

## PLANNING APPEAL DECISION

**Lead Officer:** Tony Pomfret – Development Control Manager

**To inform Members of a recent appeal decision at 12 King Street, Whitehaven**

**Recommendation:** That the decision be noted in the context of the Councils local plan policies and in relation to performance monitoring.

**Resource Implications:** Nil

### 1.0 SUPPORTING INFORMATION

1.1 Planning permission for the change of use of the ground floor of a premises on King Street from retail (Class A1) to Financial Services (Class A2) was refused in July this year on the following grounds:-

" The loss of a retail unit on this Primary Frontage would be contrary to Policy TCN 11 of the adopted Copeland Local Plan 2001-2016 which seeks to protect the designated primary frontages from non retail uses in order to retain the lively shopping character of this part of Whitehaven Town Centre"

1.2 A recent appeal against this decision has been DISMISSED. The Inspector concurred with the Councils view that by allowing a further non retail use on King Street it would fail to protect the continuity of retailing within King Street thereby threatening the viability and vitality of the area. Although he noted that the premises have not had a permanent retail occupier for several years the unit has been occupied on a temporary basis during this period and the possibility remains that a permanent retailer may come forward in the future. He considered that peoples day to day needs for A2 financial services are currently provided for in the wider town centre at the moment with several present in nearby streets. He concluded that the Council is correct in seeking to prevent a deficiency of retail uses on King Street.

1.3 A copy of the Inspectors appeal decision is attached.

**Contact Officer:** Nick Hayhurst – Senior Planning Officer

**Background Papers:** Planning application file ref 4/09/2240/0F1



# Appeal Decision

Site visit made on 27 October 2009

by **Richard McCoy** BSc, MSc, DipTP,  
MRTPI, IHBC

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

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Decision date:  
9 December 2009

**Appeal Ref: APP/Z0923/A/09/2111358**

**12 King Street, Whitehaven, CA28 7LA**

- 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 Tantias Properties Ltd against the decision of Copeland Borough Council.
- The application Ref 4/09/2240/0, dated 26 May 2009, was refused by notice dated 23 July 2009.
- The development proposed is the change of use from Retail (Class A1) to Class 2 Financial Services.

## Procedural matter

1. The appeal site was granted planning permission at appeal in 1986, for change of use to an amusement centre and snack bar. However the parties agree that following the granting of planning permission ref. 4/01/0090, in 2001, the present use of the ground floor of the appeal site premises is A1 (Retail) and I have dealt with the appeal on that basis.

## Decision

2. I dismiss the appeal.

## Main issue

3. I consider the main issue to be the effect of the proposal on the vitality and viability of this part of Whitehaven's town centre.

## Reasons

4. The appeal site is a small, vacant retail premises located on a pedestrianised town centre street, in the Whitehaven Conservation Area. It stands within a Primary Frontage as designated by Policy TCN 11 of the Copeland Local Plan (LP) 2001 - 2016, adopted June 2006 which seeks a continuous retail frontage with only Class A1 permitted in ground floor premises. In addition, LP Policies TCN 1, TCN 9 and TCN 10 seek to protect and promote the vitality and viability of existing town centres, promote and protect shopping, commercial and tourism-based activities in the Borough and allow non-retail proposals that are not detrimental to the main shopping function of the town centre.
5. The LP post dates the introduction of Planning Policy Statement 6: *Planning for Town Centres*. I consider that the LP is consistent with the advice of PPS 6 which in paragraph 2.58 states that local authorities should, where appropriate, seek to protect existing facilities which provide for people's day-to-day needs

and seek to remedy deficiencies in local shopping and other facilities. The LP, to my mind, also accords with Policy W5 of the North West of England Plan Regional Spatial Strategy to 2021, approved September 2008, which lists Whitehaven as one of the settlements where comparison retail facilities should be enhanced and encouraged to ensure a sustainable distribution of high quality retail facilities.

6. King Street is bisected by Lowther Street into 2 sections. I note the appellant's argument, based on a pedestrian count and the greater number of vacant premises, that the northern section (where the appeal site is located) is less vital and secondary to the southern section. Nevertheless, I consider the whole of King Street to be a very attractive shopping area that forms the heart of Whitehaven Shopping Centre and functions as a single shopping entity.
7. The predominant use on King Street, particularly in the northern section, is retail. PPS 6 advises that the impact of proposed changes should be considered with regard to trade/turnover and the vitality and viability of existing centres. It seems to me that people's day-to-day needs for A2 financial services are provided for in the wider town centre at the moment with several present in nearby streets and the Council is correct in seeking to prevent a deficiency of A1 use on King Street.
8. By designating King Street a Primary Frontage, the Council has demonstrated a commitment to protect its retail function while adopting a more flexible approach to uses elsewhere in the town centre. To allow the proposed change to A2, notwithstanding the current level of vacancies including the appeal site itself, would erode King Street's retailing base. It was clear from my site visit that the retail offer of King Street has been diluted by some changes to non A1 uses which, if allowed to increase, would begin to threaten the viability and vitality of the area. Therefore, in my opinion, the proposal would fail to protect the continuity of retailing within King Street thereby threatening the viability and vitality of the area contrary to LP Policies TCN 1, TCN 9, TCN 10 and TCN 11.
9. In reaching my decision I have taken account of the appellant's claim that the premises have not had a permanent retail occupier since returning to A1 use and the letter from Carigiet Cowen, dated 13 July 2009, describing the marketing position of the premises over the last 3 years or so. Be that as it may, it does not suggest that the premises have been vacant throughout that time nor that it would not be possible for a permanent retail occupier to come forward in the future.
10. I have also had regard to the West Cumbria Retail Study Final Report, April 2009 prepared by WYG Planning & Design and the Policies of the emerging Copeland Local Development Framework (LDF). Under Whitehaven, the study raises concerns regarding vacancy rates but sees the historic environment as an asset on which to build a distinctive shopping destination. It recommends, in respect of convenience and comparison shopping, that new facilities should be encouraged of a scale consistent with the current role and function of the town centre and which assist in maintaining its vitality and viability. I do not find the LP shopping policies to inconsistent with this goal. In respect of the LDF, this is at an early stage of preparation and is of limited weight.

11. In addition, the appeal site is situated within the Whitehaven Conservation Area which is characterised by a planned settlement of Georgian buildings. I consider that the proposal would have a minimal effect on the character or appearance of the conservation area as no changes are proposed to either the exterior of the building or the intensity of the use. As such it does not involve changes to the physical appearance of the area and its overall impact would be neutral.
12. I note that a previous appeal decision from 1986, ref APP/J0920/A/85/031192, is referred to by the appellant which relates to the appeal site. However, I am not aware of the particular circumstances of this case or the detailed arguments about town centre viability and vitality considered by the Inspector, although I note the appeal pre dates, by some time, PPS 6 and the adopted LP. In any event, I have determined the current appeal on its own planning merits in the light of the evidence before me.
13. For the reasons given above I conclude that the appeal should be dismissed.

*Richard McCoy*

INSPECTOR