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## Appeal Decision

Site visit made on 21 November 2017

**by Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

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

**Decision date: 07 December 2017**

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**Appeal Ref: APP/J1535/W/17/3181197**  
**76 Borders Lane, Loughton IG10 3QX**

- 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 Mustafa Ates against the decision of Epping Forest District Council.
  - The application Ref EPF/1288/17, dated 7 May 2017, was refused by notice dated 3 July 2017.
  - The development proposed is change of use from retail shop (A1) to café/restaurant (A3); external flue to the rear.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are the effect of the proposed development on:
  - i) the provision of local shops and the vitality and viability of the parade;
  - ii) the living conditions of surrounding residents in respect of noise and disturbance and smells and odours.

### Reasons

#### *Provision of local shops and vitality and viability*

3. The parade concerned comprises a local centre, identified as such in policy TC1 of the Epping Forest District Local Plan Alterations (the Local Plan Alterations), whose vitality and viability is required to be sustained or improved. It has 8 ground floor units, beneath upper floor flats, with a variety of uses, one of which is a convenience store considerably larger than the rest. Those others include two hot food takeaway outlets, a bakers, two hairdressers, a dry cleaners and the appeal site.
4. The parade plays an important role in contributing to a network of local shopping facilities throughout the district and thereby in meeting the overall shopping needs of residents. In particular, due to its position within a residential area, it is likely to minimise the need to travel further afield, thereby reducing car journeys from a sustainability perspective and providing a convenient service for less mobile people including the elderly and disabled people and families with small children. To this end, policy TC6 of the Local Plan Alterations seeks to ensure no change of use of shop premises in such centres to any non-retail use unless there is no market demand for a retail use,

- or the service provided is to be continued in another location locally, or the proposed new use would meet an identified community need.
5. The appellant refers to the unit at No 66 having been consumed within the central convenience store within the parade which I saw to be the case. It is also highlighted that that unit had planning permission for an A3 use and was previously in use as a non-retail tattoo studio. Although that resulted in a net increase in A1 floorspace within the parade, it has not increased the number and range of shops. In any case I have considered this appeal based on the current situation. Although that unit at No 66 has changed to A1 use, there is no substantive evidence, based on the current situation, that the A1 use that would be lost at No 76 would be continued in another location locally.
  6. There are only a fairly small number of units within the parade, with two already in non-retail hot food takeaway use. I have not received any substantive evidence to demonstrate that there is no market demand for an A1 retail use at the site, albeit that I saw at my site visit that it was not actually open for business and in operation as such. I note the third party submissions supporting a new restaurant in this location, including in terms of being a benefit for the local community, and the increased vitality it is claimed this would bring to the parade, and expressing the wish for the unit not to become vacant. However, I have not received any substantive evidence to demonstrate that the proposed use would meet an identified community need. Furthermore, I have received little substantive evidence to demonstrate that any increased vitality resulting from a restaurant use would be to such an extent as to outweigh the effect of a loss of a shop unit. There is also no substantive evidence to indicate the likelihood of the unit remaining vacant as an A1 use for a material amount of time.
  7. Therefore, for the above reasons, I conclude on this issue that the proposed loss of the current A1 use would be likely to undermine the function of the parade to serve the locality with adequate shops and thereby also cause unacceptable harm to the vitality and viability of the parade as a local centre. As such it would be contrary to policies TC1 and TC6 of the Local Plan Alterations. It would also be contrary to the National Planning Policy Framework (the Framework) which in paragraph 17 sets out that planning should, amongst other things, take account of the different roles of different areas.

#### *Living conditions*

8. The proposed extraction flue at the rear of the premises would extend higher than the eaves of the building and therefore appropriately clear of habitable room windows of the flats below and higher still than those of the dwellings immediately to the east of the site which are at a slightly lower level. Together with appropriate measures to control the smells and odours, as well as any noise associated with the extraction process, all of which could be secured and controlled by condition, it is likely that the living conditions of those nearby residents would be adequately protected in these respects.
9. It is likely that there would be more comings and goings from the unit in the evenings due to the nature of the proposed use and closing time of 10pm. However, such a closing time, which could be secured by condition, would prevent the likelihood of any additional later evening or night time noise and disturbance when surrounding residents are more likely to be sleeping.

Furthermore, for those residents living above the parade, there is already the potential for noise and disturbance relating to the two existing hot food takeaways and so it is unlikely that the proposed use would materially add to that. It would also be set apart to some degree from the dwelling at No 100 to the east which is separated from the site by its detached garage. Appropriate sound insulation could also be secured by condition to prevent any harmful noise transmission through the ceiling to the flat above No 76.

10. For the above reasons, I conclude on this issue that the proposed development would be unlikely to cause unacceptable harm to the living conditions of surrounding residents in respect of noise and disturbance and smells and odours. As such, in respect of this issue, it would accord with policy DBE9 of the Epping Forest District Local Plan which requires development, amongst other things, not to result in an excessive loss of amenity for neighbouring properties. In respect of this issue, it would also accord with the Framework which in paragraph 17 sets out that planning should, amongst other things, always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
11. The Council, in its decision notice, also refers to policy CP2 of the Local Plan Alterations in respect of this issue. However, that policy does not specifically relate to the living conditions of neighbouring occupiers and so is not relevant to this issue.

#### *Other matter*

12. The appellant refers to differing views of Council officers in respect of the proposal and the extent to which they took account of the submitted evidence. However, I have determined the appeal on its merits based on all of the evidence before me.

#### **Conclusion**

13. I have found that the proposed development would be unlikely to cause unacceptable harm to the living conditions of surrounding residents in respect of noise and disturbance and smells and odours. However, this does not deflect from my finding that it would be likely to undermine the function of the parade to serve the locality with adequate shops and thereby also cause unacceptable harm to the vitality and viability of the parade as a local centre.
14. Therefore, for the reasons given above, and having taken account of all other matters raised, I conclude that the appeal should be dismissed.

*Andrew Dawe*

INSPECTOR