



Appeal Decision

Site Visit made on 27 April 2021

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2021

Appeal Ref: APP/E2340/W/21/3267972

174 Railway Street, Nelson BB9 9PQ

- 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 Mrs A Parvenn against the decision of Pendle Borough Council.
 - The application Ref 20/0572/FUL, dated 1 September 2020, was refused by notice dated 17 December 2020.
 - The development proposed is described as 'part change of use from dwelling to retail'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal property was granted planning permission in February 2018 for a change of use from retail to a dwellinghouse. The appellant suggests that this permission was never implemented and therefore the property retains its retail use without the need for planning permission to facilitate the appeal proposal. However, this runs contrary to the appellant's actions in applying for planning permission for a change of use. In any case, it is beyond the scope of a Section 78 appeal to resolve this matter. It is open to the appellant to apply to have the matter determined under Sections 191 or 192 of the Town and Country Planning Act 1990. Any such determination would be unaffected by the outcome of this appeal. I have therefore considered the appeal on the basis of what is proposed and its consequent effects.
3. I observed during my site visit that the appeal property was in use as a mobile phone repair shop. I have therefore dealt with the appeal on the basis that the development has already occurred.

Main Issue

4. The main issue is whether the site is a suitable location for the development, having regard to local and national policies relating to retail development and the effect of the proposal on the vitality and viability of Nelson Town Centre.

Reasons

5. The appeal relates to a two storey, end of terrace property at 174 Railway Street, at its junction with Chapel House Road. The surrounding area is predominantly characterised by residential terraces with some corner shops and a small number of local convenience stores. The site lies outside of the defined town centre of Nelson and there is limited evidence to suggest that it can be considered as edge of centre for the purposes of applying planning policy.

6. Policy WRK 4 of the Local Plan for Pendle Core Strategy 2011-2030 (adopted 2015) (the Core Strategy) and Saved Policy 25 of the Replacement Pendle Local Plan 2001-2016 (adopted 2006) (the RPLP) direct main town centre uses to defined town and local shopping centre locations. Retail proposals on edge of centre or out of centre sites will be resisted and applications of this nature must follow the sequential approach for site selection as set out in the National Planning Policy Framework (the Framework).
7. The Council's town centre first sequential approach to retail development is consistent with the Framework's requirement to locate 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 the vitality and viability of the town centre, it should be refused. Planning Practice Guidance confirms that this policy approach is designed to support the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking¹.
8. In this case, the proposal is a main town centre use in an out of town location where a sequential assessment of alternative sites is required to justify a retail use at this location. The applicant has not provided any such assessment and therefore it has not been demonstrated that there are no sequentially preferable, suitable available and viable sites to accommodate the proposed retail use. Accordingly, the proposal conflicts with the Council's town centre first approach to retail development, undermining the retail function of Nelson town centre and thereby harming its vitality and viability. In doing so, paragraph 90 of the Framework indicates that planning permission should be refused.
9. The appellant suggests that Policy WRK 4 of the Core strategy and Saved Policy 25 of the RPLP are out of date, citing their age and recent changes to the Use Class Order². With regard to proposals for main town centre uses outside of a defined centre, I have found these policies to be consistent with the Framework and therefore they are afforded full weight. Changes to the Use Class Order do not alter the overarching policy approach for the location of town centre uses and so it does not change my view in this regard. Therefore, contrary to the appellant's assertion, paragraph 11d of the Framework is not engaged.
10. Policy WRK 4 of the Core Strategy supports the provision of small-scale retail uses that enable people to meet their daily needs for convenience shopping and particularly where proposals involve the re-opening of corner shops, as in this case. However, I am not convinced that the proposal would assist in meeting the daily needs of local people, especially given the prevalence of other retail uses in the locality and the ability for the local community to access such provision in the town centre. In any case, this does not overcome the proposal's failure to satisfy the sequential test.
11. It has been put to me that the proposal would reduce the number of private journeys into the town centre and thereby assist with social distancing measures required to tackle the ongoing Covid-19 pandemic. However, no evidence has been provided to support this assertion and, in any case, a

¹ Planning Practice Guidance, Paragraph: 009 Reference ID: 2b-009-20190722

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

reduction in journeys into the town centre is only likely to harm its overall vitality and viability. Furthermore, the Covid-19 pandemic is coming to an end and therefore any benefits in this regard would be short-lived.

12. Taking all of the above points together, it has not been demonstrated that there are no suitable, alternative and viable sites in accordance with the sequential approach to the location of main town centre uses. Consequently, the site is not a suitable location for the development, having regard to local and national policies relating to retail development and therefore it is harmful to the vitality and viability of Nelson Town Centre. The proposal conflicts with Policies WRK 4 of the Core Strategy and Saved Policy 25 of the RPLP, the relevant aims of which are set out above. It also conflicts with the associated policies of the Framework which seek to ensure the vitality of town centres.

Other Matters

13. The appellant has advised that there are already seven other technology repair shops in the town centre and therefore to locate his technology repair shop in the town centre would over saturate this provision and undermine the vitality and viability of the town centre. Be that as it may, it is not the role of the planning system to regulate competition between similar businesses and therefore this is a private matter for the appellant alone.
14. The proposal has provided some limited employment opportunity in the local area, has re-used an existing building and is providing an additional retail offer to the surrounding community. However, similar benefits could be gained in a more sequentially preferable town centre location.
15. I acknowledge that the proposal does not result in any harm to the character and appearance of the surrounding area, there were no objections from neighbouring residents, the local Highway Authority or the local Police Constabulary. Nevertheless, these are neutral considerations that do not add weight in favour of the appeal.
16. In support of the appeal my attention has been drawn to a recent grant of planning permission at 148 Railway Street for a change of use to facilitate a barber's shop and the installation of a shopfront and shutters³. However, I do not have the full details of this other case before me or the circumstances which led to that proposal being found acceptable and so cannot be sure that it represents a direct comparison to the appeal scheme. In any case, I have determined the appeal on its merits and reached my own conclusion.

Conclusion

17. For the reasons set out above, the proposal would conflict with the development plan and there are no material considerations that would override this conflict.
18. Therefore, the appeal should be dismissed.

J M Tweddle

INSPECTOR

³ Planning Application Ref. 19/0892/FUL