

PLANNING STATEMENT

IN RESPECT OF:

APPLICATION UNDER SECTION 73 OF THE TOWN AND COUNTRY PLANNING
ACT 1990

TO VARY CONDITION 3 OF PLANNING PERMISSION REF. 1/1900/87

AT:

LAND TO THE REAR OF KIRGLOVES, BURY MEAD ROAD,
HITCHIN, HERTFORDSHIRE, SG5 1RP
(NOW HUB FITNESS, UNITS 1-4 GLOVERS COURT)

ON BEHALF OF:

MR F HANCOCK

BY:

DAMES A+P

PLANNING STATEMENT

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1.0 PRELIMINARY MATTERS

- 1.1 This Planning Statement has been prepared by Dames Architecture + Planning on behalf of Mr F Hancock in support of an application made pursuant to Section 73 of the Town and Country Planning Act 1990
- 1.2 The application seeks to vary Condition 3 attached to planning permission ref. 1/1900/87 to permit the continued use of Units 1–4 for a gym/fitness use falling within Class E(d) of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 1.3 The application does not seek permission for any physical alterations to the approved development and relates solely to the variation of the operative use restriction attached to the historic planning permission.
- 1.4 The following sections of this Planning Statement set out the scope of the amendments, the planning policy context, and an assessment of the proposal against relevant material considerations.



2.0 INTRODUCTION

- 2.1 This application has been submitted under Section 73 of the Town and Country Planning Act 1990 (as amended), which allows an applicant to seek permission for the development of land without complying with conditions previously imposed on a planning permission, or to vary or remove those conditions. Where permission is granted under Section 73, it results in a new and independent planning permission that sits alongside, but does not extinguish, the earlier consent.
- 2.2 The effect of a successful Section 73 application is to grant a new planning permission subject to varied conditions. In this instance, the application seeks only to amend the operative use restriction attached to the extant permission. No amendments to the approved description of development, plans or physical form of the development are proposed.
- 2.3 The scope of Section 73 has been clarified by recent case law, notably *Armstrong v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 176 (Admin) and *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30.
- 2.4 These judgments confirm that while a Section 73 application cannot fundamentally alter the description of development, it may lawfully vary or substitute conditions (including those listing approved drawings) to secure updated or refined details, provided that the resultant scheme remains within the parameters and overall character of the original permission.
- 2.5 This application has therefore been carefully prepared to ensure that the proposed amendments remain entirely consistent with the approved description of development and do not introduce any substantive or material changes to the nature of the permitted scheme.
- 2.6 The current application seeks to vary condition 3 of permission 1/1900/87 dated 4 February 1988.
- Condition 3 restricts the use to those within classes B1 and B8 of the Town and Country Planning (Use Classes) Order 1987.
- 2.7 The purpose of the present application is to amend that condition to permit the lawful use of Units 1–4 for indoor sport, recreation and fitness purposes falling



within Class E(d) of the Town and Country Planning (Use Classes) Order 1987 (as amended), whilst retaining the existing operative use restrictions applicable to Units 5 and 6.

- 2.8 The application has been submitted following correspondence with the Local Planning Authority's Planning Compliance Team in relation to the current occupation of Units 1–4 by HUB Fitness. The Council has confirmed that it would accept a Section 73 application as an appropriate mechanism to regularise the current use.
- 2.9 The proposed variation does not seek to alter the approved description of development, physical form of the building, site layout, parking provision, access arrangements, or any other aspect of the originally approved development. The sole purpose of the application is to amend the operative use restriction attached to the extant planning permission.
- 2.10 In determining an application under Section 73, North Hertfordshire District Council must consider only the condition that is the subject of the application and any consequential amendments arising from it. The assessment should focus on whether the proposed variation would result in material planning effects that differ from those previously assessed and found acceptable.
- 2.11 The principal planning tests relevant to this application are therefore:
 1. Whether the proposed variation to Condition 3 would remain compliant with the relevant policies of the Development Plan, the National Planning Policy Framework, and all other material planning considerations; and
 2. Whether the proposed variation would continue to satisfy the underlying purpose of the original condition, namely, safeguarding the amenities of nearby residential occupiers, whilst remaining compatible with the established character and function of the wider commercial development.
- 2.12 The following sections of this statement address these matters in turn, demonstrating that the proposed variation is proportionate in scope, fully policy-compliant, and would not give rise to any materially different or unacceptable planning impacts when compared to the extant permission.



3.0 RELEVANT PLANNING HISTORY

3.1 Planning permission ref. 1/1900/87 granted consent for:

"Erection of a single-storey building for 6 workshop units and parking spaces."

3.2 Condition 3 of that permission states:

"The workshop units hereby permitted shall only be used for purposes included within Class B1 (Business) and B8 (Storage and Distribution) of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order."

3.3 The stated reason for the condition was:

"To safeguard the amenities of nearby residential occupiers."



4.0 THE PROPOSAL

- 4.1 This Section 73 application seeks to vary Condition 3 to permit use of Units 1–4 for purposes within Class E(d) (Indoor Sport, Recreation or Fitness), whilst retaining the existing operative use restrictions over Units 5 and 6.
- 4.2 No physical development is proposed.
- 4.3 The proposed varied condition wording is set out in full within the accompanying covering letter and application forms.
- 4.4 No other conditions attached to planning permission ref. 1/1900/87 are affected by this application. The sole purpose of this Section 73 submission is to amend the operative use restriction contained within Condition 3 so as to regularise the current Class E(d) fitness use of Units 1–4 and ensure that the operative planning permission properly reflects the authorised use of the site.



5.0 PLANNING ASSESSMENT

- 5.1 This section assesses the proposed variations to planning permission ref. 1/1900/87 in the context of the Development Plan, the National Planning Policy Framework (2024), and other material considerations.
- 5.2 The statutory development plan relevant to the determination of this application comprises the North Hertfordshire Local Plan 2011–2031 (adopted November 2022). There is no adopted Neighbourhood Plan covering the application site.
- 5.3 This application seeks solely to vary Condition 3 of planning permission ref. 1/1900/87 in order to permit the use of Units 1–4 for purposes falling within Class E(d) (Indoor Sport, Recreation or Fitness) of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 5.4 The application does not seek to revisit the principle of the original workshop development, the approved built form, access arrangements, parking provision, or any other aspect of the development previously authorised.
- 5.5 In determining this Section 73 application, the Local Planning Authority is therefore required to consider the planning implications arising from the proposed variation to the use restriction only, together with any consequential effects flowing from that change.
- 5.6 The principal issue for consideration is whether permitting Class E(d) use in place of the currently authorised Class B1/B8 uses would give rise to materially different planning impacts such that the original purpose of Condition 3 would be undermined.

Principle of the Proposed Class E(d) Use

- 5.7 The site forms part of an established commercial/workshop development in active commercial use.
- 5.8 The proposed gym/fitness use remains commercial in character and is wholly compatible with the wider commercial function of the site.
- 5.9 The proposal does not introduce a materially different land use character to the site, but instead regularises a modern commercial use operating from an existing commercial unit.



- 5.10 The principle of indoor fitness use from part of an established commercial yard is therefore acceptable in land use terms and remains entirely consistent with the established commercial character and function of the wider site.

Residential Amenity

- 5.11 The principal planning consideration arising from the proposed variation is the original purpose of Condition 3, namely:

“To safeguard the amenities of nearby residential occupiers.”

- 5.12 In this regard, it is respectfully submitted that the proposed Class E(d) fitness use is not inherently more harmful to residential amenity than the lawful Class B1 and B8 uses currently authorised under the extant permission.

- 5.13 Indeed, the proposed gym use may in many respects represent a less intensive and more controlled form of occupation than the approved workshop/storage uses, having regard to the following:

- Workshop and storage uses can generate regular servicing, deliveries and commercial vehicle movements throughout the day;
- Workshop uses may involve machinery, fabrication, trade activity, loading/unloading, and associated operational noise;
- B8 uses may generate frequent van movements and external handling of goods;
- By contrast, the gym use operates wholly within enclosed premises and does not involve external activity, servicing yards, industrial processes, or open storage.

- 5.14 Accordingly, the proposed variation would remain consistent with the original amenity objectives underpinning the condition.

- 5.15 For the avoidance of doubt, the Applicant would be amenable to reasonable controls over hours of operation or external activity should the Authority consider such measures necessary.



Highways and Parking

- 5.16 The proposed variation does not alter the approved access, parking or servicing arrangements associated with the development.
- 5.17 The site continues to benefit from established off-street parking and lawful vehicular access.
- 5.18 No physical alterations to the site are proposed and the gym use would continue to operate from existing floorspace within the approved building envelope.
- 5.19 The Applicant does not consider that the proposed variation would give rise to any materially greater highways impact than the range of uses currently authorised under the extant permission.
- 5.20 Accordingly, no highways objection is anticipated.

Character and Function of the Area

- 5.21 The proposed use remains consistent with the mixed commercial nature of the wider locality.
- 5.22 A gym/fitness use is a recognised commercial service use within the modern Use Classes Order and is not out of keeping with the established character of the site or surrounding area.
- 5.23 The proposal would maintain active and productive occupation of the premises whilst supporting the continued vitality and viability of the wider commercial development.

Planning Balance

- 5.24 Having regard to the above, it is respectfully submitted that:
- The proposed Class E(d) use remains compatible with the established commercial nature of the site;
 - The variation would not undermine the original purpose of Condition 3;



- The proposed use would not give rise to materially greater amenity, highways, or character impacts than the extant lawful uses; and
- The proposal represents a proportionate and appropriate modernisation of a historic use restriction to reflect contemporary commercial requirements.



6.0 CONCLUSION

- 6.1 This Section 73 application seeks to vary Condition 3 of planning permission ref. 1/1900/87 in order to permit the use of Units 1–4 for indoor sport, recreation and fitness purposes falling within Class E(d) of the Town and Country Planning (Use Classes) Order 1987 (as amended), whilst retaining the existing use restrictions applicable to the remaining units.
- 6.2 The proposed variation is limited in scope and does not alter the approved built form, site layout, access arrangements, parking provision, or any other physical aspect of the development previously authorised.
- 6.3 The principal effect of the proposal is to regularise the current occupation of Units 1–4 by HUB Fitness through a proportionate amendment to the operative use restriction attached to the extant planning permission.
- 6.4 For the reasons set out within this Statement, it is respectfully submitted that the proposed Class E(d) use would not give rise to materially greater planning impacts than the lawful Class B1/B8 uses currently authorised under the extant permission and would remain consistent with the original purpose of the condition in safeguarding the amenities of nearby residential occupiers.
- 6.5 The application is considered to satisfy the statutory and policy tests relevant to a Section 73 application. The development, as varied, would remain compliant with the adopted North Hertfordshire Local Plan 2011–2031, the National Planning Policy Framework (2024), and all other material planning considerations.
- 6.6 It is therefore respectfully requested that North Hertfordshire Council approve this application and issue a new planning permission reflecting the varied Condition 3 as proposed. Should any matters require clarification or further detail during determination, the Applicant would welcome the opportunity to address these promptly.

