



Appeal Decision

Site visit made on 29 October 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd December 2024

Appeal Ref: APP/C1055/W/24/3346550

93-95 St Peters Street, Derby DE1 2AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Merkur Slots Ltd (UK) against the decision of Derby City Council.
 - The application Ref is 24/00278/FUL.
 - The development proposed is Change of use from a vacant Class E unit (former bank) to an Adult Gaming Centre (AGC) (Sui Generis) (SG).
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from a vacant Class E unit (former bank) to an Adult Gaming Centre (AGC) (Sui Generis) (SG) at 93-95 St Peters Street, Derby DE1 2AT in accordance with the terms of the application, Ref 24/00278/FUL, 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, referenced: Site Location Plan; Site Plan; Floor Plans - Proposed 890-PL-101 Rev 00; and Plans – Proposed 890-PL-108 Rev 03.

Preliminary Matter

2. In the banner heading above and my formal decision, I have removed "93-95 St Peters Street" from the development description, as this does not form part of the proposed development.

Main Issue

3. The main issue raised by this appeal is the effect of the proposal on the vitality and viability of Derby city centre, with particular reference to its character.

Reasons

4. The appeal site is occupied by a three-storey building located on St Peters Street, in Derby city centre. The building occupies a prominent position within a primary frontage in the St Peters Quarter and Central Business District.
5. Policies AC1, AC2 and AC3 of the Derby City Local Plan Part 1 2017 (LP), set out the Council's aim of sustaining and enhancing the vitality and viability of the central 'Core Area' of the city. Within the primary frontage, Policy AC3 of the LP sets out that retail uses shall remain the predominant use. It also sets out that the St Peters Quarter reflects the more traditional 'high street'

shopping area, and the 'Primary Frontage' should remain predominantly retail in function, complemented by; cafes and restaurants, banks and building societies, health and beauty uses and leisure uses.

6. As a consequence, alternative uses will only be permitted subject to specified criteria. In particular, Policy AC3 of the LP identifies that alternative uses should be open to the general public during the day and maintain a shopfront or display of visual interest.
7. Whilst not specifically listed as a main town centre use in the National Planning Policy Framework (the Framework), the proposal is a leisure use that attracts visitor footfall.
8. I observed during my site visit, on a weekday morning, that the city centre was vibrant with a preponderance of retail uses along St Peters Street and the surrounding streets. The retail uses are supplemented by other main town centre uses and it appeared to me that there remains a healthy mix of retail and other uses that were contributing to the high levels of footfall around this part of the city centre.
9. My attention has been drawn to a previous appeal decision¹ at 21 St Peter's Street, also for an AGC, which was dismissed. The full details of the layout and configuration of that proposal and all of the evidence before that Inspector is not clear. I am also mindful that circumstances within the city centre would have changed in the intervening period between that appeal and the scheme before me. In particular, the vacancy and occupancy rates of units, the range and distribution of uses within the primary frontage, as well as market trends. Therefore, as I am required to do, I have determined the case before me on the site-specific circumstances and on its own merits and the evidence before me.
10. Furthermore, as referenced by the main parties, since the previous appeal decision, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 amending the system of use classes in the Town and Country Planning (Use Classes) Order 1987. The amendments include the creation of a new Commercial, Business and Service use class (Class E). Therefore, the existing use as a bank could be changed to a number of other Class E uses without planning permission. Some Class E uses may not create an active frontage. Likewise, some Class E uses could result in a limited amount of footfall. Based on the evidence before me, I am satisfied that there is a greater than theoretical possibility of the units being occupied by another Class E use if this appeal were to fail. I give this fallback position significant weight.
11. The ground floor of the appeal building has an existing shop front which would be retained with minimal alterations. I acknowledge that the proposed AGC would be bound by restrictive regulations, and the unit would only be accessible to adults and there would be limited views into the unit from the street. Without doubt, these limiting factors would reduce the contribution that the proposal would have to the vibrancy within the primary frontage. However, a display window would continue to be maintained at ground floor and a bespoke window display is proposed featuring 25% vinyl on the glazing, as well as posterboards and tv screens. As a result, the shop front would add visual

¹ Appeal Ref: APP/C1055/W/17/3173476

interest and animation. Views into the unit would also be possible and the proposal would be no more harmful than the display features of a bank and some other Class E uses found in city centre locations.

12. Moreover, the proposal would bring a vacant unit back into use, improving the vibrancy of the street. The appellant has also submitted evidence that demonstrates that other existing AGC premises generate good levels of footfall and that customers would also potentially undertake linked journeys, making use of other services provided within the city centre.
13. Even though Under 18's would be directly excluded from the proposal and Policy CP15 of the LP seeks to promote a socially inclusive economy, the policy also recognises that there is a need to cater for a wider range of residents and visitors. The proposed AGC would operate 24 hours a day and would generate footfall and contribute to the nighttime economy also. As such, the proposal would offer an alternative use to the other uses that contribute to the evening economy in the city centre, such as pubs, bars, and restaurants.
14. I observed other AGC premises within the city centre, highlighted by the main parties. These are a short walk from the appeal site on neighbouring streets. As a result, the proposal would not result in an over concentration of these types of uses in this part of the core area. Likewise, there is no substantive evidence that the proposal would result in an unbalanced economy that is not socially inclusive.
15. Drawing the above together, on the evidence before me, I conclude that the proposal would not adversely affect the vitality and viability of Derby city centre, with particular reference to its character. The proposal would therefore comply with the requirements of Policies AC1, AC2, AC3 and CP15 of the LP.

Other Matters

16. I acknowledge that representations have been received, including a joint submission from premises nearby, in respect of the proposal. In addition to the main issue, concerns included whether there was a need for more gambling establishments in Derby, and the suggestion that gambling establishments are associated with an area being deprived. Concerns about nuisance behaviour and crime are also cited. These factors are not in dispute between the main parties. Furthermore, no substantiated evidence to demonstrate that existing gambling establishments within the area have led to an increase in nuisance behaviour, crime, problem gambling or deprivation which might be made worse by the proposal. Likewise, there is limited evidence that the proposal would affect health and wellbeing.
17. Additionally, the protection of vulnerable people from being harmed or exploited by gambling falls within the purview of the licencing regime and is not a matter that has any bearing on the planning merits of the proposal.

Conditions

18. I have had regard to conditions suggested by the Council, as well as to the Framework and national Planning Practice Guidance. In addition to the standard time limit condition, it is necessary to impose a condition that requires the development to be carried out in accordance with the approved plans for certainty.

Conclusion

19. For the reasons given above the appeal should be allowed.

N Bromley

INSPECTOR