

1 The Proposal

- 1.1 Planning permission is sought for the change of use of the application site from an A5 (takeaway) to a mixed A3/A4 (restaurant/bar) use.
- 1.2 In addition, a single storey lean-to side extension is proposed to be demolished and replaced by a flat roof single storey addition which would measure 3.7 metres deep, by 1.2 metres wide and would have an overall height of 2.5 metres.

2 Site and Surroundings

- 2.1 The application site relates to a two storey, mid-terrace property which was formerly used as a takeaway at ground floor with offices above.
- 2.2 The surrounding area comprises mainly shops and some eateries at ground floor level with residential properties above. There are residential properties to the rear fronting onto the courtyard area and above the unit at first floor.
- 2.3 At the time of the site visit it was noted that the change of use currently proposed had not commenced but works had taken place internally i.e. bar and seating areas which reflects that of the submitted plans.
- 2.4 The application site is not located within a primary or secondary shopping frontage area and is not located within the Central Southend Area or a designated District Centre. The application site is not located within a conservation area and does not relate to a listed building.
- 2.5 The application falls to be determined by Members of the Development Control Committee at the request of Cllr J Garston.

3 Planning Considerations

- 3.1 The key considerations are the principle of the development, impacts on residential amenity, impacts upon the character and appearance of the area, highway/parking implications and CIL contributions.

4 Appraisal

Principle of the Development

The National Planning Policy Framework (NPPF) (2018), Core Strategy (2007) Policies KP1, KP2, CP1, CP2 and CP4, Development Management Document (2015) Policies DM1, DM3, DM13

- 4.1 The existing lawful use of the site is an A5 takeaway, which was granted a lawful development certificate (ref 04/01688/CLE) on 11.01.2005.
- 4.2 The NPPF states that;

“Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be

located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.”

- 4.3 The definition of main town centre uses within the NPPF includes restaurants, bars and pubs. In line with paragraph 86 of the NPPF, where a proposal fails to satisfy the sequential test, it should be refused. This is also reflected in the Council’s Core Strategy which states that employment generating development should be located using a sequential approach in accordance with the spatial priorities and roles set out in Policies KP1 and CP2. In particular, as per CP2 of the Core Strategy, Southend Town Centre will remain the first preference for all forms of retail development and for other town centre uses.
- 4.4 Notwithstanding the above, the site is located outside of a primary and secondary shopping frontage area but is located within a small row of commercial properties, including a restaurant (Syrtaki) at 60 Milton Road which was granted planning permission from A1 shop to restaurant and takeaway (A3/A5) in 2014 (14/01859/FUL). It should also be noted that the current lawful use of the site is an A5 takeaway; its last occupier being Jerk Kitchen UK.
- 4.5 In consideration of the existing use of the site, its minor scale with a floorspace for customers amounting to approximately 14.5 square metres and the location of similar food and drink establishments within the vicinity of the site i.e. Syrtaki restaurant next to the site and The Cricketers Inn opposite the site, the proposed change of use from a takeaway to a restaurant/bar is not considered to result in demonstrable harm to the vitality and viability of Southend town centre or other centres in the Borough. Furthermore, the proposed development would result in the currently vacant unit being brought back into use.
- 4.6 Whilst it has not been demonstrated that there are not sequentially preferable locations for the proposed development, it is considered that the sequential test should be applied flexibly in this case as it is clear that the proposed use would have no greater impact on town centre and shopping frontages of the Borough than the former use as set out above.
- 4.7 The principle of the development is therefore considered, on balance, to be acceptable in the specific circumstances of this case, subject to the detailed material considerations discussed below.

Design and Impact on the Character of the Area

The National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2, CP2 and CP4, Development Management Document (2015) Policies DM1, DM3 and DM13, The Design and Townscape Guide (2009)

- 4.8 National Planning Policy Framework (paragraph 124) states;

“Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”

- 4.9 Policy KP2 of the Core Strategy advocates the need for all new development to

respect the character and scale of the existing neighbourhood where appropriate and secure urban improvements through quality design. Policy CP4 of the Core Strategy states that development proposals will be expected to contribute to the creation of a high quality, sustainable, urban environment which enhances and complements the natural and built assets of Southend by maintaining and enhancing the amenities, appeal and character of residential areas, securing good relationships with existing development, and respecting the scale and nature of that development.

- 4.10 Policy DM1 of the Development Management Document advocates the need for good quality design that contributes positively to the creation of successful places. All developments should respect the character of the site, its local context and surroundings in terms of its architectural approach, height, scale, form and proportions.
- 4.11 In terms of external alterations and additions, a single storey lean-to side extension is proposed to be demolished and replaced by a flat roof single storey addition which would measure 3.7 metres deep, by 1.2 metres wide and would have an overall height of 2.5 metres. Despite the roof form being different (from lean-to to flat), the proposed extension is like-for-like in size and impact and due to its minor scale and rear siting, is not considered to be of detrimental harm to the character and appearance of the application site or the wider area.
- 4.12 There are no changes proposed to the existing shopfront and given the existing lawful use of the site the proposed use is not found to be in conflict with the character of the area.
- 4.13 The proposal is found to be acceptable and compliant with the objectives of development plan policies relating to design/character and appearance.

Impact on Residential Amenity

National Planning Policy Framework (2018); Core Strategy (2007) Policies KP2 and CP4; Development Management Document (2015) Policy DM1 and The Design and Townscape Guide (2009)

- 4.14 Policy DM1 of the Development Management requires all development to be appropriate in its setting by respecting neighbouring development and existing residential amenities *“having regard to privacy, overlooking, outlook, noise and disturbance, sense of enclosure/overbearing relationship, pollution, daylight and sunlight.”*
- 4.15 Due to its minor size, scale, height and bulk and as it replaces an existing rear/side extension of comparable size and impact, the proposed extension would not result in demonstrable harm to neighbouring occupiers through overbearing impacts, dominance, sense of enclosure, loss of light, loss of privacy or a loss of outlook.
- 4.16 In terms of levels of noise disturbance and activity from the proposed change of use to a restaurant/bar, it is considered that the level of activity and customers frequenting the site and the associated noise and disturbance are likely to be different compared to the existing lawful takeaway use. Due to commercial uses

surrounding the site, the lawful use of the site and the small size of the bar area (14.5m²), it is considered that the impact of the proposed mixed A3/A4 restaurant/bar use would be acceptable, subject to conditions to minimise noise impacts from the proposal by way of acoustic mitigation to be installed in the building and a noise mitigation management plan; particularly in consideration of the first floor flat above.

- 4.17 The submitted design and access statement notes the current opening hours for the lawful takeaway use of the site as Monday to Thursday 07:00 to 00:00 (midnight), Friday to Saturday 07:00 to 02:00, Sunday 12:00 to 22:00 (closed Bank Holidays). It should be noted that there are no planning conditions which control current opening hours. It is considered that a suitable condition could be applied to any positive decision to control the opening hours of the premises to 11:00 to 23:00 Sunday to Thursday and 11:00 to 00:00 (midnight) Friday and Saturday. These hours of operation would be unlikely to cause an unacceptable level of comings and goings to and from the site at unsocial hours. These hours are also consistent with similar existing uses located within the vicinity of the site. For example, with Syrtaki; a licensed restaurant located next to the application site and The Cricketers public house, located nearby at the junction of Milton Road and London Road.
- 4.18 Due to the reasons set out above and subject to appropriate conditions, the proposed development is not considered to result in materially adverse impact on the residential amenities of surrounding occupiers in any regard. Therefore the development is considered to be in accordance with the requirements of the development plan policies and is acceptable in regards to neighbour amenity.

Traffic and Transportation

National Planning Policy Framework (2018); Core Strategy (2007) Policies KP2 , CP3; Development Management Document (2015) Policy DM15 and the Design and Townscape Guide (2009)

- 4.19 DM15 of the Development Management Document provides parking standards which states that for an A3 or A4 use of this size (approximately 50m²), a maximum of 10 parking spaces are required. The existing A5 use would require a maximum of 3 parking spaces. No on-site parking is provided for the existing or proposed development.
- 4.20 Whilst the proposed change of use would result in a slight increase in demand for parking beyond the current lawful A5 use of the site, it is considered that due to the existing situation, the minor size of the floorspace and therefore the low levels of customers as well as the sustainable locality of the site close to London Road providing a range of main bus routes the development would not result in an unacceptable impact on parking provision which would detrimentally impact upon parking availability and highway safety. In terms of on-street parking provision, Milton Road is free of restrictions in the evening when customers are likely to visit. In addition, a drinking establishment would be less likely to be travelled to and from by car.
- 4.21 Furthermore, the movements and parking associated with waste collections and deliveries would not be materially different to the existing takeaway use and

therefore it is considered that no objection should be raised to the proposal on the grounds of highway safety. The Council's Highways department does not object to the proposed development on highway or parking grounds.

- 4.22 Therefore the proposed development is considered to be acceptable and policy compliant in the above regards.

Community Infrastructure Levy (CIL) Charging Schedule 2015.

- 4.23 The proposed development equates to less than 100sqm of new floorspace. As such, the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and no charge is payable.

5 Conclusion

- 5.1 The proposed development would be acceptable and compliant with the objectives of the relevant development plan policies and guidance as well as national planning policy/guidance. The proposal would not cause any detrimental impact on the character of the area, parking conditions in the area or highway safety nor, subject to conditions, the amenity of neighbours. This application is therefore recommended for approval subject to conditions.

6 Planning Policy Summary

- 6.1 The National Planning Policy Framework (2018)
- 6.2 Core Strategy (2007) Policies: KP1: (Spatial Strategy); KP2: (Development Principles); CP1: (Employment Generating Development); CP2: (Town Centre and Retail Development); CP3: (Transport and Accessibility); CP4: (The Environment and Urban Renaissance).
- 6.3 Development Management Document (2015) Policies: DM1: (Design Quality); DM3: (Efficient and Effective Use of Land); DM13: (Shopping Frontage Management outside the Town Centre) DM15: (Sustainable Transport Management).
- 6.4 The Design and Townscape Guide (2009)

Representation Summary

Public Consultation

- 7.1 13 neighbouring occupiers were notified of the proposal. A site notice was posted. One letter of representation has been received.

Summary of objections:

- Impact on amenity of neighbours and the area;
- Noise impacts from customers at site and coming and going;

- Anti-social behaviour;
- Wrong location for development (should be in town centre);
- Noise and smells from extraction equipment;
- Lack of parking.

Officer Comment: The 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. It is also noted that no new extraction is proposed.

Highways

7.5 There are no highway objections to this proposal.

Environmental Health

7.6 Concerns raised in relation to proposed opening until 02:00 on Friday and Saturday nights. Suggests conditions in relation to construction hours, no burning of waste etc.

7.7 Officer comment: please refer to paragraph 4.17 in relation to opening hours.

8 Relevant Planning History

8.1 04/01688/CLE - Hot food takeaway (Class A3) (Certificate of Lawfulness for an Existing Use) – Granted.

9 RECOMMENDATION

Members are recommended to GRANT PLANNING PERMISSION subject to the following conditions:

1 The development hereby permitted shall begin no 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.

2 The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, 003961 1 of 4, 003962 2 of 4, 003962 3 of 4 Rev A, 003962 4 of 4.

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

3 The premises shall not be open to customers other than between the hours of 11:00am to 23:00 Sunday to Thursday and 11:00am to 00:00am (midnight) Fridays and Saturdays.

Reason: To protect the amenity of surrounding occupiers and to protect the character the area in accordance with the National Planning Policy Framework, Policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015).

- 4 There shall be no outside dining/seating areas to the front of the building at any time without the receipt of express planning permission from the Local Planning Authority.**

Reason: In the interests of visual amenity and to protect the residential amenity of surrounding occupiers and to protect the character the area in accordance with the National Planning Policy Framework, Policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015).

- 5 No extraction and ventilation equipment shall be installed at the site in connection with the use hereby approved, unless and until full details of its location, design and specifications together with a noise assessment including any necessary noise mitigation measures have first been submitted to, and approved in writing by, the Local Planning Authority. Extraction and ventilation equipment shall only be carried out at the site in full accordance with details approved under this condition. With reference to British Standard 4142 the noise rating level arising from all plant and extraction/ventilation equipment installed shall be at least 5dB(A) below the prevailing background at 3.5 metres from the ground floor facades and 1m from all other facades of the nearest noise sensitive property with no tonal or impulsive character.**

Reason: In order to protect the amenities of the character and appearance of the site and the wider area and the amenities of surrounding residents in accordance with policies KP2 and CP4 of the Core Strategy (207) and Policies DM1 and DM3 of the Development Management Document 2015.

- 6 The use of the development hereby approved shall be only for a restaurant and drinking establishment falling under Use Classes A3 and A4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or any statutory instrument revoking and re-enacting that Order, with or without modification and shall not be used for any other purpose, including any change of use permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any order revoking and re-enacting that Order with or without modification.**

Reason: In order to protect the amenities of the character and appearance of the site and the wider area and the amenities of surrounding residents in accordance with policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document 2015.

- 7 The extended property shall only be occupied for the purpose hereby approved (a restaurant and drinking establishment) and in full accordance with a noise mitigation management plan. The details of which will have previously been submitted to the Local Planning Authority and approved in writing.**

Reason: To protect the environment of people in neighbouring properties and

general environmental quality in accordance with Core Strategy (2007) Policies KP2 and CP4, Development Management Document (2015) Policies DM1 and DM3 and Design and Townscape Guide (2009).

- 8 No external refuse or recycling storage shall take place at the site other than in accordance with details that have previously been submitted to the Local Planning Authority, approved in writing and retained as such thereafter.

Reason: In order to protect the amenities of the character and appearance of the site and the wider area and the amenities of surrounding residents in accordance with policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document 2015.

INFORMATIVES

- 1 Compliance with the decision notice does not bestow compliance with other regulatory frameworks. In particular, your attention is drawn to the statutory nuisance provisions within the Environmental Protection Act 1990 (as amended). Contact the Council's Environmental Health department on 01702 215005 for further information.
- 2 Please note that any new fascia signs etc. will require separate Advertisement Consent. For further information please visit:
https://www.planningportal.co.uk/info/200130/common_projects/4/adverts_and_signs
- 3 You are advised that as the proposed development 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 for further details about CIL.

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