



Appeal Decision

Site visit made on 9 August 2022

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 9 December 2022

Appeal Ref: APP/M2372/W/22/3293804

14 Lord Street, Blackburn, BB2 1LU

- 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 Kirkby of Jade Leisure Limited against the decision of Blackburn with Darwen Borough Council.
 - The application Ref 10/21/1302, dated 19 November 2021, was refused by notice dated 7 January 2022.
 - The development proposed is Change of Use of Retail Unit (Class E) to Betting Shop (sui generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The officer report and the Council's statement differ in their details of the adopted development management policies within the town centre. Clarification has been received from the Council that the site lies within the Primary Shopping Area and is a Secondary Shopping Frontage of Blackburn Town Centre.

Main Issue

3. The main issue is whether the proposal would undermine the vitality and viability of the town centre and the effect on the character of the area.

Reasons

4. The appeal site is a retail unit within the ground floor of a modern, flat roofed, two storey building. It occupies a corner plot on Lord Street but is also on the junction with Northgate. The site is within a pedestrianised shopping area of Blackburn city centre where it is within the defined Primary Shopping Area, is a Secondary Shopping Frontage, and is within the Northgate Conservation Area and the Northgate Quarter.
5. Policy 31 of the Blackburn with Darwen Local Plan (LP), adopted 2015, covers development in defined shopping frontages and lists a number of criteria that must be met for development not falling within Use Class A1 in ground floor units in Secondary Shopping Frontages. Whilst criterion i) and iii) of this would be met, the Council considers that it would not represent a complementary use within the Secondary Shopping Frontage as it would result in an over concentration of gambling uses, including three betting shops and an adult gaming centre within the block, which would conflict with point ii) of the policy. One of the betting shops at 54-58 Northgate has since

closed down, therefore the proposal would not increase the number of betting shops within the area. However, the site does have a sui generis use as a betting shop, it could potentially open up again.

6. Policy 30 of the LP covers managing specific uses in town centres in order to maintain a balance of the overall offer and to increase the attractiveness of town centres in which to spend time. The policy references Blackburn town centre around the Northgate and Blakey Moor area where there has been a concentration of betting offices. The policy states that betting offices only serve a limited sector of the population and that a concentration of them in one area impacts on the ability of that area to serve the wider population, particularly families. Generally, the Council wishes to have a mix of uses in the town centres. Criterion ii) of this policy states that betting offices will only exceptionally be permitted in the Northgate and Cathedral Quarters of Blackburn town centre. The Council has also said that parts of the Northgate Conservation Area/Quarter are part of a National Lottery Townscape Heritage Project for regeneration, and that the proposed use would undermine the quality of the regenerated area. It has, however, not specifically said that the appeal site is within this project area.
7. The National Planning Policy Framework (the Framework) promotes the long-term vitality and viability of town centres by allowing them to grow and diversify, responding to changes in the retail and leisure industries and allowing a suitable mix of uses. Whilst the proposal generally accords with this policy, the Council is trying to encourage specific uses within the area in order to create an overall balance within the town. This includes in Policy 8 of the LP permitting development where it contributes positively to the overall physical, social, environmental and economic character of the area.
8. It is considered that the proposal would bring benefits socially and economically to the area through the occupation and renovation of an empty shop, and that the active use of the site would improve levels of safety. It also provides an environmental objective in that the use represents an effective use of a vacant site within an existing building. However, given the scale of the scheme, the benefits of this would be minimal and it has not been demonstrated that this proposal is the only way of achieving these outcomes.
9. Whilst betting shops can be found in a town centre, and examples of this have been identified in the appeal, the use of the unit as a betting shop does not contribute to the objectives of town centres that the Council has set out in Policy 26. This includes improving the shopping offer, focusing new commercial development in the town centres, creating a vibrant residential population; and protecting and enhancing the leisure offer and developing an evening economy. The proposal is not a shopping offer. Although it would occupy a vacant building and bring a business into the centre, it is not a leisure offer or would help in developing an evening economy. A betting shop is not included in any of the list of possible cultural and entertainment facilities listed in Policy 26 iii). Although the appellant considers that it would improve the Northgate Quarter, and act as a catalyst for the regeneration of other premises within the area, it is not introducing a new facility which would expand the collective facilities in that part of the town. Instead, this fails to provide new experiences for users of the town centre and so it is unlikely to attract new people or businesses.

10. There are already betting shops in close proximity to the site. Whilst there is no specified limit on such uses in the local plan policy, the betting shop would be likely to attract only a narrow range of customers and the appeal scheme would be unlikely to attract additional footfall or customers to the area. Furthermore, it would remove the opportunity for wider retail provision which could attract new and additional footfall to the area. The benefits of this would potentially be greater given the prominent corner location of the site. The appeal scheme would limit the opportunity for the retail and leisure provision that the local plan policies aim to provide to regenerate the area. These factors and that there are several vacant units nearby further indicates that this would not be considered 'exceptional circumstances' with regard to Policy 30.
11. The site is also a secondary shopping frontage within the Primary Shopping Area and so a change of use to a betting shop would not support the aspirations for retail uses in this area and would result in the overall loss of a retail unit. This, however, needs to be balanced against the changes to the Use Classes Order on 1 September 2020, whereby Class E, 'Commercial, Business and Service' uses replaced Classes A1, A2, A3, B1, D1(a-b) and D2(e). As the site now falls within Class E, the retail use could be lost without the need for planning permission. This change is material to the determination of the appeal as it means that the ground floor could be utilised for a number of uses which do not require a shop front. Furthermore, since the determination of the application subject to this appeal, a Certificate of Lawfulness has been granted for the proposed uses within Class E. This provides a fallback position.
12. Whilst Class E includes a number of non-retail uses, betting shops are not included, thereby ensuring that such a use requires permission and assessment on a case-by-case basis. Although the uses now allowed under Class E may not produce the retail mix that was aspired to by the Council at the time of the adoption of the Local Plan, they do allow for a variety of uses, rather than limiting uses to one that is already within the area.
13. Although the proposal would bring an empty shop back into use and there would be some economic benefits, it is clear from Policy 30 that betting shops would only exceptionally be permitted in the Northgate and Cathedral Quarters of Blackburn town centre. Despite the fallback position and any benefits that may arise from the scheme, the proposal would undermine the vitality and viability of the town centre. Therefore, the fallback would not be as harmful as the appeal scheme.
14. The site is within the Northgate Conservation Area. Regard must be had to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. Paragraph 199 of the National Planning Policy Framework (NPPF) states that when considering the impact of a proposed development on the significance of a designated asset, great weight should be given to the assets conservation.
15. The significance of the area is defined by the commercial and municipal buildings within the area, and along Northgate itself, decorative brick buildings with shops on the ground floor. The host building is modern, and

external works to the building mainly relate to proposed signage, which is not part of this application. The building does not contribute to the significance of the conservation area, and with such limited changes proposed it would have a neutral effect on the conservation area and would therefore preserve the character or appearance of the conservation area.

16. The LP policies aim to retain and enhance a diverse range of uses in the town centres to support their growth which is consistent with advice given in the NPPF. Whilst there is now greater flexibility for buildings to change use without the need for planning permission, restrictions are still in place and so the current Class E use of the building, still requires planning permission. This need demonstrates the intention to provide a balance of uses within town centres in order to ensure the vitality and viability of the town centre.
17. Therefore, for the reasons set out above, the proposal would not harm the character of the area, but it would undermine the vitality and viability of the town centre contrary to Policies 8, 26, 30 and 31 of the LP and chapter 7 of the Framework.

Other Matters

18. Whilst advertisement consent has been granted for new signage for this proposal, this has been assessed separately and under the relevant regulations and so has no bearing on this appeal decision.

Conclusion

19. For the reasons given above, considering the development plan as a whole and all relevant material considerations, the appeal is dismissed.

M J Francis

INSPECTOR