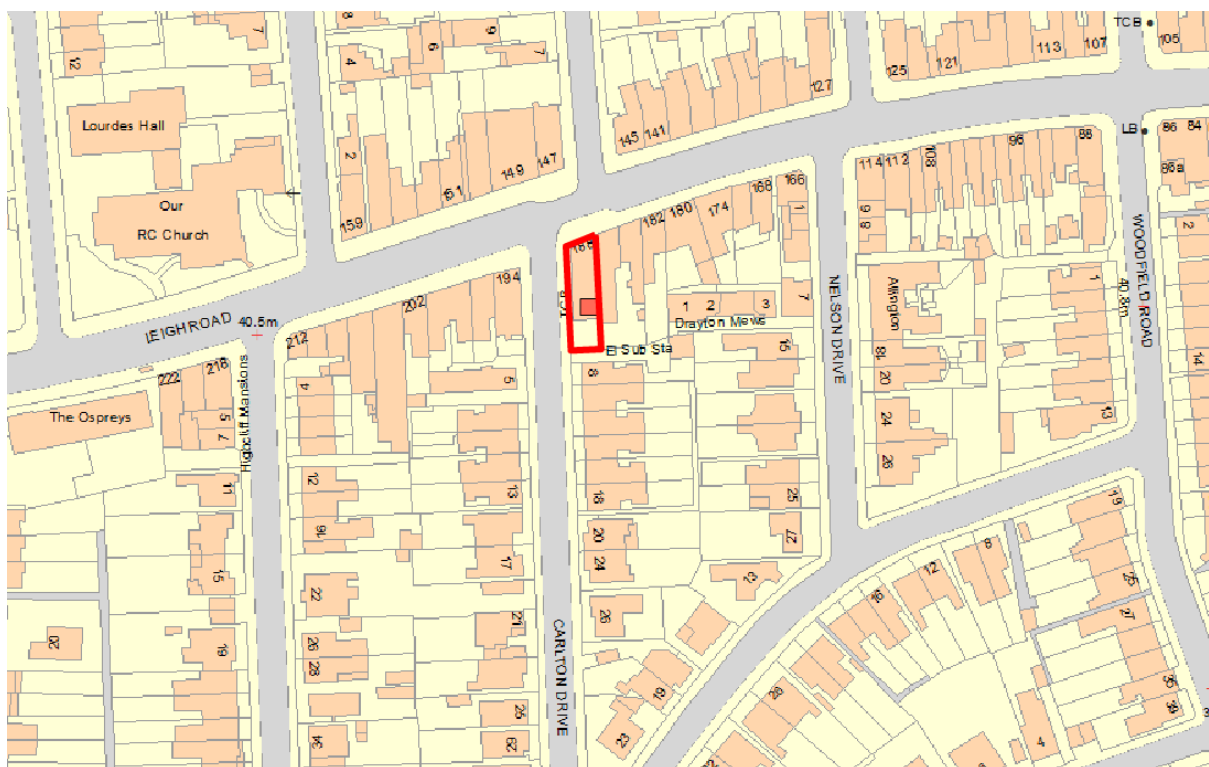


<b>Reference:</b>	17/00181/FUL
<b>Ward:</b>	Leigh
<b>Proposal:</b>	Change of use of from shop (Use Class A1) to restaurant (Use Class A3), erect single storey rear extension, alterations to front and side elevations, creation of external staircase, installation of flue and air conditioning unit and formation of refuse enclosure
<b>Address:</b>	188 Leigh Road, Leigh-On-Sea, Essex, SS9 1BT
<b>Applicant:</b>	Mr Rocco Dileone
<b>Agent:</b>	Mr C. Stone (Stone Me Ltd)
<b>Consultation Expiry:</b>	21/04/17
<b>Expiry Date:</b>	28/04/17
<b>Case Officer:</b>	Ian Harrison
<b>Plan No's:</b>	1665 01, 1665 02 and 1665 3E
<b>Recommendation:</b>	<b>GRANT PLANNING PERMISSION</b>



## **1 The Proposal**

- 1.1 The application seeks planning permission for the change of use of an existing ground floor shop to a restaurant with associated extensions and external alterations. Prior approval has previously been granted for the change of use of the existing building under the terms of application 16/01709/PA3COU.
- 1.2 The existing building at the application site measures a maximum of 20.5 metres deep and 5.9 metres wide and was most recently used as a greengrocers shop at ground floor with flats at first and second floor. An external staircase exists at the rear elevation of the building and an open storage area exists at the rear of the site. The front elevation of the shop faces Leigh Road with only a small window and a door to a storage area facing Carlton Drive.
- 1.3 The proposed extensions to the building would see a 7 metre deep and 5.9 metre wide extension at the rear of the building. The extension would feature a flat roof built to a height of 3.3 metres. The roof of the extension would be used to provide an access from the existing staircase to the public highway of Carlton Drive via a new staircase that would be provided at the rear of the extension. 1.95 metre tall walls (measured above street level) would be provided at the west side of the extension to define accesses to the proposed kitchen and the upper floor flats as well as providing a bin store.
- 1.4 The alterations to the existing building would see a set of bi-fold doors and a lobby provided at the Leigh Road frontage and two sets of bi-folding doors provided at the Carlton Drive frontage to the north of the entrance door that exists on that elevation. New doors would be provided to the Leigh Road frontage to match the appearance of the doors that are proposed to the side elevation.
- 1.5 The application shows that the ground floor restaurant would have a capacity of 55 people within the building and no outdoor dining areas.
- 1.6 The submitted plans show the provision of an extraction system within the building that would protrude from the proposed flat roof at the rear of the building, continue along the flat roof and extend along the rear of the building to a height of 1 metre above the flat roof of the building.

## **2 Site and Surroundings**

- 2.1 The application site is located to the south of Leigh Road and to the east of Carlton Drive. The site measures 27.5 metres by 6.8 metres and contains a three storey building that is described above.
- 2.2 The site is allocated as part of a secondary shopping frontage in the Council's Development Management Document.

### **3 Planning Considerations**

- 3.1 The main considerations of this application are the principle of the development, design and the impact on the street-scene, any impact on neighbouring properties and highway impacts.

### **4 Appraisal**

#### **Principle of Development**

#### **National Planning Policy Framework 2012, Core Strategy Policies KP2, CP2, CP2 and CP4, Development Management DPD Policies DM1, DM3 and DM13 and SPD1**

- 4.1 The site is located within a Secondary Shopping Frontage and it is therefore relevant to note the content of policy DM13 of the Development Management DPD which states that *“Primary and secondary shopping frontages within Southend will be managed to reinforce their attractiveness, vitality and viability within the daytime and night-time economies. The character and function of both types of frontage will be protected and enhanced.”* It also states that *“All developments in the secondary shopping frontage, as defined on the Policies Map, must maintain or provide an active frontage with a display function for goods and services rendered and the proposed use will provide a direct service to visiting members of the general public.”*
- 4.2 Policy DM13 does not include restrictions relating to the loss of retail units or require a percentage of the frontage to be retained in retail use and as such, noting that a restaurant would provide a suitably active frontage to Leigh Road. On this basis, subject to the following detailed considerations, it is considered that no objection should be raised to the principle of converting the existing retail use to a restaurant use. Prior approval has been granted for the use of the existing building at the site as a restaurant under the terms of application 16/01709/PA3COU and it is therefore considered that no objection should be raised to the principle of the proposed development.

#### **Design**

#### **National Planning Policy Framework 2012, Core Strategy Policies KP2 and CP4, Development Management DPD Policies DM1 and DM3 and SPD1**

- 4.3 It should be noted that good design is a fundamental requirement of new development to achieve high quality living environments. Its importance is reflected in the NPPF, in Policy DM1 of the Development Management DPD and in the Policies KP2 and CP4 of the Core Strategy. The Design and Townscape Guide (SPD1) also states that *“the Borough Council is committed to good design and will seek to create attractive, high-quality living environments.”*
- 4.4 In the NPPF it is stated that *“good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.”*

- 4.5 In the Council's Development Management DPD, policy DM1 states that development should "add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, use, and detailed design features."
- 4.6 Policy KP2 of Core Strategy (CS) states that new development should "*respect the character and scale of the existing neighbourhood where appropriate*". Policy CP4 of CS requires that development proposals should "*maintain and enhance the amenities, appeal and character of residential areas, securing good relationships with existing development, and respecting the scale and nature of that development*".
- 4.7 The proposed extension at the rear of the site would fill the currently undeveloped part of the application site and therefore result in built form dominating the Carlton Drive frontage. It is noted that this part of the application site is currently used as an informal storage area, with an access to the existing staircase, which is accessible from Carlton Drive through a gap that has been formed in place of former walls, with little finesse shown in creating that gap. The proposed extension has a simple flat roof form and in this instance, partially due to the limited contribution that the existing service yard makes to the character of the area, it is considered that the single storey rear extension would not cause material harm to the character or appearance of the site or the surrounding area.
- 4.8 Given that external staircases are an established feature of the application site and the neighbouring properties to the east and the fact that the first floor railings would be set back from the Carlton Drive frontage, it is considered that the impact of these elements would not be harmful to an extent that would justify the refusal of the application. The proposed walls at the Carlton Drive frontage would project forward to the same extent as the existing walls at the application site and therefore it is considered that the proposed walls would not be out-of-keeping with the established character of the streetscene.
- 4.9 The proposed alterations to the ground floor of the existing building would not be harmful to the character or appearance of the existing building. The provision of doors and a lobby at the frontage of the site would be in-keeping with other properties of the surrounding area and would result in an active frontage being provided to both Leigh Road and Carlton Drive. It is considered that this would represent the enhancement of the appearance of the existing building which currently features a large retractable awning at the north elevation and a relatively blank and uninteresting frontage to the east elevation. Likewise, it is considered that the bi-folding doors at the side elevation of the building would break up what is currently a blank and uninspiring elevation at ground floor level and therefore these works represent the visual enhancement of the site.
- 4.10 The proposed flue at the rear of the site would be partly masked from the public domain by the railings and external staircase. The visual impact of the higher parts of the flue would be comparable with the extraction system that has been granted at the site under the terms of application 16/01709/PA3COU and therefore no objection should be raised to this aspect of the proposal on visual grounds.

In the assessment of the previous application it was noted that the property on the opposite side of Carlton Drive features prominent air conditioning units and it is noted that a number of properties of Leigh Road have rear service areas which are visible and prominent within the roads that lead from Leigh Road. The use of a number of these service areas results in storage, extraction, vents and other such items being visible in the public domain. It is therefore considered that the mechanical installations at the rear of the site should be found acceptable.

### **Impact on Neighbouring Properties**

#### **NPPF; DPD 1 (Core Strategy) Policies KP2 and CP4; Development Management DPD Policies DM1 and DM3 and SPD 1 (Design & Townscape Guide (2009))**

- 4.11 Policy DM1 of the Development Management DPD also states that development should “Protect the amenity of the site, immediate neighbours, and surrounding area, having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight.”
- 4.12 The site is located within an area of mixed residential and commercial uses, with residential uses above the existing shop at the application site and a mixture of flats and offices above the adjacent Leigh Road shops. Carlton Drive, to the south of the site, features two storey dwellings and an art studio to the south west. Leigh Road is an intensively used road and it is known that the secondary shopping area has an active evening economy with restaurants and bars which represent an existing noise source.
- 4.13 The objections that have been raised by neighbouring residents are noted and it is acknowledged that the character and use of properties within Leigh Road and Carlton Drive is materially different and as such, whereas the Leigh Road does have a vibrant evening economy, Carlton Drive is of materially different character. The background noise level of the area is therefore lower and occurrences of disturbance and commotion would be fewer. It is noted that The Vine and Tigerlily have been the subject of complaints from nearby residents and that both of these properties were approved as restaurants. However, the activities occurring at those premises are not considered to provide grounds to assume that all restaurants would be operated in the same way and as such it does not follow that noise and disturbance generated at the application site would necessarily be comparable to any noise that is caused at these nearby properties. As this represents a new use it is considered that it would be possible to impose various conditions to limit the hours of use of the premises, require the bi-folding doors to be kept shut at certain times, prevent al-fresco dining, limit the playing of amplified music, limit the times when the bin store can be accessed and require details of internal sound insulation to be submitted and agreed. From this basis, it is considered that, subject to the imposition of conditions, a restaurant could be operated at this site without causing material harm to the amenities of nearby residential properties.

- 4.14 The proposed change of use would be dependent on the creation of a commercial kitchen with associated equipment, plant and extraction systems being required. Details have been provided of the installation of extraction, ventilation and air conditioning equipment that would be provided at the site and it is considered that conditions can be imposed to ensure that the operation of this equipment at the site can occur without harm to residential amenity in line with the specialist advice that has been received from the Council's Environmental Health Officers..
- 4.15 The submitted plans indicate that the area used on the roof of the kitchen for the proposed fire escape would be a small area that would only be sufficient for pedestrian access and not the gathering of people. A condition can be imposed on any permission to prevent the flat roof from being used as an amenity area. Noting the presence of existing fire escapes and upper floor windows and the blank side elevation of 8 Carlton Drive, it is considered that the proposal would not cause a loss of privacy within neighbouring properties to an extent that would justify the refusal of the application.

### **Highways and Transport Issues:**

#### **National Planning Policy Framework, Policy KP2, CP3 and CP4 of the Core Strategy, Development Management DPD Policies DM1, DM3 and DM15 and the Design and Townscape Guide.**

- 4.16 Policy DM15 states that A1 (Food), A1 (Non-Food) and A3 uses should be served by parking at a maximum rate of 1 space per 14, 20 or 5 square metres respectively. The former use of the building for retail purposes would have created some parking demand that would not have been met at the site. The 94 square metres of existing ground floor floorspace would have led to a parking demand of up to 7 spaces and the proposed use of the extended building would lead to a parking demand of up to 26 spaces.
- 4.17 No parking exists at the site to serve either the existing or proposed use, it is however noted that these are maximum standards and therefore the provision of no parking can be considered compliant with the policies of the Development Plan. Whilst the intensity of on-street parking within the surrounding area is noted it is considered that the sustainable, location and the parking restrictions that exist within the surrounding area ensures that the site can be used for the purposes set out above without causing a reduction of highway safety.

### **Other Matters**

- 4.18 An open waste storage area is shown on the submitted plans at the Carlton Drive elevation. It is considered that conditions could be imposed to require further details of this refuse store to be submitted and agreed prior to the commencement of development. The refuse store should be secure and fully enclosed.

## **Community Infrastructure Levy**

- 4.19 As the development creates less than 100 square metres of new floorspace at the application site, the development is not CIL liable.

## **5 Planning Policy Summary**

- 5.1 National Planning Policy Framework 2012.
- 5.2 Development Plan Document 1: Core Strategy Policies KP2 (Development Principles) CP1 (Employment Generating Development), CP2 (Town Centre and Retail Development), CP3 (Transport and Accessibility) and CP4 (Environment & Urban Renaissance).
- 5.3 Development Plan Document 2: Development Management Policies DM1 (Design Quality) DM3 (Efficient and Effective Use of Land), DM13 (Shopping Frontage Management outside the Town Centre) and DM15 (Sustainable Transport Management)
- 5.4 Community Infrastructure Levy Charging Schedule.
- 5.5 Supplementary Planning Document 1: Design & Townscape Guide, 2009.

## **6 Representation Summary**

### **Environmental Health Officer**

- 6.1 It has been highlighted that comments were recently provided in relation to application 16/01709/PA3COU which addressed the provision of cooking equipment and extraction equipment at the site and raised no objection to the works subject to the imposition of conditions. Additional comments have been made in relation to this application which state that:
- The conditions imposed previously should be repeated.
  - It may be the case that additional plant will need to be installed at the site and in that case the plant should comply with the requirements of the conditions (when considered alone and cumulatively).
  - The plans that have been provided create confusion about the arrangement and provision of bi-folding doors at the site.
  - Outdoor seating could be provided at the Carlton Drive elevation provided that it is used by smokers only during the evenings. The use of this area during the day could be found acceptable.

### **Leigh Town Council**

- 6.2 No objection.

## **Public Consultation**

6.3 18 neighbouring properties were notified of the proposal and a site notice was posted at the site. 6 letters of objection have been received which object to the application on the following grounds:

- Noise and disturbance from the proposed use impacting on residential amenity, directly from the use and also from people talking and smoking on the way to/from the premises.
- Lack of parking for local residents would be heightened by this proposal. More parking attendants should patrol the area.
- The proposed fire escape would be unsafe as it would be above the kitchen.
- Insufficient waste disposal facilities are proposed.
- No measures are proposed to control odours generated within the commercial kitchens.
- The flat roof should not become a roof terrace.

These concerns are noted and they have been taken into account in the assessment of the application. However, they are not found to represent a reasonable basis to refuse planning permission in the circumstances of this case.

6.4 This application has been called-in to the Council's Development Control Committee by Cllr Mulroney.

## **7 Relevant Planning History**

7.1 A similar application (16/01324/FUL) was withdrawn and subsequent prior approval application 16/01709/PA3COU for the change of use of the existing building to a restaurant was approved.

7.2 The erection of two advertising panels on the side elevation was approved in 1990.

## **8 Recommendation**

**It is recommended that planning permission be GRANTED subject to the following conditions:**

**01 The development hereby permitted shall begin not later than three years from the date of this decision.**

**Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.**

**02 The development hereby permitted shall be carried out in accordance with the following approved plans: 1665 01, 1665 02 and 1665 3E**

**Reason: To ensure that the development is carried out in accordance with the provisions of the Development Plan.**



- 03** The rating level of noise for all plant installed at this site in associated with the approved development (including but not exclusively the ventilation, refrigeration and air conditioning equipment) determined by the procedures in BS:4142:2014, shall be at least 5dB(A) below the background noise with no tonal elements. The LA90 shall be determined according to the guidance in BS:4142 at 3.5m from ground floor facades and 1m from all facades above ground floor level to residential premises. The assessment shall be carried out by a suitably qualified and experienced acoustic consultant who would normally be a member of the Institute of Acoustics. Details of this assessment and confirmation of all plant equipment that shall be installed at the site shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development hereby approved. All approved plant equipment shall be installed prior to the first use of the premises as a restaurant and the equipment shall be maintained in good working order thereafter. The plant installed must not have distinctive tonal or impulsive characteristics.

**Reason:** To protect the amenities of neighbouring residents in accordance with the National Planning Policy Framework and policy DM1 of DPD2 (Development Management)

- 04** Activities at the site hereby approved shall not give rise to structure borne noise to any noise sensitive premises including those integral to the building.

**Reason:** To protect the amenities of neighbouring residents in accordance with the National Planning Policy Framework and policy DM1 of DPD2 (Development Management)

- 05** The rating level of noise for all activities hereby approved at the site (including amplified and unamplified music and human voices) shall be at least 10dB(A) below the background noise (with no tonal elements) to ensure inaudibility in noise sensitive premises. If noise modelling software is used to calculate the likely levels or impact of the noise then any actual measurement taken such as LA90 must be taken in accordance with BS7445. The assessment should be carried out by a suitably qualified and experienced acoustic consultant who would normally be a member of the Institute of Acoustics.

**Reason:** To protect the amenities of neighbouring residents in accordance with the National Planning Policy Framework and policy DM1 of DPD2 (Development Management)

- 06** All deliveries and collections to the use hereby permitted shall be between 07:00 and 19:00 hours Monday to Friday and 08:00 and 13:00 hours on Saturday; with no deliveries taking place on Sundays or Bank Holidays.

**Reason:** To protect the amenities of neighbouring residents in accordance with the National Planning Policy Framework and policy DM1 of DPD2 (Development Management)

- 07 The use hereby permitted shall not be open to the public between the hours of 23:00 and 09:00 the following day, on any day.**

**Reason: To protect the amenities of neighbouring residents in accordance with the National Planning Policy Framework and policy DM1 of DPD2 (Development Management)**

- 08 Prior to the commencement of the development hereby approved, details of the materials used in the construction of the vent and the 'filter housing' shall be submitted to and approved in writing by the Local Planning Authority. Subsequently the development shall be undertaken in full accordance with the approved details prior to the commencement of the use hereby approved.**

**Reason: To protect the amenities of neighbouring residents in accordance with the National Planning Policy Framework and policy DM1 of DPD2 (Development Management)**

- 09 Other than within the demarked walkway shown on the plans hereby approved, the roof of the extension hereby approved shall not be used as a balcony, roof garden or similar amenity area or for any other purpose unless otherwise agreed in writing by the local planning authority. The roof can however be used for the purposes of maintenance or to escape in an emergency.**

**Reason: To protect the privacy and environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (NPPF), DPD1 (Core Strategy) 2007 policy CP4 and SPD1 (Design and Townscape Guide).**

- 10 The bi-folding doors hereby approved at the Carlton Drive frontage of the building shall be kept shut at all times between the hours of 21:00 and 09:00 the following day, on any day.**

**Reason: To protect the amenities of neighbouring residents in accordance with the National Planning Policy Framework and policy DM1 of DPD2 (Development Management)**

- 11 Any seating/tables provided within the application site, to the west flank elevation of the building at the site (fronting Carlton Drive), shall be vacated between 21:00 and 09:00 hours.**

**Reason: To protect the amenities of neighbouring residents in accordance with the National Planning Policy Framework and policy DM1 of DPD2 (Development Management)**

- 12 Except for ingress and egress, the external door to the ground floor flank elevation that serves the kitchen and the fire exit door on the same elevation shown on plan 1665 3E shall remain closed at all times and, except in cases of emergency, shall not be available for use by customers.**

**Reason: To protect the amenities of neighbouring residents in accordance with the National Planning Policy Framework and policy DM1 of DPD2 (Development Management)**

- 13 Prior to the use of the building for the purposes hereby approved, details shall be submitted of the provision of fully enclosed and secure refuse storage at the site. The approved refuse storage shall be provided in full and made available for use prior to the first occupation of the use hereby approved and be retained as such in perpetuity.**

**Reason: To ensure the provision of adequate refuse storage in accordance with policies DM8 and DM15 of DPD2 (Development Management)**

**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. The detailed analysis is set out in a report on the application prepared by officers.**

#### **Informative**

**You are advised that as the proposed extension(s) to your property equates to less than 100sqm of new floorspace the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable. See [www.southend.gov.uk/cil](http://www.southend.gov.uk/cil) for further details about CIL.**