



Appeal Decision

Hearing held on 23 March 2010
Site visit made on 23 March 2010

by **K Nield** BSc(Econ) DipTP CDipAF MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
7 April 2010

Appeal Ref: APP/F0114/A/09/2116869 **47 High Street, Keynsham, Bristol, BS31 1DS**

- 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 Bicknell Holdings against the decision of Bath & North East Somerset Council.
 - The application Ref 09/02880/FUL, dated 7 August 2009, was refused by notice dated 29 October 2009.
 - The development proposed is described in the application as a change of use from an A1 (retail) shop to a mixed A1/A3 (coffee shop).
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Decision

1. I allow the appeal and grant planning permission for a change of use from an A1 (retail) shop to a mixed A1/A3 (coffee shop), at 47 High Street, Keynsham, Bristol, BS31 1DS in accordance with the terms of the application (Ref 09/02880/FUL, dated 7 August 2009) and the details submitted therewith subject to the following conditions:
 1. The development hereby permitted must be begun before the expiration of three years from the date of this permission.
 2. The development hereby permitted shall be carried out in accordance with the plans submitted with the application (C#1/090708/Planning/OS, C#1/090708/Planning/01, C#1/090708/Planning/02, C#1/090708/Planning/03, C#1/090708/Planning/04 and C#1/090708/Planning/05).
 3. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, or any order revoking and re-enacting that Order with or without modification), the premises shall be used only as a coffee shop (mixed Use Classes A1 and A3) and for no other purpose.
 4. The use hereby approved shall not be carried on and no customer shall be served or remain on the premises outside the hours of 0800 to 1800 on any day.

Procedural Matters

2. The Council accepted the application in the terms submitted although the Reason for Refusal stated on the Decision Notice indicates its view that the proposed use as a coffee shop would fall principally within Use Class A3 (and not be a mixed A1/A3 use). The Council maintained that contention at the Hearing and its evidence indicated that the proposed Class A1 element would
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comprise the sale of merchandise only which would be incidental to the A3 use. In addition the Council contended that the proposed internal arrangement of the coffee shop with tables and seating near the shop front demonstrates that the primary use is within Use Class A3.

3. The appellant company indicated both at the application stage and with the appeal that, based on the trading of its other coffee shops, around 40-50% of sales from the appeal premises would be for take away coffee, food (some warm) and merchandise. No cooking would take place at the premises. The Council did not dispute the company's evidence in that regard.
4. Circular 03/2005¹ (at paragraph 36) provides guidance in respect of coffee shops indicating that they need to be considered on a case by case basis as to whether their primary purpose is as a shop (premises for the sale of beverages to be taken away) or as a café (where the primary purpose is the consumption of beverages on the premises) or as mixed uses.
5. On the information before me I am satisfied that the appeal scheme would comprise substantial elements of both a shop and café. The sale of beverages and food items to be taken away and the sale of merchandise would, to my mind, be of greater significance in terms of the overall trade than being incidental to a Class A3 use. Consequently I agree with the appellant's description of the appeal scheme as a mixed A1/A3 use and have determined the appeal on that basis.

Main Issue

6. The main issue in this appeal is the effect of the appeal scheme on the vitality and viability of Keynsham town centre.

Reasons

7. The appeal site is on the east side of High Street within the Primary Shopping Frontage (PSF) of Keynsham defined in the LP². The site comprises a vacant two-storey building which has been marketed for some time.
8. There is no dispute between the parties that the appeal scheme conflicts with LP policy S.5 which indicates that development in the PSF of specified towns, including Keynsham, which results in the loss of a shop use (Use Class A1) from ground floor premises will not be permitted.
9. Revised national policy in respect of town centres PPS4³ was issued after the Council determined the application. Amongst other matters PPS4 now indicates (Policy EC3.1(a)) that local planning authorities should set flexible policies for their centres which are able to respond to changing economic circumstances. The Council accepted that LP policy S.5 was inflexible in its application and that current advice in PPS4 reduces the weight that it should carry.
10. The unchallenged evidence of the appellant indicates that at present almost 74% of units within the PSF were occupied by A1 uses with fairly small percentages within Class A3 (4.3%) or in mixed A1/A3 uses (2.2%). In the

¹ ODPM Circular 03/2005: Changes of Use of Buildings and Land – The Town and Country Planning (Use Classes) Order 1987 (Circular 03/2005)

² Bath and North East Somerset Local Plan including minerals and waste policies – Adopted October 2007 (LP)

³ Planning Policy Statement 4: Planning for Sustainable Economic Growth (PPS4)

town centre as a whole A1 uses currently occupy 62.8% of the premises with 3.4% in an A3 use and fewer than 1% in a mixed A1/A3 use. The appeal scheme, if allowed, would result in a reduction of A1 uses in the PSF although such uses would still comprise over 70% of the total.

11. I was informed by the appellant (and it was not disputed by the Council) that the low proportion of food and drink uses in the PSF reflects findings in the Bath and North East Somerset Retail Strategy (December 2008) which described Keynsham as having low levels of catering establishments with opportunities to create more. In the light of the above I am of the view that the appeal scheme would not significantly weaken the predominance of A1 uses within the PSF or town centre as a whole particularly as it would itself comprise a part retail use.
12. The parties agree that although the appeal site is within the PSF which applies to both sides of High Street the eastern side of the road carries significantly less footfall and has less vitality than the western side. The main reason for this appears, in my view, to be due to the greater preponderance of multiple retail units on the west side of High Street. I consider that a coffee shop located within the PSF along the eastern side of High Street would generate a reasonable footfall in that area of equivalence to many A1 uses and it would serve to provide an uplift to the nearby A1 uses. Despite continued marketing the substantial site has remained vacant indicating a lack of potential Class A1 occupants for the premises at the present time.
13. I conclude on the main issue that although the appeal scheme conflicts with LP policy S.5 that harm is outweighed by the material considerations considered above. In addition recent national policy advice in PPS4 and other government advice on assisting business in the current economic downturn, taken together, indicate that a more flexible approach to development in town centres is appropriate at the current time. Against that context I consider that the appeal scheme would not undermine the retail function of the PSF nor lead to a fragmentation of retail uses and would not have a harmful effect on the vitality or viability of Keynsham town centre.

Other Matters

14. The appellant has provided a number of planning and appeal decisions in respect of similar types of development both within this local authority area and elsewhere. Whilst I have had regard to these I have determined the appeal scheme on its individual merits.
15. The appellant pointed out at the Hearing that the appeal scheme would provide employment for between 12-15 persons (on a part-time basis) if allowed. I have no doubt that would be of some benefit to the economic well-being of the town although it does not alter my view as to the main issue upon which my decision turns.

Conditions

16. The Council suggested conditions in the event that the appeal is successful. I shall attach a condition to relate the permission to the submitted plans for the avoidance of doubt and in the interests of proper planning. I agree that a condition to restrict the use to a coffee shop would be appropriate within this

predominantly retail area. In addition a condition to control opening hours will safeguard the amenities of nearby occupiers is reasonable and necessary in this case.

Conclusion

17. For the reasons given above and having regard to all other matters raised I conclude that the appeal should succeed.

Kevin Nield

INSPECTOR