



Appeal Decision

Site visit made on 11 November 2009

by Christopher Checkley
BA(Hons) MRTPI

**an Inspector appointed by the Secretary of State
for Communities and Local Government**

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Decision date:
4 December 2009

Appeal Ref: APP/N1350/A/09/2111617

18-19 Bondgate, Darlington, DL3 7JE

- 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 Instant Cash Loans Ltd T/A The Money Shop against the decision of Darlington Borough Council.
- The application Ref 09/00408/CU, dated 16 June 2009, was refused by notice dated 11 August 2009.
- The development proposed is change of use from Class A1 (Retail) to Class A2 (Financial and Professional Services).

Preliminary Matter

1. During the appeal an application for costs was made by Instant Cash Loans Ltd T/A The Money Shop against Darlington Borough Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant planning permission for change of use from Class A1 (Retail) to Class A2 (Financial and Professional Services) at 18-19 Bondgate, Darlington, DL3 7JE, in accordance with the terms of the application, Ref 09/00408/CU, dated 16 June 2009 and the plans submitted with it, subject to the following conditions:
 - (1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - (2) Notwithstanding the provisions of Class A2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, the premises shall not be used primarily for any of the following purposes: Bureau de Change; Betting Shop; Bank; Building Society; Estate Agency; Employment Agency; Professional Offices; Insurance Offices; or Financial Services other than those trading as retail establishments.
 - (3) At all times that the use is operating a window display shall be maintained within the corner frontage of the unit as shown on the approved drawing "Proposed Ground Floor G.A. (Rev A)" dated 17 June 2009.

Main Issue

3. The main issue is the effect upon the vitality and viability of Darlington town centre, having regard to the impact upon the character and vitality of this part of the defined secondary shopping frontage.

Reasons

4. The adopted Borough of Darlington Local Plan 1997 (incorporating Adopted Alterations September 2001) (LP) includes the general objective of safeguarding the vitality and viability of Darlington town centre as a market town and sub-regional shopping centre. The central area retains the pleasing character of a market town with many traditional buildings within its extensive conservation area. The town centre has benefited from pedestrianisation schemes and environmental improvements and the development of modern retail facilities at both the Queen Street and Cornmill shopping centres. Neither side has presented me with a full analysis of all PPS6 health indicators for the town centre but on my visit, having regard to the vacancy information and retailer requirements supplied by the appellant and my own observations, I formed the impression that the primary shopping area is generally healthy and holding its own despite the effects of the current recession. The Council has provided no evidence to the contrary.
5. The appeal property lies towards the north-west fringes of the town centre. The property is a vacant shop on a corner, with its double-fronted entrance facing north onto the more westerly part of this section of Bondgate, with its return frontage along the narrower Skinnergate to the west. Both frontages fall within the defined secondary frontage, the primary frontages and retail centre of gravity of the town centre lying some distance to the east. Importantly, this secondary frontage on Bondgate stands nearer to the north-western fringe shopping frontages.
6. Within Bondgate east of the ring road there is a clear difference in character between the easterly and westerly sections. The more easterly is much narrower, pedestrianised and links closely with the primary frontages. However, the appeal site lies within the more fringe westerly section which is much wider, non-pedestrianised and subject to the noise and pollution of vehicular traffic passing in both directions. Additionally, the appeal site return frontage is on the northernmost section of Skinnergate which is subject to the intrusion of one-way traffic. In my opinion, these detrimental factors lessen the relative retail attraction of the appeal site as a location.
7. There is a marked cluster of 3 vacant units at the junction of Bondgate and Skinnergate, comprising the corner units either side (at both the appeal site and No 20 Bondgate) and the smaller unit at 51 Skinnergate adjoining the appeal property. This concentration of visibly dead frontage is detrimental not only to the retail vitality of this part of the secondary frontage but also to the retail character of the conservation area generally.
8. LP Policy S2 seeks to safeguard and enhance the vitality and viability of the town centre, with the first part of policy S4 resisting the loss to A2 uses of retail units within the primary shopping frontages. Policy S4 also indicates that

additional A2 uses will be permitted in the secondary shopping frontages, provided that the overall concentration of non-shop uses in a particular length of frontage would not be such as to undermine its character or vitality as a shopping frontage. The Council has adopted (October 1998) Supplementary Planning Guidance (SPG): *Guidelines for the Introduction of A2 and A3 uses and amusement centres into the Secondary Shopping Frontages of Darlington Town Centre*. Since the SPG supplements adopted and saved Policy S4, was subject to public consultation and was produced in accordance with national recommendations relevant at the time, it merits substantial weight. I also accord substantial weight to national guidance in *Planning Policy Statement 6: Planning for Town Centres (2005)* (PPS6) which is more recent than the LP or the SPG.

9. The SPG indicates that where a proposal would result in the proportion of class A1 shop uses in the relevant length of frontage falling or remaining below 60%, then the overall concentration of non-shop uses will be considered to be such as to undermine its character or vitality as a shopping frontage. However, the SPG makes clear that the 60% proportion is a guideline and not a rigid threshold and that the SPG needs to be applied in the context of any other material considerations.
10. The Council calculates that the proposal would result in the proportion of class A1 uses within the relevant frontage falling to 57.8%. The appellant does not dispute the basis of the calculation. This figure lies only slightly below the 60% threshold specified in the SPG. Thus, although there is a conflict with the SPG threshold, it is minor in percentage terms. In such a case it is necessary to take full account of any other material considerations - including those mentioned within the SPG itself - that are relevant.
11. The appeal property was last occupied as a shop in mid-2007. Despite having undergone extensive reconstruction/refurbishment since then and being offered to the market on the basis of a reduced rent and other incentives, the unit has not succeeded in being let for class A1 purposes over a two-year marketing period. I do not believe this is primarily a result of the recession. The presence of a tight cluster of vacancies in this immediate location suggests to me that it has become a relatively unattractive retail pitch, and there is no convincing evidence before me that this is likely to change in the near future. Maintaining a high proportion of retail uses is clearly important in ensuring that Darlington town centre remains attractive to shoppers. However, I consider that the noticeable concentration of vacant properties here is undermining the vitality and viability of these secondary frontages and is detrimental to the town centre generally.
12. In contrast, this proposal would have a number of positive factors. First, the proposed use for a "Money Shop" would have many of the characteristics of a shop including: being open to the general public; having a frontage display, including a jewellery display in part; being primarily a daytime use open at the same time as other shops; and attracting customers by selling a variety of financial products. Second, the unchallenged evidence on the potential numbers likely to visit the shop each business day suggests that the resulting footfall would compare favourably with the daily numbers that might visit, say,

a fashion or shoe shop in the same location. Third, there is a functional inter-relationship between uses of this kind and the rest of the shopping area, for example some shoppers withdrawing cash before spending it in the shops. Fourth, vitality would be reinserted into a prominent dead frontage by the re-use. Fifth, the proposal would not result in a continuous series of 3 or more non-retail uses, such as would form an unacceptable concentration of non-A1 uses contrary to the objective of LP policy S4. Sixth, the appellant's plan illustrates that there are some 58 vacant units in the centre distributed right across the primary, secondary and fringe frontages. Even without the appeal site, these provide a very good choice of units of different sizes and locations to meet a range of needs from national, regional and local retailers. Finally, the resulting diversity of uses within the frontages in question would extend the range of facilities available whilst maintaining interest and variety and would not detract from the dominant retail character of the primary shopping area. The proposal would accord with the relatively recent advice in PPS6 indicating that secondary frontages provide greater opportunities for a diversity of uses.

13. Additionally, I agree with the appellant that the change of use would enhance both the appearance and character of the Conservation Area by bringing back vitality to a prominent vacant unit that otherwise has a detrimental and deadening effect. This is a further positive benefit.
14. I find this is a relatively finely balanced case. However, although the proposal would conflict with the SPG threshold figure, taking all relevant material considerations into account, I find that the proposal would not undermine either the objective of Policy S4 of preventing harm to the character or vitality of the relevant secondary shopping frontage or the objective of Policy S2 of safeguarding the vitality and viability of Darlington town centre in general. The scheme would accord with national advice in PPS6.
15. I have taken account of the appeal decisions presented to me, but all of them differ in one way or another from the particulars of the appeal scheme and its specific location. I make my decision on the individual merits of the proposal before me in the light of current policies and all material considerations. None of the other matters raised have been sufficient to lead me to any other conclusion.
16. I conclude that there would be no harm to either the character and vitality of these secondary shopping frontages or the vitality and viability of Darlington town centre in general. I am granting planning permission, subject to necessary conditions. Apart from the standard time condition, I am requiring the maintenance of the proposed corner window display and I am preventing the premises from being used primarily for other uses within Class A2 uses, such as professional offices or a bank, which might not have such a regular flow of visitors as The Money Shop. These latter 2 conditions will ensure that the vitality associated with a window display and good levels of footfall are maintained.

C J Checkley
INSPECTOR