



Appeal Decision

Hearing held on 24 February 2009

by **D R Cullingford BA MPhil MRTPI**

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

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Decision date:
16 April 2009

Appeal Ref: APP/H0738/A/08/2085780
133 High Street, Stockton-on-Tees, TS18 1LP

- This appeal is made under section 78 of the Town and Country Planning Act 1990 against the refusal to grant planning permission.
- The appeal is by Gala Coral against the decision of the Stockton-on-Tees Borough Council.
- The application (ref: 08/2280/FUL and dated 14 July 2008) was refused by notice dated 8 September 2008.
- The development proposed is described as a 'change of use from retail shop to licensed betting office'.

Decision

1. For the reasons given below, and in exercise of the powers transferred to me, I dismiss the appeal.

Reasons

The site and surroundings

2. The appeal premises are a vacant shop last occupied by Clinton's (selling cards mementos and other fancy goods). It is in a central position in a largely pedestrianised part of the High Street where Dovecote Street and Silver Street cross just to the north of the ancient Town Hall building. Clinton's vacated the premises about 3 years ago to occupy a new unit in the Wellington Square Shopping Centre (a fairly recent development just behind the High Street to the west) even though No.133 is a triple fronted unit with a prominent façade some 9m in width; the vacant unit and bleak shutters thus create a dismal interruption towards a central section of the High Street. Immediately to the north a vacant but smaller unit marginally accentuates the gloom; this was recently occupied as a Nobles amusement centre now transferred to larger premises opposite the old Town Hall. Further north there is a computer games shop: immediately to the south of the appeal premises there is a dry cleaner's.
3. The High Street retains something of its ancient origins in spite of some banal modern retail development (at the Castlegate Shopping Centre to the south) and the recent creation of the Wellington Square Shopping Centre towards the north. A good deal of effort has been expended on enhancing the townscape and the pedestrian environment as well as commissioning a comprehensive study from Nathaniel Lichfield and Partners, currently in the course of preparation. I saw the regeneration evident in the emerging 'cultural quarter' around Green Dragon Yard and Silver Street. And, I saw that the appellants occupy licensed betting shops in Silver Street, Dovecote Street and just beyond

the northern end of the High Street in Norton Road; these are some 60m, 120m and about 340m from the appeal premises respectively.

The proposal

4. The proposal is simply to change the use of the premises from a shop to a betting office, a change from Use Class A1 to A2. No works are currently proposed and permission for alterations to the façade could be sought subsequently. However, indicative plans and illustrations are submitted to show how the unit could be laid out and what a standard 'Coral' shop front would do to the façade. I fear something a little different would be desirable in such prominent position within this Conservation Area, but that is not a matter to be considered now.

Planning policy and the main issues

5. The appeal property lies in the Primary Shopping Frontage within Stockton town centre. Here statutory policy S4 (part of Alteration No.1 to the Local Plan adopted in March 2006) insists that there should be a presumption in favour of retaining retail uses; changes to other uses are to be permitted only if certain criteria are met. The one criterion applicable is that such a change should not result in more than 10% (by length) of all the Primary Shopping Frontage being in non-retail uses. It is accepted that this scheme would not affect amenity (criterion ii) nor lead to a continuous grouping of more than 2 non-retail uses within the Primary Shopping Frontage (criterion iii). However, in October 2008 over 10% of the Primary Shopping Frontage was already occupied by some non-retail use and by February 2009 that had risen to nearly 11%. The policy would thus operate to prevent any further loss of 'shops' and, indeed, that forms the basis of the reason for refusal, which also indicates that the loss of this unit would reduce shopping opportunities and serve as an undesirable precedent for similar proposals, thereby undermining the vitality and viability of the town centre.
6. In response it is suggested that the scheme would utilise a long vacant unit with a use that would add to the footfall in the High Street and thus enhance the bustle and activity in accordance with the aims of local policy and PPS6. Given the high levels of vacant units, it is claimed that the loss of this one to a non-retail use would be unlikely to materially reduce retail opportunities in the town and a more flexible operation of policy S4 would be warranted.
7. Hence, from what I have heard, read and seen, I consider that this case turns on whether the proposal would undermine the vitality and viability of the High Street or appropriately enhance the bustle and activity there.

The operation of policy S4

8. Given that about 11% of the Primary Shopping Frontage is now occupied by non-retail uses, policy S4 operates to prevent any further loss of shops within the Primary Shopping Frontage; its purpose is to maintain a diverse and commercially prosperous centre. Clearly, the proposal would contravene that statutory policy, from which it must follow that other material considerations are required to warrant a decision contrary to the Local Plan.

9. One such consideration suggested is that, in the prevailing circumstances, the policy operates much too inflexibly, effectively imposing a blanket ban on any change of use involving a shop within the Primary Shopping Frontage. However, in reality I think that particular characteristics of this town centre warrant the stance adopted. First, although the policy applies to the whole of the Primary Shopping Frontage (there is about 1900m of it), I estimate that a good two thirds of that frontage is contained within the 2 purpose built shopping centres. Both are 'managed' centres and both contain very few non-retail uses. As a consequence, most of the pressure to change the use of shops in the Primary Shopping Frontage falls on that third of it outside the purpose built centres. So, although a 10% tolerance for non-retail uses may seem severe, the reality is that most of the 'tolerated' 190m of non-retail frontage is most likely to be (and currently is) accommodated in the 550m or so largely on the High Street. Hence, not only does the policy operate, in practice, to allow a significant proportion of non-retail uses in the High Street, but also I think that a frontage containing some 30% of such uses must be in danger of ceasing to function as a Primary Shopping Frontage at all. In those circumstances, I think that there are very good reasons to prevent the further loss of retail outlets here, particularly as the appeal property occupies such a central and prominent position in the High Street.
10. Second, policy S4 operates in conjunction with other policies that apply to the town centre. The Primary Shopping Frontage applies to only sections of the frontages containing retail outlets. Policy S5 applies to Secondary Shopping Frontages and accommodates up to 40% of it in non-retail use while other frontages in the town centre are subject to no comparable protective policy. Taken as a whole, therefore, the Plan allows for considerable flexibility within the town centre, offering a wide range of opportunities to accommodate non-retail uses there.
11. Third, a consequence of insisting that a significant proportion of the Primary Shopping Frontage should remain in retail use is that, should a unit fall vacant, there is a fair chance that it could remain potentially available for occupation by a retail enterprise. That seems to me to have an important 'regenerative' function here, given the provisions of the sequential test. Not only would the existence of potentially available retail units in the town centre sometimes serve to prevent the establishment of competing enterprises 'out-of-centre' (being in a sequentially preferable location), but also such a resource would offer a position in the town centre to retail businesses seeking an outlet in the area. (I shall return to vacancy rates later.) I was shown two or three examples where the operation of this policy appeared to be having just such beneficial effects. Businesses selling bulky goods or fireplaces or flooring or sofas had established outlets within the town centre rather than confining operations to 'out-of-centre' locations, such as at Portrack Lane.
12. For those reasons, it seems to me that the current operation of policy S4 is not unduly inflexible. On the contrary, I think that it serves an important planning purpose in maintaining the shopping function of the High Street and, in conjunction with other town centre policies, attracting retailers back into the town centre.

The vitality and viability of the High Street

13. A further 'material consideration suggested is that, due to the relatively high levels of vacant units in the Primary Shopping Frontage, the loss of the appeal premises would not materially reduce retail opportunities there. The submitted surveys show that vacant retail units formed about 14% of the Primary Shopping Frontage in October 2008 and roughly 21% by February 2009. Yet it seems to me that the assertion advanced here is superficial. First, for the reasons outlined above, I think that some units retained for retail use in the Primary Shopping Frontage can actually serve as a mechanism to maintain the vitality and viability of shopping in the town centre. Second, I suspect that the recent increase in vacancy rates owes at least something to the onset of the recession; I do not agree that that should necessarily warrant a departure from recently adopted planning policy. Third, it seems to me that the vacancy level experienced here is at least partly due to the process of adjusting to the still evolving shopping patterns engendered by the new floorspace created in the Wellington Square Shopping Centre. It is evident that vacant units remain in that centre and the existence of modern outlets offering well configured floorspace must inevitably have some effect on the take up of older premises in the High Street. Indeed, the appeal property is vacant partly because the previous occupier transferred the business to a modern unit in the Wellington Square complex. I do not, therefore, find these vacancy rates quite as compelling as my colleague (at the Lindsey House appeal APP/H0738/A/08/2066494). On the contrary, I consider that permitting the proposed change of use simply because vacant units exist could, for the reasons indicated, serve to encourage the repetition of such development that would, all too easily, undermine the shopping function of the High Street.
14. For similar reasons I do not regard the inability to find a retail occupier for the appeal premises over the last 3 years as constituting a compelling demonstration that a non-retail enterprise would be the only option here. In addition, although I accept that the owner may not wish to explicitly reduce the apparent value of his property and that negotiations on rent and other matters may well need to be confidential, the fact remains that the explicit advertising that has occurred has not indicated any reduction in rent since the premises were vacated. Hence, although I understand that the appellants have negotiated a reduced rent, there is little concrete evidence to demonstrate that such an offer would have been obvious to potential retail operators. The evidence does not convince me that the premises must inevitably remain vacant if a non-retail use is prevented.
15. Then there is the claim that a licensed betting office would add to the footfall in the High Street and enhance the bustle and activity there. This is based on surveys undertaken at various Coral betting offices in nearby towns and cities purporting to show that as many, or more, customers are likely to visit the appellant's licensed betting offices than shops nearby and that many of them do so as part of a 'shopping' trip. This seems to have been treated as compelling evidence elsewhere (for example in South Shields APP/A4520/A/05/1182809). I am not convinced. First, I would want to know a lot more about the nature of these 'linked trips', particularly as the overwhelming characteristic of the customers surveyed is that they are male. Second, I do not find it surprising that betting shops may generate more

custom than a charity shop, or a barber's or small and obscure outlets; the results are somewhat different when comparisons are made with more recognisable shops such as Boots, Greggs and Herron's (frozen foods).

16. Third, I think that the surveys were undertaken at times when potential punters might have been particularly prevalent. They all occur between 11.00hrs and 15.00hrs on Fridays and Saturdays between 15 April 2005 and 28 May 2005 (though the actual dates recorded for the Newcastle surveys are incorrect). During this period, quite apart from normal racing programmes, there was an FA Cup semi-final between Newcastle and Manchester United (to coincide with the Newcastle survey), the London Marathon, the last day of the Premiership involving a particularly tense relegation battle, the FA Cup final between Arsenal (who won) and Manchester United (which was the first to be decided on penalties) and the Scottish Cup Final between Celtic and Dundee United (after which Martin O'Neill - the then Celtic manager - was due to retire to nurse his sick wife). I can imagine that there may well be other times of the year, such as when the Grand National is run or at the Cheltenham Festival, when almost everyone who has ever placed a bet may visit a betting shop. But I think that they are few and far between and I doubt that it would be easy to find a comparable period when punters are likely to be more evident. For those reasons I do not accept that the surveys present a realistic picture of the normal daily attraction attributable to a licensed betting office. On the contrary, I consider that such a use would usually be unlikely to noticeably add to the footfall in the High Street or to enhance the bustle and activity there.
17. Fourth, the appeal property is barely 60m from the appellant's existing licensed betting offices in Silver Street and only some 120m from that in Dovecote Street. I rather doubt that either of those existing establishments would continue to operate should permission be granted for this scheme. Hence the reality is that permission for the appeal proposal would be likely to result in the vacation of premises in other parts of the town centre. Hence, I consider that the scheme would be unlikely to enhance the vitality and viability of the town centre as a whole.

Conclusion

18. I have considered all the other matters raised, but I can find nothing sufficiently compelling to alter my conclusion that the proposal would contravene the statutory planning policy applicable here and that the material considerations advanced are insufficiently compelling to warrant a decision other than in accordance with the Local Plan; this appeal should thus be dismissed.



INSPECTOR