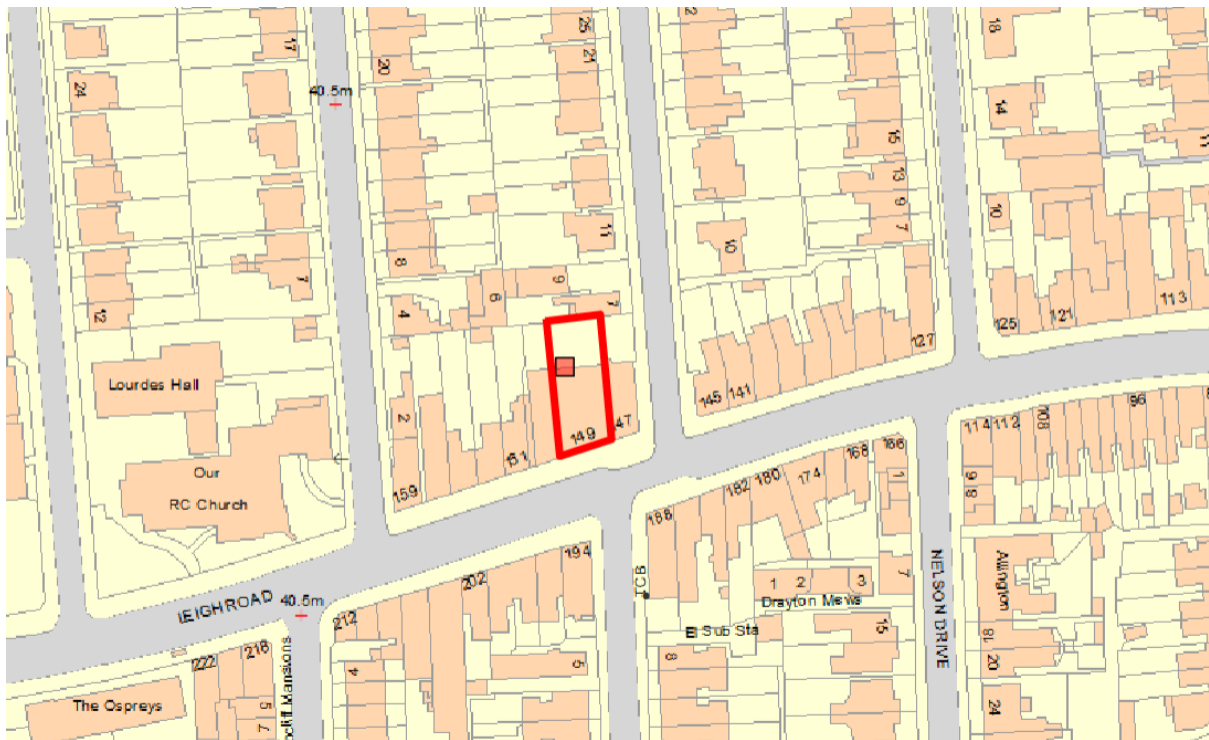


Reference:	16/01497/FUL
Ward:	Leigh
Proposal:	Change of use of first floor from offices (Class A2) to restaurant (Class A3) and ground floor restaurant (Class A3) to Bar/Restaurant (Mixed use Class A3/A4), erect single storey extension and external staircase at rear, install replacement shopfront at ground floor, alter existing extraction duct and alter elevations
Address:	149 Leigh Road, Leigh-On-Sea, Essex, SS9 1JF
Applicant:	Mr A. Artemi, The Vine
Agent:	Mr A. Merry, Design Associates
Consultation Expiry:	15.12.16
Expiry Date:	16.01.17
Case Officer:	Louise Cook/ Anna Tastsoglou
Plan numbers:	01 Rev B, 03 Rev F, 04
Recommendation:	REFUSE PLANNING PERMISSION



1 The Proposal

- 1.1 Planning permission is sought to change the use of the first floor of the building from offices (Class A2) to restaurant (Class A3) and the ground floor restaurant (Class A3) to Bar/Restaurant (Mixed use Class A3/A4 and so 'sui generis'), erect a single storey extension and external staircase at rear, install a replacement shopfront at ground floor, to alter the existing extraction duct and to alter the elevations.
- 1.2 The existing entrance to the building would be altered to allow for a widened staircase to the first floor but would remain in a similar position to the existing. The existing sliding and folding doors on the front elevation would be replaced with new stained timber units.
- 1.3 The upper floor of the building would be converted from offices to a new kitchen (33sq.m) and restaurant area (114sq.m) which would accommodate an additional 68 covers together with new toilets and bar area. The ground floor bar area would cover an area of approximately 160sqm.
- 1.4 The proposed development is CIL liable.
- 1.5 No details of opening hours have been submitted with the application.
- 1.6 It should be noted that during the course of the application, it was found that the ground floor was unlawfully used as bar/restaurant (the authorised use is as a restaurant – Ref. No.: 86/1423) and therefore, the applicant sought to regularise the use of the premises together with his application to convert the upper floor to a restaurant.

2 Site and Surroundings

- 2.1 The site is located on the northern side of Leigh Road between its junctions with Cliffsea Grove and Lord Roberts Avenue. Leigh Road is predominantly commercial in character. The property forms part of the Leigh District Centre and a Secondary Shopping parade.
- 2.2 The site is occupied by The Vine restaurant and bar at ground floor and the upper floor is used as solicitors' offices.
- 2.3 Leigh Road is predominantly characterised by two storey terrace buildings with retail units at ground floor with office space/residential flats above.
- 2.4 Lord Roberts Avenue is predominantly a residential road characterised by traditional dwellinghouses.
- 2.5 Parking on the road is restricted to maximum of two hours Monday to Saturday between 9.00 and 18.00 hours.

3 Planning Considerations

- 3.1 The main considerations of this application are the principle of the development, design and the impact on the streetscene, any impact on neighbouring occupiers, traffic and transportation and developer contributions.

4 Appraisal

Principle of Development

National Planning Policy Framework 2012, Core Strategy Policies KP2 and CP4, Development Management DPD Policies DM1, DM11 and DM13 and SPD1

- 4.1 Policy DM11 of the Development Management Document states that outside Employment Areas, proposals for alternative uses on site used (or last used) for employment purposes, including sites for sui-generis uses of an employment nature, will only be permitted where it can be demonstrated that it will no longer be effective or viable to accommodate the continued use of the site for employment purposes. Whilst the proposed development would result in loss of an office (Class A2) and 8 full time employees, the proposed expansion of the restaurant will in an additional to 17 full-time employees.
- 4.2 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.”*
- 4.3 The ground floor has a lawful use to operate as a restaurant. The proposed development will continue to provide an active frontage and will not affect the attractiveness, vitality and viability of the secondary shopping frontage. Therefore, subject to other considerations below, no objection is raised in principle to the use of the ground floor as a mixed use restaurant and bar.
- 4.4 Therefore, in this instance it is considered that the principle of development is acceptable subject to the considerations detailed below being satisfactorily addressed.

Design and Impact on the Streetscene

National Planning Policy Framework; DPD1 (Core Strategy) Policies KP2, CP4; Development Management Document Policies DM1 and DM3 and the Design and Townscape Guide SPD1 (2009)

- 4.5 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.”*

- 4.6 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.”*
- 4.7 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.”*
- 4.8 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”*.
- 4.9 The proposed shopfront will replace the existing plastic foliage with timber bi-folding doors. It is considered that this would be an improvement over the existing shopfront and there are no objections to its design and appearance in the streetscene.
- 4.10 The rear of the building will be altered by reducing the length of the existing extract flue and removing some of the first floor windows and providing a replacement fire exit and staircase. Whilst this would result in a rather blank façade, this is not a street frontage and views of this are less prominent.
- 4.11 Therefore, in light of the above, it is not considered that the proposed development would be detrimental to the character and appearance of the existing building and wider streetscene and satisfies the policies set out above.

Impact on Neighbouring Occupiers

National Planning Policy Framework; DPD1 (Core Strategy) Policies KP2 and CP4; Development Management Document Policy DM1, and the Design and Townscape Guide SPD1

- 4.12 The proposal is considered in the context of Policy CP4 of the Core Strategy (DPD1) which requires all development within residential streets to be appropriate in its setting by respecting neighbouring development, existing residential amenities and overall character of the locality.
- 4.13 Policy DM1 of the Development Management Document states that *“in order to reinforce local distinctiveness all 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...”*

- 4.14 The site is located within an area of mixed residential and commercial uses, with a mixture of flats and offices above the adjacent Leigh Road shops. Lord Roberts Avenue to the north of the site is predominantly residential in character. 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.
- 4.15 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 Lord Roberts Avenue are materially different to Leigh Road and as such the background noise level of the area is likely to be lower. It is noted that both The Vine and nearby Tigerlily have been the subject of noise complaints from nearby residents and that both of these properties were approved as restaurants. There is concern that the substantial increase in the potential number of customers to the premises would serve to exacerbate the levels of noise generated from the site. No management plan or noise assessment has been provided to the Local Planning Authority. In the absence of such evidence from the applicant to demonstrate that the proposed development would not give rise to undue noise and disturbance to neighbouring occupiers and taking into account the noise complaints that the Council has received, it is considered that the applicant has failed to demonstrate that the proposed change of use could be operated at this site without causing material harm to the amenities of nearby residential properties, contrary to the policies set out above.
- 4.16 Concern has been raised by the Council's Environmental Health Team in respect of the poor condition of the existing ventilation system. The existing extract system will be retained with only the length of the external flue shortened and the applicant has failed to submit details of the revised ducting. Given the enlargement of the proposed kitchen and numbers of covers, the applicant has failed to demonstrate that the extract and ventilation system would be adequate to prevent the spread of noise and odours which would otherwise be detrimental to the amenities of local residents and the environmental quality of the local area, contrary to policy.
- 4.17 Should permission be granted, a condition would have been imposed to ensure that the rear door and staircase is used as a fire escape only. Given the position of the fire escape, it is not considered that it would give rise to overlooking or loss of privacy neighbours at 7 Lord Roberts Avenue which has no flank windows facing the application site.
- 4.18 The proposed replacement bi-folding doors to the shopfront may result in additional noise generation from the premises. A condition restricting the opening hours would have been imposed, should permission be granted.
- 4.19 It is also noted that the proposal may lead to the need of more frequent deliveries and collection, which they have already been the reason of neighbours' complaints. Should permission be granted, a condition to secure the delivery/collection hours would have been imposed.

Traffic and Transportation

National Planning Policy Framework; DPD1 (Core Strategy) Policies KP2, CP4, CP3; Policy DM15 of the Development Management Document, the Design and Townscape Guide SPD1

- 4.20 Policy DM15 of the Development Management Document requires a maximum 1 space per 20sq.m for office (Class A2 use) and 1 space per 5sq.m for restaurants (Class A3) and bar (Class A4) uses. There appears to be no off-street parking for either the existing or proposed use. Therefore, the existing 191sq.m of first floor office floorspace would have led to a maximum parking requirement for of 10 spaces and the proposed use would lead to a maximum parking requirement for of 23 spaces, an increase of 13 spaces.
- 4.21 Whilst it is noted that the site is located within a relatively sustainable location in terms of access to public transport, there is considerable parking stress in the local area, particularly in the adjacent residential streets. The applicant has failed to demonstrate that there is sufficient on-street parking available for customers and staff. It is considered that the proposed development by virtue of the increased parking demand to serve customers and staff would exacerbate existing on-street parking stress, to the detriment of highway safety and efficiency, contrary to the policies set out above.
- 4.22 It is considered that suitable refuse storage can be provided to the rear of the site and further details can be required by condition should planning permission be granted. It is understood that waste is currently collected by private contractor.
- 4.23 No cycle parking has been shown to be provided on site and one additional cycle parking space would be required for the converted upper floor to a restaurant (a total of 4 cycle parking spaces instead of the 3 currently required for the A2 use). The change of use of the ground floor would not alter the cycle parking requirements. There is an area at the back of the property which can be used as cycle parking. Should permission be granted, provision of cycle parking would have been agreed by condition.

Developer Contributions

National Planning Policy Framework; Community Infrastructure Levy Charging Schedule

- 4.24 This application is CIL liable. If the application had been recommended for approval, a CIL charge would have been payable. If an appeal is lodged and allowed the development will be CIL liable. Any revised application would also be CIL liable.

Conclusion

- 4.25 There is no objection in principle to the loss of the existing office use to a mixed A3/A4 use at the site; however, the proposal would result in increased levels of activity and associated noise and the site has already been the subject of noise complaints and no evidence has been submitted demonstrating that the proposed expanded use and extraction system would not result in a further detrimental impact on the amenity of the nearby residential occupants in terms of undue noise levels and resulting disturbance and in additional odours. The proposal would also increase parking demand for customers and staff and no parking is provided on site. This is considered to exacerbate the existing on-street parking stress.

5 Planning Policy Summary

- 5.1 National Planning Policy Framework, 2012.
- 5.2 Development Plan Document 1: Core Strategy Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP3 (Transport and Accessibility), CP4 (The Environment and Urban Renaissance).
- 5.3 Development Management Document DPD Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM11 (Employment Areas), DM13 (Shopping Frontage Management outside the Town Centre) and DM15 (Sustainable Transport Management).
- 5.4 Design and Townscape Guide Supplementary Planning Document 1 (2009) (SPD1).
- 5.5 The Community Infrastructure Level Regulations (as amended) and The Community Infrastructure Levy Charging Schedule, 2015.

6 Relevant Planning History

- 6.1 16/02122/FUL - Change of use of first floor from offices (Class A2) to restaurant (Class A3) and ground floor restaurant (Class A3) to Bar/Restaurant (Mixed use Class A3/A4), erect single storey extension and external staircase at rear, install replacement shopfront at ground floor, alter existing extraction duct and alter elevations. Application withdrawn.
- 6.2 16/01684/FUL: Replace windows to front at first floor – Refused.
- 6.3 16/01645/FUL: Erect second floor to provide two self-contained flats, erect three storey rear extension, ground floor parking, refuse store and Juliette balconies to rear elevation and terraced area to front and side (147 - 149 Leigh Road) (Amended Proposal) – Pending consideration.
- 6.4 15/01411/FUL: Erect second floor to provide one self-contained flat, erect three storey rear extension, ground floor parking, refuse store and cycle store and Juliette balconies to rear elevation and terraced area to front and side (amended proposal) – Refused.

- 6.5 14/01082/FUL: Erect new second floor to provide two self-contained flats, erect three storey rear extension incorporating self-contained flat, ground floor parking, refuse store and cycle store and Juliette balconies to rear elevation – Refused.
- 6.6 14/00944/FUL: Clad shopfront surround with plastic foliage (Retrospective) – Refused.
- 6.7 10/01303/FUL: Erect toilet and covered walkway at rear – Approved.
- 6.8 06/00182/FUL: Retain storage container to rear (Retrospective) – Refused.
- 6.9 05/01223/ADV: Retention of halo illuminated lettering to front elevation (Retrospective) – Granted.
- 6.10 05/01158/FUL: Retention of new shopfront (Retrospective) – Approved.
- 6.11 05/00604/FUL: Erect ground floor extension at rear and install new shopfront (amended proposal) – Approved.
- 6.12 04/01859/FUL: Erect ground floor extension at rear and install new shopfront – Approved.
- 6.13 86/1423: Use shop as restaurant and install new shopfront – Approved.
- 6.14 86/0082: Erect 2nd floor extension to provide additional office accommodation and erect new external staircase at rear – Approved.

7 Representation Summary

Highways

- 7.1 Consideration has been given to the application with regard to the change of use from office to restaurant and bar. Due to the increase in potential vehicle movements associated with the proposal, it is considered that the proposed development would have a detrimental impact on the surrounding area given that it suffers from considerable parking stress. Therefore, a highway objection is raised.

Environmental Health

- 7.2 There are no details in respect of the ventilation extraction system or any ancillary plant which will be installed at the premises. The existing ventilation system at ground floor level is not considered to be in a good condition but there is no detail on the plans/submitted document in respect of the use of a new fan. In any case, any fan altered/moved or provided new must not lead to structure borne noise and should be suitably mounted to ensure isolation from the structure.
- 7.3 The extension of the business is likely to lead to increased use of the restaurant area as it is now fully segregated. The intensification of the site is likely to lead to more frequent deliveries and collection from the site which has been the source of complaint previously. Conditions are recommended.

- 7.4 The Environmental Protection team has, over several years, received complaints from nearby residents regarding noise attributed to the operation of the premises arising from the playing of music and the behaviour of patrons outside. There is concern that any increase in the number of patrons could serve to exacerbate the levels of noise generated with a resultant increase in the number of complaints.

Design

- 7.5 It is proposed to replace the existing plastic foliage with stained timber bi-folding doors, matching shopfront entrance and a new non-illuminated fascia. It is considered that this would be an improvement and this element of the proposal is welcomed.
- 7.6 No changes are proposed to the first floor front where the new restaurant would be located. The existing windows at this level are rather poorly proportioned and it is considered that the proposed change of use could be an opportunity to enhance the frontage with a change of fenestration which would be more appropriate for the use and for the streetscene generally.
- 7.7 The only other changes are to the rear where it is proposed to remove almost all the openings at first floor. This will result in a rather blank façade here however, this is not a street frontage and views of this side are less prominent.

Leigh Town Council

- 7.8 No objection.

Public Consultation

- 7.9 Neighbours notified and a site notice displayed. 12 letters of representation have been received, 11 of which object to the proposed development on the following grounds:
- Additional noise, disturbance and anti-social behaviour.
 - Exacerbate existing parking problems.
 - No taxi dropping off point so detrimental to highway safety.
 - There is no designated smoking area.
 - Increase in litter on the pavements.
 - Customers obstruct the footway.
 - Losing office spaces loses office workers, reducing daytime footfall on the street, detrimental to the shopping parade.
 - The proposal would increase the demand for parking for deliveries and customers.
 - Detrimental to the quality of life for neighbouring occupiers.
 - Request made that suitable sound insulation to be provided on party wall.
- 7.10 The application has been called into the Development Control Committee by Cllr Mulroney. Notwithstanding this, the applicant's wife works for Southend Borough Council and therefore the application falls to be considered by the Committee.

8 Recommendation

Members are recommended to REFUSE PLANNING PERMISSION for the following reasons:

01. The Council has received a number of noise complaints in relation to the current use of the premises and the applicant has failed to provide satisfactory evidence to demonstrate that the proposed development (including the existing ground floor bar/restaurant) would not give rise to further undue noise and disturbance to neighbouring occupiers, to the detriment of the amenities thereof. The proposal is therefore unacceptable and contrary to the National Planning Policy Framework; DPD1 (Core Strategy) Policies KP2 and CP4; Development Management Document Policy DM1, and the Design and Townscape Guide SPD1.

02. The existing extract and ventilation system, by reason of the enlarged kitchen and increased number of covers would be inadequately to prevent the spread of noise and odours. This would be detrimental to the amenities of local residents and the environmental quality of the local area, contrary to the National Planning Policy Framework; DPD1 (Core Strategy) Policies KP2 and CP4; Development Management Document Policy DM1, and the Design and Townscape Guide SPD1.

03. The proposed development by virtue of the increased parking demand would exacerbate existing on-street parking stress, to the detriment of highway safety and efficiency, contrary to the National Planning Policy Framework; DPD1 (Core Strategy) Policies KP2, CP4, CP3; Policy DM15 of the Development Management Document, the Design and Townscape Guide SPD1.

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The detailed analysis is set out in a report prepared by officers. In the circumstances the proposal is not considered to be sustainable development. The Local Planning Authority is willing to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development, should the applicant wish to exercise this option in accordance with the Council's pre-application advice service.

Informatives

01. Please note that this application would be liable for a payment under the Community Infrastructure Levy Regulations 2010 (as amended) if planning permission had been granted. Therefore if an appeal is lodged and subsequently allowed, the CIL liability will be applied. Any revised application would also be CIL liable.

2. The applicant is reminded that this permission does not bestow compliance with the Food Safety and Hygiene (England) Regulations 2013 or any other provision so enacted, such as those located within the Food Safety Act 1990. Applicants should contact the Council's Environmental Health Officer for more advice on 01702 215005 or at Regulatory Services Department, Southend-on-Sea Borough Council, Civic Centre, Victoria Avenue, Southend SS2 6ZG.

3. For further guidance on the control of odour and noise from ventilation systems you are advised to have regard to – Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems published by DEFRA. This can be downloaded free from www.DEFRA.Gov.UK