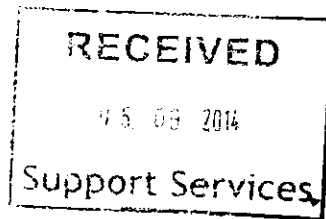


with compliments



## **Dadds Solicitors**

Crescent House, 51 High Street, Billericay, Essex CM12 9AX

**T:** 01277 631811 **F:** 01277 631055 **E:** office@dadds.co.uk

**W:** www.dadds.co.uk **DX:** 32202 BILLERICAY

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05.09.2014

Support Services

Initial Appeals  
The Planning Inspectorate  
PO Box 3035  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 9FG

29 August 2014

Dear Sirs,

**215 LONDON ROAD, RAYLEIGH, ESSEX SS6 9DN  
PROPOSED CHANGE OF USE OF GROUND FLOOR FROM A1 TO A5. INSTALL  
EXTRACT FLUE AND NEW SHOP FRONTAGE, REVISED TRADING HOURS:  
4.00PM TILL 1030PM**

On behalf of our client, this appeal is being lodged following the decision of Rochford District Council to refuse planning permission for the above proposal and we enclose:

- Appeal form complete with full statement of case;
- Application form;
- Location plan;
- Drawings 6/14/A & 6/14/B;
- Consultation response from Rayleigh Town Council raising no objection;
- Copy of the planning officer's report represented to committee; and
- Council's decision notice dated 13 June 2014

We await hearing that the appeal has been validated. A copy of the appeal has been sent to the Council.

Yours faithfully

  
Mr T Ederis for Dadds Solicitors

c.c. Mr Sahin  
Appeals Administration, Rochford District Council

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## PLANNING APPEAL FORM

If you need this document in large print, in audio format or in Braille, please contact our helpline on 0303 444 5000. **To help you fill in this form correctly please refer to the enclosed guidance leaflet "How to complete your planning appeal form".**

**WARNING:** The appeal **and** essential supporting documents **must** reach the Inspectorate within the appeal period. **If your appeal and essential supporting documents are not received in time we will not accept the appeal.**

PLEASE PRINT CLEARLY IN CAPITALS USING **BLACK** INK

### A. APPELLANT DETAILS

See section A of the guidance leaflet. The name of the person(s) making the appeal must appear as an applicant on the planning application form.

Name **MR SATHI N**

Company/Group name (if applicable)

Address **18 OAKLEY AVENUE, RAYLEIGH,**  
**ESSEX**

Postcode **SS6 9TE**

Daytime phone

Fax

I prefer to be contacted by Post Email \*

\*Email address

### B. AGENT DETAILS (IF ANY) FOR THE APPEAL

See section B of the guidance leaflet.

Name

Company/Group name (if applicable) **DADD'S SOLICITORS**

Address **CRESCENT HOUSE, 51 HIGH STREET,**  
**BILLERICA, ESSEX**

Postcode **CM12 9AX**

Your reference

Daytime phone **01277 631811**

Fax

I prefer to be contacted by Post ☒ Email \*

\*Email address

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**C. LOCAL PLANNING AUTHORITY (LPA) DETAILS**

See section C of the guidance leaflet.

Name of the LPA **ROCHFORD DISTRICT COUNCIL**LPA's application reference number **14/00138/COU**Date of the application **22 04 14**

Did the LPA validate and register your application?

Yes ☒ NoDate of the LPA's decision notice (if issued) **13 06 14****D. APPEAL SITE ADDRESS**

See section D of the guidance leaflet.

Address **215 LONDON ROAD, RAYLEIGH, ESSEX**Postcode **SS6 9DN**

Note: Failure to provide the full postcode may delay the processing of your appeal.

Please answer the questions below:

1 Is the appeal site within a Green Belt?

Yes No ☒

2 Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site? If yes, please describe them on a separate sheet.

Yes No ☒**E. DESCRIPTION OF THE DEVELOPMENT**

See section E of the guidance leaflet.

Has the description of the development changed from that on the application form? Yes ☒ No**PROPOSED CHANGE OF USE OF GROUND FLOOR FROM A1 TO A5. INSTALL EXTRACT FLUE, NEW FRONTAGE & REVISED TRADING HOURS**Area of the whole appeal site (i.e. the boundary) in hectares **0.02**Area of floor space of proposed development in square metres **46**

Does the proposal include demolition of non - listed buildings within a conservation area?

Yes No ☒**F. REASON FOR THE APPEAL**

See section F of the guidance leaflet.

The reason for this appeal is that the LPA has (please tick which applies):

1 Refused planning permission for the development described in Section E. 1 ☒

2 Granted planning permission for the development subject to conditions to which you object. 2

3 Refused prior approval of permitted development rights. 3

4 Refused approval of matters reserved under an outline planning permission 4

5 Granted approval of the matters reserved under an outline planning permission subject to conditions to which you object. 5

6 Refused to approve any matter required by a condition on a previous planning permission (other than those in 3 or 4 above). 6

Or

7 Failed to give notice of its decision within the appropriate period (usually 8 weeks) on an application for permission or approval. 7

8 Failed to give notice of its decision within the appropriate period because of a dispute over provision of local list documentation. 8

## G. CHOICE OF PROCEDURE

It is important that you read carefully section G of the guidance leaflet before you complete this section.

There are 3 possible procedures:- written representations, hearings and inquiries. You should consider carefully which method suits your circumstances before selecting your preferred option by ticking the box.

### 1 THE WRITTEN REPRESENTATIONS PROCEDURE

W ✓\*

This is normally the simplest, quickest and most straightforward way of making an appeal. The written procedure is suited to the vast majority of appeals. You should refer to the criteria within the guidance leaflet to help you select the appropriate option.

- \* a) Could the Inspector see the relevant parts of the appeal site sufficiently to judge the proposal from public land? Yes No ✓
- b) Is it essential for the Inspector to enter the site to check measurements or other relevant facts? If so, please explain below or on a separate sheet. Yes ✓ No

TO ACCESS SERVICE ROAD TO REAR AND VIEW THE PROPOSED POSITION OF THE EXTRACTOR FLUE

### 2 THE HEARING PROCEDURE

H ◇

This procedure is likely to be suited to more complicated cases which require detailed discussion about the merits of a proposal. Although you may indicate a preference for a hearing, the Inspectorate must also consider that your appeal is suitable for this procedure. If you are proposing that this appeal follows the hearing procedure you must submit a draft statement of common ground. You must give detailed reasons below or on a separate sheet why you think a hearing is necessary.

- ◇ a) If you are proposing that this appeal follows the hearing procedure you must liaise with the LPA and agree two alternative dates on which a hearing could take place. The dates should not fall on a Monday but should be between the period 7 – 11 weeks from submission of your appeal.

Please note that failure to provide at least one agreed date will result in a date being fixed by the Planning Inspectorate.

- b) Is there any further information relevant to the hearing which you need to tell us about? If yes please explain below. Yes No

### 3 THE INQUIRY PROCEDURE

I ▲

This is the most formal of the procedures. Although you may indicate a preference for an inquiry the Inspectorate must also consider that your appeal is suitable for this procedure. You are required to provide information concerning the number of witnesses and the length of time they need to give their evidence. If you are proposing that this appeal follows the inquiry procedure you must submit a draft statement of common ground. You must give detailed reasons below or on a separate sheet why you think an inquiry is necessary.

- ▲ a) How many witnesses do you intend to call? No. of witnesses
- b) How long do they need to give their evidence?
- c) How long do you estimate the inquiry will last? No. of days  
(Note: We will take this into consideration, but please bear in mind that our estimate will also be informed by others' advice and our own assessment.)

## G. CHOICE OF PROCEDURE (continued)

- d) If you are proposing that this appeal follows the inquiry procedure and have estimated that it will last no more than 2 days you must liaise with the LPA and agree two alternative dates on which an inquiry could open and enter the details below. The opening date should not fall on a Monday or Friday but should be between the period 10 – 17 weeks from submission of your appeal.

Please note that failure to provide at least one agreed date will result in a date being fixed by the Planning Inspectorate

- e) Is there any further information relevant to the inquiry which you need to tell us about? If so, please explain below. Yes      No

## H. FULL STATEMENT OF CASE

See section H of the guidance leaflet to help you decide what to include in your full statement of case.

**Under revised appeal procedures introduced in October 2013 there is no further opportunity to add to your statement of case at a later stage.**

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal?

Yes

No



Do you intend to submit a costs application with this appeal?

Yes

No



SEE ATTACHED

**I. (part one) APPEAL SITE OWNERSHIP  
DETAILS**

This must be completed for all appeals.  
See section I of the guidance leaflet.

We need to know who owns the appeal site. If you do not own the appeal site or if you own only a part of it, we need to know the name(s) of the owner(s) or part owner(s) and be sure that you have told them that you have made an appeal.

You must tick below which of the "certificates" applies.

Please tick **ONE** box only ✓

If you are the **sole** owner of the **whole** appeal site, certificate A will apply:

**CERTIFICATE A**

A

I certify that, on the day 21 days before the date of this appeal, nobody except the appellant, was the owner of any part of the land to which the appeal relates:

OR

**CERTIFICATE B**

B ✓

I certify that the appellant (or the agent) has given the requisite notice to everyone else who, on the day 21 days before the date of this appeal, was the owner of any part of the land to which the appeal relates, as listed below:

Owner's name

Address at which the notice was served

Date the notice was  
served (this must be  
within the last 21 days)

MR M PATEL

146 STATION ROAD  
WESTCLIFFE - ON - SEA  
ESSEX SS0 7SB

29 08 14

OR

**CERTIFICATES C & D**

If you do not know who owns all or part of the appeal site, complete either Certificate C or Certificate D in the guidance leaflet and attach it to the appeal form.

C/D

**I. (part two) AGRICULTURAL HOLDINGS  
CERTIFICATE**

This must be completed for all appeals.  
See section I of the guidance leaflet.

We need to know whether the appeal site forms part of an agricultural holding.  
Please tick either (a) or (b).

Please tick **ONE** box only ✓

a) None of the land to which the appeal relates is, or is part of, an agricultural holding:

A ✓

OR

b) The appeal site is, or is part of, an agricultural holding and the appellant (or the agent) has given the requisite notice to every person (other than the appellant) who, on the day 21 days before the date of the appeal, was a tenant of an agricultural holding on all or part of the land to which the appeal relates as listed below:

B

Please note: If the appellant is the sole agricultural tenant, (b) should be ticked and 'not applicable' should be written under "Tenant's name".

Tenant's name

Address at which the notice was served

Date the notice was  
served (this must be  
within the last 21 days)

## J. ESSENTIAL SUPPORTING DOCUMENTS

See section J of the guidance leaflet.

If we do not receive ALL your appeal documents by the end of the appeal period we will not accept your appeal.

You **must** send the documents listed 1-6 below with your appeal form. Please tick the boxes to show which documents you are enclosing.

- 1 A copy of the original **planning application** sent to the LPA. 1 ✓
- 2 A copy of the **site ownership certificate** and **agricultural holdings certificate submitted** to the LPA at application stage (these are usually part of the LPA's planning application form). 2 ✓
- 3 A copy of the **LPA's decision notice** (if issued). Or, in the event of the failure of the LPA to give a decision, if possible please enclose a copy of the LPA's letter in which they acknowledged the application. 3 ✓
- 4 A **site plan** (preferably on a copy of an Ordnance Survey map at not less than 10,000 scale) showing the general location of the proposed development and its boundary. This plan should show two named roads so as to assist identifying the location of the appeal site or premises. The application site should be edged or shaded in red and any other adjoining land owned or controlled by the appellant (if any) edged or shaded blue. 4 ✓
- 5 Copies of all **plans, drawings and documents** sent to the LPA as part of the application. The plans and drawings should show all boundaries and coloured markings given on those sent to the LPA. Please number them clearly and list the numbers here or on a separate sheet: 5 ✓

DRAWINGS 6/14/A & 6/14/B

- 6 Copies of any **additional** plans, drawings and documents sent to the LPA but which did not form part of the original application (e.g. drawings for illustrative purposes). Please number them clearly and list the numbers here or on a separate sheet: 6

You **must** send copies of the following, if appropriate:

- 7 A copy of the **design and access statement** sent to the LPA (if required). 7
- 8 A copy of a draft statement of common ground if you have indicated the appeal should follow the hearing or inquiry procedure. 8
- 9 Additional plans, drawings or documents relating to the application but **not previously seen by the LPA**. Acceptance of these will be at the Inspector's discretion. Please number them clearly and list the numbers here or on a separate sheet: 9
- 10 Any relevant **correspondence** with the LPA. Including any supporting information submitted with your application in accordance with the list of local requirements. 10
- 11 If the appeal is against the LPA's refusal or failure to approve the **matters reserved under an outline permission**, please enclose:
  - a) the relevant outline application; 11a
  - b) all plans sent at outline application stage; 11b
  - c) the original outline planning permission. 11c
- 12 If the appeal is against the LPA's refusal or failure to decide an application which relates to a **condition**, we must have a copy of the original permission with the condition attached. 12
- 13 A copy of any **Environmental Statement** plus certificates and notices relating to publicity (if one was sent with the application, or required by the LPA). 13
- 14 If the appeal is against the LPA's refusal or failure to decide an application because of a dispute over the local list documentation, a copy of the letter sent to the LPA which explained why the document was not necessary and asked the LPA to waive the requirement that it be provided with the application 14



## K. OTHER APPEALS

See section K of the guidance leaflet.

If you have sent other appeals for this or nearby sites to us and these have not been decided, please give details and our reference numbers.

## L. CHECK SIGN AND DATE

See section L of the guidance leaflet.

Please tick the boxes to confirm that the following actions have been carried out.

- 1 I have completed all sections of the form and the details of the ownership (sections I one and two) are correct to the best of my knowledge.
- 2 I have enclosed **all** the essential supporting documents listed in section J.
- 3 I have sent a copy of this appeal form and relevant documents to the LPA (if you do not we will not normally accept your appeal).
- 4 I have signed and dated the form (unsigned forms will be returned to you).

1 ✓  
2 ✓  
3 ✓  
4 ✓

Signature

Date 29 08 14

Name  
(in capitals)

LADS SOLICITORS

On behalf of  
(if applicable)

MR SAHN



The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 1998. Further information about our Data Protection policy can be found in the guidance leaflet.

## M. NOW SEND

Remember, it is your responsibility to make sure that we **RECEIVE** your appeal form and **ALL** supporting documents within the time limit. See section M of the guidance leaflet

### Send THIS form (not a photocopy of it) to us at:

Initial Appeals  
PO Box 3035  
Temple Quay House  
2 The Square  
Temple Quay  
BRISTOL  
BS1 9FG

Helpline: 0303 444 5000

### Send a copy to the LPA

Send a copy of the appeal form to the address from which the decision notice was sent (or to the address shown on any letters received from the LPA). There is no need to send them all the documents again; send them any supporting documents not previously sent as part of the application. If you do not send them a copy of this form and documents, we may not accept your appeal.

You may wish to keep a copy of the completed appeal form for your records

**When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.**

RECEIVED

05 09 2014

Support Services.

## STATEMENT OF CASE

215 LONDON ROAD, RAYLEIGH, ESSEX SS6 9DN

**PROPOSED CHANGE OF USE OF GROUND FLOOR PREMISES FROM A1 (RETAIL SHOP) TO A5 (HOT FOOD TAKEAWAY). INSTALL EXTRACT FLUE & NEW SHOP FRONTAGE. REVISED TRADING HOURS: 4.00PM TILL 10.30PM**

### Section 1 - Location

The proposal relates to the ground floor of a vacant shop located within a small parade of four shop units with flats above. It lies on the southern side of London Road (A129), fronting a service road that runs parallel with London Road. Whilst the frontage onto the service road has commercial premises and primarily retail uses, the land backing onto and south of the site is residential in character.

The appeal site was formerly a newsagents but is now vacant. The site adjoins a Chinese takeaway with two specialist shop units to the west. To the east is a semi detached house.

There is a petrol station with shop on the north side of London Road close by that stays open until 2200 hours.

### Section 2 - Proposal

Planning permission is sought for the change of use of the ground floor of this vacant shop (A1) to takeaway use (A5). The proposal includes for a modification of the existing shop front, removing the 0.35m deep recess to form an even frontage adjoining the pavement. An external extract flue will be positioned on the western side wall of the two storey projection.

Originally, the proposal sought permission to trade between 1600 to 0100 hours the following day; however on 22 April 2014 trading times were amended and reduced to provide a closing time of 2230 hours. The application was determined on this basis as confirmed by the officer report.

### Section 3 - Relevant Planning History

The small group of shops in which the appeal site is located was granted permission in 1954. There is no further relevant history recorded for the appeal site or the adjoining Chinese takeaway at No 217, consequently there is no planning condition restricting the latter with regard to hours of use. That said it trades between 1700 to 2300 hours Monday to Saturday, closing slightly earlier on Sundays at 2200 hours. It is closed Bank Holidays.

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Also of relevance to this appeal is the site at 99 London Road located at the end of a parade of eight shops. An earlier application (reference 10/00475/COU) to change the use of the ground floor from A1 to A5 was recommended for refusal and refused by decision notice dated 20 July 2010. A closing time of 2300 hours was proposed, seven days a week. The ensuing appeal was dismissed. As the officer report for 215 London Road reveals, this related to the failing of the application to provide adequate off street car parking arising from the earlier subdivision of the site. This was resolved in the subsequent permission granted in September 2011 for a change of use to A5, initially with a closing time of 1900 hours. This has since been extended to 2130 hours under Council reference 12/00362/FUL.

## Section 4 - Relevant Planning Policy / Analysis

The decision notice refers to Policy SAT6 to the saved Rochford District Replacement Local Plan (2006). This is attached as **document 1** for ease of reference. There are five strands to this policy.

- i) The loss of the retail unit is justified because the unit has been vacant for a period of 12 months (minimum).*

The officer report states by reference to the marketing information supplied and the Council's own independent survey that the units has been vacant for over 12 months with reasonable attempts being made to sell / let the appeal premises for retail use but without success.

Of note this is quite distinct from the proposal at 99 London Road where the officer report (attached as **document 2**) in respect of the 2010 application made clear that the site had not been a separate unit for a period of 12 months.

- ii) The use proposed would serve the day to day needs of local residents.*

The officer report for 215 London Road concludes 'the proposal would to an extent reinforce the day to day needs of the local area rather than result in a concentration of alternative uses.....and would not conflict with part (ii) of Policy SAT 6'. This reflects the view expressed in the 2010 report for 99 London Road where it advises that a takeaway could be considered as a local amenity.

- iii) The use proposed would not reduce the quality of life of residents living in the immediate vicinity of the premises, by virtue of noise, disturbance, cooking smells, litter or other factors*

The officer report advises that the proposed takeaway would be likely to attract customers into the evening until the proposed end of trading at 10.30pm each day; moreover customers would be likely to congregate outside the premises to consume their food and may disturb existing residents due to raised voices, the slamming of car doors and revving of engines.

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This paints a contrasting picture to the one presented by the adjoining A5 where this operation is not criticised by third party objectors in such terms despite the fact that it stays open later into the evening. In other words, the suggestion that customers may eat their food outside, slam car doors and so forth is clearly conjecture on the part of the Council. There is simply no hard evidence to support the Council's stance, quite the contrary. On the point relating to the external extract flue, the Council consider that this would not have great visual prominence given its location between the projection to the rear of the buildings. Neither do Environmental Services object to the proposal save that a condition would be required, stipulating that full details of the extraction system be submitted for approval prior to the commencement of the proposed use in order to address cooking odours.

Litter can be controlled by condition. Of note is that during our site inspection, the pavement and road had a clean and tidy appearance. Clearly the existing takeaway does not impact on the frontage area in this regard.

Regarding highways, the rear service road provides access to the two parking spaces for staff to the rear of the appeal site. Unrestricted on street parking is available immediately in front of the parade of shops and in adjoining side streets. The two takeaways will compete for these parking spaces but at times when the other two specialist shops will be closed. Of note is that Essex County Council Highways did not wish to raise objections to either the original or the revised proposed that now offers the earlier closing time of 2230 hours.

- iv) The proposal would not result in the removal of any independent means of accessing the upper floor(s) of the premises or otherwise prevent an effective use being made of the upper floor(s)*

The appeal proposal is compliant.

- v) Where the proposal relates to premises with an existing shopfront, the shop window would continue to be used for display purposes*

The appeal proposal is compliant

## Section 5 - Other Matters

Under the heading '*consultations and representations*', the officer report states that Rayleigh Town Council object to this application as it would be detrimental to the area and an inconvenience to residents. This is at odds with the consultation response available on the Council's planning web page (and attached to the appeal papers) where it clearly states '*based on the information provided to this Planning Committee, the Town Council has no objection to this application*'. The objection may have been true for the original application but not for the amended hours as the consultation response makes clear.

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## Section 6 - Conclusion

In the case of 99 London Road it was accepted that the adjoining shops in that parade generally closed by 1900 hours each evening. The activity in that parade would subside by this time giving nearby residents' reasonable quiet. In those circumstances, the Inspector concluded that the takeaway proposal before him, would need to close much earlier than the 2300 hours proposed to reflect the situation of the activity in the parade generally.

In the case of this proposal at 215 London Road, the adjoining Chinese takeaway trades much later into the evening until 2300 hours on most days and 2200 hours on Sundays. This provides a different context to the one presented to the Inspector at 99 London Road in that although the parade is smaller, there is however a degree of evening activity to around the same time as that proposed. Although giving further intensity to that activity, the officer report concludes this would be reasonable against these circumstances. For this reason the application at 215 London Road was recommended for approval, quite distinct from the position at 99 London Road where refusal was recommended at the application stage.

We contend that the proposed recommendation of approval at 215 London Road provides an accurate planning assessment and for the reasons above, we ask that this appeal be allowed.

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W: [www.dadds.co.uk](http://www.dadds.co.uk) DX: 32202 BILLERICAY



## DOCUMENT 1



## Shopping, Advertisements & Town Centres

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### **POLICY SAT5 – NON-RETAIL USES WITHIN SECONDARY SHOPPING FRONTAGE AREAS**

Within the Secondary Shopping Frontage Areas of Rayleigh, Rochford and Hockley defined on the Town Centre Proposals Maps, the change of use of the ground floor of premises to non-retail use will be permitted provided that all of the following criteria are met:

- i. the use proposed would be appropriate within a Secondary Shopping Frontage Area, and would support its vitality and viability;
- ii. the proposal would not result in an over-concentration of non-retail uses in part of the Secondary Shopping Frontage Area;
- iii. the proposal would not result in the undue dominance of non-retail uses in the Secondary Shopping Frontage Area as a whole;
- iv. the proposal would not result in the removal of any independent means of accessing the upper floor(s) of the premises or otherwise prevent an effective use being made of the upper floor(s); and
- v. where the proposal relates to a premises with an existing shopfront, the shop window would continue to be used for display purposes.

### **NEIGHBOURHOOD AND VILLAGE SHOPS**

9.16 A great many shops and services are scattered throughout residential areas in the District's towns and villages. These perform a vital role in providing convenience goods and services to meet people's day-to-day needs. The location of such units within residential areas means that they can be easily reached on foot, and so meet sustainability objectives. The loss of such units inevitably means that residents need to travel further to find alternative facilities, and would be more likely to drive to them. The protection of local shops and facilities is, thus, crucial to sustainability. Local facilities also provide a lifeline for those without access to public transport, or with mobility problems.

9.17 The Local Planning Authority is committed to retaining existing retail units, except in cases where a lack of demand for the unit can be demonstrated. In such cases, the change of use of the premises to a use that would provide a similar service to local residents may be permitted, subject to the criteria set out below. Amongst other things, it will be necessary to consider whether the new use will be compatible with its location close to residential properties, hot food takeaways being a case in point.





## Shopping, Advertisements & Town Centres

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- 9.18 In previous Local Plans, certain local shopping parades have been identified on Proposals Maps. It is recognised, however, that individual shops spread throughout a neighbourhood, or along a particular street, perform the same function as a parade, and should be subject to the same planning considerations. The policy below relates to all existing shops lying outside the designated Town Centres, but within the boundaries of settlements defined on the Proposals Maps. The Local Planning Authority's policy stance regarding the provision of new retail uses in rural areas (including farm shops) is covered by Policy R10 in the Rural Issues chapter.

### **POLICY SAT6 – NEIGHBOURHOOD & VILLAGE SHOPS**

**Outside the Town Centres, the change of use of the ground floor of existing retail premises to non-retail use will only be permitted if all of the following criteria are met:**

- i. the loss of the retail unit is justified because the unit has been vacant for a period of 12 months (minimum) or because the existing use is not financially viable. In either case, applicants should be able to demonstrate that all reasonable attempts have been made to sell/let the premises for retail use, but without success;
- ii. the use proposed would serve the day-to-day needs of local residents;
- iii. the use proposed would not reduce the quality of life of residents living in the immediate vicinity of the premises, by virtue of noise, disturbance, cooking smells, litter or other factors;
- iv. the proposal would not result in the removal of any independent means of accessing the upper floor(s) of the premises or otherwise prevent an effective use being made of the upper floor(s); and
- v. where the proposal relates to premises with an existing shopfront, the shop window would continue to be used for display purposes.





## DOCUMENT 2

**WEEKLY LIST**

APP. NO 10/00475/COU

CASE OFFICER	TEAM LEADER	HOPS/P M	COND COLOURING		COND MONITORING	Commo CHECKED	POSTED
			COND. NO	PLAN NO			
KS 2/9/10		SS 3/9/10				KS	

**Proposal:** Change of Use from Class A1 to Class A5**Site Location:** 99 London Road Rayleigh Essex**Legal Agreement:** NO**Plan Numbers/Letters/Supporting Statements****Zoning: RES****Parish Council - Rayleigh Town Council****Officer Report:**

Planning permission is sought for a change of use from A1 shop to A5 hot food takeaway

The application site is to the southern side of London Road at the junction with Danbury Road. This application property is the end unit of a parade of eight shops with residential flats above. The application site is actually a side extension to the original property that was constructed under planning consent 05/00121/FUL. This application created a further first floor residential unit and enlarged the retail unit at ground floor. An application was recently approved (09/00736/FUL) to subdivide the existing retail unit to the ground floor into two separate A1 units. The unit which is subject to this application is the ground floor unit created by the inclusion of the two storey side extension. The units front a service road which runs parallel to London Road, but which connects the adjoining residential side streets. The existing flats and shops have rear access from a service road connecting Danbury Road and Grange Gardens. There is some parking space to the rear for some units although the majority of these do not seem to have off street provision. The parade of shops includes a pharmacy, convenience store, butchers, post office, green grocers, hairdressers and an air gun shop.

The site is located within the residential envelope of Rayleigh, but is part of a parade of shops, with the majority of the surrounding area being predominately residential properties.

99 London Road has two previous refused applications (91/00340/COU and 96/00281/COU), both of which proposed a change of use from A1 to A5 hot food takeaway. These applications were refused as it was considered that the use was inappropriate within such proximity to residential properties and if permitted would likely result in an unacceptable degree of noise, disturbance and parking problems, detrimental to the amenities of the occupiers of the adjoining residential area and detracting from the amenity of the area more generally.

The application proposes to change the use of the unit from A1 to A5. The exact type of business is unknown. The only proposed external changes would be the introduction of a new fascia, which does not form part of this application. A ventilation system is also proposed by way of an activated charcoal unit. No further details of this system are provided.

Policy SAT 6 of the Local Plan stipulates that the ground floor existing retail premises to non retail will only be permitted if the retail unit has been vacant for 12 months minimum or because the existing use is not financially viable. The application has been supported by way of a letter from two estate agents. A letter from Hair and Son dated 9th June 2010 shows a schedule of viewings, which indicates that the unit was viewed 12 times between May 2006 and April 2007. These viewings took place 3 years before planning permission was granted to subdivide no. 99 into two separate A1 units. As such the application site was not an independent unit at this time, but part of the existing use of Rayleigh Auto. No further information is given, for example, as to if any offers were made.

Further information is supplied by HC Blake who has been marketing the unit for the past 14 months. This letter details that a lack of interest has been shown in the property, with most enquiries supposedly seeking an A5 use. The letter details a number of changes of uses within the Rayleigh Area, especially within the town centre and concludes that they consider an A5 unit would not imbalance the shopping parade and would replace an A3 unit lost at no. 132 London Road. HC Blake consider there to be a lack of A5 units outside of the town centre and suggest that allowing an A5 unit at the application site would address this deficiency. This letter although detailed, with regard to Rayleigh more generally, does not specify why an A1 use cannot be supported within the unit and why an A5 use is the only viable option.

The unit in question only became separate from the existing A1 use at no. 99 in March 2010 when planning permission was granted to create two separate units. The unit at no. 99 currently known as Rayleigh Auto, has not as far as can be determined been vacant, although the evidence would suggest that the applicant has attempted to sell this unit. The application site has not been a separate unit for a period of 12 months and therefore cannot have been vacant for this time, as before March 2010 this was part of the Rayleigh Auto.

No information, apart from the owners desire to sell, has been submitted regarding the financial viability of the unit/business.

Policy SAT 6 also states that the use proposed should serve the day to day needs of local residents and should not reduce the quality of life of residents living in the immediate vicinity, by virtue of noise, disturbance, smells or litter.

The application seeks an A5 use to be open from 11.30am until 23:00 all days of the week and including bank holidays. It is felt that a takeaway could be considered as a local amenity; however this does not particularly serve the day to day needs of local people, such like a newsagents or post office.

The proposed takeaway would likely increase the vehicle movements to the site and the need for additional parking spaces. There is currently no designated parking for the site, with off street parking only available in front of the parade (within the highway). As such parking is limited. Parking and access to this part of the parade is difficult and can easily become congested. The nearby residential streets are already significantly congested and also narrow such that manoeuvrability within these streets (particularly Danbury Road and Grange Gardens) is somewhat problematic. The existing layout does not provide for an increase in the demand for parking, which is likely to result as a consequence of the introduction of an A5 use. It is felt that an increase in on street parking and vehicle movements as a result of the change of use to a takeaway, throughout the day and into the evening, is considered to be to the detriment of residents of the surrounding neighbouring properties and the amenities they ought reasonably expect to enjoy.

Customers of the proposed use would be much more likely to congregate outside the premises to consume their food and may disturb existing residents due to raised voices and the slamming of car doors and revving of engines especially in the late evening when residents could expect to enjoy a reasonable level of peace and quiet. An increase in activity at the site is also likely to be experienced. Moreover it is considered that the proximity and location of the unit to residential property would have an adverse impact on living conditions due to likely cooking smells. It is felt that the additional activity generated by the proposal including an increase in noise, smells, nuisance and disturbance from callers to the site particularly in the late evening would be detrimental to residential amenity and hence contrary to part iii of Policy SAT 6 of the Local Plan.

Notwithstanding that the application is supported with evidence to suggest that the unit cannot be sold/let as an A1 use, the unit itself has not been vacant for a period of 12 months; furthermore it is felt that an A5 use would be detrimental to the surrounding residential properties by virtue of an unacceptable degree of disturbance, increased levels of noise, litter and increased vehicular movements/parking, detracting from the character and amenity of the area. The Council has already raised concerns with regard to the introduction of an A5 use at the site by way of the refusal of planning applications 91/00340/COU and 96/00281/COU. The application for change of use is consequently considered unacceptable and contrary to Policy SAT6 of the Local Plan and it is consequently recommended that planning permission is refused.

#### **Representations:**

Essex County Highways – No objection

Environmental Services - reports that if Members are minded to approve the application, the following conditions should be attached to any consent granted:

1. A mechanical extraction system shall be provided to the kitchen area in accordance with details submitted to and agreed in writing with the Local Planning Authority. Such agreed works shall be fully implemented prior to the commencement of any use hereby permitted and shall be maintained in the approved form while the premises are in use for the permitted purpose.

Rayleigh Town Council: Objects to the application as the change of use to A5 would increase traffic where the parking situation is already congested.

11 letters have been received in response to the neighbour notification which make the following comments and objections:

- More traffic and parking issues – parking especially is a problem with the existing shops. The yellow lines are disregarded and driveways are blocked. This will occur later in to the evenings
- More noise in the evenings with traffic and pedestrians
- Possibility of anti social behaviour – we already have this when groups of drunks go past after the pubs closes
- Smell of hot food
- Another takeaway not needed in this area
- Property prices devalued
- More litter and even more rats
- The garage that operates from this shop already creates too much inconvenience for neighbours with cars blocking up the road and oil over the pavement.
- Increase in youths gathering outside and potential for vandalism
- Problem with waste food which will continually smell especially in hot weather
- Takeaway would be better positioned on the high street
- Takeaway would encourage more dangerous and erratic parking
- Litter is a problem and will likely to made worse –there is a hygiene aspect to with families and young children using the pavements and grass verges
- Pupils from Swayne park school already congregate around the shops at lunch time – this will be made worse if a takeaway opens
- There are other takeaway outlets which are within walking distance
- Concerns over personal safety
- Many other similar local food outlets are increasingly distributing leaflets on a daily basis offering free delivery with special offers etc, clearly there seems to be a need to obtain a larger business share thus suggesting there is more than adequate local competition available which is a concern for the existing traders to survive

#### **Policies:**

Rochford District Replacement Local Plan (2006)  
SAT6

#### **Conclusions:**

REFUSE

#### **REASONS FOR REFUSAL:**

- 1 The proposed change of use from A1 to A5 given the site's close proximity to residential properties would if permitted result in the detriment of the amenities which neighbouring residents could otherwise reasonably expect to enjoy, by virtue of an increase in noise, smells, nuisance and disturbance from callers to the site, particularly in to the late evening, in addition to an increase in on street parking and manoeuvrability problems, contrary to provisions of policy SAT 6 of the Rochford District Replacement Local Plan (2006).