



Appeal Decision

Site visit made on 22 September 2020

by Paul Singleton BSc MA MRTPI

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

Decision date: 7th October 2020

Appeal Ref: APP/E2530/W/20/3247482

29 & 30 St Peter's Hill, Grantham NG31 6QF

- 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 South Kesteven District Council.
 - The application Ref S19/1658, dated 16 September 2019, was refused by notice dated 19 December 2019.
 - The development proposed is change of use of ground floor from retail (A1) to adult gaming centre (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor from retail (A1) to adult gaming centre (sui generis) at 29 & 30 St Peter's Hill, Grantham NG31 6QF in accordance with the terms of the application, Ref S19/1658, dated 16 September 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 building shall not be occupied for the use hereby permitted unless and until sound insulation works to protect neighbouring residential uses from the adverse effects of internally generated noise have been carried out in accordance with a scheme that has been submitted to and approved in writing by the local planning authority.
 - 3) The premises shall not be used for the purposes authorised by this permission other than between 09:00hrs and 22:00 hours.

Procedural Matters

2. The Council's Decision Notice, issued on 19 December 2019, states that the proposal conflicts with Policy GR4 of the (as then) emerging South Kesteven District Local Plan (2011-2036) (Local Plan). That Local Plan was subsequently adopted by the Council on 30 January 2020 and has replaced the development plans documents that were in place at the time of the Council's decision.
3. Planning law requires that appeals should be determined on the basis of the development plan and national policy in place at the time of the appeal decision rather than the time of the Council's decision or any other earlier stage. I have reached my decision on this basis. The appeal was lodged following the adoption of the Local Plan and the appellant has set out their assessment of

how Policy GR4 should be interpreted and applied in their written statement. I am, therefore, satisfied that no disadvantage to either party arises from my adopting that approach.

4. On 1 September 2020 amendments were made to the Town and Country Planning (Use Classes) Order 1987 (the UCO) by means of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 2020 Regulations). Regulation 4 advises that any application submitted before 1 September 2020, that refers to use classes as they appeared in the UCO prior to the amendments, should be determined by reference to those use classes. I have considered the appeal on that basis.
5. However, in view of the manner in which Policy GR4 is written and of the case put forward in the appellant's statement, I considered that the amendments to the UCO, specifically in relation to Class A in the former version and Class E in the amended version, could be material to the appeal. I therefore considered it appropriate to invite the parties to submit any comments they wished to make as to what implications, if any, those changes may have for the application of Policy GR4 and the determination of the appeal. Responses were received from both parties and I have taken these into account in reaching my decision.

Main Issue

6. The main issue in the appeal is the effect of the proposed change of use on the vitality and viability of Grantham Town Centre.

Reasons

7. The appeal premises comprise the ground floor of a 3 storey building fronting St Peter's Hill within the boundary of Grantham Town Centre as defined in the Local Plan. The ground floor unit forms part of a designated Primary Shopping Frontage (PSF). The premises are currently used for the sale of menswear (Class A1) and the proposed use is for an adult gaming centre which falls outside of any of the use classes set out in the UCO and is, therefore, sui generis. At paragraph 2.5.4 of its statement the Council asserts that, being sui generis, the proposed use is inappropriate within the wider town centre and that the appeal proposal is contrary to Policy GR4. I do not agree.
8. Gaming or amusement centres with gaming machines have been a common feature in town centres for very many years. The appellant has previously operated an adult gaming centre within Grantham Town Centre, in a unit at No. 54 High Street which was still in occupation for that use at the time the application was submitted. The proposed use is plainly a leisure use that falls within the definition of 'Main Town Centre Uses', set out in the glossary to the National Planning Policy Framework (Framework). That definition lists leisure and recreation uses including such things as casinos and bingo halls as Main Town Centre Uses. The examples of such uses are not a closed list and I can see no grounds for concluding that the definition does not or should not include gaming centres of the type proposed in the appeal.
9. Paragraph 2 of Policy GR4 states that, within the town centre, the re-use of buildings for a range of uses including leisure will be supported. Paragraph 4 states that leisure uses will be supported provided that the use does not cause undue harm to the character and appeal of the town centre or generate dead shopping frontage. No external alterations are proposed and no

evidence has been produced to demonstrate that the proposal would result in either of these outcomes. Accordingly, I conclude that the use is appropriate within the town centre boundary and that the proposal complies with these parts of Policy GR4.

10. The Courts have advised that development plan policies should be interpreted objectively in accordance with the language used, read as always in their proper context.¹ On my reading of the language used, Policy GR4 does not, as the Council seeks to argue, limit the occupation of units within the PSF to Class A uses.
11. Paragraph 3 of the policy says that changes to Class A1 use will be "*encouraged*" and other A Class uses will be "*supported*" subject to them positively contributing to the town centre. Paragraph 5 states a "*preference*" for A1 retail uses to be located within the PSF and that A1 retail uses elsewhere in the town centre "*will be supported provided they contribute positively to the town centre.*" The combined effect of these two paragraphs is to require a sequential approach to the selection of units by Class A1 users, with Class A1 users who propose a location outside of the PSF being required to meet the additional test of making a "*positive contribution*" to the town centre.
12. I accept that Policy GR4 seeks to encourage a predominance of A1 and other A Class uses in the PSF. However, no part of the policy states a presumption against the location of other town centre uses, which fall outside of Class A, within the PSF. For that reason, I find that the proposed change of use does not conflict with Policy GR4 and that permission should not be withheld on that basis. It is nevertheless useful to consider how the proposal sits with other elements of the policy.
13. Although not within the 'other A' class uses referred to in the third paragraph of the policy, the proposal would positively contribute to the town centre by generating footfall. No data has been submitted but the intention to provide up to 37 machines suggests an expectation on the appellant's part that a large number of customers could be in the premises at the busiest times and that a good level of footfall would be generated by the use. Due to its extended opening hours (09.00 to 22.00) the centre would generate footfall over a much longer period than many retail units.
14. It is uncertain how the Council has reached its conclusion that the proposal is "*not considered to increase footfallover and above a retail or other A class use.*"² There is, however, no requirement in GR4 for the appellant to demonstrate that it would do so and no policy basis for applying that more rigorous test. Paragraph 3 of the policy requires only that other A Class uses should generate footfall or provide supplementary uses. The appeal proposal would achieve both of these outcomes and would help to meet those objectives of the policy.
15. The proposed hours of operation demonstrate that the use is expected to attract customers from 09.00 until 22.00 hours. As they have previously operated a gaming centre at No. 54 High Street, it can be assumed that the

¹ Tesco Stores Ltd v Dundee City Council (Scotland) [2012] UKSC 13 (21 March 2012).

² Paragraph 3.1.5 of Council Statement.

- appellants have a good understanding of the likely pattern of use and level of demand for the use and are confident that the proposal will attract customers until late evening.
16. The evening economy of any sizeable centre is likely to include different elements such as food and drink outlets, cinemas, theatres, music venues and other attractions with widely varying hours of operation. I do not accept that the proposed use is particularly 'specialist' or that that the suggested 10.00 pm closing time would be so different to that of other leisure attractions as to render it unlikely to make a positive contribution to the evening economy.
 17. In my judgement, the proposal could be expected to generate linked trips with cafes, bars, restaurants and other leisure facilities in the centre. The site's location in close proximity to public houses, restaurants and the new cinema would increase its potential to make a positive contribution to the vibrancy of the town centre in the evenings. The proposal, accordingly, derives support from paragraph 6 of the policy which states that proposals that support the evening economy will be encouraged.
 18. I accept that the 2015 Retail Study should not be relied upon as an accurate assessment of the health of Grantham Town Centre but I noted a relatively high level of vacant units in the centre. Despite those vacancies, most of the buildings along the St Peter's Hill and High Street corridor seem to be in good repair and the street retains much of its attractive historic character. I observed good levels of pedestrian flow along this corridor and through the Isaac Newton Shopping Centre and that many of the food and drink outlets in the PSF appeared to be trading well, notwithstanding the Covid 19 restrictions.
 19. The menswear outlet is still trading from the appeal premises and I have no information as to when or to where that business might relocate. Given the level of vacancies, there would be a range of opportunities for that business to secure a satisfactory relocation within the core shopping area. There is, therefore, no evidence that the proposal would result in the displacement of that outlet from the Town Centre. The fact that the unit has been marketed since January 2019 provides good evidence of a lack of interest in the unit from Class A1 occupiers.
 20. As the Local Plan was adopted as recently as January 2020, full weight should be given to its policies including GR4. As I have found that the proposal complies with Policy GR4 there is a presumption in favour of a grant of planning permission, in accordance with paragraph 11(c) of the Framework.
 21. The recent changes to the UCO are a clear reflection of a move by the Government towards greater flexibility in the range of uses to be encouraged in town centres. The right to change the use of premises between the various uses within the new Class E without the need for planning permission will apply within the PSF as well as other parts of the town centre. The Council's ability to control the range of users within the PSF through Policy GR4 is, therefore, likely to be constrained.
 22. As a sui generis use, the proposed gaming centre does not fall within the new Class E. The proposal to site this within the appeal premises is, however, consistent with the Government's policy direction with regard to increasing

flexibility in the make-up of town centres and their ability to adapt to new markets and opportunities. The revised UCO supports my finding that the proposed change of use should be supported.

Other Matters

23. The site lies within the Town Centre Conservation Area and is opposite the Guildhall and Isaac Newton Statue, both Grade II Listed Buildings. As no external alterations are proposed the change of use would have no adverse effect on the setting or significance of these heritage assets.

Conditions

24. Conditions are needed to require a scheme of noise insulation to the premises and which limit the hours of operation to those applied for. These are necessary to protect the amenity of nearby residential occupiers. The wording of the noise insulation condition has been amended from that suggested by the Council to make it clear that the works are needed prior to occupation and not prior to any other fit out works to the premises.
25. The application is for a change of use only and does not seek approval for any external or internal alterations. The appellant has also confirmed that no new external lighting is proposed. There is, therefore, no need for a plans condition or a condition requiring the approval of a lighting scheme.

Conclusions

26. For the reasons set out above, I find that the proposal would not have an adverse effect on the vitality and viability of Grantham Town Centre and that it complies with Local Plan Policy GR4. As no other policies have been cited in the reason for refusal, the proposal complies with the development plan as a whole. I therefore conclude that the appeal should succeed.

Paul Singleton

INSPECTOR