

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	DC	17/06/2021
Planning Development Manager authorisation:	JJ	17/06/2021
Admin checks / despatch completed	DB	18.06.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	18.06.2021

Application: 21/00584/FUL **Town / Parish:** Clacton Non Parished

Applicant: Mr Okkes Dari

Address: 49 Ravensdale Clacton On Sea Essex

Development: Proposed change of use from E class to Sui Generis (hot food takeaway pizza) with installation of extractor flue.

1. Town / Parish Council

There is no Town Council.

2. Consultation Responses

Environmental Protection
24.05.2021

Environmental Protection have the following comments to make:

Construction Activities:

Should this application be approved we are requesting the below be conditioned to ensure measures are in place to minimise any potential disturbance from noise during this phase. In order to minimise potential nuisance caused by demolition/construction works/Ground Works, Environmental Protection recommend that the following below is conditioned:

- No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Mondays to Saturdays (finishing at 13:00 on Saturdays) with no working of any kind permitted on Sundays or any Public/Bank Holiday whilst construction works and alterations are being carried out.
- No materials produced as a result of the site development or clearance shall be burned on site.
- All reasonable steps shall be taken to minimise dust and litter emissions from the site whilst works of construction and demolition are in progress.

Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. The condition gives the best practice for Demolition and Construction sites. Failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).

Noise:

Due to the nature of the proposal and its proximity to nearby residential premises, and existing food businesses, the EP Team are requesting a noise impact assessment be undertaken. A competent person shall ensure that the rating level of noise emitted from the proposed extraction system shall not exceed 5dBA above the background. The assessment shall be made in accordance with the current version of British Standard 4142. The noise levels shall be determined at all boundaries near to noise-sensitive premises. Confirmation of the findings of the assessment shall be provided in writing to the local planning authority for written approval. All subsequent conditions shall comply with this standard.

Odour:

The proposed ventilation and extraction system should be installed by a relevantly qualified technician and it is maintained and cleaned in accordance with the manufacturer's guidance.

Informative:

The applicant is advised to seek advice and guidance from the Councils Food, Health & Safety Team, in relation to any requirements for a licence to operate as a food business.

Waste Management
30.04.2021

No comments.

ECC Highways
27.05.2021

The information that was submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated September 2018. The site is in a town centre location where there is good transport links; there are existing waiting restrictions covering the adopted highway in the vicinity of the site and it is noted that the proposal has off-street parking set aside within the boundary of the site plus a nearby car park. The proposed extractor flue is to be located to the rear of the property away from the highway, therefore:

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

1. The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been hard surfaced, sealed and if required marked out in parking bays. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.

Reason: To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety and that appropriate parking is provided in accordance with Policy DM8.

2. 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.

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.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway 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.

Informatives:

1: Steps should be taken to ensure that the Developer provides enough off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking for those employed in developing the site.

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 or by post to:

SMO1 - Development Management Team
Ardleigh Depot,
Harwich Road,
Ardleigh,
Colchester,
CO7 7LT

3: The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

3. Planning History

None.

4. Relevant Policies / Government Guidance

National:

National Planning Policy Framework 2019 (the Framework)
Planning Practice Guidance

Local:

Saved Tendring District Local Plan 2007 Policies (the 2007 Local Plan)

QL2	Promoting Transport Choice
QL11	Environmental Impacts and Compatibility of Uses
COM1	Access for All
COM2	Community Safety
COM20	Air Pollution/Air Quality
COM21	Light Pollution
COM22	Noise Pollution
COM23	General Pollution
EN1	Landscape Character
ER31	Town Centre Hierarchy and Uses
TR1a	Development Affecting Highways
TR7	Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond (the 2013-33 Local Plan)

Section 1 (adopted):

SP1	Presumption in Favour of Sustainable Development
SP3	Spatial Strategy for North Essex
SP7	Place Shaping Principles

Section 2 (emerging):

SPL1	Managing Growth
SPL2	Settlement Development Boundaries
SPL3	Sustainable Design
HP1	Improving Health and Wellbeing
PP3	Village and Neighbourhood Centres
PP5	Town Centre Uses
CP1	Sustainable Transport and Accessibility

Supplementary Planning Guidance:

Essex County Council Development Management Policies 2011 (the DM SPD)
Essex County Council Parking Standards Design and Good Practice Guide 2009 (Parking SPD)

Status of the Local Plan

The 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the Framework.

The 'development plan' for Tendring comprises, in part, the 'Saved' policies of the 2007 Local Plan. Paragraph 213 of the Framework allows local planning authorities to give due weight to policies adopted prior to its publication according to their degree of consistency with the policies in the Framework. On the 26th January 2021 Section 1 of the 2013-2033 Local Plan was adopted and now also forms part of the 'development plan' for Tendring, superseding some of the more

strategic policies in the 2007 Local Plan. Notably, the housing and employment targets have been found sound and have been fixed, including the housing requirement of 550 dwellings per annum.

Paragraph 48 of the Framework 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. In this regard 'Proposed Modifications' to emerging Section 2 of the 2013-33 Local Plan, which contains more specific policies and proposals for Tendring, has been examined and hearing sessions have now closed. It is therefore at an advanced stage of preparation. Following the Inspectors' final report and further public consultation, adoption is expected in late 2021. Section 2 will then join Section 1 as part of the development plan, superseding in full the 2007 Local Plan.

5. Officer Appraisal

The Site

The application relates to one half of a semi-detached, flat-roofed and single-storey former hairdresser's salon, which is built of brick with parapet walls to the roof and a shopfront facing Ravensdale. The other half of the building is occupied by The Saffron restaurant and take away beyond which are other commercial properties of a similar scale and design. To the southeast, east and northeast are residential properties fronting Ravensdale and the cul-de-sac Wrendale. Opposite the site is a car wash and to the rear is a car park.

The Proposal

Change of use planning permission is sought to a sui generis hot food take away (hot food sales being explicitly excluded from the new retail Use Class E(a)). An extraction system is proposed to the roof facing away from neighbouring residential properties. The submitted layout plan details a front-of-house takeaway area for customers, behind which would be a dough preparation and cooking area, a washroom and store, and a staff toilet. Plans of the extraction system show a flue with a carbon filter and silencer.

Principle of Development

The proposal is located within an identified 'District and Local Centre' within the 'Town Centre Hierarchy and Uses' established under Saved 2007 Local Plan Policy ER31. This policy states, amongst other things, that development proposals which adversely affect the vitality, viability and the urban regeneration objectives associated with each centre will not be permitted. The proposal is not located within a Primary Shopping Area (Policy ER32a), nor does the site form part of a Primary Shopping Frontage (Policy ER33), where the loss of a retail unit might be resisted. The proposal is located within a 'Neighbourhood Centre' under emerging modified Policy PP3 and is an appropriate town centre use under Policy PP5. Moreover, there is no evidence that the proposal would adversely affect the vitality or viability of the centre or harm urban regeneration objectives. In principle, the development is therefore acceptable.

Health

Criterion d) of emerging Policy HP1 states that the Council will work to improve the health and wellbeing of residents in Tendring by encouraging healthier communities through targeting of unhealthy lifestyles, such as smoking, and those which cause obesity as identified in the Joint Strategic Needs Assessment. Moreover, the Council will work in collaboration with partners, including Public Health, to avoid a concentration of fast food takeaways where the number of outlets would be likely to harm public health objectives, particularly in deprived communities, local areas of poor health, and near schools.

Paragraph 91 c) of the Framework states that planning policies and decision should aim to achieve healthy, inclusive and safe places which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to *healthier food* [emphasis added], allotments and layouts that encourage walking and cycling.

In accordance with Paragraph 48 of the Framework considerable weight may now legitimately be given to Policy HP1 d); the emerging plan is at an advanced stage of preparation, it is understood there aren't unresolved objections to the policy, and it is broadly consistent with the policies in the Framework.

The proposal would add a further hot food takeaway to the stock of such outlets. There are a substantial number of existing outlets in the area, including one within the adjacent building, the operators of which object to the proposal. However, it is difficult to be certain of the effect of the proposal on public health - Policy HP1 d) is not prescriptive, and is particularly focussed towards deprived communities, local areas of poor health, and near schools. The proposal is neither located in an especially deprived community, nor is it located near a school, and there is no evidence to suggest that the proposal is located in an area of poor health. Furthermore, the proposal would add choice to the local food takeaway market. Nevertheless, there is a degree of conflict with the aspirations of Policy HP1 d) due to the concentration of similar uses in the area.

Highways

The local Highway Authority reason the site is in a town centre location where there are good transport links and there are existing waiting restrictions covering the adopted highway in the vicinity of the site. A third party objection is raised on the basis of a lack of enforcement of those parking restrictions (see section below) however this is not a matter that falls to be considered under a planning application, as it is governed more appropriately under other legislation. The proposal benefits from off-street parking within the boundary of the site and a nearby car park. On this basis, the proposal would not prejudice the safe operation of the highway network or have any unacceptable highway safety impacts. The proposal therefore complies with the requirements of development plan Policies TR1 and TR7. Conditions are recommended to require the provision of cycle parking in accordance with the Parking SPD and emerging Policy CP1. There appears to be space on the site around the building to safely provide adequate cycle parking and the applicant has indicated they would be happy to provide such facilities.

Living Conditions of Neighbours

The shopfront faces the highway. The exhaust of the proposed flue would face away from the immediate neighbour to the side and would be fitted with odour control measures. Environmental Protection consultees raise no objection, subject to conditions. A condition is recommended to require a noise impact assessment of the extraction equipment [as opposed to a noise assessment for the overall use] to the relevant BS Standard so as to ensure that noise levels at nearby noise-sensitive premises are within acceptable limits, and one to require its installation. Also, a condition to limit construction hours and manage any associated harmful effects, which is a routine requirement for development proposals and does not indicate that planning permission should be refused.

Having regard the location of the proposal within an established urban centre, adjacent to a relatively busy highway, ambient noise levels are unlikely to be low. The hours of use sought are between 09:00 and 22:30 Monday to Friday and on Saturdays, and between 09:00 and 22:00 on Sundays and Bank Holidays. This is would be compatible with other uses in the area, and in view of these considerations a full noise assessment would not therefore be a proportionate requirement. Nevertheless, a condition should restrict the hours of opening to those applied for.

Subject to the recommended conditions it is not considered that the proposal would either individually or cumulatively unacceptably adversely affect the living conditions of neighbours due to odour, noise or disturbance. The proposal would therefore comply with Policies COM20, COM22 and COM23, QL11 and SP7, and Paragraph 127 f) of the Framework in these regards.

Visual Amenity

The proposed flue with filter and silencer would not project significantly above the parapet walls of the roof. Although more visible from the rear, it would be read in the context of similar installations of adjoining uses and what are predominantly rear service areas. The installation would be seen

obliquely from the side first floor window of the nearest dwelling, and across a considerable distance from the upper floor windows or flats above commercial properties which front North Road. Having regard to these considerations, it is not considered that the proposal would be unduly harmful to the visual amenity of the area. The proposal would not therefore conflict with the design aims and objectives of adopted Policies EN1 and SP7, or the Framework.

Other Matters

Together, Policy COM21 and Paragraph 180 of the Framework seek to avoid harmful effects of light pollution on local amenity, intrinsically dark landscapes and nature conservation. The proposal is located in an urban area which is not intrinsically dark, or designated for its nature conservation value. Subject to a condition to require prior approval of any external lighting, the proposal would not result in undue light pollution or harm local amenity, and would therefore be policy compliant in this regard.

Representations

Four individual third-party objections have been received from existing takeaway operators, together with a petition with approximately 44 signatures of local residents. Objection raised on material planning grounds therein may be summarised as follows:

- While there are parking restrictions in the area there is little enforcement and the proposal would exacerbate illegal parking problems in the locality and harm highway safety.
- Delivery services would cause noise and disturbance.
- There are already a large number of takeaways in the area – Great Clacton is saturated with fast food outlets - these create noise and disturbance and odour for neighbouring residents – the neighbouring takeaway and restaurant installed a new extraction system to address complaints – existing operators are considerate, new ones might not be.
- The cumulative impact would harm the living conditions of neighbours.
- Other outlets have brightly lit canopies on their shopfronts and the proposal would add to light pollution of the area.
- In view of the comments of Environmental Protection in relation to the flue and conditions to cover construction, a full noise impact assessment for the use should be required.

The objections have been fully considered above. Other objection raised in relation to competition between outlets is not a material planning consideration.

Planning Balance

The proposed use is acceptable in principle and there would be no unacceptable highway safety impacts. Subject to the use of conditions the proposal would not unacceptably harm the living conditions of neighbouring residents and it is therefore policy compliant in these regards. While there is a degree of conflict with the aspirations of emerging Policy HP1 d) and Paragraph 91 c) of the Framework, overall the proposal complies with the provisions of the development plan. The proposal would deliver small scale economic and employment benefits through the reuse of a vacant shop in a sustainable location, and thereby accord with Paragraph 80 of the Framework. Significant weight is attached to these benefits. In the absence of evidence of demonstrable harm to public health, these considerations outweigh the limited conflict with the development plan. On balance therefore, the proposal is acceptable, and planning permission should therefore be granted in accordance with Policy SP1.

6. Recommendation

Approve - Full

7. Conditions

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 strict accordance with the following approved plans:

Site Location Plan

Existing and Proposed Block Plan

Ground Floor Plan Drawing Ref: 49.21.01

Roof Floor Plan Diagram Drawing Ref: 49.21.02

Elevations and Section Drawing Ref: 49.21.03

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

3. The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been hard surfaced, sealed and if required marked out in parking bays. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.

Reason: To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety and that appropriate parking is provided in accordance with Policy DM8.

4. Cycle parking shall be provided on site in accordance with the Essex Planning Officers Association (EPOA) Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation of the use hereby approved 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 of the DM SPD.

5. 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.

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

6. No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours shall be restricted between 08:00 and 18:00 Mondays to Saturdays (finishing at 13:00 on Saturdays), with no working of any kind permitted on Sundays or any Public/Bank Holiday whilst construction works and alterations are being carried out. No materials produced as a result of the site development or clearance shall be burned on site and all reasonable steps shall be taken to minimise dust and litter emissions from the site whilst works of construction and demolition are in progress.

Reason: In order to protect the general amenity of the locality.

7. Prior to first use of the development a noise impact assessment of the extraction system shall be undertaken. A competent person shall ensure that the rating level of noise emitted from the proposed extraction system does not exceed 5dBA above the background noise levels. The assessment shall be made in accordance with the British Standard 4142. Noise levels shall be determined at all boundaries near to noise-sensitive premises. Confirmation

of the findings of the assessment shall be provided in writing to the local planning authority for written approval prior to the use commencing.

Reason: In order to protect the aural amenity of the locality.

8. Prior to first use of the development the ventilation and extraction system hereby approved shall be installed by an appropriately qualified technician and shall thereafter be retained in full working order, in accordance with the manufacturer's guidance, for the lifetime of the development.

Reason: In order to protect the living conditions of existing occupants.

9. Prior to the installation of any external lighting precise details shall have first been submitted to and approved in writing by the local planning authority. Any external lighting shall be designed so as to prevent any unnecessary light spill upwards or towards neighbouring residential properties. Thereafter external lighting shall only be installed in accordance with such details as may have been approved.

Reason: In order to prevent unnecessary light pollution and in the interests of protecting the living conditions of existing occupants.

10. The use hereby approved shall not operate outside of the hours between 09:00 and 22:30 Monday to Friday and on Saturdays, and between 09:00 and 22:00 on Sundays and Bank Holidays.

For the avoidance of doubt and in the interest of proper planning.

8. Informatives

1. 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.
2. Steps should be taken to ensure that the Developer provides enough off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking for those employed in developing the site.

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

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3. The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.
4. The applicant is advised to seek advice and guidance from the Councils Food, Health & Safety Team, in relation to any requirements for a licence to operate as a food business.

Are there any letters to be sent to applicant / agent with the decision? If so please specify:		NO
Are there any third parties to be informed of the decision? If so, please specify:		NO