



Appeal Decision

Site visit made on 10 July 2017

by Susan Ashworth BA (Hons) BPI MRTPI

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

Decision date: 27th July 2017

Appeal Ref: APP/C1055/W/17/3173476

21 St Peter's Street, Derby DE1 2AA

- 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 SAL Holdings Ltd against the decision of Derby City Council.
 - The application Ref DER/11/16/01418, dated 17 November 2016, was refused by notice dated 27 February 2017.
 - The development proposed is change of use from retail (A1) with ancillary storage above to adult gaming centre with tanning salon above (both sui generis) and associated changes to shopfront and signage.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the proposed change of use would conflict with the relevant policy concerning the vitality and viability of Derby City Centre and if so, whether material considerations indicate that it should nevertheless be permitted.

Reasons

3. 21 St Peter's Street is a two-storey mid-terraced unit that forms part of the Audley Centre, which dates from the 1970's. The property, which is currently vacant, was last used as a retail unit at ground floor with storage above. The site lies on a pedestrianised street in the heart of the city which links the Intu shopping centre with the retail/commercial area in the Cathedral Quarter.
4. The proposal seeks to convert the unit from a general retail use to a use that is sui-generis, specifically, an adult gaming centre at ground floor level and tanning salon above. The proposal includes alterations to the shopfront, to which the Council raises no objections. A separate application for advertisement consent for new signage has been submitted to the Council.
5. Policies AC1, AC2 and AC3 of the recently adopted Derby City Local Plan Part 1 2017, set out the Council's aim of sustaining and enhancing the vitality and viability of the central 'Core Area' of the city. St Peter's Street lies within a defined 'Primary Frontage', where, as set out in Policy AC3, retail uses shall remain the predominant use. Alternative uses, the policy states, will only be permitted subject to specified criteria such as the ability of the use to add vibrancy, animation and activity to the area, and the impact of the use on the character and environmental quality of the area. Alternative uses, it states,

should be open to the general public during the day and maintain a shopfront or display of visual interest.

6. Whilst seeking to promote diversity I note that the justification for the policy acknowledges that 'too much flexibility can have a negative effect particularly if it means that people are less likely to visit that part of the centre' and advises that this is particularly important on St Peter's Street given its role as a link between the modern and more historic shopping areas in the town.
7. The appeal site and properties in the row immediately adjacent to it are vacant and have been so for some time. Nevertheless, units on the opposite side of the street appeared to be well occupied and there is a mix of well-known shops and banks in the area. Moreover I noted at my site visit, late in the morning on a Monday, that the pedestrianised area had a vibrant and busy character with a considerable amount of pedestrian footfall.
8. The Council notes that the loss of the unit would reduce the proportion of A1 uses within the frontage to around 66% and on that basis does not object to the loss of the retail unit per se. The policies do not set out a quantitative approach to the balance of retail and non-retail uses but require a matter of judgement. In this case, I agree that the change of use of one retail unit to an alternative use as set out in Policy AC3 would not affect the function or character of the area given its vibrancy. In addition, the Council raises no objection to the proposed first floor tanning salon and I have no reason to disagree.
9. However, the proposed ground floor gaming centre would be for adults only. Under 18's would be prohibited from using the premises. As such family groups, teenagers and children would be specifically and directly excluded. Whilst I accept that some retail uses, including the previous use of the premises as an Ann Summers shop may not cater for all members of the general public, A1 retail uses generally do not directly exclude such a significant section of the public. I have taken into account the appellant's view that the use would offer a complementary activity to the main shopping function. However, I am unconvinced on the basis of the evidence before me that the premises would have a wide appeal, even with 'low stake' gaming machines present.
10. Moreover, in accordance with gaming industry regulations, the shop front would be enclosed by displays to avoid unobstructed views into the unit by under 18's. Whilst I acknowledge the appellant's point that displays could involve the use of 3D tiles, and could change seasonally, I am unconvinced that the displays would attract customers and thereby add vibrancy, animation and activity to the area. I have taken into consideration the appellant's suggestion that the content of the displays could be agreed with the Council and secured by condition. However, such a condition would be unreasonable in relation to the functioning of the business, particularly given the frequency with which the appellant considers the display would change. As such it would not meet the tests for conditions set out in the Planning Practice Guidance.
11. I accept that views into other retail units could be obscured by objects and window displays. However, it seems to me that the cumulative impact of the socially exclusive nature of the proposed use together with its 'behind closed doors' appearance would have a negative effect on the vitality and character of the area.

12. I have taken into consideration the potential 'fall-back' position whereby the premises could be converted to a non-retail use under the terms of the General Permitted Development Order. Be that as it may, I am not aware that any applications for prior notification for alternative uses have been made to the Council and this limits the weight I can give the matter as a fall-back position.
13. I note that the property has been marketed for over a year without success and I understand that the Intu centre is popular with national retailers. However, as set out above the street attracts considerable footfall. I am aware that a planning application for the comprehensive redevelopment of the Audley Centre, including the change of use of the appeal premises, is currently pending. Whether or not this application has had an effect on the vacancy of the premises is unclear. It seems to me that once the application is resolved, there will be more stability and confidence for potential purchasers. Notwithstanding that, given the vibrancy of the area and the current occupancy rate, I am not convinced on the basis of the evidence before me that the premises are unsuitable for use for retail purposes.
14. For the reasons set out, the proposal would affect the role and character of the primary retail frontage and as such would undermine its viability and vitality. For these reasons, the proposal would be contrary to Policies AC2 and AC3 of the Derby City Local Plan as set out above; Policy AC1 which seeks, amongst other things, to ensure that the city centre remains safe and inclusive and provides support to family orientated facilities and Policy CP15 which also requires the City Centre to be socially inclusive. None of the matters put forward in favour of the scheme, either singly or in combination, outweigh that conclusion.
15. Consequently, for the reasons set out, and taking into account all other matters raised including the letter of objection, the appeal is dismissed.

S Ashworth

INSPECTOR