

Our ref: LB1134

Planning Portal Ref: PP-11244646

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27th May 2022

Planning & Development
Manchester City Council
Town Hall
Manchester
M60 2LA

Dear Sir/Madam

**LAWFUL DEVELOPMENT CERTIFICATE FOR A PROPOSED USE OR DEVELOPMENT
WILMSLOW PARK, GROUND FLOOR UNIT, 211 HATHERSAGE ROAD, MANCHESTER, M13 0JR**

This Lawful Development Certificate application is submitted on behalf of our client, The Gym Limited, pursuant to Section 192 of the Town and Country Planning Act 1990. The proposal seeks to establish the lawfulness of the proposed use of this ground floor unit within Wilmslow Park, 211 Hathersage Road, Manchester as a use within Class E(d) indoor sport, recreation or fitness. Accordingly, the application has been submitted via the Planning Portal with the following description of development:

"Proposed use within Class E for indoor sport, recreation or fitness on a 24 hour basis".

In line with national and local validation requirements, the following documents are enclosed:

- Application form
- Covering Letter (this document containing the Applicant's statement of case demonstrating the lawfulness of the proposed use)
- Site Location Plan & Demise Plan

Site Description and Background Information

The site comprises of the ground floor unit at Wilmslow Park, 211 Hathersage Road, Manchester, M13 0JR previously occupied as offices for administrative functions for the NHS. The ground floor unit is currently in Class E(g)(i) office use, but the former occupier has vacated and the current owners are seeking to bring the accommodation back into active and beneficial use.

The premises was approved as office space and has been occupied for this use following the grant of planning permission in 2001 for mixed use development consisting of basement parking, ground floor office space plus 7 storeys student bedrooms and key workers flats (Ref: 061649/FO/NORTH2/01). The decision notice in Appendix 1 demonstrates the lawful consent of this unit for office use, with no conditions restricting its use, whilst the VOA record in Appendix 2 confirms its occupation as offices.

In 2019 a Planning Application was granted for the change of use from ground floor offices, Class B, (now Class E(g)(i)) to 24 hour gym, Class D2, (now Class E (d) indoor, sport, recreation and fitness). The decision notice (Ref: 122235/FO/2018) was issued on the 26th June 2019, with Condition 1 providing a three year time period from this date for the development to be commenced. Due to matters related to the COVID-19 Pandemic it has not been possible to take forward the implementation of this consent until now, however it will not be possible to address the pre-commencement conditions and undertake the necessary works to implement the consent before the current permission expires on the 26th June 2022.

This Certificate of Lawfulness is therefore submitted to address the imminent expiry of the current extant planning permission, and in line with the Use Class Order 2020 confirm that the use of the premises for a gym is not development and therefore is lawful.

Whilst the 2001 consent included Conditions 18 and 20, which required the hours of operation of retail and office uses respectively to be agreed, the wording does not apply to other uses within Class E, including indoor sport, recreation and fitness, and as such there are no restrictions on the hours of operation for a gym use.

It is therefore clear that the lawful use of the premises is for offices as per the Planning Permission granted in 2001. On the basis that there are no restrictions on use or hours for gym use, and the current permission is to expire imminently, it is evident that the unit can be occupied for health and fitness use within Class E on a 24 hour basis without needing a new planning permission.

Proposed Use

The proposal is to occupy the ground floor unit at Wilmslow Park, 211 Hathersage Road, Manchester, M13 0JR as an indoor sport, recreation and fitness use. The existing and proposed uses both fall within Class E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

The purpose of this Lawful Development Certificate is to confirm that the use of the premises within Class E(d) and its operation on a 24 hour basis would be lawful. The proposed future occupier of the unit is The Gym.

The Gym is looking to expand into new locations throughout the UK and are an established operator having over 200 similar operations in locations across the UK. The Gym aims to increase access to health and fitness activities to a wide demographic to encourage and improve health by providing a low cost and flexible gym membership option. On average 35% of The Gym's members have not been to a gym before with The Gym attempting to provide its facilities to a much wider market. The Gym provides a high quality but cheaper option for health and fitness activity.

No external works are required to facilitate the new use and access arrangements will be maintained as per existing.

Legislative Background and Requirements

This application is made under Section 192 of the Town and Country Planning Act 1990 (the "Act"). Section 192 provides individuals the opportunity to apply to the Local Planning Authority to obtain a decision on whether "*(a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land*" would be lawful. If the Local Planning Authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate.

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the "DMPO") specifies the contents of an application and how it must be submitted. It sets out that an application needs to describe precisely what is being applied for and the land to which the application relates. This application has been prepared to satisfy the requirements of the DMPO.

The legislation affirms that there is no statutory requirement to consult third parties including parish councils or neighbours; indeed, views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application. A Local Planning Authority is required to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application process.

Meaning of Development

Section 55 of the Act sets out the meaning of "development". Part (1) defines "development" for the purposes of planning legislation. It states that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

Part (2) outlines that the use of land shall not be taken for the purposes of this Act to involve development of the land; Part (2) f) confirms:

f) "in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class"

Planning Assessment

The established use of the premises is as offices. This is confirmed by the original planning permission, VOA records and lawful occupation of this premises by the former office occupier.

The Town and Country Planning (Use Classes) Order 1987 (as amended) sets out Use Classes for the purposes of planning legislation. As of 1st September 2020, the Government revised the Use Class Order, creating a new 'Commercial, Business and Service' use class, Class E under Part A of Schedule 2.

As identified by Part A (g)(i) of the Schedule, "offices to carry out an operational or administrative functions" fall within Class E of the Use Classes Order, as does indoor sport, recreation or fitness, as confirmed in Part A(d).

As stated within the Government's Explanatory Memorandum accompanying the recent Use Class Order amendments, the previous Use Class Order was first introduced in 1987 and required an overhaul to better reflect the diversity of uses found on in centres and to provide the flexibility for businesses to adapt and diversify to meet changing demands. Indeed, the Explanatory Memorandum goes on to stress that modern centres have changed so that they now seek to provide a wider range of facilities and services, including new emerging uses, that will attract people and make these areas viable now and in the future.

As stated within the Explanatory Memorandum *"Changes to another use, or mix of uses, within this class do not require planning permission. Bringing these uses together and allowing movement between them will give businesses greater freedom to adapt to changing circumstances and to respond more quickly to the needs of their communities"*.

Given the lawful use of the building is within Class E, confirmation is sought that a proposed use of the building within another use within Class E use or a mixture of Class E uses does not amount to development. In this regard, Article 3(1) of the Use Classes Order sets out that:

"Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land".

This is consistent with Part (2) f) of Section 55 of the Act, which sets out that use of a building and land for a purpose within the same use class does not amount to 'development' and does not require planning permission.

The proposal will enable reuse of this Class E premises by an identified health and fitness tenant. The proposed use falls within Class E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. From a review of the previous planning permission it is evident that there are no conditions that prevent the use moving between Class E(g)(i) and Class E(d).

Furthermore, there is no restriction on the opening hours of indoor sport, recreation and fitness uses within the premises. Whilst Conditions 18 and 20 of the 2001 consent provides a requirement to agree the opening hours of retail and office uses within the development, the condition does not provide any requirement or restriction on the opening hours of a health and fitness use and therefore the use of the premises as a gym on a 24/7 basis is lawful.

In light of the above, it is therefore clear that the existing and proposed uses of the site fall within the same Use Class, Class E, and the accommodation can be used for indoor sport, fitness and recreation on a 24 hour

basis without planning permission. The proposed change to the use of this unit does not amount to development and therefore does not require planning permission, as set out in (2) f) of Section 55 of the Act.

Summary

This application is made under Section 192 of the Town and Country Planning Act 1990 and seeks a Lawful Development Certificate confirming that planning permission is not required for the occupation of Unt 2, Pilgrim House, Cray Avenue, Orpington as a use within Class E(d), as set out within this letter.

The submission confirms the current lawful use within Class E as an office, with the proposed lawful use of this accommodation within Class E for an indoor sport, recreation and fitness use. There are no restrictions on the opening hours or operational times of indoor sport, recreation or fitness uses. The proposal therefore does not amount to development, meaning it does not require planning permission. The proposals are consistent with Section 192 of the Act and we therefore request that the Lawful Development Certificate is granted at the earliest opportunity.

Yours faithfully

Matthew Brewer
URBANSPACE Planning Ltd

APPENDIX 1 – PLANNING APPROVAL

Ref: 061649/FO/NORTH2/01

Planning

Growth & Neighbourhoods Directorate

Register of Applications

Application Reference

061649/FO/NORTH2/01

Date Registered

19 Mar 2001

Applicant's Name & Address

Watkin Jones & Son Ltd.,
Llandygai Industrial Estate, Bangor, Gwynedd LL57 4YH

Agent's Name & Address (where applicable)

Ludlam Associates,
The Bank, 99, Palatine Road, Didsbury

Location

vacant land on North West corner of Wilmslow Road/Hathersage Road, Rusholme

Proposal

Mixed use development consisting of basement parking with ground floor retail/office/parking plus 7 storeys of 948 student bedrooms and 56 flats for key workers

Ward(s)

Rusholme Ward

Decision

Approved

Date of Decision

28 Jun 2001

Conditions and Reasons:

1) The development must be begun not later than the expiration of five years beginning with the date of this permission.

Reason

Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2) Provision shall be made, to the satisfaction of the City Council, for the adequate storage and disposal of refuse.

Reason.

In the interests of amenity and public health.

3) Within 3 months of the development commencing a management plan for the car parking facilities on the site has been submitted to the Local Planning Authority and approved in writing. The scheme must include provision of spaces for the general use of visitors and shoppers to the Rusholme area. The car park must thereafter be managed in accordance with the approved scheme.

Reason

For the avoidance of doubt.

4) The development hereby approved shall be carried out in accordance with the drawings numbered 6554-[L(-)01], 6554-SK31 received 19th March 2001, 6554-[L(2-)01] rev.A, 6554-[L(2-)06] received 11th May 2001, 6554-[L(2-)07] rev.B, 6554-SK39b, 6554-SK40a, 6554-SK41b, 6554-SK42b, 6554-SK43a, 6554-SK46, 6554-SK47, 6554-SK48, 6554-SK49, 6554-SK50, 6554-SK51, 6554-SK53, 6554-SK55, 6554-SK56, 6554-SK57 received 23rd May 2001, 6554-[L(2-)02] rev.D and 6554-[L(2-)03] rev.D received 30th May 2001.

Reason

For the avoidance of doubt.

5) Within 3 months of the development commencing a specification for the landscaping scheme, including hard landscaping, forming part of the proposed development; the landscaping scheme shall be carried out within 12 months from the date when any building or other development hereby permitted is occupied or carried out as the case may be; any trees or shrubs planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within two years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

Reason

To ensure that the site is satisfactorily landscaped having regard to its location and the nature of the proposed development.

6) During the excavation of service and foundation trenches and any other disturbance to existing ground levels, a qualified archaeologist shall be present on site to record any archaeological features or finds that are uncovered. Any records so made shall be deposited with a body to be agreed, in writing, with the City Council.

Reason.

To ensure that a record, including drawn, written and photographic information as appropriate, is kept of any archaeological discoveries made.

7) Before the development commences, a site investigation must be carried out, appropriate to the proposed development, in order to assess any possible risks arising from the presence of ground gas and/or contaminated land on the site. The site investigation scheme must be submitted to and agreed by the City Council as Local Planning Authority prior to the start of any such investigation. The report shall include an assessment of the results of the site investigation and identify any measures deemed necessary to protect the development, its future users, and the surrounding environment from the presence of ground gas or contamination. Any remedial measures which may be considered necessary by the City Council to provide a satisfactory level of protection shall be agreed with the City

Council and carried out to the satisfaction of the City Council before a start is made on the development unless otherwise agreed with the City Council as Local Planning Authority.

Reason.

To ensure that the presence of or the potential for any contaminated land is detected and appropriate remedial action is taken in the interests of public safety.

8) Fumes, vapours and odours shall be extracted and discharged from the premises in accordance with a scheme to be submitted to and approved by the City Council before the use commences; any works approved shall be implemented before the use commences.

Reason

In the interests of amenity.

9) Samples of the materials to be used in the external elevations shall be submitted to and approved by the City Council before the development is commenced.

Reason

In the interests of visual amenity and to ensure a satisfactory development.

10) No development shall commence until detailed plans for the secure storage of cycles have been submitted to the City Council and approved in writing.

Reason

To ensure the proposed development makes adequate provision for cyclists.

12) Before the development commences a scheme for insulating the proposed residential accommodation against noise from traffic using Wilmslow Road and Hathersage Road will be submitted to and approved by the City Council. Any works which form part of the scheme shall be completed before any of the dwelling units are occupied.

Reason

To protect future residents from noise nuisance.

13) Before the development hereby granted planning permission is commenced on site, a scheme for the acoustic insulation of the proposed buildings together with any externally mounted ancillary equipment, shall be submitted to and approved in writing by, the City Council as the Local Planning Authority. The scheme shall:-

(a) Secure a reduction in the level of noise emanating from the application buildings site;

(b) Include the provision of acoustic glazing to external windows and doors and the provision of acoustic ventilation.

The approved scheme shall be implemented in full before any part of the scheme is first brought into use or as may otherwise be agreed in writing with the City Council as the Local Planning Authority prior to the development commencing on site.

Reason

To safeguard the amenities of the occupiers of nearby residential accommodation.

14) Before the use commences, the underground car park area shall be ventilated in accordance with a scheme to be submitted to and approved by the City Council.

Reason

In the interests of public health and to ensure satisfactory conditions within the car parking area.

15) Full particulars of access for disabled people to the proposed development shall be submitted to and approved by the City Council as Local Planning Authority before the development is commenced, and the development shall be completed in accordance with the particulars so approved.

Reason

To ensure adequate access for disabled people.

16) Within 3 months of the development, which is the subject of this permission, until satisfactory details of all boundary walls, fences, gates, including materials and their finishes have been submitted to and approved in writing by the City Council as the Local Planning Authority, and the development shall be carried out in full accordance with the particulars so approved.

Reason

In the interests of visual amenity and to ensure that the amenities of the area are not adversely affected.

17) Details of any roller shutters or security grilles to be used within the development hereby approved, shall be submitted to and approved in writing by the City Council as the Local Planning Authority prior to the commencement of the office and retail phase of the development, and the development shall be completed in accordance with the approved plans.

Reason

In the interests of visual amenity.

Condition Discharged

18) The permitted hours of operation of the proposed retail units shall be agreed with the City Council as Local Planning Authority prior to the occupation of the premises.

Reason

To safeguard the amenities of the occupiers of nearby residential accommodation once the development is complete.

Condition Discharged

19) The permitted hours for loading and unloading to the proposed retail units shall be agreed with the City Council as Local Planning Authority prior to the occupation of the premises.

Reason

To safeguard the amenities of the occupiers of the nearby residential accommodation once the development is complete.

Condition Being Monitored

20) The permitted hours of operation of the proposed office use shall be agreed with the City Council as Local Planning Authority prior to the occupation of the premises.

Reason

To safeguard the amenities of the occupiers of the nearby accommodation once the development is complete.

Condition Discharged

21) The building shall not be occupied until details of the landscaping, and street furniture as indicated on plan ref: 6554-[L(2-)02] rev.D are submitted to and agreed in writing by the City Council as Local Planning Authority. The landscaping details shall be implemented in accordance with the approved scheme prior to any part of the proposed building being occupied.

Reason

To ensure that the site is satisfactorily landscaped having regard to its location and the nature of the proposed development.

22) Notwithstanding the materials identified for the window frames, no consent is implied or given for the use of UPVC. Details of the materials and finishes to be used in all windows shall be submitted to and approved in writing by the City Council as Local Planning Authority prior to the commencement of development, and the development shall be completed in accordance with the approved details.

Reason

In the interests of visual amenity.

APPENDIX 2 – VOA RECORD



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Property

Gnd Flr Wilmslow Park 211, Hathersage Road, Manchester, M13 0JR

Valuation

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Valuation

Current rateable value (1 April 2017 to present)

£168,000.00

This is not the amount you will pay.

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Description	Offices and premises
Local authority	Manchester
Local authority reference ?	2791857