



Appeal Decision

Site visit made on 13 December 2017

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

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

Decision date: 17th January 2018

Appeal Ref: APP/J0405/W/17/3181602

14-18 Market Square, Aylesbury HP20 1TW

- 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 Done Brothers (Cash Betting) Ltd against the decision of Aylesbury Vale District Council.
 - The application Ref 17/01243/APP, dated 3 April 2017, was refused by notice dated 30 June 2017.
 - The development proposed is change of use to betting shop (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use to betting shop (sui generis) at 14-18 Market Square, Aylesbury HP20 1TW in accordance with the terms of the application, Ref 17/01243/APP, dated 3 April 2017, 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 premises shall not be used for the purposes hereby permitted except between the hours of 0800 and 2200 on Mondays to Saturdays inclusive and 0900 and 2200 on Sundays, Public and Bank Holidays.
 - 3) Notwithstanding the submitted drawings, further details of the proposed shop fronts and their treatment shall be submitted to and approved in writing prior to the first occupation of the use hereby permitted. The development shall be carried out in accordance with the approved details.

Main Issue

2. The main issue is the effect of the proposed development on the shopping strength, vitality and interest of the area.

Reasons

3. The appeal property is a currently vacant unit on the Market Square in Aylesbury town centre and forms part of the primary shopping frontage. There is no dispute between the main parties that its last use was under Class A2, which falls within Financial and Professional Services in the Town and Country Planning (Use Classes) Order 1987 (UCO) as amended.
4. The Market Square is a key space within the town centre connected by a number of pedestrian and road links. There are currently a limited number of retail units (Class A1 Shops in the UCO) around the square, with a larger

amount of banks and estate agents as well as cafes, restaurants and public houses. In the wider town centre, I observed a number of existing betting shops, although none on the Market Square itself.

5. Policy AY28 of the Aylesbury Vale District Local Plan 2004 ('the Local Plan') sets out the Council's approach to the primary shopping frontages within the central shopping area of Aylesbury town centre. The policy states that "Within these primary frontages, the Council will not permit changes of use to non-retail that weaken the shopping strength and interest of the area". Amongst other things, paragraph 23 of National Planning Policy Framework (NPPF) refers to the viability and vitality of town centres that provide customer choice and a diverse retail offer. Paragraphs 18 to 22 of the NPPF refer more generally to securing economic growth and employment.
6. Policy AY28 does not specify what the existing use would be, but in stating "changes of use to non-retail", I consider it indicates that the existing use would be retail. Moreover, as the policy seeks to resist the weakening of the shopping strength and interest of the area, this also indicates that the existing use would be retail or, in other words, a shop. Paragraph 23 of the NPPF does not specify what is acceptable in terms of changes of use, but compels local planning authorities to set policies which make clear which uses will be permitted in town centres and primary shopping areas.
7. Class A2 is a non-retail or non-shop use, something which paragraph 5.143 of the Local Plan acknowledges. A betting shop was formerly considered to fall within Class A2, but since amendments to the UCO in 2015 is now considered to be sui generis. Either way, it is non-retail. Given the existing and proposed uses, the development would not result in the loss of a retail unit, the dilution of the retail offering or the weakening of the shopping strength, vitality and interest of the area.
8. I acknowledge that the appeal property occupies a prominent location next to the Hale Leys Shopping Centre and that the Market Square would benefit from additional retail uses given efforts to revitalise this space and make it a key focus of the town centre. The existing proportion of non-retail uses within the Market Square is high, but this would not change with the proposed development.
9. I also note that the town centre already has several betting shops in close proximity to each other and that the Town Centre Plan seeks to avoid any more. Interested parties also refer to the negative effects betting shops have on retail vitality in town centres, although I have insufficient evidence to confirm that the proposed development would be harmful to such vitality. The removal of betting shops from Class A2 in the UCO provides local planning authorities with a greater ability to control their introduction. However, given the existing use and the wording of Policy AY28, there is little in terms of the evidence before me that indicates that planning permission should be withheld on retail impact grounds. The fact that betting shops increasingly operate online is not a sufficient reason against a physical town centre unit either. Reference is made to the emerging Local Plan and a policy approach which seeks to restrict betting shops, but I have little information on this approach or the status of the emerging plan and so can give this very little weight.
10. The Council and interested parties highlight apparent interest in the appeal property for retail use, although I have insufficient information on either the

likelihood of this interest displacing the betting shop proposal or the viability of different uses. Moreover, there are a number of vacant units in the town centre which offer potential opportunities for retail uses. In any case, I have made my decision based on what has been applied for in terms of the change of use.

11. I note a previous appeal decision at 7-9 Market Square in 2014¹ that dismissed a proposed change of use to a betting shop. However, the property in that appeal was a vacant Class A1 unit where the loss of a retail use was considered unacceptable and contrary to Policy AY28. Thus, this appeal is not directly comparable. The appellant has provided a number of appeal decisions from around the country to support their case, but these relate to changes of use from Class A1 to Class A2 or sui generis and so are not directly comparable either.
12. Concluding on the main issue, the proposed development would have an acceptable effect on the shopping strength, interest and vitality of the area. Consequently, there would be no conflict with Policy AY28 of the Local Plan or paragraphs 18 to 23 of the NPPF.

Other Matters

13. The property is a modern commercial building of little architectural or historic interest and so does not contribute positively to the Aylesbury Conservation Area in which it is sited or the setting of nearby listed buildings. Its currently vacant state exacerbates its poor character and appearance. It is not clear whether the signage and window displays would require separate consent, but this would be a matter for the appellant and Council to discuss. Nevertheless, the plans indicate little change to the shopfront itself and these alterations could be controlled via a planning condition. Furthermore, the operation of the unit as a betting shop would bring a vacant unit back into use and would not be significantly different to the use of other units in the town centre in terms of the level and timing of activity and movements. Therefore, the character and appearance of the conservation area and the setting of nearby listed buildings would be preserved by the development.
14. It has been argued by an interested party that as Policy AY28 and the development plan is silent on the change of use of existing non-retail uses to non-retail uses that the fourth bullet point of paragraph 14 of the NPPF applies. This states that where the development plan is absent, silent or out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole or specific policies in the NPPF indicate that development should be restricted.
15. The adverse effects of a betting shop on the retail vitality of the town centre would be limited given that no loss of retail use would occur and there would not be a weakening of the shopping strength, vitality or interest of the area. As noted above, I have insufficient evidence that an additional betting shop would harm the vitality of existing retail units. The character and appearance of the conservation area and the setting of listed buildings would be preserved. Therefore, the adverse effects of a betting shop would be limited in this specific instance.

¹ APP/J0405/A/13/2210745

16. The benefits of bringing a vacant unit back into use carries reasonable weight in terms of employment and economic activity, notwithstanding that the proposal only involves a single unit within the town centre. Therefore, even if I were to find that the development plan is silent with regards to the proposed development, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits.

Conditions

17. A condition setting a time limit for the commencement of development is necessary for clarity and compliance. A condition specifying the hours during which the premises shall be used for the permitted purposes is necessary, relevant and reasonable to ensure that the use occurs at appropriate times. A condition requiring further details of the shopfronts and their treatment is necessary and relevant to safeguard the character and appearance of the area.

Conclusion

18. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR