



Appeal Decision

Site visit made on 26 February 2025

by **H Faulkner BSc (Hons) MSc PGCE MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 April 2025

Appeal Ref: APP/Y1110/W/24/3356281

47- 48 Sidwell Street, Exeter EX4 6NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Merkur Slots Ltd (UK) against Exeter City Council.
 - The application Ref is 24/0820/FUL.
 - The development proposed is for change of use from vacant restaurant and takeaway (Sui Generis Use Class) to an Adult Gaming Centre (Sui Generis Use Class).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from vacant restaurant and takeaway (Sui Generis Use Class) to an Adult Gaming Centre (Sui Generis Use Class) at 47-48 Sidwell Street, Exeter EX4 6NS in accordance with the terms of the application, Ref 24/0820/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.
 - 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 drawings: Site Location Plan, Site Plan and Ground floor plan 894-PL-101 Rev01.
 - 3) Prior to the commencement of the use hereby permitted the noise mitigation recommendations (Ceiling insulation and exterior door upgrades) and the Operational Management Plan of the submitted Noise Assessment (Report Reference: PR2001_189_FINAL) shall be implemented in full and maintained thereafter.

Preliminary Matters

2. The original description on the application form was 'Change of use from a vacant Class E unit (former restaurant) to an Adult Gaming Centre (AGC) (Sui Generis) (SG).' This has been updated to the description in the banner heading above as this was used on the appeal form with the appellant ticking the box to say that the description had been amended. The revised description is not in dispute and as it more accurately describes the site and the proposal I have proceeded on this basis.
3. The appeal is against the failure of the Council to give notice of a decision within the prescribed period. The Council's appeal statement confirms that although the application was referred to its planning committee with a recommendation for approval, members of the committee resolved that had they determined the

application, planning permission would have been refused and putative reasons were provided.

Background and Main Issues

4. The proposal is for an AGC which would operate 24-hours a day.
5. Policy S6 of the Exeter Local Plan First Review (LP) is included in the putative reasons for refusal. The Council's statement elaborates that the proposed use would harm the overall character and amenity of the area and would generate excess noise and disturbance.
6. Although the Council consider AGC and amusement arcades to have distinctions between them the proposal has been assessed against Policy S6. This policy is applicable appreciating that amusement arcades may operate in a variety of ways.
7. Reference is made to paragraphs 96(b) and 96(c) of the National Planning Policy Framework (The Framework) which aim to achieve healthy, inclusive, and safe places.
8. Based on the putative reasons for refusal and the policies referenced, the main issues are:
 - the effect of the proposal on the vitality of the area, with particular reference to its character;
 - the effect of the proposal on the living conditions and functionality of nearby sensitive uses including residential uses, schools, and churches, with particular regard to levels of noise and disturbance; and
 - whether the proposal results in a healthy, safe, and inclusive place.

Reasons

Vitality and Character

9. The appeal site is a vacant shop unit, formerly a restaurant/takeaway in Exeter city centre, within a secondary shopping frontage. The area includes a wide range of uses including shops, takeaways, public houses, betting shops and cinemas. The mix of uses contributes to both the daytime and evening economy with some premises operating 24-hours a day.
10. The businesses in the area include national chains as well as independent stores. Whilst there are some empty units, at the time of the site visit, the area was busy with people using the shops and services on offer. The site is well connected to the main shopping area and facilities such as the bus station and leisure centre.
11. There are no other AGCs in the immediate vicinity of the site although there are several betting shops in the area. Given the existing mix of uses the proposal would add to the vitality of the area and bring a vacant unit back into operation. Policies in relation to retail uses, such as Policy S3 of the LP are not applicable and no other policies relating to high street or town centre uses other than S6 were included in the suggested reason for refusal or the Council's statement. The premises may be suitable for alternative uses, however, the assessment as part of this appeal is whether the use proposed is in accordance with local plan policies. Furthermore,

there is no policy requirement for a marketing exercise to demonstrate that the current use could not be retained.

12. The putative reason for refusal suggests that the operation of the use due to its nature would affect the amenity and functioning of sensitive community facilities. The only policy referenced is S6 which refers to proximity to housing, schools, churches, hospitals and hotels. However, in the background text it notes that they are included in relation to noise and disturbance. This is further discussed below. In any event the proposed use given its scale and the distances involved, would not affect the operation of either the school or church in a manner which would differ from existing gambling uses. Whilst concerns are raised about the opening hours schools and churches are generally closed during nighttime hours.
13. There is a mix of shops and facilities in the area, including other gambling uses, and other late night and 24-hour operations. The proposed AGC would sit alongside these uses and would not have any greater adverse impact on the character of the area than any of the existing uses. The area may be used by families, schoolchildren, and worshippers, however, I have not been provided with any evidence to demonstrate why these groups would be harmfully affected by the proposal.
14. The premises is currently in a sui generis use so the change of use would not result in any loss of retail premises. Currently, the site is empty and does not contribute to the area either visually or commercially. Part of the existing frontage is also covered so that the inside is not visible. The plans show screens at the front of the premises which would provide some active frontage and visual interest and would be an improvement on a vacant shop unit.
15. To conclude, I do not find that the proposed use would adversely affect the character of the area in terms of its vitality with particular regard to sensitive community facilities and would provide the benefit of bringing a vacant unit back into use. It would comply with Policy S6 of the LP which, amongst other things, does not permit amusement arcades where there would be visual harm.

Noise and Disturbance

16. Part (c) of Policy S6 is applicable which does not permit amusement arcades close to housing, schools, churches, hospitals, or hotels. The background text to the policy states that this is due to the potential for noise and general disturbance.
17. In respect of noise and disturbance, the site is within a city centre location with a mix of day and nighttime uses and therefore some level of noise is to be expected. The application was submitted with a Noise Assessment. The conclusion of this report was that the use would not result in any harmful levels of noise. In considering the application the Council's Environmental Health Officer (EHO) recommended approval of the scheme subject to the noise recommendations within the noise assessment being carried out and a restriction on the hours of operation of plant and machinery.
18. Given the findings of the noise assessment and the lack of objection from the EHO and in the light of no other evidence being provided to the contrary I am satisfied that subject to conditions noise levels will be acceptable within the context of the site. In its statement the Council dispute the findings of the appellant in respect of whether groups of people will use the site and lack of evidence in relation to how

the predicted customer base would not cause noise and disturbance. However, the details in the noise assessment include measurements from ten other operational venues across the country which demonstrates provides a useful comparison in terms of likely disturbance. I am satisfied that the information within the noise assessment is appropriate to assess the likely noise from the proposal.

19. The Council state that the site is within 75 metres walking distance of Sidwell Street Methodist Church and 150 metres from St. Sidwell's Church of England Primary School. There are also residential properties above the shops as well as further housing nearby. The school and church are sufficiently far away that they would be unlikely to be affected by any noise. Given my findings above in relation to the noise assessment the impact on nearby residential properties would also be acceptable.
20. To conclude, I do not find that the proposed use would adversely affect neighbouring uses including residential uses, churches, or schools in respect of noise and disturbance and would not be contrary to Policy S6 of the LP which seeks to prevent amusement arcades on this basis.

Healthy, Safe, and Inclusive

21. Paragraph 96 of the Framework states that decisions should aim to achieve healthy, inclusive, and safe places. Paragraph 96(b) states that decisions should aim to achieve places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion. Comments from interested parties identify that there are existing safety concerns in the area and the introduction of a 24-hour gambling use would further contribute to these concerns.
22. In the comments from Devon and Cornwall Police they do not object to the proposal but have requested that the 24-hour operation be restricted, with suggested opening hours of 0900 – 0200. A condition to this effect has been suggested by the Council.
23. I am mindful of the existing problems in the area, including issues relating to substance abuse. However, there are other 24-hour uses in the area so nighttime activity is not unusual. An operational management plan has been provided and demonstrates measures that will be put in place to limit disturbance. The addition of a further 24-hour use with an operational management plan is unlikely to give rise to any significant changes to the nighttime situation. Furthermore, the information provided by the appellant in relation to other premises operating as AGC supports this finding. The fact that no alcohol is served at the premises also weighs in its favour.
24. The appellant claims that a 24-hour license has already been granted, although specific details have not been provided. Licences can also control opening hours, however, they operate under a separate legislative regime to planning, however, it does result in some additional measures being in place in relation to security.
25. Whilst I acknowledge the concerns raised by the Council and consultees with regard to the potential effect of the proposed AGC on local crime and public safety there is nothing in the information before me that demonstrates that the users of the AGC would inherently constitute a greater risk in this regard than other members of the public any time of the day. Further, the council have not provided any formal

material relating to any previous or existing issues that they are aware of, that would lead me to conclude that they would be amplified by allowing the change of use.

26. The provision of uses associated with gambling are not uncommon on high streets. There may be sectors of society or religious groups which find such uses offensive or inappropriate, and this may also be the case with other uses found in the area and in the city more generally. However, the use is a legal one and as such it is not for planning to be restrictive in this regard.
27. The concerns with regard to the provision of a gambling use and gambling addiction, particularly in an area where there are vulnerable people and support services are located, are noted. Limited substantive evidence has been provided to me that existing gambling establishments within the area have led to an increase in problem gambling or deprivation which might be made worse by the proposal and therefore warrant withholding planning permission. Furthermore, the protection of vulnerable groups from being harmed or exploited by gambling falls within the scope of the licencing regime and is not a matter that I can consider within the context of a planning appeal.
28. Families including school children may travel through the area, including using the nearby bus stop. Children would most likely be in the area during the day rather than late at night. Whilst the premises may be visible to them as they pass through the area, I have no evidence to indicate that the proposed use would pose any great risk to safety. Furthermore, there are other 'adult' uses in the area mixed in with existing shops so it would be unreasonable to reject this particular use.
29. I appreciate that the change of use may not be desirable to some members of the local community. However, there is no evidence before me to demonstrate that the proposed change of use and the hours proposed would result in any increase in crime and disorder or that there would be any serious detrimental impacts on the health of local residents. There is no conflict with any local plan policy provided or with paragraph 96 of the Framework in respect of these matters.

Conditions

30. The Council has provided a list of suggested conditions it considers would be appropriate and these have been reviewed by the appellant. I have assessed those with reference to the advice in the Framework and Planning Practice Guidance.
31. The standard time limit is imposed as condition 1 and the approved plans as condition 2 in the interests of certainty.
32. A condition to ensure that the noise mitigation recommendations within the Noise Assessment are carried out is reasonable. This requires that the use operates within the requirements of this document, in the interest of ensuring there are no adverse impacts in relation to noise.
33. The development does not include any external plant and none is indicated on the plans. External plant would require further permission in any event. The inclusion of any internal plant would not be development. Therefore, it is not necessary to include a condition which requires details of plant to be submitted and approved.
34. The proposed use does not involve site machinery or plant and no demolition is proposed. Whilst there may be some internal alterations these works could be

completed without the need for planning permission. Given that there is no restriction in terms of the hours of use and the site is within a city centre I do not find that a condition restricting deliveries in the manner suggested is necessary.

35. In respect of the hours of use the Noise Assessment provided confirmed that no harmful noise has been identified. The impact of crime and antisocial behaviour are discussed above. Given these findings it is not necessary to restrict the opening hours.
36. Requiring details in respect of the shopfront display is not reasonable. The proposal does not include any external alterations. Unless requiring specific advertisement consent, internal works such as this, do not require planning permission and therefore the proposed development should not be restricted in this regard.

Conclusion

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

H Faulkner

INSPECTOR