
Appeal Decision

Site visit made on 18 December 2018

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2019

Appeal Ref: APP/J1535/W/18/3203201

**Sir Winston Churchill Now Landmark House, The Broadway,
Loughton IG10 3SP**

- 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 Co-operative Group Food Limited against the decision of Epping Forest District Council.
 - The application Ref EPF/3059/17, dated 9 November 2017, was refused by notice dated 21 February 2018.
 - The application sought planning permission for demolition of Public House and garages and replacement with construction of a mixed use development, comprising retail and food and drink units (within classes A1, A3 and A4) at ground floor level and 64 residential units at upper floor levels (first to sixth floors), together with 64 car parking spaces, service yard, access and car parking without complying with a condition attached to planning permission Ref EPF/2163/13, dated 28 March 2014.
 - The condition in dispute is No. 10 which states that: The commercial uses hereby permitted shall not be open to customers / members outside the hours of 0730 to 2300 on Monday to Thursday, 0730 to 0000 (midnight) on Fridays and Saturdays and 0900 to 2300 on Sundays.
 - The reason given for the condition is: In order to minimise disturbance to local residents, in accordance with the guidance contained within the National Planning Policy Framework and policies RP5A and DBE9 of the adopted Local Plan and Alterations.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of Public House and garages and replacement with construction of a mixed use development, comprising retail and food and drink units (within classes A1, A3 and A4) at ground floor level and 64 residential units at upper floor levels (first to sixth floors), together with 64 car parking spaces, service yard, access and car parking at Sir Winston Churchill Now Landmark House, The Broadway, Loughton IG10 3SP in accordance with the application Ref EPF/3059/17, dated 9 November 2017, without compliance with condition 10 previously imposed on planning permission Ref EPF/2163/13, dated 28 March 2014 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan.
 - 2) The commercial uses hereby permitted shall not be open to customers/members outside the hours of 0730 to 2300 on Monday to

Thursday, 0730 to 0000 (midnight) on Fridays and Saturdays and 0900 to 2300 on Sundays apart from the permitted Class A1 unit which shall not be open to customers/members outside the hours of 0700 to 2300 on Monday to Thursday, 0700 to 0000 (midnight) on Fridays and Saturdays and 0700 to 2300 on Sundays. (Demolition of Public House and garages and replacement with construction of a mixed use development, comprising retail and food and drink units (within classes A1, A3 and A4) at ground floor level and 64 residential units at upper floor levels (first to sixth floors), together with 64 car parking spaces, service yard, access and car parking).

Procedural Matters

2. The application site is given as 'Landmark House' on the application form but is shown as 'Landmark House' on the Council's decision notice and on the appellants' appeal statement. I have regarded 'Landmark House' to be the correct site address.
3. The Government published the revised National Planning Policy Framework (the revised Framework) on 24 July 2018. The appellant was notified of the publication and invited to make comments, and the Council were notified of this action. I have also asked the main parties to comment on the relevance of the Epping Forest Special Area of Conservation to the proposal. I have taken the comments received into account in reaching my decision.

Background and Main Issue

4. In their application to the Council the appellants sought to vary the opening hours on Mondays to Saturdays and Sundays of the Class A1 unit which is one of the commercial uses within the development. The Council has allowed the variation in opening hours from Monday to Saturday and refused the variation on Sundays. The Council's decision notice varies condition 10 to read as follows:

The commercial uses hereby permitted shall not be open to customers/members outside the hours of 0730 to 2300 on Monday to Thursday, 0730 to 0000 (midnight) on Fridays and Saturdays and 0900 to 2300 on Sundays apart from the permitted Class A1 unit which shall not be open to customers/members outside the hours of 0700 to 2300 on Monday to Thursday, 0700 to 0000 (midnight) on Fridays and Saturdays and 0900 to 2300 on Sundays. (Demolition of Public House and garages and replacement with construction of a mixed use development, comprising retail and food and drink units (within classes A1, A3 and A4) at ground floor level and 64 residential units at upper floor levels (first to sixth floors), together with 64 car parking spaces, service yard, access and car parking).

5. The main issue is therefore the effect that the proposed earlier opening time of 07.00 hours on Sundays upon the living conditions of the residents of the flats immediately above and adjacent to the shop premises.

Reasons

6. The shop unit, which is the subject of the appeal, is on the ground floor of a mixed use development (Landmark House) comprising commercial space with flats above. At the time of my site visit none of the ground floor units were occupied but residents had moved into the flats. Landmark House is sited at

the busy junction of Rectory Lane and The Broadway. The appeal site fronts The Broadway and is separated from the units facing Rectory Lane by an access to the flats.

7. The Broadway is an established shopping parade with a wide variety of shops on both sides of the street. In common with Landmark House there are flats over the shops. In the wider area there is a petrol filling station and a supermarket. In combination these uses contribute towards the prevailing character of the vicinity of the appeal site as a bustling local centre.
8. There are flats immediately above the appeal site and some of these units include large open balconies which are in use as amenity space. As a result of the close relationship between the shopfront onto The Broadway and the flats above any comings and goings associated with the shop use would have the potential to disturb the residents of the flats. The proposed extension of opening hours would increase the likelihood of disturbance between 7am and 9am on a Sunday morning.
9. Whilst there may be increased disturbance to residents of the flats this would present itself in the context of a wider area which is characterised by a shopping parade which provides a wide variety of local facilities. For instance there is a cash machine in an adjacent building, a car park to the rear of the terrace of shops and a newsagent on the opposite side of the road which advertises opening hours from 7am on Sundays. All of these uses would be likely to generate noise early in the morning and combined with the road noise associated with the busy road junction, the resulting noise environment for residents of the flats would already have the potential to disturb them. In this context the extended opening hours of the shop unit would not be harmful to the living conditions of residents of the flats in Landmark House.
10. I conclude that the proposed earlier opening time of 07.00 hours on Sundays would not have a harmful effect upon the living conditions of the residents of the flats immediately above and adjacent to the shop premises. The application is therefore in accordance with to Policy DBE9 of the Epping Forest District Local Plan (1998) which requires that an intensification of use does not result in an excessive loss of amenity for neighbouring properties in relation to noise or other disturbance.

Other Matters

11. The Epping Forest District Local Plan (Submission Version) 2017 has been submitted but has yet to be examined or found sound; therefore I have given limited weight to it in my determination of the appeal.
12. The Council has referred to the licensing restrictions and a planning application at 30 Barrington Green (No. 30) which is one of the other commercial units within Landmark House in support of its case. This unit is described by the Council as a restaurant; therefore it is not directly comparable with the shop unit which is the appeal site. Also in terms of its position facing Rectory Lane, No. 30 does not have the same close relationship with the shopping parade as the appeal site. As a result the occupiers close to No. 30 would not experience the same level of noise and disturbance from the shopping area as those close to the appeal site. I have given the reference to No. 30 moderate weight but it does not dissuade me from the conclusion which I have reached in terms of the main issue.

13. Local residents, including residents of the flats in Landmark House and Loughton Town Council and Loughton Residents Association have made objections in respect of matters that fall outside my consideration of the main issue. These include impact on property values, anti-social behaviour, car parking and noise from deliveries and the arrival of staff.
14. Planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property cannot be a material consideration.
15. I have limited information before me regarding the potential for increased car parking demand, anti-social behaviour and noise associated with deliveries and the arrival of staff. On this basis and the lack of associated evidence, I have given these issues only limited weight in my determination of the appeal. They have not led me to a different conclusion other than that which I have already reached in relation to the main issue.

Conditions

16. In response to my invitation to do so, both main parties have provided further information regarding the status of the conditions attached to the original consent (LPA Ref. EPF/2163/13). The Council has confirmed that all of the conditions have been complied with therefore it is not necessary for me to impose those conditions.
17. It was evident at my site visit that the development has commenced therefore I have not included a time limit condition. However I have included a condition to reference the site location plan.
18. I have also imposed a condition to control the hours of opening of the shop unit, which is the subject of the appeal, in accordance with the variation requested by the appellants. This is necessary to protect the living conditions of the occupiers of the flats above and adjacent to the shop premises.

Conclusion

19. For the reasons set out above, the appeal is allowed.

Sarah Dyer

Inspector