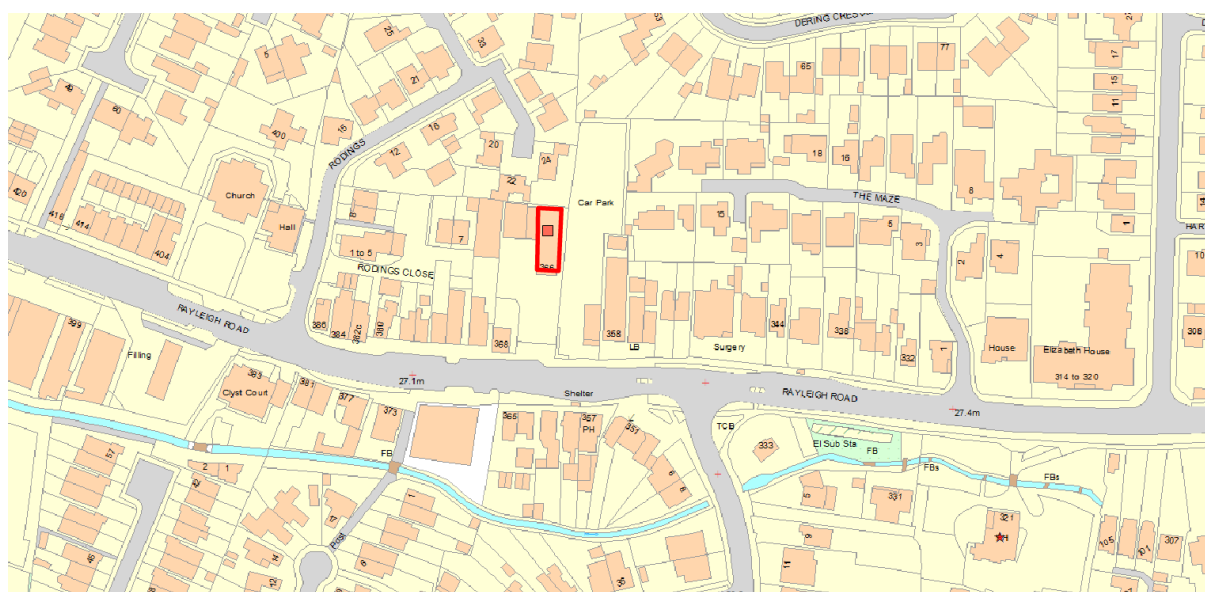


Reference:	20/01895/FUL	
Application Type:	Full Application	
Ward:	Eastwood Park	
Proposal:	Change of use from storage/distribution (Class B8) to Boxing Gym (Class E) (Retrospective)	
Address:	366 Rayleigh Road, Eastwood, Essex	
Applicant:	Mr Pinnock	
Agent:	Plainview Planning	
Consultation Expiry:	17th December 2020	
Expiry Date:	26th July 2021	
Case Officer:	Robert Lilburn	
Plan Nos:	Site Location Plan, Existing and Proposed Floor Plans, Existing Elevations	
Supporting Documents:	Planning Statement 2703/JDCM dated October 2020 Noise Impact Assessment by Nova Acoustics dated 07/06/2021	
Recommendation:	GRANT PLANNING PERMISSION subject to conditions	



1 Site and Surroundings

- 1.1 The application relates to a single storey brick building, part of a small complex of buildings situated towards the rear of a yard space and including an area of hard standing. The building is somewhat dated and of commercial character, with a roof in corrugated sheeting. Together with the surrounding curtilage it is part of a mix of uses including tyre sales and fitting and used car sales. Business rates records describe uses at the site as including storage, warehouse, workshop and car sales. The application form identifies that the property had previously been in use as a gym from 2016 to 2019.
- 1.2 The site is bordered to the east by a public car park, to the north by semi-detached dwellings and private gardens at nos.22-24 The Rodings, and to the west by a single storey commercial unit and then dwellings at Rodings Close. Ground levels rise from the north border of the site. The Rayleigh Road frontage nearby is characterised by commercial uses with flats above.
- 1.3 The application site lies partly within the identified secondary shopping frontage along Rayleigh Road. The subject building is located principally outside the secondary shopping frontage, however its access through the hard standing area is within the secondary shopping frontage as shown on the policies map of the Development Management Document. The site is located within flood zone 1.

2 The Proposal

- 2.1 The application seeks to regularise the current use of the north-east portion of the building as a boxing gym. The submitted plan identifies the siting of a boxing ring at the north end of the building and a mixed gym area along the remaining length of the unit.
- 2.2 The applicant describes that the gym would operate on a membership basis only providing personal and group training sessions. Within this a maximum of 20 members would be permitted at any one time.
- 2.3 Equipment provided includes punch bags, free weights and aerobic equipment. Showers, toilets and changing facilities are available within the premises. Opening times are described as Monday - Friday 09:00 - 21:00; Saturday 09:00 - 15:00; Sunday 10:00 - 14:00.
- 2.4 No external alterations have been carried out as part of the development. The submitted Noise Impact Assessment states that air conditioning should be installed to allow for suitable mitigation of noise while maintaining indoor temperatures. No specific details of air conditioning equipment have been provided.
- 2.5 The application has been submitted with a supporting Planning Statement. A Noise Impact Assessment by Nova Acoustics dated 07/06/2021 has been provided. The application has been submitted following planning enforcement enquiries.
- 2.6 Submission of the Noise Impact Assessment has been delayed because of the coronavirus lockdown measures, given the associated logistical issues and the need to establish a realistic assessment scenario.

- 2.7 The application has been called into Development Control Committee by Councillor Collins.

3 Relevant Planning History

- 3.1 08/00504/FUL: Use Industrial unit (Class B8) and Retail unit (Class A1) as Car Wash and Valeting (Sui Generis). Withdrawn.
- 3.2 05/01691/FUL: Erect two storey building comprising ground floor retail unit (Class A1) and two self-contained flats with roof terraces at first floor level and lay out three parking spaces at rear. Approved.
- 3.3 04/01038/FUL: Demolish existing building and erect 2 storey building comprising ground floor retail unit (Class A1) and 1 self-contained flat to first floor (Class C3) (Amended proposal). Approved.
- 3.4 04/00261/FUL: Erect 2 storey building comprising ground floor retail unit (Class A1) and 1 self-contained flat to first floor (Class C3). Refused.
- 3.5 00/00931/CLE: Motor and trailer repairs (Certificate of Lawful Use as Existing). Refused.
- 3.6 99/0207: Demolish building and erect single storey motorcycle sales unit (102m. square) to rear of 364 Rayleigh Road with associated forecourt sales area. Approved.
- 3.7 98/1081: Use part of building in storage use (class b8) for retail purposes (class a1). Approved.

4 Representation Summary

4.1 Public Consultation

15 neighbouring properties were notified and a site notice was posted. Four letters of representation have been received, three from the occupiers of one neighbouring property objecting to the application and one in support.

4.2 The objections are summarised as follows:

- Impacts of noise on amenities of neighbouring occupiers within dwellings and gardens, as a result of the use and the ventilation arrangements;
- Impacts on health and well-being of neighbouring occupiers;
- Length of time for Council to deal with the case;
- Effects of alterations on asbestos and health concerns;
- Effect on house prices

4.3 The support letter states that the development keeps the building in use and brings business to the local centre.

4.4 In addition, the applicant has provided ten letters of support from nearby business and gym customers which are summarised as follows:

- Benefits for young people and community.

4.5 The concerns raised are noted and where relevant to material planning considerations they have been taken into account in the assessment of the application. The points raised in objection are not found to justify refusing planning permission in the circumstances of this case.

4.6 **Essex Fire Service**

No objections, subject to informatives relating to water supplies for firefighting and sprinkler systems.

4.7 **Environmental Health**

The submitted details demonstrate that impact of noise on the external amenity areas of the nearest residents could be reasonably controlled through planning conditions. These include post completion testing to demonstrate the success of the mitigation measures proposed.

5 Planning Policy Summary

5.1 The National Planning Policy Framework (NPPF) (2019)

5.2 Planning Practice Guidance and National Design Guide (2019)

5.3 Core Strategy (2007): Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP1 (Employment Generating Development), CP3 (Transport and Accessibility), CP4 (Environment and Urban Renaissance), CP6 (Community Infrastructure) and CP7 (Sport, Recreation and Green Space)

5.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM10 (Employment Sectors), DM11 (Employment Areas), DM13 (Shopping Frontage Management outside the Town Centre) and DM15 (Sustainable Transport Management)

5.5 Design & Townscape Guide (2009)

5.6 CIL Charging Schedule (2015)

6 Planning Considerations

6.1 The main considerations in relation to this application are the principle of the development, design and impact on character of the area, impact on residential amenity, traffic and transportation issues and CIL.

7 Appraisal

Principle of Development

7.1 The site is partially located within a Secondary Shopping Frontage. Policy DM13 states that Secondary shopping frontages will be managed to reinforce their attractiveness, vitality and viability.

- 7.2 The development does not materially affect the secondary shopping frontage given the position and characteristics of the subject building. The proposed use brings footfall to the local centre, and in this regard is a positive aspect of the proposal generating economic activity and maintaining the site in active use. This is a consideration to be weighed in the balance.
- 7.3 Policy DM11 states that outside the Employment Areas an appraisal will be required in order to satisfy the loss of employment floorspace and/ or employment land in instances where planning permission is required. This should take the form of a qualitative appraisal referencing the quality of the building, its ability to serve a range of employment uses and any constraints on its future use for employment purposes.
- 7.4 No evidence has been provided by the applicant on marketing or suitability of the building for its on-going established use. Paragraph 22 of the National Planning Policy Framework (NPPF) states that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. In such situations, applications for alternative uses of land and buildings should be considered having regard to certain factors.
- 7.5 The applicant notes that the building has not been in a B8 use since 2016 and states that this demonstrates there is no demand for the site in this form of use. This is not considered to be conclusive evidence that there is no demand, and the failure to provide a market analysis is a negative aspect of the application. However, the qualities of the site, given the building's small size and intermingling with the car-sales lot, do not obviously lend it to a modern storage and distribution (class B8) use.
- 7.6 The application states that the use as a gym would retain employment on the site and as such there would not be loss of employment. As a Class E use, they note that a grant of planning permission would not prevent future commercial, business and service uses occupying the premises, with associated employment opportunity.
- 7.7 The representations submitted by the applicant identify public benefits associated with the development. These would be consistent with the objectives of Core Strategy Policies CP6 and CP7, supporting health and well-being within the community. The site is readily accessible being situated along a bus route and adjacent to the local centre.
- 7.8 On balance therefore given the site-specific characteristics with respect to a B8 use, its location alongside the local centre where it is accessible and benefits the shopping area, together with the identified community benefits, the use as a gym is acceptable and compliant with strategic policies in principle.

Design and Impact on the Character of the Area

- 7.9 The importance of good design is reflected in Policies KP2 and CP4 of the Core Strategy and also in Policies DM1 and DM3 of the Development Management Document. These policies seek to maintain and enhance the amenities, appeal and character of residential areas.
- 7.10 The Design and Townscape Guide also states that "*the Borough Council is committed to good design and will seek to create attractive, high-quality living environments*" and that "*proposed development [should] make a positive contribution to the local area*".

- 7.11 As noted above no external alterations have taken place in association with the change of use to the boxing gym. The submitted Noise Impact Assessment identifies the need for windows to be kept closed in the interests of neighbour amenities and therefore for an air conditioning system to be installed.
- 7.12 No details of external plant or equipment have been provided as part of the application. Such equipment would be functional in appearance. Given the qualities of the subject building, and the space available within its curtilage, it is considered that this matter can be reasonably dealt with through a condition of planning permission as the site can absorb the installation of such equipment – subject to detail – without significant detriment to its character and appearance. The proposal is therefore acceptable and policy compliant in these regards.

Impact on Residential Amenity

- 7.13 Policy DM1 of the Development Management Document 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.*”
- 7.14 The site is located close to a busy main road and the frontage surroundings nearby are other diverse commercial uses mostly of typical ‘town centre’ characteristics (e.g. shops and takeaways). There are flats located nearby above shops and commercial units. There are dwellings in close proximity to the site, and a domestic rear garden immediately adjoining the north boundary, away from the site’s active curtilage.
- 7.15 The established use of the application unit has potential to generate a level of noise and activity during typical hours of operation. No record of an existing planning condition restricting hours of operation for the established B8 use has been identified.
- 7.16 The site is located at its frontage in the context of the busy main road environment. Its passive side elevation – adjacent to which there is an empty narrow strip separating the building from the public car park – incorporates banks of windows.
- 7.17 The rear of the building is situated next to the domestic fence separating the site from the relatively large rear and rear/side garden of no.24 The Rodings. There is a substantial rise in ground level from the application site to the garden of no.24 The Rodings.
- 7.18 The narrow rear of the building, in which there are no window openings, is largely obscured from the rear of no.24, such that only the roof apex of the subject building is visible over the fence. The rear windows of no.24 face towards the public car park, and there are no side windows facing directly towards the subject building. The rear of no.22 The Rodings faces obliquely towards the application site.
- 7.19 It is considered that in this relatively active context, given the relationship between the application site and the nearest neighbouring domestic buildings and private amenity spaces, that a commercial use is capable of operating without significant detriment to the amenities of the nearest occupiers, subject to conditions.

- 7.20 The hours of operation described in the application are reasonably commensurate with the setting. The submitted Noise Impact Assessment (NIA) identifies mitigation measures to overcome the potential for outbreak of noise which could be harmful to neighbour amenities. The NIA identifies that it has been carried out on a 'worst case scenario' basis.
- 7.21 These measures are described as follows:
- Suspended ceiling sound insulation;
 - Blocking up gable end vent at the north gable using single leaf of masonry brick;
 - Windows to remain fully closed during operation of the gym;
 - Installation of a double door entry system with forced door closers;
 - Distributed public address system;
 - Cowled acoustic 'hit and miss' ventilator system;
 - External air conditioning condenser units of specification 38dB noise rating at nearest sensitive receptor.
- 7.22 The measures identified satisfactorily mitigate the potential noise breakout and associated amenity impacts on the nearest sensitive receptors. The provision of these measures can be reasonably secured through a condition of planning permission, in the interests of neighbour amenities, within a specified timeframe. A period of three months is considered reasonable for implementation in the circumstances of this case.
- 7.23 The comings and goings from the site would not be significantly harmful given the site context and the hours of use. Subject to conditions, the development would be acceptable and comply with policy in regard to neighbour amenities.

Traffic and Transportation Issues

- 7.24 Policy CP3 of the Core Strategy and Policy DM15 of the Development Management Document aim to improve road safety, quality of life and equality of access for all. Policy DM15 of the Development Management Document requires a maximum provision of one space per 10sqm of floor area for this use. In this case that would be a maximum of 16 spaces.
- 7.25 The application identifies 2 spaces within the wider curtilage of the yard, these are not within the application site. A public car park is adjacent. There are no highway objections to this proposal as the site benefits from being in a sustainable location with regards to public transport links. The proposed use has the potential to provide linked trips to other shops and services within the surrounding area.
- 7.26 No cycle parking is shown on the submitted plans or referenced in the submission. Details and provision of secure cycle storage can be required by a planning condition, as there is scope available.
- 7.27 It is not considered that parking conditions or highway safety are harmed by the development.

Community Infrastructure Levy (CIL)

- 7.28 The development is a commercial change of use with no increase in floor space. It 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 charge is payable.

8 Conclusion

- 8.1 Having taken all material planning considerations into account, it is found that subject to compliance with the attached conditions, the development is acceptable and compliant with the objectives of the relevant development plan policies and guidance. The development acceptably maintains the character and appearance of the site, street scene and the locality more widely. It would have public benefits associated with employment and health and well-being to be weighed in the balance. The amenities of neighbouring occupiers would not be significantly harmed subject to measures controllable by planning conditions. There are no significantly adverse traffic, parking or highways impacts caused by the development.

9 Recommendation

GRANT PLANNING PERMISSION subject to the following conditions:

- 01. The development is hereby permitted in accordance with the following approved plans: Site Location Plan, Existing and Proposed Floor Plans, Existing Elevations.**

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

- 02. The premises shall not be open for customers outside the following hours: Monday - Friday 09:00 - 21:00; Saturday 09:00 - 16:00; Sunday 10:00 - 16:00.**

Reason: To protect the environment of people in neighbouring properties in accordance with the National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015).

- 03. Amplified music shall not be played on the premises outside the following hours: Monday - Friday 09:00 - 21:00; Saturday 09:00 - 16:00; Sunday 10:00 - 16:00.**

Reason: In accordance with the submitted Noise Impact Assessment, to safeguard the amenities of neighbouring occupiers in accordance with the National Planning Policy Framework, Policies KP2 and CP4 of the Core Strategy, Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015).

- 04. The exterior windows and doors of the unit shall remain closed at all times during the operation of the use hereby approved.**

Reason: To safeguard the amenities of the neighbouring properties in accordance with the National Planning Policy Framework, Policies KP2 and CP4 of the Core Strategy, Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015).

- 05.i) Within three months of the date of this permission, a detailed noise mitigation scheme, with timetable for implementation, based on the noise impact assessment and outline recommendations made in the reports *Noise Impact Assessment Site Address: 366 Rayleigh Road, Eastwood, Essex, SS9 5PT Date: 22/03/2021 Project Number 5751MP Version Reference 001* and *Noise Impact Assessment Site Address: 366 Rayleigh Road, Eastwood, Essex, SS9 5PT Date: 07/06/2021 Project Number 6145MP Version Reference 001 5751MP* shall be submitted to and approved by the Local Planning Authority.**
- ii) The agreed detailed noise mitigation scheme shall be installed in full accordance with the approved timetable**
- iii) a post completion noise survey must be undertaken in accordance with the approved timetable, by a suitably qualified acoustic consultant, and within the approved timetable a report shall be submitted to and approved in writing by the Local Planning Authority. The post-completion testing shall assess performance of the agreed scheme. The gymnasium use shall thereafter and at all times be operated in full accordance with these approved noise mitigation measures in perpetuity.**
- iv) If the noise levels set out in the Noise Impact Assessment are exceeded, the use shall cease until additional noise mitigation measures have been implemented in accordance with details that are to have previously been submitted to and approved in writing by the Local Planning Authority.**

Reason: To safeguard the amenities of the neighbouring properties in accordance with the National Planning Policy Framework, Policies KP2 and CP4 of the Core Strategy, Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015).

- 06. Prior to installation of any external air conditioning units or equipment, at the premises subject of this permission, details of their specification, position and appearance shall be submitted to and agreed in writing by the Local Planning Authority. The units shall be implemented in accordance with the approved details and the specifications of the approved noise mitigation scheme before they are brought into use. If the noise levels set out in the scheme are exceeded, the use hereby approved shall cease until additional noise mitigation measures have been implemented in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority.**

Reason: In the interests of visual amenity and neighbour amenities further to the National Planning Policy Framework, Policies KP2 and CP4 of the Core Strategy, Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015) and the Design and Townscape Guide (2009).

07.i) Noise from plant and equipment at the premises subject of this planning permission including extract ventilation at the maximum operating speed shall be limited to 10 dB(A) below the background noise level measured and expressed as a LA90,15 minutes from the boundary of the nearest residential property. This shall include any penalties for noise characteristics such as tone, intermittency, etc. Background noise levels shall be established for the following periods:

- Daytime 0700 to 1900**
- Evening 1900 to 2300**
- Night 2300 to 0700**

In order to establish background noise level a representative survey shall be undertaken in accordance with BS 4142:2014+A1:2019 and/or the most suitable method to fully represent any noise source and impact at the boundary of the nearest residential properties. This shall be undertaken by a suitably competent person.

ii) Prior to operation of any plant and equipment associated with this planning permission a post completion noise survey must have been undertaken by a suitably qualified acoustic consultant, and a report submitted to and approved in writing by the Local Planning Authority. Where the proposed or actual plant and equipment noise levels are predicted to be in excess of 10 dB(A) above background noise levels a noise mitigation scheme shall be implemented in accordance with details previously agreed in writing with the Local Planning Authority.

Reason: In the interests of visual amenity and neighbour amenities further to the National Planning Policy Framework, Policies KP2 and CP4 of the Core Strategy, Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015).

08. Within three months of the date of this permission, details of secure cycle storage, together with a timetable for its implementation, shall have been submitted in writing to the Local Planning Authority for agreement. The approved secure cycle storage shall be provided at the site and made available for use by staff and/or customers within 28 days of the agreement being given by the Local Planning Authority and in accordance with the agreed details and shall be retained for the lifetime of the development thereafter.

Reason: In the interests of accessibility further to the National Planning Policy Framework, Policies KP2, CP3 and CP4 of the Southend-on-Sea Core Strategy (2007), and Policy DM15 of the Southend-on-Sea Development Management Document (2015).

09. Within three months of the date of this permission, details of refuse and recycling storage, together with a timetable for its implementation, shall have been submitted in writing to the Local Planning Authority for agreement. Refuse and recycling storage shall be provided in accordance with the approved details and made available for use by staff and customers of the premises within 28 days of agreement of the details and shall be retained for the lifetime of the development thereafter.

Reason: In the interests of neighbour amenities further to the National Planning Policy Framework, Policies KP2, CP3 and CP4 of the Southend-on-Sea Core Strategy (2007), and Policy DM15 of the Southend-on-Sea Development Management Document (2015).

10. Construction hours for the development hereby approved shall be restricted to 8am to 6pm Monday to Friday, 8am to 1pm on Saturdays and not at all on Sundays or Bank Holidays.

Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea 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.

10 Informatives:

- 1 The proposal is a commercial change of use creating no new floor space and is not CIL liable.**
- 2 There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy. Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk based approach to the inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met.**
- 3 Prior to any alterations to the existing building an appropriate Asbestos survey of the building should be undertaken and a scheme implemented to remove and safely dispose of any asbestos-containing materials in accordance with the Control of Asbestos Regulations 2012 and the applicant's/developer's Waste duty of care.**

- 4 If construction works are to be considered outside of normal hours especially overnight or are expected to cause a nuisance to existing receptors it is recommended that the applicant applies for a prior consent application under section 61 of the Control of Pollution Act 1974. A consent enables the applicant to conduct the works without the worry of enforcement provided they comply with it. The applicant will have to submit details of any noisy works including type of plant and machinery to be used, proposed daily start and finish times, consultation with nearby residents and businesses and duration and time scales of the works. The applicant will need an acoustically qualified person who will be able to calculate the predicted noise levels from the operation and the impact on nearby residents and then be able to evaluate mitigation measures that can be used. If the local authority become aware of any works that are highly likely to cause a nuisance a notice may be served under section 60 of the Control of Pollution Act 1974 to prevent this. A breach of this will represent a criminal offence. The application form and guidance are available on the Southend-On-Sea Borough Council website. The applicant can also contact the Regulatory Services Team at Southend-on-Sea Borough Council for details.**