

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	MP	12/04/19
Planning Development Manager authorisation:	AN	16/4/19
Admin checks / despatch completed	ane	18/04/19

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**Application:** 19/00225/FUL **Town / Parish:** Clacton Non Parished

**Applicant:** Mr Hall - Bubblegum Distribution

**Address:** Comrades Sports and Social Club 9 Colne Road Clacton On Sea

**Development:** Proposed conversion of existing ground floor into 3no. Two bedroom residential apartments with insertion of associated windows.

### 1. Town / Parish Council

Clacton – Non Parished.

### 2. Consultation Responses

UU Open Spaces

Response from Public Realm  
Open Space & Play

Application Details

Application No: 19/00225/FUL

Site Address: Comrades Sports and Social Club 9 Colne Road  
Clacton on Sea

Description of Development: Proposed conversion of existing ground floor into 3no. Two bedroom residential apartments with insertion of associated windows

Current Position

There is currently a deficit of 41.08 hectares of play in the Clacton/Holland area.

Any further development in Clacton will increase the current play deficit further. To prevent this deficit from growing it would be necessary to provide additional play equipment in the area. The nearest play area to the development site is located at Marine Parade approximately 0.4 miles away

Recommendation

Due to the significant lack of play facilities in the area it is felt a contribution towards play is justified and relevant to the planning application. Any contribution would be used to provide additional play equipment:

Marine Parade

Building Control and  
Access Officer

No comments at this stage.

ECC Highways Dept

A site visit has been undertaken and the information that was submitted in association with the application has been fully considered by the Highway Authority.

The proposal is situated on Colne Road which has an existing 9am - 6pm; Mon - Sat waiting restriction outside the front of the building. There appears to be provision for off street parking and turning at the rear of the building accessed via an existing vehicle access but not for this development. The site is close to the centre with good public transport links and a public car park situated nearby therefore:

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to the following conditions:

1. The Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.

2. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

3. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway/carriageway (delete as appropriate).

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway/carriageway (delete as appropriate) is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative 1:

In main urban areas with frequent and extensive public transport, cycling and walking links, the EPOA Parking Standards recommend that a reduced parking standard provision may be applied to residential developments. A reduced parking standard provision level can be applied to this proposal as it is located very close to regular public transport services and public car parking facilities.

Informative 2:

In relation to doors and windows abutting the highway no permanent part of a development shall overhang the highway.

**Informative 3:**

Any work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at: [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to:

SMO1 ' Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester.  
CO4 9YQ.

### **3. Planning History**

97/01213/FUL	Internal alterations to form disabled toilets and new toilets and bar space. Also to revise dray delivery point	Current	27.09.1997
98/00042/ADV	Back illuminated 6 sheet advertisement unit	Refused	17.03.1998
17/00342/FUL	Conversion of offices at first floor level into two flats and insertion of associated windows, doors and balcony areas.	Approved	26.04.2017

### **4. Relevant Policies / Government Guidance**

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

COM6 Provision of Recreational Open Space for New Residential Development

EN6 Biodiversity

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN17 Conservation Areas

ER3 Protection of Employment Land

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements

HG6 Dwelling Size and Type

- HG7 Residential Densities
- HG9 Private Amenity Space
- HG14 Side Isolation
- QL1 Spatial Strategy
- QL9 Design of New Development
- QL10 Designing New Development to Meet Functional Needs
- QL11 Environmental Impacts and Compatibility of Uses
- TR1A Development Affecting Highways
- TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

- CP1 Sustainable Transport and Accessibility
- HP5 Open Space, Sports & Recreation Facilities
- LP1 Housing Supply
- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- PPL4 Biodiversity and Geodiversity
- PPL8 Conservation Areas
- SP1 Presumption in Favour of Sustainable Development
- SP2 Spatial Strategy for North Essex
- SPL1 Managing Growth
- SPL2 Settlement Development Boundaries
- SPL3 Sustainable Design

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

### **Status of the Local Plan**

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2018) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

## **5. Officer Appraisal**

### **Site Description**

The application site is located on the western side of Colne Road within the Clacton Town Centre area and Clacton-on-Sea Conservation Area. The site comprises of a red brick three storey building that accommodates a social club at ground floor and residential development at first and second floor level. Access to the first and second floors is via a separate entrance door to the frontage. To the north of the building is an access road that leads to a parking/service area associated with surrounding commercial development and flats. The site has a small forecourt with parking space for one vehicle. This section of Colne Road is characterised by commercial and residential uses.

### **Description of Proposal**

This application seeks planning permission for the conversion of the ground floor from an A4 (Drinking Establishment) use to a C3 residential use incorporating three two bedroom flats.

The proposed development will only result in minor external changes, with the infilling of one existing opening to the south elevation and the installation of eight windows across the south, west and north elevations.

### History

Under planning reference 17/00342/FUL, permission was granted for the conversion of the first floor to two self-contained flats from office/storage use associated with the use of social club at ground floor.

### Assessment

#### 1. Principle of Development:

Policy ER3 of the Adopted Tendring Local Plan 2007 states that land in, or allocated for employment use will normally be retained for that purpose, and its change of use will only be permitted if the applicant can demonstrate that it is no longer viable or suitable for any form of employment use. Within this, the applicant should either submit evidence of a sustained but ultimately unsuccessful marketing exercise, undertaken at a realistic asking price or demonstrate that the land is inherently unsuitable and/or not viable or suitable for any form of employment use.

Whilst the existing building is not sited within a protected shopping frontage, it would still result in the loss of a town centre employment use within a town centre location. The proposal will see the change of use of an existing A4 Drinking Establishment use to a C3 residential use.

Information has been supplied which has attempted to demonstrate that a sustained marketing campaign has been undertaken, including the following:

- o A letter on behalf of the management committee stating the site was no longer viable as a trading premises and was therefore put up for sale;
- o A copy of the advertisement of the property with Stoneridge Estate Agents;
- o A copy of the advertisement of the property with Auction House Essex, where it states the property was sold after auction for an undisclosed amount;
- o Information showing the site was marketed between 3 November 2017 and 21 September 2018, and was sold at a (presumed) price of £400,000;

That notwithstanding, it would be expected that more detailed information be provided to demonstrate exactly how the business was failing and therefore no longer viable - no financial accounts or other evidence has been provided to support the claims made within the letter received by the management committee. Moreover, while it has been demonstrated the site was marketed for approximately 11 months, no details have been provided to show how many people showed an interest in purchasing the site and for what reason the purchase was not completed. Nevertheless the site was indeed sold as a part-commercial business, thereby demonstrating that the site is still viable in its current use.

It is therefore considered that the information supplied has failed to demonstrate that the site is no longer viable or suitable for any form of employment use.

#### 2. Visual Impacts

The adopted Tendring District Local Plan (2007) "Saved" Policies QL9, QL10 and QL11 seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

Policy EN17 states that development within a Conservation Area must preserve or enhance the character or appearance of the Conservation Area. The sentiments of this are carried forward

within Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

There are very few external changes proposed as part of the development. The front elevation is retained in its existing form, however a number of windows to the south, west and north elevations are to be installed. A further infilling of an existing window is also proposed. These changes are all minor works expected of such a development. Given the site is on the edge of the Clacton-on-Sea Conservation Area, the minor changes, which will also not be particularly prominent, will preserve its character and appearance.

### 3. Parking/Amenity

The submitted plans do not demonstrate any off-street parking provision. However, the site is located within a highly sustainable town centre location where it is expected that any residents will either walk to local facilities or use readily available local transport links. Furthermore, there are no parking restrictions after 6pm within this section of Colne Road. Therefore in view of the sustainable nature of the site a zero parking scheme is considered to be acceptable in this location.

Saved Policy QL10 of the Tendring District Local Plan (2007) requires that all new development should meet functional requirements. In particular the policy states that planning permission will only be granted if; provision is made for functional needs including private amenity space, waste storage, separation and recycling facilities and cycle parking. Saved Policy HG9 regarding private amenity space stipulates that a flat should be provided with a minimum of 50 square metres of private amenity space for a ground floor flat. Emerging policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) again reflects these requirements.

In this instance the proposal does not accord with the aspirations of saved policies QL10, HG9 and emerging policy SPL3 in terms of quality of life for the occupants. The development does not make provision for basic functional needs including useable private amenity space and waste storage/separation and recycling facilities. In respect of private amenity space, no provision for all three flats is provided and is therefore significantly below that required by the saved local plan policy to the detriment of future residents amenity. In addition the plans do not show any cycle parking provision or waste storage/recycling facilities.

Therefore the development evidently fails to meet the functional needs of any residents to the significant detriment of their residential amenity.

### 4. Impact to Residential Amenities

Policy QL11 of the Saved Plan states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

The area comprises of a mixture of commercial uses and predominantly flatted development. The proposed external changes are all at ground floor level, so will result in no additional overlooking. Therefore, there will be a neutral impact to neighbouring amenities.

### 5. Habitats Regulation Assessment

Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. This residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) in

particular the Colne Estuary SPA and Ramsar, mitigation measures will need to be in place prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

## 6. Legal Obligations

Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

The Council's Public Open Space and Play Team have stated there is currently a deficit of 41.08 hectares of equipped play in Clacton/Holland. Due to the overall significant lack of play facilities in the area a contribution is both relevant and justified to this application, with the money to be spent upgrading existing equipment at Marine Parade.

This application has not come with a correctly completed unilateral undertaking for a contribution towards play and formal open space facilities.

No such contribution has been included within this application nor has any justification for the lack of a contribution and therefore this scheme does not comply with Policy COM6.

### Other Considerations

Clacton is non-parished, however there have been two letters of observation received with concerns raised regarding the lack of parking.

## 6. **Recommendation**

Refusal.

## 7. **Reasons for Refusal**

- 1 Policy ER3 of the Adopted Tendring Local Plan 2007 states that land in, or allocated for employment use will normally be retained for that purpose, and its change of use will only be permitted if the applicant can demonstrate that it is no longer viable or suitable for any form of employment use. Within this, the applicant should either submit evidence of a sustained but ultimately unsuccessful marketing exercise, undertaken at a realistic asking price or demonstrate that the land is inherently unsuitable and/or not viable or suitable for any form of employment use.

The proposal will result in the loss of a town centre employment use within a town centre location. The proposal will see the change of use of an existing A4 Drinking Establishment use to a C3 residential use.

The submitted information does not provide detailed information to demonstrate exactly how the business was failing and therefore no longer viable; no financial accounts or other evidence have been provided to support the proposal. Moreover, while it has been demonstrated the site was marketed for approximately 11 months, no details have been provided to show how many people showed an interest in purchasing the site and for what reason the purchase was not completed. Furthermore the site was sold as a part-commercial business, thereby demonstrating that the site is still viable in its current use.



It is therefore considered that the information supplied has failed to demonstrate that the site is no longer viable or suitable for any form of employment use.

- 2 Paragraph 38 of the National Planning Policy Framework (NPPF) states that planning should seek to secure developments that will improve the economic, social and environmental conditions of the area. Furthermore, at paragraph 124 the NPPF confirms that one of the core planning principles is to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Saved Policy QL10 of the Tendring District Local Plan (2007) requires that all new development should meet functional requirements. In particular the policy states that planning permission will only be granted if; provision is made for functional needs including private amenity space, waste storage, separation and recycling facilities and cycle parking. Saved Policy HG9 regarding private amenity space stipulates that a flat should be provided with a minimum of 50 square metres of private amenity space for a ground floor flat. Emerging policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) again reflects these requirements.

In this instance the proposal does not accord with the aspirations of saved policies QL10, HG9 and emerging policy SPL3 in terms of quality of life for the occupants. The development does not make provision for basic functional needs including useable private amenity space and waste storage/separation and recycling facilities. In respect of private amenity space, no provision for all three flats is provided and is therefore significantly below that required by the saved local plan policy to the detriment of future residents amenity. In addition the plans do not show any cycle parking provision.

Therefore the development evidently fails to meet the functional needs of any residents to the significant detriment of their residential amenity.

- 3 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. This residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) in particular the Colne Estuary SPA and Ramsar, mitigation measures will need to be in place prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

- 4 Paragraph 54 of the National Planning Policy Framework (2018) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.

Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

There is currently a deficit of 41.08 hectares of equipped play in Clacton/Holland. Due to the overall significant lack of play facilities in the area a contribution is both relevant and justified to this application, with the money to be spent upgrading existing equipment at Marine Parade.

This application has not come with a correctly completed unilateral undertaking for a contribution towards play and formal open space facilities and therefore this scheme does not comply with Policy COM6.

## **8. Informatives**

### **Positive and Proactive Statement**

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.