
Appeal Decision

Site visit made on 26 January 2021

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 16th February 2021

Appeal Ref: APP/E2340/W/20/3261552

Palatine, 32 Norfolk Street, Nelson, Lancashire BB9 7TN

- 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 Muhammad Iqbal against the decision of Pendle Borough Council.
 - The application Ref 20/0369/FUL, dated 22 June 2020, was refused by notice dated 24 September 2020.
 - The development proposed is Full: Change of use of a Social Club (Sui Generis) to Retail (Use Class A1).
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The development is described in the application form as change of use from club to Asian Superstore (A1). However, this was changed and I have adopted the description from the decision notice and the appeal form in the banner heading above, in the interests of clarity.

Main Issue

3. The main issue is the effect of the proposal on the vitality and viability of Nelson town centre.

Reasons

4. The appeal site comprises a large 2 storey building in use as a social club, together with associated car parking. The immediate area is characterised by residential terraces. There is a low retaining wall with metal railings on the opposite side of Norfolk Street at this point separating the road from the canal, beyond which the area is in a mix of uses including commercial and industrial. The appeal site is approximately 300m from Nelson town centre. The location is accessible including by walking, cycling and public transport.
5. Town centres are acknowledged to play an important role at the heart of local communities. Consequently, the Council seeks to focus town centre uses in a functional network and hierarchy of retail centres primarily focused on town and local shopping centres. The application of a town centre first sequential approach is consistent with the National Planning Policy Framework (the Framework) in relation to locating main town centre uses in town centres, then edge of centre locations and, only if suitable sites are not available (or

expected to become available within a reasonable period), should out of centre sites be considered. The Framework is clear that where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on town centre vitality and viability, it should be refused.

6. In this case, the proposal would be a main town centre use in an out of centre location. The sequential assessment, dated September 2020, indicates that a search for vacant A1 retail premises was made through a combination of a physical search of the town centre and a search of several online estate agents. There is little substantive evidence that local estate agents were consulted, that the online estate agents hold details of all potentially suitable local sites, or that all vacant premises could be visually identified during a physical tour of the town centre. The appellant did not engage with the Council in carrying out the assessment, nor does it appear that publicly available resources such as the Council's planning register was consulted.
7. I accept that the search took a flexible approach in terms of considering whether adjacent units could be amalgamated. However, while the proposal is a change of use of the appeal building, the sequential assessment was limited to retail premises only and it did not consider suitable premises in different uses. I accept that the sequential test cannot reasonably be carried out on the basis of future and unknown situations. Nevertheless, by limiting the search to currently vacant premises, suitable sites expected to become available within a reasonable period may have been overlooked. Consequently, while the sites that were identified were not suitable, it has not been demonstrated that a comprehensive and thorough assessment of alternative sites was carried out.
8. The proposal would provide for online sales, retail and wholesale to meet the needs of the local Asian community, which is a type of retail offer not currently available in the area. In this regard, The Council acknowledges that access to a diverse range of shops and uses to meet the daily needs of local residents contributes to delivering sustainable and inclusive communities. Nevertheless, irrespective of the appellant's intentions, there would be no control over the future retail use of the site and I cannot be certain that an ongoing and future retail use would not undermine the vitality and viability of the town centre.
9. Therefore, it has not been demonstrated that there are no suitable, available and viable sites in accordance with the sequential approach to the location of town centre uses. The proposal would harm the vitality and viability of Nelson town centre. It would conflict with the town centre aims of Saved Policy 25 of the Replacement Pendle Local Plan 2001-2016 Adopted May 2006 and Policy WRK4 of the Local Plan for Pendle Part 1: Core Strategy 2011-2030 Adopted December 2015. It would conflict with the aims of the Framework in relation to ensuring the vitality of town centres.

Other Matters

10. The proposal would result in the creation of the equivalent of 6 full-time employment opportunities. Nevertheless, similar benefits could be delivered in more sequentially preferable town centre locations.
11. Permission (ref 13/09/0029P) was granted in 2009 for a change of use of the first floor of the appeal building to a gym. Full details of the earlier scheme have not been provided, but the permission was not implemented and it has lapsed. In any case, the permitted use was restricted by condition to a

gymnasium and it was ancillary to the social club use. Therefore, it does not provide a justification for the proposal.

12. The Planning Practice Guidance advises that it is for the applicant to demonstrate compliance with the sequential test although, wherever possible, the Council is expected to support the process and share relevant information. The appellant did not seek pre-application advice from the Council and there is little substantive evidence, such as correspondence between the parties, to suggest that any subsequent requests for assistance or information were made. The lack of engagement weighs neither for nor against the scheme.

Conclusion

13. For the reasons set out above, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict.
14. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR