

**Planning Committee 28 May 2019
Report of the Interim Head of Planning**

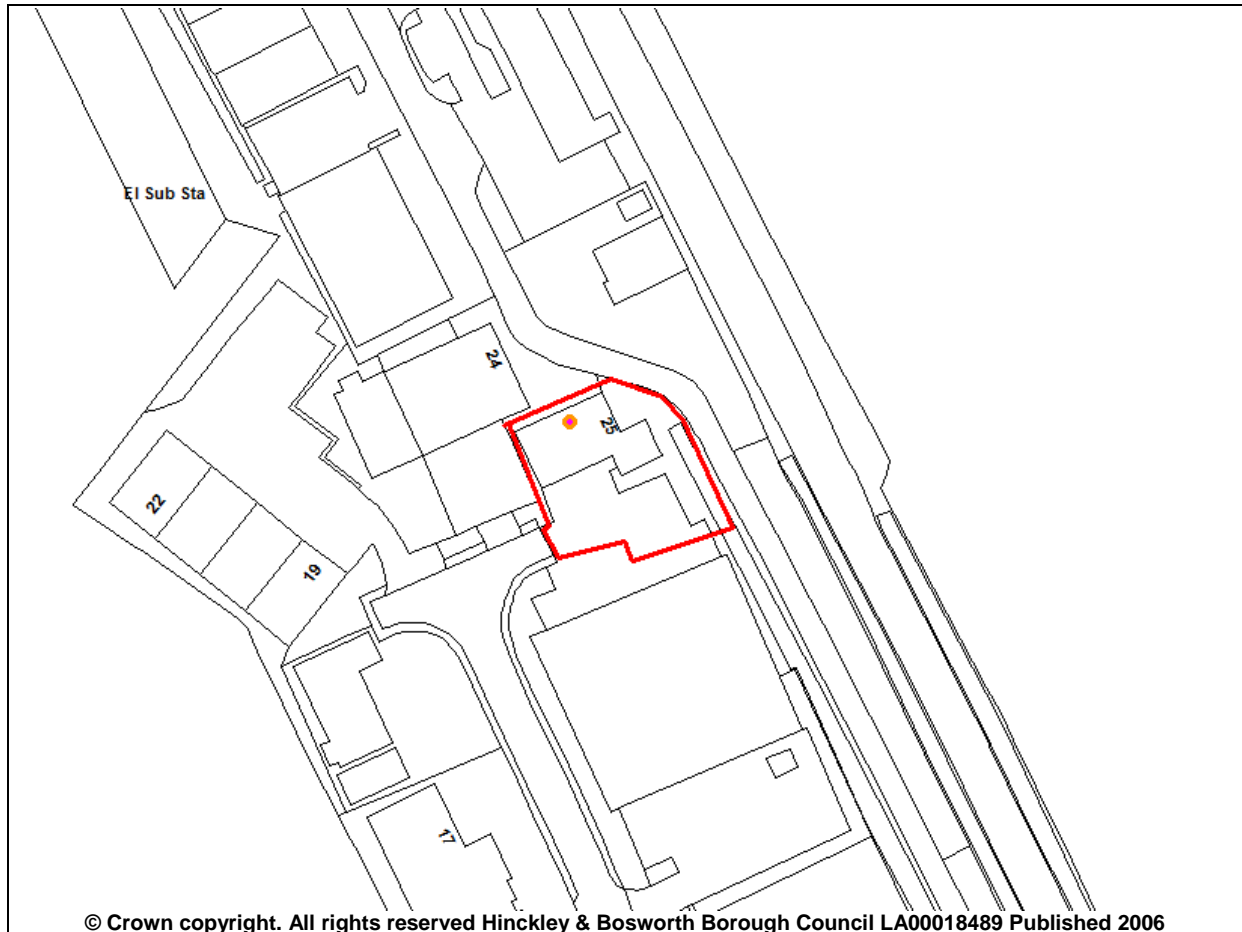
Planning Ref: 19/00176/FUL
Applicant: Mrs Fay Masterman
Ward: Ratby Bagworth And Thornton



Hinckley & Bosworth
Borough Council

Site: 25 Merrylees Industrial Estate Leaside Desford

Proposal: Change of use from light industrial (B1) to a Dance Studio (D2)



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1. Recommendations

1.1. Refuse planning permission:

1.2. Refuse planning permission for the reasons at the end of this report.

2. Planning Application Description

2.1. The application seeks the change of use of a light industrial (B1) building to a dance studio (D2).

2.2. There are no external changes or alterations to the car parking.

2.3. The dance studio would occupy the entire ground floor and mezzanine above. There would be 4 studios, a lounge, dancers den, kitchen and toilets.

3. Description of the Site and Surrounding Area

- 3.1. The application site lies within a designated rural employment site known as Merrylees Industrial Estate, a Category A Employment Site as defined within the most recent Employment Land and Premises Study (2013), which is located to the south of Thornton, outside any defined settlement boundary and therefore within the countryside. The site is also located within the National Forest. The site is surrounded by existing commercial buildings of varying design, scales, styles and appearance.

4. Relevant Planning History

18/01224/FUL	change of use from light industrial (B1) use to a Dance Studio (D2)	APPLICATION RETURNED	10.12.2018
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5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site and a notice was displayed in the local press.
- 5.2. There have been 10 letters of support. Three (3) from local businesses adjacent to the site all stating that they have no objections to the proposal. Five (5) letters are from parents of children who are members of the dance club. There is one (1) letter from one of the dance teachers and one (1) from the development officer at the Sport in Desford (SiD) premises where the dance club is currently run from. The letters support the application for the following reasons:
- 1) Community use for local people and meeting local demand
 - 2) Development of the students – confidence/social/interest in dance as a career
 - 3) Benefit/provide further employment opportunities for teaching
 - 4) No adverse impact on environment
 - 5) Improve/enhance training /certification courses/workshops/development for teachers (CPD)
 - 6) Can become a Registered Venue for Examinations within the Region in a larger permanent premises
 - 7) More flexibility to offer more classes/different genres of dancing
 - 8) Expand business as unable to do this at SiD due to other community groups also requiring SiD venue for other clubs

6. Consultation

- 6.1. No objections have been received from:
LCC highways – no objections
National Forest – no objections

- 6.2. HBBC Policy team – object

7. Policy

- 7.1. Core Strategy (2009)
- Policy 21: National Forest
- 7.2. Site Allocations and Development Management Policies DPD (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM4: Safeguarding the Countryside and Settlement Separation
 - Policy DM10: Development and Design

- Policy DM18: Vehicle Parking Standards
 - Policy DM19: Existing Employment Sites
- 7.3. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2019)
 - Planning Practice Guidance (PPG)
- 7.4. Other relevant guidance
- Employment Premises and Land Review (2013)

8. Appraisal

8.1. Key Issues

- Assessment against strategic planning policies
- Design and impact upon the character of the area
- Impact upon highway safety

Assessment against strategic planning policies

- 8.2. Policy DM1 of the Site Allocations and Development Management Policies DPD (SADMP) and the NPPF provide a presumption in favour of sustainable development. Policy DM4 states that development in the countryside will be considered sustainable where job creation has occurred and does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside. Policy DM19 of the SADMP identifies the application site as a rural employment site with the Employment Land and Premises Review 2013 identifying the site as a Category A site providing a good source of industrial space for the rural market. Policy 21 of the Core Strategy requires all new developments to reflect the Forest context and shall provide on-site or nearby landscaping that meets the National Forest planting guidelines.
- 8.3. The NPPF also gives significant weight to the encouragement of sustainable economic growth through the planning system and support and flexibility to accommodate the needs of businesses and rapid response to changes in economic circumstances. Para 2 refers to the pre-eminence of the development plan and that planning applications should be determined in accordance of the plan unless material considerations indicate otherwise. Para 2 notes that the NPPF is a material consideration. Para 8 states the economic aspects to achieving sustainable development *‘to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth...’*. In that respect the site has been designated for employment use to help meet the needs for employment land in the borough and to support ongoing economic growth.
- 8.4. The Employment Land And Premises Review 2013 states at Para 12.13 that: *‘Hinckley and Bosworth Borough Council should also recognise the increasing level of precedents of non-B use employment activity provision within employment areas across the UK. Sui generis uses, such as vets practices, and D1 non-residential institutions including training centres, nurseries/childrens play facilities and activity centres do generate employment opportunities. Such applications within the Borough should be treated on their individual merits, including employment outputs, but should be restricted to the Category B or C Employment Areas’*.
- 8.5. The proposal is located entirely within the boundaries of the existing employment site (THO18 – Merrylees Industrial Estate) and the proposed change of use is in connection with the existing unit 25 building which is substantial in size. The site is identified as a **Category A site**. DM19 states that *‘The Borough Council will seek to*

retain sites classified as Category A sites in their entirety, for B1, B2 and B8 employment uses. The development of non B class uses in Category A sites will only be allowed in exceptional circumstances. Proposals must demonstrate that they would not have a significant adverse impact on surrounding employment uses'.

- 8.6. Although the existing unit is vacant and despite requests to provide up to date marketing information, the agent has formally responded that the applicant is not seeking to reply on a formal documented marketing strategy and campaign to justify their case for the change of use which they seek and for the avoidance of doubt no such strategy or campaign will be submitted as part of the application. The applicants consider that under DM19 there are exceptional circumstances that apply.
- 8.7. Job creation, lack of alternative suitable facilities and the popularity of the dance school have been put forward as considerations to be taken into account as exceptional circumstances.
- 8.8. The applicant states that the proposed change of use to a dance studio (D2 use) would enable the relocation of the dance school in order for her to expand the business. The business has been established since 2006 and the applicant states that they employ 7 members of staff, running 43 classes and teaching 210 students weekly.
- 8.9. The agent states that the proposal is acceptable in that *'there is a pressing need to relocate to new premises within the locality which can serve the existing active pupil base with the space to allow it to accommodate the dancers on its current waiting list so that it can flourish further as an evidently successful local business and important social and community facility'.*(Applicants planning statement para 2.11) and the move will *'facilitate many more hours of teaching and will expand employment opportunities in our locality. The sports and leisure sector is already a significant factor in the local economy and as such a change of use on appropriate premises would contribute to this growing sector of the local economy'* (para 2.12).At 6.12 and 6.13 of the applicant's statement it is stated that; *'There is a demonstrated local need for the dance studio within Desford and, the Dance Factory currently has a waiting list of 82 people. The applicant has investigated the prospect of establishing a dance studio at other locations, but these have been unsuitable in terms of their size and location. Sequentially, the application site is the most appropriate location for the facility to serve the local demand ' . Furthermore, the proposed premises are an appropriate location for this dance studio as it is easily accessible from Desford (where the vast majority of the dancers live), benefitting the local community and reflecting Spatial Objective 7 and Policy 8 of the Core Strategy by delivering further employment provision to meet local need'.*
- 8.10. Policy DM19 allows the development of non B class uses on Category A sites only when exceptional circumstances can be demonstrated.
- 8.11. The *Employment Land and Premises Review* states that Non - B Class uses should only be allowed if an applicant can demonstrate exceptional circumstances and that the proposals will not have a significant adverse impact on surrounding local uses. The use for employment purposes other than B class uses may be appropriate but only if it can be shown that enhancement over and above B class uses. Such development should however not prejudice the efficient and effective uses of the remainder of the employment area. In regard to potential employment for the proposed use, the current government guidance (Employment Density guide 2015) allows between 8-13 square metres of space per employee for B1 uses. The gross internal area (GIA) of the unit is 450 square metres (potentially between 360-382 square metres of net internal area (NIA), which would result in an average employment yield of 36 employees based on 10 square metres of floor space per

person in an area of 360 Square metres NIA. The applicant has stated that there would be 7 proposed employees, 3 full- time and 4 part time - this equates to the equivalent of 5 full time employees. This would not provide employment equivalent or an enhancement of employment opportunity that would be considered as an 'exceptional circumstance'.

- 8.12. Although the applicant considers that the proposed use is a benefit to the community, the proposed use does not fall into any of the categories identified within Policy DM25 of what a 'community facility' is considered to be. In this regard, the proposed use as a dance studio is not a community use and, despite its apparent popularity, this is not considered as an exceptional circumstance.
- 8.13. It is not considered that the case, as set out by the applicant (above) demonstrates '*exceptional circumstances*'. Although the applicant also refers to the proposal meeting the aims of several spatial objectives of the Core Strategy, however it is through the policies set out in the plan that the spatial objectives are achieved and on that count the proposal fails to address the requirements of policy DM19.
- 8.14. It is also noted that even though the property is vacant, no marketing has been undertaken to assess whether the site is no longer needed for employment uses or an assessment of its continuing suitability for employment use. A check of various property websites indicates that there are currently no premises within the Merrylees employment area available for rent or sale.
- 8.15. The change of use of the site from employment to a use not within the traditional B class uses would have the result of taking a needed, viable and suitable employment property out of employment use to the detriment of the economy of the borough. The most relevant policy therefore is Policy DM19 of the SADMP. This policy states that '*the development of non B Class uses in Category A sites will only be allowed in exceptional circumstances. Proposals must demonstrate that they would not have a significant adverse impact on surrounding employment uses*'.
- 8.16. Despite the applicant's Statement (above), that other locations had been looked for, evidence of this was requested by the planning officer for the Sequential Test which had been alleged to have been carried out. At the time of writing, this had not been submitted and therefore there is no evidence in which supports the claim that there are no other suitable premises where the proposal could be relocated to.
- 8.17. Although the applicant refers to the proposal meeting the aims of several spatial objectives of the Core Strategy (see above), it is through the policies set out in the local plan that the spatial objectives are achieved and as the proposal has failed to address the requirements of policy DM19 by default, it cannot therefore meet the aims of these spatial objectives.
- 8.18. There are no current vacant premises within Merrylees Industrial Estate that are advertised. The change of use of the site from employment to another use outside of the traditional B Class employment uses would directly result in the taking of what appears to be a needed, viable and suitable employment property out of employment use to the detriment of the economy of the borough. In this regard, a change of use to a Leisure Use would have a significant adverse impact on surrounding employment uses by starting to undermine Policy DM19, which may, in time, make it difficult for the LPA to resist other changes of use thus diluting the site with non traditional use classes.
- 8.19. As aforementioned, no marketing information has been provided that would prove that the unit was no longer viable for B class business purposes. No sequential test has been provided proving that there were no other suitable premises available. No exceptional circumstances have been identified that would allow the proposed use to be considered acceptable. It is therefore considered that the proposal would have

an adverse impact on the future stability of the Category A employment site to be used for Class B Employment uses only and therefore the proposal does not comply with Policy DM19 of the SADMP.

Design and impact upon the character of the area

- 8.20. Policy DM4 of the SADMP seeks to safeguard the countryside from unsustainable development and identifies that development in the countryside will be considered sustainable under a range of criteria. The most relevant criterion is b) the proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting. Policy 21 of the Core Strategy relates to development within the National Forest and requires proposals to be appropriately related to its setting within the National forest, respect the character and appearance of the wider countryside and to not adversely affect the existing facilities and working landscape of wither the Forest or the wider Countryside.
- 8.21. There are no external alterations proposed and in this regard the proposal would have a neutral impact on the character and appearance of the surrounding area, Development under Policy DM4 is considered sustainable if it meets one or more of the set out criteria within parts a – e of the Policy. Although under part b) the proposal involves a change of use, it would not contribute to economic growth or job creation or a diversification of a rural business as required by part c) and therefore is not considered sustainable in this location. In this regard the proposal is contrary to Policy DM4 of the SADMP.

Impact upon highway safety

- 8.22. Policy DM17 of the SADMP states that all new development should be in accordance with the highway design standards. Policy DM18 requires all development to provide appropriate parking provision.
- 8.23. The site has 11 parking spaces allocated for its use. An informal arrangement has been put forward that the applicant can use up to 50 parking spaces allocated to its neighbouring businesses in the evenings and weekends (which would be the busiest times for the applicants business and other surrounding businesses would be closed).
- 8.24. The Highways Authority has no objections to the proposal or the informal arrangement and in this regard the proposal is considered to meet the requirements of policies DM17 and DM18.

9. Equality Implications

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-
- (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.
- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.

- 9.3. There are no known equality implications arising directly from this development.
- 9.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1. The proposal seeks a change of use of a B class unit on a Category A employment site for a use as a Dance Studio (class D2). The site is an important employment site, the loss of which would be detrimental to the employment provision of the borough contrary to Policy DM19
- 10.2. *DM19 states that 'The Borough Council will seek to retain sites classified as Category A sites in their entirety, for B1, B2 and B8 employment uses. The development of non B class uses in Category A sites will only be allowed in exceptional circumstances. Proposals must demonstrate that they would not have a significant adverse impact on surrounding employment uses'.*
- 10.3. *The circumstances in which employment land may be lost on category B sites are listed at point b) under category B of policy DM19. In summary this refers to the site no longer being fit/capable of being fit for employment purposes and that suitable marketing has been undertaken, or that there will be significant community benefit which outweighs the impact of the loss of the employment site.*
- 10.4. *There is no evidence provided to demonstrate the above, or anything above and beyond this to demonstrate exceptional circumstances, therefore the requirements of policy DM19 – exceptional circumstances have not been proved or evidenced so, in line with DM19 the site should be retained for B1, B2 or B8 uses. In addition no evidence has been provided that the proposal would not have a significant adverse impact on surrounding employment uses and the recommendation is to Refuse.*

11. Recommendation

11.1. Refuse planning permission:

11.2. Reasons

1. By virtue of the location of the application site within a Category A employment site and without justification as to the loss of the Class B (employment) use to a D2 (assembly and leisure) use, the loss of the site for non B class Employment use would be detrimental to the employment provision of the Borough, resulting in an unsustainable and unwarranted form of development. The proposal is therefore contrary to Policies DM1, DM4 and DM19 of the Site Allocations and Development Management Policies DPD and the NPPF.