

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 23 October 2013

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APPLICATION REF. NO: 13/00631/CU

STATUTORY DECISION DATE: 4 October 2013

WARD/PARISH: CENTRAL

LOCATION: 9 High Row, Darlington DL3 7QQ

DESCRIPTION: Change of use from retail (A1) to betting office (A2)

APPLICANT: Mr Nick Appleyard

APPLICATION AND SITE DESCRIPTION

Planning permission is sought for the change of use from retail (use class A1) to betting office (use class A2). The property is located to the north side of High Row close to Binns Department Store and opposite the Market Building.

PLANNING HISTORY

84/00648/ADV, on 20 January 1985 permission was granted display of an internally illuminated fascia internally illuminated box sign.

84/00649/DM, on 30 January 1985 permission was granted for alterations to the front elevation.

91/00401/MISC, on 25 July 1991 permission was granted for the display of an internally illuminated fascia sign and projecting sign.

95/00006/CU, on 13 February 1995 permission was granted for the change of use of the rear part of the shop to Class A2.

95/00320/AD, on 10 July 1995 permission was granted for the display of an internally illuminated fascia sign.

98/00384/FUL, on 4 August 1998 permission was granted for the installation of a cash point machine.

98/00385/ADV, on 6 August 1988 permission was granted the display of an internally illuminated sign above the cash point machine.

01/00805/ADV, on 3 January 2002 permission was refused for the display of an internally illuminated fascia and projecting box sign.

PLANNING POLICY BACKGROUND

The following policies of the development plan are relevant:

Borough of Darlington Local Plan 1997:

- S4: Town Centre Service Uses
- S6: Non Retail Uses

Darlington Core Strategy 2011:

- CS1: Darlington's Sub Regional Role and Locational Strategy
- CS7: The Town Centre

The National Planning Policy Framework 2012 is also relevant.

RESULTS OF CONSULTATION AND PUBLICITY

Letters were sent to neighbouring properties and a site notice was displayed.

An objection letter was received from **DPP** (Planning Consultants) on behalf of an unidentified client. The main points raised are summarised as follows:

- *The application is in direct contravention of Policy CS7 of the Core Strategy which seeks to safeguard and enhance the vitality and viability of the town centre.*
- *Policy S4 of the Local Plan identifies the unit as part of primary shopping frontage.*
- *The proposal does not accord with the National Planning Policy Framework which supports the principle of maintaining the vitality and viability of town centres.*
- *There are 123 units within the primary shopping area, 106 are occupied. 15% are non A1 (shops) uses. If the application is approved it will lead to an overconcentration of A2 (Financial and Professional services) uses within the primary shopping area.*
- *The loss of a retail unit will have a negative impact on the viability of this prime retail location.*
- *Although in a primary shopping frontage, the proposal should be looked at with regard to the Council's Supplementary Planning Guidance (Guidelines for the Introduction of A2 and A3 Uses and Amusement Centres into the Secondary Shopping Frontages of Darlington Town Centre 1998).*
- *Based on occupied units the primary shopping frontage is 85% A1 uses. This demonstrates the policy framework and the strength of the retail offer.*
- *It is important that A1 usage should be favoured to retain the vitality of surrounding retail premises.*
- *Policy MGPI3 (The Primary Shopping Area) of the draft Making and Growing Places Development Plan Document 2013 is proposing to take a less strident approach than the Local Plan. However the proposed change of use to a betting shop is not considered to be an exceptional circumstance. It will detract from the active retail frontages and will not provide a direct service to the public.*

- *The Darlington Retail Study 2010 identifies that more diversity is needed in the town centre. The proposal would result in the reduction of economic opportunities.*
- *An application for the change of use to a betting shop at 3-4 Tubwell Row (Ref: 11/00269/CU) was refused planning permission in 2011. The application was refused on the basis that change of use from A1 would undermine the character and vitality of the frontage and would be contrary to the aim that shopping remains the principal economic activity of the town centre. A subsequent appeal was also dismissed.*
- *Any benefits that the proposed betting office may bring to High Row do not outweigh the harm that would be caused by the loss of a retail unit in a primary shopping location.*

A second objection letter was received from **DPP** after they had reviewed the comments of Planning Policy officers. The points raised are summarised below:

- *The NPPF gives support to schemes which encourage competitive town centres, providing consumer choice and diverse retail need and so ensure their vitality and viability. Schemes such as the proposed development should therefore not be permitted as it would damage the vitality and viability of the town centre.*
- *The application is clearly contrary to Policy S4 of the Local Plan which states that betting offices and other class A2 service use will not be permitted in the primary Shopping Frontage. Therefore the application should be refused.*
- *The Policy comments seem to give weight to the fact that the unit was in A2 use prior to the occupation by Jessops. This is not relevant and the application must only be determined in line with the current use of the site and whether the principle of a change of use from class A1 to A2 accords with local and national policy or not. The proposed betting office would not provide the same sort of public service as a bank (previous use before Jessops).*
- *The submitted footfall surveys are based on data measured in 2002 which is outdated and as such does not take account of current shopping patterns and therefore is not a robust evidence base. It is not acceptable to approve an application based on such outdated data.*
- *The survey evidence presented is unclear, uncertain and lacks context for the following reasons:*
 - *No survey methodology is given. Surveys are carried out mainly, but not consistently on a Friday or Saturday afternoon. Because of the lack of methodology it is uncertain whether they capture unique respondents or include repeats, diminishing the reliability and weight that should be given to the surveys.*
 - *No survey provides details of what type of linked shopping trip and purchase(s) were made. It is unclear what benefit any linked purchases claimed are in value and breadth of products and services to the other retailers in the centres.*
 - *No survey records the age and sex of respondents. This is important in understanding how a betting shop operates in context of a retail centre and its vitality and viability.*

- *A report commissioned by the Association of British Bookmakers Limited in 2006 shows that betting shop gamblers are predominantly male (86%), predominantly over 35 years old (72%) with a significant proportion over 55 (37%). In contrast the majority of shoppers in a centre are usually women, typically making up 60-70% of shoppers in centres. Add to this children (under 18 years) are not lawfully permitted inside a betting shop, so whether shopping alone or more often with women/family groups, it becomes clear that the ability of a betting shop to attract shoppers into a centre, or form part of a linked trip is very limited indeed.*
- *An appeal decision in Harrow (ref: APP/M5450/A/12/2187570) endorses the point that betting shops are frequented primarily by men over 18 years old and a significant proportion of shoppers are women and children. The Inspector drew the conclusion:*

While some men from the proposed betting shop might then move on to the other shops, I am not persuaded that this would result in a significant increase in the number of shoppers in the centre. It would be unlikely to have a noticeable effect on the vitality of the centre.

- *In light of the above, although a betting shop may contribute to footfall, it would not generate the same level of footfall as a retail store and approval would not outweigh the harm caused by the loss of a retail unit in the primary shopping area. The application is therefore contrary to the NPPF and Local Policies CS7 and S4 which seek to protect the vitality and viability of town centres.*
- *The dominance of A1 uses is a result of adherence by the Local Planning Authority to local Plan Policy S4 which seeks to retain retail use in the primary shopping frontage. The policy should continue to be adhered to in line with the NPPF and Local Policies CS7 and S4 which seek to protect the vitality and viability of town centres.*
- *Irrespective of the size of the unit, it is a retail unit in the primary shopping frontage and its change of use to non-retail would be contrary to the NPPF, Policy S4 and CS7. Approval of this application would set a precedent along High Row and would not be in line with previous refusals made by the Council (and Inspectorate) for betting shops in the vicinity (such as that at 3-4 Tubwell Row 85 metres away – ref: 11/00269/CU).*
- *Whilst the Agent has been asked for evidence of marketing, we do not consider that marketing the unit for 6 months is long enough for a potential retail occupier to be interested. A marketing period of 12-18 months is a more acceptable and standard marketing period to allow time for a potential retail occupier show interest.*
- *An A2 shop frontage would not be as attractive as a retail store which has the ability to create active window displays to market products. We do not consider that the agent has demonstrated that the shop front can be active and attractive. This is also endorsed by the Harrow appeal decision:*

While betting shops usually provide a window display as is proposed here, this is generally of an opaque type that offers only restricted views of the interior. It is an inactive display that is unlikely to contribute to the varied and lively frontages...adversely impacting on the vibrancy and appearance of the core primary shopping area.

- *The Policy comments appear to be based on Draft Policy MGP13 of the Making and Growing Places Development Plan Document. The policy will resist proposals for change of use to non-A1 uses unless in exceptional circumstances. The policy states that:*

Exceptionally, proposals for other uses may be permitted if it can be demonstrated that:

a) the proposal has an active frontage and contributes to the vitality and viability of the frontage; and

b) the proposed use will provide a service direct to members of the public and can demonstrate a similar footfall to an A1 use; and

c) the proposal will have an attractive shop front which contributes positively to the appearance of the street; and

d) the proposal would not result in non-retail uses being grouped together in such a way that it undermines the retail role of the street; and

e) the proposal does not prevent upper floors from being effectively used, including the possibility of independent use.

- *As this policy is in draft form it cannot be afforded any material weight. The application should therefore be determined in accordance with the NPPF and adopted local policy and should therefore be refused.*

A letter in favour of the application was received from **Prism Planning** (Planning Consultants) occupiers of part of **11 High Row**. The points raised are summarised below:

- *We believe that it is important that High Row maintains attractive shop and that footfall is sustained.*
- *High Row contains several empty and unattractive shop fronts that are not attractive to ordinary A1 retail development.*
- *The policies in the Local Plan are out of date and fail to reflect market conditions and the continuing impact of the recession.*
- *We cannot see that there is any benefit to the vitality and viability of the town centre by focusing properties to remain empty. The property has been marketed unsuccessfully.*
- *There is a natural “churn” of retail property in any town centre and as retail patterns change, there will be opportunities to look at the types of business that it might be possible to bring to High Row.*

The **Planning Policy Officer** supported the application and provided comments on the proposal which form the basis for the assessment of the planning issues below.

PLANNING ISSUES

The property is located on High Row which is designated as a Primary Shopping Frontage in the Borough of Darlington Local Plan.

The National Planning Policy Framework states that local planning authorities should support existing business sectors taking account of whether they are expanding or contracting and where possible identify and plan for new or emerging sectors likely to locate in their area. The document also indicates that investment in business should not be overburdened by policy expectations and should allow for changes in economic circumstances.

Policy MGP13 of the draft Making and Growing Places Supplementary Planning Document 2013 seeks to safeguard the primary shopping frontages for use class A1 shops. Policy MGP13 also allows as an exception non A1 uses where the proposal has an active frontage, a similar footfall to an A1 use and any proposal would not result in non-retail uses being grouped together. This policy has not been adopted and as such currently carries very little weight.

Policy S4 (Town Centre Service Uses) of the Borough of Darlington Local Plan states that the loss by change of use of ground floor A1 shops in the primary shopping frontages of the town centre to banks, building societies, estate agents, betting offices and other class A2 services uses will not be permitted.

Policy S6 (Non-Retail Uses) of the Local Plan states that uses which are not A1, A2, A3. or amusement centres will not be permitted on the ground floor in the primary or secondary shopping frontages.

Policy CS7 (The Town Centre) of the Core Strategy states that the vitality and viability of Darlington town centre will be safeguarded and enhanced by protecting and promoting its role as the sub-regional centre for the western part of the Tees Valley City Region and neighbouring parts of North Yorkshire and south and west Durham, including its role as a market town.

The proposal is therefore contrary to local plan policy S4 above because it would involve the loss of a shop unit in a primary shopping frontage area of the town centre. However there are considered to be a number of material considerations that must also be taken into account:

- The developer's agent has supplied information to confirm that the property has been unsuccessfully marketed for an alternative A1 retail use. This information is supported by a statement on the current state of the property market from a local agent. The marketing exercise, although for a relatively short period of 6 months, has been undertaken and is considered to be acceptable in terms of the avenues that have been taken to demonstrate that there is a lack of demand from an alternative shop operator.
- The unit is of a modest size, with a relatively modest linear frontage and not of a size known to be in short supply in the town centre.
- The Agent has provided specific surveys undertaken by the Applicant that have supported other similar planning applications. These support the Agent's viewpoint that betting shops can generally contribute to (and in some instances increase) footfall and linked trips and there are appeal cases where inspectors have taken into account the contribution

of betting shops to linked shopping trips in drawing the conclusion that they would not be detrimental to the retail centres in question. Even if footfall and the number of linked trips was not as great compared to a shop unit, officers consider this to be preferable in the current circumstances to the premises continuing to be vacant and making no contribution to the town centre economy. This position is considered to be consistent with the NPPF. The details of the surveys including the times they were carried out are considered to be relevant and not out of date.

- The unit is in an area of High Row that is dominated by A1 uses and would not create any continuous row of non-A1 uses that could harm or have a demonstrable impact on the shopping character of the frontage.
- The unit was formerly an A2 use (Halifax bank) prior to Jessops (the last occupier of the property) moving in and at the time that the original policy regarding service uses in the primary shopping frontage was written.

Given the above points it is considered that proposed change of use would not be harmful to the vitality and viability of the town centre and is acceptable.

In terms of other matters, the objector raised concerns that approving the proposed development would be inconsistent with the refusal of planning permission in June 2011 for the change of use from retail shop to licensed betting office at 3 - 4 Tubwell Row (Ref: 11/00269/CU). There was a subsequent appeal which was dismissed, however there were different factors that had a bearing on that decision, including that the secondary frontage in which the premises is located was already biased to non-use class A1 uses and that there was a lack of evidence to suggest the market for A1 uses had been adequately tested. The Inspector deciding that appeal considered that the proposal would consolidate the frontage between Prebend Row and the Golden Cock public house as entirely non-retail. Concerns were also raised by the objector about the establishment of a precedent, however each application should be considered on its merits and will need to take account of all relevant circumstances at the time.

Conclusion

In strict terms the proposal is contrary to local plan policy S4 which seeks to safeguard the primary shopping frontages for shopping. It should be noted that the proposal also needs to be considered in the context of the aspirations of the more up to date NPPF. The property has been marketed with no interest shown for an A1 use and information has been provided showing that betting offices can help generate linked trips. The proposal would also remove a vacant unit and taking these factors into account, the proposal is not considered to undermine the shopping characteristics of the area.

SECTION 17 OF THE CRIME AND DISORDER ACT 1998

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

RECOMMENDATION

It is recommended that planning permission be granted subject to conditions

1. A3 – Implementation Limit (3 Years)
2. A window display similar to a shop or with clear views into the premises shall be maintained, in the shopfront fronting High Row at all times.

REASON - To safeguard the character and appearance of the property and the character and appearance of the Town Centre Conservation Area.

The following polices have been taken into consideration:

Borough of Darlington Local Plan 1997:

- S4: Town Centre Service Uses
- S6 : Non Retail Uses

Darlington Core Strategy Development Plan Document 2011:

- CS1: Darlington's Sub Regional Role and Locational Strategy
- CS7: The Town Centre