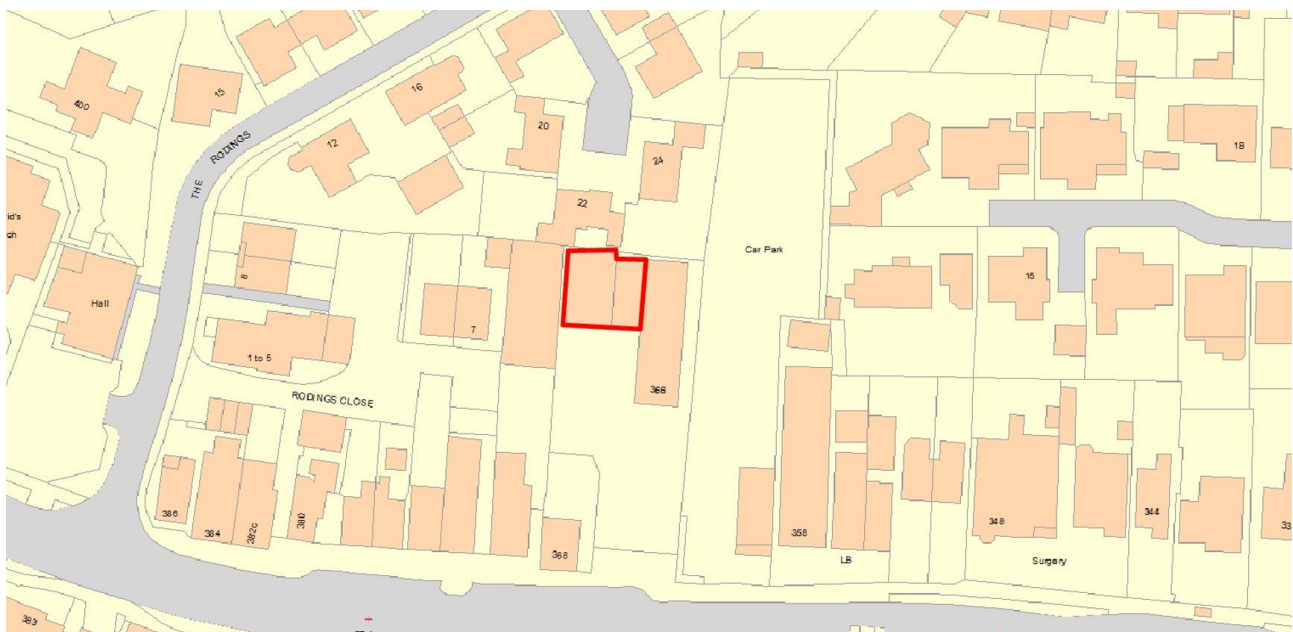


Reference:	21/02450/FUL	
Application Type:	Full Application	
Ward:	Eastwood Park	
Proposal:	Change of use from storage/distribution (Class B8) to tyre sales and fitting (Class Sui Generis)	
Address:	366 Rayleigh Road, Eastwood, Essex	
Applicant:	Karsaz Hassan	
Agent:	Nicholas Kingsley Smith of Kingsley Smith Solicitors LLP	
Consultation Expiry:	10th February 2022	
Expiry Date:	9th March 2022	
Case Officer:	Robert Lilburn	
Plan Nos:	Location Plan, Site Plan	
Supporting Document:	Supporting statement re tyre sales and fitting at 366 Rayleigh Road, Eastwood, Essex	
Recommendation:	REFUSE PLANNING PERMISSION; AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The application form identifies the site address as Kays Tyres, 366 Rayleigh Road. The submitted plans and street numbering identify the site inconsistently with previous applications made for both 364 Rayleigh Road and 366 Rayleigh Road, which show the identified site as no.364 Rayleigh Road and the neighbouring unit as no.366.
- 1.2 Applications 21/00902/FUL and 20/01895/FUL, presented to Development Control Committee in July 2021, indicated the present application site as no.364 and the neighbouring unit as no.366.
- 1.3 The matter has been raised with the applicant and representations from the applicant taken into account. On that basis, the application is assessed as applied-for, and given the subject land and building are shown clearly on the submitted plans, it is considered that the matter does not prejudice the accurate assessment of the application in its planning merits.
- 1.4 The application site is located on the northern side of Rayleigh Road. The subject of the application is an adjoined single-storey brick-built flat-roofed unit, with attached semi-enclosed bay. At the time of application, it is understood that the bay was of varying wall heights, covered by a monopitch roof to form a single storey building of makeshift appearance. It has been described in previous applications as a warehouse building.
- 1.5 It has been found on site visit that since the determination of the previous application in July 2021, the semi-enclosed bay has been enclosed with brick infill and corrugated sheeting. An industrial-style door has been fitted. Together with much of the remainder of the frontage this has been painted blue.
- 1.6 Tyre sales and fitting have been carried out at the site and this is subject to ongoing planning enforcement investigation. The site's frontage, not within the submitted site edged red, is used for vehicle sales, for which there is no record of planning permission
- 1.7 The site is set within hardstanding and car parking, combined with the boxing gym at no.366, and bordered with wooden and palisade fencing to neighbouring commercial yards to the west. A public car park is to the east. The site backs directly on to the dwellings and private amenity spaces at nos.22-24 The Rodings. Ground levels rise immediately at the north border of the site to the dwellings at The Rodings.
- 1.8 The Rayleigh Road frontage nearby is characterised by commercial uses with flats above. 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 description of proposed development within the application form submitted is a proposed change of use to tyre sales and fitting. The application form states that the change of use has not already started however at section 6 it describes the existing use as being the same use as proposed. So far as can be understood from the submitted information, the application is at least partly retrospective in relation to the use being

undertaken at the site. It is not considered that this affects the accurate assessment of the impacts of the development.

- 2.2 The operational development observed on site has not formed part of the application. The operational development does not accord with the plans which were submitted in application 21/00902/FUL, referred to below.
- 2.3 The submitted application form does not specify proposed hours of opening or employment relating to the proposal. The application identifies that some 100 tyres would be removed from the site by a registered recycling service per month.
- 2.4 The application has been submitted following refusal of planning permission at the site, described in that application as 364 Rayleigh Road. Application 21/00902/FUL for the "Change of use from storage/distribution (Class B8) to MOT Testing station and vehicle repair garage (Class B2) and alter front elevation" was refused on 23.07.2021 for the following reason:
- 01. Inadequate information has been provided to demonstrate that the proposed development would not result in significant and demonstrable harm to the residential amenity of neighbouring occupiers in terms of noise, disturbance and fumes. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP1, KP2, and CP4 of the Core Strategy (2007) and Policies DM1, DM3 and DM11 of the Development Management Document (2015).*
- 2.5 The current application is for tyre sales and fitting and does not include any operational development such as including the front elevation as previously proposed in the refused application 21/00901/FUL. The hours of operation in the previous application were described as 0800-1700 Monday to Saturday.
- 2.6 The application was called into Development Control Committee by Councillors Walker, Collins and Moring had the staff recommendation been for approval, but this report is brought to the Committee in any event, and as required by the Council's Constitution because enforcement authority is being sought.

3 Relevant Planning History

- 3.1 21/00902/FUL: Change of use from storage/distribution (Class B8) to MOT Testing station and vehicle repair garage (Class B2) and alter front elevation at 364 Rayleigh Road. Refused 23.07.2021.
- 3.2 20/01895/FUL: Change of use from storage/distribution (Class B8) to Boxing Gym (Class E) (Retrospective) at 366 Rayleigh Road. Approved 22.07.2021.
- 3.3 08/00504/FUL: Use Industrial unit (Class B8) and Retail unit(Class A1) as Car Wash and Valeting (Sui Generis). Withdrawn.
- 3.4 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.
- 3.5 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.

- 3.6 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.
- 3.7 00/00931/CLE: Motor and trailer repairs (Certificate of Lawful Use as Existing). Refused.
- 3.8 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.
- 3.9 98/1081: Use part of building in storage use (class B8) for retail purposes (class a1). Approved.

4 Representation Summary

4.1 Public Consultation

16 neighbouring properties were notified and a site notice was posted. One letter of representation has been received and is summarised as follows:

- Industrial use is unacceptable in principle;
- Impacts of existing alterations on the appearance of the site and surrounding area;
- Impact of noise and disturbance on neighbouring residential occupiers within their dwellings and gardens;
- Inaccuracies and incorrect completion of application form;
- Limited employment benefits of the use;
- Fire safety concerns.

4.2 These concerns are noted and they have been taken into account in the assessment of the application. Other than as reflected in the reason for refusal at Section 9 of this report, the remaining grounds of objection have not been found to justify refusing planning permission in the circumstances of this case.

4.3 Environmental Health

No objection subject to noise mitigation measures, for which a condition is recommended.

4.4 Essex Fire Service

No objection.

5 Planning Policy Summary

5.1 The National Planning Policy Framework (NPPF) (2021)

5.2 Core Strategy (2007): Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP1 (Employment Generation), CP2 (Town Centre and Retail Development), CP3 (Transport and Accessibility), CP4 (Environment and Urban Renaissance)

5.3 Development Management Document (2015): Policies DM1 (Design Quality), DM2 (Low Carbon Development and Efficient Use of Resources), DM3 (Efficient and Effective Use of Land), DM10 (Employment Sectors), DM11 (Employment Areas), DM13 (Shopping Frontage Management outside the Town Centre), DM15 (Sustainable Transport Management)

5.4 CIL Charging Schedule (2015)

6 Planning Considerations

6.1 The main considerations in relation to this application are the principle of the development, impacts on the character of the area, the effects of the proposal on the amenities of neighbouring residential occupiers, any traffic and parking implications and CIL.

7 Appraisal

Principle of Development

- 7.1 The NPPF states that planning decisions should promote an effective use of land while safeguarding and improving the environment and ensuring safe and healthy living conditions in a way that makes as much use as possible of previously developed land.
- 7.2 Paragraph 81 of the NPPF states that: "Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development".
- 7.3 Policies KP1, KP2 and CP4 seek to promote sustainable development. Policy KP2 seeks to direct the siting of development through a sequential approach. Policy DM3 seeks the efficient and effective use of land, provided it responds positively to local context and does not lead to over-intensification.
- 7.4 Policy CP1 states that "to promote economic regeneration, development will be expected to contribute to the regeneration and development of existing and proposed employment sites; the Town Centre and Seafront; existing industrial areas and other Priority Urban Areas".
- 7.5 Policy DM11 seeks to support the retention, enhancement and development of Class B uses within the Employment Areas and also states that: "Proposals for employment generating uses outside the Employment Areas (Policy Table 8) will be allowed where they do not impact upon the amenity of the surrounding uses and do not conflict with other development plan policies".
- 7.6 The site is not within an identified industrial area and is within a mixed area of residential and commercial uses. The site is not the sequentially most-preferable location for a commercial use of this nature.
- 7.7 As a small-scale development, it is considered that any impact to identified industrial areas would be negligible. The proposal would maintain a degree of employment at the site.
- 7.8 Publicly available photographs indicate that a tyre-related business was operating at the site in 2009. A vehicle hire business operated from the site around 2018, storing vehicles within the covered bay. No certificate of lawfulness has been applied for, or granted, to support a conclusion that tyre fitting has been carried on for over ten years, further to section 171b of the Town and Country Planning Act (1990).

- 7.9 Consistent with the findings in the previous application there is no objection to a commercial use in principle at this location, subject to detailed consideration of its impacts which are discussed below.

Design, Impact on the Character of the Area

- 7.10 Good design is a fundamental requirement of new development to achieve high quality living environments. Its importance is reflected in the NPPF, in Policies KP2 and CP4 of the Core Strategy and in Policy DM1 of the Development Management Document. The Design and Townscape Guide states that “the Borough Council is committed to good design and will seek to create attractive, high-quality living environments”.
- 7.11 The established building has an industrial character and is set amidst commercial uses. The use would be reasonably commensurate with these characteristics. No operational development is proposed in the application. The proposal, as applied-for, would not significantly harm the character and appearance of the surroundings. Matters relating to the impact of the unauthorised operational development on the character of the site and its surroundings, which has not formed part of this planning application, are considered below.

Impact on Residential Amenity

- 7.12 Policy DM1 of the Development Management Document requires all development to be appropriate in its setting by respecting neighbouring development and existing residential amenities and “having regard to privacy, overlooking, outlook, noise and disturbance, sense of enclosure/overbearing relationship, pollution, daylight and sunlight.”
- 7.13 The rear part of the building sits adjacent the boundary of 22 The Rodings, the nearest residential property to the north of the application site. This dwelling sits on significantly higher ground than the subject building.
- 7.14 Other residential units in the vicinity of the site include 7 Rodings Close, some 13m to the west of the site and 370A Rayleigh Road, the upper floor flat, some 26m to the south of the building on site.
- 7.15 The principal impacts of the proposed use on neighbouring residential occupiers would be noise disturbance from equipment associated with tyre fitting. Historically there have been complaints arising from noise associated with the use of air compressor equipment at the premises. Records show that a Statutory Abatement Notice was served under section 80 of the Environmental Protection Act 1990 on 7/12/20.
- 7.16 The Council’s Environmental Health service has confirmed no objection to the application subject to noise mitigation details. Noise mitigation measures are recommended by condition.
- 7.17 The application has provided no details of equipment or potential mitigation measures. It is therefore not reasonable to approve the application with a condition requiring noise mitigation measures as the impacts have not been quantified, and proposed mitigation measures have not been identified.
- 7.18 It is therefore not clear that protection of neighbour amenities from harmful noise impacts can be reasonably achieved within the scope of details to be provided through a planning

condition. It is not clear that this matter could be reasonably overcome through restrictions on opening hours for example. A condition would therefore not be sufficiently precise and reasonable and would fail to meet the tests for planning conditions set out in Planning Practice Guidance.

- 7.19 The application has failed to reasonably demonstrate that the development maintains neighbour amenities, and it is therefore found unacceptable and in conflict with policy in this regard.

Traffic and Transportation Issues

- 7.20 Policy DM15 of the Development Management Document states: "Development will be allowed where there is, or it can be demonstrated that there will be, physical and environmental capacity to accommodate the type and amount of traffic generated in a safe and sustainable manner". The policy also requires that adequate parking should be provided for all development in accordance with the adopted vehicle parking standards.

- 7.21 Assessed against parking standards, the maximum car parking standard required for storage uses is one space per 150sqm. There is no specified standard for sui generis uses. No parking is proposed. This is a negative aspect of the proposal, but as it may be expected that vehicles would enter the subject building for the tyre fitting service, no objection is raised. However the absence of demarcated external access and waiting provision, together with employee parking, are negative aspects of the application. The site is located on a bus route. The application form states there are no employees; the failure to specify the level of operations is a further negative element of the application, however accounting for the small scale of the site it is considered that operative parking would likely be reasonably accommodated either on the premises or on public car parking nearby. Two cycle parking spaces are required to meet the minimum standard. A condition could be imposed in this regard were the application otherwise acceptable. The access arrangements of the site would remain unaltered.

- 7.22 Subject to a condition, the proposal would be acceptable and policy compliant in this regard.

Community Infrastructure Levy (CIL)

- 7.23 As the proposal is for a change of use without the creation of additional floorspace or the creation of a residential unit, the development would not be CIL liable.

8 Summary of planning application

- 8.1 The development provides employment and economic activity. The character of the development is not harmful to the townscape. The application has not demonstrated to a reasonable degree that neighbour amenities would be maintained. No significantly harmful impacts with regard to traffic and parking have been identified. The limited benefits of the proposed development do not justify approval. The scheme fails to constitute sustainable development when considered in the round, has not overcome the earlier reason for refusal, and is found to be unacceptable and is therefore recommended for refusal.

9 Breaches of planning control

- 9.1 The current use on the site for tyre sales and fitting is an identified breach of planning control. As per the assessment above it is causing significant harm to residential amenity which is unacceptable and contrary to policy. It is found that the identified harm cannot reasonably be overcome by planning conditions based on the circumstances of the two applications so far considered and refused.
- 9.2 A further breach of planning control exists in respect of more recent physical alterations made to the premises. The semi-enclosed bay has been enclosed with brick infill and corrugated sheeting, and an industrial-style door has been fitted. Much of the frontage has been painted blue. This represents development requiring planning permission which has not been, obtained so it is unauthorised.
- 9.3 It is considered that the operational development impacts on the character and appearance of the site and surroundings. Good design is a fundamental requirement of new development to achieve high quality living environments. Its importance is reflected in the NPPF, in Policies KP2 and CP4 of the Core Strategy and in Policy DM1 of the Development Management Document. The Design and Townscape Guide states that “the Borough Council is committed to good design and will seek to create attractive, high-quality living environments”.
- 9.4 The infilled bay with metal sheeting is rudimentary and has a poor, appearance, including by reason of its extent and height within the mono-pitch roof arrangement. It is prominent in the Rayleigh Road street-scene and contrasts unfavourably with the houses behind. The part-corrugated cladding finish of the neighbouring low-rise unit to the west does not justify acceptance of the prominent, stark and obtrusive sheeting introduced, which is significantly harmful to the character and appearance of the street scene and wider area. Its harmful impact is accentuated by the blue finish. The blue painting of the brick on much of the remainder of the building is incongruous and harmful to the character and appearance of the building, street scene and wider area. The poor appearance is accentuated by the finishing of the roof at its junction with the sheeting and the angled downpipe. The industrial style door is acceptable.
- 9.5 The unauthorised operational development comprising the installation of corrugated sheeting and blue painted finish to the building are therefore considered unacceptable and contrary to policy with regard to design and character.
- 9.6 Given the nature and harmful impact of the breaches, as assessed above, and the owner’s failure to regularise the unauthorised development it is considered necessary and proportionate for an enforcement notice to be served in respect of the unauthorised use and operational development.
- 9.7 Members are recommended to AUTHORISE ENFORCEMENT ACTION to:
- a) Cease operating as a tyre fitting unit;
 - b) Remove the corrugated sheeting and blue painted finish from the building;
 - c) remove from site all materials resulting from compliance with a) and b) above.
- 9.8 The authorised enforcement action to include (if/as necessary) the service of Enforcement Notices under Section 172 of the Act and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.
- 9.9 When serving an Enforcement Notice the Local Planning Authority must ensure a

reasonable time for compliance. In this case a compliance period of 3 months is considered reasonable for the cessation of use as a tyre fitting unit and for removal of the unauthorised operational development.

- 9.10 Taking enforcement action in this case may amount to an interference with the owners' and/or occupiers' Human Rights. However, it is necessary for the Local Planning Authority to balance the rights of the owners and/or occupiers against its legitimate aims to regulate and control land within its area. In this particular case it is considered reasonable, expedient, and proportionate and in the public interest to pursue enforcement action on the grounds set out in the formal recommendation.

Equality and Diversity Issues

- 9.11 The Equality Act 2010 (as amended) imposes important duties on public authorities in the exercise of their functions and specifically introduced a Public Sector Equality Duty. Under this duty, public organisations are required to have due regard for the need to eliminate unlawful discrimination, harassment and victimisation, and must advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. Officers have in considering this application, the planning breaches and preparing this report had careful regard to the requirements of the Equalities Act 2010 (as amended). They have concluded that the decision recommended will not conflict with the Council's statutory duties under this legislation.

REFUSE PLANNING PERMISSION AND AUTHORISE ENFORCEMENT ACTION

- 01 Inadequate information has been provided to demonstrate that the proposed development would not result in significant and demonstrable harm to the residential amenity of neighbouring occupiers including nos.22-24 The Rodings and 6-7 Rodings Close, in terms of noise disturbance. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP1, KP2, and CP4 of the Core Strategy (2007) and Policies DM1, DM3 and DM11 of the Development Management Document (2015).**
- 10 Informatives:**
- 1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The detailed analysis is set out in a report prepared by officers. In the circumstances the proposal is not considered to be sustainable development.**
- 2 As the proposal is for a change of use without the creation of additional floorspace or the creation of a residential unit, the development would not be CIL liable.**