

Case Officer: Chris Wright  
Tel. No: (01246) 345787  
Ctte Date: 14<sup>th</sup> October 2019

File No: CHE/19/00401/FUL  
Plot No: 2/1870

## **ITEM 5**

### **Change of Use from storage to provide Fitness Facilities at A-Rock House, 133 Baden Powell Road, Chesterfield, S40 2RL**

Local Plan: Unallocated  
Ward: St Leonards

#### **1.0 CONSULTATIONS**

Ward Members	No comments
Strategy Planning Team	No objections after sequential test.
Environmental Services	No objections.
Design Services	No objections.
Economic Development	No comments
DCC Highways	No objection subject to condition.
Chesterfield Cycle Campaign	Requested cycling parking on site.
Coal Authority	No comments.
Neighbours/Site Notice	5 Comments from 3 neighbours in regards traffic impact, noise, impact on residential amenity and privacy.

#### **2.0 THE SITE**

2.1 This application concerns a building which is sited to the northern end of Baden Powell Road on the eastern side. It is

predominantly an industrial building with industrial buildings to the north, a fire station and large retail units to the east and residential dwellings to the west and south.

2.2 The building is a predominantly single storey building although on the streetscene of Baden Powell Road it has two storeys with a rendered ground floor and timber clad first floor. The predominant use of the building is as a base for A-Rock Construction, with a large internal area used for parking of staff vehicles and storage of materials etc. With only a small area of the site used as office accommodation for staff related to business. To the front of the site there is parking for 10-15 vehicles including an entrance to the building allowing access for staff and delivery vehicles. In the day time the front parking area is used by staff and occasional customers who visit the premises.

2.3 The 1<sup>st</sup> floor of the front section of the building was previously used as storage related to the business, it has previously been converted so a studio area/boxing gym, reception and corridor area have been split off from this storage area. There are windows to the front elevation which overlook the street. To access this part of the building is via a shutter and a ramp.

2.4 Baden Powell Road is a busy through road and it has double yellow lines and a bus stop to the front of the site.





### 3.0 **RELEVANT SITE HISTORY**

3.1 CHE/16/00725/FUL - Development of first-floor warehouse to fitness studio – Withdrawn – 15/12/16

### 4.0 **THE PROPOSAL**

4.1 The proposal is for the retention of the change of use of part of the storage area into fitness facilities.

4.2 This proposal has been amended during the process to clarify certain aspects of the scheme. The original proposal was for opening hours for the fitness facilities from 5pm until 8.30pm Monday to Friday, 9am to 1pm on Saturdays and 10am until 12pm on Sundays and Bank Holidays.

4.3 A document was provided to clarify certain issues after a site visit and neighbour comments showed some inconsistencies in the scheme. The site opening hours would now be from 9am until 9pm, although with two separate uses; it would be available for 1 to 1 boxing training between the hours of 9am and 4.30pm (which days are unclear, but it is assumed this is for Monday to Friday) and then fitness classes from 4.30pm until 8.30pm Monday to Friday and 9.15am until 12pm Saturday and Sunday. The classes will be limited to 20 members and 1 on 1 classes will lead to no more than 4 people being on site at one time. There will be no one on site before 9am or after 9pm.

- 4.4 Any music played on site will be played through a small speaker without an amplifier and no tannoy systems will be used on site. The windows to the front of the proposed gym will be obscure glazed to reduce light pollution and overlooking issues.
- 4.5 The scheme would offer 13 parking spaces, as well as several cycling parking locations.
- 4.6 The facility is offered on a zero or low cost rent basis by the owners of A-Rock Construction. Boxing classes will be offered at low rates aimed at local young people.

## 5.0 **CONSIDERATIONS**

### 5.1 **Local Plan Issues**

- 5.2 The Strategic Planning Team provided the following comments on the scheme:

#### 5.2.1 *Local Plan Spatial Strategy*

*The application site is located within an established business area (area for Economic Growth) as defined on the Regulation 22(b) Policies Map.*

#### *Sequential Approach*

*Core Strategy policy CS16 and Para. 86 of the Revised NPPF states that a sequential test should be applied to planning applications for main town centre uses which are “neither in an existing centre nor in accordance with an up-to-date plan”. As the application site sits outside of an existing centre a Sequential Test must be undertaken. The revised Sequential Test submitted by the applicant considers units advertised through a Rightmove Commercial search and through the Council’s Sites and Premises Guide. It specifies a number of requirements which are considered to be robust locational requirements appropriate to the proposed use:*

- A unit with adequate space for equipment to be stored securely and be kept in situ at all times.*
- An area of 200-250 square meters.*
- A site available for access between 9am – 9pm.*

*The NPPF (para. 86) requires that main town centre uses should be “located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered”. The site is approximately a 360m walk from the Town Centre boundary (using the measurement function within Google Earth) and would be classified as an out of centre location. The search should therefore look at town centres and then edge of centre locations if necessary.*

*The Sequential Test report concludes that none of the alternate units considered are viable for use as a non-profit fitness facility. The applicant also determined that no appropriate options exist for leisure rental owing to high rental charges, lack of flexibility to store equipment and availability at the required times, however in both cases no reference is made to edge of centre opportunities.*

*The National Planning Policy Guidance (Paragraph: 013 Reference ID: 2b-013-20190722) states that with regards to viability, town centre locations can be more expensive and complicated than building elsewhere and local planning authorities need to be realistic and flexible in terms of their expectations. As the facility is assessed on the basis of being offered a ‘nominal rent’ it would be acceptable to recognise the viability of using more central units as prohibitive.*

*Core Strategy Policy CS13 states that in established business/industrial areas, business or industrial uses, not falling within the B1, B2 or B8 classes, will be considered based upon the locational criteria set out in policy CS2, the suitability of the use for the location and the employment generation of the proposed use when compared to the existing or previous use.*

*An updated statement from the applicant states that the hours of intended use for the facility fall within the hours of B use class business, with a limit on the number of users until 4:30pm. It is not anticipated that the proposed use would have a significant detrimental impact on the employment generation capacity of the unit, however the additional pressure on parking and implications for adjacent sites should be considered.*

*The proposed use accords with the majority of the criteria within CS2 (a-f). The site falls within walking distance of the town Centre and the Derby road North Centre (proposed within the Submission Local Plan) and would therefore accord with the Council's Spatial Strategy of concentrating development within walking and cycling distance of centres (CS2 a). The proposal utilises existing development space, preserving land of environmental and agricultural value (CS2 b & c).*

*An assessment of whether the facility would inhibit existing or future business and industrial activity on adjacent sites is key to determining the level of compatibility with Policy CS13.*

*Under Influencing the Demand for Travel (CS20) although 13 parking spaces will be made available, the clarifications document indicates that the facility may have 20 users at any one time (which is likely to be exceeded as classes change over). Comment should be sought from the Highways Authority as to the suitability of the proposed car parking arrangements. Secure areas for cycle storage should be secured through condition.*

*In summary the proposal for a fitness facility would contribute to increasing opportunities to exercise to support health and well-being in the Borough; however the application site lies within an industrial area and requires a Sequential Test.*

*The applicant has evaluated some alternative sites within the town centre (on the basis of the facility being offered a nominal rent) and has not identified any suitable, available and viable alternatives that could be considered sequentially preferable to the proposed location. If no edge of centre locations can be identified, the proposal would be considered to accord with the sequential approach.*

*Regardless of the outcome of the Sequential Test it is necessary to consider more detailed Development Management concerns such as the impact on residential amenity in the area and any implications for employment generating uses.*

5.2.2 In response to an updated Sequential Test this provides more clarity regarding sources of the assessed sites, their

location (in the context of the town centre) and reasons for rejection. The locational requirements of the revised assessment are also considered to be robust.

It is concluded that none of the alternate units considered are viable for use as a non-profit fitness facility, but no reference was made to edge of centre opportunities. As A Rock is not 'edge of centre' the applicant would need to evidence that such opportunities had been considered, however, given the financial constraints indicated an edge of centre search is unlikely to yield any viable options.

The National Planning Policy Guidance (Paragraph: 013 Reference ID: 2b-013-20190722) states that with regards to viability, town centre locations can be more expensive and complicated than building elsewhere and local planning authorities need to be realistic and flexible in terms of their expectations. As the facility is assessed on the basis of being offered a 'nominal rent' it would be acceptable to recognise the viability of using more central units as prohibitive.

- 5.3 It is considered that the above findings and the principle of development is acceptable in relation to policies CS2 and CS16. In relation to CS13 the existing site is a large industrial site and was previously purchased by A-Rock Construction. They have looked to bring more of the site back into use and have completed works to the front of the site to make it more attractive in the streetscene. Previously the area where the gym is sited was utilised as a storage area for the business, but this wasn't efficiently utilised or possible to be easily used by another business. The predominant function of this site is still as a base for A-Rock Construction and the scheme would not impede or distract from this. This ensures that the re-use of this part of the site cannot be defined as lost industrial land, instead it would be bringing part of a site into use that would otherwise be vacant or under-used. As the proposal is partly related to the existing business, they retain ownership and management responsibilities of the site. This ensures that it is acceptable in relation to CS13. Policy CS18 will be assessed elsewhere in this report in terms of amenity.

## **6.0 Design and Visual Amenity**

6.1 In regards the design of the existing building the proposal will not significantly alter the exterior of the existing building, this ensures that the proposal is acceptable in terms of visual amenity.

## **7.0 Residential Amenity**

### **7.1 Overlooking to surrounding dwellings**

7.1.1 Comments have been received from neighbouring residents regarding overlooking from the neighbours sited across the road from the gym. There are windows to the front of the gym at head height (internally) which look towards dwellings, but during the application the developer has agreed to obscurely glaze windows, this will prevent users of the gym looking over towards the dwellings and residents observing customers of the gym. Precise details of what type of obscure glazing is proposed will be conditioned to ensure it is acceptable. This will ensure that the scheme won't significantly impact the privacy levels of the residents of surrounding dwellings.

### **7.2 Traffic**

7.2.1 In regards the impact of traffic there is a separate highways section, and this will consider parking numbers etc. In relation to residential amenity this section will consider the general impact of the scheme on surrounding residents. There have been comments from surrounding residents of the impact of the existing scheme. The existing gym doesn't appear to be functioning as it is currently proposed to in the future, as there have been reports of users of the facility being on site prior to 9am and after 9pm. If the scheme was approved with the proposed opening hours then the proposed opening and closing times would be conditioned and enforceable, if not kept to. The applicant proposes to re-surface and demark the carpark so parking spaces are clear for customers; there have been several comments that the users of the gym have not been using the parking spaces and instead have been parking on double yellow lines in front of the building, in front of a bus stop nearby to the building



and parking on-road within the surrounding vicinity. Due to the layout of the road, required access to driveways and double yellow lines the possibilities for on road parking are limited nearby to the building. Also the northern end of the road is nearby to Queens Park and a short walk to Ravenside retail park, so it is likely that this end of the road is used by visitors to these facilities or who may work in the town centre, to avoid paying for parking. The majority of this issue is likely to be in the day time though.

7.2.2 The parking of vehicles illegally, such as on double yellow lines and in front of bus stops, is not a planning issue, in the sense that this is a matter that is enforceable by the Local Police Service or Highways Authority. The increase in on-street parking and rise in illegal parking after the development commenced shows that the proposal has introduced more traffic to the local vicinity, and this has led to a negative impact to the residents of local dwellings. After meeting with the site owner they have stated that they would manage this issue in the future, and that customers would be encouraged to utilise the car park and not to park illegally; this is not enforceable though.

7.2.3 The proposal is to split up into two separate uses, with the day time focused on 1 to 1 classes, and the evenings with larger (up to 20 people) groups attended classes; the day time use is not likely to lead to a significant impact on the residential amenity, but the evening classes have the potential to impact the surrounding area, if not properly managed. The highways issues, in relation to the proposed car park size for the facility will be assessed further in the highways section.

### 7.3 **Noise**

7.3.1 Local residents have commented that the proposal has led to excessive noise levels. The two issues are the music and shouting related to the gym classes and the departing of customers after 9pm with shouting, door slamming and beeping. In the submitted "clarifications document" this stated that classes would end at 8.30pm and the site close by 9pm, it also said that there would be no tannoys or

amplified music played in the gym. At present this does not appear to be the case.

- 7.3.2 One of the issues is that the building has no air conditioning, so during the summer months it relies on the opening of windows to regulate the heat; this then means that any shouting or music from the classes spills out into the local vicinity and causes a noise nuisance. No solution has been proposed to ensure this won't happen again, other than the lack of a tannoy or amplified music. The installation of an air conditioning unit would be expensive, and as the site owner is unsure of the gym's long term feasibility, they are likely to be reluctant to do these works until the proposal is considered to be a financially sustainable. To ensure the proposal doesn't have a significant impact conditions are considered to be suitable to control the playing of loud music, use of a tannoy system in the building and for the windows to be retained shut during operation. The opening hours will also be conditioned to the hours specified by the applicant.
- 7.4. It is not clear how this facility will develop in the future and if the proposal will be utilised as detailed in this application, and so a temporary permission is proposed to monitor the impact of the scheme on local residents over the next 2 years. If the scheme leads to an excessive noise and/or highways impact on local people which cannot be mitigated then it will be re-considered in the future when the 2 year period comes to an end.
- 7.5 Overall it is considered that the development proposals are acceptable. The overlooking issues will be addressed by the site owner on approval and the noise and opening hours will be closely monitored and controlled in the future, if reasonable limits are exceeded. In regards the impact on residential amenity, specifically highways, the closer managing of behaviour of the users of the facility in terms of their volume when departing and illegal parking should help to reduce the impact of the facility to local people. It is considered to comply with the provisions of policy CS2 and CS18 of the Core Strategy, the wider NPPF and the adopted SPD such that the scheme is acceptable in this regard.

8.0 **Environmental Services**

8.1 Environmental Services were consulted on this application but have not objected.

9.0 **Drainage**

9.1 The building has existing drainage on site and the proposal does not significantly alter the existing situation; this ensures it is acceptable.

10.0 **Highways Issues**

10.1 The Highway Authority was consulted and provided these comments:

*The proposal would apparently utilise some space that is currently occasionally used for storage and would operate outside the working hours of the occupiers of the building. This would presumably mean that the parking available on the site would be able to be utilised by the boxing facility. The provision of some cycle parking for both employees of the business and potential users of the boxing facility may also be beneficial.*

10.2 The facility would be 210 sqm in size; within appendix G of the Chesterfield's 2013 Local Plan it states that 1 space is required per 25 sqm of leisure space, which means that 8-9 spaces are required for a facility of this size; this doesn't take into account the class sizes or any other issues. During the application cycle parking spaces have been included on site, with space within and outside the building for several spaces (3-10).

10.3 The facility offers 13 car park spaces and will offer classes with a maximum of 20 spaces. As the facility is offered to the local community is considered that some of the users may drive or bike to the site. If this occurs then this will reduce the impact of the facility on the local road network. One of the issues that come from a facility like this is the impact on the local area of the changeover period, as a poorly managed changeover could lead to a situation where customers from later classes may struggle to park on site as existing users are utilising these spaces. To ensure this doesn't occur the

officer considers that it's suitable to request a condition for a 10 minute gap between classes, to allow an orderly transition between class members.

10.4 The officer is aware that the facility is up and running, and that neighbours have commented on the impacts of this. It is considered that when the car park has been more formally laid out that this will encourage more users to utilise it. As stated above, the facility offers an adequate number of spaces as recommended for a facility such as this, so the scheme cannot be refused on this issue alone. Also, the issue of illegal parking in this area is required to be dealt with via another authority.

10.5 Having regard to the principles of policies CS2 and CS18 of the Local Plan in respect of highway safety it is not considered that the development proposals pose significant adverse risk to highway safety.

11.0 **Community Infrastructure Levy (CIL)**

11.1 Having regards to the nature of the application proposals the development comprises the creation of new leisure facilities and the development is therefore not CIL Liable.

12.0 **REPRESENTATIONS**

12.1 As a result of neighbour notification, 3 neighbouring residents have provided comments.

12.2 The residents of no.126 Baden Powell Road have provided 3 sets of comments. These include objections to the scheme on traffic, noise and residential amenity. In regards the impact of traffic the scheme has led to more congestion on the road and blocking the road for buses, as well as parking on double yellow lines. In regards noise and disturbance the users of the gym, they have caused an increase in noise when they arrive and depart, as they talk loudly, bang doors and sound horns. Loud music and shouting has also been heard from the unit. The gym also appears to be used outside of the stated hours. In regards residential amenity the increased noise at evenings and weekends impacts their residential amenity. The windows and lighting on the upper floors have led to increased lighting and overlooking, which

is also not considered to be acceptable in terms of residential amenity.

12.3 The residents of no.124 Baden Powell Road have commented that they consider that the proposal will lead to noise, traffic and privacy issues. As the proposal is already open some of the impacts are already obvious, the existing members of the gym makes a lot of noise when departing the premises at the end of classes, there are also many examples of gym users parking on double yellow lines and in front of the bus stop. As well as this, other gym users park on road within the surrounding vicinity which impacts of residents in the local area. Users of the facility overlook towards the residential dwellings across the road, as a running machine is positioned in front of one of these windows.

12.4 The residents of no.120 Baden Powell Road have commented that they consider that the proposal will lead to a negative impact on the area, as the road is narrow and parking options are limited.

12.5 ***Comments – The issues of noise, traffic and overlooking is dealt with in the report.***

### 13.0 **HUMAN RIGHTS ACT 1998**

13.1 Under the Human Rights Act 1998, which came into force on 2<sup>nd</sup> October 2000, an authority must be in a position to show:

- Its action is in accordance with clearly established law
- The objective is sufficiently important to justify the action taken
- The decisions taken are objective and not irrational or arbitrary
- The methods used are no more than are necessary to accomplish the legitimate objective
- The interference impairs as little as possible the right or freedom

13.2 It is considered that the recommendation is objective and in accordance with clearly established law.

- 13.3 The recommended conditions are considered to be no more than necessary to control details of the development in the interests of amenity and public safety and which interfere as little as possible with the rights of the applicant.
- 13.4 Whilst, in the opinion of the objectors, the development affects their amenities, it is not considered that this is harmful in planning terms, such that any additional control to satisfy those concerns would go beyond that necessary to accomplish satisfactory planning control
- 14.0 **STATEMENT OF POSITIVE AND PROACTIVE WORKING WITH APPLICANT**
- 14.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraph 38 of the February 2019 National Planning Policy Framework (NPPF).
- 14.2 Given that the proposed development would not conflict with the revised NPPF (February 2019) and with 'up-to-date' Development Plan policies, it is considered to be 'sustainable development' and there is a presumption on the LPA to seek to approve the application. The LPA has been sufficiently proactive and positive in proportion to the nature and scale of the development applied for.
- 15.0 **CONCLUSION**
- 15.1 The temporary development would not have an unacceptable detrimental impact on the amenities of neighbouring residents or highway safety. As such, the proposal accords with the requirements of policies CS2, and CS13 of the **Core** Strategy and the wider National Planning Policy Framework.
- 15.2 In regards policy CS18 conditions are included to ensure that the policy is acceptable.

16.0 **RECOMMENDATION**

16.1 That the application be **GRANTED TEMPORARY PERMISSION** subject to the following conditions:

**Conditions**

1. The use hereby permitted shall cease within 24 months of the approval of the planning application, unless another planning permission has been granted for a further period.

Reason - In the interests of assessing the impact of the scheme on highway safety and residential amenity.

2. All external dimensions and elevational treatments shall be as shown on the approved plans / documents (listed below) with the exception of any approved non material amendment.

- Clarifications document (received 05/09/19)
- Proposed Site Block Plan (car parking and cycle parking received 20/08/19).
- Existing Ground and First floor plan
- Site location plan
- Planning Statement

Reason - In order to clarify the extent of the planning permission in the light of guidance set out in "Greater Flexibility for planning permissions" by CLG November 2009.

3. The proposed car parking and cycle parking within the site shall be available for the use of the boxing facility during their hours of operation and maintained as such for the life of the development. The parking facilities shall be marked out clearly on site to show the individual parking spaces.

Reason – In the interests of highway safety.

4. Obscure glazing to a minimum Pilkington Scale level 4 shall be installed on the west front first floor windows of the proposed fitness facility. The obscure glazing shall be installed within 28 days of this consent and shall be

retained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason – In the interests of residential amenity.

5. The hours of operation for the boxing club shall be restricted to 16.30 hours to 20.30 hours Monday to Friday, 9.15 hours to 12.00 hours on a Saturday, Sunday and Bank Holidays. The 1 to 1 boxing training shall only be open on site between 9.00 hours to 16.30 hours Monday to Friday. The windows and external doors on the 1<sup>st</sup> floor of the northern and western elevations (not including the shutter) shall not be open during the above opening hours.

Reason – In the interests of residential amenity.

6. The boxing/fitness classes shall operate with a minimum of 10 minutes between class times to avoid overlapping of users and parking demand.

Reason – In the interests of highway safety.

7. The boxing/fitness classes (club) shall operate with no more than 20 persons. The 1 to 1 boxing training shall operate with no more than 4 persons in the fitness facility.

Reason – In the interests of highway safety and residential amenity.

8. During the hours of operation, no amplified music shall be played and no public address systems shall be used.

Reason – In the interests of residential amenity.