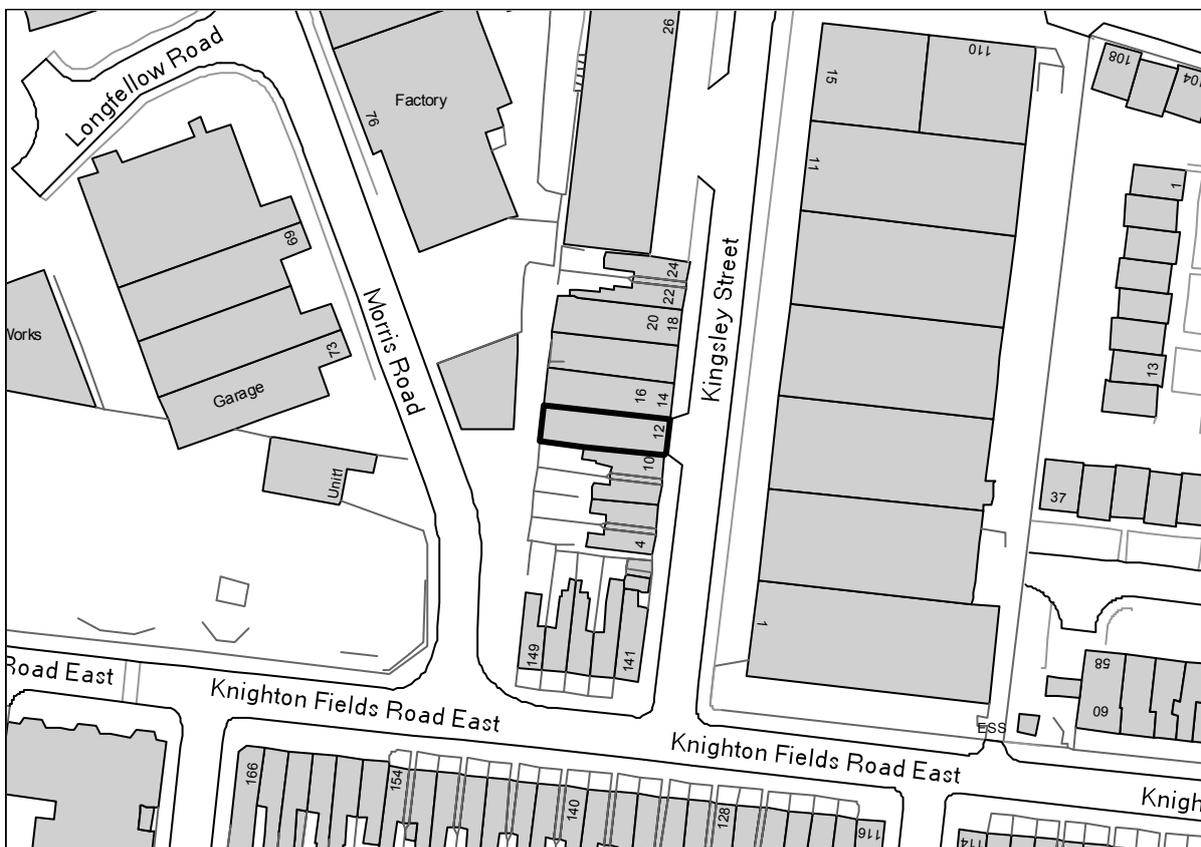


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| <b>Recommendation: Conditional approval</b> |   |
| <b>20190128</b>                             | <b>12 KINGSLEY STREET, GROUND FLOOR</b>   |
| Proposal:                                   | RETROSPECTIVE CHANGE OF USE OF GROUND FLOOR FROM LIGHT INDUSTRIAL (CLASS B1) TO LIFE COACHING AND PHOTOGRAPHY STUDIO AND WORKSHOPS AND ACTIVITIES SPACE (SUI GENERIS)       |
| Applicant:                                  | INTERHOME (PROPERTIES) LIMITED  |
| View application and responses              | <a href="http://rcweb.leicester.gov.uk/planning/onlinequery/Details.aspx?AppNo=20190128">http://rcweb.leicester.gov.uk/planning/onlinequery/Details.aspx?AppNo=20190128</a> |
| Expiry Date:                                | 4 October 2019  |
| TEI   | WARD: Castle  |



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**Summary**

- The application is before committee at officer’s discretion given the nature of use the retrospective application and the protracted discussions.
- Two objections have been received including one from Cllr Kitterick. The objections raise concerns about the disturbance to residential amenity both from

within the building and from activities directly outside, and raise concerns over the impact of the proposal on local parking capacity.

- The main issues are the acceptability of the loss of employment space, the impact of the use on the amenity of neighbouring residential properties and the impact of the use on local parking capacity.
- The recommendation is for approval.

### **Introduction**

The application relates to a two storey building in a primarily employment part of the city. The building is rated as Grade C employment land in the Council's Employment Land Study. The larger part of the industrial estate is to the north of the site. Immediately to the south is a line of terraced residential properties leading to Knighton Fields Road.

### **Background**

Conditional approval (19870564) was granted in 1987 for a change of use of warehouse to light industry. Conditions were attached requiring that no machinery be installed or operated or processes undertaken that would be detrimental to residential amenity, that no machinery be operated or work undertaken after 18:00 Mondays to Fridays and 13:00 on Saturdays or at all on Sundays or bank holidays, and that loading space be kept available and the parking service area be provided and retained.

Conditional approval (19870666) was later granted in the same year for a change of warehouse to light industrial use. Conditions were attached requiring that no machinery be installed or operated or processes undertaken that would be detrimental to residential amenity, that no machinery be operated or work undertaken after 18:00 Mondays to Fridays and 13:00 on Saturdays or at all on Sundays or bank holidays and that no business or commercial activities nor any vehicle breaking operations shall be carried on from the site.

The relationship between these two consents granted twelve days apart is unusual. Nevertheless, the available plans suggest that they relate to the same building and there is at least consistency in the wording of the conditions relating to the restriction on the machinery to be installed and process undertaken and the hours of use.

The reference to "light industrial" in the two consents now translates to Class B1(a), B1(b) and B1(c) uses. Since these two consents the building seems to have been subdivided into three separate units. A subdivision of a building from a larger Class B1 unit to a smaller number of B1 units would not fall under the definition of development and would not require planning permission. However, it has been reported to the Council that one of the units is operating as a photo studio and model agency and has been used in the evening and for night time events at the application site which have caused disruption.

An application (20181297) for the variation of Conditions 3 and 4 attached to planning permission 19870666 was refused in 2018. The application also sought clarity on the permitted uses and argued that all businesses on site at the time of the application fell within the three strands of the B1 use class.

The Council concurred that the wording and purpose of Condition 4 of permission 19870666 was ambiguous and that it was difficult to conceive how any light industrial use that did not involve business or commercial activities.

However, the application was refused as the proposed extension of hours of use were likely to be detrimental to the residential amenity of neighbouring properties due to an increase in noise and disturbance resulting from the extension of business operations and any associated parking during hours when residents are more likely to be at home.

It was also the Council's view that the operation of the studio lies outside of the Class B1 use and that it would be sui generis. The officer's report also noted that the operation of the studio was in breach of the condition restricting the hours of use.

### **The Proposal**

The application is a retrospective application for the change of use of the ground floor of number 12 from light industrial (Class B1) to a life coaching and photography studio with workshops and activities space (sui generis). The floor area subject of the planning application is 128 metres<sup>2</sup>. Access is directly off Kingsley Street. There is a dropped kerb directly outside the property.

No external alterations are proposed with the application. However, a noise survey was submitted during the application process. The purpose of the noise survey was to assess noise impact during a one-week period. It noted a corridor and staircase separating the studio from the party wall of the dwelling. Noise measurements were taken within that corridor.

The proposed hours of use are Monday to Friday between 08:00 and 18:00 and Saturday between 09:00 and 17:00. The unit will not be in use on Sundays and Bank Holidays.

### **Policy Considerations**

#### National Planning Policy Framework (NPPF) 2019:

Paragraph 80 of the National Planning Policy Framework describes how planning decisions should help create the conditions in which businesses can invest, expand and adapt.

Paragraph 109 of the framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

Paragraph 127 adds that planning decisions should ensure a high standard of amenity for existing and future users.

#### Development Plan policies:

Development plan policies relevant to this application are listed at the end of the report.

City of Leicester Local Plan – Appendix 1: Vehicle Parking Standards

### **Consultations**

Environmental Health (noise) (LCC): - concerns initially raised that the proposal would be detrimental to the adjacent residential unit transmitted through the fabric of the

building and any open doors and windows. Particular concerns over raised voices and general activities associated with the workshop and studios. Conditions initially recommended ensuring that there is no live or amplified music or voice which would be detrimental to amenities of nearby properties, that there no machinery or equipment installed or operated or processes undertaken that would be detrimental to the amenity of the area by reason of noise and vibration and that an insulation scheme to prevent the transmission of noise from the commercial unit into adjacent properties be carried out in accordance with details that have previously been agreed.

The noise assessment was forwarded on to Environmental Health Officers. On the basis of the report, satisfied that the premises do not require further noise insulation provided noisy activities do not become persistent.

### **Representations**

Two objections have been received from neighbouring properties and one was received from Councillor Kitterick.

The objections from neighbouring properties note instances of on-street activity including large groups of people drinking and behaving rowdily and raise concerns over personal safety and damage to property. Noise and disturbance generated by vehicles coming and going is also raised as a concern as is refuse and litter resulting from on-street activity.

The objections also raise concern over disturbance from activity within the building itself including vibrations from musical equipment transmitted through the walls as well as the noise from the music itself.

Whilst noting that the property is often used beyond the hours allowed under the 19870666 permission the objections also raise concern that the 'extended' hours noted in the planning application would harm the amenity of local residents, in particular access to safe and available on-street parking, privacy and the right to the enjoyment of a quiet and safe residential environment.

They also add concern that traffic and car parking problems in the evenings and at weekends when demand from residential properties is highest will be exacerbated and that the eight spaces on site will be insufficient to deal with the demand generated by events for up to 20 or 30 people.

Reference is made to Protocol 1, Article 1 of the Human Rights Act which states that a person has the right to peaceful enjoyment of all their possessions, including their home and other land. Reference is also made to Article 8 which states that a person has the substantive right to respect for their private and family life.

One objection provided evidence of the use of the premises beyond the hours allowed under the 19870666 permission.

The same objection raised concerns that given the disregard shown to the local environment there would be a negative impact on the biodiversity of the site at the rear.

An observation was also made over the accuracy of the planning application (that stated the use commenced in 2018 rather than 2016). It was questioned whether or not the site had a premises license and noted that issues surrounding the current use of the site had been reported to both environmental health and to the police.

Councillor Kitterick objected on the grounds that an effective removal of conditions would be detrimental to the amenity of neighbours at this property.

### **Consideration**

#### Principle of the use:

The site is within an area defined as 'primarily employment' in the development plan. Core Strategy policy CS10 states that employment land will be retained for Class B1(c), Class B2 and Class B8 uses. Saved City of Leicester Local Plan policy E03 adds that planning permission will not be granted for other uses unless it can be shown that the land and buildings are no longer viable for employment purposes, that the use is ancillary or complementary to a Class B use, that the use would provide a significant number of jobs, that the redevelopment of the site would make an important contribution to improving the wider urban environment or that the use would be for housing or for a local community facility.

The most recent employment land study (2017) defines this particular employment area as a General Economic Development Area and viable for employment use. There is a shortage of employment land in Leicester and the building is a relatively modern 'portal frame' construction, the type commonly required for modern employment purposes.

The existing use is not an industrial use within any of the Class B1, B2 or B8 use classes. Nor does it satisfy any of the tests of saved City of Leicester Local Plan policy E03. As such it conflicts with both policy E03 and Core Strategy policy CS10. However, the use occupies only one half of an already small unit and the floorspace is below 200 metres<sup>2</sup>. I consider that the unit is unlikely to be as attractive to the market as a unit with a larger footprint. Additionally, Kingsley Court (the building between numbers 10 and 22 Kingsley Street) has been divided into seven separate units (including three at number 12 which operate under the same family name) that sit between two short residential terraces. Though allocated in the local plan as 'primarily employment' land, the western side of the southern end of Kingsley Street is something of an anomaly and the industrial estate in real terms lies to the north of number 24 and to the east of Kingsley Street.

Given the position of the site at the southern mixed-use end of the primarily employment area and given the small size of the application unit I do not consider that the loss of the ground floor of number 12 will have a significantly detrimental impact on the objectives of Core Strategy policy CS10 of protecting and enhancing employment land or the objectives of saved policy E03 in maintaining some employment opportunities.

The supporting statement for saved policy E03 describes how where employment and residential areas meet, consideration will be given to the hours of use and level of noise permissible from nearby industrial development. Though the existing use is not an industrial use I consider that the same principle applies.

Though the use conflicts with saved policy E03 and Core Strategy policy CS10 I consider that the position and size of the site to be material considerations that mean there will be no significant detrimental impact on the policy objectives mentioned above and that the existing use is acceptable in principle, subject to its being acceptable in terms of its impact on the amenity of neighbouring residential properties.

Residential amenity:

Saved policies PS10 and PS11 seek to protect residential amenity by resisting development that would result in unacceptable levels of pollution, including noise, air and smell pollution, resisting development that would result in a loss of safety and security and resisting development that would result in an unacceptable impact on the visual quality of an area, including the impact of litter. Development should not be permitted unless the health and amenity of neighbours and the wider environment can be assured.

I note that there have been ongoing issues with the existing uses of the property particularly in relation to disturbance from noise and vibrations (both internal and external) generated by musical equipment, by groups of people and vehicles visiting the premises. Concern is also raised in relation to litter.

I also note that the objections also raise concerns in particular that these activities often occur outside of the hours permitted for the Class B1 uses (under the 19870666) permission. These hours are 07:30 to 18:00 Mondays to Fridays and 07:30 to 13:00 on Saturdays. The officer's report for 20181297 described how these hours directed activities associated with the use to daytime hours when residents of the properties at the south of Kingsley Street are likely to be out.

I consider that the same principal applied to the existing use that is subject of the application would mitigate much of the detriment to residential amenity caused by these disturbances. Therefore, I consider it necessary to attach a condition restricting the hours of use to when residents are likely to be out. I recommend that this condition restrict hours of use to between 07:30 to 18:00 Mondays to Saturdays. I do not consider that the addition of Saturday afternoon to the permitted Class B1 hours to have an unacceptable impact on residential amenity. This condition will also provide clarity over the hours within which the existing use is permitted to operate.

Nevertheless, an hours of use condition on its own is unlikely to be sufficient and will not account for periods where neighbouring residents are home during day time hours. As such, I consider it necessary to attach compliance conditions ensuring that there is no live or amplified music or voice which would be detrimental to amenities of nearby properties and that no machinery or equipment installed or operated or processes undertaken that would be detrimental to the amenity of the area by reason of noise and vibration.

The noise assessment was carried out over seven days. During that time the studio was in use on three mornings (4<sup>th</sup>, 6<sup>th</sup> and 9<sup>th</sup> July). The assessment found that there was no significant difference between these times and times when the studio was not in use. It concluded that the primary source of noise throughout the measurements was from road traffic. On the basis of the assessment Environmental Health Officers

are satisfied that further insulation between the unit and neighbouring residential is unnecessary and I accept their conclusion.

I consider that with conditions attached the amenity of neighbours and the wider environment can be assured and the proposal will be in accordance with saved City of Leicester Local Plan policies PS10 and PS11. I recommend that such conditions include a restriction on the hours of use and compliance conditions ensuring that there is no live or amplified music or voice or machinery or equipment that would be detrimental to residential amenity.

Traffic and parking:

Appendix 1 of the City of Leicester Local Plan recommends two spaces for an industrial use of this size. The existing use does not fall within any recognised planning use class and Appendix 1 does not make a recommendation for number of parking spaces. However, given that the existing use operates on an appointment basis I do not consider that the proposal will have an unacceptable impact on the parking capacity of the area.

Waste management:

Though I note concern from residents concerning litter, I do not consider that the existing use is a use that generates a significant amount of waste. I do not consider that the proposal will have an unacceptable impact on the management of waste in the area and consider it to be consistent with the objectives of saved policies PS10 and PS11.

Other issues:

Given the conditions restricting the use to day time hours and given that there are no windows overlooking neighbouring properties I do not consider that the proposal will have a detrimental impact on their privacy.

Human rights are a material planning consideration. The relevant sections to planning and this application are Article 8 (right to respect for private and family life, home and correspondence) and Article 1 Protocol 1 (right to peaceful enjoyment of possessions and protection of property). The above assessment of this planning application including all of the material planning considerations by its very nature respects the rights of individuals whilst also acting on behalf of the wider community.

The application is to regularise the existing use and I do not consider that it will have an impact on the biodiversity of the area at the rear of the site.

Conclusion:

The use conflicts with saved policy E03 and Core Strategy policy CS10. However, I consider the position and size of the unit to be material considerations that mean there will be no significant detrimental impact on the objectives that underlie these policies.

I consider that with conditions attached the amenity of neighbours and the wider environment can be assured and the proposal will be in accordance with saved City of Leicester Local Plan policies PS10 and PS11.

I do not consider that the proposal will have an unacceptable impact on the parking capacity of the area or on the management of waste in the area.

I therefore recommend APPROVAL subject to the following conditions:

1. The use shall not be carried on outside the hours of 07:30 to 18:00 Mondays to Saturdays (inclusive). (In the interests of the amenities of nearby occupiers, and in accordance with policies PS10 and PS11 of the City of Leicester Local Plan.)
2. There shall be no live or amplified music or voice played which would be detrimental to the amenities of occupiers of nearby properties. (In the interests of the amenities of nearby occupiers, and in accordance with policies PS10 and PS11 of the City of Leicester Local Plan.)
3. No machinery shall be installed or operated nor shall any processes be undertaken which are detrimental to the amenity of the area by reason of noise, vibration, smell, fumes or smoke. (In the interests of the amenities of nearby occupiers, and in accordance with policies PS10 and PS11 of the City of Leicester Local Plan.)
4. This consent shall relate solely to the submitted details received by the City Council as local planning authority on 21.01.19, unless otherwise submitted to and approved by the City Council as local planning authority. (For the avoidance of doubt.)

#### NOTES FOR APPLICANT

1. The City Council, as local planning authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received. This planning application has been the subject of positive and proactive discussions with the applicant during the process.  
The decision to grant planning permission with appropriate conditions taking account of those material considerations in accordance with the presumption in favour of sustainable development as set out in the NPPF 2019 is considered to be a positive outcome of these discussions.

#### **Policies relating to this recommendation**

- 2006\_AM11 Proposals for parking provision for non-residential development should not exceed the maximum standards specified in Appendix 01.
- 2006\_E03 Planning permission granted for the development of appropriate B1, B2 and B8 uses in Primarily Employment Areas and not for changes to other uses unless it meets criteria.
- 2006\_PS10 Criteria will be used to assess planning applications which concern the amenity of existing or proposed residents.
- 2006\_PS11 Control over proposals which have the potential to pollute, and over proposals which are sensitive to pollution near existing polluting uses; support for alternative fuels etc.
- 2014\_CS10 The Council will seek to ensure that Leicester has a thriving and diverse business community that attracts jobs and investment to the City. The policy sets out proposals to achieve this objective.