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**18/00954/FUL****REMOVAL OF CONDITION 3 ON PLANNING APPLICATION  
16/01029/COU: CHANGE OF USE FROM WORKSHOP TO  
D2 (GYM)**

APPLICANT: **MR R BARBER**  
ZONING: **EXISTING INDUSTRIAL**  
PARISH: **RAYLEIGH PARISH COUNCIL**  
WARD: **LODGE**

**1 RECOMMENDATION****1.1 It is proposed that the Committee RESOLVES**

That planning permission be approved, subject to the following heads of conditions including variation of condition 3:

- (1) Time limit
- (2) Cycle parking
- (3) Use for fitness training for no more than 30 people at one time
- (4) No amplified speech or music broadcast externally
- (5) Doors and windows to be kept shut when music and amplified speech is broadcast internally
- (6) No internally generated music to be audible at the premises boundary.

**2 PLANNING APPLICATION DETAILS**

- 2.1 The application currently before the Committee is for the removal of condition 3 of planning approval 16/01029/COU. The application was deferred from the Development Committee meeting on 13 December 2018 to allow officers time to further consider issues relating to possible monitoring equipment for sound and appropriate sound levels for music within the building, air conditioning to ensure that windows and doors would not need to be opened in warm weather and sound proofing of the building.
- 2.2 The application site is located towards the north eastern end of the Brook Road Industrial Estate. The site is some 922m<sup>2</sup> and is broadly triangular in shape. There are further commercial units to the south, east and west of

varying sizes and uses. There is an access road running parallel to the northern boundary, beyond which lie the rear garden boundaries of dwellings Nos. 14 to 30 fronting onto Woodlands Avenue. There is a pedestrian alley way between No. 14 and linking Woodlands Avenue with Sirdar Road.

- 2.3 The site is occupied by a 355m<sup>2</sup> single storey unit which includes a main 220m<sup>2</sup> working out area and two 36m<sup>2</sup> side rooms. The building was rebuilt after suffering extensive fire damage some years ago and is now used as a gym specialising in CrossFit training.
- 2.4 Planning permission (application 16/01029/FUL), was granted on 7 March 2018 for the change of use of the building to a gym. The application, with an officer's recommendation for approval, was referred to the Development Committee in February 2018. Members approved the application with additional planning conditions including condition 3 which is the subject of this application.

The condition reads as follows:

- 2.5 Notwithstanding the provisions of Use Class D2 to the Town and Country Planning (Use Classes) Order 1987 (as amended) the use hereby approved shall be restricted to use for one to one fitness training and group training to up to 10 persons at a time with sessions being pre-booked and for no other use within Use Class D2.

REASON: In view of the limited parking available within the site in the interests of highway safety and in order to limit the intensity in use, given the close proximity of nearby dwellings in the interests of the amenities those nearby occupiers ought reasonably to expect to enjoy.

- 2.6 The applicant has stated that with this restriction in place it is difficult to offer help to more people with their health and fitness and thus facilitate the growth of the business. The applicant considers that the building is under-utilised and is of such a size that the main room could fit 20-30 people training together with more in the two side rooms.
- 2.7 The applicant would like to branch out to allow the business to help overweight children; however, 10 children at the site could potentially mean 30 people at the site in total if both parents were to attend. The applicant would also like the potential to host adult and child classes together. It is also intended to start hosting seminars to educate people about healthy eating, how to exercise and make the right lifestyle choices.
- 2.8 The applicant provided an update in November 2019 to accompany this application. The applicant states that the business continues to grow and that an apprentice has been employed. The applicant would like to hire more people and provide further career opportunities but is unable to do so with the current restriction of 10 people in place. The rooms to the side of the main room have been developed to provide more space to hire more people and

help more clients. Internally there is a small sound bar as the speaker system and the walls and ceiling have been insulated where possible. The relationship between the applicant and the neighbours has improved and no further complaints have been received.

- 2.9 An increase in the cap on numbers is required to allow the business to continue to trade.

### **3 MATERIAL PLANNING CONSIDERATIONS**

#### **Planning History**

- 3.1 16/01029/COU - Change the use from workshop to D2 (Gym) – Planning permission granted subject to conditions to provide cycle parking, a limitation on the number of users, that no amplified speech shall be broadcast on external areas of the premises, that all doors and windows shall be kept shut during periods when amplified speech or music is broadcast inside the premises and that no internally generated music shall be audible at the premises boundary.
- 3.2 15/00659/FUL - Proposed re-roofing of existing building with part pitched, part flat roof. Alter existing fenestration. Approved.

#### **Existing Operation**

- 3.3 The site is within an area allocated as employment land in the Council's Allocation Plan (2014). The change in use to use class D2 (gym) has previously been considered acceptable and this use remains the lawful use of the building. The site remains a source of employment.
- 3.4 There are no changes proposed externally and the current parking provision is retained. The applicant has provided a tarmacked area to the side of the building and around 15 cars can now be accommodated on site with additional parking available to the rear of the unit, if required. The applicant has stated that permission has been obtained from the businesses adjacent and opposite to utilise their parking areas when these businesses are closed. There are double yellow lines to the end of the cul de sac closest to the residential properties and therefore parking is prohibited in this area. The Highways Authority has raised no objection to the proposal.

#### **Impact on Residential Amenity**

- 3.5 Members are reminded that conditions were imposed on the original consent such that that no amplified speech shall be broadcast on external areas of the premises (Condition 4), that all doors and windows shall be kept shut during periods when amplified speech or music is broadcast inside the premises (Condition 5) and that no internally generated music shall be audible at the premises boundary (Condition 6). These conditions would remain unaltered.

- 3.6 Concerns have been raised from the residents of dwellings located to the north of the site fronting Woodlands Avenue. The concerns in the main relate to noise from the operation of the gym and the inconsiderate parking of vehicles on Woodlands Avenue.
- 3.7 Planning enforcement officers have investigated allegations of noise in breach of conditions 5 and 6 regarding amplified music. The noise concerns were investigated jointly with the Council's Environmental Health team and no noise could be heard at one of the residential properties visited, or from the track adjacent to the site. Monitoring equipment was also installed from 13 April to 20 April 2018 at one residential property and no noise nuisance was recorded.

**Further consideration of measures to reduce the impact on nearby residential properties**

- 3.8 It is considered that the existing conditions remain sufficient to protect the residential amenities of the neighbouring properties and, since the Committee meeting in December 2018, the gym is considered to have been operating within the parameters of these conditions and no further complaints have been received. This has been confirmed with both Environmental Health and Planning Enforcement who have been reconsulted with on this application.
- 3.9 The Environmental Health team is of the opinion that the existing conditions 4, 5 and 6 are adequate to prevent any potential noise issues from this premises and an increase from 10 to 30 customers at any one time is unlikely to change this. At this current moment in time it does not consider it necessary to carry out further noise monitoring or to require additional acoustic insulation or the installation of air conditioning.
- 3.10 The applicant has stated that he has insulated the walls and ceiling where feasible, that he has formed a better relationship with the adjoining neighbours and has not received any complaints this year. The Council is also in receipt of a large number of letters in support of the operation.
- 3.11 It is therefore considered that there are no reasonable grounds to continue to restrict the use of the premises to 10 persons at a time. The applicant has requested that the condition be removed completely; however, if a limit is to be imposed then it has been requested that this is between 30 and 40 people in order to allow the business to grow. Given the floor space and the available car parking on site, it is considered that increasing the limit to 30 persons at a time would be appropriate and allow the business to grow whilst mindful of the concerns received from residents in Woodlands Avenue and would retain adequate control over the usage by the Council.

**4 CONSULTATIONS AND REPRESENTATIONS**

- 4.1 ECC Highways - No objection.
- 4.2 RDC Planning Enforcement - Planning Enforcement has no objections to this application.

The site has previously been investigated on three separate occasions in connection with alleged breaches of conditions 5 and 6 under application 16/01029/COU. These cases were investigated jointly with the Council's Environmental Health team. No noise was heard from the residential properties or the adjacent track. These cases were subsequently resolved and the respective cases closed.

- 4.3 Rayleigh Town Council - Objection due to the unacceptable impact on the amenities of local residents.
- 4.4 Environmental Health - No objection.
- 4.5 Planning Enforcement - No objection.
- 4.6 Neighbour Consultation

Twenty five neighbouring properties have been notified of the application and a site notice posted at the site. Six letters of objection have been received from residents in Woodlands Avenue and Thirty Four letters of support have been received from members of the gym praising the facilities and the owner. It is apparent that the users are aware of the impact on the nearby residents and that the gym owner manages this personally.

#### **Summary of objections**

- Loud music, equipment noise, car doors slamming and shouting from 5.30 am – 10.00 pm
- Already operating in excess of 10 people
- Other gyms on industrial estate are not near residential properties
- Gym very close to rear garden boundaries
- Operates outside of 'normal' weekday only industrial estate hours
- Doors have been open in summer months
- Clients parking inconsiderately along Woodlands Avenue
- Like living next to a perpetual party
- Can only imagine the extra noise levels from the gym and use of its equipment.
- People using gym and estate parking in Woodlands Avenue
- Current situations need monitoring more closely
- Needs to be fitted with sound proofing and air conditioning to help alleviate problem.

These concerns have been noted and where relevant to material planning considerations they have been taken into account in the assessment of the application. However, they are not found to represent a reasonable basis to refuse planning permission in the circumstances of this case.

**5 EQUALITY AND DIVERSITY IMPLICATIONS**

- 5.1 An Equality Impact Assessment has been completed and found there to be no impacts (either positive or negative) on protected groups as defined under the Equality Act 2010.

**6 CONCLUSION**

- 6.1 The proposal is considered not to cause undue demonstrable harm to any development plan interests, other material considerations, to the character and appearance of the area or residential amenity such as to justify refusing the application.



Marcus Hotten  
Assistant Director, Place & Environment

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**Relevant Development Plan Policies and Proposals**

National Planning Policy Framework (2019)

Policy EEL2 of the Allocations Plan (2014)

Policies ED1 (Employment Growth), ED3 (Existing Employment Land), CP1 (Design), T1 (Highways), T3 (Public Transport) and T8 (Parking Standards) of the Core Strategy (2011)

Policies DM30 (Parking Standards) and DM32 (Employment Land) of the Development Management Plan (2014)

**Background Papers**

None.

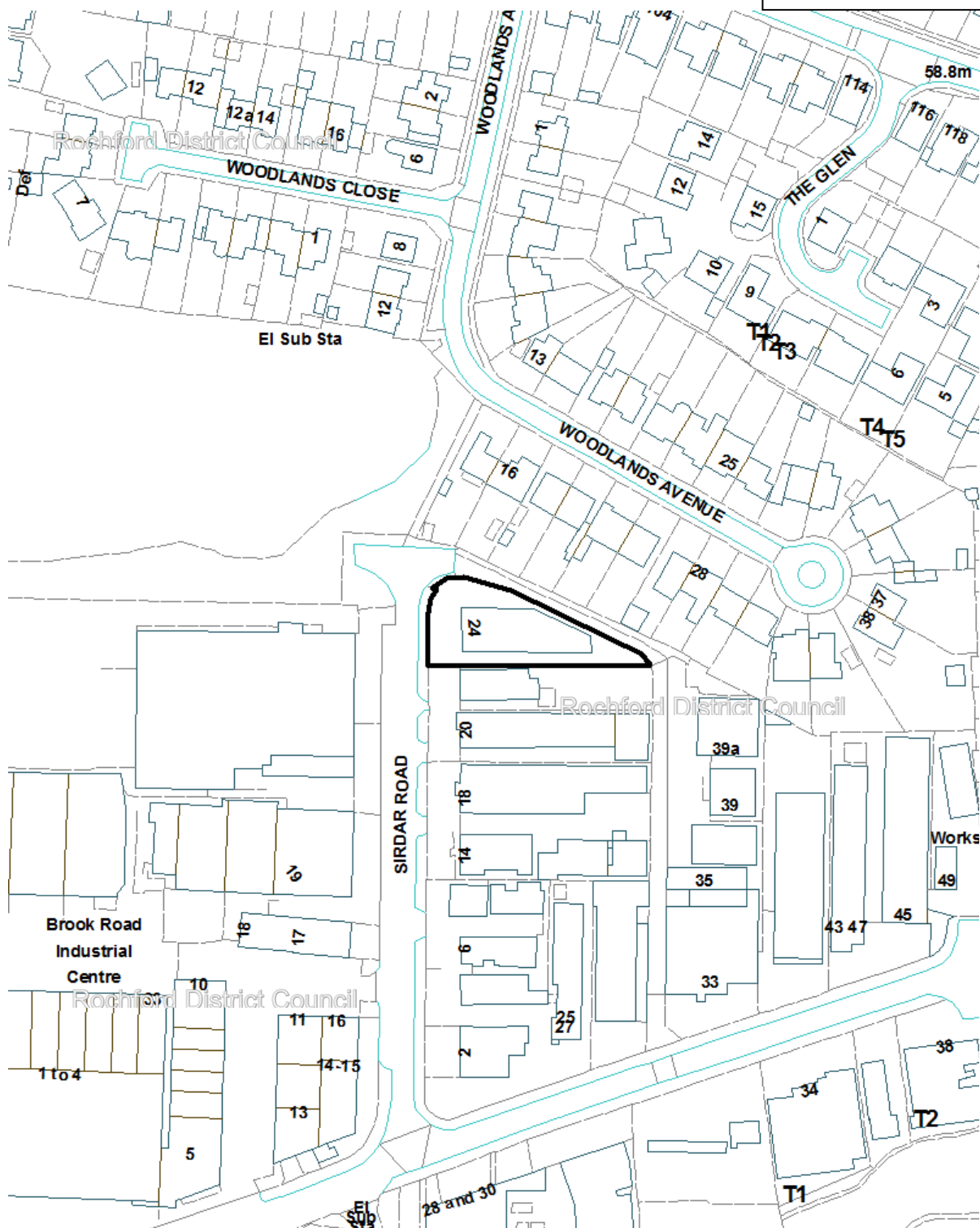
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