



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
20 SEPTEMBER 2023**

Application Number	23/00670/FUL
Location	7 High Street, Burnham-on-Crouch, Essex, CM0 8AG
Proposal	Change of use of ground floor front room from E(a) retail to C3 (residential).
Applicant	Mr and Mrs Paul Lee
Agent	Mr Ray Farrell
Target Decision Date	7 th September 2023
Case Officer	Lisa Greenwood
Parish	MAYLAND
Reason for Referral to the Committee / Council	Member Call In – Councillor D O Bown Policies S1 (Sustainability) and S2 (Design)

1. RECOMMENDATION

REFUSE for the reasons as detailed in Section 8 of this report.

2. SITE MAP

Please see below.

Harbour Antiques
7 High Street



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Maldon District Council 100018588 2014



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Scale: 1:625

Organisation: Maldon District Council

Department: Department

Comments: Burnham-on-Crouch

Date: 22/08/2023

MSA Number: 100018588

3. SUMMARY

3.1 Site description

- 3.1.1 The application site is located to the south west of High Street, within the Town Centre boundary and Conservation Area of Burnham-on-Crouch. The site comprises a retail use at ground floor level, 'Harbour Antiques', with a residential use above and to the rear of the ground floor. The private amenity space to the rear is used as a tea garden, ancillary to the antiques shop and was granted planning permission under application reference 07/00641/FUL. Access to the site is at High Street.
- 3.1.2 In planning policy terms, as stated, the site is within the Town Centre boundary and Conservation Area of Burnham-on-Crouch, where an Article 4 Direction applies, preventing certain exterior works under Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995. The site is also within a Retail Provision – Town Centre Area, where Policy E2 of the Local Development Plan (LDP) applies. In accordance with Policy EC.3 of the Neighbourhood Development Plan, the site is also within a Primary Retail Area, between no.51 and 151 on the southern side of High Street.
- 3.1.3 The site is neighboured to the east, west, and north (beyond the highway) by retail uses at ground floor level. To the south of the site is the River Crouch. The site is entirely within Flood Zone 3.

3.2 The Proposal

- 3.2.1 Planning permission is sought for the change of use of ground floor front room from E(a) retail to C3 (residential). The operation of the tea garden has now been discontinued and there are no external alterations proposed.
- 3.2.2 It is understood that the applicant wishes to change the use of the ground floor from retail to residential owing to ill health. Confidential information has been provided to the Local Planning Authority (LPA) in this regard.
- 3.2.3 This application is a re-submission of a previously refused application (planning reference 23/00181/FUL). The applicant has chosen to submit additional flood risk information. The previous application was refused planning permission on two grounds; the first, the principle of development was found to be unacceptable, and the second was owing to the fact that the site is in Flood Zone 3 and the proposal was not supported by a Flood Risk Assessment (FRA). It was therefore not possible for the LPA to accurately assess the flood risk resulting from the proposed change of use.

3.3 Conclusion

- 3.3.1 The application site is located in a Primary Retail frontage, where changes of use at ground floor level are resisted. The site is also located within Flood Zone 3, and it is considered that this type of development would be better located elsewhere within the District. Whilst a FRA has been provided, this has been reviewed by the Environment Agency (EA) and is considered to be insufficient and a technical objection has been received in this regard. For the reasons stated, it is recommended that the application is refused planning permission.

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) (NPPF) 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
- 55-59 Planning conditions and obligations
- 60-80 Delivering a sufficient supply of new homes
- 104-113 Promoting sustainable travel
- 119-125 Making effective use of land
- 126-136 Achieving well designed places
- 152-173 Meeting the challenge of climate change, flooding and coastal change
- 170-183 Conserving and enhancing the natural environment
- 189-217 Conserving and enhancing the historic environment

4.2 Maldon District Local Development Plan (2017)

- S1 Sustainable Development
- S2 Strategic Growth
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change and Environmental Impact of New Development
- D3 Conservation and Heritage Assets
- D5 Flood Risk and Coastal Management
- E2 Retail Provision
- H4 Effective Use of Land
- N1 Green Infrastructure Network
- N2 Natural Environment and Biodiversity
- T1 Sustainable Transport
- T2 Accessibility
- I1 Infrastructure and Services
- I2 Health and Wellbeing

4.3 Relevant Planning Guidance / Documents:

- Planning Practice Guidance (PPG)
- Maldon District Design Guide Supplementary Planning Document (SPD)
- Maldon District Specialist Needs Housing SPD (2018)
- Maldon District Vehicle Parking Standards SPD
- Maldon Retail Study (2015)
- Burnham-on-Crouch Neighbourhood Development Plan (2017)
- Planning (Listed Buildings and Conservation Area) Act 1990

5. MAIN CONSIDERATIONS

5.1 Principle of Development

5.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004), Section 70(2) of the Town and Country Planning Act 1990 (TCPA1990), 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 the Maldon District Approved LDP 2014-2019.

5.1.2 The largest retail areas in the District are located at Maldon, Heybridge and Burnham-on-Crouch. Burnham-on-Crouch's provision is located on the High Street, with additional units near the railway station.

5.1.3 Policy E2 of the LDP (retail) states that:

"Within the designated primary retail frontage, ground floor retail units will be protected for A1 Retail Uses. Other types of uses will normally be resisted unless it can be demonstrated that they:

- 1) Will not have a detrimental impact on the function, vitality or viability of the Primary Retail frontages; and
- 2) Will not create a new continuous frontage of three or more units of non-A1 Uses."

5.1.4 The Neighbourhood Development Plan (NDP) for Burnham-on-Crouch was 'made' in July 2017. Policy EC.3 – Retention of Retail Uses of the Burnham-on-Crouch NDP states that:

"A Primary retail area is defined between the Cinema to No.40 High Street (northern side) and No. 51 to 151 High Street (southern side).

Insofar as planning permission is required within the primary retail area proposal for the change of use from retail to other uses will not be supported."

5.1.5 The pre-amble to this Policy acknowledges that "as the Town develops and residential demand continues to increase, it will be important to develop and enhance strategic pockets of retail along the High Street – for example to maintain ease of access for local residents in walking distance of the main population centres and car parks...Policy EC.3 recognises that there is a particular concentration of retail units in High Street itself. These sit at the heart of the town and its impressive conservation area. The retention of a strong core of retail units is vital to the economic and social well-being of the Town and its inherent sustainability".

5.1.6 The proposal seeks to change the use of the ground floor unit from retail to residential. The application site is in a prominent location, within a Primary Retail frontage, and is neighbored by retail uses. It is considered that the loss of this use, even for a temporary period, would impact the function, vitality and viability of the town, resulting in an inactive frontage at High Street. Once lost, it could also be difficult to re-instate the original use once a change was made and this could set a precedent. This is contrary to Policy E2 of the LDP, and Policy EC.3 of the Burnham-on-Crouch NDP.

5.1.7 The supporting information submitted refers to Policy H3 of the LDP and the Maldon District Specialist Needs Housing SPD (2018).

- 5.1.8 Policy H3 (Accommodation for 'Specialist' Needs) states that the Council will support and enable the provision of housing to meet specialised needs in the District where this is consistent with the Council's current strategic requirements, and where there is a clearly identified need that cannot be addressed elsewhere in the District.
- 5.1.9 With regard to conversions, the SPD acknowledges that with the number of people with specialist needs wishing to stay in their own home increasing, the development of annexes, extensions and conversion of buildings within the grounds of an existing dwelling to provide self-contained residential accommodation is becoming more common. Policy H4 of the LDP is the key policy against which such applications will be assessed.
- 5.1.10 It is not considered that the proposal meets this criterion. The proposal seeks to convert 1 no. room, as opposed to a building in the grounds of an existing dwelling. With regard to Policy H3, it is the Council's current strategic requirement that the application site will remain as part of a Primary Retail frontage. As set out in section 5.6 of this report, the site is also within Flood Zone 3 and the change of use would increase the vulnerability classification to a more vulnerable use. By virtue of the location of the application site within a Primary Retail Frontage and within Flood Zone 3, and the nature of the change proposed (one room, as opposed to a building) the need could be addressed elsewhere in the District. An objection has been received from the EA, and the applicant has chosen not to submit any further information in this regard to attempt to overcome this. Whilst the personal circumstances of the applicant are considered, even if a condition could be imposed to ensure the change in use was temporary, this would not provide the LPA with assurance that this was the safest location for this type of development. Such a change would be better located in an area that was not at risk of flooding.
- 5.1.11 For the reasons stated, the proposal has been found to be contrary to Policies E2, H3, H4, S1 and D5 of the LDP, Policy EC.3 of the Burnham-on-Crouch NDP, and the policies and guidance contained in the NPPF. The principle of development is therefore unacceptable.

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. Similar support for high quality design and the appropriate layout, scale and detailing of development is required by Policy D1 and H4 of the LDP and is found within the Maldon District Design Guide (2017) (MDDG).
- 5.2.3 A successful development needs to integrate well with the existing streetscene. Visual cues such as rhythm, proportions and alignments taken from adjacent buildings should be used to inform the design of the development.
- 5.2.4 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. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the Council must have special regard to the desirability of preserving the listed building or its setting or

any features of special architectural or historic interest which it possesses. Similarly, Policy D3 of the approved Maldon District LDP states that development proposals that affect heritage assets must preserve or enhance its special character, appearance, setting and any features and fabric of architectural or historic interest. Where a proposed development would cause less than substantial harm to the significance of a designated heritage asset, this harm will be weighed against the public benefits of the proposal, including securing its optimum viable use.

- 5.2.5 There are no external changes proposed to ground floor front room. The application has been reviewed by the Council's Conservation Officer, who raises no objection. It is therefore considered that the proposal is acceptable in this regard.

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 MDDG.
- 5.3.2 The application site is bordered on both sides by a retail use at ground floor level. As there are no external changes proposed, it is not considered that the proposal would result in a loss of residential amenity to any neighbour. In terms of noise, the proposal has been reviewed by the Council's Environmental Health Officer, who raises no objection.

5.4 Access, Parking and Highway Safety

- 5.4.1 Policy T2 of the LDP aims to create and maintain an accessible environment, requiring development proposals, inter alia, to provide sufficient parking facilities having regard to the Council's adopted Parking Standards. Similarly, Policy D1 of the LDP seeks to include safe and secure vehicle and car 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 proposal seeks to increase the number of formal bedrooms at the site from 1no. to 2no. In accordance with the Council's Parking Standards, 2no. parking spaces must be provided on site to serve dwellings with 2 - 3no. bedrooms. No additional parking is proposed. However, the site is within a town centre location, and has good access to sustainable modes of transport. The proposal has been reviewed by the Highway Authority, who raise no objection. It is therefore not considered reasonable to insist that an additional parking space is provided, and this should not warrant a reason for refusal.

5.5 Private Amenity Space and Landscaping

- 5.5.1 Policy D1 of the approved LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted MDDG SPD advises a suitable garden size for each type of dwellinghouse, namely 50m² of private amenity space for dwellings with 1-2no. bedrooms.
- 5.5.2 The proposal does not seek to alter the size of the private amenity space provided, and the proposal is therefore acceptable in this regard.

5.6 Flood Risk and Drainage

- 5.6.1 Policy D5 of the LDP sets out the Council's approach to minimising flood risk. Policy S1 of the same Plan requires that new development is either located away from high-risk flood areas or is safe and flood resilient when it is not possible to avoid such areas. Policy D5 of the LDP also acknowledges that all development must demonstrate how it will maximise opportunities to reduce the causes and impacts of flooding through appropriate measures such as Sustainable Drainage Systems (SuDS).
- 5.6.2 The site lies within tidal Flood Zone 3 and has a high probability of flooding. Paragraph 167, footnote 55, of the NPPF requires applicants for planning permission to submit a site-specific FRA when development is proposed in such locations.
- 5.6.3 As stated, a previous application for the change of use of the ground floor was refused on the grounds of flood risk. Unlike the refused scheme, this application is supported by a FRA. The EA has acknowledged that the proposal is for change of use of ground floor front room from E (a) retail to C3 (a) residential, which is classified as a 'more vulnerable' development, as defined in Annex 3: Flood Vulnerability classification of the PPG. Therefore, to comply with national policy the application is required to pass the Sequential and Exception Test (s) and be supported by a site-specific FRA. It is the responsibility of the LPA to apply these tests.
- 5.6.4 The EA has reviewed the FRA and considers it does not comply with the requirements set out in the PPG. It does not, therefore, provide a suitable basis for assessment to be made of the flood risks arising from the proposed development. In particular, the FRA fails to:
1. Provide Finished Floor Levels (FFL) above the design level with climate change.
 2. No topographic survey has been submitted."
- 5.6.5 The EA provided advice as to how the objection could be overcome, but stated, "if this cannot be achieved, we are likely to maintain our objection to the application".
- 5.6.6 Following an email received to the LPA from the agent for the applicant (dated 21 August 2023), it is understood that the applicant / agent has spoken with the EA, and that the principal information sought is the floor level of the application site in relation to the Newlyn Datum, so that an assessment can be made as to what would be the flood level in the event of a breach of the sea wall coinciding with an extreme flood event. The applicant is aware that the site lies within Flood Zone 3, and that such an event would place flood water within the premises until the tide went out. The applicant therefore does not wish to submit any additional information and the objection has not been overcome. It is also not possible to apply the sequential or exception test, as the applicant has failed to submit any information with regard to alternative sites, and it is believed that alternative sites are available within more suitable locations in the District.
- 5.6.7 As the use proposed will increase the vulnerability of the site, the proposal has been found to be unacceptable in this regard.

5.7 Natural Environment and Biodiversity

- 5.7.1 Paragraph 170 of the NPPF states that 'Planning policies and decisions should contribute to and enhance the natural and local environment by; (amongst other things) minimising impacts on and providing net gains for biodiversity'.
- 5.7.2 Strategic LDP Policy S1 includes a requirement to conserve and enhance the natural environment, by providing protection and increasing local biodiversity and geodiversity, and effective management of the District's green infrastructure network.
- 5.7.3 Policy N1 states that open spaces and areas of significant biodiversity or historic interest will be protected. There will be a presumption against any development which may lead to the loss, degradation, fragmentation and/or isolation of existing or proposed green infrastructure.
- 5.7.4 There are no external works proposed, therefore the proposal is considered to be acceptable in this regard.

6. ANY RELEVANT SITE HISTORY

- **23/00181/FUL** – Change of use of ground floor front room from E 9a) Retail to C3 (a) Residential. Application refused.
- **09/05009/DET** – Compliance with conditions notification: Condition 9 of FUL/MAL/07/00641 – refuse storage including details of any bin stores to be provided. Condition cleared.
- **07/00641/FUL** - Change of use of existing garden to tea garden ancillary to existing antique shop. Application approved.
- **98/00621/FUL** - Change of use from residential to shop (antiques & collectables). Application approved.

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Burnham-on-Crouch Town Council	No comments received.	Noted.

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Highway Authority	No objection	Noted, and discussed at Paragraph 5.5 of this report.
Environment Agency	Objection. The FRA does not comply with the PPG and the proposed use is more vulnerable than the existing.	Noted, and discussed at Paragraph 5.6 of this report.

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health	No comments to make.	Noted.
Conservation Officer	No objection.	Noted, and discussed at Paragraph 5.2 of this report.

8. **REASONS FOR REFUSAL**

1. The application site is located within a Primary Retail frontage where changes of use at ground floor level are resisted, as the retention of a strong core of retail units is vital to the economic and social well-being of the Town and its inherent sustainability. The site is also located within Flood Zone 3, a technical objection has been received from the Environment Agency, and this type of use (more vulnerable), would be better located within other areas of the District. The proposal has been found to be contrary to Policies E2, H3, H4, S1 and D5 of the Maldon District Local Development Plan (2017), Policy EC.3 of the Burnham-on-Crouch Neighbourhood Development Plan, and the policies and guidance contained in the National Planning Policy Framework (2021), and the principle of development has been found to be unacceptable.
2. The application site is located within Flood Zone 3 and is classified as 'more vulnerable.' In the absence of a Flood Risk Assessment, it is not possible for the Local Planning Authority to accurately assess the flood risk resulting from the proposed development. The proposal is therefore contrary to Policies S1 and D5 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).