

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	NH	23/12/2021
Planning Development Manager authorisation:	AN	23/12/21
Admin checks / despatch completed	DB	23.12.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	23.12.2021

Application: 21/01528/FUL **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr Peter Goring

Address: 37 Connaught Avenue Frinton On Sea Essex

Development: Proposed change of use from Class E into a takeaway outlet (sui generis).

1. Town / Parish Council

FRINTON & WALTON
TOWN COUNCIL
11.10.2021

Refusal

2. Consultation Responses

Essex Heritage

Built Heritage Advice pertaining to an application for: Proposed change of use from Class E into a takeaway outlet.

The development site is located within Walton and Frinton Conservation Area.

I am unopposed to this application. Were any signage or external alterations, such as painting or refurbishment to be required to number 37 in the future as part of the business' expansion, a new planning permission and/or advertising consent applications would be required.

Alternatively, if signage or external refurbishment works are expected, these could be covered by a suitably worded condition.

Essex Highways

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 April 2019. The premises are located on Connaught Avenue which has existing parking and limited waiting restrictions outside the front of the building and adjoining side roads that will not change. It is noted that 37 Connaught Avenue will be used as a takeaway for fish and chip sales whilst supporting the kitchen to Pier One, the adjoining restaurant. The two premises will be linked with a new opening to allow staff movement. It is noted that the

proposal will not alter the external features to the premises or the residential flat to the upper floors to 35 Connaught Avenue. Taking these factors into account:

The Highway Authority does not object to the proposals as submitted. Informative:

1: 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. To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period.

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

21/01528/FUL	Proposed change of use from Class E into a takeaway outlet.	Current
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4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework July 2021

National Planning Practice Guidance

Adopted Tendring District Local Plan 2007 (part superseded)

QL2 Promoting Transport Choice

QL11 Environmental Impacts and Compatibility of Uses (part superseded)

COM1 Access for All

COM2 Community Safety

COM20 Air Pollution/ Air Quality

COM21 Light Pollution

COM22 Noise Pollution

COM23 General Pollution

EN17 Conservation Areas

ER31 Town Centre Hierarchy and Uses

TR10A General Aviation

TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26th January 2021)

SP1 Presumption in Favour of Sustainable Development

SP3 Spatial Strategy for North Essex

SP7 Place Shaping Principles

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

Essex County Council Car Parking Standards - Design and Good Practice

Status of the Local Plan

Planning law requires that decisions on planning 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 2021 (the Framework).

The 'development plan' for Tendring comprises, in part, the 'saved' policies of the 2007 Local Plan. Paragraph 219 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 were 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 the policies of the Framework. On 24th November 2021, the Council received the Planning Inspectors' final report on the legal compliance and soundness of Section 2 of the emerging Local Plan. The report has confirmed, that with the inclusion of a number of 'Main Modifications' (which have already been the subject of formal public consultation), the Plan is legally compliant and sound and can now proceed to adoption. The report is due to be considered by the Planning Policy and Local Plan Committee on 11th January 2022 which is likely to recommend adoption of the Section 2 Local Plan to Full Council on 25th January 2022. On adoption, the new Section 2 Local Plan will join the new Section 1 Local Plan to form the 'development plan' for Tendring and the old 2007 Local Plan will be superseded in full.

Now that the Inspectors' final report is received, the Section 2 Local Plan has virtually reached the final stage of preparation, all objections have been resolved and the Inspector has confirmed that the Plan is sound and therefore in conformity with the Framework. For these reasons, Officers now advise that the emerging Plan should now carry 'almost full weight' in decision making.

Until the new Local Plan is adopted in January 2022, the 2007 adopted Local Plan, legally, will still form part of the 'development plan' and there will still be a requirement to refer to the 2007 Local Plan in decision making. However, the level of weight to be afforded to the policies in the 2007 Plan is reduced to very limited weight given that a more up to date Plan has progressed to such an advanced stage of the plan making process.

5. Officer Appraisal (including Site Description and Proposal)

Site Description

The application relates to 37 Connaught Avenue, Frinton on Sea. The premises is a two-storey property with shop to the ground floor and a flat to the first floor. The site is located within the Settlement Development Boundary of Frinton on Sea and within the Conservation Area.

Use Classes Order Update

On 21st July 2020 radical changes to the Use Classes Order were made through the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. This included the revocation of Use Classes A, B1 and D, and the introduction of new Use Class E (Commercial Business and Service). The current retail use now falls within the new Class E.

The uses to be revoked (and replaced with the new Use Classes) include hot food takeaways falling under sui generis use from 1st September 2020.

Description of Proposal

The application seeks full planning permission for the change of use from retail (previously A1 now Class E) to a takeaway outlet (previously Class A5 now sui generis).

There will be minor amendments to the internal layout with the introduction of a door to the side elevation.

Assessment

The main considerations in this instance are;

- Primary Shopping Frontage of Frinton on Sea;
- Impact on Heritage Asset;
- Residential Amenities;
- Accessibility; and,
- Representations.

Primary Shopping Frontage of Frinton on Sea.

Number 37 Connaught Avenue is currently a Class E (a) use as it was trading as a bookshop, however the shop is currently vacant. The proposal is located within the 'Primary Shopping Frontage' of Frinton on Sea.

Policy ER33 of the Adopted Local Plan 2007 and Emerging Policy PP5, both refer to the Primary Shopping Frontage. A modifications document was taken and agreed at the Local Plan Committee which was held on 29th June 2021, to review the modifications and this allowed for new wording to Policy PP5 to better reflect current national planning policy, changes to the Use Class order and a more flexible approach to town centre uses. Modified Policy PP5 states that 'within the 'Primary Shopping Area', the use of ground floor shop units will be restricted to uses within Use Class E (Commercial, business and service uses)'.

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.

The proposed ground floor plan demonstrates that the existing restaurant will be linked to the proposed takeaway. There are limited seating areas to the front of the shop but the majority of footfall will be takeaway. It is therefore considered that the takeaway will be an ancillary use to the existing restaurant and therefore the principal of the conversion is acceptable.

Design and Appearance (including Heritage Impact)

Adopted Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context. Emerging Policies SPL3 and LP4 of Section 2 of the 2013-33 Local Plan also require, amongst other things that developments are designed to high standards and which, together with a well-considered site layout, create a unique sense of place. Paragraph 127 of the Framework 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.

Policy EN17 of the Tendring District Local Plan 2007 and Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Preferred Options Consultation Document (July 2016) state that development within a Conservation Area must preserve or enhance the special character or appearance of the Conservation Area.

The proposed change of use does not involve any changes to the front elevation. However, please note that any new advertisement will likely require advert consent.

As the application site is located with the Conservation Area, the Historic Environment Manager has been consulted on this application and have stated that the development site is located within Walton and Frinton Conservation Area. The officer is unopposed to this application.

Were any signage or external alterations, such as painting or refurbishment to be required to number 37 in the future as part of the business' expansion, a new planning permission and/or advertising consent applications would be required.

Limited alterations to the internal and external appearance of the building are required to facilitate the use, including the siting of the extractor fan inside the building to limit noise.

It is therefore considered that the proposed works will not cause any harm to the setting of the Conservation Area, and the proposal is therefore acceptable against this criteria.

Residential Amenities

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. 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, a pub, Sainsbury's and a Co-op, which are all night time uses, the proposal is not considered to create a significant impact upon neighbouring amenities. However, consideration must be given to the location of the site within Connaught Avenue with commercial premises on the opposite side of the road and in both directions. The proposed opening hours are not excessive with closure at 10pm.

Whilst it is recognised that there will be an element of odour from uses such as restaurants and takeaways, the proposal includes the introduction of an extractor unit which is internal and is accompanied by appropriate equipment specifications in order to mitigate and minimise any odour and noise nuisance. The Council's Environmental Protection Team raise no objections to the development subject to conditions relating to the installation and maintenance of the proposed equipment.

Due to the town centre location, public activity and noise beyond that typical of a fully residential area is to be expected. Having regard to the character of the area and appropriate extraction, any impact on residential amenities from the proposed use cannot be considered significantly harmful to warrant refusal of planning permission on this basis.

Accessibility

The site is located within in a highly sustainable local centre in easy walking distance of residential properties and public transport. Prospective clientele collecting meals by car will park in a suitable location in accordance with existing on street parking restrictions as they would do visiting any other commercial premises in Connaught Avenue.

Essex Highway Authority have been consulted on this application and have stated that 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 April 2019. The premises are located on Connaught Avenue which has existing parking and limited waiting restrictions outside the front of the building and adjoining side roads that will not change. It is noted that 37 Connaught Avenue will be used as a takeaway for fish and chip sales whilst supporting the kitchen to Pier One, the adjoining restaurant. The two premises will be linked with a new opening to allow staff movement. It is noted that the proposal will not alter the external features to the premises or the residential flat to the upper floors to 35 Connaught Avenue. Taking these factors into account the Highway Authority have no objections.

Representations

Frinton and Walton Town Council recommends this application for refusal.

No letters of representation have been received.

6. Recommendation

Approval - 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 accordance with the following approved plans:

- Drawing No. 5 Revision A
- Drawing No. 4 Revision A
- Drawing No. 7 Revision A
- Extraction Details - Scanned 02 Dec 2021

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

- 3 The hereby approved extraction equipment shall be in operation prior to first use of the hereby approved takeaway. The rating level of noise emitted from the extraction system and condensers shall not exceed 5dBA above the background at any time, 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 prior to first use of the hereby approved takeaway.

Reason - In the interests of residential amenities and nearby noise sensitive premises.

- 4 The use hereby permitted shall only operate between the hours of 10am and 10pm Monday - Sunday.

Reason - To ensure that the use is appropriate within this mixed commercial and residential location.

- 5 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.

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

Reason - In the interests of residential amenity.

8. 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.

Highways

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Additional Permissions

Please note that any works to the shop front or new advertisements may require separate planning and/or advertisement consent.

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