



Appeal Decision

Site visit made on 25 October 2022

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2022

Appeal Ref: APP/N1160/W/22/3299743

116 - 118 New George Street and Ground Floor & First Floor 2 - 4 Market Avenue, Plymouth PL1 1RZ

- 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 UK Ltd against the decision of Plymouth City Council.
 - The application Ref 22/00531/FUL, dated 28 March 2022, was refused by notice dated 4 May 2022.
 - The development proposed is change of use of 2-4 Market Avenue and 116-118 New George Street in Plymouth from a former Class E use (restaurant) to an adult gaming centre (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of 2-4 Market Avenue and 116-118 New George Street in Plymouth from a former Class E use (restaurant) to an adult gaming centre (Sui Generis) at 116 - 118 New George Street and ground floor & first floor 2 - 4 Market Avenue, Plymouth PL1 1RZ in accordance with the terms of the application, Ref 22/00531/FUL, dated 28 March 2022, 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: 1:1250 Scale Site Location Plan; 1:500 Scale Block Plan; 999-EXPR-01; 999-EXPR-02; and, 999-EX-03.

Application for Costs

2. An application for costs was made by Merkur Slots UK Ltd against Plymouth City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the description of development as set out above from the application form as neither party has provided written confirmation that a revised description has been agreed. However, I have removed reference to those elements that are not acts of development.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the retail area.

Reasons

5. The appeal site occupies a corner location in a city centre retail area. From my site visit I noted the new development commencing as part of the Colin Campbell Court redevelopment. I also noted how prominent the appeal site is when travelling to Market Avenue from Colin Campbell Court Car Park and saw a number of vacant commercial units in the area.
6. The area around the appeal site was vibrant at the time of my site visit with the street busy with traffic and people using the wide variety of retail units in this part of the shopping centre. Due to its vacancy and given the length of its inactive frontage to the street on the prominent corner, the appeal premises do not currently add to this vibrancy or to the sense of place.
7. Policies DEV18 and DEV20 of the LP seek to ensure that active frontages are provided within the area to create a suitable sense of place. However, I have not been presented with evidence detailing what the policies define as an inactive frontage. The Council have presented evidence of the possibility of the windows to the unit being inactive due to internal screening, but even if this were the case, there would still be a level of activity from the use through customers accessing and exiting the premises that would create an active frontage, which is lacking at present because of the premises not having been in use for a number of years.
8. I note the evidence from the appellant with regard to adult gaming centres adding to the footfall and pedestrian flow of areas and that this is not disputed by the Council. With this being a larger unit than the appellants current premises, this could add to the footfall of customers, even if it may not provide a frontage where you can clearly see into all of the premises. In addition, it is not disputed by the parties that the appeal property could be occupied without planning permission by another use under Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) that may not provide an active frontage.
9. I acknowledge the prominence of the site when travelling from Colin Campbell Court Car Park and have taken on board the concerns raised by the City Centre Regeneration Co-ordinator. However, I find that the benefits to the area from bringing this vacant unit back into use, the fact that a suitable shop frontage has been approved, and the benefit to the wider redevelopment of Colin Campbell Court from the re-location of the business, would result in a development that would aid the vitality of the retail centre. The proposal would provide a suitable active frontage that would be beneficial to the character and appearance of the area. It would rectify and repair the harmful effect the empty premises have on the townscape in this location.
10. As a result of my findings above, the proposed change of use would not adversely affect the character and appearance of the retail area. Accordingly, the proposal would therefore comply with Policies DEV18 and DEV20 of the Plymouth and South West Devon Joint Local Plan 2014-2034 which, amongst other things, requires that development contributes to the quality of the built environment and to the vitality of the area, and does not lead to inactive frontages.
11. The Council have referenced paragraphs 6.15 and 15.26 of the LP Supplementary Planning Document July 2020. From the information before me

paragraph 6.15 relates to the design and layout of blocks, with paragraph 15.26 relating to shutters and other security measures. As these matters are not directly relevant to the appeal proposal, I give these paragraphs little weight.

Other Matters

12. The planning application submission was accompanied by a Unilateral Undertaking (UU) dated 30 March 2022 from the appellant. This states that upon the grant of planning permission, and on entering into a lease for the appeal property, the appellant would not open the appeal premises to the public and commence trading until all operations at their existing premises have ceased. As the Council have not indicated that it is necessary to prevent both units from being in an adult gaming use, and as the UU would not prevent another operator from using the appellants existing unit as an adult gaming centre, I do not find the UU necessary. As such, the UU does not form the basis of my decision.
13. I note that the appeal site forms part of Pannier Market which is a Grade II listed building and as required by Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in considering whether to grant planning permission I have had special regard to the desirability of preserving the building and its setting or any features of special or historic interest. The significance of the listed building appears to be due to its internal architectural features and use of reinforced concrete and portal frames on a large scale. The appeal proposal seeks to change the use of the building only and as a result the features and setting of the listed building would be preserved.

Conditions

14. I have had regard to the tests in the National Planning Policy Framework in relation to conditions, and the planning conditions suggested by the Council. In addition to the standard time condition, it is necessary for a condition to confirm the approved plans in the interests of certainty. The Council have suggested a further condition to prevent any enclosures, containments, or additional advertisements inside of the shop windows but in light of my findings above, I do not find this reasonable or necessary.

Conclusion

15. For the reasons given I conclude that the appeal should be allowed.

C Rose

INSPECTOR