

Our ref: hk/lvr/Mac/CLOPUD/21.12.21

21/12/2021

Manchester City Council,
Planning Department,
PO Box 532,
Manchester,
M60 2LA

Dear Sir/Madam,

Certificate of lawful proposed use as Class E virtual reality gaming centre at 68 Bridge Street, Manchester, M3 2RJ

We act as planning consultants to Entain Plc.

Planning permission 113266/FO/2016 for Change of use from A1 Retail to Sui Generis (Betting Shop), elevational alterations to form new shopfront and installation of a satellite dish was approved on 13th October 2016 in order to facilitate the relocation of a Ladbrokes betting shop from Unit 2, 123 Deansgate, M3 2BY. However, this permission was not implemented and the use of the premises as a betting shop was not instituted as defined by Section 56 of the Town and Country Planning Act 1990. Furthermore, pre-commencement Condition 3 of the planning permission was not discharged. As such, the lawful use of the property remains in Class E (retail) use and the premises has remained vacant since at least 10th January 2017.

It is now proposed to operate a virtual reality gaming centre from the subject property. Please note that this is not a licensable activity and that no form of gambling including betting office, adult gaming centre or licenced prize gaming facilities for gambling including Category A,B, C or D machines as defined in the Gambling Act 2005 will be operated on site. Customers pre book the experience and a maximum of 20 customers will be accommodated on site at any one time which is significantly below that which would normally be accommodated within a betting office. There will not be any noisy equipment on site. All of the experiences on offer will be virtual or augmented reality where individuals can immerse themselves in virtual reality experiences via a VR headset within VR pods.

With regard to the principle of the planning use the government has introduced radical de-regulatory changes to the 1987 Use Classes Order which apply to all uses of land and buildings across England as a direct consequence of the Covid-19 pandemic. As of 1st September 2020 the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (SI 2020/757) (2020 Regulations) came into force. The new regulations revoke Part A, and Part D of the 1987 Use Classes Order (England) and also modified Part B.

This means that the following use classes no longer exist –

Class A1. Shops

Class A2. Financial and professional services

Class A3. Restaurants

Class B1. Business

Class D1. Non-residential institutions

Class D2. Assembly and leisure

In its place the government has created a new broader use class being as follows –

- **Class E. Commercial, Business and Service**

Use, or part use, for all or any of the following purposes—

- a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,*
- b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,*
- c) for the provision of the following kinds of services principally to visiting members of the public—*
 - (i) financial services,*
 - (ii) professional services (other than health or medical services), or*
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,*
- d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,**
- e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,*
- f) for a crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public,*

g) for—

- (i) an office to carry out any operational or administrative functions,*
- (ii) the research and development of products or processes, or*
- (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.*

A building in Class E may be in use for a number of uses ‘concurrently or at different times of day’ suggesting there can be complete flexibility within the Use Class. It follows that buildings can be used flexibly for all of the above without the requirement for planning permission.

The subject property being an existing lawful retail premises falls squarely within Class E and can be operated within Class E (d) use *for or indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public*. This application for a Certificate of Lawful proposed use seeks to regularise the use of the subject property as a Class E use as defined in the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 with permitted development rights for use for all of the above uses as defined in Class E including use as a gym.

In support, we refer you to formal governmental Planning Practice Guidance (PPG) advice published on 18th September 2020 under the heading ‘*Is movement between uses within the same use class development?*’ which clarifies that –

Movement from one primary use to another within the same use class is not development, and does not require planning permission.

The Commercial, Business and Service use class provides for use, or part use, for all or any of the purposes set out in that Class.

In a further nod towards the full scale diversification of commercial uses that is supported by the Government we refer you also to a revision to paragraph 036 of PPG which includes a new line advising that an “*article 4 direction cannot be used to restrict changes between uses in the same use class of the Use Classes Order*”. As such, the direction of travel of national planning policy guidance is that the Government seeks to provide a de-regulatory planning framework that provides flexibility for businesses impacted by Covid-19 to adapt and diversify to meet changing demands.

National PPG advice further indicates that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.

We also enclose a significant recent appeal decision which is relevant to this certificate of lawful proposed use application, and which sets a material precedent, in that the issue of D2 gym use as a Class E (d) use has already been considered by the Planning Inspectorate in the short time since the (Use Classes) (Amendment) (England) Regulations 2020 came into force in September 2020 and an appeal has been allowed.

Planning Appeal APP/W4325/W/20/3248455 for 'change of use from B1 industrial unit to D2 private members gym at Unit C5, 1 Brook Way, Prenton, (Merseyside) CH43 3DT was allowed on 27 August 2020. In allowing the appeal the Inspector considered that even though the proposal did not comply with the local authority's adopted local plan the introduction of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 was a significant material planning consideration which outweighed local plan policy guidance. At paragraphs 19 and 20 the Inspector states –

19. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 will come into force on 1 September 2020, amending the Town and Country Planning (Use Classes) Order 1987. These regulations amend and simplify the system of Use Classes and in doing so will create a new broad 'Commercial, business and service' use class (Class E). This will incorporate the existing shops (Class A1), financial and professional services (Class A2), restaurants and cafés (Class A3), offices and other business uses (Class B1), some non-residential institutions e.g. nurseries and health centres (Class D1), and gymnasiums and sports facilities (Class D2) use classes into a single use class.

20. The implications for the appeal being that beyond 31 August 2020 the change of use would no longer constitute an act of development and therefore the industrial use of the unit would be lost without the need for planning permission. This represents a significant fallback for the appellant, and in the event that the appeal was to fail, I am satisfied that there is a greater than theoretical possibility of this fallback option being implemented. Therefore, I give the fallback position considerable weight as a material consideration that outweighs the conflict, I have found with the development plan.

The formal regularisation of the use of the premises as a Class E use will ensure the long term viable reuse of the premises and create a genuine new attraction for visiting members of the public. Seven jobs will be created at the site and the long term viable use of the premises as a commercial, business and service use will be secured.

If you have any queries related to this proposal please do not hesitate to contact these offices in the first instance.

Yours sincerely,

HARIS KASUJI BA MA MRTPI