



Appeal Decision

Site visit made on 22 February 2021

by Michael J Muston BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2021.

Appeal Ref: APP/H5390/W/20/3257225 102 King Street, London W6 0QW

- 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 Future Leisure Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2019/02518/FUL, dated 23 August 2019, was refused by notice dated 20 February 2020.
 - The development proposed is a change of use of the ground floor and basement from shop (Class A1) to amusement centre (adult gaming centre).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of the ground floor and basement from shop (Class A1) to amusement centre (adult gaming centre) at 102 King Street, London W6 0QW, in accordance with the terms of the application, Ref 2019/02518/FUL, dated 23 August 2019, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: site plan, drawings numbered 230033A, 230033B.
 - 3) No changes to the external appearance of the building, including the installation of a new shopfront, advertisements, air-conditioning units, ventilation fans, flues or extraction equipment, shall be carried out.

Procedural Matter

2. The London Plan 2021 was adopted on 2 March 2021. Its policies and text were referred to by both parties in their statements to this appeal, as policies of the then emerging London Plan, and none of the relevant sections have subsequently altered. As the parties also included references to the earlier 2016 London Plan in their cases, I have also referred to those policies, for completeness.

Main Issue

3. The main issue is the effect of the proposal on the vitality and viability of Hammersmith Town Centre:-

Reasons

4. The newly adopted London Plan 2021 says in Policy E9 that development proposals should *"manage clusters of retail and associated uses having regard to their positive and negative impacts on the objectives, policies and priorities of the London Plan"*, including *"town centre vitality, viability and diversity"*. It also mentions avoiding an overconcentration of particular uses within town centres, but only in relation to A5 hot food takeaway uses. The supporting text in paragraph 6.9.5 does however mention amusement centres, saying that *"over concentrations of some uses however, such as betting shops, pawnbrokers, payday loan stores, amusement centres and hot food takeaways, can give rise to particular concerns regarding the impact on"*, amongst other things, vitality and viability.
5. Policy 4.8 of the previous London Plan (2016) took a similar approach. It said that planning decisions *"should take a proactive approach to planning for retailing and related facilities and services"*, and *"manage clusters of uses having regard to their positive and negative impacts on the objectives, policies and priorities of the London Plan"*. These include a centre's *"broader vitality and viability"*, and its *"role in promoting health and well-being"*.
6. Supporting text in paragraph 4.50A explained that *"it is important that the planning system is used to help manage clusters of uses to provide diverse and more vital and viable town centres"*. It cited the example of *"clustering of particular leisure uses in town centres"*, which *"can provide a visitor attraction, promote regeneration and boost economic growth and employment, provided it is managed effectively and does not reach saturation levels beyond which it has unacceptable negative impacts on a centre's vitality, viability, amenity and associated community safety"*. It said that *"in such circumstances, the planning process can help manage such negative impacts"*. It also referred to over-concentrations of betting shops giving rise to particular concerns, but did not mention amusement centres.
7. Policy TLC2 of the Hammersmith & Fulham Local Plan (2018) (LP) deals with town centres, and says that certain uses, including amusement centres, will not be permitted on the ground floor of the prime retail frontages. The appeal site is however within a non-prime retail frontage. In such frontages, this policy says that the nature and characteristics of the proposed use should be complementary to the shopping frontage, and that the proposed use should contribute to the function of the centre.
8. The supporting text to this policy in paragraph 8.19 of the LP says that *"the non prime retail frontages in the town centres have an important function"*. It says that *"they provide locations for more specialist retailers and businesses that cannot afford prime location rents but sell goods appropriate to the town centre, such as activities in the A2, A3, A4 and A5 use classes and health and other services"*. It says that *"it is desirable to maintain a stock of premises suitable for these uses in order to maintain the vitality and viability of the town centres and the range of facilities available"*. It also says that it would *"normally not be appropriate to allow changes to other uses, that do not contribute to the vitality of the shopping frontages or the town centre as a whole"*. It also adds that over concentrations of betting shops and payday loan shops should be avoided in any area.

9. As pointed out by the Council, there are two examples of amusement centres in King Street, about 40 metres and 80 metres east of the appeal site. In addition, there are a betting shop and a pawnbrokers located next to each other on King Street, about 30 metres west of the appeal site.
10. The Council is relying on the policy base set out above to argue that the appeal proposal would unacceptably replace a retail unit with a 'sui generis' use, and that it would contribute to a harmful over-concentration of adult gaming amusement centres on King Street. There are however a number of problems with that approach.
11. The thrust of Policy TLC2 is to allow non-retail uses within non-prime frontages, as long as they contribute to the function and the vitality of the shopping centre. The policy does not say that such uses can only be A class uses; much will depend on the characteristics of the individual proposed use. The appellant has, with the evidence submitted with their appeal, included two 'amusement centre profile surveys'. These both show that a majority of those users of the centre questioned were mainly visiting the town centre for shopping, and that less than 20% had come mainly to visit the amusement centre. Further, it shows that, of those who were visiting mainly for the amusement centre, at least two-thirds had done, or were intending to do, some shopping.
12. These surveys, which the Council has not disputed, show that an amusement centre can play a supporting role in enhancing the vitality and viability of a centre, in the way that other uses, such as cafes and coffee shops, do. There is nothing inherent in the particular use proposed that makes them unsuitable in non-prime frontages, nor that means that they will be bound to harm the vitality and viability of a town centre.
13. The other element of the Council's refusal is a concern about an 'over-concentration' of adult gaming amusement centres. The policies cited in the reason for refusal, as set out above, do not specifically mention amusement centres. The supporting text to Policy E9 of the London Plan 2021 (which as an merging plan was not cited in the reason for refusal) does say that over concentrations of some uses, including amusement centres, can give rise to particular concerns regarding the impact on, amongst other things, vitality and viability.
14. None of the relevant policies or supporting text provides a definition of what is meant by an 'over-concentration' of uses. However, to my mind, this must amount to a significantly greater concentration of amusement centres, or of amusement centres and other similar uses, than would exist here. Given the very large number of units in A class uses on both sides of this stretch of King Street, between the amusement centre at No 97-99 and the betting shop at No 118, I do not consider that this can be classified as an over-concentration of amusement centres and/or related uses.
15. The Council has relied on what I consider to an over-zealous interpretation of policy in refusing this application, and has not otherwise demonstrated exactly what harm would be caused to the vitality and viability of the town centre. I conclude that the proposal would not have an adverse effect on the vitality and viability of Hammersmith Town Centre, and would comply with Policies TLC1 and TLC2 of the LP, and Policy E9 of the London Plan 2021.

Other Matters

16. The appeal site is within the Hammersmith Town Hall Conservation Area (CA). Neither party has suggested that there would be any impact on the character or appearance of the conservation area as a result of the appeal proposal, and I agree.

Conditions

17. In addition to the standard time condition, another listing the submitted plans is required, to provide certainty as to what has been approved. A condition preventing changes to the external materials of the building, which might not otherwise need planning permission, is also necessary, to ensure that the character and appearance of the CA is preserved. I have imposed conditions relating to these matters, as suggested by the Council, amended where necessary to reflect the advice in the government's Planning Practice Guidance (PPG).
18. The Council has suggested a condition limiting the opening hours of the amusement centre to "*the existing opening hours for the subject unit*". However, it has not told me what these hours are, and this condition fails the test of precision set out in the PPG.
19. The Council has also suggested a condition that "*the premise shall not be used for any other purpose within Class Sui Generis of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 other than as an Adult Gaming Amusement Centre*." This suggested condition misses the point that a 'sui generis' use is outside any use class, and whether any change of use from it to another use is material will depend on the individual circumstances at the time. This proposed condition is therefore misguided.
20. Finally, a condition is suggested that the development shall not commence until details of refuse storage and collection have been agreed. This is unnecessary, as there is no evidence before me that the generation of refuse will be materially greater than with the lawful retail use. In addition, it ignores the advice in the PPG regarding avoiding pre-commencement conditions. For the above reasons, I have therefore not imposed the Council's suggested conditions 4, 5 and 6.

Conclusions

21. For the reasons set out above, I conclude that the appeal should be allowed subject to the conditions.

Michael J Muston

INSPECTOR