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# Appeal Decision

Site visit made on 29 January 2013

**by P J Asquith MA(Hons) MA MRTPI**

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

**Decision date: 25 February 2013**

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**Appeal Ref: APP/M4510/A/12/2183614**

**21-23 Clayton Street, Newcastle upon Tyne, NE1 5PN**

- 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 Pauls Property Investment Ltd against the decision of Newcastle City Council.
  - The application Ref. 2012/0886/01/DET, dated 26 June 2012, was refused by notice dated 17 August 2012.
  - The development proposed is the change of use from Class A1 to A2.
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## Decision

1. The appeal is allowed and planning permission is granted for change of use from Class A1 to A2 at 21-23 Clayton Street, Newcastle upon Tyne, NE1 5PN in accordance with the terms of the application, Ref. 2012/0886/01/DET, dated 26 June 2012, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) A window display in the windows fronting Clayton Street or the provision of clear views into the front of the premises shall be maintained at all times when the premises are open for business.

## Main Issue

2. The main issue in this case is the impact of the proposal on the vitality and viability of this area of Newcastle city centre.

## Reasons

3. The appeal premises are a ground floor shop unit facing onto Clayton Street and form part of the perimeter range of units within the block which houses Grainger Market, a substantial covered market with in the region of 250 stalls. They lie within the heart of the defined core shopping area of Newcastle city centre. The premises are currently occupied by a ladies' wear shop on a short-term basis. Despite being marketed for over a year to try to find a tenant who would commit to a long-term lease, the only interest for the re-letting of the unit is from a bookmaker, necessitating the change of use to Class A2<sup>1</sup>.
4. Saved Policy R2 of the Newcastle upon Tyne Unitary Development Plan (UDP) seeks to maintain this core shopping area as the principal shopping area in the northern region. Following on from this Policies R2.1 and R2.2 define a

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<sup>1</sup> Town and Country Planning (Use Classes) Order 1987 (as amended).

hierarchy of category A and B primary shopping frontages and direct how change of use applications will be considered.

5. The appeal premises are within a defined Category B frontage. Whilst Policy R2.1 states that change of use from A1 will not be allowed in Category A frontages, Policy R2.2 provides more flexibility within Category B frontages. Here the policy states that the change of use from Class A1 will not be allowed where this would result in the percentage of non-retail frontages exceeding 30% of any block of property in the frontage (in terms of linear measurement). The justification to the policy indicates that the 30% threshold is a guide for consideration of future change of use proposals rather than a rigid division between acceptable and unacceptable uses. Nevertheless, where the proportion of non-A1 uses has already reached over 30% the Council will resist any further changes.
6. The Council indicates that of the nine units making up the east side of Clayton Street (between Nelson Street and Nun Street) the proportion of the frontage in non-A1 use is already 43% and with the proposal this would increase to 55%. The proposal would therefore be contrary to Policy R2.2, strictly applied. However, the UDP was adopted in 1998 and therefore is now somewhat dated. The National Planning Policy Framework (the Framework) makes clear that where relevant policies are out-of-date planning permission should be granted unless adverse impacts from the development outweigh the benefits when assessed against the policies in the Framework.
7. The nature of retailing and associated leisure uses has changed considerably since the adoption of the UDP and this includes the nature of betting shops since de-regulation about ten years ago. The relationship of adjacent development to Clayton Street has also recently changed with the redevelopment of the southern portion of the very large Eldon Square covered shopping area. The west side of Clayton Street at ground level within this redevelopment is mostly given over to A1 retailing. The east side is more mixed and includes a public house, café, amusement centre and another betting office. Clayton Street, together with Nelson Street to the north, is pedestrianised (with service access only) and at the time of my visit towards the middle of a weekday these streets were subject to considerable footfall. There was only one unit within Clayton Street (to the west side) that was vacant.
8. Having regard to pedestrian footfall, as the appellant's evidence demonstrates, and as borne out by my own experience, Class A2 uses can attract as many, and in some cases more, comings and goings as retail premises. This point appears to be accepted by the Council which also acknowledges that with such uses linked trips to retailers are often made. In this sense such a use would be complementary to the wider retail function. Furthermore, because of the hours of opening of bookmakers, often into the late evening, their presence can encourage footfall and activity into streets at times when many retail uses have closed, thereby increasing street vibrancy at these times. The ability to secure a long-term lease with the proposed operator would potentially allow investment in the maintenance, management and improvement of the property which is within the grade 1 listed Grainger Market building.
9. In my view, in terms of the number and location of non-retail uses within Clayton Street, and despite not complying with the percentage criterion of Policy R2.2, allowing the proposal would not result in the noticeable diminution

of A1 retail use in the street as a whole. Nor would it appear that there was an over-concentration of non-retail uses (or bookmakers in particular) such that this would be likely to materially impact on the overall vitality or viability of this part of the city centre.

10. Whilst each case has to be judged on its own particular merits, I note that the Council has within the recent past taken a pragmatic view in allowing the change of use to a betting office in a unit in Grainger Street to the opposite side of the covered market. This is within a Category A frontage where there is a presumption against any such change. The Council acknowledged in that case the diminishing weight of the relevant saved UDP policy and that a bookmaker use was one which would have a positive effect on vitality and viability. This strengthens me in my overall conclusion that the present proposal would be acceptable and would comply with the thrust of the Framework in its positive presumption in favour of sustainable development. Whilst it would fail to comply with the letter of Policy R2.2 in terms of the frontage percentage that would be occupied by non-A1 use, it would not undermine the objective of the policy which is the maintenance of vitality and viability of a thriving city centre.
11. I have taken account of all other matters raised including the fact that the appeal premises are within the Central Conservation Area. No physical alterations are proposed to the building. As suggested by the Council, it would be appropriate to impose a condition to require the maintenance of a window display or ability to see into the premises which would ensure the continuing liveliness of the street frontage. As such, the proposal would preserve the appearance and character of this widely-drawn conservation area. Subject to the imposition of a condition along these lines the proposal is acceptable.

*P J Asquith*

INSPECTOR