



Appeal Decision

Site visit made on 2 February 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2021

Appeal Ref: APP/N5090/W/20/3260444

48 Ballards Lane, Finchley, London N3 2BX

- 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 Cashino Gaming Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/3147/FUL, dated 13 July 2020, was refused by notice dated 7 September 2020.
 - The development proposed is change of use from Bank (A2) to Sui Generis (Adult Gaming Centre)(AGC).
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Decision

1. The appeal is allowed, and planning permission is granted to change of use on the ground floor, from Bank (A2) to Suis Generis AGC at 48 Ballards Lane, Finchley, London N3 2BX in accordance with the terms of the application, Ref 20/3147/FUL, dated 13 July 2020, and the plans with it, subject to the conditions in the attached schedule.

Procedural Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (UCO). As the application was submitted before the new regulations came into force, it must be determined in accordance with the previous UCO. The main parties have had the opportunity to comment on any implications of this for the appeal as part of the process.
3. The wider evidence suggests that it is only the ground floor of the host property that is subject of this appeal. I have dealt with the appeal on this basis.

Main Issues

4. The main issues of this appeal are the effect of the proposal on:
 - i. the vitality and viability of Finchley Church End Town Centre (the FCETC); and,
 - ii. the living conditions of nearby occupiers of residential properties.

Reasons

Vitality and viability

5. The appeal site is located on Ballards Lane within the Primary Shopping Frontage (PSF) of the FCETC, as identified in the Finchley Church End Town

Centre Strategy 2012 (the Strategy). The prevailing characteristic of Ballards Lane is a mix of retail and commercial uses at ground floor, with residential accommodation located at first floor and above. However, there are examples of office blocks in the locality, such as Central House and Sovereign House. A large Tesco supermarket is also present that acts as the main retail anchor.

6. Policy CS6 of Barnet's Local Plan Core Strategy 2012 (CS), seeks to promote competitive town centre environments and provide consumer choice, whilst ensuring the efficient use of land and buildings in all town centres, encouraging a mix of compatible uses including retail, managed affordable and flexible workspace, leisure and residential that add to the vibrancy of the area, whilst respecting character, amongst other things. Policy DM11 of Barnet's Local Plan Development Management Policies 2012 (DMP) expects a suitable mix of appropriate uses as part of development within the town centres to support their continued vitality and viability, whilst not creating an over-concentration of similar uses which detracts from the retail function of the town centre. Similar objectives are outlined in Policy 4.8 of the London Plan 2016 (LonP)
7. The host property has been vacant since September 2017 when the bank left the site. I am informed by the appellant¹ that the property has been on the market since early 2018, which has attracted various casual enquiries, but only one other serious enquiry, to that of the appellant, which collapsed in March 2019. The appellant's property consultant cites the physical constraints of the former bank as a reason why there has been a lack of interest from traditional A1-A3 uses, which includes its frontage and concrete safe on the ground floor. Additionally, the host property being locally listed is considered to be a constraint.
8. Overall, the appellant's property consultant confirms that there has been little interest from retailers, resulting in no firm offers being made, which is likely to be the case for the foreseeable future. Although, a planning application² for flexible A1 to A3 uses was granted in January 2020 in order to make the host property more desirable to retailers and service providers, I accept that the effectiveness of the marketing would have been hampered by the current pandemic.
9. The appellant has provided a breakdown³ of the premises located within the PSF with 57% comprising retail shops with the remainder comprising a variety of other uses. This includes 7no. Suis Generis operators, which comprise 4no. betting shops, 1no. money exchange and 2no. dry cleaners, amounting to 7% of the PSF. Additionally, this breakdown confirms that there are no other AGCs and that there are approximately vacancy levels of 10% in the PSF. In the absence of any evidence to the contrary and following my own findings during the site visit, I consider that these figures are broadly representative of the PSF in the FCETC.
10. It is common ground between the main parties that the host property does/did not contribute to, or provide any retail function within the PSF. Therefore, the proposal will have a neutral effect on the number of retail premises in the PSF. Although, as a bank it would have been a complementary use. I acknowledge the other Suis Generis premises in the locality, particularly the 4no. betting

¹ 3H Property Consultants dated 17 August 2020

² 20/0043/FUL

³ 6.12

shops at No's 34, 36, 67 and 76 Ballards Lane. I also recognise that a further betting shop is located at No 156 Ballards Lane, opposite the junction of Wentworth Park.

11. Whilst the betting shop at No 156 is located in the town centre boundary, it is located outside the PSF and within the Secondary Shopping Frontage, some distance away from the site. Although there are distinct differences between an AGC and a betting shop, there are also some similarities. In this case, I consider that the number and location of the betting shops within the PSF, will not result in an overconcentration of similar uses. Even taking into account the additional betting shop at no 156, I do not consider that the proposed AGC will harm the FCETC. Another AGC has been brought to my attention at No 847 High Road, North Finchley, but given its distance from the site, I consider that there would be harmful cumulative effect.
12. The proposal is a type of use not out of keeping within a busy town centre location. My general impression of the FCETC, taking into account the current pandemic, was that, despite the significant difficulties which face many town shopping centres, was that the FCETC seemed to be relatively healthy. In any event, I have found that the proposal would not create an over concentration of similar uses to the detriment of the vitality and viability of the FCETC. The host building has remained vacant for a number of years. Thus, on the details before me, I am not confident that this position would alter any time soon, resulting in the prospect of the unit remaining empty for the foreseeable future. Therefore, the prospect of the host property being brought back into use, weighs in favour of the proposal. Nonetheless, I recognise that the Council are working to regenerate the area, improve the function of the FCETC, and that the proposal would not provide an active frontage.
13. Despite the misgivings of the proposal surrounding the active frontage, I consider that the proposal would still generate a notable footfall and would not harm the character of the PSF or the FCETC. Overall, the proposal would accord with guidance in Section 7 of the National Planning Policy Framework (the Framework) which is concerned with the vitality of town centres, and requires planning policies and decisions to take a positive approach to their growth, management and adaptation. Although, the proposal would introduce an AGC to the PSF, the retail function of the FCETC would not be compromised in this instance.
14. For the reasons given above, I find that the proposal would not conflict with local and national planning policies, which seek to achieve vitality and viability in Town Centres. Although there would be minor conflict with DMP Policy DM11, I have found that there would be no conflict with the land use and retail aims of LonP Policy 4.8, CS Policy CS6, DMP Policy DM01. Therefore, when the development plan is taken as a whole, I find the minor conflict with DMP Policy DM11 is clearly outweighed. Furthermore, the proposal would also comply with the requirements of the Framework.

Living conditions

15. The appeal site is the ground floor of a three-storey terraced building. There is little detail surrounding the second floor, although I am informed that a yoga studio currently occupies the first floor. Ballards Lane is a 2no. lane single carriageway road with a series of parking bays positioned at regular intervals along the road.

16. Since the determination of the planning application, the appellant has undertaken survey work⁴ (the noise survey) to investigate background noise in the immediate area. The assessment was undertaken from the front of the site, on Friday 18 September 2020 at 02:00hrs for a period of 15 minutes, taking into account general activity, which included noise from traffic and pedestrians. Whilst I have no reason to disagree with the appellant's findings in these regards, the 24-hour operation of the AGC still gives me cause for concern.
17. Noise and activity does not have to be at a high volume to be disturbing. The arrival and departure of patrons at the ground floor of the premises would have the potential to be almost constant and at all times of the day and night. Whilst numbers might not be anticipated as high during the night and in the early morning, this cannot be guaranteed. I acknowledge the patron behaviour outlined in the noise survey and agree that activity within the property might not be excessively loud, especially if the property received sufficient sound insulation.
18. However, there is a possibility of the use of outside spaces for those wishing to smoke. This could lead to external congregation, not only on Ballards Lane, but also on Redbourne Avenue. I accept that the area surrounding the site is far from quiet, as a consequence of the busy and vibrant commercial area along Ballards Lane. However, Redbourne Avenue appears to be a less busy residential street. My findings during my visit indicated that the businesses in the immediate vicinity of the site operated during the daytime and evening. There was little evidence to suggest a night-time economy or premises operating for 24-hours. Therefore, if the appeal was allowed, the proposal would be the exception in this regard. Thus, in terms of noise and activity, the proposal would be inconsistent with the surrounding uses and more noticeable within its context.
19. I have little doubt that the area surrounding the site has high footfall. However, when considering the types of business and their advertised hours of operation, it is highly likely that such footfall would decrease later at night, through to the early hours of the morning when compared to the daytime. The appellant has referred to 3 appeal decisions⁵ in his submission, which I have noted. The first decision does not have living conditions as a main issue, but the Inspector considers the hours of use, particularly the implications of a 24-hour operation as part of the conditions.
20. Whilst, I acknowledge the favourable response from the Inspector on the first decision, given the District Centre location of the site, the third decision, which had living conditions as a main issue, had its hours of operation restricted, despite initially requesting 24-hours a day. Additionally, an interested party has referenced various appeals⁶, including one for Haringey. However, in all cases very little detail has been supplied and these decisions are located in different areas to the proposal, I conclude that there are significant differences between these appeal proposals and that of the scheme before me, and all decisions illustrate that every proposal has to be considered on its own particular merits.

⁴ Noise Assessment by Archo Consulting dated 23 September 2020

⁵ APP/V2004/W/19/3233244 (the first decision); APP/R1845/W/19/3242723 and APP/L5240/W/19/3232831 (the third decision)

⁶ APP/N5090/16/W/316106 and APP/D2320/W/18/3195965

Accordingly, I find little within these cases which would lead me to alter my conclusions in this case.

21. Ultimately, it is highly likely that the operation of the AGC through the night would create additional activity at a time when local residents, particularly those living above the ground floor of the adjoining unit and on Redbourne Avenue, would expect a quieter environment at such times. On this basis, I cannot support the operation of the AGC for 24-hours a day. I am aware that a license (the license) under the Gambling Act 2005 has been granted. Although, little detail has been provided. In any event, the license has been issued under different legislation. However, I am confident in this particular instance that a suitably worded condition could be imposed, to ensure that otherwise unacceptable development could be made acceptable.
22. For the reasons given above, I find that the proposal would be highly likely to have a harmful effect on the amenity currently afforded by neighbouring residents, if the AGC were to open 24-hours a day. Consequently, the opening hours⁷ suggested by the Environmental Health Group Manager⁸ (EHO), would ensure that the proposal would constitute a form of development that would not have a harmful effect on the living conditions of residents in the locality of the site. I note that this differs by one hour in the morning, when compared to the hours suggested⁹ by the Council in its submission, but in the absence of any substantive evidence to the contrary, I find the hours, suggested by the EHO to be acceptable. This accords with the amenity aims of DMP Policies DM01 and DM04, and the requirements of the Framework.

Other Matters

23. A significant number of local residents have also expressed a wide range of concerns including, but not limited to the following; anti-social behaviour, crime, litter, highway safety and parking, public health (including children) and the host property as a non-designated heritage asset, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents, Derby Lodge Residents Association and The Finchley Society, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
24. The Council has raised concerns on the effect of the proposal on the Finchley Town Centre Strategy 2017, particularly the ambition to create 'Finchley Square'. However, little specific detail has been submitted to demonstrate that the proposal would hinder such aspirations being delivered. I have considered this appeal proposal on its own merits and concluded that it would not cause harm for the reasons set out above.
25. The approval of other planning applications¹⁰, in particular, the advert permission for the installation of illuminated signage has been referenced by interested parties. However, these applications have been approved by the Council and are not for my consideration under this appeal.

⁷ 07:00hrs to 0:00hrs

⁸ An email from the Group Manager, Consultancy and Scientific Services, Environmental Health dated 24 July 2020

⁹ 08:00hrs to 0:00hrs

¹⁰ 20/3160/FUL and 20/3161/ADV

Conditions

26. The Council has suggested conditions which it considers would be appropriate in its submission. I have reviewed these in accordance with the tests set out in the Planning Practice Guidance (PPG) and have amended the wording where necessary in the interests of clarity and simplicity.
27. I attach a condition specifying the approved plans, for certainty. Conditions are both reasonable and necessary for restricting the opening hours and the rectification of defects within the host property outlined in the noise survey in the interest of ensuring no harmful effects to the amenity of nearby residents. It is also reasonable and necessary to attach a condition relating to refuse in the interest of the visual and residential amenities in the area.

Planning Balance and Conclusion

28. Bringing the host property back into use would provide environmental benefits for the FCETC. In addition, there would be social and economic benefits for the locality, both from employment opportunities and the occupation of the building.
29. The host building has some physical limitations through its traditional design and the size and location of its windows. Nonetheless, I accept that it is highly likely that the host property would have had a degree of activity on its frontage through the 2no. clear glazed windows closest to the door. Additional external activity would have been created from the cash machine, located beneath the window closest to the adjoining bank. Therefore, the proposal would conflict with DMP Policy DM11b: iii, as it would not provide an active frontage. Furthermore, despite the site being located within the PSF, there would not be an over-concentration of similar uses, which would detract from the retail function of the FCETC.
30. Overall, I consider that there would be no adverse effects resulting from the proposal that would significantly or demonstrably outweigh the benefits associated with the scheme. Therefore, in this instance there are material considerations which indicate that the proposal should be determined otherwise than in accordance with the development plan and planning permission should be granted. Accordingly, taking the above factors into account, I do not consider that the scheme would harm the character, vitality and viability of the FCETC or the PSF in which it is located.
31. Taking all matters into consideration, I conclude that the appeal should succeed.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 999-EX-01, 999-PR-01, Working Together – The Praesepe Group, Location Plan, Cover Letter dated 13 July 2020 and the noise survey.
- 3) The use hereby permitted shall not be open to members of the public outside the hours of 07:00hrs to 0:00hrs on any day.
- 4) Before first use and occupation of the development hereby permitted, all recommendations for internal rectification, as outlined in Table One of the submitted noise survey shall be fully implemented within the host property.
- 5) Before first use and occupation of the development hereby permitted, details of enclosure and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in full accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.

End of Schedule