

Reference No: P/VOC/2022/01520
Proposal: Erection of 21no. commercial units (use class E) with associated access & parking facilities (with variation of condition 3 of planning permission P/FUL/2021/00684 to allow for the use of Units 17 & 18 to include Class E (d) (fitness))
Address: Parkway Farm Business Park Middle Farm Way Poundbury Dorchester Dorset DT1 3AR
Recommendation: Refuse
Case Officer: James Lytton-Trevers
Ward Member: Cllr Biggs
CIL Liable: No

1.0 Reason application is going to the Committee

- 1.1 Referred by the Development Management Manager following a request by Councillors Jespersen and Biggs.

2.0 Summary of Recommendation:

- 2.1 Refuse permission for the following reason:

The proposal would lead to the loss of industrial land and no evidence has been provided whether the proposal provides economic enhancement over and above the uses already approved. In addition, it would be incompatible with neighbouring land uses which will be predominantly industrial in nature. Therefore, the proposed use of two units as a gym for fitness classes is not considered to comply with West Dorset, Weymouth & Portland Local Plan policies ECON 1, ECON 2 and DOR 2.

3.0 Reason for the recommendation:

- 3.1 The proposal would lead to the loss of industrial land.
- 3.2 The specific fitness training of children of underrepresented backgrounds cannot be made a condition of any permission.
- 3.3 The units should not be 'reserved' until needed by the applicant.
- 3.4 A temporary user would have an expectation of remaining permanently.
- 3.5 No evidence has been provided whether the proposal provides economic enhancement over and above the uses already approved and the units have not been erected and it is not possible to gauge demand for these for industrial purposes.

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- 3.6 It would be incompatible with neighbouring land uses which will be predominantly industrial in nature.
- 3.7 The proposed use of two units as a gym for fitness classes is not considered to comply with Local Plan policies ECON 1, ECON 2 and DOR 2.

4.0 Key planning issues

Issue	Conclusion
Basis of granting the original permission	The original planning permission properly restricted the uses within Class E to be policy compliant.
Principle of the proposed use for gym providing fitness classes: Class E (d)	Contrary to Local Plan policies ECON 1, ECON 2 and DOR 2.

5.0 Description of Site

- 5.1 The site, which is currently undeveloped and cordoned off with herras fencing, is located to the south of the existing Parkway Farm Business Park. It is bounded to the west by the noise embankment which forms a buffer between the site and the A35. It is located off Middle Farm Way. It is within the defined development boundary for Dorchester. It is within the Dorset Area of Outstanding Natural Beauty and lies within the Open Chalk Downland Dorset Landscape Character Type/Dorchester Downs AONB Landscape Character Area.
- 5.2 Within the landscape there are numerous remains of ancient settlement sites, long barrows, burial mounds and notable hill forts from the Neolithic, Bronze and Iron ages as well as more recent Roman remains.

6.0 Description of Proposal

- 6.1 The application proposes the variation of condition 3 of an existing consent for the erection of 21 commercial units, at Parkway Farm Business Park, Poundbury. The variation of the condition would enable units 17 and 18 to be used as a gymnasium for fitness classes under Use Class E (d) of the Town and Country Planning (Use Classes) Order 1987 (as amended).

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- 6.2 The applicant, Dorwest Herbs, currently wish to occupy two of the proposed units, but would lease a further two units to another business for fitness classes for 5 years until such time as Dorwest Herbs needed these.
- 6.3 The proposed development would constitute Phase III of a commercial/industrial development on an allocated employment site at Poundbury. The 21 No. units, buildings 11 to 31, at the southern end of the Parkway Farm development would be for commercial businesses and services development under use Class E currently with restrictions to the following uses in order to comply with local plan policy DOR2:
E(c) Provision of:
E(c)(i) Financial services,
E(c)(ii) Professional services (other than health or medical services), or
E(c)(iii) Other appropriate services in a commercial, business or service locality
E(g) Uses which can be carried out in a residential area without detriment to its amenity:
E(g)(i) Offices to carry out any operational or administrative functions,
E(g)(ii) Research and development of products or processes
E(g)(iii) Industrial processes
B2
B8;
- 6.4 Use as a gym providing fitness classes, E(d), is not included.

7.0 Relevant Planning History

There are two extant permissions on the site, with differing layouts, neither of which have been implemented, as follows:

WD/D/19/000681 Decision: GRA Decision Date: 11/12/2019

Erect 22 commercial units for B1, B2 and B8 use with associated access and parking. The permission excluded certain uses with the following condition:

P/FUL/2021/00684 Decision: GRA Decision Date: 17/02/2022

Erection of 21no. commercial units (use class E) with associated access & parking facilities

8.0 Relevant Constraints (edited)

Within defined development boundary of Dorchester

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DOR2 Poundbury Parkway Farm Business Site Extension Key Employment Site

Area of Outstanding Natural Beauty (statutory protection in order to conserve and enhance the natural beauty of their landscapes – National Parks and Access to the Countryside Act of 1949 & Countryside and Rights of Way Act, 2000)

9.0 Consultations

All consultee responses can be viewed in full on the website.

Natural England – No comment

National Highways – No objection

Planning Policy - Comments

The development plan for the site is the adopted West Dorset and Weymouth & Portland Local Plan. The site is located within the defined development boundary (DDB) for Dorchester and is allocated under Policy DOR2 of the adopted local plan - Poundbury Parkway Farm Business Site Extension. The policies considered most relevant to the assessment of the principle of the proposal are:

Policy SUS2: Distribution of Development

Policy DOR2: Poundbury Parkway Farm Business Site Extension

Policy ECON1: Provision of Employment

Policy ECON2: Protection of Key Employment Sites

Policy SUS2 sets out that the main towns, such as Dorchester, would be the highest priority locations for new development. As the site already has the benefit of planning permission and as is within the DDB for Dorchester, the general principle of the site's development has been established.

Policy DOR2 allocates the subject land for 'non-neighbourly B2 and similar employment uses', and as noted, planning permission P/FUL/2021/00684 (issued 17/02/2022) gives consent for uses falling within Class B2 of the Use Classes Order, along with Class B8, and uses falling within Classes E(c)(i), E(c)(ii), E(c)(iii), E(g)(i), E(g)(ii), E(g)(iii). Notwithstanding the deviation from policy DOR2 in granting these more neighbourly uses on top of B2 use as specified in the policy, the consent expressly omits use class E(d) (Indoor sport, recreation or fitness) from the permission, among other non-business type uses that now fall under Use Class E.

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The supporting text of policy ECON1 provides a broad definition of Employment, which is as follows:

“For the purposes of this plan employment includes development in the B Use Classes such as offices, workshops and industrial premises, storage and distribution warehouses and sui generis uses commonly found on industrial estates. It also applies to non B class development which provides direct, on-going local employment opportunities such as tourism and retail. It does not apply to businesses such as farming, care homes and tourist accommodation providers, which are covered in other policies of the plan, or to development that indirectly benefits the local economy (such as housing).

Employment sites are land or premises that are presently in an employment use, or previously in an employment use if now vacant.”

Whilst a gymnasium may provide some limited on-going local employment opportunities, the plan is not specific as to whether such a use would fall within the definition of employment in the adopted local plan. Furthermore, health and fitness centres are defined within Annex 2: Glossary of the National Planning Policy Framework (2021) as a ‘Main Town Centre Use’. That said, recent changes to the Town and Country Planning (Use Classes) Order 1987 (as amended) include ‘indoor recreation or fitness’ under its new Class E(d), along with the more neighbourly business uses previously falling under B1, as new classes E(c), and E(g). In essence this could enable a former B1 business use to be used as gymnasium without the need for planning permission; something that would not be possible in this case due to the condition imposed (as discussed).

Table 4.1 of the adopted local plan lists the Parkway Farm Business Park extension as a Key Employment Site, and policy ECON2 (Protection of Key Employment Sites) sets out the following:

- *Within key employment sites (as identified on the policies map) applications for B1 (light industrial), B2 (general industrial), B8 (storage and distribution) and other similar uses will be permitted subject to proposals not having a significant adverse impact on surrounding land uses.*
- *The use of key employment sites for employment purposes other than B1, B2 and B8 may be appropriate if it can be proven that the use provides on-site support facilities or demonstrates an economic enhancement over and above B1 / B2 / B8 uses. Such development will not prejudice the efficient and effective use of the remainder of the employment area.*

In consideration of whether the principle of the variation of condition to allow a ‘fitness’ use at the site is appropriate, Criteria ii of the policy requires the case officer

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to be satisfied that proof has been provided in relation to whether the proposal provides economic enhancement over and above the uses already approved.

Supporting text for policy ECON2 states that *“in considering economic enhancement, regard will be given to issues such as wage rates, achievement of higher level skills, job numbers, and key sectors identified by the Local Economic Partnership”*. It may be relevant to this assessment that the units approved under original permission P/FUL/2021/00684 have not yet been constructed.

Furthermore, consideration will be needed as to whether the provision of a gymnasium on the site would prejudice the efficient and effective use of the remainder of the employment area. On this note paragraph 185 of the NPPF is relevant in requiring planning policies and decisions to ensure new development is appropriate for its location, taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. Given that policy DOR2 of the adopted local plan is specific in designating the site for those more non-neighbourly B2 uses, consideration is recommended as to whether the provision of a gymnasium on the site would prejudice any such potential B2 uses on the site.

Other matters

The case officer has highlighted a previous planning permission whereby a change of use to unrestricted Class E use has been granted (ref: WD/D/20/002108) for a single unit on the existing part of Parkway Farm Business Park. This permission could, in principle allow a gymnasium to be formed on the existing part of the site, however the details are not specific in stating that such a use would occur.

The case officer has requested comments in relation to whether any precedent has been set by the granting of such a permission, which may affect the assessment of the principle of the current proposed development. In response I would suggest that whilst an unrestricted Class E use for one unit on the existing Parkway Farm site has been deemed appropriate, this doesn't mean that by virtue of this, such a use would be considered appropriate on the Parkway Farm extension site, when considering the principle of the current proposal against policies DOR2 and ECON2 of the adopted local plan.

Dorset Highways – No objection.

Right of Way Ranger – No objection.

Environmental Health Officer – No comment.

Dorchester Town Council – Support

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Supported the application, especially having heard from the prospective tenant that the proposed fitness classes would allow access to fitness facilities to children from underrepresented backgrounds and provide opportunities of employment and apprenticeships.

The Committee considered the provision of 10 parking spaces to be adequate for the proposed community asset

10.0 Representations

10.1 One comment was received from the Ward Member that it would provide employment and a community asset that will be available to underrepresented groups.

11.0 Relevant Policies

West Dorset, Weymouth and Portland Local Plan

SUS2 – Distribution of Development

ECON1 – Provision of Employment

ECON2 – Protection of Key Employment Sites

DOR2 – Poundbury Parkway Farm Business Site Extension

National Planning Policy Framework

Section 6. Building a strong, competitive economy

Other material considerations

Design and Sustainable Development Planning Guidelines (adopted 2009)

DCC Parking standards guidance

12.0 Human rights

12.1 Article 6 - Right to a fair trial.

12.2 Article 8 - Right to respect for private and family life and home. The first protocol of Article 1 Protection of property

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12.3 This Recommendation is based on adopted Development Plan policies, the application of which does not prejudice the Human Rights of the applicant or any third party.

13.0 Public Sector Equalities Duty

13.1 As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have “due regard” to this duty. There are 3 main aims:-

- Removing or minimising disadvantages suffered by people due to their protected characteristics
- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

13.2 Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the PSED.

13.3 In the context of the above PSED duties the scheme provides parking spaces adjacent to the entrances of the commercial units. The entrance doors will also be fitted with level thresholds to provide for easier access to the units.

14.0 Financial benefits

14.1 The proposed development would provide employment opportunities both in the short term during the construction and thereafter use of the commercial units.

14.2 It would provide the non-material benefit of business rates although the amount is not known at this stage.

15.0 Climate Implications

15.1 Energy would be used as a result of the production of the building materials and during the construction. This is inevitable and a balance has to be struck between providing employment buildings versus conserving natural resources and minimising energy use.

15.2 The development is considered to be in a sustainable location within the DDB for Dorchester. The proposed location of the commercial units in close proximity to the residential properties of Dorchester should help to reduce

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travel time. It increases the employment opportunities nearby to where they live. This should help to reduce emissions from vehicles, as it results in shorter travel times to work but also increases the ability travel to work by other modes including walking and cycling. The proposed development also includes cycle parking provision.

16.0 Planning Assessment

- 16.1 There has been no change in policy since the last application was approved. Therefore, the only matter for consideration is whether the use of two units for fitness classes would comply with current policy and other material considerations.

Basis of granting the original planning permission

- 16.2 The original application was for the erection of 21 commercial units for Class E use. The site is located within the local plan allocation DOR 2, Poundbury Parkway Farm Business Site Extension which reads as follows:

i) Land south-west of the Parkway Farm Business site is designated for non-neighbourly B2 and similar employment uses, subject to the provision of satisfactory design, landscaping and mitigation measures to reduce any adverse impacts to an acceptable level.

- 16.3 The proposal was considered to comply with the first part of this policy as it involved the erection of Class E units. The site is also designated as a key employment site and therefore policy ECON 2 was applicable. The relevant section of which is i) which reads as follows:

i) Within key employment sites applications for B1 (light industrial), B2 (general industrial), B8 (storage and distribution) and other similar uses will be permitted subject to proposals not having a significant adverse impact on surrounding land uses.

- 16.4 Since the policy was written, in September 2020 Use Class E had been introduced. Use Class E (Commercial, Business and Service) brings together existing classes A1(shops), A2 (financial and professional services), A3 (restaurants and cafes) and B1 (business) as well as parts of classes D1 (non-residential institutions) and D2 (assembly and leisure) into one single use class to allow for changes of use without the need of planning permission. Classes B2 and B8, however, remain as separate classes. Clearly these new uses were never intended such as A1, A2, A3, D1 and D2 when the policy was written.

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16.6 Class E now includes the following:

E(a) Display or retail sale of goods, other than hot food

E(b) Sale of food and drink for consumption (mostly) on the premises

E(c) Provision of:

E(c)(i) Financial services,

E(c)(ii) Professional services (other than health or medical services), or

E(c)(iii) Other appropriate services in a commercial, business or service locality

E(d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms)

E(e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)

E(f) Creche, day nursery or day centre (not including a residential use)

E(g) Uses which can be carried out in a residential area without detriment to its amenity:

E(g)(i) Offices to carry out any operational or administrative functions,

E(g)(ii) Research and development of products or processes

E(g)(iii) Industrial processes

16.7 Of these, only the following would be allowed under the policies in the Local Plan:

E(c) Provision of:

E(c)(i) Financial services,

E(c)(ii) Professional services (other than health or medical services), or

E(c)(iii) Other appropriate services in a commercial, business or service locality

E(g) Uses which can be carried out in a residential area without detriment to its amenity:

E(g)(i) Offices to carry out any operational or administrative functions,

E(g)(ii) Research and development of products or processes

E(g)(iii) Industrial processes

B2

B8;

16.8 The original planning permission properly restricted the uses within Class E to be policy compliant. Clearly the use for Class E(d) as a gym for fitness classes would not comply with policy ECON2.

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Principle of the proposed use for gym providing fitness classes: Class E (d)

- 16.9 Granting permission for a use which does not comply with policy leads to a situation where it would deter potential other uses that can only be located in a location for industry when the proposal for a gym providing fitness classes could be located in other locations, including town centres, where general industry cannot. It is a fundamental principle of the planning system that allocated sites for industry need to be guarded against inappropriate uses which potentially waste industrial land especially as new industrial sites are hard to find in Dorchester.
- 16.10 The applicant states that it would be temporary, for 5 years, after which the applicant would occupy these two units. The applicant has not stated whom it would be occupying the units for 5 years and it has since come to light in the comments of the Town Council that it would be for *'fitness facilities to children from underrepresented backgrounds and provide opportunities of employment and apprenticeships.'* This information was not provided with the application. The planning system can only control the use of land or buildings, but could not make a permission specific to a particular applicant or service it offered. Therefore, the permission could not ensure fitness facilities would be to children from underrepresented backgrounds. Permission could only be granted for a gym in the widest sense for any end user. However altruistic the notion of providing fitness to children of underrepresented backgrounds may be, it cannot be given significant weight in the planning process for this reason.
- 16.11 It is not for the planning system to grant a temporary permission to 'reserve' potential business units until the business is ready to use these, if and when that is. Moreover a temporary planning permission is normally only used to 'test the water' to observe and review a proposal with a view to it being made permanent. It would be granted for a much shorter period than 5 years and reviewed after the temporary period expired. There is the additional issue that in granting temporary permission for whatever period there would be an expectation that it could be renewed and the temporary use could become a permanent one. In short, it is not for the planning system to behave in a way which procures property for an end user which might not materialise and which may end with a permanent permission for an inappropriate use.
- 16.12 There is the issue about the temporary user and their future. Following the temporary 5 years as use for fitness classes it is not known where the fitness classes would relocate to and there would be no guarantee that the applicant's own business had progressed to enable it to occupy one or even two of the additional units.
- 16.13 The applicant states that it would provide employment for 2-5 persons over the two units that are proposed. The units would only be used outside the

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working day and thus would be empty for most of the time. Precluding a working day long use would restrict the potential employment provision. Whilst the proposal would provide, presumably, part time employment, no proof has been provided in relation to whether the proposal provides economic enhancement over and above the uses already approved. The supporting text for policy ECON2 states that *“in considering economic enhancement, regard will be given to issues such as wage rates, achievement of higher level skills, job numbers, and key sectors identified by the Local Economic Partnership”*. There is no information provided by the applicant. It is also questionable whether the proposal would fall within the definition of employment identified in policy ECON1.

- 16.14 The applicant points out that an unrestricted use of one unit on an earlier built phase of Parkway Farm has been granted permission. It is unknown whether this unit is being/will actually be used as a gym. However, this does not set a precedent as this does not mean that by virtue of this, such a use would be considered appropriate on the Parkway Farm extension site, when considering the principle of the current proposal against policies DOR2 and ECON2 of the adopted local plan. The Council would also not wish to see a concentration of gym/fitness uses in one location.
- 16.15 The units have not been erected yet so it is not possible to assess whether other users would come forward to occupy the two vacant units for a period of 5 years. It follows that as the units are not constructed it cannot be considered that there is no interest in these units and that alternative uses such as that proposed should be considered instead.
- 16.16 It would be unclear whether the use as a gym providing fitness classes would be compatible with neighbouring uses. B2 uses in close proximity to a gym use attracting members of the public, including children, would not be ideal as B2 uses can give rise to noise, fumes and other issues including large vehicles.

Other matters

- 16.17 The applicant states that the use would be outside the normal working day when parking would be available for up to 10 cars, which would meet parking requirements. At these times there is also usually street parking in earlier phases of Parkway Farm.
- 16.18 Reference made to a ‘community asset’ by those supporting the proposal appear to mistake an ‘Asset of Community Value’ with what is being proposed. To clarify, an Asset of Community Value would be an **existing** building or other land if its main use has recently been or is presently used to further the social wellbeing or social interests of the local community and

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could do so in the future. The Localism Act states that 'social interests' include cultural, recreational and sporting interests. It does not include proposals for what might be deemed assets in the future. Assets of Community Value demand some protection from change of use. Once listed as Assets of Community Value with the local authority, the local community will be informed if they are listed for sale within the five year listing period. The community can then enact the Community Right to Bid, which gives them a moratorium period of six months to determine if they can raise the finance to purchase the asset. Clearly this does not apply to this proposal as the proposal would not by definition be an Asset of Community Value.

17.0 Conclusion

- 17.1 The proposal would lead to the loss of industrial land.
- 17.2 The specific fitness training of children of underrepresented backgrounds cannot be made a condition.
- 17.3 The units should not be 'reserved' until needed by the applicant by granting a different use.
- 17.4 A temporary user would have an expectation of remaining permanently.
- 17.5 No evidence has been provided whether the proposal provides economic enhancement over and above the uses already approved and as the units have not been erected it is not possible to gauge demand for these for industrial purposes.
- 17.6 It would be incompatible with neighbouring land uses which will be predominantly industrial in nature.
- 17.7 The proposed use of two units as a gym for fitness classes is not considered to comply with Local Plan policies ECON 1, ECON 2 and DOR 2.

18.0 Recommendation

- 18.1 Refuse permission for the following reason:

The proposal would lead to the loss of industrial land and no evidence has been provided whether the proposal provides economic enhancement over and above the uses already approved. In addition, it would be incompatible with neighbouring land uses which will be predominantly industrial in nature. Therefore, the proposed use of two units as a gym for fitness classes is not considered to comply with West Dorset, Weymouth & Portland Local Plan policies ECON 1, ECON 2 and DOR 2.

The plans that were considered by the Council in making this decision are:

- Proposed site plan - 5105 01T

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- Units 17-21 floor plans & elevations - 5105 14A