



Appeal Decision

Site visit made on 15 October 2012

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 15 November 2012

Appeal Ref: APP/Z0116/A/12/2180389

The Trading Post, 782 Fishponds Road, Fishponds, Bristol BS16 3TT

- 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 Ladbroke PLC against the decision of Bristol City Council.
 - The application Ref 12/01915/F, dated 27 April 2012, was refused by notice dated 4 July 2012.
 - The development proposed is the change of use from A1 retail to A2 betting office, together with alterations to the shopfront and the installation of new signage.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from A1 retail to A2 betting office, together with alterations to the shopfront at The Trading Post, 782 Fishponds Road, Fishponds, Bristol BS16 3TT in accordance with the terms of the application, Ref 12/01915/F, dated 27 April 2012, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Refs: 01, 02, and 13210 LEE 01, as well as unreferenced plan entitled *Section Thro* (sic) *fascia/roller shutter*.

Procedural matter

2. The description of the proposal includes the installation of new signage. The Council's decision notice makes no reference to the installation of new signage, as a separate application has been submitted under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, and therefore it is not appropriate for me to deal with such matters as part of a Section 78 appeal.
3. The Council has no objection to the part of the proposal which concerns the alterations to the shopfront and therefore I shall restrict my consideration to the change of use only.

Main Issue

4. The effect of the proposal on the vitality and viability of the Fishponds town centre.

Reasons

5. The appeal premises comprises a vacant shop unit, part of a group of commercial buildings on the south side of Fishponds Road, in the heart of the Primary Shopping Frontage (PSF) as defined in the Bristol Local Plan (LP), adopted in 1997.
6. Saved LP Policy S5 says that the change of use of ground floor shop premises in such PSFs to non-shopping uses will be permitted, provided that the proposed use would not seriously undermine the retail function of the shopping centre. It goes on to say that 6 factors will be taken into account in assessing the effect of an individual proposal on a centre, only 4 of which are relevant to this proposal. They are:
 - (i) the location and prominence of the premises within the shopping frontage;
 - (ii) the floorspace and frontage of the premises;
 - (iii) the number, distribution and proximity of other ground floor premises in, or with planning permission for, non-shopping uses, and
 - (iv) the particular nature and character of the proposed use, including the level of activity associated with it.
7. The policy sets no specific objective criteria by which the undermining of the retail centre might be judged. The appellants argue that the factors mentioned above relate only to the appeal site, which is mostly true, but in order to carry out an assessment as to whether the retail centre would be undermined, it must be necessary to relate those factors to the centre as a whole.
8. The appellants have referred me to the Council's own *City Wide Retail Study* which notes that the centre has "double the convenience floorspace than the national average" and that the shopping function of the centre is "better anchored". It also comments that the centre is perceived as a "viable trading location" a view reinforced by the opening of 2 new retail premises as well as the relocation of a betting shop within the centre.
9. I have not been told of the date of the study or provided with a copy of it, but the appellants say that it was used to inform the preparation of the Local Development Framework, and therefore it is likely to be fairly recent. Moreover, the Council has not refuted the relevance of the extracts quoted by the appellants. I therefore attach some weight to it, reinforced by my own impression from what I saw on my visit, which shows a wide variety of mainly retail uses in the centre, supplemented by a range of non-retail uses including restaurants, pubs, cafes, estate agents and 2 betting shops.
10. The Council says that the proposal would result in half of the units in the PSF being in non-retail use, whereas the appellants say that about 70% of the units are in retail use. Neither party has provided me with survey information, but in my estimation, the percentage in retail use is somewhere between the two, at about 60% of the total number of units. The large supermarkets at the eastern end of the centre lie outside of the PSF, although the as yet unadopted Site Allocations and Preferred Approach Document extends the PSF to include them, but I afford little weight to this intention at this stage. Even so, I consider that at 60% or so of retail uses in the PSF, the retail function of the centre is unlikely to be seriously undermined by the loss of one retail unit.

11. In terms of the location of the appeal site and its prominence, it is located in a part of the centre where there is already a high concentration of non-retail uses, being close to two pubs, a bank, a betting shop and an estate agency. It is close to the edge of the primary frontage, the bank next door but one at 788 being the first in a line of properties which comprise a secondary frontage. Whilst the proposal would consolidate a stretch of largely non-retail uses, a consecutive row of three such premises to the south west of the site lies in a secondary frontage where such uses are not discouraged.
12. Even so, the non-retail uses in the vicinity of the appeal site comprise uses which complement the seemingly buoyant retail function of the town centre, attracting customers, and adding to the life and attractiveness of the centre. The appeal site lies on the same side of the road as, and within easy walking distance of, two predominantly retail parts of the town centre, to the north-east and the south-west, and pedestrian shoppers are likely to pass by the site in any event.
13. The appeal premises is a small one, of about 90 sq.m., with a shop front facing the road of about 4m width, and a return façade facing a pub forecourt of about the same width. The Council treats both of these façades as being "frontage", and the Proposals Map indicates that both form part of the PSF. However, it seems to me that the term is more properly applied to a façade facing the front or abutting a road, and therefore the return façade is of secondary importance. The shop lies within the heart of the commercial area, and although the return façade makes the premises more apparent when approaching from the south-west, the unit itself is not especially prominent in the context of a busy street scene.
14. The appellants have submitted uncontested evidence to show that, in a number of examples, betting shops attract more customers than their A1 retail neighbours. On my visit, I noted several people visiting the William Hill betting shop opposite the appeal site, and a number were carrying shopping bags, which suggests that they were making combined shopping trips. The premises would have an active shopfront, displaying sports related advertising, and taken together, I see no reason to think that a betting shop would have a markedly detrimental effect on the retail centre compared with an A1 use.
15. A factor that Policy S5 does not take into account, is the length of time during which the premises has been vacant and whether its use as an A1 shop is likely to recommence. The appeal unit has been vacant since January 2011, but prior to that it was also vacant from 2007 until 2009, when it became occupied by a "pound shop". The building has a poor appearance, looking clearly empty, and wooden boarding covers up a smashed window. The property has been marketed since 2011, with no retail interest being shown.
16. Although the PSF has few vacant premises, there is one in the same group of shops, the former Spar, which has a larger floorspace, and uncontested marketing evidence is that it is likely to be more attractive to potential retailers than the appeal premises. I consider that the dim prospect for disposing of the appeal site for retail purposes and the current poor appearance are both relevant and significant factors that need to be taken into account.

17. Agents acting for a competing betting shop point to the lower vacancy rate that exists now compared to the position in 2008, when an appeal was allowed¹ at 743 Fishponds Road, on the site now occupied by William Hill. Whilst this may demonstrate that there is a demand for shop premises in the town centre, the marketing evidence suggests that there is no retail interest in this particular shop. On the other hand, the lower vacancy rate indicates that the town centre is now in a stronger position than it was in 2008, and it is more likely to be resilient to the introduction of a betting shop use in small premises.
18. Looked at in the round, it is hard to see how such a thriving centre, with a high proportion of retail shops, would be seriously undermined by the conversion of a fairly small shop to a non-retail use. In my view, putting the premises to a use which is ancillary to the retail function of the centre, attracting customers to the centre and improving the appearance of the building would only serve to strengthen the function of the town centre rather than undermine it. I therefore find that the proposal would not conflict with LP Policy S5.
19. Whilst there are differences in terms of the prominence of this site and the one opposite allowed on appeal, the overall conclusion reached by the Inspector in the 2008 appeal, that there would be no unacceptable dilution of retail units in the centre and that there would be no adverse affect on the retail function of the centre, is also pertinent here.
20. Of relevance is the more recently adopted Bristol Development Framework Core Strategy, adopted in June 2011, Policy BCS7 of which deals with centres and retailing. It takes a less restrictive view towards non-retail uses, and whilst it aims to ensure that retail uses predominate within designated primary shopping areas, it also aims to locate leisure and entertainment uses primarily within or, where appropriate, adjoining designated centres. Retail uses would still predominate if the appeal were allowed, and thus the proposal would not conflict with this policy.
21. A further and important material consideration in this case is the publication in March 2012 of the National Planning Policy Framework (the Framework). The appellants argue that Policy S5 is inconsistent with the Framework. However, the framework promotes the use of policies to support the vitality and viability of town centres, and requires local planning authorities to define the extent of primary and secondary shopping frontages and to set policies that make clear which uses will be permitted in such locations. The tenor of Policy S5 accords with this approach.
22. The Framework also attaches importance to the need to create jobs and prosperity, and to promote sustainable economic growth, and in view of my finding that the proposal would not conflict with the development plan, this adds to my reasons for allowing the appeal.

Other matters

23. The site lies in the Stapleton and Frome Conservation Area. The proposed use would have only a minor effect on the overall significance of the Conservation Area as a heritage asset, but to the extent that the building has suffered from a poor appearance for almost 2 years, the reuse would enhance its appearance.

¹ Ref: APP/Z0116/A/08/2081136 dated 12 November 2008

24. Local people expressed concerns about the prospect of 3 betting shops in close proximity to one another. However, it is the Government's policy to promote competition and choice, and it is for the appellants to decide whether there is a market demand for the services they offer.

Conditions

25. Beside the standard implementation condition, the Council has suggested 2 other conditions. A condition restricting the hours when customers might remain on the premises is sought in order to protect living conditions of nearby residents. No specific residential premises have been identified as being susceptible to noise and disturbance, and as the premises lies between two public houses, I consider that an adequate case has not been made out to justify its imposition. The Council did not seek such a condition on the William Hill premises and, in the absence of evidence of need, this reinforces my finding that it is unnecessary.
26. A condition requiring adherence to the approved plans is necessary in the interests of good planning and for the avoidance of doubt.
27. For the reasons given above, I conclude that the appeal should be allowed.

JP Roberts

INSPECTOR