

Extract from Area Planning Subcommittee East 22 May 2013

APPLICATION No:	EPF/2190/12
SITE ADDRESS:	26 Fyfield Road Ongar Essex CM5 0AJ
PARISH:	Ongar
WARD:	Shelley
APPLICANT:	Mr Kevin Gibbon
DESCRIPTION OF PROPOSAL:	Change of use from A1 to A3 and A5 with extension flue and changes to shop front.
RECOMMENDED DECISION:	Grant Permission (With Conditions)

Click on the link below to view related plans and documents for this case:

http://planpub.eppingforestdc.gov.uk/AniteIM.websearch/ExternalEntryPoint.aspx?SEARCH_TYPE=1&DOC_CLASS_CODE=PL&FOLDER1_REF=543285

CONDITIONS

- 1 The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.
- 2 The use hereby permitted shall not be open to customers outside the hours of 09.00 to 22.00 Monday to Saturday and 11.00 to 21.00 Sundays and Public/Bank Holidays.
- 3 The use hereby approved shall not commence until a scheme providing for the adequate storage of refuse from the use has been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be carried out as approved and maintained as long as the use continues unless otherwise agreed in writing by the Local Planning Authority.
- 4 Details of foul and surface water disposal shall be submitted to and approved by the Local Planning Authority prior to the unit being brought into use and the development shall be implemented in accordance with such agreed details.
- 5 Equipment shall be installed to suppress and disperse cooking/food preparation fumes and smell to a minimum. The equipment shall be effectively operated and maintained for as long as the use continues. Details of the equipment shall be submitted to, and approved, by the Local Planning Authority prior to the commencement of the use.
- 6 The rating level of noise (as defined by BS4142: 1997) emitted from the extraction system agreed pursuant to Condition 5 shall not exceed 5dB (A) above the prevailing background noise level. The measurement position and assessment shall be made according to BS4142: 1997.

This application is before this Committee since the recommendation is for approval contrary to an objection from a local council which is material to the planning merits of the proposal (Pursuant to The Constitution, Part Three: Planning Directorate – Delegation of Council function, Schedule 1, Appendix A.(g)) and since it is for a type of development that cannot be determined by Officers if more than four objections material to the planning merits of the proposal to be approved are received (Pursuant to The Constitution, Part Three: Planning Directorate – Delegation of Council function, Schedule 1, Appendix A.

Description of Site:

No 26 Fyfield Road forms one of a pair of properties in retail use with residential flats above. The application property is currently vacant but was last used as an undertakers/shop selling grave monuments (Use Class A1). The adjacent property is currently occupied by a convenience store. The immediate area is largely residential in nature but the adjacent site is occupied by an electrical sub-station and is seemingly also used for private parking. There is a small forecourt to the front of the unit and a yard area to the rear.

Description of Proposal:

Consent is sought to change the use of the premises from a purpose within Use Class A1 (Shops) to a mixed use within Classes A3 (Restaurants) and A5 (Hot food takeaways).

Relevant History

EPF/1341/05 - Change of use from shop (A1) to takeaway (A5). Refuse Permission - 19/09/2005.

Policies Applied:

TC1 – Town Centre Hierarchy
TC6 – Local Centres and Village Shops
DBE9 – Loss of Amenity
RP5A – Adverse Environmental Impacts
ST4 – Road Safety
ST6 – Vehicle Parking
CP2 – Protecting the Quality of the Rural and Built Environment

The National Planning Policy Framework (NPPF) has been adopted as national policy since March 2012. Paragraph 215 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework. The above policies are broadly consistent with the NPPF and should therefore be given appropriate weight.

Summary of Representations:

20 neighbours consulted – 9 replies received.

8 HERON COURT: Objection. No need for this facility in the locality. Lack of parking nearby. Litter, noise and general nuisance. The flue system would be unsightly.

9 HERON COURT: Objection. Within 100 yards there is an existing chip shop on the Moreton Road, and it is very unusual to see 2 chip shops so close together and particularly in a rural setting. There is insufficient parking outside the combined premises, with just parking for “Nisa” customers, so with the possible additional volume of parked traffic it could mean a potential road traffic issue as people will park on the highway and obstruct the Zebra crossing near the premises. The external flue that is proposed will be unsightly and cooking smells could attract vermin.

Equally smells (particularly fish) from the preparation area at the rear will emanate which won't be covered by the flue. Litter, noise and general nuisance. This use will attract vermin.

1 CLARE MEWS: Objection. Concern about parking and smells emanating from the unit.

2 CLARE MEWS: Objection. Concern about parking/road safety and rubbish gathering in connection with the use. Concern about young people congregating.

3 CLARE MEWS: Objection. These current outlets generate a number of parking problems in a small area - at certain times of the day, and the use of 26 Fyfield Road as any sort of food Takeaway would only add to these problems. My submission really is that another Ready Food outlet would increase traffic activity in this small "parking problem" area in two particular time zones - "lunch time" approximately 12 noon to 3 pm and "evening food" approximately 5.00 pm to 8.30 pm, whereas most other retail uses would spread customer activity throughout the working day.

41 FYFIELD ROAD: Objection. Concern about parking in the vicinity and rubbish outside the shop which is often a result of such a use.

43 FYFIELD ROAD: Objection. There is currently a very good fish and chip shop at the top of Moreton Road, some 50 yards away, and another in Ongar town, where there are also a variety of other takeaway food shops/restaurants. Smith's Fish restaurant also stands at the top of Moreton Road. We do not consider another fish and chip takeaway to be necessary. The traffic along Fyfield Road is very busy with people visiting the Nisa store and this use will exacerbate an already bad situation. Concern about rubbish/litter that this use would generate. Concern that this would increase an issue of youths congregating outside these premises.

33 SLADE ROAD: Objection. Concern about road safety and parking in the area. Issues with litter will be inevitable. Issues with youths congregating and smells emitting from the premises. The flue will appear unsightly.

3 MORETON ROAD: Objection. We are an existing fish and chip shop trading nearby and we feel this will restrict our livelihood.

ONGAR TOWN COUNCIL: Objection. Ongar Town Council objects to this application on the basis that there is limited parking facilities available which would have an adverse affect parking issues in this sensitive area and also that cooking smells would be offensive to nearby residential properties.

Issues and Considerations:

The main issues to consider relate to policy constraints for such uses, amenity, parking and extraction.

Local Centres

These units on Fyfield Road would be classed as a "local centre" and as such the relevant policy with regards to changing the use of the unit is Policy TC6. This policy is intended to ensure that a network of local shopping facilities remain available to residents in the vicinity, particularly the old and infirm. The obvious use which it is hoped to retain is units providing everyday provisions, such as convenience stores. Although the type of goods on sale cannot be controlled some level of control exists over changes of use out of a particular use class. In this regard the policy requires that before granting a change of use the Local Planning Authority must be satisfied that;

- (i) There is no market demand for a retail use.

- (ii) The service provided is to be continued in another location in the locality.
- (iii) The new use would meet an identified community need.

A similar proposal was considered in 2005 (EPF/1341/05) and was refused for the following reasons;

1 The proposed change of use would result in a loss of local service provision. The proposal is therefore contrary to Policy STC10 of the Epping Forest Local Plan and Policy TC6 of the Epping Forest District Local Plan Re-deposit July 2005.

2 The proposed use, particularly as a result of the late night disturbance would likely generate detrimental impact onto the nearby occupiers of residential properties contrary to policy DBE9 of the adopted Local Plan.

This decision is a material planning consideration and provides a useful starting point for this analysis. The Officer's report from the time recorded a concern that, notwithstanding the fact that the unit was at the time vacant, the loss of its A1 status would impact on the vitality and viability of the area. It was assessed that the occupation by another A1 use could complement the adjacent unit, which appeared to be performing well in terms of customers visiting the shop. This is still currently the case with the adjacent unit which appears to be a useful local facility providing everyday goods. The last use as a shop selling grave monuments did little in the way of contributing to the vitality and viability of the immediate vicinity. Its current vacant state does even less. However it is also the case that ideally another A1 use would fill this unit and would ensure that the premises remained a key local facility. That is not to say that the proposed use could not become a useful local facility. However the area is already served by a hot food takeaway nearby. The issue is whether the Local Planning Authority would think it appropriate to lose this unit's A1 status, perhaps in perpetuity, or whether a case has been made to agree a change of use to A3/A5.

Points two and three of Policy TC6 can be discounted as undertakers are not considered an everyday local shop use which one would expect within a local parade. Therefore from a policy perspective this proposal turns on whether there is no market demand for a retail use. In such cases it is always useful for applicants to provide evidence of marketing of the premises to support their case. No evidence, other than a statement that the shop unit has been vacant for some time, has been provided. Therefore there is no evidence of marketing and it is not known that if a robust marketing exercise was undertaken it would not result in the unit being occupied by an A1 use. Therefore from a policy viewpoint the lack of marketing could warrant a refusal. However, having regard to the characteristics of the immediate area, the adjoining shop obviously provides a key local facility and it appears to operate very effectively. The view could be taken that another A1 use would complement this use and add to local vibrancy. However the converse view could also be taken that the success of the adjoining unit allows scope for alternative uses to A1. The last use demonstrates perfectly how even a true A1 use can offer little in the way of day to day business and footfall and yet an A3/A5 use can contribute positively to a local community, adding to the vitality and viability of a local centre. It is therefore considered that although evidence of marketing has not been provided there is no obvious demand or need for an A1 unit at the site. The history of sporadic use confirms this. Subject to other planning considerations there are no clear grounds to refuse this change of use and it is not considered that the proposed use would have a detrimental impact on service provision in the area whilst bringing an empty unit back into use. Ideally every area should have one shop providing essential local needs and this would still be the case at this part of Fyfield Road. Such a view conforms to Central Government aims to promote growth and to ensure that local resources are fully utilised as enshrined in the recently adopted NPPF. Paragraph 28 of the NPPF promotes the retention of local services and community facilities in rural villages and it is not considered that this aim is offended by this proposal having regard to the immediate characteristics of the area and the adjacent A1 shop. The NPPF's core aim is to encourage sustainable development and this development would be socially, economically and

environmentally sustainable and it is considered that refusal is likely to result in the unit remaining empty which would be harmful to the locality and clearly unsustainable.

Amenity

A number of neighbours have raised concern about potential issues with regards to litter, noise and disturbance, and the potential for vermin to be attracted by such a use. Concerns about litter and vermin are common for residents when such a proposal is put forward, but the Local Planning Authority must take the view that the unit will be well operated, that bins will be provided, and that adequate care will be taken to guard against this likelihood. These issues are largely covered by other legislation.

A number of flats are located above the application site and there are dwellings in the immediate vicinity. The applicant has responded to this concern by agreeing to reduced opening hours. As such revised times as to when the unit will be in operation have been submitted. These indicate opening times of:

Monday – Saturday, 11:30 – 14: 00 and 17:00 – 21:00
Closed on bank holidays and Sundays.

The hours originally applied for were 08:00 – 23:00 Everyday

These revised hours of use seem more than reasonable, such as to guard against congregation or anti-social behaviour outside into the early hours of the morning. Local Planning Authorities have a duty to ensure that conditions meet the tests contained in Circular 11/95 in terms of reasonableness and necessity. It is Officer's opinion that reasonable opening hours would be:

Monday – Saturday, 09:00 – 22:00
Sundays and bank holidays, 12:00 – 21:00

It is considered that the condition should not be so overly restrictive as to impact on the prospective businesses ability to trade well. It is important to try and strike a balance between safeguarding the amenity of residents and not effectively nullifying the benefit of planning permission. The suggested opening hours of Officers achieve a balance between commercial and residential interests. However Members may feel it is reasonable to restrict the use to the hours applied for. It is worth noting that a condition does not become reasonable because an applicant suggests it, as such permissions run with the land and may not be suitable to a future tenant. If amenity is considered such an issue as to require what is an unduly restrictive condition then permission should be withheld. As highlighted in the preceding text, Officers are of the view that conditions appropriately deal with this issue.

An extraction system is shown on the submitted plans with no further details provided. The indicative position of the extraction system seems reasonable and retains a distance to windows of habitable rooms. Notwithstanding the flat above, it is envisaged that this issue could be dealt with sufficiently. A suitable extraction system could be agreed by condition ensuring that impact on neighbours from fumes is kept to a minimum. This could be agreed prior to the first use of the site. It is not considered that cooking smells would be a major issue for occupants of dwellings near the shop.

Parking/Road Safety

Some of the local neighbours and the Town Council have expressed concern about parking and road safety near the site. Essex County Council have previously had no issue with a change of use and it is not considered that road safety would be a serious concern. There is limited parking outside the unit and there is also the potential to park in some neighbouring streets where no

parking restrictions apply. Generally issues of parking and road safety do not warrant a refusal of this proposal.

Other Matters

Issues with regards to a nearby A5 unit are not necessarily relevant as the planning system does not exist to protect the private interests of one member of the public over another. Concern that the proposed extraction system will appear unsightly is noted, but it is not considered that such an extraction system would seriously detract from the appearance of the area.

Conclusion

The proposed change of use would have no significant impact on the vitality and viability of the area and the immediate locale would remain well served by a useful A1 unit. Impact on amenity would not be to an excessive level, and there are no serious concerns with regards to extraction equipment or parking. It is therefore considered this change of use is suitable subject to conditions.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

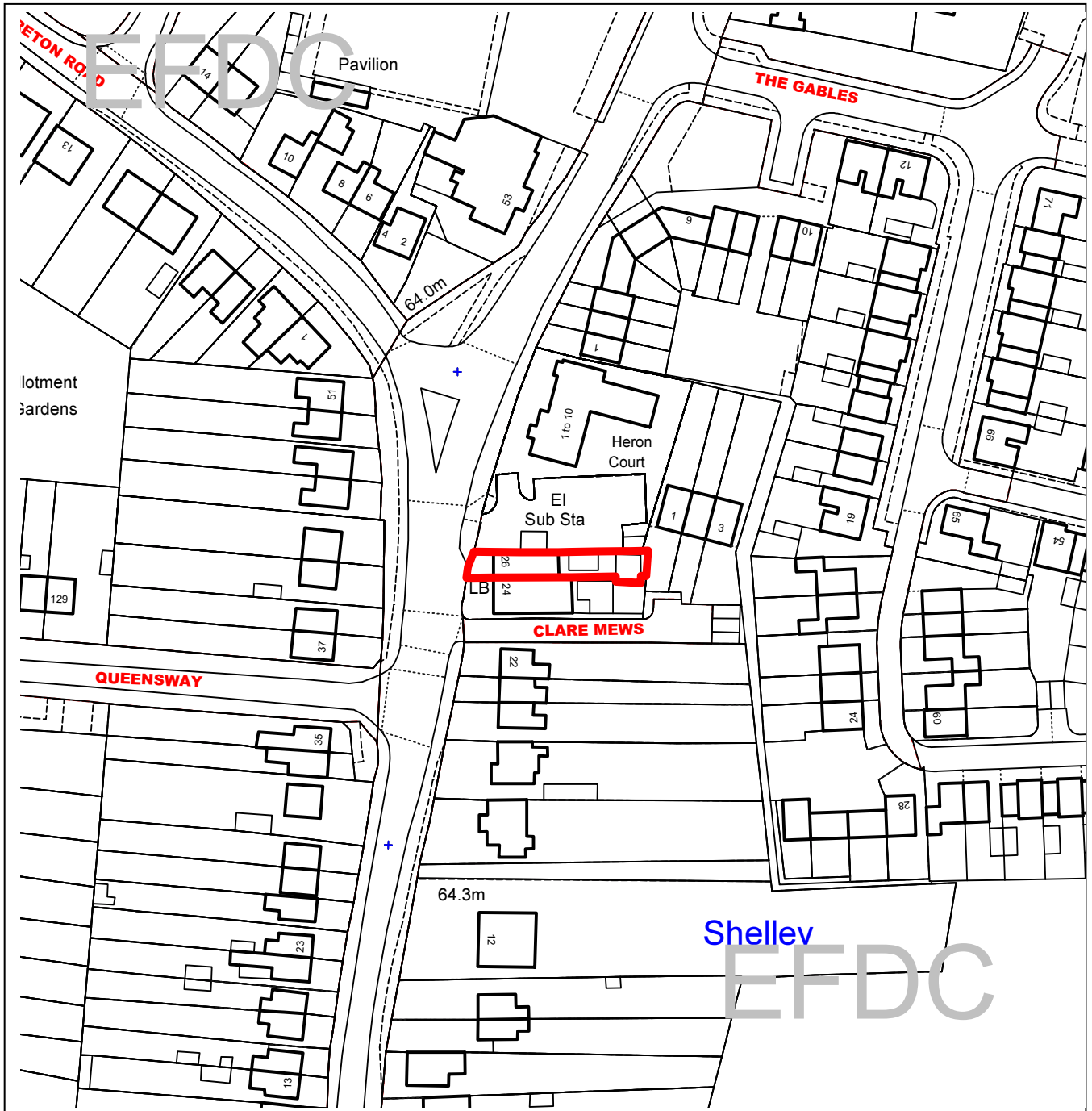
***Planning Application Case Officer: Mr Dominic Duffin
Direct Line Telephone Number: (01992) 564336***

or if no direct contact can be made please email: contactplanning@eppingforestdc.gov.uk



Epping Forest District Council

Area Planning Sub-Committee East



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Scale of Plot:	1/1250