



Appeal Decision

Site visit made on 7 August 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 18TH August 2017

Appeal Ref: APP/G4240/W/17/3171363

5 Market Place, Hyde, Tameside SK14 2LX

- 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 Thornbraid Ltd against the decision of Tameside Metropolitan Borough Council.
 - The application Ref 16/00825/FUL, dated 30 August 2016, was refused by notice dated 9 December 2016.
 - The development proposed is change of use from a range of flexible uses A1, A2, A3, A4 and A5 to A1, A2, A3, A4, A5 and Betting Shop (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a range of flexible uses A1, A2, A3, A4 and A5 to A1, A2, A3, A4, A5 and Betting Shop (Sui Generis) at 5 Market Place, Hyde, Tameside SK14 2LX in accordance with the terms of the application, Ref 16/00825/FUL, dated 30 August 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan and Ground Floor Layout Plan, received on 30/08/16.
 - 3) Before any use hereby permitted takes place, a scheme for the storage and disposal of refuse (including segregated waste recycling and disposal of food waste) shall have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. The implemented scheme shall be retained as approved thereafter.
 - 4) Before any hot food preparation equipment is used on the premises, a scheme to control the emission and dispersal of fumes, vapours and odours from the premises shall have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. The implemented equipment, measures and specifications shall be retained and maintained as approved thereafter.
 - 5) Before any fixed plant and/or machinery is used on the premises, it shall have been acoustically insulated/designed in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority. The implemented measures and specifications shall be retained and maintained as approved thereafter.

Application for costs

2. An application for costs was made by Thornbraid Ltd against Tameside Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect upon the viability and vitality of Hyde Town Centre.

Reasons

4. The appeal site consists of a three storey building located at the junction of Market Place and Clarendon Street within Hyde Town Centre with frontages onto both streets. The ground floor unit is currently vacant, having most recently operated as a shop (A1 use), whilst the upper floors are currently in use by solicitors (A2 use). The premises are located within the primary shopping area of Hyde Town Centre as defined by the Proposals Map of the Tameside Unitary Development Plan (UDP), adopted November 2004. The primary shopping area consists of an indoor precinct and a market square with a mix of retail and complementary town centre uses in the surrounding area and intermittent presence of vacant units. At the time of my visit, the outdoor market was in operation and the primary shopping area, together with the adjoining through route along Clarendon Street to the bus station, had significant levels of footfall and nearby car parks were in demand.
5. The UDP is broadly consistent with the National Planning Policy Framework (the Framework) in so far as it defines the extent of the primary shopping area and makes clear what uses will be permitted. Consequently, the appeal should be determined in accordance with the development plan, unless material considerations indicate otherwise. A Tameside Retail Study published in 2010 informed a draft Hyde Town Centre Supplementary Planning Document (SPD) published and subject to public consultation in 2011, which identified the site as outside of a revised primary shopping area. However, the SPD is afforded little weight as it was not adopted and the primary shopping area in the development plan remains unaltered. I determine the appeal on that basis.
6. Saved Policy 1.7 of the UDP, amongst other things, seeks to support, protect and enhance the role of town centres as the focal points for retailing, leisure, entertainment, administrative, commercial and cultural activities and for office and other employment. Saved Policy S4 of the UDP, amongst other things, indicates that the Council will not permit the change of use of retail premises to non-retail uses where this would create an imbalance or dominant grouping of non-retail uses in any particular area, with a continuity of shopfronts required within the primary shopping areas.
7. It has been drawn to my attention that the site has been subject to a previous appeal decision¹ relating to a proposed change from a retail use (A1 use) to a betting shop (A2 use at the time), where the previous Inspector found conflict with Saved Policy S4 arising from a dominant grouping of non-retail uses within the primary shopping area. Retail uses exist to either side of the appeal property and the proposal would not remove a shopfront. Nevertheless, I agree with the previous Inspector's findings that a further non-retail use in this location could result in a dominant grouping close to the outdoor market

¹ APP/G4240/A/12/2180427 – Dismissed – 3 December 2012

contrary to Saved Policy S4 of UDP as other non-retail uses nearby along the northern side of Market Place facing The Square include two banks, a public house and a betting shop.

8. Notwithstanding the above, the ground floor unit is no longer in use as a shop and has been vacant since July 2013 with evidence of unsuccessful marketing for a significant period of time and at a reduced rental value relative to its previous occupancy. In addition, subsequent changes to the GPDO² include permitted changes of use from a shop (A1 use) to financial and professional services (A2 use). In that context, the Council have granted planning permission in February 2016³ for change of use from retail (A1 use) to a range of flexible uses (A1, A2, A3, A4 and A5 uses) which remains extant and offers a fallback position for non-retail use of the ground floor unit. It follows from the change in circumstances since the previous appeal decision that dismissal of this appeal would not preclude a non-retail use of the ground floor unit from taking place which is a material consideration that carries considerable weight relative to the conflict with Saved Policy S4.
9. Changes to the Use Classes Order⁴ in 2015 excluded betting shops from Class A2, which means that the sui generis use is not permitted by the extant planning permission. The ground floor premises and its vacant shopfront make no existing contribution to the viability and vitality of Hyde Town Centre and its appearance is unsightly in a prominent location facing the open market. A significant period of time has now passed since the Council permitted A1, A2, A3, A4 and A5 uses, with the property having remained unoccupied with evident marketing resulting in limited enquiries and substantive interest other than from a betting shop operator. In such circumstances, whilst I cannot conclude that there is no possibility that the property would be capable of being occupied by retail or other non-retail uses in the long term, the proposal could bring the ground floor premises back into active use at an earlier opportunity. There would be resultant benefits to the viability and vitality of Hyde Town Centre, including the nearby outdoor market, through reintroducing an active use with a window display that would assimilate with those nearby, increased potential for linked trips and a modest contribution to local employment.
10. The Council's concerns relate specifically to the effect of an additional betting shop. The appeal proposal would not prevent the vacant premises otherwise being occupied by a retail use or other non-retail uses already permitted, but it could result in an additional betting shop facing Market Place which includes three existing betting shops. A number of appeal decisions⁵ have been drawn to my attention by the appellant relating to betting shops having been permitted where others are close by, which I have taken into account. However, those appeal decisions were not related to premises within Hyde Town Centre and reflected locations in other districts with a range of circumstances and where different development plan policies applied. It is, therefore, necessary that I consider the appeal proposal on its own merits.
11. Saved Policies 1.7 and S4 of the UDP provide no specific threshold for concentrations of individual non-retail uses. However, it is reasonable that a

² The Town and Country Planning (General Permitted Development) (England) Order 2015

³ Planning ref: 15/00968/FUL

⁴ The Town and Country Planning (Use Classes) Order 1987 (as amended)

⁵ APP/U5930/A/14/2229533, APP/E5330/A/14/2226118, APP/M4510/A/12/2183614, APP/E2734/A/12/2178790, APP/Z4718/A/12/2175438, APP/G5750/A/12/2172681

predominance or cluster of betting shops could create a perception of retail decline. Nevertheless, the location of the property facing onto Market Place towards The Square and the market, together with its position at the western corner of Clarendon Street, affords visual separation and demarcation from the nearest betting shop located further to the east beyond a public house on the opposite corner. The other two betting shops are located further to the east to both sides of the more enclosed streetscape of Market Place beyond Hamnett Street where a mix of other retail and non-retail uses are also present. Consequently, the use would be visually distinct from the other betting shops.

12. The mix of retail and non-retail uses around the appeal site and between each of the betting offices offer an appropriate range of alternative uses along Market Place and The Square to prevent a perception of betting shops being homogenised, predominant or clustered. Having regard to the above and given that the proposal in the primary shopping area would result in betting shops in less than 4% of the total units, it would not result in a harmful over-concentration of such uses within Hyde Town Centre. As the overall proportion of betting shops in the primary shopping area would remain comparatively low relative to retail and other non-retail uses, the betting shops and any Fixed Odds Betting Terminals (FOBTs) which may result would not have a harmful effect on the viability and vitality of Hyde Town Centre. If FOBTs were to be installed, the practice and behaviour of customers within the appeal unit is properly controlled under the licensing regime.
13. I conclude that the development would not harm the viability and vitality of Hyde Town Centre. The proposal would, therefore, accord with Saved Policy 1.7 of UDP as it could support the role of the town centre by reintroducing an active use with modest benefits in terms of local employment. Although conflict with Saved Policy S4 of the UDP has been identified, in the particular circumstances of this case it is out-weighed by the absence of resultant harm due to the fallback position of an extant planning permission and permitted development rights for non-retail uses. The proposal is consistent with the UDP and the Framework when taken as a whole.

Conditions

14. I have considered the conditions suggested by the Council and amended the wording where necessary to ensure compliance with paragraph 206 of the Framework and Planning Practice Guidance. Conditions relating to the time limit for commencement and plans compliance are necessary to provide certainty in terms of the planning permission granted. Further conditions suggested by the Council related to the installation of plant and machinery, dispersal of emissions relating to hot food preparation and arrangements for storage and collection of refuse. Those conditions are necessary to safeguard the living and working environment for occupiers of neighbouring properties, including the solicitors above, given the range of uses that would be permitted which could otherwise introduce harmful noise, disturbance and odours.

Conclusion

15. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be allowed and planning permission granted.

Gareth Wildgoose

INSPECTOR