

**13/00228/COU****2 SOUTH STREET, ROCHFORD****CHANGE OF USE FROM RETAIL TO MIXED USE  
COMPRISING USE CLASS A1 RETAIL, USE CLASS A3  
RESTAURANT AND CAFÉ, AND USE CLASS A5 HOT FOOD  
TAKEAWAY****APPLICANT: MR BRYN DRISCOLL****ZONING: SECONDARY SHOPPING FRONTAGE AREAS****PARISH: ROCHFORD****WARD: ROCHFORD**

In accordance with the agreed procedure this item is reported to this meeting for consideration.

This application was included in Weekly List no. 1190 requiring notification of referrals to the Head of Planning and Transportation by 1.00 pm on 26 June 2013, with any applications being referred to this meeting of the Committee. The item was referred by Cllr Mrs G A Lucas-Gill.

The item that was referred is appended as it appeared in the Weekly List, together with a plan.

**1 NOTES**

- 1.1 This application is to a site on the western side of South Street at the junction with Back Lane.
- 1.2 The application site relates solely to the ground floor of No. 2 South Street and is self contained with no access gained to the upper floors.
- 1.3 The site is adjoined to the south with No. 4 West Street (Ellis Hairdressers). The site is allocated within the secondary shopping frontage area of Rochford town centre, as identified in the Council's saved Local Plan. It should also be noted that the building to which this application relates is a Grade II listed building and is within the Rochford Conservation Area.
- 1.4 This proposal follows a previous refused application (13/00039/COU) for a Change of Use From Retail to Mixed Use Comprising Use Class A1 Retail, Use Class A3 Restaurant And Café, And Use Class A5 Hot Food Takeaway. This application was refused on the basis of:-

- 1.5 The proposal fails to provide sufficient information to enable the Local Planning Authority to adequately consider the effect upon the amenity of nearby residential occupiers of odour arising from the cooking processes associated with the use proposed and the effect of such apparatus for the dealing with odour upon the appearance of the Grade II Listed Building. Furthermore, it is not clear, given the divided ownership of the building, that the odour arising from cooking on the site can be addressed by means of a suitably designed external fume extract system that can be installed that would be sensitive to the Listed Building and in such a manner to those parts of the building within the applicants' control and likely impact of such fumes on the amenities occupiers of the flats above and other nearby residents.
- 1.6 Planning permission is sought for a change of use from retail (Class A1) to a mixed use comprising of Use Class A1 retail, A3 restaurant and café and A5 hot food takeaway. The use initially commenced with the retail sale of wet fish but has since diversified into hot food sales and consumption on the premises, necessitating the submission of a retrospective application for a mixed use.

## **2 RELEVANT PLANNING HISTORY**

- 2.1 Application No. ROC/316/80 - Convert existing ground floor bakers shop into Indian restaurant - Refused 23 July 1980
- 2.2 Application No. ROC/40/81 - Change of use from bakers shop and residential use to office accommodation - Granted 4 March 1981
- 2.3 Application No. ROC 200/587/LB - Alterations to roof, formation of balcony and new room, removal of ovens - Granted 24 July 1987
- 2.4 Application No. CA/0514/91 - Demolition of freestanding wall - Granted 18 September 1991
- 2.5 Application No. F/0075/92/ROC - Wooden Gate - Granted 25 March 1992
- 2.6 Application No. 13/00039/COU - Change of Use From Retail to Mixed Use Comprising Use Class A1 Retail, Use Class A3 Restaurant And Café, And Use Class A5 Hot Food Takeaway - Refused 21 March 2013

## **3 CONSULTATIONS AND REPRESENTATIONS**

### **3.1 Rochford Parish Council**

Members object to this application as they feel that vehicles will be parked in South Street at a time when the wardens are not operating.

### **3.2 Essex County Council Highways**

De minimis.

### 3.3 Historic Building and Conservation

This is an application for the change of use of the above listed building, to which I have no objections. It also includes some physical alterations.

- 3.4 It is proposed to insert a flue liner up an existing chimney stack in order to ventilate the kitchens. If this liner is independent of the stack, as it seems to be, listed building consent would not be required. The new extraction equipment inside the building would be considered fitting, not requiring consent.

- 3.5 The creation of a new toilet in the existing store room would, however, require a separate LBC application, as it would be considered an alteration to the building. This proposal would not appear to be unacceptable in principle, but no information has been provided about the nature of the new walls or partitions or their construction.

### 3.6 RDC Environmental Health

The plans for this proposed development have now been examined by my officers.

- 3.7 We are satisfied with the proposals for the mechanical extract system and relocation of the toilet in accordance with the plans submitted.

- 3.8 We have supplied the applicants with the appropriate food safety management pack and will ensure that this is in place as part of our routine inspection.

### 3.9 Neighbour Contributors

2A South Street, Prime Property Management, and which in the main make the following comments and objections:-

#### Letting Agent

- The retail unit is directly below a flat; I act as managing agent on the property. The tenant in the property has already had problems with the smell and issues from the retail unit below. He has installed a fully operational working kitchen in the premises some months ago despite the planning only being for retail use. He is already selling food, etc. The tenant would have to suffer potential noise and disturbance at unsocial hours with the take away element of the business. The location is in a Conservation Area with little or no parking available, where would customers park who were eating at the restaurant or using the take away? Most importantly, if change of use is authorised to restaurant/take away use the flat above the property will become almost valueless as mortgage companies routinely refuse to grant mortgages on residential premises directly above cafés and restaurants due to the increased fire risks and

hazards associated with such properties. The insurance is extremely expensive for contents and building, again because of the increased hazards and dangers of operating a restaurant directly below a residential flat. The owner's financial interest in his residential long lease flat would be badly affected if planning is granted. Please ensure that any planning application is sent to us so that we can take further legal advice as to the implications of any change of use that is granted without full consultation by the Council.

- The previous planning application has been refused and the same issues still apply. This is a Grade II listed building and there is insufficient ventilation and safety equipment in place. The smells of cooking are affecting the tenants in the flat above the shop very badly and no amount of ventilation will alter this as there are disused chimneys between the properties which spread the smells.
- There is inadequate noise insulation and the tenant in the ground floor shop is open late at night, which is causing sleep deprivation to the young child living in the flat above.

#### **Neighbouring Resident**

- I am writing to you once again to object to the proposed planning application 13/00228/COU. Again, I am questioning why this is even a consideration when the last planning application was denied and nothing has changed with regard to the applicants' premises and 'Reef' is still operating in the same capacity as before, even though they still do not have the planning permission to do so.
- The shop is inappropriate due to size and location.
- The shop is not appropriate to be used to sell merchandise, food and takeaways. At present they are currently operating what they are proposing and there are no clear opening and closing times. There have been parties in there until 1.30 am to which the Police and Environmental Health have been notified. On Tuesday, 28 May 2013 the occupier was in 2 South Street drinking and playing loud music until 10.30 pm. This was witnessed by another neighbour and the fireman who lives in Back Lane. All of whom have questioned why the occupier was in there doing that.
- There will be increased noise and disturbance.
- There is current noise and disturbance from the shop as they do not have set hours and frequently play music and have parties late at night. They frequently close at 5.00 pm and then have a private function that goes on till 2.00 am. This infringes on my child's sleep and I have phoned the Police and Environmental Health, who have done nothing about this. Granting the planning application would only increase the noise and disturbance. Under the Noise Policy Statement for England 2010 it states

that each Local Authority should have a vision of promoting good health and good quality of life through the management of noise and I feel that our family's quality of life and health has been and will continue to be significantly infringed. In addition to this one of the key factors of the Every Child Matters Act 2004 that forms part of the Children's Act states that all children should be healthy and stay safe.

- There are many other A1 uses within the immediate area, hence leading to an over concentration of the same or similar uses.
- There are several other cafés, restaurants and takeaways in Rochford, all within metres of each other, so I am left questioning why we need another eatery? The proposal made for the use of the shop does not seem to want to offer anything that does not already exist. Although I am not opposing in a commercial capacity I do feel that if you do not consider the views of the existing people in a domestic capacity who are the potential customers of the local eateries then how would the commercial businesses thrive if the families are driven out? I would also question the fact that if the planning application is granted at this time and the current applicant decides to move or his business fails then it leaves the premises open to be any form of restaurant, shop or takeaway that will again infringe on my family's quality of life.
- There are no provisions in place for expelling gas and fumes and no extraction for cooking.
- At present there is no provision for expelling gases or fumes and already we have issues over the constant smell of fried food. I find it highly ironic that when I complained to Environmental Health about the issues over the smells they said that the occupier of the shop was only cooking breakfast for himself. It is clearly more than breakfast that he was cooking as he has a fully operational café already running and he clearly had the intent of having a café as he has installed a commercial kitchen. When this was raised with Environmental Health it was completely dismissed. The smells are awful; it has increased dramatically over the weeks and where there is nowhere for the gases and fumes to go our home and clothing constantly smell of stale fried food. This is a statutory nuisance in law and the Local Authority has not considered the Government guidance on how to investigate the issue; they have ignored it despite numerous complaints.
- There is no adequate waste storage and disposal.
- The premises has no outside space to dispose of waste or store waste containers. We have already reported concerns over black bags being left in Back Lane and another resident complained directly to the current occupier over these issues. As the current occupier does not have any waste disposal systems he has been seen disposing of commercial waste in the public bins in the Square. Not having any form of refuse disposal increases the risk of infestations. We have also seen a rat in Back Lane;

again, we reported this to Environmental Health who again defended the current occupier. In addition to these immediate concerns and seeing as the café is already in operation should the occupier not have already made arrangements over waste disposal and should the occupier not have been issued with a trade waste agreement as free collections are for residents.

- There is an increased fire risk.
- Allowing the planning application increases the fire risk to our home as we are directly above the café. In addition to this our only exit out of our home is through the front door that is opposite the café's commercial kitchen. If there was a fire it is probable that it would be in the kitchen of the café and there is only a dividing wall between the kitchen and our front door. If the planning application was accepted then I would be interested to know how the Local Authority would safeguard my family. I have contacted a local fireman to carry out a risk assessment in respect of this matter, especially as I have a child. I will forward this to the planning department on completion. I will also be seeking advice around fire safety regulations and the role of the Local Authority as I am certain that they will have some form of duty of care towards my family in relation to this matter.
- There is not sufficient parking.
- As the Local Authority is already aware, there is an issue over parking in Back Lane. Again this poses a hazard as no emergency vehicle could access the lane if it is blocked. Allowing a takeaway licence to the premises would mean an increase in traffic and illegal parking. The Highways section of Essex County Council is also aware of these issues.
- Therefore in relation to all of my opposing issues I do hope that you consider them fully as I believe that in the event of an incident happening not only will the applicant of the planning application be liable but also the Local Authority. In addition to this if the application is approved and my family is put in a vulnerable situation I will have to move and therefore it will cause an amenable amount of stress, time and money and in the event of this I will look to receive support and compensation from the Local Authority. I am exceedingly annoyed that this secondary application would even be considered as the first was denied and I do believe that if you grant this application you will be making my family and I homeless. Furthermore, I will consider legal action myself and notify the press that Rochford District Council deems it acceptable to endanger children and allow factors to infringe on families' lives. In addition to this I will be raising public awareness around this issue because again the Local Authority only sent the consultation to the immediate neighbours, which arrived with us on 21 May 2013 even though the date on the letter states 15 May 2013. I have started an outreach campaign to all of the other local businesses and will continue to ensure that everyone objects to this and they are clearly aware of the proposal.

#### 4 MATERIAL PLANNING CONSIDERATIONS

- 4.1 No. 2 South Street is within a collection of terraced buildings along South Street. Back Lane separates the site with No.1 West Street. The documents submitted as part of this application show that the external appearance of the building would not be altered as part of this application.

##### CHANGE OF USE

- 4.2 The use proposed is for a mixed use including use classes A1, A3 and A5. The internal floor area of the unit is approximately 60.5 square metres. It should be noted that the site currently operates as a café/restaurant and has a seating area of approximately 28.5 square metres seating approximately 20 people.
- 4.3 The business trades as 'Reef' and originally opened in May 2012 specialising in seafood, the selling of shellfish of which the majority is takeaway, ordering wet fish, and making salads/sandwiches on the premises to eat in or takeaway and exhibiting and selling work from local artists. It was stated in the previous application by the applicant that, at the request of customers, they started to offer some hot food.
- 4.4 The shop/restaurant operating hours as proposed are 9.30 am - 5.30 pm Tuesday - Saturday and 10.00 am – 4.00 pm Sunday and Bank Holidays. The shop is closed on a Monday and will function with two full-time members of staff. The property already functions within these operating hours. It is considered due to the restricted hours that the uses proposed would not cause undue disturbance to residential properties above and adjoining the site.
- 4.5 The site is located within the secondary shopping frontage, where the Council seeks a balance between retail and non-retail uses in these town centre locations. Policy SAT 5 to the saved Local Plan (2006) requires that a proposed non-retail use would not result in an over-concentration of non-retail uses in part of the secondary shopping frontage area and that it would not result in the undue dominance of non-retail uses in the secondary shopping frontage as a whole. Paragraph 9.11 to the preamble to Local Plan policy SAT 5 states that as a guide, 50% of the total Secondary shopping area in a town centre should remain in retail use; in general the Council would not permit more than 45% non retail uses in the Secondary Shopping Frontages.
- 4.6 Policy SAT 5 to the Rochford District Replacement Local Plan seeks that any use proposed would support the area's vitality and viability. It should be noted that the Council's economic development officer supports this application and has supported the business owners since its opening. The business is a niche market and attracts customers from outside the area. The A1 function is retained, and agreeing a mixed A1/A3/A5 use will allow this to diversify, enabling the business to build on its success.

- 4.7 The most recent Rochford town centre mapping report (May 2013) indicates that the percentage of non retail use in the Secondary Shopping Frontage of South Street is 40%, meaning that there is some capacity for more non-retail use in this area. However, based on the recent mapping report, the percentage of the whole Secondary Shopping Frontage in the town which is non-retail is 65.78%. Within this survey the host site is already considered to be non-retail, however, the proposal is for a mixed use and would retain some A1 use. With this in mind, together with the presence it currently has within the town centre, it is considered that the proposal is acceptable.
- 4.8 The mixed use proposed is appropriate to the town centre generally. The nature of the use attracts footfall to the benefit of the vitality of the area. The South Street Secondary Shopping Frontage is relatively small in length and the composition can be affected significantly by the change of use by just one of the premises. With this in mind, together with the presence it currently has within the town centre, it is considered that the proposal would not result in an over-concentration of non-retail uses, particularly as the use does include a retail element.
- 4.9 The current application has addressed the previous concerns regarding the extractor system and customer toilet. The proposed extraction system would be installed such that no external ducting would be required and instead the extractor ducting would be inserted up the existing chimney stack and filtered out at the top of the chimney, which finishes a metre above the eaves of the building. Environmental Health has been consulted regarding this revised proposal and is satisfied with the proposed extraction system. In these circumstances, the concerns officers had previously regarding the extraction system and fumes have been overcome. No objections with regard to the extractor system have been raised by the conservation officer.
- 4.10 The applicants have also included the provision of a customer toilet that is located in the store room. Two doors would be installed. Whilst it would be necessary for the toilet to be disabled friendly, it should be noted that the shop itself is a Listed Building and is not the most accessible building for disabled people, therefore it is not considered obligatory for the toilet to meet disabled toilet dimensions. However, there should be some attempt to ensure that it is accessible for all. Environmental Health is satisfied with the proposed customer toilet provision. With regard to this element of the application the conservation officer does not find it unacceptable in principle but no information has been provided regarding the nature of the new walls or partitions or their construction and as such Listed Building consent would be required.

## **PARKING**

- 4.11 There have been concerns over parking provision for the premises; it is considered that, due to its town centre location, parking spaces would not be necessary. Double yellow lines can be seen along South Street preventing any on street parking. The premises can seat relatively small numbers of

people at once. It should also be noted that a public car park is in close proximity to the premises on Back Lane and as such would provide parking. The premises is also close to good transport links; therefore a refusal could not be justified on this basis.

## **5 RECOMMENDATION**

### **5.1 It is proposed that the Committee RESOLVES**

That the application be approved, subject to the following conditions:-

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2 The business use hereby permitted shall not open to customers outside the hours of 9.30 am - 5.30 pm Monday - Saturday and 10.00 am – 4.00 pm Sundays and Bank Holidays.
- 3 The mechanical extraction system shall be provided to the kitchen area in accordance with the details as provided by Kudos date stamped 8 May 2013. Such agreed works shall be fully implemented within three months and shall be maintained in the approved form while the premises are in use for the permitted purpose. No mechanical extraction system shall be installed on the outside of the premises.
- 4 Further details shall be submitted to and agreed in writing by the Local Planning Authority with regard to the materials to be used in the construction of the customer toilet.



Shaun Scrutton

Head of Planning and Transportation

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**Relevant Development Plan Policies and Proposals**

National Planning Policy Framework (NPPF)

Local Development Framework Core Strategy

RTC5

Rochford District Replacement Local Plan (2006)

Policy SAT5

For further information please contact Miss Rachael Collard on:-

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