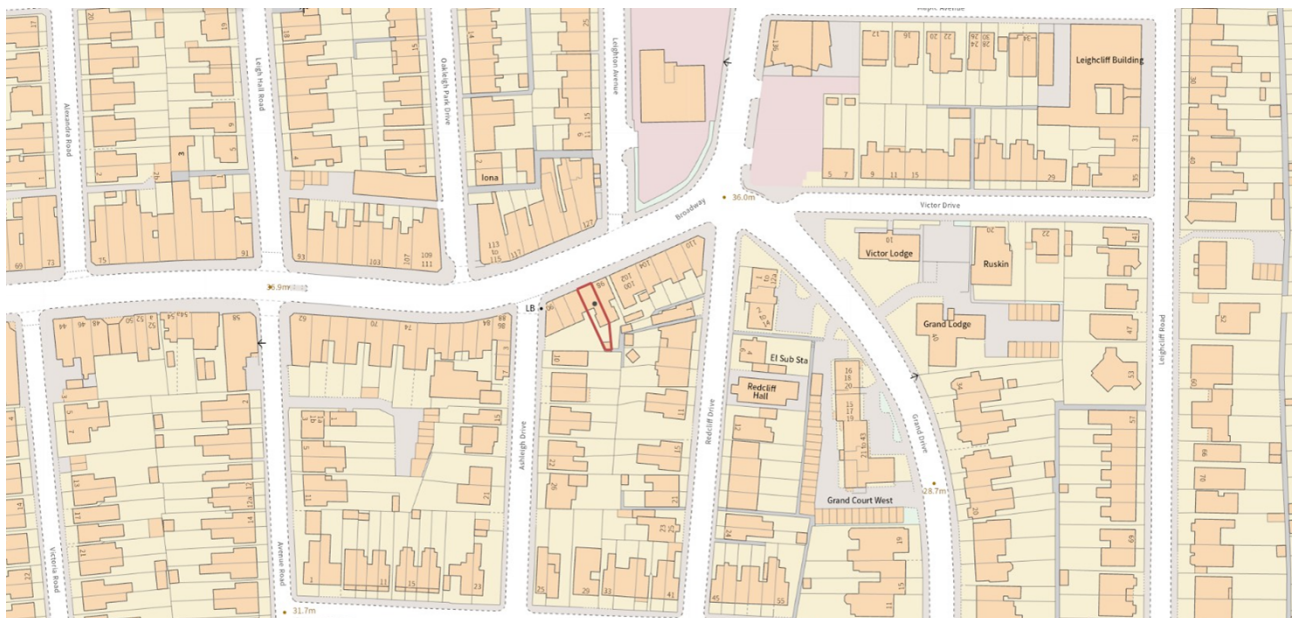


Reference:	23/00077/FUL	
Application Type:	Full Application	
Ward:	Leigh	
Proposal:	Change of use of all floors, garden and terrace from shop and residential (Classes E and C3) to cafe/restaurant (Class E), install timber balustrade to terrace (Part Retrospective) (Amended Proposal)	
Address:	96 Broadway, Leigh-on-Sea, Essex, SS9 1AB	
Applicant:	Mr Stuart Childs	
Agent:	Mr Ian Farrow of Ergotechnics Ltd	
Consultation Expiry:	16.02.2023	
Expiry Date:	07.04.2023	
Case Officer:	Abbie Greenwood	
Plan Nos:	PP100, PP101, PP102, PP103 Rev C, PP104 Rev C, PP105 Rev A	
Additional information:	Noise Impact Assessment by Venta Acoustics reference VA4337.220914.NIA dated 15.12.22; Noise Management Plan (received 20 March 2023); Risk Assessment for Public Nuisance (from licensing application) version 1 by 21st Century Licensing; 'One Warning' Policy (from licensing application) version 1.1 dated 22.10.2018; Xpelair GX6EC Window Extract Fan Specifications	
Recommendation:	GRANT PLANNING PERMISSION subject to conditions	



1 Site and Surroundings

- 1.1 The application site is on the south side of Leigh Broadway within the centre of the street block between Redcliff Drive and Ashleigh Drive within Leigh Cliff Conservation Area and is occupied by a two-storey, split-level, mid-terrace property which dates from the early 20th century. The unit was most recently used as an art gallery with a flat to the rear but has been converted without planning permission entirely to a cafe/restaurant. It has a well detailed original shopfront with original leaded windows above and an attractive faience (i.e. white ceramic) tiled façade to the front at first floor level all of which make a positive contribution to the character and appearance of the conservation area. The property has access to the rear from a shared driveway off Ashleigh Drive. This access is shared with other businesses in this block.
- 1.2 There is a variety of shop units in this section of the Broadway. Most are within buildings of a similar age and arrangement to the application site. The upper floors of the units are a mix of residential and commercial. No. 98 to the east of the application site is a creative workshop at ground floor with a flat above (No 98A). This flat also has an amenity terrace to the rear. No 94 to the west is commercial over both floors and includes a jeweller at ground floor. To the rear of the site the street block backs onto residential properties in Ashleigh Drive and Redcliff Drive.
- 1.3 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. This section of Broadway is designated as Primary Shopping Frontage. The building is also Locally Listed.

2 The Proposal

- 2.1 The application seeks planning permission for the change of use of the whole building including the ground, first floor and basement from shop and residential (Use Classes E and C3) to cafe/restaurant (Use Class E) and to use the rear garden and roof terrace for outside dining including the installation of a timber balustrade to the west and south sides of the terrace. The basement will be used for ancillary storage.
- 2.2 The application is partially retrospective as the conversion of the building has been completed and the business is operational. As the premises was formerly an art gallery (also Use Class E) at ground floor prior to this development, the change of use at ground floor is not development controlled by the planning system. However, change of use of the upper floor to café/restaurant, including the use of the terrace for this purpose, requires planning permission. Except for the terrace area and replacement kitchen extract fan, these changes are retrospective. The use and proposed works to the rear terrace have not commenced. No extensions are proposed to the building.
- 2.3 The application form states that the opening hours for the business are proposed to be 8.30am to 4pm Monday to Friday, 8.30am to 10pm on Saturday and 9am to 4pm on Sunday.
- 2.4 The submitted plans show a refuse storage area for the use to the rear of the garden area. The garden area itself was used as an outside dining area. The application form states that there is no off-street parking associated with this development.
- 2.5 The application is an amended proposal following refusal of a part retrospective application 22/01405/FUL details of which are in section 3 below. The following amendments have been made:

- An amended noise report has been submitted which includes additional noise mitigation measures.
- The proposed terrace balustrade has been amended from obscure glass to slatted timber.
- The bin area is proposed to be screened.
- The larger extract fan within the kitchen window is proposed to be replaced with a smaller quieter window extract fan.

3 Relevant Planning History

3.1 The most relevant planning history for the determination of this application is shown on Table 1 below:

Table 1: Relevant Planning History of the Application Site

22/01405/FUL (the "2022 Application")	Change of use of ground, upper floors and terrace from shop and residential (Classes E and C3) to cafe/restaurant (Class E), install obscure glass balustrade to terrace (Part Retrospective) – refused
22/00272/UCOU_B	Enforcement - Change of use of first floor as café/restaurant – ongoing
00/01039/FUL	Erect external staircase to first floor flat at rear – refused
92/0229	Use ground floor retail shop (class a1) as financial and professional services offices (class a2) – refused
86/2211	Install illuminated fascia sign– granted

3.2 The planning history of the site is a material planning consideration of significant weight. The 2022 Application was refused for the following reasons:

01 The application has failed to demonstrate that the conversion of the whole building to a café/ restaurant and the proposed use of the terrace for customer seating, does not give rise to an unacceptable level of noise and disturbance and demonstrable harm to the amenities of neighbours. This is unacceptable and contrary to policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015).

02 The proposed glazed screening to the terrace and the lack of screening to the refuse area will/has result/ed in demonstrable harm to the character and significance of the locally listed building and the character and appearance of the wider Leigh Cliff Conservation Area. This harm is less than substantial but is significant in degree and is not outweighed by any public benefits. This is unacceptable and contrary to the National Planning Policy Framework (2021), policies KP2 and CP4 of the Core Strategy (2007), policies DM1 and DM5 of the Development Management Document (2015), advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the Leigh Cliff Conservation Area Appraisal (2021).

4 Representation Summary

Call-in

4.1 The application has been called in to Development Control Committee by Councillor Mulronev.

Public Consultation

4.2 16 neighbouring properties were consulted, a site notice was displayed and a press notice was published. Four (4) letters of representation were received from three (3) interested parties raising the following summarised issues:

- Impact on neighbour amenity.
- Noise and disturbance from voices in the outside area and open rear door and use of bin store and proposed terrace.
- Impact of terrace screening on the character of the building and conservation area.
- Loss of privacy and overlooking from terrace.
- The terrace should not be used at night.
- No objections to the daytime activity.
- The previous reasons for refusal have not been addressed.

4.3 Officer Comment: These concerns are noted and those that represent material planning considerations have been taken into account in the assessment of the application. The proposed plans have been amended since this consultation was undertaken to address some of the points raised in the objections. The issues raised have been considered, however, they are not found to represent a reasonable basis to refuse planning permission in the circumstances of this case.

Environmental Health

4.4 No objections subject to conditions requiring the mitigation measures within the noise impact report to be implemented, no music to the outside terrace area, the submission of a Noise Management Plan, refuse and recycling and hours of construction.

Highways

4.5 No objections.

Essex Fire Service

4.6 No objections.

Leigh Town Council

4.7 Object – the proposed development being overbearing in design and appearance, not protecting the amenity of the site with regard to outlook and immediate neighbours with regard to noise and disturbance. The application has failed to demonstrate that the conversion of the whole building to a cafe/ restaurant and the proposed use of the terrace for customer seating, does not give rise to an unacceptable level of noise and disturbance and demonstrable harm to the amenities of neighbours. The application has stated that they will close the downstairs to limit noise which creates some cause for concerns as this is not an enforceable proposed modification.

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), CP2 (Town Centre and Retail Development), CP3 (Transport and Accessibility), CP4 (Environment & Urban Renaissance), CP8 (Dwelling Provision).

- 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 Community Infrastructure Levy (CIL) Charging Schedule (2015)
- 5.7 Southend-on- Sea Waste Management Guide for Developers (2019)

6 Planning Considerations

- 6.1 The main considerations for this application are the principle of the development, the design including the impact of the development on the character and appearance of the this locally listed building and wider surroundings including the conservation area, the impact on residential amenity, waste management, highways impacts and CIL and whether this amended proposal has overcome the previous reasons for refusal.

7 Appraisal

Principle of Development

Change of Use from Residential to Café/Restaurant

- 7.1 In relation to the loss of dwellings, Policy CP8 states '*The council will.... 2. resist development proposals that involve the loss of existing valuable residential resources, having regard to the limited land resources in the Borough, the need to safeguard an adequate stock of single family dwellinghouse, and to protect the character of residential areas;*'
- 7.2 The Five-Year Housing Land Supply (5YHLS) figure shows that there is a deficit in housing land supply in the City. The South Essex Strategic Housing Market Assessment (SESHMA) identifies that Southend has a higher proportion of flats/maisonettes and a housing stock comprised of a greater proportion of one-bed units and smaller properties, a consequence of which is that there is a lower percentage of accommodation of a suitable size for families.
- 7.3 Local and national policy also seeks to support the sustaining and expanding of businesses in town centre locations.
- 7.4 The development has resulting in the change of use of the first floor and rear projection of the building previously in residential use to a café/restaurant. In these circumstances, the loss of housing is a consideration which should be given increased weight in a balancing exercise. In this instance however, given that only a single 1-bed dwelling which does not meet the overall minimum space standards required for dwellings has been lost, and as part of an overall balanced assessment, the principle of the change of use from Use Class C3 to Use Class E can be considered acceptable. This is the same conclusion as reached for the refused 2022 Application.
- 7.5 The policies and guidance also support the principle of alterations to locally listed buildings and in conservation areas where such alterations respect the existing historic

character of the buildings and preserve or enhance the character and appearance of the wider conservation area.

- 7.6 The principle of the development is therefore considered acceptable subject to the detailed considerations set out below.

Design and Impact on the Character of the Area and Locally Listed frontage

- 7.7 Sections 69 and 72 of the Planning and Listed Buildings and Conservation Areas Act 1990 state that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
- 7.8 Paragraph 126 of the NPPF states *‘the creation of high quality, sustainable and beautiful 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.’*
- 7.9 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...’
- 7.10 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.’
- 7.11 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.*”
- 7.12 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.
- 7.13 Policy DM5 of the Development Management Document seeks to protect the character and significance of the City’s designated and non-designated heritage assets including conservation areas and in relation to non-designated locally listed buildings it states:

2. Development proposals that result in the total loss of or substantial harm to the significance of a designated heritage asset, including listed buildings and buildings within conservation areas, will be resisted, unless there is clear and convincing justification that outweighs the harm or loss. Development proposals that are demonstrated to result in less than substantial harm to a designated heritage asset will be weighed against the impact on the significance of the asset and the public benefits of the proposal and will be resisted where there is no clear and convincing justification

for this. High quality redevelopment of existing buildings within conservation areas which are considered to be of poor architectural quality will be encouraged.

3. Development proposals that result in the loss of or harm to the significance of a non-designated heritage asset, such as a locally listed building or frontages of townscape merit, will normally be resisted, although a balanced judgement will be made, having regard to the scale of any harm or loss, the significance of the asset and any public benefits.

- 7.14 The application seeks to regularise the change of use of the entire building to a café/restaurant. The development has retained the historic shopfront, and other than repainting, no changes have been made to the front elevation facing Broadway. This aspect of the development is considered to have an acceptable impact on the character and appearance of the conservation area, which is a designated heritage asset and to the locally listed building, which is a non-designated heritage asset.
- 7.15 The 2022 application was refused because, 'The proposed glazed screening to the terrace and the lack of screening to the refuse area will/has result/ed in demonstrable harm to the character and significance of the locally listed building and the character and appearance of the wider Leigh Cliff Conservation Area'. In order to address this, the screening to the proposed terrace area has been amended to slatted timber to match that at the neighbour's terrace. This would be 1.1m high on the south and east sides to reduce the impact when viewed from Ashleigh Drive. This arrangement is considered to be appropriate for this locally listed building and the conservation area and would provide a consistent styling for the rear of the terrace. It is considered that this has satisfactorily addressed the objections raised in relation to the design of the screening.
- 7.16 The same slatted timber fencing is proposed to screen the bins to the rear of the site. This would improve the view from Ashleigh Drive and is also considered to be acceptable.
- 7.17 A kitchen extract has been installed to the rear but this is a small domestic type fitted within an existing window so is more discreet than other types commonly seen in commercial premises. This is hidden from public view and has an acceptable impact on the character and appearance of this locally listed building and the conservation area.
- 7.18 Aside from the alterations noted above, no changes are proposed to the exterior of the building and the locally listed shopfront is retained. Overall, the previous reason for refusal in relation to the harm caused by the obscure glazed screens has been overcome and the historic character of the building and wider conservation area is preserved. Subject to conditions, the proposal is therefore considered to be acceptable and policy compliant in terms of design and heritage in all relevant regards.

Amenity Impacts

- 7.19 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."
- 7.20 The café/restaurant use has the potential to cause noise and disturbance to residents living close to the site. The first floor area shares a party wall with No. 98A to the east

side which is a residential property. No. 94 to the west side is in commercial use. Third party representations have raised concerns about the existing noise levels from the building.

- 7.21 The potential for noise comes from a range of activities including the change of use of the building, from plant associated with that use, from deliveries, from customers using the building, its terrace and garden. In this particular case, it is also known from past operation of the business (an element which has since ceased pending the outcome of this application) and the specifics of this application and its accompanying Noise Assessment, that the proposed use will involve some live and other music played on an incidental basis for the café/ restaurant use. These issues are discussed in turn below.
- 7.22 As the premises serves alcohol, they are subject to Licensing controls which are separately enforced by this Council and cover matters of detailed licensing control which are not for this Local Planning Authority to take into account in its determination of this planning application. When assessing the elements of the noise impact assessment referred to within the planning assessment below, however, it is relevant for this Committee to know that under licensing provisions the playing of music in premises between the hours of 8am to 11pm would not require a Music/ Events license where those premises as here, have an alcohol license for consumption on the premises and it would be in use. This is consistent with government's desire to allow for reasonable diversification of business uses in the interests of the economy. Based on the information submitted with the planning application, it is considered that the type of music-related entertainment proposed here would be incidental in nature. As such, and consistent with the description of proposed development, it is not considered that this incidental activity would result in a material change of use of the premises beyond the café/ restaurant proposed. It has been assessed on the basis that it would be similar to incidental live music provided in other café/ restaurants within the City.

Potential noise and disturbance from change of use of the building including customers and amplified music.

- 7.23 The application form states that the proposed opening hours of the business are 8.30am to 4pm Monday to Friday, 8.30am to 10pm on Saturday and 9am to 4pm on Sunday. The noise report states that evening music events associated with the primary café/ restaurant use will occur once every 6-8 weeks. It is considered that in line with the operating hours of other businesses in the area, operation until 6pm from Monday to Friday would not cause any significant harm to the amenity of neighbouring occupiers.
- 7.24 The 2022 application was refused because the application *'failed to demonstrate that the conversion of the whole building to a café/ restaurant and the proposed use of the terrace for customer seating, does not give rise to an unacceptable level of noise and disturbance and demonstrable harm to the amenities of neighbours.'* The previously submitted noise report failed to take into consideration the extended opening hours, did not include a proper noise assessment or measurements for existing noise levels within the building or transference to the neighbouring properties.
- 7.25 An amended noise report has been submitted which includes a more thorough assessment of the existing noise levels. In order to meet the guidelines set out by the Institute of Acoustics for this type of use, the report recommends the following mitigation measures:
- The window at the rear of the counter will remain closed at all times.
 - Sound insulation board is proposed to be installed on the east side party wall at ground and first floor level to prevent noise transference to neighbouring

properties.

- Live music will be limited to the ground floor area only and all windows and doors will be kept closed during the performances.
- No speakers will be mounted on to the structural walls of the building.
- The sound level for the ground floor area will be limited to no more than LAeq,5min 85dB.

7.26 The report concludes that these mitigation measures will satisfactorily address any concerns relating to the sound transference through the party walls or for neighbours to the rear. Implementation of these measures can be secured by condition.

7.27 The Council's Environmental Health Officer (EHO) comments that the amended report has considered operational/plant and equipment noise, customer noise and music noise in respect of adjoining and surrounding properties and is more comprehensive than the previously submitted one. The EHO is generally in agreement with the mitigation recommendations made in this report. In respect of music noise they comment that the maximum noise level will be difficult to monitor as the impacts from music events depend on the type of event which can vary in terms of genre and equipment. The EHO recommends that, in addition to the mitigation measures proposed above, controlling the outbreak of music noise, and noise from the building generally, should be achieved through a formal management plan for the holding of these events including the careful selection/positioning of equipment (e.g. speakers facing inwards not towards the party walls/externally, positioning/size of speakers etc), management of customer noise and behaviour during events and generally, consideration for neighbours when opening and closing the premises and other potential sources of noise from within the building such as the careful operation of plant and equipment and management of takeaway food and drink. The EHO therefore recommends that a Noise Management Plan be required to address these management matters.

7.28 A Noise Management Plan and associated 'One Warning' policy and Risk Assessment have been submitted which addresses issues such as the set up for any live music, how customer staff noise and behaviour is managed, the operation of plant and equipment, deliveries and takeaways, the management of external areas and complaints procedure.

7.29 These documents are acceptable to the EHO and their implementation and maintenance can be secured by condition. Subject to this, the amended proposal, including the sound attenuation measures, is considered to have satisfactorily addressed the reason for the 2022 refusal in this regard.

Noise and disturbance from the proposed use of the first floor terrace for customers

7.30 It is proposed to use the rear garden and rear roof terrace on top of the out rigger as an additional outside customer seating area. The plan shows the terrace to have 11 covers arranged as groups of 2-3 people. The plans state that the terrace would only be used between 10am and 5pm (4pm on Sundays). It would be enclosed by a 1.1m timber slatted screen to the south and west sides and by a 1.9m brick party wall to the east side. The dwelling to the east at first floor has its living/dining room to the rear leading to a similar terrace arrangement with slatted screens on the east side of this dividing wall.

7.31 This use of the terrace by customers formed part of the reason for refusal in the 2022 application because the submitted noise impact assessment failed to consider all the associated impacts. An amended noise impact assessment which is more detailed in its assessment has been submitted with the current application. This includes an assessment of the noise impacts on all relevant neighbours. It concludes that the

predicted sound levels for the closest neighbour at No. 96a would be 48dB which is below the Institute for Acoustics guidance levels for 'entertainment venues - gardens and play areas' of 55dB and below the level of the ambient sound from traffic and other noise sources in the area which are generally above 60dB. The report concludes that the noise levels are likely to be lower if this area is properly managed. It also proposes that the use of this area is restricted to the timings noted above.

- 7.32 The Council's EHO has no objection to the use of this terrace area for customers provided that no music is played at any time in this location and a noise management plan is agreed. The EHO also recommends that the hours of use are reduced on Sundays so that this area is not use before 12 noon and that details of any proposed exterior lighting be agreed. These requirements can be controlled by condition. It would be reasonable to apply the same restrictions to the garden. Subject to these conditions, the amended proposal is considered to have satisfactorily addressed the reason for refusal in this regard.

Noise from plant

- 7.33 In order to meet the Council's requirements that the kitchen extract noise is at least 10dB below background noise levels at the nearest noise sensitive receiver, a new kitchen extract will be installed. The specifications show it to be a domestic style fan with a noise output of 34dB which is more than 10dB below the background noise levels (more than 60dB). The Council's EHO acknowledges that these arrangements should comply but requests that this is verified by a post completion noise testing. This can be secured by condition. Subject to this condition the proposal is considered to be acceptable and policy compliant in regard to noise from plant.

Noise and Disturbance from Deliveries and Collections

- 7.34 Local residents have previously raised concerns in relation to early morning deliveries and collection (pre 6am) to the rear of the premises which is close to a number of dwellings. No information has been provided regarding the timings of collections and deliveries, but this can be conditioned to ensure that the residential amenity of neighbours is not unacceptably disturbed. In similar applications within mixed commercial/ residential areas deliveries have typically been restricted from 7am to 6pm Mondays to Fridays, from 8am to 1pm on Saturdays and not at any time on Sundays, Bank or Public Holidays. Subject to this restriction the proposal is considered to be acceptable and policy compliant in this regard.

Overlooking and Loss of Privacy from Proposed Café/Restaurant Terrace

- 7.35 The proposal includes the installation of a 1.1m timber screen to the west and south sides of the terrace. The east side of the terrace is enclosed by a 1.9m party wall.
- 7.36 The terrace would have a view over neighbouring gardens from the southern aspect which is 8.6m from the boundary of No 10 Ashleigh Drive but the terrace is orientated away from the most sensitive part of this neighbour's garden, towards the end which is 9.4m away. A large outbuilding has been erected at the end of the neighbour's garden in that position. The closest neighbours in Redcliff Drive all have sheds at the end of their gardens which effectively increase the separation distance to at least 10.5m. This is similar to the view from the terrace of No 98A Broadway attached to the application site. There is an existing 1.9m tall wall between the terrace of No 98A Broadway and the application site. To the west side, the terrace at the application site overlooks the parking area and commercial neighbour at No 94 Broadway. The proposed 1.1m high timber screen would not be an overbearing feature and would be acceptable on its own

right.

- 7.37 In order to reduce any harmful overlooking onto neighbouring amenity areas a 1m deep planter is proposed along the south side of the terrace area. This will prevent customers from standing right on the southern edge of this area and consequently reduce the outlook downwards over the neighbouring amenity areas. It is also noted that customers using this area will be seated for the vast majority of the time which will further reduce any harmful overlooking of the immediate environs of the site whilst reasonably maintaining longer views of the estuary beyond. The planter would not be an overbearing feature and would be acceptable on its own right.
- 7.38 Given that the existing character of this rear scene is of close-knit properties including a number of terraces facing south over the gardens of properties in Redcliff Drive and Ashleigh Drive, it is considered that the terrace is sufficiently separated or protected from neighbouring amenities spaces so as not to give rise to an unacceptable loss of privacy for these neighbours. The closest neighbour on the west side is a commercial unit with associated car parking so there are no concerns in relation to the loss of privacy to this side. The outlook over neighbouring gardens is therefore considered to be acceptable and policy compliant in this regard. This is the same conclusion as reached in respect of the 2022 application which was only refused on potential noise impact, not overlooking and loss of privacy.
- 7.39 Overall, therefore, it is considered that, subject to conditions relating to the installation of sound proofing, the agreement of a noise management strategy and restricting music and the hours of use of the terrace, the amended proposal has satisfactorily overcome the previous reason for refusal in regard to noise and disturbance to neighbours and the current proposal is acceptable and policy compliant in this regard.

Traffic and Transportation Issues

- 7.40 The NPPF states (para 111) that "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or, the residual cumulative impacts on the road network would be severe.*"
- 7.41 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 states that 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.

Parking

- 7.42 Development Management Policy DM15 requires new flats outside the central area to have a minimum of 1 space per unit and new restaurant space to have a maximum of 1 space per 5 sqm unless a reduced provision can be justified. The existing flat would therefore notionally generate a demand for parking of 1 space which can be offset against the policy requirement for the café/restaurant use. The first floor area of the flat which has been converted to customer seating is approximately 35sqm.
- 7.43 The site has no off-street parking spaces but is in a sustainable location close to public transport and other amenities and is likely to be visited as part of linked trips to the Broadway. The Council's Highways Officer has not raised any objections. On this basis the development is considered to be acceptable and policy compliant in this regard. This is the same conclusion that was reached in the 2022 application.

Cycle Parking

- 7.44 Development Management Policy DM15 requires cafes and restaurants to provide cycle parking for staff and customers. No specific cycle store is shown on the plan but the site has a number of large lower ground stores which could be used for staff cycles and there is public cycle parking in the Broadway. The Council's Highways Officer has not raised any objections. The development would be acceptable and policy compliant in this regard subject to an appropriate condition.

Refuse and Recycling

- 7.45 A refuse and recycling area is at the southern end of the site. This comprises a range of bins accessible from the garden and parking area which are proposed to be screened from public view by a timber slatted fence to match that proposed on the terrace. This is an acceptable solution both visually and practically. Subject to a condition requiring the screening to be installed, the proposal is acceptable and policy compliant in this regard.

Community Infrastructure Levy (CIL)

- 7.46 The proposal for the existing property equates to no new floor space, the development 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

- 7.47 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.

Conclusion

- 7.48 Having taken all material planning considerations into account, it is found that subject to compliance with the attached conditions, the proposed amended development has satisfactorily overcome the reasons for refusal of the 2022 planning application in relation to character and neighbours' residential amenity and would be acceptable and compliant with the objectives of the relevant local and national planning policies and guidance. The principle of the development is found to be acceptable. The impact on the amenities of neighbours is acceptable and all aspects of the proposal would, on balance, have a neutral impact on the character and appearance of the application site, the street scene and heritage assets including the conservation area more widely. The highways, flooding and environmental impacts of the proposal are also acceptable. The amended application is therefore recommended for approval subject to conditions.

8 Recommendation

8.1 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: PP100, PP101, PP102, PP103 Rev C, PP104 Rev C, PP105 Rev A.

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

03 The raised terrace area to the rear of the building shall not be used by customers unless and until the narrow slatted timber balustrading and 1m deep planter have been installed as shown on approved plans reference PP103 Rev C and PP104 Rev C. These measures shall be retained for the lifetime of the development.

Reason: To safeguard the character and appearance of the site and the surrounding Leigh Cliff Town Conservation Area and the amenities of neighbours in accordance with Policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1, DM3 and DM5 of the Development Management Document (2015) and advice contained within the National Design Guide (2021), Southend-on-Sea Design and Townscape Guide (2009) and the Leigh Cliff Town Conservation Area Appraisal (2021).

04 The Class E (café/restaurant) use hereby permitted shall not be open to customers outside the following times: from 8:30am to 6pm Mondays to Fridays, from 8:30am to 10pm on Saturdays and from 9am to 4pm on Sundays and Bank and Public Holidays.

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

05 No deliveries or refuse collection shall be taken at or despatched from the Class E use hereby permitted other than the following hours from 7am to 6pm Mondays to Fridays and from 8am to 1pm on Saturdays and not at any time on Sundays, Bank or Public Holidays.

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

06 Other than for maintenance or in the event of emergency escape, the rear first floor terrace area of the development hereby approved shall not be used by staff or customers for any purposes including for the consumption of food or drink or smoking outside the following hours: from 10am until 5pm on Mondays to Saturdays and from 12 noon to 4pm on Sundays and Bank and Public Holidays. There shall be no speakers or music, amplified or otherwise, played or relayed on the terrace or in the garden at any time.

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

- 07 Within 2 months of the date of this decision a post completion noise survey must be undertaken by a competent qualified acoustic consultant to accurately measure the noise from the replacement kitchen extract fan hereby approved at the maximum operating speed. This survey shall demonstrate that the noise from the kitchen extract fan when operating at its maximum speed is limited to 10 dB(A) below the background noise level over 15 minutes including any penalties for noise characteristics such as tone and intermittency measured in accordance with British Standards BS4142:2014+A1:2019. The results of the survey report shall be submitted to and approved in writing by the Local Planning Authority. If the post completion survey reveals that the above noise criteria have not been met further noise mitigation shall be specified and implemented shall be retained thereafter. If within 6 months from the date of this decision the noise criteria set above have not been met, the use of the building as a café/restaurant shall cease until a noise survey has been submitted to the Local Planning Authority confirming compliance.

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

- 08 Within 2 months of the date of this decision, the noise mitigation measures as detailed in the 'Noise Impact Assessment' by Venta Acoustics (Report VA4337.220914.NIA dated 15 December 2022) shall be implemented at the site in full by competent persons and 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 Report.

If the mitigation measures tested in the post-completion report prove to be insufficient, 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 prior to operation.

The mitigation measures as approved shall be retained thereafter.

If within 6 months from the date of this decision the noise criteria set above have not been met, the use of the building as a café/restaurant shall cease until a noise survey confirms compliance.

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

- 09 The use hereby approved shall be managed in strict accordance with the Noise Management Plan received 20 March 2023 and associated 'One Warning' Policy and Risk Assessment or any other management plan full details of which have previously been submitted to and agreed in writing by the Local Planning Authority under the terms of this condition and in either eventuality for the lifetime of the development.

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

- 10 Within 1 month of the date of this decision, the refuse and recycling area to the rear of the building as shown on plan reference PP105 Rev A shall be enclosed on its west side by a 1.8m slatted timber screen which shall fully accord with the details and specifications shown on that plan. The refuse and recycling storage facilities shall be retained for the lifetime of the development in accordance with the approved details.

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 Policy DM15 of the Development Management Document (2015).

- 11 Within 3 months from the date of this decision cycle storage facilities for at least 2 bicycles shall be provided and made available for use at the site by the employees of the approved use in full accordance with details that have been previously submitted to and agreed in writing by the Local Planning Authority under the terms of this condition. The approved cycle storage facilities shall then be retained for the lifetime of the development.

Reason: To ensure the provision of adequate cycle parking in accordance with policies DM8 and DM15 of The Development Management Document (2015).

- 12 No external lighting shall be installed to the rear of the building subject of this permission or within its outside seating areas other than in accordance with details including lighting design, specifications and location that have previously been submitted to and approved in writing by the Local Planning Authority under the provisions of this condition. All illumination shall be designed in accordance with the Institute of Lighting Professionals "Guidance Note 01/20: Guidance notes for the reduction of obtrusive light". All lighting within the site shall be retained in accordance with the approved details.

Reason: In order to protect the amenities surrounding occupiers and to protect the character 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).

- 13 Construction works associated with this permission shall not take place outside the following hours: from 8am to 6pm Mondays to Fridays, from 8am to 1pm on Saturdays and at no time Sundays or Bank and Public Holidays.

Reason: In order to protect the amenities surrounding occupiers and to protect the character 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).

Positive and Proactive Statement:

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 extension(s) equates to less than 100sqm of 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 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 will 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 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 City, 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 2013, 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 City Council, Civic Centre, Victoria Avenue, Southend SS2 6ER.**
- 05 The applicant is reminded that the development on site remains unauthorised until the mitigation measures hereby approved have been installed. Failure to remedy this may result in the council considering the expediency of enforcement action to seek to remedy the currently identified harm.**