
Appeal Decision

Hearing held on 17 January 2017

Site visit made on the same day

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 21 March 2017

Appeal Ref: APP/P4415/W/16/3155713 31 Effingham Street, Rotherham S65 1AL

- 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 Power Leisure Bookmakers Ltd against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref: RB2016/0150, dated 4 February 2016, was refused by notice dated 18 April 2016.
 - The development proposed is the sub-division of 31 Effingham Street into two retail units, alongside the change of use of Unit 1 (135m²) from its existing A3 use to a betting shop (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for the sub-division of 31 Effingham Street into two retail units, alongside the change of use of Unit 1 (135m²) from its existing A3 use to a betting shop (Sui Generis) at 31 Effingham Street, Rotherham, S65 1AL in accordance with the terms of the application, Ref: RB2016/0150, dated 4 February 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plan: 2015/78/04 – Change of Use Plan: Location Plan, Existing & Proposed Ground & First Floor Plans.
 - 3) The development hereby permitted shall not be open to customers outside the following hours: 0800-2200 on any day.

Procedural Matters

2. The application form submitted was for both planning permission and listed building consent. However, following discussions held during the Hearing it was agreed by both parties that the proposed development does not require listed building consent. As I do not consider that the proposed change of use will affect the features of special architectural or historic interest, I have amended the description to the one used in the above banner heading.
 3. Reference has been made to Policies SP22, SP23, SP24 and SP28 of the emerging Rotherham Publication Sites and Policies Document. At the Hearing the Council confirmed that examination is still underway, with publication of the Final Report anticipated by the end of August 2017. As such, the policies
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referred to may be subject to change. I therefore find that limited weight can be attached to these policies when regard is paid to paragraph 216 of the National Planning Policy Framework (the Framework).

Main Issue

4. The main issue is the effect of the proposal on the vitality and viability of the retail character and function of Rotherham Town Centre.

Reasons

5. The appeal premises occupy a prominent location on the western side of Effingham Street and are currently vacant, having been last used up until November 2014 by Greggs Bakery, a Class A3 use. The premises are located within the Rotherham Town Centre boundary and the street is designated as a Primary Shopping Street (PSS) as defined in Chapter 7 and Policy RET1.2 of the Rotherham Unitary Development Plan: Written Statement 1999 (the UDP). In such frontages, Policy RET1.2 only supports the change of use of ground floor premises to a non-shopping use where such a use contributes to the vitality and viability of the centre and does not undermine its retail character and function.
6. The appeal premises are also located within the Rotherham Town Centre Conservation Area (the CA) and form part of the wider former Town Hall, Assembly Rooms and Juvenile Courts which were converted into a shopping precinct in the 1980's. Prior to 1995, the Town Centre had 3 separate conservation areas. Those areas still do form distinct areas of character; however a fuller assessment of the town resulted in a larger area being designated.
7. The appeal site is located within the northern section of the CA. Within this section, the streets are wide and mostly pedestrianised. Architecturally they are dominated by handsome and imposing, early 20th century buildings of 3 storeys that occupy corner plots or stand in uniform rows. The row effect provides a strong horizontal feel contrasted by the use of columns and pilasters particularly on the upper floors. In addition, the site is also a Grade II listed building. The listing identifies the external features that constitute the design elements of the façade, including sandstone, transomed windows, cornicing and quoined mullions.
8. I am therefore mindful of my duties under Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservations Areas) Act 1990 in relation to both the CA and the listed building. In this respect national policy on heritage assets, which includes conservation areas and listed buildings, is set out in the Framework. At paragraph 131, the Framework details matters which should be taken into account including sustaining and enhancing the significance of the heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness.
9. From the evidence before me, I note that during the conversion the premises were significantly gutted with only the façade being retained. As such, both parties accept that internally the appeal premises have nothing remaining of special interest, other than the general layout and extent of the space. Both parties also accept that in terms of the exterior, the ground floor frontage

which served the previous occupier is considered inappropriate in terms of both design and materials.

10. A number of applications for planning permission and listed building consent were made by the appellant in 2016 in relation to external works to the unit, which are directly associated with the proposal before me. These included applications for satellite dishes and air conditioning units on the roof elevation, installation of new shop fronts and access doors, illuminated hanging signs and non-illuminated fascia signs and the replacement of existing shop fronts and display signage¹. In granting the various permissions the Council concluded that the alterations would greatly improve the appearance of the listed building at ground floor level, which would further enhance the general street-scene and character of the CA.
11. Moreover, the Council has also confirmed that the proposal '*would not affect the setting of the listed building and would not result in a detriment impact on the historic character of the CA*'. On the basis of the evidence before me, and from my observations, I have no reason to disagree. Accordingly, I consider the proposal would preserve the character and appearance of the CA and the features of special architectural and historic interest of the listed building.
12. I accept that licensing is a separate matter; however I consider it appropriate to give moderate weight to the fact that the Council granted the appellant a betting premises licence in March 2016. The granting of such a licence provides a degree of confidence about the manner in which the betting shop would be run; having regard to both the policy and training material submitted which forms part of the licence application.
13. The proposal includes the sub-division of the existing unit into two units. Proposed Unit 1, which is where the appellant intends to trade from, would be located on the ground floor and would occupy approximately 135m², with Unit 2 occupying the first floor. The sub-division of the units resulted from advice received from Lambert Smith Hampton², stating that a sub-division would be more attractive to retailers and independent tenants. Were this appeal to succeed, given the previous A3 use of Unit 1, there would be no reduction in the number of A1 units within either the PSS or wider Town Centre.
14. In relation to marketing, the appeal premises were marketed for over 15 months. Although at the Hearing the Council raised some concern in relation to the validity of the marketing exercise, at paragraph 4.3 of the Statement of Common Ground the Council has agreed that marketing had been undertaken using a reasonable renting rate. From the evidence before me, I have no reason to doubt that a thorough and extensive marketing exercise was undertaken. Moreover, I have no evidence to suggest that the unit was marketed at a significantly over-priced rate.
15. Concerns were also raised by the Council in relation to the relatively late marketing of Unit 2, which commenced in September 2016 and also whether the size and layout of the unit would be attractive to prospective tenants. However the appellant confirmed within the Statement of Common Ground, that Heads of Terms have been progressed with a Use Class A1 retailer.

¹ Council references: RB2016/0148/LB, RB2016/0147/FUL, RB2016/0157/FUL, RB2016/0161/ADV, RB2016/0165/LB

² Statement of Common Ground (Version VII January 2017):Appendix 6: Updated Position (Marketing Unit 1 & Unit 2, HOTS and Letter from Vaporized dated 3 January 2017)

16. From the Council's monitoring data I note that between 2004 and 2011 there has been an almost 267% increase in betting shops within the Town Centre. Within the Statement of Common Ground, both parties accept that there are 135 ground floor units within the PSS and 377 ground floor units in total within the Town Centre. Within the PSS, betting shops currently account for 5 units and if the appeal was allowed this would increase to 6 units.
17. Whilst each case must be determined on its own merits, some weight can be placed on both the Leytonstone and Islington appeal decisions³, where both Inspectors found a figure of 2.5% and 3.7% of betting shops in a District Centre of 174 and 125 units to be a small overall percentage. Accordingly, I consider the increase to 6 betting shops would result in a low concentration within the PSS.
18. The Council accept that the increase is not significant. Furthermore, during the Hearing the Council acknowledged that there is no relevant development plan policy which states what is an acceptable percentage threshold. Nonetheless, the Council contend that the over concentration of betting shops would result in a reduction in terms of diversity within the Town Centre and therefore its ability to meet local needs.
19. In relation to the concept of clustering I am of the view that it is not the number of betting shops within an area, rather it is whether a cluster is formed, which is of importance. Although a 'cluster' is not defined within any of the relevant development plan policies before me, I consider it is obvious when one sees it. In this respect, the map provided within the Statement of Common is helpful. From both the map, and from my observations made during my site visit, three betting shops exist within a relatively short distance of each other on Frederick Street but they are not visible from the appeal premises.
20. From my site visit I observed that both the PSS and Town Centre have a relatively wide range of uses including banking, charity shops, and hair and beauty units. It is important to note that the clustering of any retail, business or service use may limit the retail appeal and affect the vitality and viability of shopping areas in which such clusters are found. However, as a result of the diversity of uses within the Town Centre, even when walking on Frederick Street, I did not experience a sense of over dominance or clustering effect of betting shops.
21. In terms of visibility of the other betting shops within the PSS, only the Coral betting shop at 3 Effingham Street is visible and is located approximately 94 metres from the appeal premises. The William Hill betting shop is also visible and the closest at some 72 metres from the site. However, this is not located on a PSS.
22. Although the Coral betting shop at 3 Effingham Street is visible, 9 units and 2 side streets are located between the two units. As such, I consider that the mix of other uses around both the Coral betting shop and the appeal premises is sufficient to ensure that this part of the Town Centre would still have an overall impression of being retail-led.

³ Appeal References APP/U5930/A/14/2229533 and APP/V5570/W/16/3145635

23. From my observations, both the PSS and wider Town Centre appear to be well served by independent, regional, national retailers and leisure and financial services. Whilst I found it to be evident that a significant level of regeneration has been undertaken within both the PSS and Town Centre, a number of shop frontages remain in a poor state of repair, including the appeal premises. Despite this, and the fact that vacancy levels within the PSS at 14.6% are higher than the national average of 11.45%⁴, the PSS in particular appears to me to be both vibrant and busy, having observed a relatively high pedestrian flow at the time of my site visit.
24. Although the Council raised concern in relation to the appropriateness of betting shops being located on a PSS and within the Town Centre, no substantive evidence has been provided demonstrating harm caused directly by the existing betting shops in relation to vitality and viability. Neither has any evidence been provided to confirm that the proposal would directly fail to contribute to the health of the Town Centre or that the retail character and function would be undermined.
25. Annex 2 of the Framework defines a number of main town centre uses; however, I do not consider that this list is meant to be exhaustive. Accordingly, although not listed within Annex 2, I consider that betting shops are part of the mix of uses generally found within town centres. Moreover, as confirmed by the appellant during the Hearing, if a market demand did not exist for this type of use, it is unlikely the appellant would be seeking to locate to the appeal premises.
26. For these reasons, I do not consider that an additional betting shop within the PSS would result in a significant alteration to the existing balance, or result in a clustering effect that would be significantly detrimental to the retail attraction of the immediate area or wider Town Centre.
27. Turning to the issue of footfall, the Council made reference to a Scrutiny Review undertaken by Haringey Council⁵. This review concluded that the clustering of betting shops did not generate any significant footfall or trade for local retailers and also failed to provide in terms of diversity and vibrancy. In addition, on behalf of the appellant, EAS Retail, an independent survey company, undertook betting shop footfall and exit surveys between 2102 and 2014. The surveys were undertaken in five different UK town centres of varying scale; however, all had a number of betting shops located within their centres. The results of these surveys indicated that overall, new betting shops attract high visitation levels, despite the existence of existing betting shops.
28. Despite the findings of the appellant's surveys, the Council contend that, rather than increasing footfall, the proposal would actually dilute footfall and there is no substantive evidence to suggest that new trips would be generated. The Council has also referred to an appeal decision from 2013⁶ whereby that Inspector found in relation to a proposed betting shop that, given the presence of betting shops within the centre, *'it is difficult to see why additional people would be attracted to Cheetham Hill'* and that it would be unlikely to result in

⁴ Planning Potential – Rotherham Town Centre Health Check July 2016 (Appendix 15 of Appellant's Statement of Case)

⁵ Haringey Council – Scrutiny Review of the Clustering of Betting Shops in Haringey; A Review by the Overview and Scrutiny Committee April 2011

⁶ Appeal Reference: APP/B4215/A/13/2193520

- any increase in footfall overall. I have given this decision moderate weight in my determination.
29. I note the findings of the Scrutiny Review in regards to the impact that the clustering of betting shops may have on the retail appeal of local communities. However, in contrast to the Haringey report, I do not consider that the proposal would result in a clustering effect and therefore I give the report limited weight.
30. In relation to the surveys undertaken on behalf of the appellant, as a Paddy Power unit is not located within Rotherham, I accept that it was not feasible for the appellant to undertake surveys within the Town Centre. Nevertheless, given the use of an independent survey company and the range and number of surveys undertaken, there is no evidence to show that the surveys were not conducted correctly. I therefore find no reason to doubt the validity of either the survey methodology or the findings.
31. From the evidence before me, relatively high levels of footfall are anticipated to be generated by the proposal. Given the existing betting shops, I am mindful that some footfall would be drawn from these. During the Hearing the appellant confirmed that the 'betting experience' on offer from Paddy Power is significantly different to that on offer from other betting shops. As such, the appellant considers that a younger generation and more female clients are likely to be attracted by the offer of bonuses, football games and self-service opportunities. Although I accept that Paddy Power offers different packages and incentives to the existing betting shops within Rotherham, this is not a material consideration related to the planning merits of the proposal before me and carries limited weight in my decision.
32. However, unlike many of the adjacent retail units, the proposal would also contribute to the evening economy given the intended opening hours of between 0800 and 2200 on any day. Accordingly, I consider the proposal would be capable of attracting some new custom into both the PSS and the wider Town Centre.
33. Moreover, the evidence before me also states that additional linked trips would occur and the proposal would provide some local employment. In relation to linked trips, the survey evidence provided by the appellant indicates that between 68% and 91% of users of the Paddy Power units visited shops and services nearby. I accept that the level of linked trips will depend upon the range of services and shops within the locality. However, given the prominent location of the unit and the relatively wide range of shops and services close to the unit, I find no reason to doubt that linked trips would occur.
34. Turning my attention to employment, I accept that the employment opportunities associated with the betting shop would not require a specific skill set or professional qualification. The Council contend that the level of employment which would be provided is not significantly different from other units within the Town Centre. Nevertheless, the provision of 6 additional jobs would be of benefit to the local economy. Accordingly, I consider that the likely linked trips and employment opportunities are positive benefits which must be weighed against any harm found from the proposed use.
35. Policy CS12 of the Rotherham Local Plan, Core Strategy 2013-2028; 2014 (the CS), seeks to maintain and enhance the vitality and viability of the borough's

- retail and service centres. In addition, Policy CS13 of the CS seeks, amongst other things, to support development which would enhance the Town Centre's appeal as a family friendly destination and support proposals which improve the range and quality of leisure facilities.
36. I accept that the proposal is an activity only available to those aged 18 or over. Therefore, the proposal would fail to enhance the appeal of the Town Centre as a family friendly destination, a position that the appellant accepts. I have also had regard to the fact that the Council have ear-marked the public square close to the appeal premises as being a suitable location for temporary family friendly activities, such as fairground rides.
37. I acknowledge that betting shops tend to attract a restricted sector of the population and, as such, betting may be seen as a 'niche' leisure use. Nonetheless, in my opinion the activity should be considered a leisure activity.
38. In terms of visual considerations, I observed during my site visit that it is possible to see inside other betting shop premises from the street frontage. From the evidence submitted, and from verbal confirmation by the appellant during the Hearing, I accept that the proposal would result in a higher level of shop front screening than many other units on the PSS. However, in my opinion the proposed design for the front of the appeal premises would still allow for views both in and out of the unit and would not result in the creation of an appearance of a 'dead' frontage. I therefore consider that the proposed unit provide a shop frontage with associated activity of people coming and going and so would be similar to nearby units.
39. Currently, the empty nature of the premises and poor state of repair contributes nothing to the vitality and viability and character and function of the PSS and Town Centre. By contrast, due to observations made during my site visit and from the evidence before me, I have no reason to doubt that the proposal would generate footfall and activity relatively quickly. On that basis, I consider that the proposal would improve the vitality and viability of both the PSS and Town Centre, in the short and also the long term.
40. In terms of the CA, the re-use of a disused unit, and the activity that would be generated, would enhance both the character and the appearance of the CA. I consider that this is an additional factor which weighs in favour of the proposal.
41. I have taken into account the various appeal decisions to which the appellant has referred. These decisions generally highlight the positive aspects of betting offices; their contribution, in certain circumstances, to the health of town centres; and their acceptability in the primary retail areas in some shopping centres.
42. Nonetheless, as the circumstances vary from one centre to another I consider it is difficult to draw any direct comparisons with the proposal. These decisions do not, therefore, lend significant weight in support of the appellant's case. In any event, each proposal should be considered on its individual merits, which I have done in this instance.
43. Taking account of all of the above evidence, I find that the proposal would fail to accord with criterion (a) of Policy CS13 of the CS in relation to the provision of a family friendly destination. However, on the whole, I find that the proposal would contribute to the vitality and viability of the Town Centre and

therefore would not adversely impact the retail character and function of the Town Centre. In addition, the proposal would generate employment and enhance the character and appearance of the CA.

44. I consider that these are material considerations that clearly outweigh the technical breach of the CS. Accordingly, I find that the proposal complies with Policy RET1.2 of the UDP, Policy CS12 and criterion (f) (i, ii, iii and vi) of Policy CS13 of the CS. In addition, the proposal would also comply with paragraph 23 of the Framework which states that planning policies in town centres should be pursued that support their vitality and viability. Moreover, as the new uses in both Unit 1 and Unit 2 would generate economic growth and jobs, the proposal would also comply with Paragraph 19 of the Framework which indicates that significant weight should be placed on the need to support economic growth through the planning system.

Other Matters

45. Four representations were received at the planning application stage, all requesting refusal of the proposal. Within the correspondence, concerns relating to the potential effect on a designated heritage asset were raised. Matters relating to listed building consent have been dealt with separately and permission granted. Accordingly, there is nothing before me in this regard which would lead me to conclude the scheme should be resisted on these grounds.
46. Reference has also been made to the size of Unit 2 and how this may be restrictive in terms of attracting a tenant and also the impact on the vitality and viability of the Town Centre. However, both of these issues have been fully addressed within my reasoning.

Conditions

47. The Council has suggested two conditions which it considers would be appropriate were the appeal to be allowed. I have considered these in light of both the Framework and Planning Policy Guidance and find them to be reasonable and necessary in the circumstances of this case.
48. In addition to the standard commencement condition, a condition is necessary requiring that the development is carried out in accordance with the approved plan in order to provide certainty.
49. As I am minded to allow the appeal and grant planning permission, I have had regard to the short discussion in relation to the necessity for a condition relating to opening hours that was discussed at the Hearing. I note that the appellant proposes to open the betting shop between the hours of 0800 and 2200 Monday to Sunday, including bank holidays. The appellant also confirmed that a condition restricting the opening to these hours would be acceptable. Although the Council did not suggest such a condition, I consider it necessary to impose a condition relating to opening times in the interests of preserving local conditions.

Conclusion

50. I have found that the proposal would not adversely impact on the vitality and viability of the Town Centre or its retail character and function and would

accord with the development plan as a whole. Therefore, having regard to all other matters raised, I conclude that the appeal should be allowed.

Helen Cassini

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Helen Cuthbert	Planning Potential – Planning Consultant
Sam Deegan	Planning Potential – Planning Consultant
Chris Green	Power Leisure Bookmakers Limited
Russell Morgan	Power Leisure Bookmakers Limited

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Hancock	Rotherham Metropolitan Borough Council
Bernadette Rushton	Rotherham Metropolitan Borough Council
Ryan Shepherd	Rotherham Metropolitan Borough Council
Winsze Lam	Rotherham Metropolitan Borough Council