

GLOUCESTER CITY COUNCIL

COMMITTEE : **PLANNING**

DATE : **Tuesday 01 August 2017**

ADDRESS/LOCATION : **133 Bristol Road, Gloucester**
APPLICATION NO. & WARD : **17/00196/COU**
Moreland

EXPIRY DATE : **28th April 2017**

APPLICANT : **Mr James Harris**

PROPOSAL : **(i) Change of use of land and building from non-residential institution (use class D1) to 24-hour gym (use class D2) and (ii) installation of external air-conditioning units on rear elevation of building**

REPORT BY : **Adam Smith**

NO. OF APPENDICES : **SITE PLAN**
/OBJECTIONS

SITE DESCRIPTION AND PROPOSAL

Site description

The application site is in a built-up and accessible part of the city. Nearby uses include shops, restaurants and housing (seven houses adjoin the application site). Roughly 1,164 square metres (or 0.12 of a hectare) in area, the site consists of a single-storey building and a car park. The building occupies 760 square metres (or 65%) of site. According to the application documents, the building has been vacant since the latter half of 2016, but most recently functioned as a construction-training centre.

Roughly one mile from the Primary Shopping Area, the site straddles the boundary of the Central Area (as defined in the 2002 plan). It is not in one of the district or local centres (the nearest local centre is in Seymour Road, at the eastern end of Linden Road). No heritage assets are on, next to or especially near the site. The site is in Flood Zones 1 and 2, but is not the subject of any other local or statutory designation or constraint on development.

Proposal

This is an application for full planning permission to use the application site as a private gymnasium (a D2 (assembly and leisure) use) and to install air-conditioning (AC) units on the building's rear (south-eastern) elevation. The proposed AC units would be (roughly) 1.0 metre wide, 1.5 metres tall and 40 centimetres deep. A two-metre-high timber fence, erected chiefly for noise-reduction purposes, would enclose them. The proposed gym would operate all day, every day of the year. It would be

staffed between 9 a.m. and 9 p.m. during the week and between 10 a.m. and 5 p.m. at the weekend. According to the application documents, the proposed gym would create up to eight full-time jobs (or the equivalent in part-time jobs). The existing 14-space car park, along with five new stands for bicycles, would be available to members. Apart from the AC units and the associated fence, the building's exterior would not change as a result of this proposal.

RELEVANT PLANNING HISTORY

Application Number	Proposal	Decision	Decision Date
06/01144/COU	Change the use of building to retail sales of beds and furniture (Class A1).	REF	22.11.2006
13/00584/FUL	Change of use from tile sales place to training centre (Class D1).	G3Y	06.09.2013

PLANNING POLICIES

National Guidance

National Planning Policy Framework and Planning Practice Guidance

Statutory Development Plan

The statutory Development Plan for Gloucester remains the partially saved 1983 City of Gloucester Local Plan ("1983 Local Plan"). Paragraph 215 of the National Planning Policy Framework ("NPPF") states that '*...due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.)*

The 1983 Local Plan is more than thirty years old and, according to the Inspector who dealt with an appeal relating to the Peel Centre, St. Ann Way (13/00559/FUL), '*...its sheer ages suggests it must be out of date...*' (par. 11 of the Inspector's report). Therefore it is considered that the 1983 Local Plan is out-of-date and superseded by later planning policy including the NPPF.

Emerging Development Plan

Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (Main Modifications Version, February 2017)

The City Council is currently working on a new Development Plan that will replace the 1983 Local Plan. The new Development Plan will comprise the Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury ("JCS") and Gloucester City Plan ("City Plan"). On adoption, the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy and Gloucester City Plan will provide a revised planning policy framework for the Council. In the interim period, in accordance with paragraph 216 of the NPPF, weight can be attached to relevant policies in the emerging plans according to:

- The stage of preparation of the emerging plan
- The extent to which there are unresolved objections to relevant policies; and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the National Planning Policy Framework

The JCS was submitted to the Government for Inspection in November 2014. Policies in the Submission Joint Core Strategy have been prepared in the context of the NPPF and are a material consideration. The Inspector published her Interim Findings in May 2016 and the JCS authorities have now approved Main Modifications to the plan for consultation. Consultation took place in February/March 2017 and further examination hearings took place in July 2017.

The JCS has therefore reached a further advanced stage, but it is not yet formally part of the development plan for the area and the weight that can be attached to each of its policies will be subject to the criteria set out above, including the extent to which there are unresolved objections.

Relevant policies from the JCS (Main Modifications) include:

- SD3: Retail and City/Town Centres;
- SD5: Design Requirements;
- SD15: Health and Environmental Quality;
- INF1 – Transport Network;
- INF3 – Flood Risk Management.

Gloucester City Plan

The Gloucester City Plan (“City Plan”) is at a less advanced stage than the JCS. The City Plan will deliver the JCS at the local level and provide policies addressing local issues and opportunities in the City. The Draft Gloucester City Plan 2017 takes forward the results of previous consultations and was subject to consultation January and February 2017.

Gloucester Local Plan, Second Stage Deposit 2002

Regard is also had to the 2002 Revised Deposit Draft Local Plan. This has been subjected to two comprehensive periods of public and stakeholder consultation and adopted by the Council for development control purposes. The following “day-to-day” development management policies, which are not of a strategic nature and broadly accord with the policies contained in the NPPF, should be given some weight:

- ST.1: Sustainable Development;
- ST.2: Priority for Developing Previously Used Sites and Safeguarding Greenfield Land;
- ST.4: Reducing Travel by Car and Promoting Other Means of Travel;
- ST.5: Central Locations for Development which Attracts a Lot of People;
- ST.6: District and Local Centres;
- ST.12: Key Development Priorities;
- FRP.1a: Development and Flood Risk;
- FRP.6: Surface Water Run Off;
- FRP.10: Noise;
- BE.5: Community Safety;
- BE.7: Architectural Design;
- BE.21: Safeguarding of Amenity;
- TR.9: Parking Standards;

- TR.12: Cycle Parking Standards;
- TR.31: Road Safety;
- SR.4: Indoor Sports Facilities.

Supplementary Planning Guidance/Documents

None of the adopted supplementary planning documents is especially relevant to this proposal.

CONSULTATIONS

Highway Authority: No objection, but recommends that planning permission, if granted, carry a condition about parking and manoeuvring facilities.

Environmental Protection: No objection, but recommends that planning permission, if granted, carry conditions about mechanical plant and external lighting.

Planning Policy: No objection.

Drainage Officer: No objection.

PUBLICITY AND REPRESENTATIONS

16 letters/e-mails/comments of objection for the following reasons:

- The proposed gym would affect the prospects of other gyms already in the area;
- This part of Gloucester does not need another gym;
- The proposed gym would create or exacerbate congestion and parking problems in surrounding streets;
- The noise and light pollution of the proposed gym and its car park would disturb neighbours in their homes and gardens, particularly if the gym operated all day, every day;
- A 24-hour business would be out of keeping with the area;
- The proposed gym should close at 11 p.m. at the latest;
- The building should continue to function as an educational establishment;
- The car park would no longer be locked in the evening, exposing to residents to the possibility of crime and antisocial behaviour;
- Local properties would become less valuable if the gym were to open;
- The proposed gym may itself be a source of crime and antisocial behaviour.

OFFICER OPINION

Main issues

The main issues in this assessment are:

- Principle of development;
- Planning history as a material consideration;
- Visual impact;
- Living environment;

- Highways; and
- Flood risk.

Principle of development

The proposed gymnasium would constitute a 'less vulnerable' use on the border of 'low probability' and 'medium probability' flood zones. It would reuse a vacant site on previously developed land in a built-up and accessible part of the city. Thus, it would create economic activity and the equivalent of eight full-time jobs in, or at least next to, the Central Area, in accordance with one of the 2002 plan's 'key development priorities'.

The NPPF identifies 'leisure' uses and 'health and fitness centres' as 'main town centre uses'. It is, therefore, reasonable to regard the proposed gymnasium as such a use. The NPPF's glossary makes it clear that 'references to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance'.

The application site straddles the boundary of the Central Area, the highest level of the city's commercial hierarchy (excluding the Primary Shopping Area, which relates only to retail uses). Policy SR.4 of the 2002 plan says that 'planning permission for **new indoor sports facilities** will be permitted provided that development is located in or adjacent to a designated centre [or] is associated and enhances an existing recreational or educational facility [my emphasis]'. Policy SD3 of the emerging JCS says that 'new residential, retail, **leisure**, culture, tourism, office development and community facilities that contribute to the vitality and viability of designated centres will be promoted and supported [my emphasis]'.

According to the application documents, however, many of the gym's members would live or work in the local area. The building, though quite large in a predominantly residential setting, has less floor space (710 square metres) than do many city-centre gyms. In other words, the proposed development is in proportion to the suburban/edge-of-centre location.

Policy ST.6 of the 2002 plan says that 'new development which serves **suburban areas** or the needs of **local neighbourhoods** shall be located at District and Local Centres respectively where there are suitable sites available [my emphasis]'. The application site is one fifth of a mile from the nearest local centre (Seymour Road), and is even farther from the nearest district centre.

Even though part of the site is in the Central Area, the application documents include a sequential assessment (SA) that considers the availability of suitable sites within one kilometre of 133 Bristol Road. This search radius, incidentally, includes the nearest local centre, based in Seymour Road.

The SA suggests that every unit is unsuitable for some or all of the following reasons:

- another gym already operates in the area;
- the cost of adapting a listed building would be too great;
- the proposed use requires an accessible and visible ground-floor unit;
- the unit lacks a car park;

- the unit would not meet the company's floor-loading or ceiling-height requirements;
- the landlord believed that the gym would disturb the occupants of adjacent units;
- the landlord chose another tenant;
- the local residential population is too small;
- the local area is too quiet;
- the unit is not next to a road.

The SA concludes that no other sites are available within a reasonable distance of the application site.

This is a difficult proposal to assess, the application being on the border of two levels of the commercial hierarchy. Yet, because part of the site is in the Central Area, I cannot reasonably say that the proposal is contrary to the sequential approach to 'main town centre uses'. The proposed floor space seems well suited to an 'edge of centre' location, and a gym of this size is unlikely to compete directly with larger gyms in the city centre, or with those in the city's district centres, the nearest of which are in Quedgeley and Abbeymead. I conclude that the principle of development accords with the broad aims of the 2002 plan, the emerging JCS (policy SD3 in particular) and the NPPF. Before making a recommendation, however, I must consider whether other material considerations – amongst which are the NPPF and the other policies of the local plans – weigh against or in favour of the proposal.

Planning history as a material consideration

Planning records indicate that the site functioned as a plumbing centre for some time. In November 2006, the council refused an application for permission to use the site as a shop selling beds and furniture. In September 2013, the council approved an application (13/00584/FUL) for permission to use the site as a training centre (D1 use). The current application's documents state that the site most recently functioned as a training centre, but such a use seems likely to have been in breach of a pre-commencement condition.

In summary, it is not clear whether the training centre was lawfully implemented. Nevertheless, I believe that the proposed 24-hour gym would bring about a material change in the level and nature of activity throughout the day and evening.

Visual impact

The building's rear elevation already has an industrial look about it, and the adjacent car park, secured by large metal gates, only deepens this impression. The external AC units and the associated timber fence – the only proposed changes to the building's exterior – would face the car park, and so would not have a material effect on the character and appearance of the site or the Linden Road streetscape. With this in mind, I conclude that the proposal complies with policy BE.7 of the 2002 plan and policy SD5 of the emerging JCS.

Living environment

The application site adjoins one house (5 Linden Road) and six back gardens (those of 4, 6, 8, 10, 12 and 14 Lysons Avenue). Within 20 metres of the site are eleven

other houses. The main issue is the extent to which 24-hour activity might affect neighbours in their homes and gardens.

The proposal has the potential to affect residents of Lysons Avenue and Linden Road. These roads join Bristol Road, a busy route through the city, but consist mainly of houses. However, the proposal would not be the only non-residential use in the area. Next to the application site is the Shanghai Restaurant, which appears to stay open until 11 p.m. most days. A Tesco Express on Bristol Road, situated between Lysons Avenue and Frampton Avenue, also opens till 11 p.m. most days. At 150 Bristol Road, a kebab shop – an established use that did not receive planning permission – appears to remain open in the early hours of the morning.

In summary, whilst the application site is near a busy road and a restaurant, residents do not live against a backdrop of round-the-clock noise and activity. A 24-hour gym, operating next to or near 15 houses, could bring about a material change in the local living environment. For instance, it could generate noise through amplified music, exercise equipment, exercise classes, members' comings and goings, and so forth.

The council's environmental-health officer, having examined the application documents, does not object to the proposal. Crucially, he believes that the external AC units, controlled by a condition, would maintain an acceptable living environment for neighbours. Specifically, the noise created by the AC units, considered against the existing background noise of roads and the Shanghai Restaurant, would fall within an acceptable range of levels.

The application documents suggest that relatively few members use the company's gyms between ten p.m. and six a.m. The proposed gym may, of course, be unusual in this respect: it could become very busy during what many regard as 'antisocial' hours. Simply put, the LPA has no way of knowing how busy the gym might be during 'quiet' periods. Properly managed, and controlled by a planning condition requiring acoustic insulation, the gym itself *may* not disturb neighbours. But the sounds of general activity near the building and in the car park – not least those of car engines, car doors opening and closing, mobile phones ringing, and people's voices – could easily disturb neighbours, especially early in the morning or late at night.

Crucially, the applicant is willing to accept a condition limiting the car park's opening times. The car park would be closed and locked at ten p.m. each evening. It would not reopen before seven a.m. on weekdays, or before ten a.m. on Saturdays, Sundays, and public holidays (including bank holidays). This arrangement would require car-using members to park elsewhere. They would almost certainly try to park in Bristol Road (several parking bays are available between sections of double yellow lines), Linden Road or Lysons Avenue. Whilst members could park their cars near houses, the parking would be dispersed, not concentrated in the car park next to people's back gardens. Also, the entrance to the gym would be on Bristol Road, away from people's houses. I therefore conclude that gym-related activity, scattered across at least three streets, would be comparable to ordinary comings and goings.

As regards privacy, members of the gym might have clear views of neighbours' houses from the car park. Even so, the proposal would not materially change the

situation. People visiting the previous use(s) would have had the same views, and could have them again were a lawful use to resume.

As to light pollution, a condition is recommended to control the number, extent and intensity of external lights. Whilst car headlights are beyond the reach of a condition, the brick wall that stands between the car park and the houses would act as a screen, limiting their effect on neighbours.

Some objectors have mentioned the possibility of crime and antisocial behaviour. No evidence before me suggests that the proposed gym might create such problems. Managers would be responsible for running the gym in accordance with the law, and the police would need to investigate any allegations of criminal activity.

With the above in mind, I conclude that the proposed development would maintain an acceptable living environment for neighbours, in accordance with policy BE.21 of the 2002 plan and policy SD15 of the emerging JCS.

Highways

The proposed gym would retain the existing entrance and the 14-space car park. Some unrestricted parking spaces are available in Linden Road and other nearby streets. Five stands for bicycles would be available in the car park. The Highway Authority (HA), having examined the application documents, does not object to the proposal. It does not, for instance, suggest that the proposal would exacerbate or create parking problems in the area. Rather, the HA recommends that planning permission, if granted, carry a condition about parking and manoeuvring arrangements. I conclude that the proposal complies with policy TR.31 of the 2002 plan and policy INF1 of the emerging JCS.

Flood risk

This application, which seeks permission for a change of use and alterations to a building's exterior, does not have to pass the flood-related sequential test. The council's drainage officer neither objects to the proposal nor requests that planning permission, if granted, carry a condition. I conclude that the proposal complies with policy FRP.1a of the 2002 plan, policy INF3 of the emerging JCS, and paragraph 103 of the NPPF.

Human Rights Act

In making this recommendation, the council has given full consideration to all aspects of the Human Rights Act 1998 in relation to the applicant and/or the occupiers of any affected properties. In particular, regard has been had to Article 8 of the ECHR (respect for private and family life, home and correspondence) and the requirement to ensure that any interference with the right in this Article is both in accordance with the law and proportionate. A balance needs to be drawn between the right to develop land in accordance with planning permission and the rights under Article 8 of adjacent occupiers. On assessing the issues raised by the application, no particular matters, other than those referred to in this report, warrant any different action from that recommended.

CONCLUSION

The LPA lacks an up-to-date adopted development plan. Moreover, none of the specific policies of the NPPF indicates that development 'ought to be restricted'. I must, therefore, subject the proposal to the 'tilted balance' set out in paragraph 14 of the NPPF. The crucial test is this: whether the proposal's 'adverse impacts ... would significantly and demonstrably' outweigh its benefits, when assessed against the policies in the NPPF 'taken as a whole'.

The use of previously developed land in an accessible and sustainable location accords with local and national policy. So, too, does the creation of a 'main town centre use' (along with economic activity and jobs) on a vacant site that straddles the boundary of the city centre (that is, the Central Area defined in the 2002 plan). Moreover, as well as maintaining an acceptable living environment for neighbours, the proposal meets flood-safety requirements for a site in Flood Zone 2.

I conclude that the proposal accords with the overarching objectives of the 1983 and 2002 local plans, the emerging JCS and the NPPF. The proposal would also perform the economic, environmental and social roles of 'sustainable development', as defined in paragraph 7 of the NPPF. No other material considerations warrant a recommendation for refusal. I therefore recommend that planning permission be granted with conditions.

RECOMMENDATION

PERMIT

CONDITIONS

Condition 1

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason

Required to be imposed by Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Condition 2

The development hereby permitted shall be carried out in accordance with the application form and the following plans and documents (except where these may be modified by any other conditions attached to this permission):

- Location Plan (received on 10 April 2017);
- Existing layout;
- Proposed Layout (including elevations A and B) (received on 22 June 2017);
- Flood Risk Assessment for Planning (ref. 87096-Long-BristolRd, May 2017);
- Planning Statement;
- Acoustic Plant Noise Assessment (ref. RP01-17412);
- Anytime Fitness – Typical Outdoor Condenser Plant Space.

Reason

To ensure that the development is carried out in accordance with the approved plans and in accordance with policies contained within the Second Stage Deposit City of Gloucester Local Plan (2002).

Condition 3

The car park shall be closed and locked at 22:00 each evening. It shall not reopen before 07:00 on weekdays, or before 10:00 on Saturdays, Sundays and public holidays (including bank holidays).

Reason

To protect the living environment for neighbours, in accordance with policy BE.21 of the Second Stage Deposit City of Gloucester Local Plan (2002).

Condition 4

The premises shall be used as a private gymnasium and for no other purpose (including any other purpose in Class D2 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason

The local planning authority wish to control the specific use of the land/premises, in the interest of local amenity in accordance with policy BE.21 of the Second Stage Deposit City of Gloucester Local Plan (2002).

Condition 5

Prior to the first use of the gymnasium hereby approved, the external air-condition units (along with the noise-reducing timber fence enclosing them) shall be designed, built and installed on the building's rear (south-eastern) elevation in accordance with the acoustic report (ref. RP01-17412) and the approved plan entitled 'Proposed layout' (20.06.2017). The units shall at all times be maintained in accordance with the approved report and the approved plan.

Reason

To protect the living environment for neighbours, in accordance with policy BE.21 of the Second Stage Deposit City of Gloucester Local Plan (2002).

Condition 6

No music (whether live or recorded) that is audible outside the premises or within adjoining buildings shall be played or performed at any time.

Reason

To protect the living environment for neighbours, in accordance with policy BE.21 of the Second Stage Deposit City of Gloucester Local Plan (2002).

Condition 7

No external lighting shall be installed until a scheme of external lighting within the application site has been submitted to, and approved in writing by, the Local Planning Authority. The details shall include the lighting fixtures, their location on the site/on the buildings, the extent of illumination and glare. The scheme is also to include

details on how the impact of how floodlights (if any) and external lighting will be minimised. The approved lighting scheme shall be implemented prior to the commencement of the use of the development and maintained for the duration of the use of the site unless otherwise agreed in writing by the Local Planning Authority.

Reason

To protect the living environment for neighbours, in accordance with policy BE.21 of the Second Stage Deposit City of Gloucester Local Plan (2002).

Condition 8

Before the development hereby authorised is brought into use, the car parking and manoeuvring facilities shall be completed in all respects in accordance with the submitted details and shall be similarly maintained thereafter for that purpose.

Reason

To enable vehicles to enter and leave the highway in forward gear in the interests of highway safety.

Condition 9

The car park shall be used only as a storage area for bins and as a parking area for cars, motorcycles and bicycles.

Reason

To protect the living environment for neighbours, in accordance with policy BE.21 of the Second Stage Deposit City of Gloucester Local Plan (2002).

Condition 10

Except when people are entering or leaving the building, the building's windows and doors shall be shut at all times.

Reason

To protect the living environment for neighbours, in accordance with policy BE.21 of the Second Stage Deposit City of Gloucester Local Plan (2002).

Note 1

In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by offering pre-application advice, publishing guidance to assist the applicant, and publishing to the council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.