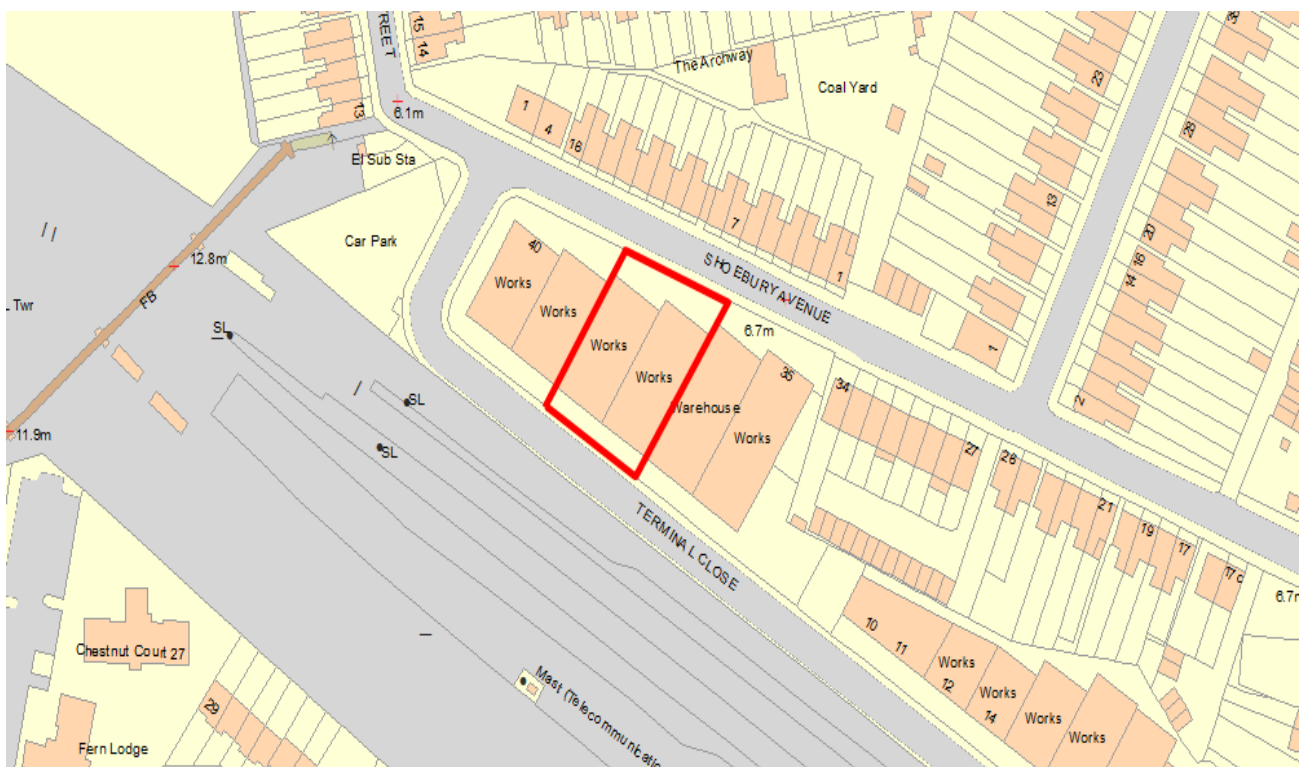


Reference:	18/00820/FUL
Ward:	Shoeburyness
Proposal:	Change of use from storage and distribution (Class B8) to a gymnasium (Class D2) and Cheerleading and Gymnastics Training Centre (Class D2)
Address:	37 - 38 Shoebury Avenue, Shoeburyness, Essex SS3 9BH
Applicant:	Miss R Blatch
Agent:	Mr N Kenney
Consultation Expiry:	27.06.2018
Expiry Date:	30.07.2018
EoT Date:	06.08.2018
Case Officer:	Scott Davison
Plan Nos:	ES/NAK/01A & ES/NAK/02A
Recommendation:	REFUSE PLANNING PERMISSION



1 The Proposal

- 1.1 This application retrospectively seeks planning permission to change the use of Units 37 & 38 Shoebury Avenue from storage and distribution use (Class B8) to a gymnasium (Class D2) and Cheerleading and Gymnastics Training Centre (Class D2). Unit 37 had a temporary planning permission for "Proposed change of use from storage and distribution (Class B8) to a cheerleading training centre (Class D2) (Amended Proposal)" (Ref: 13/01024/FUL) which expired on 13th November 2016. This permission did not apply to Unit 38.
- 1.2 The applicant has confirmed that the cheerleading and gymnastic training centre operates across both units 37 & 38 between the hours of 16:00 – 21:00 Monday – Thursday, is closed on Saturday and used occasionally on Sundays between 10:00 – 19:00 when preparing for a competition. The gym operates from unit 38 between the hours of 09:00 – 21:00 Monday – Thursday; 09:00 – 20:00 Friday; 10:00 – 17:00 Saturdays and 10.00 – 14.00 Sundays. The Design and Access statement states that a total of 12 staff are employed with 4 staff present at any one time, 2 per unit. The average class size is 20 people maximum and classes are 2 hours in duration
- 1.3 The submitted plans show that 8 parking spaces exist within the application site to the Terminal Close frontage with 4 additional parking spaces laid out parallel to Shoebury Avenue. The plans also show 15 additional parking spaces on land to the west of the application site close to the junction of Shoebury Avenue and Terminal Close. Five of these spaces are within the ownership of the applicant and further 10 spaces are leased by the applicant after the 17:00 hours weekdays and weekends. The plans show the availability of approximately 30 on-street parking spaces within Terminal Close however these are not within the control of the applicant.
- 1.4 The units are both single storey buildings and no external alterations have been carried out or are proposed as part of the development. Internally, No.37 contains a mezzanine level to the rear of the building.
- 1.5 The proposed cheerleading/gymnastics use offers sport and recreation for young people, and has previously been judged as offering a specialist type of facility. The applicant states that the use is a specialised training centre for both gymnastics and cheerleading and the nearest comparable facilities are located at the Basildon Sporting Village and Cartwheels Gymnastic Club based in Benfleet. The site also operates as a commercial gym.
- 1.6 This application follows the refusal of planning application: 17/00494/FUL Change of use from storage and distribution (Class B8) to a gymnasium (Class D2) (Retrospective) relating to Units 37 & 38 that was refused for the following reason: *"The applicant has failed to demonstrate that there is no long term or reasonable prospect of the site being used for B class uses, and that the proposed use cannot reasonably be located elsewhere within the area that it serves. On this basis it is concluded that the continued use of the premises as proposed would undermine the employment growth area and the long term availability of employment-generating development in the Borough. There are found to be no material planning considerations of sufficient weight to outweigh the harm caused by this conflict with development plan policy. This is unacceptable and contrary to the*

National Planning Policy Framework, Policies KP1, KP2 and CP1 of the Core Strategy (2007) and Policies DM3 and DM11 of the Development Management Document (2015)”.

- 1.7 In terms of history it is noted that under planning application: Ref: 13/01024/FUL relating solely to Unit 37 Shoebury Avenue described as “Proposed change of use from storage and distribution (Class B8) to a cheerleading training centre (Class D2) (Amended Proposal)”, temporary planning permission was granted on 13th November 2013 for the use and this temporary permission expired on 13th November 2016. The reason for the temporary permission was: *that permission for a temporary period only is appropriate in the circumstances and retention of the use for more than a temporary period would fail to comply with Policies KP1, KP2 and CP1 of the Core Strategy, Policy E4 of the Borough Local Plan and the National Planning Policy Framework (NPPF).*
- 1.8 Planning Application 13/00102/FUL relating solely to Unit 37 Shoebury Avenue described as “Proposed change of use from storage and distribution (Class B8) to a cheerleading training centre (Class D2)” was refused on 16th April 2013 for the following reason: *The proposed change of use would involve the loss of existing employment land and premises. This is considered to have an adverse impact on the Borough's limited supply of employment generating land contrary to Policies KP1, KP2 and CP1 of the Core Strategy, Policy E4 of the Borough Local Plan and the National Planning Policy Framework (NPPF).*
- 1.9 There are no evident differences between the current application and the refused application; 17/00494/FUL. The applicant has not submitted any additional supporting information or evidence of marketing of the property.

2 Site and Surroundings

- 2.1 The buildings, No's 37 & 38 are an adjoining pair within a row of 6 identical large pitched roof industrial buildings which front on to Shoebury Avenue to the north and Terminal Close to the south. The buildings are single storey. The premises have entrance doors to the front and rear however the units are accessed from the Terminal Close side. The site has a small front curtilage with a parking area immediately to the rear off Terminal Close.
- 2.2 The site is located within Terminal Close Industrial Estate. Immediately to the north opposite the site are the residential terraced properties which front Shoebury Avenue. To the east and west of the site are the adjoining industrial buildings and to the south is a main railway line.
- 2.3 The site is located within a designated industrial estate allocated as an Employment Area within the Core Strategy and Development Management Document. The site is located within Flood Zone 1.

3 Planning Considerations

- 3.1 The main issues for consideration include the principle of the change of use, the impact on the design of the existing building and wider street scene, any impact on neighbours, traffic and transport implications and CIL implications

4 Appraisal

Principle of Development

National Planning Policy Framework, Policies KP1, KP2 and CP1, CP4 and CP7 of the Southend-on-Sea Core Strategy (2007), Policies DM1, DM3, DM10, DM11 and DM15 of the Southend-on-Sea Development Management Document (2015)

- 4.1 Government guidance with regard to planning matters is set out in the National Planning Policy Framework (NPPF). The NPPF states that there are three dimensions to sustainable development. These are economic, social and environmental.
- 4.2 In relation to the economic strand, paragraph 3 states that *“An economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure”*.
- 4.3 Paragraph 17 states that planning should *“be genuinely plan-led”*. Paragraph 161 states *“the existing and future supply of land available for economic development and its sufficiency and suitability to meet the identified needs. Reviews of land available for economic development should be undertaken”*.
- 4.4 Policy KP1 seeks sustainable development by focussing regeneration and growth towards Priority Urban Areas which includes West Road/Ness Road in Shoebury (local centre) and the main industrial/employment areas which include Terminal Close.
- 4.5 Policy CP2 of the Core Strategy seeks to direct town centre uses including gyms to existing local centres.
- 4.6 The site is identified as an employment growth area in the Development Management Document. Policy CP1 of the Core Strategy states that *“The Borough Council will support the retention, enhancement and development of Class B uses within the Employment Areas.”* That policy also states that 1500 jobs will be created within Shoeburyness in the 20 year period from 2001 to 2021.
- 4.7 Terminal Close is identified as an employment growth area in the Development Management Document. Policy DM11 of the Development Management Document states that the Borough Council will support the retention, enhancement and development of Class B uses within the Employment Areas. Section 2 of policy DM11 relates to the use of designated employment areas and states:
- 4.8 *‘The Borough Council will support the retention, enhancement and development of Class B uses within the Employment Areas shown on the Policies Map and described in Policy Table 8. Proposals that fall outside of a Class B employment use will only be granted permission where:*
- 4.9 *2a) the development proposal is a ‘sui generis’ use of a similar employment nature, which is compatible with and will not compromise the operating conditions of the Employment Area; or*

2b) the development proposal is in conformity with a planning brief, or similar planning policy document, that has been adopted by the Borough Council for the concerned site, which sets out other appropriate uses; or

2c). it can be demonstrated to the Council's satisfaction that:

i) there is no long term or reasonable prospect of the site concerned being used for Class B purposes, and*

ii) the use is compatible with and will not compromise the operating conditions for other employment uses or the potential future use of neighbouring sites for employment uses; and

*iii) the alternative use cannot be reasonably located elsewhere within the area it serves**; and*

iv) the use will not give rise to unacceptable traffic generation, noise, odour or vehicle parking.

2d). it can be shown that the development will be a complementary and supporting use, which is both subservient and ancillary to the principal employment uses and serves the day-time needs of the estate's working population and will not result in a material change to the Class B character and function of the area.

**This should include a minimum 2 year active marketing exercise where the vacant site / floorspace has been offered for sale or letting on the open market at a realistic price and that no reasonable offers have been refused. In exceptional cases related to site-specific circumstances, where the vacancy period has been less than two years, a robust market demand analysis which supplements any marketing and vacancy evidence may be considered acceptable. Appendix 4 sets out the information to be provided in relation to marketing and market demand.*

*** The Borough Council will make a judgement about the extent of the area based upon the site concerned and the proposed use.*

In addition Appendix 4 of the Development Management Document requires sets out criteria concerning marketing information and evidence of any marketing undertaken. *"This includes evidence of an active marketing campaign for a continuous 2 year period, whilst the premises were vacant, which has shown to be unsuccessful. The marketing information should also include evidence of advertisements on site, details of the registration of property with at least one commercial property agent and evidence that the property marketed at a reasonable price reflecting market conditions, including in relation to use, condition, quality and location of the premises/ site."*

- 4.10 It is also noted that a number of evidence base documents for the Local Plan are relevant to this application as they include more detailed surveys and studies of the Borough's Employment Areas. The Southend-on-Sea Survey of Key Employment Areas (September 2013) states that there are 15 premises in Shoebury Avenue, 3 of which are vacant, equating to 20%. It should be noted that this survey is currently being updated and draft survey data from late 2017 shows that of the 15 units, 13 were noted as having a B class use (86.7%) and that vacancy rate has remained unchanged at 3 units (13.3%).

- 4.11 The 2010 Employment Land Review 2010 stated: *“The site is located in Shoeburyness directly north of the Station. The site is currently in poor use for employment purposes with high vacancy levels and poor quality units. The site is in a poor condition with older B2 industrial units. The site is not considered suitable for continued employment use in its current state. The site could be suitable for a mixed use development of residential and employment floorspace”.*
- 4.12 The Employment Land Review recommended that; *The site should be protected for employment purposes and potentially redeveloped for modern employment uses. The site should be considered alongside other sites in the Shoeburyness AAP to determine the future direction of development in the wider Shoeburyness area.* Existing employment sites are considered to have continued value in employment use and therefore should continue to be protected from loss in the first instance. These aspirations are addressed in Policy DM11 of the Development Management Document which identifies the site as an Employment Growth Area.
- 4.13 Policy CP1 also states that *“Permission will not normally be granted for development proposals that involve the loss of existing employment land and premises unless it can be clearly demonstrated that the proposal will contribute to the objective of regeneration of the local economy in other ways, including significant enhancement of the environment, amenity and condition of the local area.”*
- 4.14 The application site is currently in use by the applicant. The design and access statement and supporting information submitted with the application and the previous application confirm that:
- 4.15 UNIT 37: the property was vacant from November 2012, and was occupied by the applicant from December 2013 following a grant of temporary planning permission. It has been occupied by the applicant since that date. The temporary planning permission expired on 13th November 2016.
- 4.16 UNIT 38: the property was vacant from February 2012 to January 2014. It was then occupied until October 2014. It was then vacant until December 2014 at which point the applicant took occupation.
- 4.17 The applicant stated in the previous application that former occupiers of the units had to vacate both of the premises due to loss of business. However no evidence was submitted to support this, or to show that the building has been marketed, has been submitted. The applicant has also stated that Unit 38 was vacated in October 2014 following police action.
- 4.18 Policy DM11, section 2c in relation to criterion i) of the applicable exceptions to the Policy sets out an expectation that the application should be supported by evidence of *“a minimum 2 year active marketing exercise where the vacant site/floorspace has been offered for sale or letting on the open market at a realistic price and that no reasonable offers have been refused. In exceptional cases related to site-specific circumstances, where the vacancy period has been less than two years, a robust market demand analysis which supplements any marketing and vacancy evidence may be considered acceptable.”*

- 4.19 The applicant's evidence is included in the Design and Access statement within two paragraphs from the previous landlord. It states: "*My firm has been offering the premises to let since 9th October 2012 and they offered to let by another agent for over a year prior to us. The units are vacant and the only person who has viewed them is Miss Blatch. (The applicant)*" No documentary evidence has been submitted to address criterion 2c i) and as such the application does not meet the standards of information required by the Policy. The applicant has stated the occupiers of Unit 38 in 2014 were allegedly involved in criminal activities which ceased following police action. This does not necessarily show that the property would not be able to attract 'B' class business uses.
- 4.20 In relation to criterion 2c ii, it is considered that the proposed use would not impose an additional constraint on the operation of the employment area. Terminal Close and Shoebury Avenue is an *Employment Growth Area* that includes small units with relatively small and low-key enterprises. The use would not result in a noise-sensitive land use being created within the employment area and it is considered that most use of the site will be at hours when the employment area is less intensively used. The activities in this area have no effect on the separately allocated area of Vanguard Way to the north west. It is considered that the application does not conflict with criterion ii).
- 4.21 In relation to criterion 2c iii that is set out above (where the use can reasonably be located elsewhere), Policy DM11 goes on to state that "*The Borough Council will make a judgement about the extent of the area based upon the site concerned and the proposed use.*" The gymnasium use is a specialist facility with a larger catchment area than a conventional gym and it is therefore assumed that the catchment area is quite large. The applicant states that the next two closest comparable facilities are at the Basildon Sporting Village and Cartwheels Gymnastic Club based in Benfleet. No alternative sites have been identified by the applicant and discounted in favour of the application site. The applicant simply states that the Basildon Sporting Village is not a viable option for people in the local community. This is not sufficient evidence to address the requirements of Policy DM11. The logic of the site selection would appear to stem from the formerly authorised use of no.37 and the accessibility of the site within the built-up area, close to transport links and offering space for car parking. No evidence has been submitted in relation to an alternative location for Gymnasium Use. Gymnasiums are common uses and there is no justification for its siting in this particular location.
- 4.22 In relation to criterion 2c iv) which requires that the development should not give rise to unacceptable traffic generation, noise, odour or vehicle parking, the impact on traffic and highways is discussed in more detail below. Policy DM15 states that parking should be provided at a maximum rate of 1 space per 10 square metres of floorspace which would equate to a maximum of 37 parking spaces. Eight parking spaces are shown within the application site to the Terminal Close frontage. The 4 parking spaces parallel to Shoebury Avenue to the rear of the site are not considered acceptable. The applicant's submissions make it clear that 15 other spaces are available which are not located within the application site. The applicant has leased these spaces and five are available for use during the day and the other ten spaces are leased after for use after 17:00 and at weekends. Due to the nature of the proposed use, it is considered that the majority of the parking within Terminal Close would be available to serve the proposed use without impinging materially on operations within the employment area, but as above this cannot be relied upon

entirely.

- 4.23 The site is in a reasonably sustainable location as it is within walking distance of Shoebury Train Station and the bus services of Shoebury High Street and as such it is considered that some flexibility can be applied to the provision of parking at the site. The Council's Highway Officer has not objected to the proposal and it is generally considered that the proposed use would be able to meet criterion 2c of DM11.
- 4.24 It is noted that planning permission was previously been granted on a temporary basis at 37 Shoebury Avenue (ref: 13/01024/FUL). The officer report for noted that whilst it could be argued that the proposed use would contribute to a mixture of uses in the locality, the nature of the proposed cheerleading use being one of fitness and leisure is not an industrial activity or process falling within the scope of conventional B Class uses, and as such would not constitute an employment use. It would therefore be at odds with adopted policies that sought to prevent the loss of industrial, warehousing or other business uses on allocated land. The difference between the two 2013 applications were for the scheme that was given a temporary permission, the applicant provided information demonstrating the sustained vacancy of the site, levels of interest in the site and market values of the property which was below market value. Given the marketing information submitted, it was considered that in that case it would be reasonable to allow a temporary permission for a period of no more than three years and this would not result in a permanent loss of the B8 use. Thus there have been material changes in circumstances since the 2013 temporary consent.
- 4.25 It is stressed that the temporary permission only related to No.37 and it expired 2016 and the current use of that building is unauthorised. No.38 has never benefitted from any permission, temporary or otherwise and its present use is also unauthorised. In terms of other differences between the 2013 application and this current application, the Development Management Document has been adopted. This proposal is being assessed against the Development Management Document adopted in 2015 and the policies in this Document are consistent with those in the NPPF. Additionally the Southend-on-Sea Survey of Key Employment Areas (2013) and updated survey data from late 2017 have been published since the 2013 application that granted temporary permission.
- 4.26 In the context of the abovementioned policies of the development plan and the absence of appropriate justifications to demonstrate that the proposed change of use accords with any of the stated exemptions, it is considered that determining the application in accordance with the current development plan would indicate that an objection should be raised.
- 4.27 Paragraph 22 of the NPPF states: *“planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regarded to market signals and the relative need for different land uses to support sustainable local communities”* It is noted that at present although there is no adopted planning brief for the employment growth area. The site could represent cheaper accommodation for start-up

businesses, for example, as envisaged by Policy DM11.

- 4.28 Paragraph 014 of the central government Planning Practice Guidance states that there is no presumption that a temporary grant of planning of planning permission should be granted permanently. It goes on to say that subsequent applications should normally be granted permanently or refused if there is clear justification for doing so.
- 4.29 Policy CP7 of the Core Strategy seeks to support provision of sport and recreation facilities for children, young people and the wider community. It is acknowledged the provision of a cheerleading/gymnastics facility and gymnasium would be a possible benefit of the use including the supply of sport and community facilities. The Design and Access statement states that the activities at the units provide opportunities for trainee cheerleading coaches to gain their coaching qualifications and Essex Stars works closely with Sporting Superstars, a programme run by a local PE teacher which delivers individual training programs designed for young athletes. Essex Stars and Sporting Superstars also intend to develop a class for disabled individuals within the local community. Whilst it is acknowledged that the applicant has done valued work with the local community through the business this is not considered to outweigh the objection to the in principle loss of the employment use in the circumstances of this case.
- 4.30 The applicant has failed to supply any professional assessment of the viability of the premises as a 'B' class use or appropriate marketing evidence. While a planning brief for the employment site remains pending, it is considered that this would not outweigh the loss of employment land in the absence of appropriate assessments as to supply, demand and quality, in accordance with Criterion i) of Policy DM11.
- 4.31 It is considered that the case for 'exceptional circumstances' has not been justified and this proposal overrides the policy position on the protection of employment (B use class) uses. It is considered that the proposed uses would be contrary to the above policies, given that this would result in a permanent loss of the B8 uses. The circumstances have not changed materially since the previous refusal in November 2017 and no additional evidence has been submitted to support this application.

Impact on Neighbouring Properties

National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policy DM1, DM3 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)

- 4.32 Paragraph 17 of the National Planning Policy Framework seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- 4.33 Policy KP2 of the Core Strategy seeks to secure improvements to the urban environment through quality design. Policy CP4 seeks to maintain and enhance the amenities, appeal and character of residential areas.
- 4.34 Policy DM3 of the Development Management Document seeks to support sustainable development which is appropriate in its setting, and that protects the

amenity of the site, immediate neighbours, and surrounding area, having regard to matters including privacy, overlooking, outlook, noise and disturbance, sense of enclosure/overbearing relationship, pollution, daylight and sunlight”.

- 4.35 Regulatory Services commented that they have received complaints alleging noise nuisance from loud music and human voice (instructions being shouted over the music and loud cheering) from use of both 37 and 38 Shoebury Avenue on numerous occasions over the last 3 years during hours of operation. Were permission to be granted, a condition could be imposed to limit the noise levels emanating from the site. A noise level condition was attached to the 2013 temporary permission. Furthermore, consideration should also be given to the existing lawful use and the units could be used for storage and distribution purposes or for a light industrial use without requiring planning permission. As such, on balance it is considered that the proposed use would not result in a material increase in noise and disturbance when compared with the lawful use of the site, to such a degree as would warrant a refusal of planning permission.
- 4.36 Given the history of complaints, however, it is not clear that the change of use results in a net improvement in amenities in the area, as may otherwise weigh in favour of the proposal.

Traffic and Transport Issues

National Planning Policy Framework, Policies KP2 and CP3 of the Southend-on-Sea Core Strategy (2007), Policy DM15 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)

- 4.37 Policy DM15 of the Development Management Document requires that all development should meet the minimum off-street parking standards.
- 4.38 The submitted plans show 8 parking spaces are proposed within the application site on the forecourt in Terminal Close – four for each unit and 4 parking spaces are provided parallel to Shoebury Avenue. A further 5 spaces are located within land close to the site and additional 10 spaces within the same piece of land are available for use after 17:00 hours and at weekends. The gym operates from unit 38 between the hours of 09:00 – 21:00 Monday – Thursday; 09:00 – 20:00 Friday; 10:00 – 17:00 Saturdays and 10.00 – 14.00 Sundays. The majority of the Cheerleading / Gymnastics use is for school aged children and classes begin after 16:00 hours and run until 21:00.
- 4.39 The Design and Access statement indicates that the anticipated peak hours of use are between 18:00 – 20:00, due to the timings of classes which contrast with the peak times for the units in Terminal Close, it is likely that there will be on street parking provision available in the surrounding area and the proposed use would not have a detrimental impact upon the surrounding highway network as most of the other B Class sites close at approximately 17:30 so pick up and drop off would not cause parking related issues within the surrounding area. There are no highways objections to the proposal however they contend that the four parking spaces parallel to Shoebury Avenue cannot be considered as parking spaces as these are accessed via a pedestrian crossing point which is illegal. Highways state that should these spaces be used, highway enforcement action will be taken.

- 4.40 It is therefore considered that on balance, the proposed parking provision is sufficient to serve this development in this location and there are no highway objections to this proposal which is acceptable and policy compliant.

Design and Impact on the Character of the Area

National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015) and advice contained within the Southend-on-Sea Design and Townscape Guide (2009)

- 4.41 The National Planning Policy Framework requires new development to respond positively to its surroundings. Policies KP2 and CP4 of the Core Strategy, Policies DM1 and DM3 of the Development Management Document, and the Design and Townscape Guide, advocate the need for new development to respect and complement local character.
- 4.42 The application site is comprised of single storey light industrial buildings which are finished externally with facing brickwork and metallic cladding and have a pitched roof. No extensions and alterations to the building are proposed to enable the changes of use.
- 4.43 The buildings on the industrial estate east and west of the site are comparable in scale and appearance to application building. These are not judged to be of any particular style or design merit. To the south of the site is a railway line and to the north of the site are two storey terraced dwelling houses in Shoebury Avenue. It is not considered that the development would adversely impact the character and appearance of the Industrial estate nor would it impact on the residential properties to the north of the site. The proposal is considered to be acceptable and compliant with policy objectives in this respect.

CIL Charging Schedule 2015 Community Infrastructure Levy

- 4.44 The application is for a commercial to commercial change of use where there is no increase in floorspace. Therefore the application is not liable under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge would be payable.

5 Conclusion

- 5.1 No.37 has operated without planning permission despite the expiration of temporary planning permission for that unit in 2016. Unit 38 has never benefitted from any planning permission and an application for an identical proposal was refused in November 2017. The applicant has failed to demonstrate that there is no long term or reasonable prospect of the site being used for B class uses, and that the proposed use cannot reasonably be located elsewhere within the area that it serves. On this basis it is concluded that the use of the premises as proposed would undermine the employment growth area and the long term availability of employment-generating development in the Borough. On balance, there are found to be no material planning considerations of sufficient weight to outweigh the harm caused by this conflict with development plan policy. This is unacceptable and contrary to the National Planning Policy Framework, Policies KP1, KP2 and CP1 of

the Core Strategy (2007) and Policies DM3 and DM11 of the Development Management Document (2015).

6 Planning Policy Summary

- 6.1 National Planning Policy Framework (2012)
- 6.2 The Southend-on-Sea Core Strategy (2007): Policies KP1 (Spatial Strategy) KP2 (Development Principles) CP1 (Employment Generating Development), CP3 (Transport and Accessibility), CP4 (Environment & Urban Renaissance) CP7 (Sport, Recreation and Green Space)
- 6.3 The Southend-on-Sea Development Management Document (2015): Policies DM1 (Design Quality), DM3 (The Efficient and Effective Use of Land) DM10 (Employment Sectors) DM11 (Employment Areas) DM15 (Sustainable Transport Management)
- 6.4 Supplementary Planning Document 1: The Southend-on-Sea Design & Townscape Guide (2009)
- 6.6 CIL Charging Schedule 2015
Employment Land Review (2010)

7 Representation Summary

Transport & Highways

- 7.1 No highway objections are raised
- 7.2 The site is in a sustainable location with regard public transport with good rail and bus links in close proximity the applicant has also provided cycle parking within the site. The application has shown 4 parking spaces parallel to Shoebury Avenue these are cannot be considered as parking spaces as these are accessed via a pedestrian crossing point which is illegal. Should these spaces be used highway enforcement action will be taken.
- 7.3 To the rear of the site 8 spaces have been provided in addition to the private parking arrangement the applicant has agreed. Parking is also available within Terminal Close which does not suffer from parking stress the parking associated with the proposal is considered acceptable in highway terms.
- 7.4 It is not considered that the proposal will have a detrimental impact upon the public highway

Environmental Protection

- 7.5 On reviewing the history for the site including noise and nuisance complaints received by Environmental Protection, the following observations and comments were made in respect of the application.

- 7.6 The Environmental Protection team have received complaints alleging noise nuisance from loud music and human voice (instructions being shouted over the music and loud cheering) from use of both 37 and 38 Shoebury Avenue on numerous occasions over the last 3 years, however statutory nuisance hasn't been witnessed. Verbal advice in respect of monitoring the volume of the music and sound insulation has been provided to the applicant during this time.
- 7.7 No details have been provided regarding ventilation/ air conditioning for the unit. If this plant is required then full details are to be submitted. Compliance with the proposed noise condition(s) would also be required which is normally demonstrated in the form of an Acoustic Assessment, which is carried out by a competent person who is generally a member of the Institute of Acoustics.
- 7.8 In order to avoid the occurrence of noise nuisance and nuisance from lighting, Environmental Protection proposes that appropriate measures shall be taken.

A number of planning conditions and Informatives were suggested.

- The rating level of noise for all plant (including but not exclusively ventilation, refrigeration and air conditioning equipment)determined by the procedures in BS:4142:2014, shall be at least 5dB(A) below the background noise with no tonal elements. The LA90 to be determined according to the guidance in BS:4142 at 3.5m from ground floor facades and 1m from all facades above ground floor level to residential premises. The equipment shall not be installed before an acoustic assessment has been undertaken and the proposed installation is designed to be capable of meeting the above criteria.
- A statement of compliance with the set criteria to be submitted confirming compliance to the planning authority prior to any installation of the plant. The assessment should be carried out by a suitably qualified and experienced acoustic consultant who would normally be a member of the Institute of Acoustics. The equipment shall be maintained in good working order thereafter. The plant must not have distinctive tonal or impulsive characteristics.
- The rating level of noise for all activities (including amplified and unamplified music and human voices) shall be at least 5 dB(A) below the background noise (with no tonal elements) to ensure inaudibility in noise sensitive premises. If noise modelling software is used to calculate the likely levels or impact of the noise then any actual measurement taken such as LA90 must be taken in accordance with BS7445. The assessment should be carried out by a suitably qualified and experienced acoustic consultant who would normally be a member of the Institute of Acoustics.
- External lighting shall be directed, sited and screened so as not to cause detrimental intrusion of light into residential property.
- Automatic closing devices shall be fitted to all internal doors which apart from access and egress shall remain in a closed position at all times during opening hours.

- Except for ingress and egress, the external doors to the north elevations shall remain closed whenever the premises is operating to reduce noise break out and, except in cases of emergency, shall not be available for use by customers.

Public Consultation

7.9 12 neighbours have been notified. No responses have been received.

7.10 The application has been called in to Committee by Cllr Chalk.

8 Relevant Planning History

8.1 37 - 38 Shoebury Avenue: 17/00494/FUL Change of use from storage and distribution (Class B8) to a gymnasium (Class D2)(Retrospective) - Application Refused

8.2 37 - 38 Shoebury Avenue: 16/01647/FUL: Change of use from storage and distribution (Class B8) to a gymnasium (Class D2) at 37 - 38 Shoebury Avenue (Part-Retrospective). Withdrawn.

8.3 37 Shoebury Avenue: 13/01024/FUL: Proposed change of use from storage and distribution (Class B8) to a cheerleading training centre (Class D2) (Amended Proposal). Temporary 3 year planning permission granted until 13th November 2016.

8.4 37 Shoebury Avenue: 13/00102/FUL: Proposed change of use from storage and distribution (Class B8) to a cheerleading training centre (Class D2). Refused.

9 Recommendation

9.1 REFUSE PLANNING PERMISSION for the following reasons:

01 The applicant has failed to demonstrate that there is no long term or reasonable prospect of the site being used for B class uses, and that the proposed use cannot reasonably be located elsewhere within the area that it serves. On this basis it is concluded that the continued use of the premises as proposed would undermine the employment growth area and the long term availability of employment-generating development in the Borough. There are found to be no material planning considerations of sufficient weight to outweigh the harm caused by this conflict with development plan policy. This is unacceptable and contrary to the National Planning Policy Framework, Policies KP1, KP2 and CP1 of the Core Strategy (2007) and Policies DM3 and DM11 of the Development Management Document (2015).

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. Unfortunately, it has not been possible to resolve those matters within the timescale allocated for the determination of this planning application and therefore, the proposal is not considered to be sustainable development. However, the Local Planning

Authority has clearly set out, within its report, the steps necessary to remedy the harm identified within the reasons for refusal - which may lead to the submission of a more acceptable proposal in the future.

Informatives

- 1 You are advised that as the proposed development at your property benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable. See www.southend.gov.uk/cil for further details about CIL.**