



Appeal Decision

Site visit made on 20 August 2007

by **Graham E Snowden** BA BPhil Dip
Mgmt MRTPI

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

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Appeal Ref: APP/H0738/A/07/2044163

143 High Street, Stockton-on-Tees, Cleveland TS18 1LX

- 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 Trafalgar Leisure Ltd against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 06/1077/REV, dated 11 April 2006, was refused by notice dated 11 April 2007.
 - The development proposed is the change of use from mixed A1/A3 Use to mixed A1 Retail shop and Amusement Centre.
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Decision

1. I dismiss the appeal.

Main Issue

2. The main issue is the effect of the proposed change of use on the vitality and viability of Stockton town centre.

Reasons

Preliminary Matters

3. The appeal proposals were amended twice before formal consideration by the Council and my decision is based on drawing ref: BB05/091/001C, submitted on 20 June 2006.

Vitality and Viability of Stockton town centre

4. Government advice in PPS6 (paragraph 2.17) recommends that local planning authorities should define the primary shopping area for their centres and distinguish between primary and secondary frontages. It goes on to state that primary frontages should contain a high proportion of retail uses and that the development plan should include policies that make clear which uses will be permitted in such locations. The appeal property lies within the defined primary shopping frontage of Stockton town centre and the relevant policy in this instance is S4 in the Stockton-on-Tees Local Plan Alteration no.1 (Local Plan), which was adopted in March 2006 and represents up-to-date planning policy, which post-dates and takes into account the aforementioned advice in PPS6.
 5. Policy S4 states that there will be a presumption in favour of retaining retail use within the primary shopping frontage. Change of use will be permitted
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provided that three criteria are met. It is not in dispute that criteria ii) and iii), which relate, respectively, to the amenity of the surrounding area and the concentration of non-retail uses, are met in this instance. The disagreement between the principal parties relates to criterion i) which states that the additional use should result in no more than 10% of the sum total of the length of primary shopping frontages being in non-retail use. From the figures before me, it is clear that this 10% threshold is already exceeded and that any further non-retail frontage would breach this criterion.

6. Whilst there is some dispute about the actual floorspace figures involved, it is clear that the major part of the ground floor of the appeal property would be given over to non-retail use, if the appeal were to be allowed. It is also clear to me, from the evidence presented, that the previous use – although classified as a mixed use – was primarily a retail use, with the retail element dominant in the front part of the premises facing High Street. This is still evident from a visit to the premises. The key question is, therefore, whether the frontage to High Street would remain in retail use, were the appeal proposal to proceed.
7. Whilst a retail unit would occupy most of the frontage, there would also be access from High Street to the Amusement Centre via a corridor through this unit. Although this would be lined with display windows, associated with the retail use, the Amusement Centre would remain the predominant use of the premises as a whole and I consider that, even with the most rigid of controls, the signage on the High Street frontage would reflect this and a break in the shopping frontage would be the inevitable perception. Whilst I can understand the arguments that a continuous shopping frontage would be retained physically and the letter of Policy S4 would, therefore, be complied with, I am not convinced that this would, in fact, be the case in reality.
8. I also have considerable sympathy with the argument of the Council, and others, that the design and layout is merely a device to circumvent the purpose behind the Policy, which I consider to be the retention and protection of the retail function of the primary shopping area. Clearly, the proposal would result in the significant loss of retail floorspace in the primary shopping area, with a consequent impact on the overall retail function and the retail attractiveness of the centre as a whole. This would be at odds with the presumption in favour of retaining retail uses set out in Policy S4.
9. I have considered carefully the conflicting evidence submitted to me regarding the potential long-term commercial viability of the size of retail unit proposed. I note that the comparable units both in Stockton and elsewhere, cited by the appellant company, all have slightly larger sales areas and are not, in my view, in comparable locations. Having regard to this, and the views of a local agent, submitted by the principal objector to the proposal, I am not convinced that the unit would prove to be long-term attractive proposition for retailers and that there would be future pressure to incorporate the floorspace into the Amusement Centre. I reach this conclusion, notwithstanding the appellant's evidence of a formal offer from a potential occupier, as this appears to be dependent on use of the first floor, which would not be accessible from the ground floor unit, under the submitted scheme.

10. I have also had regard to the evidence submitted on behalf of the appellant company regarding "footfall", which purports to show that the potential combined custom generated by the proposal would be greater than that generated by similar sized retail units elsewhere. However, pedestrian flows are only one indicator of the vitality of shopping streets and I do not regard the translation of figures from other units, which, in terms of size and location, are not strictly comparable, to be totally convincing in this instance.
11. I note the appellant's claim that the unit has been vacant for two years, but there is no evidence before me to suggest that it has been actively marketed during this period. I also note the design of the shopfront (which is the subject of a separate consent) and am satisfied that this would make a positive contribution to the character and appearance of the Stockton Town Centre Conservation Area. These considerations, however, do not alter my view that, taking all the arguments together, the proposal is unacceptable.
12. I conclude, therefore, for the reasons set out above, and having regard to all other matters raised, that the proposed change of use would have a detrimental effect on the vitality and viability of Stockton town centre, contrary to the purposes behind national and local planning policy.

G E Snowdon

INSPECTOR