



Appeal Decision

Site visit made on 4 April 2014

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

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

Decision date: 24 April 2014

Appeal Ref: APP/Q1445/A/13/2206982

20-22 Market Street and 9 East Street Arcade, Brighton BN1 1HH

- 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 the Gondola Group against the decision of Brighton & Hove City Council.
 - The application, Ref. BH2013/01279, dated 22 April 2013, was refused by notice dated 25 June 2013.
 - The development proposed is 'change of use to restaurant; external plant'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. In determining the appeal I have had regard to Government planning guidance published on 6 March 2014, but in the light of the facts in this case this does not alter my conclusions.

Main Issue

3. The main issue is the effect of the proposed change of use on the vitality and viability of the East Street / Regents shopping arcade and the wider regional shopping centre.

Reasons

4. In its refusal of the appeal application the Council considers that the proposed change of use would be contrary to Policy SR4 of the Brighton and Hove Local Plan 2005 (the 'Local Plan'). This policy permits a loss of retail uses outside prime frontages provided that a healthy balance and mix of uses, including retail, is retained and concentrations of uses other than retail are avoided.
 5. As I understand it, the presumption behind Local Plan Policy SR4 is that too many non-retail uses in specific parts of the 'outside prime frontage area' would be unhealthy because they would have the potential to discourage shoppers, especially during the daytime. Moreover, in the absence of a residual critical mass of retail uses it would be difficult, if not impossible, for remaining shops to survive. The Council has defined the 'outside prime frontage area' relevant to this appeal as being 'The Lanes' and their immediate environs to the rear of the
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prime frontage In North Street and bounded by Ship Street to the west, Prince Albert Street to the south and East Street to the east.

6. The appellant's views notwithstanding, from my visit to the Lanes and adjoining streets I consider that the 'stand and observe uses within visible distance' advocated by the Council is as good a method as any for determining a sub-area for the assessment of a concentration of non-retail uses. In forming this view I have had regard to the area's distinctive character and the complex street pattern, which together encourage city centre visitors to wander and explore the locality for their shopping or leisure experiences. Applying this method in this case I saw that in the vicinity of the appeal premises, this would essentially encompass Nos. 40-45 on the west side of Market Street and Nos. 18-24 on the east, which includes two of the premises (Nos. 20 & 22) in this appeal.
7. The Council has quantified the non-retail uses already within this area as eight (two pubs, five restaurants and a Costa operating mainly as an A3 use) and points out that if the appeal is allowed only three retail uses would remain. Bearing this in mind I consider that there is already a concentration of non-retail uses in this part of the 'outside prime frontage area'. Therefore whilst I accept the appeal scheme would not in itself cause a concentration of such uses, it would arithmetically increase and thereby exacerbate one that already exists. Policy SR4 does not define 'concentration' and rather than attempting a definition I see the decision-maker's role as being to exercise a combination of a planning judgement and common sense to assess whether the description can reasonably be used in any particular case.
8. In terms of the effect of the proposal I acknowledge that daytime patrons of A3 and A4 uses may also use retail outlets and that some, but by no means all, A3 units enjoy a large proportion of their trade within normal shopping hours rather than evenings. However in an area of the city where the character is one of a variety of relatively small independent retail outlets suitable for comparison shopping and browsing, I consider that the retention of a mix of uses is essential to its character, vitality and viability.
9. It is for this reason that I give only limited weight to the results of the appellant's Brighton / Oxford / Cambridge survey, as it does not embrace the cumulative effect of a visitor's individual visits to different shops and their conversion to purchases. This would occur much less frequently in respect of patronage of A3 units, albeit with the A3 element of coffee shops a possible but still limited exception.
10. The appeal application includes 9 East Street Arcade and this is to some extent different because the 'stand and observe' test clearly cannot apply. However the loss of any retail unit, even of modest size, inside the arcade would be likely to have at least some effect on its attraction for shoppers and could thereby lead to the reduction of viability of other units. This would reduce the size and variety of the retail offer in this part the city centre.
11. I have noted that the floorspace has an extant consent for an A2 use, but even this, if implemented, would be better than a blank frontage. I have also had regard to an amended plan in the appeal scheme which introduces a dining area into the East Street Arcade. This is undoubtedly an improvement to the

proposal, but it does not go to the heart of the main issue, namely the principle of a loss of retail in this location that would arise from the scheme as a whole.

12. The National Planning Policy Framework 2012 ('the Framework') is a significant material consideration in this appeal, particularly as the Local Plan dates from 2005. However I can find nothing in Section 2 of the Framework 'Ensuring the vitality of town centres', including paragraph 23 referred to for the appellant, that undermines the objectives of Local Plan Policy SR4.
13. I am aware that the appellant considers this to be an outdated and unhelpful policy, out of touch with the Government's current direction of travel on shopping centre policy. However the appeal proposal is outside the extent of the increased flexibility and I consider that with this scheme and the location of the premises in this part of the city centre, Policy SR4 remains pertinent. I can therefore find no fault with the Council's interpretation of the policy or indeed with its overall approach.
14. I accept that the development on its own would not change the rest of the 'outside prime frontage area' from a 'healthy' to the polar opposite of an 'unhealthy' balance and mix of uses. However, as the Council has argued, the cumulative effect of non-retail uses should be considered when assessing harm to the vitality and viability of the shopping centre and the incremental effect in this case might reasonably be diagnosed as to make the balance 'less healthy'. Through allowing concentrations of non-retail uses, a momentum can be started or reinforced which would then be difficult to resist.
15. Accordingly on the main issue I conclude for the reasons set out that the proposed change of use would have an unacceptable effect on the vitality and viability of the East Street / Regents shopping arcade and the wider regional shopping centre in conflict with Local Plan SR4 and the Framework.

Other Matter

16. The appeal premises are located in the Old Town Conservation Area. Local Plan Policy HE6 states, amongst other matters, that proposals that are likely to have an adverse impact on the character or appearance of a conservation area will not be permitted. Because I have concluded that the reduction in retail units and concentration of non-retail units in this part of the city centre would have an adverse effect on the vitality and viability of the East Street / Regents shopping arcade and the wider regional shopping centre, I also conclude that it would have a similar effect on the character of the conservation area.
17. The conservation area is also a designated heritage asset as defined in Annex 2 of the Framework. The proposal would cause harm to the significance of the asset, but as it relates to a change of use of a small part and involves little or no physical alteration, this would be 'less than substantial'. I have therefore assessed whether any public benefits of the proposal, including securing the current optimum viable use of the three retail units, would outweigh my decision on the main issue. However I consider that the exacerbation of the existing concentration of non-retail uses in the Market Street area remains a sound and sufficient reason for the dismissal of the appeal.

Conclusion

18. For the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Martin Andrews

INSPECTOR