



Appeal Decision

Site visit made on 25 April 2012

by John Papworth DipArch(Glos) RIBA

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

Decision date: 30 May 2012

Appeal Ref: APP/T1410/A/12/2170342
78 Terminus Road, Eastbourne BN21 3LX

- 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 against the decision of Eastbourne Borough Council.
 - The application Ref EB/2011/0733(FP), dated 18 November 2011, was refused by notice dated 13 January 2012.
 - The development proposed is change of use of ground floor from Class A1 (Retail) to A2 (Financial and Professional Services).
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Decision

1. I allow the appeal and grant planning permission for change of use of ground floor from Class A1 (Retail) to A2 (Financial and Professional Services) at 78 Terminus Road, Eastbourne BN21 3LX in accordance with the terms of the application, Ref EB/2011/0733(FP), dated 18 November 2011, subject to the following conditions;
 - 1) The use hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The premises shall be used for the purposes of the business trading as 'The Money Shop' as set out in the application, and for no other purpose (including any other purpose in 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).

Application for Costs

2. An application for costs was made by Instant Cash Loans Ltd against Eastbourne Borough Council. This application is the subject of a separate Decision.

Main Issue

3. This is the effect of the proposed change of use on the vitality and viability of Eastbourne Town Centre

Reasons

4. Local Plan Policy TC6 concerns the mix of uses within both primary shopping areas and the secondary shopping areas and the appeal premises lie within the secondary shopping area. The policy is permissive in both areas regarding change of use from A1 to A2 (and A3) subject to considerations of; a) the

location and prominence of the premises within the frontage; b) the floorspace and frontage of the premises; c) the number, distribution and proximity of other ground floor premises in use as, or with planning permission, for class A2 and A3 uses; d) the particular nature and character of the use proposed, including the level of activity associated with it; and e) whether the proposed use on its own, or cumulatively with other such uses in the area, would give rise to unacceptable noise or disturbance, including disorder.

5. The supporting text states that in interpreting Policy TC6 the Council will have regard to the proportion of non-A1 frontages in the specified areas as set out in an accompanying table. This identifies the frontage 46 – 94 Terminus Road as Secondary Shopping Area 9 where no more than 35% should be non-A1 uses as it is considered that this area is a transitional area between the primary retail area and other secondary areas and should support a reasonable proportion of A1 uses. Other secondary areas are permitted the same or higher, up to 75% having regard to the established balance of A1 to non-A1 uses. The corporate aims set out in the heading to the Town Centre policy section includes the aim to develop a strong and sustainable local economy, encouraging business and investment into Eastbourne, and one of the corporate objectives is to develop a vibrant and successful town centre. Policy objectives include the maintenance and encouragement of the development of retail uses so that the town centre remains a major shopping destination and the encouragement and development of diversity of social and leisure facilities in the town centre to augment the town centre role as a primary destination.
6. There appears to be some disagreement over the result of the proposals, with an internal response to the Council citing this to be 56.63% whilst the appellant says 46% by frontage length, the measure required under the policy table, and 35% by unit. There is reasonable agreement over the baseline figure of about 40%. The effect of all vacant units being in A1 use is stated by the appellant to be a figure of 59%, indicating 41% in non-A1 uses. Be that as it may, the policy wording contains the various matters set out previously and each will now be considered;-
 - *a) the location and prominence of the premises within the frontage;* The frontage contains some prominent wider units, not all in A1 use and is visually contained by the prominence of the bank on the east end and the public house on the west. The appeal unit is among a number of less prominent units and is located well within the group as opposed to being at the corner plots. The character of this area is presently adversely affected by the noise, fumes and movement at the bus stops.
 - *B) the floorspace and frontage of the premises;* both these aspects are relatively small but in line with many in the group. The frontage is among the smaller units.
 - *c) the number, distribution and proximity of other ground floor premises in use as, or with planning permission, for class A2 and A3 uses;* The immediate group has, in addition to the prominent bank and public house at the ends, a large and prominent bar and cafe, and two narrower banks or building societies with their traditional frontage and display. The numbers and hence percentage have been addressed, but there is no harmful proximity of these uses at present and they are distributed reasonably along the frontage. The appeal proposal would result in two together as the neighbouring unit is a bank. However, two consecutive non-A1 frontages at

ground floor level is permitted in the primary frontage according to the supporting text, so this proximity/distribution within a secondary frontage is unlikely to be harmful.

- *d) the particular nature and character of the use proposed, including the level of activity associated with it;* It appears that this type of use is not yet common in the town centre as a whole, and there is a view expressed in other appeal decisions that the nature of the use could be beneficial to footfall in the vicinity and visitor numbers in the wider town centre. The operator provides a service that could assist in providing cash funds for shopping soon after the transaction and there is evidence of a higher number of people visiting who may still look to make use of other town centre services and shops having made the trip. The unit would have a character and appearance similar to a shop, as opposed to the solid, less inviting facade of the nearby traditional A2 use and an acceptable level of activity during main shopping hours.
 - *e) whether the proposed use on its own, or cumulatively with other such uses in the area, would give rise to unacceptable noise or disturbance, including disorder.* There is no evidence of this matter being relevant.
7. Turning now to the aims and objectives stated at the head of the policy section, these appear broadly consistent with the newly published National Planning Policy Framework, which replaced Planning Policy Statement 6 "*Planning for Town Centres*" with policies in Section 2. The first statement in this section concerns the need for positive policies that promote competitive town centre environments. Councils should seek to ensure the vitality of town centres and a clear definition of primary and secondary frontages in designated centres with policies which make clear which uses will be permitted. The required definition could well differentiate the two types of frontage with regard to the mix of retail and non-retail uses.
8. Another matter raised in correspondence to the Council is regarding the possible expansion of the Arndale Centre and the need to retain spare capacity for retail uses for the build period. However, here it is necessary to consider also the amount of vacant and short-let premises as set out by the appellant and seen on the site inspection. Some of the vacant premises are prominent or clustered and present a negative appearance. Charity shops in the vicinity tend to be the better known, more professionally presented ones, and do not appear as negative features. Their presence may well be an indicator of a lack of demand for retail space, but they serve a purpose ever bit as much as the stated ones of the appeal proposal and add weight to the acceptability of diversity in secondary frontages. In all, there appears to be a ready supply of premises to take account of any short term need regarding new build.
9. The overall health of the shopping centre appears good, having regard to the town's seaside economy and the general economic situation. There are more peripheral areas away from the appeal frontage that are showing signs of stress and the appellant draws attention in the photographic record to properties along Langney Road and Seaside Road, and these were visited. It is the fact that the appeal premises are in a beneficial retail use, but this is stated to be not continuing and unsuccessful efforts have been made to market the premises over a reasonable period. Investment in the premises would be welcome and the stated increase in employment counts in favour too, as does

the introduction of a new service not well provided for in the town centre and one that could complement the retail offer and increase consumer numbers.

10. In conclusion, the proposal would bring about an increase in non-A1 uses further above the threshold set out in the table to the 2003 Local Plan policy. However, this strict percentage approach should be read along with the permissive policy wording which sets out the considerations for a balanced decision. In this case that balance lies in the grant of permission having regard to the circumstances of the location, the neighbouring uses and the intended use, and the change of use would not be likely to adversely affect the vitality and viability of Eastbourne town centre.

Conditions

11. The appellant suggested a condition to ensure that the use of the premises was as described in the application to be carried on by this appellant. The appeal decision places significant weight on the circumstances of this operation as distinct from the generality of the A2 use class, and as provided for in the criteria of the Local Plan policy. To seek to restrict the detail of that use as proposed would therefore be a reasonable role for a condition and would satisfy the other tests in Circular 11/95 "*The Use of Conditions in Planning Permissions*" of being necessary, relevant to planning, relevant to the development to be permitted, enforceable and precise.

Other Considerations

12. Opportunity was provided for the parties to comment on the newly published National Planning Policy Framework and it is noted that the Council introduced additional information and detailed data. The Appellant was given the opportunity to comment on this information. However, having regard to the reasons previously stated on the nature of the proposals and the use of conditions to ensure that harmful A2 uses are not able to replace it, the information supplied does not alter the conclusions of this decision.

Conclusions

13. The detail of the use proposed is of a retail style of operation and a retail appearance and this would complement the use of the shopping centre by attracting footfall and spending. Conditions can be used to ensure that the permission is limited to this style of use. Whilst there would be a further breach of the 35% figure the proposal accords with the criteria of Policy TC6. The aims of the policy and the intent of the policy section would not be undermined and the vitality and viability of the town centre would not be jeopardised. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR