



Appeal Decision

Site visit made on 16 October 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08.11.2023

Appeal Ref: APP/R3515/W/23/3319465

7 Upper Brook Street, Ipswich IP4 1EG

- 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 Luxury Leisure against the decision of Ipswich Borough Council.
 - The application Ref IP/22/00704/FUL, dated 5 August 2022, was refused by notice dated 15 December 2022.
 - The development proposed is the change of use of the ground floor from a retail unit (Class E) to an adult gaming centre (Sui Generis) and first floor to storage and staff area with external alterations and associated works.
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Decision

1. The appeal is allowed and permission is granted for the change of use of the ground floor from a retail unit (Class E) to an adult gaming centre (Sui Generis) and first floor to storage and staff area with external alterations and associated works at 7 Upper Brook Street, Ipswich IP4 1EG, in accordance with the terms of the application, Ref IP/22/00704/FUL, dated 5 August 2022, subject to the attached schedule of conditions.

Main Issue

2. The main issue is the effect of the proposal on the vitality and viability of the Central Shopping Area.

Reasons

3. The proposal is for the change of use of a vacant Class E retail unit, previously Hughes electrical store, to an adult gaming centre (AGC), a sui generis use. The premises lie on the eastern side of Upper Brook Street near the junction with Carr Street, part of the retail and commercial heart of the town.
4. The site lies within the IP-One Area, Town Centre Boundary and Central Shopping Area as defined by the Ipswich Local Plan 2022 where Policies CS14 and DM27 seek to promote high quality investment to strengthen its regional role and support the town's vitality and viability by promoting appropriate development. To this end Policy DM27 divides the Central Shopping Area into Primary, Secondary and Specialist Shopping Zones where different policies apply. Upper Brook Street with Carr Street and parts of Dogs Head Street and Tacket Street lie in a secondary zone to the east of the primary zone which is centred around Tavern Street, Westgate Street and Buttermarket.
5. Policy DM27 specifies that within the primary shopping zone all uses are required to be primary commercial, business and service uses but within the

secondary shopping zone 'public houses, drinking establishments, takeaways, betting shops, payday loan shops and other main town centre uses' are permitted provided they do not exceed 15% of the units within the zone. An AGC, whilst not specifically listed as a main town centre use in the National Planning Policy Framework, is a leisure use that attracts visitor footfall and would be appropriate in the town centre if other policy requirements are met. In addition to the overall 15% limit on non-Class E uses, proposals must not lead to more than three non-Class E uses in a row nor adjacent premises being within the same use class. These circumstances would not arise in this case.

6. The heart of the Council's case is that the latest 2022 survey¹ shows that of 229 units in the secondary shopping zone, 48 or 21% are in non-Class E uses. Of the 211 occupied units, 43 or 19% are in non-Class E uses. The 15% threshold is therefore exceeded. However, the policy accepts proposals that would exceed the threshold when they would be beneficial to the vitality and viability of the shopping zone, including uses 'that help to attract people to visit the town centre during the evening'. An AGC is such a use.
7. The Council argue that the benefit of the use is not 'robustly demonstrated', a subjective point. However, the unit has been vacant for nearly two years since December 2021. Francis Darrah, Chartered Surveyors with extensive experience of the letting and sale of retail property in Ipswich town centre, note demand for retail space has been declining for some years, there are a significant number of vacant premises in both primary and secondary zones and conversion to residential is the only potential future use in some cases². Their conclusion is that there would be little, if any demand from retail or café type occupiers to use No 7 Upper Brook Street and the building may remain empty for a prolonged period, adding to the overall vacancy rate.
8. AGC uses do provide active frontages with a survey of Admiral customers elsewhere showing that about 50% make linked trips to other town centre premises. Whilst there are three existing AGCs in the area, these are over 90 metres away, so no undue concentration would result, and the planning system has no remit to limit competition.
9. The Council's 2022 survey notes that the town centre is undergoing change with a sharp increase in vacancies since 2017, particularly in the primary shopping zone where further Class E demand should presumably be focussed. Whilst the secondary shopping zone has been more resilient in relation to occupancy, this reflects its diversification with more non-retail uses, some within Class E such as cafes and restaurants but many sui-generis and some Class C1 uses. The proposal would continue this diversification trend.

Conclusion

10. For these reasons the proposal would have a positive effect on the vitality and viability of the Central Shopping Area and should be permitted. Whilst the AGC would conflict with the percentage limit for non-Class E uses in the secondary shopping zone set out in Policy DM27 this is outweighed by the other material considerations that favour the proposal in this case.
11. Although the site falls within the IP-One Opportunity Area C, the associated Policy SP20 primarily relates to the 'development opportunities' within the area

¹ Central Shopping Area – Identified Frontages Survey Report January 2023

² Letter dated 27 March 2023

rather than the use of the established peripheral street frontages. The policy is therefore of marginal relevance in determining the appeal.

12. The Council suggested four conditions should the appeal be allowed. These are accepted by the appellant³ and meet the relevant tests. In addition to the standard implementation time limit it is necessary to define the approved drawings in the interests of certainty. Conditions are also needed to control the hours of opening and to secure any necessary noise mitigation measures to protect the amenity of nearby residents.

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

David Reed

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved drawings 3479(c)1 dated 07/07/2022.
- 3) The premises shall only be open for customers between the hours of 0700 to 0000 hours daily.
- 4) Prior to first occupation, details of noise levels and any proposed noise mitigation from gaming machines shall be submitted to and approved in writing by the local planning authority and any required mitigation shall be installed prior to the first use of the adult gaming centre.

³ Including the restriction on opening hours included in the Council's case and list of conditions and not disputed in the appellant's final comments.