



Appeal Decision

Site visit made on 8 October 2012

by Michael R Moffoot DipTP MRTPI DipMgt MCMI

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

Decision date: 1 November 2012

Appeal Ref: APP/E2734/A/12/2178790

5 Fishergate, Ripon, North Yorkshire HG4 1EA

- 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 Mr Gerard Peace against the decision of Harrogate Borough Council.
 - The application Ref. 6.31.1611.A.CO.U, dated 13 April 2012, was refused by notice dated 11 June 2012.
 - The development proposed is change of use from existing A1 (retail) to A2 (letting agency).
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Procedural Matters

1. At the time of my site visit a letting agency was operating at No 5 Fishergate. Although the site location plan includes Nos 5 and 7, the planning application form refers to No 5. The appellant has confirmed that the proposal relates solely to this property, and it is clear that the Council determined the application on this basis notwithstanding the site address on the decision notice. I shall therefore confine my considerations to No. 5. At my request a revised red-lined plan has been provided by the appellant.
2. The site lies within the Ripon Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. The parties do not suggest that the outcome of the appeal would have a significant effect in this respect and I see no reason to disagree. I shall not therefore consider this matter further.

Decision

3. The appeal is allowed and planning permission is granted for change of use from existing A1 (retail) to A2 (letting agency) at 5 Fishergate, Ripon, North Yorkshire HG4 1EA in accordance with the terms of application Ref. 6.31.1611.A.CO.U dated 13 April 2012 and the revised site location plan dated 12-10-2012.

Main Issue

4. The main issue is the effect of the proposal on the vitality and viability of the shopping centre.

Reasons

5. No. 5 Fishergate is a two-storey terraced property situated within a 'Primary Shopping Frontage' (PSF) in the town centre as defined on the Proposals Map accompanying the adopted *Harrogate District Local Plan*.

6. Of the development plan policies referred to by the parties, saved Policy S5 of the Local Plan is most relevant to my determination of the appeal. Amongst other things, it states that within PSFs proposals involving the loss of existing A1 retail shops in ground level frontages will only be permitted if the proposal can be shown to lead to an improvement in the vitality and viability of the shopping centre. The justification for the policy notes that prime shopping facilities provide the greatest attraction and it is important for the continued shopping character of the centre that it is protected from non-shopping uses. It goes on to advise that a non-shopping use may be acceptable in a PSF in certain circumstances, including where it would make an important contribution to the vitality of the shopping centre and would not have a harmful impact on the shopping frontage.
7. These policy objectives generally accord with the *National Policy Planning Framework*, which states that planning policies should be positive, promote competitive town centre environments and provide for their management and growth. In drawing up Local Plans, local planning authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality, with well defined primary and secondary shopping frontages that clearly indicate which uses will be permitted in such locations.
8. Activity levels in the shopping centre were relatively high at the time of my mid-morning site visit. Shops were generally busy, footfall appeared good and parking space in Market Place and on surrounding streets was in demand. The overall impression I gained was that of a fairly lively shopping centre that appeared to be faring comparatively well in the current economic climate. Nevertheless, I noted a number of vacant retail units, including two in Fishergate, which inevitably has a negative impact on the retail character and attractiveness of the centre.
9. A survey undertaken by the Council in March 2011 indicated that 12 of the 14 properties in the PSF in Fishergate were in retail use (86%) and one unit was vacant. They note that this would drop to 79% if the appeal were to succeed. Although a more recent assessment has not been provided, it appears to me that the present proportion of retail to non-retail units in this PSF would be very similar to last year's survey. The loss of one relatively small retail outlet on the street as a result of the appeal proposal would not significantly alter this proportion, and I see no reason why the use would deter the flow of shoppers to the extent that the retail attractiveness of Fishergate would be materially compromised. Furthermore, within the context of PSFs in the wider shopping centre, which includes parts of Market Place, Queen Street and Old Market Place, retail uses would remain dominant and their contribution to the shopping centre would not be unduly prejudiced by the proposal.
10. Nevertheless, Policy S5 imposes a high test, making it clear that non-retail uses in PSFs will only be permitted if it can be shown to improve (my emphasis) the vitality and viability of the shopping centre, with such uses making an "*important contribution*" to its vitality. I have seen no compelling evidence to show that the proposal would satisfy these criteria, and I therefore find that it conflicts with Policy S5. However, there are other factors that carry weight in favour of the proposed development.
11. I understand that the premises had been vacant for some 7 months before occupation by the appellant and had attracted no substantive enquiries from prospective retail tenants during this period. This is perhaps not surprising

given the downturn in the national economy, and whilst I am not persuaded that the premises have "*limited retail options*" as the appellant suggests, there is clearly no benefit in the property remaining vacant and unsightly. The proposal would bring the building back into active use and prevent a 'dead' frontage by providing a window display, thereby contributing to the attractiveness of the shopping centre. Furthermore, the use would increase footfall along Fishergate and would be likely to lead to linked trips to other facilities in the town centre, thus enhancing its retail character and function. The appeal site's highly accessible location would also be of benefit to those without their own transport.

12. In addition, the development would make a modest contribution to the local economy by offering additional employment opportunities now and the potential for further jobs in the future, as well as enabling the business to expand. This is consistent with the Framework, which sets out the Government's clear commitment to securing economic growth in order to create jobs and prosperity and emphasises the role the planning system plays in contributing to achieving these objectives.
13. As to the Council's argument concerning a high concentration of similar A2 uses in this part of the centre and its effect on retail character, no compelling evidence has been submitted to support this contention. From my observations A2 uses are not particularly numerous nor are they concentrated in a discrete part of the shopping centre to the degree that its retail character is adversely affected. My attention has also been drawn to the recent grant of planning permission for change of use of a nearby property within a PSF from A1 to A2¹, where the Council concluded that the proposed estate agency would increase footfall and improve the vitality and viability of the city centre. Although the property had been vacant for longer than No 5 Fishergate, there are clear parallels with the appeal proposal that carry some weight in its favour.
14. Drawing these findings together, I conclude on balance that whilst the proposal may not improve the vitality and viability of the shopping centre or make an important contribution to its vitality, it would add to the variety of uses represented in the PSF without compromising its overall retail function, and in this respect would not harm the vitality and viability of the shopping centre. Furthermore, it would bring a previously vacant building back into use and enhance the attractiveness of the shopping centre, increase pedestrian activity and offer employment opportunities. I am satisfied these factors outweigh the conflict with Local Plan Policy S5 and accord with objectives in the Framework.
15. As to conditions, the standard time limit for commencement of development is not necessary given that the use has already started. No other conditions have been suggested by the parties and I am satisfied that none are necessary.

Conclusion

16. For the reasons set out above, I conclude that the proposal is acceptable and the appeal should succeed.

Michael R Moffoot

Inspector

¹ Nos 9-11 Old Market Place (LPA ref. 6.31.882.A.FUL)