
Appeal Decision

Site visit made on 18 January 2024

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13.02.2024

Appeal Ref: APP/B1605/W/23/3325026

218 High Street, Cheltenham, GL50 3HF

- 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 Mr Ian Miller for Luxury Leisure against the decision of Cheltenham Borough Council.
 - The application Ref 23/00452/COU, dated 14 March 2023, was refused by notice dated 3 May 2023.
 - The development proposed is change of use of the ground floor from a retail unit (Class E) to an Adult Gaming Centre (Sui Generis) and first floor to associated storage and staff area with external alterations and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the ground floor from a retail unit (Class E) to an Adult Gaming Centre (Sui Generis) and first floor to associated storage and staff area with external alterations and associated works at 218 High Street, Cheltenham, GL50 3HF in accordance with the terms of the application Ref 23/00452/COU, dated 14 March 2023, subject to the conditions set out in the attached Schedule.

Preliminary matters

2. The appeal property is in Cheltenham Town Centre (CTC) and within the Town's designated Central Conservation Area (CA).
3. The appellant submitted amended plans with his appeal documentation, and the Council has had the opportunity to comment on them. I have considered the appellant's proposed amendments under the principles established by the Courts in *Wheatcroft*¹. The plans show modest changes from the originally submitted plans, and I am satisfied that no-one's interests would be prejudiced if I were to consider them as part of the appeal.

Main issues

4. The main issues are: (a) the effect of the proposal on the retail character and vitality of the CTC; (b) whether the proposal would preserve or enhance the character or appearance of the CA, and (c) the effect on neighbouring residential living conditions with specific reference to noise and disturbance.

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

Reasons

The Town Centre

5. The appeal property is a vacant shop. The Council does not object to the principle of Adult Gaming Centres (ACG) being established within its town centres. Indeed, the officer report says that '*ACGs are accepted as a main town centre use*' and I have not been made aware of any policies, local or national, which distinguishes them specifically as inappropriate or unacceptable uses within the CTC.
6. The Council's concern is directed to a loss of a retail unit and what it regards as a proliferation of similar uses related to gaming and/or gambling in the CTC. It says that there are 9 such establishments in the CTC, of which 3 are sited in the High Street close to the appeal property. The Council considers this to be an overconcentration of such uses, and an additional unit would diminish the essential retail character and vitality of this part of the CTC.
7. The Council has not disputed the appellant's submitted data showing that the vacancy rate of ground floor units in the CTC is markedly less than for the UK as a whole, or that the CTC is comprised of almost 500 commercial units, and that ACGs and similar uses amount to a relatively small proportion² of the total. I saw that the existing level of sui generis uses blended reasonably well with the other uses in this part of the High Street, including many non-retail class E uses and those contained within the Brewery Quarter, and that they contributed to forming a healthy mix of uses within what appeared to me, judging from the footfall and the low number of vacant premises, to be a relatively vibrant centre.
8. The Council says that, although vacant for a lengthy period, the unit was not marketed for a sufficient period of time to appropriately test its attractiveness for a retail use. The evidence from an independent agent shows that it was marketed for about 4/5 months without any realistic retail interest, which in my mind is not an unreasonable length of time for retailers to show at least some interest, if it existed. Irrespective of the Council's view on this aspect, I have not been pointed to any policy requirement for the need for marketing. Moreover, vacant units contribute negatively to the perception of a centre's vitality, as in this case.
9. I conclude that the use is not an inappropriate one within the CTC and it would not materially impinge upon the centre's retail character, its attractiveness or vitality. Accordingly, I find no conflict with the provisions and objectives of policies RT1 & RT2 (a) of the Cheltenham Plan (CP) or policy SD2 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) directed to ensuring the continued vitality and character of the CTC.

Heritage considerations

10. The appellant's proposals do not materially alter the appearance of the existing shopfront, which is that of a fairly modern retail unit, albeit not reflective of the pleasant design and appearance of the upper parts of the building. The Council says that the existing shopfront does not benefit from a formal planning permission and that, accordingly, it '*has never approved the current*

² At 1.9%

appearance'. It strikes me however that the shopfront has been in situ for some time, and there is no evidence before me to suggest that the Council has found it objectionable in the past or attempted to secure its removal using its enforcement powers. The shop front has therefore become an established, and unremarkable feature of the High Street being little different in terms of its appearance to many others in this part of the CTC, including more recent additions.

11. As suggested in the officer report and in the response to consultation from '*Heritage and Conservation*', an enhancement may well be the ideal solution. Nevertheless, I am mindful that the statutory test quoted in the officer report³ places preservation on an equal footing with enhancement. I do not therefore consider the appellant's approach to be unacceptable in heritage terms, and the elevational design amendments made to the original submission appear to me to successfully address at least some of the Council's earlier detailed concerns.
12. Having regard to the comments in the officer report as to proposed advertisements, I should clarify that these are not a matter for me but of a separate requirement for consent under the appropriate Regulations.
13. Taking account of the existing shopfront and others in the vicinity of the appeal property, I conclude that the proposed development would, at worse, have a neutral impact on its surroundings. The character and appearance of the CA would thus be preserved. Accordingly, I find no material conflict with those provisions of JCS policy SD8 and CP policy HE3 directed to protecting the Borough's heritage assets from inappropriate development.

Living conditions

14. The appellant does not dispute the presence of residential accommodation in relatively close proximity to the appeal property. The Council's concern is based on the venture's possible effects on those nearby residents' living conditions with particular reference to noise and disturbance. I note however that the Council's Environmental Protection Team (EPT) based its objection on the appellant's initially proposed 24 hr operation. The EPT also commented that it would be willing to review alternative opening hours if put forward by the appellant.
15. In response the appellant has suggested the imposition of conditions. The first, in effect, amounts to a requirement for a noise assessment prior to the operation commencing, whilst the second suggests revised opening hours, which include proposed closing times of 2.00am on 3 days of the week, 4.00am on 3 other weekdays and 10.00 pm on Sundays.
16. To my mind, the main possible sources of disturbance are those emanating from within the premises as a consequence of the operation of the machines and background music. The other concerns the arrival and departure of customers late at night. I acknowledge, however, that this is a use normally acceptable in town centres along with other uses such as bars and nightclubs which may be open late into the night. Residents in town centres could therefore reasonably anticipate a level of activity and noise at night normally associated with town centre uses. By the same token, nearby residents in this

³ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

case could also reasonably expect controls to be imposed on a use such as this so that their amenities are not unacceptably harmed at unsocial hours.

17. The appellant has referred to two other appeals within town centres at Ipswich and Golders Green respectively in support of his case⁴. I take a similar view to the Inspectors in those cases that, with appropriate controls and mitigation, the use could be carried out without materially harming the living conditions of nearby residents. Accordingly, on this basis, I conclude that the proposed use would not conflict with the objectives of JCS policy SD14 or CP policy SL1 directed to protecting residential amenity from unacceptable harm.

Conditions

18. The Council's has not provided suggested conditions but has submitted possible subject headings.
19. A condition is imposed to ensure that the development shall be carried out in accordance with the approved plans in the interests of visual amenity and certainty. A condition on materials is unnecessary since the detail is shown on the approved plans.
20. The noise assessment condition suggested by the appellant is imposed, albeit in a modified form, to protect neighbouring residents' amenities.
21. For the same reason, an opening hours condition is imposed. Those suggested by the applicant are unacceptable since they are unlikely to be effective in protecting residents' amenities in the early hours of the morning. Rather I shall impose a condition reflecting those imposed in the Ipswich and Golders Green appeal decisions referred to by the appellant. Such opening hours are likely to be more effective in achieving the required protection.

Other matters

22. I have taken account of all other matters raised in the representations, including the representations made by the Member of Parliament, local councillors, residents, amenity bodies and those representing other interests. I have already addressed the main planning issues raised in the representations.
23. Concerns have been raised about the potential for anti-social behaviour attributed to the proposed use, but there is no firm evidence before me that this would prove to be the case in practice based on the operation of other such venues. I note the concerns relating to the social and other problems sometimes linked with gambling and gaming, and those made on moral grounds and that that this type of use is considered unacceptable in the CTC for these reasons.
24. Whilst some of these concerns are understandable and have legitimacy, planning is concerned with land use matters. As such, the concerns raised are not material to my considerations since national and local planning policies do not prevent adult gaming centres from operating. Also, such matters are regulated by other legislation including the licensing regime.

⁴ APP/R3515/W/23/3319465 & APP/N5090/W/21/3270129

25. No other matter is of such strength or significance as to outweigh the considerations that led me to my conclusions.

G Powys Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos: 3499(B)01; 3499(B)02; 3499(B)03; 3499(B)04; 3499(C)01 Rev A & 3499(C)02 Rev A.
3. Prior to the commencement of the use hereby permitted, an acoustic assessment of the anticipated operation of the use together with details of proposed mitigation shall be submitted to the local planning authority for its agreement and approval. The agreed scheme of mitigation shall be fully installed and operational prior to the commencement of the use and thereafter shall be permanently retained.
4. The premises shall not be open to customers other than between the following hours: 0900 – 0000 on weekdays and Saturdays and 1000-2200 on Sundays.