

Development Control Committee 7 December 2022

Planning Application DC/22/0511/FUL – 104 High Street, Newmarket

Date registered:	9 May 2022	Expiry date:	6 July 2022 EoT: 9 December 2022
Case officer:	Ed Fosker	Recommendation:	Approve application
Parish:	Newmarket Town Council	Ward:	Newmarket West
Proposal:	Planning application - change of use from Bank (Class E) to Adult Gaming Centre (Sui Generis)		
Site:	104 High Street, Newmarket, Suffolk, CB8 8JQ		
Applicant:	Remco Leisure Limited		

Synopsis:

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the committee determine the attached application and associated matters.

CONTACT CASE OFFICER:

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Background:

This application is presented to the Development Control Committee following consideration at Delegation Panel on the 15 November 2022. It was presented to the Delegation Panel due to the concerns from Newmarket Town Council, as well as from Councillor James Lay and Councillor Andy Drummond (Ward Members). The application is recommended for APPROVAL.

Proposal:

1. This proposal is for a change of use of the ground floor of the former Santander bank which has been vacant since May 2019 to an Adult Gaming Centre (AGC). The unit has an extant consent (DC/20/0583/FUL) to be used as a takeaway albeit the takeaway use has at the time of writing not been implemented. The AGC will provide slot machines, bingo machines and tablets for gaming. The machines offer low stakes of between 10p and £2. No alcohol is served on the premises and the proposed opening hours have been reduced by negotiation during the course of the application, from 24 hours to:

Between 08:00 and 23:00 Monday to Thursday, 08:00 and 02:00 on Fridays and Saturdays and 08:00 to 23:00 on Sundays and Bank Holidays.

This is consistent with the hours of use of the currently extant permission for the takeaway.

Site details:

2. 104 High Street is in the Conservation Area and Primary Shopping Area of Newmarket, located in a prominent position on the North side of Newmarket High Street. It is a relatively modern, flat-roofed, two-storey building
3. Above the premises is a residential flat which was approved under planning application ref DC/19/0894/FUL. To the east is 'The Graze Kitchen' and 'Shoe Zone' (which also has consent for an Adult Gaming Centre – DC/22/0096/FUL) and to the west is 'Calzone House' kebab and pizza takeaway Hughes Electrical and 'New Look'.

4. Planning history:

Reference	Proposal	Status	Decision date
DC/15/1988/FUL	Planning Application - (i) Installation of new shop front (ii) Replacement first floor windows to front elevation (iii) Removal and blocking up of first floor rear windows (iv) Removal of window and installation of new fire exit door to rear elevation	Application Granted	9 December 2015

DC/19/0894/FUL	Change of Use from (i) A2 (Financial) to A1 (Retail) basement and ground floor level; and (ii) A2 (Financial) to C3 (Residential) first floor level; and (iii) create 1no flat to second floor; (iv) installation of entrance to flats; and (v) new shopfront	Application Granted	9 August 2019
DC/19/1967/FUL	Planning Application - (i) Replace entrance doors (ii) replace first floor windows to front and rear elevations	Application Granted	27 November 2019
DC/20/0583/FUL	Planning Application - Change of use from financial service (class A2) to hot food takeaway (class A5)	Application Granted	3 June 2020
F/2009/0474/ADI	Display of externally illuminated fascia sign	Approve with Conditions	6 November 2009
F/2005/0038/ADI	Display of externally illuminated fascia and projecting sign and replacement ATM header panels	Approve with Conditions	8 March 2005
F/2005/0449/ADI	Display of externally illuminated fascia and hanging sign	Approve with Conditions	18 July 2005
F/2004/0706/ADI	Resubmission: display of internally illuminated fascia and projecting sign and replacement ATM header panels	Refuse	21 September 2004
F/2003/0963/ADI	Display of illuminated signs.	Application Withdrawn	10 December 2003

Consultations:

Public Health and Housing

5. I confirm the condition below should be attached to any permission granted. This is necessary to ensure the amenity of the residential property above is protected from noise and nuisance.
6. The building hereby permitted shall not be open except between the hours of 08:00 and 23:00 Monday to Thursday, 08:00 and 02:00 on Fridays and Saturdays and 08:00 to 23:00 on Sundays and Bank Holidays.

Waste Management

7. No comment.

Suffolk Fire and Rescue

8. No additional water supply for firefighting purposes is required in respect of this planning application.

Newmarket Town Council

9. The Committee had no means of objecting to the gambling licensing application for this property and now objects to this change of use application. It is not appropriate to have adult gaming centres in our historic High Street.
There are many gambling establishments already on the High Street - an appropriate mix of uses should be maintained there - as stated in WSC policy DM35.

Ward Members

10. Councillor Andy Drummond - Newmarket West: Does not support the application.
11. Councillor James Lay - Newmarket West: Ask that this application goes in front of the Full Planning Committee. I will object to this application.

Representations:

12. None received.
13. **Policy:** On 1 April 2019 Forest Heath District Council and St Edmundsbury Borough Council were replaced by a single authority, West Suffolk Council. The development plans for the previous local planning authorities were carried forward to the new Council by regulation. The development plans remain in place for the new West Suffolk Council and, with the exception of the Joint Development Management Policies Document (which had been adopted by both councils), set out policies for defined geographical areas within the new authority. It is therefore necessary to determine this application with reference to policies set out in the plans produced by the now dissolved Forest Heath District Council.

The following policies of the Joint Development Management Policies Document and the Forest Heath Core Strategy 2010 have been taken into account in the consideration of this application:

Policy DM1 Presumption in Favour of Sustainable Development

Policy DM2 Creating Places Development Principles and Local Distinctiveness

Policy DM17 Conservation Areas

Policy DM35 Proposals for main town centre uses

14. Other planning policy:

National Planning Policy Framework (NPPF)

The NPPF was revised in July 2021 and is a material consideration in decision making from the day of its publication. Paragraph 219 is clear however, that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF. Due weight should be given to them according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework; the greater weight that may be given. The policies set out within the Joint Development Management Policies have been assessed in detail and are considered sufficiently aligned with the provision of the 2021 NPPF that full weight can be attached to them in the decision-making process.

Officer comment:

15. The issues to be considered in the determination of the application are:

- Principle of Development
- Amenity impacts
- Other matters

Principle of Development

16. Policy DM1 provides that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. The Council will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

17. Policy DM35 provides support for main town centres uses such as shops, food and drink, financial and professional services, offices and leisure. This proposal, for an Adult Gaming Centre (AGC), is considered a sui generis 'leisure' use. However, whilst support is provided for a range of uses in town centres, DM35 seeks to maintain a predominance of retail uses, to secure the vitality and viability of the Primary Shopping Areas. DM35 states that changes of use from retail to other town centre uses will only be permitted if the balance of retail vitality and viability is not likely to be harmed and the following criteria are met:

- a. the proposal will not result in three or more non A1 uses in adjoining premises
- b. the shop front is retained or will not harm the character of the building or street scene
- c. The proposal will not remove the existing or potential beneficial use of upper floors
- d. The proposal will not adversely affect the amenity of the surrounding area.

18. Criteria b and c are not applicable in this case and criterion d is discussed below. With regards to criterion a, this proposal does not on the face of it

comply with criterion a, as it would result in three non A1 uses in adjoining premises (a kebab/pizza takeaway and a café/restaurant are adjacent to the site) this is somewhat of a moot point in any event as the premises currently is not in retail use, plus it also has an extant consent for a takeaway (Sui Generis). The degree to which DM35 is therefore relevant is significantly limited.

Due weight must be given to the extant permission for the takeaway, that said, even if the permission for the takeaway use was not in place, with the introduction of the new Class E, the Local Planning Authority (LPA) has no control over the retention of retail and shops in locations such as this, which otherwise can change to a non-retail use (such as a gym or creche) without the express permission of the LPA (see Table 1 below for all the uses permitted under Class E). Indeed, it is feasible that there would be no shops remaining in town centre locations due to the introduction of Class E but this is for the market to regulate. Therefore, it is considered that this part of the policy has only limited weight and it would not be reasonable to refuse this application on the basis of being contrary to criterion a, noting, in any event, the limited relevance of DM35 given that the premises are not currently in retail use.

19. The introduction of Class E illustrates the government's acknowledgement that retail can no longer be relied upon to sustain the vitality and viability of town centres and that other uses must be encouraged to support the vibrancy, economy and sense of community of town centres.

E(a) Display or retail sale of goods, other than hot food

E(b) Sale of food and drink for consumption (mostly) on the premises

E(c) Provision of:

E(c)(i) Financial services,

E(c)(ii) Professional services (other than health or medical services), or

E(c)(iii) Other appropriate services in a commercial, business or service locality

E(d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink,)

E(e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)

E(f) Creche, day nursery or day centre (not including a residential use)

E(g) Uses which can be carried out in a residential area without detriment to its amenity:

E(g)(i) Offices to carry out any operational or administrative functions,

E(g)(ii) Research and development of products or processes

E(g)(iii) Industrial processes

Table 1: Uses permitted under Class E without the express permission of the LPA

20. In August 2022, planning permission was approved for a change of use of ground floor and basement from retail (class E) to Adult Gaming Centre (sui generis) (Planning application: DC/22/0096/FUL) at 98 High Street, Newmarket. This unit has been in use as the shop 'Shoe Zone' with a dental practice above at first floor and is located to the eastern side of No. 104 and separated by 'The Graze Kitchen' and Wellington Street.
- 21.. AGCs are an accepted 'main town centre use' and as set out in paragraph 86 of the NPPF having regard to the sequential test the first preference for such uses is to be located within town centres. Additionally, the NPPF calls for flexibility and requires LPAs to allow town centres to grow and diversify "in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters." Paragraph 86 of the NPPF (2021) also states:
22. "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."
23. Furthermore, chapter 6 of the NPPF, requires LPAs to support businesses and economic growth, which forms an intrinsic part of sustainable development. In this case, this proposal will bring a unit, which has been empty since May 2019 into use and generate an increase in footfall on High Street and within the wider town centre.. It is considered that customers using the site could help to support other businesses. It is logical to assume due to the investment by the applicant (who has ten other sites within Suffolk and Essex) that there is market demand for this type of business in Newmarket. Furthermore, it is expected that the AGC will create a minimum of 6 full time jobs and 4 part time jobs.
24. Noting this, it is considered that the proposal can be supported as a matter of principle.

Amenity impacts

25. Policy DM2 of the Joint Development Management Policies Document is clear in that proposals for all development should not, taking mitigation measures into account, adversely impact the amenities of adjacent areas by reason of noise, smell, vibration, overlooking, overshadowing, loss of light, volume or type of vehicular activity generated. This extends to residential amenity.
26. The proposed opening hours are:
Between 08:00 and 23:00 Monday to Thursday, 08:00 and 02:00 on Fridays and Saturdays and 08:00 to 23:00 on Sundays and Bank Holidays.
27. The supporting documentation states that only background music is played within venues (similar to shops) and there are no tannoy systems. The late-night customer base is predominately late shift workers and larger groups are very rare due to the offer within the AGCs. The agents

supporting information contained within the planning statement suggests that at similar venues:

- patrons were typically alone or in a couple or small group
- normal level conversation was the only sound recorded which occurred infrequently
- People occasionally stood outside to smoke and had brief conversations at normal speech level with no shouting or otherwise anti-social behaviour
- patrons do not typically congregate outside of the application site (unlike takeaways, pubs etc)

28. Public Health and Housing colleagues have reviewed the proposal and have no objection, subject to a condition to control the hours of opening.

29. Given the town centre context of the site, and the proposed condition, it is not considered adverse noise impacts will arise as a result of this development in compliance with policy DM2

Other matters

30. Policy DM17 requires that proposals within Conservations Areas should preserve or enhance the character of the Conservation Area and retain important natural features such as open spaces, plot divisions, trees and boundary treatments which contribute to the special character of the area and demonstrate a clear understanding of the significance of the Conservation Area.

31. Currently no external changes are proposed to the existing façade of the building and therefore the existing character of the Conservation Area would be preserved, However if consent were to be approved any additional signage required would need to be the subject of a further advertisement consent application.

Conclusion:

32. In conclusion, this proposal will bring a unit, which has been empty since May 2019, into use and generate an increase in footfall on the High Street and the wider town centre, also providing additional employment opportunities within Newmarket and allowing the town centre to grow and diversify. It is not considered that there are any adverse impacts which cannot be controlled by suitably worded conditions. The principle and detail of the development are therefore considered to be acceptable and in compliance with policies DM1, DM2, DM17, DM35 of the Joint Development Management Policies Document 2015 and the provisions of the National Planning Policy Framework.

Recommendation:

33. It is recommended that planning permission be **APPROVED** subject to the following conditions:

- 1 The development hereby permitted shall be begun not later than three years from the date of this permission.

Reason: In accordance with Section 91 of the Town and Country Planning

Act 1990.

- 2 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents, unless otherwise stated below:

Reason: To define the scope and extent of this permission.

Reference number	Plan type	Date received
(-)	Location plan	22 March 2022
(-)	Existing block plan	22 March 2022
1977 02	Proposed elevations & floor plans	5 May 2022
1977 01	Ex elevations & floor plans	5 May 2022

- 3 The opening hours of the premises shall be restricted to the following hours:

Between 08:00 and 23:00 Monday to Thursday, 08:00 and 02:00 on Fridays and Saturdays and 08:00 to 23:00 on Sundays and Bank Holidays.

Reason: To minimise the impact of the development on the locality in the interests of amenity in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 12 of the National Planning Policy Framework and all relevant Core Strategy Policies.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online [DC/22/0511/FUL](https://www.suffolk.gov.uk/DC/22/0511/FUL)