

SITE AND CONTEXT

The application site comprises a gym and sports facility (Class D2) at the former J Saville Gordon premises, Quay Road, Neath. The building is of typical industrial unit construction, with a large car park set within a gated area off Quay Road. Quay Road forms a dead end street and therefore has no passing traffic. The site is in close proximity to other industrial styles buildings which host other commercial and business uses, most of which lie to the south of Quay Road. To the north of Quay Road is a church, Neath Athletic RFC and a single residential property.

BACKGROUND INFORMATION

This application has been submitted following the Council's decision to refuse to grant planning permission for the 'Retention of building for use as a barber shop ancillary to the gym' (ref P2022/0654) for the following reason:

- 1) The proposed retail development due to being located outside of the defined Neath Town Centre Retail Centre, and having failed to demonstrate there are no vacancies within the retail centre by way of a sequential test, would constitute an unacceptable form of development in principle that would undermine the retail hierarchy and fail to protect and enhance the vitality and viability of Neath Port Talbot's Retail Centres contrary to Policies SP3, SP12, SC1 and R3 of the Neath Port Talbot Local Development Plan.*

An Enforcement Notice (Ref E2022/0178) was also served simultaneously for 'Without planning permission, the unauthorised change of use of the land to a barbers shop, facilitated by the construction of a timber clad building'.

The application and Enforcement Notice were both appealed, with the application appeal dismissed and the Enforcement Notice only upheld on the time for compliance.

Of relevance, the Inspector made the following comments with regards to Ground C of the Enforcement Appeal (that matters do not constitute a breach of planning control):

6. Whilst the Local Planning Authority (LPA) appears to suggest that a barber shop use could not be ancillary to a gymnasium, I am mindful that such a determination can only be made on the facts of the case. Nevertheless, having regard to the particular circumstances of this case, I am not persuaded that the barber shop, facilitated by the timber clad building, is an ancillary use. Indeed, whilst the appellant refers to the

majority of customers of the barber shop being regular users of the gymnasium, this implies that some customers are not regular users. There is also nothing within the evidence to suggest that the barber facility is only available to gymnasium members and, notwithstanding this, no cogent evidence has been submitted to demonstrate that customers at the barber shop necessarily go on to attend the gymnasium as part of a single trip. Therefore, on the basis of the available evidence, I concur with the Council's assessment that the barber shop is in itself a retail destination. This finding is reinforced by both the scale of the operation, with four barbers employed, and the fact that the retail use is operated from a standalone structure located outside of the gymnasium.

7. I note the fact that the building is owned by the appellant and that it is sublet out. I also note the fact that the barber shop relies on the gymnasium for water and electric. Nonetheless, such factors fall well short of demonstrating that the use is ancillary. Indeed, success for the appellant on such factors alone would create a dangerous precedent in the consideration of such matters. I note the appellant's references to other gymnasiums that are said to offer barber services. However, I have not been provided with full details of these cases and have not seen any planning decisions that confirm that the exact circumstances of this case have been found to be an ancillary use. For this reason, and bearing in mind the fact that it is well-established that such matters can only be determined on a case by case basis, I do not consider that such evidence weighs heavily in favour of the appeal.

8. Therefore, on the basis of the available evidence, I find that the barber shop subject of the appeal is not an ancillary use, but rather a retail use (A1 use class) that may, or may not, attract linked trips to the adjacent gymnasium. The matters that constitute the allegation set out at Section 3 of the Enforcement Notice have therefore occurred as a matter of fact and there has been a breach of planning control. The appeal lodged under ground (c) must therefore fail.

In light of the above, the applicant has submitted details of other gymnasiums that offer additional services/ facilities for consideration by the Authority as part of this application for a Certificate of Lawful Existing Use/ Development to support their view that the barbers is an ancillary use to the gym. However to reiterate the Inspector, such matters can only be determined on a case by case basis.

Planning permission ref P2023/0757 has more recently been granted for the 'Retention of building for D2 use'. Which included the following condition;

The building shall be used for solely for a Class D2 Use in association with the gym and for no other purpose (including any other purpose in Class D2 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:

In order that other changes of use can be assessed in the interests of amenity and to accord with Policies SC1 and EC2, EC3, EC4 of the Neath Port Talbot Local Development Plan.

A previous CLEUD application was submitted and returned to applicant prior to the building being granted consent as the building was at the time unauthorised. This CLEUD application is now submitted for consideration as the building has consent and therefore the applicant again puts forward the view that the barber shop within this standalone building is an ancillary use.

DESCRIPTION OF DEVELOPMENT

This applications seeks a Certificate of Lawful Development (Existing Use) namely for the 'Certificate of lawful development (existing) for the use of an ancillary building as a barber shop ancillary to the gym (D2).'

SUPPOTING EVIDENCE

In support of the application, the applicant has provided the following information:

Warehouse Gym

A web search screen shot showing the opening hours for 'Urban Barbers' at Warehouse Gym, Swansea.

U-Fit Gym

A web search screen shot showing the opening hours for 'Pixie Hair Collective' at U-Fit Gym, Cardiff.

Llandarcy Academy of Sport, Neath

A Decision Notice for the granting of planning permission ref P2021/0394 by NPTCBC LPA dated 25.05.2021 for the 'Siting of 2 No. demountable buildings for the use of physiotherapy plus re-siting of existing demountable physio building for a temporary period of 5 years.'

Unit 12 Lonlas Business Park, Neath

A Decision Notice for the granting of planning permission ref P2019/0235 by NPTCBC LPA, dated 07.01.2023 for the 'Retention of change of use to fitness gym (Class D2) (including alteration to opening hours and class sizes that were previously restricted under planning application P2016/1018) together with retention of mezzanine floor and ancillary cafe and sunbed rooms (Amended / additional plans, supporting information and development description received 27.06.19 and 16.07.19).'

K2 Gym, Brackla Industrial Estate, Bridgend

A screen shot from what appears to be Bridgend CBC website showing registration of a planning application for 'Retention of building as mixed-use gym/fitness centre/beauty salon and training centre'.

Unit 1-2 Monastery Business Centre, Neath Abbey

A Decision Notice for the granting of planning permission ref P2016/0681 by NPTCBC LPA dated 16.09.2016 for the 'Retention of change of use of the first floor from a fitness centre to a beauty salong (sui generic)'.

Atomic Health & Fitness, Aberystwyth

Internet pages showing the services provided at the gym, including a barber, osteopath, café, changing facility and spa.

Units 2 & 3, Baglan Road, Port Talbot

A Decision Notice for the granting of planning permission ref P/2006/0876 by NPTCBC LPA dated 19.09.2006 for the 'Change of use of unites to a fitness centre (Class D2) with ancillary beauty salon/ nail bar'.

All plans / documents submitted in respect of this application can be viewed on the [Council's online register.](#)

PLANNING HISTORY

The application site has the following relevant planning history: -

- P2019/5650 Retention of gym and sports facility (Class D2)
- P2021/0965 Variation of conditions 1, 3 and 4 of planning permission P2019/5650 to allow a permanent consent, change of opening times to 06:00 to 21:00 Monday to Friday, 07:00 to 16:00 Saturday and 08:00 to 15:00 Sunday, and to allow the playing of amplified music in accordance with submitted noise assessment report.

- P2022/0472 Discharge of Condition 2 of Planning Permission P2021/0965 in relation to monitoring for verification of noise levels.
- P2022/0654 Retention of building for use as a barber shop ancillary to the gym. – **REFUSED & APPEAL DISMISSED**
- P2023/0757 Retention of building for D2 use

CONSULTATIONS

Head of Engineering & Transport (Highways): No objection

Ward Councillors: No objection

REPRESENTATIONS

A Site Notice was displayed on 19.12.2023.

No representations have been received.

REPORT

Planning Policies

Planning Policies are not relevant to applications under S191 of the Town and Country Planning Act 1990 (as amended).

ISSUES

The application seeks a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990, which seeks to certify the lawfulness of existing operations on, or use of land. The determination of the application is on legal grounds only, any views on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, is irrelevant.

Accordingly, this report concentrates solely on whether, based on the facts of the case and relevant Planning Law, the specified matter is or would be lawful.

Having regard to the above, the main issues to consider in the determination of the application relates to whether the use of the building as a barber shop is an ancillary use to the gymnasium (Class D2).

The applicant has provided evidence of other gyms with various ancillary uses to support their claim that the barber shop is an ancillary use to a gym.

ASSESSMENT

The usual material planning considerations relating to matters such as Development Plan policy and other Guidance, the principle of development/sustainability, design/landscape, neighbour amenity and highways/ access do not fall to be considered under an application for a Certificate of Lawfulness of existing use or development. This is particularly important to note given that the planning history (above) points towards the refusal of planning permission for the retention of the building for use as a barber shop ancillary to the gym.

The decision is based on the facts of the case and evidence provided by the applicant and any relevant planning law and takes into account the facts presented and any contrary evidence if available.

Section 191 of the Town & Country Planning Act 1990 (as amended) [hereafter referred to as The 1990 Act] allows for any person who wishes to ascertain whether any existing use of buildings or other land is lawful; any operations which have been carried out in, on, over or under land are lawful; or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, to make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

This Certificate is sought on the grounds that the use of the building in question, located within the grounds of the host gym, as a barbers is an ancillary use to the gym. When considering an application for a Certificate the onus lies with the applicant to supply supporting documentary evidence.

For clarification, a gym constitutes a D2 Use under the Town and Country Planning Use Class Order 1987 (as amended), and a barber shop constitutes an A1 Use. There are no permitted development rights, permitting a change of use from these classes to any other. Therefore planning permission is required for any change of use including a mixed use.

The applicant seeks to apply for a Certificate of Lawful Existing Use, for a barbers shop as an ancillary use, and that planning permission is not required. Ancillary uses are usually considered on a basis of fact and degree, for example the overall use remains the existing use and the additional use(s) are subservient to the main use.

The applicant has provided information from other gymnasiums which offer additional services/ facilities to demonstrate that a barbers is ancillary to a gym. These examples are assessed below.

Warehouse Gym

A web search screen shot showing the opening hours for 'Urban Barbers' at Warehouse Gym, Swansea.

Assessment

This is not a planning documents i.e. a Decision Notice that proves planning permission has been granted or that the relevant LPA considers the barbers to be an ancillary use. It is possible the use is unauthorised.

U-Fit Gym

A web search screen shot showing the opening hours for 'Pixie Hair Collective' at U-Fit Gym, Cardiff.

Assessment

This is not a planning documents i.e. a Decision Notice that proves planning permission has been granted or that the relevant LPA considers the barbers to be an ancillary use. It is possible the use is unauthorised.

Llandarcy Academy of Sport, Neath

A Decision Notice for the granting of planning permission ref P2021/0394 by NPTCBC LPA dated 25.05.2021 for the 'Siting of 2 No. demountable buildings for the use of physiotherapy plus re-siting of existing demountable physio building for a temporary period of 5 years.'

Assessment

The ancillary use here is physiotherapy rooms which is not a barbers and not an A1 use, therefore NPT Council's LDP retail policies won't apply. Physiotherapy rooms can also reasonably be considered ancillary to a gym. The Decision Notice also conditions that the rooms are to be used for no other purpose.

Unit 12 Lonlas Business Park, Neath

A Decision Notice for the granting of planning permission ref P2019/0235 by NPTCBC LPA, dated 07.01.2023 for the 'Retention of change of use to fitness gym (Class D2) (including alteration to opening hours and class sizes that were previously restricted under planning application P2016/1018) together with retention of mezzanine floor and ancillary cafe and sunbed rooms (Amended / additional plans, supporting information and development description received 27.06.19 and 16.07.19)'.

Assessment

The ancillary use here is sunbed rooms which is a Sui Generis use not an A1 use. Therefore NPT Council's LDP retail policies won't apply. Physiotherapy rooms can also reasonably be considered ancillary to a gym.

K2 Gym, Brackla Industrial Estate, Bridgend

A screen shot from what appears to be Bridgend CBC website showing registration of a planning application for 'Retention of building as mixed-use gym/fitness centre/beauty salon and training centre'.

Assessment

This screenshot shows an application to be submitted but not granted. The site is also within Bridgend CBC and therefore subject to a different LDP with different policies, and in a different context. A beauty salon is also a Sui Generis use and therefore would not be subject to the retail policies. The planning consent also permits a beauty salon as a mixed use i.e. planning permission is required, not an ancillary use that would not require express consent.

Unit 1-2 Monastery Business Centre, Neath Abbey

A Decision Notice for the granting of planning permission ref P2016/0681 by NPTCBC LPA dated 16.09.2016 for the 'Retention of change of use of the first floor from a fitness centre to a beauty salon (sui generic)'.

Assessment

This shows a change of use to a standalone not a mixed use or use with ancillary uses and therefore bears no relevance.

Atomic Health & Fitness, Aberystwyth

Internet pages showing the services provided at the gym, including a barber, osteopath, café, changing facility and spa.

Assessment

This is not a planning documents i.e. a Decision Notice that proves planning permission has been granted or that the relevant LPA considers the barbers to be an ancillary use. It is possible the use is unauthorised.

Units 2 & 3, Baglan Road, Port Talbot

A Decision Notice for the granting of planning permission ref P/2006/0876 by NPTCBC LPA dated 19.09.2006 for the 'Change of use of unites to a fitness centre (Class D2) with ancillary beauty salon/ nail bar'.

Assessment

This consent was granted under a different LDP and so those policies would no longer be relevant. Again the beauty salon is a Sui Generis use not A1 and so the retail policies of the current LDP would not apply.

Conclusion of Evidence

All of the examples provided by the applicant are materially different and therefore not relevant comparisons in terms of referring to non-A1 use and/or providing information that does not constitute a formal Decision granted by the relevant planning authority. None of the examples indicate that any of the Local Planning Authorities would consider a barbers to be an ancillary use to a gym. In addition, it is not considered by reason of logic that a barber shop is an ancillary use to a gym. Therefore recommended that a certificate be issued on that basis.

Planning History – Inspector's Decision

Consideration must also be given to comments provided by the Planning Inspector on joint appeal decision E2022/0178/ CAS-02235-Z5Q1V1 & P2022/0654 / CAS-02237-F7Y5B6.

The Enforcement Appeal was made on ground C – that a breach of planning control has not taken place, in that the barber shop was an ancillary use. In the determining the appeal, the Inspector stated *"I am not persuaded that the barber shop, facilitated by the timber clad building, is an ancillary use. Indeed, whilst the appellant refers to the majority of customers of the barber shop being regular users of the gymnasium, this implies that some customers are not regular users. There is also nothing within the evidence to suggest that the barber facility is only available to gymnasium members and, notwithstanding this, no cogent evidence has been submitted to demonstrate that customers at the barber shop necessarily go on to attend the gymnasium as part of a single trip. Therefore, on the basis of the available evidence, I concur with the Council's assessment that the barber shop is in itself a retail destination. This finding is reinforced*

by both the scale of the operation, with four barbers employed, and the fact that the retail use is operated from a standalone structure located outside of the gymnasium.”

It is important to note therefore that no evidence or alternative information has been provided by the applicant to state that there has been a change in circumstances of the way the barbers operates from the time of the above appeal. Given that there has been no material change in the circumstances of the barbers, to consider this application on its merits, and based on fact and degree, it is considered that the Inspector's comments still stand and it remains that the barber shop is not an ancillary use to the gym but a standalone retail destination (Class A1).

Case Law

It is well established in case law that the essential feature of an ancillary use is that there should be some sort of functional relationship between the ancillary use and the primary use, and that the functional relationship be one that is normally found. It is not considered that a barber shop is a functional use to a gym, nor one that is ordinarily found, such as a café or shop selling gym equipment. This is compounded by the fact that the barber shop is in a separate building to the gym and let to a business not associated with the gym not occupied by the gym staff. It is therefore considered to be severed from the gym functionally and creates a separate planning unit of its own use that would require the benefit of planning permission.

This is confirmed by an Inspector in Hertsmere 22/06/2017 DSC No 400-015-727 where it was determined that a car wash in a garden centre car park was not ordinarily incidental to the primary use of the premises as a garden centre and was found to be an 'extraordinary activity' even though subordinate to the lawful use, and therefore amounted to a material change of use of the planning unit.

Any test for whether a use is ancillary to another, or not, is a matter of fact and degree and each case has to be determined on its particular merits. Luton 04/02/2014 DCS No 400-003-119 found that a case where the use of an outbuilding associated with a corner shop that was being used as a barber shop was judged to constitute a separate planning unit requiring planning permission, even though both fell within Use Class A1. This was determined on the facts of the case, in that the barber shop occupied a separate and self contained outbuilding which had been granted permission as a store room in connection with the corner shop. As it has been converted to a barber shop, and contained all the equipment normally associated with a barber shop including its own signage, it was held that the outbuilding now operated independently from the corner shop and consequently a separate planning unit had been created thereby triggering a material change of use.

The facts of this Certificate in question are repeated here in that the barber shop is taking place in an outbuilding which was granted consent with a condition restricting this use to a D2 use only in association with the main use, and that outbuilding had already been granted consent for use in association with the host premises. The barbers subject to this application, also has its own equipment and signage and can operate independently from the gym, thus constituting a separate planning unit requiring planning permission.

CONCLUSION

P2023/0757 is the only permission relevant to the building and use and was granted for the 'Retention of building for D2 use'. Which included the following condition;

The building shall be used for solely for a Class D2 Use in association with the gym and for no other purpose (including any other purpose in Class D2 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:

In order that other changes of use can be assessed in the interests of amenity and to accord with Policies SC1 and EC2, EC3, EC4 of the Neath Port Talbot Local Development Plan.

As such planning permission would be required to change the use of the building to an A1 use.

And;

It is considered that on the basis that the applicant has failed to demonstrate by way of precedents set by other Local Planning Authorities as well as Neath Port Talbot CBC that a stand alone sub-let barber shop is an ancillary use to the gym, and that as found in case law constitutes an 'extraordinary activity' which cannot be considered ancillary, in addition to the facts of the case, it is considered that the use of the outbuilding as a barber shop in association with the gym is not a lawful use. As such, it is recommended not to issue the Certificate of Lawful Development.