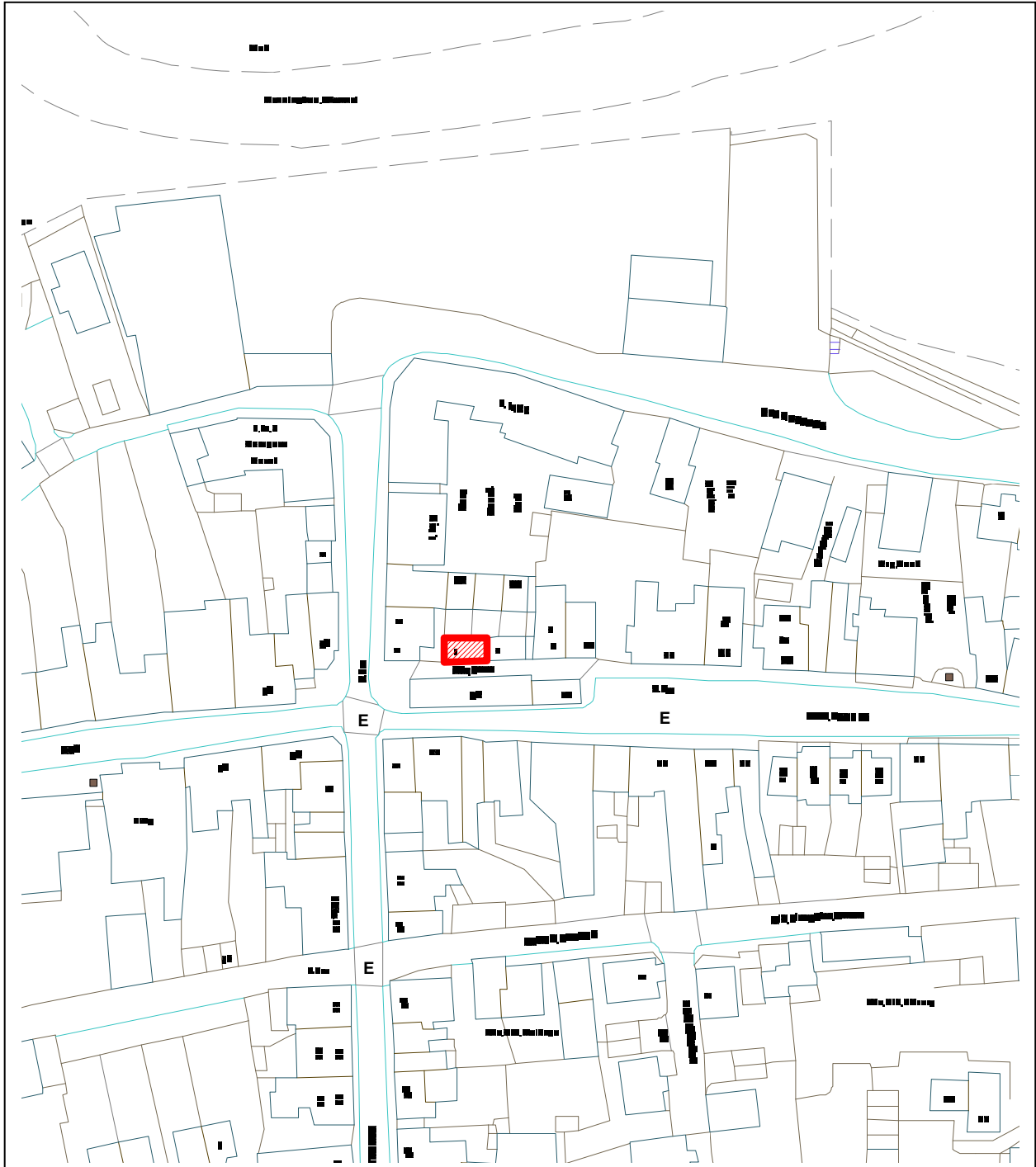


PLANNING COMMITTEE

15 MAY 2012

REPORT OF THE TEMPORARY HEAD OF PLANNING

A.4 PLANNING APPLICATION - 11/01381/FUL - 1 THE LANE, MANNINGTREE, ESSEX, CO11 1AW



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Application:	11/01381/FUL	Town / Parish: Manningtree Town Council
Applicant:	Manningtree Churches - Mr Malcolm Westwood	
Address:	1 The Lane, Manningtree, Essex, CO11 1AW	
Development:	Removal of Condition 2 of 09/00036/FUL to allow permanent use of the premises as a youth cafe/drop-in centre.	

Updated Report

1. Executive Summary

- 1.1 The application proposes the removal of Condition 2 of planning permission 09/00036/FUL, which was granted for a temporary period of three years on 14th April 2009. The removal of condition 2 would allow the permanent use of the premises as a youth cafe/drop-in centre. The condition was imposed to enable the Council time to assess the impact of the development on the retail function of Manningtree Town Centre and residential amenity in the locality.
- 1.2 This application was originally reported to the Planning Committee on 6 March 2012 with a recommendation of refusal. The Officer report advised the Planning Committee that the proposal conflicts with policy ER33 of the Local Plan, which seeks to protect existing retail uses within areas designated as a primary shopping frontage. It was considered that the proposal would result in the permanent loss of a retail unit, which would undermine the retail function of Manningtree's Town Centre.
- 1.3 Notwithstanding this, and having considered the Officer's recommendation and having weighed up all the information before it at that time, the Planning Committee resolved to grant planning permission (Minute 125 refers). A copy of the Minute is set out at Appendix A.
- 1.4 After the meeting, and before the issue of any decision, it came to the attention of the Council that 5 items of correspondence had been received prior to the date of the meeting that had not been referred to within the Officer's report. A review of the file was subsequently undertaken by the Council's Legal Services Manager in liaison with the Planning Development Manager. The review concluded that this correspondence amounted to a material planning consideration that must be duly taken into account before a final decision is taken by the Planning Committee. Furthermore, the review concluded that the comments from the Council's Department of Public Experience referred to in the Officer's report were unclear and could be open to several different interpretations. It was not clear whether the comments reflected the view of the Council's Department of Public Experience or those of the Planning Officer. Accordingly, no decision notice has yet been issued by the Council and the Council is therefore able to consider the application in light of all material considerations.
- 1.5 The applicant and an objector were informed of the outcome of this review and invited to submit further information in relation to the application should they wish to do so. Furthermore, the Council's Department of Public Experience has been asked to clarify their previous comments and Essex Police has also been consulted along with the Council's Community Safety Officer.

- 1.6 In the meantime, the temporary planning permission expired on 14th April 2012; however, at the Planning Committee meeting on 3 April 2012, the Temporary Head of Planning Services and the Planning Development Manager gave their assurances that enforcement action would not be taken pending determination of the application.
- 1.7 This report updates the Officer report which was considered by the Planning Committee meeting on 6th March 2012 (the “previous report”), a copy of which is attached at Appendix B. Those parts of the previous report which are struck through in Appendix B should not be taken into account because there is updated and additional information in Section 4 and Section 5 of this report. It is important that the Planning Committee gives further consideration to the application with all the correct information before it. This updated report therefore takes these matters into account.
- 1.8 It is also important to note that, whilst the Officer’s recommendation remains one of a refusal in line with policy ER33 of the adopted Local Plan, the Planning Committee’s resolution to grant planning permission on 6 March 2012 is itself a “material consideration” which Members must take into account when considering whether to grant or refuse planning permission. When making its decision, the Committee should take into account all material planning considerations now before them.

Recommendation: Refuse

Reason for Refusal:

It is the policy of the Local Planning Authority as contained with Policy ER33 of the adopted Tendring District Local Plan (2007) to preserve the existing level and balance of Class A1 retail uses in this part of Manningtree from erosion by the introduction of various non-retail uses. This is to maintain the form and attractiveness and the overall vitality and viability of the town centre and the compact form of the main shopping cores. Moreover the policy, which reflects recent government advice contained in PPS4: Planning for Sustainable Economic Growth, states that within the identified Primary Shopping Frontages in the District’s town centres proposals for change of use from Class A1 (shops) at ground floor level to Classes A2 - A5 will only be permitted where, amongst other things, the proportion of frontage in A2 to A5 use does not exceed 10% of the length of individual street frontage. Furthermore, the policy states that no non-retail uses will be permitted at ground floor level.

In this case the existing individual street frontage already far exceeds the 10% threshold. It is considered that further changes of use would seriously undermine the retail function. In this instance the proposed mixed use would result in the loss of a potential retail unit with the introduction of a non A1 use, which will have the effect of breaking up the coherence of the shopping centre and compromise the vitality and viability of the area contrary to the aims of the protected shopping frontage policies and the objectives of Planning Policy Statement 4 ‘Planning for Sustainable Economic Growth’.

2. Planning Policy

National Policy:

National Planning Policy Framework

Local Plan Policy:

QL10 Designing New Development to Meet Functional Needs

QL11	Environmental Impacts and Compatibility of Uses
COM1	Access for All
COM4	New Community Facilities (Including Built Sports and Recreation Facilities)
ER31	Town Centre Hierarchy and uses
ER33	Non-retail Uses Within Primary Shopping Frontages
EN17	Conservation Areas

3. Relevant Planning History

09/00036/FUL	Change of use of shop to youth cafe / drop in centre.	Approved (Temporary Permission for 3 yrs)	14.04.2009
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4. Consultations

Public Experience (Environmental Health) The Department of Public Experience have no comments to make on this application in regards to Environmental Pollution.

Having checked back through all complaint records held, which date back long before the premise was used as 'The Hub', it is advised that no complaints have been received from any members of the public, retailers or any other party about these premises or any activities relating to them.

Essex Police The area is only illuminated by units attached to other premises. To reduce the fear of crime, I would request that any "Deemed Planning Approval", should include a Condition related to the provision of an agreed Street Lighting Improvement Scheme.

The site is located in a built up area where youths attending "The Hub" are easily affecting other members of the community when they exit the building, in some quantity and commence or continue with anti-social behaviour.

To reduce incidents of anti-social behaviour and crime and reduce the fear of crime, I would request that any "Deemed Planning Approval" should include a Condition on the use of the site, indicating that any involvement or continued involvement in such stated incidents would be reflected on any one individual's continued attendance at the premises.

Since 1st January, 2011, we have had 10 Reported Incidents, involving youth related anti - social behaviour, in or around The Lane and during the current periods when The Hub is open. In addition, local officers have received details of further Incidents that have not been reported. Local Officers have indicated that the number of incidents reported since the 1st January, 2011, is not overly concerning with regards to the number of other reported Incidents.

However, the details reported are such that that the community could be aggrieved; annoyed or caused a nuisance. There is a high possibility that if the location of "The Hub" was to change then the anti-social behaviour would continue but simply in another location and have the same level of impact on policing in the area.

Overall, it is deemed that it is likely that there would be an increased impact on policing in and around the area, during the periods when the Hub is open.

Tendring District Council
Community Safety
Manager - Executive
Corporate Support

No complainants received from any members of the public in relation to running of 'The Hub'.

5. Representations (in addition to those contained in the previous Planning Committee report at Appendix B).

The following represents a summary of all those representations received since the review of the application file (including the 5 no. items of correspondence received prior to the date of the last Planning Committee meeting on 6 March 2012). Should Members wish to see the full content of the planning application file this can be arranged in consultation with the Case Officer.

5.1 Objections

1. 21 no. signature petition stating that 'The Hub' needs to be shut down if unrest is to be avoided.
2. 15 no. letters of objection received (including the 5 no. items of correspondence identified by the review of the planning application file). A summary of the content is provided below;
 - Intimidation of gathering groups of youths limits through flow of customers that pass by shops and reduces the shops revenue;
 - Lots of mess – sweet wrappers, chewing gum, phlegm on walls within The Lane;
 - Noise has risen significantly during the 3 years in which 'The Hub' has operated from the site;
 - Vandalism of pots and plants outside nearby shops;
 - Youths fill the passageway; an elderly lady was knocked over by a cyclist within The Lane. Youths on scooters and roller skates is also an issue;
 - Bad language and abuse, banging on walls, customers to nearby shops/services feel threatened. Direct impact upon businesses;
 - 10 incidents reported to local police of youth-related anti-social behaviour on a Wednesday and Thursday in and around The Lane, including;
 - loud music;
 - shouting/swearing;
 - racing on scooters through The Lane;
 - 25 youths banging on windows of businesses;
 - accumulation of mess/litter;
 - throwing of stones/apples.
 - Report from local PCSO advises that not all incidents happen at 'The Hub' however it appears that they are occurring as a direct result of 'The Hub' being open;
 - Youths asking shoppers at the nearby Tesco Express to buy them alcohol and cigarettes and are verbally abusive to staff;
 - Urination in areas along The Lane.

As a footnote to a letter from 'Out in the Sticks', 2 The Lane, it is advised that this business has since closed as a result of the problems associated with The Hub.

5.2 **Support**

1. 141 no. signature petition in support of the proposal from local youths who use the facility stressing the importance of the Hub to them and the benefits it brings.
2. 9 letters of support have been received; a summary of the content is provided below;
 - 'The Hub' is not the main cause of disruption from youths in Manningtree;
 - Press coverage has greatly exaggerated a small number of incidents that occur up to 2 hours before 'The Hub' opens;
 - No conclusive evidence that 'The Hub' has an adverse affect on either residents or businesses;
 - No alternative locations have been identified;
 - 'The Hub' has been a success in contributing to improved teenage behaviour in the town;
 - Support for central location of 'The Hub' and youngsters feel part of the community. Important for them to grow up as productive members of the community;
 - Unfair to punish majority for the sake of a few, by taking away their meeting place;
 - Closing 'The Hub' may exacerbate anti-social behaviour;
 - 'The Hub' management and volunteers are doing a fantastic job in very difficult circumstances;
 - Young people are future voters and as part of the big community a lack of support sends out a poor message in regards to a commitment to the community.

5.3 **Applicant's Representations and Supporting Information**

- The packet of 5 letters that has led to the review does not contain any new evidence and it is not clear that any of the letters were intended to be posted as public comments;
- The anonymous letter and specifically the handwritten annotation written by a second unknown person makes an assertion about 'Out in The Sticks', that the owner of that business, M Nicholas, has stated is untrue;
- Anti-social behaviour associated with The Hub is very occasional. Our records, which have been compared with those kept at Mistley Police Station, show that over a period of 30 months there were 5 complainants on Wednesday afternoons and a similar number on Thursday evenings mainly prior to the opening of 'The Hub'. The incidence of anti-social behaviour has therefore been greatly exaggerated by the objectors;
- Many of the objection letters stress the need for this kind of provision for teenagers and emphasise that their objections relate to the location of 'The Hub';
- An important objective of 'The Hub' is to encourage a sense of community and responsibility and consideration for our neighbours in The Lane. One elderly resident of Quay Courtyard to the rear of the site recounted how a group of young people had apologised for blocking her way and could not have been more considerate;
- A number of objectors have stated that 'The Hub' is too small. The main reason for groups gathering in The Lane is to smoke and attendees using the nearby Tesco Express and takeaways;
- A Meeting of 'The Hub' Action Group concluded that 'The Hub' was a positive service being offered to the youths that attend, but that the business owners are being affected by the youths and anti-social behaviour taking place before and after 'The Hub' opens and closes;
- Letter from the owner of 'Out in the Sticks' (adjacent to the 'The Hub'), stating that the closure of the premises had nothing to do with 'The Hub' next door.

6. Amenity

- 6.1 The additional letters and representations do not alter Officer's views in regard to the impact of the use upon the amenity of nearby residents and businesses. The majority of objector's concerns have regard to matters of youth-related anti-social behaviour, which is a matter for the police to deal with and is not a material planning consideration. A number of the objectors have stated that the operation of the youth club itself and what goes on inside the premises is not causing any significant noise and disturbance, but it is the behaviour of youths in and around the premises on days which 'The Hub' operates. This is a town centre location where some degree of noise has to be expected. In this instance, the proposal represents an enclosed and supervised location for teenagers to congregate as opposed to outside where noise and disturbance would be more of an issue.
- 6.2 Against this backdrop the Council's Public Experience Department (Environmental Health) and Community Safety Manager have both confirmed that they have not received any complaints from members of the public or local businesses in relation to anti-social behaviour or issues of noise disturbance in regard to the running of 'The Hub'. Essex Police has advised that whilst there are recorded incidents of anti social behaviour this would remain to be the case should the facility be relocated to another site. Essex Police has also requested conditions be imposed to provide improved street lighting and to control the people that attend The Hub. It is not considered reasonable to attach a condition to any approval of planning permission to provide improved street lighting as this falls outside of the application site and is not something that the applicant can reasonably be expected to deliver. It therefore fails the tests of Circular 11/95 that refers to the imposition of conditions. Furthermore, it would not be lawful or enforceable to impose a condition specifying the people that can attend the facility. The grant of planning permission relates to the use of the building and cannot control the identities of the youths attending the centre. In conclusion, the proposal for the permanent use of the premises as a youth club/drop in centre would not therefore have a significantly adverse impact upon the amenity of local residents.

Appendix A – Minute 125 – Planning Committee (6 March 2012)

PLANNING APPLICATION - 11/01381/FUL - 1 THE LANE, MANNINGTREE, CO11 1AW

The Committee had before it the published Officer report containing an appraisal of the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of refusal.

An update sheet with details of additional representations, namely a letter and a 141 signature petition in support of the proposal from local youths who use the facility and stressing the importance of The Hub to them and the benefits it brings, was circulated to Members before the meeting.

Jenine Collier, on behalf of the Manningtree and District Chamber of Trade, spoke against the application.

Malcolm Westwood, the applicant, spoke in support of his application.

It was moved by Councillor Johnson, seconded by Councillor White and:-

RESOLVED - That application 11/01381/FUL be approved contrary to the Officer recommendation subject to the following conditions and the following reason for approval:-

- The use only to be used by Manningtree Churches.
- No hot food to be served or prepared.
- Opening times 0900hrs to 2200hrs Monday - Saturdays and not at all on Sundays or Public Holidays.

Reason for Approval

In approving this application the local planning authority has taken account of the development plan policies and/or proposals listed above. While the proposal may be in conflict with policy ER33 of the adopted Tendring District Local Plan (2007) it is considered that the proposed change of use to youth café/drop-in centre does not adversely undermine the retail function of Manningtree Town Centre due to the property's siting along a narrow lane set back off the main retail frontage of the High Street. Additionally, the proposal would provide for the continued running of a community facility for which the applicant has proven local need. Furthermore, due to the lack of complaints to the Council's Public Experience (Environment Health) department regarding noise and amenity concerns and the fact the site is sited within a town centre location (where some noise is to be expected) the proposed permanent use of the premises as a youth cafe/drop-in centre would not have a significant adverse impact upon local residents' amenity levels.

NOTE: In accordance with the provisions of Council Procedure Rule 23.5, Councillor Candy required that she be recorded in the minutes as having voted against the above resolutions.

Appendix B – Planning Committee Report (6 March 2012) (“previous report”) –

11/01381/FUL – 1 The Lane, Manningtree, CO11 1AW

Application:	11/01381/FUL	Town / Parish: Manningtree Town Council
Applicant:	Manningtree Churches - Mr Malcolm Westwood	
Address:	1 The Lane, Manningtree, Essex, CO11 1AW.	
Development:	Removal of Condition 2 of 09/00036/FUL to allow permanent use of the premises as a youth cafe/drop-in centre.	

1 Executive Summary

- 1.1 This application proposes the removal of Condition 2 of planning permission 09/00036/FUL to allow permanent use of the premises as a youth cafe/drop-in centre. Condition 2 relates to a 3 year temporary use to enable time to assess the impact of the development upon the retail function of Manningtree Town Centre and residential amenity in the locality.
- 1.2 This proposal is in conflict with policy ER33 of the Local Plan that seeks to protect existing retail uses within areas designated as primary shopping frontage. The proposal would result in the permanent loss of a retail unit and as such would undermine the retail function of Manningtree’s Town Centre. Therefore, it is recommended that the application be refused.

Recommendation: Refuse

Reason for refusal:

It is the policy of the Local Planning Authority as contained with Policy ER33 of the adopted Tendring District Local Plan (2007) to preserve the existing level and balance of Class A1 retail uses in this part of Manningtree from erosion by the introduction of various non-retail uses. This is to maintain the form and attractiveness and the overall vitality and viability of the town centre and the compact form of the main shopping cores. Moreover the policy, which reflects recent government advice contained in PPS4: Planning for Sustainable Economic Growth, states that within the identified Primary Shopping Frontages in the District's town centres proposals for change of use from Class A1 (shops) at ground floor level to Classes A2 - A5 will only be permitted where, amongst other things, the proportion of frontage in A2 to A5 use does not exceed 10% of the length of individual street frontage. Furthermore, the policy states that no non-retail uses will be permitted at ground floor level.

In this case the existing individual street frontage already far exceeds the 10% threshold. It is considered that further changes of use would seriously undermine the retail function. In this instance the proposed mixed use would result in the loss of a potential retail unit with the introduction of a non A1 use, which will have the effect of breaking up the coherence of the shopping centre and compromise the vitality and viability of the area contrary to the aims of the protected shopping frontage policies and the objectives of Planning Policy Statement 4 'Planning for Sustainable Economic Growth'.

2. Planning Policy

National Policy:

PPS1 Delivering Sustainable Development
PPS4 Planning for Sustainable Economic Growth

Local Plan Policy:

QL10 Designing New Development to Meet Functional Needs
QL11 Environmental Impacts and Compatibility of Uses
COM1 Access for All
COM4 New Community Facilities (Including Built Sports and Recreation Facilities)
ER31 Town Centre Hierarchy and uses
ER33 Non-retail Uses Within Primary Shopping Frontages
EN17 Conservation Areas

3. Relevant Planning History

09/00036/FUL	Change of use of shop to youth cafe / drop in centre.	Approved (Temporary Permission for 3 yrs)	14.04.2009
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4. Consultations

~~Public Experience (Environmental Health)~~ ~~Department of Public Experience – Pollution and Environment have no comments to make on this application.~~

Regeneration Regeneration team do not support this application for the following reasons;

- The unit is located within Manningtree's primary shopping frontage and a permanent change of use would therefore be contrary to policy ER33.
- There are only 3 vacant shops in the town, and we understand negotiations are currently underway on one of these units with a new occupier.
- The Centre would still be best placed at an edge of centre location, allowing these premises to be used again as an A1 retail shop, thus increasing the retail vitality of the town centre.

5. Representations

- 5.1 Manningtree Town Council objects to this planning application.
- 5.2 8 letters of objection and 38 letters of support have been received. A summary of the content of the letters and the Officer response is set out below:

Objections

- Noise and disturbance
Officer Response – This is a town centre location where some degree of noise has to be expected. In this instance, the proposal represents an enclosed and supervised location for teenagers to congregate as opposed to outside where noise and disturbance would be more of an issue. Furthermore, the council's Public Experience department
- Anti-Social Behaviour
Officer Response – This is not a material planning consideration and is a matter for the police.
- Loss of an A1 (Retail) unit
Officer Response – Officers agree that the loss of an A1 unit would be detrimental to the vitality and viability of the Manningtree Town Centre.

Support

- This type of venture is needed in Manningtree and in a centralised location which is easily accessible.
Officer Response - Whilst it is not disputed that this venture represents a much needed community facility, it is not an argument for locating such a use within a protected shopping frontage. A non-A1 use is considered to adversely impact upon the health and vitality of the town centre.

6. Assessment

The main planning considerations are:

- Planning History;
- Policy Context/Retail Function;
- Residential Amenity, and;
- Other considerations.

Context

- 6.1 The application site is located on the northern side of The Lane, within the Manningtree Conservation Area and town centre. Since the granting of temporary planning permission in 2009 the premises have been in use as a youth drop-in centre/café. Prior to this the premises were in use as a 'Pound Shop' and therefore fall within A1 (retail) use. The premises have a frontage of 8 metres and a depth of 4.5 metres. To the north of the site is a retirement complex known as 'Quay Court Yard', to the east is an antiques shop and to the west is a listed building which accommodates a restaurant. The Lane runs parallel to the High Street and has a separate, but continuous retail frontage.

Proposal

- 6.2 This application is for a new permission without any time limit (removal of Condition 2 of planning permission 09/00036/FUL) to allow permanent use of the premises as a youth cafe/drop-in centre. Condition 2 of the previous permission states;

The permitted change of use shall be for a limited period of 3 years starting from the date of this permission. Upon the expiration of this period the use shall cease unless, a prior application has been submitted to and approved by the Local Planning Authority.

Reason - In order to assess the impact of the use upon the amenity of the residents living in the locality and the retail function of Manningtree Town Centre.

Planning History

- 6.3 A temporary planning permission lasting 3 years was granted in 2009 for the change of use of the premises from A1 (retail) to a youth drop-in centre/café (mixed use of A3 and D1). The reason for the permission being temporary was to enable an assessment of the use's impact upon residential amenity and the retail function of Manningtree Town Centre.

Policy Context/Retail Function

- 6.4 The local policy context has not changed since the previous granting of temporary planning permission. The site is designated within the saved Tendring District Local Plan (2007) as being part of the primary shopping frontage in Manningtree. Policy ER33 states that within the primary shopping frontages change of use from Class A1 retail at ground floor level to Classes A2-A5 will only be permitted where the proportion of frontage in A2-A5 use does not exceed 10% of the length of the individual street frontage. The policy also states that any other non-retail uses will not be permitted at ground floor level. This is to ensure that the coherence of shopping centres is not broken up and to maintain the vitality and viability of the centre. A D1 use at first floor level would be acceptable under this policy.
- 6.5 Policy ER31 does allow non-retail uses, including leisure, in town centres, but these should be located outside of the primary shopping areas. This approach is supported by the guidance in PPS4 'Planning for Sustainable Economic Growth'. The provision of community facilities that are easily accessible is an objective of the Local Plan in policy COM4; however, this is subject to there being no other overriding planning constraints. Therefore, whilst this proposal is in an accessible location within the town centre it conflicts with other policies.
- 6.6 The last permanent use of the application site was A1 (retail) use. The proposal, for a youth drop-in centre/café is considered to represent a mixed use proposal of A3 and D1 uses. The frontage of this particular retail frontage is already dominated by restaurant/café uses and as such the proportion of non-A1 uses is well in excess of the 10% maxima. The proposal is, therefore, in conflict with policy ER33.
- 6.7 A recent planning inspectorate decision relating to no. 27 High Street, which is also within the same protected retail frontage, adds weight to the argument that the permanent use of the site for non-A1 purposes would threaten the viability and vitality of the town centre. The appeal dismissal related to the change of use of the premises from A1 (Retail) to A2 (Financial and Professional Services). The inspector concluded by stating that by designating this part of the High Street as an area of protected shopping frontage, the council has demonstrated a commitment to protect its retail function. To allow the proposed change of use would erode the High Street's retail base. The inspector further added that it was clear that the retail offer of the High Street had already been diluted by some changes to non-A1 use which are threatening the viability and vitality of the area.
- 6.8 Therefore having regard to the policy context and the recent appeal decision mentioned above it is considered that the permanent change of use of the premises from A1 retail would adversely impact upon the retail function of Manningtree Town Centre and that a further permission should not be granted.

- 6.9 Policies QL10, QL11, COM1 and COM4 of the adopted Local Plan are also relevant to this application. These policies state, amongst other things, that new development should not materially impact upon the amenities of nearby residents and should be readily accessible to local people.

Residential Amenity

- 6.10 As part of the previous planning application a full assessment of the impact of the proposal upon local resident's amenity was undertaken. At that time it was considered that given the high levels of supervision, the town centre location (where some noise is to be expected) and the presence of late opening public houses and restaurants in the vicinity of the site, the proposed use would not have a significant adverse impact upon the local resident's amenity levels.
- 6.11 Furthermore, it was believed that the proposal represented an enclosed and supervised location for teenagers to congregate as opposed to outside where noise and disturbance would be more of an issue.
- 6.12 ~~The Council's Public Experience (Environmental Health) has confirmed that they have no objections to the proposed permanent change of use of the building. The recorded level of complaints over the 3 year period of the permission has not been significant. Therefore, officers remain of the view that the impact of the use on residential amenity would be acceptable.~~
- 6.13 The site is readily accessible to local people and is well located for the use proposed.

Background Papers

None.