
Appeal Decision

Site visit made on 24 September 2014

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 30 September 2014

Appeal Ref: APP/D0121/A/14/2218749

Cadbury Garden Centre, Smallway, Congresbury, Bristol, BS49 5AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr S Masters against the decision of North Somerset Council.
- The application Ref: 13/P/1741/F, dated 13 September 2013, was refused by notice dated 15 November 2013.
- The application sought planning permission for the variation of condition 4 attached to planning permission 09/P/2150/F to allow for the sale of memory cards for cameras and camping equipment without complying with a condition attached to planning permission Ref: 13/P/0237/F, dated 24 May 2013.
- The condition in dispute is No 4 which states that: The retailing of products and the offering of services from the development hereby authorised shall be limited by the terms of the Schedules numbered 1-4 below and no other retailing of other goods, products or services shall take place other than as authorised below. Products or services listed in the First Schedule may be retailed from the development hereby authorised. Products in the Second Schedule may only be retailed from the development hereby authorised within a floor area not exceeding 1,200 square metres at any one time. Products listed in the Third Schedule may only be retailed from the development hereby authorised within a floor area not exceeding the limits in area for each item shown in that schedule, and subject thereto the development hereby authorised shall not be used for the retail purposes or sale of products listed in the Fourth Schedule.

Decision

1. The appeal is allowed. Planning permission is granted for the variation of condition 4 of planning permission Ref: 13/P/0237/F, as set out below, subject to all of the other conditions of that permission which are still subsisting and capable of still taking effect:

Delete "13.Gardening clothes" under THE FIRST SCHEDULE;

Delete "10. Outdoor clothes" under THE SECOND SCHEDULE;

Add under THE THIRD SCHEDULE "6. Ladies, men's and children's clothing and footwear limited to 815 square metres";

Delete "3. Ladies, men's and children's fashion clothing and fashion shoes" under THE FOURTH SCHEDULE.

Preliminary Matter

2. Condition 4, which controls the range of goods that may be sold from the garden centre, derives initially from a planning condition imposed at appeal when planning permission was granted for the demolition and replacement of existing buildings, new buildings and extensions at the garden centre in 1998 (Appeal Ref: T/APP/D0121/A/98/291702/P2). That condition has it seems been 'rolled forward' onto other planning permissions since then that have been granted to allow other products to be sold. Most recently planning permission was granted in 2013 (Ref: 13/P/0237/F) to allow for the sale of camera memory cards and camping equipment. Condition 4 of planning permission Ref: 13/P/0237/F is the most up to date version of the original condition and it is this condition that the appellant has applied to vary again.
3. The condition refers to four schedules of products. In summary Schedule 1 allows unlimited sales of the listed products, including gardening clothes. Schedule 2 allows for the sale of the listed goods, including outdoor clothes, within a total floor area of no more than 1,200 square metres. Schedule 3 permits the sale of the listed goods within a defined floor area for each item within that schedule. Schedule 4 lists goods that may not be sold, including ladies, men's and children's fashion clothing and fashion shoes. It is proposed to remove all existing references to clothing and footwear from Schedules 1, 2 and 4 and to add a new reference to clothing and footwear within Schedule 3. The clothing and footwear sales area would be restricted to 815 square metres.

Main Issue

4. The main issue is the effect of the proposal on the vitality and viability of existing town and local shopping centres in the area.

Reasons

5. I agree with the appellant that although condition 4 seeks to prevent the sale of fashion clothing, the phrase "outdoor clothing" in schedule 2 is not precise. Outdoor clothing could literally mean clothes worn outside. Furthermore, the range and styles of outdoor clothes meant for use in outdoor pursuits such as walking and hiking is very fashionable. The wide variety of clothes currently for sale at the garden centre is already provided by several well-known fashion retailers. It is noted that the Council has questioned whether such clothes fall within the ambit of Schedule 4 and so they should be prohibited. However, there is no evidence that the Council has explored the expediency of enforcing compliance with the condition. It is also noted that the Council's Compliance and Monitoring Officer recognises that there are problems with the wording of the condition. It seems to me that there is already considerable scope to vary the ranges of clothes sold.
6. The sale of outdoor clothes sales falls within Schedule 2 wherein there is a 1,200 square metre floorspace restriction. However, there would be nothing to prevent the centre from stopping sales of the other products specified in Schedule 2 and thus utilising the full 1,200 square metres for outdoor clothes sales. Furthermore, sales of gardening clothes are currently not restricted to a floor area and could be expanded. This proposal would limit total clothes sales to 815 square metres which equates to the current total clothes floorspace.

7. Moreover, the garden centre has extensive retail space which would not be extended by this proposal. The main building is around 12,000 square metres and the external sales area covers about 7,000 square metres. There is also a very large parking area. Although the schedules of products are largely garden and leisure based, the range of such goods that can be sold is expansive. Included in the second schedule are many home ware items such as stationery, picture frames, candles, ceramics, books and toys. There are also sales of pets, pet accessories and there is a café.
8. Set against the above background, restricting clothes sales to 815 square metres means that, across the total retail floorspace available, the great majority would still be dedicated to gardening and leisure products. There would not be any noticeable effect on the existing retail function of the garden centre as a whole and its current draw of customers from across a wide geographical area would not change. There would be no significant impact on current travel patterns and the modes by which that travel is undertaken.
9. The Council has referred to how this proposal if approved could set a precedent thus making it difficult to resist similar proposals from other garden centre operators. However, there is no evidence that other centres have tried to change the range of products on offer that could lead to some cumulative retail impact. Also, the precedent concern only has weight if it would cause harm. In this case, there is very little basis to find that the proposed variation to condition 4 would have any serious consequential adverse impact on the vitality and viability of existing town and local shopping centres in the area. As such the precedent matter has very little weight and in any event each case should be considered on its individual merits.
10. All other matters have been considered but none outweigh the above findings. It is therefore concluded that the appeal proposal would not conflict with the aims of policy CS21 from the North Somerset Core Strategy and policy RT/7 from the North Somerset Replacement Local Plan which seek to safeguard existing retail centres and shops. Accordingly the appeal should succeed.

Gareth Symons

INSPECTOR