



Planning & Development Ltd

# **JMS Planning & Development Ltd**

**PLANNING STATEMENT  
CHANGE OF USE OF VACANT UNIT  
(FORMER SUI GENERIS USE)  
TO ADULT GAMING CENTRE  
(SUI GENERIS USE)**

**134-135 Friar Street**

**Reading**

**RG1 1EX**

Site: 134-135 Friar Street, Reading, RG1 1EX

Client: Chongie Entertainment Ltd

Date: April 2021

JMS Planning & Development Ltd

T: 07920 427 197

E: [alexandra@jmsplanning.com](mailto:alexandra@jmsplanning.com)

© The contents of this document must not be copied or reproduced in whole or in part without the written consent of JMS Planning & Development Ltd

## CONTENTS

|            |                                       |    |
|------------|---------------------------------------|----|
| SECTION 1: | INTRODUCTION                          | 3  |
| SECTION 2: | THE APPLICATION SITE AND SURROUNDINGS | 4  |
| SECTION 3: | PLANNING HISTORY                      | 5  |
| SECTION 4: | APPLICATION PROPOSAL                  | 6  |
| SECTION 5: | PLANNING POLICY                       | 7  |
| SECTION 6: | RELEVANT APPEAL PRECEDENTS            | 15 |
| SECTION 7: | PLANNING ASSESSMENT                   | 26 |
| SECTION 8: | SUMMARY                               | 37 |

## APPENDICES

|              |                                                                                                                                  |
|--------------|----------------------------------------------------------------------------------------------------------------------------------|
| Appendix 1:  | Appeal - Future Leisure Limited Vs London Borough of Brent<br>(Ref: APP/T5150/W/17/3189944 – 9th May 2018)                       |
| Appendix 2:  | Appeal - Terry Farr Vs London Borough of Waltham Forest<br>(Ref: APP/U5930/W/18/3193121 – 27th July 2018)                        |
| Appendix 3:  | Appeal - JWT Leisure Vs Blackpool Borough Council<br>(Ref: APP/J2373/W/18/3196247 – 18th May 2018)                               |
| Appendix 4:  | Appeal - GT Promotions Ltd Vs London Borough of Lewisham<br>(Ref: APP/C5690/W/17/3191347 – 28th August 2018)                     |
| Appendix 5:  | Appeal - Kerching Amusements Vs Broxtowe Borough Council<br>(Ref: APP/J3015/W18/3212670 – 9th April 2019)                        |
| Appendix 6:  | Appeal - RAL Limited Vs Kingston-upon-Hull City Council<br>(Ref: APP/V2004/W/19/3233244 – 22nd October 2019)                     |
| Appendix 7:  | Appeal - Mr Majid Morabbi Vs Derbyshire Dales District Council<br>(Ref: APP/P1045/W/19/3228235 – 20th December 2019)             |
| Appendix 8:  | Appeal – Luxury Leisure Vs London Borough of Croydon<br>(Ref: APP/L5240/W/19/3232831 – 13th January 2020)                        |
| Appendix 9:  | Appeal - Praesepe Holdings Limited Vs Doncaster Metropolitan Borough Council<br>(Ref: APP/F4410/W/20/3250246 – 14th August 2020) |
| Appendix 10: | Appeal – East Kent Leasing Ltd Vs Luton Borough Council<br>(Ref: APP/B0230/W/20/3256275 – 29th December 2020)                    |

## **SECTION 1: INTRODUCTION**

- 1.1 This Statement is submitted to Reading Borough Council (*"the Council"*) on behalf of Chongie Entertainment Ltd in respect of the change of use of 134-135 Friar Street, Reading, RG1 1EX (*"the site"*) from its approved use as a former betting shop (Sui Generis) to an adult gaming centre (Sui Generis). The application relates to the change of use of the site only. All other matters, including those relating to advertisements, will be the subject of further applications.
- 1.2 This Statement provides a site description, an overview of the planning history of the site and assesses the application proposals against relevant planning policy and other material considerations. This Statement concludes that the proposed application is entirely acceptable and that planning permission should be granted accordingly.
- 1.3 Chongie Entertainment Limited is a new entrant in the adult gaming centre (AGC) UK market. The Company operates to the highest standards and is fully aware of its social responsibilities in respect to issues associated with gambling which it takes very seriously. The application seeks to bring into beneficial use a currently vacant unit on a 24-hours a day basis. This will enhance the evening economy and will increase the vitality and viability of the centre along with the creation of up to eight new jobs.

## **SECTION 2: THE APPLICATION SITE AND SURROUNDINGS**

- 2.1 The application site is located on the southern side of Friar Street within Reading Central Area. The site comprises a two storey mid-terraced property of traditional construction which has been altered to accommodate a large open-plan shopfloor which extends to 153.3 sq m. The property comprises a large ground floor space, WC and storage cupboard. The first floor is currently void space and is accessed via a loft hatch and stepladder.
- 2.2 The unit sits within a parade of shops within the Primary Shopping Area, Primary Frontage, Central Core Area and the Office Core Area, with a wide range of primarily Class E use retailers in the vicinity.
- 2.3 The application site, being in the Central Area, is located around 230 metres from Reading Train Station. There is a designated bus and bicycle lane on Friar Street, at the front of the premises. The site is, therefore, in a highly accessible location.
- 2.4 The site is located within Flood Zone 1.
- 2.5 The site is not located within a Conservation Area. Neither is the application site a Listed or Locally Listed Building.

## SECTION 3: PLANNING HISTORY

- 3.1 A review of the application site's planning history has been undertaken using the Council's online planning system. There have been no recent applications for the site, the most recent dates back to 2004. None of the decision outcomes are available on the Council's website, however the details of the application are provided below.

| Application Number | Proposal                                                                                                                 | Date       |
|--------------------|--------------------------------------------------------------------------------------------------------------------------|------------|
| 041328             | Installation 1.0m diameter satellite antenna on flat roof mounting                                                       | 06/10/2004 |
| 031316             | Illuminated shop fascia and projecting sign                                                                              | 29/01/2004 |
| 031305             | New shop front. New A/C condensers to rear elevation (within enclosed garden area)                                       | 29/01/2004 |
| 030733             | Use of premises for A2 purposes as a licensed betting office and installation of a new shopfront (Duplicate application) | 14/11/2003 |
| 030734             | Use of premises for A2 purposes as a licensed betting office and installation of a new shopfront                         | 14/11/2003 |
| 960052             | Fascia and projecting sign                                                                                               | 03/05/1996 |
| 960051             | New shopfront                                                                                                            | 04/05/1996 |
| 890107             | Externally illuminated shop fascia signs.                                                                                | 21/06/1989 |

- 3.2 The premises were in operation as a William Hill betting shop for 16 years, the use of which was approved in 2003. At that time, betting shops were considered A2 use, however an amendment to the Planning Use Class Order in 2015 resulted in betting shops being classed as Sui Generis use.

## **SECTION 4: APPLICATION PROPOSAL**

- 4.1 The application seeks the change of use of the premises at 134-135 Friar Street, Reading, RG1 1EX from the former betting shop use (Sui Generis) to an Adult Gaming Centre (AGC) (Sui Generis). The unit will operate under the “*Little Vegas*” fascia.
- 4.2 The proposed AGC would extend to 153.3 sq m at ground floor level. The existing level access from Friar Street would remain with much of the floor area given over to customer space with a staff area and unisex accessible WC to the rear. The unit currently has a largely clear floorplate due to its previous betting shop use.
- 4.3 No external or physical works are proposed as part of the scheme. No net increase of the existing floorspace is proposed. Matters relating to advertisement consent are to be the subject of a separate application.
- 4.4 The existing shopfront is to be retained, ensuring an active frontage in line with the approach by the applicant to its forthcoming AGCs to ensure that it is inviting to customers and to assist natural surveillance.
- 4.5 Overall, the proposed use would reinstate an active frontage on this part of Friar Street and bring a vacant unit back into use. Consequently, there will be increased natural surveillance. The proposed AGC use will operate 24 hours a day, seven days a week, providing activity in the town centre supporting the evening and night time economy, in accordance with Reading’s Town Centre policies.

## **SECTION 5: PLANNING POLICY**

- 5.1 This Section of the supporting Planning Statement sets out relevant national and local planning policy relevant to the proposed planning application.

### **National Planning Guidance**

#### National Planning Policy Framework (June 2019)

- 5.2 The revised National Planning Policy Framework (NPPF) was updated in June 2019 and constitutes guidance for local planning authorities and decision takers. It is a material consideration in the determination of planning applications (paragraph 2).
- 5.3 The purpose of the planning system is to contribute to the achievement of sustainable development (paragraph 6).
- 5.4 Paragraph 8 confirms that there are three overarching objectives to sustainable development: economic, social, and environmental, which are interdependent and need to be pursued in mutually supportive ways:
- An economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
  - A social objective – to support strong, vibrant and healthy communities by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural wellbeing;

- An environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making efficient use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

5.5 These objectives should be delivered through the preparation and implementation of plans and application of policies in the framework; they are not criteria against which every decision can or should be judged. It is confirmed that the planning system should play an active role in guiding development to sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area (paragraph 9).

5.6 At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 10). For decision making, this means:

- Approving development proposals that accord with the development plan without delay, and
- Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless;
  - The application of policies in the framework that protect areas or assets of particular importance provides clear reason for refusing the development proposed; or
  - Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole (paragraph 11).

5.7 The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making (paragraph 12).

5.8 Local Planning Authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available and work

proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision makers at every level should seek to approve applications for sustainable development where possible (paragraph 38).

- 5.9 Planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing (paragraph 47). Local Authorities may give weight to relevant policies and emerging plans according to the stage at which they are at and the extent of unresolved objections (paragraph 48).
- 5.10 Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses whilst safeguarding and improving the environment and ensuring safe and healthy living conditions (paragraph 117).
- 5.11 Paragraph 118 confirms that planning policies and decisions should promote and support the development of underutilised land and buildings.
- 5.12 Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and where there are opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future (paragraph 80).
- 5.13 Planning policies should set out a clear economic vision and strategy which positively and practically encourages sustainable economic growth having regard to local industrial strategies and other local policies for economic development and regeneration; set criteria to identify strategic sites for local inward investment to match the strategy and meet anticipated needs over the plan period; seek to address potential barriers to investment; and be flexible enough to accommodate the needs not anticipated in the plan, allow for new and flexible working practices and to enable a rapid response to changes in economic circumstances (paragraph 81).

- 5.14 Planning policies and decisions should recognise and address the specific locational requirements of different sectors (paragraph 82).
- 5.15 Planning policies and decisions should support the role that town centres play at the heart of local communities taking a positive approach to their growth management and adaptation. Policies should define a network and hierarchy of town centres and promote their long term vitality and viability; define the extent of town centres and primary shopping areas; retain and enhance existing markets and, where appropriate, reintroduce or create new ones; allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed looking at least 10 years ahead; where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well-connected to town centres and if these are not able to be identified, set out policies which should explain how identified needs can be met in other accessible locations that are well-connected to the town centre; and recognise that residential development often plays an important role in ensuring the vitality of centres and encouraging residential development on appropriate sites (paragraph 85).
- 5.16 Local Planning Authorities should apply a Sequential Test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations and only if suitable sites are not available (or expected to become available within a reasonable period of time) should out of centre sites be considered (paragraph 86).
- 5.17 Paragraph 85 seeks to ensure that both planning policies and decisions support the role that town centres play at the heart of local communities, by taking a *“positive approach to their growth, management and adaption”*.
- 5.18 Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities and that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they are established. Where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity the applicant (or agent of change) should be required to provide suitable mitigation before the development has been completed (paragraph 182).

## National Planning Practice Guidance

- 5.19 Paragraph 001 of PPG Town Centres and Retail (July 2019 Update) acknowledges that LPAs need to consider structural changes in the economy, in particular changes in shopping and leisure patterns and format. It goes on to state that a wide range of complementary uses can, if suitably located, help to support the vitality of town centres, including residential, employment, office, commercial, leisure/entertainment [our emphasis], healthcare and educational development.
- 5.20 Paragraph 85 goes on to list criteria that planning policies should follow to achieve the above. Sub paragraph (a) seeks policies to define town centres and promote their long-term vitality and viability, highlighting their need to diversify in response to “*rapid changes in the retail and leisure industries*”. Whilst it is appreciated that the local planning policy is not in question, it must be noted that national policy recognises the trajectory of the retail environment and the need for centres to adjust accordingly. Paragraph 92(b) states that planning decisions should take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community.

## **The Development Plan**

- 5.21 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the policies of the statutory development plan, unless other material considerations indicate otherwise.
- 5.22 For the purposes of Section 38 of the Planning and Compulsory Purchase Act 2004 the statutory development plan comprises the Reading Borough Local Plan (adopted November 2019).

## The Reading Borough Local Plan

- 5.23 The Reading Borough Local Plan Map identifies the application site as being located within the Reading Central Area, the Primary Shopping Area, the Primary Frontage, the Central Core Area and the Office Core Area.

- 5.24 The Local Plan states that, in parallel to the Plan, a 2050 vision for the town has been launched, which will help in establishing Reading as an internationally recognised and economically successful city region. In addition, the Plan's vision states that the centre will continue as a regionally important shopping and business location, but its role will be widened as a place for culture, leisure and entertainment.
- 5.25 Chapter 5 of the Local Plan relates to Central Reading. It reiterates that the centre has a wide mix of facilities. In addition, it states that, *"the evening economy is particularly strong, and draws many visitors from outside Reading to the centre's pubs and clubs"*. The Plan sets out a number of key principles for the area, the most pertinent of which are as follows:
- The centre will contain a broad range of different but complementary uses within an area easily accessed by foot.
  - The centre will appeal to all sectors of Reading's population as a place to live in, work in, study in and visit.
- 5.26 Overarching Policy RL1 (network and hierarchy of centres) recognises Reading as a Regional Centre. It states that the vitality and viability of these centres should be maintained and enhanced. It also highlights that broadening the range of facilities will be acceptable in all centres. The policy recognises Central Reading as being subject to the greatest levels of development and change. The supporting text notes that the town centre is where the vast majority of town centre development will occur, and as competing centres continue to enhance their offer, it will continue to be necessary for Reading to develop and adapt to maintain its position.
- 5.27 Policy RL2 (scale and location of retail, leisure and culture development) directs retail, leisure and cultural development to existing centres. The supporting text to the policy recognises that these centres already have a range of facilities and are generally accessible by a choice of means of transport.
- 5.28 Policy CR4 (leisure, culture and tourism in Central Reading) specifies that the Central Core will be the prime focus for major leisure, cultural and tourism development. Leisure, cultural and tourism uses that would attract a wide range of people into the centre will be encouraged. Innovative solutions to leisure provision will be encouraged, particularly those that make best

use of available (often limited) site area. The explanatory text for this policy refers to those leisure, culture and tourism uses that are defined as ‘main town centre uses’ in the NPPF, excluding drinking uses. The Council expects that these facilities will *“assist in widening the variety of the offer of the centre, and would, in many cases, help to attract a greater range of people into the centre”*. For that reason, additional uses should be encouraged, and *“there are substantial opportunities within Central Reading to accommodate leisure and cultural uses”*, as well as new visitor accommodation.

- 5.29 Policy CR7 (primary frontages in Central Reading) states that uses on the ground floor along the designated primary frontages as shown on the Proposals Map will be within one of the following use classes: A1, A2, A3, A4, A5, C1, D1, D2 or related Sui Generis uses, unless it would be an entrance to upper floors. New developments (or alterations to existing uses) that front onto any of the designated primary frontages will provide an active building frontage with a display window or glazed frontage at ground floor level, in order to contribute to the vibrancy of the town centre and provide visual interest. Frontages should be of a high visual quality. Any frontages that have the potential to hinder movement or cause unnecessary safety risk will not be permitted. Proposals that would result in the loss of A1 or A2 use such that the proportion of the length of frontage within the street in A1 or A2 use falls below 50% will not be permitted.
- 5.30 The supporting text of Policy CR7 also recognises the importance of active frontages at ground floor level in creating the impression of a healthy centre. It specifies that, on the key streets in the centre, it is vital that new development continues to reflect this and offers visual interest on the frontage even if it is not an A1 retail unit.
- 5.31 Policy RL4 (betting shops and payday loan companies) states that proposals for new betting shops or payday loan shops will not be permitted where it would result in three or more betting shops and/or payday loan shops within a 150-metre radius of the application property. Clearly this planning application would secure the removal of a former betting shop, having the positive effect encouraged by the policy.
- 5.32 Policy CC7 (design and the public realm) requires that all development must be of high design quality that maintains and enhances the character and appearance of the area of Reading in which it is located.

- 5.33 Policy CC8 (safeguarding amenity) requires that development will not cause a detrimental impact on the living environment of existing residential properties.

#### **Summary of Planning Policy**

- 5.34 The above Section sets out relevant general planning policies pertinent to the application. Section 7 of this planning assessment relates each key planning issue back to the relevant policies set out within this Section.

## SECTION 6: RELEVANT APPEAL PRECEDENTS

- 6.1 In determining this application, it is relevant to consider other appeal decisions for AGC uses. Whilst it is the case that each application is determined on its own merits, relevant appeals relating to AGCs can provide clarity and information on the approach that should be taken in the consideration of relevant key issues. Those appeal decisions of particular relevance to this application are summarised below.

**Future Leisure Limited Vs London Borough of Brent (Ref: APP/T5150/W/17/3189944 – 9<sup>th</sup> May 2018)**

- 6.2 In determining whether the proposed change of use from a pay day loan establishment to an AGC was likely to have an impact on the vitality and viability of Willesden Green Town Centre, with particular regard to safety, security and anti-social behaviour and crime, the Inspector concluded at paras 15 to 26 that risks to problem gamblers, young people and other vulnerable persons were matters relevant to licensing and management functions, not planning.
- 6.3 The Inspector dismissed any connection between AGCs and social concerns such as gambling, alcohol abuse and mental health effects noting at para 26 and 30 that:

*“Moreover, if such general social concerns about harmful effects and alleged links between gambling, alcohol abuse and mental health disorders were accepted as a sound basis for rejecting planning for such uses, it is unlikely that planning permission would be given for any betting shops or AGCs or indeed other types of premises, such as pawnbrokers/payday lenders, off-licences, public houses or takeaways.”*

*“Moreover, vulnerable persons in the area would, whether the proposal was approved or not, still have access to betting shops, off-licences, public houses, pay-day lenders and pawnbrokers as they would in many high streets across London and the country”.*

- 6.4 Based on other appeal decisions, the Inspector accepted at para 37 that, provided there was compliance with policies designed to prevent an over-concentration of AGCs, there was no reason why they should be considered to undermine the vitality and viability of town centres and: *“...Therefore, I see no reason why the proposed AGC should not contribute to the mix of retail and non-retail uses offered within the town centre”.*

- 6.5 In responding to a suggestion by third parties that the unit would be better off vacant or utilised for an alternative use, the Inspector concluded at para 39 that: *“leaving properties vacant for long periods is normally considered detrimental to the viability and vitality of town centres”*.
- 6.6 The Inspector maintained that, provided there was compliance with relevant policies designed to avoid an over-concentration of such uses in an area, there was no reason why they should undermine the vitality and viability of town centres.
- 6.7 A copy of this Appeal is attached at **Appendix 1**.

**Terry Farr Vs London Borough of Waltham Forest (Ref: APP/U5930/W/18/3193121 – 27<sup>th</sup> July 2018)**

- 6.8 In considering whether the proposed change of use from an estate agents office to an AGC was likely to have a negative impact on the vitality and viability of the Walthamstow Town Centre, the Inspector concluded at para 8 that despite the Council’s claims that the proposal would detract from the vitality and viability of the secondary shopping frontage, it had provided little evidence to demonstrate that the scale of demand for Class A1 and A2 uses outstripped the supply.
- 6.9 The Inspector also concluded at para 10 that the marketing evidence presented by the Appellant’s estate agent, which suggested that there was little prospect of the premises being occupied by Class A1 or A2 uses, should be given *“considerable weight”* given his knowledge of the local market. The Inspector also referenced at para 11 the lack of other AGCs in the area noting therefore that there would not be an undue concentration of this type of Sui Generis use. The Inspector concluded at para 12 that the proposed AGC use was unlikely to impact on the vitality and viability of the area.
- 6.10 When considering whether the proposal would have an impact on crime and disorder or whether it would contribute towards gambling addiction, the Inspector concluded at para 13 that: *“those are matters that are addressed by ‘other legislation’ and are therefore not for my consideration in determining this appeal”*.
- 6.11 A copy of this Appeal is attached at **Appendix 2**.

**JWT Leisure Vs Blackpool Borough Council (Ref: APP/J2373/W/18/3196247 – 18<sup>th</sup> May 2018)**

- 6.12 In considering whether the proposed change of use from a retail to an AGC would have an impact on the vitality and viability of Blackpool Town Centre, with particular reference to its character and appearance, the Inspector concluded first at para 6 that the proposal would fall within the definition of a main town centre use as set out within Annex 2 of the NPPF.
- 6.13 The Inspector also considered at para 11 that the proposed use would add to the variety of uses within the town centre; lead to further investment in the area and the creation of new jobs; that the re-use of unit would strengthen and support the re-branding of the town centre; and that customers visiting the AGC were also likely to visit other town centre uses during their trip, adding to the vitality and viability of the town centre as a whole.
- 6.14 In considering whether the proposal would have an impact on the health and education of Blackpool's population, the Inspector concluded at para 13 that there was *"little conclusive evidence that the proposal would, individually or collectively, result in harm to people's health and education, or prevent them from leading healthy lifestyles"*.
- 6.15 A copy of this Appeal is attached at **Appendix 3**.

**GT Promotions Ltd Vs London Borough of Lewisham (Ref: APP/C5690/W/17/3191347 – 28<sup>th</sup> August 2018)**

- 6.16 In considering whether the proposed change of use from a 'pay day loans' establishment to an amusement centre (AGC) at a property in the 'primary shopping frontage' would have an impact on the vitality and viability of Lewisham Town Centre, the Inspector concluded at para 11 that the proposed use would make a greater contribution to the night-time economy than that of the existing pay day loan establishment given that it was open later into the night. Even though there were several other AGCs on Lewisham High Street the Inspector stated at para 7 that it would not result in an over-concentration of such uses.
- 6.17 Both the Inspector and the Council agreed (para 23) that noise from the 24/7 use was a matter that could be agreed by way of planning condition.
- 6.18 The Inspector also accepted at para 21 that other social or public health issues would be more directly relevant to licensing and management functions and *"....it would not be an*

*appropriate to reject a planning application for a legitimate form of use on the basis of an assumption that the premises would not be run in accord with the relevant statutory regulations.”*

- 6.19 In justifying his decision for allowing the appeal, the Inspector concluded at para 20 that: *“Paragraph 85 of the revised Framework (2018) continues its predecessor’s commitment to taking a positive approach to the growth of town centres by, amongst other things, allowing a suitable mix of uses and defining the extent of town centres and primary shopping areas, making clear the range of uses permitted in such locations as part of a positive strategy for the future of each centre. As I have concluded that the proposal would not harm the viability or vitality of town centres no conflict would arise with the Framework”.*

- 6.20 A copy of this Appeal is attached at **Appendix 4**.

**Kerching Amusements Vs Broxtowe Borough Council (Ref: APP/J3015/W18/3212670 – 9 April 2019)**

- 6.21 The key issue in the determination of this Appeal was the issue of the impact of the appeal proposal on the vitality and viability of Eastwood Town Centre. In considering this issue, the Inspector stated the following at paragraph 10:

*“The retail market has changed significantly in recent years with the advent of internet shopping and, even in primary shopping areas, there has been a move toward a greater variety of operators catering to different needs. Indeed, I note the comments of the Council’s Town Centre & Regeneration Officer which refer to the ‘evolving’ role of the town centre with a ‘long-term structural shift away from retail dominated provision to services of all types, but especially leisure (e.g. bars, cafés, entertainment) and a continued rationalisation of non-sustainable retail spaces.’ Recent changes to the General Permitted Development Order have also created additional flexibilities, largely to try to react to the changing nature of the high street. Whilst it is clearly legitimate for the Council to identify a level of retail provision below which harm to the shopping function of a street might take place, this also needs to be considered in the context of the current nature of retail activity, existing levels of vitality and viability and the Development Plan’s policies.”*

- 6.22 The Inspector also noted the difference between an AGC and the machines found in betting offices and public houses (paragraph 14):

*“There are no other adult gaming centres within Eastwood Town Centre. I note comments about the presence of other gambling machines in nearby betting shops and public houses. However, these uses are clearly materially different to the appeal proposal as gaming machines are only a limited element of a broader range of activities offered to customers. Consequently, the presence of these uses in the wider environs of the appeal property does not demonstrate that the proposed development would cumulatively add to an over-concentration or saturation of gambling-related uses.”*

- 6.23 In summary, in respect to the issue of the impact of the proposal on Eastwood Town Centre the Inspector concluded at paragraph 15 that the proposed change of use would preserve the vitality and viability of the town centre and would accord with objectives of the relevant framework to promote growth and diversification in town centres. Whilst the Inspector noted that the proposal did not comply with the requirements of saved Policy S4 of the Local Plan, which seeks to retain a threshold of 60% of A1 uses in primary shopping frontages, the Inspector attached only limited weight to this policy due to the conclusions of paragraph 10 (set out above).

- 6.24 In respect to other matters, and concerns over gambling, the Inspector stated at paragraph 16:

*“Strong concerns have been raised in respect of the potential adverse social impacts of an adult gaming centre. In response, the appellant confirmed the type of machines which would be operated on the premises would not be Fixed Odds Betting Terminals (FOBTs) which are referred to by a number of objectors, but machines with much lower maximum stakes and prizes. The appellant has also supplied details of the Licence Conditions and Codes of Practice from the Gambling Commission, to which the operator would be subject, and which specifically address matters such as protection of children and other vulnerable persons, access to premises and age checks, responsible gambling, self-exclusion and prevention of money laundering. Whilst I understand the concerns raised, the operation of the business would be strictly controlled by the requirements of the Gambling*

*Commission and there is nothing to suggest that these requirements would or could not be adhered to. On the evidence before me, therefore, I am not convinced that there would be demonstrable social harm associated with the proposed use which would weigh against the proposal.”*

6.25 The Inspector also had no concern over noise considering this could be dealt with by condition and noted that the machines are volume adjustable and can be set to levels which would not be disruptive to adjacent occupants.

6.26 A copy of this Appeal is attached at **Appendix 5**.

**RAL Limited Vs Kingston-upon-Hull City Council (Ref: APP/V2004/W/19/3233244 – 22 October 2019)**

6.27 The Inspector noted at paragraph 15 that the site’s location close to other shops and services would result in the potential for linked trips and associated footfall and also noted minor benefits with the envisaged employment levels, to the evening economy with proposed opening hours and with regard to providing natural surveillance. In particular, whilst there were two other adult gaming centres in the District Centre, the Inspector did not consider that this would cause undue concern. The Inspector considered that the centre would still contain a mix of uses and it would have the benefit of having one less vacant unit. The Inspector noted that although the shop front display areas would differ from an A1 use, this would not diminish from the appeal of this row of shops, the primary frontage, or the centre as a whole because the overall form and appearance of the units would be maintained (paragraph 16). In summary when considering the proposals impact on the health and vitality of the centre, the Inspector concluded:

*“When these factors are taken together, in particular that the vacant unit would be brought back into use, the proposal would be complementary to the shopping environment as it would not undermine the vitality and viability of the centre. Likewise, when the indicators in the PPG are considered, the proposal would not detract from the health of the centre. It would maintain the diversity of uses and it would lower the proportions of vacancies. Nor would it diminish from customers’ experience and*

*behaviour of the centre, as it would be a complementary use that would not be unexpected in such a location and allow for the potential for linked trips.”*

6.28 A copy of this Appeal is attached at **Appendix 6**.

**Mr Majid Morabbi vs Derbyshire Dales District Council (Ref: APP/P1045/W/19/3228235 – 20 December 2019)**

6.29 In an appeal regarding the change of use of 1 Union Street, Ashbourne, Derbyshire, DE6 1FG for use on the ground as an adult gaming centre within the Ashbourne Conservation Area, the Inspector considered that there was no evidence that the proposal would result in unacceptable effects on the residential amenity of neighbouring occupants, including a residential flat above the appeal site. Whilst the Council had suggested that the proposal would give rise to noise and disturbance to adjacent occupiers through the general comings and goings of customers to the premises and the potential congregation of people on the street, as well as the potential for anti-social behaviour with groups of people gathering and loitering outside the proposal, no evidence of this had been provided. The Council had been unable to supply any evidence for its assertions that adult gaming centres result in congregations of people outside the premises of, indeed that such uses are particularly or disruptive to neighbouring occupiers. The Inspector noted as well that *“Given the central location of the appeal proposal it is not unreasonable for adjacent residents to expect a certain degree of noise and disturbance from traffic and neighbouring commercial uses, including the comings and goings of customers visiting business premises akin to the proposed use”* (paragraph 9). Consequently, at paragraph 12 the Inspector concluded that the proposed development, subject to conditions, would not cause any noise or disturbance of a degree sufficient to result in unacceptable harm to the living conditions of the occupants of adjacent residential properties.

6.30 In respect to concerns over social matters, the Inspector in reviewing this point stated the following:

*“A number of objectors raise moral concerns in relation to gambling and the potential for gambling addiction and associated social deprivation. Concerns are also expressed that the site is located close to a scout hut, school and a sandwich shop which attracts a high*

*footfall of school pupils with the inference being that young people will be attracted to use the gaming machines to the detriment of their long-term wellbeing. Whilst these concerns may be legitimate, ultimately it is for government to consider appropriate policy responses to such social issues. These are not planning matters for my consideration as national and local planning policies do not proscribe such uses. Rather, the government seeks to regulate such activities by other statutory means predominantly via the licencing regime” (paragraph 15).*

- 6.31 A copy of this appeal is attached at **Appendix 7**.

**Luxury Leisure Vs London Borough of Croydon (Ref: APP/L5240/W/19/3232831 – 13 January 2020)**

- 6.32 In an appeal by Luxury Leisure for an AGC in Thornton Heath, Croydon, an Inspector in a decision letter dated 13 January 2020 gave significant weight when assessing the impact on the vitality and viability of Thornton Heath District Shopping Centre, to the fact the existing appeal site was vacant and the detrimental effect on the character and appearance of the area the vacant unit was having and that *“such a negative effect would only continue if the premises remained vacant”* (paragraph 10). The Inspector concluded that the use of the site as an AGC would therefore result in *“a significant improvement to the contribution this premises makes to the character and appearance of the area”*.
- 6.33 The Inspector considered that in light of the period this premises had remained in its current condition *“as a benefit of the scheme along with the creation of jobs. These matters will contribute to the vitality and viability of the Thornton Heath Shopping Centre”* (paragraph 13). The Inspector also did not consider that the introduction of an AGC into the centre would jeopardise the positive momentum of the centre’s regeneration (paragraph 13).
- 6.34 In respect to residential amenity and noise and disturbance, the Inspector acknowledged that *“such premises are not usually visited by groups of people”* (paragraph 22). In respect to objections to the development in principle and suggested negative influences it may have on vulnerable people, the Inspector stated at paragraph 37 *“whilst the objections of interested parties are noted, the Appellant’s evidence confirms, amongst other matters, that people under the age of 18 would not be permitted on the premises; that the sale of alcohol would*

*also not be permitted; and that there would be a very low cap on the maximum stake on a new machine in the premises. Many of the concerns raised are more relevant and better dealt with, under the licensing regime. Based on the evidence before I have no reason to withhold planning permission for the use, provided it is operated in accordance with the conditions I have imposed.”*

- 6.35 A copy of this appeal is attached at **Appendix 8**.

**Praesepe Holdings Limited Vs Doncaster Metropolitan Borough Council**  
**(Ref: APP/F4410/W/20/3250246 – 14 August 2020)**

- 6.36 In considering the most recent changes to the Use Classes Order the Inspector stated at paragraph 10:

*“I am also mindful of the forthcoming changes to the Use Classes Order that will come into effect on 1 September 2020 allowing greater flexibility for changes of use for retail within town centres. While this would not directly effect this proposal as the proposed use is sui generis it is a material consideration in respect of how it would effect the current policy and in particular the aims of retaining primary retail frontages”.*

- 6.37 The Inspector went on to state that *“the proposed use would comply with the aims of this Policy by supporting the vitality and viability of the town centre and would bring a vacant unit back into use, facilitating a use which could add to the footfall and increase the opportunity for shared trips. It would also add to the evening economy being a use that would be open up to 24 hours, and also subsequently increase employment opportunities”* (paragraph 11). The Inspector went on to dismiss the Council’s concerns that a policy that did not specifically relate to AGCs but to other sui generis uses including payday loan units and betting shops was relevant. The Inspector stated that *“even if I were to agree with the Council’s interpretation of the supporting text, the Appellant has marketed this vacant property for in excess of 12 months with no success. The appeal proposals propose having an occupier within the building where there is an opportunity for additional footfall, and it would not result in a cluster or concentration of such uses, being the only such use in this immediate area.”*

- 6.38 In respect to health and well-being, the Council were concerned that there may be local residents who are susceptible to problem gambling which would be exacerbated if the appeal were allowed. In response to this the Inspector stated, *“the updated report ‘Gambling: An Evidence Briefing Paper for Doncaster’ accepts there is a lack of robust evidence concerning problem gambling and there is limited local data for Doncaster itself. Nor does it correlate that the proximity of a gambling establishment within close proximity to residents results in additional problem gambling.*

*“There is an estimate that 1 in 90 adults in the UK are problem gamblers, with no further information on how this differs locally, if at all, or how, should the appeal be allowed this might make matters worse. I do not agree therefore that the argument presented can be given significant weight or that there is a clear link between the proposed use of the site and the concerns the Councils identify”* (paragraphs 15 and 16).

- 6.39 A copy of this Appeal is attached at **Appendix 9**.

**East Kent Leasing Ltd Vs Luton Borough Council (Ref: APP/B0230/W/20/3256275 – 29th December 2020)**

- 6.40 The Appeal site was a vacant former betting shop within a town centre location characterised by a mix of uses including late night businesses. The Inspector recognised that amusement centres (and betting shops) are an established part of high streets and shopping centres across the country and “complement their retail function”. It was also recognised that since the premises was previously in use as a betting shop, there would be no overall increase in the total number of such sui generis uses as a result of allowing the appeal.

- 6.41 In summing up, the Inspector commented that the proposed use would accord with Luton’s town centre-specific policies which sought to preserve or improve the character of the area; contribute towards job creation; and contribute to a mixed area which is vibrant and active:

*“It would also accord with the National Planning Policy Framework at paragraphs 85 and 127, which amongst other things, seek to promote the growth and diversification of town centres to allow them to grow and diversify in a way that can respond to rapid change in the retail and leisure industries and allows a suitable mix of uses, and create places where crime and*

*disorder, and the fear of crime, do not undermine the quality of life or community cohesion” (paragraph 13).*

6.42 A copy of this appeal is attached at **Appendix 10**.

### **Conclusions**

6.43 The key conclusions we would draw from the above appeals having regard to this application are that:

1. AGCs are an accepted ‘main town centre use’ – having regard to the ‘sequential test’ (set out at para 86 of the NPPF) the first preference for such uses is to be located within town centres.
2. It is accepted that AGCs can add to the variety of uses within a town centre and can lead to further investment. Customers visiting an AGC may also be likely to visit other town centre uses during their trip, adding to the vitality and viability of the town centre as a whole.
3. Conversely, leaving properties vacant for long periods is normally considered detrimental to the viability and vitality of a town centre.
4. Alleged risks to problem gamblers, young people and other vulnerable persons are matters relevant to licensing and management functions, not planning.
5. In respect to local authority change of use policies relating to restrictions on the quantum of A1 floorspace within a particular shopping parade, Inspectors are now attaching significantly less weight to such policies in light of the recent changes to the Use Classes Order which came into force on 1 September 2020 seeking the need for greater flexibility on the High Street.
6. Residents living within central locations, i.e. town centres, should expect a certain degree of noise and disturbance from traffic and commercial uses.

## **SECTION 7: PLANNING ASSESSMENT**

- 7.1 This Section of the Planning Statement assesses the proposed development against the Statutory Development Plan and relevant material considerations in respect to the key planning issues associated with the development proposal.

### **Principle of the Proposed Change of Use**

- 7.2 The adopted Local Plan Proposals Map designates the application site as being located within the Reading Central Area, Primary Shopping Area, Primary Shopping Frontage, Central Core Area and the Office Core Area.
- 7.3 Overall, the application proposal seeks to introduce a use which will bring a vacant former betting shop unit back into economic use. The unit at the current time is contributing nothing to vitality and viability of the Reading Central Area. Further benefits include associated high levels of footfall, linked trips and the creation of up to eight jobs (discussed below). The new use will complement the surrounding shops and other commercial premises and will assist in diversifying Reading Town Centre's offer.
- 7.4 The proposed central location of the application site accords with national planning guidance as set out at paragraph 86 of the NPPF.
- 7.5 At a local level, the proposals will comply with Policy RL1 (network and hierarchy of centres) in that they will broaden the range of facilities and strengthen the offer of the centre, thereby enhancing its vitality and viability. The proposals will help to support Reading as a centre of regional significance by attracting visitors from further afield and encouraging them to stay in the area for longer. The proposals will also re-introduce a 'centre use' and bring a vacant unit back into active use. To leave the unit vacant into the longer term will only be at further detriment to the wider viability and vitality of Central Reading, as acknowledged by case law.
- 7.6 Within the Primary Frontages, Policy CR7 promotes a retail-led mix of main town centre uses (including sui generis uses) that support the daytime and evening economy and provide an active building frontage to contribute to the vibrancy of the town centre and provide visual interest. The proposals are in accordance with this policy. The proposed operational hours of

the AGC mean that the proposals will enhance the evening economy and contribute to the vibrancy of Reading Town Centre. The proposed shopfront (not subject to this application but the details of which can be submitted in due course) will be an improvement on the vacant, unattractive shopfront at present. They will enable the unit to interact positively with the streetscene and encourage footfall, which will be a vast improvement on the existing situation on site.

- 7.7 The Primary Shopping Area is at the heart of the Reading Central Area and the location where footfall is greatest. As such, the location of the application site on the Primary Shopping Frontage of Friar Street, a Primary Shopping Area, is entirely appropriate and is precisely where such new uses, such as an AGC, should be located. Paragraph 1.2.4 of the Local Plan recognises that, *“Reading town centre is one of the UK’s most important centres. Its importance for retail, boosted by the opening of the Oracle in 1999, is long established, but it is also significant for leisure and culture...”* In this regard, the presence of a non-retail, leisure-type unit in this location will assist in attracting people to the town centre, encouraging them to undertake linked trips from the ACG to other town centre uses. This will have a positive impact on the local economy.
- 7.8 Policy CR7 resists the loss of A1 or A2 uses. This is not applicable as the unit is in lawful Sui Generis use as a result of the former William Hill betting shop on site. The loss of such a use is not contrary to planning policy. Notwithstanding, the proposal will introduce a use that makes a positive contribution to the overall diversity of the centre, in accordance with the policy.
- 7.9 ACGs are recognised as a main town centre use as defined in the NPPF and as set out within case law. They are a leisure / entertainment type use, therefore Policy CR4 is applicable as it recognises that the Central Core will be the prime focus for leisure development. The proposed leisure use will attract a wide range of people into the centre, in compliance with this policy. The scheme proposes a leisure-type use in an existing vacant unit of limited floorspace. Again, this complies with Policy CR4 which encourages innovative solutions to leisure provision which make best use of available site area. At a more strategic level, the proposals are also in accordance with the Local Plan’s vision which recognises the importance of widening Reading’s role as a place for culture, leisure and entertainment, and broadening

the range of facilities to establish Reading as an internationally recognised and economically successful city region.

- 7.10 A site visit undertaken in April 2021 confirmed that the town centre is healthy and thriving, despite the economic downturn and the Covid-19 pandemic. Footfall was high, both to modern format high street shops and the more traditional smaller streets. The level of vacancy is low in Reading, particularly when compared to towns of a similar size across England. This is testament to the supportive policies contained in the Reading Central Area Action Plan (adopted 2009) and being a busy university town. There is already a wide range of retail and non-retail provision in the defined town centre, provided across the following streets:

Station Road  
Queen Victoria Street  
Cross Street  
Union Street  
Friar Street  
Broad Street  
Oxford Road – part, north site  
St Mary's Butts – east side  
West Street  
Chain Street  
Butter Market  
Market Place  
Duke Street  
High Street  
King Street  
King's Road

- 7.11 This wide spread of shopping streets in Reading, each with a mix of retail, food and drink, office and leisure uses, contributes to Reading's overall health. Of the sixteen streets within the defined town centre above, there were 45 vacant units identified, ranging from very small kiosk units to larger floorplate, modern units. In the main, these represent national multiples which have recently closed across the country, for example Debenhams, the Arcadia Group and the Edinburgh Woollen Mill Group, as well as some smaller, independent shops and cafés. Many of these units were being prepared for reopening, showing good confidence in Reading

town centre, including a new Wendy's restaurant on the corner of Station Road and Friar Street, and a new food store offering on West Street where a takeaway has recently closed down. Turning to the application site itself, the former betting shop closed in 2019 and has not been in use since.

- 7.12 Within the preceding Section there are a number of relevant appeal decisions. One of the key points of principle which arises from the various appeal decisions are that AGCs are an accepted main town centre use. Further, it is accepted that AGCs can contribute to the variety of uses within a town centre which can lead to further investment and consequently can add to the vitality and viability of the town centre as a whole. The application proposal will reinforce the continuity of the Primary Shopping Frontage along Friar Street and the wider area and will make a positive contribution to the mix of uses within it.
- 7.13 Notwithstanding this, one of the key findings in the recent appeal decision in Doncaster, dated 14th August (at Appendix 8), is that the changes to the Use Classes Order allow a greater flexibility within town centres and the importance is, therefore, about supporting the vitality and viability of the town centre. The creation of Class E in general shows a clear and strong recognition from Central government of the need to diversify and move away from retail dominance in order to ensure, and in a lot of cases reinstate, town centres' vitality and viability. This stance is reflected in many of the appeal decisions set out within the preceding Section.
- 7.14 In this respect, the principle of bringing a vacant unit at ground floor level back into use and enhancing the vitality and viability of the Reading Central Area is key. The application achieves this and therefore accords with Policy RL1 in respect of the network and hierarchy of centres, as well as Policy CR7 in respect to the primary frontages in Central Reading.
- 7.15 Retail is changing dramatically at a national level. There is a recognised shift in shopping habits, with increasing numbers of out-of-town shopping destinations and increasing online retailing. The latter can be easily expressed as a percentage of the whole industry and, as of January 2021, stood at 36.3% according to the Office for National Statistics (ONS). For context, the figure was 11.7% in 2015. This clearly illustrates the scale of the problem and the resulting challenges that are facing many centres such as Reading, whose successes have historically been down to retail prosperity.

- 7.16 Research funded by the Economic and Social Research Council (ESRC) and undertaken by Southampton University in 2015, identified the extent of the problem facing British high streets and looked in great depth at the reasons why and possible solutions. The report concluded by asserting that: *“Long-term shifts towards high streets which are more orientated to service provision than retail can be expected to continue”*. The report then went on to recognised that the ‘*experiential*’ side of town centres increases spending and dwell time, heightens enjoyment and deters customers from resorting to online alternatives.
- 7.17 This diversification of uses away from predominantly retail as a means of ‘*solving*’ the high street crisis is now reflected in national policy and guidance. As such, there is a clear and strong recognition from Central government of the need to diversify and move away from retail dominance in order to ensure, and in a lot of cases reinstate, town centres’ vitality and viability. This stance is reflected in many of the appeal decisions set out within the preceding Section.
- 7.18 It is also worth considering the impacts of the current Covid-19 pandemic, which must constitute a material consideration in planning decisions. A proactive approach is needed by Councils, as a collective, towards stimulating the economy using the powers available to them. Particular focus should be on areas particularly hard-hit such as high streets, which according to the Retail Gazette, suffered an 85% decrease in footfall in April 2020 as a direct result of the crisis, which has contributed to the retail industry contracting by 18%. While some retailers that were operating before the crisis will be able to reopen once the lockdown is over, many will not. Figures from the Centre for Retail Research show that more than 16,000 stores closed over the course of 2020, resulting in over 180,000 job losses. They predict that 2021 will be even worse, with 200,000 anticipated job losses. The casualties are many and well known and include well-known and established brands such as Debenhams, Jack Wills and BrightHouse. These impacts will only be further felt as a result of the current crisis which will have untold impacts on industries and businesses, particularly those already struggling. It is highly likely therefore that a shift towards leisure and service provision in town centres will be crucial to ensure that centres that have traditionally been retail dominant remain viable.

## **Principle of the Proposed AGC, Including Proximity to Existing Betting Offices**

- 7.19 There are two existing AGCs in the Reading Central Area – Golden Touch Amusements at 9 West Street and Admiral at 98 Friar Street. There is a separation between the application site and the existing AGCs of approximately 300 metres and 175 metres respectively. These existing AGCs, like the application site, are located within the Central Area, the Primary Shopping Area, the Primary Frontage, the Central Core area and the Office Core area. Both AGCs evidently contribute to footfall in the town centre, and form part of linked trips between other units.
- 7.20 Whilst the Reading Local Plan does not specifically refer to the provision of AGCs, it does have a specific policy on betting shops (and payday loan companies) at Policy RL4. The applicant is aware that the two uses are often inappropriately conflated. It is important to recognise that an AGC is not the same as a betting shop since there are fundamental differences between the two.
- 7.21 These differences can be summarised as follows:
- By law, AGCs are not permitted to offer category B2 gaming machines. The only types of unit that are permitted to offer these are casinos and licensed betting offices (“LBOs”). LBOs are limited to providing a maximum of four B2 machines, hence betting shop operators seek to operate many units, often near one another, leading to clustering.
  - Chongie Entertainment Ltd AGCs offer the customer a much wider range of products ranging from as little as 10p in stake and a choice of ‘softer game profiles’.
  - LBOs and AGCs are generally very different environments. LBOs generally adopt a less inviting and supportive space for customers who can place a bet or play machines. Their staff are generally located behind a screen or desk and have little interaction with customers. In contrast, AGCs have historically played an important community role, focusing on customer service, with staff circulating the shop floor, and speaking to, helping, and getting to know customers. Supervision and customer interaction are constant, with customers and staff building a rapport.

- 7.22 Therefore, to assess the proposals against Policy RL4 would be a flawed approach as the proposed does not constitute a betting shop. This is supported at Appeal (see Appendix 9: Praesepe Holdings Limited Vs Doncaster Metropolitan Borough Council). In any event, the former use of the premises was a betting shop, therefore a betting shop use could be reinstated at any point without having to obtain planning permission.
- 7.23 As established by Inspectors in the appeal decisions set out in the preceding Section, particularly in respect of Hull (where three AGCs in a District Centre was considered acceptable), the proposed AGC is not going to give rise to consideration of an over-proliferation of such uses. There is only one AGC in the Central Area at present, which is sufficient distance from the application site. Therefore, it is not considered the additional unit will give rise to any negative impacts.
- 7.24 Overall, the above assessment, as well as the status of Reading as a regional centre, demonstrates that a total of two AGC units would not amount to a harmful proliferation of these uses. Conversely, its presence will serve to enhance the local area and support the function of the Central Area.

### **Residential Amenity**

- 7.25 The application site is predominantly surrounded by retail uses and other main town centre uses including pubs and bars. There nearest residential uses are at the upper floors along Friar Street. The mix of uses is similar to many sites across the Central Area and is actively encouraged in both National and Local planning policy. All machines present within the proposed AGC will be volume adjustable and can be set to levels so as to be inaudible outside the property. No music is played within the premises, and any sound produced will be within appropriate levels to ensure that this is not audible from outside the premises. Furthermore, the management of the operation will follow procedures to ensure that patrons of the proposed venue behave in an orderly manner, including entering and leaving quietly.
- 7.26 Unlike seaside amusement arcades, no tannoy is used within AGCs. The applicant is conscientious in regard to amenity impacts and always strives to be a good neighbour, being respectful of surrounding occupiers, whether this be residential or otherwise. Furthermore, as confirmed by an appeal decision in the previous section, Inspectors have consistently found

that such uses in respect to their impact on neighbours can be satisfactorily controlled through appropriate conditions. Regardless, the application proposes the change of use of a vacant unit, formerly in sui generis use. No increase in the size of the unit is proposed. There is not anticipated to be any increase in noise in comparison with the previous use.

- 7.27 The licensing regime runs alongside planning and will ensure further control of the premises through the requirement to hold a Gambling Premises Licence to operate at the proposed later hours. The Gambling Premises Licence is an ongoing regulatory tool. At any time, the licence can be made the subject of an application for review, as a result of which the conditions can be changed, or the licence revoked. It follows that licensing is a flexible and responsive regulatory tool and any sustained or serious objection can be tackled by way of a review of the licence. At all times, and regardless of any controls of the LPA, the Licensing Authority therefore has many methods of recourse, if the operation of the application site failed to respect the amenities of the local area, including ultimately revoking the Licence.
- 7.28 The evening use would be low key with few customers and will offer a facility for those seeking evening entertainment, generating employment and natural surveillance. In the appeal decision from October 2019 for a change of use to an adult gaming centre in Hull (ref. 3233244) referenced in the previous Section the Inspector in allowing the appeal confirmed the 24-hour operation was *“not unacceptable with its District Centre location”*. The central and commercial nature of Friar Street, and Central Reading in general, makes it an appropriate location for a use that operates 24-hours. Taking the above into account, the proposal is not considered to have any detrimental impact upon the amenities of neighbouring occupiers with regard to noise or nuisance. Conversely, the strengthening of the evening economy and natural surveillance will assist in managing external issues such as crime.
- 7.29 In this regard, Policy RL2 directs retail, leisure, and cultural development to existing centres. The explanatory text for this policy states that *“in order to diversify uses in the town centre and improve the Centre’s leisure offer, it is important to accommodate leisure, cultural and tourism activities that appeal to a wide range of age and social groups. Leisure and entertainment uses that would contribute to the 18-hour economy will be encouraged, and existing uses maintained”*. The proposed use would introduce a complementary evening and night-time economy offering capable of catering for a wide range of Reading’s community, and importantly, offering an alternative activity to drinking.

- 7.30 Overall, it is considered that the proposal will have an acceptable relationship with the neighbouring properties and within the site itself. It is the correct location for uses which contribute to Reading's 18-hour economy.

#### **Potential Anti-Social Behaviour**

- 7.31 Chongie Entertainment Ltd strictly adheres to a Responsible Gaming Code, which ensures that it can operate responsibly within any of the communities it operates in. This is submitted as part of the submitted planning application. This code includes:

- (i) Recognising that prevention is the best form of player protection;
- (ii) Protecting children and minors;
- (iii) Encouraging responsible communication;
- (iv) Reinforcing the need for player responsibility;
- (v) Employing professional staff;
- (vi) Keeping players informed;
- (vii) Guaranteeing fair gaming; and
- (viii) Working with experienced partners.

- 7.32 The Chongie Entertainment Ltd Responsible Gaming Policy (September 2020) confirms that the company recognises the importance of social, responsible gambling and regularly reviews its policies and procedures and their effectiveness to those that partake in gambling activities. The Company is required to meet responsibilities and guidance outlined by the Gambling Act 2005 and the Social Responsibility Code provisions of the Gambling Commissions license conditions and code of practice (LCCP). The Company is legally obligated to follow the requirements specified in the Gambling Act 2005 and the LCCP as issued by the Gambling Commission. Compliance with these would be a condition of any AGC operating license.

- 7.33 The Company operates self-exclusion and takes reasonable steps to ensure that any customers on the self-exclusion register are prevented from using their existing account or opening a new account. The Company operates a 'time out' facility for those who want to take a short break and within the unit. Posters and leaflets will be clearly displayed of key organisations which can help anybody with gambling problems.

- 7.34 Chongie implements an age verification policy to prevent children and young people from entering the premises and operates a Challenge 21 / Challenge 25 (as appropriate) on its sites.
- 7.35 In addition, Chongie Entertainment Limited makes a contribution to problem gambling charities on an annual basis which supports research into the prevention treatment of problem gambling, for visitors to learn how to gamble safely and the identification and treatment of problem gamblers.
- 7.36 Section 6 of this Statement sets out a number of key appeal decisions, which are relevant in setting out how AGC applications should be considered. One key point which is reiterated in most appeal decisions is that matters relating to gambling and social responsibility issues are not for the planning system to determine, rather these are the subject of a separate licensing regime. This is perhaps most clearly set out in the Future Leisure Limited Vs London Borough of Brent appeal case (Appendix 1), where the Inspector dismissed any connection between AGCs and social concerns such as gambling, alcohol abuse and mental health effects noting at paragraph 26 and 30 that:

*“Moreover, if such general social concerns about harmful effects and alleged links between gambling, alcohol abuse and mental health disorders were accepted as a sound basis for rejecting planning for such uses, it is unlikely that planning permission would be given for any betting shops or AGCs or indeed other types of premises, such as pawnbrokers/payday lenders, off-licences, public houses or takeaways.”*

*“Moreover, vulnerable persons in the area would, whether the proposal was approved or not, still have access to betting shops, off-licences, public houses, pay-day lenders and pawnbrokers as they would in many high streets across London and the country”.*

- 7.37 Similarly, in respect to Appeal reference: APP/U5930/W/18/3193121 dated 27th July 2018, when considering whether the proposal would have an impact on crime and disorder or whether it would contribute towards gambling addiction, the Inspector concluded at paragraph 13 that: *“those are matters that are addressed by ‘other legislation’ and are therefore not for my consideration in determining this appeal”*.

### **Job Creation**

- 7.38 An economic benefit of the application is to bring back the unit into beneficial use and the associated creation of new jobs. The application will give rise to eight new jobs, comprising two full-time and six part-time positions. These jobs would suit local people and the Company seeks to employ from the local area wherever possible. This is a further economic benefit of the proposed application.

### **Parking**

- 7.39 In respect to parking and access issues, the appeal site is in a highly sustainable town centre location benefiting from direct access to a wide range of transport modes. It is within close proximity of the train station, and there are numerous bus stops on Friar Street.
- 7.40 AGC customers generally travel by public transport or by foot to its sites. Hence the location proposed is an ideal location for an AGC. Dedicated car parking is not provided at AGC units as they are predominantly located in High Street locations. Consequently, it is not anticipated that the development will give rise to the need to provide car parking.

### **Flooding Issues and Sustainable Drainage**

- 7.41 The application site is located within Flood Zone 1, an area at the lowest risk of flooding. The application proposals will not increase the risk of flooding on-site or elsewhere.

## **SECTION 8: SUMMARY**

- 8.1 This Statement is submitted to Reading Borough Council on behalf of Chongie Entertainment Ltd in respect to the change of use of 134-135 Friar Street, Reading, RG1 1EX from its approved use as a former betting shop (Sui Generis) to an adult gaming centre (Sui Generis). The application relates to the change of use of the site only. All other matters, including those relating to advertisements, will be the subject of further application(s).
- 8.2 Chongie Entertainment Limited is a new entrant in the adult gaming centre (AGC) UK market. The Company operates to the highest standards and is fully aware of its social responsibilities in respect to issues associated with gambling which it takes very seriously. The application seeks to bring into beneficial use a currently vacant unit for 24-hours a day, allowing activity within the Reading Central Area outside of normal trading hours and will increase the vitality and viability of the centre along with the creation of 8 new jobs.
- 8.3 This Statement sets out several key appeal decisions which detail how relevant matters in respect to AGCs should be considered. The appeals confirm that matters relating to concerns over gambling and the proliferation of gambling outlets, is not for the planning system to consider, but rather are the subject of the licensing regime. It is confirmed that AGCs are an appropriate town centre use which contributes to the vitality and viability of an existing centre.
- 8.4 The application site itself is within the Town Centre's Primary Shopping Area, which the Local Plan identifies as the correct location for main town centre uses, in particular those which support the leisure function of the centre and enhance the evening economy. The application proposes to bring into use an otherwise vacant unit. Due weight must therefore be given to the reinstatement of an active frontage, along with increased footfall to the Centre generating linked trips, and the provision of employment.
- 8.5 The application site is an existing sui generis unit, therefore there will be no loss of the former A1/A2 (now Class E) uses, as identified in Policy CR7. Furthermore, the proposed use will indeed make a positive contribution to the vibrancy of the centre. As such, the application proposal is considered to be of benefit to Reading Town Centre and the application site is entirely appropriate in respect to the proposed use and its location.

---

## Appeal Decision

Site visit made on 27 February 2018

**by J P Tudor BA (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 May 2018**

---

**Appeal Ref: APP/T5150/W/17/3189944**

**9A Walm Lane, Willesden Green, London NW2 5SJ**

- 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 Future Leisure Limited against the decision of the Council of the London Borough of Brent.
  - The application Ref 17/3472, dated 8 August 2017, was refused by notice dated 28 September 2017.
  - The development proposed is change of use from pay day loans establishment to adult gaming centre (both sui generis use).
- 

### Decision

1. The appeal is allowed and planning permission is granted for change of use from pay day loans establishment to adult gaming centre (both sui generis use) at 9A Walm Lane, Willesden Green, London NW2 5SJ in accordance with the terms of the application, Ref 17/3472, dated 8 August 2017, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The shop window of the premises shall contain a retail window display.
  - 3) Customers shall only be permitted on the premises between the following hours: 1000 - 2000.
  - 4) No amusement only machines/games shall be installed at the premises.

### Application for costs

2. An application for costs was made by Future Leisure Limited against the Council of the London Borough of Brent. This application will be the subject of a separate Decision.

### Main Issue

3. The main issue is the effect of the proposal on the vitality and viability of Willesden Green Town Centre, with particular regard to safety, security, anti-social behaviour and crime.

### Reasons

4. The appeal premises consist of the ground floor of a mid-terrace property located in the Primary Shopping Frontage of Willesden Green Town Centre. It

- previously operated as a pay day loans shop but has been vacant since June 2015. The site falls within the Willesden Green Conservation Area (CA).
5. It is proposed to use the shop unit as an adult gaming centre (AGC), which would involve some changes to internal layout. It would be an amusement centre comprising gaming machines, with a maximum stake of £2, and offer some ancillary catering and ancillary retail sales.
  6. As stated in paragraph 11 of the National Planning Policy Framework (the Framework)<sup>1</sup>, planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.<sup>2</sup>
  7. Policy DMP 2, 'Supporting Strong Centres', of the London Borough of Brent Local Plan Development Management Policies, November 2016 (DMP) is relevant to the proposal. It says that non-A1 or A2 uses will be permitted within town centres where: it would not reduce the proportion of frontage in A1 and A2 use to less than 65% of the primary frontage; or if vacancy rates exceed 10% of primary frontage it would not reduce the proportion of frontage in A1 and A2 use to less than 50%; and the proposal provides, or maintains, an active frontage.
  8. As the previous use and proposed use are both sui generis, there would be no reduction in the proportion of frontage in A1 or A2 use. It is not suggested that the second criteria concerning vacancy rates is relevant. In terms of an active frontage, the submitted 'Existing and Proposed Floor Plans' and the Design and Access Statement indicate that a window display with goods for sale would be incorporated into the existing shopfront. The appellant submits that such a retail window display would compare favourably with those of shops and non-retail uses in the area and that it could be secured by condition. The Council has suggested such a condition and is satisfied that the proposal complies with DMP policy DMP 2. I see no reason to disagree with that assessment.
  9. DMP policy DMP 3 'Non-Retail Uses' states that betting shops, adult gaming centres and pawnbrokers will be permitted where it will result in: no more than 4% of the town centre frontage consisting of betting shops; no more than 3% of the town centre frontage consisting of adult gaming centres or pawnbroker/payday loan shops; no more than 1 unit or 10% of the neighbourhood parade frontage, whichever is the greater, consisting of betting shops, adult gaming centres or pawnbrokers/payday loan shops; and, a minimum of 4 units in an alternative use in-between each.
  10. The Council refers to a survey of Willesden Green Town Centre carried out on 23 September 2017, which found that there were four betting shops and three pawnbrokers but no adult gaming centres. The Council's policy team advises that when last reviewed only 1% of the town centre frontage consisted of payday loan shops/pawnbrokers with no adult gaming centres. On that basis the Council considers that the proposal would comply with DMP policy DMP 3.
  11. The Willesden Green Town Team (WGTT), a local community group, refer to five betting shops and three pawnbrokers in the area, which suggests that the number of betting shops may have increased marginally since the Council's

---

<sup>1</sup> Published March 2012

<sup>2</sup> s38(6) Planning and Compulsory Purchas Act 2004 and s70(2) Town and Country Planning Act 1990

- survey. However, that minimal change would not affect compliance with the criteria of policy DMP 3 relevant to adult gaming centres. Therefore, I agree with the Council that the proposal would comply with DMP policy DMP 3.
12. WGTT also refer to a lack of diversity in the high street and suggest that such establishments cause long term damage to the vitality and viability of the town centre. However, the Council accepts that the proposal complies with policies DMP 2 and DMP 3 of the DMP. Those policies deal specifically with diversity of uses in town centres and non-retail uses such as betting shops, adult gaming centres and pawnbrokers.
  13. Notwithstanding, the Council submits that the proposal would be contrary to DMP policy DMP 1 'Development Management General Policy'. Amongst various criteria aimed at ensuring acceptable forms of development, criterion 'f' indicates that development will be acceptable if it is '*safe, secure and reduces the potential for crime.*' However, the supporting text to policy DMP 1, which can be used as an aid to interpretation, says that in seeking to limit the potential for crime the preference is through good design. Although it also refers to 'use' as a consideration, it is clear from DMP policy DMP 3 that 'use' as an AGC is considered acceptable in town centre locations, provided that there is no over-concentration of betting shops, AGCs and pawnbrokers/payday loan shops, which that policy controls.
  14. At the outset, it is appropriate to clarify the following matter: The Council Officer's Report suggested that the AGC would include 'Fixed Odds Betting Terminals'. However, the appellant advised that such machines, which I understand allow stakes of up to £100 per play, are not permitted in AGCs. That fact has since been accepted by the Council and they have not disputed the appellant's advice that the fruit machines that would be within the AGC are subject to a strict legal code which allows a maximum stake of £2. Up to 20% of the total number of machines could allow that stake whilst the others would be lower stakes.
  15. The Council refers to the number of objections that it received including from its own Licensing Manager, Brent Police Licensing Unit, WGTT and other groups and local residents. I appreciate that the proposal has raised local concern.
  16. Brent Police Licensing Unit says that children and vulnerable persons must be protected against the harmful impact of betting and gambling, which is a licensing objective. Similarly, the Council's Licensing Manager refers to the harmful impact of AGCs on children and vulnerable persons (such as those with mental health issues). In particular the proximity of various facilities which provide accommodation and/or support to vulnerable persons, including those with mental health issues and addiction problems, is referred to by those consultees and other objectors.
  17. With regard to the impact on children, there is a statutory requirement to exclude under 18s from AGCs. The appellant advises that it operates 3 similar premises in the north London area where appropriate management and supervision by trained staff ensure compliance with that legal requirement. Ultimately, failure to exclude under 18s would be an enforcement issue to be dealt with by the relevant licensing authorities. It would not be appropriate to reject a planning application for a legitimate form of use on the basis of an assumption that the premises would not be run in accord with the relevant statutory regulations.

18. Risks to problem gamblers, young people and other vulnerable persons, would be more directly relevant to licensing and management functions. As acknowledged by the Council, planning and licensing are separate functions with different procedural and policy frameworks. The Gambling Commission sets out the Licence Conditions and Codes of Practice (LCCP), which are applicable to operators of AGCs. Monitoring and enforcement is undertaken by local authority licensing officers and the Gambling Commission's licensing officers. It is that regulatory, licensing and enforcement framework which is intended to enable safe gambling as a leisure activity whilst protecting children and vulnerable persons and ensuring that there is no association with criminal activity.
19. The Council's Licensing Unit suggests that *'once the change of use is granted then, under the Gambling Act, the licensing Authority must grant the application with conditions unless we can prove there is serious crime (such as money laundering) taking place.'* However, the appellant has provided a copy of the Council's 'Statement of Principles 2016-2019 Under Section 349 Gambling Act 2005' (SoP)<sup>3</sup> which indicates that the Council has a broad range of discretionary powers in regulating gambling through its licensing function.
20. The appellant accepts that there are various facilities and accommodation for vulnerable people in the area. The appellant advises that of those, Abbots Hotel, near the junction with Walm Lane, is close to the appeal premises and that the Star Hotel at 132 Chatsworth Road is about 300 metres away. The hostel at 247 Chatsworth Road is some 900 metres away with the homeless centre at 115 Pound Lane in the region of 1200 metres away. There whilst in the general area, a number of those facilities are not in immediate proximity.
21. A Samaritans charity shop is sited next door to the premises. It is suggested by Brent Police Licensing Unit that vulnerable persons visit the charity shop. However, charity shops in a high street are likely to attract a range of shoppers. In any event, vulnerable persons are likely to visit a range of premises across the town centre and along Walm Lane, which is a busy shopping area. Therefore, a charity shop would not, of itself, attract vulnerable people to a location where they would not otherwise be.
22. Whilst other facilities assisting vulnerable persons have also been referred to, the appellant advises that they are closer to other existing AGCs in the wider area than to the appeal site. Furthermore, no evidence has been submitted to suggest that the situation in Willesden Green is unique or rare in those respects compared with many other similar town centres location across London and the country, which also have vulnerable persons within their populations who are likely to frequent shopping centres.
23. The objections express a generalised concern about the effect of betting and gambling facilities on vulnerable people. Reference is also made to AGCs attracting street drinkers, causing nuisance to local residents. However, the fact remains that local and national planning policies allow 'uses' such as betting shops, AGCs, pawnbrokers/payday lenders, public houses and off-licences, subject to regulatory control. Such establishments are common features of high streets and shopping centres up and down the country, some of which are also likely to have similar types of facilities for vulnerable people nearby.

---

<sup>3</sup> January 2016

24. In its consultation reply the Council's Licensing Unit refers to research undertaken by Barking & Dagenham Council which it says found that demographics, the proximity of schools and colleges to betting shops, local mental health problems, the presence of homeless shelters, food banks and pay day loan shops all contribute to gambling addictions. WGTT refer to a study published in the British Medical Journal in 2005 which identified links between gambling, alcohol abuse and mental health disorders. WGTT also refer to strong evidence of a link between gambling addiction and criminal activities, including theft and fraud, although no copies of the relevant research papers have been submitted in evidence.
25. Whilst such associations may exist, ultimately it is for national government to consider appropriate policy in relation to such major social issues affecting communities across the country. However, national and local planning policies do not proscribe such uses. Rather, national government seeks to regulate gambling, alcohol sales and pay day loans by other statutory methods, including licensing regimes.
26. Moreover, if such general social concerns about harmful effects and alleged links between gambling, alcohol abuse and mental health disorders were accepted as a sound basis for rejecting planning applications for such uses, it is unlikely that planning permission would be given for any betting shops or AGCs or indeed other types of premises, such as pawnbrokers/payday lenders, off-licences, public houses or takeaways.
27. Furthermore, the Council's DMP policy DMP 3 accepts betting shops, AGCs and pawnbrokers/payday lenders within town centres, provided that there is not an over-concentration of such non-retail uses within any single length frontage, as explained in paragraph 3.8 of its supporting text. It is also apparent from paragraph 3.9 that, in preparing the DMP, the Council was cognisant of the Framework's requirement that local planning policies should take account of and support local strategies to improve health, social and cultural wellbeing for all.
28. Although the Council accepts compliance with DMP policies DMP 2 and DMP 3, it refers to conflict with London Plan (LP)<sup>4</sup> policy 2.15, with particular regard to part C, subsection f, which indicates that development proposals should '*promote safety, security and lifetime neighbourhoods.*' That relates to issues similar to those referred to in DMP policy DMP 1 criterion f, already cited.
29. However, the Council does not clearly explain or evidence in what specific way the proposed AGC would fail to meet those requirements. The proximity of facilities for vulnerable groups would not, of itself, justify withholding permission, given that the Council's DMP and relevant statute accepts AGCs as a legitimate form of planning use, albeit that they are also subject to a separate licensing and regulatory regimes.
30. Moreover, vulnerable persons in the area would, whether the proposal was approved or not, still have access to betting shops, off-licenses, public houses, pay-day lenders and pawnbrokers as they would in many high streets across London and the country. As the Council advise that there are no AGCs in the town centre, on the basis of the evidence presented, it is not apparent why the introduction of one such establishment should undermine safety, security, or

---

<sup>4</sup> March 2016

promote criminal activity. The Council's Licensing Unit states that AGCs attract street drinkers, as alcoholic drinks cannot be consumed within the premises, which would cause a nuisance to local residents. However, no specific evidence is provided to support that assertion. The Council also has other powers to control street drinking.

31. The Council's decision notice refers to the 'use' giving rise to the 'perception of crime'. I have not been directed to a specific local or national planning policy which seeks to control the perception of crime. Given that the Council's own DMP accepts AGCs as a legitimate use, I afford that alleged harm little weight.
32. Limited evidence has been submitted by the Council to support its contention of a relationship between gambling venues and crime or anti-social behaviour. However, the Council's SoP, supplied by the appellant, refers in paragraph 5.2.1 to reports of anti-social behaviour and crime in connection with some gambling premises. However, it is not clear if they concerned AGCs or other types of establishment. In any event, that information is presented in the context of the Council's licensing function, which is separate from the planning process. Moreover, given that the SoP is dated January 2016, it predates the DMP adopted in November 2016. Therefore, the Council was aware of that information prior to its adoption of policies relating to town centre planning uses which accept AGCs.
33. The Council also refers to conflict with other elements of LP policy 2.15 in part D, subsections 'c3' and 'd', which refer to meeting '*local community needs*', '*strengthening the 'offer' of the centre as a whole*' and encouraging '*community engagement, town centre management, partnerships and strategies including business improvement districts to promote safety, security, environmental quality and town centre renewal.*' However, part D of LP Policy 2.15 is intended to advise London Boroughs what their Local Development Frameworks should do. The Council has recently adopted its DMP which forms a central plank of its Local Plan (i.e. its Local Development Framework), where policies DMP 2 and DMP 3 articulate its approach to town centres and non-retails uses. In any case, the Council does not make clear why an AGC would conflict with those objectives.
34. The Council further maintains that the proposal would conflict with LP policy 4.8, paragraph B part g, which advises that local planning authorities should '*manage clusters of uses having regard to their positive and negative impacts on the objectives, policies and priorities of the London Plan*' including a centre's broader vitality and viability, community safety and security and its role in promoting health and well-being.
35. The Council Officer's report simply says that the presence of a gaming centre would conflict with those aims without providing any detailed analysis. The appellant advises that there are a number of existing AGCs in other locations across the borough. However, no compelling evidence has been presented by the Council or the objectors to show that this location differs from other town centres or that there is a direct causal link between AGCs, with low stake fruit machines, and problem gambling amongst more vulnerable groups of people or indeed that AGCs facilitate crime.
36. Moreover, '*managing clusters of uses*' appears to be the function of DMP policies DMP 2 and DMP 3 which refer to diversity of uses and limit percentages of non-retail uses, including AGCs. Issues of health and well-being also appear

to have been considered in the preparation of policy DMP 3, as indicated in paragraph 3.9 of its supporting text.

37. My attention has been drawn by the appellant to various appeal decisions<sup>5</sup> spanning a number of decades. In those appeals it has been accepted that, provided that there is compliance with relevant policies designed to prevent an over concentration of such 'uses', there is no reason why AGCs should be considered to undermine the vitality and viability of town centres. All the appeals were allowed, including one decision relating to premises at 232 Neasden Lane, within the London Borough of Brent, issued as recently as 23 February 2017. Therefore, I see no reason why the proposed AGC should not contribute to the mix of retail and non-retail uses offered within the town centre.
38. The Council seeks to distinguish those appeals from the appeal before me. It says that those appeals did not relate to appeal sites where there were facilities and accommodation for vulnerable people nearby, which is a key component of the Council's reasons for refusal. However, the appellant argues that the reason that those issues did not emerge in the other appeals is because there is no evidence that AGCs, when properly run, adversely impact on that group. As no evidence has been presented to indicate that Willesden Green Town Centre is unique in the prevalence of facilities for vulnerable groups and limited evidence of the effect of AGCs has been submitted, I am more persuaded by the appellant's view.
39. I understand that WGTT and some local residents would prefer an alternative use to be made of the appeal premises or for it to remain vacant rather than becoming an AGC. However, leaving properties vacant for long periods is normally considered detrimental to the viability and vitality of town centres. Whilst it has been suggested that independent businesses have been taking on vacant units in the area, the property consultants tasked with disposing of the property advise that it was marketed for more than 2 years prior to agreement being reached with the appellant. Moreover, my role is to consider the appeal proposal before me rather than to speculate on preferable uses.
40. Overall therefore, the above factors lead me to conclude that the proposal would not harm the vitality and viability of Willesden Green Town Centre, with particular regard to safety, security, anti-social behaviour and crime. Therefore, the proposal would not conflict with policy DMP 1 of the DMP, or LP policies 2.15 and 4.8, the content of which has already been detailed above. The proposal would also comply with DMP policies DMP 2 and DM 3 which are intended to control uses in high street locations. There are no material considerations sufficient to indicate that the proposal should be determined other than in accordance with the development plan.

### **Other Matters**

41. The appeal site lies within the CA. The proposal is for a change of use and does not involve external alterations to the building. Given that there could be a condition to retain a retail window display and the site is on a busy urban

---

<sup>5</sup> APP/T5150/W?16/316392, APP/X5210/A/12/2187117, APP/T5150/A/08/208629, APP/T5150/A02/1103105, APP/T5150/A09/2094508, T/A99/G0908/A/00/1035631, T/APP/F4410/A/97/278517/P9, T/APP/R4408/A/94/243908/P2, T/APP/N4720/A/00/1035590, T/APP/X4725/A/99/1018226/P7, APP/G5180/A/14/2229227

high street, the change of use would not have an adverse effect on the character or appearance of the CA.

### **Conditions**

42. The Council has suggested conditions which I have considered, amending them if necessary to comply with the tests contained in the Planning Practice Guidance (PPG). A condition setting a time limit for commencement of the development is required by statute. It is necessary to include a condition regarding the window display to ensure an active shop front. A condition restricting opening hours is necessary and reasonable to protect residential occupiers above the premises and on the opposite side of the road from possible noise and disturbance caused by persons entering or leaving the premises late into the night or early in the mornings. I note that similar restrictions on opening hours were imposed in a number of the appeal decisions, relating to similar premises, supplied by the appellant.
43. The appellant suggested a condition to exclude 'amusement only' machines such as video games and pin tables, which the appellant advises are deliberately noisy to make them more attractive to a youthful clientele. Given the proximity of residential occupiers above and general concerns expressed by objectors about potential effects of young people, I have included that condition.

### **Conclusion**

44. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*J P Tudor*

INSPECTOR



---

## Appeal Decision

Site visit made on 27 July 2018

**by Grahame Gould BA MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> August 2018**

---

### **Appeal Ref: APP/U5930/W/18/3193121 159 Hoe Street, Walthamstow E17 3AL**

- 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 Terry Farr against the decision of the Council of the London Borough of Waltham Forest.
  - The application Ref 171488, dated 18 April 2017, was refused by notice dated 24 November 2017.
  - The development proposed is change of use from estate agents office to amusement centre (adult gaming centre).
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for the change of use from estate agents office to amusement centre (adult gaming centre) at 159 Hoe Street, Walthamstow E17 3AL in accordance with the terms of the application, Ref 171488, dated 18 April 2017, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: unnumbered 1:1250 scale Ordnance Survey plan; and RE/W/17/01 – Existing and Proposed Layout.
  - 3) Prior to the first use of any noise amplification equipment for music, sound or speech within the premises a scheme to attenuate the noise emitted by the amplification equipment shall be submitted to and approved in writing by the local planning authority. The scheme for the attenuation of any amplified noise shall include:
    - a) the results of an external background noise survey to be completed prior to the first use of any noise amplification equipment, with the survey to be undertaken in accordance with BS4142:2014 – Methods for rating and assessing Industrial and Commercial Sound;
    - b) the identification of the maximum noise level to be emitted by any amplification equipment; and
    - c) the details of any noise attenuation measures required to ensure that the noise emitted by any amplification equipment will not exceed the background noise level to be agreed in compliance with section a) of this condition.

Prior to the first use of any amplification equipment any measures forming part of a noise attenuation scheme submitted in compliance with this condition shall be implemented in accordance with the approved scheme of details and thereafter the measures shall be retained for the duration of the use of any noise amplification equipment.

- 4) On the commencement of the adult gaming centre use hereby permitted the premises shall be used for no purpose other than an adult gaming centre. For the purposes of this condition the definition for an adult gaming centre shall be that as stated in the Gambling Act 2005 or in any Act revoking and re-enacting that Act with or without modification. The adult gaming centre hereby permitted shall only operate with amusement with prize machines.
- 5) The premises shall only be open to customers between the hours of 08:00 and Midnight on Mondays to Sundays inclusive and inclusive of public holidays.
- 6) A shopfront display shall be provided for the duration of the use hereby permitted in accordance with details to be submitted to and approved in writing by the local planning authority prior to the commencement of the use.

### **Application for costs**

2. An application for costs was made by Terry Farr against the Council of the London Borough of Waltham Forest. That application is the subject of a separate Decision.

### **Main Issue**

3. The main issue is the effect of the use on the vitality and viability of Walthamstow town centre.

### **Reasons**

4. The premises (No 159) comprise the ground floor of a mid- terrace property which is currently vacant. The premises were last occupied by an estate agency (a Class A2 use) and that use ceased in 2014<sup>1</sup>. The development would involve a change of use to amusement centre/'adult gaming centre'. The appellant currently operates an adult gaming centre at 2 Central Parade, Hoe Street (No 2), premises that are around 150 metres from No 159<sup>2</sup>. The existing business needs to relocate from No 2 because those premises are to be redeveloped following the exercising of a compulsory purchase order.
5. No 159 is within a section of Hoe Street where there is a high proportion of non-shop/Class A1 uses at street level. The usage of the street level premises in this part of Hoe Street has resulted in it being designated in development plan policy terms as a secondary shopping frontage in Walthamstow town centre.
6. Section B of Policy DM25 of the Waltham Forest Development Management Policies Local Plan of 2013 (the Local Plan) seeks to maintain and encourage Class A1 uses at ground floor level within secondary frontages. Policy DM25 goes on to state that other uses falling with use Classes A2, A3, A4 or A5 will

---

<sup>1</sup> Paragraph 2.1 of the appellant's appeal statement

<sup>2</sup> Paragraph 1.3 of the appellant's appeal statement

be considered provided that an undue concentration in the relevant shopping frontage would not arise, ie a level in excess of 50%. Policy DM25 further states that other uses appropriate to a shopping centre, such as crèche, aid centres and medical establishments may be permitted provided the 50% concentration threshold would not be exceeded and it can be shown that the use would contribute to the vitality and viability of the area.

7. Section G of Policy DM25 relates to non-retail service uses and other uses and specifically refers to sui-generis uses and indicates that in considering the suitability or otherwise of such uses, regard will be paid as to whether there would be a concentration of any such uses.
8. The development would result in no loss of a Class A1 premises, given that the most recent use of No 159 was as a Class A2 office. Accordingly I consider that the change of use to an adult gaming centre would not of itself be in conflict with section B of Policy DM25 of the Local Plan. It is contended that the proposed change of use would inadequately contribute to the maintenance and enhancement of this secondary shopping frontage's vitality and viability. However, other than asserting that there would be such an adverse effect no evidence has been put before me demonstrating that would be the case. For instance no evidence has been provided relating to the scale of the demand for Class A1 and A2 premises in the town's secondary areas and whether that demand is exceeding the supply.
9. Despite the Council's assertions I consider the evidence available to me strongly suggests that there is little prospect of the premises being reoccupied by a Class A1 or A2 user in the near future. I say that having regard to the fact that No 159 has been vacant and marketed since 2014. Limited marketing evidence has been submitted, with that evidence taking the form of a one page letter from a local selling/letting agent<sup>3</sup>. However, I consider it unsurprising that there has been limited interest in these premises, given their secondary location in the town centre.
10. Notwithstanding the limitations of the appellant's marketing evidence I consider that considerable weight can be attached to it because it has come from an agent that could reasonably be expected to have very good knowledge of the market for commercial premises in Hoe Street. That is because the agent has an office a few doors from No 159. So while very limited marketing evidence has been provided in support of the appellant's case I am not persuaded that the Council has presented any of its own evidence to countermand that presented by the appellant.
11. There are no other adult gaming centres within this secondary shopping frontage. Accordingly the relocation of the appellant's business to No 159 would not give rise to an undue concentration of this type of sui generis use, when regard is paid to section G of Policy DM25
12. On the evidence available to me, and for the reasons given above, I conclude that the use would not adversely affect the vitality and viability of Walthamstow town centre. I therefore consider that there would be no conflict with Policy DM25 of the Local Plan because: the use would not result in an increase in the number of non-Class A1 premises in the secondary frontage; the available evidence suggests that there is little prospect of a

---

<sup>3</sup> Strettons' letter of 13 October 2017

Class A1 user seeking to reoccupy the premises; and there would not be an undue concentration of adult gaming centres in the affected part of Hoe Street.

### **Other Matter**

13. Concerns have been raised that the use could have implications for crime and disorder or contribute to gambling addiction. Those are matters that are addressed by 'other legislation' and are therefore not for my consideration in determining this appeal.

### **Conditions**

14. Various conditions have been suggested and I have considered the need for their imposition having regard to the provisions of the national policy and guidance. Apart from the standard implementation condition it is necessary that the development should be implemented in accordance with the submitted plans for certainty and I have imposed a condition to that effect.
15. To ensure that the noise associated with the operation of the premises is not intrusive for the occupiers of nearby dwellings I consider it is necessary that the generation of amplified noise within the premises should be managed through the imposition of a condition. While the suggested condition would require any noise emitted by amplification equipment not to exceed the existing background level, that level has not been identified. For a condition managing amplified noise emissions to be both enforceable and reasonable I consider the existing background noise level would need to be surveyed, in advance of any amplification equipment being used, so that an appropriate noise level could be identified and agreed and any necessary attenuation works could be specified and approved. I have therefore imposed a condition to that effect.
16. To protect the vitality and viability of the town centre and the living conditions of neighbouring residents it is necessary that a condition be imposed restricting the use of the premises to that of an adult gaming centre, as defined by the Gambling Act, and that the centre only operates with amusement with prize machines.
17. To safeguard the living conditions of adjoining residents an opening hours condition has been suggested limiting the opening times to 08:00 to 22:00 hours on Mondays to Saturdays and 10:00 to 20:00 hours on Sundays and public holidays. While No 2 operates without any opening hours' restriction and there appears to be no history of noise complaints associated with the use of those premises, I consider that the siting of No 159 relative to the nearby dwellings is not directly comparable with the situation at No 2. That is because No 2 appears to be situated in a busier section of Hoe Street, being closer to High Street and there is a canopy between No 2 and the residential accommodation above, with that canopy potentially providing some acoustic screening. By contrast No 159 is located in a section of Hoe Street that has a more compact layout and there is no canopy capable of providing any acoustic screening. Within the vicinity of No 159 the street level businesses appear not to trade at noise sensitive times, ie the period after midnight.
18. While the appellant is desirous of the premises being open around the clock, no indication of how significant any income generation might be during the

early morning period has been provided. While the premises are in a town centre that is likely to be characterised by some noise generating activity after 22:00 hours, I consider that in the absence of premises in the vicinity of No 159 opening beyond midnight any comings and goings to the premises after that time could be disturbing for nearby residents. I therefore consider that a condition should be imposed requiring the premises to be closed between midnight and 08:00 hours on Mondays to Sundays, inclusive of public holidays.

19. To assist with the assimilation of the use into the streetscene within Hoe Street I consider it necessary that a shopfront display should be provided. I have therefore imposed a condition requiring the details for such a display to be submitted for the Council's approval.

### **Conclusion**

20. For the reasons given above I conclude that the appeal should be allowed.

*Grahame Gould*

INSPECTOR

---

## Appeal Decision

Site visit made on 8 May 2018

**by Andrew McGlone BSc MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 May 2018**

---

**Appeal Ref: APP/J2373/W/18/3196247**  
**42 Abingdon Street, Blackpool FY1 1DA**

- 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 JWT Leisure against the decision of Blackpool Borough Council.
  - The application Ref 17/0699, dated 5 October 2017, was refused by notice dated 20 December 2017.
  - The development proposed is a change of use from retail to amusement centre (adult gaming centre).
- 

### Decision

1. The appeal is allowed and planning permission is granted for a change of use from retail to amusement centre (adult gaming centre) at 42 Abingdon Street, Blackpool FY1 1DA in accordance with the terms of the application, Ref 17/0699, dated 5 October 2017, subject to the conditions in the attached schedule.
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plan: B17-1892.01 Rev A.
  - 3) Before the premises hereby permitted are first brought into use, a scheme of sound and vibration proofing measures shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a self-closing door to the Abingdon Street elevation (which shall not be propped open), so that amplified music is not audible from the street. The approved scheme shall be carried out before the premise is first brought into use and retained thereafter.
  - 4) No amusement only equipment/machines shall be installed on the premises.
  - 5) The premises shall at all times include a window display.
  - 6) The use of the premises hereby permitted shall not be open to customers outside the following times: 09:00 to 21:00 Monday to Sunday.

### Application for costs

2. An application for costs was made by JWT Leisure against Blackpool Borough Council. This application is the subject of a separate Decision.

## Main Issue

3. The main issue is the effect of the proposal on the vitality and viability of Blackpool Town Centre, with particular reference to its character and appearance.

## Reasons

4. The appeal premise is one of three properties in a small terrace on the eastern side of the street. Two of the three properties, including the appeal premise, are vacant. The other property is occupied by Abingdon Barbeque. The site is in the Town Centre and the extended Town Centre Conservation Area (TCCA) on the Blackpool Local Plan Proposals Map. The Town Centre is divided into zones. The appeal premise forms part of the 'SR6 Retail / Café Zone' and is within the Core Retail Area in the Council's Shopping Study. This zone is the focus of the Town Centre's secondary shopping area. Planning permission was not, however, refused on the basis of saved Policy SR6 of the Blackpool Local Plan 2001/2016 (BLP). In any event, the site is outside of the Principal Retail Core (PRC) of the Town Centre, which is to the south-west.
5. Saved BLP Policy BH18 explains that amusement centres will only be permitted within the main concentrations of secondary shopping east of and on the edge of the Town Centre. The accompanying text to the policy identifies that *amusement centres will similarly only be permitted in the eastern edge of the main Town Centre away from the areas most frequented by visitors and will also be permitted on Topping Street within the Town Centre and on other main secondary shopping streets such as Church Street, Caunce Street, King Street and Cookson Street outside and immediately east of the Town Centre.*
6. The Proposals Map does not indicate the area referred to by saved BLP Policy BH18. The proposal would fall within the definition of a main town centre use as set out in Annex 2 of the National Planning Policy Framework. Abingdon Street is in-between the PRC and the adjacent Mixed Use Zone (SR7) which includes Topping Street. Abingdon Street is characterised by independent and chain retail uses that seem in the main to serve the local community and not visitors. I saw during my daytime site visit a steady footfall and pattern of activity linked to the retail units on the street. There were also comings and goings due to bus services setting down on the street.
7. Due to Blackpool's status as a holiday resort, amusement arcades are primarily on the Promenade and at Blackpool Pleasure Beach. The Council interpret saved BLP Policy BH18 to mean that amusement centres would only be allowed on Topping Street, Church Street, Caunce Street, King Street and Cookson Street. While Abingdon Street is not specifically mentioned, the accompanying text is not definitive in terms of limiting such uses to those streets, and the site is part of the secondary shopping area. The purpose behind the policy is *to protect the character of the main shopping areas of the town most frequented by visitors, where amusement centres would inevitably attract substantial numbers of holiday makers contrary to the retail character and amenities of the shopping area.*
8. Planning permission was granted in November 2017 for a scheme at the former post office on Abingdon Street which would see the buildings used for retail, leisure, offices, restaurants and cafes<sup>1</sup>. Talbot Street and Winter

---

<sup>1</sup> Ref: 17/0503

Gardens are at either end of the street. Works have started or they are about to start shortly on a variety of developments<sup>2</sup>, which include: an extension to the Promenade tramway; hotels; a conference and exhibition centre; the relocation of a retail store; and multiple cinemas. This is against the backdrop of Policy CS17 of the Blackpool Local Plan Part 1: Core Strategy (2012 – 2027) (Core Strategy) which seeks to re-establish the town centre as the first choice shopping destination for Fylde Coast residents and to strengthen it as a cultural, leisure and business destination for residents and visitors, new development, investment and enhancement will be supported which helps re-brand the town centre.

9. Added to this, albeit before the adoption of the Core Strategy, the Houndshill Centre was expanded considerably in 2008. The appellant submits that this has shifted the pattern of trade, and thus the role and importance of different shopping streets. The Council do not dispute this point, but they consider that Abingdon Street is an important link to the PRC and Winter Gardens.
10. The character of the area surrounding the appeal premise could well change. The developments referred to by the Council all point to the ambition to strengthen the town centre as a cultural, leisure and business destination for residents and visitors. As such, even if the street's primary function remains retail/café based, these developments are likely to bring residents and visitors into the area near to the appeal premise. As a result, I agree with the Council that the street is likely to be a busy thoroughfare. However, the areas most frequented by visitors are still likely to be to the south-west and the west. Thus, the street is not, in my view, likely to attract substantial numbers of holiday makers contrary to the retail character and amenities of the centre.
11. The proposed use would add to the variety of uses in the town centre, and in particular to the north-east of the PRC. By re-using the unit, the proposal would strengthen and provide investment, supporting the re-branding of the town centre. Four full-time jobs would be created. I note that the proposed use would consist mainly of low-stake and prize gaming machines for adults. Thus, it would be different to amusement arcades. I agree with the appellant's evidence that amusement centres can be part of their customer's trips into the centre. Thus, the proposed use would contribute to the vitality and viability of the centre. This point, to an extent, is supported by the other amusement centres in the town centre. While these are all within neighbouring zones, the Council do not suggest that there is an over-saturation of such uses in the town centre or that they have affected the character, amenity and vitality and viability of the centre. Also, given the proposal's scale and location, it would not conflict with Core Strategy Policy CS17 which seeks to strengthen the retail offer with new retail development, with the principal retail core being the main focus for major retail development.
12. Notably, the visual appearance of the premise would not be that of a retail unit. I note the Council do not raise concern about the design of the unit, but the parties suggest a planning condition to secure a window display. I agree to protect the appearance of the street.
13. Concerns are expressed about the effect of the proposed use on the health and education of Blackpool's population, which Core Strategy Policy CS15 seeks to improve. I recognise the potential for the proposal along with other amusement

---

<sup>2</sup> Refs: 17/0276; 15/0494; 16/0809; and 17/0453

centres and betting shops to collectively influence people's everyday lives, especially for those in areas near to the town centre which are said to have some of the most serious health and crime problems. However, there is little conclusive evidence that the proposal would, individually or collectively, result in harm to people's health and education, or prevent them from leading healthy and active lifestyles.

14. I conclude that the proposal would accord with Core Strategy Policy CS17 and saved BLP Policy BH18; which together, among other things, seek to protect the character of the main shopping areas of the town to re-establish the town centre as the first choice shopping destination for Fylde Coast residents and to strengthen it as a cultural, leisure and business destination for residents and visitors. The proposal would also accord with Core Strategy Policy CS15 which supports development that encourages healthy and active lifestyles and addresses the Council's health problems.

*Other matters*

15. Although the premise would be in the TCCA, I agree with the view of the Council's Built Heritage Manager that the proposal would have a minimal effect on the character and appearance of the conservation area. The scheme would have a neutral effect on the character and appearance of the TCCA, thereby preserving it. I also note that the site is in an accessible location among a range of facilities and services, which include different public transport options.

**Conclusion and conditions**

16. I have had regard to the conditions that have been suggested by the parties. I have imposed a condition specifying the approved plan as this provides certainty. Conditions are necessary, in the interests of the character and amenity of the area, to secure sound and vibration proofing measures and to control the use and opening hours.
17. For the reasons set out above, I conclude that the appeal should be allowed.

*Andrew McGlone*

INSPECTOR



---

## Appeal Decision

Site visit made on 25 June 2018

**by Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

**Decision date: 28 August 2018**

---

**Appeal Ref: APP/C5690/W/17/3191347**

**92 Lewisham High Street, Lewisham SE13 5JH**

- 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 GT Promotions Ltd against the decision of the Council of the London Borough of Lewisham.
  - The application Ref DC/17/103584, dated 5 September 2017, was refused by notice dated 10 November 2017.
  - The development proposed is change of use from 'pay day loans' establishment to amusement centre (adult gaming centre).
- 

### Decision

1. The appeal is allowed and planning permission is granted for change of use from 'pay day loans' establishment to amusement centre (adult gaming centre) at 92 Lewisham High Street, Lewisham SE13 5JH in accordance with the terms of the application, Ref DC/17/103584, dated 5 September 2017, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan; existing layout, ground floor/front elevation drawing RE/lew/17/01; proposed ground floor/front elevation RE/lew/17/02.
  - 3) Development shall not take place until a scheme for protecting the residential properties on the upper floors of No 92 Lewisham High Street, from noise and vibration arising from the adult gaming centre shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed in accordance with the scheme before any part of the adult gaming centre is occupied and retained thereafter.

### Procedural Matters

2. Additional evidence was submitted by the appellant at final comments stage in relating to customer surveys. The Council and third parties have not had the opportunity to comment on the evidence and may, therefore, be prejudiced if I accepted it. I have not, therefore, taken the evidence into account in my Decision.
3. Since the submission of the appeal a revised National Planning Policy Framework (the Framework) was published in July 2018. The main parties have been

consulted on the implications of the new Framework for the current appeal and their responses have been taken into account in my reasoning below.

## **Main Issue**

4. The main issue in this case is the effect of the proposal on the vitality and viability of Lewisham town centre.

## **Reasons**

5. The appeal premises comprise a pay day loans establishment situated within a terrace on the west side of Lewisham High Street, close to the junction with Lee High Road. The terrace is occupied by commercial uses on the ground floor and residential above. As a pay day loan shop the premises are in a Sui-Generis use. The shopping centre is part of the 'Central Area' within Lewisham Town Centre Local Plan and it is agreed that it falls within a 'primary shopping frontage' referred to in Policy LTC16 of Lewisham Town Centre Local Plan (LTCLP) (2014). In such areas part 1 of policy LTC16 provides that the Council will strongly resist any changes of use involving the loss of class A1 shops and sets out a series of criteria to be applied.
6. The appeal parade of shops contains six A1 retail units, a betting office (Sui Generis) and another adult gaming centre in addition to the unit subject to the appeal (Sui Generis). Consequently, the parade is currently comprised of 67% of A1 retail units which is slightly below the threshold set out in Policy LTC16 of the LTCLP. Figures provided by Cashino Gaming Limited (CGL) show that the two existing and the proposed machine gaming use would comprise 34% of the frontage. Even if the retail frontage is considered to constitute Nos 702-212 Lewisham High Street the percentage of retail frontage would remain broadly the same.
7. There are several adult gaming centres and betting offices on Lewisham High Street, Lee High Road and Lewis Grove. However, due to total number of units and the presence of intervening uses, gambling facilities do not dominate the centre as a whole. Nor would the addition of one such use result in a cluster or concentration of such uses. Within the parade containing the appeal unit, there is one other adult gaming centre; however, this is separated from the appeal unit by a charity shop. The betting shop is situated five units away from the appeal property. As such, the proposal would not result in three consecutive non-A1 uses. Whilst the proposal may result in a duplication of uses within the centre; the same can be said for the current use and other uses such as banks.
8. As such the proposal would not unacceptably reduce the number of retail units in the town centre and nor would it result in an over-concentration of non-A1 uses given that the current use of the unit is Sui Generis. Criterion 1(a) of policy LTC16 is, therefore, satisfied. In any event, I note that criterion 1 is designed to prevent the loss of ground floor level shops which, given the current sui generis use, would not be the case here.
9. At the time of my site visit, the town centre was busy and there was a high level of footfall outside the appeal parade of shops. Having considered all of the evidence I am not persuaded that a saturation point has been reached in the centre or that the level of gambling facilities is affecting the health of the centre as a whole.
10. Conflicting evidence is before me in relation to the number of pedestrian visits which the proposal would generate in comparison to A1 retail and other uses in

Lewisham and a number of locations around the country. The full methodology for each of the methods is not before me and so I cannot be certain of the exact circumstances in which they were undertaken and the reliability of the evidence. Furthermore, it is difficult to compare the sets of evidence even where the location is the same due to surveys being undertaken on different days of the week and different times of the year. In some cases the use of the units has changed.

11. Notwithstanding the reliability of the aforementioned evidence or the weight which can be attached to it, the proposed use would not be replacing an A1, A2 or A3 use and consequently, the loss of footfall associated with those uses would not occur. I also bear in mind that the proposal would be open longer than the existing use and would attract footfall in the evenings and at night, over a longer period of time than the current use. As such it would make a greater contribution to the evening economy than the existing use.
12. There is also evidence relating to the narrower customer profile of users of adult gaming centres. I consider that the customer appeal of the existing use of a pay day loan shop is also likely to be limited. For example, both uses would exclude under 18's. Consequently, in my judgement, given the nature of the existing use, the proposal would not have a materially harmful effect on footfall compared to the existing situation.
13. Criterion 2 of the Policy LTC16 relates to proposals for non-retail development, within the primary shopping frontage and sets out two requirements. There is no evidence to suggest that the proposed change of use would harm the amenity of adjoining properties. The Council has raised concerns regarding the potential noise from around the clock use; however, it agrees that this could be addressed by way of a condition. The second requirement is for, where appropriate, attractive display windows and entrances that are compatible with adjoining shop units.
14. The proposal would include low stake prize gaming machines, ancillary catering and ancillary retail sales. The appellant has indicated that the shop front would incorporate a window display to attract the interest of the passer-by and suggests that a condition requiring the provision of a window display would be acceptable. However, there is considerable photographic evidence to indicate that adult gaming centres do not generally have a display window. This evidence supports my own observations that the adult gaming centres in the High Street do not generally have an active window display selling retail goods. In the absence of cogent evidence to the contrary, I conclude that a condition requiring an active window display would be unreasonable in relation to the functioning of the business.
15. The existing unit has a shop front which has posters in the window, but no display of retail goods. Instead, there are views of the office environment through the window. Whilst there would be an internal screen to enclose the window displays, no external changes are proposed as a result of the proposal. The design of the shop front itself is broadly consistent with those of surrounding units. I consider that the proposal is likely to result in a more active window display than is there at present. However, in the absence of an existing window display it would not be appropriate, in the specific circumstances of this case, to require a display window selling retail goods by condition.
16. In conclusion, given the existing and proposed use, I am satisfied that the development would not result in the loss of a retail unit, active frontage or a retail

display. Neither would it result in the dilution of the retail offering or the weakening of the shopping strength, vitality or interest of the area. Furthermore, it would contribute to the evening economy. Consequently, I consider that the proposal would not have a materially harmful effect on the vitality and viability of the town centre and policy LTC16 is satisfied.

17. Whilst an application for an adult gaming centre at No 90 has previously been refused this related to the change of use of an A1 retail use. The appeal site is situated within an allocation referred to as S9 Land north of Lewisham Shopping Centre. The appeal site lies outside the actual allocation; however, Policy LTC8 part 3 criterion b states that active frontages should be provided at ground floor to Lewisham High Street. Whilst this may be the case, the proposal does not result in the loss of active frontage.
18. I am aware of other appeal decisions but on the basis of the limited information provided, I am not aware of the evidence which was before the inspectors in those cases. I cannot, therefore, be certain that they are directly comparable to the appeal proposal which limits the weight which I can attach to them in my Decision.
19. For the reasons stated, the proposal would not harm the vitality or viability of Lewisham town centre. It would not, therefore, be contrary to Policy 4.8 of the London Plan 2016 which, amongst other things, seeks to manage clusters of uses. Furthermore, no conflict would arise with Policy 6 of the Core Strategy (2011) which amongst other things, states that the Council will designate primary and secondary frontages within major and district town centres to ensure essential services are maintained and contribute to their vitality and viability. Neither would conflict arise with Policies LTC14 and LTC17 of the Lewisham Town Centre Local Plan (LTCLP) (2014) which together, seek to ensure that development sustains and enhances the viability and vitality of the town centre.
20. Paragraph 85 of the revised Framework (2018) continues its predecessor's commitment to taking a positive approach to the growth of town centres by, amongst other things, allowing a suitable mix of uses and defining the extent of town centres and primary shopping areas, making clear the range of uses permitted in such locations as part of a positive strategy for the future of each centre. As I have concluded that the proposal would not harm the viability or vitality of town centres no conflict would arise with the Framework.

#### *Other matters*

21. Whilst I do not underestimate concerns regarding the social and public health issues arising from 'problem' and 'at risk' gamblers there is no evidence before me that those issues would arise from this specific proposal. I note that AGC consider that the statutory cap on the numbers of high stake/high payout machines on a given site is often circumvented. However, whilst this may be the case, it would not be appropriate to reject a planning application for a legitimate form of use on the basis of an assumption that the premises would not be run in accord with the relevant statutory regulations. Risks to problem gamblers, young people and other vulnerable persons, would be more directly relevant to licensing and management functions.

## **Conditions**

22. In addition to the standard time condition, I have imposed a condition requiring that the development is undertaken in accordance with the approved plans in the interests of certainty.
23. The Council have suggested that a condition be applied to ensure the provision of sound insulation to protect residents in the flats from noise arising from the proposal as the use will be open 24 hours. Whilst I acknowledge that such a condition is required, there is no evidence before me as to the precise levels of noise which would be generated from the premises. I have, therefore, imposed a condition requiring that a scheme for protecting residential properties on the upper floors from noise and vibration arising from the ADC is submitted to the Council and that the development would be required to be undertaken in accordance with that scheme.
24. For the reasons set out above, I do not consider it appropriate to attach a condition requiring a display window. The appellant has suggested a condition stating that no amusement only equipment/machines shall be installed on the premises; however, this matter would be more suitably addressed by licensing and management functions.

## **Conclusion**

25. For the reasons stated and taking all other considerations into account the appeal should be allowed subject to the conditions set out in paragraph 1 above.

*Caroline Mulloy*

Inspector



---

## Appeal Decision

Site visit made on 19 March 2019

**by Kevin Savage BA MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9<sup>th</sup> April 2019**

---

### **Appeal Ref: APP/J3015/W/18/3212670 62 Nottingham Road, Eastwood NG16 3NQ**

- 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 Mrs Michelle Jones (Kerching Amusements) against the decision of Broxtowe Borough Council.
  - The application Ref 18/00441/FUL, dated 5 June 2018, was refused by notice dated 17 September 2018.
  - The development proposed was originally described as '*Change of use from current use (believed to be A1) to Sui Generis. Premises to be used for an Adult Gaming Centre open to over 18 years only.*'
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for change of use from retail (Class A1) to an adult gaming centre (Sui Generis), at 62 Nottingham Road, Eastwood NG16 3NQ, in accordance with the terms of the application Ref 18/00441/FUL, dated 5 June 2018, and subject to the conditions in the attached Schedule.

### **Preliminary Matters**

2. A revised version of the National Planning Policy Framework (the Framework) was published on 19 February 2019. The revisions do not materially alter the national policy approach in respect of the issues raised in this appeal and therefore the main parties have not been prejudiced by the updates to this document.
3. In the formal decision above I have amended the description of development from that given on the application form to omit superfluous wording or words which do not describe an act of development, for the sake of brevity and clarity. I am satisfied no party would be prejudiced by this.

### **Main Issue**

4. The main issue is the effect of the proposal on the vitality and viability of Eastwood Town Centre.

### **Reasons**

5. The appeal site is a vacant unit, formerly a clothes shop, within the designated primary shopping frontage of Eastwood Town Centre. The appeal seeks a change of use to an adult gaming centre comprising up to 37 machines, a sui generis use.

6. The Framework states that planning policies and decisions should define a network and hierarchy of town centres and promote their long-term vitality and viability, by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses and reflects their distinctive characters. Policies and decisions should also define the extent of town centres and primary shopping areas and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre.
7. Policy 6 of the Aligned Core Strategies Part 1 Local Plan<sup>1</sup> (September 2014) (the ACS) promotes a network and hierarchy of town and local centres. Eastwood is defined as a District Centre. The policy states that the vitality and viability of all centres will be maintained and enhanced, including widening the range of uses whilst maintaining a strong retail character. The policy sets out that centre boundaries and primary shopping areas will be identified in Part 2 Local Plans, and those plans will be used to enhance the vitality and viability of those identified centres which are underperforming or in need of enhancement, of which Eastwood is one.
8. Policy 10 of the Council's emerging Part 2 Local Plan (the P2LP) proposes a threshold of 60% Class A1 use within primary shopping frontages. The P2LP has undergone examination, but as the Inspector's report has not yet been published, and the policies could therefore be subject to change, the emerging plan and its policies attract limited weight.
9. Given this, Saved Policy S4 of the Broxtowe Local Plan 2004 (the LP) remains applicable to the proposal. It states that permission will not be granted for a change of use from Class A1 (Shops) use at ground floor level if it would result in the proportion of Class A1 uses falling below two thirds within any defined section of prime shopping frontage area. This threshold is set in absolute terms and it does not set out other permitted uses within primary shopping areas. As such it does not align with the more flexible and positive approach of the Framework. In accordance with Paragraph 213 of the Framework, I attach limited weight to this policy.
10. The retail market has changed significantly in recent years with the advent of internet shopping and, even in primary shopping areas, there has been a move toward a greater variety of operators catering to different needs. Indeed, I note the comments of the Council's Town Centre & Regeneration Officer which refer to the 'evolving' role of the town centre with a 'long-term structural shift away from retail dominated provision to services of all types, but especially leisure (e.g. bars, cafés, entertainment) and a continued rationalisation of non-sustainable retail spaces.' Recent changes to the General Permitted Development Order have also created additional flexibilities, largely to try to react to the changing nature of the high street. Whilst it is clearly legitimate for the Council to identify a level of retail provision below which harm to the shopping function of a street might take place, this also needs to be considered in the context of the current nature of retail activity, existing levels of vitality and viability and the Development Plan's policies. Whilst Policy 10 of the P2LP carries limited weight, I note its proposed lower threshold for Class A1 use in response to these recent trends towards a more diverse high street.

---

<sup>1</sup> Covering the Boroughs of Broxtowe and Gedling, and the City of Nottingham

11. I observed Eastwood Town Centre to be an established high street providing a full range of goods and services to the public and with retail uses spread along its whole length, and indeed beyond into secondary frontage. The Council's evidence includes a survey undertaken in February 2019 which indicates 58.9% Class A1 units within the prime shopping frontage. I confirmed the accuracy of this survey at my site visit.
12. Based on the survey figures, the existing proportion of Class A1 uses already falls below the two thirds threshold of Saved Policy S4 and would fall very slightly further as a result of the proposal, though Class A1 uses would remain the dominant use within the primary frontage. The vacancy rate within the primary frontage was 14 units out of 95, or 14.7%. Whilst a degree of vacancy is healthy in that it provides choice for prospective occupants in terms of floor space and rental levels, a vacancy level of over 1 in 7 within the primary shopping area suggests to me that demand for vacant premises is not outstripping supply.
13. The vacant units include 7 Class A1 uses and a further 6 vacant Class A2, A3 and A5 uses which could change to Class A1 under permitted development. Therefore, there would still be a broad choice of potential A1 units available for prospective businesses to occupy. There is little evidence, therefore, to suggest that this proposal would undermine the existing or future provision of shopping services in this location. Rather, the proposed change of use would return a vacant unit to use, would widen the range of uses as envisioned by Policy 6 and would generate additional footfall and employment. In this context, the proposal would benefit the vitality and viability of the town centre.
14. There are no other adult gaming centres within Eastwood Town Centre. I note comments about the presence of other gambling machines in nearby betting shops and public houses. However, these uses are clearly materially different to the appeal proposal as gaming machines are only a limited element of a broader range of activities offered to customers. Consequently, the presence of these uses in the wider environs of the appeal property does not demonstrate that the proposed development would cumulatively add to an over-concentration or saturation of gambling-related uses.
15. On the main issue, therefore, I conclude that the proposed change of use would preserve the vitality and viability of Eastwood Town Centre, and would accord with the objectives of Policy 6 of the ACS and the Framework to promote the growth and diversification of town centres. In reaching this view, I acknowledge that the change of use would not comply with the requirements of Saved Policy S4 of the LP. However, for the reasons set out, I afford limited weight to this policy and it does not alter my overall finding on the main issue.

### **Other Matters**

16. Strong concerns have been raised in respect of the potential adverse social impacts of an adult gaming centre. In response, the appellant confirmed the type of machines which would be operated on the premises would not be Fixed Odds Betting Terminals (FOBTs) which are referred to by a number of objectors, but machines with much lower maximum stakes and prizes. The appellant has also supplied details of the Licence Conditions and Codes of Practice from the Gambling Commission, to which the operator would be subject, and which specifically address matters such as protection of children and other vulnerable persons, access to premises and age checks, responsible

gambling, self-exclusion and prevention of money laundering. Whilst I understand the concerns raised, the operation of the business would be strictly controlled by the requirements of the Gambling Commission and there is nothing to suggest that these requirements would or could not be adhered to. On the evidence before me, therefore, I am not convinced that there would be demonstrable social harm associated with the proposed use which would weigh against the proposal.

17. Concerns have been raised about potential disturbance as a result of the noise from the gaming machines when in operation. The appellant has indicated that all of the machines are volume adjustable and therefore can be set to levels which would not be disruptive to adjacent occupants. Based on all I have seen and read, I am satisfied that a condition restricting noise from being audible beyond the boundaries of the premises would be sufficient to prevent harm to adjacent occupants.
18. The appeal site is located within the Eastwood Conservation Area (the CA). There would be no external alterations to the building as part of the proposal. The Council concluded that there would be no harm to the character and appearance of the CA as a result of the proposal and I have no reason to reach a different conclusion in this respect.

### **Conditions**

19. The Council has suggested conditions in the event the appeal is allowed, which I have considered in light of the tests of conditions within the Framework and guidance of the Planning Practice Guidance.
20. I shall impose a condition specifying the approved plans in the interest of certainty. Conditions setting out the opening hours of the premises and restricting noise from being audible beyond the premises are necessary in order to protect the living conditions of nearby occupants and to avoid disturbance to adjacent businesses.

### **Conclusion**

21. For the reasons set out above, the appeal is allowed.

*Kevin Savage*

INSPECTOR

### **Schedule – Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Unnumbered Internal Layout Plan.
- 3) The use hereby permitted shall not be carried out outside the following times: 0900 to 2100 hours Mondays to Sundays, Bank and Public Holidays.
- 4) No amplified sound or other music (including from gaming machines, public address systems, loudspeakers etc) which is audible at the site boundary shall be played in the premises at any time.

END OF SCHEDULE



---

## Appeal Decision

Hearing held on 1 October 2019

Site visit made on 1 October 2019

**by Darren Hendley BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> October 2019**

---

### **Appeal Ref: APP/V2004/W/19/3233244 292 - 294 Holderness Road, Hull HU9 2JX**

- 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 RAL Ltd against the decision of Kingston-Upon-Hull City Council.
  - The application Ref 19/00383/FULL, dated 5 April 2019, was refused by notice dated 12 June 2019.
  - The development proposed is the change of use of 294 Holderness Road from A1 shop to sui generis adult gaming centre in connection with existing adult gaming centre at 292 Holderness Road including external alterations.
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for the change of use of 294 Holderness Road from A1 shop to sui generis adult gaming centre in connection with existing adult gaming centre at 292 Holderness Road including external alterations at 292 - 294 Holderness Road, Hull HU9 2JX in accordance with the terms of the application, Ref 19/00383/FULL, dated 5 April 2019, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 1393 (S)01 P1, Site Plan 1393 (S)02 P1, Existing Plan & Elevation 1393 (O)01 P1, Proposed Front Elevation 1393 (O)13 P1, Proposed Front Elevation 1393 (O)14 P1.
  - 3) The development hereby permitted shall not be brought into use until the flood risk resistance and resilience measures as are set out in the submitted Flood Risk Assessment dated 18 January 2019 (Doc ref: HOL-HYD-XX-XX-RP-D-5002) have been implemented. These measures shall be thereafter retained.

### **Procedural Matters**

2. The appellant submitted a further plan, named 'Frontage Measurements & Use Class' which shows an audit of the primary frontage on Holderness Road. As the Council and interested parties have had the opportunity to comment on this plan, there is no possible prejudice. Accordingly, I have considered this plan in my decision. The same applies as regards the various documents that were submitted during the hearing.

3. I was informed at the hearing that the appellant operates under the name of 'Luxury Leisure'. Nevertheless, the appeal proceeds under the name of 'RAL Ltd' as ordinarily only the applicant can make an appeal. This is reflected in the banner heading details above. 'RAL Ltd' is also the company/group name that is set out on the submitted planning appeal form.
4. A second appeal<sup>1</sup> on this site was due to be the subject of the hearing. After the hearing had opened, the appellant withdrew this appeal verbally and this was announced to the hearing. Accordingly, the hearing proceeded only on the basis of the appeal that is set out in the banner heading details and which is the subject of my decision.

### **Main Issue**

5. The main issue is the effect of the proposal on the vitality and viability of the Holderness Road District Centre.

### **Reasons**

6. The appeal property is a vacant shop unit which lies adjacent to an existing adult gaming centre that is also operated by the appellant. The proposal would, in effect, be an extension of this use. The property is located within a terraced row of units which, in total, contain 2 adult gaming centres. A further vacant unit separates these gaming centres. The remainder of the units are occupied by a variety of Class A1 and non-A1 uses<sup>2</sup>.
7. More broadly, both sides of this part of Holderness Road form a long linear arrangement of shops and services. On the same side as the appeal property, there is a stronger propensity of multiple national and regional retailers. The vacancy rate of units is fairly low and this is also reflected in the evidence of the main parties, albeit with minor differences. Holderness Road is a busy thoroughfare and, at the time of my site visit, footfall was relatively high with customers using the facilities that are on offer.
8. For the purposes of the Hull Local Plan 2016 to 2032 (2017) (Local Plan), the site is found within the defined Holderness Road District Centre. It also lies in the primary frontage of that centre. Policy 12 of the Local Plan sets out a number of considerations as regards vitality and viability that are of relevance. It states that within the primary frontage a high proportion of ground floor frontage length is to remain in A1 shopping use. It goes on to state that the change of use from A1 to non-A1 within the primary frontage will be permitted where the proportion of non-A1 ground floor frontage length would not exceed 30%.
9. It is common ground between the main parties that the concentration of A1 uses in the primary frontage is approximately 68%. Simply put, 32% is in non-A1 use. The proposal, as a non-A1 use, would further lead to the proportion of the non-A1 ground floor frontage length exceeding 30%.
10. In these circumstances, Policy 12 states that it is for the development to demonstrate that it would not undermine the viability and vitality of the centre. On similar lines, the Vitality and Viability of Centres Supplementary Planning Document 9 (2019) confirms that the policy thresholds are not to set an

---

<sup>1</sup> Appeal ref: APP/V2004/W/19/3225545

<sup>2</sup> under The Town and Country Planning (Use Classes) Order 1987 (as amended).

optimum level beyond which planning applications will simply be refused, but rather set a general threshold as a guide to when the applicant should provide supporting evidence to demonstrate their application would not undermine the vitality and viability of a centre. The same point is made by the Council's Management of Designated Shopping Frontages document, which details the composition and health of the centres across the city and was used to inform the preparation of the Local Plan.

11. The Planning Practice Guidance section: Town centres and retail (PPG) also sets out a number of indicators for assessing the health of town centres. These are also of relevance to vitality and viability. They include diversity of uses, the proportion of vacant street level property and customers' experience and behaviour, amongst other considerations.
12. The Council are concerned that the proposed use, as well as exceeding the 30% figure under Policy 12, would not be complimentary to the shopping function of the centre. In this regard, the supporting evidence on vitality and viability that the appellant has put forward centres on bringing a vacant unit back into use, employment generation, linked trips to other uses in the centre and contributing towards an evening economy, as well as increased natural surveillance during those times.
13. Turning first to bringing a vacant unit back into use, the property has not been occupied since June 2017. The marketing for the premises started before then, in November 2016. It has included an advertising board on the property, which was still in place at the time of my site visit, the preparation and distribution of a marketing brochure and listings on various property websites. An agent was appointed to carry out the marketing.
14. Despite what I consider has been a thorough marketing exercise, it is evident that the only realistic interest that has been expressed in the unit is from the appellant. Whilst the Council queried whether it has been offered at a reasonable value, there is no substantive evidence to assert this concern. As a consequence, if the proposal was not to go ahead, there seems little realistic possibility of the unit been occupied by an A1 use. For the unit to continue to remain vacant, and considering it has already been so for over 2 years, would mean it would continue to depreciate from the viability and vitality of the centre, even though the overall vacancy rate is fairly low. This attracts significant weight in my decision.
15. The site's location close to the other shops and services would result in the potential for linked trips and associated footfall. There would be minor benefits with the envisaged employment levels, to the evening economy with the proposed opening hours and with regard to providing natural surveillance, along with the existing gaming centres and other evening uses.
16. The proliferation of adult gaming centre uses, in particular in this terrace of units, would not be to the extent that the proposal would cause undue concern. It would still maintain the mix of uses that would be expected in such a centre and it would have the benefit of having one less vacant unit. Although the shop front display areas would differ from an A1 use, this would not diminish from the appeal of this row of shops, the primary frontage, or the centre as a whole because the overall form and appearance of the units would be maintained.

17. When these factors are taken together, in particular that the vacant unit would be brought back into use, the proposal would be complimentary to the shopping environment as it would not undermine the vitality and viability of the centre. Likewise, when the indicators in the PPG are considered, the proposal would not detract from the health of the centre. It would maintain the diversity of uses and it would lower the proportions of vacancies. Nor would it diminish from customers' experience and behaviour of the centre, as it would be a complimentary use that would not be unexpected in such a location and allow for the potential for linked trips.
18. The planning history of 290 Holderness Road concerning a proposed adult gaming centre that I have been referred to attracts limited weight in my decision. When this was approved, it was under a development plan that is no longer in force and whilst it has then been recently refused under the current Local Plan, I have based my decision on the planning merits of the case before me, including the totality of the evidence. The same applies as regards the appeal decisions in other parts of the country for adult gaming centres that have been drawn to my attention, as the development plans and the particular site circumstances differ. The appellant's customer inflow surveys also have a limited bearing as they relate to different locations, notwithstanding that the proposal would allow for linked trips for the reasons that I have set out.
19. I conclude that the proposal would not have an unacceptable effect on the vitality and viability of the Holderness Road District Centre. As such, it would comply with Policy 12 because whilst the stated 30% proportion of non-A1 uses in the primary frontage would be exceeded, the development has demonstrated that it would not undermine the vitality and viability of the centre.

### **Other Matters**

20. The appellant described a number of measures during the hearing which concerned security and social responsibility. Although I am aware of the concerns that can be expressed because of the nature of the use, these largely lie outside of what I can consider. This is also irrespective of whether the proposal would be implemented by the appellant, or by another similar organisation. Noise and disturbance, crime prevention and anti-social behaviour are not in dispute and, accordingly, I have not considered these matters further.

### **Conditions**

21. As well as the time limit condition (1), I have imposed a condition in the interests of certainty concerning the approved plans (2). I have also imposed a condition to minimise the risk of flooding (3). This involves the resistance and resilience measures that are set out in the Flood Risk Assessment that was submitted with the planning application and includes the floor levels, amongst other measures.
22. In relation to the external appearance of the proposal, this is already adequately addressed through requiring the proposal to be carried out in accordance with the approved plans. At the hearing, the Council requested a condition concerning the proposed internal layout. However, as no such plan forms part of the appeal submission and the gaming machines, in any event, would be moveable, such a condition would not be reasonable and necessary.

In relation to the proposed opening hours, the application submission indicates it would be in 24 hour operation on all days of the week. This is not unacceptable with its District Centre location. Thus, a restriction of the opening hours would also not be reasonable and necessary.

**Conclusion**

23. For the reasons set out above, and having regard to all matters raised, the appeal should be allowed subject to the conditions.

*Darren Hendley*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                  |                |
|------------------|----------------|
| Kevin Farnsworth | Luxury Leisure |
| Sean Heaney      | Luxury Leisure |
| Elizabeth Speed  | Luxury Leisure |
| Justin Gartland  | Lichfields     |
| Adam Jackson     | Lichfields     |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|             |                   |
|-------------|-------------------|
| John Wright | Hull City Council |
| Ben Foster  | Hull City Council |
| Roger Gray  | Hull City Council |

### **INTERESTED PARTIES:**

|                     |                   |
|---------------------|-------------------|
| Councillor Chambers | Hull City Council |
|---------------------|-------------------|

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 RE6 and RE8 Customer Inflow Surveys
- 2 Hull City Council, Hull Local Plan: 2016 to 2032 Vitality and viability of centres Supplementary Planning Document 9 (2019)
- 3 Hull Local Plan 2016 to 2032 Policies Map (2017)
- 4 Hull Local Plan – Publication Consultation Document 2016 to 2032 The Management of Designated Shopping Frontages



---

## Appeal Decision

Site visit made on 22 July 2019

**by J M Tweddle BSc(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 December 2019**

---

**Appeal Ref: APP/P1045/W/19/3228235**

**1 Union Street, Ashbourne, Derbyshire DE6 1FG**

- 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 Mr Majid Morabbi against the decision of Derbyshire Dales District Council.
  - The application Ref 18/00859/FUL, dated 3 September 2018, was refused by notice dated 15 March 2019.
  - The development proposed is a change of use to the ground floor 1 Union Street Ashbourne Derbyshire DE6 1FG to an adult gaming centre (Sui-Generis) use.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the use of ground floor as an adult gaming centre (sui generis use) at 1 Union Street, Ashbourne, Derbyshire DE6 1FG, in accordance with the terms of the application, Ref 18/00859/FUL, dated 3 September 2018 and the plans submitted with it, subject to the conditions set out in the attached Schedule.

### Application for costs

2. An application for costs was made by Mr Majid Morabbi against Derbyshire Dales District Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The Council describe the development as 'Use of ground floor as an adult gaming centre (sui generis use)', this is also implied by the appellant on the appeal form. Neither party have provided any confirmation that a revised description of development was agreed. Nevertheless, I have adopted the Council's description of development in my formal decision as this is a more accurate and succinct description of what is proposed.
4. The proposal initially included a ramped access and the installation of CCTV, however, during the determination of the planning application the appellant confirmed the withdrawal of these elements of the proposal. Therefore, the proposal amounts to a change of use with no external alterations and I have proceeded with the appeal on this basis.

## **Main Issue**

5. The main issue is the effect of the proposal on the living conditions of the occupants of adjacent residential properties, with particular regard to noise and disturbance.

## **Reasons**

6. The appeal site is the ground floor of a two storey contemporary building that has been converted from a former single storey public convenience. It is located within the defined town centre of Ashbourne where a number of commercial activities take place alongside a limited number of residential properties. The proposal seeks a change of use of the ground floor of the building to provide an adult gaming centre consisting of arcade style gaming machines with cash prizes.
7. The Council consider that the proposal would result in unacceptable effects on the residential amenity of neighbouring occupants. In particular, 1 The Channel, to the north of the site, 3 Union Street, adjoining the site to the west and which incorporates a flying freehold over the entrance to the appeal property, and, 1C The Channel, a residential flat above the appeal site. The Council suggest that the proposal would give rise to noise and disturbance to these adjacent occupiers through the general comings and goings of customers to the premises, the potential congregation of people on the street, and the movement of customers when the premises closes. In addition, objectors are concerned about the potential for anti-social behaviour with groups of young people gathering and loitering outside the premises as a result of the proposed use.
8. Despite these concerns, evidence of the likelihood of such disturbance or anti-social behaviour in connection with an adult gaming centre has not been provided. Furthermore, the Council has not supplied any evidence to support its assertion that adult gaming centres result in congregations of people outside such premises or indeed that such uses are particularly noisy or disruptive to neighbouring occupiers. I am therefore not convinced that the Council have adequately demonstrated that the proposed use is incompatible with its adjoining uses and in light of its town centre location.
9. I appreciate that the appeal site is flanked by residential properties but beyond this, and opposite the site, are further commercial uses which reflect its busy town centre location. Union Street is a busy route into the town centre and the site is situated close to the junction with Buxton Road, the main road through the town. Given the central location of the appeal proposal it is not unreasonable for adjacent residents to expect a certain degree of noise and disturbance from traffic and neighbouring commercial uses, including the comings and goings of customers visiting business premises akin to the proposed use.
10. During my site visit I could see that a large public house is located directly opposite the site with its rear entrance and large external seating area facing onto Union Street. In this context, it is my opinion that any noise and disturbance to nearby residents as a result of the proposal is likely to be negligible given this established nearby use which reinforces the busy town centre character of the area.

11. Furthermore, I consider that conditions restricting the opening hours of the premises and prohibiting any amplified music would limit any potential noise and disturbance to adjacent residents.
12. Consequently, these considerations lead me to the view that the proposed development, subject to conditions, would not cause any noise and disturbance of a degree sufficient to result in unacceptable harm to the living conditions of the occupants of adjacent residential properties. For these reasons, I find no conflict with Policies S3 and PD1 of the Adopted Derbyshire Dales Local Plan 2017 which, amongst other things, seeks to ensure that development achieves a satisfactory relationship to adjacent development and does not cause unacceptable effects by reason of noise or other adverse impacts on local character and amenity.

### **Other Matters**

13. The appeal property is located within the Ashbourne Conservation Area, and therefore I am mindful of the duty arising from section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, as the proposed change of use would not result in any physical alterations to the external appearance of the appeal property and it would maintain a commercial use within this busy town centre environment, I conclude that the proposal would preserve the character and appearance of the Conservation Area.
14. In addition, I have been alerted to the fact that the adjoining property at 3 Union Street is a Grade II listed building and it is put to me that the proposal would adversely affect the setting of this designated heritage asset. However, no external alterations are proposed and therefore I am satisfied that the proposal would have no impact on the setting of the adjacent listed building.
15. A number of objectors raise moral concerns in relation to gambling and the potential for gambling addiction and associated social deprivation. Concerns are also expressed that the site is located close to a scout hut, school and a sandwich shop which attracts a high footfall of school pupils with the inference being that young people will be attracted to use the gaming machines to the detriment of their long-term wellbeing. Whilst these concerns may be legitimate, ultimately it is for government to consider appropriate policy responses to such social issues. These are not planning matters for my consideration as national and local planning policies do not proscribe such uses. Rather, the government seeks to regulate such activities by other statutory means predominantly via the licencing regime.
16. My attention has been drawn to parking problems and traffic congestion in the vicinity of the appeal site, however, I have no substantive evidence of this and did not observe such issues during my visit. I also note the lack of any objection from the Highway Authority in this regard.
17. There is a suggestion that the planning application is lacking in information and therefore does not comply with the LPA's validation requirements. However, I am content that a sufficient level of information has been submitted to allow me to consider the appeal and the issues raised.
18. It has been put to me that the site is an edge of centre location and should therefore be subject to a sequential test. The LPA's Planning Policy Team advise that the site falls within the defined town centre of Ashbourne as established on

Inset 5 of the Adopted Derbyshire Dales Proposals Map. Accordingly, I am satisfied that the site is located within the defined town centre and therefore the sequential test does not apply.

19. An objector has suggested that the building has not been developed in accordance with a previous grant of planning permission and that some conditions relating to this previous consent are yet to be satisfactorily discharged. This may or may not be the case, however, these matters are beyond the scope of this section 78 appeal and therefore not for me to consider.
20. Whilst I note comments regarding the potential for a more community-orientated use for the site, this is not a consideration that would weigh materially against the proposed development.
21. A number of objectors have suggested that it is inappropriate for the proposed use to operate in such close proximity to a Funeral Directors, which is located to the south of the site. Whilst I am sympathetic to such concerns this is not a reason for withholding planning permission.
22. Reference is made to the design of the building being out of keeping with the locality, however, the proposal does not include any works to alter its current external appearance and therefore this is not a relevant consideration.
23. Consequently, none of these other matters, either taken individually or together, would alter my conclusions in respect of the main issue in this case, or tip the balance of considerations against the proposal.

### **Conditions**

24. I have had regard to the list of suggested conditions provided by the LPA and have considered these in the context of the Framework which advises that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
25. In the interests of certainty I have attached a condition which specifies the approved plans. To ensure that the development would be sensitive to the living conditions of the occupants of adjacent residential properties, I have imposed conditions to restrict the proposed use's opening hours and to prohibit any amplified music, as accepted by the appellant. For the avoidance of doubt and to ensure a satisfactory external appearance, I have attached conditions to ensure any ramped access is accommodated within the building and for the submission of CCTV details prior to installation. A final condition relating to the details of waste storage has also been imposed to ensure adequate arrangements are made to accommodate such facilities.

### **Conclusion**

26. For the reasons I have set out and subject to conditions, the appeal is allowed.

*Jeff Tweddle*

INSPECTOR



---

## Costs Decision

Site visit made on 22 July 2019

**by J M Tweddle BSc(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 December 2019**

---

### **Costs application in relation to Appeal Ref: APP/P1045/19/3228235**

#### **1 Union Street, Ashbourne, Derbyshire DE6 1FG**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Majid Morabbi for a full award of costs against Derbyshire Dales District Council.
  - The appeal was against the refusal of planning permission for a change of use to the ground floor 1 Union Street Ashbourne Derbyshire DE6 1FG to an adult gaming centre (Sui-Generis) use.
- 

### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Reasons**

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, cost may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense.
3. The applicant submits that the Council has acted unreasonably in that, by refusing the appeal proposal, it has gone against the advice of its professional officers without good reason and failed to substantiate its objection to the proposal on grounds of harm to residential amenity with any evidence. Further the Council has failed to provide complete or specific reasons for refusal but instead offers vague and generalised assertions about the effects of the proposal on residential amenity, which are unsupported by objective analysis. It is their contention that the proposal complied with both local and national planning policy and all other material considerations and should therefore have been permitted without the necessity of an appeal which has caused the applicant unnecessary expense.
4. Furthermore, the applicant suggests that the Planning Committee has given undue weight to preconceived negative expectations / connotations of the proposed use rather than making their own objective appraisal.
5. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

6. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. The Council advise that members of the Planning Committee undertook a site visit to assess and fully understand the implications of the proposal on the residential amenity of neighbouring properties. However, it appears that members failed to fully appreciate the town centre location of the appeal site and acknowledge the established commercial uses in the locality and existing levels of noise and disturbance at the location of the appeal site, in particular a busy highway and public house directly opposite the appeal proposal.
8. No substantive evidence was put forward by the Council to support their reason for refusal that the proposal would result in 'unacceptable effects' on neighbouring residential amenity due to the 'nature of the proposed use'. I find this phraseology to be unhelpfully vague and unclear and does not provide a robust reason for refusal with clearly identified harm. From the evidence it appears that members did make unsubstantiated assertions over the potential effects of the proposal with no objective analysis or evidence to support their claims.
9. There was no objection from Environmental Health Officers in this regard and the appellant was willing to accept planning conditions to restrict opening hours and prohibit amplified music. It appears that members did not give appropriate consideration of these factors in their determination.
10. The PPG is clear that a refusal of planning permission on a ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. From my decision it is clear that the imposition of suitable conditions is capable of mitigating any potential adverse effects and thereby indicating that planning permission ought to be granted subject to such conditions.
11. In the planning judgement, it appears to me that, having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission, in the absence of any justifiable evidence and by advancing vague assertions about the proposal's impact, therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG. As a direct result, the appellant has been faced with the unnecessary expense of lodging the appeal.
12. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Derbyshire Dales District Council shall pay to Mr Majid Morabbi, the costs of the appeal proceedings described in the heading of this decision.

14. The applicant is now invited to submit to Derbyshire Dales District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Jeff Tweddle*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan and Planning Drawings (Drawing No. A.02), received by the LPA on 27 September 2018.
- 3) The premises shall only be open for customers between the hours of 1000 and 2100 each day. No customers shall be permitted on the premises outside of these hours.
- 4) Prior to installation, details of any external CCTV cameras shall be submitted to and approved in writing by the Local Planning Authority. The equipment shall then be installed in accordance with the approved details and so retained.
- 5) There shall be no amplified music from the premises.
- 6) Notwithstanding the approved plans and for the avoidance of doubt, there shall be no external ramped access to the building. Any difference in levels shall be accommodated within the building.
- 7) No part of the development shall be occupied until details of arrangements for storage of bins and collection of waste have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the agreed details and the facilities retained for the designated purposes at all times thereafter.



---

## Appeal Decision

Hearing Held on 28 November 2019

Site visit made on 28 November 2019

**by J Moss BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13<sup>th</sup> January 2020**

---

### **Appeal Ref: APP/L5240/W/19/3232831 91 High Street, Thornton Heath CR7 8RY**

- 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 Luxury Leisure against the decision of the Council of the London Borough of Croydon.
  - The application Ref 18/06057/FUL, dated 14 December 2018, was refused by notice dated 8 February 2019.
  - The development proposed is the change of use of the ground floor to an adult gaming centre (sui generis) and external alterations and associated works.
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor to an adult gaming centre (sui generis) and external alterations and associated works at 91 High Street, Thornton Heath CR7 8RY in accordance with the terms of the application reference 18/06057/FUL dated 14 December 2018, subject to the following conditions:
  - 1) The development hereby approved shall be begun within three years of the date of the permission.
  - 2) The development hereby approved shall be carried out in accordance with plans numbered 1420 (S) 02 revision P1 – Location Plan, 1420 (O) 11 revision P1 – Existing Floorplan and Elevation, and 1420 (O) 12 revision P1 – Proposed Floorplan and Elevation.
  - 3) Prior to the commencement of the use of the premises hereby approved, noise mitigation measures shall be implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. The details submitted shall accord with the recommendations of the Hepworth Acoustics Noise Assessment dated May 2019 and shall include the following:
    - details of the insulation to be installed between the ground floor unit and first floor unit above;
    - the make, model and detailed specification of the two new condensers to be erected in the light-well;
    - details of how the noise generated by the external condenser units will not exceed at any time 54 dB(A) Lw when measured from the first-floor apartment of 91 High Street; and

- details of how all other mitigation measures shall achieve a rating level of 10 dba below the measured background noise levels.

Once installed, the noise mitigation measures shall be retained in perpetuity.

- 4) Prior to the commencement of the use of the premises hereby approved, details of the means of external illumination of the premises, including the level of illumination, shall be submitted to and approved in writing by the Local Planning Authority. Any external illumination of the premises shall only be in accordance with the approved details.
- 5) The operating hours of the use hereby permitted shall be limited to 07:00 to 00:00 hours Monday to Saturday and 07:00 to 23:00 hours on Sundays and Bank Holidays.

### **Procedural Matter**

2. Following the grant of a licence to operate an adult gaming centre by the London Borough of Croydon<sup>1</sup>, the appellant confirms that the permission now sought is no longer for a 24-hour operation, but for operating hours that accord with those granted under the licence, i.e. from 07:00 to 02:00. At the hearing alternative opening hours were also discussed which are set out in my reasons below.
3. Furthermore, in the event that I conclude that planning permission should not be granted for the use in accordance with the licenced operating hours, the appellant requests that consideration be given to a conditional grant of planning permission and suggested several options for operating hours which were discussed during the Hearing. My decision has been set out below dealing with each of the suggested alternatives separately.

### **Main Issues**

4. The main issues are as follows:
  - i. The effect of the development on the vitality and viability of the Thornton Heath district shopping centre;
  - ii. The effect of the development on the living conditions of nearby residents, with regard to noise and disturbance; and
  - iii. The effect of the proposed shop front alterations on the character and appearance of the host property and the surrounding area.

### **Reasons**

#### *Vitality and Viability*

5. The development plan for the area includes the Croydon Local Plan 2018 (CLP), which identifies the appeal site as being within a secondary retail frontage of the district shopping centre of Thornton Heath. Policy DM4 (Development in Croydon Metropolitan Centre, District and Local Centres) of the CLP deals with development in Croydon's centres. The supporting text of the policy explains that, whilst retailing is at the heart of the borough's town centres, they are also

---

<sup>1</sup> Licence granted under section 164 of the Gambling Act 2005.

places where a wide range of other uses help to ensure vitality and viability is maintained. To maintain the right balance the policy seeks to control uses by location.

6. The proposed use of the appeal site as an adult gaming centre (AGC) does not fall within a defined use class<sup>2</sup> and, as such, is within a use class of its own; otherwise known as a 'sui generis' use. Policy DM4.2 (which is within Policy DM4) of the CLP does not permit such uses within secondary retail frontages and, as such, the proposal would conflict with the policy. However, the appellant has drawn my attention to the material considerations in this case that would justify a departure from the policy and suggests that, in any event, the development in this case would comply with the aim of the policy to maintain and increase the vitality and viability of the district centre.
7. In this regard, and to address the Council's concerns with regard to the marketing campaign, at the Hearing it was clarified that the premises had been marketed since September 2017 and the full marketing of the premises continued up to the grant of the licence in May 2019. This exceeds the Council's suggestion during the Hearing of a minimum of 18 months of marketing. Despite around 21 months of marketing, the property owner was unsuccessful in securing any policy compliant occupier. The appellant's evidence confirm that the property had been marketed in a number of locations and web sites. The appellant also confirmed that, as no interest had been shown by any party in occupying the ground floor alone, both the ground floor and basement were advertised for rent.
8. With regard to the advertised rent for the property, the appellant has provided details of the rent values sought for other premises in the area. Whilst I acknowledge that the appeal premises does not directly compare to the examples given, the Council has not provided what it considers to be an appropriate rent value or any evidence to support this.
9. Accordingly, and having regard to the evidence before me, I can only conclude that the marketing campaign was satisfactory and that there is a genuine lack of interest in the property by a policy compliant occupier. Policy DM4 and its supporting text do not set out how to consider proposals for non-policy compliant uses in such circumstances. Nevertheless, this would be a significant material consideration in this case.
10. In addition to the above, the appearance of the appeal premises draws attention to the fact that it is vacant. The condition of the premises clearly has a detrimental effect on the character and appearance of the area. Such a negative effect would only continue if the premises remains vacant. The propose development would result in the provision of a new shop front, the design of which would be open and active. The development would, therefore, result in a significant improvement to the contribution this premises makes to the character and appearance of the area. In view of the period of time this premises has remained in its current condition, I view this as a benefit of the scheme, along with the creation of jobs. These matters would contribute to the vitality and viability of the Thornton Heath shopping centre.

---

<sup>2</sup> Defined in the Town and Country Planning (Use Classes) Order 1987 (as amended)

11. The Council highlight the benefits of retaining class A<sup>3</sup> uses within the primary and secondary retail frontages of the district centre. These include the linked trips that are common within a high street of small retail premises, and the support that active retail high streets provide to the community. Whilst the appellant admits that an AGC would not ordinarily provide a social environment, evidence has been provided to demonstrate that the proposed use would, in all likelihood, create some linked trips from customers visiting the premises.
12. Furthermore, that the permission sought would only apply to the ground floor of the premises and not the basement would not be a determinative matter in this case. Having inspected the premises internally, there is little potential for a separate occupier for the basement and I cannot envisage any potential problem resulting from the lack of an active use of the basement. The appellant only seeks permission for the proposed use of the ground floor of the wider property and, more importantly, it is likely that the permission granted in this case would result in an active use of this ground floor premises.
13. My attention has been drawn to the recent and ongoing regeneration of the Thornton Heath district centre and the recent uptake of vacant premises in the area. Notwithstanding the fact that the appeal premises was not one of these properties, despite being marketed during the regeneration period, the proposed use would not jeopardise the positive momentum of the centre's regeneration, particularly in view of my findings above.
14. I acknowledge the Council's reference to the appeal decision relating to 76A High Street, Croydon<sup>4</sup>, where an Inspector reached a different conclusion having regard to the same CLP policies. The particular circumstances of that case were, however, different to those considered in this appeal. For example, the decision does not suggest that the premises in question was in a particularly poor condition, or that it had remained vacant for a significant period of time, to the detriment of the wider area. The Council were unable to confirm the length of the marketing campaign in that case, and I note the Inspector's conclusions with regard to the lack of persuasive evidence to suggest that the business in that case could not continue to operate successfully from its existing premises in the same metropolitan centre. This decision does not, therefore, alter my conclusions on the first main issue.
15. In summary on this first main issue, the proposed use would not be one that is permitted by Policy DM4.2 of the CLP. However, having regard to the evidence before me, the particular use proposed would not conflict with the aims of the wider Policy DM4 to maintain the vitality and viability of the borough's centres, particularly as the CLP recognises that a wide range of non-retail uses can help to achieve this aim. Sufficient steps have been taken to secure a policy compliant occupier of the premises. These efforts have been unsuccessful, and the property has remained vacant, in a condition that has adversely affected the character and appearance of the wider area for a substantial period. Accordingly, I conclude that the proposal would have a positive impact on (or enhance) the vitality and viability of the Thornton Heath district centre. Although the proposed sui generis use would conflict with Policy DM4.2 of the CLP, in this particular case the benefits that the scheme would bring about justify a decision not in accordance with the development plan.

---

<sup>3</sup> Uses falling within class A of the Town and Country Planning (Use Classes) Order 1987 (as amended)

<sup>4</sup> Appeal reference APP/L5240/W/18/3195213

### *Living Conditions*

16. As noted above, the appeal site is within a secondary retail frontage of the district centre. The Council confirmed in the Hearing that these defined areas are generally away from the main shopping area and are more likely to be closer to residential properties. Indeed, I observed residential properties close to the appeal site, including those above the row of commercial units within which the appeal site is located. The local Councillor confirmed that some of the residential units above this row are of a size to accommodate families with children.
17. The Council's concerns with regard to this first main issue relate to the noise and disturbance caused by people entering and leaving the premises, and by customers gathering outside the premises to smoke or chat. Such activity in the evening is, however, common in the vicinity of the appeal site with a number of other commercial units close by operating during the evening hours. Indeed, the Council confirmed during the hearing that it does not object to the proposed use on the basis of any noise and disturbance it would generate in the evenings.
18. The Council do, however, maintain an objection with regard to noise and disturbance that would be generated by the development during night time hours, particularly between the hours of midnight to 07:00.
19. As noted above, the appellant has been granted a licence to operate an AGC by the London Borough of Croydon. The licence requires access to the premises to be restricted from 20:00 hours onwards, with the main door being locked and customers having to ring a silent bell to gain entry. The appellant also confirmed that persons under the age of 18 would not be permitted onto the premises at any time and that such premises are never granted a licence to sell alcohol. These matters were not disputed by the Council.
20. With regard to the anticipated level of activity during these night time hours, the appellant has provided the results of a one-off survey of customer numbers in other adult gaming centres that it operates<sup>5</sup>. This shows that the number of customers ranged from 1 to 10 at any one time between the hours of 23:00 to 02:00. The appellant suggests that there would be 3 to 4 customers per hour during these times, although the updated noise assessment<sup>6</sup> indicates a likelihood of two or three customers arriving or leaving the premises every 15 minutes during the night time.
21. The noise assessment submitted with the planning application has been updated to include an assessment of the likely impact of outdoor customer noise. It suggests that, although customers generally arrive and leave alone during this period, it is likely that the noise generated by customers chatting outside would be just below the measured average night time noise levels and that, based on this, the noise impact is predicted in the assessment to be low.
22. The likely customer numbers to the premises during night time hours could be regarded as relatively low and I acknowledge the appellant's evidence that such premises are not usually visited by groups of people. Nevertheless, the evidence indicates that there would be a regular flow of customers through the night and such activity would have the potential to generate noise. Whilst I

---

<sup>5</sup> Appendix 6 of the appellant's statement of case.

<sup>6</sup> Hepworth Acoustics Noise Assessment dated May 2019.

note the conclusions at paragraph 4.13 of the updated noise assessment, external noise generated by customers would, by its very nature, be intermittent and may, on occasion, exceed the speech noise levels suggested. Such incidents, whilst infrequent, have the potential to cause disturbance to local residents, particularly those sleeping above the premises.

23. I acknowledge the other sources of night time noise in the area that have been drawn to my attention, including the night time bus services and the other premises in the vicinity of the site that are open as late as 04:30. However, their existence would not justify the approval of a use that could result in an additional source of disturbance during the night, particularly in view of the prevalence of a number of residential properties within the immediate vicinity of the appeal site.
24. That the appellant operates adult gaming centres in similar locations elsewhere in the country does not alter my findings above. I have found harm in respect of this first main issue, having considered the particular circumstances of this case.
25. I have had regard to the licence granted for the premises that would allow the AGC to operate up to 02:00. However, during the Hearing it was confirmed that the licencing regime operates in a different manner to the planning regime and would allow for the Council to vary or revoke the licence if problems with the operation of the AGC arise. Furthermore, the matters considered in this appeal are not similar to those considered by the Council when determining whether or not to issue a licence. It would be appropriate, therefore, for me to conclude that planning permission should not be granted for a use despite it having been considered acceptable in the context of separate legislation.
26. I have had also had regard to the appeal decisions referred to by the appellant, many of which permit the AGC in those cases to operate during night time hours. I have not been made aware of the particular circumstances of these cases and, as such, I am unable to make an informed comparison to the case before me. Nevertheless, I note that the effect of the development on the living conditions of nearby occupiers was not considered as a main issue in any of the cases referred to. These decisions do not, therefore, alter my conclusions above.
27. Having regard to my conclusions above, I now consider the appellant's suggestion for a conditional grant of planning permission with alternative hours of operation to those permitted by the licence. During the Hearing the Council suggested operating hours up to 23:00, although it indicated that the operation of the AGC up to 00:00 may not, necessarily, be objectionable. The appellant confirmed that the operation of the AGC would render it unviable if restricted to a 23:00 close every day.
28. Of the operating hours suggested by the appellant during the Hearing, a 07:00 to 00:00 operation Monday to Saturday with a 07:00 to 23:00 operation Sundays and bank holidays is the closest to the Council's suggestion of what would be acceptable.
29. The evidence before me suggests the area within the vicinity of the appeal site is likely to be active during the evening hours with a number of premises nearby having regular opening times up to 23:00 and 00:00 throughout the week. For the reasons set out earlier in my decision, any opening hours for the

AGC beyond 00.00 would, in all likelihood, cause an unacceptable degree of harm. Accordingly, the use of the premises in accordance with the above-mentioned opening hours suggested by the appellant would, on balance, result in a form of development that would not have an unacceptable effect on the living conditions of nearby residents. In this regard the development would not conflict with Policy DM10.6 of the CLP, which requires new development to protect the amenity of the occupiers of adjoining buildings. It would also comply with Policy DM16 (Promoting Healthy Communities) of the CLP and its requirement for development to be designed so as to mitigate any negative impacts on health and wellbeing.

### *Character and Appearance*

30. The appeal premises is within a terrace row of properties with commercial and retail units at ground floor and residential accommodation above. The style of shop fronts within the row is mixed, as is the character of built development in the wider district centre.
31. The Thornton Heath Clock Tower is near the appeal site and, whilst not a listed structure, the view of it along High Street is recognised as important under Policy DM17 (Views and Landmarks). Within this Policy, DM17.1 states that development should not create a crowding effect around, obstruct or appear too close or too high to any local designated landmarks, including the clock tower.
32. As mentioned earlier, the shop front of the appeal premises is in a particularly poor condition. The scheme proposes the wholesale replacement of the existing with a new contemporary shop front and fascia sign. The Council have confirmed that it has no objection to the design of the new shop front and I have no reason to disagree with their view on this. However, their objections concern the illumination of the yellow door surround, which forms part of the scheme. The Council suggest that this would have a beacon like effect that would unduly draw the eye and interrupt the protected view of the clock tower.
33. There is variety in the type of illumination I observed at the time of my site visit, although much of this is used for illuminating advertisements either within the shop windows or for external signage. Within this context, a brightly illuminated shop surround would be an incongruent feature. Whilst I note that on the proposals map the protected designated view (Policy DM17) does not start until the footway to the front of 93 High Street, I was able to view the clock tower from High Street with the appeal site in my peripheral view. A brightly illuminated feature on the shop front would detract from one's appreciation of the landmark.
34. In order to mitigate the effect of the illuminated door surround the appellant has suggested the imposition of a condition to allow for a limit to be imposed on the level of illumination, which would allow this feature to be more subdued. It would, therefore, be less prominent and integrate with the existing illuminated shop windows that are in close proximity to the appeal site.
35. Accordingly, subject to the imposition of a condition controlling the level of illumination to be used in the door surround, the development would have an acceptable effect on the character and appearance of the host property and the surrounding area, in compliance with Policy DM11 (Shop Front Design and Security) of the CLP, which requires the design of new shop fronts to respect

the scale, character, materials and features of the buildings of which they form part. Furthermore, the development would not conflict with the aim of Policy DM17 to protect the designated view of the local land mark, that being the clock tower.

### **Other Matters**

36. I acknowledge the strength of objection to the development and the suggested negative influence it may have on vulnerable people. It is also suggested that a gambling establishment would be inappropriate in close proximity to the leisure centre used by children, as well as the two schools at either end of High Street. Concerns regarding the potential for anti-social behaviour and littering have also been raised.
37. Whilst the objections of interested parties are noted, the appellant's evidence confirms, amongst other matters, that people under the age of 18 would not be permitted on the premises; that the sale of alcohol would also not be permitted; and that there would be a very low cap on the maximum stake on any machine in the premises. Many of the concerns raised are more relevant, and better dealt with, under the licencing regime. Based on the evidence before me, I have no reason to withhold planning permission for the use, provided it is operated in accordance with the conditions I have imposed.
38. Furthermore, whilst I acknowledge the representations made with regard to access to the premises and facilities for those with mobility impairment, I note the Council have not objected to the development on this basis and I have no reason to conclude otherwise.

### **Conditions**

39. The conditions imposed are based on those suggested by the Council and the appellant. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance.
40. As I have allowed the appeal and grant planning permission for the development, I attach a condition requiring the completion of the development in accordance with the submitted details. The condition requiring the details and implementation of noise mitigation measures is in the interests of the living conditions of the residents living above the premises.
41. In the interests of the character and appearance of the area and the living conditions of neighbouring residents' conditions are also required in relation to the type and level of external illumination, and opening hours.

### **Conclusions**

42. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*J Moss*

INSPECTOR

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                |                                                     |
|----------------|-----------------------------------------------------|
| James Udall    | Case Officer - London Borough of Croydon            |
| Helen Furnell  | Deputy Team Leader - London Borough of Croydon      |
| Victoria Bates | Senior Planning officer - London Borough of Croydon |

### **FOR THE APPELLANT:**

|                 |                                               |
|-----------------|-----------------------------------------------|
| Dennis Pope     | Planning Director - Lichfields                |
| Mark Thompson   | Head of Risk and Compliance - Luxury Leisure  |
| Shaun Hooper    | Regional Operations Director - Luxury Leisure |
| Sean Heaney     | Acquisitions - Luxury Leisure                 |
| Elizabeth Speed | Group General Counsel - Luxury Leisure        |
| Thomas Bailess  | Principle Consultant - Hepworth Acoustics     |

### **INTERESTED PERSONS:**

|                         |                                                                   |
|-------------------------|-------------------------------------------------------------------|
| Councillor Pat Clouder  | London Borough of Croydon                                         |
| Councillor Karen Jewitt | London Borough of Croydon                                         |
| Linda Watson            | Local Resident                                                    |
| Gaetane Jones           | Local Resident                                                    |
| Andrea Perry            | Local Resident and member of Thornton Heath Community Action Team |

## **HEARING DOCUMENTS**

1. Agreed and signed Statement of Common Ground.
2. Survey of Admiral customers - October 2019.
3. Copy of the Licence granted by the London Borough of Croydon.
4. London Borough of Croydon Environmental Health Officer's consultation response.
5. Extract from the draft London Plan.
6. Extracts of CLP.
7. List of suggested conditions.



---

## Appeal Decision

Site visit made on 14 July 2020

**by Edwin Maund BA (Hons) MSc Dip UP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> August 2020**

---

**Appeal Ref: APP/F4410/W/20/3250246**

**37-39 St Sepulchre Gate, Doncaster DN1 1TD**

- 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 Praesepe Holdings Ltd against the decision of Doncaster Metropolitan Borough Council.
  - The application Ref 19/02976/COU, dated 6 December 2019, was refused by notice dated 3 February 2020.
  - The development proposed is Change of use of the ground and first floors to adult gaming and amusement centre with bingo (Sui Generis) at ground floor and ancillary staff area at first floor.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground and first floors to adult gaming and amusement centre with bingo (Sui Generis) at ground floor and ancillary staff area at first floor at 37-39 St Sepulchre Gate, Doncaster DN1 1TD, in accordance with the terms of the application, Ref 19/02976/COU, dated 6 December 2019 subject to the conditions set out in the schedule attached to this decision notice.

### Procedural Matters

2. The Council in determining the application refused it on the basis of the current development plan, but in setting out their case in support of the appeal have made reference to the Emerging Local Plan. The Examination into the Local Plan is at a relatively early stage, and it is too early in the process to know what modifications may be made as the Examination hearings have yet to commence. In these circumstances, and in accordance with Paragraph 48 of the Framework, I consider only moderate weight can be given to the Emerging Local Plan and I have determined the appeal on this basis.

### Main Issues

3. The main issues are;
  - The effect of the proposal on the vitality and viability of the Doncaster town centre and primary shopping frontage; and
  - The effect of the proposal on the health and wellbeing of residents living in the Town Ward of Doncaster.

## Reasons

### *Vitality and Viability*

4. The appeal property is a vacant shop unit on the eastern side of St Sepulchre Gate within the designated primary shopping frontage of Doncaster town centre. Located on a pedestrianised street, at the time I visited, early afternoon, mid-week, the centre was busy, and footfall was apparent in all directions, despite some ongoing restrictions due to Covid-19. I recognise this is just a snapshot in time, but from my observations the location appeared to be a healthy town centre shopping area.
5. A small number of premises were vacant, including the appeal site, nevertheless there was a good range of shops including national retail chains and other ancillary services which you would expect to find in a town centre location.
6. Along the same side of St Sepulchre Gate between High Street and Printing Office Street, I was able to view that despite being highlighted as a primary shopping frontage, this side of the road is broadly a 50/50 split between retail and non-retail uses, with several banks, two betting shops, and two cafes. With the appeal premises located between a betting shop and a café.
7. Policy TC6 of the Doncaster Unitary Development Plan (UDP) (1998) seeks to retain the predominant retail function of these frontages but supports the change from retail where that use contributes to the vitality and viability of the centre and does not seriously disrupt the continuity of the shopping frontage.
8. Policies CS7 and CS8 of the Doncaster Core Strategy (CS) (2012) highlight the importance of Doncaster town centre as the sub regional centre, sub criteria B) of CS7 advises that the vitality and viability of the borough's centres will be enhanced, by in part widening the range of uses and encouraging service and employment facilities to meet the day to day needs of residents.
9. I have been provided with information in respect of how the property has been marketed since October 2018, but this does not include whether the price sought reflected a realistic value in the current economic climate, nevertheless what information I do have is indicative of some of the challenges facing town centres and the retail sector.
10. I am also mindful of the forthcoming changes to the Use Classes Order that will come into effect on 1 September 2020 allowing greater flexibility for changes of use from retail within town centres. While this would not directly affect this proposal as the proposed use is sui generis it is a material consideration in respect of how it would affect the current policy and in particular the aims of retaining primary retail frontages.
11. The use proposed would comply with the aims of this policy by supporting the vitality and viability of the town centre and bring a vacant unit back into use, facilitating a use which could add to the footfall and increase the opportunity for shared trips. It would also add to the evening economy being a use that would be open up to 24 hours, and also subsequently increase employment opportunities.
12. The Council consider that the proposal would be in conflict with the Emerging Local Plan policy 24. I do not agree, the proposal is for none of the exclusions

identified in that it is adult gaming and amusement centre with bingo, not a betting shop, pay day loan unit or pawnbrokers. Even, if I were to agree with the Council's interpretation of the supporting text, the appellant has marketed this vacant property for in excess of 12 months with no success. The appeal proposes having an occupier within the building where there is an opportunity for additional footfall, and it would not result in a cluster or concentration of such uses, being the only such use in this immediate area.

13. In summary, I do not consider that the proposed use would be in conflict with policy TC6 of the UDP, or CS7 and CS8 of the CS which seek to ensure amongst other things, to maintain the vitality and viability of the town centre.

#### *Health and wellbeing*

14. The appeal site is located within Doncaster Town Ward. The Council identify that it is an area of deprivation relative to Doncaster Borough as a whole and Doncaster itself is relatively deprived. The Ward the Council consider has an over representation of residents that are susceptible to problem gambling, as such the appeal if allowed would exacerbate the situation and consequently have an adverse effect on public health.
15. Conversely, the updated report '*Gambling: An Evidence Briefing Paper for Doncaster*' accepts that there is a lack of robust evidence concerning problem gambling; and there is limited local data for Doncaster itself. Nor does it correlate that the proximity of a gambling establishment within a close proximity to residents' results in additional problem gambling.
16. There is an estimate that 1 in 90 adults in the UK are problem gamblers, with no further information on how this differs locally, if at all, or how, should the appeal be allowed, this might make matters worse, I do not agree therefore that the argument presented can be given significant weight, or that there is a clear link between the proposed use of the site and the concerns the Council identify.
17. I do not consider therefore that the proposal would adversely affect the health and wellbeing of residents in the Town Ward of Doncaster. I do not consider therefore that this would lead to a conflict with either the Framework or the Emerging Local Plan policy 51.

#### **Other Matters**

18. The site is located within the Doncaster High Street Conservation Area there is a duty therefore to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. The effect on the Conservation Area has not been raised as an area of concern by the Council as no changes are proposed to the external façade of the building and a shop window display has been confirmed to be retained which can be controlled by a suitable condition, I consider the duty to preserve the Conservation Area would be achieved.
19. The appellant has pointed me towards their social responsibility policy, which is to be welcomed but it is not something which could be enforced through planning conditions so can be given limited weight in determining the appeal.
20. I have been referred to a series of other appeal decisions which were allowed relating to changes of use from retail (A1) to Adult Gaming Centres (Sui

Generis) in Croydon<sup>1</sup>, Eastwood<sup>2</sup>, and Hull<sup>3</sup>. Given that each of these appeals were in different localities and had differing policy backgrounds I do not draw significant conclusions from them and therefore they do not carry significant weight in my decision.

### **Conditions**

21. I have considered the planning conditions that have been suggested by the Council against the tests in the Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents. To provide certainty a condition is necessary requiring that the development is carried out in accordance with the approved plans.
22. I have imposed a condition requiring the implementation and retention of a shop window display in the interests of the vitality and viability of the area and to preserve the character and appearance of the conservation area.  
I have not imposed the condition limiting opening hours as this is a town centre site in a sub-regional centre where late night activities could be expected.

### **Conclusions**

23. The appeal is allowed.

*Edwin Maund*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 000-EX-01, 000-DR-01.
- 3) A shop window display in all ground floor windows fronting St Sepulchre Gate shall be installed before the use commences and retained for the lifetime of the use.

---

<sup>1</sup> Appeal Reference APP/L5240/W/19/3232831

<sup>2</sup> Appeal Reference APP/J3015/W/18/3212670

<sup>3</sup> Appeal Reference APP/V2004/W/19/3233244



---

## Appeal Decision

Site visit made on 24 November 2020

**by Bhupinder Thandi BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 December 2020**

---

**Appeal Ref: APP/B0230/W/20/3256275**

**Ground floor, 10-12 Chapel Street, Luton LU1 2SE**

- 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 East Kent Leasing Ltd against the decision of Luton Council.
  - The application Ref 20/00398/COU, dated 26 March 2020, was refused by notice dated 19 May 2020.
  - The development proposed is change of use from betting office (sui generis) to amusement centre (adult gaming centre) (sui generis).
- 

### Decision

1. The appeal is allowed and planning permission is granted for the change of use from betting office (sui generis) to amusement centre (adult gaming centre) (sui generis) at Ground floor, 10-12 Chapel Street, Luton LU1 2SE in accordance with the terms of the application, Ref 20/00398/COU dated 26 March 2020 subject to the conditions set out in the Schedule to this decision.

### Application for costs

2. An application for costs was made by East Kent Leasing Ltd against Luton Council. This application is the subject of a separate decision.

### Main Issue

3. The main issue is the effect of the proposed development upon the vitality and viability of Luton town centre.

### Reasons

4. The appeal site comprises a property located within Luton town centre that is vacant at ground floor. The premises was last occupied as a betting shop. Chapel Street has a mix of uses along it, albeit dominated by hot food uses including late night businesses.
5. Luton is a typical town centre with a main indoor shopping centre, pedestrianised high street and off shoot streets containing a mix of retail and other uses. During my visit I observed a small number of betting shops and an amusement centre along the pedestrianised section of the town centre and no obvious proliferation of such uses.
6. Amusement centres and betting shops, for that matter, are an established part of high streets and shopping centres across the country and complement their retail function. There are no other amusement centres along Chapel Street. The

betting shops and amusement centre are located on George Street. Due to the low total number of such uses and the presence of intervening uses, gambling facilities do not dominate the centre as a whole. Nor would the proposed use result in a cluster or concentration of such uses in the area. I am also mindful that the previous use of the premises was a betting shop therefore there would be no overall increase in the total number of such uses.

7. The appellant has provided information undertaken at various premises around the country which indicates that some customers link visits to amusement centres with shopping trips or work. Whilst this survey is limited in scope, it has not been challenged by the Council and notwithstanding their comments there is no substantive evidence to indicate that customers to the premises would not visit other shops and facilities in the town centre thereby contributing towards its vitality and viability.
8. The use of the amusement centre would be restricted to people over a certain age. However, there is no substantive evidence that this would have a harmful material effect on visitors to the town centre or social cohesion, particularly when considering the previous use.
9. The Council contend that the proposed development would necessitate a requirement for security personnel, although there is no evidence before me to support this. In any event the presence of security personnel at the entrance to pubs, bars, shopping centres and high street retailers is a common feature of many town centres. In my judgement this would not give rise to an impression of a nuisance or unsafe use. Moreover, I am not aware of any objection from the local police force.
10. The Council contend that the town centre is at a critical stage of its regeneration. However, there is no substantive evidence before me to support this. Nor did I observe obvious signs of regeneration activity on the ground during my site visit. I therefore afford this limited weight in coming to my decision.
11. I note that no evidence has been provided demonstrating why alternative uses could not occupy the premises. However, I find that with specific regard to this appeal there is no planning policy requirement to do so. I have therefore given this matter negligible weight in coming to my decision.
12. As such, the proposed development would not undermine the vitality and viability of Luton town centre. As such it would accord with Policies LLP1, LLP3 and LLP25 of the Luton Local Plan (2016) which, amongst other things, require all new development to preserve or improve the character of the area; town centre proposals to contribute towards job creation, contribute to the achievement of a mixed area which is vibrant and active and enhance the distinctiveness and character of the area by responding positively to townscape.
13. It would also accord with the National Planning Policy Framework at paragraphs 85 and 127, which amongst other things, seek to promote the growth and diversification of town centres to allow them to grow and diversify in a way that can respond to rapid change in the retail and leisure industries and allows a suitable mix of uses, and create places where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.

### **Conditions**

14. In addition to the standard time limit condition, I have imposed a condition specifying the relevant drawings as this provides certainty.
15. The appellant has submitted a sound insulation assessment with regard to comments made by the Council's Environmental Health Officer in relation to noise transmission through the building. Whilst the Council have not commented on its contents, I am satisfied that the details are satisfactory and thus it is not necessary to impose the condition.
16. The Council has suggested a condition preventing external alterations to the appearance of the building. However, such alterations would require separate permission and do not form part of the scheme before me. Therefore, it is not necessary to impose such a condition.
17. The Council have suggested a condition limiting the opening hours of the premises to 0900 to 2300 Mondays to Saturdays and 1000 to 2200 Sundays and Bank Holidays. However, the nature of the use is unlikely to result in undue noise and disturbance from comings and goings and given its town centre location and the presence of late night and 24 hour uses in the area I do not consider it necessary to limit the opening hours.

### **Conclusion**

18. For the reasons set out above the appeal succeeds.

*B Thandi*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location/Block Plan and Existing and Proposed Ground Floor Plan Drawing Number 20003/001/B.