

**Notice of Review: Unit 33/1, Mayfield Industrial Estate,
Mayfield, Dalkeith****Determination Report**

Report by Ian Johnson, Head of Communities and Economy

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective) at Unit 33/1, Mayfield Industrial Estate, Mayfield, Dalkeith.

2 Background

- 2.1 Planning application 17/00390/DPP for the change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective) at Unit 33/1, Mayfield Industrial Estate, Mayfield, Dalkeith was refused planning permission on 23 June 2017; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
 - 2 The Registration and Acknowledgement of the Notice of Review.
 - 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
 - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
 - A copy of the case officer's report (Appendix C); and
 - A copy of the decision notice, issued on 23 June 2017 (Appendix D).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

4 Procedures

- 4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:

- Have scheduled an accompanied site visit for Monday 28 August 2017; and
 - Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that two consultation responses were received. There were no representations received. As part of the review process the consultees were notified of the review. No additional comments have been received. All the comments can be viewed online on the electronic planning application case file via www.midlothian.gov.uk.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
 - Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported to the next LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

- 5.1 It is considered that no conditions would be required if the LRB is minded to grant planning permission. The reasons for refusing the application relate to the loss of an industrial use and it is considered that this cannot be mitigated by conditions if the LRB are minded to support the review on the basis that the proposed development is acceptable.

6 Recommendations

- 6.1 It is recommended that the LRB:
- a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

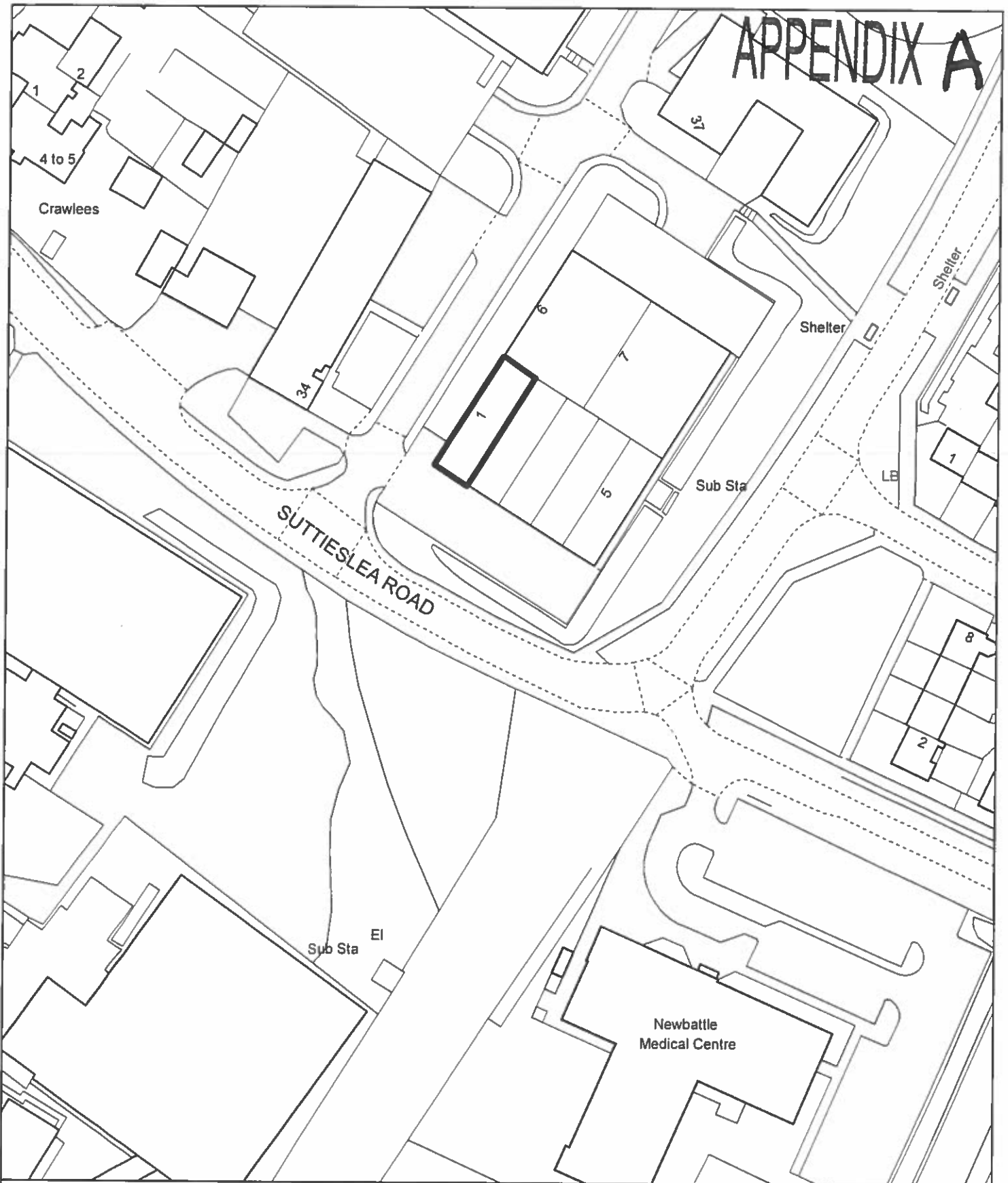
Date: 15 August 2017

Report Contact: Peter Arnsdorf, Planning Manager (LRB Advisor)
peter.arnsdorf@midlothian.gov.uk

Tel No: 0131 271 3310

Background Papers: Planning application 17/00390/DPP available for inspection online.

APPENDIX A



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Unit 33/1, Mayfield Industrial Estate, Mayfield, EH22 4AD

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File No. 17/00390/DPP

Scale: 1:1,000

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NOTICE OF REVIEW

Under Section 43A(8) Of the Town and Country Planning (SCOTLAND) ACT 1997 (As amended) In Respect
of Decisions on Local Developments

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (SCOTLAND)
Regulations 2013

The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2013

IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.

PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS
ELECTRONICALLY VIA <https://www.eplanning.scot>

1. Applicant's Details		2. Agent's Details (if any)	
Title	<div>MR</div>	Ref No.	
Forename	<div>JOHN</div>	Forename	
Surname	<div>WYNNE</div>	Surname	
Company Name	<div>SPARTAN GYM</div>	Company Name	
Building No./Name	<div>UNIT 33/1</div>	Building No./Name	
Address Line 1	<div>MAYFIELD IND. EST.</div>	Address Line 1	
Address Line 2	<div>DALKEITH</div>	Address Line 2	
Town/City	<div>EH22 4AD</div>	Town/City	<div>CORPORATE RESOURCES FILE</div>
Postcode		Postcode	<div>RECEIVED 27 JUL 2017</div>
Telephone	<div>07591 159892</div>	Telephone	
Mobile		Mobile	
Fax		Fax	
Email	<div>spartanymedinburgh@gmail.com</div>	Email	
3. Application Details			
Planning authority		<div>MIDLOTHIAN</div>	
Planning authority's application reference number		<div>16/00846/OPP 17/0390/DP</div>	
Site address			
<div>SPARTAN GYM</div> <div>UNIT 33/1</div> <div>MAYFIELD INDUSTRIAL ESTATE</div> <div>EH22 4AD</div>			
Description of proposed development			
<div>Gym</div>			

Date of application

16/05/19?

Date of decision (if any)

23/6/19

Note. This notice must be served on the planning authority within three months of the date of decision notice or from the date of expiry of the period allowed for determining the application.

4. Nature of Application

Application for planning permission (including householder application)

☒

Application for planning permission in principle

☐

Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition)

☐

Application for approval of matters specified in conditions

☐

5. Reasons for seeking review

Refusal of application by appointed officer

☒

Failure by appointed officer to determine the application within the period allowed for determination of the application

☐

Conditions imposed on consent by appointed officer

☐

6. Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

Further written submissions

One or more hearing sessions

Site inspection

Assessment of review documents only, with no further procedure

☒
☒
☐
☐

If you have marked either of the first 2 options, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing necessary.

7. Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

Can the site be viewed entirely from public land?

☐

Is it possible for the site to be accessed safely, and without barriers to entry?

☒

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

No

8. Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

- 1/ EMPTY UNIT - 18 MONTHS EMPTY AFTER NUMEROUS LETTING ATTEMPTS
- 2/ WE ARE ON A BUS ROUTE - NO NEG. FOR PRIVATE TRANSPORT (CARS)
- 3/ BUS STOP DIRECTLY OUTSIDE GYM.
- 4/ OTHER UNITS HAVE BEEN CONVERTED FROM INDUSTRIAL TO LEISURE. WHY NOT US?
- 5/ MAYFIELD GYM IS CLOSING DOWN - WHAT ARE PEOPLE GOING TO DO?
- 6/ LOTS OF NEW HOUSES ARE BEING BUILT. MORE PEOPLE WILL WANT A GYM.
- 7/ OUR GYM PROMOTES HEALTHY LIFESTYLE. OBESITY IS AN ISSUE IN MAYFIELD.
- 8/ WE ARE TRYING TO PROMOTE EXERCISE & HEALTHY EATING HABITS
SURELY THIS IS A POSITIVE FOR THE COMMUNITY.
- 9/ WE OFFER FREE DIET & TRAINING PROGRAMS TO EVERYONE
REGARDLESS IF THEY TRAIN AT OUR GYM.

Have you raised any matters which were not before the appointed officer at the time your application was determined?

Yes ☐ No ☐

If yes, please explain below a) why you are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review.

- 1/ OUR MEMBERS ARE A GREAT GROUP OF
MEN & WOMEN WHO TRAIN HARD & HELP
EACH OTHER. THIS IS POSITIVE AND HEALTHY

9. List of Documents and Evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review

By E MAIL.

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

10. Checklist

Please mark the appropriate boxes to confirm that you have provided all supporting documents and evidence relevant to your review:

Full completion of all parts of this form



Statement of your reasons for requesting a review



All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.



Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

DECLARATION

I, the applicant/agent hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

Signature:



Name:

JOHN WIPNIE

Date:

26-7-17

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act.

MIDLOTHIAN COUNCIL**DEVELOPMENT MANAGEMENT
PLANNING APPLICATION DELEGATED WORKSHEET:****Planning Application Reference:** 17/00390/DPP**Site Address:** Unit 33/1 Mayfield Industrial Estate, Dalkeith.

Site Description: The application site is a unit within a large building housing 5 commercial units. The other units are in use as a laundry, metal fabrication and MOT centre. There is associated parking to the south. The site is within the northern part of Mayfield Industrial Estate, which appears to be fully occupied with businesses such as a scaffolding company, coach/car hire and cleaning services.

Proposed Development: Change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective).

Proposed Development Details: A gym use began in October 2016. Four people will be employed at the site with between 25-30 customers per day. The opening hours are 9am to 9pm Mondays to Fridays, 9am to 3.30pm at weekends. The applicant had originally stated that they may introduce classes, however they later confirmed this would not be the case. The application form states there are five parking spaces serving the site but the applicant has also suggested that there are seven parking spaces.

The applicant states that unit was vacant for approximately 18 months before they started the gym. This was marketed on site as well as advertising in Wallyford and on Gumtree. There were only two enquiries, one for retail use and the other a dance studio. The site was previously used by a limo company with a lease due to expire in 2017. In December 2014 the limo company informed the owners they would surrender the lease on the condition that a replacement tenant could be found. The applicant suggests that it has taken considerable time and effort to find a suitable tenant. The owner of the unit, RP Slight & Sons, appears to be a joiner business based in Wallyford.

The applicant makes reference to other leisure activities in the area and good transport links and they also indicate the use could improve the health of people in the area. An existing gym in the area is closing down and there will be more people and housing in the area.

Background (Previous Applications, Supporting Documents, Development Briefs):

Application site

16/00846/DPP Change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective). Refused – inappropriate non-industrial use in industrial estate resulting in the loss of premises which would otherwise be used for the furtherance of economic development; not demonstrated that the site has been

vacant and marketed for sufficient time that there is no prospect of it being occupied by a business more appropriate to the area; contrary RP20, COMD1 and ECON4.

Consultations:

The **Policy and Road Safety Manager** has no objection.

The **Economic Development Manager** considers that demand for small industrial units is strong and that if marketed more effectively a suitable industrial tenant would be found. There is a lack of such units in the surrounding area. Although there are other leisure uses in the surrounding area, these are large units which were obsolete. The site is part of a row of industrial units and the use as a gym is incongruous with the remainder of the units in the surrounding area. They would not be supportive of this application.

Representations: No representations were received.

Relevant Planning Policies: The relevant policies of the **2008 Midlothian Local Plan** are;

RP20 Development Within the Built Up Area states that development will not be permitted where it is likely to detract materially from the existing character or amenity of the area;

COMD1 Committed Development identifies Mayfield Industrial Estate as one of the established economic land supply sites in the Local Plan. This is for business and general industry use; and

ECON4 Storage and Distribution and other non-residential use on existing industrial land and buildings states that in locations close to the strategic road network, consideration may be given to a storage and distribution (class 6) or other non-residential use on such sites and on existing industrial land and buildings subject to the following criteria being met: the level of employment arising from the proposal is equivalent to class 4 or class 5 uses; there is no loss of land identified for research and development/knowledge based industries; and provision is made to accommodate traffic generated by the proposed use, and for suitable access, without adversely affecting the local area.

The relevant policies of the **2014 Midlothian Local Development Plan Proposed Plan** are;

STRAT1 Established Economic Land Supply contains similar policy requirements to policy COMD1 of the adopted Local Plan;

DEV2 Protecting Amenity Within the Built Up Area contains similar policy requirements to policy RP20 of the adopted Local Plan; and

ECON1 Existing Employment Locations states that existing business and industrial locations will be safeguarded against loss. Within these areas, economic development, redevelopment or expansion (excluding retail) will be supported where it: would contribute to an employment density commensurate with the type of development proposed; would be compatible with neighbouring uses; would not have a detrimental impact on the amenity of the area; and could mitigate any infrastructure deficiency or requirement. The introduction or expansion of non-business or industrial uses will not be permitted. The loss or redevelopment of an existing business or industrial site in productive employment use to an alternative

non-employment generating use will only be permitted if there is no net detriment to the overall supply of economic land.

Planning Issues: The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval.

The application has been submitted as a result of enforcement action, as the applicants opened and began operating the business without obtaining planning permission. Therefore this use is currently unauthorised. The site lies within the established Mayfield Industrial Estate. The surrounding industrial estate appears to be operating successfully with no vacant units, is busy and active.

The applicant has stated that the site was vacant for 18 months until the gym use began in October 2016. They state that the advertising campaign for marketing the unit, while it was empty, involved erecting an advertising sign at the site, displaying another advertising sign at the applicant's other site in Wallyford and also advertising on Gumtree. Only two enquiries were received, neither for industrial use.

The application site is small and the Economic Development Manager considers these to be generally in high demand for industrial use. The advertising campaign carried out appears to have been very limited and not at the scale which would convince the Planning Authority that there is no appetite for the unit to be used for industrial purposes. As stated by the Economic Development Manager, if the unit had been more effectively marketed then it is highly likely that an industrial tenant would have been found.

The Planning Authority has a strong preference that such units be retained for industrial type uses, as these are activities which cannot be readily accommodated out with these designated areas. There appears to be a low number of vacant industrial sites within this area of Mayfield. The Planning Authority would be concerned if this unit were to be lost from the economic development land supply to a leisure use.

Therefore it has not been demonstrated to the satisfaction of the Planning Authority that the property was adequately marketed and that a sufficient period of time has passed between the unit becoming vacant and the gym use being established to justify that there was no prospect of the building being taken over by a use or business more appropriate within this industrial area.

Notwithstanding the above, policy ECON4 does provide some scope to support the change of use from industrial land and buildings to other uses (excluding residential), in exceptional circumstances, where proposals comply with the necessary criteria.

The first of these criteria relates to employment numbers being equivalent to that generated for a class 4 or 5 use. The Scottish Enterprise Economic Impact Guidance, provided by the Council's Economic Development Section, states that based on the footprint of the building, a light industrial use would have generated approximately four jobs. The applicant has confirmed that there are four staff employed at the site.

The proposal would not result in the loss of land identified for research and development/knowledge-based industries as the site was previously in class 5 use.

The Policy and Road Safety Manager has not raised any road safety concerns. There is an area of parking to the south of the site which the applicant has stated is for their use.

The applicant has promoted the community benefits of the proposed use as a material consideration. The Planning Authority does not dispute that the proposed use may be of benefit to the community but is concerned that the proposal attracts members of the community to a busy and active industrial estate. It is not clear why the proposed use must operate from the industrial estate rather than from a building within the community. The applicant also makes reference to other leisure uses in the area. These have been subject to planning applications which were granted on the specifics of their operation. These should not act as a precedent to allow leisure uses within industrial areas and each application should be considered on its own merits.

Overall, it has not been demonstrated that there are exceptional circumstances which would lead to the Planning Authority being able to support this proposal. There is a realistic probability that the site could quite easily be leased by a business which would offer appropriate employment and use of this industrial unit. This position has been taken for previous similar applications, a view which has been supported by the Council's Planning Committee and Local Review Body at site in an industrial estate in Penicuik.

Recommendation: Refuse planning permission.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 17/00390/DPP

Spartan Gym
Unit 33/1
Mayfield Industrial Estate
Dalkeith
EH22 4AD

Midlothian Council, as Planning Authority, having considered the application by Mr Ludovico Rizza, Unit 33/1, Mayfield Industrial Estate, Dalkeith, EH22 4AD, which was registered on 16 May 2017 in pursuance of their powers under the above Acts, hereby refuse permission to carry out the following proposed development:

Change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective) at Unit 33/1, Mayfield Industrial Estate, Dalkeith, EH22 4AD

In accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	1:1250	16.05.2017

The reasons for the Council's decision are set out below:

- The proposed development would result in an inappropriate non-industrial activity within the established industrial estate thereby resulting in the loss of premises which would otherwise be used for the furtherance of economic development.*
- It has not been demonstrated, to the satisfaction of the Planning Authority, that the site has been vacant and marketed for a sufficient period of time, or level, to justify that there is no prospect of it being occupied by a business or other industrial operation which would be more appropriate to the surrounding area.*
- For the above reasons the proposed development does not comply with the terms of policies RP20, COMD1 or ECON4 of the adopted Midlothian Local Plan.*

Dated 23 / 6 / 2017



.....
Duncan Robertson
Lead Officer – Local Developments
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



**The Coal
Authority**

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison

Direct Telephone: 01623 637 119

Email: planningconsultation@coal.gov.uk

Website: www.gov.uk/government/organisations/the-coal-authority

INFORMATIVE NOTE

The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Standards approval (if relevant). Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant safety and engineering risks and exposes all parties to potential financial liabilities. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should wherever possible be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design is developed and agreed with regulatory bodies which takes into account of all the relevant safety and environmental risk factors, including gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at: <https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries>

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com or a similar service provider.

If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority

This Informative Note is valid from 1st January 2017 until 31st December 2018