



Appeal Decision

Hearing held on 29 August 2012

Site visit made on 29 August 2012

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 10 October 2012

Appeal Ref: APP/Z4718/A/12/2175438

7 New Street, Huddersfield HD1 2AX

- 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 Fortlands Ltd against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref.2011/62/93114/W, dated 24 November 2011, was refused by notice dated 17 April 2012.
 - The development proposed is a change of use from shop (A1) to betting shop (A2).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from shop (A1) to betting shop (A2) at 7 New Street, Huddersfield HD1 2AX in accordance with the terms of the application, Ref.2011/62/93114/W, dated 24 November 2011, 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 premises shall be used for a betting shop and for no other purpose (including any other purpose in Class A2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - 3) No development shall take place until details of the shop-front display have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.

Main Issue

2. This is the effect of the proposal on the vitality and viability of the town centre.

Reasons

3. No.7 lies within a Primary Shopping Frontage as defined in the UDP¹. In such frontages, UDP Policy S11 only supports the change of use of ground floor premises, or parts thereof, to non-shopping uses where the non-shopping use offers a service appropriate to a shopping centre and not more than 33% of the frontage would be in non-shopping use if the development were carried out.

¹ Kirklees Unitary Development Plan (Written Statement - revised with effect from 28 September 2007)

4. There are already a significant number of non-shopping uses in the frontage that No.7 forms part of. On that basis, the appellant accepts that the change of use proposed would not comply with UDP Policy S11.
5. A previous appeal² for much the same proposal was dismissed in September 2009, when the premises were still occupied. One of the factors that led to that decision was a concern about the way in which the premises had been marketed. Since then, the currently vacant premises have been marketed, without success. That may well be due to prevailing economic conditions but it also seems that the nature of the accommodation has something to do with its lack of attractiveness to potential users.
6. The Council confirmed at the Hearing that it has no concerns about the marketing efforts through which the appellant has sought to find a shopping-based user for the building. The position of the Council is, in simple terms, that the premises ought to remain empty until economic conditions change to the extent that the premises become attractive, once again, to retail operators. The essential question is whether it is better to wait for that to come about or to accept a non-shopping use that could go ahead much sooner.
7. In the light of UDP Policy S11, the potential loss of a retail unit in a Primary Shopping Frontage is something the Council is right to be concerned about. However, while Primary Shopping Frontages can vary in the intensity of footfall and activity within them, New Street is relatively remote from the retail heart of Huddersfield. Given the non-shopping uses within it, the frontage that No.7 forms part of appears largely peripheral to that retail heart. The loss of the A1 use in No.7 would have little harmful impact on Huddersfield's overall retail offer, therefore.
8. Currently, the premises contribute nothing to the vitality and viability of the town centre. It may well be a long time before the economy improves to the point where the premises could make a contribution through a shopping use. The nature of the floor-space, and the location of the unit, may act as inhibiting factors that make the possibility even more remote. By contrast, the evidence of the appellant, that I have no good reason to doubt, is that a betting shop could generate footfall and activity relatively quickly. On that basis, it would improve the vitality and viability of the town centre in the short term and, more likely, the longer term too. Paragraph 23 of the Framework³ sets out that policies should be pursued to support the vitality and viability of town centres. Moreover, a new use in No.7 would also generate economic growth and jobs. Paragraph 19 of the Framework tells us that significant weight should be placed on the need to support economic growth through the planning system.
9. No.7 is part of a terrace listed Grade II and within the Huddersfield Town Centre Conservation Area. The proposal is for a change of use only with no physical changes proposed to the building. In that sense the proposal would have no impact upon, and thereby preserve, the special architectural and historic interest of the listed building. However, in terms of the conservation area, the re-use of what is currently a disused unit, and the activity that would generate, would enhance both the character and the appearance of the conservation area, as required by UDP Policy BE5. This is another factor that weighs in favour of the proposal.

² APP/Z4718/A/09/2104651

³ The National Planning Policy Framework

10. I have considered conditions in the light of advice in Circular 11/95⁴. A condition is necessary to prevent the premises being used for other activities in Use Class A2 that might not share the characteristics of a betting shop. I have framed this in a way that would not prevent a change back to Use Class A1 as permitted development. One of the benefits of the proposal is the activity the use would generate. Some of that effect would be lost if passers-by were not able to see into the premises. On that basis, it is necessary to control, by condition, the manner in which any display in the shop-front is dealt with.
11. A condition specifying the approved plans, as normally appended to grants of planning permission, is not necessary in this case because all the plan submitted does is identify the premises. That is not something that could be subject to a minor material amendment.
12. In summary, the proposal would fail to accord with UDP Policy S11. However, it would improve the vitality and viability of the town centre in the short term, and more likely the longer term, generate economic growth and jobs, and enhance both the character and appearance of the conservation area. These are material considerations that clearly outweigh the failure to accord with the development plan.
13. For the reasons given above I conclude that the appeal should be allowed.

Paul Griffiths

INSPECTOR

⁴ Circular 11/95: *The Use of Conditions in Planning Permissions*

APPEARANCES

FOR THE APPELLANT:

Alyn Nicholls	Alyn Nicholls & Associates
BA(Hons) MRTPI	
James Lamming	Savills
MRICS	
Jim Banfi	Fortlands Ltd
Paul Turner	Fortlands Ltd

FOR THE LOCAL PLANNING AUTHORITY:

John Buddle	Acting Senior Planner (Policy) KMBC
BSc(Hons) MA MRTPI	
Julia Steadman	Development Management Officer KMBC
BA(Hons) DipTP MRTPI	

DOCUMENTS

- 1 Council's second letter of notification
- 2 Copy of e-mail from John Buddle to Alyn Nicholls
- 3 Huddersfield GOAD Report
- 4 Note on the Council's evidence on rental levels in the town centre
- 5 Comparison of pedestrian counts
- 6 Copy of UDP Proposals Map

PLANS

- A Un-numbered Location Plan