

**DELEGATED DECISION OFFICER REPORT**

<b>AUTHORISATION</b>	<b>INITIALS</b>	<b>DATE</b>
File completed and officer recommendation:	AC	4 <sup>th</sup> Sept 2019
Planning Development Manager authorisation:	AN	5/9/19
Admin checks / despatch completed	ERZ	06/09/19
Technician Final Checks/ Scanned / LC Notified / UU Emails:	ERZ	06/09/19

**Application:** 19/00988/COUNOT      **Town / Parish:** Harwich Town Council

**Applicant:** Mr James Sodimu

**Address:** 180 - 182 High Street Harwich Essex

**Development:** Proposed change of use from existing shop to a one or two bedroom residential flat.

**1. Town / Parish Council**

Harwich Town Council      Harwich Town Council object to the proposed change of use from existing shop to a one or two bedroom residential flat in an area of the high street immediately adjacent to TDC's proposed redevelopment.

**2. Consultation Responses**

ECC Highways Dept      From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority

Environmental Protection      I have reviewed the application and have no adverse comment to make.

Environment Agency      We will not be providing bespoke comments for this application we do not comment on applications that fall into flood zone 2 – this will fall under Flood Risk Standing Advice

**3. Planning History**

08/01425/FUL	Change of use from A1 (retail) to A2 (office use).	Approved	22.12.2008
19/00988/COUNO T	Proposed change of use from existing shop to a one or two bedroom residential flat.	Current	

**4. Relevant Policies / Government Guidance**

NPPF National Planning Policy Guidance  
The Town and Country Planning (General Permitted Development) (England) Order 2015

**5. Officer Appraisal (including Site Description and Proposal)**

Class M – retail or betting office or pay day loan shop to dwellinghouses

***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 not permitted

M.1 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 building was used as an Estate Agents, one of the uses referred to in Class M(a) (i) on 20th March 2013. **The proposal complies.**

- (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.

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 not been granted only by this Part. **The proposal complies.**

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

The cumulative floor space of the existing building changing use under Class M would not exceed 150 square metres. **The proposal complies.**

- (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 development (together with any previous development under Class M) would not result in more than 150 square metres of floor space in the building having changed use under Class M. **The proposal complies.**

- (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.

The development would not result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point. **The proposal complies.**

- (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); or

The development does not consist 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). **The proposal complies.**

- (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 (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 proposal is (i) on article 2(3) land. **The proposal fails to comply.**

### Conditions

M.2(1) Where the development proposed is development under Class M(a) together with development under Class M(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to –

- (a) transport and highways impacts of the development.
- (b) contamination risks in relation to the building
- (c) flooding risks in relation to the building
- (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
- (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.

#### (a) Transport and Highways Impacts of the Development

The site is in a town centre location where there is reasonably good transport links; for this reason the Highway Authority does not deem it necessary to apply (in regards to provision of parking spaces) the current Parking Standards in this instance. A railway station is within 200m, bus-stops within 80m and a wide variety of shops/amenities within 100m. Parking restrictions are in place across the front and down the side of the building which prevent on-street parking between the hours of 8am to 6pm Monday to Saturday. As such it is considered that the development would have an acceptable transport and highways impact on the locale. **The prior approval is not required.**

#### (b) Contamination Risks in Relation to the Building

The building does not have any risks in relation to contamination. **The prior approval is not required.**

#### (c) Flooding Risks in Relation to the Building

Application form, Question 4 'A flood risk assessment should be provided with the application where the building is located in Flood Zones 2 and 3, and in Flood Zone 1 where an area which has critical drainage problems has been notified to the Local Planning Authority by the Environment Agency'.

The front of the building faces Harwich High Street and the land is relatively level. The side and rear of the building are accessed from Victoria Street which falls sharply in a north-westerly direction. The lowest parts of Victoria Street are in Flood Zone 3, the remainder of Victoria Street is within Flood Zone 2. The application site has a 'sunken' (basement) area which is within Flood Zone 2; the plans indicate that the bedrooms would be in this basement area. No flood risk assessment has been submitted. **The prior approval of the Local Planning Authority is required and refused.**

(d) Desirability for the Building to Change to a Use Falling within Class C3 (dwellinghouses)

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.

(i) Occupation by another A1 & A2 Service Use:-

In response to Application Form, Question 4 (Please provide a view on the impact of the change of use on the provision of services and an assessment of how likely it is that the building could be occupied by another retail or financial/professional services use): the answer given is that "the proposed change will have negligible or no impact on the provision of services in the area because there is ample supply of service providers within 50m radius of the property". The response goes on to say that "there has been a lack of demand for shops/commercial units in the area" and there are several shops/commercial units all within 150m radius of the property currently vacant and available to let".

At the site visit it was noted that the building is vacant; notwithstanding this Dovercourt High street has largely survived due to committed local residents and an older population who still prefer to visit brick and mortar shops. There is little demand for additional retail units in the town, and focus should instead be placed on filling those that are vacant. Demand is likely to come from independent traders, and there are a few modest growth sectors, which include convenience and comparison retail, coffee shops and takeaways. No evidence has been submitted with the application which confirms whether the premises has been marketed, how long the premises has been vacant, who is marketing the property and what (if any) interest has been expressed in renting the premises. It is therefore considered that that insufficient consideration has been given for in regards to an assessment of how likely it is that the building could be occupied by another retail or financial/professional services use. **The prior approval of the Local Planning Authority is required and refused.**

(ii) impact of the proposed change of use on the sustainability of a key shopping area

In response to Application Form, Question 4 (Where the building is located in a key shopping area, please provide a view on the impact of the proposed change of use on the sustainability of that shopping area) on the application form, the answers provided are that "the shop is no longer commercially viable because of a lack of demand" and "the highest and best use of the property is as a residential dwelling flat".

Paragraph 85 of the NPPF states that planning policies and 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. Paragraph 86 of the NPPF states that main town centre uses should be located in town centres. No evidence has been submitted with the application which confirms whether the premises has been marketed, how long the premises has been vacant, who is marketing the property and what (if any) interest has been expressed in renting the premises. Active street frontages are an integral characteristic to vibrant town centres. Further, the floor plans indicate that the living room would be at ground floor level – the size of the window openings would be significantly reduced. The change in window size would detract from the commercial/retail character of the area and secondly, it is anticipated that window coverings would be installed internally to prevent overlooking – these two changes would immediate create an inactive street frontage in this location. **The prior approval of the Local Planning Authority is required and refused.**

(e) The Design or External Appearance of the Building

Paragraph 130 of the NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents.

The floor plans indicate that the living room would be at ground floor level – the size of the window openings would be significantly reduced. The change in window size would detract from the commercial/retail character of the area and secondly, it is anticipated that window coverings would be installed internally to prevent overlooking – these two changes would immediate create an inactive street frontage in this location. **The prior approval of the Local Planning Authority is required and refused.**

and the provisions of paragraph W (prior approval) of this Part apply in relation to that application

(2) Where the development proposed is development under Class M(a) only, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the items referred to in sub-paragraphs (1)(a) to (d) and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

(3) Development under Class M is permitted subject to the condition that

- (a) development under Class M(a), and under Class M(b), if any, must be completed within a period of 3 years starting with the prior approval date; and
- (b) a building which has changed use under Class M is to be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as such a dwellinghouse.

The provisions of paragraph W (prior approval) apply in relation to this application.

Procedure for applications for prior approval under Part 3

W.1 The following provisions apply where under this Part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required.

W.2 The application must be accompanied by

- (a) a written description of the proposed development, which, in relation to development proposed under Class C, M, N or Q of this Part, must include any building or other operations
- (b) a plan indicating the site and showing the proposed development
- (c) the developer's contact address

- (d) the developer's email address if the developer is content to receive communications electronically
- (e) where sub-paragraph (6) requires the Environment Agency(a) to be consulted, a site-specific flood risk assessment

together with any fee required to be paid.

Application form, Question 4 'Please describe the proposed development' the written description of the development is given. Drawing numbers PJB/1940/01, PJB/1940/04a and PJB/1940/05a indicate the site and show the proposed development. The developer's contact address is provided at Question 1 of the application form. The developer's email address is given at Question 7 of the application form. Sub-paragraph (6) requires the Environment Agency to be consulted – a site specific flood risk assessment was not forthcoming. The fee was paid on 16<sup>th</sup> July 2019. **The application fails to comply with the requirements of condition 2(e) of Paragraph W.**

W.3 The local planning authority may refuse an application where, in the opinion of the authority –

- (a) the proposed development does not comply with, or
- (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

The proposed development does not comply with conditions, limitations or restrictions specified in this Part. **The application is being refused in accordance with the requirements of condition 3 of Paragraph W.**

W.4 Sub-paragraphs (5) to (8) and (10) do not apply where a local planning authority refuses an application under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval.

Sub paragraphs (6) (10)(b) apply where the application is being refused under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval. **The determination complies with the requirements of condition 4 of Paragraph W.**

W.5 Where the application relates to prior approval as to transport and highways impacts of the development, on receipt of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority must consult -

- (a) where the increase or change relates to traffic entering or leaving a trunk road, the highway authority for the trunk road
- (b) the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority
- (c) the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway

The Highways Authority were consulted on 24<sup>th</sup> July 2019. **The Local Planning Authority has complied with the requirements of Condition 5 of Paragraph W.**

W.6 Where the application relates to prior approval as to the flooding risks on the site, on receipt of the application, the local planning authority must consult the Environment Agency (b) where the development is -

- (a) in an area within Flood Zone 2 or Flood Zone 3; or
- (b) in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency for the purpose of paragraph (zc)(ii) in the Table in Schedule 4 to the Procedure Order.

The site is within Flood Zone 2 the Environment Agency were consulted on 1<sup>st</sup> August 2019. **The Local Planning Authority has complied with the requirements of Condition 6 of Paragraph W.**

W.7 The local planning authority must notify the consultees referred to in sub-paragraphs (5) and (6) specifying the date by which they must respond (being not less than 21 days from the date the notice is given).

The Local Planning Authority notified the Highways Authority consultees referred to in sub-paragraphs (5) and (6) on 24<sup>th</sup> July 2019 specifying the date by which they must respond of 14<sup>th</sup> August 2019; this date is not less than 21 days from the date the notice is given. In regards to the Environment Agency; during the determination period it was ascertained by the Local planning Authority that the flooding 'layers' on the Uniform Spatial Map are not as current as the Environment Agency maps. The effect of this is that there was a delay in ascertaining a consultation with the Environment Agency. The consultation was undertaken on 1<sup>st</sup> August 2019, with an expiry of 22<sup>nd</sup> August; this date is 3 days below not less than 21 days from the date the notice is given. Notwithstanding this, their comments were received on 2<sup>nd</sup> September.

W.8 The local planning authority must give notice of the proposed development –

- (a) by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which –
  - (i) describes the proposed development
  - (ii) provides the address of the proposed development
  - (iii) specifies the date by which representations are to be received by the local planning authority; or
- (b) by serving a notice in that form on any adjoining owner or occupier.

A site notice was attached on 16<sup>th</sup> August 2019 (the 21-day period expired on 19<sup>th</sup> August) to a street sign immediately adjacent the fixed panel to the left of the shopfront. The site notice described the development as "Proposed change of use from existing shop to a one or two bedroom residential flat". The address of the proposed development is given as "180 - 182 High Street Harwich Essex CO12 3AP". Notice was served on adjoining owners/occupiers on 26<sup>th</sup> July 2019. **The Local Planning Authority has complied with the requirements of Condition 8 of Paragraph W.**

W.9 The local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include— (a) assessments of impacts or risks; (b) statements setting out how impacts or risks are to be mitigated; or (c) details of proposed building or other operations.

The Local Planning Authority did not require the developer to submit further information in regards to assessments of impacts or risks, statements setting out how impacts or risks are to be mitigated or details of proposed building or other operations. **The Local Planning Authority has complied with the requirements of Condition 9 of Paragraph W.**

W.10 The local planning authority must, when determining an application -

- (a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8)
- (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012(a), so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and
- (c) in relation to the contamination risks on the site –
  - (i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of

- the Environmental Protection Act 1990(b), and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012(c), and
- (ii) if they determine that the site will be contaminated land, refuse to give prior approval.

Representation received as a result of the consultation under sub-paragraph (5) from the Highways Authority have been taken into account. Representation received as a result of the consultation under sub-paragraph (6) from the Environment Agency have been taken into account. No representations were received as a result of the notice given under sub-paragraph (8); though the Town Council made representations. The Local Planning Authority has had regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012(a), so far as relevant to the subject matter of the prior approval, as if the application were a planning application. As a result of the proposed change of use, taking into account any proposed mitigation, the site will not be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b). **The Local Planning Authority has complied with the requirements of Condition 10 of Paragraph W.**

W.11 The development must not begin before the occurrence of one of the following –

- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required
- (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or
- (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.

The expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority is 9<sup>th</sup> September 2019. A notification to the applicant is being made in advance of this date informing the applicant that prior approval is not required. **The Local Planning Authority has complied with the requirements of Condition 11 of Paragraph W.**

W.12 The development must be carried out -

- (a) where prior approval is required, in accordance with the details approved by the local planning authority
- (b) where prior approval is not required, or where sub-paragraph (11)(c) applies, in accordance with the details provided in the application referred to in sub-paragraph (1), unless the local planning authority and the developer agree otherwise in writing

W.13 The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

## **6. Recommendation**

Prior approval required - deemed application refused

## **7. Conditions / Reasons for Refusal**

- 1 The site is within the boundary of Dovercourt Conservation Area and is therefore on article 2(3) land. The proposal fails to comply with The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class M, (g) (i).
- 2 The front of the building faces Harwich High Street and the land is relatively level. The side and rear of the building are accessed from Victoria Street which falls sharply in a north-westerly direction. The lowest parts of Victoria Street are in Flood Zone 3, the remainder of Victoria Street is within Flood Zone 2. The application site has a 'sunken' (basement) area

which is within Flood Zone 2; the plans indicate that the bedrooms would be in this basement area. No flood risk assessment has been submitted. The proposal fails to comply with The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class M, Condition 2 (1) (c) and Procedure for applications for prior approval under Part 3, W.(2) (e).

- 3 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 site is within the Town Centre Boundary and Primary Shopping Frontage for the area as defined in both the adopted and emerging local plans. 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.

No evidence has been submitted with the application which confirms whether the premises has been marketed, how long the premises has been vacant, who is marketing the property and what (if any) interest has been expressed in renting the premises. It is therefore considered that insufficient consideration has been given in regards to an assessment of how likely it is that the building could be occupied by another retail or financial/professional services use. The proposal fails to comply with The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class M, Condition 2 (1) (d) (i).

No evidence has been submitted with the application which confirms whether the premises has been marketed, how long the premises has been vacant, who is marketing the property and what (if any) interest has been expressed in renting the premises. Active street frontages are an integral characteristic to vibrant town centres. Further, the floor plans indicate that the living room would be at ground floor level - the size of the window openings would be significantly reduced. The change in window size would detract from the commercial/retail character of the area and secondly, it is anticipated that window coverings would be installed internally to prevent overlooking - these two changes would immediately create an inactive street frontage in this location, contrary to paragraphs 85 and 86 of the National Planning Policy Framework 2019, requiring that 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 and main town centre uses should be located in town centres. The proposal fails to comply with The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class M, Condition 2 (1) (d) (ii).

Paragraph 130 of the NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. The floor plans indicate that the living room would be at ground floor level - the size of the window openings would be significantly reduced. The change in window size would detract from the commercial/retail character of the area and secondly, it is anticipated that window coverings would be installed internally to prevent overlooking - these two changes would immediately create an inactive street frontage in this location. The proposal is therefore contrary to Paragraph 130 of the National planning Policy Framework 2019 as it would not improve the character and quality of an area and the way it functions. The proposal fails to comply with The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class M, Condition 2 (1) (e).

8. Informatives

None

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