

# BIRMINGHAM CITY COUNCIL

## REPORT OF THE DIRECTOR OF PLANNING AND ARCHITECTURE

PLANNING COMMITTEE

22 September 1994

### BIRMINGHAM CENTRAL AREA: POLICY TOWARDS GROUND FLOOR USES IN THE RETAIL CORE

1. Purpose of Report

- 1.1 To update Committee on the outcome of the public consultation exercise in relation to control of non-retail uses at ground floor level within Birmingham Central Area and to seek approval to the proposed policies and to their adoption as Supplementary Planning Guidance.

2. Background

- 2.1 In February 1994 your Committee resolved that a consultation exercise should be undertaken to assess public views on the proposed policy for control of non-retail uses in the Central Area. The proposed policy is as follows:

Policy for the control of A2 uses in the City Centre

- 1) Planning applications for the change of use of retail unit to A2 (Financial and Professional Services) uses at ground floor level will not normally be permitted within the following areas:-

1-71 New Street (north side)

80-147 New Street (south side)

20-58 High Street (east side)

63-88 High Street (west side)

23-36 Union Street (south side)

1-20 Union Street (north side)

2-80 Corporation Street (east side)

1-99 Corporation Street (west side)

The Pavillions Shopping Centre

- 2) Where planning permission is granted for the change of use of a retail unit to A3 (Food and Drink) use within the above area, this will be subject to a condition removing the normal permitted development right for a further change of use to A2 use.

- 2.2 A full detailed consultation exercise has now been undertaken. All freeholders within the area to which the policy applies and/or their agents have been approached and provided with a copy of the previous report seeking their comments regarding the new policy, and several building societies have been individually consulted following requests from them for information.

- 2.3 The preparation of the draft policy was reported in the local and technical press, generating a number of addition inquiries, particularly from other local authorities.

3. The Response

3.1 A total of nine responses has been received. These are summarised below. Copies of the representations received will be available at the meeting for inspection.

3.2 Orbis Services - understand the thinking behind the policy, but consider it over-restrictive. Consider expansion of amusement arcades would also not be beneficial to the shopping area. Advocate that all applications be considered on their individual merits rather than be reference to a blanket policy.

3.3 Norwich Union - no comments on the policy, but query how long it is intended to operate, and whether it is intended to incorporate it in the UDP.

3.4 Richardson Barberry Properties Limited - consider policy to be over-restrictive. PPG6 identifies A2 uses as suitable within shopping centres. Policy should seek to maintain continuity of retail frontages by preventing unacceptable concentrations of non-retail uses rather than through total exclusion.

3.5 Abbey National Plc - PPG6 recognises the need for centres to contain a range of complementary uses, it does not support total restriction on A2 uses in primary areas, only restriction to a high proportion in retail use.

- A2 uses attract pedestrian flows greater than many A1 uses.
- Policy will encourage areas of the City Centre to become dominated by particular uses (e.g. Temple Street). It would be better to encourage diversity.
- New Abbey National branch in Union Street has contributed to vitality and viability by encouraging pedestrian activity. Other A2 uses would have the same effect and would benefit shoppers by providing financial services close to the shops.
- Identified frontages are too widely drawn.
- Policy should encourage a diversity of uses, while seeking to maintain a dominance of A1 uses within primary frontages.
- Withdrawal of permitted development right for change of use from A2 to A3 is inappropriate in the light of Circulars 1/85 and 22/88, in that there is no evidence that this could counter any specific threat.

3.6 Alliance and Leicester Building Society - substantially the same comments as the Abbey National. Also note that current difference in character between Temple Street and High Street results in part from the operation of previous policies which have sought to segregate uses rather than encourage diversity.

3.7 Nationwide Building Society - as Abbey National.

3.8 Halifax Building Society - (nb. this society currently has an outstanding appeal in relation to 71 New Street) - see no need to discriminate between A3 uses, amusement arcades etc and A2 uses.

- Policy is inconsistent with government policy because it fails to recognise the contribution of A2 uses to the vitality of centres, a point which is emphasised in PPG6.

(iii)

- While PPG6 recognises that plans may distinguish between primary and secondary frontages, such definitions should be realistic. The policy fails to reflect the fact that there are locations within the primary frontage areas, where, A2 uses could be located and where they would enhance the City Centres vitality and viability.
- The policy is inflexible and does not allow for applications to be determined on their merits. It is contrary to Sir George Young's speech to the RTPI Conference in 1992 which warned against "presumption against" policies.
- Building Societies contribute to a centre's vitality.
- No account has been taken of the impact of new floorspace (eg through the redevelopment of the Bull Ring).
- There has been little pressure for A2 uses in recent years. So there is no need for a policy. Any uses which maintain a shop window display should be acceptable.
- A revised, more flexible policy is suggested, to be applied within a more realistically defined primary area. The suggested policy reads as follows:-

"Proposals for change of use in the primary shopping frontage area from Class A1 to other uses in Classes A2 and A3 will be considered having regard to the following criteria.

- a) The location and prominence of the premises within the shopping frontage.
- b) The floorspace and frontage of the premises.
- c) The number, distribution and proximity of other premises within Use Classes A2 and A3, or with planning permission for such use.
- d) The particular nature and character of the use proposed including the level of activity associated with it.
- e) The proportion of vacant street level property in the prime area.
- f) Whether the use proposed will give rise to disturbance or nuisance.

3.9 Woolwich Building Society - substantially the same comments as the Halifax. Also notes that the policy would inhibit businesses already located in the City Centre from relocating to overcome inadequacies in their current premises.

3.10 Northern Rock Building Society - same comments as the Halifax.

#### 4. Observations

4.1 It will be noted that only a small number of freeholders chose to respond to the consultation exercise. The majority of comments come from the Building Societies, all of whom expressed opposition to the proposed policy. The comments raised highlight a number of important issues, which are discussed below.

4.2 The fact that the policy seeks only to control A2 uses is questioned by several respondents. The specific focus on controlling A2 uses arises from the Birmingham Plan's concern to encourage lively and colourful uses at ground floor level within the City Centre. A3 uses (restaurants, cafés etc) are consistent with this objective, but this is not necessarily the case with A2 uses - hence the need for a specific policy covering this type of use. Amusement arcades are covered by existing city-wide guidance which is considered to provide a sufficient basis for control.

- 4.3 It is suggested that the policy is in conflict with PPG6. This is not accepted. Paragraph 6 of the PPG supports the provision of a diversity of activity in centres, but recognises the need to protect the primary shopping function - "Local branches of banks and other financial institutions offering services to the public can be well located in town centres, but should not be allowed to dominate primary shopping areas in a way that undermines the retail function". Paragraph 8 of Annex B of the PPG (to which several respondents make reference) permits the identification of primary and secondary frontages, emphasising that the definition of such areas should be realistic and not based solely on the existence of retail uses. It goes on to recognise that "while primary frontages may be restricted to a high proportion of retail uses ..... there should be scope for more flexibility of use in secondary frontages. Plans should set out clear guidelines to apply in development control decisions".
- 4.4 Your Committee's proposed policy does not seek to limit any frontages solely to retail use. It does seek to prevent the establishment of further A2 uses, but there is nothing in the PPG which suggests that such an approach is unacceptable. The primary frontages have been defined in a way which enables A2 uses to locate close by, and I consider them to be realistic. I do not therefore consider that there is a conflict with the PPG. Alternative approaches, (such as setting a ceiling to the proportion of non-retail uses permitted in a frontage) tend to be difficult to operate in practice and do not provide the operational clarity which an effective policy requires.
- 4.5 Emphasis is placed by several respondents on the contribution of building societies to the health of centres, and on the need for diversity. The original report to your Committee recognised that building societies can attract significant pedestrian flows. This is not, however, the case with other A2 uses (for example employment agencies), which often present a blank and uninteresting face to the street. Requiring the provision of a shop window display could not satisfactorily overcome this deficiency. The contribution which building societies can make to the vitality of the City Centre as a whole is recognised, as is the particular benefit to shoppers of financial institutions being located close to shops. The proposed policy does not prevent this, since it allows for the location of A2 uses in side streets, just off the main shopping thoroughfares.
- 4.6 The principle of encouraging diversity is central to the UDP. The purpose of the proposed policy is not to discourage diversity, but to ensure that the attractiveness and liveliness of main shopping streets is maintained. This does not involve limiting such streets to shops along - cafes and restaurants are positively encouraged. It does, however, mean seeking to avoid the establishment of ground floor uses which may be incompatible with the character and atmosphere that the UDP is trying to achieve.
- 4.7 The difficulties associated with over segregating uses are recognised. As already noted the primary frontages have been carefully defined to avoid unnecessary control, and to allow the freedom for A2 uses to locate close to shops (it should also be noted that in this respect the policy is substantially less restrictive than the previous City Centre Local Plan).
- 4.8 For the above reasons it is not accepted that the proposed policy is unreasonably inflexible. It does not incorporate the phrase "presumption against" the use of which has attracted criticism from the Department of the Environment in recent years.
- 4.9 The possibility of future change in the City Centre is acknowledged. However, it is clear that the identified primary frontages will continue to be the main shopping areas for the foreseeable future, and it is reasonable for this to be reflected in planning policies. The position will, of course, be kept under review.

4.10 Finally, there is criticism of the intention to remove the normal permitted development rights for an A3 use to be converted to A2 without planning permission, where new permissions for A3 are granted. As already noted the objective of the policy is to encourage a lively and attractive atmosphere in the main shopping streets through an appropriate mixture of uses. In pursuit of this, A3 uses will be encouraged. However, normal planning rules allow A3 uses to change to A2 without planning permission, thus creating the potential for the objectives of the policy to be undermined. It is considered that the use of a conditions to address this is reasonable, and that this does not conflict with Circular 1/85 which deals with use of conditions on planning permission. Circular 22/88 is concerned, amongst other things, with the use of Article 4 Directions which would remove permitted development rights from existing uses - ie in this case from existing cafés and restaurants. The proposed policy does not seek to do this.

5. Conclusions

5.1 A careful assessment has been made of the points raised during the consultation exercise. However, for the reasons set out in the preceding paragraphs it is not considered that these justify withdrawing or revising the proposed policy. In particular the alternative policy suggested by a number of respondents is not consistent with your Committee's aspirations for the City Centre, and does not constitute an adequate policy framework. For these reasons it is considered that the policy should be confirmed.

6. Equal Opportunities Implications

6.1 A key objective of the policy approach being proposed is to encourage life and activity within the City Centre. The achievement of this objective will help make the City Centre a safer place, to the particular benefit of vulnerable groups.

7. Financial Implications

7.1 The City Council has made a significant investment in improving the environment of New Street and further improvements in the vicinity (wholly funded through the European Regional Development Fund) are now on site. The measures proposed in this report have no additional financial implications for the City Council and are intended to create a framework which will encourage further investment in the area by the private sector.

8. Recommendation

8.1 That the policy set out above is adopted as supplementary planning guidance.

DIRECTOR OF PLANNING & ARCHITECTURE

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## APPENDIX

A1/A2 Policy Modifications Consultations List

Chestertons Property Limited

Legal & General Property Limited

Eagle Star Property Limited

Land Securities Limited

Hortons Estates Limited

Johnson, Fellows & Company

S Goldstein

Waterloo Securities Limited

Pyle-Owen & Partners

Gohill Developments

Barry Noble Limited

St Andrews Land

Norwich Union Assurance Group

Prudential Portfolio Manager Limited

London & Edinburgh Trust

Richardson Barberry Properties Limited

Commercial Union Assurance Plc

Orbis Services Limited

West Midlands Police

Centro

Grimley J R Eve

Healey & Baker (on behalf of Nationwide Building Society, Alliance & Leicester Building Society, Abbey National Plc)

Gerald Eve (on behalf of Woolwich Building Society, Northern Rock Building Society, Halifax Building Society)

Erdman Lewis (on behalf of Richardson Barberry Properties Limited)

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