

**APPENDIX 1**

Planning Committee Report – 4 April 2019

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**PLANNING COMMITTEE – 4<sup>th</sup> APRIL 2019****PART 2**

Report of the Head of Planning

**PART 2**Applications for which **PERMISSION** is recommended

<b>2.1 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.			
<b>SUMMARY OF REASONS FOR RECOMMENDATION.</b> The development would provide an additional unit on a vacant plot within 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		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/10/0012	Erection of three storey building to provide shop at ground floor with two flats above (resubmission of SW/06/0033).	Granted.	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.	2006

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SW/01/1254	Shop unit with storage above with associated external works and roads.	Granted.	2001
SW/97/0025	Change of use to an AGC / amusement centre. (Olympia Leisure, 62 High Street.)	Refused, allowed at appeal.	1997

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, and viability of the High Street. Further commentary is set out in the main report, below.

**1.0 INTRODUCTION**

- 1.01 Members may recall that this item was presented for consideration at the meeting on 8 November 2018, where Members voted to approve the application subject to securing a SAMMS payment.
- 1.02 The agreed minutes refer to the officer's verbal update in respect of additional standard conditions requested by the Environment Agency (to ensure groundwater is not contaminated by any unknown contaminants on the site). However, Members' final, agreed, and minuted resolution does not delegate powers to officers to add those additional conditions to the decision notice.
- 1.03 It is thought that this is a simple oversight with the drafting and agreement of the minutes, but it is important that the Environment Agency's requested conditions are attached to the decision notice in the interest of protecting groundwater supplies from potential contaminants (the site is within Source Protection Zone 1), and Members would need to formally amend the original resolution to give officers power to do so.
- 1.04 The conditions and informatives are set out below. Conditions 5, 6, 7, and 8 are the four additional conditions requested by the Environment Agency. Condition 10 of the previous report has been deleted as it would be duplicated by condition 8 below.
- 1.05 I am requesting delegation from the committee to add these additional conditions to the decision notice (which has not yet been issued), and remove the duplicated condition.
- 1.06 The application remains identical in all other respects, and the applicant has recently agreed to the SAMMS payment. The original report and minutes are attached for reference.

**2.0 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.

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- (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
  - iii. 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.

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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:

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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.

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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.

**Council's approach to this 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.

**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

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[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: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk).

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.

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<b>2.8 REFERENCE NO - 18/501726/FULL</b>			
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<b>ADDRESS</b> Land Between 119A And 121A High Street, Sittingbourne, Kent, ME10 4AQ.			
<b>RECOMMENDATION</b> Grant subject to conditions and receipt of comments from County Archaeologist			
<b>SUMMARY OF REASONS FOR RECOMMENDATION.</b> The development would provide an additional unit on a vacant plot within 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> Called in by Ward Councillor Whelan.			
<b>WARD</b> Chalkwell	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Godden Two LLP <b>AGENT</b> Roger Etchells & Co	
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**1.0 DESCRIPTION OF SITE**

- 1.01 The application site is a vacant plot situated between Wimpy and the (currently empty) former Mothercare units on Sittingbourne High Street. It is enclosed by a close-boarded timber fence to the front and rear, largely overgrown, and backs on to a small parking / service yard to the rear of the High Street units.
- 1.02 The Sittingbourne High Street Conservation Area boundary runs along the front of the site, with the actual plot itself excluded from the designation.

**2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the erection of a three-storey building to provide an adult gaming centre (AGC) at ground floor with two one-bed flats on the upper floors.
- 2.02 The scale and design of the building is almost identical to the scheme approved previously under SW/10/0012 and SW/06/0033, with a pitched roof and decorative projecting bay feature to the front, vertically proportioned windows on the upper floors, and a traditional shopfront design at ground floor. The building will stand approximately 13.5m tall (similar height to the Mothercare building), 6m wide, and 24m deep (to match the depth of Mothercare) at two-storey level with a single storey bin / cycle store projecting 6m further along the flank elevation of Wimpy.
- 2.03 The proposed first floor flat would include a bedroom, lounge, kitchen, bathroom, and storage space. The second floor flat would have a bedroom, bathroom, storage space, and combined kitchen / lounge. Both flats would have floor spaces well in excess of the National Space Standards. Access to the flats would be via the rear of the building.
- 2.04 The proposed AGC at ground floor would feature "retail display" windows within the shopfront, an open area for gambling / gaming machines occupying the majority of the floor space, and a small office, toilet, and kitchen area towards the rear. The submitted Planning Statement comments:

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- 4.7 The activity proposed for the ground floor is that of an adult only amusement centre (Adult Gaming Centre) consisting of gaming machines, ancillary catering (light refreshments, tea and coffee) and retail sales. Such establishments are found in most shopping centres. Indeed, there is a similar one in this centre at 62 High Street. They have different effects from amusement arcades. There is a statutory obligation to exclude under 18's.
- 4.8 The ground floor premises would be soundproofed and have a window display of goods.
- 4.9 Customer Usage - It is generally accepted that this kind of establishment attracts the same type of person as nearby shops. It also attracts them in similar numbers. There is considerable evidence confirming these characteristics which can be provided if requested.
- 4.10 Appearance - The proposal would be different visually from other non-retail uses. The public perception is that the window displays compare favourably with retail uses let alone other non-retail uses. Such displays have frequently been compared favourably with shops and other non-retail uses by Inspectors dealing with appeals.
- 4.11 Amusement centres of this kind are harmless to nearby traders. They do not cause noise or disturbance.
- 4.12 I am confident that the proposal will:
  - (1) Enable the development of a longstanding 'gap' site to the benefit of the appearance and functioning of the town centre.
  - (2) have no adverse impact on retailing activity;
  - (3) add to diversity, choice and competition in the shopping area;
  - (4) not harm the character or trade of the shopping centre;
  - (5) enhance the vitality of the shopping centre;
  - (6) add to the evening economy;
  - (7) provide 2 new dwellings.
- 4.13 There is considerable evidence confirming these characteristics which can be provided if requested.
- 4.14 It is intended that the shopfront will incorporate an attractive window display of goods for sale to attract the interest of the passer-by. The display will be changed to maintain visual interest. The display can be favourably compared with those of many shops and non-retail uses in the shopping centre and would be preferable to the continued vacancy of the site.

**3.0 SUMMARY INFORMATION**

	<b>Proposed</b>
Site Area	139sqm.
Approximate Ridge Height	13m
Approximate Eaves Height	11m
Approximate Depth	24m
Approximate Width	6m
No. of Storeys	3
Parking Spaces	0
No. of Residential Units	2

**4.0 PLANNING CONSTRAINTS**

4.01 As noted above: the site frontage abuts the Sittingbourne High Street Conservation Area boundary.

**5.0 POLICY AND OTHER CONSIDERATIONS**

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5.01 The National Planning Policy Framework (NPPF) and National Planning Policy Guidance) NPPG do not contain specific policies relating to amusement centres. However, such premises fall within the definition of “Main town centre uses” (which includes entertainment uses, sport and recreation, casinos, and bingo halls, amongst others) set out in Annex 2 to the NPPF. Therefore, such activities are subject to the general provisions in Section 2 of the NPPF. These include a requirement that Councils set out clear definitions of primary and secondary shopping frontages in their Local Plan, together with policies setting out which uses will be permitted in such locations. The NPPF does not preclude activities like amusement centres or casinos from primary frontages, provided that they contribute to the mix of uses within the area and do not result in the significant degradation of the areas’ retail function.

5.02 Para. 85 of the NPPF states:

*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. Policies should:*

- 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;*

5.03 Policies Regen 1 (central Sittingbourne regeneration area), CP1 (strong, competitive economy), CP4 (good design), CP8 (historic environment), DM1 (vitality and viability of town centres), DM7 (vehicle parking), DM14 (general criteria), DM15 (new shopfronts, signs, and advertisements), and DM33 (conservation areas) of the adopted Swale Borough Local Plan 2017 are relevant.

5.04 Of particular relevance are the following policy extracts:

CP1

*Actions by public, private and voluntary sectors shall work towards the delivery of the Local Plan economic strategy. Development proposals will, as appropriate:*

*3. Secure additional non-food retail/leisure growth, taking account of committed schemes and existing centres and provide flexibility over uses in town centres to enable them to respond to the challenges they face;*

DM1

*In town centres and other commercial areas, planning permission will be granted for development proposals, in accordance with the following:*

*1. Within the defined primary shopping frontages, as shown on the Proposals Map, the Borough Council will permit non-retail uses that:*

- a. maintain or enhance the primary retail function of the area by adding to the mix of uses to help maintain or increase its overall vitality and viability, especially where providing a service or facility for residents or visitors currently lacking or*

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*under-represented in the town centre, or by increasing pedestrian activity in the immediate locality;*

- b. do not result in a significant loss of retail floorspace or the break-up of a continuous retail frontage;*
- c. do not lead to a concentration of non-retail frontage; and*
- d. do not result in the loss or erosion of a non-retail use that underpins the role, functioning, vitality and viability of the area.*

**Regen 1**

*A regeneration area for central Sittingbourne, including its town centre, is shown on the Proposals Map. Within this area proposals which support the objective of consolidating and expanding Sittingbourne's position as the main retail, business, cultural, community and civic centre for the Borough, will be permitted.*

- A. Development within the area will proceed in accordance with, or complement, a Masterplan to be prepared to support the development agreement between the regeneration partners and will accord with the key objectives of:*
  - 1. Providing additional comparison retail space and uses which provide greater vitality, viability, diversity and activity;*
- B. All development proposals will:*
  - 1. Accord with Policies DM 1 and DM 2 to maintain and enhance the retail offer of the primary shopping areas, whilst introducing uses there and elsewhere within the town centre which achieve greater vitality, viability and diversity of services and facilities, alongside buildings of architectural excellence. Where town centre vitality and viability is not harmed, other sites able to achieve similar objectives will be permitted within the regeneration area defined by this policy;*
  - 2. Maintain or enhance key non-retail uses which underpin the retail and community functions of the town centre for both day and night time economy;*
  - 3. Provide for residential development of suitable type and scale above commercial premises, or as part of mixed use developments, or on other suitable sites;*

**6.0 LOCAL REPRESENTATIONS**

6.01 The application has been called in by Ward Councillor Whelan.

6.02 We have received objections from five separate addresses (including a very lengthy series of objections from a planning agent on behalf of Olympia Leisure – the existing Adult Gaming Centre (AGC) further along the High Street) raising the following summarised concerns:

- The existing parking area to the rear is over-subscribed and further vehicles will make access to the shop units more difficult;
- Another "betting shop" will give a sense of deprivation within the town centre;
- The site should be developed for retail purposes, which will provide employment and encourage visitors;
- The High Street needs more shops; and
- The proposal would be contrary to policy DM1.

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- 6.03 The objection on behalf of the existing AGC is more technical in respect of its references to planning policies and AGC practices, and raises the following summarised points:
- Changes in legislation in the early 2000s allowed larger payouts, which increased the number of customers and footfall, and consequently lead to an expansion of these sorts of premises within town centres with Fixed Odds Betting Terminals (FOBTs) overtaking traditional bookmakers in popularity;
  - The smoking ban has affected footfall in AGCs, discouraging many elderly and female visitors, leading to a largely male customer profile;
  - This lead to an approximately 20% drop in profits nationally;
  - The submitted "customer profile" supporting the application is therefore out of date, and footfall is likely to be much lower than anticipated. AGCs therefore contribute little to 'vitality and viability';
  - A number of footfall surveys from Dover have been provided to demonstrate that other retail units have higher footfall than AGCs / footfall will be lower than projected;
  - The "retail display" within the shop front is not representative of the use (nor do the applicants have a retail display in any of the 14 existing AGCs elsewhere), as any retail use is wholly subservient to the use as an AGC, and would not encourage customers other than those intending to use the gaming/betting machines;
  - In reality, and as at other AGCs, the windows will most likely be empty or covered in advertisements for the premises, and the display of retail goods would be difficult to enforce;
  - The Council has a duty to consider public health, particularly in respect of at-risk persons (or "problem gamblers") who may use the premises;
  - Policy DM1 can't be interpreted to support the proposed development;
  - Approval would lead to a concentration of non-retail frontage;
  - No evidence has been provided to demonstrate that a retail use is not viable here;
  - Such uses should be directed to secondary shopping areas; and
  - There are multiple "machine gaming venues" within Sittingbourne already:
    - o William Hill, Paddy Power, Betfred, Olympia Leisure, Coral, and Mecca Bingo, as well as fruit machines within pubs.

**7.0 CONSULTATIONS**

- 7.01 KCC Highways have not commented as the scheme falls below their protocol response threshold.
- 7.02 Southern Water requests a condition to secure details of surface water drainage and a standard informative in respect of connections to the sewer network (both set out below) to be attached to any grant of permission,
- 7.03 The Council's Economic Development Officer does not support the scheme, commenting:

*"The top end of the High Street forms part of the core retail area and is well used by the local community. Vacancy rates are low at this end of the High Street, with only two units currently vacant. Whilst it is unlikely the proposed development would have a significant negative impact on overall trade within Sittingbourne town centre, it is also unlikely that it would contribute to the vitality, viability, or wider offering of the High Street. Given the nature of the proposed ground floor use, the offer is limited in as much as the customer base would be over 18s only.*

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*The current regeneration scheme in Sittingbourne town centre includes delivery of a new leisure offer. Alongside this we would seek to promote and protect the current functions of the High Street.”*

- 7.04 The Council's Environmental Health Manager has no objections subject to standard conditions in respect of hours of construction, installation of sound-proofing between the ground floor and the flats above, and hours of use (he has suggested hours to match those at the existing AGC (Olympia Leisure) on the High Street).
- 7.05 The County Archaeologist has no objection subject to a standard condition, as set out below.

**8.0 BACKGROUND PAPERS AND PLANS**

- 8.01 The application is supported by relevant plans, drawings, and a Planning, Design & Access Statement.

**9.0 APPRAISAL**Principle

- 9.01 The application site lies within the built up area of Sittingbourne, and within the primary retail area, where policies DM1, CP1, and Regen 1 generally encourage non-retail uses provided that they do not lead to a concentration of non-retail frontage; maintain or enhance the primary retail function by adding to the mix of uses; and do not result in a significant loss of retail floorspace.
- 9.02 In this instance, as the development amounts to a new build on a currently vacant plot, it can't (in my opinion) reasonably be argued that the scheme would result in the loss of retail floorspace that would have a consequent negative impact on the retail offering within the town centre.
- 9.03 The following commentary from the Development Control Practice manual is helpful (my emphasis in bold):

*17.533 It is clear from the evidence of cases over the years that many local authorities have used "loss of shops" as a front for non-planning objections on the basis of moral antipathy to gambling.*

*17.5331 In the majority of appeal cases local authorities have found it difficult to sustain arguments that harm will be done by a change of use of retail premises to amusement centres in primary (or core) shopping areas, even if they contravene local plan policies.*

*It was proposed to change the use of a shop in Dartford to an amusement centre. An inspector accepted that the centre seemed to have a reasonably bustling atmosphere with an emphasis on value-for-money retailers. The appeal site he observed was in a prominent location being directly opposite a main high street entrance to an indoor shopping precinct. Its loss would therefore dilute the retail element of the primary shopping frontage at a critical point, which would harm the overall vitality of the centre. While a window display could be provided this would not act as a substitute for a shop and would not act as any real shopping stimulus. It was judged that the centre would be a 'weak' use, which would fail to replicate "the shopping vitality of a true A1 use within the primary frontage"...*

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*The inspector's decision was quashed in the High Court by consent and remitted back to the SOS The Noble Organisation v SOS & Dartford BC 14/5/02. A judge held that the inspector had not properly reasoned why the appeal proposal did not measure up to being an acceptable alternative function of the premises as compared with a conventional A1(a) shop. Nevertheless, a second inspector upheld the decision of the first inspector, ruling that the change of use would dilute the retail element in a key part of the town centre, which would undermine perceptions of the town centre as an attractive shopping destination. The appeal was dismissed....*

*However, this decision was quashed in the High Court, but by consent, and a third inquiry resulted. The council now accepted that an amusement centre could be appropriate in a primary shopping area, but argued that much depended upon the vitality and viability of the centre concerned and in the case of Dartford, it was quite fragile. A third inspector agreed that it was desirable in principle to ensure that retail premises should remain in shopping use, particularly within the central parts of the town. However the premises had been on the market for a number of years and had been let only on short term leases. They appeared to be functionally obsolete for modern retail use and consequently their re-use for leisure purposes would assist in diversifying the town's economic base and make a positive contribution to the vitality of the town centre. As to character it was concluded that if the change of use were permitted shoppers would recognise the premises as an amusement centre and regard it as another element in the make up of the town centre."*

- 9.04 There are, of course, appeal decisions that have upheld refusals for AGCs in primary retail areas, but these almost exclusively relate to proposals for change of use of an existing retail premises, and not to the provision of an entirely new building on vacant plots. It's therefore hard to draw comparisons.
- 9.05 Taking the broad policy support and national appeal decisions into account I consider that the principle of the proposed development is acceptable.

Non-retail uses, and vitality of High Street

- 9.06 I note that the Council's Economic Development officer objects to the scheme, but I find it hard to convert their objection into a reason for refusal in light of the policy support above.
- 9.07 There is only one other AGC within the High Street and the current proposal would therefore add to the diversity of uses within the core shopping area in my opinion, and the two are situated a reasonable distance apart so as not to oversaturate a particular part of the town centre. Objectors have also suggested that the existing betting shops on the High Street should be counted alongside the proposed AGC as similar uses. Within the High Street there is Paddy Power to the west of this site (adjacent to Lloyds Bank) and Belfred to the east (adjacent WH Smith). If approved this scheme would therefore result in a total of 4 AGC / betting shops within the town centre, spread roughly the length of the Core Shopping Area.
- 9.08 Whilst I appreciate Members may be concerned about the number of gambling establishments on the High Street I would refer to the advice of the DCP at 9.03 above and reiterate that a moral objection to such premises doesn't translate to a planning refusal. There needs to be an identified harm, and in this instance I don't consider the



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number of such premises to be overwhelming or harmful to the overall mix of uses within this part of the town centre.

9.09 Within this part of the High Street, from Station Street to Central Avenue, there are 37 units, broken down as follows:

- 19 retail (some empty units, however);
- 10 financial and professional services (banks, estate/travel agents, barbers, etc);
- 5 food outlets (Subway, Wimpy, Greggs, Swell Café, Starbucks);
- 2 betting shops (Betfred and Paddy Power); and
- 1 church.

The dominant feature of this part of the High Street is therefore, to my mind, retail and supporting financial and professional services, and I don't consider that a third gaming/betting shop would alter that mix to the extent that planning permission could justifiably be refused.

9.10 Returning to the Economic Development officer's comments I would agree that it is desirable to protect the retail function of the High Street, but as set out above I do not consider that this development would dilute that retail offering (being an empty plot) or seriously harm the overall retail functioning of the defined Primary Shopping area.

9.11 Members may care to note the Inspector's decision for SW/97/0025, relating to 62 High Street, an existing AGC, in which they comment:

11. I also note that the reliance on shoppers as the main clientele of these establishments means that a location in a busy shopping area is considered to be important for business and that secondary areas are less favoured. In this case, because of the location of the appeal premises, between the main shopping attractions, there is a substantial pedestrian flow along the street. In my opinion this would not be lessened as a result of the proposed use in comparison with a retail use. In coming to this view, I have noted that similar amusement centres attract numbers of customers that correspond to or exceed those visiting nearby shops and business premises. Further to this, these amusement centres attract some additional custom to the shopping centres.

Scale, design, and visual amenity

9.12 The proposed building is, for all intents and purposes, identical to that approved twice before under the 2010 and 2006 permissions noted above. In that respect the scale, design, visual impact, and impact upon the character and appearance of the conservation area of the development have previously been considered and found to be acceptable. While those decisions were some time ago, and a new Local Plan has been adopted in the interim, I do not consider that the site circumstances, the appearance of the wider High Street, or the policy context (in respect of visual amenity) have changed significantly such that a refusal on these grounds would be in any way reasonable or justified. That aside, however, I consider the proposed building to be well designed and appropriate to its context.

9.13 Whilst the ground floor windows would not provide views into the premises (the interior of AGCs are screened from public view) the frontage would nevertheless provide a traditional shopfront using traditional materials (secured by condition below) which would enhance the character and appearance of the conservation area. I have also recommended conditions requiring Flemish Bond brickwork, submission of joinery

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details (including the new shopfront), submission of window details, and removal of PD rights for fixture and fittings on the High Street elevation, to ensure the frontage of the building contribute positively to the conservation area.

Public health

- 9.14 An argument has been put forward by one of the objectors that the Council has a duty to consider the health of residents when considering this proposal. It is true that planning takes factors such as this into account (such as when considering takeaways near to schools, for example), but in this instance it seems to me that the potential for harm is mitigated by other legislation. The Gambling Act 2005 includes provisions to restrict access by minors, and the Gambling Commission is currently considering changes to the legislation to reduce the maximum stake for fixed odds betting terminals / gaming machines. Government guidance prevents planning considerations and decisions from duplicating the provisions of other legislation.
- 9.15 Furthermore the Council's Licensing sub-committee agreed, at their meeting on 2<sup>nd</sup> October 2018, to adopt a Statement of General Principles to be used when considering licensing applications, including considerations in respect of minors, problem gamblers, and other associated issues. That document is due to be considered for adoption by Full Council at the meeting on 14<sup>th</sup> November 2018. The gaming license for this site was granted, in advance of planning permission, at the Licensing sub-committee meeting on 2<sup>nd</sup> February 2018, and consideration of that license took those general principles into account (albeit the Statement was still in draft at that time, awaiting committee agreement).
- 9.16 I therefore consider that the Council has considered the impacts of such a development upon the public health, and I do not consider this to amount to a justifiable reason for refusal.
- 9.17 I would also note that the agreed Statement of General Principles includes commentary in regards not being able to refuse such applications on the grounds of moral objections or general distaste for gambling / gaming premises. (See reference to para. 17.533 of the DCP at para. 9.03 above.)

Highways

- 9.18 The site lies within a sustainable, central location, immediately within the High Street and with good access to local shops, services, and public transport links. In such locations the required parking provision for the proposed flats, under current adopted guidance, is nil. Furthermore visitors to the proposed AGC are likely to either walk to the site or make use of public car parks or public transport. In that regard I have no serious concerns in respect of highway amenity or parking provision. I note local objection on parking grounds, but there is some parking to the rear of the premises, which is on private land and any anti-social parking thereon could be controlled by the landowners.

Amenity

- 9.19 The proposed flats have internal floorspace in excess of the minimum required by the national standard, and would provide a good standard of amenity for future occupants. Whilst no outdoor amenity space will be provided this is common to many dwellings above town centre shops, and is acceptable. Residents would be able to make use of the various town centre amenities, and the site is within walking distance of Albany recreation ground.

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9.20 I am concerned, however, about the potential for noise and disturbance from the ground floor use (from electronic machine sounds, customers, etc.) to affect the flats above. I have therefore recommended a condition requiring a scheme of soundproofing to be installed prior to first use of the ground floor premises.

**10.0 CONCLUSION**

10.01 This application proposes the erection of a building to infill a vacant plot on Sittingbourne High Street, with an adult gaming centre (AGC) at ground floor and two flats above. The proposed building is of a good design and would sit comfortably within the conservation area; the proposed AGC would not significantly harm the primary retail function of the High Street; and the proposed flats would provide a good standard of amenity for future occupants. Whilst I note local objection I do not consider there to be any justifiable grounds for refusal.

10.02 Taking the above into account I recommend that planning permission should be granted.

**11.0 RECOMMENDATION – GRANT** Subject to the following 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
  - iii. 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

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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 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.

- 6) 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.

- 7) 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.

- 8) 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.

- 9) 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.

- 10) No development shall take place until details of the proposed means of surface water drainage have been submitted to and approved in writing by the Local Planning Authority. Upon approval the details shall be implemented as agreed.

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Reason: In the interest of ensuring the development is appropriately drained.

- 11) 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.

- 12) 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.

- 13) 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.

- 14) 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.

- 15) Any other conditions recommended by the County Archaeologist.

**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,

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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: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk).

**THE COUNCIL'S APPROACH TO THIS 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.

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<b>2.8 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>WARD</b> Chalkwell	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Godden Two LLP <b>AGENT</b> Roger Etchells & Co

The Vice-Chairman in-the-Chair moved the officer recommendation to approve the application and this was seconded.

The Area Planning Officer reported that the Environment Agency (EA) had no objection, subject to standard conditions to secure a preliminary contamination survey of the site, to ensure that protected groundwater was not affected by any

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*Planning Committee*

*8 November 2018*

previously unknown pollution. He sought delegation to approve or refuse subject to the issue of SPA payments being resolved, and the additional conditions requested by the EA.

Mr James Godden, an objector, spoke against the application.

Mr Jeremy Godden, the Applicant, spoke in support of the application.

The Vice-Chairman in-the-Chair invited questions from Members. The Area Planning Officer explained that the comments from the County Archaeologist had been received very late and as such his comments had been reported under paragraph 7.05, and covered by condition (4) in the report, however, the information on the front page of the report had not been updated.

The Ward Member spoke against the application. He referred to a similar application refused in 2012 and considered it should be refused for the same reasons, it was an inappropriate use in the core town centre, and that gambling was already catered for elsewhere in the High Street, and there was no need for an additional one.

The Committee then debated the motion to approve the application, during which the following comments were made: this was infilling a gap, which was overgrown and an eyesore; it did not match, but there was a variety of styles there in any case; could see no reason to refuse the application; there were already gambling establishments in the High Street; this did not enhance the area, and would demonstrably harm the retail area; the design fitted in well; as it was a completely new building, it was not taking over retail space; it added to the mix of the town centre; this could help to increase footfall in the High Street; and should embrace and welcome business into the town centre.

**Resolved:** *That application 18/501726/FULL be delegated to approve subject to conditions (1) to (15) in the report, and subject to the issue of SPA mitigation payments being resolved.*