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## Appeal Decision

Site visit made on 23 March 2017

**by M Seaton DipTP MRTPI**

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

**Decision date: 05 July 2017**

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**Appeal Ref: APP/H0738/W/16/3161107**

**Collectables Retail Park, Ross Road, Stockton-on-Tees, TS18 2LX**

- 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 Charles Leonard on behalf of Cliff Court Developments Limited against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 15/2654/FUL, dated 22 October 2015, was refused by notice dated 18 April 2016.
  - The development proposed is the erection of 1No. retail unit (Use Class A1).
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 1No. retail unit (Use Class A1) at Collectables Retail Park, Ross Road, Stockton-on-Tees, TS18 2LX, in accordance with the terms of the application Ref 15/2654/FUL, dated 22 October 2015, and subject to the conditions as set out within the annex.

### Main Issue

2. The main issue is whether the proposal accords with current local and national policies for the location of retail development, and the impact on the vitality and viability of Stockton Town Centre.

### Reasons

3. The proposed retail premises would be located within an existing retail development (Collectables Retail Park), which is comprised of 8 No. existing units along with associated car parking and service access areas, and is located at the corner of Ross Road and Portrack Lane. The existing retail park is indicated as accommodating a selection of bulky goods retailers, a food retailer (Subway), a café, and a leisure use within Class D2 in the form of Jump 360, an indoor trampoline park. The appeal site is indicated to be approximately 1 km to the east of Stockton Town Centre, and would not be within an existing defined town centre, and therefore identified as occupying an out-of-centre location.
  4. The proposed development would provide an additional retail unit in the form of an extension to the western side of Unit 4, and proposes 475 m<sup>2</sup> floorspace, which would include a mezzanine floor of 160 m<sup>2</sup>. The appellant has indicated that the proposed unit would be for a bulky goods operator, who is looking for modern, flexible retail floorspace, with extensive display and storage space,
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- adjacent level car parking for ease of transporting bulky goods away from the store using trolleys, and a service area capable of accommodating HGVs.
5. The Council has identified within the reason for refusal, that the proposals would not accord with Policy CS5 of the Stockton-on-Tees Core Strategy Development Plan Document 2010 (the Core Strategy), or saved Policy S2 of the Stockton on Tees Local Plan: Alteration Number 1 to the Adopted Local Plan, Adopted Draft 2006 (the Local Plan). These policies address major retail development and other town centre uses beyond defined retail centres (Policy S2) and advise that the consideration of planning applications for main town centre uses in out-of-centre locations, should be determined in accordance with prevailing national policy on town centres (Policy CS5[7]).
  6. In respect of national retail policy, paragraph 24 of the National Planning Policy Framework (the Framework) advises that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre, and should first consider the availability of suitable sites in town centre locations, then edge-of-centre, before finally considering out-of-centre sites. The Planning Practice Guidance (the PPG) advises that in decision-taking it is for the applicant to demonstrate compliance with the sequential test, albeit with the support of the local planning authority in respect of the sharing of any relevant information. In considering out-of-centre sites, the Framework advises that sites which are accessible and well connected to the town centre should be given preference.
  7. The appellant submitted a sequential site assessment during the course of the planning application, which considered the availability of premises within and on the edge of Stockton Town Centre which would be capable of accommodating the retailer's requirements. However, at the behest of the Council, the appellant undertook a further assessment to widen the scope to include Thornaby and Billingham District Centres. The conclusion of the sequential site assessments was that there were no suitable and available properties that would meet the requirements of the developer as a consequence of either insufficient available floorspace, or a level of floorspace significantly in excess of that required.
  8. This exercise is indicated as having been revisited by the appellant for the purposes of the appeal, with a broader floorspace search parameter used of 400 – 550 m<sup>2</sup>, both above and below the requirement of the appellant for 475 m<sup>2</sup>. However, whilst the revised search identified 5 potential properties available across Stockton Borough, two of the units were assessed to be too small, with three of the units identified as being within industrial rather than retail locations. Additionally, four of the units were in out-of-centre locations and were therefore assessed to not be sequentially preferable to the appeal site in any event. As a consequence, the appellant concludes that the sequential test has been passed.
  9. The Council has highlighted within the evidence that suitable retail units are in fact available within Stockton Town Centre, specifically at No. 34 Queensway and in several properties in Wellington Square. I have carefully considered this contention. However, I am satisfied from the appellant's submissions that the units referred to in Queensway and Wellington Square would not be suitable for various reasons including lack of availability due to existing retail occupancy (Unit 6 Wellington Square), and lack of available at-grade customer car parking

(both at Queensway and Wellington Square units) for the loading of purchased goods and products from flat-bed trolleys to cars. I would also agree to be reasonable the appellant's assessment that the costs associated with a prime retail area would prove to be prohibitive for a bulky goods retailer, where the sales productivity would not be sufficient to offset the costs, thus rendering the occupation of any such situated unit as potentially unviable.

10. I have noted that the Council concluded within the delegated report that the proposal had been made on a speculative basis for a bulky goods end user, and that there should potentially be some inherent flexibility in the business model which was adopted. However, I consider that the appellant has already shown some flexibility in the format and scale of the proposed unit by seeking to utilise a mezzanine floor which would have the effect of reducing the footprint requirement. Furthermore, I am also mindful from the evidence placed before me, that the appellant had already sought to clarify the business model in an e-mail to the Council dated 11 February 2016 in advance of the determination of the planning application, and more pertinently identified the end user as being a national wood flooring retailer and their specific requirements.
11. In respect of this point, the appellant has drawn my attention to excerpts from a Secretary of State decision on an appeal for proposals which included the erection of retail units in Rushden Lakes from June 2014, and which refers to a Supreme Court case in Dundee, where reference was made to the definition of 'suitability' as a term in connection with section 2 of the Framework. In this respect, it advises *that if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach*, with the underlying principle being that the proposal should not be altered or reduced so as to fit on to an alternative site. Whilst I appreciate the Council's contention regarding flexibility, I conclude that the appellant has shown this sufficiently in respect of the format and scale, and should not be expected to fundamentally alter the stated commercial requirements in order to fit on to a specific site.
12. The Council has also expressed concerns over the impact of the proposal on the vitality and viability of Stockton Town Centre, and the potential for it to divert trade from the town centre. In this respect the Council has referred to saved Policy S2 of the Local Plan which refers to the need for larger scale retail, leisure and office developments to carry out an impact assessment, with I note the national default threshold set at 2,500 m<sup>2</sup> for a retail impact assessment to be undertaken.
13. The preamble to saved policy S2 concludes that *some smaller developments can also impact against the vitality and viability of centres depending on the nature of the proposal, and that Retail Impact Assessments may be requested for developments proposing less than 2,500 m<sup>2</sup> floorspace*. However, it is further indicated that *in some circumstances where the proposed development falls below this threshold, such as where the potential trip generation or retail impact of the proposal on an existing centre is likely to be significant, it may be necessary to treat the proposal as a major retail development*.
14. In this respect, the appellant has drawn my attention to recent decisions by the Council where it has been concluded that both bulky goods retail, and the creation of a similarly sized level of floorspace, would not compete to any meaningful degree with the existing retail offer of the town centre, and would

not result in an adverse impact on the vitality and viability of the town centre. Nevertheless, and despite the appellant's contention regarding the lack of a requirement for the completion of a retail impact assessment, I note that they have drawn through a quantitative retail assessment the conclusion that the proposed unit would in 2021 result in just a 0.18% trading impact on town centre comparison goods retailing. This conclusion is corroborated by the PPG in recognising that retail uses tend to compete with their most comparable competitive facilities. I see no reason to dispute the calculations, and therefore do not consider that the proposed retail unit would result in a significantly adverse retail impact.

15. On the basis of the policies of the Development Plan and the Framework, I am satisfied that there would not have been a requirement for the submission of a retail impact assessment, albeit that the evidence submitted has indicated that there would not be an adverse retail impact on Stockton Town Centre as a result of the development in any event. Furthermore, I am satisfied that the submitted sequential assessment has considered in sufficient detail the issue of flexibility, and has failed to identify a sequentially preferable site, and has therefore been passed.
16. As a consequence, I am satisfied the proposals would accord with Policy CS5 of the Core Strategy and saved Policy S2 of the Local Plan, which advise that planning applications for main town centre uses in out-of-centre locations should be determined in accordance with prevailing national policy on town centres, and will only be permitted where it can be demonstrated there are no other sequentially preferable sites or premises. Furthermore, there would not be any conflict with paragraph 24 of the Framework, and the proposal would also not conflict with paragraph 27, as the proposed development has satisfied the sequential test and will not be likely to have a significant adverse retail impact.

### **Conditions**

17. I am satisfied that the imposition of conditions related to the use of matching materials and controls over hours of demolition and construction would be reasonable in the interests of the character and appearance of the area, and safeguarding the living conditions of neighbouring occupiers respectively. I am also satisfied that a condition to address unexpected contamination would be reasonable in the interests of the ground conditions of the appeal site.
18. I am satisfied that a condition restricting the occupation of the retail unit for bulky goods retail only would be necessary and reasonable to safeguard the vitality and viability of existing centres, but consider that the condition proposed by the Council would be too onerous in its restrictiveness. I am satisfied that the alternative condition proposed by the appellant would fulfil the requirement to appropriately restrict future occupation of the unit.

### **Conclusion**

19. For the reasons given above, and subject to the conditions listed, the appeal should be allowed.

*M Seaton*

INSPECTOR

## **Annex**

### **Conditions**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) Unless otherwise required by conditions below, the development shall not be carried out except in accordance with the details shown on the submitted plans; SBC0001 dated 28 October 2015, LO15032-004 dated 28 October 2015, LO15032-005 dated 22 October 2015, LO15032-006 dated 22 October 2015, and LO5032-008C dated 4 January 2016
- 3) Notwithstanding the details shown on the submitted plans, the external materials shall match those of the existing building unless otherwise agreed within the Local Planning Authority.
- 4) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, works must be halted on that part of the site affected by the unexpected contamination and it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken to the extent specified by the Local Planning Authority prior to resumption of the works. Following completion of measures identified in the approved remediation scheme, a verification report must be submitted in writing and approval by the Local Planning Authority.
- 5) Construction/Demolition operations including delivery/removal of materials on/off site be restricted to 08:00 – 18:00Hrs on weekdays, 09.00 – 13:00Hrs on a Saturday and no Sunday or Bank Holiday working.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development ) (England) Order 2015 and the provisions of the Town and Country Planning Use (Classes) order 1987 as amended the retail unit hereby approved shall not exceed 475 gross internal floor spaces and shall not be used for the sale of goods other than those in the following categories:
  - i) Furniture, wall and floor coverings;
  - ii) Bedding, soft furnishings and textiles;
  - iii) Electrical goods and domestic appliances;
  - iv) DIY Products, materials, tools and machinery for repair, maintenance or improvement of the home, garden and motor vehicles; and,
  - v) Motor and cycle goods.