

Recommendation: APPROVAL

COU/2022/0207

Daneshouse with Stoneyholme Ward

Change of use from bank (Class E) to a betting shop (sui generis)
40-42 ST JAMES'S STREET BURNLEY BB11 1NQ

Applicant: Mr Kevin MacPherson, Paddy Power

Site and Surrounding Area:

The application site comprises a vacant bank which is positioned within a parade of commercial units on the south side of the St James's Street within Burnley town centre. Under the provisions of the Local Plan the site falls within the boundary of Burnley Town Centre primary shopping area and is defined as primary retail frontage with Nos 22-42 St James's Street. This frontage has a mix of retail and non-retail uses. The immediate area is predominantly commercial in character including retail and complimentary town centre uses including office and drinking establishments, and in some cases, residential on upper floors.

The two storey building, dating from the late C19, is constructed from dressed sandstone ashlar and has a bold design that is characteristic of higher status town centre buildings of its time. Whilst the building has been subject to various alterations over time its proportions, sculptural embellishment and fine craftsmanship are still apparent and combine to form a distinguished example of Victorian architecture and show the building to be one of some status. Internally the building has been significantly altered at various phases during its occupation to the extent that no features of significance remain.



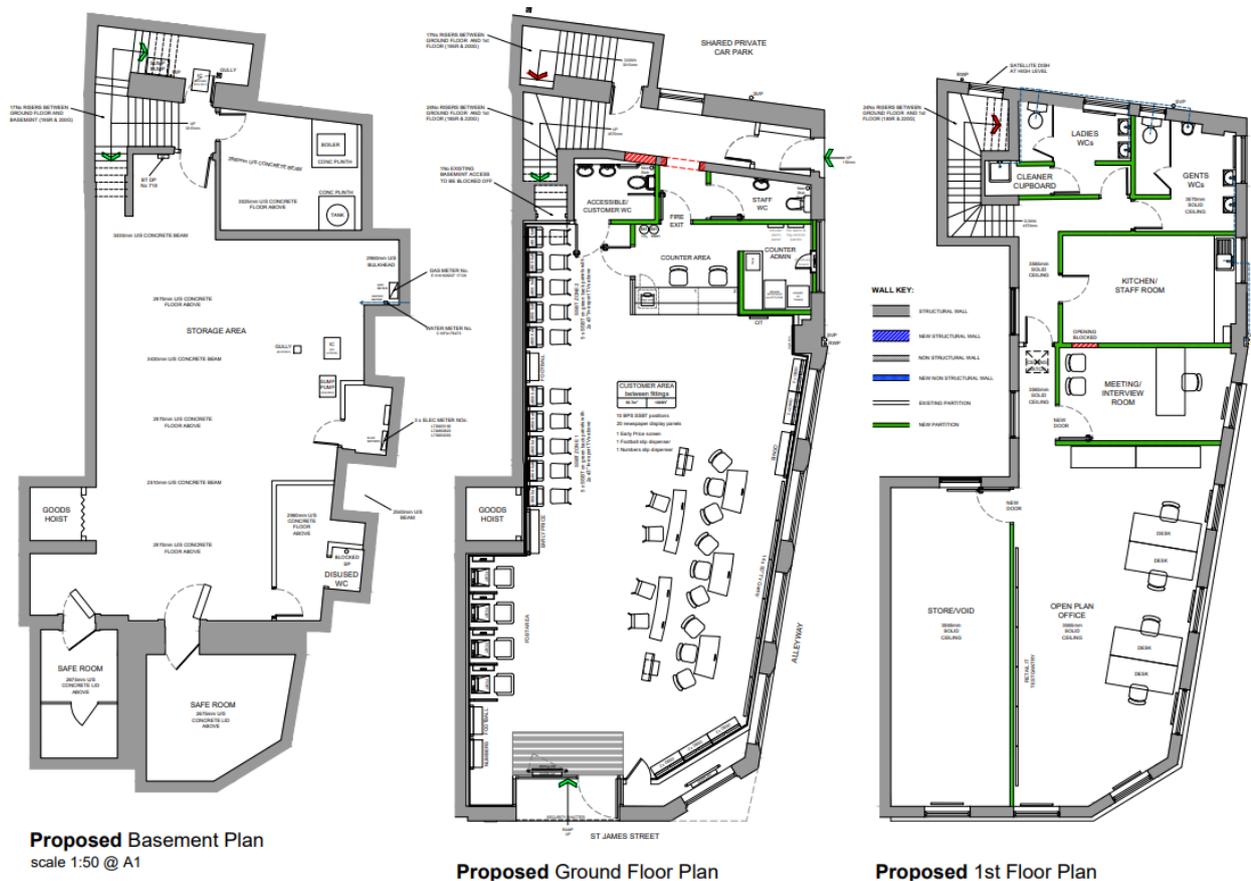
The unit has been vacant since November 2018, having been previously occupied by the Royal Bank of Scotland. The accommodation comprises two floors plus basement. The ground floor is predominantly open plan with some partitioned meeting rooms and the first floor provides office space and staff facilities. The extant use of the unit as a bank is Use Class E(c)(i) (Financial Services).

Nos 40-42 St James's Street is identified as a locally listed building (non-designated heritage asset) and lies within Burnley Town Centre Conservation Area, which is a notable example of a Victorian/Edwardian civic and commercial centre comprising buildings of fine mid-late nineteenth century architecture, particularly later nineteenth century commercial buildings, and important surviving elements of architectural detailing and decoration. The building derives much of its significance from its grouping with the other buildings within the terrace as part of the local architectural and historic character of the area as a nineteenth century 'high street'.

The Proposal

This planning application seeks permission for the change of use from bank (Class E) to betting shop (sui generis). Internal alterations required to facilitate the conversion are considered minor in nature. The building is serviced from the rear for refuse storage and collection and this will remain unchanged. There is no provision for off-street parking.

The supporting marketing report states that the unit has effectively been available to let since November 2018, initially through an assigned leasehold interest followed by a marketing exercise, and all attempts to attract a new tenant over this period have been unsuccessful (aside from the interest of the applicant). The marketing agents are of the opinion that the market conditions are very challenging, thereby reducing the likelihood of another prospective tenant coming forward in the foreseeable future.



There are concurrent planning and advert consent applications for the proposed external physical works including alterations to the shopfront; the installation of 2no. satellite dishes and 4no. air conditioning units to rear elevation; and new signage (Ref FUL/2022/0208 and ADV/2022/0209). The applications are the subject of separate reports which it is suggested are read in conjunction.

The application is before Development Control Committee as an objection has been received.

Relevant Policies:

Burnley's Local Plan (July 2018)

- TC2: Development within Burnley and Padiham Town Centres
- TC3: Burnley Town Centre – Primary and Secondary Frontages
- HE2: Designated Heritage Assets
- HE3: Non-Designated Heritage Assets

IC1: Sustainable Travel
IC3: Car Parking Standards

National Planning Policy Framework (2021) and Planning Practice Guidance: Town Centres and Retail (September 2020 update): National planning policy and guidance recognises that town centres are becoming more diverse in their uses and flexibility is needed in decision making to enable a response to rapid changes taking place in the sector. The revised NPPF post-dates the adoption of the Local Plan, in respect of town centres it has a greater emphasis on responding to the changes in retail and leisure industries and in doing so no longer directs LPAs to identify and protect primary and secondary retail frontages. This is in recognition that the main footfall drivers are often dispersed in town centres.

Planning (Listed Buildings and Conservation Areas) Act 1990: Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which confers upon the local planning authority a duty to “have special regard to the desirability of preserving or enhancing the character or appearance of a Conservation Area.”

Recent Relevant Planning History:

APP/2018/0295: External alterations including removal of ATM - Granted

APP/2016/0297: Proposed replacement of signage following corporate rebrand – Advert Consent Granted

APP/2012/0138: Display of 2no. internally-illuminated fascia signs, 1no. externally-illuminated projecting sign, 1no. replacement ATM header panel to existing machine and 3no. replacement wall plaques – Advert Consent Granted

Consultation:

LCC Highways: No response received.

Publicity: One objection received which raises the following points:

- Contrary to Policy TC3 which protects the frontage for A1 retail uses (formerly Use Class A1 but now included in Use Class E). The proposal would increase the number of sui generis uses to 3 which would be 37.5%. This will lead to a breach in the 20% threshold in Policy TC3 for Non-Class E uses.
- The potential for two betting shops in close proximity would change the predominantly retail character of the frontage. This clustering will harm the character of this part of the town centre and the addition of another gambling related use would cause harm to the main purpose of the primary frontage which is to attract and retain uses in Class E(a).
- The marketing of the space has only taken place since last year and as such a lack of demand for a policy compliant use falling within Class E has not been proven.
- Allowing further gambling uses in the town centre will fail to assist in reducing deprivation and health inequalities and reduce crime in accordance with the Local Plan’s ambitions with further potential for anti-social behaviour and increased levels of gambling in the community.
- The NPPF seeks to promote healthy, inclusive and safe places. The proposed use will not promote the health of local residents and visitors through the resultant increase in gambling in this part of town and it will not be inclusive as it will be restricted to over 18’s.
- The issues raised are addressed in the assessment of the proposal as set out below.

Planning and Environmental Considerations:

Principle of Development

The need to revive our town centres and high streets has become one of the government's most pressing planning issues and there is now significant recognition for the need to view town centres and high streets in a different way if they are to survive in the future. The Government's commitment to this is evident through the updated NPPF and changes to the Use Classes Order which provides an increasingly important planning context in the consideration of this application.

The application site falls within the town centre boundary and is identified as primary retail frontage within the primary shopping area. The fundamental purpose of the town centre and primary shopping area is to meet the needs of their catchment communities. In order to do this, they must be 'vital' (full of reasons for people to visit) and 'viable' (attractive to both visitors and investors in the longer term).

NPPF 86 advises the long term vitality and viability of town centres should be promoted by allowing them to grow and become more diverse in their uses and that flexibility is needed in planning decisions to enable them to adapt and respond to the rapid changes in the retail and leisure industries. Moreover, the Local Plan acknowledges the importance of recognising that the traditional role of the town centre is changing, particularly in relation to retailing. In relation to the protection of primary frontages it also recognises that changes to permitted development rights will reduce the ability to exercise control over some changes of use that will result in the loss of retail (para 5.3.32).

The NPPF post-dates the adoption of the Local Plan, in respect of town centres it has a greater emphasis on responding to the changes in retail and leisure industries and in doing so no longer directs LPAs to identify primary and secondary retail frontages. This is in recognition that the main footfall drivers are often dispersed in primary shopping areas and are not necessarily now only retail but extent to other main town centre uses.

Main town centre uses are defined in the NPPF Glossary. That definition lists leisure uses including casinos and bingo halls. The examples of such are not a closed list and whilst betting shops are not specifically mentioned they have been accepted as such by inspectors in appeal decisions. Accordingly, it is considered that the proposed use is appropriate to a town centre location that provides a complementary function to the shopping experience and would be acceptable in principle under Policy TC2 subject to the limits set out in Policy TC3. The main issue being the effect of the proposal on the vitality and viability of the primary shopping area and town centre, having regard to the Local Plan and any other material planning considerations.

Changes to the Planning Use Class Order and the Implications for Policy TC3

The Local Plan was adopted prior to substantial changes to the Use Classes Order that came into effect in September 2020, intended to better reflect the diversity of uses found on high streets and in town centres and allow a greater flexibility for changes of use from retail to other town centre uses under the policy objective of supporting and rejuvenating the vitality and viability of town centres. These changes saw the creation of a new Commercial, Business and Service use class (Class E), which incorporates the previous retail and non-retail use classes A1, A2, A3, B1 and parts of Class D1 and D2.

The right to change the use of premises between the various uses within the new Class E without the need for planning permission constrains the ability to control the loss of retail uses in the primary retail frontage through Policy TC3. Whilst this change would not directly affect this proposal in respect of the proposed use as a betting shop, a sui generis use falling outside the new Class E, it nonetheless provides an increasingly important planning context in the consideration of

this application signalling a clear statement of intent from the Government that there is a need to treat town centres in a more flexible way if they are to remain viable. Accordingly, it is treated as a material consideration in respect of how it would affect local plan policies for the town centre and in particular the aims of retaining primary retail frontages in Policy TC3.

Policy TC3 is now inconsistent with the Use Classes Order in so far as it refers to the previous use class (A1 retail). However the aim of the policy is to ensure that retail uses predominate on the ground floors of the primary frontages. In this respect the policy remains consistent with the NPPF which still supports the concept of primary shopping areas and sets out that policies should be clear as to the range of uses permitted in such locations. Consequently the aims of Policy TC3 still merits significant weight in the assessment of proposals for the loss of retail uses in the Primary Retail Frontage.

As a sui generis use, the proposed betting shop does not fall within the new Class E, however the proposed use, as a main town centre use, is consistent with the Government's policy direction with regard to increasing the flexibility of town centres and their ability to adapt to new markets and opportunities.

Impact on the Vitality and Viability of the Primary Shopping Area and Town Centre

Local Plan Policy TC2 highlights the importance of Burnley town centre as the sub regional centre and describes the town centre as providing a broad retail offer with a good range of public services and established evening economy. Moreover, it is recognised that the role and function of the town centre is continuing to evolve and we will continue to see an increase of town centres being used for an all-encompassing retail, leisure, business and social experience.

The application site falls within the primary shopping area of the town centre and is designated as primary frontage, under Policy TC3, with Nos 22-42 St James's Street. Policy TC3 seeks to ensure that retail remains the principal and dominant land use within Primary Frontage in order to underpin the vitality and viability of the town centre. Policy TC3 is engaged when a proposal seeks the change of use from retail (Class A1) to other non-retail town centre uses within the primary frontage and allows the introduction of such uses where they would not cumulatively amount to more than 20% of the total length of the frontage.

The extant use of the application property is a bank, a non-retail use falling within the broad planning Use Class E. It is acknowledged that the changes to the Use Class Order means that the mix of retail and non-retail uses could change over time without planning permission. However, there is no evidence to suggest that this is likely to occur on a significant scale and as such this assessment has been made on the existing makeup of the frontage.

Currently non-retail uses already make up 50% of the units totalling 57.7% of the total length of the frontage at Nos 22-42 St James's Street and include a public house, vacant betting shop, café and vacant bank (application property). Whilst the use of the application property as a bank is complementary, it does/did not contribute to or provide any retail function within the Primary Shopping Frontage. The proposed betting shop use would not result in the loss of a retail use nor would it change the proportion of existing non-retail uses across the length of the frontage. Therefore the proposal would not conflict with the intention of Policy TC3, to protect the Primary Frontage from the loss of retail uses and this is a significant consideration in the assessment of the proposal's impact on the vitality and viability of the town centre.

It is recognised that the application property could change to a Class E retail use under permitted development. However, the marketing assessment states that there is no other interested party and therefore no alternative proposal which indicates this is likely to occur should permission be refused. Accordingly, this is a factor of limited weight in consideration of this application.

There are three betting shops (including one vacant) and two adult gaming/amusement premises within a 150m radius of the application property within the primary shopping centre. However, due to the total number of units and the presence of intervening uses, gambling premises do not dominate the primary shopping area as a whole and neither would the addition of the proposed betting shop result in an over concentration of such uses. Within the block that includes the application site there is a vacant unit with a lawful use as a betting shop (formerly Corals) situated four units away. In the event that the vacant unit were to be brought back into use as a betting shop there would still be four intervening units, three of which are in retail use, between the properties such that it would not result in a harmful concentration or clustering of gambling premises to the detriment of the vitality or viability of the town centre as a whole. Having regard to the above, the extant use of the application property is a bank, a non-retail use falling within the broad planning Use Class E. Given the existing and proposed use, the development would not result in the loss of a retail use, the dilution of the retail offer or weakening the vitality and viability of the town centre. The existing proportion of non-retail uses in the block is high but this would not change with the proposed development. Moreover, the adverse effects of a betting shop on the retail vitality of the town centre would be limited given that no loss of retail use would occur. Accordingly the proposal complies with Policies TC2 and TC3 which seek to support the long term vitality and viability of Burnley town centre including the Primary Shopping Area.

Property Vacancy, Duration and Marketing Efforts

The submitted marketing evidence has shown that despite over three years of attempts to attract a new tenant, there has been no interest from retail users, the only interest being from the applicant. As such there is no reasonable prospect of viable demand for the property in its existing or retail use. In situations where there is a demonstrable lack of demand for continued use leading to prolonged periods of vacancy, significant favourable weight has been given to similar applications and appeals across the country. It is seen to be preferable to have a unit occupied, trading and providing employment than to keep it vacant in the seemingly unlikely chance that it may be occupied by a retail user in the future. The prospect of the property being brought back into use therefore weighs in favour of the proposal.

Other Considerations:

Impact on Heritage Assets

No external alterations are proposed and as such the proposal would preserve the character and appearance of the locally listed building, as a non-designated heritage asset, and the conservation area. Moreover, the re-use of vacant floorspace within the building is likely to have a positive impact on the conservation area. The proposal is therefore in accordance with Local Plan Policies HE2 and HE3 and the relevant statutory duty.

Impact on the Amenity of Neighbouring Occupants and Adjacent Land Users

Policy SP5 seeks to ensure there is no unacceptable adverse impact on the amenity of neighbouring occupants or adjacent land users including by reasons of noise and disturbance. The nearest neighbouring properties are predominantly commercial and situated in part of the town centre where there is a concentration of activity and a level of disturbance from a range of sources over a prolonged period of the day. Accordingly, some degree of noise and disturbance would not be unreasonable. With the nature of the town centre location taken into consideration, it is not considered that the proposed change of use would result in any further significant impacts in terms of noise or disturbance and would therefore comply with Policy SP5.

Highway Safety and Parking

The site is located within the pedestrianised area of the town centre and is serviced at the rear. The site is unable to offer any off-street parking however given this is a highly accessible and sustainable town centre location with good public transportation links and parking within reasonable walking distance, it is accepted that no off-street parking can be provided. The

proposal is not considered to cause or exacerbate congestion, highway safety issues or on-street parking problems. It would therefore satisfy the relevant local plan policies IC1 and IC3 and the NPPF which aims to only prevent or refuse development on highway grounds where there is an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

Refuse and Recycling

Policy SP5 requires refuse and recycling to be appropriate to the scale and type of premises. The proposed uses will utilise the existing commercial waste/refuse storage facility in the rear yard. The use is likely to have no greater impact in the storing and handling of waste than currently exists proposal would comply with Policy SP5.

Crime and Health

Gambling premises are subject to regulatory controls outside of the planning system. Overall there is no evidence to indicate that the proposed use would directly increase problem gambling or lead to greater crime in the local area.

Planning Balance:

A prolonged period of time has elapsed since the application property made any meaningful contribution to the local economy and the vitality of the town centre and it has been proven that there is no reasonable prospect of viable demand for the continued use as a bank or as a retail use. The proposal does not involve the loss of an existing retail use and would not dilute the retail offer or harm the character of the primary shopping frontage or the wider town centre. It would make use of a long term vacant unit consistent with town centre uses and would fulfil many of the functions of a retail unit by generating footfall along the street which would help support and sustain other retail uses within the primary shopping area.

Overall the proposal would accord with Policies TC2 and TC3 which seek to support the vitality and viability of town centres, and NPPF Para 86 which requires planning policies and decisions to take a positive approach to their growth, management and adaption. Although the proposal would introduce a non-retail use to the primary retail frontage, the retail function would not be compromised in this instance. Moreover, there would not be an over-concentration of similar uses, which would detract from the retail function of the town centre.

For the reasons given above, it is found that the proposal would not conflict with local and national policies which seek to achieve vitality and viability in town centres. It represents a sustainable form of development and there are no material considerations which would outweigh this finding.

Recommendation: Approve with conditions

Conditions and Reasons:

1. The development must be begun within three years of the date of this decision.

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the ground floor layout in the following approved plans: Drawing No 2021/130/02 B (Proposed Plans at 1:50 Scale) and 2022/130/09 A (Proposed Floor Plans at 1:100 Scale) received 19 April 2022.

Reason: To ensure the development is implemented in accordance with the approved plans and to avoid ambiguity.

