



Appeal Decision

Site visit made on 3 August 2021

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2021

Appeal Ref: APP/H5390/W/21/3271818

141-143 King Street, Hammersmith, London W6 9JG

- 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 Chongie Entertainment Ltd c/o JMS Planning against the decision of the London Borough of Hammersmith and Fulham.
 - The application Ref 2020/03299/FUL, dated 11 December 2020, was refused by notice dated 8 February 2021.
 - The development proposed is Change of use of vacant former print centre (Use Class E) to Adult Gaming Centre (sui generis).
-

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 26 August 2021.

Decision

1. The appeal is allowed and planning permission is granted for the Change of use of vacant former print centre (Use Class E) to Adult Gaming Centre (sui generis) at 141-143 King Street, Hammersmith, London W6 9JG in accordance with the terms of application 2020/03299/FUL, dated 11 December 2020, subject to the conditions within the attached schedule.

Procedural Matters

2. Since the time the appeal was submitted, a new London Plan has been published in March 2021 and replaces The London Plan 2016. I have had due regard to the new Plan. In addition, the revised National Planning Policy Framework (the Framework) has been published in July 2021. My decision is made in the context of the revised Framework.
3. On 1 September 2020 The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force. As a consequence, Use Class A1 retail has since been replaced by Use Class E.

Main Issue

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

Reasons

5. The appeal site is located within the Hammersmith Town Hall Conservation Area (CA). It is characterised by the variety of development types that form

- cohesive groups within it. The historic street patterns, examples of high quality mid to late nineteenth century residential development, the historic significance of planned interwar civic and public housing, and the significance of buildings and spaces between them, all contributes positively to the CA.
6. The appeal property is a vacant retail premises of a fairly modern purpose-built corner block. It is located within Hammersmith Town Centre, identified as a major town centre within the Hammersmith & Fulham Local Plan 2018 (LP). The appeal property is positioned outside the designated area of prime retail frontage and in an area of non-prime retail frontage. The town centre offers a wide choice of retail, financial, and eating establishments with good footfall levels and excellent public transport links.
 7. Whilst outside the area of prime retail frontage, nevertheless, the appeal site is experienced amongst a range of retail, café's and specialist businesses that serve the community. It was apparent that there is a number of vacant units in close vicinity to the appeal site.
 8. There is a general Council LP policy thrust to enhance the vitality and viability of the Borough's town centres, local centres and other shopping parades. Retail uses are notably safeguarded within prime retail frontage areas and this is identified in both LP Policies TLC1 and TLC2. Local Plan Policy TLC2 explains that in town centres, changes away from A uses will be permitted if they are shown to be complementary. It also specifically states that within non-prime retail areas, changes away from retail is considered against; whether or not it is a complementary use to the shopping frontage; it contributes to the function of the centre; window displays to the building and hours of opening, amongst other residential considerations.
 9. Policy TLC6 more explicitly relates to betting shops, pawnbrokers and other specific business types, and their effect upon amenity, the character and function of an area, vitality of the shopping parade and concentration levels.
 10. The supporting text of the policy broadly explains that 'There are notable concentrations...in our designated town and local centres'. However, I am not provided with substantive evidence to demonstrate that Hammersmith town centre is one such area. I note that the Council have drawn my attention to approximately six adult gaming centres, betting shops and a pawnbroker located within the Hammersmith town centre. Some are identified within the prime retail centre and from my visit within that area, I could see that these are absorbed amongst the general spread of services on offer locally. However, there is no evidence presented that leads me to the view that these are over-represented within the area.
 11. There are a good representation of retail uses as demonstrated by the appellant within Hammersmith town centre as they have provided up to date evidence of Class E retail uses with around 80% in retail use, and approximately 14% of units are in a sui generis use, with the number of vacant units low by comparison at approximately 6%. There is nothing before me to contradict these findings.
 12. I note the Council's intention to protect the dominance of retail uses although as a contribution, non-retail uses contribute to the overall success of a town centre. There is nothing before me to demonstrate that the addition of an adult gaming centre would adversely affect the retail function of the town centre.

13. Notwithstanding the fact there are two other similar uses located close by, I can only come to the view that the loss of this unit would not undermine the retail function of this non-prime frontage area, or harm the vitality and viability of the town centre, taken as a whole.
14. To add, the appeal site in its vacant condition contributes little to the appearance of the area or an economic contribution. As it is a corner building with shop frontages to two sides, it would create an active frontage which would be a positive addition to the area. The proposal would enhance the character of the area by bringing a vacant unit back into viable use. Further, this would be taken together with the other Council investments that the area has experienced as a strategic regeneration area. By creating around eight jobs, it would also generate local employment.
15. The proposal would also accord with the London Plan 2021 to manage clusters of retail and associated uses having regard to positive and negative impacts on the objectives, policies and priorities of the London Plan including town centre vitality and viability.
16. To conclude, the loss of a retail unit to an adult gaming centre would not harm the vitality and viability of the Hammersmith town centre. Therefore, the proposal would not conflict with the London Plan 2020, or the Local Plan Policies TLC1, TLC2, TLC5 and TLC6 in their combined aims to protect the vitality and viability of the town centre, its character, and living conditions. Finally, it would not conflict with the Framework in its aims to ensure the vitality of town centres.

Other Matters

17. The Council raises concerns relating to the potential of this type of use to lead to damaging effects on health and well-being of the Borough's residents. I note this point, however I have been given no substantiating evidence on the consequence of these types of uses on the well-being of local residents. Therefore, I cannot agree with the Council that an additional use would detrimentally harm the well-being of the local residents.
18. Traffic generation has been brought to my attention although this is a town centre location and there is no evidence to substantiate their view that the proposal would lead to an increased level of traffic. I note the Council have raised no concerns in this regard.
19. Advertisement illumination would be considered under separate consent.
20. Matters pertaining to the safety of children and others given the location of the site has been raised as a reason to object to the scheme. However, there is no evidence to substantiate these claims that the proposal would give rise to harm in this respect.
21. Noise and disturbance is highlighted by a local resident. However, hours of use can be controlled at the site by way of condition to protect the living conditions of local residents.

Conditions

22. I have had regard to the Council and appellant's suggested conditions and assessed these against the advice in paragraph 56 of the Framework. In

addition to the standard time limit condition, for the reasons set out above I consider it necessary to impose a condition relating to window displays to ensure active frontages are maintained in the interests of the vitality and viability of the town centre.

23. I am mindful this is a town centre location and there may be other similar types of businesses operating long hours. However, details of their circumstances are not before me. I have considered this particular environment and given the presence of residential uses located in close quarters to the appeal site, in the interest of protecting the living conditions of the occupiers, I attach a condition restricting the hours of opening from 0900 until 2200 Monday to Sunday including public and bank holidays.
24. A scheme of sound insulation to the building as a means to mitigate noise emissions emanating from the building is necessary and reasonable in order to protect the living conditions of local residents.
25. Cycle storage facilities for four cycles is conditioned in the interest of sustainable transport.
26. A flood risk assessment has been submitted with the proposal as it is located within a flood risk area. It states that flood mitigation measures will be installed including the use of flood resilient methods of construction and materials and that ground floor levels will not be lowered. This assessment is therefore conditioned to be applied.
27. A zero emission heating plant has been suggested by the Council although I can find no justification for such a condition. Another condition suggested to be imposed by the Council relating to advertisements would be considered under separate consent.
28. An informative regarding effects of contamination is not required as no ground level changes are proposed as part of the scheme.

Conclusion

29. For the reasons I have set out, the loss of a retail unit and the addition of a adult gaming centre would not harm the vitality and viability of the town centre. 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.

Alison Scott

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 following approved plans: Site Location Plan (Drawing Ref: 20.0061-03); (Existing and Proposed Floor Plan and Elevations (Drawing Ref: 20.0061-01); Existing and Proposed Site Plan (Drawing Ref: 20.0061-02); Flood Risk Assessment prepared by JMS Planning & Development.
- 3) The shop window of the premises shall contain a retail window display fronting King Street and Macbeth Street and retained for the lifetime of the development.
- 4) Prior to the commencement of the development, details of a sound insulation scheme to the building shall be submitted to and approved in writing by the Council. The approved details shall be implemented before the use is brought into operation.
- 5) All flood prevention and mitigation measures as detailed within the Flood Risk Assessment shall be installed in accordance with the approved details prior to the occupation of the development.
- 6) Prior to the use coming into operation, details of cycle storage for four cycles shall be submitted to and approved in writing by the Council. Thereafter the cycle storage facilities shall be maintained for the lifetime of the development.
- 7) The development hereby approved shall not be brought into operation until provision has been made for the storage of commercial refuse and recycling. Details of which shall be submitted to and approved in writing by the Council. Thereafter the provision for refuse and recycling storage shall be maintained for the life of the development.
- 8) The use hereby permitted shall only be open to customers between the following times: 0900–2200 Monday to Sunday inclusive including public and bank holiday's.

End of Schedule