The Planning Inspectorate

Appeal Decision

Site visit made on 27 November 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2023

Appeal Ref: APP/M4510/W/23/3329507
6 Northumberland Street, Newcastle Upon Tyne NE1 7DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
- The appeal is made by Trafalgar Leisure Ltd against the decision of Newcastle Upon Tyne City Council.
- The application Ref 2022/1518/01/DET, dated 5 September 2022, was refused by notice dated 19 June 2023.
- The development proposed is change of use from vacant retail unit to adult gaming centre (AGC) (sui generis).

Decision

1. The appeal is allowed and planning permission is granted for change of use from vacant retail unit to adult gaming centre (AGC) (sui generis) at 6 Northumberland Street, Newcastle Upon Tyne NE1 7DE in accordance with the terms of the application, Ref 2022/1518/01/DET, dated 5 September 2022, subject to the following conditions:

    1) The development hereby permitted shall begin not later than three years from the date of this decision.

    2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No. 2118_SP_01 Revision 1; Typical Active Shopfront Elevation Drawing No. 2120_ELE_01 Revision 3; Ground Floor Plan Drawing No 2118_GA_01 Revision 1; Basement Refuse Area Drawing No. 2118_GA_00 Revision 1.

    3) The use hereby permitted shall only take place between the following hours: 09:00 – 02:00 Monday – Sunday.

Procedural Matter

2. An update to the National Planning Policy Framework (the Framework) has been published dated 19 December 2023 but there are no material changes relevant to the substance of the appeal.

Main Issue

3. The main issue is the effect of the proposed development on the vibrancy and vitality of the Primary Shopping Area.

Reasons

4. The appeal site relates to two vacant units located at ground floor level within a commercial setting which was previously occupied by a clothes retailer and

travel agent. The premises occupies a prominent position to the southern end of Northumberland Street which is a busy primary shopping area of the urban core, forming part of the primary retail frontage where there are a number of other shops and services and places of employment and leisure.

5. Policy CS2 of the Newcastle City Council Planning for the Future Core Strategy and Urban Core Plan for Gateshead and Newcastle Upon Tyne 2010-2030, 2015 (CS) sets out the spatial strategy for the urban core explaining that the urban core is the priority location for development which will maintain and enhance its vibrancy. Policy CS7 relates to retail and centres explaining that these centres will form the focal point for uses, services and facilities serving the surrounding population. In addition to meeting local needs, the role of the retail sector in attracting visitors and contributing to the economy will be supported. This will be achieved by amongst others, protecting the vitality and viability of centres by encouraging a balance of retail and supporting uses which are appropriate in scale to the relative position of each centre in the retail hierarchy. To this end, Newcastle Retail Centre is designated as the regional retail centre and is the priority for strategic retail growth.

6. The site is also within the Newcastle Central Sub Area. The aim of policy NC1 of the CS is to promote the continued success of the central sub area, and this will be achieved by amongst others, protecting the retail centre and enhancing the role of Newcastle as the regional centre by only permitting A1 and A3 uses within the primary retail frontages at ground floor level. The policy also states that change of use from A1/A3 will only be permitted in exceptional circumstances where it can be demonstrated that the proposed use would make a significant contribution towards the vitality and viability of the retail centre.

7. The overall aim is therefore to protect the compactness of the retail area and avoid dilution of retail activity by protecting primary shopping frontages on the ground floor to ensure a high quality, lively and accessible shopping environment.

8. Since the adoption of the CS, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 introduced a new use class – Class E (Commercial, Business and Service), which includes a broad and diverse range of uses including uses previously defined in the revoked Classes A1 'shops', A2 'financial and professional services', A3 'restaurants and cafes', B1 'business', D1 (a-b) 'non residential institutions' and D2 (e) 'assembly and leisure'.

9. On this basis, the referred to A1/A3 uses now fall within Class E which creates greater flexibility/diversity for changes of use from retail within town centres. Such changes are a material consideration which affects the policy position and aims of protecting primary shopping frontages on the ground floor. I therefore find the focus to be more on the contribution to the vibrancy and vitality of the centre.

10. The proposed development would change the overall use from a vacant retail unit to an AGC (sui generis) and the plans submitted indicate an amusement centre. At present the units in question are vacant and from the evidence before me have been vacant for a number of years. Marketing of the property has been undertaken which took place in 2021 and during the marketing period no interest was expressed by any retailers other than for a restaurant/food use. Despite interest for a restaurant use which would have been more in line

with Policy NC1 of the CS, this did not materialise and thus the premises still sits vacant which was evident at the time of my site visit. Moreover, the low level of interest shown over a long period of time does not provide me with sufficient confidence that a use more akin to a A1/A3 use as set out within Policy NC1 would be likely to occupy the premises in the not so distant future. Although the changes made to the Use Classes Order would likely make it easier to rent out shops and other premises given the wide range of potential tenants, the marketing undertaken in relation to the appeal site demonstrates that this has not been the case in this particular instance.

11. Whilst not falling within the provision of Class E, the overall use of the proposed development in terms of its contribution to the vitality and viability of the centre would not be so substantially different to some of the other uses within Class E which could now occupy the site and the proposed use is not an uncommon use within this commercial setting. Although an alternative use may bring higher levels of activity to the area including footfall, some of the uses under Class E could also bring less activity and footfall taking into account some business and leisure uses now contained within Class E. There is also no substantive evidence to suggest that the proposed use would not provide as much footfall as some of the other uses on the high street.

12. I appreciate that the age of people who can enter the premises would likely be restricted and that customers are unlikely to buy goods to take away. However, again when read alongside other Class E development which could now occupy the site, I do not find this to be particularly harmful or so restrictive as to have a detrimental impact on the overall vibrancy and vitality of the shopping area as a whole.

13. The proposed development whilst occupying a large frontage in comparison to its other adjoining unit further south would contain an active frontage similar to other retail uses on the high street and would maintain views into the premises. It would also add to the range/variety of uses within this area whilst still involving members of the public coming and going who would also likely use other services on the high street. This would add to the overall viability and vitality of the centre. It would bring both units back into commercial use whilst also creating a number of new jobs. I do not dispute that the centre is already thriving with very few vacant units which was evident at the time of my site visit, and I have had due regard to the survey and marketing information provided by the Council which demonstrates the lack of vacant units and the strong retail use. This does not change the fact that the units are currently vacant and have been for a considerable amount of time which is considered to be more detrimental to the vibrancy and vitality of the Primary Shopping Area than bringing them back into use.

14. I observed that there were a good range of shops and services nearby including large national retailers as well as restaurants, cafés, and banks. There may be many gambling venues within the city centre although I did not find these to be prevalent in this particular area even taking into account the close proximity of the nearby Admiral Casino who has a very small frontage onto Northumberland Street with the main frontage facing Northumberland Place. On this basis, I do not consider the proposed use to lead to a proliferation of similar uses in close proximity to one another nor jeopardise the overall quality of the retailer environment. I note comments regarding precedent for other non A1/A3 uses to come forward. However, I have considered this appeal on its

own individual merits and any future applications would be subject to their own assessment.

15. For the above reasons, I conclude that the proposed development would not unacceptably affect the vibrancy and vitality of the Primary Shopping Area. Whilst not forming an A1/A3 use (now Class E) as per the specific requirements of Policy NC1 of the CS, the proposed development would not conflict with the overall aim of Policy NC1 as well as the aims of Policies CS2 and CS7 of the CS which together, amongst other matters, seek to maintain and enhance the vitality and viability of centres in the retail hierarchy. For the same reasons, the proposed development would also accord with the aspirations of the Framework relating to building a strong, competitive economy.

Other Matters

16. I have had due regard to all concerns raised regarding the proposed use including those from third parties. To this end, I am aware of the comments made from Northumbria Police regarding potential harm on communities and other issues associated with the nature of the proposed use more generally. Such issues however largely relate to matters outside the scope of my assessment and what I can consider. That said, there are a number of legislative controls in place elsewhere which would likely apply in this case and would regulate such a use. My attention has been drawn to a previous planning appeal[1] which related to an adult gaming centre and whilst I do not have the exact details which would have been before the Inspector in that case, there are material differences in that appeal and the one before me including, the main issues in dispute, location, and policy considerations. Further, it was claimed in that appeal that there were already a number of other similar uses close by and that the proposed development would result in an unacceptable concentration of gambling related uses in close proximity to one another which is not considered to be the case in the appeal I am considering. Whilst I note the comments made in relation to deprivation, there are still material differences in that appeal and the one before me and they are not therefore directly comparable.

17. As part of the development, the appellant seeks unlimited opening hours left to be controlled under the licensing regime. Evidence has however been provided by the Police to illustrate that Northumberland Street is one of the busiest locations for crime in the City Centre and whilst this may not always be associated with such uses as proposed, it is clear that adding a use which could operate 24 hours a day into an area of the city that already has significant levels of crime and complex demands, could indeed exacerbate the existing situation. Further, I am aware of the complexities of policing a City Centre and the layered night-time economy and based on the evidence before me, I am sufficiently persuaded that the suggestion to restrict the hours of operation to 0900-0200 is reasonable and necessary in this case. I acknowledge that the unit is currently unrestricted in terms of opening hours. However, its previous use as well as those which could occupy the unit under Class E would unlikely operate 24 hours a day and despite the city centre location, very few premises operate over a 24-hour period, and I am aware of only one other premises nearby to do so. I accept that there would be some minor economic/employment benefit through longer opening hours although I cannot

[1] APP/V5570/W/20/3257308

agree that many linked trips would be made given that the majority of other nearby premises would be closed. As such, opening outside of the times suggested would not particularly add to the overall vibrancy and vitality of the shopping area. The lack of residential properties nearby and more informal policing would not alter my findings on this, as it would still add to further complexity of policing a challenging city centre and overall, the claims put forward in this respect would not be sufficient to outweigh the requirement for the condition. I am also not satisfied and have no compelling case that the licensing would control the opening hours in the same way as those set out above.

Conditions

18. I have considered the Council's suggested planning conditions in light of the Framework and Planning Practice Guidance and amended these accordingly for clarity purposes. I have included the standard time for commencement of development, and I also agree that a plans condition is necessary in the interests of certainty. A condition relating to the hours of use is necessary in the interests of the amenity and safety of the area although these have been amended to reflect the suggestion made by Northumbria Police which is considered more reasonable given the opening hours of other uses nearby. The Council has suggested a condition relating to the display of advertisement. However, this is not considered relevant to the development to be permitted and would likely require further assessment. I do not therefore find it necessary to attach a condition relating to advertisement. A condition has also been suggested relating to the storage of external refuse/refuse containers. However, given that such arrangements are shown on the submitted plans which I have conditioned as part of my decision and that there is no compelling case that provision would be stored outside, then I do not find it necessary to attach a condition in this regard.

Conclusion

19. For the reasons given above and having had regard to the development plan as a whole, the appeal is allowed.

N Teasdale

INSPECTOR