



Appeal Decision

Site visit made on 7 July 2020

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 30th July 2020

Appeal Ref: APP/A2335/W/20/3248490

Lowell House, Caton Road, Lancaster LA1 3NY

- 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 J Aspden (On Yer Bike Cycles Ltd) against the decision of Lancaster City Council.
 - The application Ref 19/01214/FUL, dated 16 September 2019, was refused by notice dated 15 November 2019.
 - The development proposed is retrospective application for change of use of an industrial unit (B2) to a retail unit (A1) and the erection of a canopy to the front.
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Decision

1. The appeal is allowed and permission is granted for retrospective application for change of use of an industrial unit (B2) to a retail unit (A1) and the erection of a canopy to the front at Lowell House, Caton Road, Lancaster LA1 3NY, in accordance with the terms of application ref: 19/01214/FUL, dated 16 September 2019, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plan: 18-050 001B – Floor Site Location Plan.
 - 2) The premises shall be used for the sale, hire and repair of cycles and cycling related equipment and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Procedural Matters

2. The development is described in the application form as retrospective application for change of use to cycle sales and repair shop. However, in the interests of clarity, I have adopted the description of the development from the decision notice in the banner heading above.
3. The appeal proposal is a resubmission of a previously refused application (ref 19/00228/FUL) that seeks to regularise the continuing use of the property as a Class A1 cycle sales and repair shop. I have therefore determined the appeal on the basis that retrospective permission is sought for the development that is ongoing.

Main Issues

4. The main issues are the effects of the development on:
- i) The supply of employment land and premises; and
 - ii) The vitality of town centres.

Reasons

Employment land and premises

5. Lowell House is in the Caton Road Industrial Estate (the CRIE) between Caton Road and the River Lune, on the north side of Lancaster. The CRIE is allocated for B1, B2 and B8 business and industrial uses and it is acknowledged to be one of Lancaster's most successful employment areas. The central section of the CRIE is used largely for storage and distribution purposes while the southern end, that includes the appeal site, supports smaller business premises.
6. Lowell House is immediately adjacent to Caton Road, opposite the junction with Langdale Place which serves a predominantly residential area. The appeal site shares an access with the neighbouring tool and equipment hire business and a residential property. The limited parking to the front of the building is separated from the buildings to the south by a stone wall and a short stretch of tree-lined footpath and cycleway that links Caton Road to the Millennium Cycle Path, which is part of the National Cycle Network and the Way of the Roses route.
7. Policy DM15 of A Local Plan for Lancaster District 2011-2031 Development Management DPD Adopted December 2014 (the DMDPD) aims to avoid the loss of economically valuable and viable employment premises. Accordingly, alternative uses are only permitted subject to meeting criteria including that an ongoing employment use is no longer appropriate and viable or that the benefits of its re-use, including in terms of meeting wider regeneration objectives, outweigh the loss.
8. The development is a change of use of the appeal premises to a retail-led development comprising bicycle sales, servicing and repairs and cycle hire service. By virtue of being a primarily retail use of the site, the development has resulted in the loss of premises allocated for employment uses.
9. The appeal site was previously in use as a mechanical service centre which included offices and storage and a sales service counter. Notwithstanding the retail element, the Council considers that it was a B2 use and therefore there is a history of employment use of the site.
10. There are constraints to business use of the site including in terms of the size of the premises, the suitability of the access for larger vehicles, and the neighbouring residential property. Nevertheless, there is little compelling evidence that the location is subject to such exceptionally severe restrictions that would preclude a continuing business use of the site.
11. The appeal site was actively marketed for a period of 6 months prior to the change of use, during which time there was little serious interest from prospective business tenants. Although there is no substantive evidence that it was marketed using appropriate media sources or at a realistic price, there is

no evidence to the contrary. However, the marketing period was shorter than the 12 months that the Council considers would normally be a reasonable length of time. Notwithstanding that this would have resulted in the premises potentially being vacant for 6 months, and irrespective of site constraints, it is possible that a business tenant would have been found during an extended marketing period.

12. The Council's regeneration objectives for this area include the improvement of cycling, walking and public transport links, flood defences and the enhancement of B2 employment premises. The development does not contribute directly to any of these objectives. Nevertheless, it contributes to the Council's sustainable transport aims in relation to the promotion of cycling in a location with convenient access for walking, cycling and public transport.
13. Therefore, while the development does contribute towards sustainable transport aims for the area, and there are constraints to the use of the site, it has not been robustly demonstrated that an ongoing employment use of the site is no longer appropriate or viable. In this regard, the development results in a degree of conflict with the employment aims of Policy EC5 of the LP and Policy DM15 of the DMDPD.

The vitality of town centres

14. Planning policies recognise the role that town centres play at the heart of local communities. Accordingly, the Council seeks to promote the vibrancy and vitality of centres by directing main town centre uses to suitable town centre sites. Therefore, proposals for main town centre uses outside of town centres should demonstrate that there are no sequentially preferable sites.
15. The submitted sequential assessment (the SA) is an updated version of the assessment submitted in support of the previously refused application. It identifies retail and commercial premises within a 1km radius of the centre of Lancaster and assesses their suitability based on a number of criteria. No suitable available premises were identified and the appellant concludes that there are no sequentially preferable locations in Lancaster. However, the Council considers that it fails to satisfy the sequential test in Policy DM1 of the DMDPD and the Framework, on the grounds that there are likely to be sequentially preferable suitable sites in one of the town centres in the district.
16. With regard to the specific premises in Lancaster¹ mentioned by the Council, there is evidence that these were not in reality available and their omission from the SA does not therefore undermine its conclusions. Moreover, property searches carried out at different points in time will inevitably return different results due to the changing availability of land and premises. Consequently, and taking into account the retrospective nature of the scheme, I consider that the SA is adequate to demonstrate that there were no appropriate sequentially preferable premises within Lancaster at the time.
17. In terms of sites in town centres elsewhere, I accept that strict application of the sequential test might require that all town centres locations are considered before less central locations. However, in this respect, although the Council requested further information during the processing of the application as to why other town centre locations were not considered, the Council's Senior

¹ Corner of Gage Street and Great John Street, Market Street, corner of Woodside and Damside Street

Policy Officer had previously advised that the earlier SA was adequate in terms of its scope and search criteria. I appreciate that the Council disagrees with the Policy Officer's position. However, I am not aware that either Policy DM1 of the DMDPD or the Framework are prescriptive in terms of the geographic extent of sequential assessments, in which case a flexible approach can be adopted.

18. The Lancaster District Core Strategy identifies the centre of Lancaster as stable and successful with low vacancy rates and it attracts investment, while Morecambe is a large but under-performing town centre and Carnforth is small but important. It is therefore understandable that the Council might wish to direct development towards less vibrant parts of the district. Nevertheless, taking account of the nature and scale of the development and Lancaster City's status as a 'cycling demonstration town', it seems reasonable to focus the search in Lancaster.
19. A proliferation of town centre uses outside of existing centres would adversely affect the vitality and viability of existing centres. However, the development has operated in this location since early 2018. There is no substantive evidence that it has resulted in any detriment effects on the vitality or viability of the existing centres in the district during that time. Consequently, it seems reasonably unlikely that its continuing use would result in any greater impact.
20. Therefore, the development has not resulted in harm to the vitality or viability of town centres. It does not conflict with the town centre aims of Policy DM1 of the DMDPD. It does not conflict with the policies in the Framework that promote the vitality of town centres.

Other Matters

21. The timber canopy to the front of the appeal building is a modest structure that relates well to its surroundings. It is not visually prominent and it does not result in harm to the character and appearance of the area. The Council has not raised any concerns in this regard, and I see no reason to disagree.
22. I note the appeal decision (ref APP/A2335/C/17/3171397) where a change of use from a B8 use (auto parts centre) to D2 (gym) was dismissed. While there are apparent similarities, nevertheless it appears to differ from the appeal scheme in terms of the site and its surrounding context, marketing and effects on the town centre. Therefore, it does not appear directly comparable to the appeal scheme which I have considered on its own merits.
23. There is evidence that the parties engaged with one another during the processing of the 2 substantially similar applications at this site. Therefore, notwithstanding that the appellant did not engage with the Council's pre-application advice service, it appears that there were opportunities to agree the scope of the sequential test in advance of determination.

Planning Balance

24. The development is retail-led and therefore it is a main town centre use outside of the town centre. However, it is a small scale and low impact development and it is not detrimental to the vitality and viability of town centres in the district. Although it has resulted in a very small loss of allocated employment land and premises, it has not resulted in any apparent harm to the supply of employment land or premises. Consequently, in the absence of any tangible harm, there is limited conflict with the aims of Policy EC5 of the LP and Policy

DM15 of the DMDPD and no conflict with Policy DM1 of the DMDPD in relation to employment sites and town centres.

25. Although it is not in the town centre, the development is in an accessible location that is well-connected to the town centre. It is accessible by sustainable transport modes including walking, cycling and public transport. By virtue of its accessibility by non-car modes of transport and through its active promotion of cycling, the proposal supports the aims of the Framework in relation to climate change adaptation and supporting healthy lifestyles for public health and well-being. In addition, the development supports 5 part-time employees. These are matters that weigh moderately in favour of the scheme.
26. Therefore, there are benefits of the development and these are material considerations that outweigh the limited harm resulting from the tension with the Council's locational development aims. Consequently, the development complies with the development plan and the Framework, when read as a whole.

Conditions

27. In the event that the appeal was allowed, the Council has suggested planning conditions. I have considered these against the requirements of paragraph 55 of the Framework and the Planning Practice Guidance.
28. I have specified the approved plans in the interests of certainty. On the basis that the scale and nature of the development has been a determinative factor in my assessment of the scheme, it is appropriate to restrict the use of the site in order to protect the vitality and viability of town centres.

Conclusion

29. For the reasons set out above, I conclude that the appeal is allowed and planning permission is granted, subject to conditions.

Sarah Manchester

INSPECTOR