



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
CENTRAL AREA PLANNING COMMITTEE
27 July 2022

Application Number	22/00603/FUL
Location	102B & C, High Street, Maldon
Proposal	Section 73A application for the change of use of unit 102C from E(a) retail to E(b) restaurant use and to merge with unit 102B High Street (currently E(b) use) to form a single restaurant. Replace the frontages with aluminium windows and doors across the front of both buildings
Applicant	Mr R Muca
Agent	Chris Cumbers - CBS Cumbers MCIAT
Target Decision Date	EOT agreed – 01.08.2022
Case Officer	Vikki Bowles
Parish	MALDON NORTH
Reason for Referral to the Committee / Council	Member Call In by Councillor C Swain – Policies D1 and E2

1. RECOMMENDATION

APPROVE subject to the conditions (as detailed in Section 8 of this report).

2. SITE MAP

Please see below.



3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site is located on the southern side of the High Street, sited within the Conservation Area of Maldon. The site consists of two retail units which are part single storey and part two storey in nature with a parapet wall along the front elevation. The unit numbered 102C was previously occupied by a retail outlet known as 'Maldon Discount' and 102B was occupied by a restaurant specifically for use as a coffee, ice-cream and desert parlour known as 'Venice Gelato and Coffee'. The current lawful use of the 102B is Class E(b) and 102C is Class E(a).
- 3.1.2 The site is a primary shopping area within the settlement boundary of Maldon. The prevailing character of the High Street is for commercial units (primarily retail units) at ground floor and some associated secondary storage areas or residential units to the upper floors. The High Street is mixed in character in terms style and architecture, there are examples of properties from the 12th century; however, this section is fairly modern, with properties being built between 20th and 21st century.
- 3.1.3 Planning permission is sought to convert the two independent commercial units into one restaurant (Use Class E(b)). Unit 102B already has a lawful restaurant use (Use as Class E(b)), specifically as a coffee, ice-cream and dessert parlour. The proposal would continue the use of this unit as a restaurant but expand it to include primary cooking. The application includes a change of the lawful use of unit 102C which is currently retail (Use Class E(a)) to a restaurant (Use Class E(b)).
- 3.1.4 The application also includes operational development in the form of the installation of aluminium windows and doors to the front of both units. The application is partially retrospective in nature.
- 3.1.5 An application (reference 22/00604/ADV) for new signage has been granted advertisement consent.

3.2 Conclusion

- 3.2.1 Whilst the development would be in conflict with Policy E2 it is considered that the fallback position is a material consideration of significant weight in the determination of this application. Furthermore, whilst it is noted that the Environmental Health Team have raised an objection to the development due to lack of information it is considered that a condition could be imposed that would overcome the concerns. Therefore, no objection is raised to the proposed development.

4. MAIN RELEVANT POLICIES

Members' attention is drawn to the list of background papers attached to the agenda.

4.1 National Planning Policy Framework 2021 including paragraphs:

- 7 Sustainable development
- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 92 – 94 Promoting healthy and Safe Communities
- 104 - 109 Promoting sustainable transport
- 119 -123 Making effective use of land

- 126 -136 Achieving well-designed places
- 189 -193 Conserving & Enhancing the Historic Environment

4.2 Maldon District Local Development Plan 2014 – 2029 approved by the Secretary of State:

- S1 Sustainable Development
- S5 Maldon and Heybridge Central Area
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D3 Conservation and Heritage Assists
- E2 Retail Provision
- H4 Effective Use of Land
- T1 Sustainable Transport
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- Maldon District Design Guide SPD (MDDG) (2017)
- Maldon District Vehicle Parking Standards SPD
- Planning Practice Guidance (PPG)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004, Section 70(2) of the 1990 Act and paragraph 47 of the NPPF require that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case the development plan comprises of the approved Local Development Plan (LDP).
- 5.1.2 Policy S1 refers to the NPPF's presumption in favour of sustainable development and makes specific reference to the local economy, housing growth, effective use of land, prioritising development on previously developed land, design, the environment, sustainable communities, the effects of climate change, avoiding flood risk areas, the historic environment, local infrastructure and services, character and appearance, minimising need to travel. Policy S8 of the LDP identifies Maldon as one of the main settlements of the District where development should be directed to.
- 5.1.3 Policy S5 states that the Maldon and Heybridge Central Area will continue to act as the focal point within the District for retail, commercial, industrial, community and tourism activities. Paragraph 2 of the policy states that proposals for retail, office, housing, community, leisure uses and other town centre uses will be supported where they contribute to regeneration and diversification of the town centre.
- 5.1.4 Policy E2 of the approved LDP states that proposals for the development of retail, office, residential and other main town centre uses will be permitted within defined Town Centre Areas where the scale and type of the development proposed is directly related to the role and function of the centre and its catchment and there would be no significantly adverse impact on the viability of the centre or other centres.

- 5.1.5 The application site is located within an existing area of mixed retail and leisure uses. The site consists of two separate planning units 102B and 102C High Street and to change the use of the units from a retail unit (Class E(a)) to a restaurant (Class E(d)). Whilst the proposed use would result in the loss of a traditional retail use, Policy E2 does allow for this in some instances. This includes where the development would not have a detrimental impact on the function, vitality or viability of the Primary Retail Function and will not create a new continuous frontage of three or more units of non-A uses.
- 5.1.6 Retail areas have experienced a need to diversify and change from providing solely traditional retail units in recent years and the Council's adopted policy accepts the need for this. The development is adjacent to an existing restaurant and therefore, would result in three units being of non-A1 uses in a continuous run contrary to policy. However, this part of the High Street still contains a relatively high percentage of retail units and it is not considered that the proposed development would have a particularly negative impact on the viability of the high street.
- 5.1.7 Section 37(6) of the Planning and Compulsory Purchase Act 2004 states that *"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise"*. There is no legal definition of Material Considerations and it therefore falls to the Local Authority to decide what a relevant material consideration is and what is not. Any planning consideration that relates to development is capable of being a material consideration (Stringer) and case law shows that the 'fallback position' can be a material consideration when determining a planning application. However, it must be noted that it is up to the decision maker to apply appropriate weight to all the material considerations when exercising their planning judgement (Tesco).
- 5.1.8 The LDP was adopted prior to the current Use Classes Order. Currently under Use Class E, a change of use of a retail unit to a restaurant is not considered development. Therefore, a change of use of the individual retail unit to a restaurant would not require planning permission. The fallback position is considered to be a material consideration of significant weight in the determination of this application. Therefore, whilst the development is in conflict with criteria 2, relating to Primary Shopping Frontages, of Policy E2 it is considered, on balance, that the development is acceptable and would not have a detrimental impact on the vitality and viability of the retail function of the High Street.

5.2 Design and Impact on the Character of the Area

- 5.2.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised principles of good design seek to create a high quality built environment for all types of development.
- 5.2.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF. The NPPF states that:
- "The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities".

“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents”.

- 5.2.3 The basis of policy D1 of the approved LDP seeks to ensure that all development will respect and enhance the character and local context and make a positive contribution to the area.
- 5.2.4 Policy H4 requires all development to be design-led and to seek to optimise the use of land having regard, among others, to the location and the setting of the site, and the existing character and density of the surrounding area.
- 5.2.5 Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Council to pay special attention to desirability of preserving or enhancing the character or appearance of the conservation area. Similarly, Policy D3 of the approved LDP states that development proposals that affect a heritage asset must preserve or enhance its special character, appearance, setting- including its streetscape and landscape value.
- 5.2.6 The shopfront has already been installed and is glazed in sections with a powder coated aluminium frame of grey and white render. The building is of a relatively modern appearance and the shopfronts in situ prior to the works subject of this application were not of any real architectural merit or benefit to the character and appearance of the area. The development has facilitated a more uniform look and reflects the materials used in the neighbouring unit and similar shop fronts along the High Street. Furthermore, whilst the shopfront at 102B was unauthorised and the subject of enforcement action, a shopfront, broadly similar to the one proposed as part of this application, had been granted planning permission. Whilst it is accepted that a timber shopfront would add value to the conservation area none of the shopfronts recently present would have been timber and it is considered that the current proposed shopfront preserves the special character and appearance of the conservation area. Furthermore, the Specialist in Conservation and Heritage Assets has no objections.
- 5.2.7 The rear of the units is two storey with the second storey in residential use and accessed by a brick built external stair. There is a car park to the rear, to the east of the car park is the rear of the neighbouring restaurant and to the west is a residential unit. It is proposed that a new insulated extract duct be installed on the rear, south west elevation along with a new stainless steel flue. It is also proposed that two ground floor windows be blocked up.
- 5.2.8 The impact of the duct and flue on the appearance at the rear of the building is limited, it is not visible from the public realm and although the flue would project 1 metre above the second storey it would not be visible from the High Street.
- 5.2.9 The loss of the two ground floor windows will have little impact on the visible effect of the rear elevation and the residents of the area at the rear will not be unduly affected by these changes.
- 5.2.10 Therefore, it is considered that the development, by means of its style and design is considered acceptable in its setting and preserves the special character and appearance of the Conservation Area and is in compliance with policy and D1, D3 and H4 of the LDP.

5.3 Impact on Residential Amenity

- 5.3.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section C07 of the Maldon District Design Guide (MDDG) (2017).
- 5.3.2 The application site is in a town centre location which is characterised by a range of uses including commercial and residential. It is accepted that there is the potential for such uses to sit side by side without resulting in a detrimental impact on the business or the amenity of the adjoining residents. However, there is a need to consider matters such as noise and disturbance from patrons, plant equipment and matters such as opening hours.
- 5.3.3 As part of the proposal a ventilation scheme has been submitted to allow for the production of food for consumption on the premises. After consultation with the Environmental Health Team, it is considered that insufficient information has been provided regarding the potential impact to the occupiers of neighbouring residential properties in regard to noise from the extraction system and a holding objection has been raised by Environmental Health. However, as highlighted above, it is not unusual to have plant equipment in relatively close proximity to residential accommodation in areas such as this where often ambient background noise is higher and more noticeable in evening hours. It is therefore, considered that a condition requiring details to be submitted and in place prior to first use would mitigate any potential harm from the development.
- 5.3.4 The proposed opening hours are 1200 to 2300 weekdays, weekends and Bank Holidays. It is noted that the, relatively recently, approved opening hours for the immediate neighbouring unit, which is also a restaurant, are between 0900 to 2300 weekdays, weekends and Bank Holidays and therefore it is considered that the proposed operational hours are acceptable. It is considered that a restriction on delivery hours is also necessary and could be conditioned.
- 5.3.5 Therefore, on the basis of the above it is considered that, on balance, the proposed change of use would not have a detrimental impact on the residential amenity of the neighbouring occupiers and therefore the scheme is in accordance with Policy D1 of the approved LDP.

5.4 Access, Parking and Highway Safety

- 5.4.1 Policy T2 aims to create and maintain an accessible environment, requiring development proposal, inter alia, to sufficient parking facilities having regard to the Council's adopted parking standards. Similarly, policy D1 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council's adopted parking standards and maximise connectivity within the development and to the surrounding areas.
- 5.4.2 The unit does not benefit from dedicated off road parking; however, it is located within close proximity to a public car park located adjacent to the application site. Due to the Town Centre location it is considered that there are good connections to the site in terms of public transport and furthermore there are a number of private car parks in the vicinity of the site. Therefore, it is considered that the development would be acceptable in terms of parking and highway safety.

6. **ANY RELEVANT SITE HISTORY**

6.1 The relevant planning history for 102B is set out below:

- **02/01160/FUL – Replacement of shopfront - Approved**
- **04/01208/FUL - Replace shop front – Approved**
- **19/00491/ADV** - Application for advertisement consent for an externally illuminated fascia sign – Refused
- **19/00492/FUL** - Section 73A application replacement shopfront and change of use from class A1 to use class A3 (Retrospective) - Refused – appeal dismissed
- **19/00935/ADV** - Application for advertisement consent for a externally illuminated fascia sign – Refused
- **21/00092/FUL** - Change of use from A1 use - shop with coffee sales on site and takeaway to A3 use - Restaurants and cafes with on site and takeaway sales - Approved
- **21/00119/ADV** - Company name in vinyl letters on a painted plywood ground with painted timber border attached to existing fascia – Approved

6.2 The relevant planning history for 102C is set out below:

- **14/00772/FUL – Change of use from A1 Retail to A3 Café shop – Refused**
- **15/01079/ADV** - Application for existing sign over shop entrance with letters only internally illuminated – Refused
- **16/00324/ADV** - Application for replacement sign over shop entrance with non-illuminated letters and overhead lighting strip – Approved
- **21/00770/FUL** - Change of use of the ground floor area from current commercial unit (Use Class E) to a Hot Food Takeaway (Sui Generis) together with new Shopfront and wall mounted ground floor extraction equipment - Refused

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

7.1 **Representations received from Parish / Town Councils**

Name of Parish / Town Council	Comment	Officer Response
Maldon Town Council	Object – The proposal, due to its scale, design and use of materials, would be out of keeping with the prevailing street scene in the Conservation Area, to the detriment of the character and appearance of the surrounding area, therefore contrary to policy D1 of the Maldon District	Noted and discussed in Section 5.1 and 5.2

Name of Parish / Town Council	Comment	Officer Response
	<p>Local Development Plan.</p> <p>The loss of the retail unit in the High Street contrary to policy E1 of the Maldon District Local Development Plan.</p>	

7.2 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Conservation Area Officer	<p>The new shopfront represents an improvement on the previous situation, providing more coherence to the frontage, and results in no further harm to the conservation area. The adjacent property – SARK – has a similar aluminium shopfront which was recently granted planning permission (notably, also retrospective). The extract flues would be located to the rear and would not be prominently visible from public parts of the conservation area. At this location the flues would not harm the special character of the conservation area.</p> <p>For these reasons I advise that the application poses no conflict with policy D3 of the MDLDP, chapter 16 of the NPPF or with the duty set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.</p>	Noted
Environmental Health	Object to the application. It is not clear what the likely noise impact might be from the extraction systems to close by residents. A BS 4142 assessment should be undertaken and submitted.	Noted and discussed in Section 5.3
Strategy Team	<p>Object:</p> <ul style="list-style-type: none"> • Loss of retail floorspace on Maldon High Street as the District's main retail centre 	Noted and discussed in Section 5.1 & 5.2

Name of Internal Consultee	Comment	Officer Response
	(Policies S5 and E2, LDP) • Contrary to Strategic Policy S5 to retain the Market Town focus of Maldon's High Street and improve the retail offer and retail choice • The design of the shopfront is not characteristic of Maldon's historic town centre and opportunity not taken to enhance its character (Policies, S5, D1 and E2) • No evidence of marketing the retail space and rents offered	

8. **PROPOSED CONDITIONS:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
REASON To comply with Section 91(1) The Town & Country Planning Act 1990 (as amended).
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 705/01, 705/02, 705/03, 705/04, 705/05, 705/6A, 705/7B, 705/8B
REASON To ensure that the development is carried out in accordance with the details as approved.
3. The proposed use hereby approved shall only be in operation between 12.00 hours and 23.00 hours on weekdays, weekends and Bank Holidays.
REASON In order to ensure the appropriate use of the site and to protect nearby residential amenities in accordance with Policies D1 and D2 of the Maldon District Approved Local Development Plan, the provisions and guidance of the National Planning Policy Framework.
4. Deliveries to the site shall only be undertaken between 08:00 hours and 18:00 hours Monday to Friday.
REASON In order to ensure the appropriate use of the site and to protect nearby residential amenities in accordance with Policies D1 and D2 of the Maldon District Approved Local Development Plan, the provisions and guidance of the National Planning Policy Framework
5. A scheme to mitigate impacts from cooking odour shall be submitted to and approved in writing by the Local Planning Authority. All works that form part of the approved mitigation scheme shall have be undertaken prior to first use of the development hereby approved. All elements of the approved scheme shall be maintained and retained as such thereafter.
REASON To ensure the appropriate use of the site and to protect nearby residential amenities in accordance with Policies D1 and D2 of the Maldon District Approved Local Development Plan, the provisions and guidance of the National Planning Policy Framework.
6. A Noise Impact Assessment (NIA), relating to both the proposed use and proposed plant equipment, shall be submitted to and approved in writing by the local planning authority. The NIA shall include a scheme to mitigate the noise from both the use and the ventilation and extract system to the nearest noise sensitive receptors (NSR). All works that form part of the approved mitigation scheme shall have be undertaken

prior to first use of the development hereby approved. All elements of the approved scheme shall be maintained and retained as such thereafter.

REASON To ensure the appropriate use of the site and to protect nearby residential amenities in accordance with Policies D1 and D2 of the Maldon District Approved Local Development Plan, the provisions and guidance of the National Planning Policy Framework.

- 7 No additional external plant or machinery shall be installed unless and until details of the equipment have been submitted to and approved by the Local Planning Authority.

REASON In order to ensure the appropriate use of the site and to protect nearby residential amenities in accordance with Policies D1 and D2 of the Maldon District Approved Local Development Plan, the provisions and guidance of the National Planning Policy Framework.

- 8 All loading / unloading / reception and storage of building materials and the manoeuvring of all vehicles, including construction traffic shall be undertaken clear of the public highway.

REASON To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with policies D1 and T2 of the Maldon District Approved Local Development Plan.

INFORMATIVE

1. If further plant, other than the kitchen extraction, is to be installed; then once specified all noise emissions and proposed location should be assessed by a suitably qualified person to ensure the plant limit level can be achieved.