



Appeal Decision

Site visit made on 7 September 2021

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2021

Appeal Ref: APP/P4415/W/21/3276347

Unit 3, 6 Frederick Street, Rotherham S60 1QQ

- 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 Rotherham Metropolitan Borough Council.
 - The application Ref RB2021/0270, dated 4 February 2021, was refused by notice dated 1 April 2021.
 - The development proposed is change of use of the ground and first floor from a betting shop (Sui Generis) use to an Adult Gaming Centre (Sui Generis) use.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use of the ground and first floor from a betting shop (Sui Generis) use to an Adult Gaming Centre (Sui Generis) use at Unit 3, 6 Frederick Street, Rotherham S60 1QQ in accordance with the application Ref RB2021/0270 dated 4 February 2021. Subject to the following conditions:
 - 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
 - 2) The permission hereby granted shall relate to the area shown outlined in red on the approved site plan and the development shall only take place in accordance with the submitted details and specifications as shown on the approved plans FS/ROTH/01 rev A: FS/ROTH/04 rev A
 - 3) The use hereby permitted shall only be open to customers or for deliveries between the hours of 0800 and 0000.

Main Issues

2. The main issues in this appeal are the effect of the proposal on the vitality of the town centre, with due regard to national and local planning policy and the impact of the proposals on local residents in terms of noise and disturbance.

Reasons

3. The appeal site is a two-storey building, brick built, in the pedestrianised middle of Rotherham town centre. The unit was last used as a betting shop but has remained vacant for some time. At the time of my site visit, there was a strong footfall in the wider pedestrian area.

4. It is accepted by the parties that Adult Gaming Centres (AGCs) like the proposal are not one of the 'main town centre uses' referred to in Annex 2 of the National Planning Policy Framework (the Framework). However, the appellants forward the notion that AGCs are part of the mix of uses generally found within town centres. Rotherham town centre does have other similar uses amongst operating premises.
5. The Use Classes Order has been changed comprehensively in 2020, including the creation of a 'Commercial, Business and Service' use class (Class E) which includes a range of uses incorporating previous use classes A1, A2, A3, D1 and D2. That said, the proposal is a Sui Generis use which does not fall within the new Class E.
6. AGCs generally have solid window displays which limit views into the premises, in a similar manner to betting shops, in comparison to the changing displays of goods and visible activity associated with many retail shopping units. There is a statutory obligation to exclude under 18's from the proposed use, but again, this is not materially different to the previous use as a betting shop.
7. 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 Coral. According to the marketing evidence, there has been limited retail interest in the site since then.
8. The appeal proposal would bring a vacant property back into productive use. There is no doubt that the proposed use would not generate the level of footfall from a retail use, but in comparison to a vacant premises this would still be a benefit, including associated linked trips and employment.
9. As the proposal would change an existing non-retail use into another non-retail use there would be no change in the proportions of premises in retail use. Moreover, there are no other AGCs in the stretch of frontage that contains the appeal site. Nor is there any evidence that the proposal would lead to an unacceptable concentration of such uses in the wider town centre.
10. Furthermore, the proposal is a type of use that is not uncommon to shopping streets. Also, as it is not a replacement of a retail unit, a loss of footfall associated with retail use would not occur. The proposal would generate footfall and the proposal would bring a vacant unit back into use with the potential for some linked trips, thereby complementing and helping to maintain the vitality and viability of the Centre.
11. The proposal is a type of use not out of keeping within a busy town centre location. My general impression of the town centre, taking into account the current pandemic, is that, despite the difficulties which face many town shopping centres, the town centre seemed to be reasonably healthy. In any event, I have found that the proposal would not create an over concentration of similar uses to the detriment of the vitality and viability of the town centre. The appeal building has remained vacant for a considerable period of time, and given the details before me, I am not confident that this position would alter any time soon, resulting in the prospect of the unit remaining empty for the foreseeable future. Therefore, the prospect of the host property being brought back into use, weighs in favour of the proposal. Nonetheless, I recognise that the Council are working to regenerate the area and improve the function of the town centre

12. I have had regard to the effects of the Covid-19 pandemic, the number of vacant units in the area, the Planning Practice Guidance section on town centres and retail as well as the definition of main town centre uses in Annex 2 of the Framework. I have also to consider that a betting shop could reopen in the existing Unit without the need for planning consent.
13. My attention has been drawn to other appeal decisions. Insufficient information has been provided on these schemes and I cannot be sure of the context or background to these schemes. In any case, I have determined the appeal on its own merits
14. It is highly likely that the operation of the AGC through the night would create additional activity at a time when local residents would expect a quieter environment at such times. On this basis, I cannot support the operation of the AGC for 24-hours a day. I am unaware if any license under the Gambling Act 2005 has been granted. In any event, the license has been issued under different legislation. However, I am confident in this particular instance that a suitably worded condition could be imposed, to ensure that otherwise unacceptable development could be made acceptable.

Other Matters

15. I have noted the comments of an interested party in relation to the proposals, and I have taken those comments into consideration. I understand that the interested party operates another similar use in the locality, and the issues concerned have been addressed in my report.

Conditions

16. I have taken into account the conditions suggested by the Council, and amended the condition relating to opening hours between 0800 and 0000 rather than 2300 as requested by the Council as it increases footfall to the late-night economy but restricts all night opening in the interests of local residents.
17. I consider the standard conditions of commencement and approved plans are in the interests of proper planning.

Planning Balance and Conclusion

18. I consider that the proposal would generate footfall and would not harm the character of the Town Centre. Overall, the proposal would accord with guidance in Section 7 of the Framework which is concerned with the vitality of town centres and requires planning policies and decisions to take a positive approach to their growth, management and adaptation.
19. Based on the above, I consider the proposals to have no adverse effects that would significantly or demonstrably outweigh the benefits associated with the scheme. Therefore, in this instance there are material considerations which indicate that the proposal should be determined otherwise than in accordance with the development plan and permission should be granted. Accordingly, taking the above into account, I do not consider that the scheme would harm the character, vitality and viability of the Town Centre and the main shopping area in which it is located.

20. Taking all matters into consideration, I conclude that the appeal should succeed.

Paul Cooper

INSPECTOR