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## Appeal Decision

Site visit made on 10 April 2018

**by Nicholas Taylor BA(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 April 2018**

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**Appeal Ref: APP/N5090/W/17/3192397**

**Plot 299, 128 Colindale Avenue, Colindale, London NW9 4AX**

- 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 Power Leisure Bookmakers Ltd against the decision of the Council of the London Borough of Barnet.
  - The application Ref 17/2248/FUL, dated 5 April 2017, was refused by notice dated 8 December 2017.
  - The development proposed is change of use of 97sqm of Plot 299 of 128 Colindale Avenue from flexible A1/A2/A3 use to a betting shop (Sui Generis use).
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### Decision

1. The appeal is dismissed.

### Background and Main Issues

2. The appeal relates to a ground floor retail unit within a new local centre at Colindale. The proposed change of use from the approved flexible A1/A2/A3 use to a betting shop, which is a sui generis use (that is, of its own kind and not part of any other, more general use class), would involve 97 square metres of the overall unit. At the time of my site visit, the remaining part of the original unit was occupied by a coffee shop. The main issues in this case are as follows:
  - whether the proposed development would be acceptable having regard to the mix of uses in the local centre;
  - whether the development, particularly with regard to potential noise and disturbance, would have an acceptable effect on the living conditions of the occupiers of nearby dwellings; and
  - the effect of the development on the character and appearance of the area.

### Reasons

#### ***Mix of uses***

3. The local centre within which the appeal property is located is part of a much wider regeneration scheme, involving extensive medium-high rise residential buildings and a relatively small number of other mixed uses. Construction is still underway on a large adjacent site. *Barnet's Local Plan (Core Strategy)* (CS) states that "Colindale Avenue will provide the vibrant heart and gateway of Colindale as a sustainable mixed-use neighbourhood centre anchored by a

new public transport interchange with pedestrian piazza". This theme is further developed in the *Colindale Area Action Plan (CAAP)*, which refers to the Colindale Avenue Corridor of Change.

4. Policy DM12 of *Barnet's Local Plan (Development Management Policies)* (DMP) states, in part, that "the council will protect all retail uses (Class A1) in the existing local centres, parades and isolated shops unless it can be demonstrated that:
  - i. there will be no significant reduction of shopping facilities as a result; and
  - ii. that alternative shopping facilities that are similarly accessible by walking, cycling or public transport exist to meet the needs of the area; and
  - iii. the proposed use is within Class A2, A3, A4, A5 or meets an identified local need; and
  - iv. there is no demand for continued Class A1 use, and that the site has been marketed effectively for such use."
5. Retail and service units are focussed on Colindale Avenue, Charcot Road and the piazza, but not exclusively so. They vary in size, including small supermarkets, other shops and cafes, and, at the time of my site visit, most seemed to be occupied. There are several large supermarkets in the wider area. Given those circumstances, there would be no conflict with criteria i and ii of the policy, as the Council acknowledges.
6. The proposed use would not be within one of the uses specified in criterion iii. The appellant, reiterating Council officers' initial view, argues that, when planning permission for the mixed use scheme was originally granted<sup>1</sup>, subject to a condition restricting ground floor retail units upon their first occupation to flexible A1/A2/A3 uses, betting shops were within Class A2 and so, at that time, would have been compliant with part iii of the policy. However, in April 2015, the government took them out of that use and designated them as a sui generis use. That deliberate change was undertaken in order to give local planning authorities more control over the establishment of betting shops. It remains the case that betting shops are, in principle, an appropriate use in shopping centres and areas but, taking criterion iii at its face, I see no reason to relax it in the current case.
7. The appellants seek to argue that a betting shop would meet an identified local need, as also required under criterion iii. I acknowledge that a nearby betting shop closed recently and that there would undoubtedly be potential customers for such a facility, but there are numerous other betting shops located in adjacent neighbourhoods, easily reached on foot or by public transport. I have not been shown any strong evidence or expressions of particular need for a betting shop in this location, other than confirmation that the appellant considers that the use would be commercially viable. Consequently, the proposal fails to satisfy criterion iii.
8. With regard to criterion iv, it seems that the unit has never been occupied since completion and so there is no "continuing" A1 use as referred to in the policy. Nevertheless, A1 is part of the suite of approved uses and so the policy applies in this case. Council officers originally considered that the requirement for

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<sup>1</sup> Council ref. H/05856/13

marketing of the unit would be onerous and so, I accept, the appellant may not have considered it necessary. However, the lack of any evidence of marketing to ascertain whether serious demand exists for an A1 use, or, for that matter, any of the other currently approved Class A uses, indicates a failure to comply with criterion iv.

9. The proposal would, self-evidently, not immediately give rise to an over-concentration of betting shops in this location and so there would be no conflict in that respect with the second part of Policy DM12 or Policy 4.8 of the *London Plan* (LP). I have not been referred to any other development plan policies which specifically seek restrict betting shops, per se, in retail areas. However, Policy DM12 is written so as to require compliance with all the four criteria, which the appeal proposal fails to achieve.
10. The CS and CAAP set out ambitious aims for the regeneration scheme and the role of the neighbourhood centre. The regeneration scheme is still far from complete. Whilst the centre is shaping up to be an attractive place, it is still finding its feet and the close juxtaposition of a mixture of uses adds to the sensitivity and importance of managing its early development. The Use Classes Order provides an element of control in this instance, which the Council has chosen to exercise. The significant expression of opinion within the local community and its representatives against the appeal proposal is not determinative but carries weight. The proposed change of use fails to meet two of the four criteria of Policy DM12 and, in this case, material considerations, including the relevant aspects of the *National Planning Policy Framework*, do not indicate setting aside that conflict.

### ***Living conditions***

11. The Council's reason for refusal concerns noise and disturbance to occupiers of residential units. These are located immediately above the appeal premises and across Guardian Avenue and Colindale Avenue from it and around the area generally. The noise report for the appellants assesses that noise from within or outside the premises would be unlikely to cause undue disturbance. The Council's concerns do not relate to transmission of noise within the building but rather from customers coming and going and lingering outside.
12. A number of flats have balconies overlooking the location, creating the potential for undue noise and disturbance. However, located on a reasonably busy road next to a Tube station, the centre has been purposely designed to provide a mixture of uses and a number of these, including retail and cafés, operate over a range of hours similar or longer than those proposed for the betting shop. Residents will, therefore, be likely to expect a degree of external noise.
13. The Police raise concerns about the proposal, citing the potential for anti-social behaviour, particularly given the nearby mixture of uses, including sale of alcohol, leading to people congregating noisily outside. Numerous other third parties have expressed similar worries. However, although a completely separate regulatory regime, it is relevant that a licence has been granted to operate the betting shop; with Police participation in the proceedings. The licence was granted subject to conditions which include installation of CCTV covering the entrance, together with other measures. Breach of the general and specific licence requirements would potentially attract sanctions.

14. The public entrance to the appeal premises would be from Colindale Avenue, at the end of a short parade of shops and a café and not immediately adjacent to any residents' entrance. At this location, the pavement is wide but it is some distance from the 'piazza' where public seating is located. The proposed hours of opening and location, together with the licence provisions, would mitigate against undue noise and disturbance from customers, whether due to normal coming and going or exacerbated by anti-social behaviour. Although strongly expressed, the Council's and third party concerns are not sufficiently substantiated in planning terms to indicate serious harm to the living conditions of nearby residential occupants. Consequently, the proposal would comply with LP Policy 7.15B and DMP Policy DM04 with regard to minimising and mitigating the potential impacts of noise.

### ***Character and appearance***

15. No significant change is proposed to the appearance of the appeal premises. The Council has recently approved an application for signage and alteration of the shop front, which would retain shop windows. Therefore, there would be no harm to the appearance of the area.
16. Whilst the character of an area can be interpreted in terms of a variety of matters, the CAAP envisages the Colindale Avenue Corridor of Change as presenting active frontages providing a vibrant and safe environment. Even though I have found that the proposal would not comply with the development plan in terms of the retail mix, I am not persuaded that it would cause very serious harm to the character and appearance, as such, of this mixed-use area.
17. Therefore, there would be no conflict with DMP Policy DM01, which seeks to protect Barnet's character and amenity, or the CAAP in that regard.

### **Other Matters**

18. I take account of the jobs which would be created but, as any appropriate use of the unit would be likely to provide employment, this is not a factor which outweighs the harm that I have identified.
19. As I am dismissing the appeal it is not necessary for me to address in detail matters raised by third parties which do not relate to the main issues. However, whilst I have taken account of concerns raised about the intrinsic merits of betting shops as part of the gambling industry and the potential effects of various forms of gambling on peoples' lives, especially young people, these are chiefly addressed by legislation and regulation other than the planning system, and so do not lead me to reach different conclusions in this case.

### **Conclusion**

20. Although I have not found significant harm in respect of living conditions of nearby occupiers or the character and appearance of the area, for the reasons set out above, the harm to the retail mix and conflict with the development plan as a whole indicate that the appeal should be dismissed.

***Nicholas Taylor***

INSPECTOR