

4th March 2025



Development Control
Cumberland Council
The Market Hall
Market Place
Whitehaven
CA28 7JG

Dear Sir/Madam,

RE: LAWFUL DEVELOPMENT CERTIFICATE – UNIT 3 BRIDGES RETAIL PARK, WHITEHAVEN

Please find enclosed an application for a lawful development certificate submitted under s.192 of the Town and Country Planning Act 1990 on behalf of Pure Gym Limited ('PureGym'). This application seeks to confirm that the proposed use of Unit 3 Bridges Retail Park, Whitehaven, as a 24-hour gym is lawful.

Background

The application site comprises the former Carpetright unit at Bridges Retail Park which is located to the south of the town centre at Whitehaven. The retail park has access from Flatt Walks and currently comprises four retail units and a drive-through McDonald's restaurant. Existing occupiers also include B&M, Shoe Zone and Greggs. Unit 3 is currently vacant but was previously occupied by Carpetright. PureGym, the UK's largest health and fitness operator, now wishes to operate a gym from the site. It provides members with affordable and flexible access to an excellent range of fitness equipment and classes, 24 hours a day and on a no-contract basis. PureGym only has one existing site in Cumbria at Kendal and the proposed gym at Bridges Retail Park will be the first in Cumberland and west Cumbria.

Section 192 of the 1990 Act makes provision for an application to be made to a Local Planning Authority by anyone who wishes to ascertain whether any proposed use of land or a building is lawful. This application seeks to confirm that the use of Units 3 Bridges Retail Park as a 24-hour gym would be lawful and will not require planning permission.

We understand that outline planning permission was granted for the development of Bridges Retail Park in March 1999 (ref. 4/98/0194/0). This permission was for non-food retail units, a drive-through outlet and associated parking. Reserved matters approval was granted in April 2000 (ref. 4/00/0606/0) for five retail units. A further full planning permission was granted in September 2000 (4/00/0299/0) for the development of food and non-food retail floorspace with car parking, access and ancillary works. It is assumed that this latter planning permission was implemented as Lidl previously operated a foodstore at the retail park.

We have requested copies of these planning permissions from the Council but have been advised that they are archived on microfiche records and that the Council has no way of reading such records. Consequently, this application has been made to confirm the use of Unit 3 as a 24-hour gym.

Lawfulness of the Proposed Use

We understand that Unit 3 Bridges Retail Park has been in retail use since the time that the development was completed in the early 2000s. The lawful use of the application site will therefore now fall within Class E ('Commercial, Business and Service') of the Use Classes Order.

Class E was introduced by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which came into force on 1st September 2020 and amended the Use Classes

Order in England. Class E includes previous Class A1 uses (now Class E(a) 'Display or retail sale of goods, other than hot food'), as well as a number of other commercial and service uses. This includes gyms which previously fell within Class D2 but now fall within Class E(d) ('Indoor sport, recreation or fitness'). As such, the existing and proposed uses of the application site both now fall within the same Use Class. Section 55(2)(f) of the Town and Country Planning Act 1990 states that the use of buildings or land for any other purpose within the same use class does not involve development for the purposes of the Act. This is confirmed by 3(1A) of The Town and Country Planning (Use Classes) Order 1987 (as amended).

As noted above, the proposed use as a gym would now fall within the same use class as the previous retail use. Under the terms of Section 55(2)(f) the Town and Country Planning Act 1990, the use of Units 3 as a gym should not constitute development and would not, therefore, require planning permission. We are not aware of any conditions or planning obligations that relate to the application site and which might restrict the normal operation of the Use Classes Order.

In common with many similar facilities, the proposed gym will operate on a 24/7 basis. This is part of the applicant's flexible model and provides access for those who work shifts or wish to use the gym at less busy times of the day. We are not aware of any existing restrictions on the opening times of Unit 3 (or the wider retail park) and there is no available planning history which indicates that this might be the case. On the balance of probabilities, it therefore appears that there would be no restrictions on the operating hours of the site and that the proposed 24-hour opening would also be lawful.

Summary

This application seeks a lawful development certificate to confirm that the proposed use of Unit 3 Bridges Retail Park, Whitehaven, as a 24-hour gym (Class E) is lawful. The lawful retail use of the application site currently falls within Class E.

Section 55 of the 1990 Act confirms that the use of a building for any other purposes within the same Use Class does not constitute development. Following the changes to the Use Classes Order introduced in September 2020, former Class A1 and Class D2 uses now both fall within Class E. As such, the use of the application site as a gym would not constitute development for the purposes of the 1990 Act. There is no reason to believe that the Class E use of the application site is restricted or that there are any other restrictions on the normal operation of the Use Classes Order. We are also unaware of any existing restrictions on the opening times of the premises and the 24-hour operation of the proposed gym would therefore also be lawful.

We request that the Council issues a lawful development certificate under s. 192 of the Town and Country Act 1990 to confirm that the proposed use of the application site would not involve development requiring planning permission.

If you have any queries or require any further information, then please don't hesitate to contact me.

Yours sincerely,


JONATHAN WADCOCK
Director