

**Derry City and Strabane District Council Planning Committee Report**

**COMMITTEE DATE:** 4<sup>th</sup> November 2020.

**APPLICATION NO:** LA11/2018/0526/F

**DATE OF APPLICATION:** 09/05/2018

**APPLICATION TYPE:** Full

**PROPOSAL:** Retention of change of use to children's recreational activity space and cafe area on new mezzanine from a furniture warehouse.

**LOCATION:** Unit 2 Elagh Business Park, Derry, BT48 8QP.

**APPLICANT:** Jim Heaney

**AGENT:** Sean Furey

**ADVERTISEMENT:** 26.06.2018

**RE-ADVERTISEMENT:** 16.06.2020

**STATUTORY EXPIRY:** 01.07.2020

**RECOMMENDATION:** Refuse

**REASON FOR PRESENTATION TO COMMITTEE:** The recommendation is to refuse.

All planning application forms, drawings, letters etc. relating to this planning application are available to view on [www.planningni.gov.uk](http://www.planningni.gov.uk)

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**1. Description of Proposed Development**

This proposal is for the retention of a change of use at Unit 2 Elagh Business Park. The building is currently used as a trampoline centre for children with a café on the mezzanine floor. The floorspace of this property including mezzanine is approximately 635 square metres.

## **2. EIA Determination**

This proposal falls within Category 10 (a) of Schedule 2 of the Planning (EIA) Regulations (NI). It has been determined that this application does not require to be accompanied by an Environmental Statement in that the proposal does not meet the applicable threshold.

## **3. HRA**

Assessment under the Habitats Regulations not required as there is no watercourse directly abutting this site and this application is for the retention of change of use. Therefore, as there are no ground works proposed and there is no hydrological link, it is unlikely that there will be any adverse effects from development works on the integrity of any National or European site.

There are no significant trees or landscape features on this site which will be impacted by this proposal. Therefore it is unlikely that this proposal will adversely affect a priority species or their habitat which is afforded protection.

## **4. Site and Surrounding Area**

As can be seen in Figure 1 below, the site consists of Unit 2 which is a central unit within a row of units in Elagh Business Park. The adjacent units are occupied by Superior E-Liquid, NW Mechanical Services and A&N fuels. The red line also extends from the building through the existing estate to the Buncrana Road.

The site is located within Derry City and therefore within the development limit as defined by the Derry Area Plan 2011 (DAP 2011). It also lies within Zoned Industrial Land known as Zoning IND 3 Buncrana Rd in the Derry Area Plan 2011. It is located close by the border with ROI and the River Skeoge.

Figure 1 – Site Location Plan

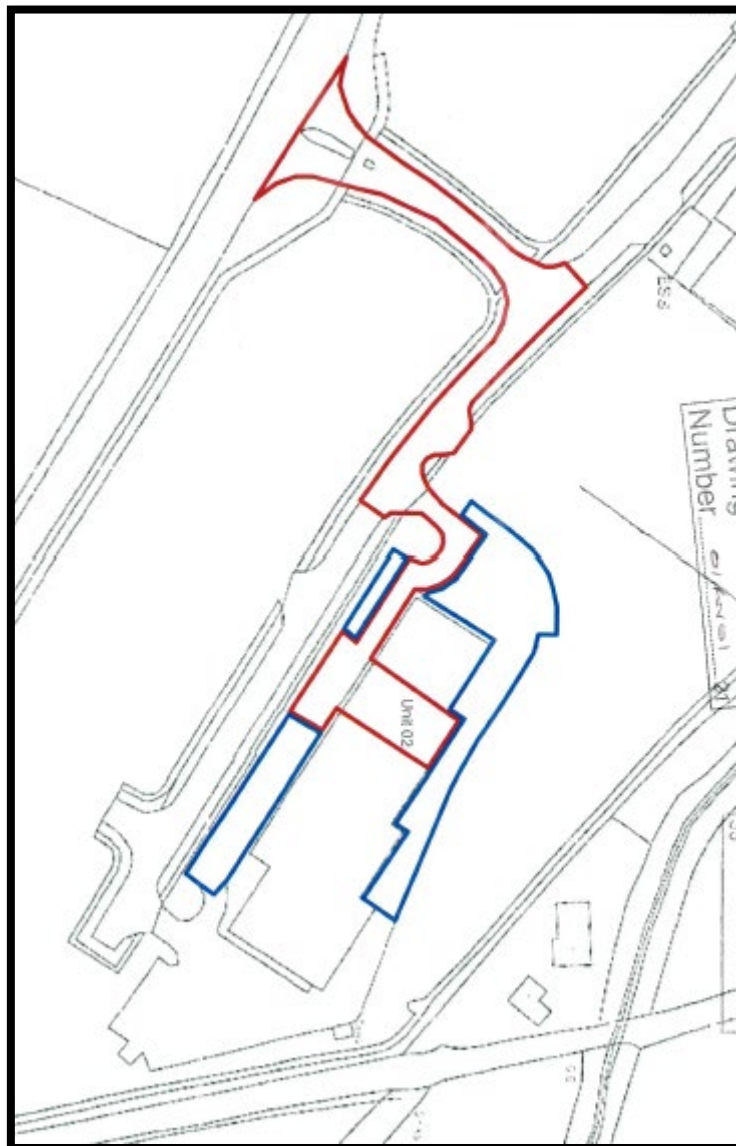


Figure 2 – Photo of the Application Site



## 5. Site Constraints

- Lough Swilly Special Protection Area (SPA), Special Area of Conservation(SAC)
- Loughs Agency Consultation Zone
- Border with ROI
- Industrial Policy Area
- Major Road Proposal

## 6. Neighbour Notification Report

Neighbour Address	Date Neighbour Notified
Apache Vape Ltd Unit 1 Buncrana Road Elagh Business Park East Londonderry Londonderry BT48 8QP	28/06/2018
North West Mechanical Services Unit 3 Buncrana Road Elagh Business Park East Londonderry Londonderry BT48 8QP	28/06/2018
Unit 10, Buncrana Road, Elagh Business Park East, Londonderry, Londonderry, BT48 8QP	28/06/2018
Unit 11, Buncrana Road, Elagh Business Park East, Londonderry, Londonderry, BT48 8QP	28/06/2018
Unit 12, Buncrana Road, Elagh Business Park East, Londonderry, Londonderry, BT48 8QP	28/06/2018

The above neighbours were re-notified on 19/09/2018 and 04/06/2020.

Neighbour Address	Date Neighbour Notified
DESMOND MOTORS Elagh Business Park East,Buncrana Rd,Londonderry,BT48 8QP	27/08/2020

Neighbour Address	Date Neighbour Notified
NMD AUTOS, 1 Elagh Business Park Elagh Business Park, Buncrana Road Londonderry	16/10/2020

## 7. Recent Relevant Site History

APP REF	PROPOSAL	ADDRESS	DECISION	DATE
LA11/2015/0315/F	Change of use from warehouse/distribution to light industrial use; construction of new internal floorspace at an upper level and alteration to the front elevation.	Unit 3 Elagh Business Park Buncrana Road Derry BT48 8	Permission Granted	23.10.2015
A/2009/0121/F	Change of use from storage/distribution units to an indoor leisure venue consisting of children's play centre, party rooms, function rooms, restaurant, games area, bowling arcade and	Units 1-5, Elagh Business Park, Buncrana Road, Londonderry	Permission Refused	15.03.2010
A/2003/0230/RM	Erection of 5 No storage/distribution units	Elagh Business Park, Buncrana Road, Londonderry	Permission Granted	30.06.2003
A/2003/0234/O	Site for extension to existing business park for purpose of light industry (class 4) general industry (class 5) storage & distribution (class11) Scientific Research /Development and back office development	Lands adjacent to Elagh Business Park, Buncrana Road, Londonderry -	Permission Granted	19.04.2005
A/1999/0607/O	Road layout and site for light industry (Class 4), general industry (Class 5), storage and distribution (Class 11) as defined in the Planning (Use Classes) Order (Northern Ireland) 1989, scientific research and development and back office development	Lands bounded by Buncrana Road/Elagh Road Londonderry	Permission Granted	06.01.2001

## **8. Policy Framework**

Regional Development Strategy 2035

Derry Area Plan (DAP) 2011

Strategic Planning Policy Statement (SPPS) for Northern Ireland 2015

PPS 4 Planning and Economic Development

PPS 4 Clarification of PED 7 – Retention of Zoned land and Economic Development Uses

PPS 2 Natural Heritage

PPS 3 Access, movement and parking

PPS 15 Planning and Flood Risk

## **9. Consultee Responses**

- NI Water: NI Water have no objections to the proposal and standard advice has been provided.
- Environmental Health (EH): EH requested that a Noise Assessment is provided given the nature of activity which is taking place within this unit to ensure that it does not adversely affect the adjoining units. Following the receipt of this, EH have stated that the results of this demonstrate compliance with BS 8233 and that the upper limits have not been exceeded, but have provided a condition to ensure that the remedial works as suggested in the survey be provided to ensure the amenity of the adjoining unit is maximised.
- DFI Roads: DFI Roads requested amended plans to demonstrate sufficient parking, the site access being extended to the public road, floor areas and a TAF. Following the receipt of amended plans and additional information they have no objections in respect of the proposal. they have provided conditions and informatives.

## **10. Representations**

There has been one letter of objection received in relation to this proposal. The issues raised are summarised below:

- The design of the premises.
- The access to and from the premises.
- The acoustics of the premises.
- The nature of the proposal adjoining an engineering premises.

## **11. Planning Assessment, including Other Material Considerations**

11.1 Section 6 (4) of The Planning Act (Northern Ireland) 2011 requires the Council to make planning decisions in accordance with the local development plan, unless material considerations indicate otherwise.

11.2 This application is for the retention of development. This is described as retention of change of use to children's recreational activity space and cafe area on new mezzanine from a furniture warehouse.

11.3 It is considered that this development falls within Class (k) Sui Generis Use of the Planning (Use Classes) Order (NI) 2015.

11.4 Given the location of the site on Zoning IND 3 Buncrana Road of the DAP and the nature of the proposal the main policy considerations in establishing the principle of this development proposal are set out in Policy IND 3 of the DAP, the SPPS and Policy PED 7 of PPS 4.

11.5 Policy IND 3 of the DAP states that Council will normally approve industrial development in existing industrial estates so as to make full use of existing infrastructure. As detailed previously, the application site is located within an industrial zoning (Zoning IND 3). At this section of the zoning permission has been granted (A/2003/0234/O) for an extension to the existing business park. The use has for this unit has therefore been conditioned as per that approval and the subsequent Reserved Matters application and is restricted to Class B1 (Storage and Distribution). The proposal as detailed above is for a Sui Generis Leisure Use and as such is not considered industrial development. Therefore, the proposal fails to comply with Policies IND 1 and IND 3 of the DAP.



11.6 Paragraph 6.280 of the SPPS states that a sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date LDP.

11.7 Paragraph 6.281 further points out that Planning Authorities should adopt a Town Centre Approach, and require applications for main town centre uses to be considered in the following order of preference;

- primary retail core;
- town centres;
- edge of centre; and
- out of centre locations, only where sites are accessible by a choice of good public transport modes.

11.8 This proposal is a commercial leisure development and as such, in accordance with the SPPS as detailed above this town centre type use should be located within the city centre as defined by the DAP 2011 which operates as the current LDP. The DAP identifies both a Commercial Core and Central Area. The Central Area as defined in Map 3 of the DAP is considered to be the “City Centre”.

11.8 However, as detailed previously, this site is located on zoned industrial land, within an existing industrial estate which is located along the Buncrana Road on the outskirts of the City. Therefore, it is not located within either the Central Area or Commercial Core. Furthermore, this is not considered to be an edge of centre location. Though this could be considered an “out of centre location” public transport links are limited to one bus stop approximately 600m walking distance from the premises along the Buncrana Road. This bus stop is not serviced by Foyle Metro. Nevertheless, the site is located on zoned industrial land as detailed above and as such is considered contrary to Policies IND 1 and IND 3 of the DAP and cannot be considered “an appropriate out of centre location” in accordance with the SPPS.

11.9 In accordance with Paragraph 6.280 of the SPPS, the agent was requested to provide a sequential test. The agent provided this. As detailed below, this identified eight properties available for rent all of which were deemed unsuitable by the agent for the reasons stated.

- 4 Swilly House, Springtown Industrial Estate – property too small.
- 10 Waterloo Place – too small and head height is too low for proposed use.

- 2 Sackville Street – property too small.
- 113-115 Spencer Road – too small and head height is too low for proposed use.
- Unit A, 7 Altnagelvin Industrial Estate – too small, head height is too low and in close proximity to another indoor trampoline park.
- Artillery Chambers 10-12 Artillery Street – property too small.
- 104 Ebrington Square – property too small.

11.10 Officers have considered the above properties and would comment as follows:

- 4 Swilly House is outside the Commercial Core and Central Area and is located within an industrial estate. It is a small single storey unit measuring 92 square metres and as such is unsuitable for this proposal.
- 10 Waterloo Place. This building is located within the Commercial Core and Central Area. It is advertised as having a retail floorspace of approximately 2155 square metres. Therefore, it is considered this would be of sufficient size to accommodate this proposal which has an existing floorspace of approximately 635 square metres. With regards to the head height required, it is considered that this unit which is spread over three floors is unlikely to have sufficient head height on each floor however works could potentially be undertaken to provide the head height required.
- 2 Sackville Street. This is currently a ground floor hair salon premises within the Commercial Core and Central Area. It has a floorspace of approximately 105 square metres. It is considered that this is too small to accommodate the proposed use.
- 113-115 Spencer Road. This is a two storey property located within the Commercial Core and Central area and is used as office accommodation. It is advertised as having a floorspace of approximately 2155 square metres. Therefore, it is considered this would be of sufficient size to accommodate this proposal which has an existing floorspace of approximately 1160 square metres. With regards to the head height required, it is considered that this unit which is spread over two floors is unlikely to have sufficient head height on each floor however works could potentially be undertaken to provide the head height required.
- Unit A, 7 Altnagelvin Industrial Estate is located outside the Commercial Core and Central Area. The space available for rent is the first floor of a two storey property measuring approximately 150 square metres. It is considered that this is too small to accommodate the proposed use.
- Artillery Chambers  
10-12 Artillery Street is a three storey building within the Commercial Core and Central Area.

Though this building could provide sufficient floorspace, this is a historical building and as such it is unlikely that the works required to be undertaken to facilitate this proposal particularly in terms of head height could be implemented without damage to the fabric of this building. Therefore, this is not considered to be a suitable building.

- 104 Ebrington Square. This is purpose built/refurbished office accommodation which is advertised as being able to accommodate up to 4-6 people per office. Therefore, it is considered that the proposal could not be accommodated at this location.

11.11 Therefore, having considered the above it can be concluded that one property within the Commercial Core and Central Area has been identified which has the potential to accommodate this proposal. Therefore, this proposal for a main town centre type use in its current location is contrary to paragraphs 6.280 – 6.282 of the SPPS.

11.12 Policy PED 7 of PPS 4 states that development proposals which that would result in the loss of land or buildings zoned for economic development use in a development plan (either existing areas or new allocations) to other uses will not be permitted, unless the zoned land has been substantially developed for alternative uses. Policy PED 4 also permits an exception where the development of a sui generis employment use within an existing or proposed industrial/employment area where it can be demonstrated that: the proposal is compatible with the predominant industrial use; it is of a scale, nature and form appropriate to the location; and provided approval will not lead to a significant diminution of the industrial/employment land resource in the locality and the plan area generally. It further states that retailing or commercial leisure development will not be permitted except where justified as acceptable ancillary development. Therefore, though this is a Sui Generis Use Policy PED 7 of PPS 4 provides policy context.

11.13 As detailed previously the last approved use of this unit was storage and distribution, therefore the current proposal would result in the loss of land zoned for economic development use in the DAP. This proposal for indoor recreation does not fall within any Class of the Planning (Use Classes Order) 2015. Therefore, it is considered to be Sui Generis, i.e. not falling within any class specified in the schedule. Within the block of 5 units in which the application site is located, permission was granted in Unit 3 for a change of use to light industrial (B2). It appears that Units 1, 4 and 5 remain in storage and distribution use (B4). Immediately in front of the site is a car sales premises, which is considered to be a Sui Generis Use. This car sales premises extends south where approval was granted for storage

of vehicles in relation to this premises. The smaller units in the north west of the zoning were approved as Light Industrial Units. These now accommodate a mix of A1, B2, D1 and Sui Generis uses some of which do not benefit from planning approval. Between this group of units and that in which the application site is located, there is a live approval for a bus/vehicle repair unit (Class B2) An End of Life Vehicle premises (Sui Generis) is located in the north western portion of the zoning and there is also a live approval for a recycling building located south of this (Class B3).

11.14 The applicant and agent have submitted information in support of this proposal in this respect. This is summarised below:

- Whilst the area is zoned for industrial use, there is no longer a requirement for so many industrial units.
- It is mixed use.
- There has been a diversification due to the non-requirement of such large units – photos provided to demonstrate this.

11.15 In consideration of Elagh Business Park overall, it is accepted that over the years a number of non-conforming commercial and leisure uses have emerged and operate within it, some with and some without the benefit of Planning Approval. Those with Planning Approval, could either be considered complementary sui generis use or ancillary uses and as such as would be considered in broad conformity with the relevant planning policies. The overall ethos of such industrial designations is to preserve these areas for economic development/industrial end uses, whilst in site specific circumstances allowing some sui-generis compatible uses to occupy vacant plots/buildings.

11.16 Having considered the above, it is concluded that whilst it is evident that whilst there are some non-conforming uses operating within this zoning, it has not been substantially developed for alternative uses.

11.17 Furthermore, though this proposal is for a sui generis use, it is considered that as this is a leisure development which is not an acceptable ancillary development. The proposed use, in its nature and scale, is designed to attract customers from a wide area beyond the industrial zoning. This is a childrens play facility and as such cannot be considered as an ancillary leisure use to the current industrial uses which operate within Elagh Business Park. Therefore the proposal fails to comply with Policy PED 7 of PPS 4.

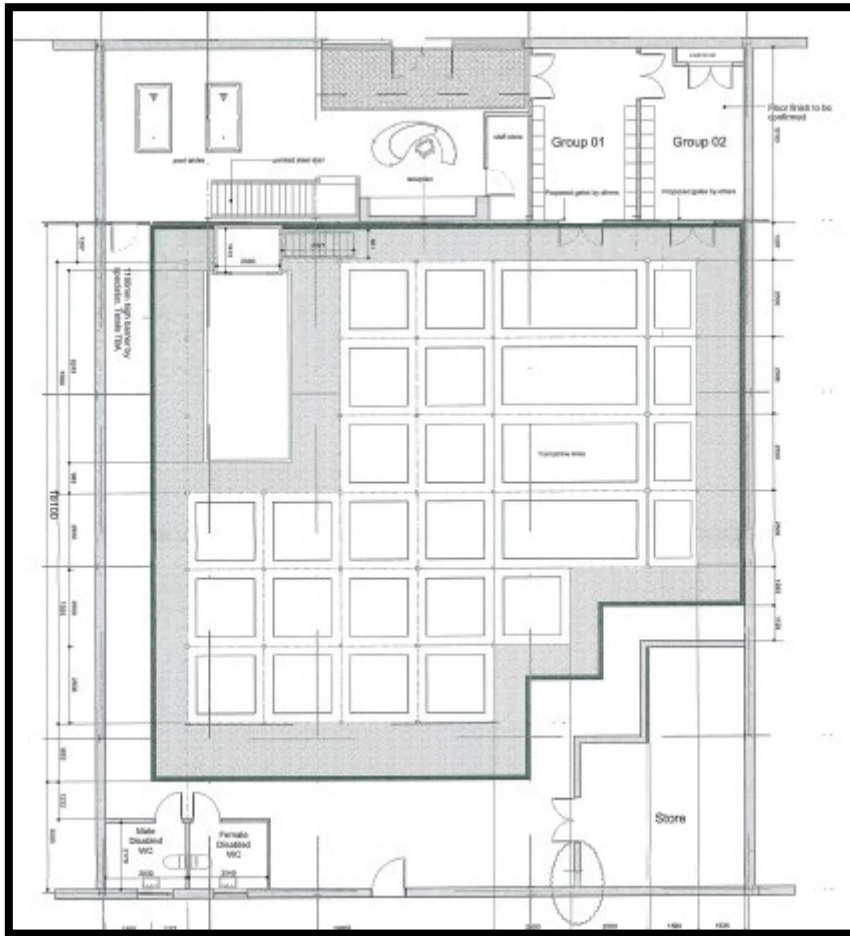
11.18 Though this proposal is not considered acceptable in principle as detailed above, the proposal is further assessed in terms of the below:

#### 11.19 Design

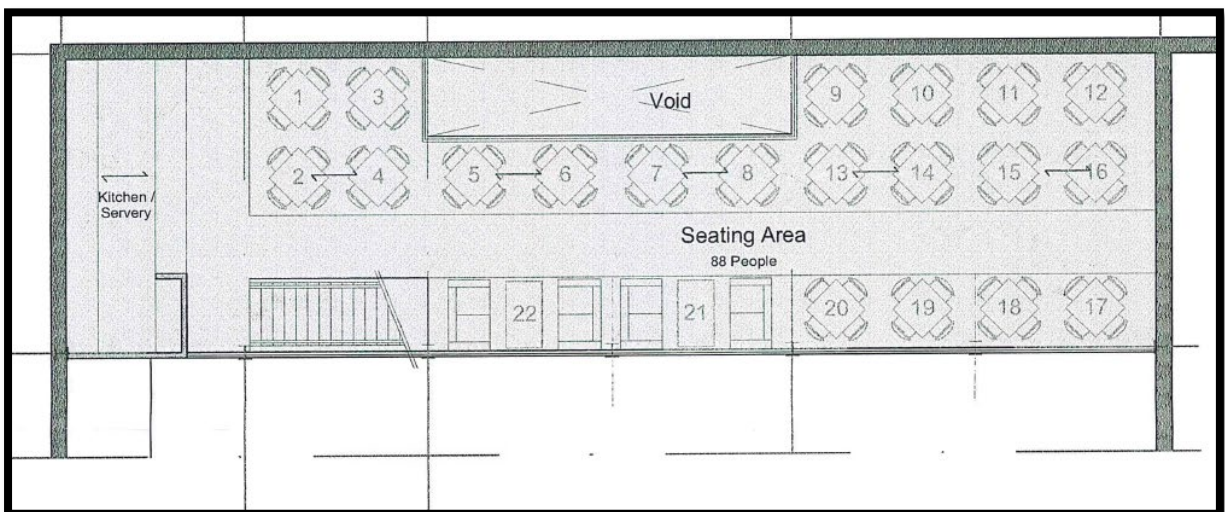
Policy BE 1 of the DAP considers design. It requires development proposals to make a positive contribution to townscape and be sensitive to the character of the area surrounding the site in terms of design, scale and use of materials. As this is an application for the retention of a change of use, there are no new buildings proposed and no significant design amendments have been made to the exterior of the building other than the addition of signage which would be considered under a separate consent to display application. This can be seen in Figure 2 above. Figure 3 below shows the internal floor plans. Therefore, it is considered that the design of this building is acceptable in this location and as such the proposal complies with Policy BE 1 of the DAP.

Figure 3 – Floor Plans

Ground Floor



Mezzanine



### 11.20 Amenity

Para.2.3 of the SPPS states that the planning system operates in the public interest of local communities. The basic question is whether the proposal would unacceptably affect amenities of owners or occupiers of neighbouring properties and the existing use of the land and buildings that ought to be protected in the public interest.

In consideration of amenity, the amenity of the occupants of the surrounding units is the primary consideration given the location of this property within a row of units. The nearest residential receptors are approximately 235 m south of this site. Given the separation distance, it is unlikely that this proposal would have an adverse impact on these properties in terms of noise or disturbance.

The main concern in this respect is that given the nature of this proposal the adjoining properties could be affected by noise and disturbance. As no development works are proposed, there are no concerns with respect to overlooking or loss of light. EH noted that the proposed development shares party walls with two existing units and that there is existing office accommodation in one of the units adjacent the party wall with the proposed development. Due to the nature of the proposed activities which will include amplified music associated with parties/events as well as a large number of patrons raising voices, a Noise Assessment was requested which should detail any mitigation/noise attenuation. EH commented as follows:

*The Noise Impact Survey suggests that the results demonstrate compliance with BS 8233 as the upper limits have not been exceeded. However, it must be acknowledged that the sound insulation testing used a single point high decibel noise source and this will not be reflective of the activities ongoing in Unit 2, namely many raised voices/shouting, speaker music and gaming machines such as pin-ball. However, cognisance must be taken of the fact that Unit 3 has an operational workshop with inherently noisy activities such as cutting/grinding metal. Unit 3 also has office and reception spaces which will be exposed to this workshop noise and also noise from Unit 2 activities. The Noise Impact Survey identified that the ground floor reception area, the source of noise complaint to the EHS, is not as well protected from sound transmission from Unit 2 as the director's office directly above at first floor level due to vertical steel stanchions at the upper level on Unit 2 side being exposed and not properly boxed in.* In consideration of the above, EH concluded that they had no objections to the proposal. In the area of weakness in the party wall between Units 2 and 3, EH suggest that the remedial works proposed to help improve noise containment in Unit 2 (the party wall boxed with two layers of 12.5mm soundbloc and mineral wool lined) are conditioned should this application be approved. Therefore, having considered the above it is concluded that given the nature of activities within these units, this proposal will not have an adverse impact on the amenity of the adjoining residents to an

unacceptable level and therefore it complies with the SPPS in this respect. Should this application be approved, the mitigation as proposed could be conditioned.

#### 11.21 Site Access and Parking

PPS 3 sets out the policies for vehicular and pedestrian access, transport assessment, the protection of transport routes and parking. Policy AMP 2 of PPS 3 states that planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where it will not prejudice road safety or significantly inconvenience the flow of traffic. Policy AMP 7 of PPS 3 states that development proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements. DFI Roads have been consulted. They requested amended plans to demonstrate sufficient parking, the site access being extended to the public road, floor areas and a TAF. Following the receipt of amended plans and additional information they have no objections in respect of the proposed development. They noted that the site boundary as indicated by the red line on the 1:1250 scale site location plan does not include the area required to provide the parking associated with this development. The red outline includes approximately 50% of the parking area required for this development with the remainder of the parking area included in the blue outline. As some of the parking is provided within the blue land, the applicant is declaring that this is within their ownership and therefore it is considered that sufficient parking can be provided and should approval be granted, the formalised provision of this parking arrangement can be conditioned. DFI Roads have provided conditions and informatives to be attached to any approval. Therefore it is considered that the proposed access will not prejudice road safety or significantly inconvenience the flow of traffic in accordance with Policy AMP 2 of PPS 3, and that sufficient parking can be provided in respect of the numbers which will be attending the premises in accordance with Policy AMP 7 of PPS 3.

#### 11.22 Natural Heritage and Flood Risk

In terms of natural heritage, PPS 2 provides the policy context. It sets out the planning policies for the conservation, protection and enhancement of our natural heritage. Though this site is approximately 65m south of the River Skeoge, there is no watercourse directly abutting this site, and as this proposal is for change of use only with no ground works proposed there is no requirement to consult SES as it is unlikely that this proposal would have an adverse impact in the watercourse including the selection



features, conservation objectives or status of any European site. There is no removal of trees/vegetation or landscape features proposed and no protected species recorded on site. As such it is unlikely that this proposal will adversely affect any priority species or their habitat which is afforded protection. Therefore the proposal complies with policies NH 1, NH 2, NH 3, HNH 4 and NH 5 of PPS 2 and Policies ENV 6, ENV 7 and ENV 8 of the DAP in this respect.

PPPS 15 sets out the planning policies to minimise and manage flood risk to people, property and the environment. There have been no areas of flood risk identified at this site and given the nature of the proposal a Drainage Assessment is not required. Therefore, this proposal complies with PPS 15 from a flood risk perspective.

## **12. Consideration of points raised in objection**

With regards to the exterior design of the premises no amendments have been made. Internally the layout is not a planning consideration. The Noise Assessment and comments from EH advise that due to the nature of the activity in Unit 3, it is unlikely that this proposal would adversely affect the amenity of the office space in that property. In terms of the access to and from the premises, DFI Roads have no objection to this and have provided standard advice. With regard to the suitability of this children's play facility being located within the industrial zoning, as detailed above in the report it is considered that this is a commercial leisure premises which should be located in an alternative location.

## **13. Conclusion and Recommendation**

Having considered all material considerations, including the development plan, relevant planning policies and consultations, it is concluded that the proposal is contrary to the DAP, the SPPS and PPS 4 as the proposed development for a commercial leisure use is located on zoned industrial land as defined by the DAP. The proposal, if allowed, would lead to the loss of industrial land/ building within zoned industrial land. This proposal is not considered to be a compatible sui generis use and PPS 4 clearly states that commercial leisure will not normally be permitted. The proposal is a town centre type use and there is no overriding reason why this proposal could not be located within the Central Area or at an appropriate out of centre or edge of centre location as required by the SPPS. Therefore, on balance refusal is recommended for the reasons as set out below.

**14. Proposed Refusal Reasons**

1. The proposal is contrary to Policies IND 1 and IND 3 of the Derry Area Plan 2011 and Policy PED 7 of PPS 4 in that this proposal for a sui generis commercial leisure use would result in the loss of land which is zoned for industrial purposes and economic development uses.

2. The proposal is contrary to the Strategic Planning Policy Statement (paragraphs 6.280 and 6.281) in that it has not been demonstrated why this proposal for a sui generis commercial leisure use could not be located within the commercial core, central area or at an appropriate edge of centre location.