



Appeal Decision

Site Visit made on 25 May 2021

by A Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Appeal Ref: APP/V5570/W/20/3261104

113-115 Fonthill House, Fonthill Road, Islington, London N4 3HH

- 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 Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2020/1779/FUL, dated 6 July 2020, was refused by notice dated 28 August 2020.
 - The development proposed is change of use of the ground floor from betting office (sui generis) to amusement centre (adult gaming centre) (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the ground floor from betting office (sui generis) to amusement centre (adult gaming centre) (sui generis) at 113-115 Fonthill House, Fonthill Road, Islington, London N4 3HH, in accordance with the terms of the application Ref P2020/1779/FUL, dated 6 July 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: location/Block Plan; WH/FP/02prop.

Applications for costs

2. An application for costs was made by Future Leisure Limited against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Procedural Matters

3. I am informed by the appellant that the Council is in the process of preparing a new local plan. However, the Council did not refer to any emerging policies and I do not have a copy of the emerging policy referred to by the appellant. Nor can I be sure that this policy will be adopted in its present form. The emerging policy therefore carries very limited, non-determinative weight in this appeal, which I have considered against the development plan currently in force .

Main Issues

4. The main issue is the effect of the proposal on the character and function of the Finsbury Park Town Centre (FPTC).

Reasons

5. The appeal site previously operated as a betting shop, but has been vacant since September 2019. It is located within the Primary Frontage of the FPTC, which along Fonthill Road, is characterised by small independent fashion shops.
6. As the proposal would change an existing non-retail use into another non-retail use there would be no change in the proportion or continuity of frontage in retail use. Moreover, there are no other amusement centres or betting shops in this stretch of frontage containing the appeal site. Nor is there any evidence that the proposal would lead to an unacceptable concentration of such uses in the wider centre.
7. There would be no alteration of the existing shopfront and a window display area would be maintained. Whilst there would likely be limited inter-visibility into and out of the premises, this would be little different to the previous use. Alternative retail use is not a guarantee of attractive and interesting window displays, as evidenced by the varied style and quality, or complete absence, of some of those in the vicinity. I am also mindful that recent changes to the Use Classes Order¹ could result in permitted non-retail uses which may not create a conventional active retail frontage.
8. Furthermore, the proposal is a type of use that is not uncommon to shopping streets. Also, as it is not a replacement of a retail unit, a loss of footfall associated with retail use would not occur. The proposal would generate footfall and there is uncontested evidence before me which indicates that amusement centre customers also tend to visit shops. Accordingly, the proposal would bring a vacant unit back into use with the potential for some linked trips, thereby complementing and helping to maintain the vitality and viability of the Centre.
9. There is a statutory obligation to exclude under 18's from the proposed use, but this is not materially different to the previous use as a betting shop. There are also other town centre uses, including some retail, which have age restrictions, or only attract certain age groups and genders, such that it is not a situation unique to the proposal and should count against it.
10. Those living in deprived areas, such as Finsbury Park, may be more vulnerable to gambling related harm. However, as noted above, there is no evidence before me that the proposal would lead to an overconcentration of gambling related uses in the area. Nor would it lead to a material increase in such uses given the previous use of the premises. In such circumstances, risks to problem gamblers and other vulnerable persons would be more directly relevant to the appropriate licensing and regulatory functions, and I am informed that the Council has granted a licence in this instance. I also note that there were no comments received from relevant consultees on this matter. Whilst the Council would prefer an alternative use to be made of the appeal premises which does not relate to betting or gambling, I must consider the proposal that is before me rather than to speculate on preferable uses.
11. Overall, the proposal would not break up the retail frontage as existing, reduce footfall or result in the weakening of the shopping strength, vitality, or interest

¹ The Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020

of the FPTC overall. Nor would it materially exacerbate matters relating to social exclusion or deprivation in the area.

12. I therefore conclude that the proposal would not have an adverse effect on the character and function of the FPTC. Thus, the proposal complies with Policy DM4.3 of Islington's Local Plan: Development Management Policies (2013) (the DMP), which seeks to prevent an unacceptable concentration of amusement centres, betting shops and other similar uses, where they would cause harm to the character and function of an area, or to the well-being of local residents. The proposal also complies with DMP Policy DM4.4, which among other things, requires development within Town Centres to be appropriate to the scale, character and function of the centre; contribute positively to its vitality and viability; and promote vibrant, attractive and inclusive places.
13. The Council also cites Policy DM4.5 of the DMP in its refusal reason and makes reference to its criteria for marketing evidence, but as the proposal does not involve the change of use of an existing retail unit, Policy DM4.5 is not relevant to this appeal, and I find no conflict with it.

Conditions

14. The Council has suggested three conditions in the event that the appeal should be allowed. I have considered these against advice in paragraph 55 of the National Planning Policy Framework to ensure they meet the relevant tests.
15. I have imposed the suggested commencement condition and a condition specifying the approved plans to provide certainty.
16. However, the Council also suggested that the opening hours should be restricted to between the hours: 10.00 – 20.00 to protect the living conditions of nearby residents. I do not have any evidence to suggest that this condition is necessary, or that the hours specified are reasonable, so the condition is not imposed.

Conclusion

17. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

A Caines

INSPECTOR