



Appeal Decision

Site visit made on 15 July 2025

by **P Burley BA(Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25th July 2025

Appeal Ref: APP/L5240/W/25/3360064

41 George Street, Croydon CR0 1LB

- 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 the Council of the London Borough of Croydon.
 - The application Ref is 24/03739/FUL.
 - The development proposed is described as 'The change of use of 41 George Street, Croydon 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. Merkur Slots are relocating from their existing unit at 12 High Street, Croydon.'
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground and basement floors from retail (Class E) to Adult Gaming Centre (*sui generis*) at 41 George Street, Croydon, CR0 1LB in accordance with the terms of the application, Ref 24/03739/FUL, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The use hereby approved shall only be carried on in the ground and basement floors of 41 George Street, Croydon CR0 1LB as illustrated on the unnumbered Site Location Plan and drawing 900-EX-001 Rev 01.
 - 3) Details of security measures shall be submitted to and approved in writing by the local planning authority. The security measures shall be implemented prior to first use in accordance with the approved details and maintained for the lifetime of the development.
 - 4) The development shall be carried out wholly in accordance with the Noise Assessment (PR2001_195_FINAL_R2 by Archo Consulting dated 01/11/2024). Noise control measures shall be implemented in full prior to the first use of the development and maintained for the lifetime of the development.
 - 5) A fire safety plan shall be submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details prior to first use.

Preliminary Matters

2. Given that elements of the description of development as written on the application form are not development, in the interests of clarity, in my decision I have used the description of development as it appears on the Council's decision notice.
3. The appeal application sought permission for a change of use only. Whilst I have been provided with information which illustrates or discusses physical changes to the appeal site, for the avoidance of doubt this decision does not grant planning permission for any such works.

Main Issue

4. The main issue is the effect of the change of use on the vitality and viability of Croydon Metropolitan Centre.

Reasons

5. The policies of the Croydon Local Plan 2018 (LP) seek to maintain the vitality and viability of the borough's designated centres which include Croydon Metropolitan Centre. The appeal site is located in Croydon Metropolitan Centre's Secondary Retail Frontage.
6. LP Policy SP3.12 says that the Council will seek to maintain as a minimum the current amount of retail floor space, to enhance the quality of retail floor space and to reduce Use Class A vacancy in the Metropolitan Centre.
7. According to LP Policy DM4, changes of use on the ground floor within Croydon Metropolitan Centre must accord with Table 5.3 of the LP which states that within Secondary Retail Frontages uses other than A1-A4, A5, B1 and community uses are unacceptable.
8. The Council acknowledges that Policy DM4 predates changes to the Use Classes Order (UCO) pursuant to The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 2020 Regulations). As a consequence of these changes use classes A1-A4, A5 and B1 no longer exist.
9. However, the Council has stated that an adult gaming centre was considered a *sui generis* use before those changes and remains so. Therefore, the proposed change of use to an adult gaming centre would result in the loss of a retail unit (Class E – previously Class A) and would be contrary to Policy DM4 and Table 5.3 of the LP.
10. An objector has argued that Policy DM4 remains compliant both with the National Planning Policy Framework (the Framework) and the Use Classes Order, concluding that the appeal scheme should not be allowed within the terms of Policy DM4.
11. The Framework says 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. It states that planning policies should allow them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries.
12. The Explanatory Memorandum to the 2020 Regulations explains that changes to the UCO were intended to provide flexibility, noting that modern high streets and

town centres have changed so that they now seek to provide a wider range of facilities and services, including new emerging uses, that will attract people and make these areas viable now and in the future.

13. This additional flexibility means that retail floorspace (now within Class E, formerly Class A1) can change to a variety of other uses within Class E without having to apply for planning permission, including to some uses which are not listed in LP Table 5.3 such as indoor sport, recreation or fitness.
14. Thus, whilst the development plan takes a restrictive and prescriptive approach in assessing which uses would be acceptable in the Metropolitan Centre in the interests of its vitality and viability, more recent national policy and legislative changes indicate that a flexible approach can assist in ensuring the vitality and viability of town centres.
15. In that context, the appellant has argued that there are a number of other material considerations that should be taken into account in this case.
16. First, it has provided evidence that the premises were marketed to a wide range of potential Class E occupiers for a year before the appellant's representatives contacted the landlord's agent. In the year since that first contact the landlord's agent has continued to market the premises. Based on that marketing the landlord's agent has expressed the opinion that the premises are unlikely to be let to a retailer or any other operator within use classes E and F in the foreseeable future.
17. The landlord's agent is a local firm and, on the basis of the evidence provided to me, I consider that they have undertaken a genuine and robust marketing exercise. I attach significant weight to their opinion about the lack of likely occupiers for the premises.
18. Second, the Council has suggested that the shopfront would likely be significantly obscured with stickers / coverings / paraphernalia to prevent passers-by from seeing the inside of the unit, therefore removing an active frontage for this prominent site at the entrance of George Street. An objector has made a similar comment.
19. Whilst the windows of the appellant's current premises at 12 High Street are masked with vinyl, it has provided details of how it could address this concern relating to the appeal site by way of advertisements behind the window.
20. On my visit to the site I observed the character of the local area. Whilst there are some retail outlets on this part of George Street there are a number of eating and drinking establishments, financial services providers, an AGC and turf accountants. A number of units are vacant and the windows of some of these have been masked with printed vinyl. I saw that the 'Little Vegas' AGC at 8-10 George Street had adopted a similar approach to that suggested by the appellant and consider that it presents a suitably-active frontage.
21. However, the appeal application relates solely to the change of use of the appeal site; details of the window treatment are not before me for determination and therefore I cannot take them into account in my decision. Similarly, I can only treat the Council's and the objector's comments in relation to this matter as conjecture

and, as such, I do not consider that this aspect of those objections should weigh against the appeal scheme.

22. Third, the appellant has provided information which suggests that its business generates customer movement and activity in centres at a level which is comparable to the activity associated with traditional retail units in primary shopping frontages and, in some cases, is significantly higher. It also suggests that whilst the majority of customers make a specific trip to use an AGC, a number go on to visit other shops and services.
23. Although this information provides a snapshot from a small number of the appellant's branches, I nevertheless consider that it lends some support to the appellant's argument that the appeal scheme would contribute to the vitality and viability of the Croydon Metropolitan Centre.
24. Fourth, the appellant has submitted a unilateral undertaking (UU) which obliges it to only operate one store in Croydon Metropolitan Centre; it intends to close its existing store at 12 High Street when the appeal scheme opens.
25. Whilst this could present an opportunity for another AGC to open in its place, it indicates that the appellant is willing to do what is within its power to ensure that the appeal scheme does not result in a net increase in AGCs in the Metropolitan Centre and that it is simply trying to secure replacement premises so that it can continue to operate its business once its current lease expires.
26. Overall, I note that the over-arching aims of policy in both the development plan and the Framework are to ensure the vitality and viability of town centres. In my opinion none of the evidence that has been presented to me leads me to conclude that the appeal scheme would result in detrimental harm to the vitality and viability of the Croydon Metropolitan Centre. Rather, it would bring back into use a vacant unit for which no alternative occupier has been identified and would generate footfall whilst allowing an existing town centre business to continue to trade once its current lease comes to an end.
27. In conclusion, therefore, whilst the appeal scheme conflicts with Policies SP3.12 and DM4 of Croydon Local Plan 2018, I consider that there are material considerations that indicate that the appeal should be determined other than in accordance with the development plan.

Other Matters

28. The building within which the appeal site is located is locally listed and within a conservation area. In making this decision I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
29. Given that the appeal scheme relates solely to a change of use, I consider that it would preserve the character and the appearance of the CA. I do not consider that the appeal scheme would cause any harm to the CA as a designated heritage asset or to the host building as a non-designated heritage asset. As such, historic environment-related considerations are a neutral component of the overall planning balance.

Planning Obligation

30. Paragraph 56 of the Framework says that consideration should be given as to whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations must only be sought where they meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and in the Framework.
31. A UU pursuant to s106 of the Town and Country Planning Act has been provided. This would ensure that the appellant would not commence trading from the appeal site until all commercial operations at its existing site have ceased.
32. This undertaking is a matter which I consider weighs in favour of the appeal scheme and, therefore, I consider that the UU is necessary to make the development acceptable in accordance with the provisions of paragraph 56 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010. Accordingly, this appeal is allowed subject to that UU.

Conditions

33. I have reviewed the conditions proposed by the Council in light of the tests in the Framework and advice in the Planning Practice Guidance. I have also taken into account comments made by the appellant in relation to these.
34. A condition relating to the timescale for commencement of the development is necessary in the interests of certainty.
35. Whilst it is necessary to define the area to which this planning permission relates in the interests of certainty, I have not listed all drawings that were submitted because some illustrate physical changes which are not approved by this decision.
36. The Metropolitan Police suggested a pre-commencement condition relating to security measures in light of the high numbers of crime and anti-social behaviour incidents in the local area. The appellant has not agreed with this, instead noting that it voluntarily installs security measures in its premises. It has provided a document setting out its standard security measures.
37. However, those measures do not include all of the suggestions of the Metropolitan Police which I consider to be necessary, in particular: CCTV in all areas that the public have access to; a secure pod / office with a means to communicate externally to support lone working; and securely-fixed cash dispensing machines. I have attached a condition which requires the submission of details to demonstrate that these measures would be provided in addition to those already set out in the appellant's submission. To be effective these measures would need to be in place before the development is brought into use and therefore I do not consider it necessary to require details to be approved before the development is commenced. The measures would also need to be maintained for the lifetime of the development.
38. I also consider it necessary to attach conditions to safeguard the living conditions of adjacent residents and the area generally in respect of noise, and in order to conform to fire safety standards as required by Policy D12 of the London Plan 2021. However, because the submitted plan (900-PL-110 Rev 00) shows changes to the premises which are not the subject of the appeal application, I have reserved the approval of details.

39. The Council has requested a condition which would restrict the use of the premises to an AGC and for no other purpose unless approved in writing by the local planning authority. The reason given by the Council is to ensure that the development does not have an adverse impact on traffic, parking, and the residential amenity of neighbouring occupiers. Given that the current lawful use is Class E and that an AGC could be changed to a Class E use (i.e. the existing use) under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) without having to apply for planning permission, I do not consider it necessary to restrict permitted development rights as suggested by the Council.

Conclusion

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

P Burley

INSPECTOR