



Epping Forest District Council



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Application Number:	EPF/2794/20
Site Name:	209 D High Road Loughton IG10 1BB
Scale of Plot:	1:500

Report Item No: 11

APPLICATION No:	EPF/2794/20
SITE ADDRESS:	209 D High Road Loughton IG10 1BB
PARISH:	Loughton
WARD:	Loughton St Marys
APPLICANT:	Mr Nurtac Timur
DESCRIPTION OF PROPOSAL:	Erection of canopies for use of garden as additional seating to café and associated landscaping.
RECOMMENDED DECISION:	Grant Permission (With Conditions)

Click on the link below to view related plans and documents for this case:

http://planpub.eppingforestdc.gov.uk/NIM_websearch/ExternalEntryPoint.aspx?SEARCH_TYPE=1&DOC_CLASS_CODE=PL&FOLDER1_REF=645293

CONDITIONS

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2 The development hereby permitted shall be carried out and retained strictly in accordance with the following approved plans and documents: Location Plan (dated October 2020), 1008_MR_DS_01, Existing and Proposed Site Plan (dated October 2020), Noise Impact Assessment by RF Environmental Ltd (dated October 2020) and Design & Access Statement (dated November 2020).
- 3 The use of the rear garden hereby permitted shall not be open to customers outside the hours of 8am to 6pm on Mondays to Sundays and Bank Holidays.
- 4 There shall be no exterior lighting affixed to any external surface of the canopy or fence hereby permitted.
- 5 Prior to first use of the rear garden by customers, a scheme of sound insulation for the proposed canopy shall have been submitted to and approved in writing by the Local Planning Authority. The scheme of sound insulation for the canopy shall be implemented prior to the first use the rear garden area by customers, and thereafter permanently retained.
- 6 Prior to first use of the rear garden by customers, a written Noise Management Plan (NMP) must be submitted to and approved in writing by the Local Planning Authority. The NMP should detail all possible noise sources associated with use of the garden area and how the business will be managed and run in order to mitigate the noise from each source. The NMP should take account of published good practice guidance such as that within the Institute of Acoustics Good Practice Guide on the Control of Noise from Pubs and Clubs or any other equivalent guidance. Any changes to the approved NMP will require the written prior approval of the Local Planning Authority. Noise from any activities associated with the use of the rear garden shall be managed in accordance with approved NMP in perpetuity.

- 7 No deliveries, external running of plant and equipment or demolition and construction works, other than internal works not audible outside the site boundary, shall take place on the site other than between the hours of 07:30 to 18:00 on Monday to Friday and 08:00 to 13:00 on Saturday and not at all on Sundays, Public or Bank Holidays without the prior written permission of the Local Planning Authority.
- 8 No noise from live or amplified music or other sound shall be played within the rear garden.

This application is before this Committee since the recommendation is for approval contrary to an objection from a Local Council and at least one non-councillor resident, on planning grounds material to the application (Pursuant to The Constitution, Part 3: Scheme of Delegation to Officers from Full Council).

Site and Surroundings

The site comprises of a ground floor commercial unit with a maisonette above, located within the Loughton Town Centre and within primary frontage. It is not listed nor in a conservation area. It is currently occupied by Molen's Café.

Proposal

The proposal is for the erection of canopies for use of garden as additional seating to cafe and associated landscaping.

Relevant Planning History

EPF/0553/14 - Change of use of shop premises from purposes within Use Class A1 (shops) to use for purposes within Use Class A3 (Restaurants & Cafes) – Approved

EPF/0808/17 - Erection of rear conservatory - Approved

EPF/0413/18 - Application for variation of condition 2 'plan numbers' and 3 'use of rear double doors' on planning application EPF/0808/17 (Erection of rear conservatory) – Refused

EPF/1366/18 - Application for variation of condition 2 'plan numbers' and 3 'use of rear double doors' on planning application EPF/0808/17 (Erection of rear conservatory) – Dismissed on Appeal

Development Plan Context

Local Plan and Alterations 1998 & 2006 (LP)

Section 38(6) Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan currently comprises the Epping Forest District Council Adopted Local Plan (1998) and Alterations (2006).

The following policies within the current Development Plan are considered to be of relevance to this application:

CP2	Protecting the Quality of The Rural and Built Environment
CP7	Urban Form and Quality
DBE1	Design of New Buildings
DBE9	Loss of Amenity

National Planning Policy Framework 2019 (Framework)

The Framework is a material consideration in determining planning applications. As with its predecessor, the presumption in favour of sustainable development remains at the heart of the NPPF. Paragraph 11 of the NPPF provides that for determining planning applications this means either;

- a) approving development proposals that accord with an up-to-date development plan without delay; or
- b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole

The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making, but policies within the development plan need to be considered and applied in terms of their degree of consistency with the Framework.

In addition to paragraph 11, the following paragraphs of the NPPF are considered to be of relevance to this application:

Paragraphs 124 & 127

Epping Forest District Local Plan Submission Version 2017 (LPSV)

Although the LPSV does not currently form part of the statutory development plan for the district, on 14th December 2017 the Council resolved that the LPSV be endorsed as a material consideration to be used in the determination of planning applications.

Paragraph 48 of the NPPF provides that decision-takers may give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

The LPSV has been submitted for Independent Examination and hearing sessions were held on various dates from February 2019 to June 2019. On the 2nd August, the appointed inspector provided her interim advice to the Council covering the substantive matters raised at the hearing and the necessary actions required of the Council to enable her to address issues of soundness with the plan without prejudice to her final conclusions.

As the preparation of the emerging Local Plan has reached a very advanced stage, subject to the Inspector's Advice regarding the need for additional MMs, significant weight should be accorded to LPSV policies in accordance with paragraph 48 of Framework. The following table lists the LPSV policies relevant to the determination of this application and officers' recommendation regarding the weight to be accorded to each policy.

Policy	Weight afforded
SP1 Presumption in Favour of Sustainable Development	Significant
DM9 High Quality Design	Significant

Summary of Representations

Number of neighbours consulted: 20. 6 response(s) received

11, 29, 31, 33, 35 PRIORY ROAD & LOUGHTON RESIDENTS ASSOCIATION - Objections – Summarised as:

- Noise and general disturbance;
- Overdevelopment; and
- Visually intrusive development.

LOUGHTON TOWN COUNCIL – The Committee OBJECTED to this application, stating that previous proposal to use the garden space at this establishment had been refused to protect the amenity of occupiers of neighbouring properties.

Members could see no reason why this should be varied, drawing the attention of the Planning Officer to the Local Planning Authority's refusal of EPF/1368/18, in this regard:

Use of the outside area by customers would be detrimental to the residential amenity of occupiers of neighbouring properties, especially a number of those fronting Priory Road, by reasons of noise and other disturbances. Excessive harm is particularly likely to occur at times beyond the normal working day since any condition to define the hours of use of the outside area would be unenforceable. As such the proposal is contrary to Policy DBE9 of the Adopted Local Plan and Alterations; Policy DM 21 of the Epping Forest District Local Plan Submission Version (2017); and, the provisions of the National Planning Policy Framework.

Planning Considerations

The main issue for consideration in this case are:

- a) The impact on the living conditions of neighbouring properties with particular regard to noise and general disturbance; and
- b) The impact on the character and appearance of the area.

In normal circumstances as the rear garden area and the café form a single planning unit, therefore, as the primary lawful use is an A3 restaurant/café the rear garden would be ancillary to that use, and a primary use may be carried on within any part of a planning unit. However, as per condition 2 (The rear garden of the application site hereby approved shall not be used in any way by customers) of EPF/0553/14 this benefit is removed.

Thus, as part of this consent it would allow the use of the garden area by customers. There is a short-term benefit, in terms of allowing social distancing during the pandemic (once restaurants are allowed to fully open), however consideration must be given to the long-term harm to adjoining occupiers from the use of the garden area which Officers have assessed below.

This application does follow a recent pre-application exercise, and Officer recommendations are present within this scheme, namely reducing the overall height of the proposed canopy from 2.8 meters to 2.5 metres and proposing suitable noise mitigation measures from the use of the garden area by customers. These measures are:

- 1) The external area will be closed to patrons after 18:00 hrs;
- 2) The number of covers will be restricted to no more than 40;
- 3) Signage will be displayed in the external area, requesting that patrons respect residents and keep noise to a minimum;
- 4) Management will make regular checks of the external area, to ensure noise levels are kept to a minimum. Any persons not complying with the management request to minimise noise will be asked to leave the premises;
- 5) The access door to the external area will be kept closed at all times, to ensure internal noise will not emanate into the external area;
- 6) No music will be played in the external area at any times; and
- 7) The canopy will be clad with acoustic membrane to enhance its sound insulation.

From the above recommended mitigation measures, points 1 and 6 & 7 would meet the six tests of adding a planning condition, so these points would be secured via a condition as part of this consent. To add, the Councils Environmental Health Noise Team have reviewed the noise survey and have raised no objections subject to the imposition of conditions as part of the consent.

Officers note the previous appeal decision (ref: EPF/1368/18), and for clarify the decision relates to a scheme of a materially different nature than currently proposed (i.e. the proposed canopy with enhanced sound insulation, rather than chairs and tables sited in the open garden area), and it was not accompanied by a noise survey, nor was their support from the Councils Environmental Health Noise Team.

Thus, Officers consider that subject to suitably worded conditions controlling the use of the garden, the proposed development would not result in significant harmful impact to adjoining occupiers that would make their living conditions unbearable from the proposed development, and is therefore in accordance with policies CP7 and DBE9 of the LP, policy DM9 (H) of the LPSV and paragraph 127 (f) of the Framework.

Character and Appearance

The proposed canopy is of an open nature and of a limited scale to be a visually intrusive development or amount to harmful overdevelopment of the site. It would not be readily visible from the street or public areas, so there is no impact to the street scene.

Conclusion

For the reasons set out above having regard to all matters raised, it is recommended that conditional planning permission be granted.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

Planning Application Case Officer: Muhammad Rahman
Direct Line Telephone Number: 01992 564415

or if no direct contact can be made please email: contactplanning@eppingforestdc.gov.uk