
Appeal Decision

Site visit made on 18 July 2023

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2023

Appeal Ref: APP/K0235/W/23/3314169
73 High Street, Bedford MK40 1NE

- 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 Chongie Entertainment Ltd against the decision of Bedford Borough Council.
 - The application Ref: 22/01610/COU, dated 12 July 2022, was refused by notice dated 7 October 2022.
 - The development proposed is the change of use of vacant unit (Class E) to adult gaming centre (Sui Generis).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) the effect of the proposal on the vitality and viability of Bedford Town Centre; (ii) whether it would preserve or enhance the character or appearance of the Bedford Conservation Area; and (iii) the effect on the living conditions of the occupiers of the nearest residential properties by way of disturbance and anti-social behaviour.

Reasons

Vitality and Viability

3. The appeal property is a vacant unit which lies in a highly prominent position in the town centre. It is located on the corner of High Street with Mill Lane, and opposite the pedestrianised Silver Street Square. The longer frontage is on Mill Lane, with the entrance to the unit located on the corner itself. The shorter High Street frontage faces directly towards Silver Street Square. The unit shows some signs of disrepair, in particular to the fascia. At the time of my site visit, the window displays contained information on the High Street Heritage Action Zone (HSHAZ), as well as on a town centre walking tour.
4. High Street contains a variety of retail and service uses, including a number of vacant units. Mill Lane contains mainly local retail services, again with some vacancies. Of note, there is an existing Adult Gaming Centre (AGC) located on High Street close to the appeal site, just beyond the Mill Lane junction, with few units in between.

5. There has been recent public realm improvement works along High Street and on Silver Street Square, the latter of which includes public art as well as seating. The submissions have also referred to improvement works to buildings that were also evident during my site visit. Despite the obvious vacancies, including a former department store near opposite the site, these improvements have created a pleasing environment which is clearly aimed at attracting footfall and sympathetic inward investment in this part of the town centre.
6. The site lies within the defined town centre boundary and the Primary Shopping Area. The High Street has its own shopping policy, Policy 16 of the Bedford Borough Council Local Plan 2030 (2020) (Local Plan), which sets out a number of objectives, including in relation to concentrations of similar uses that cause detriment of environmental quality. The supporting text makes reference to the related improvement programme for the High Street. This is all material as regards the vitality and viability of the High Street. While its list of precluded uses does not include AGCs, the objectives it applies relates to considering all planning applications in Bedford High Street. Mill Lane lies within a Secondary Shopping Frontage, where Policy 15 supports uses that contribute to the vitality, viability and diversity of the town centre and avoiding concentrations, for similar reasons to Policy 16. Both policies are clearly relevant and attract significant weight in my decision.
7. The proposal would lead to a concentration of AGCs in this part of both the High Street and the town centre. Whilst they would number two, they would be located in proximity to each other. It would be evident that a concentration of such uses would be formed. Such an effect would be accentuated by the location of the proposal because it would be highly prominent on a corner plot with two street frontages and opposite Silver Street Square. Expressing the number of such units in relation to the town centre more broadly does not address the concentration that would be formed at this particular location. In these terms, it would not give rise to diversity or mix. That only over 18s could use the premises has a limited bearing.
8. In terms of whether creating such a 'hub' would be harmful in terms of vitality and viability, depends on the particular circumstances in this part of the town centre. The improvements which have been carried out provide some context and it is evident that these are geared for a greater quality retail and cultural offering. It is not evident the improvements are intended to attract an AGC. Nor can there be any great certainty that the frontages would have visual interest or be active as a result of the proposal because it is only a change of use which is sought.
9. While the proposal would bring a vacant unit back into use and in doing so may increase footfall and linked trips, I am not persuaded this justifies putting the Council's aspirations for this location to one side. I have been referred to AGC appeal decisions outside of Bedford where development plan policies with different approaches clearly applied that were based on local circumstances. Active frontages also needs to be seen within that context. Accordingly, they do not set any particular precedent. In relation to where long term vacancy was identified as a compelling factor in those decisions, such evidence is not before me in a substantive form in relation to marketing.

10. Both the National Planning Policy Framework (Framework) and the Planning Practice Guidance: Town Centres and Retail refer to flexibility and diversity in use, as the retail trends in town centres have changed drastically over the last few years. The Council is seeking to achieve this through the various initiatives that have been brought to my attention, including the HSHAZ as regards buildings and Transporting Bedford 2020 in relation to the public realm improvements. While Class E is broader than retail in planning terms, there is not compelling evidence to suggest this permitted Use Class would lead to no retail in this location, especially when these local initiatives are also considered. The level of vacancy does not in itself justify taking a different approach.
11. I have also been referred to an appeal decision¹ at 2 Allhallows in a different part of the town centre for an AGC. Based on the information before me, that site was not near to another AGC and nor was it subject of Policy H16 or the High Street initiatives that I have been referred to. Like that Inspector, I do not take particular issue with the proximity to betting shops. My concerns arise as regards the concentration of AGCs, which is not a matter that Inspector had to consider.
12. I conclude that the proposal would have an unacceptable effect on the vitality and viability of Bedford town centre. As such, it would not comply with Policies 15 and 16 (vii) of the Local Plan in this regard and where they seek to protect the vitality and viability of the High Street and secondary shopping frontages.

Conservation Area

13. Under the Bedford Conservation Area Character Appraisal (2008) (CAA), the site lies within sub area 2. As regards its significance, the High Street provides a formal route through this commercial area and the CAA highlights the presence of shops and offices. The High Street is enclosed by a number of attractive period buildings that date from the 18th and 19th centuries. While the appeal site does not lie within its setting due to an intervening building, this includes the grade II listed 77 and 79 High Street which lies close to the site. The CAA also sets out that many of the shopfronts are poorly designed. The building on the appeal site is identified as having a neutral or negative impact on the character and appearance.
14. The CAA also identifies a number of issues that since its publication have sought to be addressed. It identifies heavy vehicular traffic along the High Street, which seems to have been largely resolved by the public realm improvements. It points to creating a notional square at the end of Silver Street, which has been achieved through Silver Street Square. A number of the buildings have been restored, including their shopfronts through the HSHAZ. This initiative is supported by Historic England.
15. The site is an important building in this part of the conservation area because of its prominent position on a corner. It is also very close to where improvement works have already taken place and this draws further attention to that it does not contribute favourably to the significance. The Council has also informed that it is a priority building through the HSHAZ.
16. I have limited information before me of how the proposal has considered the significance of the designated heritage asset. That the proposal does not seek

¹ Appeal Ref: APP/K0235/W/22/3306897

to make external changes does not give confidence that it seeks to sustain and enhance the significance of the asset through its use. Nor is there substantive evidence on how the proposal has sought to respond to the HSHAZ initiative, especially as it is a priority building. I have also been referred to what could be achieved under permitted development to uses that may not have active frontages, but relying on such an approach belies the strong level of protection that is afforded to a designated heritage asset.

17. The appellant has given some indication of what the window displays may look like. But how the promotion of the latest games and machines and information about the venue would relate to the significance has also not been fully explained. The same applies in relation to where reference has also been made to that the proposal would be fully enclosed. In relation to whether window displays could be subject to a planning condition, such an approach could nullify a permission with the level of protection that is afforded to the asset, including from the visual impact from the shop front. There is not sufficient assurance that the displays could sustain and enhance the significance of the asset.
18. Nor should the CAA be underplayed in this regard. It does make specific reference to the building in relation to its appearance and whilst not decisive on its own, the nature of uses along the High Street that it indicates does not concern AGC use. Appeal decisions elsewhere do not take my deliberations further because the consideration is the effect on the particular significance of the Bedford Conservation Area.
19. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is of considerable weight and importance. Having regard to the above, I conclude that the proposal would not preserve or enhance the character or appearance of the conservation area.
20. For similar reasons, it would not comply in this regard with Policies 16, 29 (i, ii, iii, and vi) and 30 of the Local Plan where they concern the architecture and heritage of buildings, positive character, local distinctiveness and place, protecting and enhancing heritage assets, integration with the historic environment and good design, amongst other considerations. As advertisements are the subject of a separate consenting regime, Policy 34 (i) of the Local Plan only has a limited bearing in this regard.
21. For the purposes of Policy 41S of the Local Plan and Chapter 16 of the Framework, minor 'less than substantial harm' would arise to the significance of a designated heritage asset. I am mindful when considering the impacts of a proposal on the significance, great weight should be given to the asset's conservation. In relation to the public benefits that are to be weighed in the required balancing exercise, these are of a modest nature. There would be some economic benefit and employment, the use of one vacant unit and the proposal would be located in an accessible location.
22. In taking these considerations together, the less than substantial harm to the designated heritage asset would not be outweighed by the public benefits of the proposal. It would not therefore comply with Policy 41S and Chapter 16 of the Framework.

Living Conditions

23. The closest residential properties to the proposal would be on the floor above in the building, through a permission for a House in Multiple Occupation (HMO). The predominant remaining uses in the vicinity of the site are commercial, reflecting the town centre location. With the proximity of the HMO to the proposal, there would be the potential for disturbance. As such, the applicant submitted a Noise Impact Assessment Report (NIAR) with the application. This was updated following comments by the Council's Environmental Health Officer.
24. The NIAR includes a noise survey, together with representative noise generation associated with an AGC, including from gambling machines, a cash recycler, background music and conversations. The NIA has regard to the guidance and criteria set out in British Standard 8233:2014². It finds the proposal would result in a No Observed Adverse Effect Level at the closest residential location and there would not be a significant adverse impact.
25. Assessing disturbance is clearly wider than a quantitative noise assessment, and so it is also important to consider the broader characteristics, in particular during the night time where there would be a reasonable expectation of a quieter period by residents. That however also needs to be considered in the context of the town centre location, where they would also be some prospect of night time noise.
26. There are a number of other night time uses in the vicinity of the site but in terms of cumulative effects, it is open to question whether in truth they share the same characteristics. AGCs do not sell alcohol and are centred around patrons using the machines, rather than group conversations and activity. For the same reason, I am not convinced that the proposal would lead to particular anti-social behaviour, that gambling would necessarily lead to such behaviour or would result in broader issues for other local residents in relation to these living conditions matters. Whilst licensing evidence has been presented, this seems more to concern venues which sell alcohol.
27. That being said, the application was sought on the basis of 24 hour opening. Hence, there would not be a potential respite for residents from its use, in particular given the proximity of the HMO. The appellant has however offered a 2am closure and on this basis, it would satisfactorily address this issue. If I was minded to allow the appeal, it is a matter which could be dealt with through the imposition of a planning condition.
28. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of the nearest residential properties by way of disturbance and anti-social behaviour. Hence, it would comply with Policies 32 (i, ii, iii and iv) and 85 of the Local Plan where they concern noise and disturbance, and community safety related matters, including from town centre uses. It would also comply with Policies 15 and 16 in this regard.

Conclusion

29. Whilst I consider the proposal to be not unacceptable with regard to the effect on the living conditions of the occupiers of the nearest residential properties by way of disturbance and anti-social behaviour, the unacceptable effect on the

² BS8233:2014 Guidance on sound insulation and noise reduction for buildings

vitality and viability of the town centre and that it would not preserve or enhance the character or appearance of the conservation area are decisive.

30. In coming to this view, I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. For these reasons, I conclude that the proposal conflicts with the development plan when taken as a whole and there are no material considerations to outweigh this conflict. Therefore, the appeal should be dismissed.

Darren Hendley

INSPECTOR