

Appeal Decision

Site visit made on 21 November 2016

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 12th December 2016

Appeal Ref: APP/T2215/W/16/3157353

12 Lowfield Street, Dartford DA1 1HA

- 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 Hill Organizations Ltd against the decision of Dartford Borough Council.
 - The application Ref: DA/16/00505/COU, dated 30 March 2016, was refused by notice dated 26 May 2016
 - The development proposed is the part change of use of 12 Lowfield Street, Dartford from Use Class A1 (Shops) to a betting office as well as external alterations to the shop front, installation of a satellite dish, aerial and 2 air conditioning units.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted revised drawings with the appeal scheme proposing a different shop front design to that considered by the Council. The alterations are reasonably small in scope and all of the interested parties would have had an opportunity to submit comments on the changes. I have therefore decided to accept the drawings and have taken them into consideration.

Main Issues

3. The main issues in this appeal are: 1) The effect of the proposed development on the retail function and vitality of the town centre; and 2) Whether the proposed development would preserve or enhance the character or appearance of the Dartford Town Centre Conservation Area.

Reasons

The effect on the retail function and vitality of the town centre

4. The appeal site encompasses the vacant retail premises at 12 Lowfield Street and part of the roof of an adjoining property. The retail property is situated in a prominent location on the corner of Lowfield Street and Market Street and is located within the town centre's defined primary shopping frontage.
5. Lowfield Street is a busy pedestrian thoroughfare connecting the High Street and Market Street. The Council suggests it has a high footfall due to its prominent position and accessible position close to public car parks and bus stops. I have no reason to disagree, especially as this analysis is supported by

a health check study undertaken by Quod and matches my general observations of Lowfield Road and its level of activity.

6. The Dartford Core Strategy 2011 (CS) outlines the Council's strategic vision for Dartford Town Centre. Policy CS1 seeks the revitalisation of the town centre as a shopping, leisure and service centre. Policy CS2 outlines more detailed proposals intended to achieve the objectives of Policy CS1. This includes increasing the range of shopping and leisure facilities in the town centre and for developments proposed in the town centre to demonstrate how they would benefit its revitalisation. Policy CS12 identifies that it is necessary to take into account the urgent need for regeneration and to attract more shoppers.
7. The aims and objectives outlined in the CS are broadly compatible with the National Planning Policy Framework (the "Framework"), which requires planning policies to set out a strategy for the management and growth of town centres.
8. Saved Policy R3 of the Dartford Local Plan 1995 (LP) pre dates both the CS and the Framework. The policy provides criteria to guide the assessment of proposals seeking a change of use within the primary frontage from an A1 use to a use falling within the A2 and A3 use classes. The approach in Policy R3 is broadly consistent with the Framework, which states that local planning authorities can define primary shopping frontages and set policies that make it clear which uses will be permitted in which locations.
9. The Council are updating Policy R3 in its emerging Dartford Development Policies Plan 2015 (DPP). Emerging Policy DP15 prioritises A1/A2 uses in the defined Primary Frontage and permits changes of use to A3 and A4 uses subject to criteria, including whether it has been shown that the A1/A2 use is not feasible following marketing. Other uses in the Primary Frontage will normally only be permitted where they result in significant enhancements to the quality of the town centre. All other uses are directed towards the defined Secondary Frontages. This 'retail first' approach is necessary to enable the town centre to compete with other retail centres nearby, including Bluewater. The Policies are at an advanced stage of preparation and whilst subject to minor revisions, they can nevertheless be afforded more than limited weight. Policy DP16 is being redrafted and cannot be afforded much weight.
10. The appeal scheme proposes the change of use of the appeal site from A1 retail to a betting office, which is a *sui generis* use. As a betting office falls outside of the uses envisaged by the Council as being acceptable in the primary frontage, the proposed change of use would be contrary to the objectives of the relevant sections of the existing and emerging development plan policies, notably saved Policy R3 of the LP and emerging Policy DP15 of the DPP.
11. As such, the development would frustrate and significantly harm the Council's strategic vision of revitalising Dartford Town Centre and its shopping function, through the retention of retail uses in the Primary Frontage, as a means of retaining a critical mass of retailers in the town centre. This harm would be compounded as the proposed betting office would be close to others nearby. The combined effect of this would be to erode the retail character of Lowfield Street. Any increase in footfall arising from the appeal scheme would not mitigate these limitations given the apparently high existing level of footfall.

12. The appellant has attempted to justify the appeal scheme by suggesting the proposal would support the revitalisation of the town centre. The appellant points to the properties long term vacancy, the unsuccessful marketing and the potential benefits of the proposal¹ as evidence in this regard.
13. The information supplied by the appellant demonstrates that a betting office can have a positive role to play in a town centre. It can attract footfall, linked trips, additional spend and jobs. However, it has not been established that these benefits could not be accrued from a position in the secondary frontage, which would be more in line with the Council's strategic vision for the town centre. In this respect, the benefits would not be significant.
14. Furthermore, it is unclear to what extent the betting office would have an active frontage that could contribute to the shopping function and experience of visitors to the town centre. As such, the proposed use, with an inactive frontage², is better located away from prominent thoroughfares such as Lowfield Street, where active frontages are intended to draw a wider range of shoppers into the town centre and improve their experience once there by facilitating their ability to window shop, browse and compare goods. In this respect, the appeal scheme is a better fit for a secondary frontage where it could complement the retail core of the town centre. However, evidence has not been submitted to demonstrate a unit in a secondary frontage is unavailable or would be unviable.
15. The Council have suggested that the demand for retail properties in the town centre is healthy with current vacancies explained through specific circumstances rather than by general trends. I have no reason to disagree and thus the long term vacancy of the appeal site appears to be atypical. The marketing report submitted by the appellant does not robustly demonstrate that there is insufficient demand for the appeal property as a retail unit, as there appears to have been interest in the appeal site for retail uses but terms could not be agreed. It is unclear why terms could not be agreed, what negotiations took place, whether the terms were reasonable relative to comparable sites and whether the terms and guide prices were altered to reflect the level of interest received.
16. In addition, an updated report has not been submitted to reflect the time-lapse since the report was first prepared. This undermines the weight that can be placed on the submitted report and the appellant's assertion that priority was given to uses directed by the development plan to the primary frontage before considering a betting office. The suggestions that the site is too small or out of the way to be successfully marketed for a retail use are unsupported by substantive evidence and thus carry little weight.
17. Further evidence is required to demonstrate that the asking price and terms were reasonable before I could be satisfied the marketing has thoroughly tested the demand for the property as a shop. Consequently, I cannot be satisfied a betting office is the only solution to address the long term vacancy of the appeal site. Therefore, it would be premature to set aside the objectives of the relevant development plan policies aimed at safeguarding retail uses in the primary frontage. This is especially so given the level of investment in the

¹ Including the creation of jobs and the other benefits set out in the market research undertaken by NEMS on behalf of the appellant and set out in the summary of the economic and social benefits of betting offices

² There is nothing to suggest the window display would not have a static display with limited views beyond.

town centre that is planned and the subsequent contraction in retail units that may occur. As such, the potential benefits from regeneration are not determinative in this instance as it has not been demonstrated the same benefits could not arise from a policy compliant retail use.

18. I therefore conclude in the absence of substantive evidence to the contrary, that the appeal scheme would harm the retail function of the town centre and its vitality. The proposal would thus undermine the Council's strategic vision for the town centre, contrary to objectives of Policies CS1, CS2 and CS12 of the CS, saved Policy R3 of the LP and emerging policies DP14 and DP15 of the DPP.

The effect on the Dartford Town Centre Conservation Area (CA)

19. The revised drawings submitted by the appellant show a more traditional shop front that would incorporate timber materials and a balanced subdivision of the shop windows. The shop front would also incorporate a number of details that are prevalent on other shop fronts throughout the CA including decorative pilasters, stall risers and plinths. The fascia boards would also retain a consistent width. The alterations now proposed would enhance the visual appearance of the property and thus its contribution to the street scene and CA. The Council has removed its objection to the proposed shop front alterations having considered the revised drawings.
20. The proposed roof equipment would be located towards the middle of an adjoining flat roof and behind a parapet. Consequently, the equipment is unlikely to be prominent in near or long distance views along Market Street and would therefore preserve the character and appearance of the CA.
21. The proposal would have a neutral to positive effect on the significance of the conservation area. The setting of the conservation area would be preserved and in some ways enhanced. The development would thus adhere to Policy CS2 of the CS, saved Policies B8 and B13 of the LP and emerging Policies DP12 and DP13 of the DPP, which seek to preserve or enhance the heritage of the Borough. These aims are consistent with Section 12 of the Framework.

Other Matters

22. The appellant has referred to a number of appeal decisions. Some of these pre date changes to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and all fall within the remit of other planning authorities where different development plan policies apply. The specific circumstances of this site, alongside the particular challenges of Dartford Town Centre, which the Council are seeking to address, dictates that the appeal scheme falls to be considered on its own merits. Accordingly, the appeal decisions referred to do not alter my conclusions on the main issues.

Conclusion

23. The proposal would preserve and enhance the conservation area but this would not mitigate for its other shortcomings. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

Graham Chamberlain
INSPECTOR