



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**CENTRAL AREA PLANNING COMMITTEE
22 NOVEMBER 2023**

Application Number	23/00943/FUL & 23/00944/LBC
Location	43-45 High Street, Maldon, CM9 5PF
Proposal	Installation of condenser units and full internal alterations/refurbishment.
Applicant	Mr Jon Birtles - Loungers UK Limited
Agent	Elizabeth Lawrence - Turley
Target Decision Date	27 November 2023
Case Officer	Hayley Sadler
Parish	MALDON NORTH
Reason for Referral to the Committee / Council	Member Call In by Councillor N R Miller for the following policy reasons: LDP policy D1 (Design Quality and Built Environment) & D3 (Conservation and Heritage Assets)

1. RECOMMENDATION

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


GRANT LISTED BUILDING CONSENT subject to the conditions as detailed in Section 8 of this report.

2. SITE MAP

Please see below.

43-45 High Street - Maldon
 23/00943/FUL & 23/00944/LBC



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	Organisation:	Maldon District Council
	Department:	Department
	Comments:	Central Area Committee
	Date:	03/11/2023
www.maldon.gov.uk	MSA Number:	100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site is located on the northern side of the High Street within the settlement boundary of Maldon and within the Maldon Conservation Area. The site is occupied by a three-storey mid terrace Grade II Listed Building, with a mixed use of commercial at ground floor level and residential at first and second floor level.
- 3.1.2 Planning permission is sought for the installation of 5No. condenser units contained within a 4 sided acoustic, louvred enclosure and 1No cellar cooler condenser unit contained within a 4 sided acoustic, louvred enclosure.
- 3.1.3 Listed building consent is sought for full internal alterations and refurbishment
- 3.1.4 The proposed condenser units would be located on the side, eastern, elevation towards the rear of the building within the external yard of the application site.
- 3.1.5 The proposed internal alterations and refurbishment would include the installations of a bar, toilets, a kitchen area as well as the installation of an extraction and ventilation system. The ground floor of 43-45 High Street has been vacant for many years, with a Morrison's Local being the last to occupy the space, and previous to that it was a post office. Both of these previous uses would have fallen within Use Class A1 of the Town and Country Planning Use Classes Order 2007 (as amended) prior to September 2020. From 1 September 2020 Use Class A1/2/3 were revoked and replaced with a new Use Class E. Class E combines what were previously retail shops (A1), financial and professional services (A2), and restaurants and cafes (A3). Class E also contains the previous B1 (business) as well as parts of the previous classes of D1 (non-residential institutions), and D2 (assembly and leisure). Planning permission is not required for the change of use between any of these uses. As such, planning permission is not required for the use of the premises for the proposed business.
- 3.1.6 It should be noted that planning permission was granted on 3 June 2013 under reference 12/00609/FUL for a 'Change of use of premises from retail use (A1) into a public house (A4). The applicant was J.D Weatherspoon. Alterations to existing building, including formation of an internal mezzanine floor to accommodate kitchen; provision of mechanical equipment; new hoist in brick shaft to rear elevation; erection of 2m high fence, application of film to windows as indicated on drawings; infill of 2 no. existing windows to rear elevation; re-opening of arched doorway to front elevation and insertion of timber door in same and various internal alterations as indicated on the drawings. This permission has now expired.

3.2 Conclusion

- 3.2.1 The proposed works are acceptable and would not cause harm to the listed building or the character and appearance of the area or the Conservation Area, in accordance with policies and D1, D3 and H4 of the Local Development Plan (LDP), chapter 16 of the NPPF and Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 2023 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 – 58 Planning conditions and obligations
- 119 – 123 Making effective use of land
- 126 – 136 Achieving well-designed places
- 174 – 193 Conserving and enhancing the historic environment

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

- S1 Sustainable Development
- D1 Design Quality and Built Environment
- D2 Climate Change & Environmental Impact of New Development
- D3 Conservation and Heritage Assets

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF) (2021)
- Maldon District Design Guide (MDDG) (2017)
- Maldon District Vehicle Parking Standards SPD

5. MAIN CONSIDERATIONS

5.1 Design and Impact on the Character, Setting and Fabric of the Listed Building

5.1.1 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.

5.1.2 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 MDDG (2017).

5.1.3 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.

5.1.4 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 Local Development Plan 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.

- 5.1.5 The principle of alterations to mixed commercial and residential premises within conservation areas is considered acceptable in line with and subject to compliance with policy D3 of the approved LDP. Nos. 43-45 High Street is a grade II listed building within the Maldon Conservation Area. It was originally built as the Literary and Mechanic's Institute with Corn Exchange to the rear. The building was designed by T. Roger Smith in 1859-60. The Institute occupied the building until 1886 where it held a library of 2000 volumes. The Corn Exchange later became the All Saints Parish Hall and has had various uses since, including the Post Office and, most recently, Morrisons Local. The front elevation is a striking composition in stock brick. It has three storeys of round-arched windows and incorporates short stone columns with carved Corinthian capitals. The centre breaks forward and is topped by a pediment. The building is listed for its architectural and historic interest as a high-quality architect-designed example of a Victorian Literary and Mechanics Institute making a positive contribution to the special character of the conservation area.
- 5.1.6 The Council's Conservation and Heritage Specialist has been consulted on the applications and has raised no objection to the proposed works, recommending conditions if the application were to be approved and has provided the following response:

'The alterations proposed as part of these applications have largely already been completed. It is disappointing that work has been carried out in advance of listed building consent being granted and I certainly do not condone this. Undertaking relevant works of alteration to a listed building without consent risks prosecution or the service of enforcement notices requiring reversal of work if it is deemed that they cause harm to the listed building's significance. I would therefore caution the applicants against pursuing such an approach in the future. However, in my judgement the proposed work has not and will not cause harm to the significance of the heritage assets. I have kept a close eye on the work, making several site visits. Internally, the work has only affected modern fabric, involving the replacement of modern breezeblock partitions, repairs and redecoration. The alterations of internal layout are minor and cause no harm to the building's architectural interest. The modern suspended ceiling introduced by Morrisons Local has been removed from the rear hall, revealing the wonderful decorative roof which will remain exposed; better revealing an aspect of the building's special character. A roof leak during the building's long period of vacancy had resulted in decay to one of the roof trusses which has been sympathetically repaired. Where areas of decorative plasterwork had failed they have been sensitively restored on a like-for-like basis. Such repair work, and much of the internal redecoration work, is of such a minor nature that it does not require listed building consent. It is proposed to install / retain four condenser units externally at ground level against the east elevation of the rear hall. In this position the units are largely screened from public views by the existing boundary wall, causing no harm to the significance of the listed building or the conservation area.'

- 5.1.7 The proposed condenser units would be located on the side, eastern, elevation of the building within the external yard and would not be visible from within the street scene of the High Street.
- 5.1.8 The proposed condenser units would be located approximately 1.6 metres from the boundary with the rear of 47 High Street, located at ground level and separated by a boundary wall. The condenser units would not be visible to the neighbouring

properties to the west as they would be blocked from view by the host building. As such, given the discreet location of the units, there would be no harmful impact on the character and appearance of the host listed building, nor the character and visual amenities of the local area. The proposal in this respect is acceptable having regard to policies D1 and D3 of the LDP

5.2 Impact on Residential Amenity

- 5.2.1 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 (2017).
- 5.2.2 The application site has the residential proprieties of Flats 1 and 2 on the first and second floors of the host building and is bordered by two three storey mixed use Grade II listed buildings, No.47 (Commercial unit at ground floor) to the east and No.41 (Commercial unit at ground floor) and residential flats at first and second floor level to the west.
- 5.2.3 The proposed condenser units would sit on the ground floor. Flats 1 and 2 of the host building occupy the first and second floors above.
- 5.2.4 The Council's Environmental Health Specialist (EHS) has raised no objection in relation to the installation of the condenser units as the submitted noise management plan includes details of the acoustic screening. The EHS have advised that as long as the units are installed as described and the attenuation construction as specified in the submitted plans and supporting information, there should be no loss of amenity to the adjacent residential properties. Whilst not part of the proposed works a concern was raised in relation to odour mitigation from use of the existing metal louvres to the rear of the building which will be used as the kitchen extract. The Agent provided details of the use of the existing internal extract and ventilation system which should mitigate noise and odour from the kitchen and that they would prevent any nuisance from the low-level discharge and intake of the system. The Council's EHS has confirmed there is no objection to the measures proposed. No specific details on deliveries has been submitted only that these would be during normal trading hours. As this information is too vague it would therefore be necessary to impose a condition to detail the day and times of deliveries to protect the amenity of the neighbouring properties. The Agent has confirmed that the applicant is happy to agree to limiting deliveries to the premises between 8am-6pm 7 days a week.
- 5.2.5 Therefore, it is considered that the development would not represent an unneighbourly form of development or give rise to overlooking or overshadowing, in accordance with the stipulations of Policy D1 of the LDP.

6. ANY RELEVANT SITE HISTORY

- **MAL/746/79 & LB/MAL/46/79** – Post office, Approved – 8 October 1979
- **MAL/276/80 & LB/MAL/13/80** – Enlargement to car park at rear, Approved – 6 May 1980
- **MAL/526/82** – Alterations to windows, Approved – 26 August 1982
- **93/00331/FULF** - Small first floor extension and minor elevation alterations, Approved – 26 August 1993
- **93/00722/FUL** - Installation of ATM cash dispenser through existing glazed window reduced in height. New security panel surround, Approved – 10 February 1994

- **93/00723/ADV** - Flat internally illuminated machine sign within cash dispenser surround, Approved – 10 February 1994
- **94/00051/LBC** - Installation of ATM cash dispenser through existing glazed window reduced in height. Security panel infill, Grant Listed Building Consent – 10 March 1994
- **07/00426/FUL** - Retail development including rear extension and internal re-organisation/alterations to include new rear first floor and new front doors, Approved – 19 June 2007
- **07/00427/LBC** - Retail development conversion with rear extension and internal alterations including new rear first floor and new front doors, Grant Listed Building Consent – 19 June 2007
- **08/01038/FUL** - Proposed alterations to existing retail area and conversion of ground floor and upper floor to 5 flats, Refused – 13 November 2008
- **08/01061/LBC** - Proposed alterations to existing retail area and conversion of ground and upper floors to 5 flats, Refused – 13 November 2008
- **09/00549/LBC** - Alterations to ground floor retail area, conversion of first and second floors to form 3 flats and small single storey extension to rear, Grant Listed Building Consent – Grant Listed Building Consent – 21 August 2009
- **09/00550/FUL** - Alterations to ground floor retail area, conversion of first and second floors to form 3 flats and small single storey extension to rear, Approved – 21 August 2009
- **12/00609/FUL** - Change of use of premises from retail use (A1) into a public house (A4). Alterations to existing building, including formation of an internal mezzanine floor to accommodate kitchen; provision of mechanical equipment; new hoist in brick shaft to rear elevation; erection of 2m high fence, application of film to windows as indicated on drawings; infill of 2 no. existing windows to rear elevation; re-opening of arched doorway to front elevation and insertion of timber door in same and various internal alterations as indicated on the drawings, Approved – 3 June 2013
- **12/00610/LBC** - Alterations to existing building, including formation of an internal mezzanine floor to accommodate kitchen; provision of mechanical equipment; new hoist in brick shaft to rear elevation; erection of 2m high fence, application of film to windows as indicated on drawings; infill of 2 no. existing windows to rear elevation; re-opening of arched doorway to front elevation and insertion of timber door in same and various internal alterations as indicated on the drawings, Grant Listed Building Consent
- **14/00103/FUL** - Alterations to existing doorways and windows, the removal of the canopy to the rear elevation, insertion of new louvres to rear elevation, and internal alterations, Approved – 17 April 2014
- **14/00104/LBC** - Alterations to existing doorways and windows, the removal of the canopy to the rear elevation, insertion of new louvres to rear elevation, and internal alterations, Grant Listed Building Consent – 17 April 2014
- **14/00468/FUL** - Minor amendments to approved planning application FUL/MAL/14/00103 (Alterations to existing doorways and windows, the removal of the canopy to the rear elevation, insertion of new louvres to rear elevation, and internal alterations), Approved – 3 July 2014
- **14/00469/LBC** - Minor amendments to approved planning application LBC/MAL/14/00104 (Alterations to existing doorways and windows, the removal of the canopy to the rear elevation, insertion of new louvres to rear elevation, and internal alterations), Grant Listed Building Consent – 3 July 2014
- **14/00492/ADV** - Formed individual lettering fixed to runner bar, internally illuminated. Formed aluminium projection sign with steel gibbet, externally illuminated. Formed aluminium hung sign with steel support bars, non-

illuminated. Various internally applied vinyl window graphics, Approved – 21 August 2014

- **14/00822/LBC** - Formed individual lettering fixed to runner bar, internally illuminated. Formed aluminium projection sign with steel gibbet, externally illuminated. Formed aluminium hung sign with steel support bars, non-illuminated. Various internally applied vinyl window graphics, Grant Listed Building Consent – 23 January 2015
- **23/00746/ADV (Undetermined)** - Advertisement consent for 1No. externally illuminated fascia sign, 1No. externally illuminated hanging sign, 1No. internally illuminated menu board and lighting, (For consideration on this committee agenda)
- **23/00747/LBC (Undetermined)** - Installation of signage, changes to external materials including the repainting of doors and windows and glazing alterations. (For consideration on this committee agenda)

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 - These works are retrospective and result in material changes in the use of the premises to a restaurant, causing noticeable harm to the quality of life for neighbouring residents.	The premises already benefits from Class E use and this application is for the installation of the condenser units and the internal alterations of the building. As such there is no change of use involved with the proposal
	The proximity of the restaurant to these residents and its operating hours, which are not considerate of the neighbourhood, lead to noise and disturbance.	The premises is located within the High Street that already has other restaurants and bars. Furthermore, as stated above, the use benefits from deemed consent (planning permission not required as no development is involved) under the Town and Country (Use Classes) Order 2007 (as amended)
	The submitted information is insufficient to demonstrate that measures to mitigate noise and disturbance have been adequately planned as referred to in Environmental Health Specialist's response regarding concerns about fugitive odours and noise	Details have been provided by the applicant and the Environmental Health Specialist has raised no objection

Name of Parish / Town Council	Comment	Officer Response
	from the kitchen extract.	
	Additionally, the retrospective works harm the listed building's heritage asset, as well as the character and appearance of the Conservation Area. Therefore, these actions are contrary to Policies D1 and D3 of the Local Development Plan and the National Planning Policy Framework.	The Council's Conservation & Heritage Specialist has raised no objection to the proposed works. This is set out at 5.1.6 – 5.1.8 of this report

7.2 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Conservation and Heritage Specialist	No objection and no recommended conditions	Noted
Environmental Health Specialist	No objection subject to recommended conditions	Noted – refer to section 5.2 of report

7.3 External Consultees

Name of External Consultee	Comment	Officer Response
Cadent Gas	No objection subject to recommended informative	Noted

7.4 Representations received from Interested Parties

7.4.1 **Nine** letters were received **objecting** to the application and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
Increase in noise from within the premises and those coming and going	This application is solely for the installation of condenser units and internal alterations
Where are staff going to park as Bull Lane to the rear is a single track road	
Increase in traffic and congestion	
Loss of privacy from tables located on the mezzanine floor internally	
Smell from food waste and preparation	
Increased overlooking from large windows	
Bull Lane is unsuitable for large vehicles	
The building is only single glazed	
Insufficient information has been	The applicant has provided the details

Objection Comment	Officer Response
received in relation to noise and disturbance mitigation	of how this will be managed and the procedure for reporting an issue

8. **PROPOSED CONDITIONS**

GRANT PLANNING PERMISSION subject to the following 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: Site Location Plan, LNG4165.BP, LNG4165.01, LNG4165.02, LNG4165.03A, LNG4165.04B, LNG4165.10A, L241-01, OC Innovations Odour Control Spec Sheet, Loungers Maldon – Operations and Noise Management Plan
REASON To ensure that the development is carried out in accordance with the details as approved.
- 3 The materials used in the construction of the development hereby approved shall be as set out within the application form/plans hereby approved.
REASON In the interest of the character and appearance of the area in accordance with Policy D1 of the approved Local Development Plan and guidance contained within the National Planning Policy Framework.

INFORMATIVE

Cadent Gas Ltd own and operate the gas infrastructure within the area of your development. There may be a legal interest (easements and other rights) in the land that restrict activity in proximity to Cadent assets in private land. The applicant must ensure that the proposed works do not infringe on legal rights of access and or restrictive covenants that exist.

If buildings or structures are proposed directly above the apparatus the development may only take place following diversion of the apparatus. The applicant should apply online to have apparatus diverted in advance of any works, by visiting cadentgas.com/diversions

Prior to carrying out works, including the construction of access points, please register on www.linesearchbeforeudig.co.uk to submit details of the planned works for review, ensuring requirements are adhered to.

GRANT LISTED BUILDING CONSENT subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this consent.
REASON To comply with Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site Location Plan, LNG4165.BP, LNG4165.01, LNG4165.02, LNG4165.03A, LNG4165.04B, LNG4165.10A
REASON To ensure that the development is carried out in accordance with the details as approved.