
13/00332/FUL**36 MAIN ROAD HOCKLEY****CHANGE OF USE FROM A1 (SHOPS) TO A5 (HOT FOOD TAKEAWAY) INCLUDING INSTALLATION OF EXTRACT SYSTEM/DUCTING TO REAR ELEVATION****APPLICANT: MR MOHAMMED CHOWDHURY****ZONING: SECONDARY SHOPPING FRONTAGE****PARISH: HOCKLEY****WARD: HOCKLEY CENTRAL**

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

This application was included in Weekly List no. 1195 requiring notification of referrals to the Head of Planning and Transportation by 1.00 pm on Wednesday, 24 July 2013, with any applications being referred to this meeting of the Committee. The item was referred by Cllr P A Capon.

The item that was referred is appended as it appeared in the Weekly List, other than to correct there were three neighbouring residents' letters rather than two, together with a plan.

1 NOTES

- 1.1 This small vacant shop within Hockley town centre lies on the northern side of Main Road in the middle of a short parade of shops and other town centre uses - including a restaurant at no. 32 (Class A3), a hairdresser's at no. 34 (Class A1) and a small supermarket at nos. 38/40 (Class A1) - opposite the Hockley Methodist Church.
- 1.2 There are flats above all the units in the parade.
- 1.3 The premises lie within a Secondary Shopping Frontage - as defined on the Hockley Town Centre Proposals Map.
- 1.4 The unit has been empty and unused for a significant period - possibly as far back as 2008.

2 PROPOSAL

2.1 There are two elements to the application:-

- change of use from A1 shop use to A5 hot-food takeaway use;
- Installation of a fume/odour extract system based on ducting that would rise from ground floor level and terminate about 800mm above eaves at the rear of the premises.

2.2 Opening hours would be 5.00 pm to 11.00 pm Monday to Saturday. The use would be closed on Sundays and Bank Holidays.

3 MATERIAL CONSIDERATIONS

3.1 The two key issues to be considered are:-

- shopping policy;
- residential amenity.

SHOPPING POLICY

3.2 The main thrust of shopping policy SAT5 is to ensure the Secondary Shopping Frontages support the vitality and long term viability of town centres as destinations for shopping.

3.3 Specifically, it states that non retail uses will be permitted, subject to certain tests being satisfied. The key tests being:-

- new use to be appropriate within a Secondary Shopping Centre;
- new use should not result in an over-concentration of non retail uses;
- new use should not result in non-retail uses being over dominant in the Secondary Shopping Frontage area.

3.4 Certain types of non retail use have their place in town centres - including banks, building societies, restaurants and pubs - insofar as they complement the main shopping function of a centre.

3.5 The proposed use is considered to be an appropriate use in a town centre location such as this.

3.6 Neither would the proposal result in an over concentration of non retail uses in the parade as the unit would be flanked on both sides by retail uses and - out of a total of four units in the parade - one of these is a triple width unit - only two would be in non-retail use.

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- 3.7 However, it is particularly important that non retail uses are not allowed to over dominate more generally, to the detriment of the shopping function of a town centre. In this respect there is detailed guidance in the preamble text to saved policy SAT5.
- 3.8 Specifically, this suggests a limit of 45% on the proportion of a Secondary Shopping Frontage that may be given over to A2, A3, A4, A5, sui generis or B1 uses.
- 3.9 For the purposes of interpreting policy, Hockley town centre is divided into West and East.
- 3.10 The site lies in Hockley West.
- 3.11 According to the 2010 Secondary Shopping Frontage Survey - the latest data-base available - about 50% (50m) of the secondary shopping frontage in Hockley West was in non retail use then. The balance between retail and non retail uses is not believed to have changed materially since then.
- 3.12 Thus the existing situation is that non retail uses in Hockley West Secondary already amount to more than the 45% figure in the preamble text.
- 3.13 Moreover, the proposal would increase the amount of the secondary shopping frontage in such use to about 56% of the total.
- 3.14 There is, therefore, an argument that loss of the unit to non retail use would be unacceptable because it would further erode the prime shopping function of the town centre and the contribution that the secondary shopping frontages make to this.
- 3.15 On the other hand, there is a need for flexibility in the application of percentage controls over the balance between retail and non retail uses.
- 3.16 In this particular case the unit (formerly a pharmacy) has been empty for an extended period - since at least 2008. Notwithstanding the fact it has been marketed for A1 shop purposes over most of that time, it has not been re-occupied and has remained unused - for any purpose as it happens - throughout that period.
- 3.17 Whilst there are many reasons that may explain why a shop has remained vacant the evidence does suggest that after 5 years (during which time it has been consistently marketed for such use) there is a lack of demand for A1 shop use here.
- 3.18 The question to be considered, therefore, is whether there is now a case to allow it to be re-used for non retail purposes.

- 3.19 The view is taken - supported by the Council's Economic Development Officer - that the time has, indeed, been reached to allow the use to be brought into some form of non retail use so that it once again has some sort of beneficial use, rather than simply remains vacant. It is, of course, regrettable that the unit would be lost as a shop.
- 3.20 However, re-use for a non retail use is probably better than leaving the unit vacant indefinitely - because, without some sort of beneficial use, it makes no contribution to the shopping function of the centre in any event and potentially, if repeated, can have a negative effect.
- 3.21 Moreover, an A5 use has its place within a town centre, generating at least some footfall and trade, albeit mainly at a time when most of the shops will be closed.
- 3.22 It should also be noted that policy SAT5 does allow for the possibility of non retail uses being permitted where a lack of demand for the unit for A1 use can be demonstrated. This is such an instance.
- 3.23 Accordingly, in the particular circumstances of this case it is concluded that objection to the proposed use on the grounds that it would result in the loss of a shop unit, to the detriment of the shopping function of the town centre would not be justified.

4 RESIDENTIAL AMENITY

- 4.1 There are flats over all the units in the parade and residential properties on the opposite side of Main Road.
- 4.2 Impact on residential amenity is, therefore, an important issue.
- 4.3 A key issue in this regard is the fact that uses of this kind are typically evening uses that have the potential to cause noise and disturbance at a time of day when ambient noise levels are lower than during the normal business day and people are entitled to expect some peace and quiet. The hours of business proposed here are 5.00 pm to 11.00 pm.
- 4.4 In considering the acceptability of the use and the hours sought it is important to note that there is already a restaurant elsewhere in the parade at no 32; moreover, a condition on that planning permission ((07/00640/COU) limits opening hours to midday to 11.00 pm. This parade is not, therefore, entirely quiet in the evening at present.
- 4.5 The officer report that supported the grant of planning permission for the restaurant at no. 32 (07/00640/COU) acknowledged the fact that takeaway food shops generate higher levels of activity than restaurants; the planning permission applies a condition that limits use of the premises to a restaurant only and to no other within Class A3 as it was then.

- 4.6 However, notwithstanding the restrictions that apply to the restaurant at no. 32 (Harrison's), it is a fact that the Costcutter convenience store that operates out of the triple unit at the western end of the parade, no. 38/40, is open from 7.00 am to 10.30 pm Monday to Saturday and 7.00 am to 10.00 pm on Sundays.
- 4.7 This is not, therefore, any longer a quiet location with little activity in the evening. On the contrary, with a layby in front of the parade that allows short-term parking and the long Costcutter opening times, there is a constant flow of customers until late in the evening. Neither are there any planning controls over the Costcutter opening times.
- 4.8 It is the opening of Costcutters that has significantly added to levels of activity in the locality and this is a situation that has only come about in the last couple of years; certainly it post dates consideration of the restaurant planning application at no. 32 in 2007.
- 4.9 Nonetheless this new situation is a fact and now demands some re-assessment of the extent to which it is possible to protect against the impact of evening uses here.
- 4.10 The first point to make is that against this background the exclusion of take-aways from the parade (because of the amount of activity they generate) when the Costcutter business at no. 38/40 operates in much the same way until almost as late in the evening (10.30 pm as opposed to 11.00 pm proposed) and over a much longer period overall is now questionable.
- 4.11 Certainly, the introduction of a further late evening use with high levels of "coming and going" as a result of customers stopping and leaving over short periods of time would add to existing activity levels. However, against the background of what already arises, it is not considered this would any longer be particularly noticeable or significant.
- 4.12 Rather, the new situation with a level of activity until late in the evening warrants the application of a condition limiting opening times that reflect what already occurs.
- 4.13 The application seeks 5.00 pm to 11.00 pm. This is half an hour later than the Costcutter closing time that applies six days of the week, but would be the same as what is permitted at the restaurant at no. 32.
- 4.14 The opening hours proposed are not, therefore, materially different from those operated by two neighbouring uses in the parade and are considered to be acceptable.
- 4.15 A condition that simply limits closing time to 11.00 pm would, therefore, now be appropriate.
- 4.16 Subject to such a condition, the conclusion reached is, therefore, that the use is acceptable, given the local circumstances that apply today.

- 4.17 This, then, leaves the impact of the fume/extract flue at the rear of the building.
- 4.18 This would not be an attractive feature. Nonetheless, it is typical of its type, is necessary and is not visible in the public domain. It is, therefore, judged to be visually acceptable.
- 4.19 It would, however, pass in close proximity to a first floor window in the flat over the unit.
- 4.20 Nonetheless, the flat is not a self contained unit, access being via the ground floor shop unit, and the plan indicates that it would be occupied by staff at the takeaway. For as long as it is not self contained occupation by staff is likely to be the case into the future.
- 4.21 There is also the question of possible noise and smell nuisance from the operation of the fume/odour extract equipment.
- 4.22 However, the Head of Environment Services has assessed the proposal and takes the view that, notwithstanding the proximity of flats over the parade, the use is nonetheless acceptable in principle, even with the installation/operation of a fume/odour extract system, as sought. This is, however, subject to any planning permission being granted with a condition that requires full details of a mechanical fume/odour extraction system being agreed with the Local Planning Authority (prior to first operation of the use) and the agreed works being satisfactorily implemented.
- 4.23 That being the case planning objections on grounds of unacceptable noise and smell nuisance would be difficult to sustain.
- 4.24 Taking all these issues into account the view is, therefore, reached that objections on grounds of harm to residential amenity are not reasonable either.

5 OTHER MATTERS

- 5.1 Insofar as the above does not address representations made, the following further comments are made:-
- The layby in front of the parade, together with other publicly available parking in the towncentre, is considered to be adequate to provide parking for customers visiting the use. In this respect, it should be noted that the Highway Authority raises no objections to the proposal.
 - Inconsiderate or illegal parking falls to be addressed under other legislation and powers.
 - The existence of other takeaway uses in the town centre is not in itself a planning consideration beyond the application of shopping policy. The number of such uses largely reflects local demand and is a matter for the

market to determine.

- The type of food to be sold is not a planning consideration.
- Mess and rubbish is always an issue with this sort of use.

6 CONCLUSION

- 6.1 This is an empty shop that has been unused for some years, during which time no substantive interest has been raised in bringing it back into A1 retail use.
- 6.2 The unit is located within Hockley West Secondary Shopping Frontage where saved policy SAT5 accepts re-use for appropriate non retail purposes, subject to limitations, including the proportion that may be given over to such use to avoid over domination.
- 6.3 Nonetheless, the policy needs to be applied flexibly to take account of local circumstances.
- 6.4 The view that is reached is, therefore, that objections on grounds of breach of shopping policy would not be reasonable, given the considerable length of time that the unit has been vacant, without interest for A1 retail use. On the contrary, the proposal would bring back into beneficial use a unit that has long made no contribution to the shopping function of the centre.
- 6.5 Neither is rejection of A5 takeaway use any longer reasonable, given the late evening hours that are operated by other uses in the parade and associated levels of activity, one of which is a A1 retail use.
- 6.6 Nor do any other substantive objections arise in terms of the impact on residential amenity.
- 6.7 Subject to safeguarding conditions - it is accordingly recommended that planning permission be granted.

7 REPRESENTATIONS

7.1 HOCKLEY PARISH COUNCIL

No objections, but then goes on to raise concerns about odour, lack of parking and no disabled parking.

7.2 ECC HIGHWAY AUTHORITY

No objections.

7.3 RDC ENVIRONMENTAL SERVICES

No objections, subject to a condition requiring submission and agreement of a

scheme of mechanical fume/odour extract equipment and its installation and maintenance to serve the use.

7.4 Two letters have been received, raising objections on the following grounds:-

- Parking problems as people wait, some of whom will park inconsiderately across neighbouring drive ways.
- Layby already heavily used and the new use will only make existing local parking problems worse, particularly since the Council recently introduced parking charges at Hockley Woods, which has caused some to park on nearby roads outside the woods.
- mess and rubbish.
- Type of food to be sold not stated.
- Already enough takeaways in the town centre, at least 10 such uses. Empty shops should be occupied by uses needed locally.
- Will not provide additional employment for local people as the flat over would be used for staff.

8 RECOMMENDATION

8.1 It is proposed that the Committee **RESOLVES**

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

- (1) SC4B Time Limits Full - Standard
- (2) The use hereby permitted shall not be operated beyond 2300 hours on any evening up to 0800 hours the following day.
- (3) Before the use hereby permitted is first commenced - and notwithstanding the details shown on approved drawing no 13/05/6/1 A - a mechanical fume/odour extraction system shall be provided to the kitchen area in accordance with written details, which shall have been submitted to and agreed in writing by the Local Planning Authority. Thereafter, any such plant/equipment shall be retained and shall only be operated as approved in writing by the Local Planning Authority.



Shaun Scrutton

Head of Planning and Transportation

Relevant Development Plan Policies and Proposals

CS1, CS2, SAT5, SAT7, TP8, of the Rochford District Council Adopted Replacement Local Plan

RTC6 of the Rochford District Council Core Strategy 2011

National Planning Policy Framework

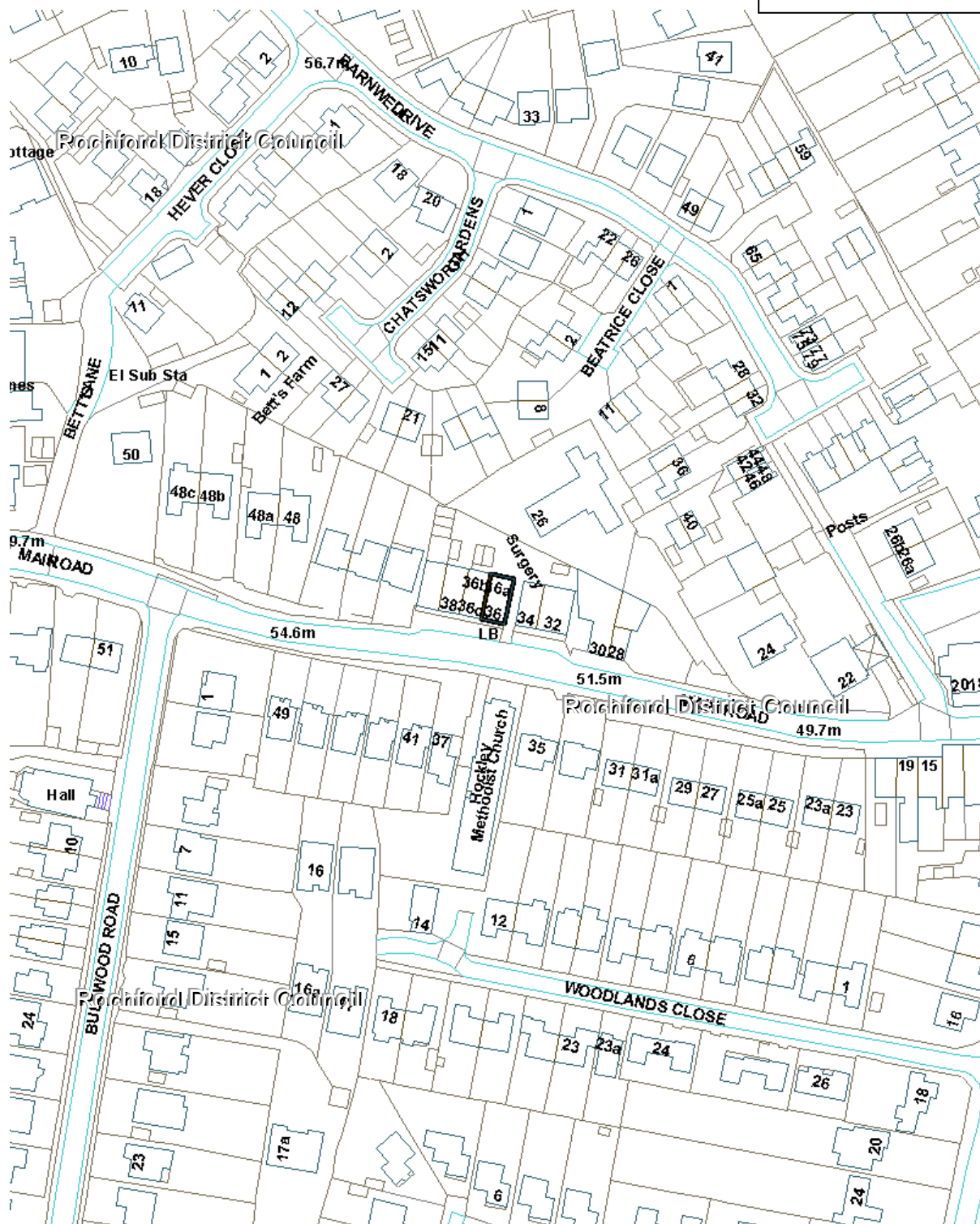
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