



**Application No:** 151831

**Location:** 48a William Harris Way, Colchester, CO2 8WJ

**Scale (approx):** 1:1250

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**7.4 Case Officer: Eleanor Moss**

**Due Date: 06/11/2015**

**OTHER**

**Site:** 48a William Harris Way, Colchester, CO2 8WJ

**Application No:** 151831

**Date Received:** 3 September 2015

**Applicant:** Mr S Gecin

**Development:** Use of premises as restaurant & takeaway (A3/A5) & installation of associated kitchen extract system and external ducting with brick effect cladding - on the rear elevation of the building.

**Ward:** Berechurch

**Summary of Recommendation:** Conditional Approval

### **1.0 Reason for Referral to the Planning Committee**

- 1.1 This application is referred to the Planning Committee because it was called in by Councilor Harris due to the impact the scheme will have on neighboring amenity in terms of noise, odour and disturbance.

### **2.0 Synopsis**

- 2.1 The key issues explored below are the impact the scheme will have on the surrounding area in terms of design.
- 2.2 The recent appeal dismissal on the grounds of visual amenity is referred to and the improved design is described.
- 2.3 This is held to be acceptable and approval is recommended.

### **3.0 Site Description and Context**

- 3.1 The site is a vacant and boarded up commercial unit in the central mixed use section of a modern housing estate. There are three floors of flats above and a convenience store next door. To the rear is a parking court, bike store and bins for the flats. Three large stair cores protrude from the rear elevation. Windows, serving the flats and communal stair ways are located on this elevation also.
- 3.2 In front of the unit is an attractive area of public realm. A children's nursery, a barber's, a tanning salon and another small vacant unit also front this area. There are 13 short term parking bays (two of which are disabled parking bays), seating and planting. This area is the focal point of the mixed use development.

## **4.0 Description of the Proposal**

- 4.1 The change of use to an A3/A5 restaurant and take-away mix is proposed. The agent has estimated that due to the relatively large floor area the mix will be 80 per cent restaurant and 20 per cent take away. A new shop front is proposed. An internal extraction system with carbon filtration and an external metal flue clad in brick effect to match the existing structure is also proposed.

## **5.0 Land Use Allocation**

- 5.1 The site is located in a Neighbourhood Centre as allocated in the Local Development Framework Proposals Maps (October 2010).

## **6.0 Relevant Planning History**

- 6.1 The unit was granted consent as part of the wider Garrison Masterplan estate permission O/COL/01/0009 in June 2003 and the reserved matters were approved via application RM/COL/04/1871 in January 2005. This scheme does not appear to have been implemented. Following this the reserved matters were approved again in March 2006 under reference RM/COL/05/2071 and this permission does appear to have been implemented.
- 6.2 This application has previously been determined at Planning Committee on 8/11/2014 under application 145607. The application was refused by Committee for the following reasons:

*Proposing the change of use of this ground floor retail unit to an A3/A5 mix has necessitated a large external flue on the rear elevation that runs from the ground floor up past three floors of flats and then on to one metre above eaves level. The scale of the flue, along with the inherently industrial design will create an element that will become a dominant feature of the rear elevation. The flue measures 400mm square and is proposed to be wrapped in a mineral wool lagging which will be held in place by a light metal mesh and plastic straps. This will create an uncompromisingly industrial addition to the rear of the building. This issue is exacerbated as the elevation on which the flue is proposed has a great degree of public visibility from the well used parking court to the rear of the block that also houses the bike store and the bin store for the flats.*

It is worth noting that the proposal was refused on design grounds alone.

- 6.3 Subsequently, the refusal was appealed and dismissed at appeal for the following reason:

*Given the resulting industrial and utilitarian appearance I consider the proposed flue would be of an unacceptable design given its location on an elevation that, whilst to the rear, acts as the main entrance to the properties and faces an area that is well used by residents.*

- 6.4 Below is an excerpt from the appeal decision relating to other matters. Other matters includes the noise, smell and disturbance of the proposal.

*Interested parties have raised a number of concerns. Those relating to the flue have been taken into account in the main issue above. Other concerns relate to noise, disturbance, smell, parking and waste storage. The property is located within a small parade which includes a small supermarket that opens late into the evening. Provided the opening times of the proposed use are similar I do not consider the proposed change of use would cause noise and disturbance that would justify dismissing the appeal. There are a number of parking spaces in front of the parade for visitors which would provide adequate parking for customers. **Subject to adequate maintenance the flue should not give rise to noise or smell and the Council has not raised concerns regarding waste storage provision. In the circumstances I see no reason to object to the principle of the proposed change of use.***

## 7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:
- SD1 - Sustainable Development Locations
  - CE2c - Local Centres
  - CE3 - Employment Zones
  - UR2 - Built Design and Character
  - TA5 - Parking
- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):
- DP1 Design and Amenity
  - DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
  - DP7 Local Centres and Individual Shops
  - DP17 Accessibility and Access
  - DP19 Parking Standards
- 7.4 Further to the above, the adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

N/A

7.5 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

Vehicle Parking Standards  
Shopfront Design Guide

## **8.0 Consultations**

8.1 Environmental Services – No objection subject to conditions (which will be imposed)

8.2 ECC Highway Authority – No objection

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

## **9.0 Parish Council Response**

9.1 Non-parished

## **10.0 Representations**

10.1 At the time of writing, nine objections had been received, in summary objections to the scheme have been raised on the following grounds:

1. The proposal would blight the properties above as due to the stricter lending criteria from the majority of high street mortgage lenders, they will not give a standard mortgage with a takeaway/restaurant below. Owners would lose equity and decrease property value.
2. The application has been refused and heavily objected from the council and local residents. This should enforce a precedent on any future applications of this nature.
3. The bins within the communal area are already overflowing
4. The use will introduce more vermin into the area
5. The use will cause parking problems from the customers, staff and deliveries
6. The scheme will be a fire risk
7. The use will create disruption within the area
8. The extraction and filtration is insufficient and not fit for purpose
9. The scheme is an eye sore
10. The use will cause smells, noise and vibration from the extraction system.
11. The use will encourage people to congregate outside the premises
12. The applicant is proposing to attach this flue on the stair core of the entrance to three flats part of the building not owned by them
13. When we bought our dwellings we did not expect an A3 or A5 use in this unit

The full text of all of the representations received is available to view on the Council's website.

In response:

1. The impact this scheme will have on property value or the saleability of a property is not a planning consideration.

2. This application has previously been refused on design grounds alone, which will be discussed further in the report. Applications for planning permission or change of use may come in at any time and each application will be considered on its own merits.
3. The commercial bin (measuring 1 metre x 1.27 metres x 1.38 metres) will be stored in or next to the communal bin store that was provided on site for the entire block – the flats and the commercial units. This is considered to be an acceptable solution. The fact the existing bins are sometimes overflowing is not relevant as the unit will have its own commercial bin which will be emptied by commercial waste contractors – possibly the Council in this instance.
- 4 and 10 - The Environmental Services Team has assessed the detail of the scheme and is satisfied with the findings. On the basis of the technical specifications they do not have reason to object to the scheme.
5. Parking will be discussed within this report (under heading 11.0 Parking Provision)
6. It is not considered that this scheme poses a materially greater fire risk than an equivalent A3 use. Restaurants and hot food take-aways are often located below residential properties and there are a number of examples of similar situations across the Borough. To refuse the scheme because restaurants/take-aways are a perceived fire risk to residential properties above would therefore be unreasonable. There is no evidence to suggest that this scheme will cause materially harmful warming of the flats above.
7. To be discussed further in the report
8. To be discussed further in the report
9. To be discussed further in the report
- 11 To be discussed further in the report
- 12.This is a civil matter rather than a planning consideration
- 13.Residents appear to have been promised at the point of sale that the unit is to be an (A1) retail use only. The vendor may have meant that the approved use on site was A1 retail. If the vendors said the unit will only ever be A1 that is unfortunate as it would mean that the residents would have been made promises over possible uses that the vendor had no control over. Regardless of an approved use, applications for changes of use can be made at any time and must be assessed on their own merits in line with national and local adopted policy.

## **11.0 Parking Provision**

- 11.1 This scheme will generate a demand for short term parking. However the adopted standards do not require any minimum parking provision and therefore this scheme complies with the adopted parking standards. This section of the estate has short term parking spaces in bays located directly outside the unit.

- 11.2 The Highway Authority has also stated that staff will park in the spaces to the rear. This is not the case. This was brought to the attention of the Highway Authority but it does not want to change its recommendation. The site is sustainably located a short walk from a bus stop and from other residential areas therefore there is a good chance staff will not have a car. However if the staff do drive they will have to park in non-controlled sections of the highway. This situation will be the same as with any commercial use, for example A1 retail.
- 11.3 Residents are concerned that customers will find the short term spaces full and will use the parking court to the rear. The Council cannot control customers parking in spaces that customers have no right to park in. However in this instance it is considered that there are sufficient short term parking spaces (13 in total, two of which are disabled bays) in front of the unit to limit this possibility to within tolerable levels.
- 11.4 Therefore a refusal on parking grounds is not warranted, nor was this raised as a previous determination for refusal by the Council or Appeal Inspector.

## **12.0 Open Space Provisions**

- 12.1 No issues in this regard

## **13.0 Air Quality**

- 13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

## **14.0 Development Team and Planning Obligations**

- 14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

## **15.0 Report**

### Principle of Development

- 15.1 The original permission for the site (reserved matters application RM/COL/05/2071) granted A1 use for these units under condition 19. No conditions were imposed to restrict the opening hours of the use.
- 15.2 Policy DP7: Local Centres is relevant to this scheme. It requires development to a) meet the needs of residents within the neighbourhood development and b) requires that a proposal would not reduce the number of A1 retail units in any retail centre to below 50 per cent of the units used for commercial purposes.
- 15.3 With regards to a) this scheme is designed to meet the needs of the residents of the neighbourhood and also the wider area.

- 15.4 With regards to criterion b) the policy test is met. The day nursery forms part of the original permission for the estate layout. Out of the five ground floor units one is a convenience store, one is a tanning salon, one is a barber's and two are vacant. The store, the barber's and the other vacant unit are A1. The tanning beauty salon has the character of an A1 use but is sometimes held to be a *sui generis* use. Either way, this proposal would not take the number of non-A1 units below 50 per cent.
- 15.5 The Policy Team is comfortable with the scheme in policy terms and accepts that the multipurpose convenience store directly next door reduces the likelihood of another A1 use being viable in this unit.
- 15.6 In terms of marketing, the application has supplied details demonstrating how the unit has been marketed. It was advertised as an A1 unit. The particulars mention the possibility of other uses but are clear that applicants would need to check regarding consents first. Therefore the unit has not been marketed as an A3/A5 use. The estate agent has confirmed that there have been 13 accompanied viewings and also suspects that a number of interested parties have visited the site unaccompanied. They have had interest from three different parties, all of which drew up heads of terms for an A3/A5 use. There does not appear to be interest in an A1 use in this site and no representations have been received from anyone suggesting they wish to open a retail use in this unit.
- 15.7 The NPPF and the development plan is supportive of economic development such as this and is especially supportive of schemes that provide new jobs, four of which will be created.
- 15.8 As mentioned above, the Appeal Inspector had no objections to the scheme in terms of principle.

#### Design and Layout

- 15.9 Although for a change of use, this scheme also involves the installation of a new shop front. The shop front proposed is simple and contemporary in design and is similar to that used next door at the existing convenience store. In this context the proposed new shop front is acceptable.
- 15.10 This scheme proposes a large flue. It takes the shape of a square metal tube that is 400mm square. It would exit the unit to the rear at ground floor level, run along the rear elevation at ground floor level and then run up the side of the existing stair block. It would terminate one metre above the eaves of the building. As an amendment from the previous scheme, the proposal would utilise brick effect cladding to the outside of the proposed flue which would match the existing brick on site in terms of colour and size. Effectively the proposed flue would appear as a harmonious addition to the rear, rather than as a utilitarian addition.



- 15.11 Whilst the proposed flue would be visible from the private parking court to the rear, it has been sited in a position that is as tucked away as possible. The front of the flats is attractively designed with a great deal of detail, modelling and variation in materials that break up the mass of the building. However the rear elevation of the large block of flats is of no particular architectural sensitivity and is not publicly prominent. It is dominated by three large protruding stair cores that serve the flats. As the stair cores project out and the proposed flue would be situated in a corner close to the junction of the central stair core and the rear elevation, the flue would therefore be read (in visual terms) as an matching addition and would not be visually prominent when viewed from the public realm. In this context, it would not be overly dominant and would not have a materially harmful impact on the composition of the rear elevation. There does not appear to be any way in which the flue could be internalised. It has therefore been positioned in as sensitive a position as is possible. On balance it is considered to be acceptable in design terms.
- 15.12 In terms of the appeal decision, effectively all other considerations such as noise, smell, principle and disturbance were not considered to be materially harmful. The appeal decision was based on design terms alone. It is considered that this proposal has moved on significantly since the previous submission and therefore the design is considered to be acceptable.

#### Impact on the Surrounding Area

- 15.13 Unlike some other purely residential sections of this recently built estate, the site is located in the mixed used section with residential uses located over ground floor commercial units. The unit in question is currently vacant and therefore is still boarded up from when it was built. Empty units such as this have a negative impact on the street-scene. Unlike the small vacant unit opposite, this unit is very prominent in the street-scene due to its position and size. The boarded up nature of the unit does not create the vitality that was planned when this mixed used section of the estate layout was designed. It is therefore considered that this scheme will have a positive impact on the surrounding area by introducing an active frontage that is missing currently.

#### Impact on Neighbouring Amenity

- 15.14 Intensifying the use from a vacant unit to an A3/A5 restaurant and take-away will have an inevitable impact on neighbouring amenity, however it is worth noting that the appeal decision did not consider that the proposed flue could give rise to increased levels of noise or disturbance subject to regular maintenance. Copied below is the paragraph from the appeal decision which discusses matters of noise, smell, disturbance and parking.
- 15.15 *'Interested parties have raised a number of concerns. Those relating to the flue have been taken into account in the main issue above. Other concerns relate to noise, disturbance, smell, parking and waste storage. The property is located within a small parade which includes a small supermarket that opens late into the evening. Provided the opening times of the proposed use are similar I do not consider the proposed change of use would cause noise and disturbance that would justify dismissing the appeal. There are a number of parking spaces in front of the parade for visitors which would provide adequate parking for customers. Subject to adequate maintenance the flue should not give rise to noise or smell and the Council has not raised concerns*

*regarding waste storage provision. In the circumstances I see no reason to object to the principle of the proposed change of use but this does not outweigh the harm I have identified above.'*

- 15.16 Discussions with the Agent have confirmed that the proposed cladding system would not impact upon the ability to effectively maintain and clean the proposed flue as seamless access hatches would be provided. In addition, the Environmental Protection team has been consulted and raised no objection to the proposal.
- 15.17 Therefore it is considered that the quality of the extraction system and flue is sufficient and therefore it is felt that a refusal on the basis of odour, noise or vibration would not be sustainable at appeal.
- 15.18 Set against the current vacant situation, the scheme would cause intensification in noise and disturbance to residential neighbours. It is accepted that restaurant/take-aways, and in particular the take-away element, can cause noise and disturbance beyond that which one would expect from a retail unit for example. They can generate a large number of comings and goings, particularly in the evening when nearby residents are at home and expect to be able to relax.
- 15.19 Notwithstanding the neighbours' objections which have been carefully considered, it is not considered that this use will cause a level of noise and disturbance that would be materially harmful to the point of warranting a refusal of this scheme. The following hours of opening are to be conditioned:

Weekdays: 08:00-21:30

Saturdays: 08:30-21:30

Sundays and Public Holidays: 10:00-21:30

These proposed opening times have not resulted in an objection from Environmental Protection. This is considered to be a marked improvement on the approved A1 permission which has no conditions relating to its opening hours.

#### Highways

- 15.20 Essex County Council has no objections to the scheme on highways grounds. Parking has been dealt with in the relevant section above.

#### Economic Development

- 15.21 As this scheme comprises economic development and proposes four full time jobs it will make a small but useful contribution to the jobs market. It therefore accords with the economic development sentiments of the NPPF.

#### Access for All

- 15.22 The unit has a level entrance with a proposed internal ramp to finished floor level and therefore will be accessible for those in wheelchairs.

## **16.0 Conclusion**

- 16.1 This change of use to a mixed A3/A5 restaurant/takeaway would have an impact on neighbouring amenity but that impact is considered to be within tolerable levels. Members are only able to consider this application on design grounds alone due to the previous appeal decision which has been raised within this report. The flue would be to the rear, would harmonise with the existing brick on site and has been sited in a position where it is as tucked away as possible. Therefore it is considered that the proposal is acceptable in terms of design and the proposal would not sustain a refusal at appeal. This scheme would bring a commercial unit that has been vacant since it was built into use and would also provide employment. Therefore, on balance, the scheme complies with the Development Plan and the NPPF and an approval is warranted.

## **17.0 Recommendation**

- 17.1 APPROVE subject to the following conditions

## **18.0 Conditions**

### **1 - Time Limit for Full Permissions**

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

### **2 - \*Development to Accord With Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers TD01, TD03, TD04, TD05, TD06, TD07, TD08 TD09 and TD10 dated August 2015 and TD11 dated October 2015, unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

### **3 - Food Premises (Control of Fumes and Odours)**

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. The duct termination must be designed to achieve a vertical efflux velocity of 15 m/s. More information will need to be provided to the Local Planning Authority prior to first use to demonstrate how this can be improved to achieve this. Such control measures as shall have been agreed shall thereafter be retained and maintained to the agreed specification and working order. Reason: To ensure that there is a scheme for the control of fumes and odours in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

#### 4 - Non-Standard Condition/Reason

No food may be prepared or cooked on the premises without the grease/odour system being in use. No food may be prepared or cooked on the premises unless the grease/odour system is serviced and maintained in line with the manufacturer's details.

Reason: To ensure that the extracting system is used when food is being prepared and cooked and to ensure the system is correctly maintained to ensure scheme does not cause material harm to neighboring amenity in terms of odour.

#### 5 - \*Restriction of Hours of Operation

The use hereby permitted shall not OPERATE outside of the following times:

8am to 9.30pm Monday to Friday with the (A5) Hot Food Takeaway element not opening until 10am but closing at 9.30pm;

9am to 9.30pm on Saturdays with the (A5) Hot Food Takeaway element opening not opening until 10am but closing at 9.30pm;

10am to 9.30pm on Sundays and Bank Holidays with the (A5) Hot Food Takeaway element not opening until 11am but closing at 9.30pm.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

#### 6 - Site Boundary Noise Levels

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

#### 7 -Litter

Prior to the first occupation of the development hereby permitted, equipment, facilities and other appropriate arrangements for the disposal and collection of litter resulting from the development shall be provided in accordance with details that shall have previously been submitted to, and agreed in writing by, the Local Planning Authority. Any such equipment, facilities and arrangements as shall have been agreed shall thereafter be retained and maintained in good order.

Reason: In order to ensure that there is satisfactory provision in place for the storage and collection of litter within the public environment where the application lacks sufficient information.

## 8 - Grease Traps Required

Prior to the first use of the development hereby permitted, any foul water drains serving the kitchen shall be fitted with grease traps that shall at all times thereafter be retained and maintained in good working order in accordance with the manufacturer's instructions. Reason: To prevent unnecessary pollution of the groundwater environment quality in the area and/or blocking of the drainage system.

## 9 - Self-Closing Doors

Prior to the first use or occupation of the development hereby permitted, all doors allowing access and egress to the premises shall be self-closing and shall be maintained as such, and kept free from obstruction, at all times thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

## 19.0 Informatives

### (1) **ZT0 – Advisory Note on Construction & Demolition**

The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

### (3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

## 20.0 Positivity Statement

20.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.