DECISION DELEGATED TO HEAD OF PLANNING

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Application No:	**H16-0764-23**	**Applicant:**	**Switha Ltd**
Proposal:	Proposed use for 24 hour gym		
Location:	Carpetright 70 Westlode Street Spalding		
Terminal Date:	3rd November 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Not applicable because the proposal is to determine whether or not a use is lawful or not.

Representations:

	Object	Support	No Obj.	Comments
RESIDENTS	1	1	0	0

CASE OFFICER ASSESSMENT

Proposal

S192 Lawful Use Certificate Application.

Specifically the application seeks a certificate to confirm a lawful proposed use of Unit 2 (formerly Carpetright) as a gym with unrestricted trading hours, i.e. no restriction on 24 hour opening if desired by the gym operator.

The certificate relies on the existing planning permissions that apply to the unit together with the introduction of Class E to the Use Classes Order.

Site Description

The application site is within the Spalding Settlement Limit as defined in the South East Lincolnshire Local Plan (SELLP), 2019. The site is also defined in the local plan as part of Spalding Town Centre. Spalding is defined in the SELLP as a Sub-Regional Centre. The site is in an edge of centre location.

The site is a retail warehouse unit currently occupied by Carpetright. It is part of a wider development, forming one of two units forming the Spalding Retail Park. Permission was originally granted in 2005 for the erection of two non retail warehouse units, external garden centre, 24 one and two bedroom flats, parking for 161 cards and associated works. The current application's red line plan only relates to the Carpetright warehouse unit, not the wider site.

There are residential uses to the east and along Albion Street/Double Street to the south of the retail park. These are a mixture of older traditional two storey dwellings but single aspect apartments have also been built as part of the original scheme for the retail park on the southern elevation of unit 1. The site is also within a Conservation Area and listed buildings exist nearby but not adjacent.

History

H16-0941-21 - Demolish existing buildings and erect two non food retail warehouse units, external garden centre, 24 one and two bedroom flats, parking for 161 cars and associated works - approved under H16-0610-05. Modification of Condition 2 deleting the words 'food & drink for consumption off the premises (other than confectionary & pet foods)' - re-submission of H16-0957-20. Approved 20 October 2021.

H16-0957-20 - S73A CONTINUATION. Demolish existing buildings and erect two non food retail warehouse units, external garden centre, 24 one and two bedroom flats, parking for 161 cars and associated works - approved under H16-0610-05. Modification of Condition 2 to allow the sale of food & drink items from Unit 2. Withdrawn (appeal).

H16-0819-18 - Section 73 Application. (Former Homebase Store, 70 Westlode Street) Demolish existing buildings and erect two non-food retail warehouse units, external garden centre, 24 one and two-bedroomed flats, parking for 161 cars and associated works approved under H16-0610-05. Modification of Condition 2 to allow beneficial occupation of vacant store by B & M Retail Ltd - Approved 5th November 2018.

H16-0610-05 - Demolish existing buildings and erect two non-food retail warehouse units, external garden centre, 24 one and two-bedroomed flats, parking for 161 cars and associated works. - Approved 9 June 2005.

Consultation Responses

Three responses from 3 members of the public raise some or all of the following points:

In Support

Will do wonders for the gym culture in the town, many gyms feel elitist and prevent people from going, especially the people who need it the most. Having 24 hours space that has adequate facilities, easily accessible, walkabout for most of Spalding and within a nurturing atmosphere will hopefully change the gym culture in our town for the better.

Object

-Spalding does not need anymore gyms. Having another will have a detrimental affect on the gyms currently in Spalding. The car park at Carpetright is also not big enough, it's already packed at weekends with B&M shoppers.

-Too much noise for residence around the area, as music will be played throughout the night. Parking will be over populated, taking money away from B&M. It will close other gyms. Will impact Castle Complex around the corner which is Council funded meaning additional funding, which is crucial for continuous development for the South Holland area

Planning Considerations

This application is a legal determination and planning policy is not relevant to the determination as to whether or not the proposed use would be lawful.

The following has been submitted in support of the application:

-Application Form.
-Decision Notices for H16-0610-05, H16-0810-18 and H16-0941-21.
-Block Plan
-Covering letter

Changes to the Use Classes Order

On 1 September 2020, the Use Classes Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) were significantly altered, and the new permitted development rights came into force in April 2021 and August 2021. Retail uses, previously classified as Class A, are now considered within Class E, Commercial, Business and Service Uses.

This updated and consolidated General Permitted Development Order gives certain permitted permanent changes for Class E uses, such as to a mixed use for any purpose within Class E . The purpose of the changes to these orders is to support the Government intention to enable flexibility of uses within the associated Class E uses.

Current lawful Use

The planning history shows that the planning unit was part of a larger retail development, with this retail warehouse being granted to operate as Carpetright. The lawful use is therefore retail. There were no conditions imposed at the time removing permitted development rights in relation to changes of use.

The previous and proposed uses are both considered to fall within Class E of the Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020. Thus no material change of use is proposed. The use of a gym, even if used 24 hours a day, is lawful.

Other Matters

Two objections in relation to this application were received, which relate to the respondents not wanting the gym as it will compete with other gyms in the town. The planning system cannot interfere with market competition, and in this case, the gym is in an edge of centre location and therefore is an appropriate use in any case.

Parking is also cited as a concern, and that the car park is full of B&M Shoppers. When the use is no longer in operation B&M will not attract customers and therefore the car parking situation will change. Spreading the car parking over a 24 hour period for a gym will change the parking patterns - meaning off peak use will flatten the pattern of car parking over a longer period.

Noise from the gym is controllable via other legislation rather than planning, but in any event it is not considered that a gym would be particularly noisy from the outside of the building.

Whilst the above concerns are noted, the proposal relates to a legal determination if planning permission is required or not, and it is not the purpose of the application to consider the planning merits of the case in policy terms. The comments do not affect the determination of the proposal as a result.

Conclusion

Approve.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share

a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.