

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	MP	16/05/19
Planning Development Manager authorisation:	AN	16/5/19
Admin checks / despatch completed	EB	17/05/19

Application: 19/00355/FUL **Town / Parish:** Harwich Town Council

Applicant: Miss Billie-Jo Hatcher

Address: 2 - 3 Midland House High Street

Development: Change of use from A1 (retail) to D1 (pre-school/nursery) and change parking area to garden area with 1.8 metre high fence around the two buildings and connecting doorway.

1. Town / Parish Council

Harwich Town Council Harwich Town Council objects this application on the grounds of the loss of parking spaces for residents of the building and possible highways issues, in regard to the location of the building and its proximity to a busy junction, during drop-off and pick up times.

2. Consultation Responses

Environmental Protection I have reviewed the application and have the following revised comments to make;

Environmental Protection require a noise assessment from a qualified acoustician (ANC or Equivalent) to show that the proposed use of the building (Pre-school/Nursery) is not causing adverse impact on the existing amenity.

Also where applicable demonstrate the acoustic conditions and sound insulation of each room or other space (e.g. play areas, garden area and driveway) is suitable for the nature of the proposed activities taking place therein. Where this is unable to be demonstrated Consultants recommendations must be followed in terms of methods recommended attenuating the sound levels to an acceptable level e.g. sound Insulation, walls or fencing etc.

Reason: To ensure that nearby noise sensitive premises do not suffer a loss of amenity.

ECC Highways Dept The Highway Authority raises an objection to the above application for the following reasons:

The Highway Authority will protect the principle use of the highway as a right of free and safe passage of all highway users.

Although the site is within the town centre and is close to some existing bus stops, the overall parking provision for the application is considered to be inadequate for the application based on the information provided. It is unclear what capacity there is and as a result this could give rise to cars from this development occupying

spaces in the adjoining streets, particularly during the AM peak period which are covered by a number of existing parking and waiting restrictions.

The parking highlighted on the plan does not indicate whether this is visitor or staff parking or the number of spaces that will be available?

Furthermore, the introduction of the fence around the premises would impact on the current parking that takes place adjacent to the building. It also appears that the proposed fence shown on the block plan is encroaching on the publicly maintainable highway which has public rights of way over it and must not be obstructed at any time.

From the information provided the proposal if permitted would set a precedent for future similar developments which would likely lead to inappropriate parking detrimental to the general safety of all highway users and undermine the principle of seeking to discourage on-street parking in the locality.

The proposal is therefore contrary to policy DM1 and DM8 contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Notes:

1. As far as can be determined from the submitted plans it is unclear what parking provision is being provided; is the parking for staff or a drop off area. Currently it is unclear how the majority of people are going to get to and from the premises. The proposal fails to provide sufficient off road parking facilities. The proposal would lead to additional vehicles being left parked in the adjoining highway adding to the existing parking stress in the area and causing conditions of congestion, danger and obstruction, contrary to the interests of highway safety and contrary to Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

2. Off road parking spaces when constrained by structures should be 3.4m wide to enable circulation around the vehicle and for the doors to open fully.

3. The applicant would be advised to visit Essex Highways website under Highway status enquiries to request a copy of the definitive map showing the extent of the highway boundary at the front and side of the building. To ensure the proposed fencing does not encroach onto the Publicly Maintainable Highway.

The Highway Authority may consider a revised proposal to include a redesign of the proposed alignment of the fence once the Highway Boundary information has been checked by the developer. Further information and clarification is provided in relation to parking and drop off proposals for the proposed business and what parking is being provided as part of the application.

Building Control and
Access Officer

The change of use will require a full plans Building Regulation application to be submitted.

3. Planning History

N/A

4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

ER31 Town Centre Hierarchy and Uses

ER33 Non-Retail Uses Within Primary Shopping Frontages

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

PP2 Retail Hierarchy

PP5 Town Centre Uses

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.

5. Officer Appraisal

Site Description

The application site is 2-3 Midland House, which is located to the north-east corner of Cliff Road adjacent to the High Street within the parish of Harwich. The building is three storeys in height, with a first floor extension that wraps around the outer edge, which serves three residential flats. The surrounding area is heavily urbanised, with numerous residential and commercial properties to all sides. The beach is approximately 300m to the south. The site is within the Settlement Development Boundary for Harwich within both the Saved Tendring District Local Plan (2007) and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Description of Proposal

This application seeks full planning permission for the change of use of the site from its existing A1 (shop) use to a D1 (non-residential institution) use. The change will result in the site being occupied as a pre-school/nursery.

The site will open Monday to Friday between 7am and 7pm, and will result in 10 full time and 2 part time employees being hired.

While there are no external alterations proposed to the building, a 1.8m high metal fence is to be erected across the perimeter of the site.

Assessment

1. Principle of development

Paragraph 85 of the National Planning Policy Framework (2019) states planning decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. It further states planning policies should define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations.

Policy ER33 of the Adopted Tendring Local Plan 2007 states that within an area identified as a Primary Shopping Frontage, proposals for a change of use from Class A1 shops to a non-retail use will not be permitted at ground floor level.

The application site lies within the Primary Shopping Frontage for Harwich within the Adopted Local Plan 2007 only, and accordingly fails to adhere to above local policy.

2. Design, Layout and Appearance

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

The submitted plans do not show any external alterations to the building itself; however do show the erection of a 1.8m high metal fence to the perimeter of the site and directly adjacent to the public footpaths. Given that the site is positioned in a highly prominent corner location within the Harwich Town Centre, with no other similar examples of such fencing, it is considered this fencing will appear too oppressive and out of character in this location, to the serious visual detriment of the areas existing character.

Officers have raised concerns to the applicant regarding the visual harm of the proposed fencing, and while the applicant confirmed they intended to reduce both the height and depth of this fencing, amended plans were not submitted. That notwithstanding, the applicant had suggested reducing the depth by approximately 5cm and the height to approximately 1.3m; while this would have reduced the visual impacts, it would still not have overcome Officer's highlighted concerns.

3. Impact to Neighbouring Amenities

Paragraph 127 of the National Planning Policy Framework (2019) states planning decisions should ensure that developments will function well and add to the quality of the area, are sympathetic to local character and history, and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

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 site is located within a highly urbanised area, with numerous commercial and residential properties in the immediate vicinity including flats above the proposed use. The proposed nursery would involve the employment of twelve members of staff, numerous comings and goings from the site including parents dropping off/picking up children and children playing in outside areas resulting in significant noise. Accordingly the Council's Environmental Protection team have requested a noise assessment from a qualified acoustician to show that the proposed use of the building will not cause an adverse impact on the existing amenities of local residents. The applicant has failed to provide such an assessment, and it has therefore not been properly demonstrated that the proposed development can be carried out without causing significant harm to the amenities of surrounding residential properties, and is therefore contrary to the above national and local policies.

4. Highway Safety

Paragraph 109 of the National Planning Policy Framework (2019) states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Policy TR1a of the Adopted Local Plan 2007 states proposals for development affecting highways will be considered in relation to the road hierarchy to reducing and preventing hazards and inconvenience to traffic and to the effects on the transport system including the physical and environmental capacity to accommodate the traffic generated. Policy TR7 of the Adopted Local Plan 2007 states that for residential development within town centres and for all non-residential development, the adopted car parking standards will be applied.

Adopted Car Parking Standards state that for a D1 use, there should be minimum parking provision of one parking space per full time equivalent member of staff, and pick up/drop off facilities. The standards also state there should be minimum provision of two spaces measuring 5.5m x 2.9m for dwellings with two bedrooms or more.

The application forms shows there to be an equivalent of 11 full time members of staff, requiring there to be a minimum of 11 parking spaces measuring 5.5m x 2.9m and an area for pick up/drop

off points. While communications with the applicant confirm the area to the south-eastern corner of the site is to be used for pickups/drop offs, there is insufficient space to accommodate the necessary parking arrangements. Therefore, although the site is located within the Harwich Town Centre and in close proximity to existing bus stops, the overall parking provision is considered to be inadequate and would result in cars from the development occupying spaces in the adjoining streets, particularly during the morning peak period, which are covered by a number of existing parking and waiting restrictions. Further, within planning permission 05/00865/FUL for three flats to the first floor of Midland House, three parking spaces were allocated to the hardstanding area to the western edge of the site. The introduction of the proposed fencing around the premises would remove this current parking arrangement, ensuring the occupiers of these properties will have no parking provision. Therefore the development would add to the existing parking stress in the area, causing conditions of congestion, danger and obstruction, contrary to the interests of highway safety. Accordingly Essex County Council as the Highways Authority has objected to the proposal.

Other Considerations

Harwich Town Council object to the application on the grounds of loss of parking spaces for residents of the building, and possible highway issues during drop-off and pickup times.

In answer to this, these points have been raised within the main body of the report above.

There have also been three letters of objection received, with the following concerns:

1. Unsuitable parking arrangements;
2. Highway safety concerns; and
3. Loss of a retail property.

In answer to this, these points have been addressed in the main body of the report above.

There have also been three letters of support received. A petition of 67 signatures has also been supplied by the applicant; however this petition is not titled and does not include any details of the application, so it is unclear if those who signed this are supporting this particular planning application or are more generally in support of a pre-school/nursery.

6. Recommendation

Refusal.

7. Reasons for Refusal

- 1 Paragraph 85 of the National Planning Policy Framework (2019) states planning decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. It further states planning policies should define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations.

Policy ER33 of the Adopted Tendring Local Plan 2007 states that within an area identified as a Primary Shopping Frontage, proposals for a change of use from Class A1 shops to a non-retail use will not be permitted at ground floor level.

The application site lies within the Primary Shopping Frontage for Harwich within the Adopted Local Plan 2007, and accordingly fails to adhere to above local policy to the detriment of the vitality and viability of the town centre.

- 2 The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. One of the core planning principles of The National Planning Policy Framework (NPPF) as stated at paragraph 124 is to always seek to secure high quality design.

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).

The submitted plans show the erection of a 1.8m high metal fence to the perimeter of the site and directly adjacent to the public footpaths. Given that the site is positioned in a highly prominent corner location within the Harwich Town Centre, with no other similar examples of such fencing, it is considered this fencing will appear oppressive and out of character in this location, to the serious visual detriment of the areas existing character, and thereby fails to accord with the above national and local policies.

- 3 Paragraph 127 of the National Planning Policy Framework (2019) states planning decisions should ensure that developments will function well and add to the quality of the area, are sympathetic to local character and history, and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

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 site is located close to numerous residential properties including three flats above the proposed use. The proposed nursery would involve the employment of twelve members of staff, numerous comings and goings from the site including parents dropping off/picking up children and children playing in outside areas resulting in significant noise. A noise assessment has not been received and it has therefore not been demonstrated that the proposed development can be carried out without causing significant harm to the amenities of surrounding residential properties, and is therefore contrary to the above national and local policies.

- 4 Paragraph 109 of the National Planning Policy Framework (2019) states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

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Adopted Car Parking Standards state that for a D1 use, there should be minimum parking provision of one parking space per full time equivalent member of staff, and pick up/drop off facilities. The standards also state there should be minimum provision of two spaces measuring 5.5m x 2.9m for dwellings with two bedrooms or more.

There are to be an equivalent of 11 full time members of staff, requiring a minimum of 11 parking spaces measuring 5.5m x 2.9m and an area for pick up/drop off points. While there is an area to the south-eastern corner of the site to be used for pickups/drop offs, there is insufficient space to accommodate the necessary parking arrangements. The overall parking provision is therefore considered to be inadequate and would accordingly lead to additional vehicles being left parked within the adjoining and nearby streets causing conditions of danger, obstruction and congestion, contrary to the interests of highway safety.

Further, within planning permission 05/00865/FUL for three flats to the first floor of Midland House, three parking spaces were allocated to the hardstanding area to the western edge of the site. The introduction of the proposed fencing around the premises would remove this current parking arrangement, ensuring the occupiers of these properties will have no parking provision. Therefore the development would add to the existing parking stress in the area, causing conditions of congestion, danger and obstruction, contrary to the interests of highway safety.

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.