

<u>No:</u>	BH2026/00121	<u>Ward:</u>	Wish Ward
<u>App Type:</u>	Removal or Variation of Condition		
<u>Address:</u>	2 St Heliers Avenue Hove BN3 5RE		
<u>Proposal:</u>	Application to vary condition 1 of planning permission BH2001/00118/FP to permit opening hours of 06:00 to 22:00 daily for the internal facilities.		
<u>Officer:</u>	Michael Tucker, tel: 292359	<u>Valid Date:</u>	21.01.2026
<u>Con Area:</u>		<u>Expiry Date:</u>	18.03.2026
<u>Listed Building Grade:</u>		<u>EOT:</u>	
<u>Agent:</u>	Lewis And Co Planning SE Ltd Lewis & Co Planning 2 Port Hall Road Brighton BN1 5PD		
<u>Applicant:</u>	Hove Fitness Club C/o Lewis & Co Planning 2 Port Hall Road Brighton BN1 5PD		

1. RECOMMENDATION

1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **REFUSE** planning permission for the following reasons:

1. The proposed variation to condition 1 to allow for an opening time of 6am daily would have a significant harmful impact on neighbouring amenity due to the increased noise and disturbance that would result from comings and goings and activity on site in the early morning. No evidence has been submitted to demonstrate that these harmful impacts can be appropriately mitigated. The proposal is therefore contrary to Policies DM20 and DM40 of the City Plan Part Two.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.

2. This decision is based on the drawings received listed below:

Plan Type	Reference	Version	Date Received
Location Plan			21-Jan-26
Block Plan			21-Jan-26

2. SITE LOCATION

- 2.1. The application relates to a two-storey building, with car parking and two tennis courts, set on a backland site to the south of Portland Road. The site is bounded by Davis Park to the south, and residential dwellings on Coleman Avenue and St Heliers Avenue to the east and west. The site is served by a narrow vehicle access route from St Heliers Avenue, shared by commercial premises on Portland Road.
- 2.2. The site is in use as a fitness club, with the most relevant historic planning application being BH2001/00118/FP. There is a concurrent planning application under consideration (BH2025/02448) for the erection of three padel courts on one of the tennis courts.

3. RELEVANT HISTORY

- 3.1. **BH2025/02451** - Application to vary conditions 1 and 2 of planning permission BH2001/00118/FP. Variation of condition 1 to permit opening hours of 06.00 to 22.00 daily for internal facilities only, with external sports facilities, including tennis courts, to remain closed until 08.00. Condition 2 varied to permit use of terrace on first floor level on South elevation from 08.00 to 20.00 daily. Refused for the following reasons:

The proposed variation to condition 1 to allow for an opening time of 6am daily would have a significant harmful impact on neighbouring amenity due to the increased noise and disturbance that would result from comings and goings and activity on site in the early morning. The proposal is therefore contrary to Policies DM20 and DM40 of the City Plan Part Two.

The proposed variation to condition 2 to allow for the terrace to be used until 8pm would have a significant harmful impact on neighbouring amenity due to the increased noise and loss of privacy for neighbours that would result from prolonged use of the first-floor terrace. No information has been provided relating to the use of the terrace or any measures to mitigate for this impact. The proposal is therefore contrary to Policies DM20 and DM40 of the City Plan Part Two.

- 3.2. **BH2001/00118/FP** Continued use of premises without complying with condition 7 (the premises shall not be used before 8 a.m. or after 11 p.m. on any day) attached to planning permission ref 3/88/0955, which would be modified to read, 'The premises shall not be used before 0700 hours or after 2300 hours on any day, except Sundays and Bank Holidays when the premises shall only be used between 0800 hours and 2300 hours'. Approved.

Condition 1 replaced condition 7 and reads as follows:

The premises shall not be used for any purpose before 7.00a.m., or open to members of the public before 7.15a.m. or after 11.00pm on any day, except Sundays and Bank Holidays when the premises shall only be used between 8.00am and 11.00pm.

- 3.3. **BH2001/00117/FP** Continued use of premises without complying with Condition 9 (There shall be no social functions, discos or parties held at the premises

without the prior approval in writing of the Borough Council) - removal of Condition 9 of permission reference 3/88/0955. Refused. Appeal Dismissed.

4. APPLICATION DESCRIPTION

- 4.1. The application seeks to vary condition 1 of BH2001/00118/FP, relating to opening hours (see History section above).
- 4.2. Condition 1 is proposed to be varied to permit opening hours of **06:00 to 22:00 daily**. This would be one hour earlier opening and closing than currently consented on Mondays to Saturdays, and two hours earlier opening on Sundays and Bank Holidays.
- 4.3. This is the same change as was proposed under the recently refused application BH2025/02451.

5. REPRESENTATIONS

- 5.1. **Eight (8)** letters of objection have been received, summarised as follows:
 - Identical to previous refused application
 - The site is not being operated in accordance with its lease
 - Current unauthorised opening at 6am already causes noise disturbance, which will continue if the application is approved
 - Inaccurate statements within the application
 - Opening earlier would not prevent outdoor activity
- 5.2. **Thirty-nine (39)** letters of support have been received, as well as a petition, summarised as follows:
 - The site is already opening at 6am, this allows for exercise in the early mornings which provides benefits for users of the site
 - Other gyms nearby are open at this time
- 5.3. Full details of representations received can be found online on the planning register.

6. CONSULTATIONS

- 6.1. **Environmental Health: Objection Summary:**

This application cannot be supported due to the history of the premises not being able to manage noise from their operations and failure to demonstrate that the impacts from this proposal on residential amenity can be effectively mitigated.

Main Comment:
- 6.2. The Environmental Protection Team has received several complaints in the past about amplified music, loud public address systems, this is despite the club fitting

mufflers in the studio to minimise sound escape and asking class instructors to keep the volume down.

- 6.3. It also appears that the club currently struggles with managing the disturbance from early morning operations as we have already received reports of noise from members engaging in outdoor activities before the permitted 0715 start time.
- 6.4. Although the applicant argues that allowing access from 06:00 hours will eliminate the problem of members exercising or gathering outside before 07:15 hours, there does not appear to be a plan in place for restricting outdoor activity before 0715 hours.
- 6.5. Allowing earlier opening may also attract more early-morning users, increase footfall, vehicle movements, and car-door and people noise, as well as increase the likelihood of noise from music, amplified systems, and class activities during a sensitive period of the morning.
- 6.6. The submitted assessment reveals noise levels at the site are consistent between 0800 and 2100 hours, however, there is no evidence to support the assumption that noise levels from the club are the same between 0600 hours and 0700 hours as the document does not contain measurements or noise modelling representing the noise climate around this time.
- 6.7. The applicant does not provide details on how they intend to manage the impact of their proposal, measures to prevent early arrival and waiting, details of any acoustic insulation or sound containment upgrades to minimise noise break-out as recommended by a suitably qualified acoustic specialist, or controls on music/noise sources, class activities and amplified sound before 07.15 hours.
- 6.8. **Sustainable Transport:** No comment received
- 6.9. **Sports Facilities:** No comment received
- 6.10. **Sussex Police Community Safety:** No objection

7. MATERIAL CONSIDERATIONS

- 7.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report
- 7.2. The development plan is:
 - Brighton & Hove City Plan Part One (adopted March 2016);
 - Brighton & Hove City Plan Part Two (adopted October 2022);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013, revised October 2024);

- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
- Shoreham Harbour Joint Area Action Plan (adopted October 2019).

8. POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP17	Sports Provision
CP18	Health City
SA6	Sustainable Neighbourhoods

Brighton & Hove City Plan Part Two

DM20	Protection of Amenity
DM40	Protection of the Environment and Health

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main consideration in the determination of this application relates to the impact of the proposals on the amenity of neighbouring occupiers and the locality. Sports and health considerations are also relevant.

Impact on Amenity:

- 9.2. Policy DM20 of the City Plan Part Two states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health. Policy DM40 seeks to also protect the amenity of nearby occupiers from undue noise, disturbance, pollution etc.

Condition 1 (Opening Hours)

- 9.3. The current wording of condition 1 of BH2001/00118/FP is:
The premises shall not be used for any purpose before 7.00 am, or open to members of the public before 7.15am or after 11.00pm on any day, except Sundays and Bank Holidays when the premises shall only be used between 8.00am and 11.00pm.
- 9.4. The reason given for this current condition is the safeguarding of the amenities of occupiers of surrounding residential properties.
- 9.5. The proposed variation would be to allow for an earlier opening time of 6am daily. This would be one hour earlier than currently consented on Mondays to Saturdays and two hours earlier on Sundays and Bank Holidays.
- 9.6. It is noted that condition 3 sets additional limits on the hours of use of the tennis courts and the playing of music that is audible outside the premises, and this condition is not proposed to be varied as part of this application.

- 9.7. The proposed variation of condition 1 would result in the bringing forwards of customer movements (including vehicle and pedestrian arrivals and departures) to 6am, or even earlier if customers arrive in time for a 6am start. This would be together with any outdoor activities not related to the tennis courts. It is for example noted that public representations have referred to regular early morning outdoor running sessions as part of 'hyrox' classes.
- 9.8. The site location is constrained, on a backland plot in a residential area with residential dwellings on three sides. The site access runs in close proximity to residential dwellings on St Heliers Avenue. This is a constrained context and the high degree to which surrounding dwellings are exposed to activity on the site was noted by the Inspector when dismissing an earlier appeal at the site for use for functions (BH2001/00117/FP).
- 9.9. The proposed opening time of 6am daily is considered to be inappropriate for this location, and the resultant comings and goings and on-site activity at this time of day would result in a significant harmful impact on neighbouring amenity, contrary to Policies DM20 and DM40 of the City Plan Part Two.
- 9.10. The application claims that the current opening time results in customers exercising on surrounding streets before 7:15am, and argues that the proposed earlier opening time would prevent this from occurring. It is however unclear how this could be the case, as the proposed earlier opening time would not result in any restriction on activity on surrounding streets. In fact, it would likely result in more activity at earlier times with customers arriving and leaving, as well as earlier activity within the building itself. Moreover it is clear from public representations that the site appears to be already operating with an opening time of 6am (on an unauthorised basis), and that this has not prevented customers exercising outdoors.
- 9.11. No robust information with regards to noise impact or mitigation for the earlier hours sought has been provided with the application. The comments of the Environmental Protection team are noted, with several complaints having been received regarding the application site, despite the club fitting mufflers in the studio to minimise sound escape and asking class instructors to keep the volume down. It is not considered that conditions can appropriately mitigate any impacts, for example through a Noise Management Plan, as there is no evidence such measures will be effective and this would likely involve extensive measures that could be onerous to fulfil. Moreover, given that efforts have already been made to minimise noise from the premises without success, it is not certain that a condition of this nature could be relied upon to mitigate noise to an acceptable level. Any associated activity outside the site outside direct control of the applicant would also be difficult to mitigate. In the absence of information and evidence regarding noise generation and potential mitigation measures it is considered a condition is not sufficient or appropriate. The Environmental Protection team object to the proposal in principle.
- 9.12. It is recognised that the proposals include an earlier closing time, to be brought forwards by one hour to 10pm. This would have some beneficial impact on

neighbouring amenity but would not negate or otherwise be considered to outweigh the harmful impact identified above. It is also recognised that the proposed opening time would allow an earlier window for exercise for members of the club, however this attracts only limited positive weight as the site is not the only location available for exercise at this time.

- 9.13. Whilst relevant planning policies seek to encourage sports provision and uses which facilitate healthy lifestyles in principle, their impacts and operational hours need to have due regard to their individual location. In this instance the site is significantly constrained and the harm identified does not outweigh any (modest) improvement/availability of sports provision.

Other Considerations:

- 9.14. The application includes a Noise Assessment, but this document is relating to the concurrent (separate) application for the conversion of two of the tennis courts to padel courts. It includes no consideration of the potential impact of the proposed variations to conditions 1 of BH2001/00118/FP. The noise monitoring position was at the southeast corner of the tennis courts and so may not be truly representative of noise from the fitness club building or comings and goings to the site, and the noise data is only listed from 8am onwards.
- 9.15. It is noted that public representations have raised concerns that the fitness club is already operating in breach of these two conditions and that this earlier activity is already having a harmful impact on neighbouring amenity. This has been raised with the Planning Enforcement team to investigate.

10. CONCLUSION:

- 10.1. Insufficient information has been provided with the application to demonstrate that the proposed earlier opening time of 6am daily would not result in a significant harmful impact on neighbouring amenity due to earlier comings and goings and activity on site compared to the currently permitted hours of use. Whilst there would be some benefit for users of the site, this would not be considered to outweigh the harm that has been identified. Refusal is recommended.

Biodiversity Net Gain

- 10.2. This scheme was considered exempt from the need to secure mandatory biodiversity net gain under Schedule 7A of the TCPA because:
- It does not impact a priority habitat or habitat of more than 25sqm or 5m of linear habitat;

11. EQUALITIES

- 11.1. Section 149(1) of the Equality Act 2010 provides:
- 1) A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

11.2. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) and determined that the proposal would not give rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.