

**PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)**

**Appeal under Article 108 against a decision made under Article 19 to  
refuse planning permission**

**REPORT TO THE MINISTER FOR THE ENVIRONMENT**

made under Article 115(5)  
by D A Hainsworth LL.B(Hons) FRSA Solicitor  
the inspector nominated under Article 113(2) from the list of persons appointed  
under Article 107

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**Appellants:**

Fitbody (Jersey) Ltd

**Application reference number and date:**

P/2015/1365 dated 2 September 2015

**Decision Notice date:**

11 December 2015

**Site address:**

Units 12 and 13, Le Capelain House, Castle Quay, La Rue de L'etau, St. Helier  
JE2 3EB.

**Development proposed:**

"Change of use from Class C office to Health and Fitness Suite".

**Inspector's site visit date:**

10 May 2016

**Hearing date:**

11 May 2016

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**Introduction**

1. This is an appeal by the applicants against the refusal by the Planning Applications Committee of planning permission for the development described above.
2. The reason given for the refusal of planning permission is as follows:

"The Department [of the Environment] considers that insufficient evidence has been submitted to demonstrate that the use will not cause ongoing unreasonable harm to the amenities of neighbouring uses, including the living

and working conditions for nearby residents and businesses, in particular with regard to noise and vibration. Therefore the proposal fails to comply with the requirements of Paragraph 3 of Policy GD1 of the Jersey Island Plan, 2011 (Revised 2014).”

### **Description of the units and their use**

3. The units are on the ground floor on the north side of Capelain House, which is part of the waterfront development. The adjoining ground-floor units are a convenience store and a dental practice. The upper floors contain residential accommodation.
4. The units were built following planning permissions granted in 2007 and 2008, which authorised their use as a restaurant. Permission was granted in 2012 to change the use to offices. The appellants' use of the units began in 2015, the appellants having taken the view after consultation with the Department of the Environment that the change of use was permitted development.
5. At that time, a change of use from 'Class C – Office' to 'Class K - Medical and welfare' was permitted by the Planning and Building (General Development) (Jersey) Order 2011. Class K was defined as:
  - 'Use (other than residentially) as –
  - (a) a health centre;
  - (b) a clinic;
  - (c) a dispensary; or
  - (d) a consulting room or surgery.'

### **The case for the appellants**

6. The appellants maintain that the change of use was permitted development, since their business is a specialised appointments-only service focusing on behavioural health, well-being, nutrition and fitness, which is particularly targeted at overweight clients referred by GPs and clients with existing medical conditions, with a view to reducing health risks. They state that the business is staffed by qualified personnel and that the services available include wellness classes, health checks, injury and movement assessments, chiropractic and massage treatment, advice about diet and nutrition, and personal and group fitness classes.
7. If planning permission is required, the appellants maintain that it ought to be granted, since the sound insulation reports they have submitted show that the applicable criteria have been met and that best-practice mitigating measures have been implemented.

### **The case for the Department of the Environment**

8. The Department acknowledge that advice was given to the appellants that confirmed the permitted development right to change the use of the units from Class C to Class K, but they do not accept that the business, as it has in fact been operated, falls within the terms of Class K. In the Department's view the business is a mixed use, being part medical and welfare and part gym. As such, the Department maintain that the business does not fall within any use class and that it therefore requires planning permission.

9. The Department state that the change of use proposed in the application, from offices to use as a health and fitness suite, is not unacceptable in principle, but that Paragraph 3 of Policy GD1 of the Island Plan must be complied with. This indicates that development proposals will not be permitted if they “unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents”.
10. The Department acknowledge that the appellant has taken steps to reduce the effect of noise, but do not consider that the mitigation measures have gone far enough. They point to the difficulties in attenuating impact noise from gym equipment and to the fact that the sound insulation reports do not deal with insulation between the units and the residential accommodation on the floor above.

### **Representations made by interested persons**

11. A large number of representations have been received during the processing of the application and the appeal. Nearly all are from users of the facilities, who support the continuation of the business and point to the benefits in terms of health and well-being that they personally attribute to their use of the facilities. Senators Lyndon Farnham and Philip Ozouf have also written in support of the business and have expressed a hope that a way can be found for it to be allowed to continue with appropriate planning safeguards.
12. Representations have been received from the adjoining businesses. The operators of the convenience store state that they have no issues to raise. Conflicting representations have been received from the dental practice about the impact of noise.
13. The residents on the upper floors have made significant complaints about the effect of noise on their living conditions. This has arisen mainly as a result of the use of the gym equipment, the sounds made by people participating in group activities and the playing of music. The residents indicate that they have been regularly disturbed at unsociable hours.

### **Potential planning conditions**

14. I initiated a discussion at the hearing as to whether planning conditions could be imposed that would make the business compliant with Paragraph 3 of Policy GD1. This discussion took place without prejudice to the case put forward by the Department and to the appellants' contention that the change of use was permitted development.
15. It was clear from the discussion that more detailed work was required on the drafting of the various conditions identified for consideration at the hearing. I therefore indicated that it would be helpful to me if the parties could liaise with each other after the hearing, on a without-prejudice basis, and submit further representations to me to assist in the preparation of this report.
16. I have now received these representations and I thank the parties for their assistance. A range of potential conditions has been put forward for consideration. I have assessed them below and taken them into account in my conclusions and recommendations.

## **Inspector's assessments and conclusions**

### *The main issues in the appeal*

17. I consider the main issues in the appeal to be (a) whether the change of use of the units was permitted development when it took place and (b), if it was not, whether its continuation will cause unreasonable harm to the amenities of neighbouring businesses and residents, taking into account the available evidence and the planning conditions that could be imposed if planning permission were granted.

### *Whether the change of use was permitted development*

18. It is not disputed that the business is operated in the way I have described in paragraph 6 above. However, the units have been laid out internally so that the majority of the floorspace is allocated to the use of gym equipment or as an exercise area. There were only two small rooms available for consultations or treatment when I visited the units and the predominant appearance of the units was that of a gym.
19. In these circumstances, I consider as a matter of fact and degree that the Department's description of the use as a mixed use, part medical and welfare and part gym, is correct. I conclude therefore that planning permission was required for the change of use of the units from their previous use as offices.

### *The effect on amenities*

20. The convenience store and the dental practice are separated from the units by internal party walls, which the advice I have received indicates have been constructed so as to meet normal sound insulation criteria. An issue occurred as a result of the attachment of gym equipment to the party wall with the dental practice, but this was resolved by moving the equipment to a partition wall within the units.
21. The Department are correct in stating that the sound insulation reports do not deal with insulation between the units and the residential accommodation on the floor above. There is in fact no insulation protecting the amenities of the residential accommodation other than that which is provided by the original method of construction of the building.
22. I do not have the details of the method of construction, but the building appears to be steel-framed with concrete floors. It is purpose-built and modern, and was constructed to provide commercial space on the ground floor with residential accommodation above. The standard of insulation was considered to be appropriate for the units' use as a restaurant, which could be expected to generate noise internally. Nevertheless, it is clear from the representations I have received that the residents above have been disturbed by noise generated by the appellants' business. This disturbance is most likely to have occurred because the sound insulation measures have been inadequate or the business has not been operated with sufficient safeguards for residential amenity. Specific issues have arisen in relation to the siting, design and method of installation of the gym equipment, the dropping of gym apparatus on to the floors and walls, the playing of loud music, vociferous group sessions and gym activities at unsociable hours.

23. In my opinion, the unregulated continuation of the appellants' business would have an unacceptable effect on the residential accommodation on the floor above and could have an undesirable impact on the quiet setting that is desirable for dental practice. I consider the Planning Applications Committee's decision to be soundly based, having regard to the information available to the Committee at the time. In my view, the determining factor in the appeal is whether, taking into account all the evidence now available, planning conditions could be imposed that would sufficiently overcome the amenity problems, so as to bring the business up to the standard called for by Paragraph 3 of Policy GD1.

*Planning conditions*

24. A range of planning conditions would be needed, dealing with the nature of the business to be operated, the measures to be taken to control noise within the units and the hours of operation of the business.

25. The appellants suggest that the use should be limited to the type of business described in paragraph 6 above. Clients would only be accepted on a membership basis and attendance would be by appointment only. Classes would be limited to twelve clients and an instructor. The Department have reservations about the wording of the conditions required to achieve this, but I consider that effective and enforceable conditions could be drafted.

26. The appellants have put forward several measures to deal with noise. These would deal with the type of gym equipment, the use of sound systems, group sessions and sound-absorbent floor matting. The Department consider the details put forward to be too vague and to be in need of a timescale; they have put forward a more demanding set of conditions. I agree with the Department's approach on this matter. I also consider it is essential that further consideration is given to the effectiveness of the sound insulation between the units and the residential accommodation above.

27. The hours of operation suggested by the appellants are 0600 to 2100 on Mondays to Fridays, 0800 to 1600 on Saturdays and 0900 to 1300 on Sundays. The Department acknowledge that these hours reflect the nature of the business but consider, in particular, that it should open at a later time in the morning in order to protect residential amenities. I consider that it is possible in this respect to strike a balance between the needs of the business and its clients and the protection of amenities that would satisfy Paragraph 3 of Policy GD1 in association with other conditions. I do not consider that a restriction is justified on the hours during which medical and welfare services not involving gym equipment and exercise facilities can be provided.

*Overall conclusion*

28. The business supports one of the fundamental policy aims of the Island Plan, namely the promotion of "high levels of health and wellbeing across the Island by ensuring that a healthy environment, healthy lifestyles and a high level of education prevail" (paragraphs 7.26 and 7.27). The planning conditions set out in paragraph 30 below would in my opinion sufficiently overcome the amenity problems to bring the business up to the standard called for by Paragraph 3 of Policy GD1. They are fair and reasonable, precise and enforceable, strike the appropriate balance and will allow a business that is

valued for its contribution to health and well-being to continue without unreasonable harm to the amenities of neighbouring residents and businesses.

29. For the reasons set out in the preceding paragraphs of this report, I have concluded that the appeal should be allowed and that planning permission should be granted subject to the planning conditions set out below.

### **Inspector's recommendations**

30. I recommend that in exercise of the powers contained in Article 116 of the Planning and Building (Jersey) Law 2002 (as amended): -

(i) the appeal be allowed in full; and

(ii) planning permission be granted for the change of use of Units 12 and 13, Le Capelain House, Castle Quay, La Rue de L'etau, St. Helier JE2 3EB from offices to a health and fitness suite, in accordance with the application ref: P/2015/1365 dated 2 September 2015, subject to the following conditions: -

1. The development shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.

Reason for Condition 1: To ensure that the development is carried out and completed in accordance with the details approved.

2. The Units shall be used as a health and fitness suite providing services relating to behavioural health, well-being, nutrition and fitness to which the provision and use of gym equipment and exercise facilities shall be ancillary, and for no other purpose.
3. The use of the health and fitness suite shall be restricted to members only and shall be by appointment only. Group sessions shall be limited to a maximum of twelve persons and an instructor.
4. The use of gym equipment and exercise facilities shall only take place between the following hours: -  
  
0700 to 2100 on Mondays to Fridays inclusive, 0800 to 1600 on Saturdays and 0900 to 1300 on Sundays.
5. No sound-amplifying equipment shall be operated in the health and fitness suite so as to be audible within any adjoining premises.
6. The use of the Units as a health and fitness suite shall cease within one month of the date of a failure to comply with any of the requirements in (i) and (ii) below: -

(i) Within one month of the date of this permission, full details of a scheme specifying the measures to be taken to control noise (including impact noise) emanating from the health and fitness suite, together with a timetable for the implementation of the scheme, shall be submitted in writing to the Department of the Environment for written approval. The scheme shall include details of the gym equipment and exercise facilities to be provided (including details of their siting, design,

fixing and mounting) and the steps to be taken to minimise the transmission of air-borne and structure-borne sound (including details of the sound-insulation to be applied to the Units and the floor matting to be provided).

(ii) All measures comprised in the approved scheme shall be completed as approved in writing and in accordance with the approved written timetable. The measures shall thereafter be retained as approved in writing and the health and fitness suite shall only be used in accordance with the approved scheme or any modification thereof approved in writing by the Department of the Environment.

Reason for Conditions 2 to 6: To protect the amenities of nearby residents and businesses.

Dated 13 June 2016

*D.A.Hainsworth*

Inspector