



<b>Title of Report:</b>	<b>Planning Committee Report – LA01/2020/0966/F</b>
<b>Committee Report Submitted To:</b>	<b>Planning Committee</b>
<b>Date of Meeting:</b>	<b>22<sup>nd</sup> June 2022</b>
<b>For Decision or  For Information</b>	<b>For Decision</b>

<b>Linkage to Council Strategy (2021-25)</b>	
Strategic Theme	Cohesive Leadership
Outcome	Council has agreed policies and procedures and decision making is consistent with them
Lead Officer	Senior Planning Officer

<b>Budgetary Considerations</b>	
Cost of Proposal	Nil
Included in Current Year Estimates	<b>N/A</b>
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

<b>Screening Requirements</b>	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:
	EQIA Required and Completed:	N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:
	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

<b><u>No:</u></b> LA01/2020/0966/F	<b><u>Ward:</u></b> Route
<b><u>App Type:</u></b> Full Planning	
<b><u>Address:</u></b> Unit 4 Ballybrakes Business Park, Ballymoney.	
<b><u>Proposal:</u></b> Retrospective application for change of use from sales of kids toys to gym on ground floor with changing areas and offices on first floor.	
<b><u>Con Area:</u></b> N/A	<b><u>Valid Date:</u></b> 25 Sep 2020
<b><u>Listed Building Grade:</u></b> N/A	
<b><u>Agent:</u></b> Simpson Design 42 Semicock Road, Ballymoney. BT53 6PY	
<b><u>Applicant:</u></b> G. E. H. Q. Unit 4 Ballybrakes Business Park, Ballybrakes Road, Ballymoney	
<b><u>Objections:</u></b> 0	<b><u>Petitions of Objection:</u></b> 0
<b><u>Support:</u></b> 0	<b><u>Petitions of Support:</u></b> 0

## EXECUTIVE SUMMARY

- Retrospective planning permission is sought for a change of use from sales of kids toys to gym on ground floor with changing areas and offices on first floor.
- No planning permission exists for the retail (kids' toys) outlined in the description. The overall building / site appears to have been the subject of sub-division of units for a variety of uses including industrial and commercial uses, warehouse and distribution, leisure / recreation and retail. The original use on site was as a factory.
- The site is located within Ballymoney Town Settlement Development limit and is within an Existing Area of Economic Development as defined by the Northern Area Plan 2016.
- The proposal is considered contrary to the Northern Area Plan and the SPPS as the proposal relates to a town centre use outside a town centre location. A number of vacant premises of varying sizes exist within the whole catchment (and within Ballymoney Town Centre) and no information has been submitted indicating that a sequential consideration of the proposal has been undertaken by the applicant.
- No statutory consultee objections or third part objections.
- Refusal is recommended.

Drawings and additional information are available to view on the Planning Portal- <https://epicpublic.planningni.gov.uk/publicaccess/>

## 1.0 RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 9 and the policies and guidance in sections 7 and 8 and resolves to **REFUSE** planning permission subject to the reason set out in section 10.

## 2.0 SITE LOCATION & DESCRIPTION

- 2.1 The site comprises Unit 4 of Ballybrakes Business Park. The business park consists of a large rectangular building which appears to have been originally formed by 5 linear pitched roof elements which are gable fronted to the north (roadside). Although formed by linear elements, the building is not sub-divided along these and appears to comprise a single structure, subdivided into numerous units of varying sizes along all four elevations. The overall building dominates the site with access roads to the north-eastern and north-western corners onto Ballybrakes Road with access and parking around the entire building. The overall site boundaries are generally defined by a variety of mature planting.
- 2.2 Unit 4 comprises a mid-elevation unit on the eastern side of the main structure and comprises of a small narrow frontage over two floors, finished in pre-fabricated corrugated metal and smooth render. The unit appears to extend back considerably from the front elevation and incorporates two large connected ground floor areas as well as a reception area and store to the front with office and changing facilities at first floor.
- 2.3 The site is located within Ballymoney Town Settlement Development limit and is within an Existing Area of Economic Development as defined by the Northern Area Plan 2016. The western boundary of Ballybrakes forms part of the defined extent of the Settlement Development Limit. The existing car parking area to the front of the subject site is partially affected by an area of pluvial ponding.

2.4 The character of the surrounding area on the southern side of Ballybrakes Road within the SDL is dominated by commercial uses comprising those units within Ballybrakes Business Park as well as the adjacent commercial uses to the east which include a large builder's merchants.

### **3.0 RELEVANT HISTORY**

D/1985/0111 - Change of use of part of redundant factory to export agency for agriculture.

D/1986/0290 - Change of use of part of existing factory to retail unit for bathroom, plumbing and heating equipment. Permission Granted

D/1986/0009 - Change of use of part of existing factory to indoor bowling stadium. Permission Granted

D/1987/0159 - Change of use of part of factory to tyre storage and fitting depot. Permission Granted.

D/1987/0244 - Change of use of part of warehouse to frozen food distribution depot. Permission Granted.

D/1988/0322 - Change of use of part of vacant factory to ten pin bowling alley and exhibition hall. Permission Granted.

D/1992/0021 - Change of use of vacant industrial unit to indoor go-kart stadium. Permission Granted.

D/2004/0245/F - Change of use from commercial office and store to new dry waste re-cycling centre handling segregated waste. Permission Granted.

LA01/2017/1592/F - Change of use from office and store to dry waste recycling facility.

## **4.0 THE APPLICATION**

- 4.1 The application is described as a “Retrospective application for change of use from sales of kids’ toys to gym on ground floor with changing areas and offices on first floor”.

### **Habitat Regulations Assessment**

- 4.2 The potential impact of this proposal on Special Protection Areas, Special Areas of Conservation and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features of any European site.

## **5.0 PUBLICITY & CONSULTATIONS**

**External:** N/A

**Internal:**

NI Water: No objections.

DFI Roads: No objections.

DFI Rivers: No objections.

Environmental Health: No objections.

## **6.0 MATERIAL CONSIDERATIONS**

- 6.1 Section 45(1) of the Planning Act (Northern Ireland) 2011 requires that all applications must have regard to the local plan, so far as material to the application, and all other material considerations. Section 6(4) states that in making any determination where regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

6.2 The development plan is:

- Northern Area Plan 2016

6.3 The Regional Development Strategy (RDS) is a material consideration.

6.4 The Strategic Planning Policy Statement for Northern Ireland (SPPS) is a material consideration. As set out in the SPPS, until such times as a new local plan strategy is adopted, Councils will apply specified retained operational policies.

6.5 Due weight should be given to the relevant policies in the development plan.

6.6 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

## **7.0 RELEVANT POLICIES & GUIDANCE**

Regional development Strategy 2035.

The Northern Area Plan 2016.

Strategic Planning Policy Statement (SPPS) 2015.

A Planning Strategy for Rural Northern Ireland.

Planning Policy Statement 3: Access, Movement and Parking.

Planning Policy Statement 4: Planning and Economic Development

Planning Policy Statement 15: Planning and Flood Risk

## **8.0 CONSIDERATIONS & ASSESSMENT**

8.1 The proposal relates to the retrospective granting of permission for the existing use as a gym on ground floor with changing areas and offices on first floor.

8.2 The main planning considerations for this application relate to: the Town Centre first approach, the Retention of zoned land and economic development uses, Design, Compatibility with surrounding land uses, Amenity, Features of Natural Heritage, Access / Parking and Drainage / Flooding.

- 8.3 The Northern Area Plan 2016 identifies the site as being located within an existing area of economic development. Major areas of existing economic development within settlements are identified, for information only, in Volume 2 of the Plan. Within these existing economic development areas, planning applications will be determined in accordance with the provisions of prevailing regional planning policy.
- 8.4 The lawful use of the existing unit is unclear with the most recent use being described in the proposal description as retail (sales of kid's toys). No planning permission exists to this effect and the overall site appears to have been the subject of subdivision of units for a variety of uses including industrial and commercial uses, warehouse and distribution, leisure / recreation and retail. The original use on site would appear to have been as a factory.
- 8.5 The Strategic Planning Policy Statement for N. Ireland (SPPS) promotes sustainable development throughout the planning system. The guiding principle for planning authorities is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
- 8.6 The SPPS was introduced in September 2015 and is a material consideration in determining planning applications and appeals. The SPPS states that a transitional period will operate until such times as a Plan Strategy for the whole of the Council area has been adopted. During this transitional period existing policy contained within identified policy documents will be applied together with the SPPS.

### **Town Centre First Approach**

- 8.7 The application relates to retrospective permission for a change of use of Unit 4 Ballybrakes Business Park to a gym. The proposal comprises a fairly small frontage over two floors within the eastern elevation of the overall built form with a considerably larger ground floor area extending to the rear comprising two large individual areas. The proposal comprises a gym with ancillary facilities including changing rooms, offices,



showers and toilets with storage and reception areas at the ground floor entrance.

- 8.8 Although the lawful use of the subject unit is unclear, the original use of the overall building appears to have been as a factory which would imply General Industrial Use (Class B3 of The Planning (Use Classes) Order (Northern Ireland) 2015. As noted above the site now incorporates a variety of uses. The proposed use as a gym does not fall within any use class specified with the Use Classes Order and is identified as sui generis.
- 8.9 During the transitional period referenced in the SPPS, existing policy contained within identified policy documents will be applied together with the SPPS. However, the SPPS is clear that any conflict between the SPPS and any retained policy must be resolved in favour of the SPPS.
- 8.10 Paragraph 6.270 of the SPPS states that its' aim is to support and sustain vibrant town centres across Northern Ireland through the promotion of established town centres as the appropriate first choice location of retailing and other complementary functions consistent with the RDS.
- 8.11 The Regional Development Strategy 2035 (RDS) recognises the importance of accessible, vibrant city and town centres which offer people more choice for shopping, social activity and recreation. As such the SPPS promotes a 'town centre first' approach for the location of future retailing and other main town centre uses and identifies the regional strategic objectives for town centres and retailing as to:
- Secure a town centres first approach for the location of future retailing and other main town uses.
  - Adopt a sequential approach to the identification of retail and main town centre uses in LDP's and when decision taking.
  - Ensure LDP's and decisions are informed by robust and up-to-date evidence in relation to need and capacity.
  - Protect and enhance diversity in the range of town centre uses appropriate to their role and function, such as leisure, cultural and community facilities.
- 8.12 For the purposes of the SPPS "other main town centre uses" are defined at Paragraph 6.271 as including cultural and

community facilities, retail, leisure, entertainment and business. Although as a sui generis use the proposal falls outside Part D of the Use Classes Order - Community, Recreation and Culture, a gym is considered a leisure use in the ordinary sense and therefore meets the definition of a main town centre use.

8.13 Ballymoney is defined as a Local Hub within the RDS 2035. The NAP 2016 town centre boundary indicates the location where a town centre first approach should be directed / applied. Ballymoney Town Centre has a high level of vacancies, recorded in the 2019 Survey as over 20% in a range of different sized units and locations. Although a survey has not been undertaken in 2020, the level of vacancy and variety is not considered to have diminished.

8.14 The application site lies approximately 990 metres beyond the edge of Ballymoney Town Centre as identified in Map 2/01b of the Northern Area Plan 2016 and is not within an area identified as a local centre. The proposed use is considered a main town centre use which should be contemplated in the town centre first.

8.15 Paragraph 6.280 of the SPPS states that a sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up to date LDP. Paragraph 6.280 also states that where it is established that an alternative sequentially preferable site or sites exist within a proposal's whole catchment, an application which proposes development on a less sequentially preferred site should be refused. In this instance the catchment of the proposal is likely to include, at a minimum, a substantial area of Ballymoney town.

8.16 Paragraph 6.281 of the SPPS outlines the sequential test for such uses in the following order of preference:

- Primary retail core;
- Town centres;
- Edge of centre; and
- Out of centre locations, only where sites are accessible by a choice of good public transport modes.

8.17 Edge of town centres are identified within the SPPS as those areas within 300m from the town centre boundary (although

Council's may set other thresholds). The application site represents an out of centre location which would result in minimal, if any, contribution to the town centre. Sequentially, under the SPPS, it is the least preferable location and should be accessible by a choice of good public transport modes, which is not the case. A number of vacant premises of varying sizes exist within the whole catchment (and within Ballymoney Town Centre) and no information has been submitted indicating that a sequential consideration of the proposal has been undertaken by the applicant.

- 8.18 The town centre is also partially designated as a Conservation Area. The occupation of vacant premises in the town centre would assist in maintaining buildings that potentially contribute to the character of the Conservation Area directly through occupation and indirectly by increasing the attractiveness of the centre for the location of other uses through increased footfall and activity.
- 8.19 As alternative sequentially preferable sites exist within the whole catchment the proposal does not comply with the town centre first approach and is unacceptable in principle.

### **Retention of Zoned Land and Economic Development Uses**

- 8.20 Policy PED7 of PPS4 (Planning and Economic Development) relates to the retention of zoned land and economic development uses. This policy advises that any development that would result in the loss of land or buildings zoned for economic development use in a development plan (either existing areas or new allocations) to other uses will not be permitted, unless the zoned land has been substantially developed for other uses.
- 8.21 As noted above the existing site incorporates a variety of lawful uses including retail, storage and distribution as well as leisure facilities in the form of a 10 pin bowling alley and an indoor go-karting facility. The existing zoned land could therefore be considered to have been substantially developed for alternative uses. However, as the proposal relates to a main town centre use, it is contrary to the SPPS 'town centre first' approach for the location of future retailing and other main town centre uses.

The failure to adhere to the 'town centre first' approach takes precedence and is critical to the unacceptability of the proposal.

- 8.22 The second paragraph of Policy PED7 outlines those circumstances where an exception will be permitted for the development of a sui generis employment use compatible with the existing economic development. This policy includes a caveat that even in the circumstances outlined, retailing or commercial leisure development is not permitted, except where justified as acceptable ancillary development. The proposed use is considered to fall within commercial leisure development and is not ancillary development. In any case, as above, the failure to adhere to the 'town centre first' approach is critical to the unacceptability of proposal.

### **Design**

- 8.23 Policy DES2 Townscape of the Planning Strategy for Rural Northern Ireland requires development proposals in towns and villages to be sensitive to the character of the area surrounding the site. It also states that the main concern is to ensure that development proposals neither conflict with, nor detract from the character, amenity and design of an area. In terms of visual impact / design, no external alterations to the existing built form are proposed.

### **Compatibility with Surrounding Land Uses**

- 8.24 The site incorporates a variety of uses including those outlined above. The proposed site is located immediately adjacent a number of small business including an engravers, a signage business and a dry waste re-cycling centre. The proposal may potentially raise issues regarding noise (due to music and some larger pieces of fitness equipment such as treadmills etc). However, it is unlikely to conflict with any existing uses within the overall complex and as a retrospective application has been in operation for some time with no noise complaints to EHD. No objections have been received in relation to adjoining businesses / uses.

## **Amenity**

- 8.25 The site is located within an existing economic development area and is unlikely to significantly impact on amenity. The nearest residential properties exist within Bannfield (approximately 163m from the proposal). Although a gym may raise some issues regarding noise, this should generally remain within the envelope of the building (particularly as the frontage is limited) and in combination with the separation distance to existing residential properties is unlikely to impact on residential amenity. No alterations are proposed to the existing building which would create any additional impact.
- The local Environmental Health Department has been consulted and advise that the business has been in operation and to date no complaints have been received. Environmental Health recommends restricting hours of operation as well as a condition to ensure that all plant and equipment used in connection with the proposal are situated, operated and maintained in a manner to prevent the transmission of noise and odour to surrounding sensitive receptors.

## **Features of Natural / Built Heritage**

- 8.26 The proposal is within an existing building and site zoned as existing economic use and does propose any building alterations. The proposal does not affect any natural heritage features, listed buildings or areas of archaeology.

## **Access / Parking**

- 8.27 The site currently utilises the shared access and parking arrangements which serve the entire site. Parking is available immediately adjacent the proposal. DFI Roads has been consulted and raise no objections to the access or parking arrangements.

## **Drainage / Flooding**

- 8.28 The site is partially affected by pluvial ponding / surface flooding. No alterations / additional hardstanding is proposed and a drainage assessment is not required by policy. DFI Rivers recommend the applicant carry out sufficient assessment of drainage matters to satisfy themselves that no issues will arise.

The existing premises is connected to public mains water supply as well as mains drainage and sewerage.

## **Representations**

8.29 None.

## **9.0 CONCLUSION**

9.1 The proposal is considered unacceptable at this location having regard to the Northern Area Plan 2016 and other material considerations. The SPPS promotes a 'town centre first' approach for the location of future retailing and other main town centre uses. The application site represents an out of centre location, alternative sequentially preferable sites exist within the whole catchment and the proposal does not comply with the town centre first approach.

## **10.0 Refusal Reason**

1. The proposal is contrary to paragraphs 6.273 and 6.280-6.281 of The Strategic Planning Policy Statement for Northern Ireland (SPPS) 2015, in that the proposal has not complied with the sequential test for a main town centre use in that alternative sequentially preferable sites exist within the proposal's whole catchment.

# Site Location Plan

