

---

**15/00236/FUL**

**91 HIGH STREET RAYLEIGH**

**CHANGE OF USE OF PAVED AREA TO FRONT OF NO. 91  
TO USE FOR EXTERNAL SEATING IN CONNECTION WITH  
A3 (RESTAURANTS AND CAFÉS USE)**

**APPLICANT: PIZZA EXPRESS**

**ZONING: TOWN CENTRE, PRIMARY SHOPPING**

**PARISH: RAYLEIGH TOWN COUNCIL**

**WARD: WHEATLEY**

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

This application was included in Weekly List No. 1297 requiring notification of referrals to the Director by 1.00 pm on Wednesday, 19 August 2015 with any applications being referred to this meeting of the Committee. The item was referred by Cllr J L Lawmon.

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

**1 NOTES**

- 1.1 The application site comprises an area of public highway land to the front (North West) of number 91 High Street, Rayleigh. Planning permission and listed building consent have been granted for the change of use of the ground floor of the property from Use Class A1 (retail shop) to Use Class A3 (restaurants and cafés). Number 91 High Street comprises a Grade II listed building and is situated within the Rayleigh Town Centre and Conservation Area.
- 1.2 The proposal is for external seating surrounded by planters and banners to the frontage to enable outdoor seating to occur. During the course of the application revised plans were provided seeking to address some of the concerns initially raised. As a result, the depth of the external seating area was reduced from 2.9m to 2.4m with a single row of tables now no longer proposed. 7 planters would surround the seating on wheels. Initially they were linked by rope, however, windbreaks are now proposed between the planters.

**2 PLANNING HISTORY (since the 1990s)**

- 2.1 15/00411/LBC - Listed Building Consent for Internal Alterations to First Floor and 2No. Non Illuminated Fascia Signs. PENDING CONSIDERATION
- 2.2 15/00409/ADV - Advertisement consent for 2No. Non Illuminated Fascia Signs. PENDING CONSIDERATION. RECOMMENDED FOR APPROVAL BY OFFICERS.
- 2.3 15/00343/LBC - Removal of Redundant Chimney Stack with Built in Safe Above and Below Roof Level. Provision of a New Structural Floor Over the Original First Floor Joists within the 14th Century Wing of the Building to Provide an Independent and Structurally Sound Floor. PENDING CONSIDERATION
- 2.4 15/00238/ADV - Installation of 1No. fascia sign (externally illuminated). 1No. hanging sign (externally illuminated) on refurbished bracket (re-positioned) and 1No. menu and name plaque sign (non illuminated). PENDING CONSIDERATION
- 2.5 15/00166/LBC - Internal Works to Form Restaurant and Installation of Four External Condenser Units. One Externally Illuminated Fascia Sign and One Externally Illuminated Projecting Sign. Paint Existing Shop Front. APPROVED
- 2.6 15/00024/LBC - Proposed Change of use of ground floor from A1 (shops) to A3 (food and drink) incorporating single storey rear extension. Change of use of first floor from A1 (shops) to D1 (non residential institutions) for use by Rayleigh Town Museum and creation of new first floor access. Works to include part demolition and internal and external alterations as per Listed Building Consent 14/00477/LBC and to include alterations to the main access door from High Street and insert a 'door and a half' door to the rear elevation of the new extension to provide a wheeled bin storage area - APPROVED.
- 2.7 14/00883/NMA - Application for Non Material Amendment following applications 14/00491/FUL and 14/00477/LBC :-
1. Alterations To The Main Access Door From High Street To Sales Area To Provide An Outward Opening Door With A Clear Opening Of 1050mm.
  2. The Inclusion Of A "Door And A Half" Door Set To The Rear Elevation Of The New Extension - NON MATERIAL AMENDMENT PART PERMITTED/PART REFUSED.
- 2.8 14/00875/FUL - Proposed Change of Use of Ground Floor from A1 (Retail) to A3 (Restaurants/Cafés) Incorporating Single Storey Rear Extension. Change of Use of First Floor from A1(Retail) to D1 for Use as a Museum (Rayleigh Town Museum) and Creation of New First Floor Access. Variation of Condition 3 to Allow Extended Opening Times 1000-2330 hours for the A3 use. APPROVED

- 2.9 14/00491/FUL - Proposed Change of Use of Ground Floor from A1 (Retail) to A3 (Restaurants/Cafés) Incorporating Single Storey Rear Extension. Change of Use of First Floor from A1 (Retail) to D1 for Use as a Museum (Rayleigh Town Museum) and Creation of New First Floor Access. APPROVED.
- 2.10 14/00477/LBC - Proposed Change of Use of Ground Floor from A1 (Retail) to A3 (Restaurants/Cafés) Incorporating Single Storey Rear Extension. Change of Use of First Floor from A1(Retail) to D1 for Use as a Museum (Rayleigh Town Museum) and Creation of New First Floor Access. Works to Listed Building to Include Part Demolition and Internal and External Alterations. APPROVED.

### 3 MATERIAL CONSIDERATIONS

- 3.1 The application seeks planning permission to change the use of public highway land to an area of outdoor seating to serve the restaurant (Use Class A3) approved but not yet operational, at No. 91 High Street. The proposed seating area would protrude into the public highway by 2.4 metres along the entire frontage of the property. This property does not have any forecourt to its frontage; all of the frontage is within the public highway. Therefore, unlike a recent application at No. 81 High Street (Greggs) for outdoor seating, No. 91 does not have a fall back position whereby it has existing forecourt that could be used for external seating without the need for planning permission. The entire proposal is within the highway and requires planning permission.
- 3.2 Due to the protrusion of the building and the siting of the market, on market days, the siting of the external seating would not allow for any pedestrian walkway. This would not be acceptable. The market was granted planning permission under application reference 13/00077/FUL. It was subject to a planning condition which restricted markets to Wednesdays and an additional 10 days within the calendar year. This existing planning approval is a material consideration to the current application. The agent has advised that Pizza Express is agreeable to a restriction which prevents them from setting out the seating when the market is in progress. It is considered that this could reasonably be imposed by planning condition ensuring that there would not be interference between the approved market and the proposed seating. Rayleigh Town Council advises that they intend to introduce more markets, particularly a Saturday market. However, with no application approved or currently under consideration for such a proposal, this cannot be considered as part of this application. It would be unreasonable to prevent the restaurant to use its external seating on days when a possible future market may operate, which is yet to be confirmed or granted planning permission. There are also plenty of other areas that could be used to operate a market on any additional days within the High Street without reliance on the area outside of No. 91.

3.3 On a non market day, the proposal would reduce the area available as a pedestrian walkway outside No. 91. Whilst the building is in a prominent forward position within the High Street, there is a large quantity of highway to the frontage of No. 91. There is some street paraphernalia including bollards, a street lamp, bicycle rank and benches within the highway, which pedestrians would need to manoeuvre around. However, it is still considered that there would be sufficient walking space for pedestrians with the proposed external seating area in place.

3.4 The Manual for Streets 2007 is national guidance published for the Department of Transport. Within this document is provided the following guidance with regard to pavement widths:-

'6.3.22 There is no maximum width for footways. In lightly used streets (such as those with a purely residential function), the minimum unobstructed width for pedestrians should generally be 2m. Additional width should be considered between the footway and a heavily used carriageway, or adjacent to gathering places, such as schools and shops. Further guidance on minimum footway widths is given in Inclusive Mobility.'

6.3.23 Footway widths can be varied between different streets to take account of pedestrian volumes and composition. Streets where people walk in groups or near schools or shops, for example, need wider footways. In areas of high pedestrian flow, the quality of the walking experience can deteriorate unless sufficient width is provided. The quality of service goes down as pedestrian flow density increases. Pedestrian congestion through insufficient capacity should be avoided. It is inconvenient and may encourage people to step into the carriageway (Fig. 6.9).'

3.5 Within the Inclusive Mobility document produced by the Department of Transport it states as follows at section 3.1:-

3.6 'A clear width of 2000mm allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints 1500mm could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another. The absolute minimum, where there is an obstacle, should be 1000mm clear space. The maximum length of restricted width should be 6 metres (see also Section 8.3). If there are local restrictions or obstacles causing this sort of reduction in width they should be grouped in a logical and regular pattern to assist visually impaired people.'

3.7 It is also recommended that there should be minimum widths of 3000mm at bus stops and 3500mm to 4500mm by shops though it is recognised that available space will not always be sufficient to achieve these dimensions.

3.8 Whilst the Inclusive Mobility document seeks greater pavement space close to shops, it accepts that such dimensions may not always be achievable. The

Essex Design Guide at page 122 gives a minimum width requirement of 2m and so does page 45 (section 4.5) of the Development Management Handbook produced by Essex County Council (ECC) Highways. ECC Highways does not object to the proposal, however, they highlight the requirement for a highway licence for the seating proposed. The 2m width would be exceeded for most of the length of the seating with a slightly more restrictive manoeuvrability between the existing street lamp and bollard towards one corner. This is considered to provide sufficient manoeuvrability space for pedestrians.

- 3.9 Policy RTC4 of the Council's Core Strategy is concerned with Rayleigh town centre and among other things seeks to improve accessibility to and within the town centre, and to ensure a safe and high quality environment for residents and visitors. Whilst the proposal would result in a reduction in pavement space within this area it is not considered that this would be to such an extent that it would unacceptably obstruct accessibility and reduce the quality of the High Street environment for residents and visitors.
- 3.10 Whilst it is recognised that the Rayleigh Centre Area Action Plan (AAP) is currently in draft form it can still be afforded some weight due to the stage that this document has now reached. The Rayleigh Centre Area Action Plan Submission Document was submitted to the Government for independent examination on 5 December 2014 and the Council has completed a consultation on the main modifications to this document. Within section 2.8 of the AAP, it is stated that "... the development of the AAP offers an excellent opportunity to enhance the accessibility of the town centre for the elderly and those with disabilities. Such improvements can be achieved by the removal of street clutter along main routes of pedestrian movement... Minor walking improvements could be delivered in the form of a redesigned taxi rank, the removal of pedestrian guard railings and general de cluttering". The AAP seeks to reduce the level of street clutter within the town centre, to enhance accessibility. Within policies 4 and 5 in particular, the AAP seeks to create a new public space at the centre of the High Street including the rationalisation and reduction in size of the taxi rank. Such possible reduction in size in the taxi rank would increase accessibility within this area. It is not, however, considered that the proposed outside seating area would represent street clutter, but it is considered instead that it would add desirable vibrancy to the High Street environment.
- 3.11 The site is located within the Rayleigh Conservation Area and is also a Grade II Listed Building. The Rayleigh Conservation Area Appraisal and Management Plan (RCAAMP) at figure 47 considers No. 91 as having a positive contribution to character (listed building or landmark building). Paragraph 10.41 describes this building as follows:-
- 3.12 'No. 91 is the oldest known building in the High Street, datable to the 15th century (Figure 6). Its restored exterior is recognisably late medieval. However, the timber shop front would look more attractive if it were painted,

not stained. To the side of it, there is a lane through to Websters Way: poor boundary treatments and parked cars present a dismal view which contrasts with the two good buildings which frame the entrance to it (Figure 31).'

- 3.13 Discussing High Street works in general the RCAAMP states the following at paragraph 10.29:-
- 3.14 'A street improvement scheme was carried out in the High Street in 1998. The broad pavements are made of concrete slabs relieved with red clay paving bricks in the wider areas such as the south end of the west side and round the Millennium clock. The street is quite well provided with trees, mostly planes, and in the wider part these have raised planters round their bases with integral seats. Other features are benches, a well designed bus shelter, bollards, stainless steel cycle stands, cast iron railings and traditional type lamp standards. The street furniture is all painted a uniform green. The success of this scheme is reflected in the heavy pedestrian use of the pavements in the wider end of the street and the numbers of people to be found on and around the benches.'
- 3.15 This highlights how well used Rayleigh High Street is by its residents and visitors and the importance of this building to Rayleigh High Street. No. 91 is the oldest known building in the High Street and has a prominent appearance within the Rayleigh Conservation Area.
- 3.16 The listing description for the building describes it as follows:-
- 3.17 'House, now a shop. C16/C17 or earlier with later alterations and additions. Timber framed and plastered. Red tiled roofs. 3 red brick chimney stacks. Left range with gabled cross wing to right. 3 vertically sliding sashes with glazing bars and horns to first floor. C20 shop front in C18 style with continuous fascia base, pilasters with moulded capitals and bases and 3 small paned bows, the door with lower panel, small paned upper glazing and side lights. Internally most features are covered but pairs of heavy jowled storey posts are visible to the first floor of the cross wing, a C18 roof to left range, side purlin petted at ridge, and stick baluster staircase at rear.'
- 3.18 Whilst the external seating would project beyond the front elevation it is not considered that it would detract from the general appearance of the building or the Conservation Area in general. The ECC Conservation officer objects to the application considering it to represent an unwelcome intrusion in the street scape of the Conservation Area by adding a cluttered and intrusive element and considers the proposed seating will be detrimental to the character and appearance of the Conservation Area and to the setting of the Listed Building. However, officers consider that it would not be so detrimental to the Listed Building and the Conservation Area to justify refusal of this application. Whilst it would be located to the frontage of this prominent building it would be temporary in nature, only being sited outside the building at the times when the restaurant would be operational and particularly not on Wednesdays. In

addition, the large feature windows to the frontage would be only partially obscured by the seating; these windows are also a later twentieth century addition to the building. For this reasoning it is not considered justified to refuse this application. From a design perspective, however, it is not considered that the windbreaks proposed with advertising are of a particularly attractive design and it is considered that an alternative solution should be sought by planning condition which would be less intrusive. Windbreaks should be proposed which attach directly to the planters to avoid the need for metal upright stands which would add clutter to the seating area. In addition, in this sensitive location tables and chairs should be of high quality appropriate to the setting. To ensure a suitable design of external seating and tables outside this listed building, detail of the style of tables and chairs should be agreed by planning condition.

- 3.19 The National Planning Policy Framework at section 2 'ensuring the vitality of town centres' states at paragraph 23 that Local Planning Authorities should 'recognise town centres as the heart of their communities and pursue policies to support their viability and vitality'. It is considered that a degree of outside seating to the High Street frontage would assist in supporting the vitality of the High Street, creating an 'active' frontage. Other popular towns have outside seating for café/restaurant uses, such as Leigh-on-Sea, yet this has not negatively affected the functioning of this particular busy High Street location.
- 3.20 It is not considered that access to the Rayleigh Lanes fire escape would be obstructed by the proposed seating. It would not be reasonable to refuse an application due to the potential for smokers to use the seating area. Policy DM29 only requires consideration of the Air Quality Management Area for major developments. This proposal is not a major development.
- 3.21 Planning conditions could be imposed where reasonable, including controlling no seating on market days and a requirement for the planters and paraphernalia to be brought inside when not in use. A planning condition restricting opening hours in line with the approved application reference 14/00875/FUL should also be imposed which limited the A3 use to 1000 to 2330 hours.

#### **4 REPRESENTATIONS**

SN and advert in paper expire 14/08/15

##### **4.1 RAYLEIGH TOWN COUNCIL**

First and Third Comments

##### **4.2 Objects to this application due to the following reasons:-**

- 1) The Town Council has planning permission for market stalls on Wednesdays and 10 weekend/bank holidays per year in the High Street up to and including No. 91. The applicant is applying to use

---

pavement space that is already occupied by a market stall and this will leave no space for pedestrians. Rayleigh is at its busiest on market days and High Street businesses fully support the market as they benefit from having a market on the High Street. Pavement space is required to allow the public (which includes pushchairs, wheelchairs and disability scooters) to travel easily along the High Street and to be able to stop, browse and be served at the market stalls. The loss of pavement space will result in the public, and particularly the disabled and elderly, from visiting Rayleigh on market days. This would not only be detrimental to stall holders but also to High Street businesses. As a result of the success of the market, Rayleigh Town Council intends to apply for permission to hold a permanent Saturday market when the Rayleigh Area Action Plan process is complete.

- 2) Market traders pay rent to the Town Council to hire the pavement space for the market, however, the applicant would not be required to pay to use the pavement space.
- 3) Smokers will sit at the tables which will be unpleasant and unhealthy to passers by and stall holders.
- 4) The proposed tables and chairs will only be used for a part of the year as the public will not fill these seats all year round. However, the banners/planters and furniture will be in place permanently.
- 5) It is common for a company with barriers/planters to stretch them out further than permitted, taking more space away from pedestrians, creating hazards and making it even more difficult for the disabled and visually impaired to get around.
- 6) The Rayleigh Area Action Plan is under consultation at present. Pavement space should not be changed until the Action Plan has been fully considered and implemented.
- 7) This application is for a listed building, which is in the Conservation Area. If this application is allowed it will be detrimental to the overall outlook of the street scene and this important building will be hidden by the proposed furniture.
- 8) The recess next to Pizza Express is the Rayleigh Lanes fire exit. Furniture in front of this building could make access difficult.
- 9) An application does not appear to have been submitted for advertising consent for the wording on the planters/banners.
- 10) If this application is allowed this will set a precedent for the many other High Street businesses who sell food/drink to use pavement space.

- 11) Change of use of the pavement is a removal of highway rights. It is necessary for Rochford District Council to ensure that the applicant has followed the correct procedures, which would include making an application to ECC Highways and the Department for Transport.
- 12) It is common practice for restaurants who want to place furniture on the pavement to apply to Rochford District Council for Street Trading Consent, rather than applying for a change of use of the pavement, as in this case. Rochford District Council needs to ensure that the correct procedures have been followed by the applicant.
- 13) If approval is given the outside seating will be in use during the hours of operation, which will run late into the evening. This could create a noise and anti-social behaviour problem for the High Street and nearby residents.

#### 4.3 Second Comments

1. First RTC comment - the Town Council has planning permission for market stalls on Wednesdays and 10 weekend/bank holidays per year in the high street up to and including No. 91. The applicant is applying to use pavement space that is already occupied by a market stall and this will leave no space for pedestrians. Rayleigh is at its busiest on market days and high street businesses fully support the market as they benefit from having a market on the high street. Pavement space is required to allow the public (which includes pushchairs, wheelchairs and disability scooters) to travel easily along the high street and to be able to stop, browse and be served at the market stalls. The loss of pavement space will result in the public, and particularly the disabled and elderly, from visiting Rayleigh on market days. This would not only be detrimental to stall holders but also to high street businesses. As a result of the success of the market, Rayleigh Town Council intends to apply for permission to hold a permanent Saturday market when the Rayleigh Area Action Plan process is complete.

4.4 Agent comment - No longer concern as no seating at market times.

4.5 Further RTC comment - Rayleigh Town Council has previously stated that it wants to hold a permanent Saturday market in the town centre and has been waiting for the Rayleigh Area Action Plan to be implemented to progress this. Will this apply to any day in the future when a market or an event is held?

2. First RTC comment - Market traders pay rent to the Town Council to hire the pavement space for the market, however, the applicant would not be required to pay to use the pavement space.

4.6 Agent comment - No longer concern as no seating at market times.

- 
- 4.7 Further RTC comment - The Town Council's objection is that if planning approval is allowed, this will result in a business being able to increase its floor space by a considerable amount by taking land that is currently rightfully used by the public as pavement space.
3. First RTC comment - Smokers will sit at the tables, which will be unpleasant and unhealthy to passers by and stall holders.
- 4.8 Agent comment - This is the outdoor eating area for a restaurant, not the equivalent of the smoking area for a pub. Smokers may use this area, but that is not its intended purpose. This is an al fresco dining area.
- 4.9 Further RTC comment - Due to the British climate the public would normally want to eat a hot meal indoors and, unless the weather was particularly good, only smokers will want to eat outside, as seen at other similar establishments in the town.
4. First RTC comment - The proposed tables and chairs will only be used for a part of the year as the public will not fill these seats all year round. However, the banners/planters and furniture will be in place permanently.
- 4.10 Agent comment - The tables, chairs and screens will only be in place when likely to be used and will be brought in each evening. The planter boxes would be left outside in the winter but can be placed against the building frontage rather than around the seating area and would still be brought in each evening
- 4.11 Further RTC comment - It would be impractical to carry this number of tables, chairs, barriers etc through the narrow doorway at the front. No storage facilities have been shown on the plan and these items cannot be carried through the kitchens to the back. Storing outdoor furniture in a restaurant is very unhygienic. Planters placed against the building frontage would spoil the look of this important listed building even further, particularly as the decorative bay windows go down to almost ground level. The tables and chairs will remain in place outside all day even when empty throughout the winter months on the off chance that someone may want to sit there. The business wants the outdoor seating area and banners as a large advertisement and to give their presence more prominence on the High Street.
5. First RTC comment - It is common for a company with barriers/planters to stretch them out further than permitted taking more space away from pedestrians, creating hazards and making it even more difficult for the disabled and visually impaired to get around.
- 4.12 Agent comment - The applicants will stick to their permitted area and the barriers are now revised to ensure that they are recognisable to blind or visually impaired pedestrians using a stick.

- 
- 4.13 Further RTC comment - The blind, visually impaired and disabled should not have to negotiate unnecessary obstacles on the high street. This area already has a higher than average amount of street furniture.
- 6 First RTC comment - The Rayleigh Area Action Plan is under consultation at present. Pavement space should not be changed until the Action Plan has been fully considered and implemented.
- 4.14 Agent comment - I would hope and expect the AAP to encourage proposals that enhance the vitality, viability and attractiveness of the High Street. We strongly believe that the opportunity for al fresco dining at Pizza Express will be fully in accordance with any such objectives and policies.
- 4.15 Further RTC comment - This may be the case when the weather is good enough for the public to enjoy al fresco dining, however, the British climate does not allow for this and most of the year the pavement will have been taken and blocked by empty tables and chairs behind barriers.
7. First RTC comment - This application is for a Listed Building, which is in the Conservation Area. If this application is allowed it will be detrimental to the overall outlook of the street scene and this important building will be hidden by the proposed furniture.
- 4.16 Agent comment - It is, of course, a matter of opinion, but it is our view that some seating and screens - obviously modern temporary features that might be expected in a High Street location - will not detract from the fine Listed Building. It is very common across the country and abroad to see restaurant seating in historic contexts without detriment to their interest whilst encouraging people to appreciate and enjoy the environment.
- 4.17 Further RTC comment - This particular building has decorative bay windows, which would be hidden behind this furniture. It is not appropriate to compare Rayleigh to restaurants abroad or in other unspecified locations across the country. Rayleigh High Street is within the Conservation Area.
8. First RTC comment - The recess next to Pizza Express is the Rayleigh Lanes fire exit. Furniture in front of this building could make access difficult.
- 4.18 Agent comment - There is no furniture proposed in front of the recess and no obstruction to the fire escape.
- 4.19 Further RTC comment - If this is approved a condition should state the exact boundaries and RDC should be prepared to enforce this.
9. First RTC comment - An application does not appear to have been submitted for advertising consent for the wording on the planters/banners.

- 
- 4.20 Agent comment - If the Council considers that an application is required for the logos on the breeze screens Pizza Express will willingly make such an application
- 4.21 Further RTC comment - Additional advertisements will detract from the appearance of this important Listed Building.
10. First RTC comment - If this application is allowed this will set a precedent for the many other high street businesses who sell food/drink to use pavement space.
- 4.22 Agent comment - Each application can be dealt with on its merits, but perhaps it would be a good thing if there were additional external dining opportunities in the town where space permits.
- 4.23 Further RTC comment – Again, this is a matter of opinion. Rayleigh is fortunate to have some areas of wide pavement space and the pavement can become quite crowded at busy times of day, as was witnessed by the planning officer at our site meeting. Due to Rayleigh's elderly population there is a high and increasing number of mobility scooters, which take up a lot of pavement Space.
11. First RTC comment - Change of use of the pavement is a removal of highway rights. It is necessary for Rochford District Council to ensure that the applicant has followed the correct procedures, which would include making an application to ECC Highways and the Department of Transport.
- 4.24 Agent comment - There is no requirement for Department of Transport approval. Pizza Express is aware that a Pavement Licence will also be required under the Highways Act and will apply as necessary if planning permission can be obtained.
- 4.25 Further RTC comment - I recommend that the Planning officer clarifies this with the appropriate department. I have discussed this with the Department of Transport and have previously sent the contact details to the planning officer.
12. First RTC comment - It is common practice for restaurants who want to place furniture on the pavement to apply to Rochford District Council for Street Trading Consent, rather than applying for a change of use of the pavement, as in this case. Rochford District Council needs to ensure that the correct procedures have been followed by the applicant.
- 4.26 Agent comment - We are unaware of any need for a Street Trading Licence but Pizza Express will, of course, follow any licensing or other regulatory requirements.

- 
- 4.27 Further RTC comment - I am not saying a licence is required if planning approval is given, but this was the procedure that has been followed by other businesses in the past before change of use applications were recently submitted.
13. First RTC comment - If approval is given the outside seating area will be in use during the hours of operation, which will run late into the evening. This could create a noise and anti-social behaviour problem for the high street and nearby residents.
- 4.28 Agent comment - Please bear in mind that this is a proposed dining area and not a proposed drinking area. The likelihood of late night activity or disturbance is therefore greatly reduced. Furthermore, the seating, tables, planters and barriers will be brought in each evening and not left out overnight. We do not have any expectation of causing disturbance to neighbours, but were that to be the case there would be licensing controls that could be used to address the position.
- 4.29 Further RTC comment - The consumption of alcohol will be taking place at the same time as dining and with 30 chairs this would create a considerable amount of additional noise and a potential for nuisance. Rayleigh has anti-social behaviour issues already when night time visitors walk down the high street to get taxis or to move between licensed premises. There may not be a licensing issue within the pubs/clubs, however, the disturbances and anti-social behaviour happen when the visitors leave, out on the street. If night time al fresco dining is allowed on the pavement for this site and for the other applications that are likely to follow, this potentially increases noise, nuisance and anti-social behaviour outside of premises in Rayleigh's high street.
- 4.30 ECC HIGHWAYS - Comments as follows:-
- From a highway and transportation perspective the impact of the proposal, as shown in the drawing nos.1368/02 and 1368/03 prepared by Butler Associates, is acceptable to the Highway Authority. However, the application includes use of adjoining highway land for the positioning of one row of outdoor tables with seating, which requires a section 115 licence, of the Highways Act 1980.
  - Informative
  - As confirmed by the agent, Butler Associates, by email 1 June 2015, 'The planters will be made with lockable casters so that they can be brought inside the restaurant when they are not trading.'
- 4.31 ECC CONSERVATION - Comments as follows:-
- The building is listed grade II, and occupies a prominent location within the Rayleigh Conservation Area. The building is currently undergoing works to

alter, fit out and extend at ground floor level to accommodate a Pizza Express restaurant.

- I object to the principle of this application, as I believe that it will create an unwelcome intrusion into the street scape of the Conservation Area by adding a cluttered and intrusive element. As such, the proposed seating will be detrimental to the character and appearance of the Conservation Area and to the setting of the Listed Building. This will only be heightened by the use of several screens to section off the area from the rest of the pavement, which would further add to the intrusive nature of the proposed plans.
- It is worth noting that whilst there are a couple of other establishments that offer outside seating on the High Street, these are limited to two tables under the canopy of the buildings, and as such do not represent such an overpowering intrusion. It is also worth noting that a similar application at 81 High Street, Rayleigh was recommended for refusal on the same grounds.
- I would therefore recommend refusal on the grounds that the application is contrary to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and to the requirements set out in section 126 of the NPPF.

#### 4.32 ROCHFORD ACCESS COMMITTEE FOR THE DISABLED

##### 4.33 First Response

- They are all a hazard to the disabled.
- We have to look out for the A boards that block the paths in the High Street.
- Putting on the path tables and chairs two rows deep is over the top and the cloth barrier is a hazard to the blind that use a long cane as it will go under the barrier.

##### 4.34 Second Response

- The Access Committee still does not support this plan as the siting of seating on the paved area outside a Listed Building, does not go well, nor does the use of pots or planters that can be a hazard to the blind.
- There is no paper work with this to say that they will be moved at night or that they will not be used on market days if they are approved.

## 4.35 MARKET TRADER

## First Response

- I am a sole trader in ladies fashion goods who has been trading on my designated pavement pitch in Rayleigh High Street for over three years. In those three years I have established a big, regular clientele, but I also rely heavily on passing trade.
- As I am a lone parent of two young children I am only able to trade two days per week (I also trade on Southend's Thursday market). This means that I have to work on a large scale on the two days that my stall operates, hence my 30ft pitch, in order for my business to be viable and to support myself and my two children.
- I am massively opposed to Pizza Express coming to the High Street and trying to stake claim to the pavement where I operate my business from. Because my pitch is so large it would be difficult to relocate it to another good location and if I am moved (e.g. across the road where it is not busy) this large company would jeopardise my business and could make me go under. This prospect terrifies me.
- Pizza Express wants to use three metres of the pavement from its building. This would mean that the area it wants to use would come out into my stall with no room for a pedestrian walkway. The Council has planning permission already in place for me to trade on the location of my pitch. The fact that this is already in place makes it completely unfair if I am forced to move. The Council earns from me monthly from the rent that I pay to them and that benefits the community, yet if planning permission is granted to Pizza Express the Council gains absolutely nothing.
- From the positive feedback that I constantly get from my customers I know that my stall is an asset to Rayleigh High Street. I sell Italian boutique and brand named garments that can be found in many of the Leigh Broadway boutiques for a lot more money. I do well in Rayleigh because there is a distinct lack of good quality women's wear at competitive prices on its High Street. In my first year of operating in Rayleigh customers were constantly commenting that Rayleigh High Street has needed a decent high fashion clothes outlet for years (I cater for all sizes and all ages) with many customers saying that I save them a shopping trip of going into Southend or Basildon when they need something new to wear. I have a lot of die-hard regulars who come into the High Street specifically for me and who no doubt spend money with other businesses whilst they're on the High Street. I'm not sure all of this can be said about another high end pizza outlet when you already have the likes of Ask and Prezzo.

## 4.36 Second Response

- I have looked at the application and am concerned that although Pizza Express has expressed in an email that they are agreeable to a restriction that prevents them from setting out the seating when the market is in progress, it is not mentioned in the actual revised planning application. Therefore, the facts stated in my original opposing letter still stand with this revised application.
- Although the revised application has slightly less chairs, the area requested would still be inside my stall with completely no access for a pedestrian walkway if this was to happen on a Wednesday. Any other day of the week does not affect me.

## 4.37 OWNER OF PREMISES - Comments

- As the owner of this property and landlord to Pizza Express (ground floor) and Rayleigh Town Museum (first floor) I would like to clear up a few misunderstandings and answer some of the concerns of Rayleigh Town Council. I would like to make clear that the lease with Pizza Express pays the same rent, with or without the outside seating area, so I have no financial interest in this application.
- I have owned this property since 2002 and have been unhappy with the way the property has been unloved by the previous tenant. An agreement was reached to surrender their lease so a comprehensive restoration could be carried out and new tenants sought. The objective was to open up this the oldest commercial building in the High Street with the main part believed to date back to the 1350s, for wider community use.
- I chose Pizza Express as a partner as they have a rich history of restoring historic buildings and converting them to quality restaurants. They are not a pub and provide outside seating for al fresco dining, not a pub smokers area. Together with Pizza Express and the Rayleigh Town Museum we will be investing over £1m to restore and open up the historic building structure for both diners and museum visitors to enjoy. It's just such a quality commercial development as this which allows a subsidised rent to be offered to the museum. It should also be recognised that more seats and expanded trade will mean more local jobs, which is obviously a benefit to the local community.
- When looking at the Town Council's objections it's clear that they have a financial interest in the Wednesday market, but it should not be overlooked that Pizza Express makes a substantial financial contribution of many thousands of pounds to local funding for all day every day trading as opposed to part of one day each week.

- 
- To clear up the points raised about the consent procedures, advice was sought from both Essex County Council Highways Department and Rochford District Council Planning Department and the recommended procedures have been followed.
  - When considering the application, great weight should be given to the Rayleigh Area Action Plan. In this plan 91 High Street is classified as secondary shopping area and as such supports the recommendations for leisure facilities and additional vibrant café and street culture. The high quality pavement furniture proposed is very much in line with the artist's impression (figure 9) featured on page 27 of the Rayleigh Draft Area Action Plan and will enhance the vitality and sustainability of Rayleigh Town Centre. The Town Council's concerns over space for market stalls will be addressed by the creation of new public space in the centre of the High Street provided by the recommended reduction in size of the taxi rank. Regarding existing pavement clutter, this too will be overcome by the Council's policy to remove unnecessary clutter.
  - Fire exit from the adjoining snooker hall is not an issue as the furniture proposed is not in front of the fire exit route.
  - In conclusion, I support this application as it will be a tasteful addition to the café and vibrant culture, which is lacking in this part of town, which also has probably the widest pavement in that area of town.

4.38 LOCAL RESIDENTS - One response received (134 Eastwood Road), which can be summarised as follows:-

1. It would be inappropriate to introduce a small area of paving, different in size, texture or colour from what exists over the entire High Street Conservation area. The objective in the conservation area to conserve what is there, unless there are compelling reasons for not doing so. The entire High Street Conservation Area, and beyond, was re-paved with great care and precision perhaps ten years ago. It would be callous to change what exists, without justified reason.
2. A variation in size, colour or texture of paving would create unjustified prominence to one restaurant, prejudicial to the other restaurants in the High Street...which are already suffering from minimal patronage.
3. The existing paving forms the only unifying element in the Conservation area. That unifying element must be maintained.
4. The applicant must be asked to justify the proposed change of material.

5. Will pedestrians be barred from walking on the paved area?  
Pedestrians should not be barred from walking over any part of what is highway.
6. Creating a seating area over what is currently a pedestrian area will be an unjustified inconvenience to pedestrians and wheelchair/ambulant users of the High Street.
7. Any paving (which should not be permitted) must respect the layout of the existing paving slabs. Existing paving slabs should not be cut or rearranged to accommodate any new paving (which in any event should not be permitted).
8. Any seating outside the restaurant must be minimal, to avoid restricting the space available to pedestrians and wheelchair/mobile users. Rayleigh was once a market town, with buildings opposite each other, a wide distance apart - to accommodate market trader's stalls? Photographs of old Rayleigh illustrate this. I assume the area between the buildings facing each other was, or became, part of what is highway land, under the Highways Act. Therefore County Highways should be consulted. The old adage "once a highway, always a highway" should be borne in mind. It is my understanding that any part of a highway can only cease to become highway land, by an act of Parliament.
9. I am mystified by the increasing number of large and small restaurants in our relatively small town centre. It simply cannot be viable. Only a handful of residents use these restaurants and one wonders how they survive. I have never seen more than one table in use by diners ... at any time of day.

## 5 RECOMMENDATION

### 5.1 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 external seating and associated paraphernalia, including planters, shall not be placed on the site on Wednesdays and 10 other calendar days of the year when the market is in operation, as approved via application reference 13/00077/FUL. If on the 10 other calendar days of the year when the market is in operation the restaurant places its external seating and associated paraphernalia, including planters, to the frontage prior to the setting up of the market the seating and associated paraphernalia shall be immediately removed.

- 
- (3) The use of the external seating area hereby permitted, shall not take place (whether or not open to customers) outside 1000 to 2330 hours.
  - (4) The external seating and associated paraphernalia, including planters, shall be brought inside the premises when the external seating area is not open to customers.
  - (5) Prior to works commencing details for an alternative wind break design and the external seating and tables shall be submitted to and agreed in writing by the Local Planning Authority. Once agreed, such alternative wind break design and external seating and tables shall be implemented on site prior to first use of the development hereby approved and shall be those permanently used when the development is in operation.



Shaun Scrutton

Director

---

### Relevant Development Plan Policies and Proposals

CP1, CP2, RTC1, RTC4 of the of the Rochford District Council Local Development Framework Core Strategy Adopted Version (December 2011)

DM1, DM34 of the Development Management Plan (2014):

Rayleigh Centre Area Action Plan Submission Document (Post Pre-Submission Consultation).

Rayleigh Conservation Area Appraisal and Management Plan (2007)

Manual for Streets (2007)

Inclusive Mobility (2005)

The Essex Design Guide (2005)

National Planning Policy Framework (2012)

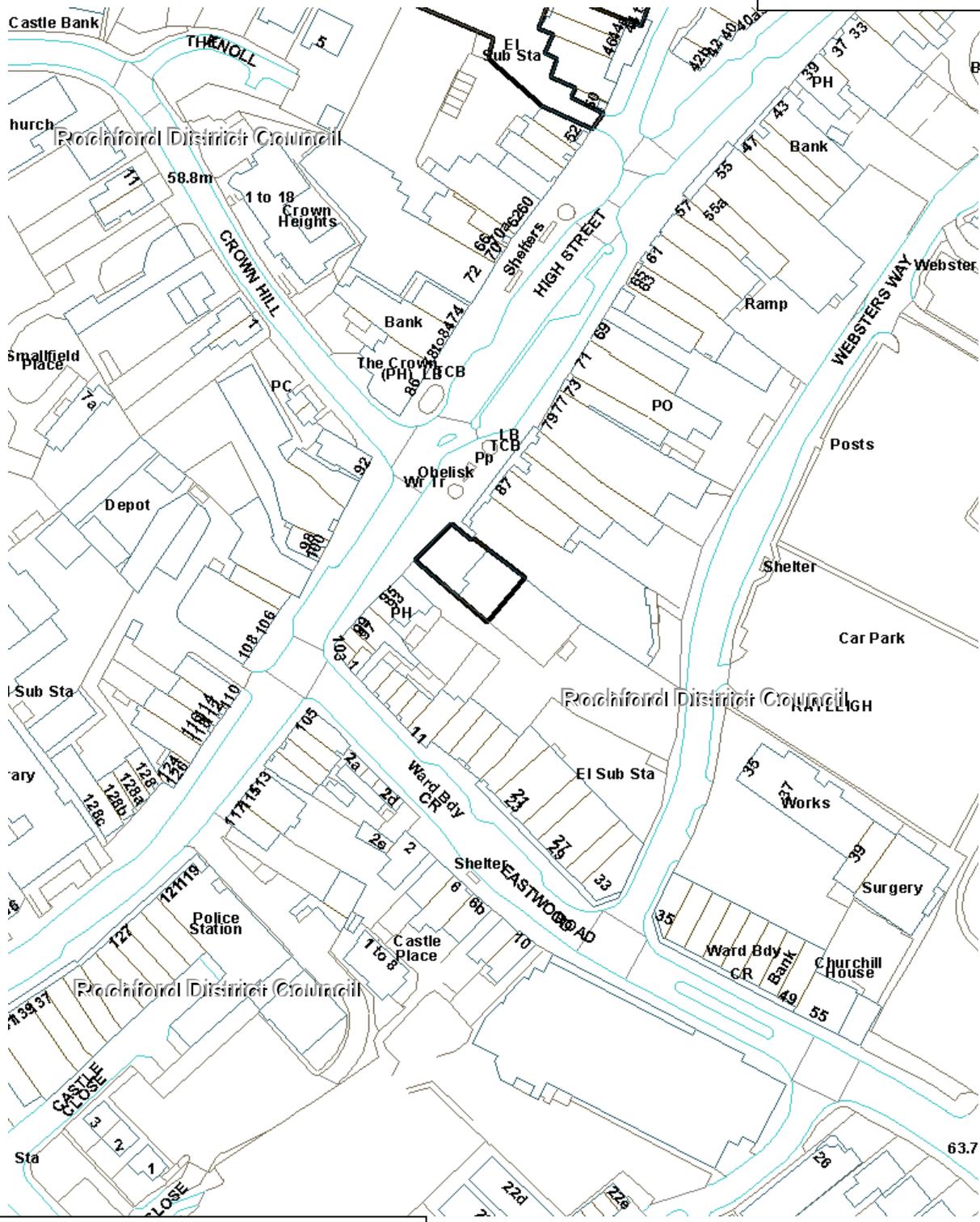
For further information please contact Claire Buckley on:-

Phone: 01702 318096

Email: [Claire.buckley@rochford.gov.uk](mailto:Claire.buckley@rochford.gov.uk)

If you would like this report in large print, Braille or another language please contact 01702 318111.

15/00236/FUL



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. This copy is believed to be correct.

Nevertheless Rochford District Council can accept no responsibility for any errors or omissions, changes in the details given or for any expense or loss thereby caused.

Rochford District Council, licence No.LA079138

6.21



NTS