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Item No: 7.2

Application: 210787

Applicant: Mr M Anbarasan

Agent: Mr Tony Fisk, Chruley & Associates

Proposal: Part Change of Use to Takeaway (Fish & Chip Shop) Change of Shopfront; installation of extractor Hood & Fan & External Cold Rooms

Location: 87 Colchester Road, West Bergholt, Colchester, CO6 3JU

Ward: Lexden & Braiswick

Officer: Annabel Cooper

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee as Cllr Willetts called-in the application, the reasons for call-in being: 'the application fails to show the location, type and size of equipment needed to ensure that odours do not pervade the local neighbourhood, nor cause malfunction to the sewage system.'
- 1.2 Furthermore, Cllr Barber added further to the reasons for call-in to include: road safety, parking and highways grounds.

2.0 Synopsis

- 2.1 The proposal is for the part change of use of an existing convenience store to a hot food takeaway (Fish & Chip Shop). The key issues for consideration are the principle, impact on neighbouring residential amenity, parking and highways safety.
- 2.2 The proposal would provide economic and social benefits, as the proposed would result in a new business in West Bergholt and provide employment opportunities for 3 full time and 2 part time staff.
- 2.3 It is also considered that the proposed would be in a sustainable location and could serve a population that would be able to access the facility by foot and bicycle.
- 2.4 The application has resulted in a number of objections. It is acknowledged that there would be some impact on neighbouring amenity however it has been judged that these impacts could be suitably controlled by planning conditions which would ensure a satisfactory level of amenity is retained.
- 2.5 Both the Highways Authority and Environmental Protection have been consulted and raise no objection to the proposal. As the experts in their fields their comments hold significant weight.
- 2.6 It is considered that the positive economic and social impacts are sufficient to outweigh any concerns identified and consequently approval is recommended.

3.0 Site Description and Context

- 3.1 The site currently is minor part of a local village convenience store. The proposed change of use only relates to part of the commercial premises.

4.0 Description of the Proposal

- 4.1 Part Change of Use to Takeaway (Fish & Chip Shop), change of shopfront and the installation of extractor hood and fan and external cold rooms.

5.0 Land Use Allocation

5.1 Existing Commercial

6.0 Relevant Planning History

- 6.1 202746: Ash's Convenience Express - Single storey rear extension including raising of existing rear flat roof and new shopfront - Approved - 01/02/2021

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 be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

- 7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character

- 7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

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 West Bergholt Neighborhood Plans is relevant. Specific to this application are policies:

PP14: Expansion of Employment Sites

- 7.5 Submission Colchester Borough Local Plan 2017-2033:

The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is now completed for Part 2 of the plan. Part one of the plan has been found sound by the Inspector and has now been formally adopted. The examination of Part 2 of

the ELP was undertaken in April 2021, the Council is awaiting the Planning Inspectors comments later this summer.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

1. The stage of preparation of the emerging plan;
2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
3. The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination of Part Two, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF. The degree of weight to be afforded needs to be assessed in the light of para.48 of the Framework and, in particular, the extent of unresolved issues and the materiality of these issues.

- 7.6 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

The Essex Design Guide
Sustainable Construction

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

8.1 Highways Authority:

The Highway Authority do not object to the proposals and recommended the standard informative with regards to works within the highway.

8.2 Environmental Protection:

The Council's Environmental Protection team have not objected to the proposed and have recommended a number of conditions should planning permission be granted, these include conditions to control of fumes and odours, opening hours as well as restrictions on delivery times, site boundary noise levels and the installation of grease traps.

9.0 Parish Council Response

- 9.1 The Parish Council have stated the following:

The Parish Council objects to this application for a part change of use due to the likely impact on the community in terms of increased traffic, issues with parking, noise, odours and disturbance and litter. The application is not accompanied

with any statement of need for the proposal and lacks any information relating to these concerns. No mitigation is provided to deal with these all too obvious concerns. In addition, the times of operation are unacceptable particularly the late evening operating times which will attract additional traffic and cause disturbance to nearby residential properties. Overall, the application does not comply with PP14 of the CBC adopted West Bergholt Neighbourhood:

PP14: Expansion of Employment Sites - Proposals to upgrade or extend existing employment sites will be supported provided that:

- the impact on the amenities enjoyed by occupants of nearby properties is acceptable; and
- they do not compromise the character of the area or openness of the countryside; and
- where appropriate, they satisfactorily demonstrate expected traffic impact is acceptable in terms of highway safety and the amenity of nearby residents.

This application has not demonstrated any thought or mitigating measures to limit the impact on nearby residents in regard to:

- road safety with the proximity of an already dangerous junction at Armoury Road,
- lack of parking provision for passing trade,
- noise concerns, potential public nuisance from loitering and light pollution caused by the excessive opening hours,
- and increased litter.

The Council would also note that the potential positioning of the large flue is almost adjacent to 85 Colchester Road, whilst there is ample room to move it away from this neighbour and further into the grounds of 87 Colchester Road itself.

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

10.2 71 objections have been received. A summary of the objections is set out below:

- Parking
- Highways safety
- Increased traffic
- Inappropriate opening hours
- Adverse impact of smell
- Adverse impact of noise and disturbance
- Fire hazard
- Litter and waste
- Light pollution

- Encourage anti-social behaviour
- Health Issues (as a result of fast-food)
- Competition of existing businesses
- Impact on drainage and water systems
- Not in keeping with the character of the area

10.2 8 supporting comments have been received. A summary of the comments:

- Employment opportunity
- Would be in walking distance

11.0 Accessibility

11.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposal does not give rise to any concerns regarding discrimination or accessibility.

12.0 Air Quality

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

13.0 Planning Obligations

13.1 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 (s.106) of the Town and Country Planning Act 1990.

14.0 Report

14.1 The main issues in this case are:

- The Principle of Development
- Access and Highways Safety
- Amenity
- Environmental Protection
- Design, Scale and Form
- Planning Balance

Principle of Development

14.2 The existing convenience store is a well-established local business. Development policy DP5 states that sites and premises currently used or allocated for employment purposes will be safeguarded for appropriate employment uses. Development Policy DP7 states individual shops, will be safeguarded for A1 retail purposes. West Bergholt Neighborhood Plan policy PP14 states that proposals to upgrade or extend existing employment sites will be supported provided that the impact on the amenities enjoyed by occupants

of nearby properties is acceptable they do not compromise the character of the area or openness of the countryside; and where appropriate, they satisfactorily demonstrate expected traffic impact is acceptable in terms of highway safety and the amenity of nearby residents.

- 14.3 Only a relatively small section of the existing shop is proposed to be converted to the use as a fish and chip shop. A recent approval for an extension to the shop would ensure that minimal floor space is lost, should this be implemented. It is also considered that the diversification of the unit would see an overall improvement to the appearance of the shopfront. Therefore, it is not considered that the proposed would have an adverse impact on the retail use.
- 14.4 The introduction of a fish and chip take-away would provide additional employment opportunities for local people.
- 14.5 There are no existing fish and chips shops in walking distance the closest is in Eight Ash green. It is not considered that the introduction of a fish and chip shop would have an adverse impact on the existing businesses in West Bergholt.
- 14.6 Impact on the amenity of residential neighbours, character, traffic and highways safety will be addressed in the subsequent report.
- 14.7 It is considered that there is policy support for the expansion of existing businesses and for the creation of new employment opportunities. Therefore, it is considered that the principle of the proposed change of use is acceptable.

Access and Highways Safety

- 14.8 Development Plan policy DP17 requires all development to maintain the right and safe passage of all highways users. Development Plan policy DP19 refers to the Vehicle Parking Standards which is an adopted Supplementary Planning Document.
- 14.9 Several of the objections received cite traffic generation, parking and highways safety as primary concerns.
- 14.10 With regards to traffic generation the proposed does not raise any concerns, the proposed is well located to be able to serve a large population that would be able to travel via sustainable transport modes. It is accepted that some customers may attend by car, but this is likely to have a negligible impact on traffic generation. There have been no concerns raised by the Highways Authority.
- 14.11 The Vehicle Parking Standards sets out the vehicle parking standards across Essex. For hot food takeaways there is a maximum standard, therefore there is no requirement for parking to be provided. There is a large area to the rear of the site which could accommodate parking for staff. There is an existing lay-by which serves the existing business and would be sufficient to accommodate the proposed use.

- 14.12 The Highways Authority are the experts with regards to Highways Safety they have been consulted and have not objected to the proposed, therefore it is considered that the proposed is acceptable.
- 14.13 The proposed is acceptable in terms of traffic generation, parking and highways safety as such the development complies with Development Policies DP17 and DP19 and satisfies these elements of the Neighborhood Plan Policy PP14.

Amenity

- 14.14 Development Plan policy DP1 requires all development to be designed to a high standard that protects existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance daylight and sunlight.
- 14.15 Several of the objections received cite opening hours, odour and fumes, noise and disturbance, litter and waste as primary concerns.
- 14.16 The Environmental Protection team have reviewed the proposed and have recommended conditions to reduce the impact of the development to an acceptable level.
- 14.17 The Environmental Protection team has accepted the proposed opening hours as acceptable. The hours would be controlled by planning condition. There are also restrictions for deliveries that would be controlled by condition.
- 14.18 With regards to odours and fumes an extraction system would be required and the application shows the proposed location of the extraction flue. The Environmental Protection team have recommended a condition for further information to be submitted with regards to control measures for fumes, smells and odours. In order to be considered acceptable the measures would need to be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems.
- 14.19 A condition has been recommended to control noise from the proposed takeaway.
- 14.20 A condition would also be imposed for the provision of equipment, facilities and other appropriate arrangements for the disposal and collection of litter. Litter is also controlled by other legislation, including the Environmental Protection Act 1990. The site is already a commercial business therefore there are commercial waste facilities in existence.
- 14.21 The proposed cold store to the rear of the site is set away from the boundary with the neighbouring residential dwelling, it is also a low flat roofed unit. As such there are no concerns with regards to overbearing, light or privacy.

- 14.22 It is therefore considered that with the proposed conditions the development would preserve a satisfactory level of neighbouring residential amenity and accord with Development Policy DP1 and also to comply with the WB Neighborhood Plan Policy PP14.

Design, Scale and Form

- 14.23 The shop front is currently tired and in need of refurbishment. The proposed changes to the shop front are considered to be acceptable and would be a visual improvement on the existing. Therefore, the proposed is considered to be in accordance with Development Policy DP1.
- 14.24 The rear of the site is not visible from the public realm therefore there are no concerns with regards to proposed cold store unit. It is a small free-standing unit that reads as an ancillary subservient addition. The extraction flu is to be located to the rear of the site where it will not be visible from the public realm.

Other

- 14.25 Concerns have been raised with regards to light pollution. As the unit is located with a residential area it is considered that the light spill from the premises would have a negligible impact. Any external illumination for example on adverts would require express permission.
- 14.26 Prior to the first use of the development hereby permitted, any foul water drains serving the kitchen will be fitted with grease traps this will be controlled by condition.
- 14.27 A number of matters have been raised that are not material planning considerations.
- 14.28 Concerns have been raised with regards to fire risk, the proposed business would need to comply with all relevant legislation with regards to fire risk and would be reviewed by Building Control.
- 14.29 It is understood that a new business can bring the fear of anti-social behaviour. However, the proposed is with an established residential area and therefore there is natural surveillance from neighbouring properties and passing cars and pedestrians.
- 14.30 There are no national or local guidance that would prohibit certain commercial ventures because of potential impact on public health.

Planning Balance

- 14.31 The National Planning Policy Framework (the Framework) makes it plain that the purpose of the planning system is to contribute to the achievement of sustainable development and identifies three dimensions to sustainable development: economic, social and environmental.
- 14.32 The current proposal would provide economic and social benefits, the proposed would result in a new business in West Bergholt and provide employment opportunities, comprising 3 full-time and 2 part-time staff.
- 14.33 It is also considered that the proposed would be in a sustainable location and could serve a population that would be able to access the facility by foot and bicycle.
- 14.34 It is acknowledged that the application has resulted in a number of objections. It is also acknowledged that there would be some impact on neighbouring amenity. However it has been judged that these impacts could be suitably controlled by planning condition to ensure that a satisfactory level of amenity is protected.
- 14.35 It is considered that the positive economic and social benefits are sufficient to warrant recommendation of approval of the scheme.

15.0 Conclusion

- 15.1 To summarise, it is considered that the benefits of the scheme outweigh any potential adverse impacts and the proposal is considered to be acceptable on this basis.

16.0 Recommendation to the Committee

- 16.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

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. Premises Only for a Specific Use

The premises shall be used for hot food takeaway purposes only and for no other purpose.

Reason: For the avoidance of doubt as to the scope of the permission as this is the basis on which the application has been considered and any other use would need to be given further consideration at such a time as it were to be proposed.

3. 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:

A9705/10 'Site Location Plan' dated November 2020;
AP705/11 'Proposed Block Plan' dated Nov 2020;
AP705/12 'Ground Floor Plan' dated March 2021;
AP705/13 'Proposed Elevations' dated March 2021
AP705/14 'Proposed Outside Condenser' dated March 2021.

Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

4. Materials as Stated in Application

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings.

Reason: To ensure that materials are of an acceptable quality appropriate to the area.

5. Restriction of Hours of Operation

The use hereby permitted shall not OPERATE/BE OPEN TO CUSTOMERS outside of the following times:

Weekdays: 11:00-23:00

Saturdays: 11:00-23:00

Sundays and Public Holidays: 11:00-18:00

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

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. 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.

7. Site Boundary Noise Levels (for external refrigeration unit and kitchen odour extract).

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 0dB(A) above the background levels determined at all facades of or 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. Note: All noisy plant should be located as far from residential receptors as possible.

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.

8. 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 and current guidance. 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.

9. 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.

10. 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.

INFORMATIVES

1. Highways Informative

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:

SMO1 – Essex Highways
Colchester Highways Depot,
653 The Crescent,
Colchester
CO4 9YQ

2. 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.

3. Informative on Advertisements

PLEASE NOTE: A separate consent may be required under the Town and Country Planning (Control of Advertisement) Regulations 2007 in respect of the display of advertisements on these premises. Advice may be sought from the Local Planning Authority.

Advisory Note on Construction & Demolition

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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 and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

Informative on Any Application With a Site Notice

PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.