

## **Development Control Committee 4 January 2023**

### **Planning Application DC/21/0427/FUL – Sports Direct Fitness, Easlea Road, Bury St Edmunds**

<b>Date registered:</b>	2 March 2021	<b>Expiry date:</b>	27 April 2021 EOT agreed 06.01.2023
<b>Case officer:</b>	Gareth Durrant	<b>Recommendation:</b>	Grant application
<b>Parish:</b>	Bury St Edmunds Town Council	<b>Ward:</b>	Moreton Hall
<b>Proposal:</b>	Planning application - change of use from gym (class E) to retail (class E commercial, business and service)		
<b>Site:</b>	Sports Direct Fitness, Easlea Road, Bury St Edmunds		
<b>Applicant:</b>	K/S Cratfield		

#### **Synopsis:**

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and associated matters.

#### **Recommendation:**

It is recommended that the Committee determine the attached application and associated matters.

#### CONTACT CASE OFFICER:

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## **Section A – Background**

**This application was considered at the Development Control Committee meeting on 7 December 2022.**

**Officers were recommending that the planning application be approved, subject to conditions and a S106 as set out in Paragraph 72 of Report No DEV/WS/22/049. Bury St Edmunds Town Council do not support the proposals.**

**Members at the meeting of 7 December 2022 resolved that they were 'minded to' refuse planning permission, contrary to the Officer recommendation of approval. At this point, the decision making protocol was invoked requiring a risk assessment report to be prepared for this matter before any decision is made.**

**The reason why Members resolved that they were minded to refuse the application was that they considered the loss of the existing leisure facility would be contrary to policy DM42.**

**The previous Officer report for the 7 December 2022 meeting of the Development Control Committee is included as Working Paper A to this report. Members are directed to this paper for details of the site and development, summaries of consultation responses and neighbour representations, and for the officer assessment of the proposal. Working Papers 1 to 8 which accompanied the December report are viewable on that agenda item from the 7 December 2022 Development Control Committee.**

### **Proposal:**

1. See Working Paper A

### **Application supporting material:**

2. See Working Paper A

### **Site details:**

3. See Working Paper A
4. The applicant is 'K/S Cratfield', the owners of the site. The building is currently leased to Sports Direct.

### **Relevant planning history:**

5. See Working Paper A

### **Consultations:**

6. See Working Paper A
7. A further response has been received from the Economic Development team:

'Economic Development still objects to this proposal for the following reasons:

1. This premises was part of the employment stock for Bury St Edmunds before planning permission was granted for leisure use. It was accepted that this was an exception and therefore a planning condition was added to ensure that the premises would return (as far as possible) back to employment use. The changes to the Use Classes Order in our opinion are irrelevant as local factors over-ride the National approach. This premises is on an industrial estate designated as a General Employment Area, that was properly planned to cater for the growth of our employment uses.
  2. There is a shortage of employment land in Bury St Edmunds. This property is part of that stock. It is essential that all opportunities to support the economic growth of the town are not undermined.
  3. Whilst the property was allowed to be used for leisure purposes, it should not be automatically considered appropriate for retail use which is entirely different.
  4. This proposal does not accord with Policy DM30. The proposal only has to accord with one of the following factors and it fails all, for the reasons explained.
    - a) There is insufficient employment land to meet local job growth requirements;
    - b) No evidence has been provided that there have been genuine attempts to sell this site for the current or employment use;
    - c) There are no over-riding environmental problems as a result of the current use;
    - d) There are no urban regeneration or community over-riding benefits;
    - e) The proposal is not for an employment related support facility; and
    - f) There are no sustainability benefits that would outweigh the loss of an employment site.
  5. The Economic Development team regularly receives requests from companies for premises and Bury St Edmunds is often the most popular location. There are several times when the requests go unfulfilled due to the shortage of available employment space.'
8. The planning Policy Team have also provided further comments in an updated note:

DC/21/0427/FUL – Sports Direct  
Planning policy note – 20/12/2022

This report is supplemental to the previous policy comments dated 29/09/22 on application DC/21/0427/FUL regarding Sports Direct. The purpose of this report is to provide clarification on the previous leisure comments provided, and inform a members' risk assessment should they continue to be minded to refuse the application.

Swimming pool

West Suffolk Sports Facilities Assessment (March 2022) Paragraph 6.18.2 states that there is a need for an additional four lane 25m pool by 2040 across the district. Sub area analysis cannot be considered in isolation. Almost all facilities serve catchments that extend beyond immediate sub-area boundaries. In relation to comfortable capacity, the assessment considers quantity, quality, accessibility and availability.

Table 13.2 clarifies the need for the Bury St Edmunds sub area:

The application proposes the loss of a 20m x 8m (160sqm) pool to the Bury St Edmunds catchment. The assessment classifies the Sports Direct pool as a 'community accessible facility' as it can be used by anyone who is a member of the sports club and records a peak usage level of 60%. Sport England recognises a measure of 'comfortable capacity', where a swimming pool is regarded as effectively fully utilised when peak usage levels reach 70%. The average used capacity figure for pools in and around Bury St. Edmunds is 69% (the same as for the district as a whole) and therefore based upon Sport England's 70% comfortable capacity, Bury St Edmunds has no existing spare capacity for swimming pools.

The loss of the Sports Direct swimming pool facility creates a deficit in Bury St Edmunds, which should be addressed. The applicants are not seeking to facilitate the provision of a replacement pool by providing land elsewhere.

#### Leisure

Presently Sports Direct provide 62 stations and a 15m by 10m studio, which scored well in the 2022 Sports Facilities assessment with good all week around availability. The assessment concludes that currently, there is a need (dependent on population increases) for an additional 6-127 stations in West Suffolk district to 2040.

The application does not propose any replacement fitness facilities to be provided elsewhere. However, the loss of the stations will not result in an overall deficit at this time and therefore a contribution is not required.

#### Conclusion

Bury St Edmunds swimming pools are already at 69% capacity which is at the maximum level considered comfortable by Sport England. The proposal will result in the loss of 20m x 8m (160sqm) of pool space to the Bury St Edmunds catchment, which is already at the maximum level of comfortable capacity. The closure of the Sports Direct facility will add to that pressure in the Bury St Edmunds catchment and create a deficit.

It is considered that the loss of the swimming pool and proposed retail use requires an appropriate contribution, in accordance with policy DM42 and the findings of the West Suffolk 2022 Sports Facilities Assessment. In order to calculate the necessary contribution to compensate for the swimming pool loss, we consider the rates stated in the latest version of Sport England third quarter 2022 facility cost updates document (SQM rate of £1,084 per sqm) should be used. The value of that loss is therefore calculated as  $160 \times £1,084 = £173,440$ .

#### Recommendation

The proposal as submitted is contrary to Policy DM42 in that it results in the loss of a swimming pool and fitness facilities creating a deficit of provision. Financial contributions for £173,440 would be required in order to address this.

The application would be considered acceptable if all other material considerations, including retail impact are satisfactorily addressed and contributions of £173,440 are made in respect of swimming pool re-provision within the Bury St Edmunds catchment.

## **Representations:**

9. See Working Paper A
10. At the time of completing the report a further 36 representations have been received from members of the gym since the last Committee meeting, many of which have already made representations. No new matters are raised.

## **Policy:**

11. On 1 April 2019 Forest Heath District Council and St Edmundsbury Borough Council were replaced by a single authority, West Suffolk Council. The development plans for the previous local planning authorities were carried forward to the new Council by regulation. The development plans remain in place for the new West Suffolk Council and, with the exception of the Joint Development Management Policies Document (which had been adopted by both councils), set out policies for defined geographical areas within the new authority. It is therefore necessary to determine this application with reference to policies set out in the plans produced by the now dissolved St Edmundsbury Borough Council.
12. The following policies of the Joint Development Management Policies Document and the St Edmundsbury Core Strategy 2010 & Vision 2031 have been taken into account in the consideration of this application:

### *St Edmundsbury Core Strategy (2010)*

- Policy CS9 – Employment and the Local Economy
- Policy CS10 Retail, Leisure, Cultural and Office Provision
- Policy CS14 – Community infrastructure capacity and tariffs

### *Bury St Edmunds Vision 2031 (September 2014)*

- BV14 (j) – General Employment Areas – Bury St Edmunds (Moreton Hall)
- BV15 – Alternative Business Development within General Employment Areas
- BV17 – Out of Centre Retail Proposals

### *Joint Development Management Policies Document (2015)*

- DM12 – Mitigation, Enhancement, Management and Monitoring of Biodiversity
- DM30 – Appropriate Employment Uses and Protection of Employment Land and Existing Business
- DM35 – Proposals for Main Town Centre Uses
- DM41 – Community Facilities and Services
- DM42 – Open Space, Sport and Recreation Facilities
- DM46 – Parking Standards

## **Other planning policy:**

National Planning Policy Framework (NPPF)

13. The NPPF is a material consideration in planning decisions. Paragraph 219 is clear however, that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF. Due weight should be given to such policies according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework; the greater weight that may be given. The policies set out within the Joint Development Management Policies (including those listed above) have been assessed in detail and are considered sufficiently aligned with the provision of the 2021 NPPF that full weight can be attached to them in the decision-making process.

**Officer comment:**

14. Please refer to Working Paper A from paragraph 31 for the officer assessment of the proposals.

**Section B – Update & Policy Assessment**

When permission was granted to change the property to a gym in 2000 a condition was imposed preventing any change to any other use (that would otherwise either be permitted development or in some cases not even development for the purposes of the planning system) once the gym use had been implemented. This was imposed to prevent uncontrolled future changes of use without reference to the prevailing planning policy context at the time. When this permission was granted a gym use fell within use class D2. Following the changes to the Use Classes Order in 2020, use class D2 now falls within a more broader class E, as of course does the former retail use class A1. Had the previous gym permission not had the restrictive condition imposed therefore, the current application would not have needed to be submitted on the basis that the 'change' of use falling within the same use class E, would be permitted development. A change of use within a single use class is not development and therefore does not require planning permission. The Government's rationale for this change to the use classes order was to deregulate the planning system and make it easier and more flexible for premises and business to change and adapt, without the regulatory requirements, and the timescales, costs and uncertainty, otherwise imposed by the planning system and the need, as was previously, for planning permission for such changes. So, in this light, it is only the existence of an old condition, imposed prior to the changes to the Use Classes Order, that is the reason why the Authority currently has any control in this regard.

15. In response to the further comments from the Economic Development team, these are largely addressed within the officer comments in the committee report copied at Working Paper A. Advice from the Council's independent retail consultant concludes that the economic growth of the town will not be undermined if a retail use was to operate from this site, subject to suitable restrictions. The development plan does protect employment sites, but it also allows, under certain circumstances, other types of development as has been concluded to be acceptable in this case, subject to strict conditions to ensure there is no impact on the retail offer of the town centre. The retail use proposed would not replace an existing 'B' Class employment use; the gym use is a use which falls within Class E (formerly D2). Accordingly, there would be no net loss of employment including the favoured former 'B' Class employment from the site/premises. As the application maintains the status

quo with respect to policies BV14 and DM30 and would not result in the loss of an employment site (it has already been lost to B-Class uses) the proposals are not considered contrary to the provisions of these policies.

### **Analysis against policy DM42 – Open space, sport and recreation facilities**

16. Members have stated that they were minded to refuse permission due to the change of use resulting in the loss of a leisure facility and consequently that the proposal conflicts with policy DM42.
17. Updated comments from the Planning Policy team have been provided, specifically in relation to their leisure comments.
18. Policy DM42 states:

'Proposals for the provision, enhancement and/or expansion of amenity, sport or recreation open space or facilities will be permitted subject to compliance with other Policies in this and other adopted Local Plans. Development which will result in the loss of existing amenity, sport or recreation open space or facilities will not be allowed unless:

- a. it can be demonstrated that the space or facility is surplus to requirement against the local planning authority's standards for the particular location, and the proposed loss will not result in a likely shortfall during the plan period; or
- b. replacement for the space or facilities lost is made available, of at least equivalent quantity and quality, and in a suitable location to meet the needs of users of the existing space or facility.

Any replacement provision should take account of the needs of the settlement where the development is taking place and the current standards of open space and sports facility provision adopted by the local planning authority.

Where necessary to the acceptability of the development, the local planning authority will require developers of new housing, office, retail and other commercial and mixed development to provide open space including play areas, formal sport/recreation areas, amenity areas and where appropriate, indoor sports facilities or to provide land and a financial contribution towards the cost and maintenance of existing or new facilities, as appropriate. These facilities will be secured through the use of conditions and/or planning obligations. Clubhouses, pavilions, car parking and ancillary facilities must be of a high standard of design and internal layout, and be in accordance with other policies in this Plan. The location of such facilities must be well related and sensitive to the topography, character and uses of the surrounding area, particularly when located in or close to residential areas. Proposals which give rise to intrusive floodlighting will not be permitted.'

19. Sports Direct is a privately run gym facility, providing a range of fitness services to its members. As noted within the planning policy team's comments, there is no deficit of fitness stations, but a need of between 6 and 127 will be required (depending on population growth) by 2040 within West Suffolk. Fitness stations are much more transient in nature and can be more easily re-provided by the market (unlike swimming pools). On

this basis there is no reasonable requirement for the loss of the fitness facilities to be re-provided for through a S106 Obligation. Of greater concern is the loss of the swimming pool. The proposal will result in the loss of 20m x 8m (160sqm) of pool space to the Bury St Edmunds catchment, which is already at the maximum level of comfortable capacity. The closure of the Sports Direct facility will add to that pressure in the Bury St Edmunds catchment. It can therefore be reasonably concluded that the proposal fails to comply with criteria a. of policy DM42.

20. It is important to note that in order for a proposal to be compliant with policy DM42, it must satisfy criteria a. **or** criteria b. Criteria b. of the policy seeks to ensure replacement facilities are made available, of at least equivalent quantity and quality, and in a suitable location to meet the needs of users of the existing space or facility. The reasons for refusal provided by members were not fully or precisely articulated at the meeting, reasonably so, given the concerns raised, officers have interpreted the Committee resolution as to include the inadequacy of replacement provision to meet the needs of users of the existing facility as required under criteria b.
21. There is a need for the provision of a four lane 25m pool by 2040 across West Suffolk. The loss of the swimming pool to the proposed retail use requires appropriate compensation, in accordance with policy DM42 and the findings of the West Suffolk 2022 Sports Facilities Assessment. One of the site specific opportunities for consideration at Bury Leisure Centre stated within the West Suffolk Sports Facilities Assessment (2022) was to 'Re-provide and re-configure 716sq.m of water space as part of the Leisure Centre redevelopment, including the provision of an 8-lane 25m pool.' (Para 6.20.3). This Assessment also shows that there is justification in seeking developer contributions towards the costs of provision of additional facilities in Bury St. Edmunds on the basis of existing insufficient spare capacity.
22. As previously advised, in order to calculate the necessary contribution to compensate for the swimming pool loss, we consider the rates stated in the latest version of Sport England third quarter 2022 facility cost updates document (SQM rate of £1,084 per sqm) should be used. The value of that loss is therefore calculated as  $160 \times £1,084 = £173,440$ .
23. The proposal as submitted is contrary to policy DM42, criteria a. in that it results in the loss of a swimming pool where there is already a deficit of provision. Financial contributions for £173,440 would be required in order to address this and this has been agreed with the applicant. Where this money will be spent within Bury St Edmunds is yet to be determined. Although a replacement leisure centre is planned at Western Way, the wording of the S106 clause would refer to a facility in the Bury St Edmunds area. It is acknowledged that any replacement facilities may not be in an equally convenient location to those residents who currently live so close to the Sports Direct facility. However, there is no reasonable case to be made or evidence before us to suggest that these funds do not adequately compensate for the lost facility. Officers are firmly of the view that whilst the change of use would result in the loss of a leisure facility, this harm can be appropriately compensated through securing funds towards new swimming pool provision, in accordance with policy CS14. There are therefore no grounds to refuse permission.

## **Section C – Refusal Reasons**

24. The Officer recommendation remains one of approval, as per paragraph 72 of Working Paper A (with an amendment to condition 1 and an additional condition as verbally advised at the last committee meeting):

A) The prior completion of an Agreement (or equivalent) under S106 of the Town and Country Planning Act 1990 (as amended) to secure:

- Developer contribution to be used towards replacement swimming pool capacity to serve the town (Bury St Edmunds);

and

B) The following planning conditions:

- 1) The unit shall be used for the sale of convenience goods Use Class E(a), or for the sale of non-food comparison goods within Use Class E(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended) excluding fashion clothing, footwear and fashion accessories, health and beauty / personal care products, jewellery, sports, toys and hobby goods and books and stationary, unless ancillary (no more than 10% of the floorspace combined) to the primary use of the unit. The sale of convenience goods shall be limited to a maximum net sales area of 992sqm or the sale of comparison goods shall be limited to a maximum net sales area of 1000sqm.
- 2) Prior to commencement of development a written 'Ecological Enhancement Strategy' shall be submitted to the Local Planning Authority for approval in writing. The written strategy shall include proposals at the application site for enhancements to biodiversity interests. Thereafter, the approved strategy shall be fully implemented and/or adhered to in accordance with a timetable and/or trigger points agreed as part of the written strategy.
- 3) Prior to the first use of the building or site for retail use a scheme for the provision and implementation of electric vehicle charging points shall be submitted to an approved in writing by the Local Planning Authority. Thereafter the approved scheme shall be implemented and the approved charge points installed and made available for use prior to the first use of the building or site for retail purposes.
- 4) There shall be no retail sales or display of goods or services for sale externally within the application site, outside of the building, unless precise details of the goods/services and their location/s have been agreed in advance with the Local Planning Authority following submission of a formal planning application.
- 5) No plant or machinery required for the operational use of the premises shall be installed on the building (including its roof) or within its curtilage unless full details of the location/s and specification of any plant or machinery to be installed has been submitted to the Local Planning Authority for approval in writing. Only the approved plant or machinery shall be installed at the site in the locations approved by the Local Planning Authority.

6) The Gross Internal Area (GIA) of the building for retail use shall not exceed 1452 sqm and shall be limited to the ground floor. The existing mezzanine floor shall be limited to the uses shown on the floor plan (drawing no. SPORTD-IWD-XX-XX-DR-A-2002 rev P01). There shall be no insertion of additional mezzanine floorspace within the building, without the prior submission of a planning application to the Local Planning Authority.

25. However, if the Committee remains of the opinion that this application should be refused, then Officers would recommend the following reason:

1) Policy DM42 of the Joint Development Management Policies Document seeks to secure the provision of new open space, sport and recreation facilities and to protect and safeguard existing facilities from being lost to other uses or development. Policy CS14 enables financial contributions to be secured to mitigate the impact of new development. The change of use of the building from a gym to a retail use would result in the loss of a highly valued and well used leisure facility. The loss of this leisure facility will result in a deficit of swimming pool provision within West Suffolk. The proposed developer contribution would not provide immediate replacement provision in a suitable location to meet the needs of users of the existing facility. The proposal therefore conflicts with policy DM42 of the Joint Development Management Policies Document and policy CS14 of the St Edmundsbury Core Strategy.

#### **Section D – Risk Assessment:**

26. Members are again reminded, notwithstanding the above refusal reason, that Officers remain very firmly of the view that this proposal should be supported and that to refuse would be at odds with the clear and considered advice from both our retail consultant and Planning Policy team. Accordingly, if the Committee remains of the opinion that this application should be refused then they must be aware of any potential risks that may arise.

27. Members will be aware that applicants have the right to appeal a refusal of planning permission and robust reasons for refusal must be given, directly related to planning policy, providing evidence of harm and following consideration of the material planning issues.

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless there are material considerations that indicate otherwise. It is considered that there are no overriding material considerations that would indicate that the application should not be approved.

29. Should the application be subject to an appeal against a refusal of planning permission and the Inspector concludes that the Local Planning Authority had acted unreasonably in refusing a proposal that complies with the Development Plan, the applicants would have the right to seek to recover their appeal costs (in full or in part depending on the circumstances) from the Local Planning Authority. This may result in financial implications for the Council.

30. A further risk to the Authority from a refusal is reputational as it may show a lack of regard for the interpretation of our local plan policies. In coming to their decision Members must clearly identify whether they consider the proposal conflicts with the development plan and their reasons for reaching their decision. If it is decided that the proposal does not comply with the policies of the development plan and they wish to refuse the application, the material considerations which justify this position must be identified. Failure to adequately identify the reasons for a decision would adversely impact on the reputation of the Council.

### **Section E – Conclusion**

31. For the reasons outlined above and also set out within the original report to Development Control Committee, Officers consider that whilst the change of use would result in the loss of a leisure facility, this harm can be appropriately compensated through securing funds towards new swimming pool provision.

32. In coming to their decision, Members must clearly identify how they consider the proposal conflicts with the development plan and their reasons for reaching their decision in circumstances such as this where the proposal does otherwise comply with the Development Plan.

33. It is recommended still therefore that planning permission be **APPROVED** subject to the following:

A) The prior completion of an Agreement (or equivalent) under S106 of the Town and Country Planning Act 1990 (as amended) to secure:

- Developer contribution to be used towards replacement swimming pool capacity to serve the town (Bury St Edmunds);

and

B) The following planning conditions:

1) The unit shall be used for the sale of convenience goods Use Class E(a), or for the sale of non-food comparison goods within Use Class E(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended) excluding fashion clothing, footwear and fashion accessories, health and beauty / personal care products, jewellery, sports, toys and hobby goods and books and stationary, unless ancillary (no more than 10% of the floorspace combined) to the primary use of the unit. The sale of convenience goods shall be limited to a maximum net sales area of 992sqm or the sale of comparison goods shall be limited to a maximum net sales area of 1000sqm.

2) Prior to commencement of development a written 'Ecological Enhancement Strategy' shall be submitted to the Local Planning Authority for approval in writing. The written strategy shall include proposals at the application site for enhancements to biodiversity interests. Thereafter, the approved strategy shall be fully implemented and/or adhered to in accordance with a timetable and/or trigger points agreed as part of the written strategy.

- 3) Prior to the first use of the building or site for retail use a scheme for the provision and implementation of electric vehicle charging points shall be submitted to an approved in writing by the Local Planning Authority. Thereafter the approved scheme shall be implemented and the approved charge points installed and made available for use prior to the first use of the building or site for retail purposes.
- 4) There shall be no retail sales or display of goods or services for sale externally within the application site, outside of the building, unless precise details of the goods/services and their location/s have been agreed in advance with the Local Planning Authority following submission of a formal planning application.
- 5) No plant or machinery required for the operational use of the premises shall be installed on the building (including its roof) or within its curtilage unless full details of the location/s and specification of any plant or machinery to be installed has been submitted to the Local Planning Authority for approval in writing. Only the approved plant or machinery shall be installed at the site in the locations approved by the Local Planning Authority.
- 6) The Gross Internal Area (GIA) of the building for retail use shall not exceed 1452 sqm and shall be limited to the ground floor. The existing mezzanine floor shall be limited to the uses shown on the floor plan (drawing no. SPORTD-IWD-XX-XX-DR-A-2002 rev P01). There shall be no insertion of additional mezzanine floorspace within the building, without the prior submission of a planning application to the Local Planning Authority.

### **Documents:**

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online [DC/21/0427/FUL](https://democracy.westsuffolk.gov.uk/ieListDocuments.aspx?CIId=527&MIId=5186)

Working Paper A – 7 December 2022 Development Control Committee report

Working Papers 1 to 8 which accompanied the December report are viewable on that agenda item from the 7 December 2022 Development Control Committee agenda on the Council's website here:

<https://democracy.westsuffolk.gov.uk/ieListDocuments.aspx?CIId=527&MIId=5186>