



Appeal Decision

Site visit made on 7 August 2020

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/V2004/W/20/3246195

290 Holderness Road, Kingston Upon 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 Cashino Gaming Ltd against the decision of Kingston-upon-Hull City Council.
 - The application Ref 19/00658/COU, dated 4 June 2019, was refused by notice dated 5 August 2019.
 - The development proposed is described as change of use of the ground floor of 290 Holderness Road from a retail unit (A1) to an adult amusement centre (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the ground floor of 290 Holderness Road from a retail unit (A1) to an adult amusement centre (Sui Generis) at 220 Holderness Road, Kingston Upon Hull HU9 2JX, in accordance with application Ref. 19/00658/COU, dated 4 June 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: Site Location Plan – 290 Holderness Road Scale 1:1250 and Proposed Ground Floor Layout Drg No RE/15/hu2.
 - (3) The development hereby permitted shall not be brought into use until the flood resilience measures set out in section 3 of the Flood Risk Assessment dated 29 July 2019 have been implemented. These measures shall be retained thereafter and the premises shall only be operated in accordance with the Flood Warning Evacuation Plan Ref P19-184-3E-00-XX-RP-C-9000 Issue 1 dated May 2019.

Procedural Matter

2. Since the appeal was submitted, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force on 1 September 2020 and amend the Town and Country Planning (Use Classes) Order 1987 (the Order). Retail units previously categorised as being in A1 use now fall under a new Use Class E (Commercial Business and Service Uses). I have consulted the parties in respect of the amended Order and any written representations made in this regard have been taken into account.

Main Issue

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

Reasons

4. The appeal site is a vacant shop unit situated within a terraced two-storey parade containing a variety of retail and non-retail uses. Neighbouring units to either side of the site are in use as adult amusement centres (AAC). The unit forms part of the primary frontage within Holderness Road District Centre. There was a high footfall in the area at the time of my site visit.
5. Policy 12 (District, Local and Neighbourhood Centres) of the Hull Local Plan (2017) (the LP) amongst other things confirms that within the primary frontage of Holderness Road District Centre, a high proportion of the ground floor frontage length should remain in shopping use. Changes to non-retail uses will be permitted where the proportion of non-A1 ground floor frontage length would not exceed 30%. Where this proportion would be exceeded, development should demonstrate that it would not undermine the vitality and viability of the centre.
6. The parties have confirmed that this approach is also supported by a Supplementary Planning Document in respect of the 'Vitality and Viability of Centres' which confirms amongst other things that the policy thresholds do not set an optimum level beyond which planning applications will simply be refused, rather a general threshold as a guide to when an applicant should provide further supporting evidence to demonstrate that their application would not undermine the vitality and viability of a centre.
7. It is common ground between the parties that the 30% threshold in Policy 12 has already been exceeded. I have taken the appellant's figures as representing the worst-case scenario as they set out a slightly greater exceedance of the threshold than the Council's figures. On that basis, retail uses currently equate to 68.1% of the primary frontage. If the extant planning permission for an expansion of the neighbouring 'Admiral' AAC is implemented, this would reduce the percentage of retail frontage to 66.9%. In combination with the appeal proposal, the percentage of retail frontage would reduce by a further 1% to 65.9% meaning 34.1% of the frontage would be in non-retail use. Even so, 65.9% represents a significant majority proportion in terms of the percentage of retail use within the primary frontage.
8. The amendments to the Order referred to in my procedural note could result in changes from retail uses to other uses within Class E without the need for planning permission. Consequently, over time the percentage of non-retail units could increase further above the maximum 30% threshold under Policy 12. However, I cannot be certain of this and I have therefore determined the appeal against the existing situation with the vitality and viability of the District Centre remaining a significant material consideration.
9. An advert advertising the appeal unit's availability for A1 – A5 uses was in place at the time of my site visit. The appellant has also provided a letter from a Commercial Property Consultant which indicates that the unit has been vacant for 4 years. The unit has been marketed by an agent since October 2018 and it is suggested that the limited size of the unit and its position

between 2 AAC's is unlikely to prove an attractive proposition for a retailer. Given the considerable period that the unit has remained vacant, I find no reason to doubt this assertion.

10. The proposal would extend an existing AAC and consolidate its position within the parade alongside a neighbouring unit in the same use. It would not introduce a new AAC and there would not be a marked change in the proliferation of AACs. There remains a diverse mix of other appropriate uses for a district centre location within the parade including retail units.
11. Even though the proposed use would not provide a new service or facility, the proposed expansion still has the potential to create a modest increase in footfall and linked trips to other services. The relatively low vacancy rates in the primary frontage only further persuades me that the vitality and viability of the district centre is not under threat. The loss of this particular unit for an alternative use appropriate to this location could be accommodated without material harm to the primary shopping function of the district centre.
12. I conclude that the site-specific circumstances described effectively demonstrate that the change of use would not undermine the vitality and viability of the Holderness Road District Centre. In that particular regard the proposal would comply with Policy 12 of the LP.

Conditions

13. In addition to the standard time limit, I consider it reasonable to attach a condition confirming the approved drawing numbers in the interests of certainty. Section 3 of the Flood Risk Assessment provided sets out details in respect of 'finish floor levels and flood resilience measures' and a flood warning evacuation plan has also been provided. A condition requiring the development to be carried out in full accordance with these measures and for the premises to be operated in accordance with the flood warning evacuation plan is reasonable and necessary in the interests of ensuring flood risk at the site is minimised.

Conclusion

14. For the reasons set out, the appeal is allowed.

M Russell

INSPECTOR