

Agenda Item:	5.2
Site:	Part of First Floor, Octagon Centre, Burton on Trent, DE14 3TN
Proposal:	Change of use from Class A1 shops to Class D2 Assembly and Leisure as a gymnasium

Report of Head of Service (Section 151 Officer)

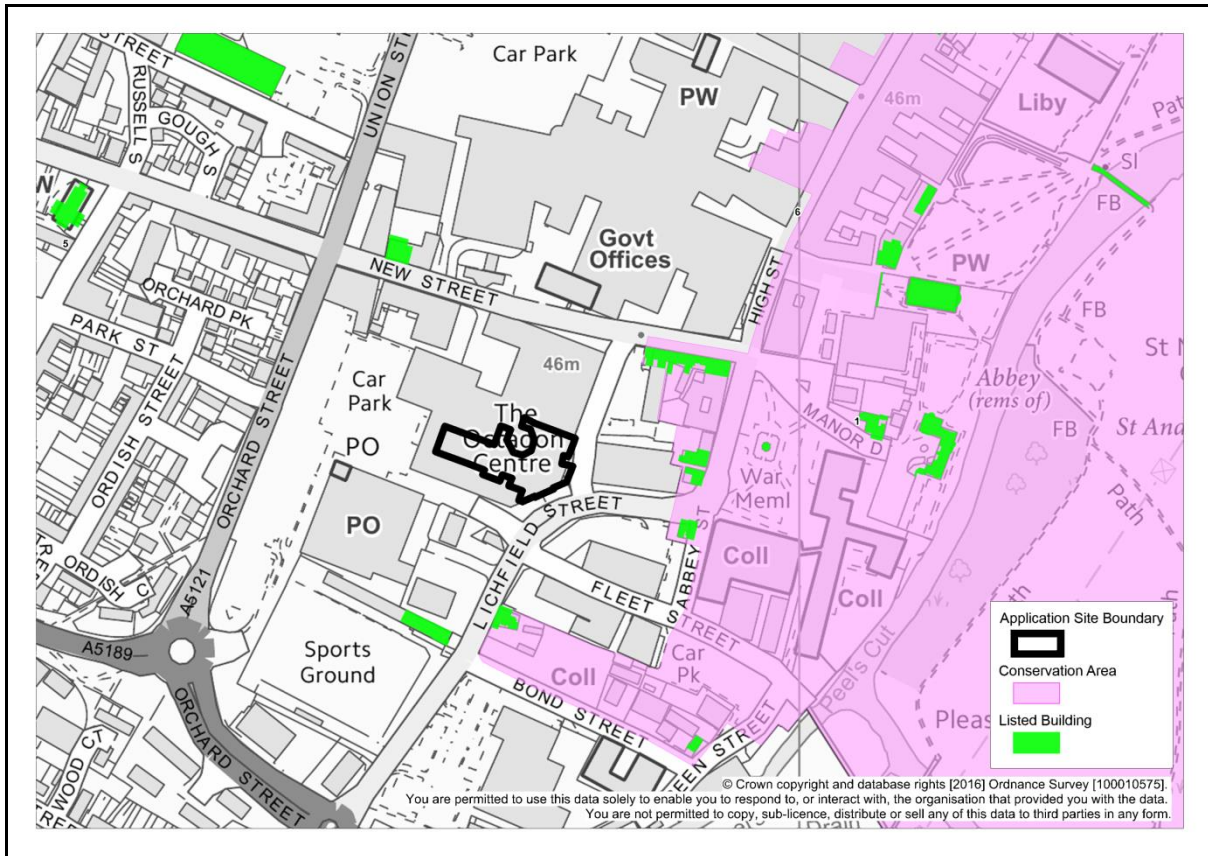
This report has been checked on behalf of Legal Services by John Kirkham

[Hyperlink to Application Details](#)

Application Number:	P/2016/01434
Planning Officer:	Charlotte El Hakiem
Type of Application:	Change of Use
Applicant:	Vixcroft (Burton) Ltd
Ward:	Burton
Ward Member (s):	Councillor M Rodgers
Date Registered:	21 October 2016
Date Expires:	25 November 2016, extension of time agreed

1. Executive Summary

- 1.1 Planning permission is sought for the change of use from A1 shops to class D2 assembly and Leisure as a gymnasium.
- 1.2 Statutory consultees have raised no objections.
- 1.3 6 letters of support have been received from retailers within the town, Burton Chamber of commerce and MP Andrew Griffiths.
- 1.4 The proposal would have an adverse impact on the vitality and viability of the Town Centre contrary to Local Plan Policies SP20 and SP21.

Map of site**2. The Site Description**

- 2.1 The Octagon Centre is located at the southern end of the town centre of Burton within the primary retail core opposite the Coopers Square shopping centre. The site is 0.441 hectares (1.089 acres) in size and is bound by New Street to the north, Orchard Street to the west, Park Street to the south and Lichfield Street to the south-east. The application site forms the first floor of the shopping centre.
- 2.2 The Octagon Centre was constructed in 1990 and consists of two inner malls and a central octagonal space which links the north and south-west sides of the centre. The majority of the retail units are at ground floor level.
- 2.3 The first floor consists of approximately 550 sqm of retail space distributed through varying floorspace per unit. All of the units are arranged around the central octagon and are all accessed via a central lift or escalator. There are also public toilets and redundant office and storage space in this area.
- 2.4 The centre has a 719 space car park which is shared by an Asda superstore on its south-west side. 30 spaces are allocated for disabled use. The car park is accessed off Orchard Street. The site also has pedestrian access from Orchard Street, Park Street, Lichfield Street and New Street.
- 2.5 The existing building is constructed in red brick, with a mixed slate and glass roof and two large glazed entrances on the north and west elevations. The north elevation has a strong emphasis on New Street owing to two gables with brickwork detail linked by an octagonal glass atrium. The building encloses the street with its dominant height and reflects the height

and fenestration of other surrounding buildings. On the west side the glass entrance is met by two single storey elements one a more recent extension which emulates brewery buildings in the town and the single storey section that returns the building around Park Street.

3. Planning History

- PA/15460/002 Erection of a two storey shopping centre Approved 11/08/1986
- PA/15460/008 Erection of a two storey shopping centre Approved 15/06/1987
- PA/15460/020 Extension to car park Approved 30/10/1989
- PA/15460/186 Extension to existing centre for A1 retail use Approved 15/02/2000
- P/2010/00967 Erection of first floor and two storey extensions and installation of new shopfronts. Approved 25/10/2010.
- P/2013/00665 - Alterations to the parking and pavement arrangement on part of the existing car park adjacent to TK Maxx – Withdrawn 11/07/2013
- P/2013/00768 - Installation of new shop-front including entrance doors and windows, alterations to the parking and pavement arrangement on part of the existing car park adjacent to TK Maxx – Approved 19/08/2013
- P/2014/01658 Formation of a new west mall entrance and west elevation shopfront facing the car park, internal reconfiguration of lobby and shop units adjacent, installation of part new roof and roof lights. Approved 12/02/2015
- There have also been various applications for new shopfronts and signage within the shopping centre.

4. The Proposal

- 4.1 The application seeks to change the use of the first floor of the shopping centre from class A1(retail) and A3 (restaurant and café) to D2 (Assembly and leisure), specifically a gymnasium.
- 4.2 The proposal involves the change of use of all of the existing retail spaces on the first floor and in addition extending the current boundaries of the units to incorporate the current circulation space and walkways.
- 4.3 The proposal sees the removal of the escalators and replacement with stairs still within the central area of the centre. The existing public toilets will be relocated to the southwestern side of the first floor and accessed via the lift or central staircase. The toilets will remain in public use and the remainder of the first floor would be incorporated into the gym floorspace.
- 4.4 In addition there would be an upgrade in new floor tiling and lighting throughout the shopping centre.

List of supporting documentation

- 4.5 The following documents have been provided as part of the application:

P_2016_01434 Octagon Planning Statement Received 16.11.16 (141116 (Final).pdf
P_2016_01434_Application Form.pdf

P_2016_01434_Covering Letter.pdf
P_2016_01434_Existing First Floor Plan rev A.pdf
P_2016_01434_Existing Ground Floor Plan rev A.pdf
P_2016_01434_Location Plan rev C.pdf
P_2016_01434_Occupational Report.pdf
P_2016_01434_Planning Statement with Appendix and Caneparo op2.pdf
P_2016_01434_Proposed First Floor Plan rev A.pdf
P_2016_01434_Proposed Ground Floor Plan rev A.pdf
P_2016_01434_REVISED Planning Statement RECEIVED 26_10_2016.pdf
P_2016_01434_Transport Statement F1 (160628)a.pdf

4.6 Throughout the application following requests for further information the following documents have also been provided:

- Marketing brochure by local agent Rushton Hickman for two vacant ground floor units
- Newspaper advert for first floor accommodation dated 23rd November 2016
- Marketing brochure by Fawley Watson Booth for unit 27 (ground floor)
- Marketing brochure by Fawley Watson Booth for externally facing ground floor unit
- Marketing brochure for Unit B (first floor) by Fawcett Mead
- Marketing brochure for Unit F (first floor) by Fawcett Mead
- Marketing brochure for Unit H (first floor) by Fawcett Mead
- Various options for previous proposals, October 2013 (please note none of these were submitted as formal planning applications)
- Photos of to let signs on first floor retail units
- Summary of options considered by site owners
- Promotion material for Octagon events October 2015 – summer 2016
- Letters from 5 local retailers who have direct experience trading on ground floor and first floor within the Octagon
- Note on expenditure growth including a copy of the Retail Planning Briefing Note 14 (Experian, November 2016)
- Supplemental Planning Statement received 6th December 2016
- Review of Planning Application Material Supporting Planning Application P/2016/01434, received 4th January 2016

4.7 The relevant findings are dealt with in section 8 onwards below.

5. Consultation Responses and Representations

5.1 A summary of the consultation responses is set out below:

Statutory and non statutory consultee		Response
5.2	Parish Council	No response received
5.3	SCC Highways	No objections

6. Neighbour Responses

6.1 **Six letters have been received in support** of the application from in centre retailers.

- I think this is a good idea and would be a positive move for the centre.
- Express full support
- The Entertainer is in agreement that the change of use from retail to leisure seems like the only option to bring the floor space back into use.
- As a retailer, we feel the improved footfall generated by the Gym would help support the attraction of the Octagon centre, therefore justifying the Entertainer's continued operation in the town centre. In addition, to this The Entertainer is likely to benefit directly from the footfall due to the close proximity of the unit.

6.2 Ann e-mail of support for the application from Asda was submitted by the applicant on 4th January 2017. The support letter states that the proposals seems like a positive use for a space that has been underutilised in a retail capacity, should be a footfall driver for this part of the town and would be an additional asset to the shopping precinct. The support is provided on the basis that the car park isn't compromised

6.3 A letter from MP Andrew Griffiths states that the Octagon has no passing footfall and so it would be difficult to be used effectively for retail. A gym in that location would bring people into the shopping and the town more generally. If planning permission is not granted by January 20th the gym may make their investment elsewhere.

6.4 A letter from Burton Chamber of Commerce has also been received their comments are summarised below

6.5 Any enhancement of facilities provided in the town can only add to make Burton a more attractive location. The first floor has historically never really functioned and has struggled for footfall. Its emptiness has distracted from the centre and actually works against attracting shoppers to visit. A non retail use seems the only prospect to bring floor space back into use. It will also bring job creation.

7. Policy Framework

National Policy

- National Planning Policy Framework
- National Planning Policy Guidance

Local Plan

- Principle 1: Presumption in Favour of Sustainable Development
- SP1: East Staffordshire Approach to Sustainable Development
- SP20 Town and Local Centres Hierarchy
- SP21 Managing Town and Local Centres
- SP24 High Quality Design
- SP25 Historic Environment
- SP34 Health and Wellbeing

- SP35 Accessibility and Sustainable Transport
- DP1 Design of New Development
- DP2 Designing in Sustainable Construction
- DP5 Protecting the Historic Environment: All Heritage Assets, Listed Buildings, Conservation Areas and archaeology

Principle of Development

7.1 The NPPF states that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. Paragraph 14 of the NPPF states that for decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.

7.2 Paragraph 251 of the NPPF states that 'due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the framework, the greater the weight that may be given'.

7.3 With regards to town centres the NPPF states that Local Planning Authorities should plan positively, to support town centres to generate local employment, promote beneficial competition within and between town centres, and create attractive, diverse places where people want to live, visit and work. The NPPF states that Local Plans should define a network and hierarchy of centres that is resilient to anticipated future economic changes and define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations. The NPPF states that it is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability.

7.4 The National Planning Practice Guidance states that Local Planning Authorities should take full account of relevant market signals when planning for town centres and should keep their retail land allocations under regular review.

8. Local Plan

8.1 The Council has adopted a positive approach in seeking to meet objectively assessed development needs of the Borough. The policies in the plan provide a clear framework to guide sustainable growth and the management of change, thereby following the Government's presumption in favour of sustainable development.

- 8.2 Strategic Policy 1 sets out the East Staffordshire Approach to Sustainable Development. Principles listed in the policy include social, environmental and economic considerations to be taken into account in all decision making where relevant. The relevant principles are:
- located on, or with good links to, the strategic highway network, and should not result in vehicles harming residential amenity, causing highway safety issues or harming the character of open countryside;
 - it is convenient and safe to walk, cycle and travel by public transport between (and for larger sites, around) the site and existing homes, workplaces, shops, education, health, recreation, leisure, and community facilities and between any new on-site provision;
 - high quality design which incorporates energy efficient considerations and renewable energy technologies;
 - would demonstrably help to support the viability of local facilities, businesses and the local community or where new development attracts new businesses and facilities to an area this does not harm the viability of existing local facilities or businesses;
- 8.3 Policies SP20 and SP21 aim to see new leisure and retail uses be delivered within the town centres of Burton Upon Trent and Uttoxeter with existing town centre uses protected where this would affect the viability of retail centres.
- 8.4 Strategic Policy 20 identifies the requirement for 21,100 sqm of comparison goods floorspace and 5,750 sq m of convenience goods floorspace. The policy identifies Town Centres, Local Centres and Rural Centres which have a different role to play in providing retail across the Borough. Strategic Policy 21 sets out a different set of criteria for proposals in town centres, local centres and rural centres.
- 8.5 The evidence base prepared to support the Local Plan policies titled East Staffordshire Leisure and Retail Study 2013 included detailed analysis of forecast rates of future retail and leisure expenditure growth, retail developments in East Staffordshire and surrounding local authority areas, population projections over the plan period and change in national planning policy approach following publication of the NPPF in 2012. The evidence base represents the most up to date, accurate reflection in full of available data inputs and assumptions including household surveys of shopping patterns.
- 8.6 SP21 states that within the primary retail frontages the Council will only permit Class A1 (retail) use at ground floor level unless it can be demonstrated that the proposed use will enhance the vitality of the primary retail area with a use that complements the main function of shopping and does not lead to an overconcentration of non A1 uses.
- 8.7 Given that the proposal will lead to the loss of A1 retail floorspace and the provision of a gym it is important to establish how Local Plan policy treats both the loss of retail provision and also the establishment of non A1 uses.
- 8.8 The starting point and an area of conflict between the Borough Council and the applicant is the designation on the first floor as Primary/Secondary retail frontage.

- 8.9 The Local Plan policies map shows primary frontages throughout the Octagon Centre. There is no separate plan showing the first floor.
- 8.10 The applicant assumes that upper floors are secondary retail based upon SP21 which makes reference to ground floor Primary Retail units only. The policy is actually silent on this matter however in relation to the Octagon Centre and the current application the Borough Council has a different interpretation.
- 8.11 The Octagon Centre is a purpose built retail centre and was described in its original planning permission as two storey shopping centre, which would make it a retail destination in its own right. Whilst some of the first floor has been used for non retail (hot food outlets) the primary use has always been A1 retail and therefore the Borough Council feel that it is reasonable to consider the first floor of the centre as within the primary retail frontage.
- 8.12 If you compare the Octagon Centre to the High Street or to Station Street which are both designated as having Primary Retail Frontages. Quite clearly the upper floors are occupied by non retail uses or as storage for ground floor retail units. Policy SP21 when it refers to ground floor A1 Primary Frontage and the assumption being that upper floors are not primary and are not therefore subject to the same strict retail control, is an accurate assessment of the application of Policy SP21 in the context of the High Street or Station Street.
- 8.13 It is not the Borough Council's view that policy SP21 should be applied in this way to a purpose built retail centre, which was clearly given retail consent on the first floor for a primary A1 retail use and is designated as primary retail core. The applicant on the other hand applies the logic in SP21 to suggest that because the first floor is not on the ground floor, it must be secondary retail. Which, in their opinion, is clearly demonstrated through the vacancy levels experienced and their inability to rent the space to retailers.
- 8.14 The applicant and the Borough Council are not in agreement. It does make a difference in terms of decision making but the designation of the first floor as either primary or secondary is only one consideration when making a decision. If the first floor is primary retail, as suggested by the Borough Council, then the policy allows for non A1 retail to locate in this space providing proposals do not lead to an over concentration of non A1 uses. If the first floor is considered to be secondary retail then there is a more relaxed approach to the type of uses that can be located and non retail uses can be more prevalent and acceptable in planning terms providing they compliment the function of the town centre as a whole.
- 8.15 The change of use from A1 to D2 in what the Borough Council considers to be primary retail will result in an over concentration of non retail uses in this location and a complete loss of A use class in this location.
- 8.16 Moving on to other considerations and the key policy issue set out in SP21 is the need to safeguard retail provision in centres. The policy is clear that:

'Development leading to the loss of uses within Class A of the Use Classes Order in centres will only be permitted if:

- *The facility has been sufficiently and realistically marketed over a 6 month period*
- *That the current use is demonstrably no longer viable; and*
- *The change of use would not harm vitality and viability of the local centre*¹

8.17 Therefore a key issue is the loss of A1 retail. It is necessary that the applicant demonstrates how the proposal for a gym is acceptable in planning terms against the three policy tests in SP21. For the application of this part of the policy the location of the proposal is not dependent on whether the retail area is Primary or Secondary.

8.18 Each point is now discussed in more detail below:

Marketing

8.19 Following requests, the applicant has provided copies of marketing material, listed in Section 4.5 of this report. This includes copies of brochures of different units prepared by three different agents and a copy of marketing within the local newspaper. The applicant advises that the material was e-mailed out and provided on websites however no further detail on this has been provided. When requested for details on the marketing of different units over time information has not been forthcoming. Whilst it is clear that there is a history of marketing of different units within the centre as they have become vacant, it is not evident what marketing has taken place over the most recent 6 month period, with only one newspaper advert dated 23rd November provided. The applicant requested any feedback from retailers (or non retailers) who responded to the marketing, however this has not been provided. Overall whilst the specific details of the marketing have not been provided it is accepted that a level of marketing of the site has been carried out following the closure of Beatties and to some extent this part of the policy can be satisfied although the evidence should be described as limited.

Viability

8.20 The applicant argues that having the space vacant is not viable to the shopping centre overall. Attempts have been made to occupy the first floor via reduced rents and local events with unsatisfactory results. The applicant has provided written proof from local retailers who have at some point, and some quite recently, occupied space on the first floor. The letters demonstrate that trading was not as successful as when relocated to ground floor units or other units within the town centre. In addition the applicant has provided responses from a selection of national retailers who were contacted to ascertain interest in first floor premises within Burton Upon Trent. Whilst most responses were negative this was for a mix of reasons including presence already in the town, presence within nearby centres as well as requiring ground floor premises. Details on non-retail events which have taken place on the first floor have also been provided. Whilst the applicant has provided information to assist with understanding

¹ The Borough Council notes that the use of the word 'local' appears to imply that retail should only be safeguarded in local centres as defined by the policy. This is a typo and the safeguarding of retail provision is to be achieved across all sizes of retail centres in the Borough.

the viability of the centre from an occupier/rental perspective it has not provided information on which improvements it intends to carry out to support existing retailers and in making the shopping centre an attractive, up to date and modern retail experience overall. Information on previous options have been provided, such as attracting a new department store and separate gym user however details on why these options have not been carried through have not been provided. However, overall it is considered that the applicant has partly met this test and provided information regarding viability.

Harm to the viability and vitality of local centre

- 8.21 Evidence to support the Local Plan was prepared by Peter Brett Associates in 2013. They have also been commissioned by the applicant to provide an independent assessment of the information supplied to the Borough Council and have determined that it is robust enough to positively meet the policy tests when considering safeguarding retail provision in centres and that the retail strategy as a whole can still be delivered over the plan period.
- 8.22 Again the Borough Council and applicant are at odds on this policy test. The Borough Council having undertaken a thorough assessment of retail need for the plan period has set out in Policy SP20 that just over 21,000 sq m of retail comparison floorspace is required over the plan period for Burton upon Trent. This is split over different timeframes which takes into account the growth, and its timing, that the town is likely to experience. These figures were prepared using various information, including a number of retail proposals that were known to the Borough Council at that time and had planning permission. Of particular relevance were applications for comparison retail floorspace at Burton Rugby Club, a new Tesco store on Hawkins Lane and an extension at the Octagon shopping centre. It is important to note that none of these applications have been implemented and so this needs to be considered alongside the need for additional retail floorspace in the town centre over the plan period. One of the applications at Burton Rugby Club still benefits from a valid planning permission and a reserved matters application is expected to be submitted in 2017.
- 8.23 It should also be noted that the figures in SP20 are minimal figures for future retail provision and the evidence base did not take into account two appeal decisions for additional housing totalling 550 units in Burton which fell outside of the Local Plan strategy. The evidence base was prepared prior to the outcome of the appeals and therefore population increases may be greater than those considered in the retail evidence base.
- 8.24 The applicant's assessment states that the retail market is continually changing which needs to be reflected in the approach taken. This includes the significant rise in non-store based sales, the polarisation of key retailers to larger town and city centres and new out of centre retail provision. The assessment also considers that increasingly, town centres are moving towards a greater diversity of uses to complement key retailers including personal services, leisure activities and food and drink operators. This encourages dwell time within the town centre through these associated uses. The applicant considers that town centre shopping centres are part of this trend with upper floors and in some cases lower floors providing a greater mix of uses.

- 8.25 Peter Brett consider that there remains a qualitative need for additional purpose built retail units to attract key national retailers not currently present in Burton Town Centre but that given market changes, the provision of a department store, which was considered key in the Local Plan evidence, is now unlikely. Peter Brett consider the loss of retail units in this application are small in nature and are not attractive to national comparison retailers. Therefore the loss of these retail units does not undermine the qualitative requirements identified in the Local Plan evidence base and those set out in policy SP21. Overall the applicant considers the additional footfall will strengthen the Octagons role within the Town Centre.
- 8.26 Taking all the above into consideration, The Borough Council therefore concludes that due to 1) the withdrawal/abandonment of retail proposals and 2) the increase in housing assigned to Burton upon Trent and 3) minima Local Plan figures, the loss of retail particularly in a key destination shopping centre will have implications on the ability of Burton upon Trent to meet its needs into the future. It is the Borough Council's view that when lost to non retail uses this places a further requirement to deliver retail provision to meet retail needs, with limited opportunity of acceptable sites to provide it. The loss of primary retail space would further compound this deficit It seems illogical to have to find further retail space outside of the retail core to provide the floor space as required by the provisions of Local Plan Policy SP21.
- 8.27 Whilst it is accepted that town centres are changing, it is not accepted that the work undertaken to support the Local Plan is out of date. It is not accepted that because the evidence for future retail provision provides a timeline which demonstrates that the greatest need is 2026-2031 that this justifies losing A1 retail space in one of Burton's key shopping centres now. This approach by the applicant also does not take into account the three points made in the preceding paragraph. Burton upon Trent has limited opportunity to provide further retail provision. Any schemes coming forward will need to creatively fit into the current town centre boundary which is constrained on all sides by other uses. The Octagon Centre provides the perfect in door experience for retail customers in the centre of the town and as such is advantageously located. On this basis it is not felt that the applicant has demonstrated that the loss of retail in the Octagon centre has been justified based upon the Borough Council's own evidence of need.
- 8.28 In addition to assessing the loss of retail provision it is necessary to assess the proposal in terms of the use and how this fits in with policy. It is accepted that D2 is a use class that can be accommodated within the town centre. Leisure uses provide complementary town uses and are encouraged in policy at both a national and local level. The location of a gym within the town centre is therefore supported, but not within primary retails areas or where it would result in a significant loss of A use class.
- 8.29 The Local Plan evidence base concluded that existing gyms in Burton appeared to be at capacity and therefore there may be a requirement for additional gyms in both Uttoxeter and Burton town centres. Since this time there have been applications for smaller gyms within the town, more recently on Middleway Park, however it is noted that demonstrating need

for such a use in the town centre is not necessary to satisfy national planning policy and so this is not required to be considered.

8.30 The applicant has provided the following estimation of users to the gym and associated increased visitors to the town centre

- 10,000 Gym users per week.
- That equates to 520,000 gym users per annum.
- Applying some caution, the application equates to 0.5M new visits to the town centre annually.

8.31 The applicant states that the figures have been provided by the gym operator who has 43 gyms nationally. The applicant states that whether the figures are accurate or not is a 'commercial risk' to the gym operator. Whilst that maybe the case it is important in planning terms to assess any impacts that arise from the application. It should be noted that there is no increase to car parking provision proposed.

8.32 No information has been supplied based upon other examples of gyms in shopping centres to link the gym membership and increased footfall to additional retail spend in the centre or in the wider town centre. However it is important to note that there is no certainty that the shops within the centre will stay open beyond existing hours. Therefore for those gym users visiting at peak hours (often outside typical working hours) there will no increased visiting to the units within the centre itself. The estimated number of users would equate to the same number of people using both Burton Meadowside and Uttoxeter Leisure centre and without knowledge of the gym operator membership details for similar size facilities in similar size towns, it is difficult to accept this figure as accurate or likely.

8.33 Of course there will be a benefit of having an occupier in the first floor space. However it is unclear how much benefit will actually arise from this user in terms of supporting the vitality and viability of the town centre as a whole to overcome the policy requirements.

9. Design and Impact on the character and appearance of the area

9.1 The NPPF attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. The NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

9.2 Strategic Policy 1 and 24 state that development proposals must contribute positively to the area in which they are proposed. The policy lists a number of criteria developments are expected to achieve including creating a sense of place, reinforcing character, reflecting densities and where possible minimise the production of carbon through sustainable construction.

9.3 Policy DP1 of the Local Plan re-iterates the design principles set by SP24 stating that development must respond positively to the context of the surrounding area, exhibit a high quality of design and be compliant with the East Staffordshire Design Guide.

- 9.4 Detailed policy 2 aims for development to achieve high sustainability and environmental credentials adopted energy efficiency techniques and other standards where possible.
- 9.5 The East Staffordshire Design Guide requires the design of new commercial development to respect and respond positively to its context. New development should respond to any important desirable precedents on or close to the site in terms of the existing built context, for instance, building lines, heights of buildings, their form and their massing. An appropriate and effective response to context does not normally require a specific architectural style.
- 9.6 The proposal would see the reconfiguration of the first floor retail space to form a gymnasium. This would involve the partitioning of the area with glass walls and a glazed entrance and the repositioning of the public toilets for the centre to the south west corner of the upper floor. The application also includes the formation of a stairwell and removal of the existing escalators.
- 9.7 The applicant also proposes some cosmetic alterations such as replacement tiling to give a more contemporary feel to the shopping centre.
- 9.8 With reference to the proposed design of the scheme it is considered that the scheme satisfactorily complies with the provisions of Local Plan Policies DP1 and SP24.

10. Residential Amenity

- 10.1 The National Planning Policy Framework and DP1, of the Local Plan seeks to ensure new development will not have an adverse impact on the amenities of new or existing residents by way of loss of light, overlooking or overbearing. There are no immediate neighbours that would be affected by the change of use. The site is located within the town centre and is a town centre compatible use. Therefore it is not considered there will be any adverse impacts on the amenities of residential properties.
- 10.2 Very little information has been supplied to better understand how the Octagon shopping centre will operate 24 hours a day when it currently closes its doors early evening however it is accepted that security in this context is not a planning consideration. Gyms are considered a town centre use and hours or use outside of retail hours are compatible with other town centre leisure uses. It is important to note that the location of the site means that there are no adjacent residential uses and therefore it is not considered there would be any increased impacts to residential amenity as a result of increased use of the centre outside of the existing hours.

11. Highway Matters

- 11.1 The NPPF in section 4 sets out the role transport policies play in facilitating sustainable development which contributes to wider sustainability and health objectives. Decisions should consider ensure development proposals have taken the opportunities for sustainable transport modes, ensure safe and suitable access to the site can be achieved for all people and improvements can be undertaken within the transport network that

cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

- 11.2 Policies SP1 and SP35 of the Local Plan aim to ensure development is located on sites with good links to the highway network, development is convenient and safe to walk, cycle and travel by public transport. Developments should not result in vehicles harming residential amenity, causing highway safety issues or harming the character of the open countryside. For those developments likely to have an impact on the wider highway infrastructure, proposals should be accompanied by a transport assessment clearly setting out how the likely impacts of the development will be addressed.
- 11.3 The Council's parking standards SPD sets out standards for different uses including space size, accessibility and the quantity of car parking spaces required for different uses.
- 11.4 The site is located within the retail area and is easily accessible by foot, bicycle and public transport. The car parking provided on site is used as part of general town centre parking provision.
- 11.5 The car park currently has 719 spaces including 30 disabled spaces. The car park is privately owned and managed by ANPR.
- 11.6 It is proposed that the gym members will be permitted to park within the site for a period of 2.5 hrs. Members will be given a voucher to reimburse their car parking fee when exiting the car park. This is similar arrangement to other privately owned car parks within the Town.
- 11.7 It is also proposed for 20 permits to be given to staff to use all day within the Octagon Centre car park.
- 11.8 Following survey work carried out by the applicant monitoring the usage of the car park over a 24hr period for a week. The results showed spare capacity in the day time and the car park did not reach full capacity on a weekday.
- 11.9 The Transport assessment concluded that the proposed gym would have a reduced impact on car parking than the existing shops would be likely to assuming their full occupation. It further concluded that the use of the gym will have different peak hours to the shops and is likely to demand most spaces after the working day when the shops are likely to be closed.
- 11.10 The proposed gym provides numbers on likely members and visitors per week as 10,000. Whilst it is appreciated that a number of members will arrive on foot, cycle or by public transport, it is questionable whether there can be a comparison made to the loss of customers to the retail provision when they were at full occupation and this number. Notwithstanding this it is regarded that the gym will have varying times of intensification of users and therefore it is considered that any intensification and rise in parking numbers can be accommodated within the available capacity in the car park. The survey carried out shows evidence that sufficient spaces exist on the remaining Octagon Centre car park and surrounding town centre car

parks. It is concluded in the Transport Assessment that there would be no discernible increase, above daily variation in the number of car trips on the highway network as a result of the proposal.

- 11.11 Pedestrian links have been improved through the site in recent years with an enhancement of the pedestrian walkway from Asda to the west of Park Street.
- 11.12 The Octagon Centre also has secure cycle racks for cyclists to use. If the application were to be approved further cycle storage may need to be conditioned.
- 11.13 The servicing of the gym would be carried out via the existing servicing arrangements for the first floor of the centre. It is considered that these arrangements would remain satisfactory.
- 11.14 The Highways Authority has no objections to the proposal.

12. Historic Environment

- 12.1 Paragraph 126 of the NPPF states that Local Planning Authorities should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance.
- 12.2 In determining planning applications with respect to any building or other land in a conservation area, local planning authorities are under a statutory duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Case law has established that this means that considerable importance and weight has to be given to that statutory duty when balancing the proposal against other material considerations.. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss.
- 12.3 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Again, as for the Section 72 duty referred to above, case law has established that this means that considerable importance and weight has to be given to that statutory duty when balancing the proposal against other material considerations.
- 12.4 Strategic Policy 25 states that Development proposals should protect, conserve and enhance heritage assets and their settings, taking into account their significance, as well as the distinctive character of the Borough's townscapes and landscapes.

- 12.5 Detailed policy 5 goes into more detail regarding Historic Assets, Listed Buildings, Conservation Areas and Archaeology. Detailed policy 6 aims to protect other heritage assets which are not necessarily covered by listed building or conservation area status, such as shopfronts and the setting of important historic landscapes.
- 12.6 The nearest Conservation Area is approximately 78 metres away (Burton No. 2 and No. 3 Town Centre Conservation Area). The nearest Listed Buildings are:
- 9 and 10 New Street (Grade II) - 75m from the application site.
 - 50 Lichfield Street (Grade II) – 79m from the application site.
 - 9 and 10 Lichfield Street (Grade II) – 84m from the application site
- 12.7 The application relates to internal alteration to the first floor of the Octagon centre and the development will not be read in context with nearby heritage assets. The proposed development will have no impact on these heritage assets such that Sections 66 and Section 72 are not engaged.

13. Flood Risk and Drainage

- 13.1 Section 10 of the National Planning Policy Framework seeks to ensure that new development is not at risk from flooding, or does not increase flood risk elsewhere. It advocates the use of a sequential test with the aim of steering new developments to areas with the lowest probability of flooding. The Environment Agency produces flood risk maps which classifies land according to probability of flooding. The areas of highest risk are classified as Flood Zone 3, with a 1 in 100 or greater annual probability of flooding, and the areas of lowest risk are classified as Flood Zone 1, with a less than 1 in 1000 annual probability of flooding.
- 13.2 The Octagon falls within an area which is protected by flood defences as defined by the Environment Agency. The proposal is on the first floor of the shopping centre as is regarded not as a vulnerable use. Therefore the application is compliant with the provisions of Local Plan Policy SP27.

14. Conclusions

- 14.1 The proposal is situated in a sustainable location in the town centre and seeks to deliver a D2 use which is compatible in this location. There will be benefits from the proposal in terms of finding a use for a current vacant retail space within one of Burton's primary shopping centres. However the information supplied in terms of user numbers and the operation of the Octagon Centre to be able to fully quantify the benefits has not been demonstrated.
- 14.2 Local retail plan policies provide the framework for determining applications that will result in the loss of retail (A1 floorspace) within defined town centres. The context within which a decision should be taken is the recognition that additional retail floorspace is required over the Local Plan period. Information provided does not fully satisfy the criteria within the retail policies which would allow for the loss of retail floorspace.

14.3 The site is not in a conservation area and given the separation distances and the form of existing built development, it is not considered that the proposal would have an impact on views into, or those out of any conservation areas nor would any Listed Building or its setting be affected and therefore the statutory duties under Sections 66 and 72 are not engaged.

15. RECOMMENDATION

15.1 **REFUSE for the following reason** Paragraph 23 of the National Planning Policy Framework states that planning policies should promote a competitive diverse town centre and pursues policies which support their viability, vitality and encourage economic activity. Local Plan Policy SP20 states that the town centre will be supported and strengthened to focus on communities and the policy identifies additional floor space requirements. Local Plan Policy SP21 continues to support safeguarding the retail character and function of the town centre and protecting its vitality and viability. The functional need of SP21, where there is a loss of Class A uses, requires evidence to demonstrate that either the site has been sufficiently marketed or the current use is demonstrably no longer viable and where a change of use would not harm the vitality and viability of the town centre. The site is situated in the primary retail core of the town centre and as such is where retail (A use classes) function is directed and concentrated to encourage the viability and vitality of the centre. Whilst other uses including leisure are acceptable within the town centre this should not be at the expense of the loss of primary retail floor space particularly where the need for additional comparison floor space has been identified within Local Plan Policy SP20 to further strengthen Burton's retail function. The loss of retail space and introduction of a leisure use would add further deficit to required floor space within the town and in turn the retail character and function would not be safeguarded to the detriment of the retail character of Burton Town Centre contrary to Local Plan Policies SP20 and SP21 and the provisions of the National Planning Policy Framework in particular paragraph 23.

16. Background papers

16.1 The following papers were used in the preparation of this report:

- The Local and National Planning policies outlined above in section 7
- Papers on the Planning Application file reference P/2016/01434

17. Human Rights Act 1998

17.1 There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these potential issues are in this case amply covered by consideration of the environmental impact of the application under the policies of the development plan and other relevant policy guidance.

18. Crime and Disorder Implications

18.1 It is considered that the proposal does not raise any crime and disorder implications.

19. Equalities Act 2010

19.1 Due regard, where relevant, has been had to the East Staffordshire Borough Council's equality duty as contained within the Equalities Act 2010.

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