



Appeal Decision

Site visit made on 8 April 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2025

Appeal Ref: APP/D1590/W/24/3355393

170 High Street, Southend-on-Sea SS1 1JX

- 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 Southend-on-Sea City Council.
 - The application Ref is 24/01037/FUL.
 - The development proposed is described as 'change of use of 170 High Street, Southend from a vacant Class E unit to an Adult Gaming Centre (AGC) (Sui Generis) (SG) use to allow Merkur Slots Ltd (UK) to occupy the unit'.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from retail (Class E) to adult gaming centre (Sui Generis) at 170 High Street, Southend-on-Sea SS1 1JX in accordance with the terms of the application, Ref 24/01037/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. In the banner heading above, I have used the description of the proposed development as given on the application form, but in the decision I have used the revised description on the Council's decision notice. The revised description was quoted on the appeal form, but without confirmation that written agreement had been given to its wording prior to the Council's decision. The appellant has subsequently confirmed that the description can appropriately be used in this decision, and I am satisfied that it accurately describes the proposed development. Although a specific operator was named on the application form, there is otherwise no indication that the proposed change of use should be restricted to that operator, and I have considered the appeal on the basis that it would not.
3. The application was amended prior to the Council's decision, to provide revised window display details as shown on drawing no. 897-PL-108 Rev 00. I have had regard to the amended details, which incorporate TV screens not previously shown within the proposed window display.

Main Issue

4. The main issue is the effect of the proposed development on the vitality and viability of the City Centre.

Reasons

5. The appeal site is located in the City Centre, towards one end of the High Street, near the junction with Southchurch Road and London Road. It is within an area defined in the development plan as a Primary Shopping Area and within the High

Street Policy Area and Town Centre Primary Shopping Frontage as defined in the Southend Central Area Action Plan DPD 2018 (SCAAP). There is a shop unit on the ground floor, with fully glazed display windows to either side of a pair of customer entrances.

6. The same building includes several additional shop units, which continue around the corner into Southchurch Road. At the time of my site visit, the small unit next to the appeal site was occupied by a shop providing, amongst other things, mobile phone and computer accessories and repairs. The larger corner unit is a currently vacant former betting shop, although the Council has granted planning permission for its use as an Adult Gaming Centre (AGC). There are three more betting shops a short distance along Southchurch Road and London Road.
7. Generally, the area around the appeal site includes a wide variety of town centre uses. There are several food and drink outlets, including one next to the appeal site, as well as a large retail unit on the opposite corner, occupied by a stationers and Post Office. The nearby Victoria Shopping Centre fronts onto a pedestrianised plaza, ringed by a mix of leisure uses, banks, food and drink outlets and retail units. At the time of my site visit, around lunchtime on a weekday, there was a continuous flow of pedestrians, and the area felt lively and active.
8. The unit on the appeal site is currently vacant. Different dates are given for its last occupation, but the marketing evidence¹ indicates that it was last occupied in October 2019 and the evidence that the premises have been vacant for a considerable period is not disputed.
9. In the National Planning Policy Framework (the Framework), section 7 sets out requirements for ensuring the vitality of town centres and paragraph 90 makes clear that planning decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Main town centre uses are defined widely, and include leisure and entertainment uses, although AGCs are not specifically listed.
10. In the SCAAP, Policy PA1 supports uses that contribute to the vitality and viability of the City Centre and Policy DS1 sets out a variety of more detailed requirements in that respect. In particular, Part 4a of Policy DS1 concerns the balance of retail and non-retail uses in the primary shopping frontage, while part 4b relates to the characteristics of the retail frontage.
11. The SCAAP pre-dates the introduction of Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). Consequently, the Council's Officer Report acknowledges that the percentage thresholds for non-retail units within part 4a no longer carry over-riding weight. Nevertheless, the proportion of non-retail uses within the block containing the appeal site currently complies with the threshold in Policy DS1, according to the Officer Report, and that would still be the case following the proposed change of use. Therefore, while it must be recognised that there is much less certainty about how the mix of uses will evolve over time, in light of the increased range of uses falling within Class E, currently the mix of uses in the vicinity of the appeal site is broadly in accordance with Policy DS1 and the appeal proposal would not change that.

¹ Four & Co Marketing Letter dated 2 October 2024

12. In order to comply with regulations restricting the proposed use to those over 18, views into the premises would be obscured. Consequently, the shop frontage would be less visually active than town centre uses which provide window displays designed to draw the eye into the interior. That is something which Policy DS1 Part 4b aims to avoid, by requiring that an active frontage is retained. However, the policy allows for frontages which provide a display function for goods and services rendered, alongside a requirement that the proposed use will provide a direct service to visiting members of the general public.
13. The proposed window display would not include the application of any vinyl to the glazed display windows and there would be physical and digital screens displaying graphics relating to the business, set back slightly over a metre from the windows. These details could be secured by the conditions imposed below. In the absence of vinyl obscuring views through the glass, there would be a view of the window display, which would relate to the services provided at the premises. While it may not be as visually enticing as some shop window displays and would differ in several respects from the example given in Plymouth, the proposed display would not be entirely inactive in nature.
14. Both of the central double entrance doors, which occupy a significant proportion of the frontage, would be retained. Therefore, there would be a readily identifiable entrance into the premises, which would be clearly aimed at visiting members of the public. Survey evidence provided by the intended operator indicates that a sample of AGCs attracted comparable footfall to neighbouring Class E units surveyed at the same time. The premises would also be open 24 hours a day. The Council acknowledges that there is potential for linked trips and, given the proximity of other leisure uses and food and drink outlets, including those open into the evening, that appears a very realistic probability.
15. Furthermore, at present the unit is vacant and has been for a considerable period. At the time of my site visit, there was a metal barrier across one entrance and the glazed doors were plastered with posters. While it is apparent that the unit is capable of providing a large, visually interesting shopfront display, in reality that is not currently the case and has not been for some time. Currently, it looks somewhat uncared for and unappealing. Therefore, in the circumstances of this particular unit, the introduction of a use which would be capable of drawing in leisure customers would contribute positively to the overall level of activity along this section of the High Street, notwithstanding the relatively inactive displays.
16. While retaining the current Class E use would in principle allow for a more varied range of potential occupiers, the marketing evidence indicates a lack of success in attracting such users. The most recent agent describes zero interest in the premises since September 2023, and his letter confirms that the previous agent had the same experience. As such, although the earlier part of the vacancy period would have been impacted by the Covid 19 pandemic, there is no indication that more recent marketing has been any more successful. Nor has the Council or any other party suggested that the approach to marketing was otherwise unsuitable.
17. In any case, introduction of a Class E use is not guaranteed to introduce a significantly more active frontage, depending on the needs of the specific occupier. While the largely obscured frontage to the stationers opposite mainly faces around the corner, it is nevertheless an example of a conventional retail use which includes screened off shop windows and does not make a particularly positive

contribution to the visual interest of the retail frontage. Should a suitable Class E occupier be identified in future, it would remain open to the Council to grant planning permission to revert to that use, subject to the provisions of the relevant development plan policies at that point.

18. I am mindful that another AGC has been approved in the corner unit, although that had not been implemented at the time of my site visit. There are also existing betting shops nearby. However, although all these units are quite close together, they are not all within the same street frontage and there are several other intervening and surrounding uses. Even allowing for its prominent location, the introduction of a second AGC on the appeal site would not create an obvious or harmful concentration of such uses. Nor is there any clear reason to think that it would discourage footfall between the main High Street and the various other leisure, retail and other town centre uses in the vicinity.
19. For the reasons given above, I conclude that the proposed development would not have a harmful effect on the vitality and viability of the City Centre. That being the case, it would not conflict with the support in Policy PA1 of the SCAAP for uses that contribute to the vitality and viability of the centre, or with relevant requirements in Policy DS1, as outlined above. Nor would it conflict with relevant requirements in Policies CP4 and KP2 of the Southend on Sea Core Strategy 2007, which include that development will be expected to contribute to the creation of a high quality, sustainable urban environment and that regard should be had to the need to safeguard and promote the vitality and viability of existing town centres.
20. While the reason for refusal also alleges conflict with Policies DM1 and DM3 of the Southend on Sea Development Management Document 2015 and the Southend-on-Sea Design and Townscape Guide 2009, the design requirements set out in those policies are more clearly related to the effect of development on the character and appearance of the area. No operational development is proposed to the building or the shopfront and as such the requirements of those policies are of limited relevance. Furthermore, the Officer Report does not identify any specific conflict with Policy DM1 or the Design and Townscape Guide. In any case, for the reasons given above, I have concluded that the effect of the proposal on the appearance of the appeal site would be acceptable in its context.

Other Matters

21. The Derby appeal decision mentioned by an interested party is several years old and related to a different city. Also, the Inspector's reasoning indicates that the unit in question had been vacant for a significantly shorter period, and that a suitable shopfront could not be secured by conditions. As such, that case differs in a number of significant respects and the Inspector's conclusions do not alter the conclusions I have reached above.
22. I have noted the different circumstances at 80 High Street and 174 High Street, which led to the Council approving change of use of those sites to a betting office and AGC respectively. Taking account of those different circumstances, I do not agree with the appellant that the Council's approach was inherently inconsistent. Nevertheless, having considered the evidence before me, I have concluded that the proposed development would be acceptable, for the reasons given above.

23. A Noise Assessment² (NA) was provided with the application, which includes evidence of noise emissions from existing AGCs as well as assessing the effect on residential premises close to this site. Mitigation measures are proposed, and no objection was raised by the Council's Environmental Health consultee, either to the methodology in the NA or the effect of the proposed use on nearby residents, provided those measures are implemented. Based on that evidence, I am persuaded that the mitigation measures would adequately safeguard living conditions for those living nearby, notwithstanding the proposed 24-hour operation.

Conditions

24. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guidance. I have also had regard to the appellant's comments on the suggested conditions, and additional conditions recommended by consultees on the application. As a result, I have included additional conditions and omitted others. Where the conditions depart to a material extent from those recommended by the Council, I have sought the views of both main parties and taken comments received into account. The appellant has also provided written confirmation of agreement to the inclusion of pre-commencement conditions.
25. I have imposed a condition requiring compliance with the approved plans, in the interests of certainty. As recommended by both main parties, the plans listed in the condition include amended drawing no. 897-PL-108 Rev 00, which details the proposed window display, as well as the earlier drawing 879-PL-101 Rev 02, which specifies the proposed use of the ground floor. To avoid ambiguity, I have imposed a condition to secure implementation of the proposed window display details, referring to the drawing on which they are specified. The same condition would ensure that the windows remain clear and unobstructed by vinyl or other applied materials, which is in line with measures proposed by the appellant, so as to maintain a suitable and visible window display for the duration of the use.
26. Conditions are also imposed to secure implementation of the initial sound insulation measures and ongoing Operational Management Plan, as detailed in the Noise Assessment, to safeguard living conditions for nearby residents.
27. Conditions 3 and 4 include requirements which need to be secured prior to the commencement of development, since they are necessary to render the development acceptable from the onset of the proposed use. However, I have not included a condition requiring details of the proposed window display to be submitted for approval prior to commencement, since the details on the drawings are adequate and would be secured by the condition mentioned above.
28. Since the application was for use as an Adult Gaming Centre (*sui generis*) and not for uses within Class E, the Council's recommended condition allowing for both uses would not fairly and reasonably relate to the proposed development. Should an alternative use be proposed in future, that would be subject to consideration of whether a material change of use was involved and consideration by the Council of any planning application against the development plan and other material considerations at that point.

² Archo Consulting Noise Assessment reference PR2001_187_FINAL_R1 dated 25 June 2024

29. The proposed use appears neither more nor less likely to require air conditioning or other plant and equipment than the existing Class E use, so there is no clear justification for imposing conditions relating to installation of plant and equipment or waste management, as recommended by the Council's Environmental Health consultee. Neither would it be justifiable to impose planning conditions restricting construction works, since no operational development is proposed and internal measures such as new shop fittings would not be subject to such restrictions if the premises were remaining in Class E use. However, the omission of these suggested conditions would not prevent the Council from exercising control over any unacceptable noise, disturbance or pollution in accordance with other regulatory regimes.

Conclusion

30. The proposal would accord with the development plan and no material considerations indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, the appeal should be allowed.

Jane Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years beginning with the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following drawings:
 - Site Location Plan at 1:1250
 - Site Plan at 1:500
 - 897-EX-001 Rev 02: Existing Ground Floor
 - 897-EX-003 Rev 02: Existing First and Second Floor
 - 897-PL-108 Rev 00: Proposed Display Manifestation (including Proposed Ground Floor Layout and Proposed Display Manifestation Elevation Plan) -
 - 897-PL-101 Rev 02: Proposed Ground Floor Plan
 - 897-PL-102 Rev 02: Proposed First and Second Floor
- 3) Prior to commencement of the use hereby permitted, the ground floor window display shall be installed in accordance with drawing no. 897-PL-108 Rev 00: Proposed Display Manifestation and shall thereafter be so retained. For the duration of use of the premises as an Adult Gaming Centre, the ground floor display windows shall be fitted with unobscured glass, which shall not be modified by the application of vinyl or any other measures which obstruct visibility of the window display from the street.

- 4) The recommended sound insulation measures detailed in section 3.2 and Appendix C of the Archo Consulting Noise Assessment reference PR2001_187_FINAL_R1 dated 25 June 2024 shall be implemented in full before the use of the site as an Adult Gaming Centre begins and shall thereafter be retained.
- 5) Once commenced, the use hereby permitted shall thereafter be undertaken in accordance with the Operational Management Plan detailed in Appendix E of the Archo Consulting Noise Assessment reference PR2001_187_FINAL_R1 dated 25 June 2024.

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