

Appeal Decision

Site visit made on 22 November 2017

by M Seaton BSc (Hons) Dip TP MRTPI

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

Decision date: 15 December 2017

Appeal Ref: APP/U5930/W/17/3179827

855 High Road, Leyton, London, E10 7AA

- 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 Mr Rajas Raj against the decision of the London Borough of Waltham Forest.
 - The application Ref 171224, dated 31 March 2017, was refused by notice dated 26 May 2017.
 - The development proposed is the change of use of a shop (Class A1) to an adult gaming centre (*sui generis*).
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Procedural Matter

1. The planning application forms identify the description of the proposal as a *change of use from off licence to a gaming licence*, with the reference to a gaming licence also adopted by the Council in the description of development in the Notice of Decision. However, I am satisfied that the description above, which is as set out in the Planning Appeal Form, is the most accurate and complete description of the proposals from a planning perspective.

Decision

2. The appeal is dismissed.

Main Issue

3. The main issue is the impact of the proposed change of use on the vitality and viability of Bakers Arms District Centre.

Reasons

4. The appeal site is occupied by a two-storey mid-terrace property, which is identified as having been within Use Class A1, and lawfully occupied as such further to being granted planning permission in 2011. The site is highlighted as being located within a primary shopping frontage and the Bakers Arms District Centre. The proposed change of use relates only to the ground floor of the appeal site and would see the introduction of an adult gaming centre within a *sui generis* Use Class, comprising of two gambling rooms, as well as storage areas and a WC.
 5. The appeal site is located within a primary shopping frontage comprising Nos. 819-859 High Road, within which is located a Tesco Superstore at Nos. 819-849 High Road. The remaining units within the parade are identified as "*Islamic Impressions*" – a shop selling fabric/cloth (no. 851); "*Optical World*" – an
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Optometrists (No. 853); "A R Mobile" – a mobile phone shop (No. 855a); "Greggs" – Bakery (No. 857); and "Buttercream" – a cake decorating shop (No. 859). The site is located close to the junction between High Road, Lea Bridge Road, and Hoe Street.

6. The Council has identified that the proposal would not accord with Policy CS14 of the Waltham Forest Local Plan Core Strategy 2012 (the Core Strategy), and Policy DM27 of the Waltham Forest Local Plan Development Management Policies 2013 (the Development Management Policies). These policies address the promotion of attractive and vibrant town centres and consolidating the role of District Centres – including Bakers Arms, and creating a sustainable distribution of town centre uses by managing the proliferation of particular uses where their location and/or grouping would be contrary to the Council's aspirations and priorities (Policy CS14). Within primary frontages, retail uses (Class A1) will predominate on ground floors, with other uses only permitted where all of a suite of criteria are met (Policy DM25).
7. The Council's case relies heavily upon the conclusions reached by an Inspector within a dismissed planning appeal decision (*Ref: APP/U5930/A/11/2163376*), for a *change of use from A1 retail to licensed betting office (Use Class A2)* at No. 857 High Road, Leyton, dated 31 January 2012. In this respect, the Inspector ventured that *whilst customer footfall might be comparable to some retail uses and, therefore, not insignificant*, it was nevertheless important to *protect the retail function of commercial frontages and also give a good impression of its (the Baker Arms District Centre) retail offer at such an important gateway into the Centre*.
8. Whilst I have had regard to these conclusions, I am mindful that they were drawn within the context of the policies of a subsequently superseded Development Plan in the form of the *Waltham Forest Unitary Development Plan (First Review 2006)*. In respect of Policy DM25 of the Development Management Policies, the appellant has now sought to address the various criteria within the Grounds of Appeal.
9. I am satisfied that the proportion of non-retail uses in the relevant frontage (i.e. Nos. 819-859 High Road) would not exceed 30% of the total length, and that there would not be a resultant group of three or more adjoining standard size shop units in non-retail uses. However, I am not persuaded that an adult gaming centre could reasonably be said to provide a service which would be directly related to a shopping trip, such as the examples given at Policy DM25 A) iii) of banks, building societies and cafés. In this respect, I have been mindful of paragraph 26.6 of the justification to Policy DM25 addressing primary frontages. In this paragraph it is stated that *other uses including some professional and financial services such as estate agents and betting offices, provide a more specialised service and are not directly related to a shopping trip in that they are not frequently visited as part of a normal shopping trip*. I would also consider an adult gaming centre to fall within such a defined use, and therefore I consider that the proposed change of use would conflict with this aspect of Policy DM25.
10. I note that Policy DM25 A) iv) – ix) are cited as additional factors which the Council would take into account in making decisions. I accept that the size of the appeal premises does not warrant consideration of the frontage in conjunction with an adjacent frontage, and I have no reason or contrary

evidence before me from which to dispute the appellant's reference to betting/gaming shops attracting high visitation levels. I have noted the appellant's suggestion that if there was not a market demand that the appellant would not be seeking to locate in this location. However, no detailed evidence has been provided of an identified local need to justify the proposed change of use in accordance with the requirement of the policy, with there being no submissions placed before me to suggest that a local need survey has been undertaken in support of the proposed development. Additionally, I have not been provided with details of an assessment as to the availability or non-availability of alternative vacant premises outside of the primary frontages, but within the District Centre.

11. I accept the appellant's point that the existing primary shopping frontages within the District Centre contain a wide range of uses, including non-retail uses. However, neither the appellant nor the Council has referred in any detail to whether the proposed use either contributes to, or detracts from, the Council's aspirations and priorities, in particular, the regeneration objectives for the local area, beyond an assertion by the appellant that there are no overarching regeneration objectives for the area which would be hindered. On this basis, and in the absence of any contrary submissions by the Council, I see no reason to disagree with the appellant's standpoint in this respect.
12. Turning to the impact of the proposed use on the vitality and viability of the proposed use on the primary frontage, it is evident that the principal objective of Policy DM25 in relation to primary frontages is to retain a high proportion of retail uses selling a wide range of goods, and maintain the essential retailing function of the District Centre. Whilst I note that the policy allows a certain degree of dilution of the retailing function, as I have already set out in my assessment of Policy DM25 A) iii), this would be as a means of allowing directly related complementary uses to shopping trips to be located within the District Centre in primary frontages. I have already concluded that an adult gaming centre would not reasonably be classified as such a use. On the basis of the information before me, I consider that the loss of a retail unit to the use proposed would result in an adverse effect in this respect.
13. The appellant has identified the unit as having been vacant for a period of in excess of 6 months, and that the proposed development would bring back some vitality to this part of the District Centre. However, at the time of my site visit the shutters to the retail unit were raised, and the shop appeared to be well-stocked and open for business. This would appear to be clearly contrary to the appellant's statement within the Grounds of Appeal. In any event, and irrespective of any contended and unsubstantiated impact on trading as a consequence of the nearby Tesco Superstore, this is not a matter which on the basis of my observations and the level of information submitted I have attached any more than limited weight to the appellant's contended benefit in this respect.
14. The appellant has drawn my attention to a more recent allowed appeal decision (Ref: APP/U5930/A/14/2229533), for a *change of use to a betting office (sui generis use)* at No. 620 High Road, Leyton, dated 2 April 2015. I have also been mindful of the appellant's reference to a further appeal decision (Ref: APP/V5570/W/16/3145635) dated 30 August 2016, for a *change of use from a solicitors (A2) to a betting shop (sui generis)*, for a site within the London Borough of Islington. In both instances, the appellant has referred me to the

conclusions of the respective Inspectors as to the acceptability of a certain percentage (2.5-3.7%) of total units being gambling facilities within District or Local Shopping Centres, with the contention that the resultant 3.5% for Bakers Arms District Centre would also be a comparatively low percentage of gambling uses. In the context of the wider centre, I would not disagree with this conclusion, although this would not in itself preclude the need for the assessment of the appropriateness of the proposed change of use on the Primary Shopping Frontage.

15. I have noted the appellant has also addressed the issue of the concept of the 'clustering' of similar units. In this respect, I accept that there are a number of existing non-retail and gambling uses at the main junction near the appeal site, but also that the appeal site is located further away than the unit considered in the 2012 appeal at No. 857 High Road. On the basis of my observations, I do not consider that the proposals should be considered as part of any contended visual clustering at the junction, being set far enough away to not be read within the same context as the other units.
16. As a consequence of my conclusions above, I am satisfied that the proposal would result in an adverse impact on the vitality and viability of Bakers Arms District Centre, and in particular the primary shopping frontage. There would be conflict with Policy CS14 of the Core Strategy and Policy DM25 of the Development Management Policies. These policies seek to consolidate the role of District Centres, create a sustainable distribution of town centre uses by managing the proliferation of particular uses, and within primary frontages, ensure that retail uses continue to predominate, with other non-retail uses only permitted subject to various criteria, including that they are directly related to shopping trips.

Conclusion

17. The appellant has referred to the fact that he has held an adult gaming licence since November 2009, as a basis for confidence about the manner in which the proposed enterprise would be run. Furthermore, reference is made to the contended contribution that would be made to the evening economy and local employment. Whilst I have had regard to both of these points, I am satisfied that the limited weight which these factors would attract in support of the proposals would not be sufficient to outweigh the harm which I have identified in respect of the main issue.
18. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

M Seaton

INSPECTOR