

**PLANNING COMMITTEE – 25 APRIL 2019**

**DEFERRED ITEM**

Report of the Head of Planning

**DEFERRED ITEMS**

Reports shown in previous Minutes as being deferred from that Meeting

<b>DEF ITEM 1 REFERENCE NO - 18/501726/FULL</b>		
<b>APPLICATION PROPOSAL</b> Erection of a 3 storey building comprising of an amusement centre (adult gaming centre) on the ground floor with 2 x single bedroom flats on the upper floors.		
<b>ADDRESS</b> Land Between 119A And 121A High Street Sittingbourne Kent ME10 4AQ		
<b>RECOMMENDATION</b> Grant subject to conditions.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The development would provide an additional unit on a vacant plot with the High Street and therefore would not erode or diminish the retail offering of the Core Shopping Area. The development would also provide two residential flats within a sustainable, central, urban location.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Officers are seeking to amend the Committee's previous resolution in order to add four conditions requested by the Environment Agency, and remove one condition which would be duplicated.		
<b>WARD</b> Chalkwell	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Godden Two LLP <b>AGENT</b> Roger Etchells & Co
<b>DECISION DUE DATE</b> 23/05/18		<b>PUBLICITY EXPIRY DATE</b> 25/05/18

**Planning History**

SW/10/0012

Erection of three storey building to provide shop at ground floor with two flats above (resubmission of SW/06/0033).

Granted Decision Date: 02.03.2010

The development would have provided an additional retail unit within the Core Shopping Area and two residential flats within a sustainable urban location, and would have sat comfortably within the context of the High Street Conservation Area. That permission has now expired, however.

SW/06/0033

Erection of three storey building to provide shop at ground floor with two flats above

Granted Decision Date: 03.03.2006

SW/01/1254

Shop unit with storage above with associated external works and roads.

Granted Decision Date: 05.02.2002

SW/97/0025

Change of use to an AGC / amusement centre. (Olympia Leisure, 62 High Street.)

Refused Decision Date: 21.02.1997 Allowed at appeal

This permission relates to the existing AGC at 62 High Street, where permission was refused by the Council but the subsequent appeal allowed by the Inspector, who considered that such uses would not detract from the wider retail offering, vitality of the High Street. Further commentary is set out in the main report, below.

## **1.0 BACKGROUND**

- 1.01 Members will recall that this application was reported to the Meeting on 4<sup>th</sup> April, recommended for approval. After a wide ranging discussion, the Planning Committee was minded to not accept the officers recommendation to approve.
- 1.02 Determination of the application was therefore deferred to this meeting in accordance with the Terms of Reference of the Planning Committee, since a refusal of planning permission would have been contrary to my recommendation, contrary to policy and/or guidance, and in my view Members had not demonstrated sound planning reasons for refusing the application which could be substantiated on appeal.
- 1.03 In this new report I do not intend to repeat the assessment of the application as set out in the original report. I will though assess the possible implications of a decision to refuse planning permission for the reasons mooted at the previous Meeting, and confirm my recommendation that permission be granted.

## **2.0 POSSIBLE IMPLICATIONS OF A DECISION TO REFUSE PLANNING PERMISSION**

- 2.01 My concerns over a possible decision to refuse planning permission for this development is based on the need for planning decisions to reflect a proper assessment of planning policies and other material considerations and for Members, when overturning officer recommendations, to present sound, justifiable and defensible planning reasons for refusal related to the likely impact of the proposed development.
- 2.02 At the meeting, the discussion of the Committee centred around a number of issues, which I set out below.

Inappropriate location for such a use in a primary shopping frontage which would detract from the vitality of the High Street

- 2.03 As members are aware the site is located within the Sittingbourne Town Centre Regeneration Zone (Policy Regen 1 is relevant) and a primary shopping frontage (Policy DM1 is relevant). In terms of assessing the proposal against both these policies I am of the opinion that the development would generally comply with both.

2.04 In respect of 1a of Policy DM1 whilst the proposal would not provide more retail (Class A1) floorspace, it would not detract from the primary shopping function of this part of the town centre as it would add to the mix of existing uses which in turn would help to maintain or increase Sittingbourne's overall vitality and viability. It would represent a use which is currently under-represented in the town centre as there is only one other adult gaming centre (AGC). It may also result in an increase in pedestrian activity in the immediate area. With respect to 1b of Policy DM1 the proposal would not result in the loss of retail floorspace as it is currently a vacant plot of land and will not result in the break up of a retail frontage as both units either side of the site are in non-retail use – a dentist and a Wimpy bar. However, the proposal does struggle to fully comply with 1c of DM1 as it may be argued that granting planning permission for this proposal would lead to a concentration of non-retail frontage uses along this side of this part of the High Street. Members should note that between (but not including) the Sittingbourne Baptist Church and the Covenant Love Chapel, 62% of the shop frontage on this side of the High Street is within use class A1 retail (noting that some units are currently vacant) and that if one includes the proposed AGC – which is sui generis (i.e. a class of its own), then the percentage of A1 retail frontage would reduce to 59%.

Whilst I am of the opinion that such a reduction is modest and would not result in a significant increase in non-retail frontage here, the proposal would not result in the loss or erosion of a non-retail use that underpins the vitality and viability of the area as the site is currently a vacant parcel of land. If however members are so concerned, then one could argue that this may be grounds for considering refusing the application, although I do consider that it would be difficult to win such an argument on appeal. Nevertheless, if an appeal was to be submitted, I believe that there would be limited risk of a significant successful costs claim against the Council.

2.05 The development would comply with Policy Regen 1, as it would introduce a use within the town centre which will provide greater vitality, viability and diversity of services and facilities than at present. It will enhance key non-retail uses in the town centre, especially for the night time economy and would also provide 2 x 1 bed flats.

2.06 Finally, the proposed development would also comply with the updated NPPF which recognises that diversification is key to the long-term vitality and viability of town centres and that they need to “respond to rapid changes to the retail and leisure industries”.

Already enough of these businesses like this in the High Street

2.07 Members should note that there is only one other AGC in the High Street and therefore it can be argued to add to the diversity of uses within the primary shopping area. Also, the existing and proposed AGCs are situated a reasonable distance apart from each other, thereby not oversaturating a particular part of the High Street. Some objectors have commented that the existing betting shops on the High Street should be counted along with the proposed AGC as similar uses. If one was to accept such a scenario, then in these circumstances with the proposed use, there would be a total of 4

AGC/betting shops (Paddy Power to the west to the site and Betfred to the east) within the town centre, spread along the length of the primary shopping area.

I would remind members that in considering whether or not to refuse an application there needs to be an identified harm and in this instance I do not consider the number of such premises (with or without including betting shops) to be overwhelming or harmful to the overall mix of uses within this part of the town centre.

Morally wrong to have such uses in the town centre

2.08 Whilst I am aware that some members may be concerned about the number of gambling establishments in the High Street to argue that it is morally wrong or similar to have such uses in town centres, this is not a material planning consideration and therefore is not one that can be taken into account when determining this application.

**3.0 CONCLUSION**

3.01 Reasons for refusing planning permission need to be based on relevant planning policy guidance and /or material planning considerations relevant to the development proposed. As noted above, I do not consider that the planning committee’s consideration of this development gave rise to such reasons , hence why the application was called in.

3.02 In this case I am of the opinion that the proposed development would not give rise to material planning harm justifying the refusal of planning permission, and I do not consider that Members’ consideration of the application demonstrates any such harm as arising. I therefore remain of the view that planning permission should be granted and accordingly recommend approval.

**4.0 RECOMMENDATION - GRANT** Subject to the following conditions:

**CONDITIONS**

(1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

(2) No development shall take place other than in complete accordance with drawing 007/18/02.

Reason: In the interest of visual amenity and preserving or enhancing the character and appearance of the conservation area.

(3) No development shall take place, including any works of demolition, until a

Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- i. storage of plant and materials used in constructing the development
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- v. wheel washing facilities
- vi. measures to control the emission of dust and dirt during construction
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: In the interests of the amenities of the area and highway safety and convenience.

- (4) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification, which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

- (5) No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site has been submitted to, and approved in writing by, the Local Planning Authority. This strategy will include the following components:

A. A preliminary risk assessment which has identified:

- all previous uses;
- potential contaminants associated with those uses;
- a conceptual model of the site indicating sources, pathways and receptors; and
- potentially unacceptable risks arising from contamination at the site.

B. A site investigation scheme, based on (A) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

C. The results of the site investigation and the detailed risk assessment referred to in (B) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

D. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (C) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

Reason: To ensure that the development is not put at unacceptable risk from, or adversely affected by, unacceptable levels water pollution in line with paragraph 170 of the National Planning Policy Framework.

- (6) Prior to any part of the permitted development being occupied a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

Reason: To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete.

- (7) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reason: To ensure that the development is not put at unacceptable risk from, or adversely affected by, unacceptable levels water pollution from previously unidentified contamination sources at the development site.

- (8) No infiltration of surface water drainage into the ground is permitted other than with the written consent of the Local Planning Authority. The

development shall be carried out in accordance with the approved details.

Reason: To ensure that the development is not put at unacceptable risk from, or adversely affected by, unacceptable levels water pollution caused by mobilised contaminants.

- (9) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: To protect controlled waters, including groundwater and to comply with the National Planning Policy Framework. Piling or any other foundation designs using penetrative methods can result in risks to potable supplies from, for example, pollution / turbidity, risk of mobilising contamination, drilling through different aquifers and creating preferential pathways. Thus it should be demonstrated that any proposed piling will not result in contamination of groundwater.

- (10) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 - 1900 hours, Saturdays 0730 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (11) No development beyond the construction of foundations shall take place until details in the form of samples of external finishing materials to be used in the construction of the development hereby approved, including details of finishes and colouring, have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity and preserving or enhancing the character and appearance of the conservation area.

- (12) No development beyond the construction of foundations shall take place until detailed drawings (at a suggested scale of 1:5) of all new external joinery work, fittings, and the new shopfront hereby permitted, together with sections through glazing bars, frames and mouldings, have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of preserving or enhancing the character and appearance of the conservation area.

- (13) No development beyond the construction of foundations shall take place until manufacturer's specifications of the windows, doors, balconies, and balustrades be used on the development hereby permitted have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- (14) No development beyond construction of foundations shall take place until 1:2 plan and vertical part section drawings showing the degree to which all window frames will be set back from the brick face of the building have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- (15) The brickwork on the front (High Street) elevation of the building hereby permitted shall be laid in Flemish Bond.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- (16) No light fittings, pipework, vents, ducts, flues, meter boxes, alarm boxes, ductwork, satellite dishes, or other appendages shall be fixed to the High Street elevation of the building hereby permitted unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- (17) The use of the ground floor of the premises hereby permitted shall be restricted to the hours of 09.00 to 22.00 Monday to Saturday, and 10.00 to 21.30 on Sundays and Bank Holidays.

Reason: In the interests of the amenities of the area.

- (18) The use of the ground floor of the premises hereby permitted shall not commence until a scheme of soundproofing between the ground floor and the residential units above has been submitted to and approved in writing by the Local Planning Authority. Upon approval the scheme shall be implemented as agreed.

Reason: In the interest of residential amenity.



## INFORMATIVES

1. It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

2. A formal application for connection to the public sewerage system is required in order to service this development, please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk). Please read our New Connections Services Charging Arrangements documents which has now been published and is available to read on our website via the following link <https://beta.southernwater.co.uk/infrastructurecharges>

Due to changes in legislation that came in to force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site.

The applicant is advised to discuss the matter further with Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk).

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance: the application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

If your decision includes conditions, there is a separate application process to discharge them. You can apply online at, or download forms from, [www.planningportal.co.uk](http://www.planningportal.co.uk) (search for 'discharge of conditions').

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

