authority has been consulted and has raised no objection, although it has been suggested that cycle parking should be incorporated into the development in-line with sustainable transport policies. This could be secured via condition, and potentially accommodated internally.

8.16 Therefore, there are not considered to be any significant detrimental impacts to the local transport network or with regards to highway safety or parking provision; thus the application accords with Local Plan Policy 39.

v) Other matters and material considerations

8.17 A gym falls within Use Class D2 (assembly and leisure), which also includes uses such as music venues, cinema and bingo hall etc. Other uses such as these within this class would have the potential to generate greater level of transport movements or parking requirements, which would need to be assessed to ensure there was no impact on highway safety or local/neighbouring amenity. Should permission be granted it would therefore be considered necessary to limit the use of the site to solely a gym and remove permitted development rights; in order for any other use/activity to be properly assessed.

8.18 Given the nature and siting of the application, there are not considered to be any implications with regards to flood risk or ecology.

**8.19 With regards to the additional comments received during the re-consultation period, one new supporting comment raised relates to an expectation of a reduction in car journeys from East Wittering to Chichester by virtue of having a gym within the local area. However, as noted there is already a gym closer to the site and East Wittering; Harbour Way Health Club. Furthermore, the application site is not within the settlement boundary whereby it has not been demonstrated that there is not a more suitable site, nor has it been demonstrated that the application is within a sustainable location. No transport surveys have been carried out, and any comments regarding number of vehicle journeys are somewhat speculative.**

**8.20 In terms of additional objection comments, the applicant is entitled to apply for retrospective planning consent and no signage has been observed at the site or within its surrounds. The Highways Authority does not consider that the proposed use would generate any material increase in traffic movements. The clarified facilities of the nearby health club should be noted.**

**8.21 All third party comments received during both consultation periods have been addressed above or within the main body of the assessment. No new material considerations have been raised which would alter the recommendation.**

**Conclusion**

8.22 The application, although acceptable in all other regards, would result in the unjustified loss of a business, in direct conflict with the policy requirement to safeguard key employment uses, unless it can be proven through adequate marketing evidence that those uses are no longer required or viable. Therefore, in the absence of any marketing evidence, the loss of B1 use floorspace is contrary to Policy 26 and Appendix E of the Chichester Local Plan: Key Policies 2014-2029.

8.23 There are not considered to be any other material considerations which would outweigh the conclusion.

## Human rights

8.24 In reaching this conclusion, the human rights of the applicants and nearby occupiers have been taken into account and it is deemed that the recommendation to refuse is justified and proportionate.

## **RECOMMENDATION**

REFUSE for the following reasons:-

1) The proposal results in the loss of a business (B1-B8) use within an established rural business park. No marketing evidence for the property and its existing lawful use has been provided to show there is no longer a requirement for this type of employment use, and therefore there is not a sufficient level of information to justify the loss of B1(c) use. The proposal would therefore result in the unjustified loss of an employment use which conflicts with Policy 26 and Appendix E of the Chichester Local Plan: Key Policies 2014-2029.

For further information on this application please contact James Gellini on 01243 534734

To view the application use the following link - <https://publicaccess.chichester.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=PP4V69ERJ7B00>