

Delegated Application Report

Application number: 210560

Address: Unit 5, 61 Merrick House, Whale Avenue, Reading, RG2 0GX

Case Officer: Mr David Brett

Proposal: Change of use from Class D2 (Gym) to Class E (Grocery Shop) (Amended description)

Received on: 12/04/2021

Valid from: 15/04/2021

Target Decision Date: 10/06/2021

Site Description and Surrounding Area

The proposal site is a gymnasium at Unit 5, Merrick, House, Whale Avenue on the Kennet Island development. The surrounding area comprises of a mix of residential two storey terraced rows and flats. Merrick House itself is four storey mixed use development, with a mix of uses at ground floor level, and flats on the first, second and third floors.

Proposal

This Certificate of Lawfulness application seeks the change of use from gym to grocery shop. As per the changes to the Use Classes Order in England; from 1st September 2020 a gymnasium (previously D2 use) now falls under Class E for Commercial, Business and Service uses. Also as per the changes to the Use Classes Order in England; from 1st September 2020 a grocery shop (previously A1 use) now falls under Class E for Commercial, Business and Service uses.

Plans Submitted

The applicant supplied the following;

- ~~• Location Plan - 61 Merrick House, Whale Avenue RG2 0GX~~
- ~~• Existing & Proposed Floor Layout - FUL-01~~
- Design and Access Statement - Unit-5 61 Merrick House RG2 0GX

Received on 12/04/2021

- ~~• Location Plan - 61 Merrick House, Whale Avenue RG2 0GX~~
- ~~• Existing & Proposed Floor Layout - FUL-01 Rev A~~

Received on 07/06/2021

- ~~• Location Plan - 61 Merrick House, Whale Avenue RG2 0GX~~
- Location Plan - 61 Merrick House, Whale Avenue RG2 0GX
- Existing & Proposed Floor Layout - FUL-01 Rev A1

Received on 08/06/2021

Relevant Planning History

080528 - Block H - Use as A1 (Unit 3 - 47 sq m), A2 (Units 1 and 2 - 88 sq m), A3 (Unit 4 - 65 sq m), temporary (5 years) use as sales and marketing suite (Units 5 and 6 - 439 sq m) and temporary (2 years) use as sales and marketing suite (Unit 7 - 107 sq m). Block T - Use as D1 Dental Surgery (Unit 9 - 93 sq m), A1 (Unit 12 - 170 sq m) and D1 Community Centre (Units 13 and 14 - 181 sq m). Alterations to the to the ground floor frontages of Block H and Block T. - Application Permitted on 10/09/2008. Conditions relating to Unit 5:

- U39040 - Temp permission - 5 yrs
 - The use of Units 5 and 6, Block H as a sales and marketing suite shall cease use on or before five years from the date of this permission.
 - Reason: as a permanent permission would be contrary to the proper planning of the area and to ensure that suitable community facilities are provided for the surrounding population.
- U39048 - Sales and Marketing suite - hours of use

- The hours of use of Units 5, 6 and 7 of Block H as a sales and marketing suite shall be restricted to between the hours of 07:00am to 10:00pm Monday to Fridays and 08:00 to 10:00pm on weekends.
- Reason: to protect local residents from unreasonable disturbance arising from the use.

090312 - Change of use from temporary use as sales and marketing suite to gymnasium (D2 use)
- Application Permitted on 15/04/2009

The following application relates to Units 6, 7 and 8 at Merrick House:
110485 - Change of use from community use (D1) to fitness studio (D2) to extend gymnasium -
Application Permitted on 16/12/2011

Summary of Consultations

No formal consultations were undertaken for this case as they would be of no consequence in the determination of an application of this type. The decision for this case will have to be based solely on The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as amended. Reference is also made to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

Relevant Planning Policy and Guidance

National Planning Practice Guidance

The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)

Town and Country Planning Act 1990 (as amended); Section 192 and Section 55 (2) (f)

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Appraisal

A Certificate of Lawfulness for a change of use class from D2 to E has been submitted to the Local Planning Authority as the applicant considers the proposal falls within the permitted development rights of the property and would be lawful by virtue of the GPDO and thus would not require a planning permission.

In accordance with Section 55 (2) (f) of the Town and Country Planning Act 1990 (as amended) the change of use from D2 (Gymnasium) to E(a) (shop) is lawful as both uses are, as of 1st September 2020 (with reference to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020), within the same use (Class E) and therefore the change of use does not constitute development in line with Section 55 of the Town and Country Planning Act 1990 (as amended).

In accordance with the change to the Use Classes Order in England (from 1st September 2020) from D2 “the use Class until 31st August 2020) to E(a) for Unit 5, 61 Merrick House, Whale Avenue, Reading, RG2 0GX. The change of use would see for Unit 5, 61 Merrick House, Whale Avenue, Reading, RG2 0GX from a gymnasium to a shop as specified on the application form. While gymnasium would have fallen under use Class D2 prior to 1st September 2020, use Class D2 falls under E(a) from 1st September onwards. A shop was previously Class A1 and is now Class E (a).

Section 55 (2) (f) of the Town and Country Planning Act 1990 (as amended)

- **Meaning of “development” and “new development”**
- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land-
 - (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of

the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class. **Complies**

Recommendation

The proposal has been assessed against Section 55 (2) (f) of the Town and Country Planning Act 1990 (as amended) for the change of use from D2 to E(a) and is lawful as both uses fall within the same use, as of 1st September 2020 (with reference to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020), and therefore the change of use does not constitute development in line with Section 55 of the Town and Country Planning Act 1990 (as amended).

It can be confirmed that the proposed change of use from D2 to E(a) would be lawful for planning purposes within **use class E(a)** on the basis of site location plan received on: **Tuesday 8th June 2021.**

Sufficient evidence has been provided to demonstrate that a Certificate of Lawfulness should be granted for the proposed use.

Informatives

