

Committee	PLANNING COMMITTEE B	
Report Title	UNIT E (GROUND FLOOR), WILLOW HOUSE, DRAGONFLY PLACE, LONDON, SE4 3FJ	
Ward	TELEGRAPH HILL	
Contributors	Russell Brown	
Class	PART 1	6 th April 2017

<u>Reg. Nos.</u>	DC/16/095899
<u>Application dated</u>	15.03.2016
<u>Applicant</u>	Gmax Trackstars Athletics
<u>Proposal</u>	The continued use of Unit E, Willow House, Dragonfly Place, SE4 as a Yoga Studio (Use Class D2).
<u>Applicant's Plan Nos.</u>	LP-MY-03-GFA5 Rev A - Lease Plan Received 6th May 2016 LP-MY-03-GFA5 Rev A - Fire Escape Plan; Planning Statement Received 10th May 2016
<u>Background Papers</u>	(1) Case File DE/54/84/TP (2) Core Strategy (June 2011) (3) Development Management Local Plan (November 2014) (4) London Plan (March 2015, further altered in March 2016)
<u>Designation</u>	PTAL 3 Local Open Space Deficiency Local Employment Location Not in a Conservation Area Not a Listed Building
<u>Screening</u>	N/A

1.0 Property/Site Description

- 1.1 The application site is located within the wider Dragonfly Place development on the west side of Endwell Road (B2142) where it curves northwards, close to the junctions with Drakefell Road and Mantle Road. The 4,600m² site is long and narrow in shape and extends westwards towards a vehicular access off Drakefell Road. Directly to the north are the rear gardens of residential Victorian properties on Drakefell Road and to the south is the Brockley Cross Business Centre and a railway embankment beyond that.
- 1.2 Planning permission for the redevelopment of the site has now been fully implemented and all blocks have been constructed. The application unit is within Block A, called Willow House, and the application relates to the ground floor of Unit 5, which is four storeys high, the lower two of which are designated for

commercial uses (Use Class B1) with residential (Use Class C3) above. The ground floor of Unit 5 is currently in an unauthorised use as a yoga studio (Use Class D2), and has been since 1st September 2015.

- 1.3 The application site is within a wider Defined Employment Area, which includes the adjacent Brockley Cross Business Centre and employment land beyond the vehicular access off Drakefell Road.
- 1.4 The property is not within a Conservation Area, not subject to an Article 4 direction, nor is a listed building or within the vicinity of one. The railway embankments to the south of the Brockley Cross Business Centre are designated as a Green Corridor and the site has a PTAL rating of 3.

2.0 Relevant Planning History

- 2.1 DC/10/75997/X: The demolition of the existing buildings at Martins Yard, Endwell Road SE4 and the construction of 4 blocks of three and four storeys, incorporating balconies, comprising 20 commercial units (3,000 square metres floorspace for Use Class B1) at ground and first floor and 12 one bedroom, 31 two bedroom and 4 three bedroom self-contained residential units at second and third floor, together with associated landscaping, provision of an electricity sub-station, amenity areas, bin stores, 47 cycle spaces and 35 car parking spaces. **Granted and implemented.**
- 2.2 DC/11/78896/X: An application for minor material amendments, namely a variation of Standard Condition (2) of the planning permission dated 18 March 2011 (DC/10/75997/X) for the demolition of the existing buildings at Martins Yard, Endwell Road SE4 and the construction of 4 blocks of three and four storeys, incorporating balconies, comprising 20 commercial units (3,000 square metres floorspace for Use Class B1) at ground and first floor and 12 one bedroom, 31 two bedroom and 4 three bedroom self-contained residential units at second and third floor, together with associated landscaping, provision of an electricity sub-station, amenity areas, bin stores, 47 cycle spaces and 35 car parking spaces). In order to allow 'the demolition of the existing buildings at Martins Yard, Endwell Road SE4 and the construction of 4 blocks of three and four storeys, incorporating balconies, comprising 20 commercial units (2,883 square metres floorspace for Use Class B1) at ground and first floor and 15 one bedroom, 28 two bedroom and 4 three bedroom self-contained residential units at second and third floor, together with associated landscaping, provision of an electricity sub-station, amenity areas, bin stores, 44 cycle spaces and 34 car parking spaces.' **Granted and implemented.**

3.0 Current Planning Application

- 3.1 Planning permission is sought on a retrospective basis for the change of use from office (Use Class B1) to a yoga studio (Use Class D2) of only the ground floor of Unit 5 within Block A, called Willow House. No external changes are proposed.
- 3.2 The proposed opening hours are from 07:00-21:00 Mondays to Fridays, 08:00-17:00 on Saturdays and 09:00-18:00 on Sundays including Bank Holidays. The use employs one full-time and one part-time employee.

4.0 Consultation

- 4.1 No formal pre-application advice was sought.
- 4.2 The Council's consultation met the minimum statutory requirements and those required by the Council's adopted Statement of Community Involvement.
- 4.3 A site notice was displayed and letters were sent to 211 local residents, Brockley Ward Councillors and the Council's Highways Officer.
- 4.4 Furthermore, a drop in session was held at the application unit on 28th June 2016 at 17:30. It was attended by six local residents and the applicant.

Written Responses received from Local Residents and Ward Councillors

- 4.5 11 objections were received from local residents and ward councillors, raising the following concerns:
- The applicant is in violation of current planning requirements and Condition (7) of DC/11/78896.
 - A change of building use and classification from B1 to D2 would have significant consequences for the other units in the development and could lead to a loss of amenity for residents who live above.
 - Impact on highways because currently the public have to book appointments to come and visit the businesses and the majority of them do not receive many visitors. If approved people will be able to walk in off the street, which will have safety / security implications.
 - The road is very narrow and there may be more traffic as people pick up from and drop off at the classes. This will create both noise and traffic congestion and will completely change the use and feel of the road.
 - The road is not owned or maintained by the Council and increasing the amount of traffic and thoroughfare will decrease its lifespan and increase the need for repairs that would affect residents' services charges, which is unfair, especially on an affordable housing scheme.
 - Changing one unit will set a precedent for the other commercial units currently with B1 use in the development.
 - The proposed opening times are too late for a residential area which may disturb the peace and quiet of the flats in the evening; especially considering D2 uses also includes cinemas and concert venues, which could bring loud music and many people into the small cull-de-sac.
 - The yoga studio should not be classed in the same way as other use types in the same category when it does not contribute any noise, smell, late night business or large volume of traffic. If the yoga studio must be classed as a different category then there are concerns about other businesses also applying for a change of use.
 - There are parking implications as the housing association for the residential units has recently adopted a parking enforcement solution where the owners of car parking spaces are unable to use them. Any customers of the yoga studio will be forced to park on already congested surrounding roads.
 - When Dragonfly Place was built, residential premises accounted for at least 70-75% of total occupancy. Business and creative units were meant for the occupiers and not intended for onward public use or use via a membership.
 - The yoga studio does not benefit the residents or other businesses especially as no concessions are offered.

- There has been increased litter as a result of the use and the 'clean up' bill is paid for by residents through the service charge.
- Changing the use to suit one person's needs will needlessly affect a wide number of current and future residents.
- A change of use class as this could potentially affect residents' ability to sell and re-mortgage their properties as all the flats are shared ownership, which also restricts which mortgage companies will lend.

4.6 Five letters of support were received from local residents, raising the following points:

- Satisfaction with the current tenants.
- The yoga studio really contributes to Brockley as a community by bringing people together to meet and to perform an exercise that is beneficial to both the physical and mental well being of the local people.
- A resident within the development has apparently recently re-mortgaged their property and the presence of the yoga studio was not an issue that came up.
- Any costs or changes to licensing would have a severe impact on this small, worthwhile business, which could be devastating to them.
- There is nowhere that offers yoga classes in Brockley, which do not cause any disturbances or anti-social behaviour. The use is totally beneficial to the community and the physical and mental well-being of those who practice it.
- The yoga studio is a positive presence in Dragonfly Place, but there should be conditions set in place to ensure it is only the yoga studio that has the right to operate, not any other type of Commercial usage.
- Should this go to Planning Committee stage it would be highly inappropriate for the councillors who have been involved in objecting to sit on the hearing.

5.0 **Policy Context**

Introduction

5.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:-

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

A local finance consideration means:

- (a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown, or
- (b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).

5.2 Section 38(6) of the Planning Compulsory Purchase Act 2004 makes it clear that 'if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'. The development plan for Lewisham comprises the Core Strategy, Development Plan Document (DPD) (adopted in June 2011), DMLP (adopted in November 2014) and policies in the London Plan (March 2016). The NPPF does not change the legal status of the development plan.

National Planning Policy Framework

- 5.3 The NPPF was published on 27 March 2012 and is a material consideration in the determination of planning applications. It contains at paragraph 14 a 'presumption in favour of sustainable development'. Annex 1 of the NPPF provides guidance on implementation of the NPPF. In summary this states that (paragraph 211) policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the NPPF. At paragraphs 214 and 215 guidance is given on the weight to be given to policies in the development plan. As the NPPF is now more than 12 months old paragraph 215 comes into effect. This states in part that '...due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)'.
- 5.4 Officers have reviewed the Core Strategy for consistency with the NPPF and consider there is no issue of significant conflict. As such, full weight can be given to these policies in the decision making process in accordance with paragraphs 211, and 215 of the NPPF.

Other National Guidance

- 5.5 On 6 March 2014, DCLG launched the National Planning Practice Guidance (NPPG) resource. This replaced a number of planning practice guidance documents.

London Plan (March 2015)

- 5.6 On 10 March 2015 the London Plan (further altered in March 2016) was adopted. The policies relevant to this application are:

Policy 3.1 Ensuring equal life chances for all

Policy 3.19 Sports facilities

Policy 4.6 Support for and enhancement of arts, culture, sport and entertainment provision

Policy 6.9 Cycling

Policy 7.1 Lifetime neighbourhoods

Core Strategy

- 5.7 The Core Strategy was adopted by the Council at its meeting on 29 June 2011. The Core Strategy, together the Development Management Local Plan and the London Plan is the borough's statutory development plan. The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Lewisham Core Strategy as they relate to this application:

Spatial Policy 1 Lewisham Spatial Strategy

Spatial Policy 5 Areas of Stability and Managed Change

Core Strategy Policy 3 Strategic Industrial Locations and Local Employment Locations

Core Strategy Policy 14 Sustainable movement and transport

Core Strategy Policy 19 Provision and maintenance of community and recreational facilities

Development Management Plan

- 5.8 The Development Management Local Plan was adopted by the Council at its meeting on 26 November 2014. The Development Management Local Plan, together with the Core Strategy and the London Plan is the borough's statutory development plan. The following policies are relevant to this application:-

DM Policy 1 Presumption in favour of sustainable development
DM Policy 10 Local Employment Locations (LEL)

6.0 Planning Considerations

- 6.1 The relevant planning considerations are the loss of the existing lawful use, the acceptability of the proposed use, the impact on the unit on highways and the amenities of neighbouring residents.

Principle of development

- 6.2 The application unit is within the Endwell Road Local Employment Location (LEL). LELs are often associated with a District Hub or Local Hub (in this case, Brockley Cross is a Local Hub) and provide small, well defined and valuable space in good quality buildings for businesses that provide local goods and services, and support the vitality and viability of these centres that are usually within walking distance.

Core Strategy Policy 3 states that the Council will protect the Local Employment Locations (LELs) for a range of uses within the B Use Class (B1, B8 and where appropriate B2 industry) and also appropriate sui generis uses, to support the functioning of the local economy. This is further supported by DM Policy 10, which states that the Council will support uses within the B Use Class and appropriate sui generis uses within an LEL, subject to the use being appropriate in the location in relation to the surrounding built context, the intensity of the use and the new use meeting the aims in the Core Strategy Policy 3.

- 6.3 Yoga studios fall within the D2 use class. However, officers consider that the use is appropriate given that it meets the policy objectives as set out below:

- It is appropriate in the location in relation to the surrounding built context;
- It is of an intensity of use that will be sufficiently small scale as to not impact negatively on neighbouring businesses.
- It would help to support the functioning of the local economy, in line with the aims of Core Strategy Policy 3.
- It is not amongst the list of uses that will not be granted within LELs (i.e. residential, day nurseries, churches and other community facilities).
- It would not have a negative effect on the continued commercial functioning of the area as a whole. The number of people employed in the business is comparable to that of a light industrial unit of equivalent size.
- There are three vacant B1 units in Dragonfly Place and so the use is not displacing an alternative business.

- 6.4 Furthermore, Core Strategy Policy 19 supports creation of leisure and recreational facilities in areas that are easily accessible and located within close proximity of

public transport and town and local centres. Given the site's proximity to the Brockley local centre and Brockley Station, this policy further supports the principle of the change of use.

- 6.5 As such, officers consider on balance the principle of the change of use acceptable. Officers recommend that a condition be added to restrict the use to a yoga studio within the D2 use class, as other uses within that class would have the potential to cause disturbance to residents and undermine the functioning of the LEL.

Highways

- 6.7 This site has a good PTAL rating of 3/4, with Brockley Overground station a three minute walk away and there are bus stops on Endwell Road (for bus route 484) and on Brockley Road (for bus routes 171, 172 and N171). It is therefore considered that the majority of patrons would be likely to visit the premises by foot of public transport.
- 6.8 Objections have been raised about patrons of the yoga studio using car parking pertaining to residential and office units, despite a controlled Parking Zone (CPZ) being in place. Dragonfly Place is a private road, and the enforcement of parking within it is an operational matter for its owners. The enforcement of parking restrictions within the street may cause some overspill parking to adjacent streets. However, in the context of Brockley station and the various shops and services available in the centre of Brockley, patrons of the yoga studio would only be likely to form a very small proportion of parking pressure from visitors from outside the area. Officers note that clients can book online if an account is created on their website so would not need to visit the unit just to book a class. Furthermore, the use requires only minimal servicing.
- 6.9 Table 6.3 of London Plan Policy 6.9 requires two cycle spaces, one long and one short stay, and these are recommended to be secured by condition.
- 6.10 As such, the impact on highways from the use is considered to be acceptable.

Impact on the amenity of neighbouring occupiers

- 6.11 The nature of the yoga use is such that any music would not be played at high volume. However, a condition is recommended preventing any music, amplified sound system or otherwise to be used or generated which is audible outside the premises or within adjoining buildings. Officers note that there are noise sensitive properties above the unit in the form of residential flats.
- 6.12 Officers consider the opening hours put forward by the applicant to be unacceptable. The hours should be similar to those that are typical for a B1 office use so that no significant disturbance is caused to the flats above. Therefore, Officers propose the following opening hours:
07:00-19:00 from Monday to Fridays
09:00-17:00 on Saturdays, Sundays and Bank Holidays
Therefore, subject to a condition controlling the hours and music, the proposal is considered to have an acceptable impact on neighbouring amenity.

7.0 Equalities Considerations

- 7.1 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.2 In summary, the Council must, in the exercise of its function, have due regard to the need to:
- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - (b) advance equality of opportunity between people who share a protected characteristic and those who do not;
 - (c) Foster good relations between people who share a protected characteristic and persons who do not share it.
- 7.3 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 7.4 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 7.5 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision-making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty
- 7.6 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

7.7 The planning issues set out above do not include any factors that relate specifically to any of the equalities categories set out in the Act, and therefore it has been concluded that there is no impact on equality.

8.0 Conclusion

8.1 Officers have considered the particular circumstances of the application against relevant planning policy set out in the Development Management Local Plan (2014), the Core Strategy (2011), London Plan (March 2015) and the National Planning Policy Framework (2012).

8.2 It is considered that the change of use would be acceptable in principle and would not result in significant harm being caused to highways or to the amenity of neighbouring occupiers.

8.3 A legal agreement, attached to planning permission DC/10/75997/X prevents the change of use of B1 units within Dragonfly Place. This would need to be amended to allow the proposal, and this is set out as recommendation A.

9.0 **RECOMMENDATION (A)**: Authorise Officers to amend the legal agreement under Section 106 of the 1990 Act (and other appropriate powers) to cover the following principal matters as considered appropriate to ensure the acceptable implementation of the development:

- Not to apply for a change of use of the Commercial Units for a period of ten (10) years commencing from the date of the occupation of the first Affordable Commercial Units.

10.0 **RECOMMENDATION (B)**: **Subject to completion of a satisfactory legal agreement, GRANT PLANNING PERMISSION subject to the following conditions:**

1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: As required by Section 91 of the Town and Country Planning Act 1990.

2) The development shall be carried out strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:

LP-MY-03-GFA5 Rev A Lease Plan; LP-MY-03-GFA5 Rev A Floor Plan Received 9th May 2016

Planning Statement Received 9th May 2016

Reason: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.

3) Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the premises shall be used as a yoga studio and for no other purpose (including any other purpose in Class D2 of the Schedule to the Town and

Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).

Reason: In order to safeguard the amenities of adjoining occupants, and of the local area generally, and to comply with Policies 3.19 Sports facilities and 4.6 Support for and enhancement of arts, culture, sport and entertainment provision of the London Plan (March 2015, further altered in March 2016) and Policy 19 Provision and maintenance of community and recreational facilities of the Core Strategy (June 2011).

- 4) No music, amplified sound system or other form of loud noise (such as singing or chanting) shall be used or generated within the yoga studio which is audible outside the premises or within adjoining buildings.

Reason: To safeguard the amenities of the adjoining premises and the area generally and to comply with Paragraph 120 of the National Planning Policy Framework and DM Policy 26 Noise and Vibration of the Development Management Local Plan (November 2014).

- 5) The premises shall only be open for customer business between the hours of 07:00 and 19:00 from Monday to Fridays and between 09:00-17:00 on Saturdays, Sundays and Bank Holidays.

Reason: In order to safeguard the amenities of adjoining occupants at unsociable periods and to comply with Paragraph 120 of the National Planning Policy Framework and DM Policy 26 Noise and Vibration of the Development Management Local Plan (November 2014).

- 6) (a) A minimum of two secure and dry cycle parking spaces shall be provided within the development.

(b) No development shall commence on site until the full details of the cycle parking facilities have been submitted to and approved in writing by the local planning authority.

(c) All cycle parking spaces shall be provided and made available for use prior to occupation of the development and maintained thereafter.

Reason: In order to ensure adequate provision for cycle parking and to comply with Policy 6.9 Cycling of the London Plan (March 2016) and Policy 14: Sustainable movement and transport of the Core Strategy (June 2011).

INFORMATIVES

Positive and Proactive Statement: The Council engages with all applicants in a positive and proactive way through specific pre-application enquiries and the detailed advice available on the Council's website. On this particular application, positive discussions took place which resulted in further information being submitted.