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## Appeal Decision

Hearing held on 26 March 2025

Site visit made on 26 March 2025

**by N Praise BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 April 2025

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**Appeal Ref: APP/Z3635/W/24/3348201**

**39 Church Road, Ashford, Surrey TW15 2QF**

- 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 Astro Property (MK) Ltd against the decision of Spelthorne Borough Council.
  - The application Ref is 24/00577/FUL.
  - The development proposed is described as a change of use of basement and ground floor from a vacant bank to an adult gaming centre (AGC).
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### Decision

1. The appeal is allowed, and planning permission is granted for the change of use of basement and ground floor from a vacant bank to an adult gaming centre (AGC) at 39 Church Road, Ashford, Surrey TW15 2QF in accordance with the terms of the application, Ref 24/00577/FUL, subject to the following conditions:
  - 1) The development hereby permitted shall begin no later than two years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans - Site location Plan; 39ChrAGC/FUL/24/01; 39ChrAGC/FUL/24/02 and 39ChrAGC/FUL/24/03 received by Spelthorne Borough Council on the 08.05.2024.
  - 3) Prior to first operation of the development hereby permitted the separating floor between the development and the first-floor flats above shall be in accordance with the details set out in the Noise Assessment Report, Reference: P24-046-R01 April 2024 (Hepworth Acoustics). Thereafter, this standard of sound insulation shall be retained and maintained.
  - 4) The use hereby permitted shall only take place between the following hours: 09:00 – 23:00.

### Applications for costs

2. An application for costs was made by Astro Property (MK) Ltd against Spelthorne Borough Council. This application is the subject of a separate decision.

### Preliminary Matters

3. The National Planning Policy Framework (“the Framework”) was updated in December 2024. The main parties were given an opportunity to comment on this and the revised version has been referred to in this decision.

4. The Council has an emerging local plan which has recently been the subject of examination. However, at the time of writing this decision, the emerging local plan has not been found sound or whether any modifications are required. At the hearing it was agreed between the main parties that the emerging local plan is a material consideration, but any considerations carry limited weight. I have therefore determined the appeal on this basis.

## **Main Issues**

5. The main issues are the effect of the proposed development on:
  - the living conditions of neighbouring occupants with particular reference to noise; and
  - the vitality and viability of Ashford Town Centre.

## **Reasons**

### *Noise*

6. The proposed Adult Gaming Centre (“AGC”) would operate 24 hours a day, 7 days a week. The appeal site is located within a commercial area, however the closest noise sensitive use includes a residential use above the proposed development.
7. Policy EN11 of the Spelthorne Core Strategy and Policies Development Plan Document 2009 (“the Core Strategy”) requires developments that generate unacceptable noise levels to include measures to reduce noise to an acceptable level. Paragraph 198 of the Framework also states that planning decisions should ensure that new development mitigates and reduces to a minimum potential adverse impacts resulting from noise from new development.
8. The proposal is supported by a Noise Assessment (“the NA”). The NA concludes that any noise breakout from within the building would be low and would not result in a discernible loss of amenity to local residents. At the Hearing the Council confirmed that it broadly agreed with these findings. Having reviewed all the evidence before me I find no reason to come to another finding in this regard.
9. In respect to outdoor customer noise the NA also considers the potential noise impact at night from customers arriving at or leaving the premises. The NA suggests, based on evidence from other AGCs in Greater London, that customer movements would be around two to three customers arriving or leaving in 15-minute periods at peak times.
10. The NA explains that if customers are having a conversation when leaving typical speech noise levels would be around 65 dB(A) at 1 metre. When considered in relation to the distance to the nearest habitable-room window, noise levels reduce to 50 dB(A). The NA confirms that 50 dB(A) would be below the lowest measured night-time noise level; therefore, the noise impact from customers arriving at or leaving the premises is predicted to be low.
11. While this may be the case, what is less clear is the noise which occurs from customers using vehicles to leave or arrive at the premises and people smoking and vaping in groups. The report is silent on these concerns and such points were put to the appellant during the Hearing. Indeed, it was accepted that larger groups of four people or upwards create more noise than the NA allows for.

12. Additionally, individuals smoking or vaping may also watch media on mobile devices. The report is also silent on these matters. Customers could arrive and leave in vehicles. The shutting of car doors and associated engine noises of cars starting, idling and pulling away have also not been considered as part of the NA.
13. The impacts of noise pollution on health and quality of life are well understood. These include stress, annoyance, and sleep disturbance. It is therefore essential that the planning system balances the interests of commercial concerns with residential occupiers. I therefore need to be certain that the noise impacts would be acceptable particularly as the proposed development would operate throughout the night close to noise sensitive uses.
14. I accept this is a town centre location and there is already a degree of activity during the daytime. However, at night many commercial units would be closed, and the impact of noise would be more acutely experienced. For the reasons set out above, the NA does not fully demonstrate how the proposal would not cause adverse noise impacts to the living conditions of neighbouring occupants during the most sensitive time periods late into the night and the early hours of the morning.
15. The proposal would therefore be contrary to the relevant provisions of Policy EN11 of the Core Strategy. This, amongst other things, looks to ensure unacceptable levels of noise are not generated from developments.
16. In coming to this finding, I have had regard to another AGC elsewhere in the Borough<sup>1</sup>. This venue is different, and I do not know how close the nearest residential occupiers or other noise sensitive uses are. In addition, it appears to be located on a pedestrianised road with less activity from vehicles. On this basis direct comparisons cannot be made between the proposed development and this other AGC. The presence of an AGC elsewhere in the borough therefore has limited bearing on my findings regarding noise.

### *Vitality and Viability*

17. The appeal site lies within Ashford Town Centre and this commercial area comprises a diversity of uses which include retail shops, cafes, hair salons / barbers, beauty services, professional services, betting shops, bakers and dry cleaners, amongst other uses. Vacancy rates are also relatively low when compared to other large shopping centres in Spelthorne<sup>2</sup>.
18. It is proposed to change the use of the appeal site from a financial service use<sup>3</sup> to an AGC<sup>4</sup>. The AGC would be an adult establishment providing various gaming machines to visiting members of the public. Policy TC3 of the Core Strategy protects existing retail uses and encourages mixed use development that contributes positively to the centre and its long-term viability and vitality. This broadly accords with the Framework which seeks to support town centres and the role they play at the heart of local communities<sup>5</sup>.

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<sup>1</sup> 109 High Street, Staines, Surrey, TW18 4PQ.

<sup>2</sup> Appendix 2: Retail, Spelthorne Borough Council Authority Monitoring Report 2023.

<sup>3</sup> Use Class E(c)(i) as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended).

<sup>4</sup> a sui-generis use.

<sup>5</sup> Paragraph 90.

19. Town centres provide key services and facilities that people need; the success of a town centre relies on many aspects and one of these aspects includes a suitable mix of uses and facilities to serve the interests of all members of society. A healthy mix of uses enables people to make choices in which leisure activities they may wish to engage in, and a successful combination of uses can enhance the social wellbeing of communities and the wider economic prosperity of the area.
20. Following on from this the Framework states that town centres need to diversify in a way that can respond to changes in the retail and leisure industries<sup>5</sup>. Therefore, the right balance of uses is essential to the health of the town centre and the benefits it delivers to the community creating better places to live and work.
21. I appreciate that an AGC is not a 'traditional' town centre use being sui generis; these uses do not fit into their own use class often being unique in themselves. For the purposes of this appeal, this brings the proposed use under planning control. However, a sui generis use is not unacceptable by default and there is no reason before me to suggest they are excluded as a matter of principle from town centres. The sui generis allows the decision maker to consider the proposed development on its own merits including if any harm may arise.
22. The glossary at Annex 2 of the Framework outlines uses which could be considered appropriate within town centres. While AGCs are not included in this list there was no suggestion at the Hearing that this is a closed list. The list includes uses such as retail, leisure, entertainment and more intensive sport and recreation uses such as bars, pubs, nightclubs, bingo halls and casinos amongst other things.
23. This list therefore gives a flavour of what may be appropriate in a town centre subject to the specific detail of each case. It was put to me at the Hearing that an AGC shares some characteristics with a bingo hall or a casino in terms of its typical customer age profile, contribution to the night-time economy and activities that take place. I note that there would be similarities, and these uses are listed as main town centre uses in the glossary of the Framework.
24. I appreciate the limited amount of existing night-time uses in Ashford Town Centre; however, I also note that Planning Policy Guidance<sup>6</sup> states that evening and night-time activities have the potential to increase economic activity within town centres and provide additional employment opportunities. They can allow town centres to diversify and help develop their unique brand and offer services beyond retail. However, it is important to also consider any harms which may occur.
25. I have not been made aware of any legislative or policy requirements to market the existing unit as a Class E unit or limit the number of betting facilities within the locality. Indeed, while Policy TC3 seeks to protect the retail character, beyond this the test focuses on the vitality and viability of the town centre.

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<sup>6</sup> Paragraph: 001 Reference ID: 2b-001-20190722 of the Planning Practice Guidance.

26. The current unit is not in retail use, as such the current number of non-retail uses would not be altered and there would not be any loss of existing retail uses. Given the composition of retail uses would not be eroded, there is limited evidence before me to show that the established retail character of the town centre would be harmed. It is also conceivable that patrons of the proposed AGC would increase footfall to the town centre with potential to contribute to spin off trade by entering other shops and facilities delivering economic benefits to these other commercial units.
27. The age profile of customers would be over eighteen and I acknowledge this would exclude children, teenagers, and family groups. While this would be restrictive in this regard, the glossary of the Framework identifies uses such as nightclubs and casinos as appropriate town centre uses and these also typically cater for those over eighteen. While there are already two betting shops within Ashford Town Centre, there is limited evidence before me to suggest there is an overconcentration of establishments which only permit the entry of adults and relate to gambling.
28. Shopfronts and their windows are important, they contribute to the wider vibrancy of a town centre; they also communicate a brand's personality, and invite customers to enter the premises. The appellant confirms that the shop frontage would be retained, however, I appreciate that gaming regulations require some screening of the inside floorspace.
29. As requested during the Hearing, I visited another AGC within the borough<sup>1</sup>. I noted the use of screening, signage, and advertising behind the windows. This shows that an active frontage can be retained in a visually appealing way while complying with gambling regulations. Indeed, it would be in the interests of the operator to make the unit visually attractive to invite visiting members of the public onto the premises. I therefore find that the proposed development would be designed to attract customers, and this would add its own layer of vibrancy and activity to the town centre both on its own but also as a part of the wider shop front character along this frontage.
30. I have considered the volume of written objections, a petition, and the well-attended, clearly articulated representations made by members of the public at the Hearing; including a letter read out by the Member of Parliament. These were authentic and very understandable concerns about the proposed development, and I have carefully considered each written representation as well as the oral comments made at the Hearing.
31. I note the concerns regarding the perceived risk of crime and antisocial behaviour associated with the proposed development. However, there is no compelling evidence before me to directly show that AGCs contribute toward increased crime and disorder in the area. The Council also confirms that the local Police Crime Officer did not raise any specific concerns while noting that any crime and / or anti-social behaviour issues would be a matter for the licensing regime.

32. While gambling is primarily a leisure pursuit, I also profoundly accept the impacts of problem gambling, and the damaging effects addiction can have on individuals and those around them. Like all addictions, this is a serious matter, indeed the gambling industry is strictly regulated under other regulation beyond the planning regime<sup>7</sup>. This therefore ensures that operators meet certain standards for fairness, integrity, and transparency with penalties for non-compliance including addressing concerns related to problem gambling. This is very important, and I do not consider it lightly, however, given it is covered under other regulations, it does not alter my overall findings.
33. The demands and habits of the community change over time and a healthy town centre needs to respond to these changes. A suitable mix of uses and facilities is essential to serve the interests of all members of society to make choices in which leisure activities they may wish to engage in. As indicated above, there is limited evidence before me of any overconcentration of particular uses, services or facilities.
34. The proposed development would further this range of facilities positively contributing toward its diversity. It has not, therefore, been robustly shown, in evidence, that the proposed use would harm the vitality and viability of Ashford Town Centre. The proposed development would therefore accord with the relevant provisions of Policy TC3 of the Core Strategy. This, amongst other things, looks to ensure development proposals contribute to the long-term vitality and viability of the centre.
35. In coming to this finding I have considered another appeal for an AGC which was dismissed<sup>8</sup>. However, this appeal relates to development in another borough elsewhere and was made nearly eight years ago before the current version of the Framework was published. In addition, it is not clear if the Inspector, in this other appeal, had the benefit of visiting another AGC as I have done. This other appeal decision, therefore, has limited bearing on my overall decision.

## Other Matters

36. The proposed development would occupy an existing unit within the town centre, the Council state that the use itself would not generate a significant increase in traffic movements or parking pressures. They acknowledge that on, and off-street parking is available within the town centre and the appeal site is also well served by public transport. I have no clear reason to disagree.
37. Alternative uses are suggested in representations such as a retail use or community use. While there is no reason before me as to why these would not comply with the development plan, they are not part of this proposal. I have therefore considered the appeal before me on its own merits as set out in this decision.
38. Interested parties have commented about the loss of property values. Planning is concerned with the use of land in the public interest, rather than the impact of development on individual property values<sup>9</sup>. As such, property values are not determinative in this instance.

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<sup>7</sup> For instance, the Gambling Act 2005.

<sup>8</sup> Ref: APP/C1055/W/17/3173476.

<sup>9</sup> Paragraph: 008 Reference ID: 21b-008-20140306 of the Planning Practice Guidance.

39. There is limited evidence before me to show that light pollution from the proposed AGC would be unneighbourly. I have not been made aware of any existing issues with light pollution at the commercial premises in Ashford Town Centre and there is no compelling reason before me to suggest the AGC would create adverse light pollution.

### **Planning Balance**

40. The proposed development would bring a vacant unit back into use and I have also found no harm to the vitality and viability of the centre from the proposed development. I have, however, found that the noise impact of the proposed development has not been shown to be acceptable during sensitive hours late into the night and into the early hours of the morning. As such, this harm to the living conditions of neighbouring occupants would be considerable and long lasting. The benefits proposed would not outweigh this harm.
41. At the Hearing the appellant suggested that should I find the proposal to be unacceptable as a 24hr operation they would accept a condition to limit the hours of operation. While 9am as an opening time was agreed, there was some debate between the main parties as to what would be an acceptable closing time with considerable difference of opinion in this regard.
42. I accept that many traditional town centre uses close by the early evening, however, town centre uses can be acceptable into the evening and beyond if they do not generate harm. In this case the proposed development has been found to be harmful during the sensitive hours of the late night and early morning. I have not been provided with a formal definition of which periods of night and early morning are the most sensitive, therefore, it falls to me, as a matter of planning judgment, to consider what would be reasonable to mitigate the harm I have identified. I have also considered the suggestions from both parties as to what may be appropriate.
43. In this case, the Noise Act 1996 identifies a sensitive period of time after 23:00. This would be reasonable given the concerns I have identified as part of my decision relate to noise impacts at sensitive late night and early morning hours. Therefore, a condition limiting these hours as I have set out above would make an otherwise unacceptable development acceptable.

### **Conditions**

44. The Council has suggested a list of five conditions which I have considered and where necessary amended in line with national policy and guidance. In the interests of certainty, conditions specifying time, and the approved plans are needed. Furthermore, to ensure that the living conditions of local residents would be protected it is necessary and reasonable to impose conditions to ensure compliance with the NA's findings on internal noise break out and to limit opening hours.
45. I have not imposed the Council's suggested condition No 4 as the appellant would have to apply for and implement a licence under the Gambling Act 2005 which specifically includes a requirement to prevent the proposed use from being a source of crime. Although a separate process, this parallel control provides some reassurance that the appellant would have to fully address crime as part of a separate licencing regime.

46. I have also not imposed suggested condition No 5 which was submitted orally by the Council at the Hearing. This condition sought to control significant external changes to the appeal building. However, given this matter is already adequately controlled under Section 55 of the Town and Country Planning Act 1990, the imposition of such a condition would not be necessary.

### **Conclusion**

47. For the above reasons, having regard to the development plan as a whole and all other relevant considerations, the appeal is allowed subject to the conditions listed above.

*N Praine*

INSPECTOR

## **ANNEX A: APPEARANCES**

### **FOR THE APPELLANT:**

Roger James Pidgeon, Dip Tp, MRTPI - Agent.

Thomas Bailess, M Eng, MIOA - Principal Consultant, Hepworth Acoustics.

### **FOR THE LOCAL PLANNING AUTHORITY:**

Oliver Capildeo, Barrister, LLB (Hons); BPTC LLM – Counsel instructed by Spelthorne Borough Council.

Matthew Clapham, BSc (Hons), MA - Senior Planning Officer.

Dave Denham, Masters degree in environmental health; PG Diploma in acoustics and noise control CIEH and IOA - Senior Environmental Health Regulatory Officer.

### **INTERESTED PARTIES (denoting those persons who took part in the hearing and whose names were recorded):**

Catherine Rutherford – Ward Councillor.

John Dickens – Chair Ashford Residents Association.

Angela Myne - Local Resident.

Nick Urquhart - Local Resident.

Andrew McLuskuy - Local Resident.

Tom Kanek - Local Resident and Business Owner.

Caroline Shannon - Local Resident.

Ian Smith - Local Resident.

Christine Hughes - Local Resident.

### **ORAL REPRESENTATIONS WERE ALSO GIVEN ON BEHALF OF:**

Lincoln Jopp MC - Member of Parliament for Spelthorne.

Michelle Arnold – Ward Councillor.

## **ANNEX B: DOCUMENTS ACCEPTED DURING THE HEARING:**

HD1. Transcript of Lincoln Jopp's oral representations.

HD2. Transcript of Michelle Arnold's oral representations.