



Appeal Decision

Site visit made on 20 October 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2020

Appeal Ref: APP/W1715/W/20/3257049

Unit 3, Lankester House, 1 Freegrounds Road, Hedge End, Southampton SO30 0HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Samuel Ramsey (Kettle and Cake) against the decision of Eastleigh Borough Council.
 - The application Ref X/19/86760, dated 21 October 2020, was refused by notice dated 17 February 2020.
 - The application sought planning permission for prior approval for change of use for A1 (retail) to A3 (restaurants and cafes) without complying with a condition attached to planning permission Ref J/17/80081, dated 11 April 2017.
 - The condition in dispute is No3, which states that: *"the development hereby permitted shall not be open to customers and no deliveries shall be received or dispatched from the site except between the hours of 10am-5pm Monday-Saturday and 10am-4pm Sunday"*.
 - The reason given for the condition is: *"To protect the amenity of the occupiers of nearby properties"*.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the refusal of the planning application, progress on the emerging *Eastleigh Borough Local Plan 2016 – 2036* (the EBLP) has advanced, with the publication of the Inspector's post-hearing advice on 1 April 2020. The council has confirmed that it is progressing with modifications to the EBLP to enable its adoption in 2021, and that emerging Policies DM1 and DM13 remain relevant to the appeal. Given the advanced stage of preparation reached, I attach moderate weight to the emerging EBLP in my determination of the appeal.
3. The description of development on the planning application form indicates that the appellant seeks to extend the customer opening hours and delivery times to between 10am and 10pm on Monday to Saturday with the Sunday hours remaining as between 10am and 4pm as approved.
4. There is a difference of opinion between the appellant and the Council as to whether, during the course of the determination of the application, the description of development was altered to accord with a reduced proposal that officers were prepared to support, comprising the extension of customer

opening hours to between 10am and 10pm on Thursday to Saturday only. Since the application form was not amended, nor the application re-advertised with an amended description, I have dealt with the appeal on the basis of the description of development on the application form.

Main Issue

5. Having regard to the reason for condition 3 of permission Ref J/17/80081, and the Council's two reasons for refusal in respect of the appeal proposal, the main issue is the effect of the proposed development on the living conditions of the occupiers of neighbouring properties, with particular reference to noise disturbance and off-site parking.

Reasons

6. The appeal site comprises a tea room occupying a ground floor unit within a commercial building which is also used as estate agents and property letting offices. Although it is located within the secondary shopping area of Hedge End, the detached building lies within close proximity of residential properties in Freegrounds Road, Freegrounds Avenue and Bursledon Road, and is separated from the main groups of commercial uses along the B3033 and B3036 by an open grassed area and Freegrounds Avenue to the north of the building and the wide and busy St Johns Road to the north-west.
7. The existing tea room operation comprises a day time use which is compatible with the adjacent offices and the neighbouring dwellings. It operates during the part of the day when Hedge End shopping centre is expected to be active and lively, and is likely to attract customers combining a tea room visit with a trip to the shopping centre for other purposes.
8. The proposed extension of customer opening hours and delivery times until 10pm would introduce a night-time commercial activity within an immediate area characterised by residential properties, including those within the quiet, no-through Freegrounds Road. The proximity of the appeal site to this road, the orientation of the tea room building which predominantly fronts it, and the fact that the road provides the means of vehicular access to the site, all combine to mean that the proposal has the potential to significantly impact on the living conditions of neighbouring residential occupiers.
9. Customer comings and goings associated with the extended hours have the potential to result in noise disturbance to neighbouring occupants, due to customers congregating and chatting outdoors within the vicinity of the site before and after visiting the premises, and due to vehicular movements as customers drive to and from the on-street parking area immediately adjacent to the tea room at the end of Freegrounds Road. Harmful noise impacts from the tea room could also arise from the use of the outdoor customer seating area, which extends along the west side of the building, and directly faces residential properties. All these impacts would potentially occur during a time at night when the surrounding residential area would be expected to be relatively quiet.
10. I am not persuaded that the proximity of a bus stop to the northern end of Freegrounds Road would significantly add to the general level of noise experienced within the vicinity of the appeal site during the period of the proposed extension of hours to the tea room operation.

11. The appeal site does not include any on-site parking provision. Whilst there are off-street car parking areas associated with the adjacent offices and a nearby church, these appear to be privately owned, and I have no evidence before me that they are available to users of the tea room. The no-through nature of the northern end of Freegrounds Road, and the parking restrictions along the B3033 in front of the site, means that given the limited amount of street parking in front of the tea-room, there is a reasonable prospect that tea room customers may park on the street along Freegrounds Road in an attempt to the reduce walking distance to the premises. This has the potential to cause inconvenience to residents, and conflict between vehicular and pedestrian use of the road, particularly given the narrow road width, the lack of pavements and the intermittent street lighting.
12. Although there may be available public car parking further afield than the immediate site vicinity, in the absence of a formal customer parking management scheme, customers driving to the premises are likely to aim to park as close to the premises as possible.
13. I also find that the above noise and inconvenience impacts could be exacerbated by deliveries to the premises during the extended customer opening hours, having regard to the means of access to the site via Freegrounds Road. Given the lack of detailed information before me regarding delivery schedules and parking and servicing arrangements, I find that the potential impact on neighbouring living conditions of regular commercial deliveries to the appeal site during the proposed extended delivery hours could be significantly greater than that arising from domestic deliveries to the nearby houses, which are likely to be pre-arranged by the occupiers.
14. I acknowledge that conditions restrict the use of the premises to a tea room or café only and prevent the sales of hot food to take away. However, in the absence of details in respect of the proposed formal management of customer and delivery services access and parking, and the proposed nature and extent of any outdoor use of the premises associated with the proposal, I must apply the precautionary approach in respect of this main issue.
15. I have noted the clientele that the appellant seeks to attract, and the letters of support for the business from third parties. However, these matters do not overcome my concerns, since the current permission and the appeal scheme if allowed, would run with the land not the appellant.
16. For the above reasons, I conclude that there is inadequate evidence before me to satisfactorily demonstrate that the proposal would not materially harm the living conditions of the occupiers of neighbouring residential properties, having regard to the effects of noise disturbance and off-site parking. As such, I cannot conclude that the proposal would accord with the aims of Saved Policies 59.BE and 100.T of the *Eastleigh Borough Local Plan Review (2001–2011) 2006* and emerging Policies DM1 and DM13 of the EBLP. These policies, amongst other things, seek to ensure that development proposals are an appropriate use for the locality and compatible with adjoining uses, and that they avoid unduly disturbing or conflicting with adjoining or nearby uses in terms of noise, include measures that minimise impact on the existing transport network, and provide convenient access to the highway network.
17. This is generally consistent with the *National Planning Policy Framework 2019*, which seeks to ensure that developments will function well and promote a high

standard of amenity, health, and well-being for existing and future users (paragraph 127).

Other Matters

18. When judged against some of the core planning principles of the Framework, the appeal scheme would perform well in that it is located in an accessible location in an urban area, and there are economic and social benefits associated with the proposal. However, these benefits are not outweighed by the potential harm to the living conditions of neighbours that I have identified.
19. I acknowledge the impact of Covid-19 on the operation of the business. However, I must determine this appeal having regard to the long-term use of the site and the impact of the scheme on neighbouring living conditions. I acknowledge the recent increased flexibility afforded to town centre uses through Permitted Development changes. However, these changes do not specifically allow an extension of opening hours of commercial premises where they are currently restricted by a planning condition. In any event, I must determine this appeal on the particular circumstances of the appeal site and the proposal before me.

Conclusion

20. For the reasons given above, I conclude that the appeal should be dismissed and the condition retained in its present form.

S Leonard

INSPECTOR