

**REPORT TO DEVELOPMENT MANAGEMENT COMMITTEE**  
**13 October 2021**

**REFERENCE:** HW/FUL/21/00384

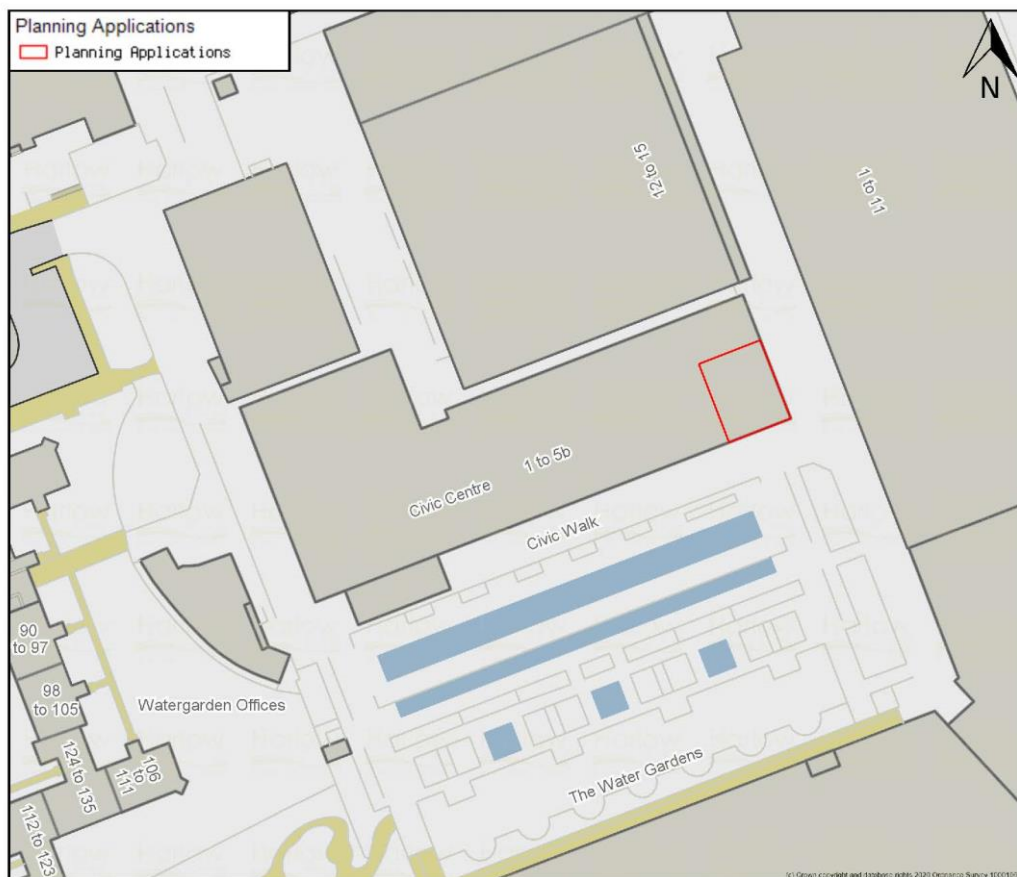
**OFFICER:** John Harrison

**APPLICANT:** Ali Golztas

**LOCATION:** Esquires Coffee Houses  
Civic Walk  
College Square  
Harlow  
Essex  
CM20 1AQ

**PROPOSAL:** Change of use of café to restaurant and bar

**LOCATION PLAN**



**REASON BROUGHT TO COMMITTEE – multiple objections have been received which are contrary to the officer recommendation.**

## **Application Site and Surroundings**

The application property is the Esquires café located underneath the Civic Centre in the south-east corner of the block between the Greggs shop and the Five Guys restaurant. The unit is 12 metres by 15 metres with a shopfront in the southern elevation which has a return along part of the eastern elevation. It is a double-height unit, i.e. there is scope to insert a mezzanine floor and the application indeed proposes this. The Civic Centre above has three main floors and Greggs adjoins this and is a two-storey building. As the Civic Centre projects further forward than Esquires, there is an outdoor seating area in front of the premises protected from the elements by the overhang of the Civic Centre. The Water Gardens are Grade II Listed. The Wild Boar sculpture in the Water Gardens by Elisabeth Frink is also Grade II Listed.

The site is located in a primary frontage.

## **Details of the Proposal**

The proposal is to change the use of the café (Use Class E(a)) to a restaurant and bar (Use Class E (b) and Sui Generis). Floor plans have been submitted with the application and these show a kitchen and food preparation area, toilets including a toilet for disabled people, a serving counter and seating on the ground floor and a bar, toilets, a small storeroom and a seating area at first floor.

Apart from new signage, which presumably would be the subject of a separate application if consent is needed for it, no external alterations to the building's elevations are proposed. The proposal would involve the insertion of a mezzanine floor which would be the bar element of this proposal (Sui Generis), but this would not require planning permission for the physical works. A fume extract duct across the roof of Greggs, terminating at the alley behind the Civic Centre is proposed, but this would not be visible from ground level. The application forms indicate there would be no increase or decrease in the number of people employed on the premises. Although there is a question on the application form asking about opening hours of the business, the forms indicate these are not known at this stage.

## **RELEVANT PLANNING HISTORY:**

There is no relevant planning history.

## **CONSULTATIONS**

### **Internal and External Consultees**

#### **Heritage Officer Place Services**

The proposal would have no adverse impact on the heritage assets. The drawings indicate the front elevation will remain unaltered. The repositioning of the ducting will not be harmful to the heritage assets. Therefore, I raise no objection.

#### **HDC Environmental Health Services**

Adequate details regarding the extract fan have been provided so I have no comments to make

## **Neighbours and Additional Publicity**

Number of Letters Sent: 13

Total Number of Representations Received: 10

Date Site Notice Expired: 6 August 2021

Date Press Notice Expired: N/A

## **Summary of Representations Received**

LOSS OF USE - Loss of only decent coffee shop in Harlow with a lovely community feel used by a range of people, bars only serve a niche market and do not enhance the area or add to the community, amazing venue that is such a good local business, brings members of the community together, supports local charities, we need to support local businesses especially after a year of businesses failing, Harlow does not need more overpriced chain restaurants but small businesses all families can enjoy, such venues are friendly and accessible and friendly to all families, fantastic little local business - should be supporting them not closing them down, fine cafe with occasional local events, another bar is not required, community needs a cafe with some music; has been an incredible cafe and hub for the community; its owners are fantastic, it is a staple of the Water Gardens, food and drink has been wonderful, told events have been good, much loved community asset.

EXTERNAL IMPACTS - Bars encourage drink driving and anti-social behaviour, increased disturbance to neighbouring residential areas, loss of amenity.

## **PLANNING POLICY**

The relevant policies of the adopted Harlow Local Development Plan (HLDP) are:

PL2 Amenity Principles for Development

PR6 Primary and Secondary Frontages in the Town Centre

PL12 Heritage Assets and their Settings

PR11 Evening and Night Time Economy

L2 The Provision and Loss of Recreational, Sporting, Cultural and Community Facilities

IN2 Impact of Development on the Highways Network including Access and Servicing

IN3 Parking Standards

Draft Harlow Town Centre Action Plan (2019)

Retail Core 2 - Water Gardens

## **PLANNING STANDARDS**

National Planning Policy Framework (NPPF) (2021) - 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 Essex Parking Standards: Design and Good Practice (2009)

## Summary of Main Issues

In dealing with this application, it is necessary to consider the loss of the existing use, the acceptability of the proposed use, amenity impact, impact on the listed buildings and servicing and parking.

### The loss of the existing use

It is a basic principle of planning that it generally deals with how land is used, not who uses the land. From the comments submitted on the application, it seems that this café is a facility appreciated by some of the community. This would seem to be an indication of how the existing proprietor has operated the business. In planning terms, however, the property is within the Class E Use Class which encompasses a wide range of uses including retail, offices and gyms or other fitness businesses. The owner of the Esquires business has indicated that because of a rent increase and other cost increases it is no longer viable and running at a loss. Within this context, even if this application were refused, the business would be unlikely to continue trading for very long. Policy L2 of the Local Plan does give the Council an ability to protect “cultural and community uses and facilities”. It is arguable whether the existing use could be considered to be a “cultural and community use”, but even if it is considered to be such, given the fallback rights for the premises’ use for any Class E purpose, it would be unreasonable to refuse the application to prevent the loss of the Esquires business.

### The acceptability of the proposed use

Policy PR6 seeks to protect and enhance the existing retail offer by preventing a proliferation of uses which are not conducive to maintaining the vitality and viability of the Town Centre. This policy refers to uses within the Use Classes Order 1987 which has now been replaced by the Use Classes Order 2020.

Though it would presumably also operate during the day, the proposed use can be considered to be a night-time economy use which Local Plan policy PR11 covers. This requires a sequential test if a proposal is outside the town centre – the proposal is located within the town centre so one is not needed. The policy then stipulates it should be proven that the development will have a positive effect on the vitality and viability of the retail centre, its night-time economy and the local area. The use is likely to attract people to the town centre in the evening, so it will have this effect. Finally, policy PR11 refers to legal agreements or conditions to minimise negative impacts. The issue of possible conditions is considered below. In considering the nighttime use, it should be noted that one of the objectives of the Draft Harlow Town Centre Action Plan is the promotion of a nighttime economy in the town centre and this proposal would help achieve that objective.

Although the use must be considered in terms of night-time use, it is also necessary to consider aspects of daytime use. To be economically viable the proposed use would almost certainly have to operate during the day. A restaurant and bar might be used slightly less intensively than the present café so the footfall may be a little bit lower. This slightly lower footfall is not likely to have a significant impact on the overall viability of the town centre and some uses within the Class E Use Class could generate a significantly lower footfall.

As the site is designated as primary frontage under policy PR6 of the HDLP and a key retail frontage in the Town Centre Area Action Plan, the proposed ground floor use would technically be contrary to policy PR6 as there has been no marketing of the existing use for 1 year. However, as there is no condition restricting the change of use and the proposed and existing uses on the ground floor are within Use Class E, planning permission is not required

for this change. However, the mezzanine use as a bar would be contrary to policy PR6 as it would be a Sui Generis Use.

It is considered that given that the ground floor is retained within Class E and that policy PR11 and the HTCAAP supports the evening economy in this location, the minor conflict with PR6 can be outweighed by the Development Plan as a whole. On this basis, the proposed use is considered acceptable.

### **Amenity impact**

The nearest residential properties to the site are in Dad's Place, at the far end of the Civic Centre. There is the possibility that people leaving the premises on foot late at night and heading towards west Harlow could cause disturbance to the residents of Dad's Place and people leaving the premises on foot could also disturb the residents of other flats in the town centre. Such impacts are not considered to be likely to be significantly greater than the impact from existing pubs and other businesses opening late at night in the town centre. The proposal is therefore considered to be acceptable in terms of Local Plan policy PL2. Officers are assessing the need for a condition to manage hours of operation and Members will be duly informed of that recommendation via a supplementary report.

### **Impact on listed buildings**

The proposal is basically a change from one commercial use to another broadly similar use. It does not involve external changes to the premises. The area is a commercial one and the Water Gardens and the Wild Boar sculpture have always been located in a commercial setting. The proposal would not significantly affect the setting of the listed buildings therefore and the Essex County Council Heritage Adviser has not raised any objection on this score. Local Plan policy PL12 protects the setting of listed buildings but this policy would not be breached.

### **Servicing and parking**

The existing servicing arrangements for the property, using the access adjacent to St Paul's Church, would continue to be used. The only element of the proposal which would result in a bigger servicing requirement would be the installation of the mezzanine which doubles the size of the building. This does not require planning permission, however, so could not be used as a justification for objecting to the application. Adequate car parking is provided in the Water Gardens car park and the proposed use is more likely to require evening rather than daytime parking and the car park is less intensively used in the evening. Thus, the proposal is acceptable in terms of Local Plan policies IN2 and IN3.

An objection has been raised on the grounds this use might encourage drink driving. As this issue is dealt with by other legislation, it would not be reasonable to refuse the application for this reason and anyway there is no evidence that the nature of these premises is such that they would be likely to particularly encourage drink driving.

## **CONCLUSIONS**

Much of the objection to this application relates to the loss of the existing business on the site. Given the application property could be used for any Class E purpose, refusing this application would not ensure the preservation of this business. The proposed new use is acceptable as a night-time economy use and residential properties in the town centre would not be significantly affected by the use. The settings of the nearby listed buildings would not be harmed and the

proposal is acceptable in terms of servicing and parking. The application is therefore recommended for approval.

## RECOMMENDATION

**That Committee resolve to 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: 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 cooking in connection with the approved use, the fume extract duct system shown on the approved plans shall be constructed in full accordance with the plans. Thereafter, it shall be permanently retained in position.  
**REASON: To ensure adequate dispersal of cooking fumes to comply with policy PL2 of the Harlow Local Development Plan (2020).**
- 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
	--	Site Location Plan	29.06.2021
A100	--	Existing Ground Floor Plan	29.06.2021
A101	--	Existing Roof Plan	29.06.2021
A102	--	Existing Front & Rear Elevations	29.06.2021
A103	EAST (SIDE)	Existing Elevations	29.06.2021
A104	A-A	Existing Sections	29.06.2021
A105	B-B	Existing Sections	29.06.2021
A106	--	Proposed Ground Floor Plan	29.06.2021
A107	--	Proposed Mezzanine Floor	29.06.2021
A108	--	Proposed Roof Plan	29.06.2021
A109	--	Proposed Front & Rear Elevations	29.06.2021
A110	EAST (SIDE)	Proposed Elevations	29.06.2021

## **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.