



STANFORDS

## No.37 Connaught Avenue Frinton-on-Sea

Removal of condition 6 of approval 21/01528/FUL relating to the use of the site only as ancillary to the takeaway operation at No.35 Connaught Avenue.

Planning Statement.



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## 1.0 Introduction

1.1 This Planning Statement has been prepared on behalf of Mr Goring, in support of a removal of condition application for the removal of condition 6 of approval 21/01528/FUL relating to the use of the site only as ancillary to the takeaway operation at No.35 Connaught Avenue at No.37 Connaught Avenue, Frinton-on-Sea, CO13 9PN.

1.2 This statement should be treated as forming part of the application and includes details on the site and its surroundings, the intended scheme and how it relates to adopted and emerging planning policies. Although the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2013 removed the requirement for Design and Access Statements to be submitted with minor planning applications, this statement is submitted to explain the rationale behind the development to assist the Local Planning Authority in making its decision.

## 2.0 Site and Surroundings

2.1 The site is located on the western side of Connaught Avenue and forms part of an extension to the restaurant known as Pier One. The restaurant and takeaway first opened within No.35 only in 2016 after a six-month renovation. An approval to extend the premises into No.37 in December 2021 was implemented following the relocation of Caxton Books to No.55 Connaught Avenue.

2.2 No.37 is a three-storey building with the restaurant and takeaway (sui generis) use on the ground floor with the further two floors providing residential accommodation. The site falls within four planning designations; the settlement boundary, the primary shopping area, the town centre and the Frinton and Walton Conservation Area.



Photograph from The Clacton Gazette (2016)



Photograph from Google Street View of the expanded premises (2023)

### 3.0 Relevant Planning History

- 3.1 Full planning permission was granted for the proposed change of use from Class E into a takeaway outlet (sui generis) at No.37 Connaught Avenue, Frinton-on-Sea (reference: 21/01528/FUL).

### 4.0 Policy Context

#### National Planning Policy Framework

- 4.1 Section 6 discusses the ways in which planning policies and decisions can build a strong, competitive economy. Paragraph 85 states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.
- 4.2 Paragraph 87 highlights that planning policies and decisions should recognise and address the specific locational requirements of different sectors.
- 4.3 Ensuring the vitality of town centres covers section seven of the NPPF. 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. This includes the retention and enhancement of existing markets.

#### Local Planning Policies

- 4.4 The Local Plan's strategic objective for Employment/Commercial is "To provide for the development of employment land on a variety of sites to support a diversity of employment opportunities".
- 4.5 Paragraphs 6.2.11 – 6.2.13 of the Local Plan states that "The nature of retail is changing, with the emergence of on-line shopping along with the popularity and convenience of large superstores. The Council wishes to promote the vitality and viability of these centres and

accepts that with changes in shopping habits, they will need to move with the times to remain a focus for economic activity and community life. Therefore, our centres will need to change too by becoming more diverse in their offer, embracing more leisure-based activities such as: eating and drinking; promoting the evening economy; utilising the internet as a promotional tool rather than seeing it as a threat to business; providing safe and attractive environments that people are more inclined to visit through choice, rather than convenience; and being easily accessible by a range of transport types. The Council and local businesses both have an important role to play in bringing about this change.”

- 4.6 Policy PP5 states that within town centre boundaries, main town centre uses will be permitted where they support the vitality and viability of the town centre. Within the primary shopping area, the use of ground floor shop units will be restricted to uses within Use Class E.

#### National Planning Practice Guidance

- 4.7 Local planning authorities can take a leading role in promoting a positive vision for these areas, bringing together stakeholders and supporting sustainable economic and employment growth. They need to consider structural changes in the economy, in particular changes in shopping and leisure patterns and formats, the impact these are likely to have on individual town centres, and how the planning tools available to them can support necessary adaptation and change.
- 4.8 Evening and nighttime activities have the potential to increase economic activity within town centres and provide additional employment opportunities. They can allow town centres to diversify and help develop their unique brand and offer services beyond retail.
- 5.0 The Proposal
- 5.1 Planning permission was granted in December 2021 for the change of use of No.37 to a takeaway outlet falling under the sui generis use class. Condition 3 restricts the rating level of noise no greater than 5bDA above background noise in the interests of residential amenity and nearby noise sensitive premises. Condition 4 restricts the use to 10am to 10pm everyday to ensure that the use is appropriate within this mixed commercial and residential location. Condition 5 restricts any external lighting being erected without approval from the Council in the interests of protecting the living conditions of existing occupants. Condition 6 is proposed to be removed. The condition reads:

*The approved use shall be occupied only ancillary to number 35 Connaught Avenue as a takeaway only.*

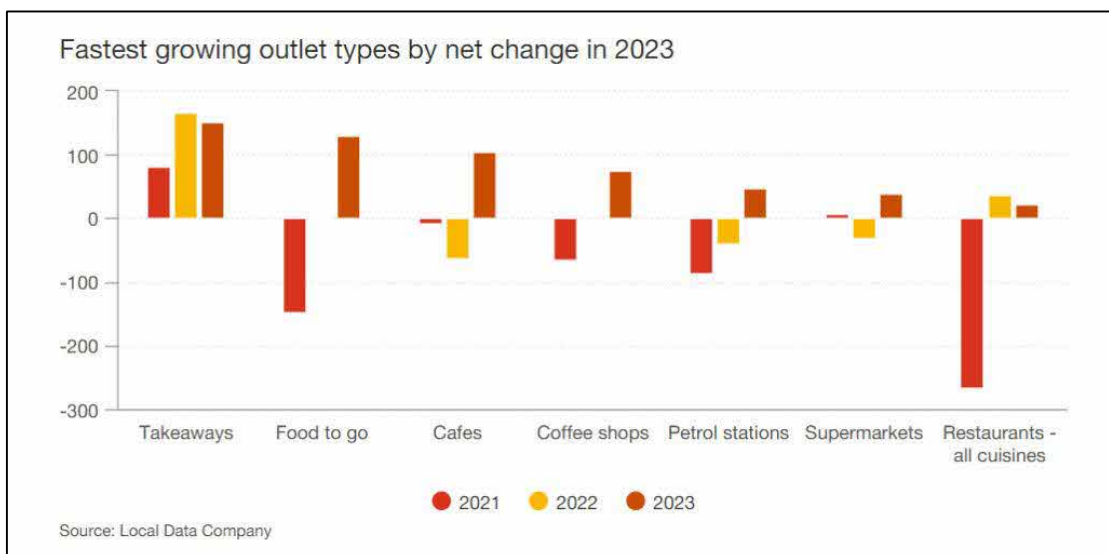
*Reason – In the interests of residential amenity.*

It is also clear from the delegated officer's report for the extant planning permission that condition 6 was added to make the development acceptable in planning terms because a sui generis use would not be acceptable in a primary shopping area under Policy PP5.

- 5.2 The applicant financially invested in expanding the businesses offering with the hot food takeaway at No.37. However, with double the expenses, it has become problematic to make the model viable. In order to retain the original restaurant use, the applicant intends to sell the takeaway as a separate entity to release the relevant funds. This forms in part a material consideration when looking into the vitality of town centres. However, considerations of Local Plan objectives, functionality, residential amenity, and the use of planning conditions are discussed within this planning statement as justification for the removal of the condition.

#### Government and Local Plan Objectives

- 5.3 Data released this month from the Local Data Company that reveals 39 retail chain outlets closed in the UK each day during 2023, with just 25 stores opening, resulting in an average net closure of 14 per day. The top category of new openings in this sector were takeaways.



This pattern began to emerge when the Government allowed temporary change of use of cafes, public houses and restaurants to provide hot food takeaways when unable to operate as usual during the pandemic. In the Build Back Better High Streets government publication, it is recognised that the benefits of these flexibilities were obvious by 'giving businesses the chance to respond to how communities today want to enjoy their high streets' (p.33). This led to the government's Hospitality Strategy. This states that 'Hospitality is part of a high street eco-system that is vital to maintaining strong local economies and communities. This eco-system includes hospitality, retail, personal care services, consumer services and the leisure sector. It also connects the day and night-time economies.' The overall Strategy aims to support the reopening, recovery and most importantly resilience of the hospitality industry. It does however directly highlight planning as an identified concern to its success (p.11). The Built Environment Committee launched a new inquiry just last month into high streets focussing on these challenges.

- 5.4 It is clear when read as a whole that the Local Plan adopted just two years ago is aware of the major threat to town centres and high streets across the country. This is not only with the change of retail spending habits preferring online retailers and expansion of large supermarket goods on offer. During the Independent Examination of Section 2 of the Local Plan, Topic Paper 3: Retail and Town Centre Policy formed part of the evidence base. Page three states 'The Use Classes Order introduced in September 2020 has combined retail uses with a range of other commercial, business and service uses thus enabling more properties to change their use without the need for planning permission. To facilitate this, the Council will need a more flexible approach to ensure the vitality of our Town Centres in the short, medium and long term – a significant move away from the traditional and now outdated town centre policies that sought to protect primary shopping frontages for A1 retail use only. Diversification will play a key role in this, activities such as eating, drinking, community-based pursuits and new residential accommodation have the potential to enliven our town centres.' However, this is not reflected within its Policy PP5 relating to primary shopping areas. The policy states that 'the use of ground floor shop units will be restricted to uses within Use Class E'. There is no explanation as to why this policy has been negatively worded to create a blanket exclusion. Considering the changes to the Use Classes Order, the sui generis category has vastly expanded to include uses commonly found in a high street location. Therefore, this policy is in direct conflict with the NPPF. In this instance, the change of use has already been granted and implemented. This application seeks to merely remove the condition tying the takeaway use at No.37 with the restaurant use at No.35.

### Functionality

- 5.5 When the change of use was granted, there were no external alterations proposed. The only operational development undertaken to functionally link the two premises together was a single personnel door from the restaurant floor to the rear of the takeaway. It is clear from both these drawings and the operation of the two businesses that the two halves are not functionally reliant on one another. Both have an existing customer access onto Connaught Avenue, separate kitchens, separate staff toilets and separate accesses to the rear of the buildings onto Old Road. No.35 and No.37 have the ability to operate entirely separately.

### Residential Amenity

- 5.6 The Council's reasoning for condition 6 relates directly to the protection of residential amenity. The Environmental Protection team raised no objection to the change of use subject to a condition relating to the installation and maintenance of the proposed equipment. The site's location on Connaught Avenue, with commercial premises dominant on both sides of the road, the opening hours no later than 10pm have not been excessive enough to impact residential amenity. There would be no greater use than the existing arrangement, as consumers visiting the restaurant already differ than those visiting the takeaway premises.
- 5.7 Any external alterations from a future business, including signage, as well as any changes to opening times would require specific approval by the Council. Therefore, there are existing mechanisms in place providing protection from any speculative adversity that could arise from removal of condition 6.

### Use of Planning Conditions

- 5.8 Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:
1. necessary;
  2. relevant to planning;
  3. relevant to the development to be permitted;
  4. enforceable;
  5. precise; and



6. reasonable in all other respects.

Any proposed condition that fails to meet one of the 6 tests should not be used.

5.9 Questions can be raised as to the necessity, relevance, and reasonability of condition 6. Whilst the condition's reason reads 'in the interests of residential amenity', no objections were raised by the Environmental Protection team about the proposal subject to a condition relating to the installation and maintenance of the plant equipment.

5.10 The delegated officer's report reveals that:

When assessing the proposal against the criteria above, the change of use from a shop (Class E (a)) to a takeaway (Sui Generis) would not be supported by the Modifications of Section 2 of the Emerging Local Plan. However, although the proposal would result in the loss of a shop unit within the 'primary shopping' frontage, the proposal needs to be considered in the context of it essentially being an ancillary and complementary addition to the existing immediately adjoining fish restaurant, 'Pier One' and not an independent facility (i.e. internal access between the existing restaurant and takeaway to be provided) which under the amended Use class E and appropriate within the primary frontage.

5.11 There is no provision within the policy nor its preamble to make the development acceptable in planning terms by tying the occupation of the proposed use to an existing use. Therefore, there was no justification in the Local Plan to do so raising questions of relevance to planning.

5.12 The Council had the ability to add a condition ensuring the shared personnel door was not obstructed to ensure the enforceability of the functional link; this was not implemented.

5.13 The original proposal showed commitment to financially invest and diversify the recreational offering to the high street which supports the government and district Council's aim of saving the vitality and vibrancy of town centres. It is therefore questioned whether it was actually reasonable and necessary to tie No.37 to No.35 in the first place. Thereby demonstrating that the condition was unnecessary, irrelevant and unreasonable.