
Appeal Decision

Site visit made on 14 February 2017

by S D Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 15th March 2017

Appeal Ref: APP/V4630/W/16/3164430
9-11 Park Street, Walsall WS1 1LY

- 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 Mecca Bingo Ltd against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 16/1145, dated 22 July 2016, was refused by notice dated 8 November 2016.
 - The development proposed is change of use from vacant retail unit to Mecca electronic bingo centre with ancillary food and drink operation; alterations to entrance doors; and erection of air conditioning compressors.
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Decision

1. The appeal is allowed and planning permission is granted for change of use to an electronic bingo centre with ancillary food and drink operation; replacement of the shop front; and erection of air conditioning compressors at 9-11 Park Street, Walsall WS1 1LY in accordance with the terms of the application Ref 16/1145, dated 22 July 2016 and subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mecca Bingo Ltd against Walsall Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development as stated on the planning application form is set out above. The Supplementary Supporting Statement describes the proposed development as change of use to an electronic bingo centre with ancillary food and drink operation; replacement of the shop front; and erection of air conditioning compressors. This more accurately describes the proposal and is preferred.
4. The Council, following the Sittingbourne Appeal decision¹, does not dispute that the main use falls within Class D2 of the Town and Country Planning Use Classes Order 1987 (as amended)².
5. The Council has referred to a long list of planning policies in the Officer report and the Appeal Statement without fully elaborating on the manner in which

¹ Ref APP/V2255/A/09/2114379

² Para 6.8.2 of the Council's Statement

these apply to the development proposal. In my deliberations I have therefore focused primarily on those policies explicitly referred to in the reasons for refusal set out on the decision notice and of which copies have been provided in the evidence.

Main Issues

6. I consider the main issues for this appeal to be:

- whether the proposal would conflict with planning policies taking particular account of Policy S4 of the Walsall Unitary Development Plan 2005 (the UDP) and be out of place in a primary shopping street in Walsall;
- the effect of the proposed development on the character and appearance of the Bridge Street Conservation Area (the CA); and
- the effect of the proposed development on the fear of crime and anti-social behaviour.

Reasons

7. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise³. For the purposes of this appeal the development plan comprises the Saved Policies of the UDP and the Black Country Core Strategy 2011 (the BCCS). The National Planning Policy Framework (the Framework) is a material consideration. In accordance with Paragraph 216 of the Framework weight can be given to the emerging Walsall Town Centre Area Action Plan published 2016 (the AAP) according to its stage of preparation and the degree of consistency with the Framework.

Planning policies and the primary shopping street

8. The appeal site is a three storey building in Walsall Town Centre. Park Street is a main pedestrianised street within the Primary Shopping Area (PSA) and the CA and is a primary shopping street. Nos 9-11 are close to the central junction of The Bridge. The appeal site is surrounded by retail and commercial properties, including shops, restaurants and public houses.
9. During my site visit I observed that the general character of Park Street is as a busy pedestrian thoroughfare during the day. The appellant says it is also busy until late at night although the Crime Prevention Design Advisor states that opening hours will not be in line with other establishments.
10. Policy S2 of the UDP identifies Walsall as the Main Town Centre and Policy CEN2 of the BCCC identifies Walsall as a Strategic Centre. Together with policies CEN3 and CEN4 of the BCCS development plan policies seek to sustain and enhance Walsall in its sub-regional role for comparison shopping and other town centre uses, including leisure and entertainment, and to regenerate town centres across the Black Country. Policy S1 of the UDP defines town centre uses as including retailing, financial and other services, food and drink and leisure. Policy S1(a)v specifically provides for entertainment and leisure including Class D2 uses. Annex 2 of the Framework specifically mentions bingo

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

halls as a main town centre use. Accordingly use as an electronic bingo centre with ancillary food and drink, would not, in principle, contravene the aims of Policies S1 and S2 of the UDP; the similar Policy AAPS1 of the emerging AAP; or the Framework.

Policy S4 of the UDP

11. Saved Policy S4 sets out general principles for town and district centres. Policy S4(a) seeks to sustain and enhance the range and quality of shopping, leisure and other appropriate uses in town centres to meet the needs and aspirations of all who use the centres. Policies S4(b) and S4(c) prioritise safeguarding the existing level of shopping, leisure and other provision. These policies recognise that in some centres there is scope for an increase in such uses provided it is not at the expense of the vitality and viability of the centre as a whole. These principles are broadly re-iterated in the emerging AAP.
12. Under Policy S4(d) the Council seeks to ensure that within the PSA, at ground floor level, the retail function of frontages is not prejudiced but states that non-retail uses will be permitted subject to four criteria. These overlap to a certain extent and I consider them in more detail below. Policy S4(e) provides for areas elsewhere in centres and upper floors to have other uses including leisure. Policy S4(f) seeks new investment and developments of a high standard of design that includes paying attention to the principles of designing-out-crime. Policies S4(g) and (h) relate to accessibility and parking neither of which would be affected by the proposed change of use.

Criterion (d)i - Contribute to the vitality of the frontage by attracting additional trade and/or increasing the range of facilities on offer

13. Customer visits are estimated as about 300 per day during the week and about 500 per day at weekends. Dwell times at the premises are estimated to range from around 25 minutes to a few hours. The appellant considers this level of activity compares favourably to the previous retail use of the site. As the proposal is a new venture exact numbers cannot be predicted and I have seen no detailed evidence relating to the demand for a facility of this kind. However, I see no reason to suppose that the estimated level of activity would be dissimilar to that of some retail premises.
14. Games would be available throughout the day with customers able to opt in and out as they please rather than the restrictive "sessional" model more commonly found. I have seen no detailed evidence to suggest that such a use would be over represented in the PSA and its offer would be likely to be a different environment than that of the Gala Bingo Hall on the Jerome Retail Park some 15 minutes walk away, the amusement arcade on the other side of Park Street or bookmakers. To this extent the proposed use would add to the mix of uses in the town centre as a whole whether or not other leisure facilities are under development at the Waterfront.
15. It has been put to me that the proposal would not attract additional trade and would feed off existing businesses. I have seen no substantial evidence to indicate whether this would be so or not. On the balance of probabilities I consider there would be likely to be a mix of shared trips, new trips and trips combined with visits to other town centre facilities. There could be some diversion of trade from existing businesses such as cafes and other leisure

businesses but this would not conflict with Paragraph 23 of the Framework which encourages competitive town centres that provide customer choice.

16. The appeal site is vacant and the evidence indicates that no trade has taken place since 12th February 2015. Whilst a quality retail use might be preferred for the site there appears to be no strong demand for this and it seems to me there is a real risk that the premises may remain vacant for some time or be brought into use as a charity shop or similar as elsewhere in the PSA. I consider this to be the case even though there may be other locations outside the prime shopping frontage where the proposed use could occupy vacant floor space and whether or not the emerging AAP seeks to direct leisure development to the developing Walsall Waterfront.
17. On balance I conclude that the likely increased footfall over a longer part of the day and the use of the currently vacant unit for the bingo centre as proposed, even within the primary shopping street and the CA, would be benefits that would outweigh the hope value of occupation by a prime retail use at some unspecified time in the future. On this basis I conclude that the proposal would not conflict with the provisions of Policy S4(d)i.

Criterion (d)ii - Not detract from the retail function by creating 'dead frontage' or otherwise deterring shoppers, to an unacceptable extent or in an unacceptable location; criterion (d)iii - incorporate a window display to maintain and enhance the interest and liveliness of the street scene

18. The proposed scheme includes two large glazed windows. There would be customer seating at a shelf in one window and a view into the coffee lounge and server behind. There would therefore be a degree of liveliness and interest in the shop frontage not dissimilar to that of cafes and restaurants often found in town centres. In this respect the proposal would not result in a totally 'dead frontage'. There could be a risk of coverings being applied to the windows that would obscure activities inside. In mitigation the appellant has indicated a willingness to accept a condition controlling window coverings.
19. A staircase would restrict views of the interior from the street through the other window. This would not present the type of window display sought in a PSA. The proposal would therefore not comply in full with Criteria (d)ii or (d)iii. Set against this, during my site visit I observed some retail and non-retail premises with very limited window displays and/or windows wholly or partially obscured by vinyl coverings or advertisements.

Criterion (d)ii - Non-retail uses are unlikely to be acceptable on both sides of the entrance to a shopping centre

20. The appeal site is not at the entrance to the shopping centre and so there would be no conflict with this part of criterion (d)ii.

Criterion (d)iii - Be open during shopping hours and incorporate a shop front

21. The proposed opening hours would be 7:00 to midnight Mondays to Saturdays and 9:00 to midnight on Sundays and Bank Holidays which would include most shopping hours and beyond. The food and drink on offer would include breakfast, lunch and evening menus which could engage those using the town centre throughout the shopping day. The proposals incorporate a new shop front. Accordingly there would be no conflict with this part of criterion (d)iii. I comment further on this in the section on Character and Appearance below.

Criterion (d)iv -Not detract from the amenities of the area in any other way

22. I have addressed matters of the fear of crime and anti-social behaviour below.

Conclusion in respect of Policy S4 of the UDP

23. The evidence indicates there is a high level of vacancies in Walsall⁴ and the appellant states that there has been little interest from retailers in this property⁵ or in 17 or so vacant retail units nearby⁶. There are a number of vacant units within the town centre as a whole and there are 10 units of various sizes to secure pre-lets as part of the Council supported Primark development⁷.
24. The DTZ Report⁸, as supporting evidence in the preparation of the AAP, finds that *"Focusing long term investment within the town centre PSA is essential to delivering the BCCS strategy for regeneration and growth"* and that *".. retail content is the key driver of activity in the town centre and vital for creating the environment for other town centre uses to be successful"*. However, the DTZ report also recognises that key to ensuring the future health and status of the town centre is securing new strategic retail development within the PSA in addition to existing commitments and that there is little retail demand to suggest that, aside from existing commitments at Digbeth and St Matthews Quarter, major new retail development in Walsall will be achievable in the short to medium term.
25. There have been increasing calls for diversification of high streets including leisure uses⁹. The emerging AAP also recognises that more footfall is needed along Park Street and up to St Mathew's quarter especially at night. Policy AAPLE1 of the emerging AAP recognises that leisure has an increasing role with people seeking a varied experience when visiting the town centre and that town centres need to diversify their offer to attract footfall and compete with other centres. Leisure uses can also bring life into the town centre especially during the evenings. The proposal could assist with this and its size would not be of a scale that could jeopardise the delivery of the Waterfront as a leisure destination.
26. The Council considers there would be a real risk that the proposed use in this prime shopping frontage could deter further trade and investment from Park Street and the PSA. The Council points to an historic issue with drawing people along Park Street, the main pedestrian connection between the town centre and the edge-of-centre retail park at Crown Wharf, and the Digbeth area.
27. I acknowledge there appears to be some pressure on the retail offer in the PSA as town centres are generally under pressure and the Council advises there is a local issue with retailers moving from the PSA to Crown Wharf, as happened with the appeal premises. The Council has invested in a new market and the public realm around The Bridge and considers any weakening of the retail offer would have a negative effect on investment.

⁴ Report to the Planning Committee; the Express and Star newspaper recently reported that Walsall is the sixth worst town for vacant units with 27.6 per cent of shops out of business; paragraph 6.6.8 of the Council's Statement

⁵ Paragraph 6.15 of the Planning Support Statement

⁶ Paragraph 2.4 of the Grounds of Appeal

⁷ Paragraph 6.6.6 of the Council's Statement

⁸ Walsall Town Centre Demand Study and Development Sites Assessment September 2015

⁹ Section 6 of the Planning Support Statement

28. On the other hand, a considerable investment would be likely to be made in refurbishment and upgrading of the premises and the proposal could create some 25 jobs, both of which would help in regeneration. Whilst this could also be the case if the premises were occupied by a prime retail use at present there seems little such demand.
29. Based on the information before me there seems to be a need to encourage the occupancy of vacant units and attract a wider range of uses to increase footfall and extend the day when customers may wish to use the town centre. Relative to the appeal property remaining empty, the primary retail function of the area could, I consider, be enhanced by the proposed use, and the likelihood is that it would thereby add to vitality of the frontage, rather than the reverse.
30. Policy S4 does not preclude non-retail uses provided they meet the criteria. I have concluded above that most of the criteria are satisfied. I conclude that the proposed window display, whilst not as engaging for passers-by as some retail window displays, would not amount to such a dead frontage or be so bland or lacking in interest as to be sufficient reason to refuse the proposal. The proposal could add to the attractions of the shopping street although there is a risk this may not be the case. On balance, I conclude that although there would be some conflict with Policy S4 of the UDP or other shopping related development plan policies and Policy AAPS1 of the emerging AAP in the particular circumstances the proposal would not be out of place in a primary shopping street in Walsall.

Character and Appearance

31. The Planning (Listed Buildings and Conservation Areas) Act, 1990, requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Paragraph 132 of the Framework states that great weight should be given to the conservation of designated heritage assets. The Park Street part of the CA has a mix of buildings of different ages and styles and its character is one of a mixed, busy shopping centre.
32. Park Street has a number of shop frontages with large glazed window displays. The appeal site has a shop front about 11m wide. The proposal includes a new shop front that would incorporate a timber stall riser. These physical amendments to the shop front would improve the visual quality of the property and would enhance the appearance of the CA.
33. The display inside the shop front would not be as attractive to passers-by as some retail window displays. However, I consider the proposed layout with food and drink related activities near the windows would not be dissimilar to some other window displays. Accordingly I consider that the proposed window display would have a neutral effect on the CA taken as a whole.
34. Whether or not some people disapprove of gambling or the serving of alcohol, the comings and goings of customers and the activities within the premises are not inappropriate or out of character in the busy, mixed use, town centre CA. I have seen no detailed evidence that those who play bingo are more likely to smoke than others. Even were this to be the case customers smoking outside the premises would be little different in my opinion to customers smoking outside other premises such as cafes and public houses and not particularly more disruptive to the flow of pedestrians than seating or market stalls.

35. I consider the proposed use would have some positive effect of bringing into use an empty property. On balance I conclude that the proposed development would not harm the character or appearance of the CA. It would have some beneficial effects but at worst would have a neutral effect, which amounts to the preservation, of the character and appearance of the CA. Accordingly the proposal would not contravene Policy ENV2 of the BCCS; Policies GP2, ENV29, ENV32 or ENV35 of the UDP or those principles of the Framework that seek to ensure development preserves or enhances the character or appearance of conservation areas.

Fear of crime and anti-social behaviour

36. Park Street is the pedestrian link between Walsall Train Station, St. Paul's Bus Station and the Bradford Place Bus Interchange as well as linking shopping areas. Policy GP2 of the UDP and the Supplementary Planning Document Designing Walsall (the SPD) require development to contribute towards creating places that feel safe, secure and welcoming for everyone and safe to move through in line with similar aims in Paragraph 58 of the Framework.

37. The Council considers representations made by the wider community as demonstrating fear of the proposal. Concerns raised by third parties include the impact on local trade; fear of alcohol/drug abuse; safety of children and the elderly; and anti-social behaviour. The appeal site is located in the St Matthews Neighbourhood Policing Team Beat and the Crime Prevention Design Advisor (the CPD Advisor) objects to the proposal and advises of a high recorded level of crime in that Beat. The CPD Advisor considers that, as the opening hours would not be in line with other establishments, youths and offenders that loiter in the area may be drawn to the premises when others have closed, such as occurs at the nearby McDonalds store. The CPD Advisor is also concerned about the management of underage drinking, intoxicated customers, vulnerable persons particularly at later hours, the management of customers' winnings and makes recommendations about security measures.

38. Specific data relating to the immediate environs of the appeal site has not been provided. I note that the Home Office data indicates that in the year ending September 2016 Walsall had lower than average crime rates than comparable areas¹⁰. The appellant would be a licensed operator and would have to comply with the Gambling Commission's Licence Conditions and Code of Practice and I note that detailed policies would be in place to ensure responsible gambling¹¹. The evidence indicates that neither the Council nor the Police raised any objections to the application for gaming or liquor licences and that mediating conditions including CCTV installation and door supervisors have been agreed with the West Midlands Police Licensing Officer¹².

39. The proposed use would bring customers and staff into the town centre. No substantive evidence has been provided to show that such people would be particularly likely to engage in crime or anti-social behaviour. Indeed the presence of customers and staff seated at the window and moving around the town centre would provide some natural surveillance. This could have a deterrent effect on crime and anti-social behaviour that would balance against possible anti-social behaviour. Licensing controls could provide further

¹⁰ Appellant's Response to LPA's Statement of Case Appendix 2

¹¹ Mecca Bingo's Responsibility Statement

¹² Appellant's Response to LPA's Statement of Case Paragraphs 2.13, 2.14 and 2.17

mitigation and the use would not be able to occur without the necessary licences being in place.

40. Therefore, on the basis of the information before me, I find that the proposed development would have a neutral effect on the fear of crime and anti-social behaviour. Accordingly there would be no conflict with Policy GP2 of the UDP; the SPD; or those principles of the Framework that seek safe and accessible environments.

Other Considerations

41. I have considered the many objections to the proposed change of use submitted by third parties, including a petition on behalf of shop keepers and traders, and the appeal decision in respect of a similar proposal in Nottingham Ref APP/Q3060/W/16/3150846. However, whilst the Inspector found that a similar development in that case was not acceptable in a town centre location, I have assessed the appeal proposal on its merits with regard to the development plan policies which relate to the specific appeal proposal before me and the circumstances of the two cases are not directly comparable.

Conclusion and conditions

42. For the reasons set out above I have concluded there would be some degree of conflict with Policy SP4 of the UDP. However, the proposal would comply with other policies and would have benefits in respect of bringing back into use a vacant building and increasing footfall including in the evenings. On balance I conclude that the benefits outweigh the disadvantages and that the proposal would not significantly conflict with the policies of the development plan taken as a whole; policies in the emerging AAP; or the Framework. The appeal should succeed.
43. I have considered the conditions proposed by the Council in the light of the Framework and the National Planning Policy Guidance. As well as the standard condition specifying the time limits for commencement of development compliance with the approved plans/approved details is necessary to provide certainty. In the interests of the appearance of the CA full details of the proposed shop front, including colour, are required and the development shall be carried out in accordance with the approved details.
44. It is necessary to control future changes of use, restrict coverings on the windows and impose opening hours to ensure the frontage retains some activity and interest within the shopping street. It is not necessary to impose a condition in relation to "Secure by Design" specifications or CCTV as these are matters for the tandem licensing regime.

SDHarley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The premises shall be used only as an electronic bingo centre with ancillary food and drink operation, and for no other purpose (including any other purpose in Class D2 of the Schedule to the Town and Country

Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

- 3) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site location plan 8389 PL 001; Proposed elevation new shop front 8389 SK 008; Internal elevations ground floor 8389 PL 400; Proposed ground floor and first floor plans 8389 PL 200; Supplementary Supporting Statement — 17 October, 2016; Planning Support Statement outlining the company vision; Mecca Bingo's Responsibility Statement - the company responsibilities with regards to gambling and its effect on customers.
- 4) Prior to any part of the development first coming into use and before any new shop front is installed a cross section at a 1:20 scale through the proposed new shop frontage and details of the colour for the new shop front shall be submitted to and approved in writing by the Local Planning Authority. The agreed details shall be fully implemented and thereafter maintained.
- 5) The materials used for external elevations shall be those indicated on the approved plans/details.
- 6) Within the permitted hours of 7:00 to midnight Mondays to Saturdays and 9:00 to midnight on Sundays and Bank Holidays at all times the electronic bingo centre occupies the premises the ground floor coffee lounge shall not be closed to customers between the hours of 9:00 and 18:00 hours.
- 7) At no time shall there be any adverts, vinyl or other coverings applied which would restrict views into and out of the shop front windows.

End of conditions