

Appeal Decision

Site visit made on 31 January 2017

by Jason Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23rd February 2017

Appeal Ref: APP/T5150/W/16/3163392

Ground Floor, 322 Neasden Lane, London NW10 0AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Palace Amusements (Holdings) Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/2167, dated 23 May 2016, was refused by notice dated 20 July 2016.
 - The development proposed is change of use from financial service/money shop (sui generis) to amusement centre (adult gaming centre) (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from financial service/money shop (sui generis) to amusement centre (adult gaming centre) (sui generis) at Ground Floor, 322 Neasden Lane, London NW10 0AD in accordance with the terms of the application, Ref 16/2167, dated 23 May 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) A window display showing items available for sale within the unit shall be provided at all times in the windows fronting Neasden Lane.

Preliminary Matter

2. Since the decision was issued the Council has adopted the Brent Local Plan Development Management Policies, November 2016 (DMP). I have therefore considered the appeal against the relevant policies contained therein.

Main Issue

3. The main issue is the effect of the proposal on the vitality and viability of Neasden Town Centre.

Reasons

4. This appeal relates to the ground floor of a mid-terrace property located in the Primary Shopping Frontage of Neasden Town Centre. The unit is currently vacant having been the premises of a payday loan shop up until May 2015.
 5. It is proposed to use the unit as an amusement centre/adult gaming centre consisting of prize machines, ancillary catering and ancillary retail sales. DMP Policy DMP2 states that non-A1 or A2 uses will be permitted within town centres where: it would not reduce the proportion of frontage in A1 and A2 use
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to less than 65% of the primary frontage: or, if vacancy rates exceed 10% of primary frontage it would not reduce the proportion of frontage in A1 and A2 use to less than 50%; and, the proposal provides or maintains, an active frontage.

6. The proposal would result in a sui generis use in the primary frontage. Whilst the payday loan shop use of the premises was previously A2, it was nevertheless reclassified as sui generis under the Town and Country Planning (Use Classes) (Amendment) (England) Order 2015. This change pre-dates the adoption of the DMP. I recognise that part of the reasoning behind the reclassification was to allow Council's to prevent harm from an increase in such uses on the high street. I also recognise that a material change of use would still occur, as noted in the representations of Cashino Gaming Limited (CGL). However, whilst the proportion of the frontage is currently below 65% for A1 or A2 use, as the existing use of the property is sui generis, the proposal would not reduce the current proportion of A1 or A2 uses in the frontage. To that end, the proposal would accord with the first criteria of Policy DMP2.
7. There is no dispute between the parties that the proposal would accord with the second criteria of Policy DMP2. The Council indicates that vacancy rates in the centre are well below 10% and therefore I see no reason to disagree.
8. The Council has raised no concerns in respect of the third criteria of Policy DMP2. However, the evidence of CGL suggests that that the property would not have a retail frontage, instead it would more closely resemble a betting shop. The appellant nevertheless indicates that the shopfront would incorporate a window display of goods for sale on the premises to attract passing customers. Moreover, the display would be changed regularly to maintain visual interest. The appellant suggests that such a display would be comparable to many retail and non-retail uses within the centre and that a condition could secure such a shop front. I agree that such a condition would be reasonable and necessary and would, as such, ensure that the proposal would provide an active frontage. Consequently, the proposal would comply with the third criteria of Policy DMP2 of the DMP.
9. DMP Policy DMP3 states that betting shops, adult gaming centres and pawnbrokers will be permitted where it will result in: no more than 4% of the town centre frontage consisting of betting shops; no more than 3% of the town centre frontage consisting of adult gaming centres or pawnbrokers/payday loan shops; no more than 1 unit or 10% of the neighbourhood parade frontage, whichever is the greater, consisting of betting shops, adult gaming centres or pawnbrokers/payday loan shops; and, a minimum of 4 units in an alternative use in-between each.
10. The first criterion is not relevant as it relates to betting shops. In addition, there is no dispute between the main parties that the proposal would accord with the second criteria or the third criteria.
11. The Council indicate that there are currently four betting shops (3.6% of frontage) and one amusement arcade (0.7% of frontage) in the Primary Shopping Frontage. These uses are concentrated in the element of frontage which the appeal property forms part of. There is a betting shop three units to the west of the appeal property (328 Neasden Lane) and three betting shops to the east (310, 274 and 251-253 Neasden Lane), with an adult gaming centre around 45m-50m away at 304 Neasden Lane.

12. The Council and CGL suggest that the collective reference to betting shops, adult gaming centres and pawnbrokers in the fourth criteria of Policy DMP3 means that it requires four alternative uses between any of those three uses. In contrast, the appellant argues that the use of the word 'each' rather than 'any' suggests that the Policy requires four alternative uses between each property in a specific use to another in the same use.
13. Paragraph 3.8 of the supporting text to Policy DMP3 states 'to ensure there is not an overconcentration of particular uses within any single length of frontage the policy seeks to prevent adult gaming centres, pawnbrokers, betting shops and takeaways locating in close proximity to a unit in the same use'. Such wording suggests that the reference within Policy DMP3 relates to units in the same use, rather than within the collective reference of sui generis uses in the main body of the policy.
14. I have considered the considerable evidence and expertise of CGL on the significant changes to the operation and customer base of adult gaming centres and betting shops over the years, including those operated by the appellant. However, as discussed above a window display for the sale of goods could be secured by condition. This would draw a notable distinction with surrounding betting shops where the displays are dominated by advertisements and a lack of internal visibility. Furthermore, the proposed use would provide ancillary retail and catering facilities which are not commonly found in betting shops. Thus I find there would be a distinction in the characteristics of the proposed adult gaming centre and existing betting shops in this instance. In any event, even if I were to agree with CGL in respect of that matter, it seems to me that all those uses referred to in Policy DMP3 have different characteristics, hence their explicit reference within the policy itself. I therefore find the appellant's interpretation of the fourth criteria rather more persuasive, and see no compelling reason why such an interpretation would undermine the aims and purposes of Policy DMP3.
15. To that end, there are six separate businesses, including two which occupy double units between the appeal property and the only other unit in use as an adult gaming centre at 304 Neasden Lane. As a consequence, the proposal would comply with the fourth criteria of Policy DMP3.
16. The aims and objectives of DMP Policy DMP3 are to ensure that there is no over-concentration of uses which would undermine the vitality and viability of shopping areas. As a whole, there are just five sui generis uses in use for either betting or adult gaming centres within a centre of around more than 100 units. Moreover, the proposal would not materially increase the number of sui generis uses and would be only one of two adult gaming centres in the frontage. It is apparent that the centre has a particularly low vacancy rate and is the only vacant unit within this particular stretch of the shopping frontage. Consequently, taken all of the above into account, I am satisfied that the proposal would not result in an overconcentration of such uses within the primary shopping frontage and would not be to the detriment of the retail offer of the town centre.
17. CGL indicates that the premises have not been marketed with any vigour and little effort has been made therefore to attract an acceptable alternative use. However, the appellant indicates that marketing has been carried out for some time. In any case, given that I have found that the proposal is suitable having

regard to Policies DMP2 and DMP3 of the DMP, I afford the need to attract a different use for the property little weight, particularly as I have been provided with no policy basis for such an approach.

18. I conclude, therefore, that the proposal would not have a harmful effect on the vitality and viability of Neasden Town Centre. It would, as such, accord with Policies DMP2 and DMP3 of the DMP and the aims to promote competitive town centre environments as set out in the National Planning Policy Framework (the Framework).
19. The proposal would also accord with Policy 4.8 of the London Plan¹ which states that clusters of uses should be managed having regard to their positive and negative impacts on vitality and viability, competitiveness, quality or diversity of offer and sense of place or local identity. Policy 2.15 of the London Plan relates to development proposals for retail to residential use and is not, therefore, relevant here.
20. Saved Policy SH7 of the Brent Unitary Development Plan 2004 (UDP) relates to changes of use from retail to non-retail. That is not the case here and the Policy is not therefore relevant. Saved Policy SH6 of the UDP states that non-retail uses in primary shopping frontages will be acceptable provided they are confined to one of several uses. Adult gaming centres are not included in the list and therefore the proposal would conflict with Policy SH6. In addition, Policy SH13 of the UDP states that amusement centres will be acceptable only in Secondary Shopping Frontages. The proposal would conflict with Saved Policy SH13.
21. However, Paragraph 23 of the Framework is clear that local planning authorities should promote competitive town centres that provide customer choice and a diverse offer to ensure their long term vitality. Policies SH6 and SH13 of the UDP take a far more restrictive approach which is not wholly consistent with the flexible approach set out in the Framework. I therefore afford Policies SH6 and SH13, and the conflict with them, limited weight.

Other Matters

22. There is no evidence before me that the proposal would give rise to harmful levels of noise and disturbance, or crime and anti-social behaviour. Indeed the evidence of the appellant and of CGL suggests that adult gaming centres can be accommodated without detriment. I therefore afford such concerns little weight.
23. The alleged failure of the appellant to comply with conditions on planning permission for other premises under their control is not a matter to which I can contribute more than little weight to in.

Conditions

24. No suggested conditions have been put forward by the Council. Suggested conditions have been put forward by the appellant and the Council has had the opportunity to comment on them, though it has not done so. Nevertheless, in addition to the standard time limit condition, for the reasons set out above I consider it necessary to impose a condition relating to a window display to

¹ The London Plan: The Spatial Development Strategy for London Consolidated with Alterations Since 2011, 2016

ensure an active frontage is maintained in the interests of the vitality and viability of the centre.

25. I consider a condition requiring the machines in the premises to be amusement only as suggested by the appellant would not be necessary, relevant or enforceable.

Conclusions

26. For the reasons given above I conclude that the appeal should be allowed.

Jason Whitfield

INSPECTOR