

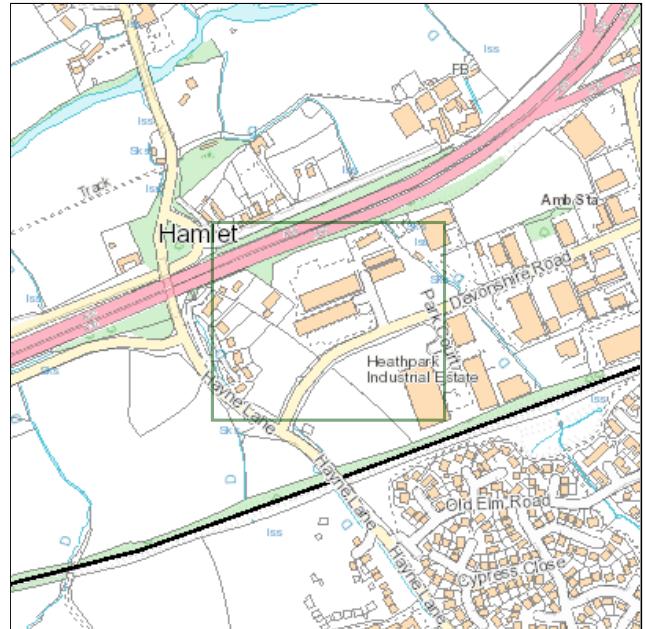
**Ward** Honiton St Michaels

**Reference** 21/1420/VAR

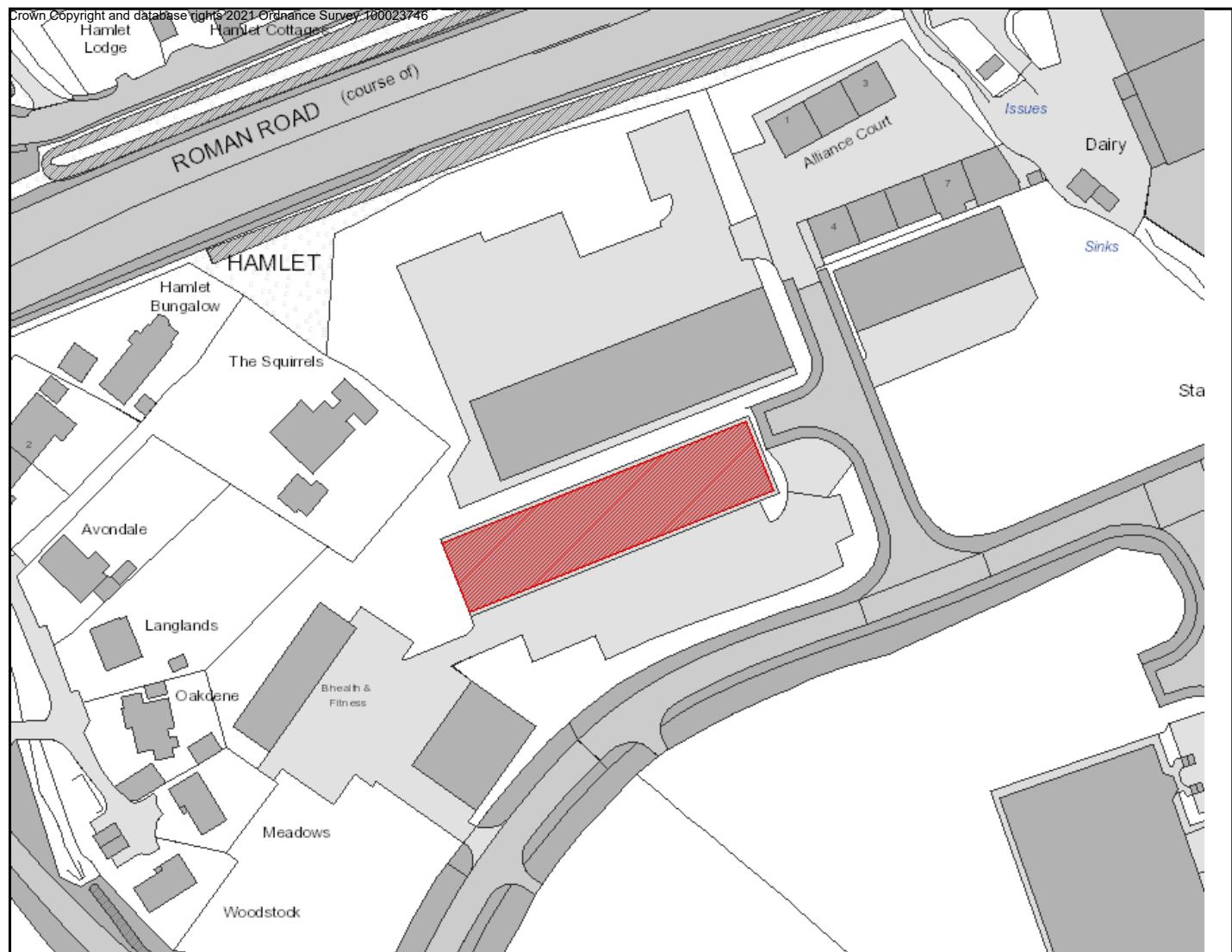
**Applicant** Mr Craig Bernhardt

**Location** Unit 5 Weston Park Devonshire Road  
Heathpark Industrial Estate Honiton EX14 1ST

**Proposal** Variation of condition 1 (extension to opening hours) of 19/2150/VAR.



### RECOMMENDATION: Approval with conditions



		<b>Committee Date: 4<sup>th</sup> August 2021</b>
<b>Honiton St Michaels (Gittisham)</b>	<b>21/1420/VAR</b>	<b>Target Date: 20.07.2021</b>
<b>Applicant:</b>	<b>Mr Craig Bernhardt</b>	
<b>Location:</b>	<b>Unit 5, Weston Park, Devonshire Road Heathpark Industrial Estate Honiton EX14 1ST</b>	
<b>Proposal:</b>	<b>Variation of condition 1 (extension to opening hours) of 19/2150/VAR</b>	

**RECOMMENDATION: APPROVAL with conditions**

**EXECUTIVE SUMMARY**

**The application is before committee because the officer recommendation differs from that of one of the ward members.**

**The proposal seeks to extend the opening hours of an existing gym to allow it to be open 24 hours a day and 7 days a week. The hours of opening currently being restricted to 6:00 to 22:00 on Mondays to Fridays and 08:00 to 18:00 Saturdays, Sundays and Bank Holidays.**

**The gym is located at the western end of Heathpark Industrial estate, Honiton and occupies a two storey industrial style building. There are other commercial/industrial premises to the east and residential development to the west. The A30 lies beyond the site to the north.**

**The proposed extension of the opening hours has the potential to give rise to additional noise impacts due to the operation of the gym at times where the background noise environment may be quieter. There have been a number of objections to the application from local residents who have raised specific noise concerns in relation to the current use and where there are no restrictions, or control, over potentially noisy activities, such as the playing of amplified music.**

**Whilst it would not be appropriate to seek to introduce measures through this planning application that seek to restrict the way in which the gym currently operates (although there are other means by which noise issues can be investigated and dealt with) it is necessary to consider whether adequate control could be placed on any extended hours of opening to adequately protect residential amenity.**

**The Environmental Health Officer has not objected to the scheme but has recommended a detailed condition requiring submission of a Noise Management Scheme to control noise during the proposed extended hours of opening. Without such a condition the proposal would likely be considered unacceptable, but through its imposition can be made acceptable, as such, and where the application is otherwise considered acceptable, the application is recommended for approval.**

## **CONSULTATIONS**

### **Local Consultations**

#### **Honiton St Michaels - Cllr Mike Allen**

Although the site is some distance from housing I do believe a restriction on opening hours should remain in force at least from 12 midnight to 6 a.m. to avoid traffic noise disturbance.

#### **Honiton St Michaels - Cllr Phil Twiss**

This is a valuable health and well being operation sited close to residential properties but unlikely to have any adverse impact with people arriving or leaving the site, given the entrance is situated on Devonshire Road and I support the extension of proposed hours of operation.

#### **Parish/Town Council**

Gittisham parish councillors object to this application on the grounds of adverse impact on a residential amenity.

### **Technical Consultations**

#### **Environmental Health**

**07.06.21** - I have considered the application 21/1420/VAR and I recommend approval with conditions:

Prior to extending the hours of operation, a Noise Management Plan (NMP) will be submitted for approval by the Local Planning Authority. On written approval of the NMP by the Local Planning Authority, the NMP will be implemented and operated during the hours of operation on the premises. The NMP must detail the methods by which the gyms management will systematically assess, reduce and prevent noise emissions from the premises, through operational managerial techniques and abatement technologies. The NMP will identify and employ appropriate measures to minimise the generation of noise from the premises and will include:

- o The control noise from the use of audio equipment at source by good operational practices through staff training.
- o A noise limiting device must be installed and operated at all times when audio equipment is being used at the premises. The noise limiting device shall only be operated the set level approved in writing by the Local Planning Authority. The device must have sufficient management controls in place to ensure that it cannot be bypassed or tampered with once the approved level has been set.

o All external doors must be kept shut at all times when the premises is being used. Doors may be opened for normal entrance and egress of people but must be shut immediately thereafter.

o Clear and legible notices must be prominently displayed in the car park area requesting customers to respect the needs of local residents and enter and leave the area quietly.

The NMP should be periodically reviewed (at least once per year) and updated where necessary or when any of the following occur:

o Significant changes are made to premises, audio equipment or operational practices on the site.

o The Local Planning Authority requests that the NMP is updated.

o Complaints are received, which on subsequent investigation result in the identification of further control measures or remedial action, in addition to those already set out within the NMP.

#### **24.06.21 - Revised comments:**

I'd be happy with changing the condition to read:

Prior to extending the hours of operation as hereby approved , a Noise Management Plan (NMP) shall be submitted to and approved in writing by the Local Planning Authority. Any NMP so approved shall be implemented and operated during the extended hours of operation (these being at all times outside of the hours of 06:00 to 22:00 on Mondays to Fridays and 08:00 to 18:00 Saturdays, Sundays and Bank Holidays). The NMP must detail the methods by which the gyms management will systematically assess, reduce and prevent noise emissions from the premises, through operational managerial techniques and abatement technologies. The NMP will identify and employ appropriate measures to minimise the generation of noise from the premises and will include:

o The control noise from the use of audio equipment at source by good operational practices through staff training.

o A noise limiting device must be installed and operated at all times when audio equipment is being used at the premises. The noise limiting device shall only be operated the set level approved in writing by the Local Planning Authority. The device must have sufficient management controls in place to ensure that it cannot be bypassed or tampered with once the approved level has been set.

o All external doors must be kept shut at all times when the premises is being used. Doors may be opened for normal entrance and egress of people but must be shut immediately thereafter.

In addition, details of clear and legible notices to be prominently displayed in the car park area and requesting customers to respect the needs of local residents and enter and leave the area quietly, shall be submitted for approval as part of the NMP. Signage as agreed shall be displayed in accordance with these details and maintained thereafter.

The NMP should be periodically reviewed (at least once per year) and updated where necessary or when any of the following occur:

- o Significant changes are made to premises, audio equipment or operational practices on the site.
- o On request of the Local Planning Authority
- o Complaints are received, which on subsequent investigation result in the identification of further control measures or remedial action, in addition to those already set out within the NMP.

### **Other Representations**

3 letters of objection have been received raising the following issues:

- Concerns over impact of noise from gym opening 24/7
- Bass music can be heard from adjoining properties, if there was no music there would be no concerns with extended opening times.
- The music is too loud due to the thin nature of the building walls and when doors are left open.
- Concerns if members using the gym have access to the sound system without the supervision of staff.

### **PLANNING HISTORY**

<b>Reference</b>	<b>Description</b>	<b>Decision</b>	<b>Date</b>
19/2150/VAR	Variation of condition 3 of application 17/0428/FUL (change of use of building from B1/B8 (light industry/storage) to D2 (health club and gymnasium) together with the insertion of a first floor and associated external alterations) to permit extended opening hours	Approval with conditions	12.11.2019

### **POLICIES**

Adopted East Devon Local Plan 2013-2031 Policies  
Strategy 6 (Development within Built-up Area Boundaries)

D1 (Design and Local Distinctiveness)

EN14 (Control of Pollution)

Strategy 23 (Development at Honiton)

Government Planning Documents  
NPPF (National Planning Policy Framework 2019)  
National Planning Practice Guidance

## **Site Location and Description**

The application relates to an existing commercial warehouse style unit located at the western end of the Heathfield Industrial Estate on the west side of Honiton and south of the A30. The building is two storey and in use as a health club/gym. It is set down and back from the estate road and between neighbouring larger industrial units to the east and a small group of residential properties to the west, the gardens of which wrap around to the north of the site.

The site lies within the built-up area boundary of the town.

## **Proposed development**

Permission was granted by application 17/0428/FUL to change the use of the unit to its current use from a B1/B8 use. Condition 3 of the original permission restricted the opening hours of the gym to the following:

07:00 to 21:00 on Mondays to Fridays  
08:00 to 17:00 Saturdays and  
09:00 to 13:00 on Sundays and Bank Holidays.

The reason given for the imposition of the condition was to protect the amenity of nearby neighbours.

A subsequent application in 2019 (19/2150/VAR) was granted permission to vary the opening hours to:

6:00 to 22:00 on Mondays to Fridays  
08:00 to 18:00 Saturdays, Sundays and Bank Holidays.

The current proposal seeks to remove all restrictions on opening times to allow the business to open 24 hours a day 7 days a week.

## **ANALYSIS**

The main issue for consideration is the acceptability of the extended open hours on the amenity of nearby residents.

### **Amenity Impact**

The applicant is seeking to extend the opening hours of the business to allow 24/7 operation of the gym in order to meet customer demand. It is suggested that they have had numerous enquiries about earlier and/or later opening times to work around work commutes/shift patterns etc. The applicant has also pointed to other businesses operating without restriction in nearby towns and that they have lost members as a result of this.

It is further advised that the extended opening hours would operate with full CCTV provision as well as Panic Alarms, Comprehensive Anti-Tailgating Door Entry System and Fully Manned Outsourced Surveillance during unstaffed hours.

The principal issue to consider with regards to the proposal is the impact on amenity of neighbouring occupiers, particularly with regards to noise resulting from the operation of the gym.

At the time of determination of the previous application the Environmental Health team were consulted and advised that they had no objections to the extended opening hours proposed and that they had received no complaints regarding the use of the gym. The applicant has similarly suggested that they have received no objections to the operation of the premises.

In response to the current application there have been representations from three local residents and all of which have raised issues with noise. The particular concern appears to relate to the playing of amplified music and specifically that with a heavy base line.

Policy EN14 of the Local Plan seeks to prevent development from that would result in unacceptable levels of pollution to residents or the wider environment, noise and/or vibration is listed as one particular potential pollutant effect. Policy D1 similarly seeks to protect the amenity of occupiers of adjoining residential properties.

Para. 180 a) of the National Planning Policy Framework (NPPF) also seeks to ensure that new development takes into account the likely effects (including cumulative effects) of pollution and where appropriate mitigates and reduces to a minimum potential adverse impacts resulting from noise from new development – and avoids noise giving rise to significant adverse impacts on health and the quality of life. Advice is given in the National Planning Practice Guidance on determining noise impacts and where relevant on how such impacts might be mitigated.

The Council's Environmental Health team have assessed the application and the potential for it to give rise to additional amenity impacts. In order to seek to control noise outputs from amplified music and to control other noise impacts that could arise from the use of the gym outside of its current opening hours a condition is recommended. Such a condition would require submission of a Noise Management Plan (NMP) for approval prior to any extension of opening hours. The NMP would be required to provide details of how noise resulting from the use would be assessed, reduced and prevented through operational managerial techniques and abatement technologies. Specifically it would need to show how audio equipment would be controlled including the use of noise limiting devices. In addition it would require the closure of external doors other than when the building is being accessed or exited. The suggested condition also includes a mechanism for the review of and amendments to the required NMP should further measures be required.

## **CONCLUSION**

There are concerns from neighbouring occupiers as to how the extension to the opening hours proposed might exacerbate existing noise concerns. These concerns

appear to relate predominantly to the playing of amplified music on the premises and over which there is currently no control. Subject to suitable control over and regulation of music noise and to other proposed measures being introduced, to reduce the noise impacts from the development, the use of the premises for the extended time period can be considered acceptable. The proposal would assist in supporting the existing business and help to promote health and safe communities, one of the key objectives of the NPPF.

## **RECOMMENDATION**

APPROVE subject to the following conditions:

1. Prior to extending the hours of operation as hereby approved, a Noise Management Plan (NMP) shall be submitted to and approved in writing by the Local Planning Authority. Any NMP so approved shall be implemented and operated during the extended hours of operation (these being at all times outside of the hours of 06:00 to 22:00 on Mondays to Fridays and 08:00 to 18:00 Saturdays, Sundays and Bank Holidays). The NMP must detail the methods by which the gyms management will systematically assess, reduce and prevent noise emissions from the premises, through operational managerial techniques and abatement technologies. The NMP will identify and employ appropriate measures to minimise the generation of noise from the premises and will include:
  - o The control noise from the use of audio equipment at source by good operational practices through staff training.
  - o A noise limiting device must be installed and operated at all times when audio equipment is being used at the premises. The noise limiting device shall only be operated the set level approved in writing by the Local Planning Authority. The device must have sufficient management controls in place to ensure that it cannot be bypassed or tampered with once the approved level has been set.
  - o All external doors must be kept shut at all times when the premises is being used. Doors may be opened for normal entrance and egress of people but must be shut immediately thereafter.

In addition, details of clear and legible notices to be prominently displayed in the car park area and requesting customers to respect the needs of local residents and enter and leave the area quietly, shall be submitted for approval as part of the NMP. Signage as agreed shall be displayed in accordance with these details and maintained thereafter.

The NMP should be periodically reviewed (at least once per year) and updated where necessary or when any of the following occur:

- o Significant changes are made to premises, audio equipment or operational practices on the site.
- o On request of the Local Planning Authority
- o Complaints are received, which on subsequent investigation result in the identification of further control measures or remedial action, in addition to those already set out within the NMP.

(Reason – In the interests of protecting the amenity of neighbouring occupiers and to appropriately manage noise emanating from the site in the interests of minimising noise pollution, in accordance with policies D1 (Design and Local Distinctiveness) and EN14 (Control of Pollution) of the East Devon Local Plan and guidance in the National Planning Policy Framework and accompanying Planning Practice Guidance.)

2. The building shall only be used as a gymnasium and for no other purpose (including any other purpose in Class E of the Schedule to 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 with or without modification).  
(Reason - To ensure that the social benefits of the proposal, which are given significant weight in the planning balance, are not diminished and to prevent other potential uses which would be unsuitable within this designated employment area, in accordance with Strategy 32 (Resisting Loss of Employment, Retail and Community Sites and Buildings) of the adopted East Devon Local Plan 2013-2031and guidance contained within the National Planning Policy Framework.)
3. The first floor window on the north west elevation of the building shall be fitted with obscure glazing up to a height of no lower than 1.7 metres above any part of the internal floor level of the area in which the window has been installed. The obscure glazing limitation required by this condition shall be retained thereafter.  
(Reason - To maintain the private amenity of the occupiers of the properties to the rear of the site, in accordance with Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031).
4. The development shall be carried out in accordance with the approved Travel Plan, received 5th July 2017 and as approved under discharge of condition notice dated 28th July 2017 submitted in relation to application 17/0428/FUL. This plan shall be monitored and reviewed on an annual basis and a copy of that annual review and action plan arising shall be submitted to the Local Planning Authority. The development shall be carried out in accordance with the agreed travel plan and subsequent revisions.  
(Reason - To promote and secure sustainable modes of transport, in accordance with Strategy 5B (Sustainable Transport) of the adopted East Devon Local Plan 2013-2031, and guidance contained within the National Planning Policy Framework).
5. The parking spaces, as shown on the approved plan PIN981(10)01 (and limited to the land within the red edge drawn on plan PIN981(10)03) received by the Local Planning Authority 27th March 2017) and relating to application 17/0428/FUL shall be retained and kept available for those purposes at all times.  
(Reason - To ensure that adequate and safe provision is made for the occupiers and in the interests of highway safety in accordance with the requirements of Policy TC7 - Adequacy of Road Network and Site Access of the Adopted New East Devon Local Plan 2013-2031.)
6. The landscaping, cycle parking and external lighting related to the site, as shown on drawing non YGSWB/PIN/CF/01 B dated 27th July 2017 and approved under discharge of condition notice dated 28th July 2017, relating to application

17/0428/FUL shall be carried out as approved and shall be maintained for a period of 5 years from the date of implementation. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.

(Reason - In the interests of the character and appearance of the development and highway safety and to ensure that adequate and safe provision is made for employees and visitors to the site in accordance with Policies D1 (Design and Local Distinctiveness), D2 (Landscape Requirements), TC4 (Footpaths, Bridleways and Cycleways) and TC9 (Parking Provision in New Development) of the adopted East Devon Local Plan 2013-2031).

#### NOTE FOR APPLICANT

##### Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council works proactively with applicants to resolve all relevant planning concerns; however, in this case the application was deemed acceptable as submitted.

The historical planning application is referenced under (17/0428/FUL) for which the approved plans were as follows:-

PIN981(2)-01	Location Plan	27.03.17
PIN981(1)01 :	PROPOSED Layout	27.03.17
PIN981(10)02 :	APPROVED Layout	16.02.17
PIN981(10)03	Block Plan	27.03.17
PIN981(14)01	Proposed Combined Plans	16.02.17
PIN981(14)02	Existing Combined Plans	16.02.17

This decision notice for the variation should be read in conjunction with these previously approved plans.

#### List of Background Papers

Application file, consultations and policy documents referred to in the report.