

Reference:	18/01122/FUL	
Ward:	Milton	
Proposal:	Change of use from shop (Class A1) to restaurant (class A3) and install extraction vent to rear	
Address:	Mariner House, 157 High Street, Southend-on-Sea, Essex SS1 1LL	
Applicant:	Pilingstone Ltd	
Agent:	UPP – Urban Planning Practice	
Consultation Expiry:	26 th July 2018	
Expiry Date:	12 th November 2018	
Case Officer:	Abbie Greenwood	
Plan Nos:	U-PP-LP001, U-PP-EP001 Rev 4, U-PP- EE001 Rev 4, U-PP-PP001 Rev 4, U-PP-PP002 Rev 4, U-PP-PE001 Rev 4, U-PP-PS001 Rev 4, Noise Impact Assessment by Venta Acoustics ref VA2309.180820.NIA dated 7 th November 2018, Filtration Report by Purified Air dated 2.6.18, Design and Access Statement by UPP dated May 2018	
Recommendation:	Members are recommended to GRANT PLANNING PERMISSION	



1 The Proposal

- 1.1 The proposal seeks to change the use of the ground floor from retail (class A1) to a restaurant (class A3) and install an extract grille to the rear elevation at ground floor. The proposal also includes the erection of a bin store to the rear forecourt area. The plans and noise report were amended during the application to address concerns relating to the impact on neighbours.
- 1.2 No changes are proposed to the shopfront at this time.
- 1.3 In addition to the plans, the application is supported by a Design and Access Statement, a Filtration Report by Purified Air dated 2.6.18 and a revised Noise Impact Assessment by Venta Acoustics dated 9.11.18.

2 Site and Surroundings

- 2.1 The proposal site is located on the west side of the High Street within the centre of the street block which spans between Queens Road and Elmer Approach. The unit itself is situated below the 10 storey tower of Mariner House which has recently been converted to residential use under permitted development. The unit is currently vacant.
- 2.2 The application building was constructed in the late twentieth century and has a modern appearance. The High Street generally is mixed in character including both historic and modern buildings. The ground floor units are all commercial uses comprising A1-A3 uses. The upper floors are a mix of commercial and residential.
- 2.3 The application site is located within the Defined Shopping Centre of Southend and is allocated as part of the Primary Shopping Frontage in the Southend Central Area Action Plan. It falls within the High Street Policy Area.

3 Planning Considerations

- 3.1 The planning considerations in relation to this development are the principle of the development, the impact on the existing building and the character of the area, impact on neighbour amenity, any traffic and transport impact and CIL.

4 Principle of Development

National Planning Policy Framework (NPPF) (2018); Core Strategy (2007) Policies KP1, KP2, CP2, CP3 and CP4; Development Management Document (2015) Policies DM1, DM3, DM10 and DM15 ; Southend Central Area Action Plan (SCAAP) (2018) policies DS1 and PA2 Southend Design & Townscape Guide (2009)

- 4.1 The NPPF and policies noted above are seeking to support a prosperous retail centre.
- 4.2 In relation to retail development within the town centre and potential change of uses within the primary shopping frontage Policy DS1 states:

'The Council will seek to maintain a high level of retail use with at least 60% Class A1 retail use within town centre primary shopping frontage. Alternative appropriate nonretail uses, particularly Class A3 restaurants and café uses, will also be supported provided that they contribute to the vitality of the Town Centre and would result in:

- a. no more than 40% of the town centre primary shopping frontage, measured in terms of length of frontage, being used for non-retail purposes. Where nonretail uses would exceed 40% of the primary shopping frontage length, no further loss of Class A1 will be allowed;*
- b. an active frontage is retained or provided 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;*
- c. no detrimental impact to those living or working nearby, for example by causing undue noise, odour and disturbance.'*

- 4.3 The most recent survey data for the town centre found that 85.3% of the whole High Street frontage was in A1 (retail) use. The proposed change of use would alter this to 84.4%. Within the streetblock itself the proposal would change the % of A1 units from 72.2% to 60.9%. Both these figures are still within the threshold of Policy DS1. It is also considered that the proposed restaurant use would enable an active frontage to be maintained. Therefore, the principle of the proposed change of use is acceptable and policy compliant subject to the detailed considerations set out below.

Design and impact on the character of the existing building and the wider streetscene

National Planning Policy Framework (2018); Core Strategy (2007) Policies KP2 and CP4; Development Management Document Policies DM1 and DM3, Southend Central Area Action Plan (SCAAP) (2018) Policies DS1 and PA2 Southend Design & Townscape Guide (2009)

- 4.4 The Core Strategy policy KP2 requires all new development to *"respect the character and scale of the existing neighbourhood' in order to achieve a sustainable urban environment."*
- 4.5 Core Strategy Policy CP4 states *"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."*
- 4.6 The proposed change of use will maintain an active frontage to the High Street so will not have a detrimental impact on the streetscene in this regard. No changes are proposed to the shopfront within this application. The only physical change to the property is the insertion of an extract grille to the rear elevation facing onto the Farringdon Service Road and a new bin store to the rear. This is considered to be a minimal intervention on the rear elevation of the building. These changes will not have a significant impact on the character of the building or the wider streetscene although it is considered that the grille should be conditioned to match the adjacent wall and full details of the refuse store design and materials will need to be agreed.

Subject to these conditions, the design of the proposal is considered to be acceptable and policy compliant in this regard.

Impact on Neighbouring Properties

National Planning Policy Framework (2018); Core Strategy (2007) Policies KP2 and CP4; Development Management Document Policies DM1 and DM3, Southend Central Area Action Plan (SCAAP) (2018) Policy DS1 and the Southend Design & Townscape Guide (2009)

- 4.7 Policy DM1 requires new development to *'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;'*
- 4.8 Policy DS1 of the SCAAP states that *'Class A3 restaurants and cafes will be supported provided that they would result in no detrimental impact to those living or working nearby, for example by causing undue noise, odour and disturbance.'*
- 4.9 The site is located directly below residential units within the tower of Mariner House. There are also other residential units located above some of the retail units in this street block. The other neighbours are commercial uses, mainly retail. The change of use has the potential to impact on these residents in terms of noise and odours emanating from the proposed duct to the rear elevation. The proposed plan shows that the grille to the duct would be sited 2.1m above ground level and approximately 1.3m below the window to the first floor residential unit. The proposed extraction plant and fans will be located internal to the building.

Noise

- 4.10 The applicant has submitted plans of the kitchen and extraction system, a Design and Access Statement, a filtration report and a Noise Report in support of the application. The plans, including the design of the extraction system, and the noise report were revised following concerns raised by the Council's Environmental Health Officer in relation to noise and odour impact on neighbouring properties.
- 4.11 The noise report recognises that the neighbour which would be most affected by any noise generated from the proposal is the first floor flat in Mariner House which would be directly above the extract discharge point. Baseline measurements of the background noise level close to this receptor have been taken and these confirm the typical existing background noise levels to be 47dB between 0700 and 2300 and 42dB between 2300 and 0700. Following advice from the Council's Environmental Health Officer the plant has been designed to operate at a maximum of 33 dB which is more than 10dB below background noise levels. The report confirms that 2 Alnor SIL 100-300 1050mm silencers will be used to achieve this. The plant proposed is not expected to generate any tonal noise.
- 4.12 With regard to structure borne noise the report states that the ductwork will be fitted with anti-vibration rubber or neoprene mounts with a minimum deflection of 5mm which will provide 95% isolation efficiency which is higher than the usual recommended minimum of 90%.
- 4.13 The Council's Environmental Health Officer has worked with the applicant's noise

consultant to ensure that the mitigation measures proposed are suitable for the proposed use and context. He has confirmed that, subject to a condition requiring these mitigation measures set out in the revised noise report to be implemented, the proposal is acceptable in terms of noise from extraction equipment and structure borne noise.

- 4.14 The Design and Access Statement comments that the proposed hours of operation are until 12.30am on Sundays to Thursdays and 1.30am on Fridays and Saturdays and the noise report states 2am for all days. Given the proximity of residential uses and the potential for noise nuisance from customers exiting the premises at closing times, it is considered that these hours are antisocial and could cause noise disturbance to nearby residents. It is noted that a similar application in the block opposite was recently consented for opening hours of 0900-23.00 Monday – Sunday (A1 to A3 at 114-116 High street reference 18/00200/FUL). These hours were considered to be generally in accordance with opening times for similar uses in this area. It is therefore considered reasonable to restrict the opening times of the use to be the same as this recent approval.
- 4.15 It will also be necessary to impose a condition relating to delivery times as these too have the potential for noise disturbance. It is considered that these should be restricted to daytime only within the hours of 07.00 – 19.00 Monday to Friday and 08.00 – 13.00 Saturdays with no deliveries on Sundays and Bank Holidays. This is in line with other similar premises in the area.

Odour Control

- 4.16 The system plan shows there to be a grease filter, a particulate control unit, a carbon filter and an ozone generator unit (GreenTeck OT-64G) installed as part of the proposed extraction system design. As with the noise specifications, these odour control specifications have been revised following advice from Environmental Health.
- 4.17 The Councils Environmental Health Officer comments that the amended details have addressed concerns previously raised in relation to odour control.
- 4.18 Therefore it is considered, subject to the implementation of the increased specifications of plant and the proposed mitigation measures set out in the plans and noise report, and conditions controlling opening and delivery hours, the proposal has satisfactorily addressed concerns relating to the impact on neighbours. The updated proposal is now considered to have an acceptable impact on neighbours and is therefore policy compliant in this regard.
- 4.19 In relation to other aspects of neighbour amenity such as outlook and daylight, there are no extensions proposed except the bin store, it is therefore considered that there will be no material impact on these aspects of neighbour amenity for the residents in the tower above or in neighbouring properties.
- 4.20 Overall therefore, the amended plans and noise report, which include details of an enhanced specification of extraction plant, have demonstrated that the proposed change of use should not have an adverse impact on neighbour amenity.

Traffic and Transportation

National Planning Policy Framework (2018); Core Strategy (2007) Policies KP2, CP3 and CP4; Development Management Document Policies DM3 and DM15; Southend Central Area Action Plan (SCAAP) (2018) Policy DS5 and the Southend Design & Townscape Guide (2009)

- 4.21 Development Management Policy DM15 recommends a maximum of 1 space per 18 sqm for A1 uses and a maximum of 1 space per 6 sqm for A3 uses but applies a flexible approach to off street car parking for commercial sites within the town centre.
- 4.22 The existing building has an open forecourt to the rear which the Design Statement says can accommodate 6 spaces, The submitted documentation states that these would be retained in the proposal, however, it is noted that the approved cycle store to serve the new residential units is to be sited in this area and the current application also proposes a new refuse store for the A3 use here. The remaining space can accommodate 4 cars. It is assumed that these would be available for staff rather than customers.
- 4.23 The site is located in the heart of the town centre close to a variety of public transport options, a number of public car parks and other amenities. It is also considered likely that customers to the proposed restaurant would make linked trips. Overall the site is a very sustainable location.
- 4.24 The Council's Highways Officer confirms that there are no highway objections to this proposal as it is not considered that the change of use will have a detrimental impact upon the public highway. The parking and highways implications of the proposal are therefore acceptable and policy compliant in this regard.

Refuse and Recycling

- 4.25 The proposed plans include a new refuse facility to the rear of the building to serve the proposed restaurant. This will house 4 x 100 litre bins. The Council does not currently deliver commercial refuse and recycling collections so private arrangements will need to be made to suit the needs of the business. It is noted however that the proposal includes space for multiple bins so could accommodate different types of waste including recycling and food waste and that the bins are to be located in a convenient and accessible location at the rear of the premises . This is found to be an acceptable approach.
- 4.26 It is noted that concerns have been raised in respect of potential vermin in the vicinity of the refuse store. If this arose it would be dealt with separately under environmental health legislation.
- 4.27 It is considered that, if the proposal was found to be acceptable in all other regards full details of the proposed refuse store and a waste management plan can be conditioned to ensure that the refuse was properly stored and collected. This aspect of the proposal is therefore considered to be acceptable and policy compliant subject to these conditions.

Community Infrastructure Levy (CIL)

- 4.28 As the proposed alteration creates no new floorspace and is a commercial to commercial change of use, the development benefits from a Minor Development

Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable.

5 Conclusion

- 5.1 Having taken all material planning considerations into account, it is found that subject to compliance with the attached conditions and recommended mitigation measures, the proposed development would be acceptable and compliant with the objectives of the relevant development plan policies and guidance. The principle of the development is found to be acceptable and the proposal would have an acceptable impact on the amenities of neighbouring occupiers and the character and appearance of the application site, the street scene and the locality more widely. The highways impacts of the proposal are acceptable. 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), CP2 (Town Centre and Retail Development), CP3 (Transport and Accessibility) and CP4 (Environment & Urban Renaissance),
- 6.3 Development Management Document (2015): DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), Policy DM10 (Employment Sectors), and DM15 (Sustainable Transport Management)
- 6.4 Southend Central Area Action Plan (2018) Policies DS1(A Prosperous Retail Centre), DS5 (Transport, Access and Public Realm) and PA1 (High Street Policy Area Development Principles)
- 6.5 CIL Charging Schedule (2015)
- 6.6 Southend Design & Townscape Guide (2009)

7 Representation Summary

Highways

- 7.1 There are no highway objections to this proposal it is not considered that the change of use will have a detrimental impact upon the public highway.

Environmental Health

- 7.2 The Updated/Revised Report dated 07th November 2018 has been reviewed. The Contents of Paragraphs 5:2:1 & 5.2. 2 and paragraph 5.2.3 with Table 5.4 and Table 5.5 are acceptable. This Report shows that it meets the Southend Council Noise Criteria and as such that Planning Permission can be considered.

A Condition should be imposed to require the development to adhere to all the mitigation measures set out in this report.

Cadent Gas Limited (National Grid)

- 7.3 Surveys have identified that there is apparatus in the vicinity of your enquiry which may be affected by the activities specified. Due to the presence of Cadent and/or National Grid apparatus in proximity to the specified area, the contractor should contact Plant Protection before any works are carried out to ensure the apparatus is not affected by any of the proposed works.

[Officer Comment: If the proposal is found to be acceptable an informative will be added informing the application of this issue.]

Public Consultation

- 7.4 50 neighbours were notified of the proposal and a site notice was displayed. Representations were received from 8 residents raising the following issues:

- Impact on residential amenity
- Fire risk from a commercial kitchen
- Noise nuisance
- Increase in insurance premiums
- Antisocial behaviour
- Odour from kitchen extract
- Unsightly rubbish bins and associated smells and vermin
- There are other more suitable vacant premises in the town centre
- Impact on property values
- The flats to the rear are single aspect so there is no alternative source of ventilation other than the rear windows which are above the proposed extract
- Health and safety concerns
- Security concerns
- Noise from vehicles associated with the restaurant to the rear of the building including from potential delivery vehicles
- Noise from customers
- The building would be better used as a youth centre to provide activities for the youths that hang around this area
- There are already too many restaurants in this area
- Any other use would be preferable
- Unsocial opening hours
- Negative impact on resale of residential units
- The proposal should include sound proofing between the restaurant and the residential units
- 1.30am is too late and will cause disturbance to residents, this should be reduced to 11pm
- Noise associated with refuse collection
- Lack of parking
- Harm to the amenity of the area

[Officer Comment: These issues are taken into account in the appraisal above. Issues raised in respect of financial matters are not a material planning consideration.]

7.5 This application was called to committee by Councillor J Garston and Councillor Ware-Lane.

8 Relevant Planning History

- 8.1 16/01544/PA3COU - Change of use of first floor and part of ninth floor from office (Class B1(a)) to five self-contained flats (Class C3) (Prior Approval) – Prior Approval Granted
- 8.2 15/01434/FUL - Replace existing windows to front, side and rear elevations to second floor through to ninth floor – granted
- 8.3 14/01430/PA3COU - Change of use of the existing building from office use class B1(a) to 16 self-contained flats class C3 under Class J and of the Town And Country Planning (General Permitted Development) (Amendment) (England) Order 2013 – prior approval granted
- 8.4 08/01642/FUL - Install plant on roof- granted
- 8.5 08/01591/ADV -Install replacement internally illuminated fascia sign and internally illuminated projecting box sign – granted
- 8.6 08/01590/FUL - Install replacement shopfront and roller shutter – granted

9 Recommendation

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

01 The development hereby permitted shall begin not later than 3 (three) years from the date of this decision.

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

02 The development hereby permitted shall not be carried out except in complete accordance with the details shown on U-PP-LP001, U-PP-EP001 Rev 4, U-PP- EE001 Rev 4, U-PP-PP001 Rev 4, U-PP-PP002 Rev 4, U-PP-PE001 Rev 4, U-PP-PS001 Rev 4

Reason: To ensure the development is carried out in accordance with the development plan.

03 The installation of the plant equipment and noise mitigation measures associated with the development hereby approved, shall be carried out before the use commences in full accordance with the approved plans noted in condition 02 and the submitted Noise Impact Assessment by Venta Acoustics ref VA2309.180820.NIA dated 7th November 2018 and shall be maintained in perpetuity thereafter.

Reason: In order to protect the amenities of the residential occupiers of the development and surrounding residential occupiers in accordance with policies KP2 and CP4 of the Core Strategy (207) and Policies DM1 and DM3 of the Development Management Document 2015.

04 The premises shall not be open for customers outside the following hours: 09:00 hours to 23:00 hours Monday to Sunday and at no other times.

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

05 All deliveries and collections associated with the use hereby approved shall be between: 07:00-19:00 Monday to Friday; and 08:00-13:00 Saturday; with no deliveries on Sundays or Bank Holidays.

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).

06 Prior to the first occupation of the building for use class A3 purposes, design details and materials of the proposed waste storage and an associated waste management plan shall be submitted to and approved by the local planning authority. The development shall be implemented in accordance with the approved details from first occupation for the proposed use and shall be maintained and managed as such in perpetuity.

Reason: To ensure that the development is satisfactorily serviced and that satisfactory waste management is undertaken in the interests of highway safety and visual amenity and to protect the character of the surrounding area, in accordance with Policies KP2, CP3 and CP4 of the Core Strategy (2007) and Policies DM1 and DM15 of the Development Management Document (2015).

07 Prior to the first occupation of the building for use class A3 purposes, the grille to be installed on the rear elevation shall be powder coated to match the adjacent wall.

Reason: To safeguard the visual amenities of the area, in accordance with policies This is as set out in Core Strategy (2007) policy KP2 and CP4, Development Management Document (2015) Policy DM1 and advice contained within the Southend Design and Townscape Guide (2009).

08 Notwithstanding the details shown on the documents submitted and otherwise hereby approved, with reference to British Standard 7445:2003, the noise rating level arising from activities associated with the use hereby approved (including amplified music and human voices) shall be at least

10dB(A) below the background noise (with no tonal elements) level as measured at 1m from the facades of the neighbouring noise sensitive premises to ensure inaudibility in noise sensitive premises.

Reason: In order to protect the amenities of occupiers of the development and 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).

09 The installation of the odour control plant equipment measures associated with the development hereby approved, shall be as specified on approved plan reference-PP-Ps001 Rev 4 and shall be maintained in perpetuity thereafter.

Reason: In order to protect the amenities of the residential occupiers of the development and surrounding residential occupiers in accordance with policies KP2 and CP4 of the Core Strategy (207) and Policies DM1 and DM3 of the Development Management Document 2015.

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) 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.

Informatives

01 You are advised that the proposed development is for a commercial to commercial change of use with no increase in floorspace. The proposal is therefore not CIL liable as it benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no change is payable.

02 Compliance with this 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) and also to the relevant sections of the Control of Pollution Act 1974. Contact 01702 215005 for more information.

03 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

04 This permission does not convey any form of consent for external advertisement signs, consent for which will separately be required under the provisions of the Town and Country Planning Advertisement Regulations.

05 The applicant is advised that surveys have identified that there is gas apparatus in the vicinity of your site which may be affected by the activities specified. You are required to contact Cadent Plant Protection before any works are carried out to ensure the apparatus is not affected by any of the proposed works. Contact details are plantprotection@cadentgas.com or Tel 0800 688588 quoting the following reference NL_TE_Z5_3NWP_011858.