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## Appeal Decision

Site visit made on 21 August 2019

**by E Griffin LLB Hons**

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

**Decision date: 13 December 2019**

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**Appeal Ref: APP/P4605/W/19/3229958**

**54-57 High Street, Ladywood, Birmingham B4 7SY**

- 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 Mark Davis of Luxury Leisure against the decision of Birmingham City Council.  
The application Ref 2018/09039/PA dated 6 November 2018 was refused by notice dated the 5 February 2019.
  - The development proposed is change of use of the ground and first floors to an amusement arcade (sui generis) with external alterations including a new shopfront and associated works.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground and first floors to an amusement arcade (sui generis) with external alterations including a new shopfront and associated works at 54-57 High Street, Ladywood, Birmingham B4 7SY in accordance with the terms of the application 2018/09039/PA dated the 6 November 2018, subject to the following conditions:
  - 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
  - 2) The development hereby approved shall be implemented in accordance with the details submitted with the application; Existing Ground Floor and First Floor Plan 1441(0)01; Existing Front Elevation 1441(0)02; Proposed Ground Floor and First Floor Plan 1441(0)03; Proposed Front Elevation No Signage 1441(0)05; Site Location Plan; Block Plan.
  - 3) A scheme for the provision of a network of closed circuit television cameras, including the proposed location of the cameras, mounting columns, proposals for the use and management of the system and proposals for its installation shall be submitted to and approved in writing by the Local Planning Authority prior to occupation. The CCTV system shall be installed in accordance with the approved details prior to first occupation and thereafter maintained.
  - 4) The premises shall only be open to customers between the hours of 09:00 and 22:00.

## **Main Issues**

2. The main issues are (i) the effect of the appeal proposal on the character and appearance of the area with particular regard to the design of the shopfront and (ii) whether the proposed change of use would increase opportunities for crime and fear of crime.

## **Reasons**

### *Character and Appearance*

3. The appeal site is located within a high street location in Birmingham City Centre. The surrounding area comprises a mix of retail, leisure and commercial uses including national retail chains such as Boots and Marks and Spencer and a mix of other shops. The appeal building forms part of a larger block of buildings and was empty at the time of my visit but was previously used for retail on the ground floor and part of the first floor was previously used by the adjoining restaurant and takeaway that is still located next door. There is a betting shop "Betfred" to the other side of the appeal site which forms the end of the block. There is an alleyway to the other side of Betfred. There is an existing adult gaming centre located about 90 metres away operated by the appellant's sister company.
4. The appeal proposal includes a new shop front as well as the change of use. Whilst the existing front door is central, there would be a new double door on the left which would have an illuminated yellow frame. The rest of the frontage would be largely glass with two black slatted screen frames that would house two TV screens.
5. The Council considers that the proposed shop front would result in an inactive frontage that would adversely affect the character and appearance of the streetscene. An active frontage would be derived from both its appearance and its use and associated comings and goings. The appeal proposal would share some shop-like characteristics in that it would have an entrance door and windows capable of window display and people can walk in directly in off the street.
6. Whilst there would be two TV screens to either side of the front window, they would be set back and the central panel would be free of a TV screen allowing some natural surveillance. The appellant indicates that just under 70 per cent of the window display would be clear glass. It is also the case that a number of nearby retail units nearby have backdrops which create some limited visibility into the units. As well as the larger high street retail units, there are also units such as a pawnbrokers who have less active frontages.
7. In an area where there is a mix of styles, uses and designs, I do not consider that the design of the shop front which includes TV screens as shown on the submitted plans constitute an inactive frontage that would harm the character and appearance of the area. It would not therefore be contrary to Policy PG3 of the Birmingham Development Plan (the Development Plan) which, amongst other things, states that new development should respond to local area context.

### *Opportunities for Crime*

8. The police confirm that the appeal site is within an area where there are a disproportionately high number of calls to West Midlands Police relating to criminal activity and acts of anti-social behaviour. There is in place a Public Space Protection Order which includes the appeal site due to environmental issues such as misuse of telephone kiosks, and there are a large number of bus stops and benches nearby where people can loiter. The appellant acknowledges that appeal site is located in an area where statistics show that incidents of crime are relatively high. The police comment upon the poorly lit and misused New Meeting Street alleyway which is around 8 metres from the appeal proposal to the side of Betfred. The police indicate that there have been a significant number of calls to the postcode area of the appeal site up to December 2018 but the appeal site was not operating as an adult gaming centre at that time. It is not disputed that the area experiences high levels of crime.
9. It would appear that currently groups of students and school children congregate around 3 and 4pm outside the appeal site which is close to an intersection of various bus routes. Whilst the Council and the police consider that the proposed change of use would have an exacerbating impact on the existing levels of anti - social behaviour, there is limited evidence to show that the appeal proposal would facilitate or increase the likelihood of criminal activities occurring. There are issues with crime in the area and the presence of the empty unit is not assisting in managing any crime issues. The occupation of a currently vacant unit would be likely to provide some natural surveillance and remove the opportunity for groups to gather outside a vacant shop. The presence of CCTV which can be conditioned would provide some monitoring and may act as a deterrent for anti-social behaviour. The appeal proposal would be lit and the premises would be staffed.
10. The police have objected to the appeal proposal on the basis that the number of calls relating to gambling industry establishments is high and that the proposed use would adversely impact upon the location and crime and fear of crime. There is however limited evidence that the appeal proposal would facilitate or increase the likelihood of these activities. The appellant has for example indicated that its sister premises at Priory Square which is approximately 90 metres away has had no reported incidents.
11. The police also object to the appeal proposal operating 24 hours a day. With regard to the hours of operation, the application form has referred to 24 hours of operation although neither party has provided evidence regarding the suitability or otherwise of 24 hour opening. Although the appellant has indicated that the sister company has operated an adult gaming centre nearby without any crime issues, no details are provided of the hours of the existing similar establishment. The Council had not commented upon the hours of operation during the course of the appeal, although a late comment was received suggesting lesser hours. The police as part of their objection within the appeal procedure considered that 24 opening hours would be inappropriate.
12. The appeal site is situated in an area where the surrounding development is largely retail on the ground floor and together with commercial premises at higher levels would generally be closed at night. During the day, the area would be busy with passers-by and shoppers and use of the areas such as the

alleyway to the side of Betfred would be safer during daytime hours when nearby facilities would be open and act as natural surveillance. Having regard to the combination of the nature of the surrounding development, where businesses are largely open during the day and not at night, the Public Space Protection Order and the unlit alleyway to the side of Betfred that has been identified as an issue by the police, I do consider that the appeal proposal is in an area where more limited hours would be appropriate.

13. On balance, subject to suitable conditions, I do not therefore consider that the appeal proposal would increase opportunities for crime and fear of crime. It would therefore not be contrary to Policy PG3 of the Birmingham Development Plan 2017 amongst other things states that new development should create safe environments that design out crime, designing buildings that promote positive social interaction and natural surveillance.
14. Paragraph 127 of the National Planning Policy Framework (the Framework) states that planning decisions should create places that are safe, inclusive and accessible and where the fear of crime does not undermine the quality of life or community cohesion and resilience.

### **Other Matters**

15. Apart from the police there have been objectors. The local Member of Parliament at the time of the application considered that the appeal proposal would aggravate the problems that prevail in the area. A local councillor has referred to the need for regeneration of the whole area and witnessing levels of bad behaviour. Whilst that may be the case, I have not found that the appeal proposal would be likely to exacerbate existing issues, for the reasons given. A nearby occupier has also referred to the loss of a retail unit. Taken as a whole, the Council does not consider that the loss of one retail unit would undermine the vitality/viability of the City Centre and I see no reason to disagree with that view.

### **Conditions**

16. The standard conditions with regard to implementation of the planning permission and with regard to plans are needed in the interests of certainty. I have imposed an hours condition for the reasons already stated. A condition in respect of CCTV is needed to help create safe environments and promote natural surveillance.

### **Conclusion**

17. For the reasons given, I conclude that the appeal should be allowed subject to conditions.

*E. Griffin*

INSPECTOR