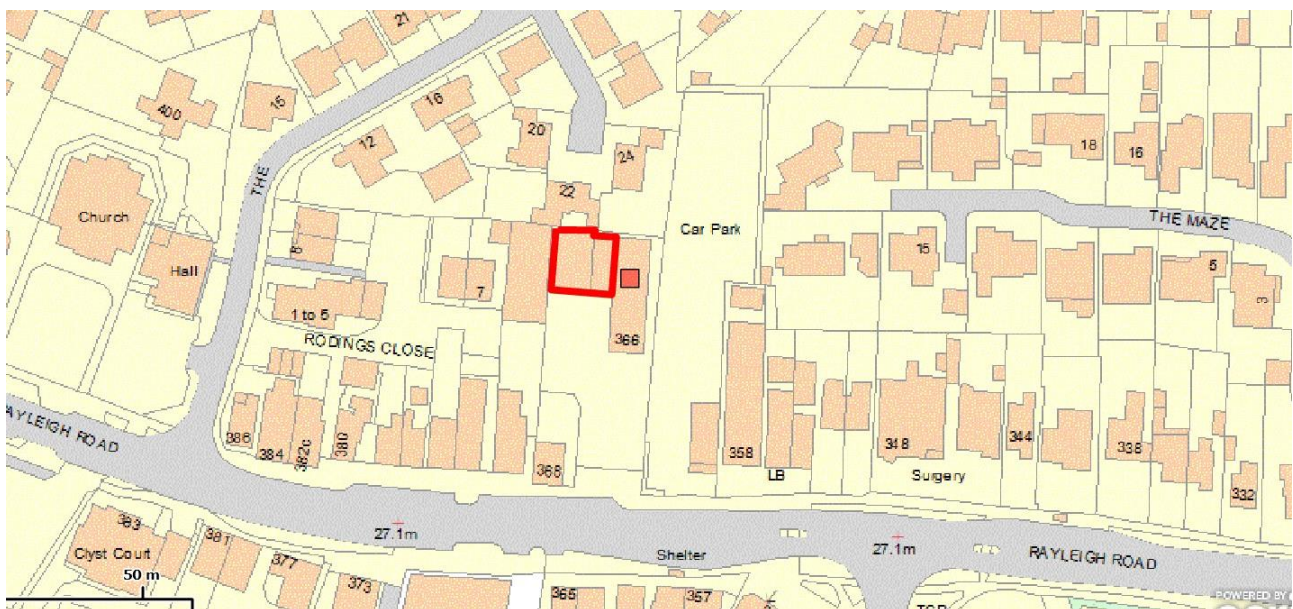


Reference:	22/01051/FUL	
Application Type:	Full Application	
Ward:	Eastwood Park	
Proposal:	Change of use from storage/distribution (Class B8) to tyre sales and fitting (Sui Generis) (Retrospective) (Amended Proposal)	
Address:	366 Rayleigh Road, Eastwood, Essex	
Applicant:	Mr Karsaz Hassan	
Agent:	Nicholas Kingsley Smith of Kingsley Smith Solicitors LLP	
Consultation Expiry:	9th June 2022	
Expiry Date:	7th July 2022	
Case Officer:	Robert Lilburn	
Plan Nos:	Site Plan 26 Oct 2021 Existing Floor Plan and Elevations PP / 02 A Existing Floor Plan and Elevations PP / 02 A (2) Proposed Floor Plan and Elevations PP / 03 A	
Supporting Document:	Supporting statement, Noise Impact Assessment 26 th April 2022 Issue 01	
Recommendation:	REFUSE PLANNING PERMISSION	



1 Site and Surroundings

- 1.1 The application form identifies the site address as 366 Rayleigh Road, in common with application 21/02450/FUL which was presented to Development Control Committee (DCC) on 2 March 2021. Application 20/01895/FUL, presented to DCC in July 2021, indicated the boxing gym adjoining the 'tyre garage' as no.366. Plans submitted in the current application identify the boxing gym premises as no.364.
- 1.2 This matter has previously been raised with the applicant and further to their representations, the application was assessed as applied-for. Consistent with the previous application it is considered that the matter should not prejudice the accurate assessment of the application in its planning merits. It should be noted that the Enforcement Notice issued on 1 June 2022 relates to 364-366 Rayleigh Road (21/00206/UCOU_B).
- 1.3 The submitted plans identify the application site inconsistently. Clarification has been sought, and received, excluding the red edge shown on the submitted floor plans. It is noted that the red edge confirmed by the agent excludes the area at the front of the building in which tyres have been noted on site visit as stored in the open. It is considered that this matter does not prejudice the accurate assessment of the application which is assessed on its merits as submitted.
- 1.4 The application site is located north of Rayleigh Road. The subject of the application is a single-storey brick-built flat-roofed unit, with high bay area, 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. Tyre sales and fitting have been carried out at the site and this is subject to a planning Enforcement Notice along with the alleged unauthorised operational development. The structure adjoins the boxing club to the east
- 1.5 The site is set within an area of hardstanding and car parking, combined with the boxing gym at no.366, and bordered mainly with wooden and palisade fencing. The remainder of the building's forecourt frontage, beyond the area used for storing tyres, is used for vehicle sales, for which there is no record of planning permission. As noted, the site edged red identifying the application site has been confirmed and does not include the hard standing area.
- 1.6 Neighbouring commercial yards lie 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.
- 1.7 The Rayleigh Road frontage nearby is characterised by commercial uses with flats above. The subject building is located 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 started on 24.10.2019 and was completed on 25.10.2019. In the submitted Supporting Statement the applicant states that *“matters relating to the appearance of the premises will be resolved through a further application once approval confirms the use is satisfactory”*. The applicant has therefore explicitly excluded operational development from the scope of this assessment.
- 2.2 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.
- 2.3 The application has been submitted following refusal of planning permission at the site, in application 21/02450/FUL for the *“Change of use from storage/distribution (Class B8) to tyre sales and fitting (Class Sui Generis)”*. This was refused on 03.03.2022 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 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).*
- 2.4 The key difference in the current application from the previous refused application 21/02450/FUL is that the current application is supported by a Noise Impact Assessment 26th April 2022 Issue 01 by DAA (NIA).
- 2.5 The applicant has provided existing and proposed elevations showing operational development and a use layout consistent with the plans to application 21/00902/FUL for *Change of use from storage/distribution (Class B8) to MOT Testing station and vehicle repair garage (Class B2) and alter front elevation*. That application was refused further to a report to DCC, 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).*
- 2.6 As noted above no operational development is to be assessed in this application, and the operational development that has taken place is at odds with those previously assessed elevation changes to which no objection was raised. The applicant has also provided proposed plans indicating the use previously found unacceptable in application 21/00902/FUL. This would appear to be outside the scope of this application which is for tyre sales and fitting.

- 2.7 The applicant has provided two sets of floor plans which provide contradictory information regarding the layout of the existing tyre store and fitting arrangements.
- 2.8 The Enforcement Notice (EN) issued on 1 June 2022 (21/00206/UCOU_B) pursuant to the report to DCC of 2 March 2022 (21/02450/FUL) alleges the breach of planning control as:
- A. Without planning permission, the change of use from storage/distribution (Class B8) to tyre sales and fitting (sui generis);
 - B. Without planning permission, the erection of a brick wall and installation of corrugated sheeting and industrial door.

- 2.9 The EN states that *"it appears to the council that with respect to the unauthorised development the above breach of planning control has occurred within the last ten years and the council considers it is expedient to issue this notice for the following reasons:*

The current use on the site for tyre sales and fitting is an identified breach of planning control. It is causing significant and demonstrable harm to 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).

It is found that the identified harm from the unauthorised use cannot reasonably be overcome by planning conditions based on the circumstances of the case and in line with the findings of the two applications so far considered and refused [21/02450/FUL (Change of use from storage/distribution (Class B8) to tyre sales and fitting (Sui Generis) and 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)]".

- 2.10 As noted, the principal change in the current application from the situation subject of the EN is the provision of the NIA.
- 2.11 The application was called into Development Control Committee by Councillors Walker and Collins.

3 Relevant Planning History

Adjoining premises, identified as 366 Rayleigh Road in the following applications:

[**Officer comment:** these two cases relate to adjoining premises.]

- 3.1 22/00180/AD: Approval of details pursuant to conditions 05 (noise mitigation scheme), 06 (details of AC unit), 07 (noise survey), 08 (details of secure cycle storage) and 09 (details of refuse and re-cycling storage) of planning permission 20/01895/FUL dated 22.07.2021, Pending consideration.
- 3.2 20/01895/FUL: Change of use from storage/distribution (Class B8) to Boxing Gym (Class E) (Retrospective). Approved 22.07.2021.

Application site, identified as 366 Rayleigh Road:

- 3.3 21/02450/FUL: Change of use from storage/distribution (Class B8) to tyre sales and fitting (Class Sui Generis). Refused.

Application site, identified in previous applications as 364 Rayleigh Road:

- 3.4 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. Refused 23.07.2021.
- 3.5 21/00206/UCOU_B: Change of use to tyre sales and fitting, together with the erection of a brick wall and installation of corrugated sheeting and industrial door. Enforcement Notice issued 01.06.2022 to take effect from 01.07.2022.
- 3.6 364-366 Rayleigh Road:
08/00504/FUL: Use Industrial unit (Class B8) and Retail unit (Class A1) as Car Wash and Valeting (Sui Generis). Withdrawn.
- 3.7 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.
- 3.8 Earlier applications have been determined in relation to the site; these are considered not to have a significant bearing on the determination of the current application.

4 Representation Summary

Public Consultation

- 4.1 14 neighbouring properties were notified and a site notice was posted. 3 letters of representation have been received from 2 nearby occupiers, commenting and objecting as follows:
- Impacts on neighbour amenities of noise and disturbance;
 - Previously-raised objections still stand;
 - Car repair area and test ramp indicated on the plans contradict description of proposal as tyre sales and fitting;
 - Health effects of stress associated with application and complaints process;
 - Impacts on house prices.
- 4.2 These concerns are noted and where relevant to material planning considerations they have been taken into account in the assessment of the application. Other than as set out in Section 9 of this report the remaining points of objection raised in the representations are not found to justify refusing planning permission in the circumstances of this case.

Environmental Health

4.3 Summary

There does not appear to be any description of all site activities that may give rise to noise. It also does not sufficiently show where the operations are on site and give a sufficient description of the condition of each building. From previous visits operations occurred in both buildings.

The noise impact assessment does not appear to have considered the garden area adjacent to the north of the site in The Rodings.

366 Rayleigh Road currently has a statutory abatement notice in force arising from noise from the compressor used to inflate tyres at the site. Clarification is required as to if/how noise nuisance has been abated.

At the time of the nuisance investigation the compressor was housed in the building where tyres are stored. It did not have any enclosure on it. The building had a corrugated metal structure with large air gaps near to the roof that directly fed through the adjacent residential garden and premises. The ceiling height in the tyre store and compressor building is high adding to the reverberant sound. A full description of the building interior of the tyre store area should be provided together with details of any treatment to the compressor.

The report shows an assessment of noise from tyre changes. This indicates that at the noise receptors identified in the report the specific noise will be 5 dB(A) above the background noise level and hence 15 dB(A) above the council's criteria. Confirmation is required as to whether this is accurate for the garden receptor to the north of the site.

The specific noise assessment does not include the compressor last seen in the tyre storage building. Details of compressors location, specific noise levels from it produced and its noise impact need to be provided. This is important as it was the specific noise source that caused the greatest impact previously.

The air gaps in near to the roof of the tyre store area should be filled as any noise within that building is likely is likely to break out into the garden area to the north.

The above information should be provided with revised mitigation measures.

[officer comment: the Environmental Health officer has requested additional information is provided to address the above. The application is an amended proposal, for a development materially similar to that subject to an Enforcement Notice, issued to address significant neighbour amenity impacts. The application is not reasonably clear in several key respects, regarding uses, layout and site location. Although clarity has been sought from the agent with regard to concerns with the quality of information, it is not considered reasonable in these circumstances that the application process be further drawn out by seeking additional information and revisions].

4.4 **Highways**
No objection.

4.5 **Fire**
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 Waste Storage, Collection and Management Guide for New Developments (2019)

5.5 CIL Charging Schedule (2015)

6 Planning Considerations

6.1 As far as can be ascertained from the submitted details, the application is for development similar to that identified in the Enforcement Notice.

6.2 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, CIL and whether the application has overcome the earlier reason for refusal and the reasons for issuing an Enforcement Notice. Matters relating to detailed design are confirmed by the application to be excluded from the scope of this application.

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 and 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 in principle significantly harm the character and appearance of the subject building and 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, have separately been subject to the recent Enforcement Notice.

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’ amenity 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. The 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 sought further details of the use, equipment, layout, noise pathways through built fabric and noise impacts at the nearest sensitive receptors (NSR). The submitted NIA does not reasonably address the above matters, as readings have been taken on site only without regard for the specific issues in the building's structure and its relationship to the NSRs. Mitigation measures are proposed and these are based on incomplete and inadequate information including assumptions about the building's structure which do not correspond with the observations of the Environmental Health officer.
- 7.17 The application has not provided sufficient details of equipment or operations and potential mitigation measures. The failure to clearly identify the site and its layout are further negative aspects of the submission. It is therefore not reasonable to approve the application with a condition requiring noise mitigation measures as the impacts have not been fully quantified, and proposed mitigation measures have not been identified.
- 7.18 Consistent with the recently refused application for similar development at the site and the reasons for issuing an Enforcement Notice with regard to the same, it is not considered that protection of neighbour amenities from harmful noise impacts can be reasonably achieved within the scope of a planning condition. It is not clear that this matter could be reasonably overcome through restrictions on opening hours.
- 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 that adequate parking should be provided for all development in accordance with the adopted vehicle parking standards.
- 7.21 No parking is proposed. 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 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 employee parking would likely be reasonably accommodated either on the premises or on public car parking nearby. The site is on a bus route. 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. This conclusion is concurrent with the basis of decision on previous applications on the site.

Community Infrastructure Levy (CIL)

- 7.22 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 Conclusion

- 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 reasons for issuing an Enforcement Notice, and is found to be unacceptable and is therefore recommended for refusal.

9 Recommendation

REFUSE PLANNING PERMISSION for the following reason(s):

- 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.**