

## Development Management Report

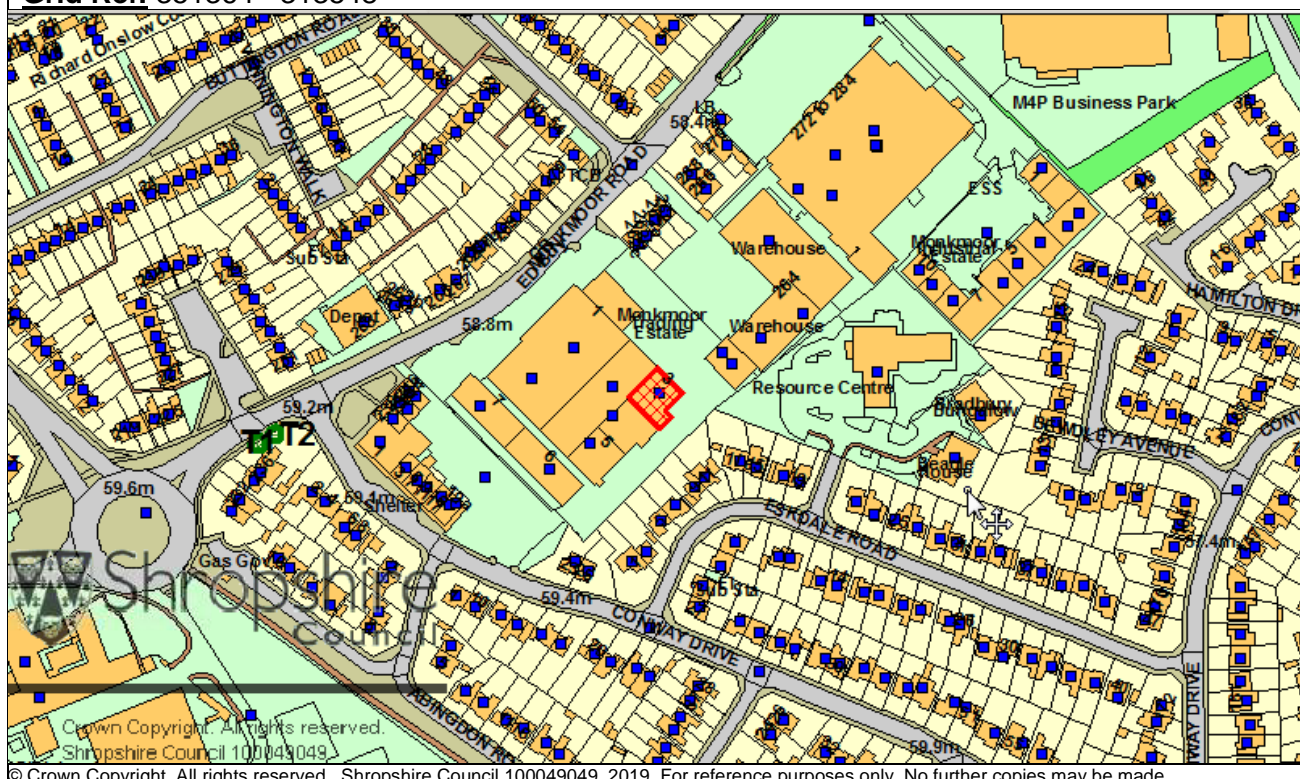
Responsible Officer: Tim Rogers

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### Summary of Application

<b><u>Application Number:</u></b> 20/01453/COU	<b><u>Parish:</u></b>	Shrewsbury Town Council
<b><u>Proposal:</u></b> Change of use from a garage to a fitness/boxing gym		
<b><u>Site Address:</u></b> Unit 3 Monkmoor Trading Estate Monkmoor Road Shrewsbury Shropshire		
<b><u>Applicant:</u></b> Mr Luke Merrifield		
<b><u>Case Officer:</u></b> Jane Raymond	<b><u>email:</u></b> <a href="mailto:planning.northern@shropshire.gov.uk">planning.northern@shropshire.gov.uk</a>	

**Grid Ref:** 351364 - 313548



**Recommendation:** Grant Permission subject to the conditions set out in Appendix 1 and that the Planning Manager is given delegated approval to issue the decision once a revised plan indicating the parking areas outlined in red has been received.

## **REPORT**

### **1.0 THE PROPOSAL**

1.1 This application relates to change of use from a car repair garage to a fitness and boxing gym within use class D2 of the use classes order.

1.2 The hours of opening proposed are:

11:00 to 20:30 Monday to Friday  
11:00 to 13:00 on Saturday and Sunday  
Closed on Bank Holidays.

The applicant has advised that in the future they might like to offer 1-1 training on Saturday afternoons 13:00 to 17:00.

1.3 The number of customers at a group gym session would be between 20 and 30 and there would be 2 members of staff (fitness trainers). The applicant has confirmed that there will be no exercising or activity outside and that customers will park at the side and front of the building.

1.4 No external changes are proposed to the building and the applicant has confirmed that no amplified music will be played although they will have music playing in the building but not at a level that would be audible outside.

### **2.0 SITE LOCATION/DESCRIPTION**

2.1 The application site is a unit within the corner of a large building at Monkmoor Trading Estate, located in the Monkmoor area of Shrewsbury. The unit has an internal floor area of approximately 250 square metres and is located at the rear of a large former aircraft-hanger that is occupied by a carpet shop/warehouse.

2.2 The rear boundary of the trading estate backs onto the rear gardens of the properties in Eskdale Road and Conway Drive.

2.3 The building is surrounded by a large car parking area which is shared by all customers and visitors to any of the smaller units at the rear of the building and the large carpet warehouse to the front of the building.

### **3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

3.1 The proposal does not comply with the scheme of delegation to officers as set out in Part 8 of the Shropshire Council Constitution as the application has been requested to be referred by the Local Member within 21 days of electronic notification and it is agreed by the Principal Planning Officer in consultation with the committee chairman and vice chairman that it could be considered there are material planning reasons.

#### 4.0 Community Representations

##### 4.1 - Consultee Comments

- 4.1.1 **Regulatory Services:** The noise from the centre especially music and amplified speech should not be audible at the boundaries of the near residential properties.

##### 4.2 - Public Comments

- 4.2.1 **Shrewsbury Town Council:** Whilst the Town Council has no objections to a boxing club being established, the current application raises a few concerns: - The proposed hours of opening are likely to cause considerable disruption to local residents. We would like to see measures in place to prevent noise disruption to neighbouring properties in particular on weekends and bank holidays. - We are also aware that neighbour consultations have not yet taken place and site notices have not yet been issued. We understand that these issues are soon to be remedied and wish to wait until after this time to consider the application fully.

- 4.2.3 **Cllr Pam Moseley:** I would like to request that this change of use application for unit 4 of Monkmoor Trading Estate to provide a boxing gym be considered by the Northern Planning Committee. My reasons are as follows:

The unit, within the Monkmoor Trading Estate building, is situated very close to the rear gardens of 1-11A Eskdale Road. As such, activities in the units within the building have the potential to cause disturbance to residents of those homes. The other uses are in the category of B2 usage, are long established, and indeed this type of use here predates the residences. Their hours of operation are established and were some years ago the subject of a planning appeal (to extend the opening hours). The appeal was dismissed and the hours remain as Monday to Friday 8am to 6pm and 8am to 1pm on Saturdays, with no activity on Sundays or Bank Holidays.

The opening hours proposed in this current application are 11am to 8.30pm Monday to Friday and 11am - 1pm on Saturday and Sundays, with the applicant indicating that he may also wish to extend Saturday hours until 5pm.

I feel that these opening hours would be to the detriment of the neighbouring houses being able to enjoy their properties, particularly in the summer months, when gardens are used both daytimes and evenings, and windows open, due to noise disturbance. A similar use operated in the adjacent unit in recent times and caused considerable problems for residents, with noise, behaviour and traffic movements. Whilst this is a different applicant, I feel that the same issues could arise.

Objection: The application for change of use of this unit would, due to the proposed opening hours which include evening and weekend usage, be to the detriment of the residents of the properties in Eskdale Road which back on to the site. Other uses in the building are permitted to open only until 6pm on weekdays, till 1pm on Saturdays and not at all on Sundays or Bank Holidays.

They proposed use will, according to the application, use music in the proposed gym, presumably of a motivational nature, and as there are several windows which face directly on to the rear gardens of the Eskdale Road houses, this will cause disturbance to the residents of those properties. The application states that classes held in the gym could involve up to 30 clients at a time. Together with the noise from the unit, there also will be disturbance from the activity of people arriving and departing each class introduced when the site is currently closed.

4.2.4 Two letters of objection from the same resident but one with 6 names and addresses stating that “Residents listed below (no signatures owing to Coronavirus restrictions) of properties bordering the site strongly oppose this application and ask you to reject it”. The two letters are available in full on the file and summarised as follows:

- Despite opposition from residents permission was granted for a similar business in the adjacent unit in the past.
- This led to problems and disturbance including shouting, loud music, activity and exercising and loiterers outside the unit and abuse of the hours creating nuisance and upset for residents.
- The business was an attraction for loiterers who created a nuisance by climbing on the garden fences, peering into properties and shouting abuse at residents.
- It is widely known that much noise is associated with fitness gyms and therefore they should be sited away from housing.
- The restrictive hours that were put on the site (Mon-Fri 0800 – 1800 and Sat 0800 – 1300) were put in place to protect the residents of neighbouring properties from noise and air pollution outside of these hours allowing residents peace and quiet during the evenings and weekends.
- The unit is best suited to a small workshop.
- Doubt that the unit is equipped with the facilities expected of a fitness centre such as showering and changing facilities and does not have adequate sound proofing.

## 5.0 THE MAIN ISSUES

Principle of development  
Parking  
Impact on residential amenity

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 The unit is situated within the part of Monkmoor Trading Estate that is not protected employment land and therefore is not protected for solely B1, B2 and B8 employment uses. Gyms and leisure facilities are a main town centre use but policy MD10b (Impact Assessments for Town and Rural Centres) advises that a town centre retail impact assessment is not required for units of 500 square metres or less. Given the scale of development and the floor area of the unit (approximately 250 square metres) an impact assessment is not required and it is considered that the proposal would not draw people away from the town centre and would have no impact on the vitality and viability of Shrewsbury town centre.

6.1.2 CS16 (Tourism, Culture and Leisure) seeks to support new leisure facilities that are appropriate to their location, and that enhance and protect the existing offer within Shropshire recognising the role and benefits of tourism and leisure for the local economy, local communities and visitors.

6.1.3 The Trading Estate is situated close to Shrewsbury Town Centre and is within a mixed use residential and business area. The proposed gym would provide a local community facility in a sustainable location which would be easily accessible. It is therefore considered to accord with the aims of policy CS6, which seeks to provide sport and recreational facilities which contribute to the health and wellbeing of communities.

## 6.2 **Parking**

6.2.1 There are large parking areas available to the side, front and rear of the building shared between all units. Although parking is available to the rear it is recommended that a condition is imposed restricting car parking to the side and front particularly after 6pm weekdays and on Sunday mornings when the other units are all closed, as vehicle movements to the rear would be more noticeable during these times.

## 6.3 **Impact on residential amenity**

6.3.1 Concern has been raised by the local member and also local residents that the use of the gym beyond the current hours of use as garage (i.e. 18:00 – 20:30 Monday to Friday and 11:00 – 13:00 on Sunday) would result in unacceptable noise and disturbance to the residents at the rear outside the normal working hours of the trade park. This concern is based on their experience of a gym that used to operate from the adjacent unit and that has now closed.

6.3.2 It is acknowledged by officers (and also the applicant) that another operator used the outside area for exercise with amplified music playing and that opened beyond the approved hours and therefore resulted in noise and disturbance to nearby residents. However conditions can be and are recommended to be imposed regarding the opening hours, the areas to be used for parking, that no amplified music should be played that can be heard outside the building and that no activities or exercise should take place outside the building.

- 6.3.3 It is considered that subject to compliance with these conditions that the proposed change of use would have no adverse impact on the residential amenity of the properties to the rear. An application cannot be refused due to fear that the recommended conditions will be breached due to an earlier and different operator breaching their planning conditions.
- 6.3.4 It is also acknowledged that the hours of opening proposed goes a few hours beyond the opening hours of the surrounding B1, B2 and B8 businesses. Having regard to the noise and activity associated with these industrial uses it is understood why these restrictive hours need to be in place in order to protect the neighbouring residents. However it is considered that a small scale gym operating inside a building until 2030 weekdays and on Saturday and Sunday morning until 13:00 would not result in unacceptable noise and disturbance in the locality.

## 7.0 CONCLUSION

- 7.1 The proposal would not result in the loss of protected employment land and given the scale of development and the size of the unit it is considered that the proposal would have no impact on the vitality and viability of Shrewsbury town centre. The proposed gym would provide a sport and recreational facility in a sustainable location that would contribute to health and wellbeing. The use of this unit as a gym is therefore considered acceptable in principle.
- 7.2 Adequate parking is available for the proposed number of customers and it is considered that subject to compliance with the recommended conditions the proposal would have no adverse impact on residential amenity.
- 7.3 The proposal is therefore considered to comply with the most relevant local plan policies CS6, CS16, MD2 and MD10b and approval is recommended subject to the conditions set out in Appendix 1 and that the Planning Manager is given delegated approval to issue the decision once a revised plan indicating the parking areas outlined in red has been received.

## 8.0 Risk Assessment and Opportunities Appraisal

### 8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning

merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

## 8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

## 8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

## 9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

## 10. Background

### Relevant Planning Policies

Central Government Guidance: NPPF

Local Plan Policies: CS6, CS16, MD2 and MD10b.

## 11. Additional Information

### **List of Background Papers**

20/01453/COU - Application documents associated with this application can be viewed on the Shropshire Council Planning Webpages <https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=Q8FAB7TD0HG00>

Cabinet Member (Portfolio Holder): Councillor Gwilym Butler

Local Member: Cllr Pam Moseley

### **Appendices**

#### **APPENDIX 1 – Conditions**

#### **STANDARD CONDITION(S)**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

#### **CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT**

3. The premises shall not be open to the public, nor any services be available to the public, outside the hours of 11:00 to 20:30 Monday to Friday and 11:00 to 13:00 on Saturday and Sunday, nor shall any member of the public remain on the premises outside of these hours.

Reason: To protect the amenities of occupiers of nearby properties from potential noise nuisance and disturbance.

4. All vehicles of customers and staff shall be parked in the areas outlined in red on the approved plan after 18:00 weekdays and on Saturday and Sunday and shall not be parked at the rear of the building or along the boundary with properties in Eskdale Drive during these times.

Reason: To protect the amenities of occupiers of nearby properties from potential noise nuisance and disturbance.

5. No activities or exercise shall take place outside the building and no amplified music or sound shall be audible from outside the building.

Reason: To protect the amenities of occupiers of nearby properties from potential noise nuisance and disturbance.

6. The premises shall only be used for the purposes of a fitness club/boxing gymnasium within Use Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Order in any statutory instrument revoking or re-enacting that Order, and for no other purposes within that Order. Upon the use



as a fitness club/boxing gymnasium ceasing the site shall not be used for any purpose other than the lawful use that existed prior to the determination of this application.

Reason: An unrestricted and unlimited D2 use would not be compatible with the wider employment uses (Use Class B1,B2 and B8) and to maintain a supply of employment uses in the locality.