



**Application No: 161336**

**Location:** Old Heath Recreation Pavilion, Recreation Road, Colchester

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

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**7.6 Case Officer: Mark Russell**

**Due Date: 18/07/2016**

## **CHANGE OF USE**

**Site:** Old Heath Recreation Pavilion, Recreation Road, Colchester

**Application No:** 161336

**Date Received:** 23 May 2016

**Agent:** Mr Lee Spalding, Colchester Borough Council

**Applicant:** Mr Aaron Hunter

**Development:** Redevelopment of the Old Heath Tennis Pavilion into a community café (resubmission of 152344)

**Ward:** Old Heath and Hythe

**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 Colchester Borough Council is the applicant.

### **2.0 Synopsis**

- 2.1 It is explained that the applicant wishes to amend the permission granted in 2015 which allowed this building to be used as a community café. Longer hours of use are sought as is permission to play amplified music a limited number of times per year.
- 2.2 Objections from neighbours are reported, these relate to matters of increased noise and traffic. It is held that these objections are insufficient reason to recommend refusal and, therefore, permission is recommended.

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

- 3.1 The building in question is a community café in the former sports pavilion on Recreation Road and near the south-eastern corner of the Recreation Ground at Old Heath. Close by are tennis courts and a children's play area. Opposite the site are the residential properties of Recreation Road.

### **4.0 Description of the Proposal**

- 4.1 Planning permission was granted (reference 152344) for a change of use from sporting pavilion to community café with some alterations to the building in 2015. The required works have been carried out and the building is now run as a community café by the GO4 enterprise. The application at hand is effectively a request to vary two conditions of that application: Condition 6 (hours of use) and Condition 8 which precludes amplified music.

4.2 In more detail, the existing permitted hours of use under condition 6 are:

Weekdays: 07:30-20:00

Saturdays: 07:30-20:00

Sundays and Public Holidays: 07:30-20:00

The proposal at hand is:

Weekdays: 07:30-22:00

Saturdays: 07:30-22:00

Sundays and Public Holidays: 07:30-20:00

4.3 The existing condition 8 states: "No external amplified music shall be permitted at any time."

The proposal is to reword this to: "No external amplified music shall be permitted at any time unless written permission has been granted for a special event or community activity by Colchester Borough Council for no more than 12 occasions per year." It is noted that officers have re-worded this so it is clear that this will be via the medium of an application for a Temporary Events Notice (TEN).

4.4 The application also shows a small extension (store) to the front and an internal reconfiguration of the building with the central section (which used to house toilets and washing facilities) having been removed and the space inside having been opened up to form a seating area.

4.5 The rear section (previously showers) has been closed off and used for back of house functions (office, store, kitchen, cleaner's store), with three toilets and baby-changing facilities being provided off to the left-hand-side.

4.6 To the front, a glass door and screen have been installed inside the external doors and two new windows (one either side of the door) inserted.

4.7 Externally, a paved seating area to the side (west) of the building has been provided. This is sand bedded, small element concrete with flag paving.

4.8 All of these works have been carried out, but will be restated in the issuing of any permission as this application has been presented as a resubmission.

## **5.0 Land Use Allocation**

5.1 Public Open Space

## **6.0 Relevant Planning History**

6.1 152344 - Redevelopment of the Old Heath Tennis Pavilion into a community cafe. Approved 18<sup>th</sup> December 2015.

## **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  
SD3 - Community Facilities

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

DP1 Design and Amenity  
DP4 Community Facilities  
DP10 Tourism, Leisure and Culture

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:

n/a

## **8.0 Consultations**

8.1 Sport England – no objection

8.2 Highway Authority: No comments

8.3 Environmental Control: No objection, requested conditions limiting hours of opening to those applied for deliveries 07:00 – 19:00 Monday to Saturday (with none on Sunday) and delivery and also that no external amplified music should be permitted.

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 n/a

## **10.0 Representations**

10.1 Ten letters of objection were received from nearby residents, as follows:

- Later hours will lead to noise/disruption;
- Noise from music;
- With the park no longer locked, people will hang around afterwards;
- The “twelve times a year” might be condensed in to a few weeks in summer;
- Pressure on parking;
- People will not use the distant car park;
- Oppose change of use to café;
- This is a change to a community centre

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

## **11.0 Parking Provision**

11.1 n/a

## **12.0 Open Space Provisions**

12.1 n/a

## **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**

15.1 Principle: The principle of change of use from sports pavilion has been accepted. This building is no longer required in its former primary function as a sporting facility and the change of use to a community café has already occurred.

15.2 The use is community-based and is run by GO4 (the group which also currently trades from Holy Trinity Church). GO4 Enterprises has signed a lease and has the sole and exclusive use of the kitchen area within the community café.

15.3 The café is for the use of community not for profit companies and groups only. It is an agreed arrangement that community groups will be allowed to use the café seating areas and toilet facilities.

15.4 The commentary on the café effectively changing use to a community centre is, therefore, not wholly correct. The building, whilst primarily a café in the traditional sense, was always intended to be used by community groups, as was made clear at the time of the previous application.

15.5 GO4 has explained the reasoning behind the proposed amendments as follows:

*We have been approached by the following groups who wish to utilise the building after the 8.00pm closure.*

*1. Musikate - They are New Town based and are unable to find a meeting room for their group of young musicians to practice the Ukele. The leaders are working so not able to fit in before 8 pm.*

*2. Lazy Dog Walkers - Want to use the building to facilitate social gathering (without the dogs!!), again an 8 pm closure is too early.*

*3. Frontier Youth Trust - As a venue to have organised meetings with young people in the evening (not a youth club).*

*4. Worth Unlimited - Would like to use the building to establish a base for detached youth workers (not a youth club).*

*5. Various organisations have indicated they would like to use the building for their committee meetings, and as people are working, most of these meetings would commence around 7.30 pm and run over the allocated time.*

*6. GO4 would like to make the building available for Poetry groups, craft groups, Self help groups, where people are working during the day and only have evenings available.*

OFFICER COMMENT – Whilst this gives a flavor of the types of groups which could use the building, the use would not be restricted to these groups.

15.6 Given that there is not a change of use (but rather, perhaps, a change in emphasis) the only proposed differences are, therefore, the later opening time and the external playing of amplified music.

15.7 It is acknowledged that the general use and patterns of activity have changed at the Recreation Ground in the last few years. From being a fully-functioning recreation ground with several sports pitches and pavilion and gates which were locked every evening; the pitches are now no longer there (other than one set of goals with no pitch markings) and, since April 2014, the gates are no longer being locked. This has meant that there are sometimes activities on site later in the day, particularly in the long, light summer evenings and sometimes even later.

- 15.8 The further complication is the new Council-owned car park on Port Lane. Whilst there had been an area of hardstanding here for many years which was used for specific events; since March this year, this forty bay car park has been available 24 hours a day, seven days a week and is to be used as pay and display during the hours of 8:00am – 6:00pm, and as resident permit holder parking (for up to 20 vehicles) during the hours of 6:00pm – 8:00am.
- 15.9 Both of these elements – the 24 hour availability of the Recreation Ground and the new car park, have led to a different climate to that which local residents, some of them longstanding, including those as far away as Port Lane and Falcon Crescent, have been used to.
- 15.10 An additional observation has been amplified noise coming from the multi-use game area to the detriment of residential amenity.
- 15.11 However, the matters described above are already in place and it is important not to let these prejudice the proposal at hand other than where the proposal might exacerbate existing problems, at which point it is necessary to assess the potential harm.
- 15.12 The two different limbs of the proposal require separate judgement to begin with (although they are interlinked).
- 15.13 Regarding the **proposed hours**: The times of opening being applied for are not held to be excessive. 10pm is not classified as a night-time hour (that being judged to start at 11pm according to the World Health Organisation). Our Environmental Control team has not objected.
- 15.14 An existing problem, which had not been anticipated at the time of the previous application, is that of inconsiderate parking. This could go on two hours later in to the evening and the current application offers the chance to ameliorate matters.
- 15.15 One objector has suggested that the Port Lane car park should not be pay and display, or that Recreation Road should be resident only parking. Both of these ideas have validity, but are outside the scope of this Planning application.
- 15.16 It is unfortunate that some users of the café are choosing not to walk the short distance of 100 metres across the Recreation Ground (or 250 metres via the perimeter) either through being lazy or not wanting to spend a small amount of money, or perhaps because they are unaware of the Port Lane car park. In some cases, the elderly, or those with disabilities, will need to park nearby. However, for most people this is not the case.
- 15.17 The user of the site needs to find ways to encourage its customers to park more considerately. Signage could be of some assistance and this is covered by a proposed condition.
- 15.18 It is accepted that some site-related activity (a Ukulele group, for example) will be audible from nearby residential dwellings (the nearest properties being 25 metres away, and that being the front of these houses). However, it does not seem likely that the noise and disturbance would be so unacceptable as to render the proposal refusible.

- 15.19 It is, therefore, concluded that the hours element is acceptable.
- 15.20 Regarding the **proposed amplified music**: The potential impact of this is more easily understood. The current condition forbids external amplified music. The proposal is to allow this up to twelve times a year. Here Planning and Licensing overlap as the provision of entertainment or alcohol are licensing matters. It is presumed that the type of event that is envisaged would seem to go hand in hand with external amplified music.
- 15.21 Such events are not uncommon on public parks (Castle Park, for example, being fully licensed for such events and holding them often, albeit that these events are generally further from residential properties).
- 15.22 The Recreation Ground itself (including the pavilion building) is fully licensed, this is a situation left over from its previous use. However, it is the Council who is the licensee and not GO4, so that organisation would need to apply for a TEN. Or seek the permission of the Licence holder (i.e. Colchester Borough Council) to cover any event under the remit of the premises licence.
- 15.23 Given that such matters could, therefore, fall outside of the TEN (by simply being given the permission of the Council as licensee), it is proposed that the Planning condition explicitly states that the amplified external music will only be allowed under matters covered by the TEN and not by any other agreement.
- 15.24 This means that these events would be subject to consultation with the police and the Council's Environmental Control team. Should either of these bodies object, the application would be denied or referred to the Council's Licensing Committee.
- 15.25 This matter is already covered by the tenancy agreement between the Council and GO4. Our Community Initiatives Officer has clarified this point:
- "We have agreed that the tenant will not apply to have a full premise license on the café to sell alcohol at all times, but have agreed that should the tenant like to sell alcohol from the demised premise on a special occasion e.g. a community event, that permission will have to be granted from the Council via a Temporary Events Notice, which would be reviewed and approved by the licensing and environmental protection teams."*
- 15.26 This gives some comfort, but for the avoidance of doubt this matter is to be firmed up within a Planning condition.
- 15.27 Given that the situation would be controlled and subject to the same rigours as any other event licence application, it is held that matters of law and order and residential amenity are safeguarded. Environmental Control has further advised that, in the event of any noise issues, a Noise Abatement Notice can be served irrespective of any licence.
- 15.28 For these reasons, proposed playing of Externally-generated music up to twelve times per year and subject to TEN can be recommended for approval.



15.29 As before, it is proposed to place a personal condition on the site to prevent a general A3 use developing. It is also necessary to place an additional condition removing permitted development changes of use (without this, the building could become a shop, estate agents or office without the need for Planning permission).

## **16.0 Conclusion**

16.1 The proposal is a positive, community-based re-use of an existing community building which has already been running successfully for several months. Whilst the proposed change have raised issues of residential amenity, these are held to be dealt with and approval is recommended.

## **17.0 Recommendation**

17.1 APPROVE with conditions.

## **18.0 Positivity Statement**

18.1 The 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 and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

## **19.0 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 - Non-Standard Condition/Reason**

The development hereby permitted shall comply in all respects with the approved plans CBH/1415/7005 02 revision A, 03 revision A, 05 revision A, 06, 07 and 08 revision A, 09, **10** and 11.

Reason: For the avoidance of doubt as to the scope of this permission.

### **3 - Non-Standard Condition/Reason**

The materials used shall match those on the submitted application.

Reason: For the avoidance of doubt as to the scope of this permission.

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

The community cafe hereby permitted shall be for the use by community not for profit companies and groups only; community groups shall be allowed to use the cafe seating areas and toilet facilities.

Reason: In the interests of retaining this building as a community asset as this is the basis on which permission has been granted.

#### 5 - Non-Standard Condition/Reason

Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 2015, amended 2016, the change of use hereby approved shall be restricted to the A3 (restaurant) use applied for and for no other use.

Reason: To ensure that the use does not benefit from permitted development rights which would be inappropriate for this location.

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

The use hereby permitted shall not operate/be open to customers outside of the following times:

Weekdays: 07:30-22:00

Saturdays: 07:30-22:00

Sundays and Public Holidays: 07:30-20:00

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.

#### 7 - \*Restricted Hours of Delivery

No deliveries shall be received at, or despatched from, the site outside of the following times:

Weekdays: 07:00-19:00

Saturdays: 07:00-19:00

Sundays and Public Holidays: No deliveries.

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 delivery vehicles 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.

#### 8 - Non-Standard Condition/Reason

No external amplified music shall be permitted at any time unless a Temporary Event Notice has been granted. Amplified music must not be played on more than 12 days per year and on no more than 4 occasions in any calendar month.

Reason: To ensure that the use of amplified music does not cause harm to neighbouring amenity from the frequency of the events.

9 – Within 56 days of this permission, the applicant shall provide signage at the entrance to the building, advising customers to park considerately and to use the Port Lane car park. This sign shall be made visible at all times. Reason: To try to encourage considerate parking in this residential area.

## 20.0 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.