

Committee	PLANNING COMMITTEE A	
Report Title	70 Deptford High Street	
Ward	New Cross	
Contributors	Alfie Williams	
Class	PART 1	11 MARCH 2021

<u>Reg. Nos.</u>	DC/20/118795
<u>Application dated</u>	14.10.2020
<u>Applicant</u>	East Kent Leasing Ltd
<u>Proposal</u>	The change of use of 70 Deptford High Street SE8 to an amusement centre - adult gaming (sui generis)
<u>Background Papers</u>	(1) Case File DE/156/70/TP (2) Core Strategy (June 2011) (3) Development Management Local Plan (November 2014) (4) The London Plan (March 2016)
<u>Designation</u>	Deptford District Centre Primary Shopping Frontage Area of Archaeological Priority Deptford High Street Conservation Area Deptford Neighbourhood Forum Flood Risk Zone 2 PTAL 6a

## 1 SUMMARY

- 1 This report sets out the Officer's recommendation of approval for the above proposal. The report has been brought before Committee for a decision on the request of a local Ward Councillor.

## 2 SITE AND CONTEXT

### *Site description and current use*

- 2 The application site is a three storey over basement late Victorian building, located on the eastern side of Deptford High Street, north of the junction with Hales Street. The building is comprised of a commercial unit at basement and ground floor level with residential accommodation above. This application relates to the commercial unit only. The ground floor unit was in use as a betting shop from 2004 until 2019 but is now vacant. The building has a modern blue coloured metal shopfront with a marble stall riser and timber fascia. The upper floors feature facing London stock bricks and timber sash windows.

### *Character of area*

- 3 The surrounding area is predominantly commercial in character owing to its designation as a Major District Centre, with residential accommodation confined to the upper floors of the buildings. The high street south of the train station (including the application site) is designated as Primary Shopping Frontage, with the area to the north designated as Secondary Shopping Frontage. As a result the high street features a relatively high concentration of retail uses. The High Street also features a street market on Wednesday, Friday and Saturdays and has a vibrant night-time economy, mainly concentrated on Resolution Way and the Market Yard, with many restaurants, bars, pubs, nightclubs and music venues bringing activity in the evening.

**Figure 1: extract from Local Plan policies map showing Major District Centre and primary shopping frontage designation: site of 70 Deptford High Street edged in red**



#### ***Heritage/archaeology***

- 4 The property is located within the Deptford High Street and St Paul's Conservation Area. Deptford High Street is characterised by modestly scaled buildings, generally between one and four storeys in height and built on narrow plots with uninterrupted frontages which create a strong sense of enclosure. London stock brick is the dominant material; however, there are a variety of finishes to the front elevations, including render, paint, and artwork.

#### ***Transport***

- 5 The property is located within a highly accessible location (PTAL 6a) with Deptford Station and Deptford Bridge DLR Station within short walking distance. The area is also served by 24 hour public transport including several night-bus routes on New Cross Road and a tube service from New Cross Gate Station, approximately 1.1km away.

### **3 RELEVANT PLANNING HISTORY**

- 6 DC/04/57834: The construction of a single storey extension to the rear of 70 Deptford High Street SE8 – refused 5 November 2004.

- 7 DC/04/58600: The construction of a single storey extension to the rear of 70 Deptford High Street SE8, to provide a staff room with toilet – granted 3 February 2005.
- 8 DC/10/75772: The installation of a new shop front at 70 Deptford High Street SE8 – granted 26 March 2012.

## 4 CURRENT PLANNING APPLICATION

### 4.1 THE PROPOSALS

- 9 The proposed development would see a change of use of the commercial unit from betting shop (Sui Generis) to an adult gaming centre (Sui Generis). The layout of the unit would remain largely as existing with the basement retained for storage and the ground floor accommodating the adult gaming centre. A small office area would be created at ground floor level. No external changes are proposed as part of this application.

## 5 CONSULTATION

### 5.1 APPLICATION PUBLICITY

- 10 Site notices were displayed and a press notice was published on 28 October 2020. Letters were also sent to residents and business in the surrounding area as well as the relevant ward Councillors and amenity societies on 23 October 2020.
- 11 Seven responses were received from local residents, comprising seven objections.
- 12 The Deptford Society supported by the Deptford High Street Association also raised objections to the application.
- 13 Cllr Dromey also supported the objection submitted by the Deptford Society. These objections along with those of local residents are summarised below.

#### 5.1.1 Comments in objection

Comment	Para where addressed
Principle of the proposed use	35-36
Impact on the high street	37
Impact to the Conservation Area	46- 47
Opening hours	59

- 14 Other matters were also raised within they objections but are not main considerations for this application. These are addressed below:
- 15 *Crime and anti-social behaviour:* It is recognised that crime and fear of crime are generally material considerations in the assessment of planning applications as is made clear by paragraph 91 of the NPPF. However, gambling uses are licenced and these matters are adequately addressed by the assessment of licencing applications.
- 16 An Adult Gaming Premises Licence for the unit was granted at the Lewisham Licencing Committee Meeting held on 3 November 2020. The Committee approved the licence subject to 31 conditions, the majority of which relate to crime prevention and CCTV. The

licence also restricts the opening hours to 9:00 – 23:00 and requires a door supervisor at all times. See Appendix 1 for the Gambling Licence and Appendix 2 for the Committee Report.

- 17 *Community Benefit:* There is no requirement in policy for development to be beneficial to the wider community and therefore the absence of any obvious community benefit is not a consideration for this application.

## **5.2 INTERNAL CONSULTATION**

- 18 The following internal consultees were notified on 30 October 2020.

- 19 Highways: no comments.

- 20 Conservation: no objections.

## **6 POLICY CONTEXT**

### **6.1 LEGISLATION**

- 21 Planning applications are required to be determined in accordance with the statutory development plan unless material considerations indicate otherwise (S38(6) Planning and Compulsory Purchase Act 2004 and S70 Town & Country Planning Act 1990).

- 22 Planning (Listed Buildings and Conservation Areas) Act 1990: S.66/S.72 gives the LPA special duties in respect of heritage assets.

### **6.2 MATERIAL CONSIDERATIONS**

- 23 A material consideration is anything that, if taken into account, creates the real possibility that a decision-maker would reach a different conclusion to that which they would reach if they did not take it into account.

- 24 Whether or not a consideration is a relevant material consideration is a question of law for the courts. Decision-makers are under a duty to have regard to all applicable policy as a material consideration.

The weight given to a relevant material consideration is a matter of planning judgement, except where the weight that should be given to specific planning considerations is directed, for instance by the NPPF. Matters of planning judgement are within the exclusive province of the LPA. This report sets out the weight Officers have given relevant material considerations in making their recommendation to Members. Members, as the decision-makers, are free to use their planning judgement to attribute their own weight, subject to aforementioned directions and the test of reasonableness.

### **6.3 NATIONAL POLICY & GUIDANCE**

- National Planning Policy Framework 2019 (NPPF)
- National Planning Policy Guidance 2014 onwards (NPPG)
- National Design Guidance 2019 (NDG)

## **6.4 DEVELOPMENT PLAN**

25 The Development Plan comprises:

- London Plan Consolidated With Alterations Since 2011 (March 2016) (LPP). The London Plan (March 2016) will be replaced by the new London Plan on 2 March 2021. This report does not rely on any policies from the current London Plan that would differ materially from the new London Plan.
- Core Strategy (June 2011) (CSP)
- Development Management Local Plan (November 2014) (DMP)
- Site Allocations Local Plan (June 2013) (SALP)
- Lewisham Town Centre Local Plan (February 2014) (LTCP)

## **6.5 SUPPLEMENTARY PLANNING GUIDANCE**

26 Lewisham SPD:

- Deptford High Street and St Paul's Church Conservation Area Supplementary Planning Document (2019)

27 London Plan SPG:

- Culture & Night Time Economy (November 2017)

## **6.6 OTHER MATERIAL DOCUMENTS**

- Publication London Plan (December 2020): On 29th January 2021, the Secretary of State wrote to the Mayor of London confirming all necessary directed modifications to the Intent to Publish London Plan (December 2020) had been conformed with, and confirmed the new London Plan could now be published. The Publication London Plan (PLP) is now a material consideration.
- The PLP will replace the current London Plan on 2 March 2021. This report sets out which PLP policies are relevant to this application and attributes those full weight.

## **7 PLANNING CONSIDERATIONS**

28 The main issues are:

- Principle of Development
- Urban Design & Heritage
- Transport
- Impact on Adjoining Properties

### **7.1 PRINCIPLE OF DEVELOPMENT**

*General policy*

- 29 The National Planning Policy Framework (NPPF) at Paragraph 11, states that there is a presumption in favour of sustainable development and that proposals should be approved without delay so long as they accord with the development plan.
- 30 Lewisham is defined as an Inner London borough in the London Plan. LPP 2.9 sets out the Mayor of London's vision for Inner London. This includes among other things sustaining and enhancing its recent economic and demographic growth; supporting and sustaining existing and new communities; addressing its unique concentrations of deprivation; ensuring the availability of appropriate workspaces for the area's changing economy; and improving quality of life and health.
- 31 The Publication London Plan (PLP) sets out a sequential spatial approach to making the best use of land set out in PLPP GG2 (Parts A to C) that should be followed.

*Policy*

- 32 PLPP SD6 states that the vitality and viability of London's varied town centres should be promoted and enhanced.
- 33 CSP 6 designates primary and secondary frontages within the Major and District town centres to ensure essential services are maintained.
- 34 DMP 14 aims to protect retail uses and imposes criteria for assessing changes of use involving the loss of retail units within primary, secondary and non-designated shopping frontages. DMP 14 does not impose any restriction on changes of use affecting non-retail uses.

*Discussion*

- 35 The commercial unit is currently vacant and was last used as a betting shop (Sui Generis). The betting shop use does not benefit from any protection or restrictions on changes of use within national, regional or local policy. As such, the loss of the existing betting shop use would not conflict with the development plan and is therefore not objectionable.
- 36 In regard to the proposed use, there are no policies preventing changes of use to adult gaming centres. However, the Publication London Plan (December 2020) at paragraph 6.9.5 does identify the harm that can arise from an overconcentration of certain uses and highlights gambling uses such as betting shops and amusement centres within those potentially harmful uses. The Development Management Local Plan at paragraph 2.101 similarly identifies the detrimental impacts that can arise from an overconcentration of these type of uses.
- 37 The proposed adult gaming centre would replace a similar gambling use and as such would not result in a net increase to the number of gambling establishments on Deptford High Street. For that reason, Officers are satisfied that the proposed development would not be harmful to the vitality or viability of the Deptford High Street or the wider Deptford District Centre.

**7.1.1 Principle of development conclusions**

- 38 The proposed change of use would not result in the loss of a retail unit and neither would it increase the concentration of gambling uses within the high street. The proposed development would therefore be compliant with the principles of PLPP SD6, CSP 6 and DMP 14.

## 7.2 URBAN DESIGN & HERITAGE

### *General Policy*

39 The NPPF at para 124 states the creation of high quality buildings and places is fundamental to what the planning and development process should achieve.

### 7.2.1 Impact on Heritage Assets

#### *Policy*

40 Heritage assets may be designated—including Conservation Areas, Listed Buildings, Scheduled Monuments, Registered Parks and Gardens, archaeological remains—or non-designated.

41 Section 72 of the of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives LPAs the duty to have special regard to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

42 Relevant paragraphs of Chapter 16 of the NPPF set out how LPAs should approach determining applications that relate to heritage assets. This includes giving great weight to the asset's conservation, when considering the impact of a proposed development on the significance of a designated heritage asset. Further, that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset that harm should be weighed against the public benefits of the proposal.

43 LPP 7.8 states that development should among other things conserve and incorporate heritage assets where appropriate. Where it would affect heritage assets, development should be sympathetic to their form, scale, materials and architectural details. PLPP HC1 states that development proposals affecting heritage assets, and their settings, should conserve their significance.

44 CSP 16 ensures the value and significance of the borough's heritage assets are among things enhanced and conserved in line with national and regional policy.

45 DMP 36 echoes national and regional policy and summarises the steps the borough will take to manage changes to Conservation Areas, Listed Buildings, Scheduled Ancient Monuments and Registered Parks and Gardens so that their value and significance as designated heritage assets is maintained and enhanced.

#### *Discussion*

46 The proposed development does not include any external alterations to the building thereby minimising any significant impacts to the character and appearance of the Deptford High Street and St Paul's Conservation Area. Officers consider that there would be some modest benefit from activating a vacant unit and adding to the vitality of the area.

47 Alterations to the shopfront and the addition of signage would likely require planning permission and/or Advertisement Consent. An informative is recommended advising the applicant to engage with the Council's pre-application service prior to making any external alterations to the building.

#### *Summary*

48 Officers, having regard to the statutory duties in respect of Conservation Areas in the Planning (Listed Buildings and Conservation Areas) Act 1990 and the relevant

paragraphs in the NPPF in relation to conserving the historic environment, are satisfied the proposal would preserve the character and appearance of The Deptford High Street and St Paul's Conservation Area.

## **7.3 TRANSPORT IMPACT**

### *General policy*

49 Nationally, the NPPF requires the planning system to actively manage growth to support the objectives of para 102. This includes: (a) addressing impact on the transport network; (b) realise opportunities from existing or proposed transport infrastructure; (c) promoting walking, cycling and public transport use; (d) avoiding and mitigating adverse environmental impacts of traffic; and (e) ensuring the design of transport considerations contribute to high quality places. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and a choice of transport modes.

50 Para 109 states "Development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".

51 PLPP T1 states that all development should make the most effective use of land, reflecting its connectivity and accessibility by existing and future public transport, walking and cycling routes, and ensure that any impacts on London's transport networks and supporting infrastructure are mitigated.

52 The Core Strategy, at Objective 9 and CSP14, reflects the national and regional priorities.

### *Discussion*

53 The site is located within a highly accessible town centre location served by a train station, DLR station and several bus routes. This is reflected in the PTAL rating of 6a, which is the second highest possible. Therefore, any impact to the local transport network and local capacity would be negligible.

54 The proposed gaming centre is similar in character to the lawful betting shop use and so there is not likely to be a significant difference in terms of the servicing and waste management requirements. As such, it is considered that the unit could retain the existing arrangement.

### **7.3.1 Transport impact conclusion**

55 The proposed development is considered acceptable in transport terms and is therefore compliant with the development plan.

## **7.4 LIVING CONDITIONS OF NEIGHBOURS**

### *General Policy*

56 NPPF para 127 sets an expectation that new development will be designed to create places that amongst other things have a 'high standard' of amenity for existing and future users.

### *Policy*



57 PLPP HC6 states that the night-time economy should be managed through an integrated approach to planning and licensing.

*Discussion*

58 No external alterations are proposed as part of the application and therefore there would be no change in terms of loss of outlook, light or privacy at the neighbouring properties.

59 In regard to noise and disturbance, the proposed adult gaming centre is considered to have similar impacts to that of a betting shop and therefore the impact is considered acceptable. The Publication London Plan at Policy HC6 instructs local planning authorities to take an integrated approach to planning and licensing. The gambling licence for the premises, granted by Lewisham Council's Licensing Committee on 3 November 2020 and into force on 11 December 2020 (see Appendices), restricts opening hours to 9:00-23:00. A condition is therefore recommended imposing the same opening hours.

#### **7.4.1 Impact on neighbours conclusion**

60 The proposed development is assessed to be acceptable in terms of the impact to the living conditions of the neighbouring properties subject to a condition restricting the opening hours.

### **7.5 FLOOD RISK**

61 The NPPF para 155 expects inappropriate development in areas at risk of flooding to be avoided by directing development away from areas at highest risk. Para 163 states development should only be allowed in areas at risk of flooding where mitigation measure can be included.

62 LPP 7.13 expects development to contribute to safety, security and resilience to emergency, including flooding.

*Discussion*

63 The application site is located within Flood Risk Zone 2. A Flood Risk Assessment has been submitted confirming that the development would follow the Environment Agency's standing advice for changes of use. Officers are therefore content that the proposed development would be acceptable in terms of flood risk vulnerability.

## **8 LOCAL FINANCE CONSIDERATIONS**

64 Under Section 70(2) of the Town and Country Planning Act 1990 (as amended), a local finance consideration means:

- a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown; or
- sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).

65 The weight to be attached to a local finance consideration remains a matter for the decision maker.

66 The CIL is therefore a material consideration and the applicant has completed the relevant form. In this case the proposed development would not be CIL liable as the change of use does not include extensions.

## 9 EQUALITIES CONSIDERATIONS

67 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

68 In summary, the Council must, in the exercise of its function, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and persons who do not share it.

69 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

70 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

71 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

72 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available

at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>

73 The planning issues set out above do not include any factors that relate specifically to any of the equalities categories set out in the Act, and therefore it has been concluded that there is no impact on equality.

## 10 HUMAN RIGHTS IMPLICATIONS

74 In determining this application the Council is required to have regard to the provisions of the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way which is incompatible with the European Convention on Human Rights. "Convention" here means the European Convention on Human Rights, certain parts of which were incorporated into English law under the Human Rights Act 1998. Various Convention rights are likely to be relevant including.

- Article 8: Respect for your private and family life, home and correspondence
- Protocol 1, Article 1: Right to peaceful enjoyment of your property

75 This report has outlined the consultation that has been undertaken on the planning application and the opportunities for people to make representations to the Council as Local Planning Authority.

76 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with the above Convention Rights will be legitimate and justified. Both public and private interests are to be taken into account in the exercise of the Local Planning Authority's powers and duties. Any interference with a Convention right must be necessary and proportionate. Members must therefore, carefully consider the balance to be struck between individual rights and the wider public interest.

77 This application has the legitimate aim of changing the use of the building. The rights potentially engaged by this application, including Article 8 and Protocol 1, Article 1 are not considered to be unlawfully interfered with by this proposal.

## 11 CONCLUSION

78 This application has been considered in the light of policies set out in the development plan and other material considerations.

79 The proposed change of use would not conflict with the Development Plan in terms of the loss of the existing betting shop use or by introducing an over concentration of gambling uses within Deptford High Street. The impacts to the Deptford High Street Conservation Area, the local transport network and the living conditions of the neighbouring properties have been considered and are assessed to be acceptable. Therefore, the application is recommended for approval subject to conditions.

## 12 RECOMMENDATION

80 That the Committee resolve to **GRANT** planning permission subject to following conditions and informatives:

## 12.1 CONDITIONS

1) **FULL PLANNING PERMISSION TIME LIMIT**

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:** As required by Section 91 of the Town and Country Planning Act 1990.

2) **APPROVED PLANS**

The development shall be carried out strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:

20005/001 (Existing Ground floor & basement Plans); 20005/001 (Proposed Ground floor & basement Plans);

**Reason:** To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.

3) **OPENING HOURS**

The premises shall only be operational between the hours of 09:00 and 23:00 Monday to Sunday

**Reason:** In order to safeguard the amenities of adjoining occupants at unsociable periods and to comply with DM Policy 14 District centres shopping frontages of the Development Management Local Plan (November 2014).

## 12.2 INFORMATIVES

- 1) **Positive and Proactive Statement:** The Council engages with all applicants in a positive and proactive way through specific pre-application enquiries and the detailed advice available on the Council's website. On this particular application, no pre-application advice was sought. However, as the proposal was clearly in accordance with the Development Plan, permission could be granted without any further discussion.
- 2) You are advised to engage with the Council's pre-application service prior to undertaking any external works to the shopfront including the display of new advertisements.