



Appeal Decision

Site visit made on 4 April 2022

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th May 2022

Appeal Ref: APP/W0734/W/21/3289652

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 Merkur Slots Ltd against the decision of Middlesbrough Council.
- The application Ref 21/0677/COU, dated 6 September 2021, was refused by notice dated 10 December 2021.
- The development proposed was described as '*Full planning permission for of the change of use of the ground floor at 58 Linthorpe Road from Class E to an AGC (Sui Generis). Advertisement consent is also sought for 2 x internally illuminated fascia signs and 1 x internally illuminated Fascia sign with a Sun logo inlaid with 5mm Opal 050 acrylic disc.*'

Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor from Class E to an Adult Gaming Centre (Sui Generis) at 58 Linthorpe Road, Middlesbrough, TS1 1RA in accordance with the terms of the application, Ref 21/0677/COU, dated 6 September 2021, 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 (1:1250@A4); block plan (1:500@A3); 999-PR-01 Rev 03 and 999-EX-02.
 - 3) A window display in all ground floor windows fronting Linthorpe Road shall be installed before the use commences and shall be retained for the lifetime of the use.

Preliminary Matters

2. The development was initially described in the manner set out above, although a separate application for advertisement consent¹ was granted for the installation of internally illuminated fascia signs in connection with the use sought by the appellant. I have adopted the more concise development description set out on the decision notice as being for the: *change of use of ground floor from Class E to an adult gaming centre (Sui Generis)*.
3. My attention has been drawn by both parties to a similar proposal previously considered at appeal by another Inspector at the current appeal site². I have had regard to the conclusions reached in that instance.

¹ LPA Ref No: 21/0678/ADV – approved 13 December 2021

² APP/W0734/W/21/3269738

Main Issues

4. The main issues are the effects of the proposed development upon:
- The vitality and viability of the town centre; and
 - The character and appearance of the appeal site and surrounding area.

Reasons

Vitality and viability

5. The appeal site is a vacant ground floor unit on Linthorpe Road, a Primary Shopping Frontage (PSF)³ within Middlesbrough town centre's shopping area. Formerly occupied by Burger King until 2015, the unit has since only been temporarily occupied by a retail operator for a short period between late-2016 and early-2017.
6. Middlesbrough Local Plan (LP) policy REG20 sets out, amongst other things, the Council's approach to supporting the role of the town centre. Its provisions are supported by LP policy REG21 (together with the proposals map) which identifies primary shopping frontages (PSF) where use class A1 retail uses will be appropriate. The latter LP policy also goes on to state that other uses falling within use classes A2 and A3, together with other complementary uses, may be acceptable provided that they do not harm the character and function of the shopping area, or impact upon the vitality and viability of the town centre.
7. However, since the LP's adoption, the Use Classes Order (the Order) has been changed, the effect of which has been to incorporate uses previously falling within Use Class A1 (as well as classes A2, A3, D1 and D2) within a new Use Class E. Whilst the proposed adult gaming centre is a sui generis use, which does not fall within Use Class E, the new Order is clearly material to this matter in respect of how it would affect the LP policies' ability to retain retail uses and its support for, and protection of, uses categorised within the now superseded Order.
8. With regard to the LP policies' approach, the extent to which they are able to directly resist non-A1 retail uses has been diminished by the latest Order as such uses may now move, unfettered, within the new Class E. There is, therefore, the very real prospect that the Order may facilitate the introduction within the PSF of uses which the LP policies previously sought to resist. Although of limited direct relevance to a proposal for a sui generis use such as the appeal proposal, the new Order recognises a greater flexibility of uses within, and a changing role for, town centres and their retail function.
9. The approach set out in the previous appeal decision relating to this site concisely and accurately set out the flexibility inherent in the wording of LP policies REG20 and REG21, and particularly their reference to other complementary uses. I agree with this approach which means that significant weight may still be afforded to these policies as a whole, although their aim to support and protect Class A uses within the town centre's PSF carries only limited weight. The National Planning Policy Framework (the Framework) continues to recognise the importance of town centres, but notes the

³ As identified in the Middlesbrough Local Plan

importance of growth, management and adaptation in making clear the range of uses permitted within town centres and primary shopping areas.

10. Including vacant units, the appellants' submission demonstrates that the proportion of non-A1 uses and Class E uses within the block in which the appeal site lies did not change between February and December 2021. Whilst it also shows that the proportion of non-(former) A1 uses exceeded the 15% threshold set out within LP policy REG21, neither had this figure increased over the same period. Tellingly, of the 21 units within this block the level of vacancies rose from 5 to 7 of the 21 units.
11. The proposal would remove the appeal unit from a Class E / former Class A1 designation and further shift the proportion of non-Class A1 uses beyond LP policy REG21's threshold. However, as set out above, this carries limited weight in the context of the new Order which would allow unfettered movement of uses within Class E, and also therefore potentially away from former Class A1 uses. The matter of whether or not Class E uses will be PSF compliant in policy terms in the future is not one to which I give any significant weight at the time of determination of this appeal.
12. The appeal unit is flanked by retail uses in a part of the PSF where Class E, and particularly retail uses falling within the former Class A1 remain dominant. It would however also bring a long vacant unit back into active and sustained use in a manner absent since 2015 and would counteract the recent increase in vacant units within this block, as demonstrated by the appellants' 'Health Check' of units⁴, between February and November 2021.
13. There is broad agreement that the bringing back into use of a currently vacant unit can support the vitality and viability of a town centre in a way that a vacant unit would not. However, the Council state that the proposed use would potentially deter groups and individuals from visiting this part of the town centre as well as discouraging 'the right kind' of investment but have not presented any evidence to support how this might be so.
14. Instead, relying upon vague and unsupported statements, no compelling effort has been made by the Council to challenge the appellants' footfall analysis of three adult gaming centres in other locations across the country. These show adult gaming centres to be at least comparable, if not more so, in terms of footfall within a town centre location than their retail neighbours.
15. The previous Inspector's conclusion that Linthorpe Road had a bustling character was largely in line with my observations, even taking account of the late afternoon timing of my visit to the site. Nevertheless, on the basis of the evidence presented to me by the appellants, it seems to me that adult gaming centres are capable of generating footfall rather than discouraging it, and no evidence to the contrary has been presented to me by the Council. It is not therefore clear the basis upon which the Council consider that the proposal would not have a positive impact upon the PSF in light of the appeal unit's long-term vacancy.
16. I am mindful that the appeal proposal was previously considered to not be a complementary use within the PSF. However, I am satisfied that the appellant has demonstrated, through comparison with other similar proposals in a range

⁴ Statement of Case: Figure 6.1 – Health Check Results of Appeal Site's Frontage Block

of town centres, that the proposal would not harm footfall within Linthorpe Road or the PSF. It is also clear to me that in the context of a unit which has suffered from long term vacancy levels and in a particular block within the PSF where those levels have been shown to have increased in recent times, the bringing back into use would be beneficial.

17. The property has been marketed for a continuous and lengthy period, with submissions showing that rental and sale expectations for it have been reduced during the course of that period. In the absence of a detailed critique of the marketing process, I am satisfied that sufficient weight can be afforded to its conclusions to support the contention that the proposal would be beneficial to the vitality and viability of the town centre and, in these terms, would be a complementary use. I am satisfied therefore that the proposal would result in a complementary use of the appeal premises for the purposes of LP policies REG20 and REG21 without causing demonstrable harm to the vitality or viability of the town centre.

Character and appearance

18. The appeal premises has a contemporary and heavily glazed shopfront, albeit like its neighbours, recessed beneath a heavy canopy. The appellant has undertaken to ensure that the glazed shopfront would be retained without the application for vinyl to the glazing. A large display screen would also be position within the largest portion of shopfront glazing.
19. The measures outlined by the appellants demonstrate an awareness of the potential shortcomings of adult gaming centres in terms of their external appearance. The Council are correct to be concerned about such matters. However, whilst it is also the case that traditional retail units typically have more active shopwindow displays, it is by no means always the case that that should be so. Moreover, in the context of the new Order where uses may move more freely within Class E, it cannot necessarily be expected that once active shopwindows are retained as such.
20. The Council highlight the supporting text to LP policy REG21 which describes features of complimentary uses. I have no reason to believe that the appeal proposal would not be open during the day, whilst the submitted plans and evidence shows that the display screen would provide moving and engaging images whilst maintaining otherwise unobstructed views into the unit's interior. I have already concluded that the appellants have adequately demonstrated that the proposal would not, based on evidence of other similar units, lead to a reduction in footfall levels and thus I am satisfied that the proposal would not have a harmful effect on the character or appearance of the surrounding area.
21. Nor, in views into such units, would the scene be notably different. Thus, in the context of a long standing inactive and vacant shop and shopfront with little evidence or prospect of alternative retail or Class E use, the particular details of the appellants' approach to the proposal are such that it would not cause material harm to the character or appearance of the PSF or town centre. Conversely, the benefit of bringing a long-vacant unit back into complementary use is a matter which carries significant weight.
22. For these reasons, the proposed development would not be in conflict with the aims and objectives of LP policies REG20 or REG21 in their support for the town centre and Primary Shopping Frontages and the role that complementary uses

play therein. Nor would the proposed development be at odds with LP policy CS5 which seeks to secure a high standard of design in all development proposals in terms of, amongst other things, their effect on the character and appearance of the area.

Conditions

23. The Council have not suggested any conditions in the event that the appeal should succeed. Nevertheless, it should come as no surprise to either party that I have imposed time limit and approved plans conditions. These, I consider, are necessary and reasonable in the interests of proper planning and to provide certainty.
24. In addition to the proposed ground floor plan, which is covered by the approved plans condition, a further condition requiring the provision and retention of a window display at all times in the windows fronting Linthorpe Road is necessary in the interests of character and appearance.

Conclusion

25. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

G Robbie

INSPECTOR