

**Application No:** [W 23 / 1597](#)

**Town/Parish Council:** Lapworth

**Case Officer:** Adam Walker

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**Registration Date:** 22/02/24

**Expiry Date:** 18/04/24

**Former Timber Yard, Old Warwick Road, Lapworth, Solihull, B94 6BA**

Retrospective planning application for the retention of portable building, 3no. steel containers, 2no. freestanding canopies and 2no. fixed canopies, timber fencing and change of use from Sui Generis to Use Class F2(c) (outdoor fitness business) FOR D Wilson Property Holding Group Ltd

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This application is being presented to Committee as over five public representations have been received in support of the application and it is recommended for refusal.

**RECOMMENDATION**

The application is recommended for REFUSAL for the reasons set out at the end of this report.

**DETAILS OF THE DEVELOPMENT**

This is a retrospective planning application for the retention of the existing portable building, steel containers, canopies and fencing and change of use from Sui Generis to Use Class F2(c) (outdoor fitness business).

The existing business is known as The Gym Shed and involves the operation of an outdoor gym. The business provides personal training sessions and organised classes and has been in operation since around the summer of 2022.

The development comprises of:

- Small portable cabin (7 square metres) serving as a WC and kitchenette and located at the north western end of the site.
- Two shipping containers that serve as a combined administrative space and facility for gym equipment. A larger container (27 square metres) is located towards the north western end of the site and smaller container (10 square metres) is located in the south eastern end of the site. Both containers lead out onto a timber deck that has a fixed timber canopy over.
- Area of astro turf situated in between the shipping containers/decking that provides space for open air training sessions.

- Two freestanding canopies that are erected over part of the astro turf to provide protection to users of the facility during inclement weather.
- 2m featheredge timber fencing to part of the site boundary with Old Warwick Road. Note: The application proposes to amend the existing fencing to this boundary; the extent of the fencing to the roadside is to be reduced by approximately 35m and the height of the retained fencing lowered from 2.4m to 2m and painted dark brown. Planting is proposed adjacent to the shipping containers and portable cabin.
- Low level timber retaining wall to canal side boundary.

Vehicular access to the site is from Old Warwick Road, with the proposed parking for the facility being within the existing lay-by adjacent to the site.

### **THE SITE AND ITS LOCATION**

The application site was previously used in connection with a timber merchants. Supporting information indicates that the Applicant purchased the timber merchant site in September 2022 and divided it into two separate businesses; the north western part continues to operate as a timber yard (see relevant planning history below) and the south eastern part now operates as a fitness business.

The gym site comprises of a rectangular shaped parcel of land adjacent to Old Warwick Road. It includes a section of the highway lay-by adjacent to the gym and extending for a distance to the south east.

The site is generally flat and is bound by Old Warwick Road along its frontage and by the North Stratford Canal and towpath to the rear. The canal towpath sits above the level of the application site and is separated by trees and other vegetation along the boundary. An area of trees lie to the site's south eastern boundary.

The site lies within the West Midlands Green Belt and is located in between Kingswood and Hockley Heath. The surrounding area is generally characterised by agricultural land with ribbon development along the roadsides. There are some houses a short distance from the site along Old Warwick Road and Lapworth Cricket Club exists towards the south east.

The application site falls within the Canal Conservation Area.

### **RELEVANT PLANNING HISTORY**

#### Current:

W/23/1595 - Retrospective planning application for the retention of detached timber building and timber fences, proposed partial demolition of existing building and continuation of existing use for a timber business (Sui Generis) - Undetermined (under consideration by Officers)

Planning history associated with the historic timber yard use (Curtis Woodyard):

W/02/1479 - Retention of building to provide office, mess room, and toilet facilities (retrospective) – Approved

W/97/0940 - Retention of a single storey building to provide replacement office, mess room and toilet facilities (Variation of Condition 1 of W920637) – Temporary permission approved

W/92/0637 - Erection of a single storey building to provide replacement office, messroom and toilet facilities - Temporary permission approved

Enforcement:

ENF/0158/22 - Erection of timber fence adjacent the highway, erection of a timber building, siting of steel containers & canopies on the land & operation of a fitness business from the land - The current planning application that is now under consideration (W/23/1597) has been submitted following investigation of ENF/0158/22.

**RELEVANT POLICIES**

- National Planning Policy Framework

Warwick District Local Plan 2011-2029

- DS5 - Presumption in Favour of Sustainable Development
- DS18 - Green Belt
- CT1 - Directing New Meeting Places, Tourism, Leisure, Cultural and Sports Development
- SC0 - Sustainable Communities
- BE1 - Layout and Design
- BE3 - Amenity
- HS1 - Healthy, Safe and Inclusive Communities
- HS6 - Creating Healthy Communities
- HS7 - Crime Prevention
- HE1 - Protection of Statutory Heritage Assets
- HE2 - Protection of Conservation Areas
- NE2 - Protecting Designated Biodiversity and Geodiversity Assets
- NE3 - Biodiversity
- NE4 - Landscape
- NE5 - Protection of Natural Resources
- TR1 - Access and Choice
- TR2 - Traffic generation
- TR3 - Parking
- FW1 - Development in Areas at Risk of Flooding
- FW2 - Sustainable Urban Drainage

## Guidance Documents

- Air Quality & Planning Supplementary Planning Document (January 2019)
- Parking Standards (Supplementary Planning Document- June 2018)

## **SUMMARY OF REPRESENTATIONS**

**Lapworth Parish Council:** Neutral - the Parish Council neither objects to or supports the application. The Parish Council does however consider that the fencing is too high for this location.

**WDC Arboricultural Officer:** No objection

**WDC Conservation Officer:** No objection. The previous concerns raised have been addressed through revisions to the application proposals, specifically in relation to the amendments to the existing fencing and proposed soft landscaping.

**WDC Environmental Protection:** No objection subject to conditions restricting the installation of speakers for the purpose of amplified voice and/or music and to limit the opening hours (no customers permitted to be on the premises other than between 0600 hours and 2100 hours, Monday to Friday, and between 0600 and 18:00 on Saturdays).

**Canal and Rivers Trust:** The adjacent canal is designated as a Conservation Area and also a Local Wildlife Habitat. It is noted that the scheme involves the removal of some trees from the canal facing boundary and it is unclear whether these have already been removed. It is also noted that it is indicated that as the existing vegetation to this boundary is sparse in places it could be supplemented by additional planting. It is considered that it would be appropriate to provide replacement/new planting along the canalside boundary to offset the removal of existing trees and help to maintain the role of the canal corridor as a wildlife habitat. New planting could also reduce the visual impact on the Canal Conservation Area. Suitable planting could be secured by condition. It is unclear if external lighting is proposed but it appears that this is likely in order to facilitate year-round use of the open air gym. It is important that any lighting is designed to minimise light spill onto the adjacent canal as this could affect nocturnal wildlife. Recommend that a condition is imposed on any permission requiring details of the lighting so that the potential impacts on nocturnal wildlife can be assessed.

**Inland Waterways Association:** No comments received

**Lead Local Flood Authority:** No objection.

**Local Highway Authority:** Object. The following issues have been identified:

- Inconsistency with the red line boundaries on the submitted plans

- Clarification required in relation to the use of some of the land to the west of the site that has had a fence erected on the kerb line and a gravel base laid with a gated entrance.
- The boundary to the application site (which includes a wooden fence, a gated vehicular access and two pedestrian gated accesses) has been erected directly onto the kerbs at the edge of the public highway. Any future maintenance of the kerbs will therefore prove very difficult and the layout does not accord with Warwickshire County Council's highway construction specification in this regard.
- There is a historical dropped kerb access which has had the fence erected over it and is no longer in use; as this access is no longer in use as part of the development, a full height kerb will need to be reinstated.
- The pedestrian gated access to the east of the vehicular access has the full height kerb in the entrance, creating a trip hazard for pedestrians and preventing access for disabled users; this should be rectified.
- The location of both pedestrian gates do not provide any pedestrian visibility, so if a car is moving within the lay-by and a pedestrian is leaving the gate, regardless of the fact that the speed of vehicles will be low, there could be potential conflict.
- A wooden ramp is located across the layby opposite the pedestrian gated access located adjacent to the vehicular access; this is not acceptable as this is part of the public highway for the benefit of the wider public using the highway to park, therefore the wooden ramp must be removed to prevent highway safety issues for pedestrians and any vehicles pulling onto the layby.
- The applicant is not entitled to place signs within the layby requesting vehicles to 'slow down'. The layby is for the benefit of the general public using the public highway and the sign must be removed.
- A lamp (wattage unknown) over the Gym Shed signage overhangs the highway and may create an element of distraction to drivers.
- It appears that a vehicular access from the lay-by is proposed. Swept path details are required to demonstrate that vehicles can enter/exit the site in a forward gear together with visibility splays along B4439 Old Warwick Road. However, there are concerns that the vehicle access point(s) would be served via the existing layby. Cars using the layby for parking will impact on visibility splays from the access for drivers of vehicles attempting to re-enter the public highway from these points. Furthermore, cars parked either side of the vehicular access will prevent a car from pulling off the public highway and entering the access if the gate is closed, thus raising highway safety concerns. There are therefore concerns with the proposal for a vehicular access from the lay-by although if this is not provided, the facility will be reliant upon the layby for its parking provision.
- The layby is publicly maintained for use by general users of the highway users and is not necessarily parking provision for a private business use.
- A further concern with the development proposals are that drivers of vehicles on leaving the premises may attempt to 'u' turn across the carriageway or at the crossroads junction immediately to the north of the site in order to travel back in the direction they arrived. Whilst this may not have been an evident issue with the timber yard, the two uses cannot be directly compared with the gym opening later into the evening than the timber yard would have been operating.

- **Transport Statement:** The hours of operation for the fitness gym are included within the submitted Transport Statement. At the time of visiting the site (Thursday 18th April) the fitness gym was operational, with one person in the gym and an additional person arriving. The proposed hours of operation should be amended accordingly. The Transport Statement should also be amended to establish vehicular movements associated with the facility. The number of employees should also be provided.
- The layby provides a total of approximately 24 parking spaces, 14 from the southern end of the fitness gym and beyond this there is space for a further 10 vehicles. The data above suggests that a maximum of 18 people could attend the fitness gym (this may change once the operational figures are clarified). The Highway Authority have concerns that the layby is being used as a 'private parking' provision for the business rather than for its purpose, and whilst it has been used to enable the timber yard to operate, those visiting the timber yard would be unlikely to be spending 45 - 60 minutes at a time. Also, a historical search of a mapping system has shown a maximum of 7 vehicles in the layby at any one time, unlike the potential for 18 parked vehicles.
- A Stage 1 RSA will be required to be submitted in respect of the proposed layout.

**WCC Ecology:** No objection subject to conditions to secure a Construction Environmental Management Plan (CEMP: Biodiversity) and for full details of the external lighting.

**Public response:** 32 representations in support of the application have been received. A summary of the comments is provided below.

- The gym supports the local community and many people use and enjoy this facility
- Valuable resource to our semi-rural community; no other local facilities exist so it's of great benefit
- It is great to have local businesses within the parish, rather than driving an extra half an hour to gyms in Solihull or Warwick
- It offers good facilities for all ages
- More sporting facilities like this are needed in Lapworth to help tackle obesity
- Encouraging people to keep fit outdoors in the fresh air can only be a good thing; the facility improves the physical and mental health of those attending
- Facility is an improvement on the previous timber yard use; the timber yard was more dangerous in terms of vehicle movements and the gym is a visual improvement for the area
- Taken a semi derelict site and made it appealing to local residents
- It is a good use of space / brownfield site
- The business is ideally located, serving small surrounding villages
- The gym has built-up a good reputation in the area
- The gym has provided support to Lapworth Cricket Club
- The site is easily accessible along the canal towpath
- Provides employment
- The gym has brought additional business to other local businesses in the area
- Visually unintrusive design that fits in with its natural surroundings

## **ASSESSMENT**

### **Procedural matter - Description of development**

The Applicant describes the development as an outdoor fitness business falling within Use Class F2(c). Having considered the application in detail, Officers consider that the proposed use is a hybrid of an outdoor and indoor fitness business. It is evident from the Applicant's own social media accounts that some fitness activities take place inside the double shipping containers where gym equipment is kept and the layout of this area and the nature of some of the equipment strongly suggest that it would serve as an indoor training space. Moreover, the patio areas with fixed canopies over form an extension of the shipping containers and these are considered to be more akin to an indoor use rather than a true outdoor use. It is nevertheless recognised that a significant proportion of the fitness activities take place within an outdoor environment on the astroturf.

Indoor sport facilities fall within Use Class E(d). It is therefore considered that the proposed use is a hybrid of F2(c) and E(d).

### **Principle of development**

The principle of development is twofold; firstly the principle of the proposed development within the Green Belt and secondly the principle of new sports development/community use within this location.

#### Green Belt

##### *Policy context*

The site lies within the West Midlands Green Belt. Paragraph 142 of the NPPF states that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 143 of the NPPF identifies the five purposes of the Green Belt, which are:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

Paragraph 152 of the NPPF goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in

very special circumstances. Paragraph 153 states that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Paragraph 154 of the NPPF states that local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt. It does however identify a number of exceptions to this; these exceptions include:

- The provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport or outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
- The partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.

Paragraph 155 of the NPPF identifies certain other forms of development that are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This includes material changes in the use of land, such as changes of use for outdoor sport or recreation.

Policy DS18 of the Local Plan states that the Council will apply national planning policy to proposals within the Green Belt

Openness is not defined within the NPPF but is generally considered to mean an absence of development. Case law has established what factors may be taken into account when considering the potential impact of development on the openness of the Green Belt. This confirms that openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume. The duration of the development and its remediability as well as the degree of activity likely to be generated, such as traffic generation, are also relevant considerations.

#### *The Applicant's case*

Information submitted in support of the application provides an assessment against national Green Belt policy. This states that the site forms part of existing brownfield land and as such the proposal complies with the NPPF because it represents the partial redevelopment of previously developed land (NPPF paragraph 154(g)). A separate 'Brownfield Register Statement' has also been provided which seeks to demonstrate the previous use of the site.

The Applicant goes on to state that the new use is fully contained within the site and has a less intrusive impact (both visual and activity) than that of the previous timber yard. They consider that the new portacabin units, fencing and other structures will have a significantly reduced impact on the Green Belt than



that of the previous timber storage units, which over time achieved a substantial degree of permanence. Additionally, the Applicant considers that the removal of the previous level of timber storage will ensure that there would be a reduced level of impact on the openness, character and the visual amenities of the Green Belt, as well as to the character and appearance of the area. It is concluded that the proposed development would have a minor impact on the openness of the Green Belt and would be of a limited extent.

The Applicant's assessment also considers the impact of the development against the five purposes of the Green Belt and concludes that there will be no conflict with the purposes of including land in the Green Belt.

Notwithstanding the Applicant's stated position that they consider the development meets with one of the exceptions within the NPPF and consequently the proposal is not inappropriate development (i.e. partial redevelopment of a brownfield site which would not have a greater impact on the openness of the Green Belt than the existing development - paragraph 154(g) of the NPPF), the supporting information then presents a case for the existence of 'very special circumstances'. Very special circumstances are however only necessary when a development comprises inappropriate development in the Green Belt. In other words, when it does not meet with any of the exceptions listed within the NPPF. The Applicant's case for very special circumstances is as follows:

- The existing business is locally owned and staffed and consequently makes a significant contribution to the local economy. The intended use will allow for an enhanced level of support and contribution.
- The existing business has an excellent working relationship with the local community and has received favourable comments from the Parish Council.
- The proposed builds will be of an appropriate scale and design for the intended use, the site and the immediate area.
- There will be no adverse ecological, landscape or flood risk issues attached to the proposal.
- The proposal complies with all relevant planning policies [as set out in the Applicant's Planning Statement].
- The proposal redevelops a what would otherwise be derelict brownfield site.

The Applicant concludes that the level of very special circumstances advanced in support of the proposal are sufficient to outweigh any perceived harm to the openness of the Green Belt and sufficient to justify the proposed development.

#### *Officers' Green Belt Assessment*

The application site has previously been used as part of a timber yard business, with the land in question being used for open storage of timber products. There is nothing to indicate that the application site previously contained any buildings or other structures associated with the timber yard business and the available

evidence suggests that it has solely been used for the storage of timber. All the buildings associated with the timber yard lie outside of the application site and are the subject of a separate planning application for the retention of a timber yard business (W/23/1595). Supporting information indicates that the original timber yard has operated for over 20 years and imagery from Google Maps dated 2009 shows the presence of an established timber yard in situ.

The established lawful use of the land is as a timber yard and it is therefore accepted that the site constitutes previously developed (brownfield) land. The proposal therefore represents the partial redevelopment of a brownfield site. As such, the policy test is whether the development would have a greater impact on the openness of the Green Belt than the existing development. However, owing to the fact that the current application is retrospective, it is necessary to consider whether the existing gym development has a greater impact on the openness of the Green Belt than the previous use as part of a timber yard.

The proposal development involves a number of new buildings and structures on the site that would be permanent features.

At the north western end of the site is a modified portable building measuring approximately 2.3m wide and 3.4m long at a height of approximately 2.4m. Adjacent to this is a large container (essentially two conjoined shipping containers) that is approximately 4.7m wide and 5.8m long with a height of approximately 2.4m. Projecting from this container is an area of timber decking with a timber canopy over; the canopy projects by circa 4.6m.

At the south eastern end of the site is a single shipping container that is about 2.3m wide and 4.7m long, with a height of circa 2.4m. This container also has an adjoining decking area with canopy over; the canopy projects by approximately 4.3m.

Lying in between these buildings and structures is an area of astroturf that provides the outdoor training space. This is currently enclosed by a c40m section of 2.4m timber fencing to the boundary with Old Warwick Road and it is proposed to reduce the height of this fencing to 2m. During wet or very warm weather two moveable canopies are usually provided over part of the astroturf to protect users of the facility, but these are of a very temporary and intermittent nature.

Some new planting is proposed as part of the development. This includes infill planting to supplement the existing vegetation to the boundary with the canal and some hedging and climbing plants adjacent to the portable building and shipping containers to provide some soft screening.

When the site was used as part of a timber yard it provided an area for the open storage of timber. The different timber products were stacked in rows across the site. The storage was relatively low level when considering its overall height and it stands to reason that the height of the timber stacks fluctuated over time as

products were sold and subsequently restocked; this is confirmed by imagery from Google Maps.

The previous storage use extended almost 40m further to the south east than the existing gym development. This area to the south east is not included within the application site boundary and it is currently enclosed by 2.4m timber fencing to Old Warwick Road. This fencing forms part of the application site boundary and it proposed to remove the fencing in this location so that this area becomes open. A visual image submitted with the application indicates that this neighbouring strip of land would have gravel surfacing and edging to the boundary with the existing layby, along with a low timber retaining wall to the canalside boundary and a short strip of hedgerow dividing the land in two.

While the removal of a substantial section of fencing to the south east of the site is beneficial, it must be borne in mind that the fencing is unauthorised and therefore its removal is not dependent on the proposed gym development coming forward. Furthermore, because this adjacent piece of land is outside of the application site boundary and is not identified as being land within the control of the Applicant, the treatment of this area as shown within the submission details cannot be controlled by the Local Planning Authority (LPA). More importantly, there would be nothing to prevent its lawful use being reinstated at a later date. Therefore, while the plans indicate a significant reduction in the geographical spread of development in comparison to the previous timber storage use, the development would not prevent the reintroduction of the established use of the land in the future.

In any event, the proposal is considered to be a more intensive form of development than the previous storage use in terms of its built form. Whereas the previous use involved low level open storage of timber materials set against a vegetated backdrop, the proposed gym involves permanent buildings in the form of a modular building, shipping containers with projecting timber canopies along with a substantial section of 2m high timber fencing. This results in a concentrated built form, some 50m in length, with a high degree of enclosure. Some visual mitigation is proposed through new hedge planting to the south eastern boundary and in front of the modular building as well as the introduction of climbing plants to the fencing and the roadside elevations of the containers. While the planting would help to soften the visual impact of the development, it provides only limited mitigation and the prevailing character of the site would be an urban form of development with a strong sense of enclosure.

In Officers' opinion, the proposed gym development has a greater impact on the visual and spatial openness of the Green Belt than the previous use as timber storage. As such, the proposed development constitutes inappropriate development and should not be approved except in very special circumstances.

When considering the impact of the gym use in comparison to the previous use on the site it is necessary to also have regard to the potential fallback position. It is accepted that the lawful use of the site is as open storage in connection with a timber yard and this use (or other similar storage use) could therefore be revived on the application site, as well as the area of land to the south east that has

historically been part of the timber yard business. There is considered to be a realistic prospect of this occurring given that there is a separate application with the LPA for a continuation of a timber business on the adjoining site to the north west. It is acknowledged that reintroducing a storage use would also have an impact on the openness of the Green Belt but given the constraints of the site any such use is likely to be relatively low level - in a similar fashion to the historic timber storage use. As such, the fallback position in terms of the lawful use of the land does not materially alter Officers' opinion on the impact of the proposed development on the Green Belt.

It is to be noted as well that paragraph 154 of the NPPF confirms that the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport or recreation are not inappropriate provided that the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The Applicant has not sought to rely on this to justify their development within the Green Belt and given that Officers consider the development to be a hybrid of an outdoor and indoor sports/recreational use, it is not considered that this part of the NPPF is applicable to the development proposed.

Turning to the impact of the development on the five purposes of the Green Belt, the application site is remote from the nearest towns and large villages and would not therefore conflict with Green Belt purpose (a), which is to check the unrestricted sprawl of large built-up areas.

In relation to Green Belt purpose (b), which is to prevent neighbouring towns merging, the site is well separated from the nearest towns and settlements and so would not result in any sense of their boundaries becoming blurred.

Green Belt purpose (c) is to assist in safeguarding the countryside from encroachment. Encroachment from urbanising influences is the intrusion / gradual advance of buildings and urbanised land beyond an acceptable or established limit. Given that the site is previously developed land and the gym use does not extend as far as the previous storage use, there is not considered to be any greater degree of physical encroachment in geographical terms. Having said that, the introduction of permanent buildings and other structures onto the site is considered to have more of an urbanising influence in comparison to the previous open storage use and as such there is deemed to be some conflict with Green Belt purpose (c).

The site does not border or sit prominently within the setting of any historic towns. The proposal would not therefore conflict with Green Belt purpose (d), which is to preserve the setting and special character of historic towns.

The final purpose of the Green Belt is to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. The site is brownfield land, albeit outside of an urban area, and so Green Belt purpose (e) is not directly relevant given that it seeks to incentivise development on previously developed land.

## *Conclusion*

Officers are of the opinion that the proposal represents inappropriate development which would, by definition, harm the Green Belt. Officers consider that it would result in harm to the openness of the Green Belt in both spatial and visual terms. There would also be a degree of harm to one of the purposes of the Green Belt through encroachment; this would result from the intrusion caused by the introduction of permanent buildings and structures onto the site where there has not previously been any, thereby having more of an urbanising influence. The proposed development would therefore conflict with the NPPF and Policy DS18 of the Local Plan. All harm to the Green Belt carries substantial weight.

Inappropriate development should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. The Applicant's submission contains a series of circumstances which they consider, when taken together, amount to very special circumstances to outweigh the harm to the Green Belt. The Applicant's case is considered at the end of this report following the assessment of all other relevant planning considerations.

### Suitability of the site's location

The NPPF identifies that health and fitness centres are classed as a main town centre use.

The NPPF requires a sequential test to be applied to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available should out of centre sites be considered (paragraph 91).

The application lies outside of a town centre. However, paragraph 93 of the NPPF confirms that the sequential approach should not be applied to applications for small scale rural offices or other small scale rural development. Neither the NPPF nor the Planning Practice Guidance define what constitutes small scale rural development. Nevertheless, having considered the size and nature of the proposal, Officers consider that it represents small scale development in a rural location and thereby meets with the exception for requiring the application of the sequential test.

Policy CT1 of the Local Plan is titled 'Directing New Meeting Places, Tourism, Leisure, Cultural and Sports Development'. This policy specifically relates to 'main town centre uses', which are defined in the NPPF and Local Plan. The first part of the policy states that new meeting places, tourism, leisure, cultural and sports development will be permitted in the town centres in accordance with the town centre policies (policies TC1 to TC18) and then seeks to apply a sequential approach to the location of such development.

The second part of Policy CT1 states that, in all other cases, new tourism, leisure and cultural development will be permitted where it can be demonstrated that:

a) There are no sequentially preferable sites or buildings and the development is easily accessible using sustainable forms of transport such as walking, cycling and public transport; or

b) The facility is of a type and scale that will mean it primarily serves a local community who can access it by means other than the private car.

The Local Plan does not include a similar exception for small scale rural development when considering the sequential test. Nevertheless, having accepted that there is no requirement for the sequential test under the NPPF, Officers have not sought to apply it in the context of Policy CT1. In coming to this conclusion, Officers have had regard to the predominantly outdoor nature of the development, which does not lend itself to typical town centre sites. This differentiates the proposal from a traditional health and fitness centre.

The proposal is nevertheless considered to be a form of leisure development and as such it is considered that part b) of the policy is applicable. Therefore, the facility is required to be of a type and scale that will mean it primarily serves a local community who can access it by means other than the private car.

In addition to this, paragraph 88 of the NPPF, under the heading 'supporting a prosperous rural economy', states that planning decisions should enable the development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

Paragraph 89 of the NPPF states that planning decisions "should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist."

Chapter 8 of the NPPF seeks to promote healthy and safe communities. Paragraph 96 states that planning decisions should, *inter alia*, enable and support healthy lifestyles. Paragraph 97 states that, to provide the social, recreational and cultural facilities and services the community needs, planning decisions should plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments.

Policy SC0 of the Local Plan (Sustainable Communities) states that new development should ensure it is brought forward in a way which enables strong communities to be formed and sustained. Sub-section f) states development should provide good access to community facilities including meeting places, local shops transport services, health facilities and open space.

Policy HS1 (Healthy, Safe and Inclusive Communities) states that the potential for creating healthy, safe and inclusive communities will be taken into account when considering all development proposals. Support will be given to proposals that, *inter alia*, provide good access to local shops, employment opportunities, services, schools and community facilities.

Local Plan Policy HS6 (Creating Healthy Communities) states that development proposals will be permitted provided that they address a number of key requirements associated with delivering health benefits to the community. These key requirements include opportunities for community cohesion by the provision of accessible services and community facilities and places and opportunities for people to interact regardless of age, health or disability and access to opportunities to partake in indoor and outdoor sport and recreation.

The Applicant has provided a heat map which indicates where 52 members of the gym live (52 represents the number of members who were willing to provide their personal details for this exercise). The heat map shows that the majority of these members live within a 10 minute drive of the application site, in the Lapworth, Kingswood and Hoxley Heath areas. The remainder of the members are slightly further away.

The heat map also identifies other gyms in nearby town centres such as Shirley, Redditch, Warwick, and Stratford-upon-Avon. This is to demonstrate the travel distances that these clients would have to undertake if the proposed development did not exist.

It is evident from the submitted heat map as well as the 32 representations received in support of the application that the proposal serves a local client base. It is also evident that existing members of the gym would generally have greater travel times to attend an alternative gym.

Officers therefore accept that the facility is primarily serving the local community. It therefore follows that the gym is helping to meet the needs of the rural community in this area and is facilitating opportunities for the local community to access sport and recreation provision.

Where a facility primarily serves a local community, it is necessary for the community to be able to access it by means other than by private car (Policy CT1(b)).

The site is accessible via the adjacent canal towpath and this provides favourable opportunities for active travel; the towpath is however unlit which means that its usage is likely to be limited to certain times of the day across the year. Residents from nearby settlements could access the site via Old Warwick Road although

opportunities for pedestrians are constrained along here and the travel distances are also likely to be an impediment to anything other than cycling. The site is on a bus route (513) but this is not a regular service.

The nature of gyms is such that most members will drive to the facility, particularly out-of-centre gyms. Gyms are most often frequented early in the morning and in the early evening period - prior to and shortly after the end of the normal working day - as well as on weekend mornings. Consequently, many gym members will choose to drive for convenience regardless of other available travel options.

In Officers' opinion, the location of the site means that it is heavily reliant on private car. Indeed, the heat map that has been provided refers to driving travel times. The NPPF does however recognise that sites to meet local community needs in rural areas may not be well served by public transport. In these circumstances the NPPF states that it will be important to ensure that development does not have an unacceptable impact on local roads. The Local Highway Authority has raised an objection to the application (as detailed elsewhere in this report) and this includes the impact on the layby adjacent to the gym which forms part of the public highway.

In summary, the gym would provide a facility that would help to meet the needs of the local community in a rural area and facilitate healthy lifestyles. In this regard the proposal is consistent with the NPPF and the aforementioned Local Plan policies. Opportunities do exist for accessing the site by means other than private car, such as cycling, running or walking, albeit there are limitations to these which would serve as an impediment. It is also likely that the gym's existing members would travel greater distances to access another facility and so there is a sustainability benefit to the site's location. While it is considered that the site would mainly be accessed by private car, it is acknowledged that this is not necessarily unusual given the nature of this type of use. On balance, Officers therefore consider that the site's location is acceptable in terms of its accessibility. This is however subject to the impact on the local road network being made acceptable with regards to the Local Highway Authority's position.

## **Heritage**

The site lies within the Canal Conservation Area (CCA).

Section 72 of the Planning (Listed Buildings and Conservation Areas) 1990 imposes a duty when exercising planning functions to pay special attention to the desirability of preserving or enhancing the character of a Conservation Area.

Paragraph 205 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.



Paragraph 208 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

Policy HE1 of the Local Plan reflects the above requirements of the NPPF.

The Council's Conservation team initially raised concerns with the impact of the proposed buildings/structures on the character and appearance of the CCA. This particular canal length is highly rural in character, with limited built form and typical canal side housing, including lock cottages. The Conservation team commented that the combination of steel containers, canopies and portable buildings results in a distinctive change, creating a stark, industrial character when read from the canal towpath, in contrast to the rural characteristics of the area. The structures are deemed clearly at odds with the prevailing character of the CCA, with insufficient screening to mitigate the impact. It was recommended that extensive planting be provided, along with a reduction in height of the existing fence and the removal of canopies and steel containers to the absolute minimum required, to lessen the visual impact of the proposals on the CCA.

In response to these concerns, the Applicant has amended the scheme to remove a section of the existing fencing, including the fencing in front of the containers to create a more varied street elevation. Additionally, it is proposed to reduce the height of the fencing that is to be retained (from 2.4m to 2m) and paint it in a darker brown colour. Screen planting is now proposed, including infilling gaps in the existing vegetation to the canal, providing sections of hedgerow and climbing plants to screen and soften the appearance of the portable building and steel containers and providing climbing plants to the exterior of the retained fence so that it is broken up by greenery.

The Conservation team has considered the amended scheme and consider that it satisfactorily addresses their original concerns. It would be necessary to condition full details of the planting proposals.

The development is however considered to result in some harm to the character and appearance of the Conservation Area. While the development would replace the previous timber storage on the site which provides some benefit, the nature of the proposed buildings remain at odds with the prevailing character of the CAA in this location. Some mitigation is now provided but there would nevertheless be visual change to the site through the industrialised nature of the buildings. The level of harm is considered to be 'less than substantial' within the meaning of the NPPF, with this harm being towards the lower end of less than substantial.

Where such harm is identified, it is a requirement of national and local planning policy that the public benefits outweigh this harm. The Applicant's Heritage Impact Assessment advances a series of public benefits that they consider decisively outweigh the less than substantial harm to the character and appearance of the Canal Conservation Area. These public benefits are:

- Providing continued employment;
- Enhancing the region's economic activity;
- Enhancing the fitness levels and wellbeing of local clients of the fitness business;
- Providing additional access provided to local people to the canal and towpath. This is in terms of enhanced opportunity for use and enjoyment of the heritage asset by local people (particularly through which increases the potential to celebrate the value of the CCA and broadening understanding of its significance, as encouraged in the Conservation Area Appraisal
- Providing a buffer zone between the tranquil Canal Conservation Area and modern traffic on Old Warwick Road.

The HIA goes on to state that if measures were taken to visually improve the zone of interface between the fitness business and the canal towpath, it is considered that this impact would be reduced yet further, thereby reducing the level of public benefit required to balance any harm. Infill planting is now proposed to the canalside boundary which helps to mitigate the visual impact of the development when experienced from the canal and towpath.

Officers consider that the employment and economic benefits associated with the gym use would be very modest considering the scale of the business. Nevertheless, the development would support a small business which would in turn would provide a wider benefit to the local economy.

Enhancing the ability of the local rural community to access health and fitness facilities and services is considered to be a public benefit which weighs strongly in favour of the application.

Provision of additional access to local people to the canal and towpath and the creation of a buffer zone between Old Warwick Road and the canal are extremely tenuous public benefits and Officers do not afford these any weight.

Overall, the economic benefits combined with the provision of a facility that would help meet the needs of the local rural community and facilitate access to sport and recreation opportunities are considered to outweigh the less than substantial harm that has been identified. The application therefore accords with the NPPF and Policy HE1.

### **Impact on the character and visual amenity of the area**

The development is introducing industrialised buildings onto the site and a substantial section of 2m high timber fencing, and this impacts on the character and visual amenity of the area. The impact must however be considered in the context of the lawful use of the site as a timber yard and given the visual mitigation measures now proposed, on balance Officers do not consider that the development would result in any significant harm to the character and visual amenity of the area, such that it would warrant the refusal of planning

permission. The application is therefore considered to accord with Policy BE1 of the Local Plan and guidance in the NPPF.

### **Residential amenity**

There are some residential properties within the wider vicinity of the site. The Council's Environmental Health team has been consulted and no objections have been raised subject to conditions restricting the installation of speakers for the purpose of amplified voice and/or music and to limit the opening hours (no customers permitted to be on the premises other than between 0600 hours and 2100 hours, Monday to Friday, and between 0600 and 18:00 on Saturdays). On this basis it is considered that the development would not result in any unacceptable impacts on the living conditions of nearby residents and the application is therefore considered to accord with Policy BE3 of the Local Plan and guidance in the NPPF.

### **Highway safety**

The Local Highway Authority (LHA) has raised a series of issues and concerns with the application. The Applicant has provided a response to this and further comments from the LHA are awaited. At the time of writing it is unclear whether the Applicant's response is sufficient to address the matters raised by the LHA. An update will therefore be provided to members prior to the committee meeting.

### **Trees and ecology**

Two dead trees are proposed to be removed along the canalside boundary and it is proposed to provide new planting along this boundary to infill the gaps in the existing vegetation. A detailed scheme for the planting could be secured by condition. The LPA's arboricultural officer raises no objection to the application.

The County Ecologist has assessed the proposals and also raises no objection, subject to conditions requiring a Construction Environment Management Plan (CEMP) and to secure details of the external lighting to ensure the adjacent canal corridor is protected from undue light spill in the interests of local wildlife.

In terms of biodiversity net gain (BNG), it is considered that the previous use of the site would have had negligible ecological value and the new planting that is proposed as part of the scheme would deliver a net gain for biodiversity. It is to be noted that the application was submitted before recent BNG legislation was introduced and therefore it is not subject to the mandatory 10% BNG requirement.

The aforementioned conditions would also address comments made by the Canal and Rivers Trust.

### **Flood risk and drainage**

The Lead Local Flood Authority has been consulted and no issues have been raised. The application is therefore considered to be acceptable in terms of flood risk and drainage.

### **Sustainability**

Issues of accessibility have already been considered.

In terms of the Council's Net Zero Carbon DPD, the development does not meet the threshold for consideration against policies NZC1 to NZC3. As the application is retrospective, NZC4 could be considered relevant given that it relates to existing buildings. This requires that all developments demonstrate a consideration to sustainable construction and design in accordance with Local Plan Policy CC1 'Planning for Climate Change Adaptation'. In addition, all development should consider alternatives to conventional fossil fuel boilers.

The buildings are in the form of shipping containers and a small modular building and provide storage and training space plus some very basic amenities (WC and kitchenette). Given the scale and nature of the buildings, Officers consider that a pragmatic approach should be applied in this instance. The development is considered to fall outside the intended scope of the policy and it would be disproportionate to seek net zero measures on this particular scheme.

### **Other matters**

It is clear from the representations received in support of the application that the gym is a valued facility that is enjoyed by its members and they understandably wish to see that it continues. The comments made have been taken into account within Officers' assessment of the application, particularly in considering the suitability of the site's location.

Lapworth Parish Council neither objects to or supports the application. The Parish Council does however consider that the fencing is too high for this location. Since these comments were made the Applicant has revised the scheme to reduce the height of the fencing and remove some of the existing fencing entirely.

### **Very special circumstances**

The Applicant has provided a case for the existence of very special circumstances (as detailed earlier in this report). An Officer response is provided as follows:

- *The existing business is locally owned and staffed and consequently makes a significant contribution to the local economy. The intended use will allow for an enhanced level of support and contribution.*

Officer response: There is an economic benefit associated with this small business, including through the support of employment opportunities. The application form indicates that the business supports 2 full time jobs and 2 part time jobs. However, evidence to support the Applicant's assertion that the development makes a "significant" contribution to the local economy has not been provided and given the size of the business Officers consider that the

extent of the economic benefits are likely to be very modest. The economic benefits do nevertheless weigh in favour of the application.

- *The existing business has an excellent working relationship with the local community and has received favourable comments from the Parish Council.*

Officer response: The relationship between the business and the local community is considered to be immaterial in planning terms. Lapworth Parish Council has been formally consulted on the application and has a neutral stance (neither for or against the proposal).

- *The proposed builds will be of an appropriate scale and design for the intended use, the site and the immediate area.*

Officer response: It is a normal planning requirement for new built development to be of an appropriate scale and design for its intended use and the site's location. The design is not innovative in any way - such that it could potentially be afforded weight as part of a case for very special circumstances - and the scale and design are not considered to contribute to very special circumstances.

- *There will be no adverse ecological, landscape or flood risk issues attached to the proposal.*

Officer response: Other planning impacts of the development are to be assessed in their own right and are to be weighed in the overall planning balance. An absence of harm would not contribute to the existence of very special circumstances.

- *The proposal complies with all relevant planning policies [as set out in the Applicant's Planning Statement].*

Officer response: Developments are expected to comply with relevant planning policies and therefore policy compliance would not contribute to the existence of very special circumstances.

- *The proposal redevelops what would otherwise be derelict brownfield site.*

Officer response: The NPPF already considers the redevelopment of previously developed sites in the Green Belt and the application has been assessed on that basis. As such this matter is not considered to contribute to the existence of very special circumstances. Also, while the recycling of previously developed land is promoted in the NPPF and represents an efficient use of resources, this is a general principle of good planning and is not something that could reasonably be said to contribute to very special circumstances. There is also nothing to suggest that the site would otherwise appear as a derelict piece of land that is likely to detract from the character and appearance of the area.

## **Planning Balance and Conclusion**

The proposed development would result in harm to the Green Belt by reason of inappropriateness, loss of openness and encroachment; substantial weight is to be afforded to this harm.

The development also has the potential to prejudice highway safety. A series of concerns and issues have been raised by the LHA, although the Applicant has provided a response to these concerns. Nevertheless, at the time of writing, it is unclear whether the LHA objection can be lifted.

It has been evidenced that the proposal would primarily serve the local community. It is considered that the gym would help to meet the needs of the rural community in this area and facilitate opportunities for the local community to access sport and recreation provision. This in turn enhances the sustainability of the local community and weighs in favour of the application. The main benefit of this would be a reduction in car journey distances/times if existing gym members were to attend alternative premises within the local area.

There would also be a very modest economic benefit through the support of a small business providing up to 3 full-time equivalent jobs.

The 'less than substantial' harm that has been identified to the CCA would be outweighed by the public benefits associated with the economic and sustainability aspects of the proposal.

Of the other matters identified, namely amenity, trees, ecology and drainage, these either result in no material harm or could be adequately addressed through the imposition of appropriate conditions. As such they neither weigh for or against the proposal.

Having considered the Applicant's case for very special circumstances and also having considered the benefit of the development in terms of the facility meeting the needs of the local community, it is not considered that these amount to very special circumstances to clearly outweigh the harm to the Green Belt. The application is therefore contrary to the NPPF and Policy DS18 of the Local Plan and is therefore recommended for refusal on that basis.

Additionally, other harm has been identified in terms of highway safety and the very special circumstances advanced by the Applicant would also need to outweigh that harm - or alternatively the Applicant's response to the LHA objection will need to be sufficient for the LHA to conclude that the development is acceptable in highway safety terms. Further information will be provided to members on this point.

## **REFUSAL REASONS**

- 1 The NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Local Plan policy DS18 echoes the requirements of the NPPF.

In the opinion of the Local Planning Authority, the proposal represents inappropriate development, which is harmful by definition. There would be harm to the openness of the Green Belt in both visual and spatial terms and the development would also represent encroachment through the introduction of a greater urbanising influence, which would conflict with one of the purposes of the Green Belt. It is not considered that very special circumstances exist to clearly outweigh the harm to the Green Belt.

- 2 The application has not adequately demonstrated that the proposed development would not result in an unacceptable impact on highway safety, specifically in terms of the impact on the adjacent layby which forms part of the public highway and the proposed access and parking arrangements. The application is therefore contrary to Policy TR1 of the Local Plan and guidance contained within the NPPF.

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