The Planning Inspectorate

Appeal Decision

Site visit made on 26 April 2022

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2022

Appeal Ref: APP/M2372/W/21/3288909
29 King William Street, Blackburn BB1 7DJ

- 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 Cashino Gaming Ltd against the decision of Blackburn with Darwen Borough Council.
- The application Ref 10/20/1186, dated 7 December 2020, was refused by notice dated 15 November 2021.
- The development proposed is described as: Full planning permission for change of use of 29 King William Street from an E use (previously A1/B1) to an Adult Gaming Centre (AGC) (Sui Generis).

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

   - the effect of the proposal on the vitality and viability of Blackburn Town Centre (BTC), including the Northgate Quarter (NQ), and
   - the effect of the proposal on the Northgate Conservation Area, (NCA).

Reasons

3. The appeal site comprises the ground-floor of a three-storey terraced property. The changes to the Use Classes Order (UCO) that came into effect on 1st September 2020 created a 'Commercial, Business and Service' use class, ie Class E, which incorporates the previous use classes of A1, A2, A3, B1, D1 and D2. I consider these changes to be a material consideration. Prior to the changes, the building had an A1/B1 (Retail/Office) use.

4. For planning policy purposes, the site is located within BTC, a Primary Shopping Area (PSA), a Primary Shopping Frontage (PSF), the NQ, and the NCA. The key development plan policies are 26, 30 and 31 of the Blackburn with Darwen LP Part 2: Site Allocations and Development Management Policies 2015, (the LP).

5. Policy 26 of the LP states that planning permission will be granted for development involving main town centre uses where they contribute to one or more of the 4 objectives outlined in the policy. In summary, the objectives are: i) strengthening and focusing the shopping offer; ii) expanding the role of the town centres; iii) protecting and enhancing the leisure offer, developing an evening economy, and developing cultural and entertainment facilities,

particularly in the Northgate and Cathedral Quarters of BTC; and iv) establishing a vibrant town centre residential population.

6. The appellant considers the proposal would contribute to objectives i) ii) and iii) of Policy 26. Even if I were to accept the appellant's interpretation of these policy objectives, the proposal needs to be appraised against other relevant policies; and where there are tensions between policies, ultimately a decision must be reached taking account of the development plan read as a whole.

7. Policy 30 of the LP explains that the Council will support and encourage a mix of complementary uses in town and district centres, subject to relevant safeguards and consideration of the cumulative impact and effect of concentration of similar uses within a particular area. The policy explains that planning permission will be granted for complementary uses in the circumstances specified within the policy. In respect of Amusement Arcades, which AGMs are regarded to be, Policy 30 specifies that these will not be allowed in PSFs or CAs. Hence, the proposal clearly does not accord with Policy 30 of the LP.

8. Policy 31 of the LP allows for development not falling into Use Class A1 on ground-floor premises in PSFs, provided criteria specified in the policy are met. Thus, in summary, the criteria comprises: i) a minimum of 70% of the units in a block are required to remain in A1 use, or, in the NQ of BTC, A1 and A3 use; ii) the proposed use has to be complementary to the primary shopping function of the PSF and will contribute to vitality and viability; iii) the proposed use would not result in 3 adjoining non-retail uses in the block, and iv) a shopfront is retained/provided.

9. The PSF 'block' consists of 7 units, numbers 19-35 King William Street. At the time of my visit[1], the units comprised a charity shop, a restaurant, 2 building societies, a bank, a shop selling goods received in exchange for cash, and the appeal site (which was vacant). According to the current UCO the block consists of 7 units all in the same use class, ie Class E. According to the UCO pre 1st September 2020, the block consists of 3 x A1 retail uses, 3 x A2 financial uses and one A3 restaurant use.

10. Leaving aside existing and previous UCO Class categorisations, it is clear that Policy 31 requires 70% of the block of 7 units to remain in either retail or restaurant use, in order to allow development that is not retail use. At present, around 57% of the 7 units are in retail or restaurant use, which is already below the 70% required to be retained by Policy 31. Should the appeal site be granted permission to change its use from retail to an AGC, the PSF block would comprise of only around 29.5% of units being in either retail or restaurant use. This percentage would be significantly below the level required to be retained by Policy 31. Additionally, the proposal would result in 3 adjoining non-retail uses in the block. The proposal therefore does not accord with Policy 31 of the LP.

11. As noted, the site lies within the NCA. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. Additionally, paragraph 199 of the National Planning Policy Framework,

[1] Although the Council Officer's Report states that the block consists of 7 units, it only identifies 6, ie a charity shop, a McDonald's restaurant, Yorkshire Building Society, a vacant retail unit (the site) and the Nat West Bank.

the Framework, advises that, when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

12. In summary, the NCA derives its significance from its development historically, buildings of historical and architectural interest (some of which are listed), certain key views, vistas and open spaces, and the potential for remains of archaeological significance to be present in the area. As the proposal does not include any operational development, I am satisfied that it would preserve the character and appearance of the NCA.

Other considerations, planning balance and conclusion

13. I accept that town centres and consumer habits have changed and continue to do so, and the changes to the UCO reflect the Government's objective of seeking to allow greater flexibility for units to change use without the need for planning permission. However, the extent of flexibility is still restricted, and uses that do not fall within those captured by Class E, such as the proposal, still require planning permission; thereby indicating the Government's intension to retain a suitable balance of uses within town centres. It is not clear at this stage what the mid-to-long-term effects of the changes to the UCO on town centres will be.

14. Following a previously dismissed appeal for an identical proposal at the same site[2], the current submission includes additional evidence related to marketing and footfall.

15. I acknowledge that the premises have been marketed since September 2020. However, the premises have not remained vacant during that period; they have been occupied by 2 different companies for 2 separate temporary periods. Although the premises have not been occupied on a permanent basis, they have only been unoccupied (vacant) for around 18 months. Given the circumstances created by the Covid 19 pandemic during the last few years, in this context I consider 18 months does not constitute an extensive vacant period. It is not clear at this stage what the long-term impact of Covid 19 on town centres will be. Given the exceptionally unusual circumstances of the pandemic, I do not think it can be concluded at this stage that the premises are highly unlikely to be occupied in the not-too-distant future by a retail company, Class E user, or indeed a user associated with the extant flexible permission granted in August 2019[3].

16. The results of the survey related to footfall and pedestrian flow concludes that:

> *"…Merkur AGCs generate good levels of customer movement and activity in centres, which is comparable to the activity associated with traditional retail units in Primary Shopping Frontages and in some cases is significantly higher."*
>
> The *"evidence confirms that Merkur AGCs increase the propensity of linked trips to other shops and services within centres, demonstrating the complementary role they play."*

[2] Appeal Ref APP/M2372/W/21/3266423.
[3] Planning Ref 10/19/0653.

17. However, the survey was based on only 3 of Merkur's AGCs, albeit located in different parts of the country. Furthermore, the survey data does not provide details such as the 'health' of the centres, the make up of the PSFs each of the AGCs are located within, the number of retail units present within the centres and PSFs, or the use of the units located either side of the AGCs. Consequently, I am minded to adopt a cautious approach to the conclusions reached. As such, I cannot conclude from the data that all AGCs, moreover the AGC proposed, would generate good levels of footfall and pedestrian flow in town centres or that the presence of AGCs in PSFs would not undermine the vitality or viability of town centres.

18. I accept that the effect of the proposal should be considered in the context of the PSA overall and take account of other retail units in other PSF blocks in the PSA, including the block opposite the appeal site on the eastern side of King William Street. Nevertheless, the PSFs have a distinct and significant role to play in securing and retaining a healthy level of retail provision within the PSA. Additionally, each PSF block contributes to the vitality and viability provided by the combination of PSF blocks. Hence, reducing the retail provision in the PSF block of concern to one unit, and creating a row of non-retail uses, would undermine the contribution the block makes to the PSF whole and consequently the vitality and viability of the town centre.

19. I appreciate the proposal would bring a unit that is currently vacant back into use, and in doing so would create a small number of employment opportunities. Additionally, although I have not seen any details, the appellant contends that use of the premises as proposed could include an active frontage. I also accept that the proposal would not lead to a concentration of AGCs in the PSF or the PSA.

20. Furthermore, as shown in the information provided related to the 'Health Check' of the BTC PSF, of the 41 units listed only 18, including the appeal site, are identified as having a retail use, ie around 44%. Consequently, there is already a significant deficit of retail units in the PSF. Granting permission for the proposal would further reduce the retail offer in the PSF. The resultant reduction of retail units in the PSF overall and the resultant significant lack of retail units in the PSF block of concern, lead me to conclude that the proposal would undermine the vitality and viability of the town centre. The other considerations outlined do not overcome the significant harm I have identified. The proposal does not therefore accord with policies 26, 30 and 31 of the LP taken as a whole, the requirements of which are outlined above, or the primary objective of section 7 of the Framework, which seeks to ensure the vitality of town centres.

21. Notwithstanding my conclusion regarding the effect of the proposal on the NCA, for the reasons outlined, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR