

Committee Report

Item 6B

Reference: DC/19/01721
Case Officer: Lynda Bacon

Ward: Sudbury South West.

Ward Member/s: Cllr Sue Ayres.

RECOMMENDATION – PLANNING PERMISSION WITH CONDITIONS

Description of Development

Planning Application - Change of use from Shop (A1) to Bar (A4)

Location

14 Borehamgate Shopping Precinct, King Street, Sudbury, Suffolk CO10 2ED

Expiry Date: 09/11/2019

Application Type: FUL - Full Planning Application

Development Type: Change of Use

Applicant: Caffeine Lounge Ltd

Agent:

Parish: Sudbury

Site Area: 260sqm gross internal floor area

Density of Development:

Details of Previous Committee / Resolutions and any member site visit: None

Has a Committee Call In request been received from a Council Member (Appendix 1): No?

Has the application been subject to Pre-Application Advice: Yes (informal – no reference)

PART ONE – REASON FOR REFERENCE TO COMMITTEE

The application is referred to committee for the following reason/s:

The Chief Planning Officer considers the application to be of a controversial nature having regard to the extent and planning substance of comments received from third parties and / or the location, scale and / or nature of the application.

Borehamgate Precinct is owned by Babergh District Council. The applicant is related to an elected Member. The Councillor for Sudbury North West is an objecting neighbour.

PART TWO – POLICIES AND CONSULTATION SUMMARY

Summary of Policies

NPPF - National Planning Policy Framework
CS01 - Applying the presumption in Favour of Sustainable Development in Babergh
CS03 - Strategy for Growth and Development
CS04 - Chilton Woods Strategic Land Allocation and Strategy for Sudbury / Great Cornard
CS15 - Implementing Sustainable Development
CS16 - Town, Village and Local Centres
SD01 - Sudbury Town - Principal Shopping Area
SD06 - Sudbury Town - Bus Station & Borehamgate

Neighbourhood Plan Status

This application site is not within a Neighbourhood Plan Area.

Consultations and Representations

During the course of the application Consultation and Representations from third parties have been received. These are summarised below.

A: Summary of Consultations

Sudbury Town Council

Recommended that the application be approved, subject to there being evidence of marketing this property as available for commercial rent/sale for the required 12 months prior to a change of use application. Adequate sound proofing to protect local residents and security of the inside of Borehamgate Precinct during late nights/early mornings must be a requirement.

On reconsultation, the Town Council “welcomed this report and noted the measures being proposed for the sound proofing, however as a Town Council we would like to see all doors and windows double glazed and the inclusion of a lobby to help reduce the noise as people enter and exit the premises.”

Economic Development & Tourism

Leisure and evening economy uses are increasingly important to the continued occupation and sustainability of town centres and high streets, reflecting the changing uses of settings that have been traditionally retail. The Ipswich economic area needs assessment 20171 identified that the hospitality and leisure is expected to experience continuing growth to 2036, with Sudbury being a recognised centre of this activity within the District.

The E-sports business is relatively new but is increasingly popular, this business should therefore provide a new and complementary offer to the towns existing leisure offer.

Economic Development Support this application

Environmental Health - Noise/Odour/Light/Smoke

Having initially recommended refusal, due to the lack of an acoustic assessment and potential noise break-out and activities from smokers outside, Environmental Health were able to recommend approval, with a series of conditions.

The full, amended, response is below:

Big Sky Acoustics Ltd were instructed Babergh District Council acting on Behalf of Caffeine Lounge to assess the proposed use of the premises as an e gaming lounge with recorded music and alcohol sales. We have now received Technical report number 1909091 dated 30th August 2019.

The report confirms that the premises and the proposed use in its current form is not suitable due to the likely significant adverse impacts caused by the 4 main points raised in previous comments.

The report has identified extensive mitigation is required to modify the building structure to contain internal noise and to control noise from people in the precinct at certain times. The report also provides operational advice to the business operator in terms of people management, sound system installation and control.

External People Noise:

As stated previously the precinct is below a number of residential windows and normal noise from a well behaved group of people smoking around the benches is highly likely to cause disturbance which is likely to include sleep disturbance at night.

Section 5 of the noise impact assessment has confirmed this significant adverse impact (and likely statutory nuisance) with a simple calculation of noise from a group of smokers holding normal conversation. While worst case for a group of well-behaved people quietly talking does not account for any increased volume from people under the influence of alcohol have fun in a reasonable manner as seen in most popular bar external areas late at night.

Additionally It should be noted that the calculations assume best case 'inverse square law' sound propagation (-6dB per doubling of distance) and does not account for the effects of reflection from surround hard surfaces within the precinct and as such the impact is likely to be higher than predicted.

The conditions on the premises license do not offer any protection against this nuisance. The staff at the premises cannot be expected to ask people not to talk while smoking outside.

The consultant has made a recommendation at 5.11 of the report stating that it would be better to locate a designated smokers' area outside of the precinct especially after 23:00 hours. This is again suggested in paragraph 6.11 with regards to late night access and egress of customers.

This can be dealt with by condition preventing the precinct entrance being used after 23:00 and also assists mitigation of noise breakout from the front doors into the precinct as discussed in section 6.9 of the report.

Internal Noise:

The report confirms that the building is not constructed in a manner to confine noise from regulated entertainment. The author of the report has assumed an internal recorded music noise level 86dBA.

This is a lower noise level than most licensed premises playing recorded music as part of their entertainment where noise levels are commonly 90 to 95dB LAeq with louder premises being up to 105dB LAeq. It is assumed that this lower revised figure is based on the license holders intended business model. As such it is important to note that the suggested mitigation in the noise impact assessment is only based on this level noise.

It will therefore be necessary to internal noise is limited to 86dB LAeq for recorded music. This can be dealt with by condition.

Using the figure of 86dBA it has been confirmed that the construction of the main internal structure of walls, ceilings and support pillars are likely to transmit noise via the structure and will not provide sufficient sound reduction to airborne noise travelling through the adjoined elements. Mitigation options are discussed as follows.

It should be noticed that there are a number of uncertainties concerning transmission pathways and it is stated by the consultant in paragraph 4.6 that mitigation should not cause disturbance for noise at 86dBA.

Given the uncertainties and that the mitigation works are necessary prevent unacceptable impacts on existing residential dwellings. This can be required by a validation condition following works.

Walls, Ceilings and Support pillars:

Section 6 of the report is recommending the creating new independent (Isolated from main existing structure) ceiling, wall and support linings to prevent direct sound transmission and improve the sound reduction performance for airborne sound.

Isolating the walls and ceilings minimises the risk of direct sound transmission via the structure while the ceiling construction give the greatest protection for airborne noise to the flats above. The installation of these linings should follow figures 7, 9 and 10 and the descriptive methodology in paragraphs 6.17 to 6.38.

Based on these works a sound reduction performance of $R_w (+Ctr) 64(55)dB$ should be achieved. Music noise should therefore be less 23dBA (worst case) and below normal internal background noise of most habitable rooms.

This can be required by Condition. Additionally, any imperfections in the construction of these mitigations works may lead to a reduction in their effective. I would therefore strongly recommend that validation testing is undertaken after works are complete. Validation testing is also suggested in the report due to unpredictability in Low Frequency noise performance which may also require adjustment at the sound system itself.

Glazing and external doors:

The consultant has confirmed that the glazing in windows and doors was not designed to contain noise and is therefore insufficient for the proposed use. There is extensive glazing including the main doors to the precinct and recommendations have been made as follows.

- Windows need to be thoroughly checked to ensure they are air-tight and any damage to frames and glazing repaired. All louvres and air vents should be removed and/or sealed. In addition, secondary glazing should be installed with a sufficient air gap. Design Criteria is suggested in paragraph 6.6 and it is vital that the glazing provides a continuous air-tight seal from floor to

ceiling. However, no formal specification is given at this stage. Details of the final specification can be required by condition

- Main Doors are of lightweight single glazed construction opening into the precinct and will cause internal noise breakout that will unreasonably affect the flats above. It is therefore recommended that a lobby style internal door (Or equivalent works to the same end) is necessary. It is also recommended that the main doors are not used after 23:00 and as such any alternative doorway used should also benefit from an internal lobby style double door system (or equivalent). No formal specification is available at this stage but can be required by condition

As with the internal mitigation works it will be necessary to validate that works have been successful to ensure that when doors are closed the main entrance frontage is able to contain noise sufficiently to prevent airborne noise causing a problem at the flat windows above.

Validation testing in this instance should conform that the noise does not exceed the levels suggested in The IOA Good Practice guide for noise from pubs and clubs. This guide is also recommended by the noise assessment in paragraphs 4.9 to 412

Sound System:

The report also makes recommendation to carefully select a suitable sound system with suitable signal processing and well thought out speaker positioning to ensure that noise can be controlled to prevent neighbour disturbance but equally importantly will ensure the best sound for a good customer experience. This sound system should be locked to prevent unauthorised users changing settings and increasing volumes. Control should remain to a limited number of employees as approved by the business operator.

It is strongly recommended that this is undertaken and that a condition is placed on the permission requiring the full specification of the sound system and speaker locations

Environmental Protection therefore remain concerned that the premises in its current state is not suitable for the proposed use applied for within the terms of the premises license which is already in place. However, we would have No Objection to planning permission being granted subject to suggested conditions being applied that require the full recommendations of the noise impact assessment to be carried out and validated as successful prior to the commencement of development

SCC - Highways

SCC's perception is that the proposed change of use would not have any adverse effect on the highway network at this location. Therefore, SCC does not wish to restrict the grant of permission for DC/19/01721.

B: Representations

At the time of writing this report at least 8 letters/emails/online comments have been received. It is the officer opinion that this represents 2 objections, 5 support and 1 general comment. A verbal update shall be provided as necessary.

Views are summarised below:-

Initial public consultation response:

Support/neutral:

Great idea - there is very little for youngsters to do in Sudbury. I work in an educational environment and the children have already been talking about Caffeine Lounge and getting excited about it as they do not have anything to do in the town apart from the skate park and are already excited about forming teams. I myself would have loved a facility like this growing up - it keeps you off the streets, it's really good socially, meeting new people rather than gaming in your room at home on your own. I have spoken to Will and understand that they are also looking at putting on educational programs at Caffeine Lounge. People who work in the industry will come and put on lectures, workshops and give an introduction to all the possible jobs in the gaming and esports industry. This enterprise would be a valuable addition to Sudbury.

I am a resident of the town and I think this would be a fantastic development. e-sports are growing, and it is a brilliant time to get involved.

It would bring a new and innovative entertainment to town that could be a hub for tech and gaming. It would be a real boon to the area.

With the correct license stipulations, I think it's a brilliant idea and will give the people of Sudbury alternative social activities and the bridging of age gaps, a breath of fresh air.

Brilliant idea, a great opportunity for local gamers and hopefully provide entertainment for tweens. Good fresh business. Bringing some life back to an otherwise vastly dated town. The more diverse the offering, the better for everyone, and the town.

Inadequate Access - The application has not taken account that the Borehamgate precinct closes at 8pm each evening and is closed on Sunday, it is difficult to see if access is off Great Eastern Road or through precinct. The change of use to bar does not fit with the establishments currently located there.

Objection:

- Dominating/overbearing
- Fear of crime
- General dislike of proposal
- Health & Safety
- Impact on property value
- Inadequate access
- Inadequate parking provision
- Increase in anti-social behaviour
- Loss of parking
- Loss of privacy
- Noise

People live above this property and the precinct is locked up from 8 pm when the fish and chip shop shuts. The property applying would need two exits in case of fire. This would involve leaving the rear doors unlocked leading into the precinct which should be locked leaving people trapped if the precinct remains unlocked, we have the problem of skateboarding noise etc. We have young families living above and late-night noise and what else comes with it are not what is really required.

Subsequent public consultation resulted in one further letter of objection being received raising the following points:

Very concerned about noise levels, concerned that the insulation has not being done and would like evidence that it has.

Also, the precinct should be shut at night, if left open anti-social behaviour will result when the bars and clubs shut; you will get problems with skateboarding and homelessness and possible vandalism.

A roller door between the application property in the precinct and the job centre would close off the precinct and make it safe. There is support beam between the buildings for it to hang from and the application site would have two entrances.

Those supporting the application do not live close by.

(Note: All individual representations are counted and considered. Repeated and/or additional communication from a single individual will be counted as one representation.)

PLANNING HISTORY

REF: DC/19/01721	Planning Application - Change of use from Shop (A1) to Bar (A4)	DECISION: PDE
REF: B/0065/75/FUL	Shop front alterations	DECISION: GRA 12.03.1975
REF: B/11/00768	Change of use of part of first floor from ancillary storage to 3 no. self-contained residential flats.	DECISION: GRA 19.09.2011

PART THREE – ASSESSMENT OF APPLICATION

1.0 The Site and Surroundings

- 1.1. The application site is located within Borehamgate Precinct; a 20th Century three-storey mixed use complex, which together with adjacent Kings House, is located at the junction of King Street and Great Eastern Road. It forms an integral link between the town centre to the north and the bus and train stations and main town centre car parks to the south/south east. The Site Area is 260sqm of gross internal floor area.
- 1.2. There are 16 commercial/retail units located on the ground floor with residential and office uses occupying the first and second floors above. 12 residential flats are located within Kings House and there are further residential flats/maisonettes above the ground floor retail units, including 3 single storey flats above the application site premises. The ground floor commercial/retail units all have glazed shop frontages within the precinct itself, the interior of which is mainly open with a glazed canopy over part; the application site also has a second entrance from Great Eastern Road. The Precinct is gated to exclude pedestrian access after 8pm.
- 1.3. The site is within the Principal Shopping Area of the Sudbury Town Land Use Policy Areas as defined in the Babergh Local Plan (2006). The site is also within the wider Hamilton Road Quarter

which is proposed for mixed use redevelopment under Saved Policy SD06 of the Local Plan. The vision for the Hamilton Road Quarter outlined in the Development Prospectus endorsed by Babergh Cabinet at its meeting on 13 September 2018 states that 'To facilitate the development some buildings at the south end of the site will have to be removed.' The application site is located at the southern end of Borehamgate Precinct and is therefore likely to be demolished when the Hamilton Road Quarter is redeveloped (subject to planning permission).

- 1.4. A Premises Licence for the proposed use was authorised dated 14th June 2019, subject to conditions.

2.0 The Proposal

- 2.1. Described in the initial Planning Statement submitted with the application as follows;

'The premises is situated in the Borehamgate Precinct which is next to Hamilton Road, the Sudbury bus station and part of the council's new development plans to regenerate the area and improve the night- time economy.

The current premises has been empty for some time and is in a very poor state of repair. It was last used by "Thing-me-Bobs". All the walls on the ground floor are covered in metal cladding and the toilets upstairs are not useable.

Caffeine Lounge propose to turn this premises into an esports lounge. It will have Gaming PCs & Consoles set up for people to come and game. The premises will have 1Gb per second of internet speed. This will enable players in the gaming community as either individuals or teams to participate in various competitions to be run locally, nationally and internationally. Universities/educational establishments will run game design workshops. There will be gaming days for the disabled with the aid of a Charity like Special Effect using modified equipment.

TV screens will also be live streaming gaming events from around the world.

Opening times have not been decided but to cover all eventualities we are applying for a licence to cover 9am - 3am Monday to Sunday. Opening times will vary according to occasionally hosting international competitions in different time zones e.g. the USA/Far East. The atmosphere we want is that of a fun and relaxing place for customers to hang out on the sofas or chairs and tables to enjoy a new and exciting experience where they can interact with gamers from around the world

The venue will include a bar serving a variety of hot and cold drinks and alcohol.

There will be recorded music played in the background.

Customers will be able to use the current public parking available off Great Eastern Road, the bus station or the train station in Station Road.

The number of proposed staff will be 3 full time and 14 part time.'

- 2.2. The subsequent Planning Statement received 24th September 2019 further explains that 'Caffeine Lounge is an Esports venue - where gamers (of electronic games) will come to use high grade PCs to play games, play in competitions and watch the screening of national and international gaming competitions. The venue will have a bar for the sale and consumption of hot and cold

beverages and alcohol. Some gaming retail products and merchandise will also be sold at the venue.' The Planning Statement further states 'The Caffeine Lounge is a gaming venue for computer games. It is not a bar, sports bar or a nightclub. Gamers will be wearing headphones and taking up the majority of space at the venue. Whilst playing they cannot have any background noise that will interfere with their concentration by increased sound around them that could be heard through their headsets. Therefore, our sound levels are always going to be at a reasonable level.'

2.3. The subsequent Planning Statement also proposes internal sound mitigation to the premises as follows:

'The Council commissioned a survey by Blue Sky Acoustics. In their report they made recommendations about:

- a) the internal soundproofing required for the walls, ceilings, pillars and sound system
- b) external sound mitigation measures which have been covered already within the premise license and lease.

The applicants 'plan to implement the internal sound proofing recommendations made to minimise noise travelling to the flats above from within the premises, outlined below.

Sound Proofing Works

A schedule as below to be undertaken by a local builder:

- Build and install a suspended Casoline MF ceiling consisting of 2 layers of 12.5mm sound block plaster board and 2 layers of 50mm Rockwool prorox SL920 to specification.
- Build independent walls using I studs for framework, fill cavity with 50mm Rockwool SL920 mineral slabs and fix 2 layers of 15mm soundbloc.
- Build metal independent stud walls around structural concrete pillars, loose fill with Rockwool prorox SL920 and line with 2 layers of 15mm sound bloc plasterboard.
- Plaster skim walls and dry line ceiling area.

Sound System;

Recommendations made by Blue Sky Acoustics regarding the sound system to be used in the venue will also be implemented.'

2.4. The relevant Noise Impact Assessment referred to above was received 8th October 2019. In summary, the Noise Impact Assessment identifies that the primary internal noise source will be amplified music and that the predicted noise level of customers outside the premises will be above typical background levels in a pedestrian precinct. The report identifies that with suitable soundproofing works and correct sound system specification and system controls, the proposed use should not cause disturbance to the adjacent uses if the building is correctly designed and constructed, and if the sound system is optimally configured. The report also states that to minimise the predicted noise level from customers outside the premises any designated smoking area would be better suited to the rear of the unit on Great Eastern Road especially after 23:00hrs and that it would be preferable for customers to exit the building via the service door onto Great Eastern Road during late night trading. The report goes on to advise that good operational practices are essential as no amount of sound insulation works can make up for poor management practices and a suggested Noise Management Policy and Dispersal Policy are

appended to the Noise Impact Assessment. The report concludes that the proposed use will not adversely impact on residential amenity if all noise generating activity is contained by the building, and if comprehensive operational practices to control noise and dispersal are implemented.

3.0 The Principle Of Development

- 3.1. The starting point for any planning decision is the development plan, as identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004. Determination of any application must be made in accordance with the plan unless material considerations indicate otherwise. A key material consideration regarding the principle of development is the National Planning Policy Framework (NPPF) 2019.
- 3.2. The National Planning Policy Framework (NPPF) provides that the NPPF "does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise".
- 3.3. Planning permission is sought to change the use of the ground floor unit (260m²) from its existing Class A1 retail use to a bar/drinking establishment use falling "within Class A4" as a licensed e-sports gaming lounge.

OFFICER COMMENT – Whilst A4 use was quoted in the application, your Officers feel that the use is, in fact, a *Sui Generis* use, falling outside of any use class. Any permission granted should be conditioned to that effect. Whilst the application was advertised as A4, there is no injustice in granting permission as a *Sui Generis* use.

- 3.4. Saved Policy SD01 states: At ground floor level in the primary shopping frontages in Sudbury the introduction of, or change of use to, shops will be permitted. The introduction of, or change of use to, non-shopping uses will not be permitted except where: it can be demonstrated that a unit has remained vacant for a considerable time; the unit has proved consistently unattractive to retail interest; and documentary evidence is submitted in support of the application to confirm the above conditions.
- 3.5. Saved Policy SD06 applies to land around the Bus Station and includes the application site. Policy SD06 states: The land is proposed for a mixed-use redevelopment featuring retail, leisure or other commercial uses. Residential development forming an integral part of a mixed-use scheme will be acceptable.; subject to specified criteria.
- 3.6. Core Strategy Policies CS1, CS3, CS4 and CS15 apply the presumption in favour of sustainable development locally, offer support and encouragement to economic growth and employment opportunities and promote a healthy and diversified mix of uses and range of shops and services in the town centres.
- 3.7. Policy CS16 relates specifically to Town, Village and Local Centres and states that retail, leisure, tourism, cultural and office development will continue to be focussed in Sudbury and Hadleigh, and in village and local centres at an appropriate scale and character for the location... New retail, leisure and similar service uses, including evening and night-time uses, will be assessed for potential impact, including cumulative impact, on the character and function of the centre / area, anti-social behaviour and crime, including considering security issues raised by crowded places, and the amenities of nearby residents, as well as on the vitality and viability of existing centres.

- 3.8. NPPF: Paragraph 85 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. Planning policies should (inter alia): a) define a network and hierarchy of town centres and promote their long-term vitality and viability - by allowing them 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.

NPPF: Paragraph 91 states;

Planning policies and decisions should aim to achieve healthy, inclusive and safe places which promote social interaction and are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.

NPPF: Paragraph 92 states;

To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: plan positively for the provision and use of shared spaces, community facilities and other local services to enhance the sustainability of communities and residential environments; ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and also ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

NPPF: Paragraph 180 states;

Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (inter alia): a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

- 3.9. Saved Policy SD01 is a restrictive policy that seeks to prevent non-shopping uses within the primary shopping frontage of the town and is not therefore entirely consistent with the positive approach to supporting diversified town centre uses advocated by the NPPF, Policy SD01 is therefore afforded less weight. Policy CS15 is a wide-ranging, criteria-based policy, setting out how the Council will seek to implement sustainable development. Policy CS16 supports evening and night-time uses subject to full assessment of potential impacts arising from such uses. Policies CS15 and CS16 are entirely consistent with the objectives of the Framework and are therefore afforded full weight.

- 3.10. The applicant's subsequent Planning Statement explains the policy context of the proposal as below:

'In the Hamilton Road Quarter Development Prospectus 2018, produced by Babergh and Mid Suffolk Councils, there is a clear plan for the future development of the area.

"Babergh District Council is seeking to deliver a comprehensive regeneration of the Hamilton Road Quarter in Sudbury to help unlock the value of Council owned assets and to generate wider social, economic and environmental benefits for the town as a whole."

"The council has developed the vision for Hamilton Road Quarter over the past two years and is committed to bringing to fruition a step change for the area, supporting the

development of a dynamic, living town centre for Sudbury.”

One of the key strategic outcomes cited in the prospectus is:

“Business Growth:

Encourage development of employment sites and other business growth of the right type, in the right place and encourage investment in skills and innovation in order to increase productivity”

In addition, the Council has a strategic aim to develop the night-time economy in Sudbury.

The Borehamgate Shopping Centre lies within the Hamilton Road Quarter and is therefore an integral part of any redevelopment for the area. It has suffered in recent years from the lack of upkeep and investment.

Caffeine Lounge Ltd’s proposal for an Esports venue therefore fits very well with the economic development vision and strategy for the Hamilton Road Quarter and Sudbury.

In addition, there will be further benefits for Sudbury:

1. The venue would have a knock-on benefit and create an economic multiplier effect on local trade and businesses through increased footfall in Borehamgate and the surrounding area.
2. The venue is expected to create 20 new jobs in the area.
3. The venue would attract visitors from outside Sudbury, from neighbouring towns and villages but also from further afield with competitors travelling to and staying in Sudbury for events at Caffeine Lounge.
4. The venue has contracted a range of local builders and suppliers to convert the premises.
5. The venue will provide a much-needed community environment for younger people in the area.
6. Caffeine Lounge plans to work on educational partnerships with local schools and universities to encourage the development of career skills in gaming IT.
7. The business overall will create strong publicity for Sudbury as a unique and progressive Destination.

3.11 It must also be recalled that the Borehamgate precinct has seen a steady decline in occupancy. Our Estates department has confirmed the following:

- Unit 2 – Formerly Jonathan Lambert Jewellers: became vacant on 25-Mar-19 (8 months);
- Unit 9 – Britalicious Ltd: in occupation under Tenancy at Will, dated Jul-19, pending signing of Lease. Previously unoccupied since Aug-16 (35 months);
- Unit 13 – Former butchers: unoccupied since Aug-16 (39 months);
- Unit 16 – Formerly Thing Me Bobs: unoccupied since Jun-18 (16 months).

3.12 The opportunity to fill one of these units, which has been without a use for almost a year-and- a-half, with a town centre-type of use should, therefore, be very positively entertained.

3.12. The principle of the development within the primary shopping frontage of Sudbury is acceptable in accordance with the policies of the development plan, that is to say, the change of use of the premises from shop (A1) to Gaming Lounge Bar (*Sui Generis*) is accepted as an appropriate town centre use as a matter of principle. The specific details of how the proposed use will operate requires careful assessment. Planning considerations and other material considerations are detailed where relevant below.

4.0 Nearby Services and Connections Assessment Of Proposal

4.1. N/A

5.0 Site Access, Parking And Highway Safety Considerations

5.1. The Highway Authority's perception is that the proposed change of use would not have any adverse effect on the highway network at this location.

6.0 Design And Layout [Impact On Street Scene]

6.1. The application comprises the change of use only and does not include external alterations. There is no impact on the street scene.

7.0 Landscape Impact, Trees, Ecology, Biodiversity And Protected Species

7.1. N/A

8.0 Land Contamination, Flood Risk, Drainage and Waste

8.1. There is no relevant land contamination, flood risk, drainage or waste impacts associated with the proposal.

9.0 Heritage Issues [Including The Impact On The Character And Appearance Of The Conservation Area And On The Setting Of Neighbouring Listed Buildings]

9.1. N/A

10.0 Impact On Residential Amenity

10.1. Three single-storey residential flats are situated directly above the application site premises, 12 residential flats are located within the neighbouring Kings House and there are further residential flats/maisonettes above the ground floor retail units in the vicinity.

10.2. The application proposal seeks permission to use the ground floor premises below the flats as a gaming lounge bar. The hours of operation applied for are 9:00am through to 3:30 am Monday to Sunday and until 6:00 am on all bank holidays. A premises license for the use has been granted.

10.3. Access to the premises is proposed via the existing shop frontage within the precinct. The precinct is gated and currently the gates are closed at 8:00pm. The applicant confirms that arrangements are in place to extend the opening hours of the precinct to coincide with the proposed hours of operation, thereby permitting pedestrian access within the precinct until 3:30am every day of the week and up to 6:00am on all bank holidays.

10.4. The application proposal therefore has potential to impact the residential amenity of the occupiers of neighbouring property by virtue of noise and general disturbance within the precinct as patrons arrive and exit the premises. The applicant's subsequent Planning Statement states that:

'Babergh District Licensing Authority granted license no. BPL0463 to Caffeine Lounge covering the Supply of Alcohol, Films, Indoor Sporting Events, Recorded Music and Late Night Refreshment, together with a schedule of approved opening hours.

In addition, the licence provided for the management of noise and disturbance created by patrons leaving the premises within the Appendices to the licence.' The applicant goes on to state the following provisions:

a) The following conditions for controlling sound outside the premises have been stipulated in the Premise Licence:

The premises licence holder shall take all reasonable steps and precautions to minimise the risk of disturbance or nuisance to local residents caused by events or attendees at the licensed premises (whether through people noise, entertainment noise, vehicular noise, waste disposal, event set-up or breakdown, littering or obnoxious odour).

Staff on duty shall monitor the activity of patrons leaving the premises and assist with a managed departure. Persons leaving shall be reminded to act in a responsible manner and leave the immediate area with consideration to the needs of the local community.

Monitoring shall take place both inside and outside of the licensed premises and due regard shall be had to whether the activities may lead to excessive noise at neighbouring properties.

Appropriate remedial steps shall be taken, and recorded, in the event of any excessive noise levels being experienced.

Notices shall be prominently displayed and maintained on the premises requesting that attendees/users of the licensed premises leave the premises and the vicinity quietly and with respect to the needs of neighbouring properties.

b) Additional conditions were stipulated after a hearing with the Licensing Authority:

The premises licence holder shall ensure that a member of staff regularly checks on outside areas where patrons are observing the smoke-free legislation in the designated smoking areas for the licensed premises. A detailed logbook shall be kept of these occasions.

The primary business of the premise is an e-gaming centre/e-sports lounge.

The internal layout of the premises cannot be altered without the consent of the Licensing Authority.

The premises shall not be used as a vertical drinking establishment.

There shall be no live music at the premises.

All windows and external doors shall be kept closed between 23:00 hours and 06:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.

No under 18's shall be allowed on the premises after 23:00hrs.

c) Furthermore, the premises lease stipulates the following:

On all occasions where the Premises are open beyond 23:30pm, the Tenant shall (at its own expense) ensure such additional staff stewards as are reasonably and prudently required for the provision of security within the premises and the building.'

- 10.5. Notwithstanding the conditions and provisions of the Premises Licence, the application proposal has the potential to impact on the residential amenity of the occupiers of neighbouring and adjoining property and this requires close examination in the context of this proposal.
- 10.6. The main consideration in the determination of this application is whether the environmental impact of the proposed use on existing neighbouring properties can be mitigated to ensure that the building can sufficiently contain noise from the proposed use, which includes regulated entertainment and the sale of alcohol, so as to prevent a statutory nuisance for the residential flats above particularly after 23:00 hours and up to 06:00.
- 10.7. The submitted Noise Impact Assessment is key to the outcome of this application to ensure that adjoining residents are safeguarded from statutory nuisance and to protect the Council's position as property owner and landlord in the future. The submitted assessment demonstrates that the proposed use should not adversely impact on residential amenity, provided all noise-generating activity is contained by the building, and if comprehensive operational practices to control noise and dispersal are implemented.
- 10.8. The Environmental Protection Team have confirmed that whilst the Team remains concerned that the premises in its current state is not suitable for the proposed use, there is no objection to planning permission being granted, provided suggested conditions are applied that require the full recommendations of the noise impact assessment to be carried out and validated as successful, prior to the commencement of the proposed use.
- 10.9. The conditions suggested by Environmental Protection are included below and require significant mitigation works to modify the building structure to contain internal noise and to control noise from people in the precinct at certain times. Before imposing the suggested conditions, the Local Planning Authority must first ensure that each condition satisfies the tests provided at Paragraph 55 of the NPPF, which makes it clear that planning conditions should be kept to a minimum, and only used where they satisfy the tests of being: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.
- 10.10. In the Case Officer's opinion, the conditions suggested by Environmental Protection are necessary, relevant, enforceable and precise. However, given the full extent of the mitigation works and operational controls required to safeguard neighbouring amenity, it is only proper to consider whether the conditions are 'reasonable in all other respects. As property owner, the Council's Asset Management Team have confirmed that the proposed mitigation works are both achievable and deliverable by a competent builder and in this regard, it is therefore considered reasonable to impose the conditions requiring mitigation works. However, the acoustic report emphasises that physical mitigation works alone will not be enough to mitigate the impact of noise; it will require the implementation of, and adherence to, the recommended Noise

Management Policy and Dispersal Policy and in this regard it is considered reasonable to also impose a condition requiring the Noise Management Policy and Dispersal Policy to be implemented.

- 10.11. It is also noted that the acoustic report has assumed that recorded music played at the premises would be at a lower noise level than generally expected for most licensed premises where recorded music is played and that this lower noise level is based on the applicant's intended business model to use the premises as a gaming lounge. It is important to note that the suggested mitigation is only appropriate for the lower noise level assumed by the report and it is therefore considered necessary; relevant and reasonable to restrict the use to the gaming lounge use applied for to ensure that the LPA retains control over other noise-generating uses within Use Class A4 (drinking establishments including public houses, wine bars or other drinking establishments).

PART FOUR – CONCLUSION

12.0 Planning Balance and Conclusion

- 12.1. The application proposes a leisure use within a town centre location where Core Strategy Policies CS1, CS3, CS4 and CS15 offer support and encouragement to economic growth and employment opportunities and to a diversified mix of uses and services in town centres. Policy CS16 advises that new retail, leisure and similar service uses, including evening and night-time uses, will be assessed for potential impact, including cumulative impact, on the character and function of the area, anti-social behaviour and crime, including considering security issues raised by crowded places, and the amenities of nearby residents, as well as on the vitality and viability of existing centres.
- 12.2. The proposed change of use from Shop (A1) to a *Sui Generis* Gaming Lounge Bar is an appropriate use within a town centre location and is therefore acceptable in principle. However, the specific details of the proposed gaming lounge use, including drinking establishment with regulated entertainment via recorded music until 03:30 hours 7 days per week with extended opening until 06:00 hours on public holidays requires very careful consideration given that residential flats are situated immediately above the application site and other residential flats are adjacent.
- 12.3. The Council as landowner has commissioned a Noise Impact Assessment on behalf of the applicant which concludes that, subject to suitable and verified soundproofing works, a correct sound system specification and system controls, together with restricting customer access to the precinct after 23:00hrs and the implementation of Noise Management Policy and Dispersal Policy the proposed use will not adversely impact on residential amenity.
- 12.4. The conditions suggested below are required to ensure that the proposed use is acceptable in such close proximity to noise sensitive occupiers of neighbouring property. The conditions require extensive mitigation works and impose on-going controls over the operation of the proposed gaming lounge use. The Case Officer is satisfied that for this specific application, the suggested conditions meet the six tests as set out in the Framework, noting that the Council's Asset Team have confirmed that the mitigation works are both achievable and deliverable.
- 12.5. It should also be noted that as the Council is both the landowner and the regulatory Local Authority, there is the potential risk that in the event that the proposed use results in a breach of

planning or licensing control, or a noise nuisance complaint is received, the Council could be presented with the unusual scenario that, ultimately, it could be taking remedial action against itself to resolve any such situation that may arise in the future. This potential risk is a material planning consideration of some limited weight that weighs against the proposal however, on balance and subject to full compliance with all the recommended conditions, the proposal is an acceptable use in a town centre location and planning permission could be granted.

RECOMMENDATION

That the application is GRANTED planning permission and includes the following conditions:-

- Use limited to *Sui Generis* Gaming Lounge Bar
- Commencement of development
- Approved plans and documents
- Restrict use to that applied for i.e. gaming lounge within Class A4.
- Implementation of Noise Management Policy and Dispersal Policy.
- As recommended by Environmental Health:

1. Prior to the commencement of development written details of all proposed works to improve the sound insulation performance of the windows and main doors (including second internal doors or lobby) of the building, as guided by section 6 (paragraphs 6.1 to 6.11) of the Noise Impact Assessment produced by Big Sky Acoustics Technical Report Number 1909091 dated 30th August 2019 shall be submitted to the Local Planning Authority for approval. The Approved scheme installed prior to first operation, maintained and retained in that form thereafter unless otherwise agreed in writing by the Local Planning Authority

2. Prior to first use of the site as a licensed premise, all sound insulation works to walls, ceilings and support pillars shall be completed as described section 6 (paragraphs 6.15 to 6.38) of the Noise Impact Assessment produced by Big Sky Acoustics Technical Report Number 1909091 dated 30th August 2019. The Approved scheme works shall be retained and maintained in that form thereafter unless otherwise agreed in writing by the Local Planning Authority

3. Prior to first use of the site as a licensed premise, The details of the sound system, speakers and speakers' locations shall be submitted to the local Planning Authority for Approval Approved scheme works shall be retained and maintained in that form thereafter unless otherwise agreed in writing by the Local Planning Authority

4. Prior to first use of the site as a licensed premise a Sound Limiter will be installed that restricts all amplified sound to a maximum noise level of 86dB LAeq. The noise limiter will be retained and maintained in that form thereafter unless otherwise agreed in writing by the Local Planning Authority

5. The Main Entrance Doors that are accessed via the Borehamgate precinct shall not be used for access or egress (except in an emergency) between 23:00 hours and 08:00 hours the following day. In addition smokers will be directed away from the main precinct between 23:00 hours and 08:00 hours the following day.

6. Prior to first use of the site as a licensed premise an Acoustic Validation Report shall be submitted in writing to the Local planning Authority for approval. The report shall include the results of tests that confirm that sound insulation is sufficient for the proposed use under normal operating conditions (maximum recorded music volume of 86dBLAeq) following the completion works required by conditions 1 and 2 above. The validation should confirm all works carried out as well as acoustic testing. With regards to validation of the works to the main doors and windows as required by Condition 1 the test should show that noise levels at 1m from the façade of any residential windows

LAeq (EN) should not exceed LA90 (WEN) And L10 (EN) should not exceed L90 (WEN) in any 1/3 octave band between 40 and 160Hz.

EN = Entertainment noise level, WEN = Representative background noise level without the entertainment noise, both measured 1m from the façade of the noise-sensitive premises.

With regards to validation of works to walls, ceilings and support pillars the validation report shall confirm that the works have provided at least 64dB (55) Rw (+Ctr) and that recorded sound is not audible in the bedrooms of any adjoining residential flat as the result of sound transmission via the structure. Amplified sound shall not be permitted until the validation report is agreed