

SECTION A – MATTERS FOR DECISION

Planning Applications Recommended For Approval

<u>APPLICATION NO:</u> P2021/0965	<u>DATE:</u> 29/09/2021
PROPOSAL:	Variation of conditions 1, 3 and 4 of planning permission P2019/5650 to allow a permanent consent, change of opening times to 06:00 to 21:00 Monday to Friday, 07:00 to 16:00 Saturday and 08:00 to 15:00 Sunday, and to allow the playing of amplified music in accordance with submitted noise assessment report.
LOCATION:	Unit 9 Gym, Quay Road, Neath SA11 1SL
APPLICANT:	Mr Tavis Knoyle
TYPE:	S73 – Variation of Conditions
WARD:	Neath North

BACKGROUND

This application is reported to Planning Committee due to an ongoing enforcement complaint regarding a breach of condition in relation to the playing of amplified music at Unit 9 Gym.

The site initially benefitted from a temporary consent under planning permission P2017/0990 for the change of use of the building (Class B8) to a gym (Class D2), conditioned to cease on 22nd November 2019.

An extension of time to that planning permission P2019/5650 was granted on 29th January 2020 for the retention of a gym and sports facility (Class D2) until January 2023, subject to several conditions.

As no scheme for noise management and/or mitigation measures were submitted with the application, a condition was placed on the consent to prohibit the playing of amplified music in order to prevent any issues relating to noise and disturbance on the adjacent and nearby premises.

However, since February 2020 the Council's Planning Enforcement team have received continuous complaints regarding the playing of amplified music from the premises, with reference to ongoing disturbance and impacts on the overall well-being of nearby occupiers. Numerous site visits have been carried out by Planning Enforcement that have confirmed the playing of amplified music from the gym, including at unsociable hours, therefore establishing an ongoing breach of Condition 4 of planning permission P2019/5650 that relates to the prohibiting of amplified music.

This Section 73 application aims to address this issue and remove the condition by proposing a noise management scheme in order to prevent any further adverse impacts with regards to residential amenity and noise pollution on the occupiers of the

nearby commercial premises and residential property. This application also seeks to vary the opening hours and obtain a permanent planning consent.

SITE AND CONTEXT

The application site comprises a gym and sports facility (Class D2) at the former J Saville Gordon premises, Quay Road, Neath. The building is of typical industrial unit construction, with a large car park set within a gated area off Quay Road. Quay Road forms a dead end street and therefore has no passing traffic. The site is in close proximity to other industrial style buildings which host other commercial and business uses, most of which lie to the south of Quay Road. To the north of Quay Road is a church, Neath Athletic RFC and a single residential property.

The premises comprises a double bay industrial building measuring approximately 34m x 13m, with a concrete block curtain wall and profiled metal sheet roof.

DESCRIPTION OF DEVELOPMENT

This Section 73 application seeks full planning permission to vary Conditions 1 (Temporary Consent), 3 (Opening Hours) and 4 (Noise) of planning permission P2019/5650, granted on 29th January 2020. The conditions attached to P2019/5650 read as follows:

1 The development hereby permitted is for a temporary period only and shall cease not later than 24th January 2023 after this time the gym shall cease trading and the use revert back to a B8 use.

Reason: To provide a suitable period in which the planning authority can assess the impact of the development and to consider if the planning use is appropriate for the building and that the use does not accord with policies EC4.

3 Customers shall only be allowed on the premises between 06:00 to 21:00 Monday to Friday and 08:00 to 14:00 on a Saturday and Sunday.

Reason: In the interest of clarity.

4 There shall be no playing of amplified music at the premises or activities associated with the gym outside of the gym building. In the event of noise complaints being received, the Local Authority may require the applicant to undertake a suitable and appropriate noise assessment and produce the findings and recommendations in a written report. The assessment shall be undertaken by a suitably qualified and competent person. The methodology shall be agreed with the Local Authority prior to the assessment. The assessment and subsequent report shall be submitted to the Local Authority within 6 weeks of the Authority making the request. If an extension of time is required, then an application must be put in writing to the Authority for consideration. The request for an extension must detail the reasoning why an extension of time is required and detail how much of an extension is sought. Recommendations contained within the report shall be implemented within 4 weeks of submitting the report to the Authority. If an extension of time is required, then an

application must be put in writing to the Authority for consideration. The request for an extension must detail the reasoning why an extension of time is required and detail how much of an extension is sought.

Reason: To ensure that the amenities of occupiers of other buildings in the vicinity are protected, and to ensure compliance with Policies SP16, EN8 and BE1 of the Neath Port Talbot Local Development Plan.

Planning permission is sought under this application to vary the conditions as follows:

Condition 1: To allow for a permanent consent

Condition 3: To extend opening hours to

06:00 to 21:00 Monday to Friday

07:00 to 16:00 Saturday

08:00 to 15:00 Sunday

Condition 4: To allow the playing of amplified music in accordance with the submitted noise report.

It is noted that only by addressing the impacts of noise and condition 4, can the Authority consider acceptance of conditions 1 and 3.

The 'Feasibility Assessment of Proposed Noise Management Report' submitted on behalf of the applicant is summarised as follows:

- Due to inclement weather providing unsuitable conditions for the initial proposed methodology, a noise limiter was set to a level agreed suitable by Planning Enforcement during a previous site visit. The level was considered acceptable in a somewhat subjective context on the basis that the music was inaudible to Council Officer's during the site visit (approx. 6.30am on 11th August 2021) at the boundary of the nearby residential property, 1-3 Bridge Street.
- The tamper proof noise limiter is presently in situ.
- It is considered that the agreed level is suitable for the operation of the gym and does not result in any adverse impacts of the nearby residential occupier.

NEGOTIATIONS

Ongoing extensive dialogue has taken place between Planning and Environmental Health Officers and the noise consultant in order to achieve an appropriate solution that would allow the playing of amplified music to be permitted.

PLANNING HISTORY

The application site has the following relevant planning history:

- P2017/0990 Change of use of building (Class B8) to a gym (Class D2)
- P2019/5650 Retention of gym and sports facility (Class D2)

CONSULTATIONS

Environmental Health: Approve subject to conditions

Community Council: No reply, therefore no observations to make.

REPRESENTATIONS

The neighbouring properties were consulted on 18th February 2022 and a Site Notice was displayed on 17th February 2022.

In response, to date multiple representations have been received from one individual over a sustained period, with the issues raised summarised as follows:

- Ongoing intermittent disturbance in terms of noise and vibration due to the playing of amplified music.
- Resultant impact on health and overall well-being.

In addition to the above objection, the Council has received ongoing dairy entries with regards to noise due to the continuous breach of planning control from the complainant. However, it must be noted that the complaints are mostly the same (i.e. noise, opening hours and well-being) and therefore this one objection can be considered to be a sustained objection from a single objector.

It must also be noted that whilst the complaints have been received over an extended period of time, the gym has been closed intermittently due to Covid-19 restrictions over the last 2 years.

Further complaints have been received concerning the noise levels from other points within the vicinity such as at the canal, and Bridge Street following implementation of the noise limiter. Plus concerns over the effectiveness of the limiter in relation to the potential ventilation of the building in the summer months.

REPORT

The Well-being of Future Generations Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet its sustainable development (or well-being) objectives. This report has been prepared in consideration of the Council's duty and the "sustainable development principle", as set out in the 2015 Act. In reaching the recommendation set out below, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

As a Section 73 application, the Local Planning Authority must only consider the question of the conditions to which planning permission is being sought to vary. The Local Planning Authority must not reconsider the full merits of the original planning permission. Should the S73 application be approved it will form a new planning

permission, which should include all the previous conditions (where necessary) to avoid the possibility of the new permission being interpreted as having no conditions other than those applied to vary.

The Local Planning Authority should consider any other material change in circumstances since the original planning permission was granted. There has been no change in Local Planning Policy since the approval of the previous application.

National Planning Policy:

[Planning Policy Wales](#) (Edition 11) was revised and restructured in February 2021 to coincide with publication of, and take into account the policies, themes and approaches set out in, [Future Wales - the National Plan 2040](#) and to deliver the vision for Wales that is set out therein.

Future Wales now forms part of the Development Plan for all parts of Wales, comprising a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities. All Development Management decisions, strategic and local development plans, planning appeals and all other work directed by the development plan need to accord with Future Wales.

The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales, as required by the Planning (Wales) Act 2015 and the Well-being of Future Generations (Wales) Act 2015.

PPW11 takes the seven *Well-being Goals* and the five *Ways of Working* as overarching themes and embodies a placemaking approach throughout, with the aim of delivering *Active and Social Places*, *Productive and Enterprising Places* and *Distinctive and Natural Places*. It also identifies the planning system as one of the main tools to create sustainable places, and that placemaking principles are a tool to achieving this through both plan making and the decision making process.

PPW is supported by a series of more detailed [Technical Advice Notes](#) (TANs), of which the following are of relevance: -

- Technical Advice Note 11: Noise

Local Planning Policies

The Local Development Plan for the area comprises the [Neath Port Talbot Local Development Plan](#) which was adopted in January 2016, and within which the following policies are of relevance:

Topic Based Policies:

- [Policy SC1](#) [Settlement Limits](#)
- [Policy EC2](#) [Existing Employment Areas](#)

- [Policy EC3](#) [Employment Area Uses](#)
- [Policy EC4](#) [Protection of Existing Employment Uses](#)
- [Policy EN8](#) [Pollution and Land Stability](#)
- [Policy BE1](#) [Design](#)

Supplementary Planning Guidance:

The following SPG is of relevance to this application: -

- [Pollution](#) (October 2016)

Issues

Having regard to the above, the main issues to consider in this application relate to whether there has been a material change in circumstance with regards to the principle of a gym and sports facility at the site, together with the principle of development which removes a temporary consent and allows a permanent consent as a D2 use, resulting in the loss of an employment use and the impact of the development on the neighbouring occupiers with regards to noise pollution and disturbance.

Principle of Development

Whilst the principle of development has been established on a temporary basis, this application must consider the impacts in land use terms on a permanent basis, namely the loss of land/building from its employment use.

The site lies within the Settlement Limits as defined by Policy SC1 of the Neath Port Talbot Local Development Plan, however it is not specifically allocated as an Existing Employment Area under Policy EC2 and is therefore not restricted to Use Classes B1, B2 and B8, ancillary facilities and other non Use Class B Commercial Services under Policy EC3 Employment Area Uses.

Policy EC4 Protection of Existing Employment Uses states that proposals which result in the loss of employment uses as defined by Policy EC3 will only be permitted where certain criteria relating to change in viability or appropriateness, unacceptable impacts on amenity and adjacent uses or by introducing new uses that increase the combined level of employment.

The Officer Report for planning permission P2019/5650 notes that:

The use proposed is one that is more appropriately sited within a designated retail centre, as a supporting use, one that would support the vitality, viability and attractiveness of an existing centre. Whilst it is accepted that the site lies within proximity to the designated town centre of Neath, the location is isolated, and not visually linked or easily accessible by public transport.

The principle of the change of use of this industrial building is contrary to policy, however, the applicant has indicated that this building had been vacant for several years prior to the temporary consent in 2017 and was becoming in a state of disrepair.

The applicant has not provided any additional information on the present situation, however, as the use is operating from the unit, it is unlikely that the site has continued to be marketed for an alternative, and Policy compliant use in the interim.

It must be noted that these points remain relevant to consider in the determination of this application and notwithstanding the requirements of Policy EC4, it is considered that as the Council is not aware of any significant demand of employment uses within the area, on balance the permanent loss of one unit is acceptable. Furthermore, a temporary consent has been granted twice as a non-conforming use from a previous employment use and has been operational as a gym throughout the time period.

Additionally, the gym employs 8 full time and 7 part time workers. The applicant has made a significant investment into the building and the gym as a business is operating successfully. There are also no existing buildings of this scale for such a use within the existing town centre. The site whilst isolated from the town centre is within proximity to it that would allow joint trips, and access by public transport and an area that is accessible for walking and cycling. There are also other retail uses in the area, including garden centre and pet stores that also require larger scale buildings that are prevalent within this edge of centre location.

Overall, it is considered that the loss of one unit and to permit a permanent permission would not significantly affect the land bank of employment land and buildings in the area. Therefore, subject to other material considerations being satisfactory, it is considered that the use of the site as a gym (Class D2 use) would be an acceptable form of development at this edge of centre location with regards to Policies SC1, EC2, EC3 and EC4 of the Neath Port Talbot Local Development Plan.

Noise and Disturbance

Policy EN8 Pollution and Land Stability of the Local Development Plan states:

Proposals which would be likely to have an unacceptable adverse effect on health, biodiversity and/or local amenity or would expose people to unacceptable risk due to the following will not be permitted:

- *Air pollution;*
- *Noise pollution;*
- *Light pollution;*
- *Contamination;*
- *Land instability;*
- *Water (including groundwater) pollution.*

Proposals which would create new problems or exacerbate existing problems detailed above will not be acceptable unless mitigation measures are included to reduce the risk of harm to public health, biodiversity and/or local amenity to an acceptable level.

The explanation of this Policy in respect of noise goes further adding:

In relation to noise, potentially noisy proposals should not be located close to sensitive uses (such as hospitals, schools and housing) and new noise sensitive developments should not be located near to existing noisy uses (including industry and existing or proposed transport infrastructure) unless it can be shown that adverse effects can be dealt with through mitigation measures incorporated into the design. Where noise levels are likely to be a significant issue, developers may be required to provide information to show that no nuisance is likely to be caused through increased noise levels at sensitive locations if the development proceeds.

In the above policy and in relation to this development it is important to differentiate between noise as a statutory nuisance, and that which can result in an unacceptable amenity issue.

The Environmental Health Section have undertaken visits, which have concluded that the level of noise from the use does not constitute a “Statutory Noise Nuisance”. However, the Planning Authority must consider the noise impacts under Policy EN8, which relates to an adverse impact on health and well-being through unacceptable impacts on amenity. As such it does not follow that just because the development does not create a statutory noise nuisance, that amenity issues do not arise.

The impacts were evident from the development following numerous site visits by officers of the Planning Department. This was considered to result in an unacceptable impact upon the amenity of occupiers within the nearest residential property, where the noise levels were found to be at an unreasonable level. As such ongoing efforts to address these impacts to an acceptable level have taken place over the period leading up to and during the submission of this application.

The Local Authority must be reasonable and endeavour to seek resolution to any issue arising and consider the appropriateness of any formal enforcement action. In this case considerable time and effort has gone into negotiating with the applicant to seek technical expertise to mitigate the noise impacts.

The following section clarifies what measures have been agreed/implemented to mitigate these impacts on amenity to an acceptable level.

Due to the construction of the building, it is not viable to incorporate physical sound proofing measure to the structure and therefore it is more appropriate in this circumstance for a noise management scheme to address the matter at hand.

Planning and Environmental Health officers have carried out extensive dialogue and negotiation with the agent and noise consultant working on behalf of the applicant to agree to a suitable methodology, noise levels and appropriate management scheme to enable amplified music to be played at the gym. The Environmental Health officer has offered the following (summarised) comments on the proposed scheme:

- *During a site visit to the premises the music was played at the levels previously agreed with Planning. The music could not be heard from the nearby residential*

property and therefore EVH are satisfied that it is possible for the gym to operate with noise at a level that will not have any detrimental effect on the amenity of the nearby residential property.

- A noise limiter has been installed on the gym audio system at the previously agreed levels that has been deemed to be inaudible from the residential property. This prevents any increase in the sound level over that agreed and is tamperproof.*
- A condition is recommended requiring the gym to comply with these levels at all times and also to ensure that the limiter remains in place and set at the agreed levels at all times.*
- The Feasibility Assessment of Proposed Noise Management of Unit 9 Gym including use of limiter, 14 February 2022 proposes that a verification assessment is carried out to demonstrate that the subjective inaudible levels are also unmeasurable. This would mean that noise monitoring will be used to demonstrate that the music at the agreed level adds no additional noise to the existing background at the nearest residential receptor. A condition is recommended to ensure that this piece of work is carried out within 3 months of permission being granted.*

It is considered that sufficient testing has been carried out, and that the proposed controls and conditions imposed would prevent the development resulting in any adverse impacts with regards to noise and disturbance, general amenity and overall well-being on the neighbouring occupiers, compliant with Policies BE1 and EN8 of the Neath Port Talbot Local Development Plan.

Assessment/ Review of Existing Conditions

The following sections of this report describe the modifications that are proposed to permission P2019/5650 rather than reiterating everything that was outlined in the original report. The original report, which remains relevant for all matters not considered within this report, can be viewed on the [Council's online register](#).

On the basis that the temporary consent was issued due to concerns over potential issues regarding noise which have been proved to have materialised over the time period in which the gym has operated, it is considered logical to assess the application to vary the condition in relation to noise prior to considering the application to allow for a permanent consent.

Noise

Noise complaints have also previously been submitted to and investigated by Environmental Health where it was determined the noise issue does not meet the test to be considered a statutory nuisance. As such no further action was taken. The noise concerns are considered to be an amenity issue under planning, and therefore it is appropriate for the issue to be addressed under the planning system.

The 'Feasibility Assessment of Proposed Noise Management Report' has been reviewed by Environmental Health Officers as discussed above, and subject to appropriate conditions, it is considered that the applicant has mitigated the issue sufficiently for the Local Planning Authority to agree to vary the condition to allow the playing of amplified music. The noise limiter is in place and a further site visit on 17th February 2022 confirms that the playing of music at the agreed level cannot be heard from 1-3 Bridge Street.

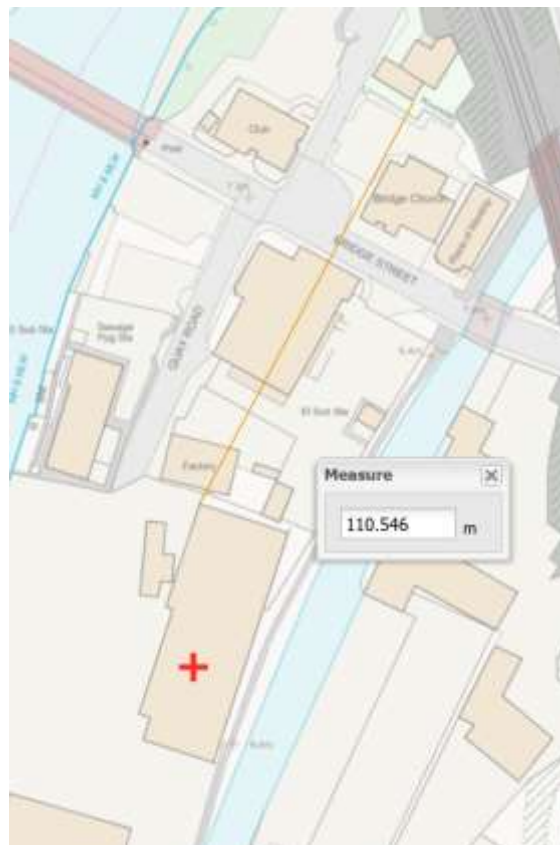
Opening Hours

It is considered that in light of the noise management scheme, an extension of opening hours would not result in any adverse impact on the nearby residential occupiers, inclusive of unsociable hours.

This industrial / business prominent area is located within close proximity to main thorough fares and a train line and it is considered that the additional traffic at the proposed extended weekend time are sociable hours and would not be over and above the noise levels that already exist in the area.

Additionally given the industrial nature of the area it is not anticipated that the increased level of traffic at such times would be sufficient to result in any adverse impacts relating to noise and disturbance on the single residential property. The proposed variation of condition in relation to opening hours is therefore considered to be compliant with Policies EN8 and BE1 of the Neath Port Talbot Local Development Plan.

Plan Indicating Distance from Unit 9 Gym to 1-3 Bridge Street



To Allow of a Permanent Consent

The consideration of the issues above demonstrates that the proposal has mitigated any adverse impacts on the amenity of the neighbouring occupiers and nearby residential occupiers, and therefore all previous justifications for granting a temporary consent are no longer relevant. The development can be considered to be acceptable for a permanent consent in regard to Policies BE1 and EN8 of the Neath Port Talbot Local Development Plan.

Summary of Issues

In light of the above it is considered that the proposal constitutes an appropriate form of development with sufficient measures to mitigate previous and ongoing issues. In order to grant planning permission, it is considered that conditions in relation to the following would be necessary:

- Control of opening hours;
- Condition to prevent noise levels from exceeding the agreed internal levels;
- Condition to require the noise limiter to remain in place on a permanent basis;
- Condition to verify noise levels by way of a factual and interpretive report to be completed and submitted to the Local Planning Authority.

Other Matters

As identified earlier in this report, a number of objections were received in response following the publicity exercise. In response to the main issues raised which have not been addressed elsewhere in this report, the following comments are made.

The Council has been addressing the issue of the site operating in breach of its conditions which has resulted in the application to adequately address these matters, and impose suitably worded enforceable conditions.

The mitigation and conditions imposed also address the issues raised, taking into consideration the construction of the building. As such it is considered that this suite of controls will ensure that there is no unacceptable impact upon residential amenity.

Returning to the issue of noise from the gym being heard at alternative locations in the wider area since the noise limiter has been in place. In addition, the matters raised regarding the ventilation requirements that may affect the noise levels in day to day operation of the site are already addressed in the wording of the verification condition, and supporting note to developer.

The intention of the limiter is for the noise not to be heard from the nearby residential property (the nearest noise sensitive property) and it would not be considered an amenity issue for the noise to be heard at an acceptable level in the wider commercial area, where other activities take place. As stated previously, the noise prior to the limiter being in place was investigated by Environmental Health and not considered to warrant a statutory nuisance.

CONCLUSION

The decision to recommend planning permission has been taken in accordance with Section 38 of The Planning and Compulsory Purchase Act 2004, which requires that, in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises Future Wales – the National Plan 2040 and the Neath Port Talbot Local Development Plan (2011–2026) adopted January 2016.

It is considered that the proposal represents an appropriate form of development that would have no unacceptable impact on the local land bank of employment uses and the amenity of the neighbouring occupiers subject to the recommended conditions. Accordingly, the proposed development is in accordance with Policies SC1, EC2, EC3, EC4, BE1 and EN 8 of the Neath Port Talbot Local Development Plan.

It is further considered that the decision complies with Future Wales – the National Plan 2040 and the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well-being of Future Generations (Wales) Act 2015.

RECOMMENDATION: Approval, subject to conditions.

Conditions

- 1) The development shall be carried out in accordance with the following approved plans and documents: Site Location Plan received 16th September 2021.

Reason: In the interests of clarity.

- 2) The use hereby approved shall operate and be open to customers between 06:00 to 21:00 Monday to Friday, 07:00 to 16:00 Saturday, 08:00 to 15:00 Sunday only. No amplified music shall be played outside of these hours.

Reason: In the interests of amenity, and to accord with Policies EN8 and BE1 of the Neath Port Talbot Local Development Plan.

- 3) Operational Noise Levels

During the operation of the development hereby permitted, noise levels shall not exceed the agreed internal levels at any location as set out in Section 2.4 of the Noise Management Assessment of Unit 9 Gym dated 20 August 2021 (reproduced below) unless amended in compliance with condition 5 of this permission.

	Measured sound level $L_{Aeq,1min}$		
	Near Speaker cluster	Far Speaker cluster	Centre of Counter
6am Levels 4 & 5	77	74	69
7am Levels 4 & 5	77	74	69
9am Levels 4 & 6	77	89	80
6pm Levels 4 & 6	77	89	80
Daytime (no classes) Levels 4 & 4	76	76	69

Reason: In the interest of clarity and the amenity of the neighbouring occupiers and to accord with Policies BE1 and EN8 of the Neath Port Talbot Local Development Plan.

4) Noise Limiting Device

The noise limiting device, as detailed in Feasibility Assessment of Proposed Noise Management of Unit 9 Gym including use of limiter dated 14th February 2022 must be fully functional and in proper working order at all times during the playing of recorded music and retained as such thereafter.

If the noise limiting device breaks down the responsible person shall inform the Local Planning Authority as soon as reasonably practicable. Equipment failures shall be repaired or replaced as soon as is reasonably practicable and without undue delay.

Reason: In the interest of the amenity and Policies BE1 and EN8 of the Neath Port Talbot Local Development Plan

5) Monitoring for Verification of Noise Levels

Within 3 months of the date of this permission the following actions must be completed and a factual and interpretive report demonstrating the completion must be submitted to and approved in writing by the Local Planning Authority.

1. Adjust the Gym sound system taking account of day to day operation of the site, including any adjustable ventilation methods for the building (see note 1) to an acceptable level for operation of the Gym (see condition 3) and measure the sound level in the same location “the monitoring location” used to establish background levels in Feasibility Assessment of Proposed Noise Management of Unit 9 Gym dated 24th January 2022.

2. If the operational level is not measurable at the monitoring location confirm the internal level at the locations identified in condition 1. If the operational level is measurable reduce the sound system to a level that is not at the monitoring location and record this level as the operational level to be used as the new control point for the electronic limiter.

3. Seal Noise Limiting Device with a tamper proof seal to be retained as such thereafter

Reason: To ensure that the development operates within the limits permitted in the interest of the amenity and to accord with Policies BE1 and EN8 of the Neath Port Talbot Local Development Plan.

6 There shall be no playing of amplified music or activities associated/ancillary to the use hereby approved outside of the building other than for the parking of motor vehicles.

Reason: In the interest of the amenity and to accord with Policies BE1 and EN8 of the Neath Port Talbot Local Development Plan.