

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	28.8.19
Planning Development Manager authorisation:	GN	29/8/19
Admin checks / despatch completed	RUE	29/08/19
Technician Final Checks/ Scanned / LC Notified / UU Emails:	ER	29/8/19

ER

Application: 19/01013/FUL **Town / Parish:** Lawford Parish Council

Applicant: Miss Yee Cheung - Boyer Planning

Address: Units 6A - 6D Riverside Avenue West Lawford

Development: Proposal to change the use of the existing units from B2 use to a Builder's Merchant (Sui Generis use) and to install a roller shutter door and window on the rear of the building.

1. Town / Parish Council

No comments received

2. Consultation Responses

Environmental Protection No adverse comment to make.

ECC Highways Dept The Highway Authority does not object to the proposals as submitted.

3. Planning History

19/01013/FUL	Proposal to change the use of the existing units from B2 use to a Builder's Merchant (Sui Generis use) and to install a roller shutter door and window on the rear of the building.	Current
--------------	---	---------

4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

ER2 Principal Business and Industrial Areas

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

SP1 Presumption in Favour of Sustainable Development

SPL3 Sustainable Design

PPL1 Development and Flood Risk

Local Planning Guidance

Essex Design Guide

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 Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF.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 (including Site Description and Proposal)

Site Description

The application site comprises a 'terrace' of four commercial units (6a to 6d) with a small pocket of 11 similar sized units. The units are utilitarian in their appearance having a large floorspace on a single level, accessed by way of functional roller-shutter doors; ancillary office space is on a mezzanine level. Parking in this area is extensive and appears to be on an ad-hoc arrangement with no formal allocation of bays. This small pocket forms part of a much wider industrial estate located on the periphery of the District adjacent the River Stour. The estate comprises many uses that are entirely appropriate for this area and include such companies as engineering, vehicle parts, cosmetic alterations to vehicles and kitchen worktop manufacturers.

Description of Proposal

The application proposes changing the use of these four units from B2 (General Industrial) where the company produced professional food-cutting surfaces to a Sui Generis use, specifically a Builder's Merchant. Other incidental development includes the installation of a second roller-shutter door to the rear (north) elevation and an additional window to this elevation also.

It is proposed to operate between the hours of 07.30 and 17.00 Monday to Friday, 08.00 and 16.00 on Saturdays and no opening Sundays and Bank Holiday.

Principle

The site is located within the Development Boundary therefore there is no principle objection to the proposal, subject to the detailed considerations discussed below.

The term "builders' merchants" is normally taken to be a use where building materials, including bulky items such as sand and gravel, cement, drainage goods, kitchen and bathroom fittings etc. are stored and sold. Some builders' merchants sell goods by wholesale only i.e. to the building trade, and in that case the use could be argued to fall within Class B8, although in Hammersmith & Fulham 01/08/1989 DCS No 041-523-925 an inspector stated "A builders' merchants, involving as it does the primary purpose of selling materials to the building trade, does not fall within Class B8, nor in my view does it come within Use Class A1: rather it is a use which is *sui generis*." However, this still has to be squared with the statement of Woolf J in *Meadows & Others v Secretary of State for the Environment and Gloucester City Council* 4/5/1982 where he averred that there was nothing in the ordinary use of the word "store" (for which planning permission existed) to prevent it being applied to a storage use where those goods were disposed of by wholesale transactions which took place on those premises.

Of course, many builders' merchants sell goods both to the trade and also to the general public and at appeal the conclusion has been drawn that such a combination of A1 and B8 use indicated a *sui generis* classification, see Torfaen 10/12/1992 DCS No 053-207-936 and Bolton 18/11/1998 DCS No 030-897-516. In a case in London, a former builders' merchants was allowed on appeal to retain the change to a supermarket, see Greenwich 27/02/2007 DCS No 100-048-441. Although considering the former use was not simply A1 but a mix of sales to the public as well as wholesaling, planning permission was acceptable on its merits as there was no vitality and viability harm.

In the case of a use where the sale of builders' materials is primarily to the public an A1 classification would be appropriate.

Design & Appearance

The Government attach 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 130 is to always seek to secure high quality design.

Saved Policies QL9, QL10 and QL11 aim to ensure that all new development makes a positive contribution to the quality of the local environment, relates well to its site and surroundings particularly in relation to its form and design and does not have a materially damaging impact on the amenities of occupiers of nearby properties. Emerging Policy SP1 reflects these considerations.

The change of use is appropriate in an area such as this and the forming two additional openings within the rear (north) elevation would relate well to the building itself and the surrounding built form.

Impact to Neighbouring Amenities

The NPPF, at paragraph 17 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, 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).

There are no residential properties anywhere within the vicinity (circa 250m to the south); the forming of openings in the rear elevation would not result in a loss of privacy to the occupiers of the unit to the south-east, there is no enlargement in regards to footprint or the height of the structure. In regards to the proposed openings hours these are not of a duration which would harm the amenities of other businesses in the locale.

Highway Issues

The Essex Parking Standards requires new developments for B2 to provide 1 parking space for every 50sqm; the unit would likely require around 15 parking spaces. There are 10 spaces as existing and it is not proposed to increase or decrease this provision. On the basis that the units are in a sustainable location with regards to public transport, there are no Parking Standards published for a Sui Generis use, ample parking opportunities exist around the industrial estate and, finally, the Highways Authority offers no objection to the proposal – little objection is raised in regards to parking.

Flooding

The site is located in an area which is at high risk of flooding (a major events is likely to occur at least once in every 100 years).

A Builder's Merchant can be considered as a shop, general industry, storage purposes, and distribution. Therefore based on the advice contained in the National Planning Practice Guide (NPPG), it is understood that the application site falls under the 'Less Vulnerable' category in accordance with Table 2: Flood risk vulnerability classification (Paragraph: 066 Reference ID: 7-066-20140306). While the application site is located in Flood Zone 3a the proposed development is deemed 'appropriate' in accordance with Table 3: Flood risk vulnerability and flood zone 'compatibility' of the NPPG. As such, no Sequential and Exception Tests would need to be applied in this case. It is considered that the change of use of the existing units would not have an impact or result in flooding elsewhere on site. The site is currently protected by a raised embankment and the risk of the site being flooded would be no higher or different to the previous use of the units.

6. Recommendation

Approval - Full

7. Conditions / Reasons for Refusal

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: SITE PLAN and 1033 03; received 5th July 2019.

Reason - For the avoidance of doubt and in the interests of proper planning.

8. Informatives

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Are there any letters to be sent to applicant / agent with the decision?		NO
Are there any third parties to be informed of the decision?		NO