



Appeal Decision

Site visit made on 13 November 2012

by **David Smith BA(Hons) DMS MRTPI**

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

Decision date: 4 December 2012

Appeal Ref: APP/J1535/A/12/2179282
22 Forest Road, Loughton, Essex, IG10 1DX

- 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 Eldar Properties Ltd against the decision of Epping Forest District Council.
- The application Ref PL/EPF/2371/11, dated 17 November 2011, was refused by notice dated 25 April 2012.
- The development proposed is a change of use of ground floor from A1 (retail shop) to A3 (restaurant/café).

Decision

1. The appeal is allowed and planning permission is granted for a change of use of ground floor from A1 (retail shop) to A3 (restaurant/café) at 22 Forest Road, Loughton, Essex, IG10 1DX in accordance with the terms of the application, Ref PL/EPF/2371/11, dated 17 November 2011, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) 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 approved scheme shall be implemented before the use begins. All equipment installed as part of the scheme shall be operated and maintained in accordance with the manufacturer's instructions.
 - 3) Before the use hereby permitted begins details of measures to suppress noise from mechanical equipment and of sound attenuation between the premises and the flat above shall be submitted to and approved in writing by the local planning authority. The approved measures to suppress noise from mechanical equipment shall be installed before it is first operated and shall thereafter be retained. The approved sound attenuation shall be installed before the use begins and shall thereafter be retained.
 - 4) Other than on the day of collection any refuse storage bins shall only be kept in the location shown on drawing no PAS/ELD/02A.
 - 5) The premises shall not be open for customers outside of 0700 to 2300 hours on Mondays to Fridays, 0900 to 2300 hours on Saturdays and 1200 to 2230 hours on Sundays and Public Holidays.



Main Issues

2. The main issues are the effect of the proposal on the existing retail use of the premises and on the vitality and viability of Loughton High Road town centre and whether adequate arrangements would be made for the storage of refuse and the control of odours.

Reasons

Vitality and viability

3. Loughton High Road is one of the principal town centres in the District according to Policy TC1 of the Epping Forest District Local Plan and Alterations. The appeal site is in a peripheral location outside of the defined key frontage so that Policy TC4 does not apply.
4. Paragraph 11.48a confirms that uses within Class A3 are appropriate in a town centre. As it falls within this category the proposal would contribute towards making the centre an attractive and useful place to shop, work and visit throughout the day and evening. Subject to other factors criterion (i) of Local Plan Policy TC3 indicates that such uses should be permitted. Given the already slightly fragmented nature of town centre uses along Forest Road and the nature of the proposal a stretch of 'dead' daytime frontage would not result. There would therefore be no conflict with criterion (iv).
5. Representations deplore the loss of a retail unit and comment that there are ample catering establishments in the near vicinity. However, the proposal would comply with relevant development plan policies aimed at protecting the function of the town centre. Indeed, it is acknowledged that food and drink outlets can add to the range of uses offered and are therefore complementary. Moreover, it is not the role of the planning system to set limits on the numbers of restaurants and cafes in any given locality.
6. After a period of vacancy the premises commenced trading as a hairdresser in May 2012. Relevant policies do not refer to whether or not there is a current Class A1 use and do not require a period of marketing. It is also difficult to see how granting permission for the proposal might, in itself, threaten the successful growth of the fledgling business. This is more likely to depend on other factors and would not be likely to alter the existing lease arrangements. It is not unusual for commercial buildings to have alternative uses and it is also understandable that owners would wish to have flexibility.
7. Even if Class A3 uses command higher rentals there is no policy objection to the loss of a retail use in this location. In the light of this whether or not any permission is taken up within the standard time limit is of little relevance in planning terms. Realistically the existence of permission for a different use of No 22 is unlikely to be the source of anxiety. In any case, the National Planning Policy Framework establishes that significant weight should be placed on the need to support economic growth.
8. The key point is that the proposed use would not harm the vitality and viability of Loughton High Road town centre and, in this context, the effect on the existing retail use of the premises would be insignificant. There would be no conflict with the development plan in this respect.

Refuse storage and odours

9. Provision would be made for the storage of refuse at the rear of the site. As is general practice the bins would be taken out on the day of collection along a narrow alley between the appeal site and 24 Forest Road. Notwithstanding its width, the slight 'dog leg' and the protruding pipes and gutters it was demonstrated that it would be practical to move containers along this route. Indeed, this is what happens at the moment. Therefore it would be most unlikely for any operator to be compelled to leave black sacks on the pavement thereby reducing amenity and with the attendant risk of attracting vermin.
10. This path also provides a right of way for No 24 and an escape in the event of fire. However, by siting the bins at one end neither of these would be impeded. A condition could ensure that only this area was used for refuse storage. The appellant company indicates that the path is within its ownership but the adjoining owner believes that the bins would actually be sited on his property. Any such dispute is not a planning matter and there is no definitive evidence that satisfactory arrangements for refuse storage could not be made.
11. Food waste would be kept immediately at the end of the gardens of houses in Smarts Lane. It is not unusual for this to occur close to residential properties in or around town centre locations. No objections to this aspect of the proposal have been raised by the Environmental Health Officer. Whilst much might depend on the type of waste and the frequency of emptying there is nothing to indicate that the enjoyment of the adjoining areas would necessarily be spoilt by the smell that might arise.
12. The layout plans indicate that the kitchen would be at the rear and that a flue would protrude from the roof over 10m away from the first floor flat. The Council is critical of the height of the duct in relation to this accommodation but because the end user is unknown these details are illustrative. What they do show is that there would be scope for satisfactory extraction arrangements to be made and there is no technical objection on this ground. This matter could therefore be covered by condition.
13. Adequate arrangements would be made for the storage of refuse and the control of odours. There would be no conflict with Local Plan Policy DBE9 which requires that changes of use do not result in an excessive loss of amenity for neighbouring properties.

Other Matters

14. Parking demand is high along Forest Road near to the appeal site and in the daytime the number of spaces available is restricted. However, any use of the premises would generate traffic and some requirement for parking. Compared to the current use and the earlier tool hire shop the proposal would be likely to bring about additional activity in the evening. That said, this is a town centre location where this is to be expected and there are public car parks nearby. As such, limited weight should be attached to these concerns.

Conditions

15. In order to safeguard living conditions and ensure that the use operates properly conditions are required in relation to details of fume extraction equipment, attenuation of plant and sound insulation between the ground and first floors. As indicated the location of the refuse bins should be secured. A

condition requiring details of foul drainage from the kitchen including a grease separator is also sought. However, the suggested wording refers to the Building Regulations indicating that this is a duplication of other controls.

16. The Council also seeks to agree the opening times of the use. This is to prevent potential late night nuisance and to establish whether it can be open for part of the working day. Both of these are legitimate objectives but neither would be infringed by imposing the hours of operation broadly as set out in the original application. These have been altered slightly to provide a better balance between commercial and residential interests. This course of action also has the benefit of providing certainty to any potential occupier.

Conclusions

17. The proposed use would cause no harm in respect of the main issues identified and there are no other material considerations which outweigh this finding or the conformity with the development plan. Therefore, for the reasons given, the appeal should succeed.

David Smith

INSPECTOR