



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: 3 December 2012

Appeal Ref: APP/J1535/A/12/2179057
74-76 High Street, Epping, Essex, CM16 4AE

- 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 Willowcity Estates plc against the decision of Epping Forest District Council.
 - The application Ref PL/EPF/0001/12, dated 19 December 2011, was refused by notice dated 7 March 2012.
 - The development proposed is a change of use of premises from A1 (shops) use to a shared use of A3 (restaurants and cafes) and A5 (hot food takeaways).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of premises from A1 (shops) use to a shared use of A3 (restaurants and cafes) and A5 (hot food takeaways) at 74-76 High Street, Epping, Essex, CM16 4AE in accordance with the terms of the application, Ref PL/EPF/0001/12, dated 19 December 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) The premises shall not be open for customers outside of 0900 to 2300 hours on Mondays to Saturdays and 1200 to 2230 hours on Sundays and Public Holidays.
 - 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 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.
 - 4) Before the use hereby permitted begins details of measures to suppress noise from mechanical equipment shall be submitted to and approved in writing by the local planning authority. The approved measures shall be installed before any mechanical equipment is first operated and shall thereafter be retained.
 - 5) Before the use hereby permitted begins details of refuse storage shall be submitted to and approved in writing by the local planning authority. The approved storage shall be put in place before the use begins and shall thereafter be retained.

EPPING FOREST DISTRICT COUNCIL

05 DEC 2012

PLANNING SERVICES

Application for costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposal on the vitality and viability of Epping town centre and on the living conditions of surrounding residents with particular regard to noise and activity at night.

Reasons

Vitality and viability

4. For many years 74-76 High Street traded as a furniture shop but this has now closed. The building was occupied by a charity shop at the time of my visit. Epping town centre is one of the principal centres in the District according to Policy TC1 of the Epping Forest District Local Plan and Alterations. The appeal site is outside of the defined key frontage so that Policy TC4 does not apply.
5. Paragraph 11.48a confirms that uses within Classes A3 and A5 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. Epping is also characterised as having a "buoyant evening economy" with an interesting mix of uses. The proposed use would enhance this function.
6. However, the Council is critical of the proliferation of similar uses clustered at the southern end of the High Street. The appellant lists a total of 13 premises within Use Classes A3 and A5 and there is also a night club. However, these are spread over quite a wide area. Their presence is also balanced by the Tesco store almost opposite the appeal site which is described as one of the 'anchors' of the town centre. Furthermore, planning policies set no percentage limits and paragraph 11.52a makes it plain that outside key frontages proposals should be assessed against other policies, including Policy TC3.
7. Criterion (iv) indicates that proposals should be refused if they would result in stretches of 'dead' daytime frontage. The appeal premises are flanked by retail uses so a continuous row of non-retail units would not occur. Indeed, this end of the town centre is not wholly commercial as there are breaks formed by residential properties. These 'gaps' do not appear to have affected its overall attractiveness as the area was busy in the middle of the day. In any case, the use might be open in the daytime rather than solely in the evening. Even if that were not the case the proposal in isolation would not be so 'lifeless' as to deter activity to the extent that permission should be withheld.
8. A planning obligation has been submitted which provides that the site will remain open between 1200 and 1500 hours on Mondays to Saturdays. This is partly in response to paragraph 11.44a of the Local Plan but it is difficult to compel any business to stay open at certain times. Moreover, the clause does not require the proposed catering use to be fully open to customers so that it might be complied with by making only a token effort to trade. All of that said, as indicated above, this provision is not necessary to make the development acceptable in planning terms.

9. Some representations comment that there are already too many food shops and that saturation point has been reached. However, the proposal would comply with planning 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. Furthermore, it is not the role of the planning system to set limits on the numbers of restaurants, cafes or takeaways in any given locality.
10. To sum up, the proposal would not detract from the vitality and viability of Epping town centre. It would also accord with relevant development plan policies including Local Plan Policy TC3.

Living conditions

11. As previously mentioned there is residential accommodation nearby although none above this single storey building. There is some evidence that the existing uses undertaken at this end of the High Street give rise to disturbance. The Council argues that the proposal would have an adverse cumulative impact. On the other hand, this is a town centre location where a degree of disruption is to be expected and the environment can be differentiated from quieter suburban or rural areas.
12. There may come a point at which more of the same would make living conditions intolerable for those in the vicinity. However, having regard to the size of the building, the hours proposed and the relationship with the closest housing the proposal would not cross that particular bridge. Indeed it seems likely that activities arising from the proposed use would be subsumed within the existing conditions that prevail. The appellant's survey on a Saturday found pedestrian activity associated with other evening uses and a considerable amount of passing traffic. In this context the effect of the proposal would be insignificant in terms of noise and activity at night.
13. Uses of this kind can give rise to odours but given the separation from neighbours and the nature of the unit there would be scope for this to be covered by condition. According to the Council the area is well served by litter bins and this is a matter covered by other legislation. As such, reservations about further debris do not amount to a compelling planning objection.
14. Consequently the proposal would not harm the living conditions of surrounding residents. 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 or with Policy RP5A which seeks to avoid adverse environmental impacts.

Other Matters

15. The Council alludes to parking issues without being specific but local residents refer to high levels of existing parking demand for the limited spaces along the High Street. However, any use of the premises would potentially generate traffic and some requirement for parking. Compared to a retail use the proposal would be likely to bring about additional vehicle movements in the evening. That said, this is a town centre location where this is to be expected and where visitors would normally rely on public car parks. As such, limited weight should be attached to these concerns.

Conditions

16. In order to safeguard living conditions and ensure that the use operates properly conditions are required to secure details of fume extraction equipment, attenuation of plant and refuse storage. There is no clear indication that drainage details are required by means of a planning condition given other legislation. The hours of use should also be specified to tally with those applied for in order to provide a balance between commercial and residential interests. The wording adopted would not prevent staff being on the premises outside those times for the purposes of opening or clearing up.

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