



Appeal Decision

Site visit made on 12 March 2020

by R Morgan MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/R1845/W/19/3242723
25 Vicar Street, Kidderminster DY10 1DA

- 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 Shipleys against the decision of Wyre Forest District Council.
 - The application Ref 19/0096/FULL, dated 7 February 2019, was refused by notice dated 10 June 2019.
 - The development proposed is change of use from retail (class A1) to amusement centre (adult gaming centre) and construction of a smoking shelter to the rear.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from retail (class A1) to amusement centre (adult gaming centre) and construction of a smoking shelter to the rear at 25 Vicar Street, Kidderminster DY10 1DA in accordance with the terms of the application, Ref 19/0096/FULL, dated 7 February 2019, and 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 plans: Location & Block Plan scale 1:1250, 593/03 Rev A; 593/05 Rev A; 593/06 Rev. A, 593/07 Rev B and 593/09 Rev B.
 - 3) Prior to the erection of the smoking shelter, samples of the materials to be used in its construction must be submitted to and approved in writing by the local planning authority. The smoking shelter shall be constructed in accordance with the approved details and thereafter maintained.

Application for costs

2. An application for costs was made by Shipleys against Wyre Forest District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposed loss of a retail unit on the vitality and viability of Kidderminster town centre.

Reasons

4. The appeal site is an existing retail unit in a pedestrianised street in Kidderminster town centre. It is located adjacent to a building society with the other surrounding premises in retail use. Although there are a number of vacant units in the main shopping area, including the appeal premises, it was evident at my site visit that the town centre generally appeared to be thriving.
5. The appeal site is located within the area designated as a Primary Shopping Frontage within a Primary Shopping Area (PCA) in Policy SAL.GPB2 of the Site Allocations and Policies Local Plan 2013 (SAPLP). Paragraph 5.23 of the Kidderminster Central Area Action Plan 2013 (KCAAP) explains that the Primary Shopping Frontage is considered to be the prime retail location of the town, where A1 retail development will be concentrated and other uses will be restricted, in order to maintain the retail experience.
6. The proposed amusement centre would contain fruit machines and there would be a limited catering element. Amusement centres are not uncommon in town centres and rely on pedestrian flows to operate. The company operate an existing amusement centre in Worcester Street which is close to the main town centre but in a more peripheral location. Having regard to the appellant's survey of customers of those premises, it would appear that people combine trips to the amusement centre with other purposes, in particular shopping and, to a lesser extent, work.
7. Although SAPLP Policy SAL.GPB2 and KCAAP Policy KCA.GPB2 do not specifically encourage such a use in this Primary Shopping Frontage location, the proposal would provide a form of leisure use which would clearly relate to, support and complement the role and retail function of the town centre as required by criterion 2.i) of Policy SAL.GPB2.
8. The provision of a safe environment is also a requirement of SAPLP Policy SAL.GPB2 criterion 2.i), and in this regard I note concerns expressed by Worcestershire Public Health about potential impacts of the proposal on crime, anti-social behaviour and mental health. I have taken into account the Council's submissions regarding places which have a number of high risk permissions and the identified areas of deprivation within the Wyre Forest. However, I have not been provided with any substantive evidence that the proposed use would have an adverse impact on crime, anti-social behaviour, vulnerable groups and mental health and that it would add to the deprivation in the area. In any event, the proposed use would require a licence under the Gambling Act and concerns of this nature could be fully addressed through this process. It is not for the planning system to duplicate issues covered through other legislative regimes. I therefore attach limited weight to these issues.
9. Criterion 2.ii) of SAPLP Policy SAL.GPB2 is concerned with the impact of the proposal on the vitality and viability of the centre. There are a number of vacant units in the town centre, and securing a use for the appeal premises which would support the primary retail function of the area would have a beneficial impact on vitality and viability.
10. The use of the amusement centre would be restricted to people over a certain age, but I have been provided with no evidence that this would result in a reduced footfall in the town or would impact to a harmful degree the number of visitors to the town centre.

11. I acknowledge the Council's concerns about the intensification of non-A1 uses in this area and the slow creep of such uses, which could have a detrimental impact on the secondary shopping area as well as the town centre. However, the proposed use of the appeal site adjacent to a building society but otherwise surrounded by retail units would not result in an adverse cluster of non-retail uses or the fragmentation of the shopping frontage in this particular location. Furthermore, the small size of the unit compared with the surrounding shops would limit the extent to which the proposed use would dilute the primary retail function of this part of the town centre. Therefore, there would be no conflict with Criterion 2.iii) of Policy SAL.GPB2 of the SAPLP in this regard.
12. Also, I have had regard to the evidence submitted on behalf of the appellant that, other than for a temporary period, the appeal premises have been vacant since January 2013. The unit is long and thin, with a narrow street frontage to Vicar Street. Its unusual shape and limited frontage could be a reason for the apparent lack of demand for this unit when compared to the larger shop units in the area. Given the length of time that this unit has remained vacant and having regard to the number of other vacant retail units in the area, I have to conclude that dismissing the appeal is unlikely to secure any long-term A1 use of the appeal premises. I therefore attach significant weight to returning one empty unit into use.
13. Criterion 2.iv) of SAPLP Policy SAL.GPB2 requires that proposals in Primary Shopping Frontage areas provide an active frontage and are open for business during the day. The appellant has confirmed that the proposed amusement centre would have a shop front designed to be attractive to customers. It would be open during the day and into the evening.
14. Based on all I have seen and read, I conclude that in this particular case, the proposed loss of a retail unit in this location would be acceptable and would not cause material harm to the vitality and viability of Kidderminster town centre. Whilst there is some conflict with Policy SAL.GPB2 of the SAPLP and Policy KCA.GPB2 of the KCAAP in respect of the proposed use, the proposal complies with criteria 2.i. – 2.iv. of Policy SAL.GPB2 which seek, amongst other things, to ensure that the scale and type of development in Primary Shopping Frontages is directly related to the role and function of the area and would not result in an adverse cluster and over-concentration of non A1 uses.
15. Furthermore, the proposal would accord with guidance in Section 7 of the National Planning Policy Framework which is concerned with the vitality of town centres, and requires planning policies and decisions to take a positive approach to their growth, management and adaptation.

Conditions

16. In addition to the standard time limit and plans conditions, the Council has suggested a condition requiring samples of the materials of the proposed smoking shelter to be submitted and approved. Given that the proposed shelter at the back of the shop unit would be visible from the public domain, I agree that such a condition is necessary to ensure the development has a satisfactory appearance.
17. The Council has also suggested conditions requiring secure cycle storage to meet the requirements of its Streetscape Design Guide and the provision of a network of CCTV cameras. I have not been provided with details of any

relevant policies concerning these matters or the design guide to support such a requirement and therefore their justification is unclear. As such, I am not satisfied that these conditions would be necessary or reasonable.

18. The appellant has suggested a condition requiring that the premises maintain a window display. The proposal includes a window display in order to attract customers, and even without this, the vitality and viability of the centre would not be undermined. Also, no information has been provided to show that restricting the use to 'amusement only' machines as suggested by the appellant is necessary. Therefore, I consider conditions of this nature are not required.
19. Worcestershire Public Health have suggested a condition restricting opening hours to between 10:00 and 23:00 to mitigate any adverse effects relating to crime and anti-social behaviour. However, neither the Council or the appellant have commented on the proposed hours of operation and I do not have any evidence to suggest that this condition is necessary.

Conclusion

20. For the reasons given, I conclude that the appeal be allowed subject to the conditions.

R Morgan

INSPECTOR