
Appeal Decision

Site visit made on 26 March 2014

by Mrs K.A. Ellison BA, MPhil, MRTPI

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

Decision date: 22 April 2014

Appeal Ref: APP/H0738/A/13/2207927

Linthorpe Interiors, Ross Road, Stockton-on-Tees TS18 2NH

- 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 R Hanlon (Linthorpe Interiors) against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 12/2939/COU dated 18 December 2012 was refused by notice dated 29 August 2013.
 - The development proposed is the subdivision and change of use of part of ground floor of premises to retail use.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The retail use has been in operation for some time so I have determined the appeal as relating to development which has already been carried out.
3. The floor area of the retail use was stated to be 575sqm on the application form but is described as 609sqm in the appeal documentation. The Site Layout plan (ground floor) denotes areas as 'fabric displays' and 'furniture displays' (shaded yellow and purple respectively). Although the plan states it is schematic and the areas are approximate, the Council confirmed at the site visit that it had based its decision on the areas shown on this plan. Since the plan appeared to be a reasonable representation of the areas of the ground floor in retail use at the time of my site visit, I have likewise relied on that plan in reaching my decision.
4. Previous guidance on planning for town centres¹ was cancelled with the publication of the Planning Practice Guidance in March 2014. Submissions have been received from the Appellant and the Council with regard to the current guidance and I have taken these into account in reaching my decision.

Main Issues

5. The main issues are whether the proposal accords with local and national policies for retail development particularly as regards the requirements of the sequential test and whether the location would lead to an unacceptably high reliance on the private motor car.

¹ Planning for town centres: Practice Guidance on Need, Impact and the Sequential Approach (2009)

Reasons

6. The appeal property has been formed from the subdivision of an industrial unit within the Portrack Lane area of Stockton, some 1.4km from Stockton town centre. The general area is served by a dual carriageway and contains a mix of out-of-centre retail units, retail parks and industrial and commercial development. Part of the first floor of the appeal property is given over to the manufacture of curtains and blinds. These, along with other home interior products, are sold from the ground floor retail space.
7. Core Strategy policy CS5 of the Local Plan² sets out a hierarchy of shopping centres in the Borough and recognises the role of Portrack Lane as an out-of-centre site. It states that any proposals for main town centre uses in out-of-centre locations, including Portrack Lane, will be determined in accordance with prevailing national policy. Saved policy S2³ sets a range of requirements concerning proposals for new retail development including the need to consider sequentially preferable sites.
8. Further to policy CS5, current national policy requires that a sequential test should be applied to proposals for main town centre uses, with out of centre sites being considered only if suitable sites are not available⁴. The associated Planning Practice Guidance notes that it is for the applicant to demonstrate compliance with the sequential test, which should be applied proportionately and appropriately. In assessing whether a proposal is compliant with the sequential test, consideration should be given to the suitability of more central sites and the scope for flexibility in the format or scale of the proposal.

Issue 1: The sequential test

9. For the Appellant it is argued that viability should be taken into account as part of the assessment of suitability. Although viability is no longer identified as a specific consideration in national planning policy for retail development, it would be neither proportionate nor appropriate to apply the test in a way which failed to have regard to the ability of the Appellant company, as an independent retailer, to operate profitably. As such I agree with the Appellant that, for the purposes of this appeal, viability should be a relevant consideration when assessing the suitability of premises for this company.

Background

10. A sequential site assessment was submitted in support of the initial planning application in December 2012. It was based on a defined catchment area which included Stockton and Middlesbrough town centres as well as five district centres. It set out a requirement for premises in the region of 450-650sqm, the whole of which should be at ground floor level, in recognition of the bulky nature of some of the goods on sale. The range of goods sold is described as 'home interior products including furniture, curtains, blinds and lighting'.
11. Although the assessment identified several sites as available, they were found to be unsuitable for a range of reasons including insufficient space at ground floor level or high costs leading to lack of viability. Information as to other available premises was then provided by the Council. These were reviewed

² Stockton on Tees Borough Core Strategy 2010

³ Stockton-on-Tees Local Plan Alteration Number 1 March 2006

⁴ NPPF: paragraph 24

but, in March 2013, the Appellant also found them to be unsuitable, primarily by reason of lack of viability. Unit 22 Wellington Square, in Stockton town centre, had been considered at both stages. Although of appropriate size, it was said to be unsuitable on grounds of viability.

12. At appeal stage, the Appellant's case was directed towards the question of viability in relation to the unit at Wellington Square. The Appellant's final comments respond to information from the Council concerning other vacant retail units. They also provide a revised viability appraisal for the unit at Wellington Square, following criticisms by the Council of the estimated costs for rent and rates.

The sequential test

13. As regards flexibility, the catchment area covers the town centres of Stockton and Middlesbrough as well as the five district centres in the two Boroughs, in reflection of the role of Portrack Lane as a retail destination. In this respect, the sequential assessment indicates a suitable degree of flexibility. On the basis of a floorspace area of 575sqm, a search for premises in the region of 450-650sqm would appear reasonable. However, the assessment has not been updated to reflect the revised floorspace area of 609sqm. To my mind, this runs the risk of excluding some premises which, although slightly larger than existing, may nevertheless prove suitable. In addition, I am not convinced as to the requirement for the whole of the premises to be at ground floor level. Other retail operations selling a comparable range of goods seem capable of trading quite successfully from upper floors, for example where a retail unit has a lift or where it is linked to a multi storey car park. Such a requirement should be dependent on the facilities available within any potential premises. Consequently, I consider that the sequential assessment fails to allow sufficient flexibility as to the format and scale of the proposal.
14. As regards the availability of potential premises, the Council has on two occasions been able to suggest other premises which had not been identified within the submitted sequential assessment. I recognise that in any such assessment there may be other considerations to be taken into account, such as size, overheads and overall viability. However, the evidence is that there have been significant omissions within the sequential assessment in relation to the process of identifying potentially suitable sites. To my mind, this seriously undermines the validity of the conclusions as to the range of sequentially preferable units which may be available.
15. There are also several failings in relation to the information as to viability. The trading details from the Profit and Loss account are not certified as taken from the company's accounts so that their status has not been established. Also, as they relate only to 2012 it is unclear how closely they reflect the company's performance in the longer term, especially bearing in mind any possible disruption when the company moved premises. As such, the information as to the financial standing of the company does not provide an objective basis for an assessment of its ability to trade from a possibly more costly but sequentially preferable unit.
16. Moreover, the likely costs of occupation of a sequentially preferable unit appear to have been consistently overestimated. It was originally claimed that the rent and rates in relation to Unit 22 Wellington Square would be £130,800. This was revised to £99,400 at appeal stage and then £78,550 at final

comments stage. I recognise that this latter figure would appear to be more robust than its predecessors, since it is broadly in line with the Council's own information as to the most recent Zone A rentals achieved in the town centre. However, this series of corrections calls into question the assumptions as to rental levels on other properties which were considered in the initial sequential assessment but rejected, in part, on grounds of viability.

17. It is also of note that the case for viability relies on a comparison with the likely net profit when trading from the current premises. This also appears to have been consistently overestimated, since it did not take into account the correct rateable value⁵. When a comparison is made between these corrected figures and the likely costs of trading from a sequentially preferable location, the consequences for the viability of the business appear materially less adverse than originally indicated. As a result, this further reduces the weight which can be attached to the claimed effect on viability.

Conclusions on the sequential test

18. It is for the Appellant, in the first instance, to demonstrate compliance with the sequential test. Although the test should be applied proportionately and appropriately I consider that, in this instance, the supporting information shows a lack of rigour with regard to identifying sequentially preferable units, it fails to properly establish the current position as to the financial standing of the Appellant company and does not provide reliable information as to the likely comparative costs if it was to occupy a sequentially preferable unit. Consequently, it does not demonstrate that the proposal is in compliance with the sequential test, as required by Core Strategy policy CS2, Local Plan policy S2 and NPPF paragraph 24.

Issue 2 - reliance on the private motor car

19. I have been referred to two other appeal decisions relating to another unit a short distance away on Portrack Lane itself⁶. In the first of those, the Inspector notes that the majority of customers will arrive by car. Compared with town centre sites, the site in question was not in a highly accessible location. This assessment was supported in the second appeal decision. In this respect, I note that the Appellant does not dispute the analysis that customers are likely to arrive by car. I agree.
20. The appeal site is within an area where the layout of roads and car parking is much more amenable to car-borne customers than those using other modes of transport, particularly in comparison with the town centre. It is also some distance from the bus stops on Portrack Lane and the route to the appeal site would entail walking past industrial premises as well as a small retail park. Even though there would be some scope for linked trips I consider that, on the whole, the location is somewhat less favourable to non-car users than the site considered in the earlier appeals. On that basis, I conclude that the proposal fails to satisfy Local Plan policy CS2 which, among other things, expects new development to be well serviced by an attractive choice of transport modes.

⁵ The original calculations suggested a net profit of almost £48,000 for 2012 whereas the most recent calculations indicate this would be closer to £30,400

⁶ APP/H0738/A/11/2156600 and APP/H0738/C/12/2172372

Conclusions

21. Whilst consideration of viability is reasonable as part of the proportionate and appropriate application of the sequential test, the information provided has not been sufficient to demonstrate that there are no sequentially preferable units available within the defined catchment area. In addition, the proposal would be likely to lead to increased reliance on the private car. Although the possibility of cumulative harm to the vitality and viability of other centres has been raised by the Council, the matter has not affected my decision on this appeal.
22. For the reasons given above, I conclude that the appeal should not succeed.

K.A. Ellison

Inspector