

Steve Humphrey - Henry Simmonds - Sainsbury Application

From: Mike Taylor [REDACTED]
To: 'Steve Humphrey' <Steve.Humphrey@tmbc.gov.uk>, 'Lindsay Pearson' <Lindsa...>
Date: 18/10/2014 13:07
Subject: Henry Simmonds - Sainsbury Application
CC: [REDACTED]
Attachments: Community-Right-to-Bid-Guidance-note.pdf; 14 10
18CAMRA_Guide_to_Nominating_Pubs_as_Assets_of_Community_Value_2013.pdf;
14 10 18 Article 4 Direction.doc

Dear Steve,

The possible loss of the Henry Simmonds has severe implications for Borough Green and its neighbours, not just the loss of a pub, but also the impact of a new aggressive retailer on the fragile economic balance of our existing Rural Retail Centre, but some of that is a matter for the impending Planning Application.

The loss of the pub has triggered much concern locally:

1. Over the past few years, Borough Green has lost the Rock Tavern, the Red Lion and the Fox & Hounds to housing developers, Platt has lost the Brickmakers, Ightham the Chequers, Wrotham the Three Postboys and the Horse & Groom. I am sure there are many others that have slipped past this teetotaler's vision.
2. This loss comes at the same time as a steadily increasing population, often housed on the lost sites, and places like Isles Quarry, need a growing supply of these assets for their fostering of community spirit & entertainment value. Pubs are very often the village social hub where community events, charity and sporting challenges develop, where newcomers make friends, they are the engines of a vibrant village life.
3. It is understandable when a landowner wishes to repurpose a failing or closed pub, but the Henry Simmonds is demonstrably a viable community asset, albeit somewhat starved of investment and good stewardship.
4. Borough Green is your designated Rural Service Centre for a wide area, a huge area that is bereft of the night time entertainment economy that exists in our towns, so pubs should be viewed as an important element of infrastructure as are schools, doctors and sewers.
5. Whilst a Sainsbury will undoubtedly provide some jobs, the impact on the retail centre, and consequent job loss, will far outweigh any gains.

The community therefore intend to pursue two paths:

The first we can get underway ourselves, which is to get the Henry Simmonds listed as an "Asset of Community Value", and to register a "Community Right to Bid". To that end we are publicising an Emergency Meeting of the PC for Friday, to provide the required minute for the application. This is to keep you up to date with our thinking, we obviously need the goodwill of T&MBC to bring these to fruition

The second is where we need your help, and that is to change the Permitted Development Rights with an Article 4 direction. As we understand it, this mechanism is within the gift of the LPA, and I attach some of the notes we have found.

Looking forward to your thoughts,

Mike Taylor



Our Ref: A088839-3

Date: 20th November 2014

Tonbridge and Malling Borough Council
Planning Department
Gibson Building
Gibson Drive
Kings Hill
West Malling
Kent
ME19 4LZ

Dear Sir/Madam,

THE HENRY SIMMONDS PUBLIC HOUSE, BOROUGH GREEN, TN15 8DB – PROPOSED ARTICLE 4 DIRECTION

Introduction

Please accept this letter as a formal representation against the proposed direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO) on behalf of our clients, Sainsbury's Supermarkets Ltd and JEMP Property Invest.

The proposed direction, if made and confirmed by Tonbridge and Malling Borough Council, would result in an application for a change of use from Use Class A4 (Drinking Establishments) to Use Class A1 (retail) being requiring for the proposed development to take place. Such an application would result in a substantial delay and would, in our view, be entirely unnecessary given the site's location and planning policy status.

National Guidance

Paragraph 200 of the National Planning Policy Framework (2012) (NPPF) is clear that *the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area.*



100 St John Street, London, EC1M 4EH
Tel: +44 (0)20 7250 7500 Fax: +44 (0)20 7250 7501 Email: info@wyg.com www.wyg.com

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The National Planning Policy Guidance (2014) (NPPG) explains that there must be justification for both the *purpose and extent* of an Article 4 direction (para. 037) and that *the potential harm that the direction is intended to address should be clearly identified* (para. 038).

There is no evidence that the potential change of use of the site from A5 (drinking establishments) to A1 (retail) would cause harm to local amenity or to the wellbeing of the area. Indeed a retail use would not carry with it some of the impacts associated with the use of the site as a public house that might harm amenity or wellbeing, like noise and disturbance late in to the evening. The ability of the site to be used in different ways is important in its ability to respond to market conditions flexibly so that it can easily continue to meet local needs and make a positive contribution to the amenity and wellbeing of Borough Green.

In that context, there would be no justification for either the purpose or the extent of an Article 4 direction removing certain Permitted Development rights at this site. To do so would conflict with the national guidance contained within the NPPF and NPPG.

Permitted Development

Permitted Development rights allow certain types of development to take place without the need to apply for and obtain planning permission beforehand. These types of development are, by their nature, not contentious. As the NPPG explains, *Permitted Development rights are subject to conditions and limitations to control impact and to protect limit amenity* (para. 016) and so the legislation intrinsically minimises the impacts of development that is permitted.

Over recent years, the Government has introduced a raft of legislation and guidance aimed and taking many more types of development out of the planning application process. There can be no doubt of the national direction in this regard. To impose an Article 4 direction at this site would fully conflict with that direction of travel with no justification.

The designation of the site

The site is designated as a District Centre by Policy R1 of the Development Land Allocations Development Plan Document (DPD) (2008). This policy notes that uses which do not justifiably require a shopping centre location or do not provide an appropriate service for the day-to-

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day needs of the local community will not be permitted in retail centres.

Policy CP22 (Retail Development) of the Core Strategy (2007) states that the Borough has *a range of urban and rural district centres which offer retail facilities to meet the day-to-day needs of their local communities (6.3.46) and the key to delivering this will be in maintaining and enhancing the role of the Borough's existing retail centres which act as a focal point for the communities they serve (6.3.47).*

Clearly, a retail use is a wholly appropriate one in a District Centre. It is vitally important for the health of centres like this one that they are able to flexibly respond to changing market requirements so as to be able to properly meet the needs of the communities that they serve in line with the Council's policy aspirations.

By imposing a direction under Article 4, the Council would be introducing a barrier that would undermine the ability of the centre to respond quickly and flexibly to market demands and the needs of the community and such a direction would seem to conflict with the thrust of the Council's policies.

Compensation

The Town and Country Planning Act 1990 notes that if a local planning authority makes an Article 4 direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn where planning permission is subsequently refused for development that would have been permitted or where limiting conditions are imposed. Although we would expect planning permission to be granted (with costs on appeal) if the Council is contemplating that there are reasons for refusing consent (which it must be in order to justify the proposed direction) then it should be aware of, and calculate, the likely level of compensation. Members should be aware of the financial consequences.

Summary

This representation constitutes an objection to the proposed imposition of an Article 4 direction that would restrict Permitted Development rights at 4 Wrotham Road, Borough Green. Such a direction would conflict with the national guidance contained within the NPPF and NPPG, would undermine the objectives of the General Permitted Development Order and the national drive towards removing developments from the planning system, would conflict with the Council's policy aspirations and would likely result in abortive expenditure for our clients.



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We respectfully request that this direction does not come in to force.

Please contact me if you would like to discuss any aspect of this letter.

Yours Sincerely,



Gary Morris
Director

For and on behalf of WYG



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