

<b>Reference:</b>	21/00757/FUL	
<b>Ward:</b>	Eastwood Park	
<b>Proposal:</b>	Change of use from retail (Class E) to restaurant and takeaway (Class E and Sui Generis), install extraction flue system to rear and form new rear access	
<b>Address:</b>	153 Rayleigh Road Eastwood Essex SS9 5XE6RL	
<b>Applicant:</b>	Mr M Kugathas	
<b>Agent:</b>	Mr T AY	
<b>Consultation Expiry:</b>	21.07.2021	
<b>Expiry Date:</b>	03.09.2021	
<b>Case Officer:</b>	Oliver Hart	
<b>Plan Nos:</b>	<b>21.01; 21.02; 21.03; 21.04A; 21.05; 21.06; Odour Management Plan; Noise Impact Assessment Issue 02</b>	
<b>Recommendation:</b>	<b>Members are recommended to: GRANT PLANNING PERMISSION subject to conditions</b>	



## **1 Site and Surroundings**

- 1.1 The application site contains a three storey mid-terrace building within a small parade of ground floor commercial units with residential flats above. The ground floor of the application building is presently vacant although most recently it was in use as a florists. The neighbouring uses in the parade include a hairdressers to the south and an off licence / corner shop, dry cleaners and hot food takeaway to the north. The wider surrounding area is mainly residential in character. Immediately to the front of the site is a slip road off Rayleigh Road which provides parking in front of the units within the terrace.
- 1.2 The site is located within a secondary shopping frontage. It does not have any other specific allocation within the Development Management Document Proposals Map.

## **2 The Proposal**

- 2.1 The application seeks planning permission for a change of use of the ground floor commercial unit (Class E) to a mixed-use restaurant/takeaway (Sui Generis). Other alterations include a new access to the ground floor rear elevation to serve the ground floor commercial unit and an extractor flue to the rear. The flue design was amended during the course of the application siting it closer to the rear wall.
- 2.2 Details of signage have been submitted. These are to be assessed under different regulations for which a separate advertisement consent application is under consideration.
- 2.3 Aside from the advertisement signage no exterior alterations are proposed to the front of the ground floor unit. To the rear of the building would be refuse storage facilities for the commercial unit. There would be some changes to the internal layout of the commercial unit to facilitate cooking equipment, a new serving counter and seating areas toward the front of the unit.
- 2.4 The proposed hours of operation would be 08:00 – 23:00hrs (Monday -Sunday).
- 2.5 Councillor Collins has called the application in for consideration by the Development Control Committee.

## **3 Relevant Planning History**

- 3.1 21/00758/ADV- Install one internally illuminated fascia board and one internally illuminated projecting sign to front- pending consideration

## **4 Representation Summary**

### **Public Consultation**

- 4.1 9 neighbours were individually notified and a site notice was displayed. 26no. representations and 2 petitions, one comprising 48 signatures and the other 16 signatures were received. Summary of objections;
- Amenity concerns relating to potential odour impacts from fryers and additional noise and disturbance from vehicles frequenting the new use.
  - Additional litter/refuse concerns- potential for rats and other vermin

- Over-proliferation of takeaway uses in the area.
- Potential hub for anti-social behaviour
- Council should be promoting healthy eating
- Parking concerns
- Highway safety concerns from potential queues to front of the unit.
- Detrimental impact to health of the parade.
- Drainage concerns
- Visual amenity impact resulting from proposed flue
- Illuminated signs would be detrimental to the character and appearance of the area.

Neighbour re-notification was carried out on receipt of the revised plans and a further 3 responses were received. The responses related to ensuring that initial objections initially lodged (above) still stand.

**[Officer Comment]** All relevant planning considerations have been assessed within the appraisal section of this report. These concerns are noted and where they relate to planning concerns, have been taken into account in the assessment of the application however they were not found to represent a justifiable reason for refusal in this instance. Issues relating to the illuminated signs have been dealt with under separate regulations.

## **Environmental Protection**

- 4.2 The Application has provided a Detailed Extract System Drawing: See Drawing No: 030/P/21.04 dated April 2021 for the Proposed Extract duct showing how to mitigate odour nuisance impact on nearby properties especially on the upper floors (See odour management proposal). A revised Noise Impact Assessment has also been submitted following re-location of the extractor flue closer to the rear wall of the building.

The Design /Access Statement has been reviewed in terms of EH.

The Hours of Use are from 08:00 to 23:00 hrs (Monday to Sunday).

The Amended Noise Impact Assessment by DAA Group dated 21/07/2021 for the change in the Extract Location position has been reviewed and the contents meets L90 -10dB(A) of BS4142 :2014 See Paragraph 6.0 Sound Insulation Scheme and also Noise Emission Calculation Data Sheet (Kitchen Extract System).

EH is able to recommend planning permission subject to the relevant conditions as the detailed Noise Impact Assessment of BS4142:2014 meets L90 -10dB(A) for all noise sources including structure- borne noise.

## **Highways**

- 4.3 No objections raised.

## **5 Planning Policy Summary**

- 5.1 The National Planning Policy Framework (NPPF) (2021).
- 5.2 Planning Practice Guidance and National Design Guide (2019).

- 5.3 Core Strategy (2007): Policies KP1 (Spatial Strategy), KP2 (Development Principles) KP3 (Implementation and Resources) Policy CP1 (Employment Generating Development) CP2 (Town Centre and Retail Development) CP3 (Transport and Accessibility) and CP4 (Environment and Urban Renaissance)
- 5.4 Development Management Document (2015) DM1 (Design Quality), DM2 (Low Carbon Development and Efficient Use of Resources), DM3 (Efficient and Effective Use of Land), DM13 (Shopping Frontage Management outside the Town Centre) and DM15 (Sustainable Transport Management).
- 5.5 Design & Townscape Guide (2009).
- 5.6 Community Infrastructure Levy (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 the character of the area, living conditions for future occupiers, impact on neighbouring properties, any traffic and transport issues, sustainability and CIL (Community Infrastructure Levy) considerations.

## 7 **Appraisal**

### **Principle of the development**

- 7.1 This proposal is considered in the context of the relevant Council policies relating to new development and design. Also of relevance are the National Planning Policy Framework including section 12 (Achieving well-designed places) and Core Strategy Policies KP2, CP4 and CP8.
- 7.2 Policy KP2 of the Core Strategy requires that all new development contributes to economic, social, physical and environmental regeneration in a sustainable way through securing improvements to the urban environment through quality design, and respecting the character and scale of the existing neighbourhood. Policy CP4 requires that new development be of appropriate design and have a satisfactory relationship with surrounding development.
- 7.4 Policy DM13 of the Development Management Document states; *“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.”*
- 7.5 The site is located within a Secondary Shopping Frontage. Appendix 5 of the Development Management Document sets out potentially acceptable uses according to centre hierarchy. For existing local centres elsewhere (i.e. not town or district centres) at street frontage level a Sui Generis use is potentially acceptable. Given there is no restriction on the uses within this area of Rayleigh Road and having regard to the retention of an active frontage, it is considered that the proposed use, part comprising restaurant but also with takeaway use of the ground floor would be acceptable in principle and would integrate acceptably with the existing commercial parade, subject to compliance with other relevant planning policies and guidance and

planning considerations.

- 7.6 On this basis and subject to the following detailed considerations, no objection is raised to the principle of the use.

### **Design and Impact on the Character of the area**

- 7.7 Good design is a fundamental requirement of new development to achieve high quality living environments. Its importance is reflected in the NPPF (section 12) and in Policies KP2 and CP4 of the Core Strategy and also in Policies DM1 and DM3 of the Development Management Document. 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.”
- 7.8 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 improvements to the urban environment through quality design*”.
- 7.9 Policy DM1 of the Development Management Document states that all 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”.
- 7.10 Policy DM3 (1.) advises that: The Council will seek to support development that is well designed and that seeks to optimise the use of land in a sustainable manner that responds positively to local context and does not lead to over-intensification, which would result in undue stress on local services, and infrastructure, including transport capacity.
- 7.11 The character of the area is mixed, but predominately retail uses exist within the vicinity of the site at ground floor. The proposed change of use of the building is not accompanied by any alterations to the ground floor front elevation. Internal reconfiguration of the ground floor restaurant to facilitate the new restaurant/take away use, including provision of cooking equipment, counter space, store and seating areas are shown. These would have no material character and appearance impact. To the rear, a new access, extractor flue and waste enclosure (within the rear forecourt area) are proposed. The detailed position of the proposed extractor flue was amended during the course of the application moving it further back towards the rear elevation so reducing its prominence. The new rear access and waste enclosure would not be visible from the public highway or from neighbouring properties. Whilst glimpsed views of the extractor flue would be possible from the rears of gardens of properties adjacent to the rear forecourt area along Willow Close and Rayleigh Road to the south, the separations involved (between 12.5m-20m) are such that it is not considered that they would be visually prominent to the detriment of visual amenity or the character and appearance of the rear garden scene.
- 7.12 On this basis, it is considered that these alterations are acceptable and that they would integrate satisfactorily within the existing commercial nature of the unit. Associated advertisements in connection with the proposed use can be controlled under the separate advertisement consent application.

- 7.13 It is therefore considered that the proposed development would be acceptable and would comply with policy in the above regards.

### **Impact on Neighbouring Properties**

- 7.14 Paragraph 343 of The Design and Townscape Guide (2009), under the heading of Alterations and Additions to Existing Residential Buildings states, amongst other criteria, that extensions and alterations must respect the amenity of neighbouring buildings and ensure not to adversely affect light, outlook or privacy of the habitable rooms in adjacent properties. Policy DM1 of the Development Management Document also states that development should *“Protect the amenity of the site, immediate neighbours, and surrounding area, having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight.”*
- 7.15 The site is located in a secondary shopping frontage within an area of mixed commercial uses, with residential flats above. The proposal does not include any external seating areas. There are separate residential properties immediately above and to the east and west of the application site within the parade and the rear of the application site. The site fronts a main road. The proposed restaurant and takeaway use would alter the pattern and level of visitors compared with the premises' existing use and would generate a degree of noise and activity including fully into evening hours. This could happen were the premises changed solely to a restaurant within Class E of Use Classes Order which was introduced to enable and encourage commercial diversification in the interest of the economy (ie without the need for express planning permission from this Local Planning Authority). This is a factor to which due weight must be applied in balancing the merits of this proposal.
- 7.16 It is considered that this area has an active evening economy with other premises including a convenience supermarket representing existing noise sources in this section of Rayleigh Road. As such this locality already experiences ambient noise levels higher than reasonably expected within a wholly residential setting. The application form indicates proposed opening times of the premises from 08:00 to 23:00, Monday to Sunday. It is considered on balance that the proposed change of use would not alter the patterns of activity or noise levels within the vicinity to an extent that would cause significant harm to residential amenity. Environmental Health have not objected subject to a condition restricting the opening times. The proposed hours of operation would be generally in accordance with surrounding opening times for similar uses and no objection is raised on this basis.
- 7.17 It is not considered that the proposal would result in a material loss of privacy or overlooking harmful to neighbouring occupiers' amenity nor would it give rise to any detrimental overbearing, perceived or actual dominant impacts or harmful loss of light including by reason of formation of a new rear access which would lead to an existing garage court to the back of these and neighbouring premises.
- 7.18 The proposal is dependent on the creation of a commercial kitchen with associated plant and equipment. This would include the installation of noise and odour mitigation measures including a kitchen extraction flue to deal with the emission of smells and odours from the proposed development and noise from associated plant and equipment. The proposed flue has been re-positioned during the course of the application to reduce its prominence when seen from the nearby windows of neighbouring upper floor dwellings and is considered acceptable in this respect.

Details of noise and odour mitigation measures have been submitted with the application. These details demonstrate compliance with BS 4142 :2014. On this basis, the Environmental Health service have not objected to the proposal subject to relevant conditions.

- 7.19 In light of the above it is reasonable to conclude on balance that the impacts of noise and activity from the proposed commercial premises would not be materially harmful to the amenity of occupiers of the adjacent flats in the parade subject to conditions. The proposed development would on balance be acceptable and policy compliant in the above regards.

### **Traffic and Transport Issues**

- 7.20 Policy DM15 states that each flat should be served by one parking space. Policy DM15 also states that “*Residential vehicle parking standards may be applied flexibly where it can be demonstrated that the development is proposed in a sustainable location with frequent and extensive links to public transport and/or where the rigid application of these standards would have a clear detrimental impact on local character and context.*”
- 7.21 Development Management Policy DM15 recommends a maximum of 1 space per 18 sqm for retail (former A1) uses and a maximum of 1 space per 6 sqm for restaurant (former A3 uses). For take-away establishments the standard is 1 space per 20m sqm. The site is located within a sustainable location in relation to public transportation frequency and links. On street parking is located along the slip road off Rayleigh Road and as such, the proposal is considered not to harm parking provision and availability. Highways officers have raised no objection.
- 7.22 The proposal is acceptable and policy compliant in the above respects.

### **Community Infrastructure Levy (CIL)**

- 7.23 The proposed development would not create any additional floorspace at the application site. The development 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 proposed development would on balance be acceptable and compliant with the objectives of the relevant development plan policies and guidance. The proposal would on balance have an acceptable impact on the amenities of neighbouring occupiers, the shopping frontage and wider centre within which it would be located, the character and appearance of the building and the locality more widely. The highways impacts of the proposal are acceptable. This application is therefore recommended for approval subject to conditions.

## **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 be carried out and operated in accordance with the approved plans: 01; 02; 03; 04; 05; 06; Odour Management Plan by Delta Tech Ltd.; Noise Impact Assessment by DAA group Ltd.**

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

**03 The development hereby approved shall be operated in strict accordance with the recommendations contained within the Odour Management Plan (by Delta Tech Ltd.)**

**Reason: In order to protect the amenities of the surrounding occupiers in accordance with policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015).**

**04 In accordance with the contents of 'paragraph 6.0 (Sound Insulation Scheme) and Appendix B -Calculations' contained in the Revised Noise Impact Report (Issue 02) by DAA Group Ltd., the noise rating level arising from operation of the extractor flue hereby approved must be sufficient so as to meet BS 4142:2014 i.e. to not exceed 10dB(A) below the prevailing background noise level measured at the nearest noise sensitive properties.**

**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).**

**05 Prior to the first operation of the use hereby approved, details of the design and materials of the proposed waste storage and an associated waste management plan shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in full accordance with the approved details from its first operation and shall be maintained and managed as such for the lifetime of the development.**

**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).**

**06 The ground floor unit of the development hereby approved shall solely be used as a sui generis restaurant and takeaway use or for purposes falling within Class E and shall be used for no other purposes including any change of use permitted under the Town and Country Planning (General Permitted Development) Order 2015 (as amended) or any revocation, amendment or re-enactment of that order.**



**Reason:** To ensure the development is implemented in accordance with the permission sought and to enable the Local Planning Authority to control the impact of the use of the premises within the Use Class specified in accordance with the National Planning Policy Framework, Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).

- 07** The use hereby approved shall only be open for customers during the following hours: 08:00 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 the advice contained in the Design and Townscape Guide (2009).

#### **Informatives**

- 01** You are advised that as the development does not result in new floorspace the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable. See [www.southend.gov.uk/cil](http://www.southend.gov.uk/cil) for further details about CIL.
- 02** You should be aware that in cases where damage occurs during construction works to the highway in implementing this permission that Council may seek to recover the cost of repairing public highways and footpaths from any party responsible for damaging them. This includes damage carried out when implementing a planning permission or other works to buildings or land. Please take care when carrying out works on or near the public highways and footpaths in the borough.
- 03** The applicant is reminded that this permission 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 the noise provisions within the Control of Pollution Act 1974. Applicants should contact the Council's Regulatory Services Officer in Environmental Protection for more advice on 01702 215005 or at Regulatory Services, Southend-on-Sea Borough Council, Civic Centre, Victoria Avenue, Southend SS2 6ER'.
- 04** The applicant is also reminded that this permission is separate to the need to comply with Food Safety and Health & Safety at Work laws. These will include the Food Safety Act 1990 (as amended), the Food Hygiene (England) Regulations 2006, Regulation (EC) 852/2004 and the Health and Safety at Work Etc. Act 1974. Applicants should contact the Council's Regulatory Services Officer for Food and Health and Safety for more advice on 01702 215005 or at Regulatory Services, Southend-on-Sea Borough Council, Civic Centre, Victoria Avenue, Southend SS2 6ER.
- 05** This permission does not convey any form of consent for external advertisement signs, consent for which is required under the provisions of the

## **Town and Country Planning Advertisement Regulations.**