



Appeal Decision

Hearing held and site visit made on 30 May 2012

by **Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)**

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

Decision date: 29 June 2012

Appeal Ref: APP/C2708/C/12/2169700
40-42 Sheep Street, Skipton, BD23 1HY

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act).
 - The appeal is made by Nero Holdings Limited against an Enforcement Notice issued by Craven District Council on 13 December 2011.
 - The Council's reference is 1133/11.
 - The breach of planning control as alleged in the Enforcement Notice is without planning permission, the change of use of the ground floor of the building on the land from a Class A1 (retail) use to a mixed Class A1/A3 (retail/café) use.
 - The requirement of the Enforcement Notice is to stop using the ground floor of the building on the land for a mixed Class A1/A3 (retail/café) use.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the ground set out in Section 174(2)(a) of the 1990 Act.
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Procedural Matters

1. The appellants withdrew the Ground (f) & (g) appeals at the Hearing.

Decision

2. The appeal is allowed, the Enforcement Notice is quashed and planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act for the development already carried out, namely the use of the ground floor of 40-42 Sheep Street, Skipton, BD23 1HY as shown on the plan attached to the Enforcement Notice as a mixed Class A1/A3 (retail/café) use subject to the following conditions:
 1. The ground floor of the premises shall only be used as a coffee shop serving coffee, other hot and cold drinks, sandwiches and other light refreshments for consumption on or off the premises.
 2. The premises shall not be open for customers outside the following hours:-
 - (i) 08:00 – 18:00 Mondays – Saturdays, and
 - (ii) 09:00 – 17:30 Sundays.
3. No primary cooking of unprepared food shall be carried on within the premises. Only reheated or cold food that has been prepared elsewhere shall be served within the premises.

Background Matters

4. The appellants occupy Nos. 40-42. The ground floor is used for the sale of hot and cold drinks including cakes and light refreshments. The majority of customers consume their purchases on the premises at seats and tables provided on the ground and first floors. The second floor is used as ancillary accommodation to the coffee shop use. Currently about 14% of sales are for consumption of food and drink off the premises – the appellants anticipate that this percentage will increase to about 20%.
5. The appellants explained at the Hearing that even if the appeal was dismissed they would remain in occupation of Nos. 40-42 and operate it as an-:
 - (a) A1 use of the ground floor (with a few spaces for customers to eat and drink their purchases), and
 - (b) A3 use on the first floor with ancillary uses on the second floor.
6. The Council did not dispute that a use as outlined above would be acceptable in policy terms.

Skipton Town Centre & Core Retail Area

7. There are about 383 units in Skipton Town Centre of which about 55% are in retail use. 13% of the ground floor space within these units is used for food and drink uses which is below the national average of 16%. The appellants carried out a survey of the Town Centre in February 2011. There were at that time 28 vacant units within the Town Centre – 7.35% of the total. The national average Town Centre vacancy rate as at December 2011 was 13.6%.
8. The Council have identified a Core Retail Area within the Town Centre. This comprises 187 units (48% of the total for the Town Centre) of which 80.2% are in retail use. If Nos. 40-42 were in an A1 use the percentage would be about 80.74%. 8.5% of the Core Retail Area units are used for food and drink uses. There are no hot food takeaways within the Core Retail Area.
9. I was advised that at the time the survey was carried out there were 18 vacant units (9.6%) within the Core Retail Area. The Council stated that they had checked the position as at 29 May 2012 and the number of vacant units had reduced to 15 (about 8%). However, according to the Council's Retail Study in 2004 the vacancy rate in the Core Retail Area was 4.71%. In my assessment, there has been a significant increase in vacancy rates in the Core Retail Area.

Main Issue

10. I consider the main issue in this case is whether the use of Nos. 40-42 as a coffee shop results in material harm to the vitality of Skipton Town Centre or its Core Retail Area.

Ground (a) and the deemed planning application – that planning permission should be granted for what is alleged in the Enforcement Notice.

Policy

11. The development plan for the area includes the Craven District (Outside the Yorkshire Dales National Park) Local Plan (the Local Plan). The Council identified the current use of Nos. 40-42 as being contrary to saved Policy R3.

This Policy explains that within the Core Retail Area the Council will resist any proposals for the change of use at ground floor level from retail to any other use. The Local Plan also explains that:

- a) It is essential to maintain the retailing function of Skipton because it is vital to the life of Skipton and the District.
- b) The Council does not wish to see the function of the core area as retailing centres undermined through an over diversification of uses.
- c) In Skipton 81% of the commercial outlets within the Core Retail Area are used as shops.

12. The Council agreed that the proposal would result in a very marginal breach of the 81% figure referred to in the Local Plan.
13. The appellants accepted that they did not comply with the Local Plan policy which is effectively a prohibition on any change of use of ground floor premises within the Core Retail Area from retail.

Other Material Considerations

14. The National Planning Policy Framework (the NPPF) was published in March 2012. It explains, in a case such as this, that due weight that should be given to relevant policies in a Local Plan according to their degree of consistency with the NPPF. The closer the Local Plan Policy is to the policies of the NPPF the greater the weight that should be given to the Local Plan Policy.
15. At the heart of the NPPF is a presumption in favour of sustainable development. For decision making this means that where relevant development plan policies are out of date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole.
16. The appellants argue that the Local Plan Policy R3 is out of date with the NPPF because;
 - a) The NPPF requires planning policies to be positive and promote competitive Town Centre environments. Policy R3 cannot achieve this because it is an embargo on all changes of use of ground floor properties in the Core Retail Area. This indicates to me that Policy R3 is out of date.
 - b) The NPPF also requires Local Plans to define the extent of Town Centre and primary shopping areas based on a clear definition of primary and secondary frontages and to set out policies that make clear which uses are permitted in such areas. The Local Plan does not define primary and secondary frontages and therefore it cannot comply with the NPPF in this regard. This indicates to me that Policy R3 is out of date.
 - c) Further, the NPPF explains that Councils should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence (the evidence base). There is no evidence base for the 81% figure referred to in Policy R3 - it is simply an historic figure of what the A1 usage was within the Skipton Core Retail Area at some given point in its history prior to the adoption of the Local Plan in July 1999. There is no evidence base to indicate that if the percentage of A1 uses fell below the 81% figure it would harm the vitality of

the Core Retail Area. This again indicates to me that Policy R3 is out of date.

17. It is generally clear from the representations made at the hearing that the local community is proud and passionate about Skipton, its Castle and the Town Centre. They believe that Skipton's strength results in part from its uniqueness in remaining largely unspoilt. The Council are of the view that Policy R3 has secured a balanced retail offering which has enhanced and secured its long term viability. Skipton not only provides for the needs of its own community and that of residents living in surrounding villages but it is also a vibrant tourist destination. The Council and local residents want to ensure that Skipton remains a successful local market town.
18. I saw the Core Retail Area of Skipton on both market and non-market days. The town, which is known as the Gateway to the Dales, clearly benefits from the large numbers of visitors who come especially in the summer on market days. I was advised that on some summer days as many as 100 coaches arrive with visitors as well as those who come by car and public transport. There is a very wide range of shops and services in the Core Retail Area.
19. I was also advised that Skipton has previously been awarded by the Academy of Urbanism the High Street of the Year due in part to its quiet charm, community spirit and flourishing independent traders.

Does the Use harm the Vitality of the Core Retail Area or Town Centre?

20. The evidence conclusively shows that the number of customers using Nos. 40-42 was comparable with the best performing A1 uses carried out in nearby premises. I have no doubt that the number of people using Nos. 40-42 is significantly greater than its previous use as opticians.
21. Further, the appellants' evidence shows that the main reason why 160 of their customers come to Skipton each week is to use the coffee shop facility at Nos. 40-42. Further still, over 1,000 customers each week planned on visiting the coffee shop at Nos. 40-42 as part of their trip to the Town Centre. It is clear to me that the use of Nos. 40-42 as a coffee shop creates vitality in this part of the Town Centre and performs substantially better than the average number of customers visiting A1 uses in this part of Sheep Street.
22. The uncontested evidence from the appellants was that their use provided a mix of A1 and A3. Whilst the majority of customers ate and drank what they bought within the premises there was a significant proportion of A3 type customers. I noted this mix of uses at the times of my site visits.
23. I therefore conclude that the coffee shop use of Nos. 40-42 does not result in any harm to the vitality of Skipton Town Centre or its Core Retail Area.

Other Matters

Non compliance with Policy R3

24. The Council are concerned that if the appeal is allowed it will open the floodgates to others non-retail uses in the Core Retail Area. They referred to the Inspector's reasoning at paragraphs 20 to 22 of the appeal decision relating to 271 High Street, Epping¹ (the Epping Decision) following the service of an

¹ APP/J1535/C/06/2021060

Enforcement Notice. There are important differences which distinguish the Epping Decision from the matter that is before me. They are:

- a) The Local Plan in the Epping Decision was very up to date e.g. it was adopted in 2006 (the same year that the Enforcement Notice was issued in that case).
 - b) Epping Forest District Council had provided for "key frontages" and "non-key frontages" in their Town Centre.
 - c) The non-retail limit within the "key frontages" was set at 30%.
 - d) The Development Plan which included the Local Plan was in accordance with the then current Government advice as set out in PPS 6.
25. I understand the local concern that allowing this appeal may create a precedent for further non-retail uses at ground floor level in the Core Retail Area. I am aware that Enforcement Notices have recently been issued regarding café uses at two other premises within the Core Retail Area. However, there is insufficient evidence to know whether the uses at these premises are similar to that at Nos. 40-42.
26. It is clear that the appellants' use of Nos. 40-42 is not that of a traditional café in a tourist destination. It provides a service for both A1 and A3 users. No food is cooked at the premises. There is no waitress service. Importantly, it is also possible to control the future use of the premises so that it remains largely as that currently carried on by the appellants.
27. I do not consider that this decision creates a precedent that is binding on the Council. Each planning application has to be judged on its own individual merits.

What adverse impacts (if any) arise from granting planning permission for the use which significantly and demonstrably outweigh the benefits.

28. There is no evidence before me that the introduction of coffee shops into any Town Centre/primary shopping frontage has caused any harm to the retail function of that area.
29. I have had regard to the Inspector's concerns as expressed in the Epping Decision that the critical tipping point between retail and non-retail uses can only be identified retrospectively and possibly not for several years. The appellants do not agree with that assessment and their expert was unable to identify any harmful changes to the retail function of this part of Sheep Street, the Core Retail Area or the Town Centre as a result of the introduction of the coffee shop use at Nos. 40-42.
30. In any event the NPPF explains that where the policies of the Local Plan are out of date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. There is no evidence that persuades me that there are any adverse impacts arising from this coffee shop use.
31. The Council consider that the maintenance of the 81% of A1 uses has ensured that Skipton has retained its uniqueness and that is why Skipton has performed

better against national indicators than many other Town Centres. I do not have the evidence before me that supports that assertion.

32. It was also suggested that allowing this appeal would adversely impact on the lawful A3 uses in the Core Retail Area. Again there is no evidence to support this concern. In any event it is not the role of the planning system to control competition between the providers of various services and goods.

Blank Frontages

33. I know that having blank frontages within primary shopping frontages can reduce the vitality of the area. However, in this case the ground floor windows in the frontage allow passers by to see into the premises and note what is on sale. Further, customers can be seen within the premises enjoying their break from shopping or work etc and this creates interest for passers-by. I do not consider that the use creates any problems relating to blank frontages.

Loss of retail shop causes harm

34. The coffee shop use has not displaced the former optician use from the Town Centre – in fact that use has relocated to an area which probably has a greater number of people passing by than the premises at Nos. 40-42.
35. The Estates Gazette Database can be used to identify retailer requirements in Skipton. There are thirty nine retailers and businesses seeking representation in Skipton Town Centre. Thirty of these would fall within a Class A1 use. However, the majority require a larger floor space than that which can be provided at Nos. 40-42 and there is no evidence that the appellants' use has stopped an A1 user from occupying the premises.

Closure of Competitors

36. There is no evidence that the coffee shop use at Nos. 40-42 has resulted in the closure of any competitors in the Core Retail Area.

Commencement of Use without Planning Permission.

37. I have noted the concerns raised at the Hearing that the use proceeded before planning permission was granted. I do not condone that course of action but it is not a good reason to withhold consent especially when no harm has been shown to arise from the coffee shop use at Nos. 40-42.

Conclusions

38. For the reasons given above I conclude that the appeal should succeed on Ground (a) and planning permission will be granted.

Conditions

39. I have considered the conditions discussed at the Hearing in the light of the advice in Circular 11/95 "*The Use of Conditions in Planning Permissions*". The conditions were agreed by the appellants and the Council. In reaching my decision I have taken into account the particular circumstances of the way in which the use is currently carried on by the appellants. The conditions which are imposed relate to matters that are fundamental to this use and I consider that they are essential for the protection of the vitality of the Core Retail Area within the Town Centre. I consider it is reasonable and necessary to ensure that the use of the ground floor is limited to the use which is currently carried

on. This is because I consider that no harm is caused to the retail function of the Town Centre by this use. The Council should be able to consider any other use as this could harm the vitality of the Town Centre.

Tim Belcher

Inspector

