



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

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.