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## Appeal Decisions

Hearing and site visit held on 15 May 2012

by **Clive Hughes BA (Hons) MA DMS MRTPI**

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

Decision date: 9 July 2012

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### Appeal A: APP/J1535/A/12/2170987

**208 - 212 High Street, Epping, Essex CM16 4AQ**

- 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 Edgewest Epping Ltd against the decision of Epping Forest District Council.
  - The application Ref PL/EPF/2538/11, dated 12 December 2011, was refused by notice dated 8 February 2012.
  - The development proposed is the demolition of buildings and the redevelopment of the site to provide a mixed use development comprising Class A3 restaurant use and 8 residential units.
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### Appeal B: APP/J1535/E/12/2170991

**208 - 212 High Street, Epping, Essex CM16 4AQ**

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
  - The appeal is made by Edgewest Epping Ltd against the decision of Epping Forest District Council.
  - The application Ref PL/EPF/2539/11 CAC, dated 12 December 2011, was refused by notice dated 8 February 2012.
  - The demolition proposed is described as the demolition of buildings and the redevelopment of the site to provide a mixed use development comprising Class A3 restaurant use and 8 residential units.
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### Decisions

#### Appeal A: APP/J1535/A/12/2170987

1. The appeal is allowed and planning permission is granted for the demolition of buildings and the redevelopment of the site to provide a mixed use development comprising Class A3 restaurant use and 8 residential units at 208 - 212 High Street, Epping, Essex CM16 4AQ in accordance with the terms of the application, Ref PL/EPF/2538/11, dated 12 December 2011, subject to the 14 conditions set out in the Annex to these decisions.

#### Appeal B: APP/J1535/E/12/2170991

2. The appeal is allowed and conservation area consent granted for the demolition of buildings and the redevelopment of the site to provide a mixed use development comprising Class A3 restaurant use and 8 residential units at 208 - 212 High Street, Epping, Essex CM16 4AQ in accordance with the terms of the application Ref PL/EPF/2539/11 CAC, dated 12 December 2011 subject to the 3 conditions set out in the Annex to these decisions.

### **Application for costs**

3. At the Hearing an application for costs was made by Edgwest Epping Ltd against Epping Forest District Council. It is the subject of a separate Decision.

### **Background**

4. The appeal site lies within the Epping Conservation Area; it has road frontages to the High Street and, at the rear, to Hemnall Street. The site is narrow and deep. It is occupied by a locally listed building and adjoins the George and Dragon Public House which is grade II listed. It was agreed at the Hearing that only the building on the High Street frontage warrants local listing; the buildings on the Hemnall Street frontage are of limited architectural value. The two retail units are currently being occupied on short term lets; one of the units was closed at the time of my visit. The upper floors and the outbuildings are all vacant. The upper floors of the building on the High Street frontage have been badly fire damaged and cannot be used.
5. The planning history of the site is highly relevant to the determination of these appeals. In particular planning permission (PP) and conservation area consent (CAC) were granted in 2007 for the redevelopment of the whole site to provide a new building comprising Class A1 retail use on the ground floor with 8 residential units above. The PP and CAC were both renewed in May 2010 and remain extant. The design of the development was similar to that now proposed; the only significant difference between this approved scheme and the current proposals is the use of the ground floor unit for Class A3 use and not the previously approved Class A1 use.
6. PP and CAC were refused for the demolition of the buildings on the site and the construction of a building providing a Class A3 restaurant on the ground floor with 8 flats above in July 2011. Appeals against these decisions were dismissed in December 2011. In dismissing the appeals, the Inspector made it clear in his decisions that they were being dismissed solely on the basis of the proposed roof line, which he considered to be harmful to the setting of the adjoining listed building and to the wider Conservation Area. In respect of the ground floor Class A3 use, the Inspector concluded that despite conflict with the development plan, a Class A3 use was preferable to the units becoming vacant and remaining difficult to let. He opined that the proposed use would be beneficial to the vitality and viability of the centre.
7. The current proposals are very similar to those refused and dismissed on appeal last year. The only significant difference is that the roof line of the proposed building has been reduced back to that approved in 2007; the proposed uses remain the same. The Council's reasons for refusal do not raise any objections to the design of the proposed building. The scheme involves the demolition of all the buildings on the site and the construction of a three storey building with Class A3 restaurant use on the ground floor with 8 residential flats above. The flats would be accessed from Hemnall Street, as would nine car parking spaces and a cycle store.

### **Main Issues**

8. The main issues are (i) the effect of the proposals, involving the demolition of a locally listed building and the expansion of the non-retail frontage, on the historic character of the High Street as a retail shopping area (*both appeals*); and (ii) the vitality and viability of the retail centre (*appeal A only*).

## Reasons

9. Concerning the first issue, when PP and CAC were refused in 2011, the Council's only reasons for refusal related to the loss of the Class A1 use and the height of the proposed replacement building. There was no reason for refusal relating to the impact of the loss of the existing building. This was understandable for, as set out above, the Council had previously accepted the principle of the demolition of the building and the redevelopment of the site. The 2010 PP and CAC remain the fall-back position concerning the loss of this building. The previous Inspector, as recently as December 2011, accepted the principle of a Class A3 use on the ground floor of a replacement building. These are material considerations of some weight and the current proposals and reasons for refusal need to be considered in that context.
10. The existing building is in a poor state of repair but there is no evidence to show that it could not be repaired and refurbished. It makes a positive contribution to the town centre and the Conservation Area. Policy HC9 of the Epping Forest District Local Plan says that the Council will only grant consent for the demolition of a building in a Conservation Area where the building does not make a significant contribution to the character and appearance of that area or where the redevelopment proposals preserve that character. Policy HC13A of the Local Plan Alterations says that the maintenance of locally listed buildings will be encouraged. In granting consent for the demolition of this locally listed building in 2007 and 2010 the Council must have been satisfied that the redevelopment would at least preserve the established character or appearance. In terms of its appearance, the current proposal replicates that which has been previously approved; design is not a reason for refusal.
11. The Council now objects to the proposals due to the impact on the historic character of the High Street as a retail shopping area. However, as set out below, attempts over the last 5 years to market the premises for retail purposes have failed. The Council does not question the marketing that has taken place or challenge the findings. The present, short-term, retail uses are unsatisfactory and will not lead to the necessary refurbishment of the fire damaged premises. As demonstrated by the failed marketing exercise over many years and as concluded by the previous Inspector, the premises are difficult to let. The existing building would not be suitable for a Class A3 use due to the configuration of the accommodation available. The presence of vacant retail premises in the heart of the town centre will do nothing to help the vitality or viability of the centre.
12. In all these circumstances I conclude that while the loss of the locally listed building in the Conservation Area would conflict with Policy HC13A, this conflict has recently been accepted by the Council and the harm is outweighed by other material considerations. There is no conflict with Policy HC9 of the Local Plan as the proposed redevelopment would preserve the character of the area.
13. With regard to the second issue, Policy TC4 of the Alterations to the Epping Forest District Local Plan, adopted in 2006, relates specifically to the amount of non-retail frontage that is acceptable in each town centre. The Policy says that in a key retail frontage permission will be granted for non-retail uses at ground floor level provided it would not result in (i) the non retail frontage exceeding 30%; and (ii) more than 2 adjacent non-retail uses. In this case there is no doubt that the proposals conflict with criterion (i) as the amount of non-retail frontage already exceeds 30%; the current figure is 32.5%. Concerning

- criterion (ii), while the proposals involve the loss of 2 retail units, the proposed restaurant, in combination with the adjoining public house, would only result in 2 adjacent non-retail uses. This would not breach the policy.
14. Concerning criterion (i), the proposals would increase the non-retail frontage by 1.1%. As the existing level already exceeds 30% there would be a clear conflict with the development plan. It is therefore necessary to consider whether the other material considerations outweigh the harm that would arise. The property has been marketed for retail use since 2007 and the appellant has submitted statements to demonstrate the level of marketing that has taken place and the limited level of interest that has been generated.
15. The previous Inspector noted that the Council accepts that a robust marketing exercise has been undertaken and that the Council did not challenge the contention that the redevelopment for the approved Class A1 scheme would not be viable. The Council's position in this regard has not changed. The current position is that the units are let on short-term leases that are due to expire in the autumn and not be renewed. The units are of poor quality; in particular they have low headroom and, in respect of the western unit, a poor internal configuration. The whole building is in poor condition.
16. I have taken into account the anecdotal evidence presented at the hearing in respect of the demand for such retail floorspace. However, the detailed evidence and failure to find tenants after 5 years of active marketing indicates to me that there is currently no demand for the units. I have noted that there is only one vacant unit in the key frontage but there are charity shops and the units on the appeal site are only on short-term leases. I have also taken into account the fact that the appellants have been unable to attract a retail occupier for the consented Class A1 redevelopment in the 5 years since planning permission was first granted.
17. Despite the conflict with Policy TC4(i) of the Local Plan Amendments, I agree with the findings of the Inspector in December 2011 who concluded that the harm arising from this conflict would be outweighed by the benefits to the vitality of the centre of having an occupier within the new building. I have taken account of the concerns raised that a grant of permission would open the floodgates for further Class A3 uses. However, I also heard that some existing Class A3 units are struggling and are currently for sale. In any case, the particular circumstances of these units are unlikely to be replicated elsewhere in the centre and so any grant of permission would not be a precedent to enable other retail units to be converted into Class A3 uses.

#### *Conditions*

18. The conditions as set out in the Officers' report to Committee were discussed at the Hearing. Where necessary I have amended the wording of the conditions in line with that discussion. With regard to the application for planning permission, a condition requiring the submission of details of materials is necessary in the interests of the visual amenity of the Conservation Area. Details of the wall adjacent to No 2 Hemnall Street is necessary to prevent unneighbourly overlooking of the garden of that property from the new flats. An archaeological investigation is necessary prior to the commencement of excavations due to the archaeological potential of the site. The parking and cycle parking facilities need to be provided and retained to ensure that such

facilities are provided within the site. A condition prohibiting a gate across the vehicular access is necessary in the interests of highway safety.

19. Conditions regarding the hours of use of the Class A3 use, noise from mechanical plant and details of the bin stores are necessary in the interests of the living conditions of nearby residents. During the demolition/ construction phase conditions are necessary to ensure that wheel washing takes place on the site in the interests of highway safety, to ensure that the works take place within a known timescale and at times that do not harm the living conditions of nearby residents.
20. With regard to the application for Conservation Area Consent, a condition is necessary to ensure that the existing building is not demolished in advance of a schedule and timetable for its replacement to avoid an unsightly gap in the street frontage. I have identified the approved plans in respect of both appeals for the avoidance of doubt and in the interests of the proper planning of the area.

#### *Conclusions*

21. In reaching my conclusions I have taken into account the recently published National Planning Policy Framework. However, I have not been provided with any substantive evidence which would lead me to conclude that the Local Plan policies referred to above are inconsistent with the Framework. Accordingly, the Framework has not led me to reach any different overall decisions.
22. I have taken into account all the other matters raised in the written representations and at the Hearing. I have found nothing that outweighs my conclusions on the main issues. I have taken into account the fact that the proposals will bring an underused site in the town centre back into full beneficial use. The provision of 8 new flats is a benefit what also weighs in favour of the scheme. Overall, I conclude that the conflict with the development plan is outweighed by the other material considerations. The appeals are therefore allowed.

*Clive Hughes*

Inspector

**APPEARANCES**

**FOR THE APPELLANTS:**

Duncan Parr BA DUPI DipTP FRGS MRTPI Cgoeg MEWI	Director, Savills
Philip Bell BSc(Hons) MRICS A Fattal	Ian Scott International Appellants

**FOR THE LOCAL PLANNING AUTHORITY:**

Jill Shingler BA(Hons) MRTPI	Epping Forest DC
Maria Kitts BA(Hons) MA	Epping Forest DC

**INTERESTED PERSONS:**

Clr Jon Whitehouse	District and Town Councillor
Ash Tadjrish	Town Clerk, Epping Town Council
Barbara Ford	Epping Town Centre Partnership
Rakel Patel	Epping Traders
Vanita Patel	Local resident
Deirdre Spence	Herts and Essex Architectural Research Society
Harry Pennington	Local resident
Michael Heptow	Local resident

**DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Application for costs on behalf of the appellants
- 2 Council's response to application for costs

**PLANS**

- A Drawings No MWSC-HEM-03 & 04; 713/05B, 14h & 15h; 3415/M1 Rev A & M3 Rev A; site location plan; application plans

## Annex

### Appeal A: APP/J1535/A/12/2170987

#### Schedule 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: Drawings No MWSC-HEM-03 & 04; 713/05B, 14n & 15h; 3415/M1 Rev A & M3 Rev A; and site location plan.
- 3) No development shall take place until samples of the materials and their colours to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Demolition and ground reduction should not exceed the present ground/slab levels with no removal of the existing building foundations until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. This condition will only be considered to have been discharged when the planning authority has received and approved an archaeological report and/ or publication of the required archaeological works.
- 5) Details of the wall to be erected to the boundary of No 2 Hemaall Street shall be submitted to and approved in writing by the local planning authority. The approved boundary wall shall be erected prior to the first use of the approved Class A3 use or first occupation of any of the flats hereby approved, whichever is the sooner. The wall shall be retained thereafter.
- 6) Prior to the commencement of development, and notwithstanding the details shown on the approved plans, details of the bin stores shall be submitted to and approved in writing by the local planning authority. The bin stores shall be constructed in accordance with the approved details and shall be retained in the approved form thereafter.
- 7) No gates shall be erected across the vehicular access from Hemaall Street.
- 8) The rating level of noise, (as defined in BS4142:1997) emitted from any air conditioning units, condenser units or any other mechanical plant shall not exceed 5dB(A) above the prevailing background noise level. The measurement position and assessment shall be made in accordance with BS4142:1997.
- 9) The ground floor Class A3 use shall not be open to customers outside the hours of 08.00 to 24.00 hrs on Mondays to Saturdays (inclusive) and 09.00 to 23.00 hrs on Sundays and Bank/ Public holidays.
- 10) None of the development hereby permitted shall be occupied until the vehicle parking area shown on the approved plans, including any car parking spaces for the mobility impaired, has been hard surfaced, sealed and marked out in parking bays. The vehicle parking area shall be retained in this form for the duration of the development. The vehicle parking area shall not be

used for any purpose other than the parking of vehicles that are related to the development.

- 11) The cycle parking facilities as shown on the approved plans shall be provided prior to the first use or occupation of any part of the development hereby permitted. The facility shall be kept available for the parking of cycles for the duration of the development.
- 12) Prior to commencement of demolition, a schedule and timetable of works including details of the means of demolition and leading to a final completion date shall be submitted to and approved in writing by the local planning authority. The works shall then be completed in accordance with the approved timetable.
- 13) Wheel washing or other cleaning facilities for vehicles leaving the site during construction work shall be installed in accordance with details which have been submitted to and approved in writing by the local planning authority. The facilities shall be installed prior to the commencement of demolition/ building works on site and shall be used to clean vehicles leaving the site.
- 14) All construction/ demolition works and ancillary operations (which includes deliveries and other commercial vehicles to and from the site) which are audible at the boundary of noise sensitive premises, shall only take place between the hours of 07.30 and 18.30 hrs on Mondays to Fridays (inclusive); between 08.00 and 13.00 hrs on Saturdays; and at no time on Sundays or Bank/ Public holidays.

#### **Appeal B: APP/J1535/E/12/2170991**

##### **Schedule of conditions:**

- 1) The works hereby authorised shall begin not later than 3 years from the date of this consent.
- 2) Prior to the commencement of demolition, a schedule and timetable for the redevelopment of the site in accordance with appeal decision reference APP/J1535/A/12/ 2170987 (Council ref PL/EPF/2538/11) has been submitted to and approved in writing by the local planning authority. The works shall then be completed in accordance with the approved timetable.
- 3) The works hereby authorised shall be carried out in accordance with the following approved plans: Drawings No MWSC-HEM-03 & 04; 713/05B, 14n & 15h; 3415/M1 Rev A & M3 Rev A; and site location plan.