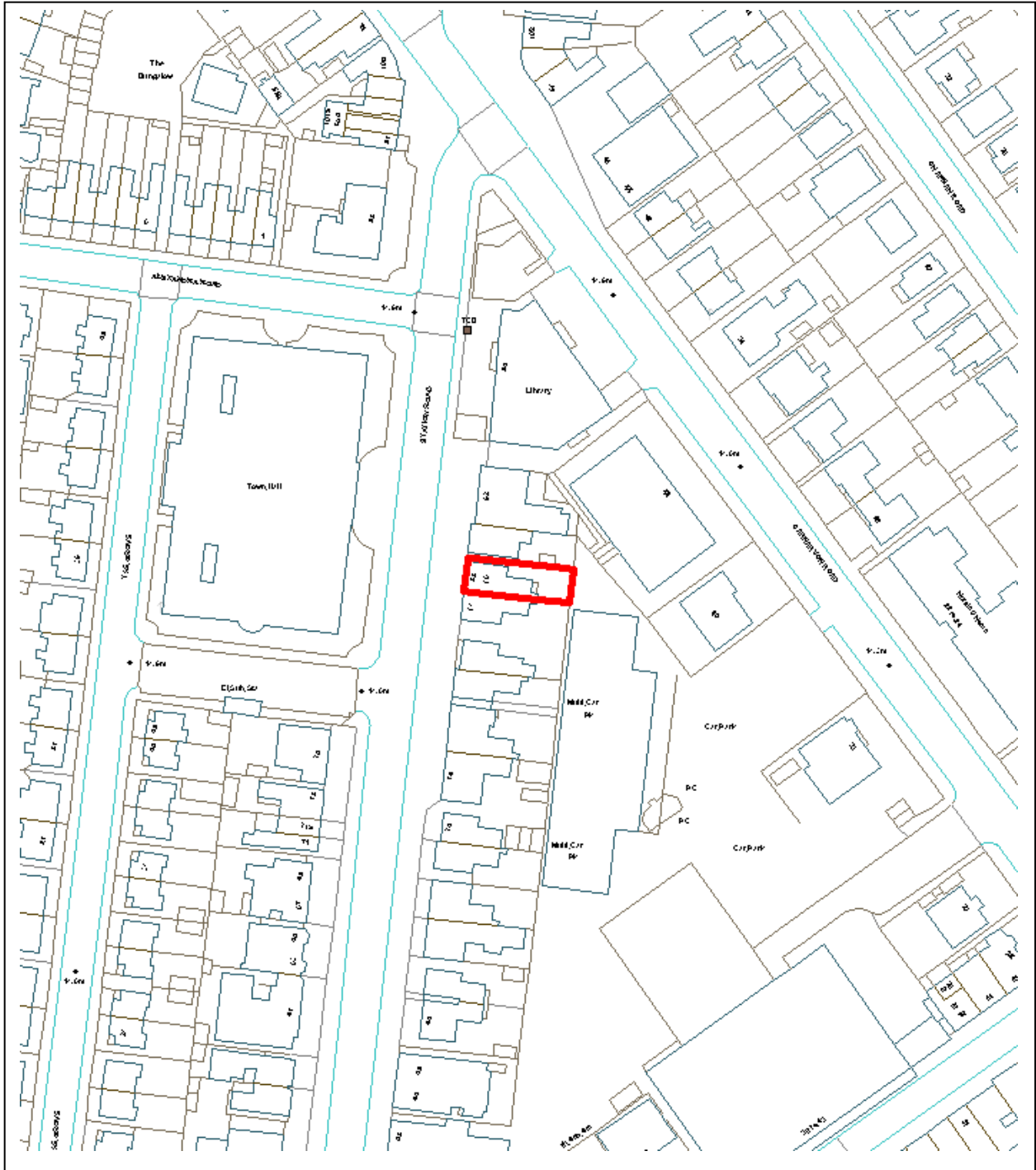


PLANNING COMMITTEE

23 AUGUST 2011

REPORT OF THE TEMPORARY HEAD OF PLANNING

**A.2 PLANNING APPLICATION - 11/00637/FUL - 86 STATION ROAD, CLACTON ON SEA, CO15 1SP**



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<b>Application:</b>	11/00637/FUL	<b>Town / Parish:</b> Clacton Non Parished
<b>Applicant:</b>	Ace Properties Ltd	
<b>Address:</b>	86 Station Road Clacton On Sea Essex, CO15 1SP	
<b>Development:</b>	Change of use of ground floor to A5 takeaway.	

## 1. Executive Summary

- 1.1 This application is before Members because it has been referred by Councillor Paul Honeywood due to “highways and /or other traffic issues” and “negative impact on neighbours”.
- 1.2 The application is for a takeaway. No further details of the nature of the proposal are given as the application is to assist in the marketing of the property. The site is in the town centre where Local Plan policies and Government guidance generally direct such uses. Smells and fumes generated by the use can be satisfactorily controlled through conditions and there is no materially harmful impact on the site’s appearance, highway safety or parking when compared to the alternative lawful uses the site could be put to.

### **Recommendation: Approve**

#### **Conditions:**

- Time limit
- Approved plans
- Implementation of flue
- Scheme of ventilation, extraction and odour control
- Opening hours no later than 11pm

#### **Reason for approval:**

This application is for a takeaway in a town centre location where Local Plan policies and Government guidance generally direct such uses. Smells and fumes generated by the use can be satisfactorily controlled through conditions and there is no materially harmful impact on the site’s appearance, highway safety or parking when compared to the alternative lawful uses the site could be put to. Other concerns expressed by neighbours relating to the unsociable and illegal behaviour they feel will result from this proposal can be given little weight as the proposed use does not generate such behaviour.

## 2. Planning Policy

### National Policy:

PPS4            Planning for Sustainable Economic Growth

Local Plan Policy:

Tendring District Local Plan 2007

ER31	Town Centre Hierarchy and Uses
ER32a	Primary Shopping Area
QL9	Design of New Development
QL10	Designing New Development to Meet Functional Needs
QL11	Environmental Impacts and Compatibility of Uses
TR1A	Development Affecting Highways
COM20	Air Pollution/ Air Quality
COM22	Noise Pollution
COM23	General Pollution

Core Strategy and Development Policies Proposed Submission Draft

CP16	Town, District, Village and Neighbourhood Centres
DP1	Design of New Development

**4. Representations**

Five letters of objection have been received. The objections raised are summarised below and are all addressed within the subsequent sections of this report.

- Late night noise and disturbance
- Potential vandalism, litter, violence and other illegal / unsociable from takeaway customers in and around the site.
- The proposal would result in a loss of parking to nearby residents.
- Unwelcome smells from the extract vent.
- There are too many takeaways in town already.
- Loss of 'Estate Agency' character.
- Deliveries etc will have to take place from the forecourt as there is no rear access to the premises.

**5. Assessment**

The main planning considerations are:

- Policy Context;
- Existing Lawful Use;
- Amenity;
- Character and Appearance, and;
- Parking and Highway Safety.

## **Policy Context**

- 5.1 The application site is situated within the town centre as defined by the Local Plan. A takeaway is a town centre use which Government guidance in PPS4 and Local Plan policy ER31 direct towards town or local centres. Policy ER32a of the Local Plan designates parts of the town centre where non-retail uses such as takeaways will be discouraged. The application site is not within that area. Consequently, subject to local considerations, there is a presumption in favour of such a takeaway use in this location.

## **Existing Lawful Use**

- 5.2 The existing lawful use of the site is uncertain. The application form describes it as being within Class A5 (takeaway). This appears to be a mistake as no planning permission would be required in such an eventuality and in plans the applicant identifies the existing use as being A2. The last use of the site was as a letting agency which does fall within Class A2 of the Use Classes Order. However, prior to being a letting agency, the site was used as a dance shop which would be within Class A1 (retail). There is no planning record of the change of use from shop to letting agent.
- 5.3 In either case, because of permitted development rights that allow changes from Class A2 to Class A1, the site could possibly lawfully be used as a shop without requiring a planning application.

## **Amenity**

- 5.4 This application includes a flue situated on the north side of 86 Station Road. The upstairs floors of both 86 Station Road and 90 Station Road to the north, serve offices and not residential properties. The nearest residential properties will therefore be the flats on the upper floors of 84 Station Road which is on the opposite side of the building to the proposed extraction flue.
- 5.5 The Environmental Services department of the Council advise that the proposed flue, combined with conditions requiring the implementation of a scheme for ventilation, extraction and odour control, would ensure that the amenity of nearby residential and commercial properties will not be materially harmed through noise from the ventilation/extraction system and/or smells.
- 5.6 Objectors' concerns about possible criminal activity outside or nearby the takeaway are not grounds for refusing this application. A takeaway in itself does not cause criminal activity and it would therefore be unreasonable to refuse this application on that basis. Objectors admit some such undesirable activity already occurs in the area.
- 5.7 It is a realistic possibility that the takeaway operators would wish to open late into the night at weekends at least. There would also be the possibility of customers congregating inside and outside the takeaway late at night. The application site is situated in the town centre, just outside of the primary shopping part of the town centre, on the main route to the train station. Such a site is where one might expect to find a takeaway. The town centre is where late-night congregation is to be expected and this is not in itself undesirable. It is common for groups of people to congregate at night within the town centre and takeaways sometimes form a focus for this. Although flats are commonly located above commercial properties in the town centre, the location means that resident's expectations of quiet must be considerably reduced compared to more suburban locations.
- 5.8 Never-the-less, the proximity of residential properties to this site, which does not currently have late night land uses close by, means that it is reasonable to impose conditions preventing the takeaway from opening too late into the night.

### **Character and Appearance**

- 5.9 Although the flue is not an attractive feature, because of its siting it will have minimal public visibility and is therefore acceptable in terms of its appearance.
- 5.10 Objectors have made comment that the proposal is harmful to the 'estate agency character' of the area. It is the case that there are many estate agencies and banks on Station Road. This has evolved over time through the devices of the free market and not through any policy allocating or protecting Station Road for such uses. Similarly, objectors claim that there are already enough takeaways in town. The free market dictates whether or not there are enough takeaways in the town and indeed where those takeaways are. It is not generally for the planning system to interfere in the free market unless there are material planning grounds for doing so. There are no policies in the adopted Local Plan or the draft LDF that seek to limit the number of takeaways or restrict them in this part of Station Road.

### **Parking and Highway Safety**

- 5.11 It is commonly the case that commercial (and residential) properties in the town centre do not provide customer or staff parking. It is also common for loading and unloading to take place in the highway in town centres. In any case, there is no reason to suppose that the proposed use would generate a greater parking or servicing requirement than other uses that the premises could be put to without requiring a planning application – for example shop use. The highway authority has no objection to the proposal and it is noted that the Council's adopted parking standards do not set down any minimum requirements for takeaways. These are material considerations of significant weight.
- 5.12 Whilst objectors at 84 Station Road have concerns that their own parking facilities will be compromised by this proposal, for the above reasons, that is unlikely. It is in any case a private matter and not one that could be given planning weight.

### **Background Papers**

None

**Copies of all written observations on the applications before you for determination are available for inspection up to and including the date of the meeting during normal office hours at the Council Offices, Weeley. Please advise Planning Reception if you wish to see them to ensure the file is available. The file containing the observations will be available in the Council Chamber half an hour before the commencement of the meeting.**