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# Appeal Decision

Site visit made on 19 August 2013

**by David Murray BA (Hons) DMS MRTPI**

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

**Decision date: 5 September 2013**

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**Appeal Ref: APP/H0738/A/13/2198512**

**128 High Street, Stockton-on-Tees, TS18 1AY.**

- 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 William Noble Automatics Ltd. against the decision of Stockton-on-Tees Borough Council.
  - The application Ref. 13/0432, dated 20 February 2013, was refused by notice dated 18 April 2013.
  - The development proposed is the change of use of the premises from retail to Class A2 or A3<sup>1</sup> (flexible permission).
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## Preliminary matter

1. The planning application as submitted included an A5 use within the proposal however, following discussions between the appellant's agent and the Council it is apparent that the A5 element of the proposal was dropped, as reflected in the formal decision notice. I have considered the appeal on this basis.

## Decision

2. The appeal is allowed and planning permission is granted for the change of use of the premises from retail to Class A2 or A3, at 128 High Street, Stockton, TS18 1AY, in accordance with the terms of the application, Ref. 13/0432, dated 20 February 2013, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

## Main Issues

3. The main issue is the effect of the proposed change of use on the vitality and viability of Stockton-on-Tees Town Centre.

## Reasons

### *Background*

4. The site is a four storey property which fronts the High Street close to the corner with Dovecot Street. It is a Grade II Listed Building and has recently been refurbished with a new shopfront at ground floor facing the street and it is also located in the Conservation Area of Stockton Town Centre. The property is vacant as is the adjoining unit No. 127 which is also owned by the appellant company. The lawful use of the premises is Class A1 retail and the appellant proposes to change this to either a Class A2 or A3 use; a flexible permission in order to give greater scope to finding new tenants/owners for the property.

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<sup>1</sup> As defined in the Town and Country Planning (Use Classes) Order (1987), as amended.

*Relevant policy*

5. The Council's Core Strategy Policy 5 – Town Centres – seeks to restrict new retail development to the town centre and continue the role of Stockton as the Borough's main shopping centre. The policy indicates that the creation of specialist roles for Stockton through specialist retailers will be supported together with other initiatives including for leisure and other town centre uses. Further, the justification to the policy says (in paragraph 10.6) that in order to address vacancy problems a reassessment of areas defined as primary and secondary shopping frontages will be undertaken.
6. Saved Policy S4 of Alteration No. 1 to the Adopted Local Plan (2006) deals with the main shopping centre and provides criteria for assessing changes of use of premises at ground floor level to non-retail uses. The policy indicates that within the 'Primary Shopping Frontage' (PSF), which includes the appeal site, there is a presumption in favour of retaining existing retail uses. The policy goes on to specify criteria for allowing the change of use to non-retail uses, including: providing that a proposal results in no more than 10% of the sum total length of the PSF being in non- retail use, and not resulting in a continuous grouping of more than two non-retail uses in the PSF.
7. The Council has published a Regeneration and Environment - Local Development Document (LDD) which includes a reassessment of shopping area policies. However, the LDD is a 'Preferred Options' document and at this early stage of its preparation, it cannot be afforded much weight as it may change and has not yet been found to be 'sound'.
8. National guidance is set out in the National Planning Policy Framework (the Framework). This sets out a presumption in favour of sustainable development and identifies that ensuring the vitality of town centres is a core planning principle. Within this, the policy says that the extent of town centres and primary and secondary shopping areas should be clearly defined and policies set to make clear which uses will be permitted in such locations. However, the policy also stresses that where town centres are in decline, Councils should plan positively for their future to encourage economic activity.
9. Even though the local policy S4 is broadly consistent with some parts of the Framework, it is of some age and pre-dates the Framework in terms of allowing sustainable development and the Government's aim of encouraging enterprise and growth to boost the economy. I can therefore only afford it limited weight.

*Policy S4 criteria*

10. In terms of the detailed criteria in the policy, the Council advise that the latest monitoring figures (April 2013) state that 15.59% of the PSF is in non-retail use, and this has increased from the surveyed levels going back to 2008.
11. Although the appellant challenges some of the gathering and interpretation of the survey data, it appears to me that the proposed change of use and potential loss of a shop would make this fundamental ratio worse by adding to the level of non-retail uses exceeding 10%.
12. The second element of the policy relates to the actual frontage. From my observations at the site visit, and on the basis that the lawful use of the vacant unit No. 127 is as a shop, the proposal would meet the terms of the second

arm of the policy in that it would not result in a continuous grouping of more than two non-retail uses in PSF.

13. I conclude in relation to the development plan that while the proposal would not be at odds with Core Strategy Policy 5, it does not accord with some of the criteria designed to protect the vitality and viability of the town centre as set out in Policy S4.

#### *Other considerations*

14. In addition to the development plan, the assessment of the effect on vitality and viability needs to take into account other considerations.
15. It is apparent that the town centre is underperforming and has been for some time. The appellant's agent says that this was a conclusion of the Stockton Town Centre Shopping Study 2009. Further, the appellant draws attention to current vacancy rates and submits in plan form that of the 161 shops in the PSF 33 are currently vacant. This is a significant level of vacancy.
16. The appellant also sets out the marketing exercise that has been undertaken of the property since the refurbishment of the unit in 2010/11, but that appears to me to be fairly limited and also the marketing of the property has been for uses in addition to A1. Nevertheless, the Council do not contest the agent's expert assessment of the market that there is no realistic prospect of the premises being reoccupied for A1 use in the foreseeable future.
17. Some of these aspects are reflective of the stress on many town centres in the recent recession. In order to aid the regeneration of town centres, the Government commissioned the Portas Review to assess the problems and opportunities. The author recommended, amongst many other aspects, a more flexible approach to use classes to stimulate flexibility and encourage diversification.
18. Nevertheless, the Council point out that the appeal site lies at the heart of the Town Centre, opposite the Town Hall and close to the regular market and therefore any change of use not in accord with the prevailing policy would be very noticeable. I also observed at the site visit that the public realm of the town centre and marketplace is being regenerated at the moment with significant investment in new paving and street furniture, which reflects the Council's policy commitment to regenerate and enhance the town centre.

#### *Conclusions*

19. Bringing all of these aspects together, the proposal would add to the proportion of non-retail uses in this PSF at the moment, and so conflict in part with Policy S4, but I can only put limited weight on this policy now and pending the review and development of the new Town Centre shopping policies in the emerging LDD. Whereas the evidence submitted on the nature of the local retail market and shop vacancy reasonably demonstrates that there is unlikely to be a prospect of a retail use being secured for this building soon. There is a greater likelihood of a more flexible approach involving the proposed A2 and A3 uses attracting an occupier and such commerce could contribute to the viability and vitality of the town centre more than the continued presence of a vacant unit.

20. On balance, I find that the provisions of the Local Plan policy are outweighed at the moment by these other considerations, pending the formal adoption of new policy. I will therefore grant planning permission for the change of use.
21. The Council recommend a number of conditions that should be imposed on any permission. In addition to the statutory condition on the period of implementation, I agree that a condition specifying the plans approved is necessary in the interests of clarity. Further, as an A3 use (Restaurants and cafes) is part of the proposal, the premises may open in the evening, so a limitation on the opening hours is necessary given that there are residential properties in the vicinity of the site. An A3 use may also involve the cooking of food and details of the provision and implementation of a ventilation and extraction system and its effect on the listed building, together with provision of a grease trap and the siting and provision of waste storage facilities must be submitted to and agreed by the Council prior to any use commencing in order to prevent smells arising and in the interests of avoiding flooding and pollution. Where necessary, I have revised the conditions recommended to better meet the guidance in Circular 11/95. It is also necessary to have a condition to require notification to the Council of the new use taken up pursuant to the permission in the interests of clarity.
22. The Council, also request that the hours in which construction may be carried out and the delivery of materials should be restricted but this is unnecessary in a town centre location and would be difficult to monitor and enforce. I will therefore not impose this condition.

*Overall Conclusion*

23. For the reasons given above I conclude that the appeal should be allowed.

*David Murray*

INSPECTOR

## **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SBC0001; RE/STO/13/3; RE/STO/13/04.
- 3) The use hereby permitted shall not be open to customers, nor shall there be any deliveries to/from the property, outside of the hours of 0800 till 2300 in the same day, and the premises shall be vacated by 2330 on that day.
- 4) Prior to the commencement of any A3 use, details of a ventilation and fume extraction system, including a full technical specification, specifying the position of ventilation, fume or flue outlet points and the type of filtration or other fume or odour control treatment at the premises, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the use starting and shall be retained thereafter and maintained in accordance with the specification, including the replacement of any filters.
- 5) Prior to the commencement of any A3 use, details of a drainage system to the premises, relating to the installation of a suitable grease trap to prevent the discharge of grease into the public sewer, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the use starting and shall be retained thereafter and maintained in accordance with the specification.
- 6) Prior to the commencement of the development hereby approved, details of the siting and provision of waste provision and collection shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the use starting and shall be retained thereafter and maintained in accordance with the specification.
- 7) Prior to the commencement of any non-retail use pursuant to this permission, the Council shall be notified in writing as to whether it is an A2 or A3 use to be implemented.