



Appeal Decision

Site visit made on 24 May 2021

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Appeal Ref: APP/W0734/W/21/3269738

58 Linthorpe Road, Middlesbrough TS1 1RA

- 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 Middlesbrough Borough Council.
 - The application Ref 20/0636/FUL, dated 20 October 2020, was refused by notice dated 15 January 2021.
 - The development proposed is change of use from shop (A1) to adult gaming centre (Sui Generis).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the vitality of the town centre, with due regard to national and local planning policy as well as character and appearance.

Reasons

3. The appeal site is a vacant unit within Middlesbrough town centre. It is located on Linthorpe Road which is part of the shopping area. At the time of my visit, this area had a high footfall of pedestrians commensurate with this being the main pedestrian axis in the town centre, even allowing for the circumstances of the ongoing pandemic.
4. The appellants accept that adult gaming centres such as the appeal proposal are not one of the 'main town centre uses' referred to in Annex 2 of the National Planning Policy Framework (the Framework). However, they consider that adult gaming centres are part of the mix of uses generally found within town centres. In that respect, there are a number of similar uses elsewhere in the town centre.
5. However, the site is within the Primary Shopping Frontage (PSF) identified in the development plan. Policy REG21 of the Regeneration Development Plan 2009 (the Regeneration Plan) specifies that use class A1 retail uses under the Use Classes Order will be appropriate in the PSF. Uses within classes A2, A3 and other complementary uses may also be acceptable under policy REG21, provided that they will not harm the function and character of the shopping area, and will not impact on the vitality and viability of the town centre.

6. However, the Use Classes Order has been changed, including the creation of a 'Commercial, business and service' use class (Class E) which includes a range of uses incorporating the previous use classes A1, A2, A3, D1 and D2. This is a material consideration in this appeal. That said, the proposal is a Sui Generis use which does not fall within the new Class E.
7. Policies REG20 and REG21 of the Regeneration Plan refer to use classes which have been replaced by Class E. On that basis, those policies are out of date for the purposes of my determination of this appeal. However, the policies are worded flexibly so that a range of non-A1 complementary uses may be acceptable in the PSF, subject to the considerations referred to previously. The protection of primary shopping areas remains part of Government policy in respect of ensuring the vitality of town centres, as set out in paragraph 85 of the Framework. The wording of the policies therefore reflects the Framework, whilst being of sufficient flexibility to respond to the circumstances of the new Class E. Therefore, despite my conclusion that those policies are out of date, I give them significant weight in my consideration of this appeal.
8. Policy REG21 includes a 15% limit for non-A1 uses in the PSF. The 15% threshold for non-A1 uses may be of reduced relevance as, under the provisions of Class E, a property may alternate between uses within the new class without requiring planning permission. However, as a Sui Generis use which does not fall within Class E, the consideration of whether the appeal proposal is complementary to the PSF remains relevant in my consideration of this appeal.
9. Whilst adult gaming centres may be acceptable in town centres, the appeal proposal should be assessed within the context of whether it would be a complementary use within the PSF. The Council submits that the proposed use would not generate high footfall in the context of a primary retailing or other retail area. Within the context of the bustling character of Linthorpe Road as well as my observations of adult gaming centres elsewhere in the area, I consider that these concerns are well-founded. Whilst the matter of footfall has been referred to in a number of appeal decisions submitted by the appellants, they have provided no substantive evidence in respect of the relative footfall generated by the appeal proposal compared to a retail or other complementary use to disprove the Council's concerns.
10. Adult gaming centres generally have solid window displays which limit views into the premises, compared to the changing displays of goods and visible activity associated with many of the premises in the vicinity of the appeal site. Whilst it may be possible to provide some form of display, due to the limited views into the premises and the lower level of comings and goings of customers, in my view the proposal would have a deadening effect on the frontage of the PSF. I therefore do not consider that the proposal would be a complementary use within the context of the PSF, and would harm the function and character of the shopping area.
11. The appellants submit that the proposal relates only to a change of use and that the frontage does not form part of the appeal. However, even if controlled by a condition, the proposal would lead to a change in the character of the frontage as well as the use of the site, and I consider that these matters are material to my consideration of this appeal.

12. I acknowledge that uses such as gyms and offices could operate from the premises under Class E, and that these may include frontages which are not of a retail appearance or particularly active character. However, even allowing for the number of vacancies in the area, there is no substantive evidence that such uses are likely to be introduced into this extent of the PSF under the provisions of Class E.
13. I am mindful that the site is vacant, and has been for some time. The appellants have submitted marketing evidence in relation to the history of the site since it was vacated by Burger King in 2015. This refers to a short period of occupation by a retail use from the end of 2016 until early 2017. Other interest has been shown in the property since 2015, in respect of a potential lease holder and disposal of the freehold, although these interests were not progressed. The landlord has also undertaken alterations to the property to make it more appealing to retail occupants.
14. However, the Council has provided details of rental values for a range of properties in the area which are significantly below the rent being asked for the appeal property. This includes a number of properties in the PSF and the wider town centre. The appellants' evidence indicates that the rental expectations for this property have been particularly high. Nevertheless, I consider that those expectations should be realistic and reflect the circumstances of the area. Due to the rent being requested for the property, I do not consider that the longevity of the marketing period and lack of interest demonstrates that the premises cannot reasonably be brought forward for a retail or complementary use.
15. The appeal proposal would bring a vacant property back into a productive use. Whilst I have concluded that the resultant footfall would be more limited compared to a shopping or complementary use, in comparison to a vacant premises this would still be a benefit, including associated linked trips and employment. However, mindful of my conclusions on the marketing evidence, it has not been demonstrated that there is no realistic possibility that a retail or complementary use could be introduced with the same or greater benefits.
16. I have had regard to the various appeals referred to by the appellants, particularly in respect of the potential benefits of adult gaming centres. However, it has not been demonstrated that the circumstances of those appeals are directly comparable to the appeal before me, including in respect of marketing, site constraints, primary shopping areas, planning policy, and previous uses of the site. In any event, I have reached my own conclusions on this appeal on the basis of the evidence before me.
17. There is some disagreement as to the health of the town centre. The appellants consider that the character and function of Linthorpe Road is healthy and has a diverse mix of uses which contribute positively to the centre, and emphasise the proportion of Class E uses in the PSF. The Council contests this view, referring to vacancy levels and the ongoing challenges facing town centres. Notwithstanding those matters, based on what I have seen and read, the character and function of Linthorpe Road within the PSF and its contribution to the vitality of the wider town centre remain of significant importance. The conflicting stances in respect of the health of the town centre does not reduce that importance or demonstrate that concerns, including whether the proposal

is a complementary use within the PSF or the robustness of the marketing exercise, should be set aside.

18. I conclude that the proposal would not be a complementary use within the PSF, and would conflict with policies REG20 and REG21 of the Regeneration Plan in respect of the harm to the function and character of the shopping area as well as the vitality and viability of the town centre. The frontage which would result from the proposal would harm the character and appearance of the area, in conflict with policy CS5 of the Core Strategy 2008 which seeks to enhance the best characteristics of the built environment and ensure that development is contextually well-integrated. The proposal would also be contrary to paragraph 85 of the Framework in respect of ensuring the vitality of town centres.
19. Although I have concluded that policies REG20 and REG21 of the Regeneration Plan are out of date due to the introduction of Class E, I still give these policies significant weight in my consideration of this appeal due to the flexibility of the development plan regarding complementary uses in the PSF. On the basis of the above, I conclude that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR