

APPENDIX 1

REPORT TO DEVELOPMENT MANAGEMENT COMMITTEE
12th April 2023

REFERENCE: HW/FUL/23/00015

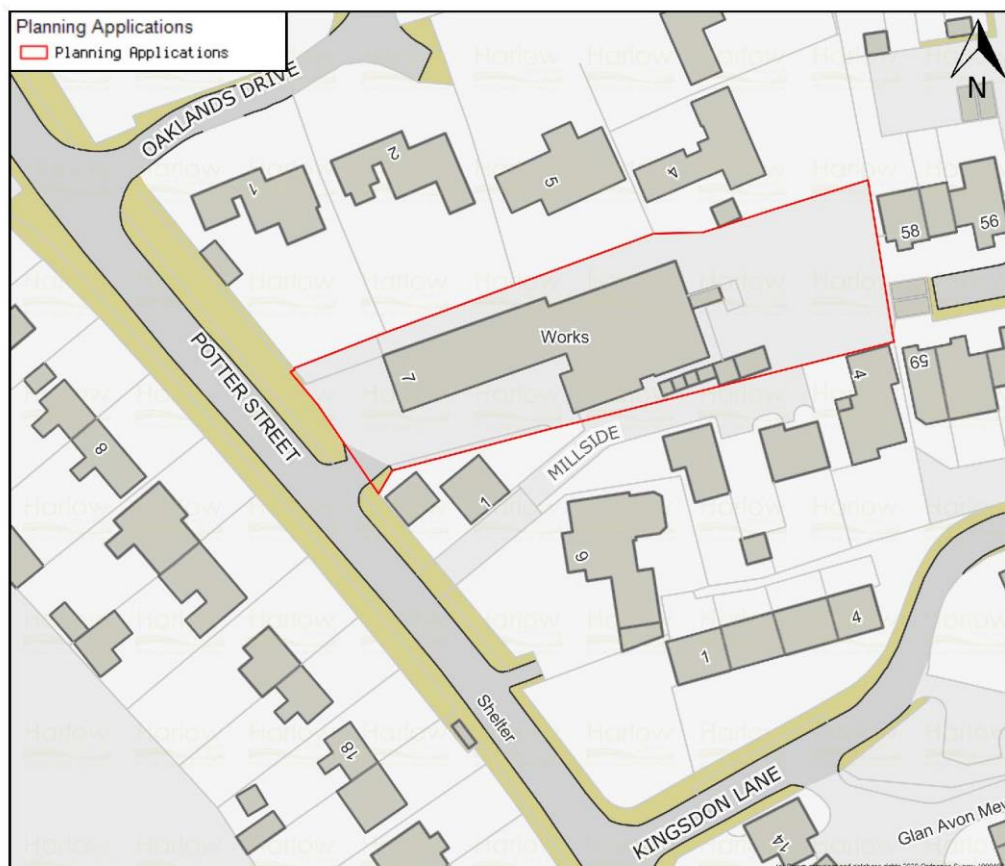
OFFICER: Mick Gavin

APPLICANT: M B Yildiz

LOCATION: 7 Potter Street
Harlow
Essex
CM17 9AD

PROPOSAL: External works (part implemented) consisting of partial demolition and realignment of south elevation with insertion of 2 new windows and new door, new sliding entrance doors and new window to west (front) elevation, internal blocking up of some windows, these works to facilitate change of use within Use Class E to a supermarket and office spaces. New side access and rear car parking area created.

LOCATION PLAN



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REASON BROUGHT TO COMMITTEE: The proposal is contentious and there is significant public interest from Councillors and members of the public.

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Application Site and Surroundings

The site is a plot of 0.2ha which stretches back from its Potter Street frontage approximately 90m. A substantial building occupies the site, set back from the road, with a depth of 48m and maximum width of 16m. The building is largely single storey apart from an older two storey element towards its front. This building comprises what appears to be the original building on the site, which is part single, part double storey with weatherboard clad walls and pitched clay tiled roofs. It has a more recent single storey, flat roof addition on its north side, and a more recent large single storey addition to its rear.

The two-storey element of the building has a depth of 6.5m and ridge height of 7.0m. The large single storey addition at the rear has a footprint of 16m by 24m, with a shallow double pitched roof arrangement, maximum height 4.3m.

To the rear of the building is an open area of grass and some boundary vegetation and trees.

Access is gained from Potter Street with the building set back from the frontage by between 9 and 12m. To the front is parking/ hardstanding providing space for 8 cars.

The building was last used by a firm manufacturing scientific equipment which appears to have occupied the site for a considerable period. The lawful use of the site is therefore considered to be light industrial, which falls with Use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended), specifically Use Class E(g) of Class E.

The site is within a residential area, with rear gardens of adjacent houses abutting the site boundary on its north, east and south sides. On the south side are nos.1 -4 Millside. No.1 Millside is a detached chalet style house in a constrained plot which adjoins the application site at its front with a brick wall on the boundary. Nos. 2 and 3 are separated from the boundary by the Millside access to their front. No.4 Millside adjoins the site towards its rear with the side elevation of the house directly adjacent to the boundary.

To the site's east (rear) no.58 Abbeydale Close, a semi-detached house and rear garden, adjoins the site.

To the north are detached houses in Oaklands Drive (nos.1, 2, 5 and 4) with rear gardens adjoining the boundary

The site is not within a conservation area, does not contain a listed building or affect the setting of a listed building.

Details of the proposal

The application seeks permission for various external works to the building, to alter existing openings, insert new openings including new front entrance doors and windows, demolish part of the single storey building on its south side, and lay out new parking to the rear of the building to provide 9 car parking spaces. A new externally illuminated fascia sign is also proposed which is the subject of a separate, concurrent application for advertisement consent (HW/ADV/23/00016).

These works would facilitate use of the building by a retail unit, to occupy the rear single storey part of the building, and new offices, to occupy the front two storey part of the building, as below:

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Retail unit: 391 sqm
Four office units: 161 sqm

The existing windows on the elevations to serve the proposed shop ie. the windows on the rear, south and north elevations of the single storey rear element of the building, would be blocked up internally.

The existing windows on the elevations to serve the offices ie. the windows on the front, north and south elevations of the front part of the building, would be largely retained unaltered.

The proposed opening hours of the shop are Monday to Sunday between 08:00 to 23:00.

Officers are aware that works have been occurring on site. This has involved internal works and externally site clearance, which do not in themselves require planning permission, but also the proposed shopfront doors and glazing have now been installed.

The lawful use of the site is light industrial, which falls within Use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). The proposed uses, retail and office, also fall within Use Class E: retail within Class E a) and office within Class E g). No change of use therefore occurs when a light industrial use changes to a retail use or an office use. In this case however, physical works to the building and to provide parking are required in order to facilitate and enable the proposed uses to be implemented, and given that these are intrinsically linked in this case, the proposed development is assessed in its entirety in this report.

RELEVANT PLANNING HISTORY:

Planning Applications

<u>App Number</u>	<u>Proposal</u>	<u>Status</u>	<u>Decision Date</u>
HW/FUL/22/00515	Proposed subdivision of the office premises into 4 units, the partial change of use from use class E(g) (Offices) into use class E(a) (Retail Shop), including the partial front extension of this unit, and alteration of the elevations.	Withdrawn	11.01.2023
HW/ADV/22/00516	Installation of 1 no. Externally Illuminated Fascia Sign	Withdrawn	11.01.2023
HW/ADV/23/00016	Display of 1 No. Externally Illuminated Fascia Sign for proposed Retail Premises	PCO	
HW/EQ/02/20408	Proposed residential redevelopment.	PRQ	
HW/PL/07/00160	Demolition of Existing Commercial Building and Erection of 3 Detached Houses with Garages	Withdrawn	13.07.2007
HW/PL/07/00267	Demolition of Existing Commercial Building & Erection of 3 No. Detached Dwellings with Garages	Granted	04.10.2007

CONSULTATIONS

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Internal and external Consultees

Essex County Council - Highways

The applicant has not demonstrated to the satisfaction of the Highway Authority that the impact caused by this proposal is acceptable in terms of highway safety with particular regard to the following:

1. The car parking arrangements are constrained and do not provide suitable manoeuvrability for safe and efficient access for them or around the site. This will ultimately lead to conflict between vehicles trying to enter and egress the site, at the site access, which could lead to conflict with vehicles on Potter Street, to the detriment of highway safety.
2. There is no defined pedestrian route to the retail element, which, coupled with the poor parking arrangements is likely to cause conflict between vehicles and pedestrians using the site, to the detriment of pedestrian safety.
3. There is no information submitted as to how the site will provide for safe and efficient servicing and deliveries, without causing an adverse impact on the on-site parking, vehicles entering and egressing the site, and through traffic on Potter Street.
4. The proposal is not providing any cycle parking and is therefore restricting the choice of future users to utilise other modes of sustainable transport, which will increase the demand on the use of the private motor vehicle for all journeys to and from the site.

Therefore, this proposal is contrary to the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011, and policy IN1, IN2, IN3 of the Harlow Local Development Plan 2020, and the NPPF 2021.

Arboricultural Consultant

Works have been undertaken to the south flank of the site and some trees/shrubs will be removed. Due to the presence of trees at the northern side of the building, which are not being removed as part of the proposal it is considered that the proposal does not significantly impact trees and green infrastructure. On balance loss of the trees/shrubs to the south flank is acceptable to allow access to the rear parking. Due to the retention of trees along the northern side, and the additional space needed for car parking next to it which will involve some groundworks, it is necessary for this application to protect trees to be retained. Therefore, the proposed development is acceptable subject to a condition to secure an Arboricultural Method Statement.

HDC - Cleansing And Environment

Inadequate information as to how the applicant would propose waste collections ie. would the applicant manage waste for the whole site or would the retail and office units have separate waste collections. The retail unit would need separate bins because of the waste that is generated.

Access needs to be viable onto the site and if access is not viable, a store would be required within 10 metres of the road. The location would need to be suitable and surfaces

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appropriate. 5 units will require somewhere in the region of 5 bins (frequency dependent) and a store would need about 1.5 standard parking bays, so 2 in practicality.

Neighbours and Additional Publicity

Number of Letters Sent: 38

Total Number of Representations Received: 9

Date Site Notice Expired: 2 March 2023

Date Press Notice Expired: 9 March 2023

Summary of Representations Received

10 objections received which object to the application on grounds summarised below.

Residential amenity

Hundreds of people would be in and out of shop daily, huge increase in footfall and vehicles compared to previous use which was only office hours; concern at late night opening hours; constant unacceptable noise from vehicles and people, car doors slamming at all hours, rubbish collection vehicles, deliveries late night and early morning, air conditioning; no respite open 7 days a week early morning to late night; first floor window has been inserted and new lighting on side of building, neither shown on plans, and results in overlooking of 1 and 2 Millside and 9 Potter Street and light pollution into 1 and 2 Millside.

Light pollution from illuminated sign, shop windows, car headlights

No.1 Millside would have hundreds of people walking past house and garden, would destroy privacy; light shining directly into house and garden of nos. 1 and 2 Millside; would lights be installed on property and rear parking area;

Huge negative impact on adjacent residents quality of life and mental health.

Character of area

Plot is between residential properties in residential area, development out of keeping in area with distinct village character; amounts to new mini shopping area in completely unsuitable location; housing would be more in keeping with local needs and area;

Parking and highways

16 car space inadequate for staff and visitors; more traffic and more pollution

New accessway to rear parking not wide enough for 2 cars to pass, only room for one way traffic, will lead to vehicles backing up in one direction or another, what if blocked by parked car or delivery lorry unloading;

Shoppers will park on road rather than use difficult parking;

Limited on-site space for deliveries, no dedicated delivery area, not enough space to turn on site for delivery vehicles; no room left for waste bins; will result in parking or reversing onto Potter Street;

On street parking will obstruct wheelchair users, mobility scooters, people with prams and visual impairment; will make it difficult for buses to pass; will obstruct visibility for drivers

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emerging from Millside and Oaklands Drive; will cause congestion at access worsening existing problems of cars backing up to Clock Tower roundabout;
No pedestrian walkway, conflict with cars will cause accidents; narrow access point will cause collisions with boundary wall;

This is effectively a new hatch without the necessary highways infrastructure.

Waste

No room left on site for waste bins; likely large amount of food waste would occur which would need frequent collection to prevent smell, especially in summer, rates; what are the waste collection arrangements; litter and rubbish will increase, litter bins and litter management needed.

Need

Facility is not necessary – Prentice Place hatch and Tesco superstore are within walking distance and serve needs of area perfectly adequately; goes against Gibberd's founding principles.

Future use

Concern at possible future uses including takeaway which would cause smell, rubbish noise, anti-social behaviour; any permission should be clear it does not include takeaway and any change of use from offices should have further application and further chance for neighbours to comment; concern there may be plans to add storeys.

Other

Out of sight car park would attract anti-social behaviour; loss of mature trees on boundary which screen neighbours; concern litter will block drainage ditch and cause flooding; sewer crosses 2 Oaklands Drive and concern capacity will be exceeded; likely to be hazardous substances on the site; asbestos is being removed and is a danger which should be dealt with properly.

Officer comment: Most of these issues are addressed in the assessment below. In terms of other matters raised, potential future uses are not considered here as the application relates to only office and retail uses. Any future application for different uses would be advertised for neighbour comment in the usual way. Whether permission was required would need to take account of the provisions of Use Class E. A takeaway use is a sui generis use falling outside Class E and would need a planning application, which would be subject to publicity in the normal way. Anti-social behaviour would be a matter for site management and the police. Issues of sewer capacity would be a matter for building regulations. Asbestos control is a matter for the Health and Safety Executive.

PLANNING POLICY

National Planning Policy Framework (NPPF)

The Development Plan is prepared taking account of the National Planning Policy Framework (NPPF) (as extant at the time - the NPPF is regularly updated; currently in its 2021 version) and the associated Planning Practice Guidance (PPG) (first published in March 2014 but also regularly updated with the NPPF).

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Harlow Local Development Plan 2020

Planning law requires that proposals should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The Development Plan for the site consists of the Harlow District Council (HDC) Harlow Local Development Plan 2020 (HLDP), Essex County Council (ECC) Essex and Southend-on-Sea Waste Local Plan 2017 and ECC Essex Minerals Local Plan 2014.

The part of the Development Plan applicable to the proposal is the HDLP. The HDLP is prepared in the context of the National Planning Policy Framework (NPPF) – see ‘Planning Standards’ below. It is important to note that this is a very recently adopted and therefore ‘up to date’ plan in terms of NPPF Para.12.

Policies of most relevance to the application are:

The relevant policies of the Harlow Local Development Plan 2020 (HLDP) are:

Strategic Policies

SD1 - Presumption in Favour of Sustainable Development

RS1 – Retail Hierarchy

RS3 – Protecting and Enhancing Existing Retail Centres

Development Management Policies

PL1 - Design Principles for Development

PL2 - Amenity Principles for Development

PL3 - Sustainable Design, Construction and Energy Usage

PL7 – Tree and Hedgerows

PL10 - Pollution and Contamination

PL11 - Water Quality, Water Management, Flooding and Sustainable Drainage Systems

PR3 – Employment Development Outside Employment areas and Neighbourhood Service Areas

PR5 - The Sequential Test and Principle for Main Town Centre Uses

L4 - Health and Wellbeing

IN1 - Development and Sustainable Modes of Travel

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

IN3 - Parking Standards

Harlow and Gilston Garden Town (HGGT) is a designated ‘Garden Community’ under the Government’s Garden Communities Programme.

NPPF Para.72 provides the national policy context for Harlow and Gilston Garden Town (HGGT) as a location for *larger scale (housing) development*. Of particular note is the emphasis on; *existing or planned investment in infrastructure, the areas economic potential and the scope for net environmental gains..... plus; clear expectations for the quality of development and how this can be maintained (such as by following garden city principles)*.

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The HGGT (Local Authorities) Partnership has published a series of documents that set the standards expected for developments in the Garden Town and are therefore relevant to this application.

Supplementary Planning Documents (SPD) /Other Guidance

The following local planning guidance is relevant to this application:

HDC Design Guide SPD (2011)

Design Guide Addendum SPD (adopted December 2021).

ECC Development Management Policies (2020 - living document with regular updates).

HGGT Guidance

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The HGGT (Local Authorities) Partnership has published a series of documents that set the standards expected for developments in the Garden Town and are therefore relevant to this application.

The HGGT Vision elaborates on the HGGT's interpretation of garden city principles and sets expectations for high quality development to accord with the principles.

The HGGT Design Guide requires consideration of design quality in a garden city principles sense and draws attention to specific local issues.

ASSESSMENT

Summary of Main Issues

The key issues for consideration in the determination of the application are the following:

- The principle of development;
- Impact on neighbouring amenity;
- Parking and highways;
- Trees
- Flood risk and drainage;
- Contamination
- Other
- Equalities

Principle of development

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At the heart of the NPPF 2021 is a presumption in favour of sustainable development which meets social, economic and environmental needs. One of the core principles in the NPPF is that planning should encourage the effective use of land. Paragraph 119 of the NPPF states that planning decisions should promote an effective use of land while safeguarding and improving the environment and ensuring safe and healthy living conditions.

Policy SD1 of the HLDP reiterates the presumption in favour of sustainable development and sets out that development that accords with the Local Plan will normally be supported, unless material considerations indicate otherwise.

The use as a shop, and internal works not affecting the external appearance, do not require planning permission. However, as set out above substantial external alterations are needed to enable the retail use, and the assessment is of the overall development including the retail use.

Impact on the vitality and viability of town centres

Retail is a Main Town Centre Use. Policy RS1 sets out the hierarchy of retail centres in Harlow which requires that proposed retail development be directed to Harlow Town Centre in the first instance, followed by Neighbourhood Centres and then Hatches. This is the hierarchy in which Main Town Centre Uses should be directed to first before and out of centre sites are considered. Policy PR5 details this policy further in that main town centre uses should be directed to town centres including hatches unless there are no suitable or available sites.

The proposal would be 391 sqm square metres and would be located 500 metres from the Prentice Place Hatch. No sequential test has been submitted to demonstrate that proposed use cannot be located within Prentice Place Hatch. Given the substantial size of the proposed shop and relative proximity of the existing Hatch it is considered likely that the retail outlet would result in harm to the vitality and viability of Prentice Place Hatch. No impact assessment was submitted with the application to demonstrate otherwise. The proposal would therefore conflict with policies RS1 and PR5 of the HDLP.

The location outside any of the centres also means the site is not as accessible or well served by parking in conflict with policy IN1 of the HLDP 2020.

Neighbour amenity

Policy PL2 of the HLDP 2020 policy seeks to preserve the amenity of existing neighbours, in terms of the privacy, light and outlook they currently enjoy.

In terms of impact on the living conditions of neighbours, particularly the occupiers of properties directly adjoining the site, the main impacts would arise from the retail outlet.

The retail floorspace of 391sqm is approximately double the generally estimated average floorspace of a small supermarket such as Tesco Express or Sainsbury's Local. No transport statement accompanied the application to assess likely traffic generation, but clearly a unit of this size would be expected to generate significant visiting traffic movements. Vehicle traffic at the front and rear would result in significant noise and disturbance to adjoining and adjacent neighbours. Neighbours' concerns regarding revving engines, slamming car doors together with general noise associated with people entering and leaving the shop, up to 11pm seven days a week, are shared by officers. Similarly light pollution from the proposed illuminated fascia sign and the large expanse of glazing at the front of the shop to provide entrance doors and full height windows, would cause significant light pollution, added to during night-time hours by car headlights. The fascia sign is dealt with under a separate

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application for advertisement consent (HW/ADV/23/00016), but clearly its impact needs to be included in the overall planning assessment as it is integral to the scheme.

The access route from the road to the rear of the site would run adjacent to nos.1-4 inclusive Millside. Nos.1 and 4 in particular would be severely affected as their rear gardens are separated from the access route only by a boundary wall, meaning cars would be travelling to and from, parking and manoeuvring immediately next to them. For no.1 Millside there would be direct, close and significant light pollution to its rear windows and garden from the immediately facing illuminated fascia sign and light from the largely glazed shop frontage. No.1 is set in a constrained plot between the Millside access road and the brick wall boundary on its north side, which separates it from the application site. This means its rear garden abuts the application site for its whole depth of 17m. The house is oriented such that its rear aspect from its rear windows and rear garden is toward and across the application site. The separation distance between the almost directly facing illuminated fascia sign to the rear wall of the house would 14.5m. The separation distance at an oblique angle to the end of the no.1's rear garden would be approximately 4.0m.

Significant noise and light pollution would be experienced by other neighbours, especially no.4 Oaklands Drive which adjoins the site of the proposed rear parking, and 38 Abbeydale Close adjoining the rear of the site. These impacts would be exacerbated by night-time operation of the retail unit given the area's relatively low night-time ambient noise levels and absence of night-time lighting other than street lamps.

It is considered that these impacts would be extremely intrusive and unneighbourly and are unacceptable pursuant to the requirements of policies PL2 and PL10 of the HLDP 2020.

Parking and highways

At narrowest point the new access way to the rear of the building would be 3.8m wide, which is not wide enough to allow two cars to pass each other. Officers agree with objections received commenting that the lack of passing space is likely to lead to backing up in one direction or another, leading to congestion on the site and at the site access. Visitors' preference will be for parking at the front of the site and on Potter Street instead. This would be likely to lead to on-street congestion adjacent to the entrance with attendant highway safety issues arising from obstruction of the road for cars and other vehicles, and where parking on the narrow footway occurs, as would be likely, problems and safety risks for vulnerable pedestrians.

No provision is made for waste storage and collection. To provide adequate facilities to meet the Council's requirements would require access and turning space on-site for refuse collection vehicles or provision of a store which would occupy two parking spaces.

The comments of the Highway Authority are set out above, detailing objections to the proposal on grounds of constrained car parking and manoeuvring arrangements and unsafe access; lack of separation between vehicles and pedestrians; absence of any detail on servicing arrangements; and absence of cycle parking. The proposal is unacceptable pursuant to policies IN1, IN2 and IN3 of the HLDP 2020.

Trees

Policy PL7 of the HLDP 2020 seeks to ensure that trees are protected, subject to, inter alia, their value and character. The Council's Arboriculture Consultant considers the proposal can be accepted subject to a condition requiring an Arboricultural Method Statement. A condition to secure this could be imposed if the application was to be approved.

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Flooding and drainage

The site falls within Flood Zone 1, the area at lowest risk of flooding. The proposed additional area of hardstanding provided to the rear for parking is relatively small. However, no details of sustainable drainage measures accompanied the application.

Contamination

There is a likelihood that due to the nature of the previous use there may be contamination present at the site. No Phase 1 risk assessment accompanied the application, which the application does not address.

CONCLUSION

It is considered that the proposal would be severely detrimental to the amenities of neighbouring residents due to the greatly increased intensity of pedestrian and vehicular traffic generated at the site, and light pollution arising from the use of the building and associated activity. The proposal would also fail to provide adequate parking and servicing arrangements to the detriment of highway safety and sustainable transport.

RECOMMENDATION

That Committee resolve to refuse permission for the following reasons:

1. No sequential test has been submitted to demonstrate that the use cannot be located within the Town centre, a Neighbourhood Centre or Prentice Place Hatch or other Hatch. Given the size of the proposed shop and its relative proximity of the Prentice Place Hatch it is considered likely that the retail outlet would result in harm to the vitality and viability of that Hatch. No impact assessment was submitted to demonstrate this would not occur. The proposal would therefore conflict with policies RS1, PR5 and IN1 of the HDLP.
2. The proposal would result in significant harm to the amenities of neighbouring residents in terms of noise, disturbance, light pollution and loss of privacy arising from intensification of vehicle and pedestrian traffic at the site and the introduction of light pollution arising from signage, window openings, and vehicle headlights. These impacts would be exacerbated by night-time operation of the retail unit given the area's low night-time ambient noise levels and absence of night-time lighting other than street lamps. The proposal thereby conflicts with policies PL1 and PL10 of the Harlow Local Development Plan 2020.
3. The proposal would be detrimental to highway safety by virtue of inadequate on-site manoeuvring space which would fail to efficiently and safely accommodate parking and servicing resulting in congestion and on street parking to the detriment of the free and safe flow of traffic, and absence of arrangements to segregate vehicle and pedestrian traffic. The proposal thereby conflicts with policies IN2 and IN3 of the Harlow Local Development Plan 2020.
4. No cycle parking is provided and the proposal thereby fails to provide for sustainable modes of transport in conflict with policies IN1 and IN2 of the Harlow Local Development Plan 2020 and the Essex County Council Parking Standards 2009.
5. The proposal fails to demonstrate that the scheme would not harm future users of the site by reason of the lack of a Phase 1 Desktop assessment of contamination risk which addresses the potential impact on the proposed residential sensitive end-use. The proposal

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would therefore be contrary to policy PL10 of the Harlow Local Development Plan, December 2020.

INFORMATIVE CLAUSES

1. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal. However, the issues are so fundamental to the proposal that it is not considered that there is a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.
2. Drawings

Plan Reference	Version No.	Plan Type	Date Received
2204.02 P100 Existing Ground Floor Plan	--	Drawing	20.01.2023
2204.02 P101 Existing First Floor Plan	--	Drawing	20.01.2023
2204.02 P102 Existing Roof Plan	--	Drawing	20.01.2023
2204.02 P103 Existing Elevations	--	Drawing	20.01.2023
2204.02 P104 Proposed Ground Floor Plan	--	Drawing	20.01.2023
2204.02 P105 Proposed First Floor Plan	--	Drawing	20.01.2023
2204.02 P106 Proposed Roof Plan	--	Drawing	20.01.2023
2204.02 P107 Proposed Elevations	--	Drawing	20.01.2023
2204.02 P108 Proposed Sign Details	--	Drawing	20.01.2023
2204.02 P109 Block Plan	--	Drawing	20.01.2023
Site Location Plan	--	Location Plan	20.01.2023