



Appeal Decision

Site visit made on 12 January 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd March 2021

Appeal Ref: APP/Y5420/W/20/3260036

448-454 High Road, Tottenham, London N17 9JN

- 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 City Gaming Ltd against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2020/1777, dated 4 May 2020, was refused by notice dated 10 September 2020.
 - The development proposed is change of use of the ground floor to part adult gaming centre (Sui Generis) and part coffee and cake shop (A1/A3), with associated shopfront alterations.
-

Decision

1. The appeal is allowed, and planning permission is granted for change of use of the ground floor to part adult gaming centre (Sui Generis) and part coffee and cake shop, with associated shopfront alterations at 448-454 High Road, Tottenham, London N17 9JN in accordance with the terms of application Ref HGY/2020/1777 dated 4 May 2020, subject to the conditions set out in the schedule attached.

Procedural Matter

2. In the banner heading above I have used the description from the appellant's planning application form. In the decision paragraph I have omitted reference to the use class of the coffee and cake shop to reflect the changes to the Town and Country Planning (Use Classes) Order 1987 (the UCO) as a consequence of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

Main Issue

3. The main issue is the effect of the proposed development upon the vitality and viability of the Tottenham High Road/Bruce Grove District Centre.

Reasons

4. The appeal site comprises two units on the ground floor of a three storey building located within a primary shopping frontage in the Tottenham High Road/Bruce Grove District Centre. It is characterised by a variety of commercial uses including several non-shopping uses mostly fronting the High Road. At the time of my visit many premises were closed in accordance with national Covid-19 lockdown rules. However, having regard to the visibility of

whitewashed windows, empty units, fly posting, stickers, and estate agents boards, relatively few premises appeared vacant.

5. Policy DM42 of the Haringey Development Management DPD (2017) (the DMDPD) seeks to ensure that having regard to viability and vitality, primary frontages are characterised by their predominantly retail function and that there is a suitable balance of uses across the designated frontages. Within primary shopping frontages Policy DM42A) states the use of ground floor units for appropriate town centre uses will be permitted where three criteria are met. The Council's retail survey from August 2018 found that 44.74% of the primary frontage was not in a retail use, although the appellant suggests this may be around 40%. However, based upon this and my visit, the percentage is above the threshold of 35% for non-retail uses under DM42A)a).
6. The conclusions of the Inspector in previous appeal decision Ref APP/Y5420/W/19/3227764 are noted. However, the full details of the layout and configuration of those proposals and all the evidence before that Inspector is not clear. The most recent use of the larger unit is an A2 use (financial and professional services). As it was not a retail use the Adult Gaming Centre (AGC) (a Sui Generis use) would not result in a greater degree of conflict with the percentage threshold for non-retail uses in DM42A)a) or consecutive non-retail uses in criteria b) of DM42A. Replacing the former retail use in the smaller unit, with the proposed coffee and cake shop, might be considered to result in a greater degree of conflict with DM42A)a) and more than two consecutive non-retail units in conflict with criteria b).
7. However, since appeal Ref APP/Y5420/W/19/3227764 the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 amending the system of use classes in the UCO. The amendments include the creation of a new Commercial, Business and Service use class (Class E). The new Class E incorporates previous use classes A1, A2, A3, B1, and some of D1 and D2.
8. The proposed use of the smaller unit no longer constitutes an act of development and the previous A2 use could also be changed to a Class E use, with both units being of an adequate size to accommodate other Class E uses. Therefore, the existing uses could be lost or changed to a number of other Class E uses without planning permission. The Council suggests low vacancy rates within the district centre would mean the premises would be able to attract other town centre uses. Based upon the evidence before me, I am satisfied that there is a greater than theoretical possibility of the units being occupied by another Class E use if this appeal were to fail. I give this fallback position significant weight.
9. An active frontage is derived from both the appearance and comings and goings. Some premises nearby had posters, banners, or displays in the windows significantly restricting an active frontage, with other premises such as banks presenting a less visually active frontage. The appeal site currently has solid tiling across a significant proportion of the frontage. I am mindful that other permitted Class E uses such as an office or light industrial use, health and medical services, and nurseries may not create an active frontage and may have limited footfall.
10. The proposed coffee and cake shop would provide an active frontage compliant with Policy DM42A)c). The presence of a small lounge area in the AGC which

could include some catering facilities is suggestive that customers might be encouraged to stay for longer periods than a retail use. However, the AGC would create some footfall, which would be likely to have more frequent comings and goings than other Class E uses. Some of these other Class E uses may also not seek to create an active window frontage. The internal screening shown in the drawings would allow limited inter-visibility into and out the premises. It is evitable that the change of use would result in some change to a window display, which both parties agree could be the subject of a suitable planning condition. I am of the view that there is no inherent reason why a condition could not secure a suitably active frontage, compliant with the aim of Policy DM42A)c).

11. The development would bring two vacant premises back into use close to commercial and retail uses, with the potential for some linked trips. Although there are other betting shops and may be some limited other facilities in pubs and takeaways in the area, they are a materially different use to an AGC. There is one AGC nearby and the development would add a leisure and entertainment use contributing to the diversity and mix of uses, providing increased surveillance later in the evening. In these regards, the proposal would be complimentary to the centre and create a suitable mix of uses, that would not undermine the vitality and viability of the centre.
12. I note the references to an over-concentration of gambling uses, the potential for harmful social effects, the proximity to schools, the reference the Haringey Statement of Gambling Policy (2016), Tottenham Regeneration initiatives, and Policy DM46. I agree with the previous Inspector that there is a distinction between betting shops and AGCs, and there is no conflict with Policy DM46 which is specifically aimed at betting shops. There is no substantive evidence before me that demonstrates this development would result in a direct conflict with the strategies or policies referenced, that it would result in a defined over-concentration of such premises, or this development would result in harm. Furthermore, the AGC is also subject to the licensing regime, and the evidence before me suggests it would be subject to several licence conditions, including in respect of vulnerable persons and crime prevention, such as CCTV, controlled access, trained staff, and a Gang Management Policy.
13. A number of appeal decision letters have been provided to me. However, most are in different local authority areas, with different development plan policies. Based upon the evidence before me they are not directly comparable to this proposal, which I have considered on its own merits and impacts.
14. For the reasons set out above, the development would result in a limited conflict with Policy DM42 of the DMDPD insofar as it seeks primary frontages are characterised by their predominantly retail function. However, the previous uses can be replaced with a range of non-retail uses under Class E without the need for planning permission. The changes to the use classes order outweigh the conflict with the development plan. The development would provide some benefits in respect of footfall, diversity of uses, bringing vacant premises back into use, and subject to the imposition of a suitable planning condition would create an active frontage. Therefore, on-balance, the development would not be harmful to the vitality and viability of the Tottenham High Road/Bruce Grove District Centre.

15. The development would also be compliant with paragraph 85a) of the National Planning Policy Framework (2019) (the Framework) which expects decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation, in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses, and reflects their distinctive characters.

Other Matters

16. The appeal site occupies the ground floor of an attractive 1920's Locally Listed Building (LLB) within the Bruce Grove Conservation Area (the BGCA). Special attention should be given to the desirability of preserving or enhancing the character or appearance of the BGCA under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The BGCA encompasses buildings along the High Road and some to its rear, north and south of the appeal site, characterised by mostly historic brick buildings and occasional newer buildings with commercial uses on the ground floors exhibiting a variety of frontages.
17. The attractive upper floors of the appeal site building make a minor positive contribution to this part of the BGCA. The ground floor tinted windows, grey tiling and blank areas for signage are dated, and make a minor negative contribution to the BGCA and the LLB. The proportions and appearance of the proposed frontages integrating glass and blue and white tiles, would renew and have a minor beneficial effect upon the LLB, and would not be harmful to, thereby preserving the character and appearance of the BGCA, and the elements that make a positive contribution to its significance. Therefore, the development would not conflict with Policies DM1 or DM9 of the DMDPD or Policy SP12 of the Strategic Policies Local Plan (2017).
18. There are residential properties above some neighbouring premises, although the floors above the appeal site units are non-residential. The site is within a busy district centre location on a main vehicular route, where ambient noise levels are relatively high. Subject to the imposition of a suitable condition in respect of hours of use, the development would not result in harmful living conditions to neighbouring occupiers as a consequence of noise and disturbance.

Conditions

19. I have considered the list of suggested conditions provided by the Council in the context of the advice in the Framework and Planning Practice Guidance. As well as the standard condition for commencement, for certainty a condition requiring the development to be carried out in accordance with the approved plans is necessary. In the interests of securing an active frontage in accordance with Policy DM42A)c) a condition is necessary to require the details of a shop window display to be submitted to and approved by the Council. It is not necessary for this to be a pre-commencement condition.
20. In the interests of the living conditions of the occupiers of nearby residential properties it is necessary to impose a condition restricting the hours of use. The hours reflect those in the premises licence. Having regard to the directly neighbouring uses a condition in respect of sound proofing and noise mitigation is not necessary.

Conclusion

21. The development would result in a limited conflict with the development plan read as a whole. However, the benefits of the development and the other material considerations set out above outweigh the limited conflict with the development plan. Therefore, for the reasons given, the appeal is allowed and planning permission is granted.

Dan Szymanski

INSPECTOR

Schedule of 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 plans/drawings numbered: 2011_20A; 2011_10; 2011_11; 2011_01B; 2011_02C; and 2011_03.
- 3) The development hereby permitted shall only operate in accordance with the following hours:
 - i) Nos 450 – 454 High Road: Between the hours of 09:00hrs – 00:00hrs Monday – Saturday and 09:00hrs – 23:00hrs on Sunday; and,
 - ii) No 448 High Road: Between the hours of 07:00hrs – 19:00hrs Mondays – Fridays, 07:00hrs – 18:00hrs on Saturdays and 09:00hrs – 18:00hrs on Sundays and Bank Holidays.
- 4) Notwithstanding the submitted details, prior to the first use of the premises hereby permitted at No 450 – 454 High Road as an Adult Gaming Centre, the details of shop window displays shall be submitted to and approved in writing by the Local Planning Authority for all ground floor windows fronting High Road. The approved displays shall be installed prior to the first use of the premises as an Adult Gaming Centre, and shall be retained for the lifetime of the development.

End of Schedule.