



Planning Appeals
Commission

Appeal Decision

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Appeal Reference: 2015/A0129
Appeal by: Kelvin Properties Ltd
Subject of Appeal: The refusal of full planning permission
Proposed Development: Relocation of an approved retail showroom (including amended elevations) in substitution for planning permission C/2009/0824/F, along with general site works
Location: Land adjacent to Unit 10 (Pets at Home), Riverside Regional Centre, Castleroe Road, Coleraine
Planning Authority: Causeway Coast and Glens Borough Council
Application Reference: C/2014/0206/F
Procedure: Informal Hearing on 28 January 2016
Decision by: Commissioner McShane, dated 6 June 2016

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether:
 - the proposal is in accordance with the local development plan;
 - the impact of the proposal on the vitality and viability of Coleraine town centre would be acceptable both in its own right and in terms of the precedent it would create; and
 - there is a need for the development at this location.
3. The appeal proposal seeks planning permission to erect a new retail showroom adjacent to Pets at Home, Riverside Centre, Coleraine. The proposal is described as a relocation and substitution of a previous planning approval for a retail showroom on a site located north of Burger King, Riverside Centre. The Appellant proposes that permission C/2009/0824, which was granted full planning permission on 12 May 2010 and which had no restriction placed on the form of retailing to be carried out from it, be the subject of an unopposed revocation order, issued by the Planning Authority, with no compensation claimed by him.
4. The Appellant, in seeking to rely on the revocation of the May 2010 approval, argues that that planning permission remains extant based upon a number of access and other site works that it is claimed took place on 6 May 2015. The Planning Authority witness stated that he was not in a position to confirm the date the works took place and while recognising that it is a matter of judgement as to whether a material start has been made to a development he pointed out that the

proper channel for establishing such a matter was for the Appellant to apply for a Certificate of Lawful Development (LDC).

5. There is a dispute between the parties as to whether the claimed works took place prior to 11 May 2015 and as to whether the nature of those works amounts to a commencement of development. This set of circumstances is distinguishable from appeal decision 2004/A420. In that appeal the date of commencement of works and their extent were not disputed by the Department. In any event, the settled Commission position is that there is, as argued by the Planning Authority, a legal process introduced by statute that should be followed. Sections 169 – 174 of the 2011 Act provide the relevant legislation in respect of LDCs; replacing Articles 83A-F of 1991 Order as introduced by the Planning (Amendment) (NI) Order 2003 (no.430). The statutory scheme involves the initial determination of lawful use by application to the planning authority for the issue of a certificate. If the application is refused, the right of appeal to the Commission is provided for. In such circumstances, it would not be appropriate to sidestep the LDC process. Consequently, no weight can be attached to the argument that the appeal proposal can be treated as a substitute for an extant permission and the assessment of whether there is a justifiable basis to allow an unrestricted retail unit on the appeal site must be made in that context.
6. The appeal must be determined in accordance with the local development plan, so far as material to the application, unless any other material considerations indicate otherwise. The local development plan in this instance is the Northern Area Plan (NAP), which was adopted in 2015.
7. The NAP states that the Riverside Centre, which is unzoned, has developed with a particular commercial role accommodating a range of retailing commonly found in out-of-town centre sites. It goes on to state that it will seek to ensure that any future development there is complementary to, rather than competing with, the town centres, and does not adversely affect the vitality and viability of the latter. The NAP's focus is on maintaining a vibrant, compact, multi-functional town centre and to this end a town centre boundary for Coleraine is defined in which "normally all retail development will be required to locate".
8. The appeal site is extensive measuring approximately 7 hectares. The 464sqm retail unit proposed would be located adjacent to Pets at Home and would use existing car parking. There is no specific end user in mind, however it is proposed that the unit could include any of the following: a pharmacy; local convenience store; dry cleaners; hire shop; barbers/hairdressers; travel agent; baby products/equipment; outdoor leisure goods or bed retailer. These are unrestricted Class A1 town centre retail uses. Any of these uses would compete with businesses in the town centre and in that sense would not be complementary to the town centre.
9. It was estimated that the likely impact of the proposal on Coleraine town centre, assuming a worst case scenario that the diversion by the proposal from the town centre was 100%, would be 6%. This was not disputed. Similarly, there was no dispute that impacts on town centres below 10%-12% are considered acceptable.
10. Notwithstanding this, the Planning Authority is concerned about precedent. If the appeal proposal were to be allowed, the Planning Authority would find it difficult to

resist future applications for small scale unrestricted Class A1, retail units at the Riverside Centre. There was no persuasive argument as to how the precedent would be limited. Therefore, allowing the appeal would create an undesirable precedent and such a self evident precedent would pose an unacceptable threat to the vitality and viability of Coleraine town centre. Accordingly, the appeal proposal is not in accordance with the NAP.

11. The Strategic Planning Policy Statement for NI (SPPS), published in September 2015, provides strategic subject planning policy for a wide range of planning matters, including town centres and retailing. It cancelled Planning Policy Statement 5: Retailing and Town Centres and Planning Policy Statement 1: General Principles.
12. The SPPS states that it is important that planning supports the role of town centres and contributes to their success. The premise that underpins the regional strategic retail objectives and policy, which must be taken into account in the preparation of LDPs and in the determination of planning applications, is the *town centres first approach* (my emphasis). Notwithstanding the Planning Authority's reference to Paragraph 6.279, which is primarily about retailing in the countryside, the concern of the Planning Authority is that the appeal development would have an adverse impact on Coleraine town centre, given its proposed size, unrestricted Class A1 use and out of centre location. It has already been concluded that the proposal is not in accordance with the NAP as the unacceptable precedent that it would create would pose a threat to the vitality and viability of the town centre. It therefore follows that the proposal is completely at variance with the town centres first approach of the SPSS.
13. The NAP, notwithstanding its adoption in September 2015 and its end date of 2016, has not been prepared with regard to the new regional policies in the SPPS. Accordingly, it is not an up-to-date plan. Therefore, as required by Paragraph 6.282 of the SPPS, an assessment of need must be prepared. There is no conflict between this paragraph and Paragraph 6.283, which requires applications for retail developments above a threshold of 1000sqm, which are not proposed in town centre location and are not in accordance with the LDP, to undertake a full assessment of retail impact *as well as* (my emphasis) need.
14. The needs assessment provided by the Appellant explained his need to locate a retail unit in a commercially attractive part of the Riverside Centre; but this only explains how the appeal development would benefit the developer. He pointed to the need to provide a small scale retail unit to meet the needs of the local resident population; however, the Appellant has not specified what the specific end use is, explained why it is needed at this particular location or provided evidence on the needs of the local population. The construction of the retail unit would generate employment; however, this would also be the case if it were to be built within the town centre or at an edge of centre location. The needs assessment provided is insufficiently robust and does not outweigh the threat posed to the vitality and viability of Coleraine town centre of allowing a small scale, unrestricted Class A1 retail use outside the town centre and the undesirable precedent it would create.
14. The appeal proposal is not in accordance with the NAP or regional retail policy within the SPPS. The Planning Authority has sustained its objection to the proposal and the appeal must fail.

The decision is based on the following drawings:-

- APP Drawing SL01 (DOE Drawing No 01): Site Location Map (Scale 1:2500)
- APP Drawing SK02 (DOE Drawing No.03 (REV A): Proposed Site Plan (Scale 1:500)
- APP Drawing SK04 (DOE Drawing No.05): Proposed Plan (Scale 1:100)
- APP Drawing SK06 (DOE Drawing No.07): Proposed Elevations (Scale 1:100)

COMMISSIONER DMCSHANE

List of Appearances

Planning Authority:-
Mr M Wilson Causeway Coast and Glens Borough Council

Appellant(s):-
Mr W Orbinson QC instructed by Strategic Planning
Mr M Kelly Strategic Planning

List of Documents

Causeway Coast and Glens Borough Council:
 'A' Planning Authority's Statement of Case and Appendices

Strategic Planning:
 'B' Appellant's Statement of Case and Appendices

Documents Submitted at Hearing
 'PAC1' Email correspondence, dated 12 May 2015 and attached photographs
 'PAC2' Letter from NIE, dated 7 May 2015
 'PAC3' PAC Decision 2014/A420
 'PAC4' Extract from Planning Order
 'PAC5' Letter from Strategic Planning, dated 25 January 2016
 'PAC6' Letter from Bruce Shaw, dated 29 April 2016