

SITE PLAN ATTACHED

66 HIGH STREET BRENTWOOD ESSEX CM14 4AN

**CHANGE OF USE OF SHOP A1 (SHOP) TO A3 (RESTAURANT) AND
CONSTRUCT EXTRACTION DUCT TO REAR OF PREMISES**

APPLICATION NO: 18/01302/FUL

WARD	Brentwood South	8/13 WEEK DATE	26.09.2018
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PARISH		POLICIES	
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CASE OFFICER	Mr Mike Ovenden
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Drawing no(s) relevant to this decision:	18-048/02/B; 18-045/01; 18-045/02;
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This application is referred to committee at the request of Councillor Wiles.
The reason given is: This does not relate to current thinking and TC7.

1. Proposals

This application relates to the change of use of a shop (A1 retail) to A3 (Restaurant). No changes to the front or other parts of the exterior are proposed as part of this application, except an exterior flue for extraction/deodorising of cooking smells.

2. Policy Context

National Planning Policy Framework (NPPF) 2018

National Planning Practice Guidance (NPPG)

Policy CP1 General Development Criteria
Policy C14 Development Affecting Conservation Areas
Policy TC7 Non-Retail Uses/Prime shopping frontage
Policy PC4 Noise

Local Development Plan:

The successor document for the Brentwood Replacement Local Plan 2005, the new Local Development Plan (LDP), underwent draft stage consultation (Regulation 18) in 2016 and as there are outstanding objections to be resolved, only limited weight can be given to it in terms of decision-taking, as set out in paragraph 48 of the National Planning Policy Framework 2018. As the plan advances and objections become resolved, more weight can be applied to the policies within it. Nevertheless, the draft Local Plan provides a good indication of the direction of travel in terms of aspirations for growth in the Borough and where development is likely to come forward through draft housing and employment allocations. The emerging LDP was the subject of site-focused consultation (Regulation 18) between 29 January and 12 March 2018, identifying proposed development allocations. This will be followed by the Pre-Submission Draft (Regulation 19), currently anticipated to be published in Q3 of 2018. Following this, the LDP will be submitted to the Secretary of State for an Examination in Public in Q4 of 2018. Provided the Inspector finds the plan to be sound it is estimated that it could be adopted in early/mid 2019.

3. Relevant History

18/00868/FUL: Change of use of shop A1 (Shop) to A3 (Restaurant), A4 (Drinking Establishment) and A5 (Hot food takeaway) and construct extraction duct to rear of premises -Application Refused

4. Neighbour Responses

None received

5. Consultation Responses

- Historic Buildings and Conservation Officer – I raise no adverse comments in respect of the change of use although the diminution of retail (A1) should be carefully monitored to negate the variety within the Town Centre being lost to only the night time economy. The construction of a flue in this instance is not ideal but given the restricted views of this rear elevation within the Conservation Area it can be accepted.
- Environmental Health & Enforcement Manager – none received
- Food Safety Team-

I have viewed the plans on line, but there is no detail on the kitchen layout for me to make any significant comments. I note that there is no provision of a ground floor/disabled access WC. This is however a matter for the Building Control department to address. It would be useful if there were a plan of the kitchen and bar layout.

In the meantime, should planning be minded to grant the application, I would request that following conditions and or informative are added:-

1. If the proposed works fall within the scope of the Construction, Design and Management Regulations that the work is duly notified to the relevant body - i.e the Health and Safety Executive.
2. You are advised to consult with Environmental Health on the design and layout of the kitchen and associated food rooms before opening.
3. All areas proposed to be used for food storage, preparation, handling, cooking etc to be compliant with the requirements of the Food safety Act 1990, particularly Regulation EC 852/2004, Annex II- Chapters I, II, V, VI, VII., and any other relevant food safety legislation.
4. All proposed work areas to be compliant with the requirements laid out in the Health and Safety at Work etc Act 1974 and the Workplace (Health, Safety and Welfare) Regulations 1992 as amended.
5. It is recommended that new wash hand basins are fitted with non-hand operable taps to permit good hand hygiene
6. Sanitary accommodation to be provided in accordance with BS 6465
7. Please be minded that the premises must be registered, 28 days before opening, in accordance with the Food Premises (Registration) Regulations 1991. The application form for food registration may be found at <http://www.brentwood.gov.uk/index.php?cid=1098>

- Basildon Fire Station-

Access

The proposal itself does not affect fire service access to existing premises in the vicinity.

Fire service access to the proposed development remains sufficient, meeting the requirements of Section B5 Approved Document Fire Safety Volume 2.

More detailed observations on access and facilities for the Fire Service will be considered at Building Regulation consultation stage should the application be successful.

Advisory comments are made concerning Building Regulations

- Thames Water Development Planning– none received. At the time of the last application, the following comment was made:

WASTE COMMENT

Thames Water recommends the installation of a properly maintained fat trap on all catering establishments. We further recommend, in line with best practice for the disposal of Fats, Oils and Grease, the collection of waste oil by a contractor, particularly to recycle for the production of bio diesel. Failure to implement these recommendations may result in this and other properties suffering blocked drains, sewage flooding and pollution to local watercourses.

6. Summary of Issues

This application follows the refusal of a similar proposal concerning the premises earlier this year. That related to the change of use of an occupied shop (A1 retail) to A3 (Restaurant), A4 (Drinking Establishment) and A5 (Hot food takeaway) and construction of an extraction duct to rear of premises. As originally submitted this application was for the same range of uses but has since been reduced by omission of A4 and A5 use. It therefore relates to change of use of a shop (A1 retail) to A3 (Restaurant). No changes to the front or other parts of the exterior are proposed as part of this application, except an exterior flue for extraction/deodorising of cooking smells is proposed at the rear and is shown in indicative form. The documentation has been updated since the last application, including comments on the reason for refusal of the last application.

The starting point for determining a planning application is the development plan, in this case the Brentwood Replacement Local Plan 2005. Planning legislation states that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Relevant material considerations for determining this application are the National Planning Policy Framework 2018 (NPPF) and National Planning Practice Guidance 2014 (NPPG). Although individual policies in the Local Plan should not be read in isolation, the plan contains policies of particular relevance to this proposal which are listed in section 2 above.

A significant material consideration is that a very similar application has been refused on this site very recently. To be successful this application would need to overcome the reason for the refusal of that application.

The premises lie within the identified shopping frontage of 56-114 High Street. At the time of the case officers site visit it was operating as an A1 retail unit selling carpets. Policy TC7 states that within this frontage further A2, A3, A4 or A5 uses will only be allowed in certain circumstances.

- There would be no more than 2 adjacent non retail uses
- No more than 40% of the block would be non retail

The reason for this protection is to retain the character and vitality of the shopping frontage. The policy recognises that while non retail uses have a role to play in a vibrant town centre too high a concentration of non retail can erode the retail function of the area, hence the limit identified above. This unit lies in a central position in the frontage.

With regard to the first bullet point, the premises to each side are a Turkish Restaurant (no 64) and a bakers shop/cafe (no 68-70) operated as part shop/ part

eatery by a national chain. The agent considers this to be an A1 use but while there is a retail counter a significant proportion of floorspace appears used for on site consumption as part of an A3 type use. It is also noted that the unit next to that (no 72) is a restaurant. Whatever the precise balance of the elements of use carried out in the bakers premises it would lead to a row of four premises providing on site consumption, restaurant type facilities. These eateries were all permitted before the adoption on the development plan - at no 64 in 1996, at unit 68-70 in 1975 and at no 72 in 2002.

With regard to the assessing the percentages of units in A1/non A1 use some of the businesses operate out of premises that have been created from more than one unit. For the purposes of this assessment, the units have been counted on the basis of how they are operated. For example a national chain operates a bar at 78-82 High Street but this is operated as one unit and therefore for this assessment counted as one unit. This block already has significantly more than 40 percent of the units in non retail use – approaching 60%. The applicant considers the figure to be 51% - though still clearly above the 40% given in the policy. The proposal would result in the loss of one of those A1 units and increase by one of the number of non A1 units pushing the percentage even further away from that given in the policy.

The proposal is therefore contrary to Policy TC7. While the development plan dates from 2005 and therefore capable of being judged out of date, for example due to changes in national policies, the revised NPPF published 24 July 2018 retains support for this type of policy in paragraph 85b) advising that planning policies should:

“define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre”.

On that basis Policy TC7 is considered to be consistent with current national policy and up to date.

The applicant recognises that the proposal does not comply with Policy TC7 and refers to the state of the national high street retail economy and online shopping. The applicant states that “The premises are located in a part of the High Street that is dominated by restaurants and bars”. In essence this makes the same point as made above referring to the existing split between retail and non retail uses.

The applicant states that the premises has been actively marketed since the floor covering company current occupying it entered a Company Voluntary Arrangement (CVA) in the Spring of 2018. Whatever the outcome of CVA the applicant has cast doubt on whether the existing user would remain or that another retail occupier could be found advising that this resulted in no interest except from A3/A4/A5 occupiers. The applicant draws support from a practitioner in the local commercial property market.

In support of this point the applicant has provided a list of properties in the town termed 'shops available and or vacant in Brentwood Town Centre'. There is an inferred link between the above claim and the list of properties 'available and or vacant' although some of those properties are in less central locations. Much of the applicants case is not specific or restricted to this unit and could be repeated to any other unit in the high street and further afield.

This is an attractive double display retail unit in a central High Street location, which benefits from good footfall. It has been marketed for only a limited period of time (4 months at the time of their reporting). While they have in theory used a targeted database very little information has been provided on the actual marketing pack and indeed levels of retail interest. It may also be that generic marking may not be the best way to find a future A1 occupier. The marketing information on the Jackson Criss website for this unit is very limited. The feedback from JC mentions limited, but not no interest.

Most retailing market analysis differentiates between High Street locations and shopping centres. The Baytree Centre is potentially approaching a renewal phase and therefore comparisons with other units are not well made. The reference to other available retail premises is noted but some of those do not compare well with regard to location in contrast to this central Brentwood High Street site.

Knight Frank's Retail Property Outlook 2018 indicates that prospective High Street retail tenants outside London remain very cautious about the uptake of new bricks and mortar retail space, although generally the retail sector in the south east remains stronger than in other parts of the country. Landmark locations are often the push for investment. Brentwood is still a 'smart' retailing environment with likely pretty strong levels of local discretionary expenditure.

The combined level of rent and rates appear to set a fairly high benchmark for meeting fixed costs. Flexibility on terms may be critical to obtaining occupation. Furthermore, there may be the added factor of Brexit adding some caution to investment plans of potential occupiers. In that context the extra information does not overcome the reason for refusal.

Other matters

An indicative and generalised representation of the out flow of a deodorising system has been provided which shows that it would be provided at the rear of the main part of the building. More detailed written information is also provided. In the event of planning permission be granted details of the precise design and specification could be required by condition. Suggested opening hours are indicated in the application (0730 to midnight) these could be subject to planning condition if the use was accepted in planning terms. However no objection has been made by Environmental Health or Conservation to indicate that a satisfactory system could

not be provided or that the proposal would harm residential amenity or the character of the conservation area.

7. Recommendation

The Application be REFUSED for the following reason:-

R1 U27287

The proposed change of use of this unit, currently in an operative A1 retail use, to a non retail use would further increase the percentage of non retail uses in this central high street shopping frontage location which is already far in excess of the 40 percent limit contained in the Policy. It would also lead to a row of four substantially non A1 units together. The National Planning Policy Framework 2018 confirms the legitimacy of seeking to retain uses within primary shopping areas such as this. The proposal therefore would further challenge the vitality of retail in this high street location contrary to Policy TC7 of the Brentwood Replacement Local Plan 2005 and the National Planning Policy Framework 2018.

Informative(s)

1 INF05

The following development plan policies contained in the Brentwood Replacement Local Plan 2005 are relevant to this decision: CP1, C14, TC7, PC4, National Planning Policy Framework (NPPF) 2018 and NPPG 2014.

2 INF20

The drawing numbers listed above are relevant to this decision

3 U05836

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and clearly identifying within the grounds of refusal the defective principle of development. The issues identified are so fundamental to the proposal that based on the information submitted with the application, the Local Planning Authority do not consider a negotiable position is possible at this time.

BACKGROUND DOCUMENTS

DECIDED: