

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		NH	30/10/2024
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		JJJ	30/10/2024
Assistant Planner final checks and despatch:		ER	30/10/2024

Application: 24/01154/FUL **Town / Parish:** Clacton Non Parished

Applicant: Mr G Cocelli

Address: 31 Rosemary Road Clacton On Sea Essex

Development: Planning Application - Change of use from shop (Use Class E) to hot food take-away (Use Class Sui Generis) (retrospective)

1. Town / Parish Council

Clacton is non parished

2. Consultation Responses

Essex County Council Built Heritage Advice pertaining to a full planning application for change of use of a shop (Use Class E) to a hot food take-away (Use Class Sui Generis), and installation of associated extract system with external ducting at far rear elevation.
Heritage
09.10.2024

The building affected by this proposal, 31 Rosemary Road, is a mid-terrace property that forms part of an unlisted building located within the Clacton Seafront Conservation Area. The terraced properties appear upon the historic OS Maps dating from the latter half of the nineteenth century but are not shown on the early OS Maps for the area. Properties 31, 29, 27, 25, and 23 Rosemary Road are an example of the vernacular architectural preference for the Regency style. They have a distinct façade featuring a repeated pediment roof detail on every other property, and all have shop fronts below.

The main consideration for this application in respect of the historic built environment is whether the proposal impacts the character and appearance of the Conservation Area. Owing to the age of these properties and that their architectural merit can still be appreciated as a distinct group. They are considered to make a positive contribution to the character and appearance of the Conservation Area.

It is noted that this proposal has been previously refused planning permission under application 24/00484/FUL for reason that the proposed external flue would be harmful to the character and appearance of the Conservation Area. There also does not seem to be a record for the approval of planning permission for the existing external flue that is of the same design as that proposed and shown by the superseded drawings as installed upon the neighbouring property 29 Rosemary Road.

The concern remains that the proposed installation of another large flue at the rear of the terrace would cause less than substantial harm

to the character and appearance of the Conservation Area, as determined before. However, the amended plans and elevations submitted on the 2nd of October have omitted this proposed alteration to the building.

Whilst I support the proposed change of use alone, I do not support the addition of an extract flue to the same design as previously proposed. There is a concern that the change of use could necessitate a harmful alteration to the building though the addition of an inappropriate flue which could result in less than substantial harm to the significance of the Conservation Area, as previously established.

In considering the proposed change of use alone, there is no harm identified to the significance of the Conservation Area. Therefore, the change of use alone will preserve the character and appearance of the Clacton Seafront Conservation Area, in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the provisions of Chapter 16 of the NPPF.

Environmental Protection
23.08.2024

With reference to the above application; I can confirm the EP Team have reviewed the recently submitted Noise Impact Assessment and have the following comments to make:

Noise: The submitted NIA, dated 29th July 2024, has been reviewed by the EP Team and we are satisfied with its methodology. However, there are some concerns over the potential vibration impact from the proposed installation. As outlined in the report we would also recommend, as a precaution, that plant should, wherever possible, be installed on suitable type isolators. The fan should be installed with flexible connections to adjacent structures. We would recommend the above be implemented along with any other mitigation measures proposed, with specific reference to points outlined in sections 7.1, 7.2 and 8.5.

REASON: to protect the amenity of the nearby residential dwellings

3. Planning History

03/01873/FUL	Change of use from aquatic shop to body piercing jewellery, and tattooist.	Approved	04.11.2003
24/00484/FUL	Planning Application - change of use from shop (Use Class E) to hot food takeaway (Use Class Sui Generis) and installation of associated extract system with external ducting at rear elevation.	Refused	24.06.2024

4. Status of the Local Plan

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of 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 National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Local Plan 2013-33 and Beyond (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any Neighbourhood Plans that have been made and the Minerals and Waste Local Plans adopted by Essex County Council.

5. Neighbourhood Plans

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

6. Relevant Policies / Government Guidance

National:

National Planning Policy Framework December 2023 ([NPPF](#))

National Planning Practice Guidance ([NPPG](#))

Local:

Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 (adopted January 2021)

SP7 Place Shaping Principles

Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022)

SPL3 Sustainable Design

PP2 Retail Hierarchy

PP3 Village and Neighbourhood Centres

PP5 Town Centre Uses

PP6 Employment Sites

PP14 Priority Areas for Regeneration

PPL8 Conservation Areas

Supplementary Planning Documents

[Essex Design Guide](#)

7. Officer Appraisal (including Site Description and Proposal)

Site Description

The application site is 31 Rosemary Road, Clacton on Sea. The premises is currently vacant and is located within the Clacton Seafront Conservation Area – it would appear that the ground floor has been vacant for some time. The premises also lies within the Village and Neighbourhood Centre, Priority Area for Regeneration and is located within the settlement development boundary. The immediate area comprises of a mixture of shops with residential above to the first floor.

Description of Proposal

This application seeks planning permission for the change of use from a shop (Class - E) to hot food takeaway (Class - Sui Generis).

During the Officers site visit, it is noted that the majority of internal fit out works to facilitate the change of use to a take away had already commenced – as such the proposed change of use is part retrospective.

Assessment

1. Principle of Development

The application site falls outside of any recognised Primary Shopping Area and is located within a defined Neighbourhood Centre as set out within Policy PP3. The area includes other commercial

properties, including hot food takeaways and restaurants along Rosemary Road. The site is in a sustainable location close to the hustle and bustle of Clacton Town Centre.

Neighbourhood centres will be the focus for 'town centre uses' which include retail, leisure, commercial, office, tourism and cultural, community and residential development. The Council will promote a mix of appropriate town centre uses within these defined centres with 'active street frontages' at ground floor level. Proposals must be properly related in their scale and nature having regard to the above hierarchy.

The site is not safeguarded for retail use and a Sui Generis takeaway use is acceptable having regard to the location, and no clear policy conflict can be identified, this is subject to other considerations covered below.

2. Design and Appearance (including Heritage Impact)

Paragraph 135 of the National Planning Policy Framework (NPPF) (2023) requires that developments are visually attractive as a result of good architecture, are sympathetic to local character, and establish or maintain a strong sense of place.

Adopted Policy SP7 of Section 1 of the 2013-33 Local Plan seeks high standards of urban and architectural design, which responds positively to local character and context. Policies SPL3 and LP4 of Section 2 of the 2013-33 Local Plan also require, amongst other things, that developments deliver new dwellings that are designed to high standards and which, together with a well-considered site layout that relates well to its site and surroundings, create a unique sense of place.

Policy PPL8 (Conservation Areas) of the adopted Local Plan are considered to be consistent with the NPPF in these respects, and also specifically states that development within a designated Conservation Area, or which affects its setting, will only be permitted where it has regard for the desirability of preserving or enhancing the special character and appearance of the Conservation Area, especially in terms of a. scale and design, particularly in relation to neighbouring buildings and spaces; b. materials and finishes, including boundary treatments appropriate to the context; c. hard and soft landscaping; d. the importance of spaces and trees to the character and appearance; e. any important views into, out of, or within the Conservation Area. Policy SP7 of the adopted Local Plan states all new development must meet high standards of urban and architectural design. Policy SPL3 of the adopted Local Plan focuses on Sustainable Design, emphasising that all new developments should positively contribute to the quality of the local environment and protect or enhance local character.

There are no external changes proposed to the building, however, were any signage or external alterations, such as painting or refurbishment to be required to number 31 in the future as part of the proposal, a new planning permission and/or advertising consent applications would be required.

Essex County Council Place Services Heritage Team have been consulted on this application as the application site is located within the Conservation Area and support the change of use.

3. Impact to Residential Amenities

Paragraph 130 of the National Planning Policy Framework (2021) confirms planning policies and decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Policy SP7 of Section 1 of the 2013-33 Local Plan requires that the amenity of existing and future residents is protected. Section 2 Policy SPL 3 (Part C) seeks to ensure that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

The application site is located within the town centre location comprising of predominantly retail uses with non-domestic uses located above the ground floor shop. The opening hours proposed are Monday to Friday 11am - 1am, Saturdays 11am - 2pm and Sunday/Bank Holidays 11am -

midnight. As a town centre location, night time comings and goings can be expected and due to the other uses along the frontage such as restaurants and other takeaways and newsagents, which are all night time uses, the proposal is not considered to create a significant impact upon neighbouring amenities. The application does not include any external ducting and is purely for the change of use.

4. Habitat, Protected Species and Biodiversity Enhancement

Ecology and Biodiversity

Paragraph 186 of the NPPF states that, when making planning decisions local planning authorities need to assess whether significant harm to biodiversity could result from the development. The NPPF goes on to state the hierarchy that should be applied to mitigate any harm to ecology that is identified. Paragraph 180 of the NPPF requires that Local Planning Authorities contribute to and enhance sites of biodiversity or geological value. TDLP Policy PPL4 states that proposals for new development should be supported by appropriate ecological assessments and, where relevant, provide appropriate mitigation and biodiversity enhancements to ensure a net gain.

This report addresses the distinct legal requirements, ensuring a comprehensive analysis of the ecology and biodiversity impacts of the proposal in line with regulatory standards.

General duty on all authorities

The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: "For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England." Section 40 states authorities must consider what actions they can take to further the general biodiversity objective and determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. In conclusion for decision making, it is considered that the Local Planning Authority must be satisfied that the development would conserve and enhance.

This development is subject to the general duty outlined above. However, the proposal is for a change of use of a shop to a takeaway on a site with little or no soft landscaping or biodiversity features. On this occasion it is not considered necessary or reasonable to include a condition to secure soft landscaping details.

Therefore, the development on balance and with consideration of the impact of the development and baseline situation on site, does conserve and enhance biodiversity interests.

Biodiversity net gain

Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. The minimum requirement is for a 10% net gain in biodiversity value achieved on a range of development proposals. The application was submitted prior to the introduction of this requirement and is not therefore applicable for Biodiversity Net Gain.

Protected Species

In accordance with Natural England's standing advice the application site and surrounding habitat have been assessed for potential impacts on protected species. The proposal is for a change of use of an existing building which is unlikely to adversely impact upon protected species or habitats.

Conclusion

In accordance with the overarching duty outlined above, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

Other Considerations

Clacton is non parished.

1 letter of objection has been received raising the following concerns (summarised below):

- Too many takeaway outlets along Rosemary Road

In response to the concern raised above, each application is assessed on its own merits and the proposed use, for the reasons given, is not considered to result in any clear policy conflict insofar as the land use/key and most important policies quoted above, are concerned.

- Works already undertaken

It is noted that during a site visit, the works have started and therefore this application is for retrospective planning permission.

Conclusion

The application site falls within the Settlement Development Boundary of Clacton on Sea within the Local Plan 2013-2033 and is also not specifically allocated for retail use. As such the principle of the change of use is acceptable. Officers note that there are no external changes proposed and that there will be no neighbouring impacts due to the town centre location comprising of retail uses in the immediate area. Taking the above into consideration, the application is considered to comply with local and national planning policies and is therefore recommended for approval.

8. Recommendation

Approval - Full

9. Conditions

1 APPROVED PLANS & DOCUMENTS

CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard (except for Listed Building Consents). Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

- Drawing No. L100 – Amended site and block plans – received 22.10.2024
- Drawing No. P101 - Proposed Plans – received 22.10.2024

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved, unless otherwise separately referenced in other conditions that also form this decision. The

second role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

Please note in the latest revision of the National Planning Policy Framework (NPPF) it provides that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). Accordingly, any future amendment of any kind will be considered in line with this paragraph, alongside the Development Plan and all other material considerations.

Any indication found on the approved plans and documents to describe the plans as approximate and/or not to be scaled and/or measurements to be checked on site or similar, will not be considered applicable and the scale and measurements shown shall be the approved details and used as necessary for compliance purposes and/or enforcement action.

- 2 The use hereby approved shall be undertaken only between the hours of;

Monday to Friday - 11am - 1am

Saturday - 11am - 2am

Sunday/Bank Holidays - 11am – midnight

Reason - To ensure the use of the site is appropriate to the locality and to safeguard the amenities of local residents.

10. Informatives

Positive and Proactive Statement

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.

It is noted that after undertaking a site visit, a first floor rear element exists at the property however Officers are unable to locate a planning permission relating to the extension. You are strongly advised to attend to this matter urgently. Moreover, an extraction flue is also observed to the rear of the building which also appears to not benefit from the necessary consents. For the avoidance of doubt, this permission does not authorise any extraction equipment and relates solely to and grants planning permission for a change of use from shop (Use Class E) to hot food take-away (Use Class E Sui Generis). The applicant is strongly encouraged to attend to these unauthorised elements.

11. Equality Impact Assessment

In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions

including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

12. Notification of Decision

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	NO
Has there been a declaration of interest made on this application? No Declarations Of Interest Made	YES	NO