



Appeal Decision

Site visit made on 2 January 2023

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Appeal Ref: APP/B1415/W/22/3294882

40-41 Queens Road, Hastings, TN34 1RE

- 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 Hastings Borough Council.
 - The application Ref HS/FA/21/00443, dated 29 April 2021, was refused by notice dated 24 February 2022.
 - The development proposed is change of use of the ground floor unit of 40-41 Queens Road from a vacant pawnbroker (E Class) to an Adult Gaming Centre (Sui Generis).
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor unit of 40-41 Queens Road from a vacant pawnbroker (E Class) to an Adult Gaming Centre (Sui Generis) at 40-41 Queens Road, Hastings, TN34 1RE in accordance with the terms of the application, Ref HS/FA/21/00443, dated 29 April 2021 and is subject to those conditions set out in the attached schedule.

Main Issues

2. The main issues raised in respect of the appeal are the effect of the proposed development on: -
 - a) Levels of noise and disturbance in the area at night and early morning; and
 - b) The health and wellbeing of Hastings residents.

Reasons

Noise and disturbance

3. The proposal seeks 24 hours a day, 7 days a week adult gaming use of the premises. Third party and Council Member concern has been raised to potential unacceptable noise and other disturbance arising from the proposed use of the premises.
4. The proposal has been supported by a noise assessment that assesses potential impact on noise sensitive properties, including those of the flats above the premises. The assessment identifies measures that could be put in place prior to the use commencing to improve the sound insulation performance of the premises. The Assessment also studied other operational adult gaming centres elsewhere to assess activity during the most noise sensitive period of the night. Those operational premises assessed

demonstrated that the comings and goings of patrons at those premises was relatively low.

5. The Council's Environmental Health Team have not raised objection to the proposal and request a condition be imposed requiring the recommendations of the noise assessment to be strictly adhered to and carried out prior to the use commencing. Other requested conditions would aim to control the hours of construction on site and would require details of any fixed plant, machinery and associated equipment that has the potential to cause noise disturbance to be submitted for local planning authority approval prior to installation.
6. There would be some evening, late night and early morning activity generated by the proposed use of the premises. However, the evidence provided by the noise assessment indicates that the adult gaming use of the premises would not attract large crowds during noise sensitive periods of the day and night. Furthermore, given the patronage is likely to be relatively low it is unlikely that noise impacts would occur in regard of patrons entering and exiting the premises. Furthermore, the machines in themselves would generate low levels of noise and only low background music would be played inside the premises.
7. This is a town centre location where there are restaurants and public houses and where some activity would be expected. The evidence does not support the activity generated by the premises would be substantially out of keeping with the noise levels in the area at those sensitive times of day. Consequently, I find that the potential noise generated associated with the proposed use of the premises would not be of an extent that would be substantially harmful to the living conditions of residents in the area.
8. Policy DM6 Hastings Development Management Local Plan 2015 (the Local Plan) states that applicants will be required to supply convincing supporting evidence (from a relevant and suitably qualified professional) that any actual or potential pollution can be overcome through appropriate remedial, preventative or precautionary measures. The proposal has been supported by a noise assessment that assesses potential impact on noise sensitive properties. The imposition of appropriately worded planning conditions that would prevent unacceptable noise generation, as requested by the Council's Environmental Health Team, would make the development acceptable in planning terms.
9. For these reasons, I conclude that the proposed development would not generate harmful levels of noise and disturbance at late night and/or early morning. As such, the proposed development would comply with Policy DM6 of the Local Plan that seeks, amongst other matters, noise that would be detrimental to neighbouring and/or local amenity to be kept to a practical minimum.

Health and wellbeing

10. Third party and Council Member concern has been raised to an over-concentration of gambling premises in this part of the town centre and the potential adverse social impacts of an adult gaming centre in this location. There is also concern that the use could harmfully affect the more vulnerable residents of Hastings, specifically in respect of gambling and its negative impact on health and wellbeing. It has also been highlighted that Castle Ward, within which the proposal would be located, is in the top 10% of the most

deprived wards in the whole country and the second with the highest violent crime record in Sussex.

11. The Council's report to its Planning Committee notes that gambling premises only make up a very minor proportion of the overall offer within Hastings town centre. The report comments that the nearest gambling premises, a betting shop, is approximately 100m from the appeal premises with the only other gaming centre over approximately 250m away. This would not represent an over-concentration of gambling premises in this part of the town centre, even with the proposed use in place. Whilst some third party representation suggests there may be more than this, the only other premises that I have been directed to is a premises said to be opening at the former Debenhams.
12. The Council's report to its Planning Committee also advises Members that matters of impact upon vulnerable people and problem gambling is a matter specifically considered under the licensing regime. The premises has been granted a 24-hour licence by the Council's Licensing Team which is subject to conditions to which the premises must adhere in order to protect customers and staff; such as, protection of children and other vulnerable persons, access to premises, age checks and responsible gambling. The Council's report to its Planning Committee also advises that the operators are fully aware of their Licensing Objectives and, as with all their premises, have robust measures in place to ensure vulnerable people are protected. I have been provided with a copy of the premises licence by the appellant.
13. Concern has also been raised over the use generating antisocial behaviour which could lead to potential damage to other premises in the locality. Representation from the Local Police Support Team notes that the level of crime and antisocial behaviour in Hastings district is above average when compared with the rest of Sussex but advise that they have no major concern regarding the proposal. I have no substantive evidence before me that would lead me to conclude that antisocial behaviour or crime would be generated as a result of the proposed use.
14. There is no clear correlation between the proposed gambling premises and its proximity to residents and any addition to problem gambling locally. There is also no clear local evidence that would support the proposed use having a detrimental impact on the health and wellbeing of the residents of Hastings or that would add to deprivation and/or crime in the area. Therefore, there is no clear link between the proposed use and the concerns raised by the Council. As such, I do not give the Council's contentions in respect of these matters significant weight. Furthermore, such matters are regulated by other legislation, including the licensing regime, and it is not for the planning system to duplicate issues covered through other legislative regimes. As highlighted by the appellant, other Inspectors have come to similar conclusions in respect of similar matters relating to health and wellbeing.
15. For these reasons, I conclude that the proposed development would not harm the health and wellbeing of Hastings residents. As such, the proposed development would not conflict with Policy FA3 of the Hastings Planning Strategy 2014 and the provisions of the National Planning Policy Framework (the Framework) that seek, amongst other matters, to ensure decisions result in development that promotes health and wellbeing.

Other Matters

16. Third party concern is raised over the decline of the town centre and suggest that the premises could be put to a better use and that local business would suffer as a result of the proposed use. The proposal would bring a vacant premises back into use, it would add to footfall and the diversification of the town centre and would provide employment. There is no clear indication that would suggest that the proposed use would bring about a decline in local businesses. Furthermore, the premises has a large shop front which the proposal indicates would be retained. Therefore, the change of use would not significantly alter the appearance of the street scene.
17. The premises would not offer any off-road parking provision. Nonetheless, the site is situated in an urban location where public transport is within walking distance of the site. The Council's highway advisers have not raised an objection to the proposal despite there being no off-road parking.

Conditions

18. I have considered the planning conditions suggested by the Council in light of paragraph 56 of the Framework and the advice in the Planning Practice Guidance. In addition to the standard time limit condition and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
19. For those reasons set out above and in the interest of safeguarding the living conditions of residents, conditions that require the development to be carried out in accordance with the recommendations contained within the noise assessment report and within specified construction times are necessary. For the same reasons a condition is necessary to provide details of any fixed plant, machinery and associated equipment that has the potential to cause noise disturbance are to be submitted for local planning authority approval prior to installation. In the interest of the living conditions of local residents and the visual appearance of the area a condition is necessary for the provision of refreshments to be ancillary to the permitted use.
20. The Council seeks to secure the premises as an Adult Gaming Centre (Sui Generis use) only and to remove any future change of use of the premises that may be permitted under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification). I consider this to be necessary to ensure that any future alternative use of the premises is appropriate to this town centre location and to safeguard the living conditions of existing and future residents.
21. A condition is requested that would prevent patrons from smoking or vaping outside the premises which fronts Queens Road. However, it is set out in the Council's Committee Minutes that the Planning Services Manager advised Members that such a condition would be unenforceable. I have no substantive reason that might lead me to a different view to that of the Planning Services Manager, therefore, I have not imposed such a condition.

Conclusion

22. Having regard to the above the appeal should be allowed.

Nicola Davies

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site plan, existing and proposed floor plans (QRD/HAS/04A) and noise assessment report (PR2001_47_FINAL_R1).
3. Prior to the commencement of the use hereby approved, the development shall be carried out in accordance with the recommendations contained within the Noise Assessment (PR2001_47_FINAL_R1) dated 19/10/2021. The works required within the Noise Assessment (PR2001_47_FINAL_R1) dated 19/10/2021 shall thereafter be retained permanently whilst the permitted use is in operation.
4. During construction any work which is audible at the site boundary, including deliveries to and from the premises, shall not take place before 08:00 and after 18:00 hours Monday-Friday or before 09:00 and after 13:00 on Saturdays and at no time on Sundays or Bank Holidays.
5. The acoustic specification of any fixed plant, machinery and equipment associated with air movement (including fans, ducting and external openings), compressors, generators or plant which has the potential to cause noise disturbance to any noise sensitive receivers, shall be submitted to and approved by the Local Planning Authority before installation. Any fixed plant, machinery and equipment approved shall be provided in full accordance with the details approved and thereafter be retained permanently whilst the use is in operation.
6. The provision of refreshments at the premises shall remain ancillary to the permitted use as an Adult Gaming Centre (Sui Generis use).
7. Notwithstanding the provisions of The Town and County Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the use hereby approved is for an Adult Gaming Centre (Sui Generis use) only and there shall be no further change of use without planning permission first being applied for and approved in writing by the Local Planning Authority.

End of schedule