

Planning Agenda

Wednesday, 25 January 2023 at 6.00 pm

Council Chamber, Muriel Matters House, Breeds Place, Hastings, TN34 3UY.
Please enter the building via the Tourist Information Centre entrance.

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democraticservices@hastings.gov.uk

		Page No.
6.	Planning Appeals and Delegated Decisions	1 - 22

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Agenda Item 6

AGENDA ITEM NO: **6(c)**

Report to: PLANNING COMMITTEE
Date of Meeting: 23 February 2022
Report from: Assistant Director of Housing and Built Environment

Application address: **Shop and Premises, 40-41 Queens Road,
Hastings, TN34 1RE**

Proposal: **Change of use of the ground floor unit of 40-41
Queens Road from a vacant pawnbrokers (E
Class) to an Adult Gaming Centre (Sui
Generis).**

Application No: **HS/FA/21/00443**

Recommendation: **Grant Full Planning Permission**

Ward: CASTLE 2018
Conservation Area: No
Listed Building: No

Applicant: Merkur Slots UK Ltd per Planning Potential
Magdalen House 136-148 Tooley Street London
SE1 2TU

Public Consultation

Site notice: No
Press advertisement: No
Neighbour Letters: Yes
People objecting: 14
Petitions of objection received: 0
People in support: 0
Petitions of support received: 0
Neutral comments received: 0

Application status: Not delegated - 5 or more letters of objection
received
Referred by Councillor

1. Site and surrounding area

The application site relates to 40-41 Queens Road a four-storey mid-terrace building. This application only relates to the commercial unit at ground floor level within this building. The ground floor unit has been vacant since October 2019, having previously operated as a Cash Generators pawnbroker. The front elevation of the commercial unit features a glazed

aluminium shop front. The application site is located on the eastern side of Queens Road opposite its junction with South Terrace. Above the commercial unit at first floor level there are two self-contained flats which were approved under application HS/FA/18/00871. Further residential units are found over the third and fourth floors. The commercial unit fronts onto Queens Road, however, due to a steep hill, the unit is effectively split level, four storeys at the front and three storeys at the rear, meaning the unit does not have a rear. The rear provides access to the residential units on the upper floors of the building. The unit is situated between two retail (Class E) units, with a bookshop ('Bookbuster') located to the south, and a mobile phone repair shop to the north ('Powermend'). Many of the properties along this road feature commercial/retail units at ground floor level with residential use above. The building is immediately abutted by the public footpath and Queens Road to the front. The premises is situated within the Town Centre Shopping Area and also lies within the main retail area. On the opposite side of the site is the entrance to Priory Meadow Shopping Centre and Marks & Spencer Store. To the rear of the building there is a narrow pedestrian walkway, which is well-kept and is residential in character. The property is not listed nor is it located within a Conservation Area designation.

Constraints

SSSI Impact Risk Zone

Business Improvement District

Great Crested Newts (green impact risk zone)

2. Proposed development

This application is seeking planning permission for a change of use of the ground floor unit of 40-41 Queens Road from a vacant pawnbroker (E Class) to an Adult Gaming Centre (Sui Generis), to allow Merkur Slots to occupy the unit.

There will be a mixture of gaming slot machines and electronic bingo which will be played on tablets.

The proposed opening hours of the unit will be 24 hours, seven days a week.

No external alterations are proposed under this application, however a number of internal alterations are proposed to form an office, kitchen area and unisex toilet with the rest of the floor space to be dedicated to the slot machines and electronic bingo.

Complimentary refreshments, teas and coffees will be provided to customers but no alcohol is to be served on the premises. The premises will predominantly sell cold snacks and occasional hot snacks, which will be heated in the microwave.

The application is supported by the following documents:

- Marketing report
- Planning, design and access statement
- Site waste management plan
- Letter from agent regarding footfall data
- Footfall, pedestrian flows and surveys
- Merkur Slots brochure
- Noise assessment report (PR2001_47_FINAL_R1)

Relevant planning history

- HS/FA/19/00844 To convert 1no. retail unit into 2no. retail units. The unit will be split down the middle into 2no. units with the left hand side of the shop front kept as is and a proposed new entrance added to the right hand side shop front.
Granted subject to conditions 6.12.2019
- HS/FA/18/00871 Change of Use of first floor retail unit (A1) to two self contained flats (C3).
Granted 05/12/2018
- HS/FA/11/00534 Replace the existing timber windows and doors with white upvc windows and doors.
Granted 25.08.2011
- HS/AA/09/00639 Erection of Store Signage with Trough Lighting, and 2x Projection Signs.
Granted 11.01.2010
- HS/72/01387 Internal alterations to showroom and self-contain flats.
Granted 16.11.1972
- HS/71/01462 Installation of shop front.
Granted 31.12.1971
- HS/71/01215 Display of illuminated fascia sign.
Granted 11.11.1971

National and local policies

Hastings Local Plan – Planning Strategy 2014

Policy FA2 - Strategic Policy for Central Area

Policy FA3 - Strategy for Hastings Town Centre

Policy SC1 - Overall Strategy for Managing Change in a Sustainable Way

Policy E3 - Town, District and Local Centres

Hastings Local Plan – Development Management Plan 2015

Policy LP1 - Considering planning applications

Policy DM1 - Design Principles

Policy DM3 - General Amenity

Policy DM4 - General Access

Policy DM6 - Pollution and Hazards

Policy SA1 - Hastings Town Centre Shopping Area

Revised Draft Local Plan

Other policies/guidance

National Design Guide

East Sussex County Council (Highways) Minor Application Guidance (2017)

National Planning Policy Framework (NPPF)

Paragraph 8 sets out the three overarching objectives of the planning system in order to achieve sustainable development. Those are: economic (by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation); social (to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and

future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being); and environmental (to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy).

Paragraph 9 advises that plans and decisions need to take local circumstances into account, so they respond to the different opportunities for achieving sustainable development in different areas.

Paragraph 11 of the NPPF sets out a presumption in favour of sustainable development.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Paragraph 12 of the NPPF states that the development plan is the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

Chapter 7 of the NPPF considers retail centres, and places an emphasis on flexibility, the ability to "respond rapidly to change" and the changing climate of shopping habits.

Paragraph 86

Planning policies and 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. Planning policies should:

a) define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;

b) define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;

c) retain and enhance existing markets and, where appropriate, re-introduce or create new ones;

d) allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site availability, so town centre boundaries should be kept under

review where necessary;

e) where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre; and

f) recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.

Paragraph 130 of the NPPF requires that decisions should ensure developments:

- function well
- add to the overall quality of the area for the lifetime of that development
- are visually attractive in terms of
 - layout
 - architecture
 - landscaping
- are sympathetic to local character/history whilst not preventing change or innovation
- maintain a strong sense of place having regard to
 - building types
 - materials
 - arrangement of streets

In order to create attractive, welcoming and distinctive places to live, work and visit.

- optimise the potential of the site to accommodate an appropriate number and mix of development.
- create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Paragraph 134 of the NPPF states that development that is not well designed should be refused but that significant weight should be given to development that reflects local design policies and government guidance on design and development of outstanding or innovative design which promotes high levels of sustainability and raises the standard of design in the area, provided they fit with the overall form and layout of their surroundings.

Paragraph 135 of the NPPF seeks to ensure that the quality of an approved development is not materially diminished between permission and completion through changes to the permitted scheme.

3. Consultation comments

Licensing Team - **No objection**

It is noted the premises has now been granted a 24-hour licence by the Licensing Team.

Police - **No objection**

ESCC Highways - **No objection subject to imposition of condition relating to on-site cycle provision**

Given the impracticalities and limited space of the site and its Town Centre location it is not considered necessary to attach this condition in this instance.

Planning Policy Team - **No comment received**

Environmental Health Team - **No objection subject to imposition of condition numbers 3, 4 and 5**

4. Representations

In respect of this application, neighbour letters were issued.

14 letters of objection were received from 13 different properties.

14 letters of objection have been received raising the following concerns:

- premises could be put to better use, this will only add to the decline of the Town Centre.
- there are other similar establishments nearby, this will lead to an over concentration.
- harmful to the area, should be encouraging small local/family run shops which contribute to the area.
- local businesses would suffer as a result.
- health and wellbeing concerns.
- gambling is a terrible addition and should not be encouraged, strain on the community.
- concern this use will exacerbate existing issues of crime/anti-social behaviour and deprivation.
- 24 hour opening not appropriate within residential area, concerns about noise and disturbance.
- no off-road parking available.

5. Determining issues

The main issues which needed to be considered with this application is the existing and proposed use, the impact upon the character and appearance of the area, neighbouring residential amenities, great crested newts, highway parking and safety, refuse and health and wellbeing.

a) Principle

The site is in a sustainable location and the application is therefore in accordance with Policy LP1 of the Hastings Local Plan - Development Management Plan 2015 in this respect and acceptable in principle subject to other Local Plan policies.

b) Existing and proposed use

The application site is located within Hastings Town Centre where Policy E3 of The Hastings Planning Strategy (2014) directs Town Centre uses. It states that the vitality and viability of Town Centres will be maintained and, where appropriate, enhanced. Measures will include

safeguarding the retail character and function of the centre, enhancing the appearance and environmental quality of the centre, encouraging diversity of uses and the provision of a wide range of retail, leisure, social, education, arts, cultural, office, residential and commercial uses, and promoting the reuse of vacant buildings.

Policy FA3 of the Development Management Plan (2015) states that the Council places great importance on the maintenance and improvement of the role of the Town Centre as a pleasant, lively, and safe place for shopping and recreation, education, employment, and as a place to live, as well as developing the evening economy.

Policy SA1 sets out uses which are appropriate to shopping areas. Both parts of this policy need to be satisfied in order for the development to be permitted:

- criterion (a) sets a percentage threshold for non-A1 use, which in this location is 45%.
- criterion (b) considers the qualitative impact of allowing such non-A1 use (shopping frontage, attractiveness, vitality, etc).

Paragraph 5.10 of Policy SA1 recognises that different and complementary uses during the day and in the evening can reinforce each other, making the Town Centre more attractive to local residents, shoppers, workers and visitors.

Chapter 7 of the NPPF considers retail centres, and places an emphasis on flexibility, the ability to "respond rapidly to change" and the changing climate of shopping habits. This advice is also reflected in the PPG. In addition, information from a range of national studies indicates that due to a long-term change in shopping habits, percentage thresholds may restrict the overall vitality of Town Centres. The general position is that Town Centres must "find a focus other than retail in order to survive" (UK Parliament, 2019).

The Planning Policy Team's own monitoring and emerging research in respect of Hastings Town Centre and other shopping areas in the Borough, now suggests that less weight should be attached to the criterion (a) of Policy SA1, and a more qualitative approach is needed. Furthermore, that continuing to implement a percentage threshold could have unintended consequences and become harmful to the vitality of these centres. As such it is acknowledged that criterion (a) of Policy SA1 can no longer be used. This being said, criterion (b) of Policy SA1 remains a material consideration due to the impact on the vitality and viability of the Town Centre as a whole with such a large and prominent interruption to the frontage occupying a key gateway position (adjacent to the junction of Queens Road and South Street) in the shopping area.

During determination of the application some concerns were expressed to the applicant by the Local Planning Authority regarding possible impacts upon the vitality and viability of the Town Centre given the proposed use and the key gateway position of the premises. The applicant commissioned a number of daytime footfall surveys which were undertaken by an independent survey company, ESA Retail. The footfall surveys were undertaken at 3 operational Adult Gaming Centres (AGCs) in Lowestoft, Hessle Road (Hull) and Wood Green (London), all of the adult gaming uses being located within shopping locations. The results demonstrate that the footfall associated with Merkur's Adult Gaming Centres (AGCs) are comparable with that of many retail units within Town Centre locations. The immediate frontage at the application site is similar to that of the 3 locations surveyed. The surveys also demonstrate that pedestrian flow remains high outside Merkur Adult Gaming Centres (AGCs) and that they generate linked trips, which means that they visited other shops and services in the relevant shopping location. As such, it is considered the proposal would satisfy criterion

(b) of Policy SA1. The premises is also positioned between two retail units, therefore the proposals would not result in any significant interruption to the shopping frontage, with the vast number of units nearby to the application site being within retail use. It is also noted that the premises have not been in use as a traditional retail unit for some time, with pawnbrokers typically classified as quasi retail and are often categorised as A2 or more commonly Sui generis uses.

It is important to note that the recent introduction of Class E has introduced further flexibility on the high streets, with a range of Town Centre and non-Town Centre uses. The future of the high street is no longer reliant on traditional retail, it is reliant on a mix of uses that offer different experiences for residents and visitors, which encourage people into the centre. Whilst Adult Gaming Centres (AGCs) were not included in the recent changes to the Use Classes Order, the fact that the application site can change to a range of non-retail uses under permitted development clearly carries some weight in favour of the proposal.

It is also acknowledged that the premises have been vacant for a considerable period of time, since October 2019, when the tenant 'Cash Generator' went into liquidation. The applicant has provided robust marketing over an 18-month period which demonstrates that the unit is no longer viable as a retail unit. One of the main reasons for this is that the unit does not have a rear and is unable to be serviced from either the rear or the front. As such, given the units vacancy and the evidence of marketing and lack of commercial interest, provided in support of the application, the re-use of the premises carries weight in favour of the proposal. The proposed Adult Gaming Centre (AGC) will bring about a number of benefits for the Town Centre, including reinvestment into a vacant unit, at least 6 new jobs, footfall and linked trips and a broadening of the current leisure offer in the centre, including electronic bingo, particularly given the future of the high street is no longer reliant on retail.

Taking the above into account, it has been demonstrated that the proposals comply with the overall objectives of the Council's Town Centre and shopping policies, and that any identified conflict with policy criteria is clearly outweighed by significant material considerations. It has been demonstrated that the proposals will not only maintain, but enhance, the vitality and viability of the Town Centre shopping area and the Town Centre as a whole by bringing a vacant unit back into use, creating new jobs, footfall and linked trips and contributing to the array of uses found within the Town Centre. The proposal would therefore accord with Policies E3, FA3 and SA1 of the Hastings Local Plan and the broad aims of the National Planning Policy Framework.

c) Impact on character and appearance of area

Policy DM1 of the Hastings Local Plan - Development Management Plan (2015) states, all proposals must reach a good standard of design, which includes efficient use of resources, and takes into account:

- protecting and enhancing local character
- showing an appreciation of the surrounding neighbourhood's historic context, street patterns, plot layouts and boundaries, block sizes and scale, height, massing and materials

No external alterations to the unit are proposed as part of this application, therefore the proposed change of use to this premises will have no impact on the character and appearance of the area. This is in line with the aims of Policy DM1 of the Hastings Local Plan - Development Management Plan (2015), the proposal is thereby considered acceptable in

this regard.

d) Impact on neighbouring residential amenities

The proposed Adult Gaming Centre (AGC) is proposed to operate on a 24-hour basis. It is therefore important that no unacceptable impacts in terms of noise or other disturbance during late hours occurs, considering the amenity of nearby residential units. It is noted a number of objection comments from local residents have raised concerns in this regard. The site is situated within a Town Centre location with mixed uses and has an established evening and night-time economy, notably comprising restaurants and pubs. As such the applicant has submitted a detailed noise report to support the application which assesses potential impacts on noise sensitive properties, principally the flats above. The report contains a number of recommendations to improve sound insulation performance which are required to be carried out prior to the opening of the premises to avoid harmfully impacting the amenity of any adjacent residential units. The report identifies that once these recommendations have been carried out, the site will be suitable for 24-hour operation. The noise report also includes case studies of operational Adult Gaming Centres (AGCs) in Camberwell (London), Boston and Hessle Road (Hull) during the most noise sensitive period of the night. Based on the site assessments of patron behaviour it is considered unlikely that noise impacts will occur due to patrons leaving and entering the site. The applicant has also provided figures of the lowest and highest number of patrons within the units between the period of 6.30pm to 6.30am at three operational Adult Gaming Centres (AGCs) in Lowestoft, Hessle Road (Hull) and Wood Green (London). These are as follows; Hessle Road (Hull) - between 1 and 9 patrons, Wood Green (London) - between 4 and 12 patrons and Lowestoft - between 0 and 5 patrons. As demonstrated the number of patrons and associated comings and goings of the premises are relatively low for these periods of time. As set out in the supporting brochure, only background music is played within venues (similar to shops) and there are no tannoy systems with noise adjustable machines. Furthermore, Merkur's Adult Gaming Centres (AGCs) are not evening/night-time leisure uses that attract large crowds of people like pubs, bars, cinemas etc. The late-night patron base is predominantly late shift workers looking to relax and large groups are rare, with any unruly or loud behaviour policed by staff within such premises.

The Environmental Health Team were consulted on the application and raised no objection subject to the imposition of conditions. Condition 3 will be attached requiring the recommendations within the noise report to be strictly adhered to and carried out prior to the use hereby commencing. Condition 4 will also be included to control the hours of construction on site and Condition 5 will be added requiring details of any fixed plant, machinery and associated equipment which has the potential to cause noise disturbance to any noise sensitive receivers to be submitted to and approved in writing by the Local Planning Authority. Condition 7 has also been included to ensure no patrons at any time shall smoke or vape outside the premises which fronts Queens Road, to avoid patrons loitering, limiting noise when entering and leaving the premises.

On balance, it is not considered that the proposed use would generate noise during the night to an extent that would result in harm to residential amenity that which may reasonably be expected in this busy high street context. The proposal is therefore considered acceptable in this regard subject to imposition of conditions and is in line with the aims of Policies DM3 and DM6 of the Hastings Local Plan - Development Management Plan (2015).

e) Impact on Great Crested Newts

Great Crested Newts (green impact risk zone):

The development falls within the green impact risk zone for Great Crested Newts and as the application is not a Household one and no ground works are proposed, there is no requirement to consult NatureSpace in respect of Great Crested Newts. It is not considered there will be any impact upon the Great Crested Newts as a result of this development.

f) Highway safety/parking

No parking provision for this proposed conversion has been provided. However, this said, the site is located within a central and sustainable location within an existing retail location along Queens Road. The premises also lie within the Town Centre Shopping Area. Given the units location, there are plenty of choices regarding public transport with Queens Road providing a main bus route in and out of Hastings, with the main train and bus station also within walking distance of the site. Furthermore, it is also noted a number of car parks are situated close by, within walking distance including the multi-storey car park of Priory Meadow shopping centre. No details of trip generation have been provided, however it is considered that the two uses are likely to generate similar level of trips. On balance, the proposed development is unlikely to result in a significant impact on the local highway network and the proposal is considered acceptable in this regard. ESCC Highways have raised no objection. Whilst they have requested the imposition of a condition to secure on-site cycle provision, given the impracticalities and limited space of the site and its Town Centre location, it is not considered necessary to attach this condition in this instance.

g) Refuse

The application is located within a well-established commercial area. A waste collection service currently operates on Queens Road for the existing commercial units. Refuse sacks for both domestic and recyclable waste are provided by Hastings Borough Council and will be presented to the kerb side on collection days for the waste collection service to collect. It is not considered the proposed Adult Gaming Centre use will generate high levels of waste. While there have been no specific details of waste storage submitted, the agent has confirmed that any waste will be stored within the commercial unit until collection day, as existing. This arrangement has been considered acceptable with an informative note added to the permission which details this.

h) Health and wellbeing

A number of objections have been received raising concerns that the proposal will lead to an over-concentration of gambling premises in this part of the Town Centre and the potential adverse social impacts of an adult gaming centre in this location.

In response the applicant has confirmed that Merkur's Adult Gaming Centres (AGCs) are smart and professional venues that offer a range of low stake gaming and electronic bingo. They do not have the fixed odds betting terminals (FOBTs) that betting shops previously had, with lower maximum stakes and prizes. They have a large female customer base and attract individuals and couples rather than large groups. Due to the nature of the gaming and as no events take place, such as sports fixtures like at betting premises, customers do not congregate in the vicinity of venues. They do not sell alcohol and staff will not allow customers who are intoxicated to enter the premises. Staff stay with their customers on the shop floor rather than behind a counter as is the case with betting shops, as a result, incidents are rare.

Matters of impact upon vulnerable people and problem gambling is something that is specifically considered under the licensing regime. Merkur Slots are fully aware of the Licensing Objectives in this regard and as with all their stores, have robust measures in place to ensure vulnerable people are protected. This includes staff training, customer supervision, monitoring, interaction, reviewing source of funds, providing self-help tools and advice to ensure responsible play, provision of information regarding gambling support services and self-exclusion, where appropriate. It is noted the premises has now been granted a 24-hour licence by the Licensing Team which includes a list of robust conditions for which the premises must adhere to in order to protect customers and staff; such as protection of children and other vulnerable persons, access to premises, age checks and responsible gambling.

Whilst it is acknowledged that the East Sussex Public Health team have produced an evidence-based paper which summarises the association between gambling premises and health and wellbeing related issues, it is noted however that this document reviews these issues on a national and regional level, rather than a local one with site specific correlations.

It is also noted that gambling premises only make up a very minor proportion of the overall offer of Hastings Town Centre and the nearest gambling premises (a betting shop) is over 100m away, with the only other adult gaming centre in the Town Centre over 250m away. There are numerous other Town Centre uses located between these uses and the application site. As such, there is not currently an over-concentration of such uses, neither will there be with the proposed use in place.

Whilst the concerns raised are understood, given the other findings noted above and that there is no local evidence to suggest that the proposed use would be detrimental to the health and wellbeing of the residents of Hastings, the proposal is considered acceptable in this regard. A number of appeals have also been dismissed on these grounds for example 37-39 St Sepulchre Gate, Doncaster DN1 1TD (APP/F4410/W/20/3250246) and 62 Nottingham Road, Eastwood NG16 3NQ (APP/J3015/W/18/3212670), with the Eastwood appeal having similar circumstances to this application site given its Town Centre location, historic percentage policy having limited weight, recent changes to the General Permitted Development Order introducing greater flexibility, noise adjustable machines and no Fixed Odds Betting Terminals (FOBTs).

i) Site Constraints

SSSI (Site of Special Scientific Interest) Impact Risk Zone:

The site is within a SSSI IRZ. The scale of development does not fall within the threshold for consultation with Natural England and as such it is not considered that there will be any impact on SSSIs.

6. Conclusion

In conclusion, the proposed conversion of the premises will bring a vacant unit back into use with high footfall, linked trips, new jobs which will assist in diversifying the Town Centre's offer. It is considered to be an acceptable form of development which complies with local and national plan policies. It is therefore recommended that permission is granted subject to imposition of the attached conditions, to provide a good form of development which protects the vitality and viability of the Town Centre and protects the amenity of adjoining and future

residents.

These proposals comply with the Development Plan in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

The Human Rights considerations have been taken into account fully in balancing the planning issues.

7. Recommendation

Grant Full Planning Permission subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Site plan, existing and proposed floor plans (QRD/HAS/04A) and noise assessment report (PR2001_47_FINAL_R1)
3. Prior to the commencement of the use hereby approved, the development shall be carried out in accordance with the recommendations contained within the Noise Assessment (PR2001_47_FINAL_R1) dated 19/10/2021. The works required within the Noise Assessment (PR2001_47_FINAL_R1) dated 19/10/2021 shall thereafter be retained permanently whilst the permitted use is in operation.
4. During construction any work which is audible at the site boundary, including deliveries to and from the premises, shall not take place before 08:00 and after 18:00 hours Monday-Friday or before 09:00 and after 13:00 on Saturdays and at no time on Sundays or Bank Holidays.
5. The acoustic specification of any fixed plant, machinery and equipment associated with air movement (including fans, ducting and external openings), compressors, generators or plant which has the potential to cause noise disturbance to any noise sensitive receivers, shall be submitted to and approved by the Local Planning Authority before installation.
6. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification). The use hereby approved is for an Adult Gaming Centre (Sui Generis use) only and there

shall be no further change of use without planning permission first being applied for and approved in writing by the Local Planning Authority.

7. No patrons at any time shall smoke or vape outside the premises which fronts Queens Road.
8. The provision of refreshments at the premises shall remain ancillary to the permitted use as an Adult Gaming Centre (Sui Generis use).

Reasons:

1. This condition is imposed in accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt and in the interests of proper planning.
3. To safeguard the amenity of adjoining and future residents.
4. To safeguard the amenity of adjoining and future residents.
5. To safeguard the amenity of adjoining and future residents.
6. To ensure that any further change of use is appropriate to the town centre location and to safeguard the amenity of adjoining and future residents.
7. In the interest of protecting neighbouring residential amenity and preventing any obstruction on the pavement.
8. To allow the Local Planning Authority to retain control over the development in the interests of visual and residential amenity.

Notes to the Applicant

1. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.
2. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraph 38 of the National Planning Policy Framework.
3. The applicant is reminded that any trade waste produced at these establishments will need to be collected by a registered and licensed trade waste carrier, and the collections will need to be frequent enough to prevent the waste from becoming a detriment to the surrounding area. The bins will need to be locked and kept in good condition and off of the public highway.
4. The applicant should consider the installation of a monitored intruder alarm if not open 24 hours a day. Additionally, appropriate money handling facilities and a management package to protect staff from robbery and harm should be implemented at the premises.

5. Photographic evidence of the works required by the Noise Assessment (PR2001_47_FINAL_R1) dated 19/10/2021 should be documented for inspection by Environmental Health if requested.

Officer to Contact

Mrs L Fletcher, Telephone 01424 783261

Background Papers

Application No: HS/FA/21/00443 including all letters and documents



Appeal Decision

Site visit made on 2 January 2023

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Appeal Ref: **APP/B1415/W/22/3294882**

40-41 Queens Road, Hastings, TN34 1RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Merkur Slots UK Ltd against the decision of Hastings Borough Council.
 - The application Ref HS/FA/21/00443, dated 29 April 2021, was refused by notice dated 24 February 2022.
 - The development proposed is change of use of the ground floor unit of 40-41 Queens Road from a vacant pawnbroker (E Class) to an Adult Gaming Centre (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor unit of 40-41 Queens Road from a vacant pawnbroker (E Class) to an Adult Gaming Centre (Sui Generis) at 40-41 Queens Road, Hastings, TN34 1RE in accordance with the terms of the application, Ref HS/FA/21/00443, dated 29 April 2021 and is subject to those conditions set out in the attached schedule.

Main Issues

2. The main issues raised in respect of the appeal are the effect of the proposed development on:
 - a) Levels of noise and disturbance in the area at night and early morning; and
 - b) The health and wellbeing of Hastings residents.

Reasons

Noise and disturbance

3. The proposal seeks 24 hours a day, 7 days a week adult gaming use of the premises. Third party and Council Member concern has been raised to potential unacceptable noise and other disturbance arising from the proposed use of the premises.
4. The proposal has been supported by a noise assessment that assesses potential impact on noise sensitive properties, including those of the flats above the premises. The assessment identifies measures that could be put in place prior to the use commencing to improve the sound insulation performance of the premises. The Assessment also studied other operational adult gaming centres elsewhere to assess activity during the most noise sensitive period of the night. Those operational premises assessed

demonstrated that the comings and goings of patrons at those premises was relatively low.

5. The Council's Environmental Health Team have not raised objection to the proposal and request a condition be imposed requiring the recommendations of the noise assessment to be strictly adhered to and carried out prior to the use commencing. Other requested conditions would aim to control the hours of construction on site and would require details of any fixed plant, machinery and associated equipment that has the potential to cause noise disturbance to be submitted for local planning authority approval prior to installation.
6. There would be some evening, late night and early morning activity generated by the proposed use of the premises. However, the evidence provided by the noise assessment indicates that the adult gaming use of the premises would not attract large crowds during noise sensitive periods of the day and night. Furthermore, given the patronage is likely to be relatively low it is unlikely that noise impacts would occur in regard of patrons entering and exiting the premises. Furthermore, the machines in themselves would generate low levels of noise and only low background music would be played inside the premises.
7. This is a town centre location where there are restaurants and public houses and where some activity would be expected. The evidence does not support the activity generated by the premises would be substantially out of keeping with the noise levels in the area at those sensitive times of day. Consequently, I find that the potential noise generated associated with the proposed use of the premises would not be of an extent that would be substantially harmful to the living conditions of residents in the area.
8. Policy DM6 Hastings Development Management Local Plan 2015 (the Local Plan) states that applicants will be required to supply convincing supporting evidence (from a relevant and suitably qualified professional) that any actual or potential pollution can be overcome through appropriate remedial, preventative or precautionary measures. The proposal has been supported by a noise assessment that assesses potential impact on noise sensitive properties. The imposition of appropriately worded planning conditions that would prevent unacceptable noise generation, as requested by the Council's Environmental Health Team, would make the development acceptable in planning terms.
9. For these reasons, I conclude that the proposed development would not generate harmful levels of noise and disturbance at late night and/or early morning. As such, the proposed development would comply with Policy DM6 of the Local Plan that seeks, amongst other matters, noise that would be detrimental to neighbouring and/or local amenity to be kept to a practical minimum.

Health and wellbeing

10. Third party and Council Member concern has been raised to an over-concentration of gambling premises in this part of the town centre and the potential adverse social impacts of an adult gaming centre in this location. There is also concern that the use could harmfully affect the more vulnerable residents of Hastings, specifically in respect of gambling and its negative impact on health and wellbeing. It has also been highlighted that Castle Ward, within which the proposal would be located, is in the top 10% of the most

deprived wards in the whole country and the second with the highest violent crime record in Sussex.

11. The Council's report to its Planning Committee notes that gambling premises only make up a very minor proportion of the overall offer within Hastings town centre. The report comments that the nearest gambling premises, a betting shop, is approximately 100m from the appeal premises with the only other gaming centre over approximately 250m away. This would not represent an over-concentration of gambling premises in this part of the town centre, even with the proposed use in place. Whilst some third party representation suggests there may be more than this, the only other premises that I have been directed to is a premises said to be opening at the former Debenhams.
12. The Council's report to its Planning Committee also advises Members that matters of impact upon vulnerable people and problem gambling is a matter specifically considered under the licensing regime. The premises has been granted a 24-hour licence by the Council's Licensing Team which is subject to conditions to which the premises must adhere in order to protect customers and staff; such as, protection of children and other vulnerable persons, access to premises, age checks and responsible gambling. The Council's report to its Planning Committee also advises that the operators are fully aware of their Licensing Objectives and, as with all their premises, have robust measures in place to ensure vulnerable people are protected. I have been provided with a copy of the premises licence by the appellant.
13. Concern has also been raised over the use generating antisocial behaviour which could lead to potential damage to other premises in the locality. Representation from the Local Police Support Team notes that the level of crime and antisocial behaviour in Hastings district is above average when compared with the rest of Sussex but advise that they have no major concern regarding the proposal. I have no substantive evidence before me that would lead me to conclude that antisocial behaviour or crime would be generated as a result of the proposed use.
14. There is no clear correlation between the proposed gambling premises and its proximity to residents and any addition to problem gambling locally. There is also no clear local evidence that would support the proposed use having a detrimental impact on the health and wellbeing of the residents of Hastings or that would add to deprivation and/or crime in the area. Therefore, there is no clear link between the proposed use and the concerns raised by the Council. As such, I do not give the Council's contentions in respect of these matters significant weight. Furthermore, such matters are regulated by other legislation, including the licensing regime, and it is not for the planning system to duplicate issues covered through other legislative regimes. As highlighted by the appellant, other Inspectors have come to similar conclusions in respect of similar matters relating to health and wellbeing.
15. For these reasons, I conclude that the proposed development would not harm the health and wellbeing of Hastings residents. As such, the proposed development would not conflict with Policy FA3 of the Hastings Planning Strategy 2014 and the provisions of the National Planning Policy Framework (the Framework) that seek, amongst other matters, to ensure decisions result in development that promotes health and wellbeing.

Other Matters

16. Third party concern is raised over the decline of the town centre and suggest that the premises could be put to a better use and that local business would suffer as a result of the proposed use. The proposal would bring a vacant premises back into use, it would add to footfall and the diversification of the town centre and would provide employment. There is no clear indication that would suggest that the proposed use would bring about a decline in local businesses. Furthermore, the premises has a large shop front which the proposal indicates would be retained. Therefore, the change of use would not significantly alter the appearance of the street scene.
17. The premises would not offer any off-road parking provision. Nonetheless, the site is situated in an urban location where public transport is within walking distance of the site. The Council's highway advisers have not raised an objection to the proposal despite there being no off-road parking.

Conditions

18. I have considered the planning conditions suggested by the Council in light of paragraph 56 of the Framework and the advice in the Planning Practice Guidance. In addition to the standard time limit condition and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
19. For those reasons set out above and in the interest of safeguarding the living conditions of residents, conditions that require the development to be carried out in accordance with the recommendations contained within the noise assessment report and within specified construction times are necessary. For the same reasons a condition is necessary to provide details of any fixed plant, machinery and associated equipment that has the potential to cause noise disturbance are to be submitted for local planning authority approval prior to installation. In the interest of the living conditions of local residents and the visual appearance of the area a condition is necessary for the provision of refreshments to be ancillary to the permitted use.
20. The Council seeks to secure the premises as an Adult Gaming Centre (Sui Generis use) only and to remove any future change of use of the premises that may be permitted under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification). I consider this to be necessary to ensure that any future alternative use of the premises is appropriate to this town centre location and to safeguard the living conditions of existing and future residents.
21. A condition is requested that would prevent patrons from smoking or vaping outside the premises which fronts Queens Road. However, it is set out in the Council's Committee Minutes that the Planning Services Manager advised Members that such a condition would be unenforceable. I have no substantive reason that might lead me to a different view to that of the Planning Services Manager, therefore, I have not imposed such a condition.

Conclusion

22. Having regard to the above the appeal should be allowed.

Nicola Davies

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site plan, existing and proposed floor plans (QRD/HAS/04A) and noise assessment report (PR2001_47_FINAL_R1).

3. Prior to the commencement of the use hereby approved, the development shall be carried out in accordance with the recommendations contained within the Noise Assessment (PR2001_47_FINAL_R1) dated 19/10/2021. The works required within the Noise Assessment (PR2001_47_FINAL_R1) dated 19/10/2021 shall thereafter be retained permanently whilst the permitted use is in operation.

4. During construction any work which is audible at the site boundary, including deliveries to and from the premises, shall not take place before 08:00 and after 18:00 hours Monday-Friday or before 09:00 and after 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

5. The acoustic specification of any fixed plant, machinery and equipment associated with air movement (including fans, ducting and external openings), compressors, generators or plant which has the potential to cause noise disturbance to any noise sensitive receivers, shall be submitted to and approved by the Local Planning Authority before installation. Any fixed plant, machinery and equipment approved shall be provided in full accordance with the details approved and thereafter be retained permanently whilst the use is in operation.

6. The provision of refreshments at the premises shall remain ancillary to the permitted use as an Adult Gaming Centre (Sui Generis use).

7. Notwithstanding the provisions of The Town and County Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the use hereby approved is for an Adult Gaming Centre (Sui Generis use) only and there shall be no further change of use without planning permission first being applied for and approved in writing by the Local Planning Authority.

End of schedule

Refusal of Permission Town and Country Planning Acts



Development Management Team
Muriel Matters House, Breeds Place
Hastings, East Sussex TN34 3UY

www.hastings.gov.uk/planning

Application Number: HS/FA/21/00443

Drawing Numbers: Site plan, existing and proposed floor plans (QRD/HAS/04A) and noise assessment report (PR2001_47_FINAL_R1)

Applicant: Merkur Slots UK Ltd

Address:

Shop and Premises, 40-41 Queens Road, Hastings, TN34 1RE

Description:

Change of use of the ground floor unit of 40-41 Queens Road from a vacant pawnbrokers (E Class) to an Adult Gaming Centre (Sui Generis).

In pursuance of its powers under the Town and Country Planning Acts, and all other powers, the Council hereby REFUSES to permit the development described in the Plans and Application specified above, for the following reason:-

1. The proposed development would create a level of noise and disturbance at late night and early morning that would be out of keeping with the quiet nature of the area at this time of day. As such the proposed development would be contrary to Policy DM6 of the Hastings Development Management Local Plan (2015). In addition the proposal would result in a use type that would harmfully affect the more vulnerable residents of Hastings, specifically in respect of gambling and its negative impact on health and wellbeing contrary to Policy FA3 of the Hastings Planning Strategy (2014) and paragraph 130 of the National Planning Policy Framework, which seeks to ensure that decisions result in development that promotes health and wellbeing.

Note to the Applicant

You are advised:

1. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraph 38 of the National Planning Policy Framework.

Appeal against decision

Guidance on appeals can be found [here](#) . If you want a planning appeal to follow the inquiry procedure, you will need to tell us and the Planning Inspectorate. This must be done at least 10 days before your appeal submission. To tell us and the planning inspectorate, please email:.

Planning Inspectorate: inquiryappeals@planninginspectorate.gov.uk

Planning Services: planning@hastings.gov.uk

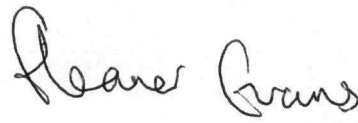
Further details about the inquiry procedure can be found **Page 21**

<https://www.gov.uk/government/news/inquiries-review-notification-of-inquiry-as-preferred-procedure-now-re>

[quired-10-days-prior-to-appeal-submission](#)

Dated: 24 February 2022

To: Planning Potential
Magdalen House
136-148 Tooley Street
London SE1 2TU

A handwritten signature in black ink, appearing to read 'Eleanor Evans', written in a cursive style.

for Eleanor Evans
Planning Services Manager

Application No. HS/FA/21/00443