



Appeal Decision

Site visit made on 3 August 2020

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2020

Appeal Ref: APP/P1133/W/20/3251909
32 Queen Street, Newton Abbot TQ12 2EQ

- 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 Mr Nilesh Rathi, Krisha Commercial Investments Ltd against the decision of Teignbridge District Council.
 - The application Ref 20/00124/FUL, dated 21 January 2020, was refused by notice dated 8 April 2020.
 - The development proposed is for proposed change of use from A1 (retail) to A3 (restaurant).
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Decision

1. The appeal is allowed and planning permission is granted for the proposed change of use from A1 (retail) to A3 (restaurant) at 32 Queen Street, Newton Abbot TQ12 2EQ in accordance with the terms of the application, Ref 20/00124/FUL, dated 21 January 2020, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Ref 5326 AL(0)01; Drawing Ref 5326 AL(0)03; and Drawing Ref 5326 AL(0)04 Rev A.
 - 3) Deliveries and collection of goods and waste at the site shall not take place other than between 0700 to 2100 hours.
 - 4) The use hereby permitted shall not take place other than between the 1100 to 2300 hours.

Main Issue

2. The main issue is whether the proposed use would be acceptable with regards to development plan policies.

Reasons

3. The appeal site contains a retail unit with ancillary uses on the upper floors. It is situated within a row of terraced buildings in an area characterised by retail uses and defined by the Teignbridge Local Plan (2013-2033) (TLP) as a primary shopping frontage in Newton Abbot town centre. Neighbouring ground-floor units on either side of the site are an A3 restaurant/cafe and a D1 opticians, with a Sui Generis use and an A4 use either side of those units. The evidence before me indicates that the current percentage of A1 retail uses in Queen Street is approximately 55%.

4. Aiming to maintain the central function of core retail areas within town centres, TLP Policy EC7 sets out that development will not be permitted which would: lead to less than 70% of ground floor units to be in A1 retail use; create three or more adjoining ground floor units in uses other than A1 retail; or lead to the change of an existing active ground floor frontage to a non active use.
5. With proposed daily opening hours of 1100 to 2300 hours, the change of use from retail to a restaurant would not lead to a non-active ground floor use. However, the proposed development would lead to five adjoining non-retail ground floor units. Albeit by less than approximately 2%, the appeal proposal would also further reduce the percentage of ground floor retail units within the primary shopping frontage of Queen Street.
6. For the above reasons, I conclude that the proposed development would not be acceptable with regards to development plan policies. I therefore find that it conflicts with TLP Policies S1A, S1, S2, S21A, S13 and EC7. Amongst other aspects, these set out the Council's approach to sustainable development, seek to maintain the retail emphasis of Newton Abbot town centre and the essential retail character of primary shopping frontages, and require development to maintain and integrate with the character of the locality and be consistent with the provisions and policies of the local plan. These policies appear to be broadly consistent with the provisions in the National Planning Policy Framework (Framework) in relation to ensuring the vitality of town centres.
7. The Council allege that the proposed development would not comply with the Newton Abbot Neighbourhood Development Plan 2016-2033 (NANDP). However, it has not been put to me which of its policies the development is alleged to conflict with and I have little substantive evidence that the appeal proposal would conflict with it.

Other matters

8. The site contains a Grade II listed building and I am mindful of the requirement under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) for special regard to be had to the desirability of preserving the (listed) building or its setting or any features of special architectural or historic interest which it possesses. However, the Council does not allege that the development would harm the listed building. Based on the evidence before me, and having considered the development proposed and visited the site, I concur with that view. Accordingly, I find that the proposed development would preserve the listed building.

Planning Balance

9. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, there are a number of such considerations before me.
10. The submitted evidence indicates that TLP Policy S14 supports town centre enhancements in line with the Newton Abbot Regeneration Study which, it has been put to me, identified the need to encourage an evening economy. Covering town centre regeneration, NANDP Policy 8 sets out amongst other aspects that any proposal which seeks to stimulate an appropriate evening economy in the town centre is strongly encouraged. Promotion of evening

activities is also identified in a range of other Council documents which have been submitted with the appeal. This includes the: Newton Abbot Town Centre Masterplan Delivery Strategy Vision Document; the Economic Development Plan 2018-2023 Action Plan; and the Council's Ten Year Strategy (2016-2025). The latter of these identifies a series of overarching projects, including Going to Town, which seeks to invest in town centres and amongst other things supports proposals for evening leisure opportunities, and Investing in Prosperity, which seeks to create jobs and wealth.

11. I note that the supporting information submitted with the appeal sets out that the existing retail unit has been vacant since May 2018 and that despite extensive marketing the only interest expressed has been for A3/A4 uses. Although for a non-retail use, the development proposed would bring the unit back into use. With opening hours between 1100 to 2300 hours, it would also provide an active ground floor use during the daytime and evening.
12. On this basis, and in-line with the various objectives in the Framework, adopted development plan and other Council documents, the appeal proposal would make use of an under-utilised unit, stimulate an evening economy, create some employment and add activity to the site's frontage and the street. It would thereby support the vitality and viability of the town centre.
13. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 will come into force, amending the Town and Country Planning (Use Classes) Order 1987. At that point, the current A1 retail and A3 cafes/restaurants uses will fall under a new use class, Class E. Given that the Use Classes Order provides for changes of use within a single use class as not being taken to involve development, a change from retail to a restaurant will therefore soon no longer require planning permission. Consequently, although the Regulations are yet come into force and were not pertinent at the time of the Council's determination of the planning application, they are a material consideration given that the proposed change of use at the appeal site will soon not require planning permission.
14. Although I place significant weight on the TLP, in this instance I find that the above material considerations outweigh the conflict with the development plan that I have identified. This indicates that permission should be granted, notwithstanding that the development does not accord with the above listed policies of the TLP.

Conditions

15. I have had regard to the planning conditions that have been suggested by the main parties. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
16. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. However, I have not included reference to the other documents suggested by the Council because I have little evidence that indicates that they also need to be included in the condition.
17. A condition covering the timing of deliveries and collections is necessary with regards to the living conditions of adjoining occupiers. A condition relating to

the opening hours of the proposed use is also necessary for the same reason. However, I have amended the Council's wording because the hours suggested are not what were proposed and would not be reasonable given the use proposed.

18. Despite the consultation response from Environmental Health, the Council have neither alleged that the proposed development would result in unacceptable effects in relation to odour and noise nor suggested any conditions relating to the levels and management of noise and odour generated by the proposed use. I have little substantive evidence to indicate otherwise, particularly given the town centre location of the site and that its upper floors are not in domestic use. Consequently, the evidence before me does not indicate that such conditions would be necessary and reasonable. I have therefore declined to impose conditions relating to these matters.

Conclusion

19. For the above reasons, the appeal is allowed.

Tobias Gethin

INSPECTOR