
Appeal Decision

Site visit made on 3 December 2025

by **Paul Martinson BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 December 2025

Appeal Ref: APP/U2750/W/25/3370484

67 - 68 Baxtergate, Whitby, North Yorkshire YO21 1BL

- 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 I Miller of Luxury Leisure against the decision of North Yorkshire Council.
 - The application Ref is ZF24/01954/FL.
 - The development proposed is described as: 'Change of use from Bank (Class E) to adult gaming centre (sui generis)'
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Decision

1. The appeal is allowed and planning permission is granted for change of use from Bank (Class E) to adult gaming centre (sui generis) at 67 - 68 Baxtergate, Whitby, North Yorkshire YO21 1BL in accordance with the terms of the application, Ref ZF24/01954/FL subject to the below conditions set out in the attached schedule.

Applications for costs

2. An application for costs has been received from I Miller against North Yorkshire Council. That is the subject of a separate decision.

Preliminary Matters

3. The application was refused by the Council Members at the Council's Planning Committee following a recommendation of approval by Council Officers. The Council has not supplied an appeal statement defending this approach, however its reasoning behind refusing the application is detailed in its single reason for refusal on its decision notice. I have used this reason for refusal to inform my main issue below.

Main Issue

4. The main issue is the effect on the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance.

Reasons

5. Baxtergate lies within the defined Town Centre and the Primary Shopping Area as set out in the Scarborough Borough Local Plan (2017) (the LP). The proposed use as an adult gaming centre comprises a main town centre use as set out in the Glossary to the National Planning Policy Framework (the Framework).
6. Policy TOU5 of the LP seeks to limit new amusement arcades to specific locations along Pier Road, a short walk from the appeal site. However, paragraph 7.93 and 7.94 of the policy justification set out that a distinction is made between the aims of

Policy T0U5 to control amusement centres of the open fronted arcade type within the areas where amusements are designed to attract holiday visitors and the alternative adult gaming centres (AGCs). These are defined as a modern form of amusement centre offering a closed and relatively discreet use of casual entertainment using electronic machines principally situated within shopping areas.

7. The policy justification also states that any applications for AGCs must be considered on a case-by-case basis, taking into account the mix of existing uses present in the locality and potential impacts that the use may have upon the amenity of an area.
8. The appeal property is a two storey building that was formerly used as a bank and is now vacant. It lies on Baxtergate, a narrow street with limited vehicle access in the Whitby town centre. The immediate vicinity includes numerous retail units, cafes, public houses and hot food takeaways. On the site visit I saw that the footfall during the day is high, as would be expected in a town centre. Given the number of public houses and the hot-food takeaways, it is likely that Baxtergate continues to experience a high level of a footfall outside of normal working hours.
9. The appeal property extends to two storeys and sits lower than its adjoining neighbours, a public house and a pharmacist. A hotel incorporating a bar lies at Angel Yard to the opposite side of the road with a hot-food takeaway adjacent. The Council sets out that Baxtergate typically composes of commercial units at ground floor with offices and residential flats at first floor. This was my impression on the site visit. I also saw signs for holiday apartments to the opposite side of the road to the appeal site. The occupiers of those properties will be accustomed to an existing evening background noise level associated with the footfall generated by the existing late-opening commercial premises in this town centre location.
10. AGCs play background music internally similar to a retail unit, the noise of which is contained within the building, whilst the machines themselves are quiet, distinguishing the use from the noisier, open fronted arcades referred to in Policy T0U5 above. AGCs do not sell alcohol and are centred around customers using the machines to play games, rather than group conversations and activity. As such, intoxicated customers are not permitted entry. The appellant sets out that customers are free to walk in prior to 22:00, after which the doors are normally locked, and customers are individually 'buzzed in'. Taking into account the nature of this use, I am satisfied that it would not generate anti-social behaviour.
11. The evidence provided from similar premises represents a guide for the level of activity anticipated during the early morning period. This amounts to less than 4 visitors per hour during the period between 02:00 and 09:00. I would further note that owing to the 24-hour nature of the use, exit or arrival would not be concentrated at closing or opening times as can sometimes be a feature of other late opening uses.
12. The appellant's noise assessment¹ sets out that the noise generated by customers talking outside the building would be well within the range of existing background noise levels (LAeq,15mins) measured from the position of the closest bedroom windows in the late evening/early morning period. The survey found that the dominant noise source was plant noise from other nearby premises and road traffic on nearby road networks. There was also noise associated with a delivery to

¹ Noise Assessment by Hepworth Acoustics, dated October 2024.

the coffee shop on the opposite side of the road between 2330 and 0000. These are noise levels that can reasonably be expected within a town centre at this time.

13. Given the prevalence of existing late-opening premises in the vicinity, the location in the town centre and the likely low levels of customers entering and exiting the premises into the early hours, as well as the nature of the proposed use, there is no compelling evidence before me that the proposal would lead to noise levels that would result in noise or disturbance that would adversely affect the living conditions of the occupiers of nearby properties. My assessment in this regard is supported by the comments of the Council's Environmental Health section which raised no objection to the proposal.
14. For the above reasons the proposal would not result in an unacceptable impact on the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance. The proposal would comply with Policy DEC4 of the LP which seeks to protect the amenities of the existing occupiers of land and buildings and states that proposals for development should not give rise to unacceptable impacts by means of disturbance arising from noise. The proposal would also comply with paragraph 135 of the Framework which requires planning decisions to ensure a high standard of amenity for existing and future users.

Other Matters

15. The appeal site lies within the Whitby Conservation Area (CA). The appeal site also adjoins the Grade II listed building, Black Swan Inn. Whilst not a reason for refusal, I have a statutory duty under sections 66(1) and 72(1) of the Act² to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA and to have special regard to the desirability of preserving the special interest of listed buildings and their settings.
16. The special interest and significance of the CA insofar as it relates to the appeal, derives from the coastal setting, the dominance of the river, the high concentration of traditional buildings incorporating local materials, many of which are occupied by local businesses, and the enclosed, narrow streets radiating away from the harbour.
17. The special interest and significance of The Black Swan Inn as a listed building derive from its architectural and historic interest as an early nineteenth century public house. Although a much more recent building, the appeal property as an adjacent commercial building within a commercial street nonetheless contributes to the town centre setting of the listed building.
18. The application form is clear that the proposal is limited to a change of use only and no external elevations are therefore proposed. Should any external changes be required, along with advertisement displays, these would be considered as part of any future applications for planning permission or advertisement consent. The proposal would ensure that the building continued to be used for a commercial use and continue to bring visitors to the town centre.
19. For these reasons the proposal would preserve the character and appearance of the CA. Similarly, the special interest of the Black Swan Inn would be preserved.

² Planning (Listed Buildings and Conservation Areas) Act 1990.

On this basis the proposal would meet the requirements of the Act, and the provisions within the Framework. I note that the Council concluded similarly

20. I have had regard to the weight of public opposition to the proposal. Much of the concern relates to the location of the use within this part of Whitby. However, as set out above, this location, within the town centre and shopping area is supported by the development plan policy. Whilst many respondents cite their preference for an alternative use of the building, I am required to limit my considerations to the acceptability of the scheme that is before me.
21. In that regard, owing to the discrete nature of AGCs, I consider that such uses can be successfully accommodated in shopping areas without resulting in harm, as envisaged by LP Policy TOU5. I am not persuaded that the proposal would adversely affect the hospitality industry, particularly as it would generate footfall to a currently vacant unit within the town centre and provide local employment.
22. The proposed use would provide a range of gaming machines limited to low stakes of between 10p and £2 and would not include fixed odds betting terminals. The use would also be strictly controlled through separate legislation which seeks to prevent problem gambling and its associated effects, particularly for vulnerable people. The nature of the AGC use involving gambling would therefore not be a reasonable justification to withhold planning permission.
23. While I have taken into account all of the representations by interested parties, I am satisfied that none of the other matters raised, either individually or collectively, would result in a level of harm that would justify dismissal of the appeal, and they do not alter my findings on the main issue.

Conditions

24. The conditions imposed are based on those proposed by the Council. Where necessary I have amended the wording of these in the interests of precision and clarity, and to comply with advice in the Planning Practice Guidance.
25. In addition to the standard timeframe condition, I have imposed a condition specifying the approved plans for certainty. A condition is also necessary, in the interests of the living conditions of nearby occupiers, to limit the emptying of glass bins to during the day and early evening and to prevent the playing of music externally.

Conclusion

26. For the above reasons, having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Paul Martinson

INSPECTOR

SCHEDULE OF 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 drawing nos: 3582(B)03 and 3582(C)01.
- 3) All glass waste from the premises shall only be emptied into the bins within the bin storage area between the hours of 07:00 and 23:00 on any day, and shall be kept within the building outside of these hours.
- 4) There shall be no external amplified music played at the premises at any time.

END OF SCHEDULE