



**REGULATORY
SERVICES
COMMITTEE**

REPORT

21 July 2011

Subject Heading:

**P0746.11 – Land adjacent to the former
Cherry Tree Public House, 119
Rainham Road**

**Erection of restaurant with drive thru
facility (Class A3/A5), parking and
associated works (Application received
19th May 2011)**

Report Author and contact details:

**Helen Oakerbee (Planning Control
Manager) 01708 432800**

Policy context:

**Local Development Framework
London Plan
National Planning Policy**

Financial summary:

None

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input checked="" type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input type="checkbox"/>
High customer satisfaction and a stable council tax	<input type="checkbox"/>

SUMMARY

This application seeks full planning permission for the construction of a restaurant including drive thru facility with associated parking and access road. This proposal

follows an earlier application which was refused. The planning issues include the principle of development, design and street scene impact, parking and highway matters, amenity issues and community safety. These issues are set out in detail in the report below. Staff consider these revised proposals to be acceptable, subject to planning conditions and a legal agreement to secure a financial contribution towards improving bus stop accessibility. It is therefore recommended that planning permission be granted.

RECOMMENDATIONS

That the proposal is unacceptable as it stands but would be acceptable subject to the applicant entering into a Section 106 Legal Agreement under the Town and Country Planning Act 1990 (as amended), to secure the following:

- A financial contribution of £8,000 to be used towards improving pedestrian accessibility to bus stops within the vicinity of the site.
- All contribution sums shall be subject to indexation on the basis of the Retail Price Index or an alternative index acceptable to the Council from the date of the agreement to the date of payment.
- All contribution sums once received shall include any interest accrued to the date of expenditure.
- The Council's legal fees for preparation of the agreement shall be paid on or prior to completion and the Council's planning obligation monitoring fees shall be paid as required by the agreement.

That Staff be authorised to enter into a legal agreement to secure the above and upon completion of that agreement, grant planning permission subject to the conditions set out below.

1. Time limit - The development to which this permission relates must be commenced not later than three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. Accordance with plans - The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans, particulars and specifications.

Reason: The Local Planning Authority consider it essential that the whole of the development is carried out and that no departure whatsoever is made from the details approved, since the development would not necessarily be acceptable if partly carried out or carried out differently in any degree from the details submitted. Also, in order that the development accords with the

LDF Development Control Policies Development Plan Document Policy DC61.

3. Car parking - Before the building hereby permitted is first occupied, the areas set aside for car parking shall be laid out and surfaced to the satisfaction of the Local Planning Authority. The parking areas shall be retained permanently thereafter for the accommodation of vehicles visiting the site and shall not be used for any other purpose.

Reason: To ensure that car parking accommodation is made permanently available to the standards adopted by the Local Planning Authority in the interest of highway safety and in order that the development accords with the LDF Development Control Policies Development Plan Document Policy DC33.

4. Materials - Before any of the development hereby permitted is commenced, samples of all materials to be used in the external construction of the buildings shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed with the approved materials.

Reason: To ensure that the appearance of the proposed development will harmonise with the character of the surrounding area and in order that the development accords with the LDF Development Control Policies Development Plan Document Policy DC61.

5. Landscaping - No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and shrubs on the site, and details of any to be retained, together with measures for the protection in the course of development. All planting, seeding or turfing comprised within the scheme shall be carried out in the first planting season following completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local Planning Authority.

Reason: In accordance with Section 197 of the Town and Country Planning Act 1990 and to enhance the visual amenities of the development, and that the development accords with the LDF Development Control Policies Development Plan Document Policy DC61.

6. Refuse and recycling - Before the development hereby permitted commences, details of the proposed refuse storage and recycling facilities to be provided at the site for the use, together with arrangements for refuse disposal and details of recycling and collection shall be submitted to and approved in writing by the Local Planning Authority. The facilities as approved shall then be provided at the site prior to the commencement of

the use and retained at the site thereafter in accordance with the approved drawings at all times.

Reason: In order to ensure that any such facilities respect the visual amenity of the locality and in order that the development accords with the LDF Development Control Policies Development Plan Document Policy DC61.

7. Cycle storage - Prior to completion of the development hereby permitted, cycle storage of a type and in a location previously submitted to and agreed in writing by the Local Planning Authority shall be provided and permanently retained thereafter.

Reason: In the interests of providing a wide range of facilities for non-motor car residents, in the interests of sustainability and in order that the development accords with the LDF Development Control Policies Development Plan Document Policy DC36.

8. Secure by Design - Prior to the commencement of the development hereby approved a full and detailed application for the Secured by Design award scheme shall be submitted to the Local Planning Authority, setting out how the principles and practices of the Secured by Design Scheme are to be incorporated. Once approved in writing by the Local Planning Authority in consultation with the Havering Crime Prevention Design Advisor the development shall be carried out in accordance with the agreed details.

Reason: In the interest of creating safer, sustainable communities and to reflect guidance in PPS1 and Policies CP17 and DC63 of the LDF Core Strategy and Development Control Policies Development Plan Document.

9. Boundary treatment - Prior to the commencement of the development hereby approved, details of proposed boundary treatment, including details of all boundary treatment to be retained and that to be provided, shall be submitted to and agreed in writing by the Local Planning Authority. The development shall then be carried out in accordance with the agreed details and the boundary treatment retained thereafter.

Reason: In the interests of privacy and amenity and to accord with Policies DC61 and DC63 of the LDF Development Control Policies Development Plan Document.

10. External lighting - Prior to the commencement of the development a scheme for the lighting of the premises and associated external areas shall be submitted to and approved in writing by the local planning authority. The scheme of lighting shall include details of the extent of illumination together with precise details of the height, location and design of the lights. Any lamp columns shall be so orientated so as not to cause glare or light spillage to surrounding residential properties or glare to the public highway. The approved scheme shall then be implemented in strict accordance with the agreed details prior to the first occupation of the development and retained thereafter to the satisfaction of the Local Planning Authority.

Reason: In the interests of highway safety and amenity. Also in order that the development accords with Policies DC32 and DC61 of the LDF Development Control Policies Development Plan Document.

11. Details of CCTV - Prior to the commencement of use of the development hereby permitted a scheme showing the details of a CCTV system to be installed for the purposes of community safety and the prevention of crime throughout, shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Havering Police Crime Prevention Design Advisor. No part of the development shall be occupied or used before the scheme is implemented as agreed.

Reason: In the interests of security and in order that the development accords with Development Control Policies Development Plan Document Policies DC61 and DC63 together with the provisions of Policy 4B.6 of the London

12. Hours of construction - No construction works or construction related deliveries into the site shall take place other than between the hours of 08.00 to 18.00 on Monday to Friday and 08.00 to 13.00 hours on Saturdays unless agreed in writing with the local planning authority. No construction works or construction related deliveries shall take place on Sundays, Bank or Public Holidays unless otherwise agreed in writing by the local planning authority.

Reason: To protect residential amenity and in order that the development accords with the LDF Development Control Policies Development Plan Document Policy DC61.

13. Construction methodology - Before development is commenced, a scheme shall be submitted to and approved in writing by the local planning authority making provision for a Construction Method Statement to control the adverse impact of the development on the amenity of the public and nearby occupiers. The Construction Method statement shall include details of:

- a) parking of vehicles of site personnel and visitors;
- b) storage of plant and materials;
- c) dust management controls
- d) measures for minimising the impact of noise and, if appropriate, vibration arising from construction activities;
- e) predicted noise and, if appropriate, vibration levels for construction using methodologies and at points agreed with the local planning authority;
- f) scheme for monitoring noise and if appropriate, vibration levels using methodologies and at points agreed with the local planning authority; siting and design of temporary buildings;
- g) scheme for security fencing/hoardings, depicting a readily visible 24-hour contact number for queries or emergencies;
- h) details of disposal of waste arising from the construction programme, including final disposal points. The burning of waste on the site at any time is specifically precluded.

And the development shall be carried out in accordance with the approved scheme and statement.

Reason: To protect residential amenity and in order that the development accords with the LDF Development Control Policies Development Plan Document Policy DC61.

14. Land contamination - Prior to the commencement of any works pursuant to this permission the developer shall submit for the written approval of the Local Planning Authority (the Phase I Report having already been submitted to and approved in writing by the Local Planning Authority):

a) A Phase II (Site Investigation) Report if the Phase I Report confirms the possibility of a significant risk to any sensitive receptors. This is an intrusive site investigation including factors such as chemical testing, quantitative risk assessment and a description of the site ground conditions. An updated Site Conceptual Model should be included showing all the potential pollutant linkages and an assessment of risk to identified receptors.

b) A Phase III (Risk Management Strategy) Report if the Phase II Report confirms the presence of a significant pollutant linkage requiring remediation. The report will comprise two parts:

Part A - Remediation Scheme which will be fully implemented before it is first occupied. Any variation to the scheme shall be agreed in writing to the Local Planning Authority in advance of works being undertaken. The Remediation Scheme is to include consideration and proposals to deal with situations where, during works on site, contamination is encountered which has not previously been identified. Any further contamination shall be fully assessed and an appropriate remediation scheme submitted to the Local Planning Authority for written approval.

Part B - Following completion of the remediation works a 'Validation Report' must be submitted demonstrating that the works have been carried out satisfactorily and remediation targets have been achieved.

c) If during development works any contamination should be encountered which was not previously identified and is derived from a different source and/or of a different type to those included in the contamination proposals, then revised contamination proposals shall be submitted to the LPA; and

d) If during development work, site contaminants are found in areas previously expected to be clean, then their remediation shall be carried out in line with the agreed contamination proposals.

For further guidance see the leaflet titled, 'Land Contamination and the Planning Process'.

Reason: To protect those engaged in construction and occupation of the development from potential contamination. Also in order that the development accords with the LDF Development Control Policies Development Plan Document Policy DC53.

15. Sound insulation - Before the development hereby permitted commences details of a scheme shall be submitted to and approved in writing by the local planning authority which specifies the provisions to be made for the control of noise emanating from the building. Such scheme as may be approved shall be implemented prior to first occupation and thereafter retained in accordance with such details to the satisfaction of the Local Planning Authority.

Reason: To prevent noise nuisance to adjoining properties in accordance with the recommendations of Planning Policy Guidance Note 24 'Planning and Noise'.

16. Details of new plant and machinery - Before any works commence a scheme for any new plant or machinery shall be submitted to the local planning authority to achieve the following standard. Noise levels expressed as the equivalent continuous sound level LAeq (1 hour) when calculated at the boundary with the nearest noise sensitive premises shall not exceed LA90 -10dB and shall be maintained thereafter to the satisfaction of the Local Planning Authority.

Reason: To prevent noise nuisance to adjoining properties in accordance with the recommendations of Planning Policy Guidance Note 24 Planning & Noise 1994.

17. Highway works - Prior to the commencement of the development, details of the proposed works affecting the public highway including the loading bay shall be submitted to and approved in writing by the Local Planning Authority and all necessary legal agreements secured. The works shall be carried out in full and in strict accordance with the approved details prior to the first occupation of the development and thereafter permanently retained.

Reason: In the interests of highway safety and in order that the development accords with the LDF Development Control Policies Development Plan Document Policy DC32.

18. Opening hours - The restaurant and drive thru shall not be used for the purposes hereby permitted other than between the hours of 1100 and 2300 on any day without the prior consent in writing of the Local Planning Authority

Reason: To enable the Local Planning Authority to retain control in the interests of amenity and in order that the development accords with the LDF Development Control Policies Development Plan Document Policy DC61.

19. Delivery and servicing hours - No deliveries or servicing shall take place other than between the hours of 0800 and 1100 on any day without the prior consent in writing of the Local Planning Authority.

Reason: To enable the Local Planning Authority to retain control in the interests of amenity, and in order that the development accords with Development Control Policies Development Plan Document Policy DC61.

20. Extraction and ventilation equipment - Before the use commences suitable equipment to remove and/or disperse odours and odorous material should be fitted to the extract ventilation system in accordance with a scheme to be designed and certified by a competent engineer and to be approved in writing by the Local Planning Authority. After installation a certificate shall be submitted to the Local Planning Authority and the equipment shall be properly maintained and operated within design specifications during normal working hours.

Reason: To protect the amenity of occupiers of nearby properties and in order that the development accords with the LDF Core Strategy and Development Control Development Plan Document Policy DC61.

21. Noise and vibration from extraction and ventilation equipment - Before the use commences a scheme to control the transmission of noise and vibration from any mechanical ventilation system installed shall be submitted to and approved in writing by the Local Planning Authority and implemented prior to the permitted use commencing. Thereafter, the equipment shall be properly maintained and operated during normal working hours.

Reason: To protect the amenity of occupiers of nearby properties and in order that the development accords with the LDF Core Strategy and Development Control Development Plan Document Policy DC61.

22. Restriction of use - Notwithstanding the provision of the Town and Country Planning (Use Classes) Order 1987 (as amended) the use hereby permitted shall be as a restaurant and drive thru only unless and until an application to change the use is permitted by the Local Planning Authority.

Reason: To restrict the use of the premises and to enable the Local Planning Authority to exercise control over any future use not forming part of this application.

23. Litter management strategy - Prior to the commencement of use of the development hereby permitted, details of a litter management strategy for the site, including the external areas hereby approved, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

Reason: In the interests of amenity and in order that the development accords with the LDF Core Strategy and Development Control Development Plan Document Policy DC61.

INFORMATIVES

1. The applicant is advised that planning approval does not constitute approval for changes to the public highway. Highway approval will only be given after suitable details have been submitted, considered and agreed. Any proposals which involve building over the public highway as managed by the London Borough of Havering will require a licence and the applicant must contact the StreetCare Service (Traffic and Engineering section) to commence the submission/licence approval process.
2. In aiming to satisfy conditions 8, 9, 10 and 11 above, the applicant should seek the advice of the Borough Crime Prevention Design Advisor. He can be contacted through either via the London Borough of Havering Planning Control Service or Romford Police Station, 19 Main Road, Romford, Essex, RM1 3BJ.
3. The applicant is advised that in response to condition 11 (CCTV), the system will need to include an acceptable level of external coverage, where the cameras are capable of recording good quality images at all time of day and night.
4. Reason for Approval:

The proposal is considered to be in accordance with Policies CP4, CP9, CP15, CP17, DC32, DC33, DC34, DC35, DC36, DC40, DC52, DC53, DC55, DC61, DC63 and DC72 of the Local Development Framework Core Strategy and Development Control Policies Development Plan Document. The proposal is also considered to be in accordance with the provisions of Policies 2A.8, 3B.1, 3C.1, 3C.2, 3C.23, 3D.1, 3D.2, 4B.1, 4B.6 and 4B.8 of the London Plan.

Planning Obligations

The planning obligations recommended in this report have been subject to the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the obligations are considered to have satisfied the following criteria:-

- (a) Necessary to make the development acceptable in planning terms;
- (b) Directly related to the development; and
- (c) Fairly and reasonably related in scale and kind to the development.

REPORT DETAIL

1. Site Description

- 1.1 The application site is located on the eastern side of Cherry Tree Lane at the junction with Rainham Road. The site, which forms part of the Cherry Tree Corner Major Local Centre, comprises the car park area and beer garden of the former Cherry Tree Public House which closed in early 2010. The application site is roughly an L shape and has an area of 0.16 hectares. To the north the site is bounded by the former public house building which is due to be converted into a Tesco store and to the west the site is bounded by the rear garden area of no. 268 Cherry Tree Lane. To the east the site is bounded by the rear garden area of no. 10 Cherry Walk, garaging and a two storey building with commercial at ground floor and residential above.
- 1.2 Cherry Tree Lane is subject to parking restrictions on both sides of the carriageway from its junction with Rainham Road for approximately 130 metres south in the form of a single yellow line. The parking restrictions operate Monday to Saturday between 0800 and 1830 hours. There are no further parking restrictions on Cherry Tree Lane. Rainham Road is subject to parking restrictions on both sides of the carriageway in the form of a single yellow line, which also operates Monday to Saturday between 0800-1830 hours.

2. Description of Proposal

- 3.1 The application seeks full planning permission for the construction of a new KFC restaurant including drive thru facility with associated parking and access road.
- 3.2 The proposed building would be generally aligned with the main façade of the adjoining public house on the Cherry Tree Lane frontage. The building itself would be single storey and would cover approximately 268 square metres in area. The main façade would front towards Cherry Tree Lane. The design of the building would take a contemporary approach utilising large areas of glazing particularly on the front and side elevations. The proposed building would measure 10.5 metres in width by 25 metres in depth. The building would be covered by a flat roof of 4 metres in height. The external walls would be constructed in a metallic cladding with glazing panels across the front façade.
- 3.3 To the rear of the restaurant is an enclosed storage and service yard. Both pedestrian and vehicular access would be via Cherry Tree Lane with 11 parking spaces provided in front of the building for patrons of the restaurant. A drive through lane would be provided running around the building which would also have two individual parking bays for vehicles awaiting food collection.

- 3.4 Staff parking would be provided via 7 spaces positioned adjacent to the flank wall of the former public house and accessed off the Rainham Road. This area would also be utilised by service vehicles. Service vehicles would pull into the site from Rainham Road in a forward gear, then load/unload within a dedicated servicing area and exit the site using the drive thru lane onto Cherry Tree Lane. The applicant has advised that servicing would only occur outside of opening hours. Cycle parking would be provided for customers adjacent to the main façade. Cycle parking for staff can be provided within the secure rear service yard.
- 3.5 The applicant has advised that the development would provide in the region of 25 full time and 15 part time new jobs. These would be advertised via the local job centre so as to be accessible to local people. The applicant is seeking hours of opening between 1100 and 2300 hours seven days a week.

3. Relevant History

- 3.1 P0338.11 - Erection of restaurant with drive thru facility (Class A3/A5), parking and associated works - Refused and appeal lodged.
- 3.2 The above application which was submitted in February 2011 was refused in April 2011 under delegated powers for the following two reasons;
- *The proposed development would, by reason of its height, bulk, mass and projection into the rear of the site, appear as an unacceptably intrusive and visually overbearing feature in the rear garden environment of no. 268 Cherry Tree Lane harmful to visual amenity contrary to Policy DC61 of the LDF Core Strategy and Development Control Policies Development Plan Document.*
 - *The proposal would, by reason of the likely noise and general disturbance caused by vehicles manoeuvring through the drive thru lane, particularly during the evening hours of operation, be unacceptably detrimental to the amenities of occupiers of no. 268 Cherry Tree Lane contrary to Policy DC61 of the LDF Core Strategy and Development Control Policies Development Plan Document.*
- 3.3 This current application seeks to overcome those reasons for refusal. In order to address the concerns raised by staff previously the overall size of the proposed building has been reduced and pulled further away from the boundary with no. 268 Cherry Tree Lane. The proposed drive thru lane has also been pulled further away from the boundary with the neighbouring property in order to provide for a wider landscaped buffer.

4. Consultations/Representations

- 4.1 The application was advertised and neighbour notification letters sent to 175 adjoining addresses with 21 letters of representation being received at the time of writing this report. The letters raise objection to the application on the following grounds;
- Potential for youth congregation within the site

- Concentration of such uses in the locality
- Additional noise and disturbance
- Additional traffic and potential for drivers to disobey traffic signs at the Cherry Tree Lane/Rainham Road junction
- Highway safety
- Potential for additional rubbish
- Devaluation of property
- Cooking smells
- Physical appearance of the proposed building
- Potential to encourage vermin
- Loss of trade to other businesses
- Potential for large vehicles to park up on the highway in order to use the restaurant

4.2 A letter of representation has been received from Councillor Breeding raising objection to the application on the grounds of highway safety, additional traffic and increased noise causing a nuisance to local residents. A letter of representation has also been received from Councillor Burton raising objection to the application on the grounds of highway safety and a concentration of such uses in the locality.

4.3 The London Fire Brigade is satisfied with the proposals.

4.4 The London Fire and Emergency Planning Authority are satisfied with the proposals.

4.5 The South Hornchurch Metropolitan Police Safer Neighbourhood Team (SNT) has raised objection to the application on the basis that the area has historically suffered from high levels of anti-social behaviour. Whilst these issues are presently under control the SNT consider that an additional take away facility of the nature proposed would act as magnet for youths. Concern is also raised about the potential rat running through the site.

4.6 The Borough Crime Prevention Design Advisor recommends that planning conditions are imposed in respect of the secure by design award scheme, opening hours, external lighting, boundary treatment, landscaping and CCTV.

4.7 Transport for London has no observations to make on the proposed development.

4.8 The acting Principal of the Brittons Academy raises objection to the proposal on the basis that it is likely to encourage school students to gather in the vicinity of the site and the potential harm which may result to students from vehicles. The letter also refers to the area being a historical hot spot for youth congregation and raises concerns that the proposal could act as a magnet for youths resulting in anti-social forms of behaviour occurring.

5. Relevant Policies

5.1 LDF Core Strategy Development Plan Document

CP4 – Town Centres
CP9 – Reducing the need to travel
CP15 – Environmental Management
CP17 - Design

5.2 LDF Development Control Policies Development Plan Document

DC32 – The road network
DC33 – Car parking
DC34 – Walking
DC35 – Cycling
DC36 – Servicing
DC40 – Waste recycling
DC52 – Air quality
DC53 – Contaminated land
DC55 – Noise
DC61 – Urban design
DC63 – Delivering safer places
DC72 – Planning Obligations

5.3 The London Plan

2A.8 – Town centres
3B.1 – Developing London's economy
3C.1 – Integrating transport and development
3C.2 – Matching development to transport capacity
3C.23 – Parking strategy
3D.1 – Supporting town centres
3D.2 – Development in town centres
4B.1 - Design principles for a compact city
4B.6 – Safety, security and fire protection
4B.5 – Creating an inclusive environment
4B.8 - Respect local context and communities

5.4 Government Guidance

Planning Policy Statement 1 – Delivering Sustainable Development
Planning Policy Statement 4 – Planning for Sustainable Economic Growth
Planning Policy Guidance Note 13 – Transport
Planning Policy Guidance Note 24 – Planning and Noise

6. Staff Comments

6.1 The main issues in this case are considered to be the principle of the development, impact upon character and appearance of street scene, impact upon neighbouring occupiers, community safety, highways matters and car parking provision.

6.2 Principle of Development

- 6.2.1 The application site is located within the Cherry Tree Corner Major Local Centre as defined within the Council's LDF. National, strategic and local plan policy as demonstrated in PPS4, the London Plan and the Havering Core Strategy Development Plan Document each promote town centre uses such as restaurants and takeaways within established town centres. The existing Cherry Tree Corner Major Local Centre provides a range of retail and services uses for the local community. The addition of a purpose built restaurant and drive thru facility is considered to complement the existing local centre facilities and would be compliant, in principle, with planning policy.
- 6.2.2 PPS4 provides substantial support for providing sustainable economic development. Staff are of the view that the proposal would make an efficient and effective use of previously developed land within an established local centre. The proposal would also provide an opportunity for the creation of new employment opportunities which is encouraged by Policy CP4 of the LDF.
- 6.2.3 Policy DC16 of the LDF deals specifically with the Major Local Centres. It states that planning permission for service uses including Class A3 and A5 uses will only be granted within the retail core at ground floor level where; the use provides a service appropriate to a shopping area, the proposal will not result in the grouping of three or more adjoining non-retail uses and where the proposal will not result in the relevant frontage being greater than 33% in non-retail use.
- 6.2.4 In the case of this application the proposed restaurant use is considered to be appropriate to a shopping area and it would not result in the grouping of three or more adjoining non-retail uses. The proposal would result in an additional unit being created within the centre rather than the utilisation of existing shop premises, which is more often the case when considering proposals for new Class A3/A5 uses. Consequently the existing amount of retail floor space within the centre would remain unchanged and the calculation of non-retail uses within the frontage is not considered to be relevant in this case.
- 6.2.5 There are a number of existing restaurants in the local centre however these are removed from each other and the applicant site. Staff are of the view that the proposal would not result in an over concentration of such uses in the locality.

6.4 Site Layout and Design

- 6.4.1 The application site has a frontage onto both the Cherry Tree Lane and Rainham Road street scenes. The proposed building would be set back 39 metres from Rainham Road and as such would pose no adverse impact. The proposal would see the creation of a staff parking area to the side of the former public house building. This area is presently characterised by hard

surfacing therefore the proposal would result in material change to the street scene. The proposal indicates areas in which soft landscaping could be provided. Staff are of the view that details of surfacing materials and landscaping could be secured via condition.

6.4.2 The proposed building would be sited to face onto Cherry Tree Lane. The building would be of a fairly modern and contemporary design. Given the location of the site within a local centre staff are of the view that a contemporary design approach is not in principle unacceptable. The proposed building would be set back from the site frontage with a parking area in front of the building. The set back of the building would respect the existing building line in Cherry Tree Lane. The height and massing of the building is relatively low in height, being a single storey building in construction. Staff are of the view that the proposed building would have an acceptable impact on the street scene. In the event that approval was being recommended details of materials could be secured via condition.

6.4.3 The applicant has indicated that the access road and car parking areas would be lit from the proposed building although this could be supplemented with column lighting where required. Staff are of the view that lighting could be secured via condition in the event that Members are minded to grant planning permission.

6.4.4 The applicant's design and access statement advises that the proposal would seek to meet sustainability objectives through various measures including a high standard of insulation, natural ventilation and rain water harvesting.

6.5 Impact on Amenity

6.5.1 The nearest residential properties to the proposed development are at no. 268 Cherry Tree Lane and no. 115 Rainham Road. With regard to the latter property this is located on the upper floor above the Cherry Tree Fish Bar. This property is located within the local centre and fronts directly on to the busy Rainham Road. Given the location of the property above a commercial premises staff are of the view that occupiers would expect a lower level of amenity than if the property were located in an entirely residential area. Consequently the use of the access road in the vicinity of no. 115 Rainham Road by staff members and the occasional delivery vehicles would not in staff's view have an adverse impact on amenity having regard to the existing background noise levels and the activities previously associated with the Cherry Tree Public House.

6.5.2 The proposed site layout would see the building provided fairly centrally in the site with a car park to the frontage adjacent to Cherry Tree Lane. A drive through lane would be provided running around the building (in which vehicles would travel round the building in a clockwise direction) which would have two individual parking bays for vehicles awaiting food collection. Vehicles travelling through the drive thru lane would order food on the northern side of the building, make payment on the eastern side of the building and collection food on the southern side of the building. The

proposed layout of the drive thru lane is such that it would run parallel to the boundary with no. 268 Cherry Tree Lane. The existing house at no. 268 Cherry Tree Lane does not have any side facing windows within the property which looks towards the application site. The previous application was refused partly on the basis that the operation of the drive thru would be unacceptably harmful to the amenity of occupiers of this property. In order to address the reason for refusal this revised proposal would see the proposed drive thru lane and two parking bays for vehicles awaiting food collection moved further away from the boundary. The proposed drive thru lane would be removed from the boundary with no. 268 by between 3.8 metres and 2.2 metres. This would allow the introduction of a decent landscaped buffer with the adjoining property together with an acoustic fence on the boundary.

- 6.5.3 The applicant has provided information which provides an analysis of data indicating the average number of vehicle movements at a similar restaurant and drive thru in Waltham Cross. A forecast of the likely vehicle movements of the proposed restaurant has also been submitted. The information shows that at peak times on Fridays and Saturdays after 2100 the number of vehicle movements is likely to decrease compared with earlier times during the day. For the period between 2100 and 2200 the figures anticipate that 17 vehicles are expected to use the proposed drive thru lane (one in every 3.5 minutes). The submitted data suggests that the vehicle movements would reduce further for the period between 2200 and 2300 where a maximum of 11 vehicles are anticipated.
- 6.5.4 In terms of the potential impact of the proposal on no. 268 Cherry Tree Lane staff have given consideration to the fact that this property has historically been located immediately adjacent to a car park associated with the former public house. In view of this it is reasonable to conclude that the property will have been subject to vehicular noise and general disturbance. The former public house was licensed to open until 2300 therefore this provides a basis against which to assess the proposal. Staff accept that after the closing of the public house the adjoining property would have been subject to people returning to their vehicles and the associated noise from doors closing, engines starting etc. Such noise would have taken place throughout the car park area and not necessarily have been concentrated in the area adjacent to the boundary fence with no. 268.
- 6.5.5 The proposed development would see the drive thru lane run between the building and the boundary with the adjoining property. Given the proposed site layout vehicular noise from cars collecting food would be concentrated in this area. In refusing the previous application staff concluded that the proximity of the proposed drive thru lane to the boundary with the adjoining property at no. 268 would be likely to give rise to an unacceptable level of noise and general disturbance from revving engines, car radios and customers' voices. The judgement for Members in the case of this application is whether the changes made to the siting of the drive thru lane together with a noise report submitted by the applicant is sufficient grounds to overcome the previous reason for refusal.

- 6.5.6 The applicant's submitted noise report outlines that due to local traffic noise, opening the restaurant between 1100 and 2300 on any day is unlikely to give rise to noise levels that will be audible from the nearest residential property. The findings of the survey have been studied by staff from the Council's Environmental Health Service who are satisfied with the methodology used. Having regard to the findings of the applicant's noise survey, the likely number of vehicle movements during the later hours of opening sought and the separation of proposed drive thru lane from the adjoining residential property at no. 268 staff are satisfied that the operation of the premises between 1100 and 2300 would not give rise to material harm to residential amenity.
- 6.5.7 The proposed building would be sited fairly centrally on the site and would run rearwards parallel with the boundary of no. 268. The previous application was partly refused on the basis that the proposed building would have been an overbearing feature within the rear garden of no. 268. This revised proposal has seen the overall size of the building reduced in terms of depth from 27.5 metres previously to 24 metres and reduced in terms of width from 11.3 metres to 9.9 metres. The proposed building would also be set further off the boundary with the adjoining property. The setting back of the proposed building and drive thru lane from the boundary would also enable a decent landscaped buffer to be provided. The proposed building would be of a single storey construction and removed from the boundary by between 6.5 and 8 metres. At its closest point the previous application proposed the building at 5 metres from the boundary. The building would have a maximum height of 4 metres which remains unchanged from the previous application. The proposal would see the ground level within the site altered which would result in the site being 0.3 metres lower than the adjoining garden. A 1.8 metre fence is proposed on the boundary with the neighbouring property. The difference in levels together with the boundary fence means that 1.9 metres of the building would be visible above the fence from the neighbouring rear garden. Having regard to the changes outlined above staff consider that this revised proposal would have an acceptable impact on the rear garden environment of the adjoining property at no. 268.
- 6.5.8 The applicants have submitted details of fume extraction for consideration to ensure that the use does not result in an unacceptable loss of residential amenity. These details have been considered by the Council's Environmental Health service who does not object to the odour/extraction systems proposed, subject to a number of requirements/conditions being imposed. The Environmental Health service has also confirmed that the onus for ensuring that the system does not result in odour nuisance rests with the applicant and that if the system is subsequently found to be causing an odour nuisance at any point, modification works could be requested and an abatement notice served. Accordingly, staff are satisfied that there are appropriate controls to ensure that the use does not cause an odour problem.

6.6 Parking and Highway Issues

- 6.6.1 Access into the site would be taken from Cherry Tree Lane. An existing entrance to the former public house car park already exists in this location and would be upgraded to a suitable standard and this could be secured via a Section 278 agreement. The Council's Highway Engineers have raised no objection to the proposal in respect of access. Letters of representation raise concern that the proposed development would increase the frequency of vehicles disobeying the no right turn which exists at the junction with Cherry Tree Lane and Rainham Road to prevent vehicles from turning into Rainham Road. This problem is an existing situation and staff are of the view that it would be difficult to sustain a refusal of planning permission on the basis that the proposal may increase traffic infringements. Furthermore the enforcement of traffic regulations is a matter for the Police.
- 6.6.2 Letters of representation raise concern in respect of potential rat running through the site between Cherry Tree Lane and Rainham Road in order to avoid the traffic lights. The submitted plans indicate that lockable bollards would be used to segregate the proposed service area/staff parking area from the remainder of the site, so as to remove any opportunity for rat running. Staff consider these arrangements to be acceptable.
- 6.6.3 The applicant has submitted a detailed transport assessment. It is predicted that 24 two-way car trips would occur during the morning and evening peak periods as a result of the proposals. Staff are of the view that the existing transport network could accommodate the predicted walking, cycling and public transport trips resulting from the proposals. Staff are of the view that the proposal would not result in a material conflict with advice given in PPG13. The location of the application site benefits from good pedestrian and cycle facilities, and the applicant's intend to provide on-site cycle parking. There are number of bus stops located within close proximity to the site, which are relatively frequently served, providing access in and around an extensive catchment area. Staff are of the view that the proposal would not be detrimental to the local highway network.
- 6.6.4 Given that the proposal has the potential to result in an increased number of trips staff consider it reasonable that the applicant contributes towards highway improvements in line with Policy DC32 of the LDF. It is on this basis that a financial contribution of £8,000 has been requested from the applicant towards the cost of improving pedestrian accessibility to nearby bus stops. In the event that Members are minded to grant planning permission this could be secured via a legal agreement.
- 6.6.5 The maximum parking standards set out in the Council's LDF require one space per 10 square metres of floor space. For this proposal the standard equates to a maximum of 19 spaces. The proposal would provide for 11 customer spaces plus 7 staff spaces and 2 lay-by spaces for those awaiting drive through meals (a total of 20 spaces). Directly opposite the application site on the northern side of Cherry Tree Lane is a Council owned public car park providing 43 spaces. This car park is available on a 24 hour basis with parking charges limited to 20p for an initial 2 hour period. In addition it is

noted that the site is well served by local bus services. In particular Cherry Tree Lane is served by four bus services (routes 165, 365, 372 and 652) providing on average around 12 services per hour in either direction. Rainham Road is also served by a further bus service (route 103) with a 10 minute frequency. Having regard to the level of on-site parking to be provided and the availability of a nearby public car park and public transport, staff are of the view that the proposal is acceptable in respect of car parking. The proposal is judged to comply with Policies DC32 and DC33 of the LDF in this respect.

6.6.6 The applicant has advised that service vehicles would visit the site outside of the restaurant opening hours. Vehicles would enter the delivery area in a forward gear before using the drive thru lane to exit the site onto Cherry Tree Lane necessitating the temporary removal of the proposed bollards. The applicant has further advised that service vehicles would be limited to vans rather than larger heavy goods vehicles and this could be subject to a planning condition if Members considered it to be appropriate. Staff are of the view that the proposal is acceptable in respect of servicing and complies with LDF Policy DC36.

6.6.7 The submitted plans indicate that cycle parking would be provided for customers. In addition within the storage area to the rear of the building there is an opportunity to provide cycle parking for staff. Further details of this could be secured via condition and as such the proposal is judged to comply with Policy DC35.

6.6.8 In terms of pedestrian access the submitted plans indicates that suitable pavement and crossing areas would be provided within the site. The proposed building has also been designed to comply with Part M of the Building Regulations and the Disability Discrimination Act 2004. The proposal is judged to be acceptable in respect of LDF Policy DC34.

6.6.9 Policy DC40 advises that planning permission will only be granted for developments where suitable waste and recycling storage facilities are provided. The applicant has advised that refuse storage could be contained with the rear service yard with an additional area identified on the eastern portion of the site for certain recyclable refuse. Further details of this could be secured via condition.

6.7 Community Safety

6.7.1 The area in which the application site is situated has historically suffered from disorder, mainly from youths. This problem has required close police attention over a number of years. It is important therefore that any new business does not lead to an increase in this type of problem and that suitable measures are put in place to reduce such risks. Crime prevention and community safety issues are material planning considerations and the Council has adopted planning policy and supplementary guidance to encourage safer places. Policy DC63 of the LDF advises that new development should address issues of community safety.

6.7.2 Concerns have been expressed in letters of representation that the proposed use could result in an increase in youth congregation and anti-social forms of behaviour. Staff are of the view that the proposed development would provide an opportunity to introduce additional surveillance onto the site which is currently unused. Staff consider it to be reasonable that details of a CCTV system are secured via condition in order to discourage any potential anti-social forms of behaviour which may otherwise result. In the event that Members are minded to grant planning permission a condition is also recommended to ensure that the proposed development adopts the principles of the Secured by Design award scheme.

6.8 Other matters

6.8.1 While it is accepted that such establishments can generate litter, this problem is not confined to the immediate vicinity of the premises given that meals may be carried for some distance prior to being consumed. The applicant has advised that litter patrols would take place four times a day where members of staff would patrol the premises both internally and outside in the immediate vicinity to pick up litter of any sort and dispose of this appropriately. In the event that the application was being recommended for approval a condition could be imposed requiring the applicants to produce a litter management strategy which should ensure that the site is maintained in a reasonable manner.

7. Conclusion

7.1 The application site is located within the Cherry Tree Corner Major Local Centre. The introduction of a restaurant with drive thru within the Local Centre is considered to be acceptable in principle having regard to national and local planning policy. The proposal is judged to be acceptable in terms of its design and impact on the street scene. The proposal is also judged to be acceptable in respect of parking and highway issues subject to securing a financial contribution towards bus stop accessibility improvements. The proposal is judged to be acceptable in respect of community safety issues subject to the imposition of conditions.

7.2 This application follows a previous proposal which was refused based upon the physical impact of the building on residential amenity and the likely noise and general disturbance caused by vehicles manoeuvring through the drive thru lane. This current proposal has been revised through a reduction in the depth of the proposed building and its siting further away from the boundary with the neighbouring property. It is also proposed to alter the ground level within the site so that the proposed building sits lower than the adjoining rear garden area. The proposed drive thru lane has also been pulled further away from the boundary with the neighbouring property in order to provide for a wider landscaped buffer. Having regard to the changes made and the findings of the submitted noise report staff are of the view that this revised proposal would now have an acceptable impact on residential amenity. Staff recommend approval of the application subject to the completion of a legal agreement and the imposition of planning conditions.

IMPLICATIONS AND RISKS

Financial implications and risks:

None.

Legal implications and risks:

Legal resources will be required for the drafting of a legal agreement.

Human Resources implications and risks:

None.

Equalities implications and risks:

The proposed development would include level threshold access for the disabled together with two dedicated extra wide disabled parking bays. The Council's planning policies are implemented with regard to Equalities and Diversity.

BACKGROUND PAPERS

Application form, plans and supporting statements received on 3rd March 2011.