

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AL	06/06/2019
Planning Development Manager authorisation:	AN	6/6/19
Admin checks / despatch completed	EN	6/6/19

**Application:** 19/00583/COUNOT

**Town / Parish:** Harwich Town Council

**Applicant:** Mr J Cohen

**Address:** 7 Central House High Street Harwich

**Development:** Proposed change of use from part retail to part residential.

### **1. Town / Parish Council**

Not applicable.

### **2. Consultation Responses**

ECC Highways Dept

The information that was submitted in association with the application has been fully considered by the Highway Authority.

The proposal highlights that there are no external works proposed to the existing premises; in addition there are good public transport links in the vicinity of the premises 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 free of charge.

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.

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: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements



and specifications of the Highway Authority; all details shall 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**

None.

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

Not applicable.

### **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 (including Site Description and Proposal)**

### **Application Site**

The application relates to 7 Central House, High Street, Harwich a single storey element of the 3/4 storey Central House addressing the corner of High Street and Mill Lane. The premises comprise 3 shop fronts and accesses but the floor plans show one large space. The unit has been empty for some time.

### **Proposal**

The proposal is to change the use of part of the building (2 of the 3 units) from Class A1 (shop) to Class C3 (Dwelling Houses) under the new permitted development allowances as set out in Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

The proposed change of use would result in the creation of 2 no. one bedroom flats with a combined floor space of approximately 75 square metres.

### **Assessment**

This is a "prior notification" under Schedule 2, Part 3, Class M of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The applicant is seeking the Council's determination as to whether its "prior approval" is required for the change of use of the existing A1 (shop) use to C3 (Residential).

### **Permitted development:**

M. Development consisting of—

(a) a change of use of a building from—

(i) a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order;

(ii) a use as a betting office or pay day loan shop, or

(iii) a mixed use combining use as a dwellinghouse with—

(aa) a use as a betting office or pay day loan shop, or

(bb) a use falling within either Class A1 (shops) or Class A2 (financial and professional services) of that Schedule (whether that use was granted permission under Class G of this Part or otherwise), to a use falling within Class C3 (dwellinghouses) of that Schedule, and

(b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

### **Development is not permitted by Class M if:**

(a) the building was not used for one of the uses referred to in Class M(a)—

(i) on 20th March 2013, or

(ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use;

- *The unit has been vacant for some time but when it was last in use, it was for the purposes of A1 retail.*



(b) permission to use the building for a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order has been granted only by this Part;

- *Not applicable.*

(c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres;

- *The 2 proposed dwellings amount to 75 sqm.*

(d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M;

- *The site has not been subject of any other development under Class M.*

(e) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;

- *No extensions or alterations are proposed that would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point.*

(f) the development consists of demolition (other than partial demolition which is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order);

- *No demolition is proposed.*

Or;

(g) the building is—

- (i) on article 2(3) land;
- (ii) in a site of special scientific interest;
- (iii) in a safety hazard area;
- (iv) in a military explosives storage area;
- (v) a listed building; or
- (vi) a scheduled monument.

- *The building is not located within or subject of any of the above designations.*

### **Conditions**

Therefore, the application meets the requirements of Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015, subject to the following conditions:

(a) transport and highways impacts of the development,

- *The area consists of a mixture of commercial and residential properties, of which most have limited off-street parking arrangements. The site is located in a sustainable location within easy walking distance of public transport links local services within the town centre, the beach and other recreational facilities. It is therefore considered that a development of this scale would not result in any adverse impacts on transport or highways.*

*Essex County Council raise no objection.*

(b) contamination risks in relation to the building,

*The previous A1 use is unlikely to have resulted in contamination.*

(c) flooding risks in relation to the building,



*This is not applicable to this application as the site is not within a high risk flood zone.*

(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use—

(i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or

(ii) where the building is located in a key shopping area, on the sustainability of that shopping area, and

- The GPDO does not define a 'key shopping area'.

Copies of appeal decisions provided by the Agent conclude that 'the Council is able to use its Local Plan to assist it in considering this type of application' and 'in order to consider the effect of the proposal it is reasonable for the local planning authority to have regard to the evidence that forms its development plan in making such an assessment.

On this basis, the adopted Tendring District Local Plan (2007) categorises Harwich as a Town being one of the districts main urban areas with the emerging Tendring District Local Plan 2013-2033 Publication Draft (2017) categorising Harwich as a Strategic Urban Settlement. Furthermore, the site is within the Town Centre Boundary and Primary Shopping Frontage for the area as defined in both the adopted and emerging local plans. Policy ER31 of the Tendring District Local Plan 2007 states that development proposals which adversely affect the vitality, viability and the urban or rural regenerations objectives associated with each centre will not be permitted. Furthermore, Policy PP2 of the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft highlights this location as a key location that can be resilient to future economic changes. Furthermore, ER33 states that within Primary Shopping Frontages non-retail uses will not be permitted at the ground floor level. National Planning Policy Framework 2019 Paragraph 85 states the local planning authorities should; Recognise town centres as the heart of their communities and pursue policies to support their viability and vitality; Retain and enhance existing markets and, where appropriate, re-introduce or create new ones; Promote competitive town centres that provide customer choice and diverse retail offer and which reflect the individuality of town centres and; Recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites.

Additional information has been provided by the Agent received on 29<sup>th</sup> May 2019 in the form of;

- a letter from Upstix estate agency;
- a Marketing Statement;
- a copy of the Appeal Decision APP/L5240/W/17/3187705 for 285 Portland Road, London SE25 4QQ; and,
- covering emails.

The main points covered within the additional information can be summarised as follows;

*Upstix estate agency*

- Property marketed since September 2017 with no interest due to the condition of the property and the substantial taxable value of the unit making it commercially unviable for most small business.
- A smaller single unit would be more viable as an option for most tenants for both rental outlay and tax purposes.



### *Marketing Statement*

- Proposal preserves active frontage as only the 2 end units are being converted into dwellings.
- Making the unit smaller is likely to make it more attractive to tenants.
- Offered with rent free period but still no interest.
- Google street view images show unit vacant in 2015.
- There is no negative impact on adequate provision of services as the use of this building has not been taken up for many years.
- No negative impact on the sustainability of the shopping area. As explained above, this will increase the potential of bringing this long term vacant retail unit back into use thereby enhancing the shopping area.

### *Appeal Decision APP/L5240/W/17/3187705 for 285 Portland Road, London SE25 4QQ*

- In this instance, the appeal site assessed as follows:

'The appeal site is located within one of three blocks of properties that collectively form the Portland Road parade. The parade appears to function as small, neighbourhood centre, providing small scale local goods and services for the surrounding residential properties. There are a number of units on the parade that are currently vacant, and the appeal site has been vacant for a number of years.'

Portland Road is based in a largely residential area, it is one of a number of small parades of shops, and I note that in the Local Plan it is designated as a neighbourhood centre. It is clear from the evidence that the parade encompasses at least twenty units, a number of which are vacant. There is limited evidence before me to demonstrate the amount of time that the other units have stood vacant, however on the basis of the evidence put forward by the appellant, I am satisfied that there is little demand for the appeal property.

Taking into account the number of vacant properties, the location of the appeal property at the fringe of the parade, and the considerable period of time for which the appeal property has been vacant, I do not consider that the change of use of the appeal site would result in an impact on the provision of services as specified in M.2.(1)(d)(i).'

It goes on to conclude;

'The unit is on the edge of the parade, adjacent to an existing residential unit. On the basis of the evidence I am satisfied that the building is not located in a key shopping area.'

'I do not consider that the change in the façade would result in harm to the character and appearance of the area.'

### *Covering email*

- The current change does not require the removal of the large windows as they can be fixed internally with blinds. Further changes to the frontage can be agreed at a later date through the planning process.

Having regard to all information presented by the Agent, this proposal is considered to be contrary to the above policies as it results in the permanent loss of ground floor commercial premises within a defined centre and key shopping area.

The appeal decision is not considered relevant as the specific elements of that appeal are considered materially different to the proposal being considered as the site was not within a key shopping area.

Full details of the marketing campaign and interest have not been provided. Both the agent and marketing agent state that smaller units would be viable but yet there is no indication that this has



been explored through the marketing campaign. For example, the unit has the potential to be divided into 2 or 3 smaller units and marketed for both A1 and A2 uses.

Recent nearby planning history includes the approval of number 2 Central House, High Street for a change of use from A1 to D2 (escape room) under planning reference 17/02035/FUL. Officers concluded that the use 'will attract many visitors and users of the services on offer. People using the services may also take advantage of the other amenities and facilities in the vicinity contributing the local economy. For these reasons, the proposed use will bring back a vacant unit into use and cannot be considered to undermine the overall vitality or viability of the town centre and is therefore considered to comply with the aims of the policy.' This demonstrates that the Council are being more flexible in their approach to regenerate the area, bringing a vacant unit back into use with a non-retail use ensuring that a range of uses and amenities are on offer in line with the aims of NPPF.

There is no indication that the marketing campaign has explored the options for the use of the premises for alternative commercial or leisure uses.

(e) the design or external appearance of the building, and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

The impact of the change of use on the external appearance of the building under condition (e) is minimal and cannot be considered significantly harmful as the existing shop frontages will simply be screened internally with blinds.

#### Conclusion

It must therefore be concluded that it is undesirable for the building to change use to Class C3 dwelling. The application fails to satisfactorily demonstrate that there is no reasonable prospect of the building being used to provide A1 or A2 services or other commercial uses or leisure uses failing condition (d) (i). The site adjoins existing residential properties to its rear but the commercial units along the High Street and the defined Protected Shopping Frontage continues to the west. The proposal results in the permanent loss of a ground floor commercial premises within a defined centre and key shopping area, setting an undesirable precedent for other units within the protected area to be lost, contributing to the erosion of the High Street therefore having a negative impact upon its sustainability failing condition (d) (ii).

#### **6. Recommendation**

Determination prior approval required and refused

#### **7. Reasons for Refusal**

- 1 National Planning Policy Framework 2019 Paragraph 85 states the local planning authorities should; Recognise town centres as the heart of their communities and pursue policies to support their viability and vitality; Retain and enhance existing markets and, where appropriate, re-introduce or create new ones; Promote competitive town centres that provide customer choice and diverse retail offer and which reflect the individuality of town centres and; Recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites.

The adopted Tendring District Local Plan (2007) categorises Harwich as a Town being one of the districts main urban areas with the emerging Tendring District Local Plan 2013-2033 Publication Draft (2017) categorising Harwich as a Strategic Urban Settlement. Furthermore, the site is within the Town Centre Boundary and Primary Shopping Frontage for the area as defined in both the adopted and emerging local plans. Policy ER31 of the Tendring District Local Plan 2007 states that development proposals which adversely affect the vitality, viability and the urban or rural regenerations objectives associated with each centre will not be permitted. Furthermore, Policy PP2 of the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft highlights this location as a key location that can be resilient to future economic changes. Furthermore, ER33 states that



within Primary Shopping Frontages non-retail uses will not be permitted at the ground floor level.

The application fails to satisfactorily demonstrate that there is no reasonable prospect of the building being used to provide A1 or A2 services or other commercial uses or leisure uses failing condition (d) (i). Full details of the marketing campaign and interest have not been provided. Both the agent and marketing agent state that smaller units would be viable but yet there is no indication that this has been explored through the marketing campaign. For example, the unit has the potential to be divided into 2 or 3 smaller units and marketed for both A1 and A2 uses.

The site adjoins existing residential properties to its rear but the commercial units along the High Street and the defined Protected Shopping Frontage continues to the west. The proposal results in the permanent loss of a ground floor commercial premises within a defined centre and key shopping area, setting an undesirable precedent for other units within the protected area to be lost, contributing to the erosion of the High Street therefore having a negative impact upon its sustainability failing condition (d) (ii).

It must therefore be concluded that it is undesirable for the building to change use to Class C3 dwelling under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 therefore failing Conditions (d) (i) and (ii).

#### **8. Informatives**

Not applicable.