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# Appeal Decision

Site visit made on 6 August 2014

**by Cullum J A Parker BA(Hons) MA MRTPI AIEMA**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 5 September 2014**

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**Appeal Ref: APP/J1535/A/14/2219451**

**Chigwell Food & Wine, 10 Brook Parade, High Road, Chigwell, Essex, IG7 6PF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Hasan Dagdelen against the decision of Epping Forest District Council.
  - The application Ref EPF/2595/13, dated 5 December 2013, was refused by notice dated 7 May 2014.
  - The development proposed is change of use from Class A1 Shop to Class A5 fish and chips hot food takeaway use together with extract duct at rear.
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## Decision

1. The appeal is allowed and planning permission is granted for a change of use from Class A1 Shop to Class A5 fish and chips hot food takeaway use together with extract duct at rear at Chigwell Food & Wine, 10 Brook Parade, High Road, Chigwell, Essex, IG7 6PF in accordance with the terms of the application, Ref EPF/2595/13, dated 5 December 2013, subject to the conditions in Appendix A.

## Procedural Matter

2. I note that amended plans, labelled Rev.01, have been submitted. The main difference appears to be that the extraction flue would be located further away from the upper floor residential accommodation and the ducts would be located internally rather than on the flat roof. Both parties have had an opportunity to consider these revised plans. For the avoidance of doubt, I consider that it is the amended drawings for which permission is sought.

## Main Issue

3. The main issue is the effect of the proposed change of use on the economic viability, and consequently the character and appearance, of the Brook Parade local centre.

## Reasons

4. The appeal property is located within a terraced block of commercial properties at ground floor level facing onto Brook parade. My site visit confirmed that the parade contains a mixture of uses including a bank, beauty/hair salons, estate agent, restaurant/cafe and convenience stores. To the front of the units there is a wide pedestrian pavement with a number of public bins, and off street parking beyond.

5. The proposed development seeks a change of use from A1 retail shop to A5 fish and chip takeaway. Whilst there are a variety of uses taking place along the parade, there were no obvious examples of any A5 types uses present. Policies CP2 and CP3 of the Epping Forest District Local Plan Alterations 2006 (EFDLP), indicate that the Council seeks to safeguard and enhance the setting, character and townscape of the urban environment, and that the scale and nature of development respects the character and environment of the locality.
6. In this case, there would be no alterations to the front elevation of the building, thereby retaining the visual appearance of the area and parade. It is also clear that there is already a mixture of uses within the Parade. There is no conclusive evidence before me which demonstrates that by allowing the A5 use sought in this case would result in the A1 retail uses being in danger of disappearing and changing the overall character of the street. It was clear during my site visit, during the mid-morning, that the Parade is a vibrant mix of well used services, providing a diverse local centre for residents. The evidence, in that in allowing this appeal the character of the area would change to an extent that would be materially harmful to its continuing vitality or affect the overall viability of the local centre, is unpersuasive.
7. In terms of the visual impact of the extraction equipment to the rear of the building, the amended Rev.01 drawings show that a majority of this would now be situated within the internal part of the building, with a short flue pipe located at the rearmost end of a single storey rear extension. The rear elevation of the parade is significantly different to the front, appearing more as a service area with off road car parking and various examples of extraction and condensing equipment. Given the relatively small size of the flue pipe, or 'extract duct', in relation to the overall scale of the Parade and the more service orientated appearance, I consider that the extract duct to be acceptable in terms of character and appearance.
8. I therefore conclude that the proposed development would not have an adverse effect on the character and appearance of the area or the parade. Moreover, given the distance from the Chigwell Village Conservation Area, it would not have an adverse impact its setting. Accordingly, the proposal accords with Policies CP2 and CP3 of the EFDLP, the aims of which I have aforesaid.

### **Other matters**

9. A number of concerns have been raised by neighbours and local residents. I now consider these before reaching my final conclusion. In terms of the potential for smells and the noise of the extraction equipment, this would be located to the rearmost part of the building and some distance from the rear upper windows of the Parade. The revised plans also show that this would also be located inside the building rather than positioned on the flat roof, thus assisting in reducing the potential for noise. Moreover, I consider that specific details of such equipment could reasonably be controlled by condition. As such, the potential noise and smells arising from the proposed development could be suitably mitigated by ensuring that the proposed development would not result in material harm to neighbours in terms of smells and extraction equipment noise.
10. I acknowledge the concerns that the fish and chip use could result in the congregation of youths, and that this may result in anti-social behaviour. However, there is no conclusive evidence before me to indicate that such a

problem exists or that this specific use would result in such an outcome. I also note the concerns relating to the potential for increased littering. However, it was clear from my site visit that there are a number of public bins available along the parade which patrons could use. I do not therefore find that the proposed development would result in a materially harmful impact in terms of littering or other associated anti-social behaviour.

11. In terms of parking and traffic concerns, there is an area of on-street parking directly in front of the Parade. This allows customers to pull off of the main highway and park up to use the local parade. I do not, therefore, find that proposal would result in a detrimental impact on highway safety.
12. With regard to the risk of fire in the upper floors of the building, which are residential in use, any internal works are likely to be subject to both building regulations and environmental health legislation. Moreover, I note the concerns in terms of the proposal potentially resulting in a negative impact on property values. However, the effect on property values is a separate matter from planning controls. I have also considered the point made that the proposal would result in setting a precedent within this location. Nevertheless, it is well established planning practice that each proposal is considered on its own merits, as I have done in this case.
13. I therefore consider that these and all other matters raised, whether considered individually or cumulatively, do not weigh significantly against allowing the proposed development.

### **Conditions**

14. A number of conditions have been suggested by the Council, and in considering these I have had regard to Paragraph 206 of the National Planning Policy Framework and the Planning Practice Guidance with regard to the use of planning conditions. A condition requiring the proposed development to be carried out in accordance with the submitted drawings is necessary for the avoidance of doubt and in the interests of proper planning.
15. A condition requiring the submission of further details for the extraction equipment to control fumes and smells, including the provision for such equipment to be installed and maintained, is reasonable to ensure that the extraction equipment adequately mitigates the impact of the proposed development in terms of smells and noise. For similar reasons, a condition restricting opening hours is necessary to ensure that the use permitted does not operate continuously and provides respite for residents during the early morning and late evening periods.
16. A condition relating to the submission of details for litter and waste is reasonable and necessary to ensure that any waste arising from the new use is sufficiently managed in the interests of nearby residential living conditions.

### **Conclusion**

17. For the reasons given above I conclude that the appeal should be allowed.

*Cullum J A Parker*

INSPECTOR

## **Appendix A – List of conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Proposed Block Plan, Existing Block Plan, 13.03.01.REV.01, 13.03.02.REV.01, 13.03.03.REV.01, 13.03.04 and 13.03.05.REV.01
- 3) Before the use hereby permitted begins, a scheme for the installation of equipment to control the emission of fumes and smell from the premises shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.
- 4) The premises and use hereby permitted shall not be open for customers outside of the hours 10:00 – 22:00 Monday to Sunday inclusive.
- 5) Before the use hereby permitted begins, details of measures to deal with litter and waste arising from the proposed use shall be submitted to and approved in writing by the Local Planning Authority. The details as approved shall be implemented, and thereafter retained.