

Ref. PD9802/LT/HM
[REDACTED]Alison Newland
Planning Services
Tendring District Council
Council Offices
Thorpe Road
Wheeley
CO16 9AJ

15 July 2021

Dear Alison, Sir or Madam,

**APPLICATION UNDER SECTION 73 OF THE TOWN AND COUNTRY PLANNING ACT 199 (AS AMENDED)
VARIATION OF CONDITION 2, 3, 4 AND 5 OF PLANNING PERMISSION 19/00388/FUL DATED 10 FEBRUARY 2020**

We have been instructed by our client, Hawkstone Vale (Clacton) LLP ("the Applicant"), to submit an application to vary Planning Permission Ref. 19/00388/FUL dated 10 February 2020 for the redevelopment of the Old Gasworks on Old Road in Clacton-on-Sea ("the Site"). This application relates specifically to Conditions 2, 3, 4 and 5 and seeks to make minor changes to the approved site layout, as well as conditions relating to the use of the approved units.

The scheme is now fully-let and the changes outlined within this report are a result of the various tenant's requirements.

In support of the application, please find attached a copy of the following information:

- Planning Application Form and Certificates dated 15 July 2021;
- CIL Form dated 15 July 2021;
- Application Cover Letter (this letter)
- Plan Ref. 18-1704/201d "Proposed Site / Block Plan";
- Plan Ref. 18-1704/202c "Proposed Floor & Roof Plans – Trade Units";
- Plan Ref. 18-1704/203b "Proposed Floor & Roof Plans";
- Plan Ref. 18-1704/204 "Proposed Plans and Elevations – A3 Restaurant";
- Plan Ref. 18-1704/205d "Proposed Elevations & Sections"
- Plan Ref. 18-1704/206b "Proposed Site Totem Signs";
- Plan Ref. 18-1704/207 "Boundary Treatment & Service Yard Gate Elevations";
- Transport Technical Note dated 14 July 2021, prepared by MJM Consulting Engineers.

The requisite application fee of £234 has been paid via the Council's online payment system. The application has been submitted via the Planning Portal, with the reference PP-09987552.

BACKGROUND TO APPLICATION

The application relates to the redevelopment of the Old Gasworks Site on Old Road in Clacton-on-Sea. Planning permission was granted for the redevelopment of the Site on 10 February 2020 under Planning Permission Ref. 19/00388/FUL, as follows:

Redevelopment of former Gasworks site comprising a mixed use Trade Counter led development classes A1, A3, A5, D2, B1, B2, B8 and Sui Generis uses plus car parking, landscaping, totem sign, reconfigured access arrangements and associated works.

The permission was granted subject to 39 conditions. Condition 2 set out the list of approved plans and documents, while Conditions 3, 4 and 5 controlled the use of the units as follows:

3. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order) Units A1, A- H, and J-P as shown on Drawing Ref: 18/1704/101p can be used flexibly within Class B1 and/or B2 and/or B8, along with the ancillary retail function associated with a trade counter (for the avoidance of doubt, 20% ancillary retail would be acceptable) and for no other purpose without the approval of the Local Planning Authority.
4. Notwithstanding Condition 3, Units 2 and E shown on Drawing Ref: 18/1704/101p can be used flexibly within Class B1 and/or B2 and/or B8, along with the ancillary retail function associated with a trade counter (for the avoidance of doubt, 30% ancillary retail would be acceptable) and/or the following sui generis uses:
 1. Storage, distribution and sale of hard wall and floor finishes and associated products
 2. Auto centre involving fitting and associated sale of tyres and car parts
5. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order) Units J, K, L, M, N and P as shown on Drawing Ref: 18/1704/101p can be used flexibly within Class A1, A3 and/or A5. Notwithstanding, this the total Class A5 floorspace within Units J, K, L, M, N and P shall not exceed 254 sq. m gross.

The above conditions restricted the use of the units, as shown on the approved Site Plan (Ref 18-1704-101P), as follows:

- Units A1-H within the main trade terrace consisting of 2,607 sq. m., as well as Units J-P facing Old Road consisting of 725 sq.m. fronting Old Road can be used for either Class E(g), B2 and or B8 purposes, as well as for trade counter use, with an ancillary retail function of up to 20%;
- In addition, Units J-P fronting Old Road could be used for retail purposes, including those within Use Class E(a), E(b), with up to 254 sq. m being able to be used for a sui generis take-away use; and
- In addition to Use Class E(g), B2 and B8, Units 2 and E can also be used as a trade counter use with up to 30% ancillary retail floorspace ,as well as for the storage, distribution and sales of floor and wall finishes, or as an auto centre.

In addition, to the uses set out above, the upper floor of the terrace fronting Old Road (725 sq. m), above Units J-P could also be used as a gym (Class D2, now Class E).

There are no conditions restricting the amalgamation of the approved units; the above conditions simply restrict the overall quantum of floorspace.

THE PROPOSED DEVELOPMENT

Layout Changes

The application proposes a number of changes to the approved plans, which are a direct result of the necessary requirements of the proposed tenants for the scheme. These are shown on Plan Ref. 18-1704/201d, and summarised below as follows:

Site / Floor Plan Changes:

- The total number of units have been reduced from 18 to 11;
- The proposed gym at first floor level above Units J, K, M has been omitted;
- The projection/step of Unit J in front of the main elevation to Old Road has been removed;
- The drive-thru unit (Unit P) has been moved south by approximately 1.5m and the drive-thru lane altered to avoid a NG Gas Plant restriction zone’;
- The totem sign has been relocated to avoid a gas restriction zone, and is now located on the south-east corner of the Site at the pedestrian link to the existing part of Waterglade Retail Park. Details of the totem signage have been provided as part of the application submission; and
- The number of parking spaces has increased from 109 to 113 spaces, with 3 additional spaces to be provided in front of unit J and one additional space to be provided to the south of Unit B/C.

Elevations/Section Changes

- All of the units, save for the drive-thru in Unit P and the Tyre Centre unit have been updated to a standard height throughout of 5.5m to the underside of the structure at the eaves;
- The height of the Tyre Centre has been increased to 4m;
- The proposed gym at first floor level has been omitted, and the roof over Units J, K, M facing Old Road has been amended to dual pitch to match units facing the Waterglade Retail Park to the south; and
- The entrance doors, shopfronts and roller shutter doors have been updated to accord with the revised unit layout.

For clarity purposes, a schedule of the approved and proposed floor areas is set out below.

Table 1 – Approved Floor Areas

Unit	Floor Area (sq.m)
1 (Drive-Thru)	167
2 (Tyre Centre)	186
E	372
A1	300
A	252
B	252
C	278
D	233
F	348
G	286

H	286
J	120
K	127
L	127
M	127
N	127
P	97
Gym	725
Total	4,410

Table 2 – Proposed Floor Areas

Unit	Floor Area (sq. m)
P (Drive-Thru)	167
2 (Tyre Centre)	186
B / C	768
D	558
E	372
F	348
G	345
H	220
J	419
K	170
M	140
Total	3,692

The changes to the proposal will result in an overall reduction in floor area of 718 sq. m, and will reduce the total number of units from 18 to 11.

User Restriction Changes

In addition to the proposed changes to the site layout and height of the units, this application also seeks to vary the user restrictions on the units, as set out at Conditions 3, 4 and 5 of the Planning Permission. As well as updating the wording to take account of the new Use Classes Order (Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020) which came into effect in September 2020, the following changes to the current use restrictions are proposed:

- Update the permitted uses to accord with the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.
- Allow up to 1,635 sq. m that could to be used for Class E(a) retail or as a Class E(b) café use across the Site. Under the current permission up to 1,450 sq. m could be used for these uses, which includes 725 sq.m. associated with the gym use, which would now also fall within a Class E use . As such, this application seeks permission for a further 185 sq. m of floorspace that *could* be used for retail / café purposes.

- Allow for one unit to operate as a trade counter with up to 25% ancillary retail sales, where the primary use of the unit is as a trade counter.
- Allow up to 45% of ancillary retail sales within Unit H, where the primary use of the unit is as a trade counter

The remainder of the units will continue to be in accordance with the current permission, namely where they function as a trade counter use, these will continue to be limited to 20% ancillary retail sales, apart from in the Tyre Centre Unit and Unit E, where 30% ancillary sales are permitted.

Taking account of the above, we proposed that Conditions 3, 4 and 5 are amended as follows:

3. *Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order) Units B/C, D, E, F, G, H, J, K and M, as shown on Drawing Ref: 18/1704/201d can be used flexibly within Class E(g) and/or B2 and /or B8, along with the ancillary retail function associated with a trade counter (for the avoidance of doubt, 20% ancillary retail would be acceptable) and for no other purpose without the approval of the Local Planning Authority, save for the following:*
 - a) No more than 1,635 sq. m across all units can be used for Class E(a), Class E(b) and / or sui generis hot food take-away purposes. The hot food take-away use must not exceed 254 sq. m;
 - b) Notwithstanding (a) above, *within one unit only*, where the predominant use is E(g)(iii), B2 or B8, up to 30% of the floorspace can be used for ancillary retail sales under Class E (a) (trade counter use):
 - c) Notwithstanding (a) above, *within one unit only*, where the predominant use is E(g)(iii), B2 or B8, up to 25% of the floorspace can be used for ancillary retail sales under Class E (a) (trade counter use):
 - d) Notwithstanding (a) above, *within Unit H only*, where the predominant use is E(g)(iii), B2 or B8, up to 45% of the floorspace can be used for ancillary retail sales under Class E (a) (trade counter use):
 - e) up to 372sq. m within a single unit can be used for the storage distribution and sale of hard wall and floor finishes and associated products (sui generis use);
4. Notwithstanding Condition 3, the Tyre Centre Unit as shown on Drawing Ref: Ref: 18-1704/201d can be used flexibly within Class B1 and/or B2 and/or B8, along with the ancillary retail function associated with a trade counter (for the avoidance of doubt, 30% ancillary retail would be acceptable) and/or as an auto centre involving fitting and associated sale of tyres and car parts.
5. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order) Unit P, as shown on Drawing Ref: 18/1704/201d can be used for purposes falling within Class E(b), with ancillary sui generis take-away.

PLANNING ASSESSMENT

Layout / Design Changes

The proposals comprise minor changes to the overall design of the already approved scheme, which are a direct result of the necessary requirements for the proposed tenants of this scheme. The overall general layout of the scheme remains as approved, with minor changes to the footprint and height of the buildings. The main change relates to the internal configuration of the units reducing the total number of units from 18 to 11 and removal of the gym at first floor level. We note that the current permission on the site does not include any restrictions on the amalgamation units, therefore, the principle of fewer, larger units would be allowed under the current permission.

The height of the units fronting Old Road will be reduced following the removal of the gym at first floor level, which will bring the height of the terrace into line with the main terrace and will have an overall improvement on the townscape in light of the two story buildings on the opposite side of Old Road. The height of the Tyre Centre unit will be increased from 3.5m to 4m to aid functionality of the unit, and also providing uniformity in terms of height across the Site.

The layout changes also include some minor changes to the car park layout due to the repositioning of the unit entrances and also increasing the total number of car parking spaces from 109 to 113. The application is accompanied by a Transport Technical Note prepared by MJM Consulting Engineers which considers the effect of the proposed changes on the overall scheme, and concludes the following:

- Servicing at the site also remains as per the approved permission previous application, with units served either from the rear service yard, or by smaller vehicles using the parking bays to the front. Vehicle swept path analysis of the revised layout has been undertaken which demonstrates that vehicles can access, egress and manoeuvre within the site.
- The proposals result in an uplift in parking spaces to 113, including an additional disabled bay. Given the level of parking previously permitted at the site, and the similarity of the two schemes, it is considered that the level proposed is sufficient to meet the needs of the site. Further, the demand for parking will be monitored through a Travel Plan.
- Given the removal of the gym use at first floor level, it is considered that the revised proposals are likely to result in a slight reduction in trips to the Site. As such, the conclusions previously reached regarding the trip impact of the proposals remain valid, and that the scheme will not result in 'severe' cumulative impacts on the local highway network.

In the light of the above and given the overall minor nature of the changes proposed, we consider these to be acceptable in policy terms and should therefore be considered favourably.

The Use of the Units

The application seeks to widen the use of some of the units at the Site to take account of the potential tenant line-up for the scheme. These changes will not change the nature of the development as an industrial / trade scheme, rather it will allow for additional ancillary uses in line with tenant demand for the area. Whilst all of the units on both the southern and eastern terraces will retain a flexible use within *Class E(g) and/or B2 and /or B8, along with the ancillary retail function associated with a trade counter (20% ancillary retail)*, this application proposes the following additional flexibility:

- Up to 1,635 sq. m that could be used for retail sales under Class E(a) and / or as a restaurant / café use under Class E(b);
- One single unit can operate as a trade counter with 25% ancillary retail; and
- One single unit (Unit H) can operate as a trade counter with 45% ancillary retail.

The current permission explicitly allows for up to 725 sq. m of retail / restaurant floorspace at the Site. In addition, the approved gym use at first floor level allows for a further 725 sq. m of floorspace, which would now fall under Use Class E. As such up to 1,450 of sq. m of floorspace under the approved scheme could be used as a retail / café use under Class E, meaning that this application relates to an uplift of just 185 sq. m, in addition to the additional 5% of ancillary retail associated with a trade counter use in a single unit. Further, the application will result in an overall reduction on in the total amount of floorspace at the Site of 718 sq. m. Notwithstanding this, the planning matters associated with the increase in floorspace that could be used for retail sales is considered below.

Please note that the other approved uses at the Site are unaffected, including the drive-through restaurant, up to 235 sq. m for use as a hot-food take away, the use of the Tyre Centre, and the sale of floor and wall coverings from a single unit.

Sequential Test

National policy set out in the National Planning Policy Framework (NPPF), local policy set out in the Tendering Local Plan 2007 (Policy ER31) and emerging Local Plan Draft Policy PP2, require a sequential assessment to be undertaken for planning applications for main town centre uses, which are not in an existing centre or in accordance with an up-to-date development plan. The sequential test means, wherever possible, seeking to focus new development within, or failing that, on well located sites on the edge of existing centres. Only if in centre or edge-of-centre sites are not available will out-of-centre locations be appropriate, provided they are acceptable in other respects.

In line with the original planning application, a sequentially preferable site would need to be able to provide the entire floorspace proposed (3,692 sq. m), along with the necessary car parking and servicing arrangements. The Council have already confirmed that the Site is an appropriate location for the type of retail uses proposed through the granting of the original permission, and we are not aware of any sites within Clacton Town Centre that have come forward in the past 18 months since the previous application was approved that would meet the requirements of the proposal. As such, it follows that the sequential test remains satisfied.

Furthermore, as demonstrated in the original application, not only is the Site allocated for a mix of uses under Policy CL10 of the adopted Local Plan (including retail and leisure), the wider area is an established destination for commercial uses. The development also affords opportunities for 'linked trips' to take place, particularly with the adjacent Waterglade Retail Park. As such, the proposal as a whole will enhance the overall offer and attraction of this area of Clacton as a whole.

Taking account of the above, we confirm that the conclusions of the sequential test undertaken and approved in relation to the original application continue to relate to this S73 application, and that the application site is the most sequentially preferable site to accommodate the proposed development. It follows that the proposal accords with Policy ER31, Policy PP2 of the emerging Local Plan and Paragraph 86 of the NPPF.

Impact Test

Paragraph 89 of the NPPF states that when assessing applications for retail and leisure development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact

assessment if the development is over a proportionate, locally set floorspace threshold. If there is no locally set threshold, the default threshold is 2,500 sq. m. There is currently no local threshold for the requirement of an impact assessment within the adopted Local Development Plan.

This application relates to the provision of just 1,635 sq. m of floorspace that could be used for retail purposes under Class E, an increase of 185 sq. m on the approved development. Even taking account of the proposed increased thresholds for ancillary retail sales associated with a trade counter use for two of the units, the total amount still falls well short of the impact threshold. As such, in line with the original application, we confirm that there is no requirement to consider the potential impact of the development.

Summary and Conclusions

This S73 application proposes minor physical amendments to the scheme already approved by Planning Permission Ref. 19/00338/FUL at the Old Gasworks site in Clacton. The amendments are considered to be minor and continue to satisfy the policy requirements under which the original scheme was approved. In addition, this application seeks to allow greater flexibility as a direct result of the requirements for the proposed tenants of the scheme, by increasing the amount of floorspace at the site that could be used for retail sales or as a café use under Use Class E by 185 sq. m, and increasing the amount of ancillary retail sales associated with a trade counter use from 20% to 25% in one unit only and from 20% to 45% in Unit H. We conclude that the revised proposals continue to be acceptable in all respects, and should therefore be considered favourably by the Council.

We trust the information submitted is in order and allows you to validate and determine this application, however should you require any further details please do not hesitate to contact Lucy Turner on 07392 139 438 (lucy.turner@montagu-evans.co.uk) or Harry Manners on 07341 114785 (harry.manners@montagu-evans.co.uk) should you require any clarification.

Yours sincerely,



MONTAGU EVANS LLP

Enc.