



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: 22nd 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.
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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 appeal¹ 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 uses².
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

¹ Appeal ref: APP/V2004/W/19/3225545

² 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
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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