

<b>Application</b>	22/00614/FUL
<b>Ward:</b>	Leigh
<b>Proposal:</b>	Alter shopfront and install new extraction flue system and bin store to rear
<b>Address:</b>	55 Broadway Leigh-On-Sea Essex SS9 1PE
<b>Applicant:</b>	Mr Abdelhamid Oukili
<b>Agent:</b>	S K Architects
<b>Consultation Expiry:</b>	24 <sup>th</sup> May 2022
<b>Expiry Date:</b>	6 <sup>th</sup> June 2022
<b>Case Officer:</b>	Abbie Greenwood
<b>Plan Nos:</b>	Proposed plans and elevations <b>732-P01-Rev A, 732-P03B- Rev G</b>  Proposed plans and elevations showing consented flats scheme <b>732-P03A-Rev H</b>
<b>Supporting Documents</b>	Heritage Statement Noise Impact Assessment by Sound Licencing Ltd Rev 1.0 dated 27.4.22 Fan Specifications – TCBBX2.TCBTX2 Cowl Type JC
<b>Recommendation:</b>	<b>GRANT PLANNING PERMISSION subject to conditions</b>



## 1 Site and Surroundings

- 1.1 The application property is on the north side of Leigh Broadway at the junction with East Street. The proposal relates to the commercial unit on the ground floor of the building which was last used as a Travel Agent (class E) and then florist (Class E) but has been vacant for some time. The upper floors of the building were last used as ancillary offices for the travel agent but are currently vacant. Planning permission was granted in 2021 reference 21/02206/FUL for the conversion of the first and second floor to flats including extensions to the rear of the building. That approval is shown in pink on the submitted plans for information only and does not form part of the current application. The agent has confirmed that it is very likely that this scheme will be built.
- 1.2 The site falls within the boundary of Leigh Cliff Conservation Area. The building was constructed in the 1920s/30s and is the western half of a matching pair and one of the larger 3 storey buildings in the block. Its location on a corner means that it is prominent in wider views and exposed to the rear where it can be clearly seen from East Street. The shopfront is modern with an oversized fascia and some UPVC windows have been installed above. As specifically noted in the Leigh Cliff Conservation Area Appraisal, these aspects cause some harm to the character of the building but overall, it is well detailed and has the potential to make a positive contribution to the conservation area. To the rear is a single storey extension with a parapet roof, and a single parking space.
- 1.3 Leigh Broadway is a busy and popular shopping street within the heart of Leigh. It is an important part of the history and development of the town in its Victorian and Edwardian heyday. The buildings fronting Broadway are a mix of designs which make for an interesting streetscene. This section of Broadway is designated as Primary Shopping Frontage. East Street to the rear, contains residential dwellings which are outside the conservation area boundary.

## **2 The Proposal**

- 2.1 The proposal seeks to replace the existing shopfront and fascia and install an extract flue to the rear. As confirmed in the Supporting Statement to this application, the intention is to convert the ground floor premises to a restaurant. Such change of use would remain within the premises' existing Class E (Business) use class. The change to restaurant is not material and does not represent development requiring planning permission, so does not form part of the application.
- 2.2 The proposed shopfront will be painted timber with bi-folding doors including stallriser panel detail, and a new, narrower, painted timber fascia. The entrance will be relocated to the corner with double doors including the same stallriser detailing.
- 2.3 The proposed extraction flue will be situated on the flat roof of the rear single storey projection, extending upwards in the southeast corner of the terrace adjacent to the proposed residential extension. The flue will be spray painted to match the building colour and a screen will be installed to the west side of the lower section to separate it from the remainder of the flat roof. This arrangement will have an impact on the area of roof proposed as a terrace to the first floor flat in the residential scheme approved in 2021. This aspect of the residential scheme will therefore require amendment – this can be sought through a separate application and to be considered on its individual merits.
- 2.4 The proposal includes a commercial refuse store to the rear which comprises a Eurobin screened by 1.75m timber fencing.

## **3 Relevant Planning History**

- 3.1 21/02206/FUL - Change of use from offices to 2 self-contained flats at first and second floor, erect rear extension to first and second floor, install terrace to rear at first floor and juliette balcony to rear at second floor and alter elevations (Amended Proposal) – granted
- 3.2 21/01130/FUL - Change of use of shop and offices to restaurant at ground floor and 3 self-contained flats, erect rear extension to first and second floor, erect dormer to rear, install terraces and juliette balcony to rear, alter elevations – refused
- 3.3 15/01079/FUL – Change of use of first and second floors and roofspace from ancillary office and storage area (Class A2) to form 2 self-contained flats with roof gardens, erect first and second floor rear extension and dormer extension to the rear, insert rooflight to the front and first floor window to the side and internal alterations to ground floor – refused
- 3.4 03/00794/FUL - Erect porch at rear, extensions to roof front and rear and first and second floors rear, wall at rear, form balconies or balustrades at front and rear, alter front elevation, use first and second floor as one self-contained flat and one self-contained maisonette, lay out rear parking and bin store (Amended proposal) – refused and dismissed on appeal (no plans available)
- 3.5 Other planning history is historic or not materially relevant to this proposal.

## **4 Representation Summary**

### **Public Consultation**

- 4.1 17 neighbouring properties were consulted, including after receipt of revised plans, a site notice was displayed, and a press notice published. 1 letter of representation has been received raising the summarised issues below. The re-consultation period is still to expire. Any further representations which may be received will be reported to this Committee through the Supplementary Agenda:

- Impact on residential amenity.
- Concern over noise and disturbance from customers of the new restaurant.
- Concern over noise and odour from the proposed flue.

Officer Comment: These concerns are noted and those that represent material planning considerations have been taken into account in the assessment of the application. However, they are not found to represent a reasonable basis to refuse planning permission in the circumstances of this case.

### **Environmental Health**

- 4.2 The Noise report indicates that the proposed flue is predicted to operate at 21dB(A) below background levels which is acceptable. The proposal is therefore acceptable subject to conditions requiring:

- The noise mitigation measures set out in the Noise Report to be adhered to and a post completion noise survey carried out.
- Prior to occupation full details of the odour control system to be agreed.
- Refuse and Recycling
- External Illumination
- Hours of Construction

### **Leigh Society**

- 4.3 The proposed windows to the shop front are rather small and fussy, but otherwise we have no major objection to the proposals. [Officer comment- the detail of the shopfront has been revised since these comments were received]

### **Leigh Town Council**

- 4.4 Object - The application is sited in the Leigh Cliff conservation area and therefore the bi-fold doors proposed are not in keeping. The proposed flue to the rear of the building does not protect the immediate neighbours and surrounding residential area with regard to outlook, noise and disturbance.

## **5 Planning Policy Summary**

- 5.1 The National Planning Policy Framework (2021) and National Design Guide (2021)

- 5.2 Core Strategy (2007) Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP3 (Transport and Accessibility), Policy CP2 (Town Centre and Retail Development) and CP4 (Environment & Urban Renaissance).
- 5.3 Development Management Document (2015) Policies DM1 (Design Quality), DM3 (The Efficient and Effective use of land), DM5 (Southend on Sea's Historic Environment), Policy DM13 (Shopping Frontage Management outside the Town Centre) and DM15 (Sustainable Transport Management)
- 5.4 The Southend-on-Sea Design and Townscape Guide (2009)
- 5.5 Leigh Cliff Conservation Area Appraisal (2021)
- 5.6 Southend Waste Management Guide for Developers (2019)
- 5.7 Community Infrastructure Levy (CIL) Charging Schedule (2015)

## **6 Planning Considerations**

- 6.1 The main considerations for this application are the principle of the development, the design including the impact of the proposed works on the character and appearance of the building, the streetscene and wider conservation area, the impact on neighbours' amenity, any highways impacts and CIL.

## **7 Appraisal**

### **Principle of Development**

- 7.1 Policy DM13 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.*' The policy also requires an active frontage to be provided to the main street frontage. The principle of the intended restaurant use at ground floor should form no part of the Council's assessment of this application because this use in itself does not require planning permission.
- 7.2 This proposal is considered in the context of the above policies. These policies and guidance support alterations to properties in primary shopping frontages in conservation areas where such alterations maintain an active frontage, respect the existing historic character of the buildings and preserve or enhance the character and appearance of the wider conservation area. The replacement shopfront will maintain an active frontage to Broadway. The merits of the detailed design are considered below. The principle of the proposal is therefore considered acceptable.

### **Design and Impact on the Character of the Conservation Area**

- 7.3 Sections 69 and 71 of the Planning and Listed Buildings and Conservation Areas Act 1990 states that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

- 7.4 Paragraph 126 of the NPPF states *‘the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations and how these will be tested, is essential for achieving this.’*
- 7.5 Paragraph 201 of the NPPF states *‘where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or total loss...’*
- 7.6 Paragraph 202 of the NPPF states *‘Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.’*
- 7.7 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’*. Policy CP4 of the Core Strategy 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.”*
- 7.8 Policy DM1 of the Development Management Document advocates the need for good quality design that contributes positively to the creation of successful places. All developments should respect the character of the site, its local context and surroundings in terms of its architectural approach, height, scale, form and proportions.
- 7.9 Policy DM5 of the Development Management Document seeks to protect the character and significance of the Borough’s heritage assets including conservation areas.
- 7.10 The existing shopfront and fascia were installed many years ago and are poor quality both in terms of their design and scale and their materials. This is noted in the Leigh Cliff Conservation Area Appraisal. The replacement of the shopfront therefore offers a significant opportunity to enhance the building’s impact in the conservation area.
- 7.11 The proposal is to replace the existing shopfront with a new shopfront which includes painted timber bi-folding doors and a new, narrower, painted timber fascia. The entrance will be relocated to the corner. The proposed design is a significant improvement on the existing arrangement - in particular the change to timber, the introduction of a stallriser detail to the base of the doors giving the shopfront more traditional proportions, the breaking up of the glazing and the narrower fascia are all positive and will significantly enhance the character of the existing building and the wider conservation area.

The bi-folding nature of the shopfront is not a traditional feature however, it is well proportioned and similar to other new shopfronts in the Broadway so would not be out of keeping in this location nor would it cause any harm to the building when all the relevant factors are weighed in the balance. The proposed shopfront alterations are therefore acceptable.

- 7.12 The proposed flue is a significant height to meet environmental requirements but has been sited to minimise its visual impact on the conservation area, ensuring that it cannot be viewed from the Broadway, whilst maintaining the option of implementing the rear extension in planning permission 21/02206/FUL (shown pink on the proposed plans but outside the scope of this application). The lower section of the flue is screened by the parapet and proposed screening. Overall, it is considered that the limited harm caused by the visual impact of this feature to the character of the building and the wider conservation area plus any harmful visual impacts identified in respect of the East Street streetscene are clearly outweighed by the significant enhancement to the frontage of the building and its consequent enhanced contribution to the character and appearance of the conservation area.
- 7.13 The refuse store proposed to the rear will be visible in the streetscene but will be appropriately screened and will not appear out of place to the rear of the commercial frontage or visually harmful.
- 7.14 Overall, it is considered that design of the proposal, and in particular the replacement shopfront, would have a positive impact on the character of the existing building and the wider conservation area subject to the described conditions. The proposal is therefore acceptable and policy compliant in regard to design and heritage.

### **Impact on Residential Amenity**

- 7.15 Paragraph 343 of the Design and Townscape Guide states that *“extensions 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 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.”*
- 7.16 The applicant has confirmed that the intended restaurant will be open to customers between 9am and midnight Monday to Sunday. Given that there are residential properties approved above and existing in neighbouring buildings, it is considered reasonable to require that the bi fold doors are shut from 10pm each day. This is in line with other newer restaurants in the Broadway and can be secured by condition.
- 7.17 Full details of the proposed rear flue and extraction equipment and a noise report have been submitted with the application. The report concludes that the proposed flue is predicted to operate at 21dB(A) below background levels. The Council's Environmental Health Officer confirms that this should not have an unacceptable impact on neighbours provided the mitigation measures set out in the report are implemented and that a post completion noise survey is carried out. He also requires that the odour mitigation measures are agreed prior to installation.

These can all be secured by condition.

- 7.18 The proposed flue will also have a visual impact on the amenities of future occupiers of the approved upper flats, however, as this proposal has not commenced, only limited weight can be given to this consideration. The flue is sited in the corner so it would not obstruct any new windows or significantly impact on outlook from the proposed extension were it to be built. A screen is proposed at the lower terrace level to visually and physically separate the flue from the proposed amenity area. Accommodating the flue will impinge to an extent on the area identified as terrace for the dwellings approved in 2021 so the application for residential development on the upper floors of the building would require amendment via a separate application. That would be considered on its individual merits but, as an initial view, the degree of reduction in terrace size from that previously approved could be demonstrated to meet the reasonable amenity needs of the future occupiers, attaching due weight to the sustainable location of the development close to a range of local amenities and recreational opportunities. Such separate application would also consider the impacts of the flue on new residents. An informative is recommended reminding the applicant that an amended application for the flats would be required should the current application be approved and implemented.
- 7.19 The proposed bin store is considered to have an acceptable impact on neighbour amenity in all relevant regards.
- 7.20 Overall, therefore, subject to the described conditions it is considered that the proposal would have an acceptable impact on the amenities residential amenity and is policy compliant in this regard.

### **Traffic and Transportation Issues**

- 7.21 No on site parking exists for customers of this business unit. On street parking is available in the Broadway and surrounding streets and in North Street Car Park nearby. The area to the rear of the unit will be maintained as a parking area for staff. This is considered to be acceptable.
- 7.22 The proposed extension includes dedicated bin storage for the restaurant. This is considered to be an acceptable arrangement and can be secured by condition.
- 7.23 Overall, it is considered that the proposal is acceptable and policy compliant in terms of traffic, parking and transportation matters.

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

- 7.24 The proposal has no new floor space. The development therefore benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable.

## **Equality and Diversity Issues**

- 7.25 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 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.

## **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 be acceptable and compliant with the objectives of the relevant development plan policies and guidance. The principle of the development is acceptable. The proposal would have an acceptable impact on the amenities of neighbouring occupiers. Overall, the proposal would have a positive effect on the character and appearance of the application site, the street scene and the conservation area more widely, when due weight is attached to the significant improvements to the building's appearance which outweigh the limited negative considerations associated with the impact of the proposed rear flue. 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 three years from the date of this decision.**

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

**02 The development hereby permitted shall be carried out in accordance with the following approved plans 732-P01-Rev A, 732-P03B- Rev G.**

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

**03 The replacement shopfront within the development hereby approved including the bifold doors including stallriser panel detail, fanlights, relocated door and fascia shall only be finished in painted timber. Prior to first operation of the rear flue the following shall have been completed at the site:**

**a) the flue shall have been spray painted to reasonably match the colour of the host building or in accordance with details of any other external treatment**

which have previously been submitted to and approved in writing by the Local Planning Authority under the terms of this condition,  
b) the screen balustrading shall have been erected in accordance with the details shown on drawing number 732-P03B – Rev G and  
c) the new shopfront and fascia shall have been completed in accordance with the details on drawing 732-P03B- Rev G

**Reason:** To safeguard the visual amenities of the conservation area, including the weight attached as part of a balanced assessment taking account of the benefits to the building and Conservation Area attributed to the new shopfront and fascia which is all in accordance with the National Planning Policy Framework (2021) Core Strategy (2007) policy KP2 and CP4, Development Management Document (2015) Policies DM1 and DM5 and advice contained within the Southend-on-Sea Design and Townscape Guide (2009), the National Design Guide (2021) and Leigh Cliff Conservation Area Appraisal (2021).

**04** Prior to first operation of the extraction flue system hereby approved, the noise mitigation measures as detailed in the Noise Impact Assessment Report - Kitchen Extraction System 55 Broadway, Leigh-On-Sea SA9 1PE for Picante Leigh-On-Sea by Sound Licensing Limited and dated 27 April 2022 (revision 1) shall be implemented, installed by competent persons and completed at the site in full accordance with those mitigation measure details. Additionally, prior to first operation of the development hereby approved, a post completion noise survey must be undertaken by a suitably qualified acoustic consultant, and a report submitted to and approved in writing by the Local Planning Authority. The post completion testing shall assess performance of the noise mitigation measures against the noise levels as set in the post-completion testing report. If the mitigation measures tested in the post-completion report prove to be insufficient, details of additional noise mitigation measures (where necessary to ensure the appropriate noise levels can be met), shall be submitted to and approved in writing by the Local Authority and installed and tested thereafter at the site prior to operation of the flue extraction system. The mitigation measures as approved shall be retained for the lifetime of the development.

**Reason:** To ensure the resulting noise from the flue extraction system would not be detrimental to living conditions of neighbouring and future occupiers in accordance with the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015).

**05.** The bifold doors within the shopfront hereby approved shall be closed between 22.00 and 09.00 hours Mondays to Sundays.

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

**06 Prior to first operation of the rear flue hereby approved, the commercial refuse store, as shown on the plan reference 732-P03B- Rev G, shall be provided at the site and made available for use. This refuse store shall be retained 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 and CP3 of the Core Strategy (2007) and Policies DM5 and DM15 of the Development Management Document (2015).**

**09 Construction Hours for the development hereby approved shall be restricted to 8am – 6pm Monday to Friday, 8am - 1pm Saturday and not at all on Sundays, Bank or Public Holidays.**

**Reason: In the interests of the amenities of neighbours pursuant to Policy CP4 of the Core Strategy (2007) and Policy DM1 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 as the proposed development equates to less than 100sqm of new floorspace and does not involve the creation of a new dwelling (Class C3), 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 City.**

**03 The applicant is advised that any takeaway function associated with any restaurant use of the application site within Class E (Business) of the Use Class Order must remain ancillary to that main restaurant function. If the takeaway element is judged to be more than ancillary, then separate express planning permission will be required for this change of use.**

**04 The applicant is reminded that the development hereby approved will have an impact on the area of flat roof proposed as an amenity terrace to the first floor flat in the residential scheme approved in 2021 reference 21/02206/FUL. This aspect of the residential scheme will therefore require amendment and will be considered on its individual merits – this amendment must be sought through a separate application.**

**05 The applicant is advised that separate advertisement consent is required for any new signage and planning permission is likely to be required for any externally mounted lighting fixtures.**

**06 Prior to any alterations to the existing building an appropriate Asbestos survey of the buildings 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.**