

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		JJ	28/11/2024
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		AN	28/11/24
Assistant Planner final checks and despatch:		ER	29/11/24

Application: 24/01477/LUPROP **Town / Parish:** Brightlingsea Town Council

Applicant: Gym Atomic Ltd

Address: 2 Harbour Square Waterside Marina Brightlingsea

Development: Application for Lawful Development Certificate for Proposed Use or Development for proposed use to be a gym, use class E(d). The hours of operation will be 7 days a week, 6am until 10pm.

1. Town / Parish Council

Brightlingsea Town Council No comments received

2. Consultation Responses

N/A

3. Planning History

00/00587/FUL	Mixed use development of 181 residential units, marina and commercial units and associated car parking (amended scheme)	Refused	09.08.2001
01/02098/CON	Demolition of existing sheds, workshops, warehouses, offices, jettys and slipways	Approved	19.06.2002
01/02099/FUL	Mixed use development comprising 148 residential units, 5 commercial live/work units, marina, retail shops, restaurant, public conveniences and associated car parking and environmental improvements.	Approved	23.06.2004
88/00457/OUT	Redevelopment to provide a mix of residential/leisure/ marina and ancillary retail	Approved	11.02.1994
97/00076/OUT	Redevelopment to provide a mix of residential/leisure/ marina and ancillary retail (Variation of Condition 2 imposed upon planning permission TEN/88/0457 relating to the extension of time limit for submission of reserved	Approved	28.08.1997
04/01621/FUL	Mixed use development of residential units and retail units.		02.10.2009

05/01279/FUL	Mixed use development of residential and retail units.		02.10.2009
07/01240/FUL	Change of use of retail units to include A1, A2 and A3 uses.	Withdrawn	27.11.2007
07/01241/FUL	Amendments to pedestrian access and service area.	Withdrawn	19.10.2009
24/01477/LUPRO P	Application for Lawful Development Certificate for Proposed Use or Development for proposed use to be a gym, use class E(d). The hours of operation will be 7 days a week, 6am until 10pm.	Current	

4. **Status of the Local Plan**

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Local Plan 2013-33 and Beyond (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any Neighbourhood Plans that have been made and the Minerals and Waste Local Plans adopted by Essex County Council.

5. **Neighbourhood Plans**

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

6. **Relevant Policies / Government Guidance**

Not required

7. **Officer Appraisal (including Site Description and Proposal)**

Application Site

The application site comprises of a ground floor unit which is currently vacant but has previously been used as a restaurant. The site is within Harbour Square on Waterside Marina. The application site is within the Settlement Development Boundary and Flood Zones 2 and 3.

Description of Proposal

Proposed use to be a gym, use class E(d). The hours of operation will be 7 days a week, 6am until 10pm.

Assessment

For the purposes of determining this application for a certificate of lawful development for a proposed use or development, the main considerations are;

- Planning History;
- Use Classes Regulations Class E

Planning History

No conditions have been found on any previous application relating to the unit which restrict the permitted development rights of the approved restaurant. The application site therefore benefits from permitted development rights.

Use Classes Regulations Class E

The aim of this application is to establish whether or not this development would require planning permission. The certificate issued would state that the development is lawful and not at risk of being subject to enforcement action. To establish whether the proposed development is permitted development reference needs to be made to The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

Proposed use to be a gym

Class E - Commercial, Business and Service

Use, or part use, for all or any of the following purposes—

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,
 - (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,
 - (c) for the provision of the following kinds of services principally to visiting members of the public—
 - (i) financial services,
 - (ii) professional services (other than health or medical services), or
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,
 - (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,
 - (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,
 - (f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,
 - (g) for—
 - (i) an office to carry out any operational or administrative functions,
 - (ii) the research and development of products or processes, or
 - (iii) any industrial process,
- being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

The site currently has planning permission for use as a restaurant. A restaurant falls under use Class E(b), the proposed Gym is also within use Class E(d) so therefore the change of use is permitted and planning permission is not required.

Other Considerations

For information any external changes including air conditioning etc. will likely require planning permission. If adverts are required this may also require advertisement consent.

We have received two letters of representation raising concerns in regards to potential noise nuisance in particular noise reverberating through the building.

Officer Response – As the proposal is permitted development as confirmed above, unlike with a planning application, conditions cannot be applied in regards to noise or any other consideration.

The merits of the case are not for consideration it is purely a determination of whether the change of use is permitted development. Legislation under the Environmental Protection Act 1990 relates to statutory nuisances should these arise [Nuisances - what the Council can do \(tendringdc.gov.uk\)](https://www.tendringdc.gov.uk)

8. Recommendation

Lawful Use Certificate Granted

9. Conditions

- 1 The proposed development constitutes permitted development by virtue of the provisions of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

10. Informatives

Ecology Informative

In accordance with the Council's general duty to conserve and enhance biodiversity, you are strongly encouraged to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Suggested enhancements could include: <https://www.rhs.org.uk/wildlife/in-the-garden/encourage-wildlife-to-your-garden>

11. Equality Impact Assessment

In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

12. Notification of Decision

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	NO
Are there any third parties to be informed of the decision? If so, please specify:	NO
Has there been a declaration of interest made on this application? No Declarations Of Interest Made	NO