

**REPORT TO DEVELOPMENT MANAGEMENT COMMITTEE
11 November 2020**

REFERENCE: HW/FUL/20/00387

OFFICER: Nicholas Fu

APPLICANT: Dangira Jankauskaite

LOCATION: 3 - 4 The Rows
Harlow,
Essex

PROPOSAL: Change of use from sui generis (Nightclub) to Class E
(Restaurant) (amended description)

LOCATION PLAN



REASON BROUGHT TO COMMITTEE:

Two objections have been received which are contrary to the officer recommendation

Application Site and Surroundings

The application site is located within Town Centre North and within the Town Centre and Edge of Town Centre Redevelopment Area, and is a secondary shopping frontage, according to the Adopted Replacement Harlow Local Plan Proposals Map 2006.

The application site relates to the ground floor premises 3 - 4 The Rows. The premises has its main frontage onto The Rows, and a rear access onto North Gate. The applicant indicates that the application site, including the first floor space, was most recently used by a nightclub. The first floor space has a separate access.

Details of the Proposal

Planning permission is sought to change the use of the unit from a sui generis use (Nightclub) to Class E (Restaurant). The proposed opening hours are 11:00am to 02:00am Monday to Sunday. The proposal also includes the installation of ventilation extraction system with external duct to the rear of the building.

During the submission of this application, the proposed use class was A3 (restaurant). On 1st September 2020, the Government introduced a new 'Commercial, business and service' use class (Class E), which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3), offices (B1) use classes and other uses which are suitable for a town centre area. The description of the current application is therefore subsequent amended to reflect this new use class order.

RELEVANT PLANNING HISTORY

There is no relevant planning history for this site. A change of use application to Restaurant and Takeaway at the neighbouring premises was granted planning permission earlier this year.

Application reference: HW/FUL/20/00256

Location: 2 The Rows, Harlow, Essex, CM20 1BX

Proposal: Change of use A2 (Betting Shop) to Mix A3/A5 (Restaurant & Hot Food Take-away), and the installation of ventilation extraction system including external duct (Amended description)

Status: Granted Planning Permission

Date: 27 August 2020

CONSULTATIONS

Internal and External Consultees

HDC - Regeneration Team

None Received.

HDC - Environmental Health Services

No Comment to make

HDC - Cleansing and Environment

None Received.

Neighbours and Additional Publicity

Number of Letters Sent: 46

Total Number of Representations Received: 2

Date Site Notice Expired: N/A

Date Press Notice Expired: N/A

Summary of Representations Received

Two objections were received. They objected to the application as they think there are too many food places within the area, and there is limited provision for night clubs.

PLANNING POLICY

BE1:"Character and Identity" new and extended buildings should relate to their setting to strengthen, enhance, protect or create local character. Permission will be granted for new development providing: it is well connected to and integrated with the wider settlement; the height massing, layout, appearance and landscape makes an appropriate visual relationship with that of the form, grain, scale, materials and details of the surrounding area; building design is specific to the site and its context; it enhances the character, image and perception of the area when highly visible.

RTCS1:"Sequential Approach" proposals for retail and other development which attract large numbers of people, will be determined on a sequential basis by applying the descending order of preference. The need and capacity for development and how well the site is serviced by public transport and by means other than the car will be taken into account. Within areas of large scale new housing development, appropriate provision will be made for local shopping and associated services provided this does not undermine the vitality and viability of the town centre, or any nearby neighbourhood centre or hatch. Development must be appropriate to the function, size and character of the centre concerned.

RTCS3:"Town Centre and Regeneration" permission will be granted for proposals that strengthen the role of the town centre by: improving the range and quality of facilities including retailing, employment, leisure, entertainment and culture to encourage a vital and vibrant town centre environment; increasing diversity, quality and inclusive nature of employment opportunities, leisure, social, educational and cultural facilities, to meet the needs of the local population; managing road traffic and improving access and road safety, while improving facilities for passenger transport users, pedestrians, cyclists and those with special needs and providing car parking where appropriate; enhancing the town centres character and appearance; improving facilities for disabled people, elderly people and carers with babies and children; providing mixed use development including residential or other suitable uses on vacant or underused upper floors; retaining key facilities.

RTCS4:"Town Centre and Regeneration" permission will be granted for proposals that will produce and improvement in the environmental quality of the town centre, or otherwise be of benefit to those working, visiting or residing within the centre.

RTCS5:"Town Centre North" permission will be granted for proposals in Town Centre North for the following types of development: Entertainment and leisure uses; food and drink uses (A3); hotel and conferencing facilities; health and fitness uses; playhouse relocation; refurbishment/relocation of the market; office uses (upper floors) and Shops (A1), providing there would be no loss of key facilities.

RTCS11:"Primary and Secondary Frontages" within the town centre secondary frontage, changes of use to the following will be granted permission: A1 (shops); A2(financial and professional services); A3 (food and drink); D1 (non-residential institutions); D2 (assembly and leisure); Sui Generis (amusement centres), providing the use does not result in the loss of key facilities; does not have a detrimental visual impact on the area; does not cause unacceptable levels of noise and disturbance to surrounding facilities.

T9:"Vehicle Parking" parking shall be provided in accordance with the adopted vehicle parking standards. Justification is required for the amount of car parking proposed on an operational need and, if applicable, a Green Commuter Plan.

Harlow Local Development Plan Pre-Submission Publication (2018)

The new Harlow Local Development Plan is currently being examined by an Inspector appointed by the Secretary of State.

Paragraph 48 of the NPPF sets out that weight may be given to relevant policies in emerging local plans according to the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight may be given); and the degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

The 'Harlow Local Development Plan Pre-submission Publication' (the 'emerging Local Plan') was submitted for examination in October 2018. The Examination started with public hearings which ran between March and April 2019.

In December 2019, the Inspector wrote to the Council with suggested modifications to the emerging Local Plan. The modifications are necessary in order to ensure the Plan is sound, that issues raised during the Examination have been considered, and that the Plan can, therefore, be formally adopted by the Council.

The detailed Main Modifications to the emerging Local Plan, were consulted upon between 12 March and 31 May 2020. On the 8 September 2020: Harlow Council published a new report relating to housing need. A consultation on this report ran for 2 weeks until 25 September 2020. Subject to receipt of the Inspectors report, is anticipated the Plan will be formally adopted by the Council in Autumn 2020.

It is considered, therefore, that the policies within the emerging Local Plan are consistent with the policies in the 2012 NPPF, as it was submitted during the transition period between the 2012 and 2018 NPPF versions. Significant weight can, therefore, be given to relevant emerging Local Plan policies at this stage.

PLANNING STANDARDS

National Planning Policy Framework (NPPF) (2019) - sets out the Government's key economic, social and environmental objectives and the planning policies to deliver them. These policies will provide local communities with the tools they need to energise their local economies, meet housing needs, plan for a low-carbon future and protect the environmental and cultural landscapes that they value. It seeks to free communities from unnecessarily prescriptive central government policies, empowering local councils to deliver innovative solutions that work for their local area.

Supplementary Planning Documents/Current Planning Guidance

The Harlow Design Guide SPD (2011)

The Essex Parking Standards: Design and Good Practice (2009)

Planning Practice Guidance (PPG)

Summary of Main Issues

Policy RTCS5 states that planning permission will be granted for proposals in Town Centre North for entertainment and leisure uses; food and drink uses; hotel and conference facilities; health and fitness uses; playhouse relocation; refurbishment of the market; office uses (upper floors); residential (uses) and shops. This is subject to there being no loss of key facilities that contribute to the range of offer in the Town Centre or that act as anchors or catalysts which assist in retaining or attracting new operators.

Policy RTCS11 states that within the Town Centre secondary frontages, changes of use to the following will be granted permission: Class A1 (shops); Class A2 (financial and professional services); Class A3 (food and drink); Class D1 (non-residential institutions); Class D2 (assembly and leisure); Sui Generis (amusement centres); provided that the use does not result in the loss of key facilities that contribute to the range of offer in the town centre or that act as anchors or catalysts which assist in retaining existing or attracting new operators; does not have a detrimental visual impact on the area and does not cause unacceptable level of noise.

Policy RTCS1 states that development must be appropriate to the function, size and character of the centre concerned, and Policy RTCS4 states that planning permission will be granted for proposals that will produce an improvement in the environmental quality of the Town Centre or will otherwise be of benefit to those working, visiting or residing within the Town Centre.

Policy RTCS3 states that planning permission will be granted for proposals that will strengthen the role of the Town Centre subject to certain criteria being met, including that the proposal should improve the range and quality of facilities; encourage a vital and vibrant town centre environment; increasing employment opportunities and increasing social facilities; providing car parking; enhancing character and appearance of the Town Centre; and retaining key facilities that contribute to the range of offer in the Town Centre or that act as anchors or catalysts which assist in retaining existing or attracting new operators.

The emerging Local Plan is also at a relatively advantaged stage, so significant weight should now be given to the policies contained within the emerging Local Plan. Policy PR6 of the emerging plan states that with the exception of offices at ground floor, Main Town Centre Uses, evening and nighttime uses will be permitted in the Town Centre secondary frontages.

On 1st September 2020, the Government introduced a new 'Commercial, business and service' use class (Class E), which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices (B1) use classes. Uses such as gyms, nurseries and health centres (previously in use classes D1 Non-residential institutions and D2 Assembly and leisure) and other uses which are suitable for a town centre area are also included in the class.

If the application site was last being used as a shop or other services falling within the previous Class A, the applicant would be entitled to convert the application site into a restaurant without full planning permission from the Local Planning Authority in accordance to the new use classes order.

Planning permission is required in this instance as the existing use of the application site is a nightclub, which is a Sui Generis use. It is, however, recognised that through the introduction of the new use classes order, the Government's objective is to bring various commercial business and service together and give businesses greater flexibility to adapt to changing circumstances, prevent vacant units and to respond more quickly to the needs of their communities. This is considered to be a material consideration weighing in favour of the proposed development.

The proposal seeks change of use from sui generis (Nightclub) to Class E (Restaurant). The application site is on a secondary frontage within Town Centre North and within the Town Centre and Edge of Town Centre Redevelopment Area. The proposed restaurant use is supported by Policies RTCS5 and RTCS11 of the ARHLP. The principle of the proposal can therefore be considered acceptable.

The applicant indicates the application site was previously the ground floor part of a nightclub, which is not in operation for some time. No change of use is proposed for the first floor, which means the first floor space could still be used as a nightclub with its separate entrance. It is therefore considered that the proposal would not result in the loss of a key or anchor facility within the Town Centre. The proposal would fill a vacant unit and would pull new visitors to the Town Centre, crucially, to the north of the Town Centre.

Policy PR6 of the emerging Local Plan seeks to ensure there is an appropriate proportion between shops and restaurants on a given frontage. However, the new use class E would render this restriction difficult to enforce. Moreover, the first floor space above the application site will remain as for nightclub use. Whilst objections were received regarding the number of food premises within the area, there is no policy restriction preventing this from happening in this location.

The application site is well-connected and it is anticipated that customers/staff could access the site by foot, public transport or via car (with various car parks available in the Town Centre). Although the application site does not have any designated parking spaces, it is considered that the proposal should not be refused on parking grounds.

The proposal includes the installation of a ventilation extraction system with external duct. The external structure measures approximately 1.8m in height and 0.8m at its widest. It would be rather noticeable on the external wall of the building. There are however other existing installations on this elevation, such as air-condition units and vertical projecting signage. Although the proposed ventilation would not improve the appearance of the application site and the wider town centre, it is on balance not considered to warrant a refusal. A condition is recommended to request the submission of detailed design of the external duct system to ensure its design would be of high quality.

The submitted drawing does not provide any detail for signage. The applicant should be reminded that separate Advertisement Consent would be required for a new signage.

The closest residential use would be Westgate House and other first floor flats within the Town Centre. The proposed restaurant would generate different types of nuisances compared to the previous nightclub use, but these are not considered to be any better or worse. The Council's Environmental Health Officer was consulted and has no objection to the proposal.

The Waste Manager did not comment on the current application, but he also raised no objection to the application at the adjacent unit 2 The Rows. It is reasonable to have a similar conclusion given the similarity between the proposals and the proximity of the locations. Moreover, there are other restaurants and takeaways within the area, including the adjacent restaurant at 1 The Rows and three other takeaways on the opposite side of The Rows. Given

the town centre location of the application site, it is considered that the proposal would be acceptable in terms of neighbour amenity.

It is therefore considered that the proposal broadly complies with policies BE1, RTCS1, RTCS3, RTCS4, RTCS5 and RTCS11 of the ARHLP, and is recommended for approval.

RECOMMENDATION

Granted 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: In order to comply with Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Prior to the commencement of development, hereby permitted, full details of the ventilation extraction system with external duct shall be submitted to and approved in writing by the Local Planning Authority. The proposed external installations shall be in materials and colours similar to the exterior of the host building. Prior to the first use of the premises as a restaurant the approved ventilation, extraction system and any external ducting shall be fully installed and operational. Thereafter, it shall be retained in perpetuity.

REASON: In the interest of visual and the broader amenity of the Town Centre and to accord with Policies BE1 and RTCS4 of the Adopted Replacement Harlow Local Plan, July 2006.

- 3 The development hereby permitted shall be carried out in accordance with the approved plans as shown listed in the table below.

REASON: For the avoidance of doubt and in the interests of proper planning.

Plan Reference	Version No.	Plan Type	Date Received
1136-01	--	Existing Location and Site Plans	13.08.2020
1136-02	--	Proposed Floor and Elevations	13.08.2020

INFORMATIVE CLAUSES

- 1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
- 2 The applicant is reminded that separate Advertisement Consent is required for any external signage.