
Appeal Decision

Site visit made on 6 July 2021

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2021

Appeal Ref: APP/X5990/W/21/3266795
182-184 Edgware Road, London W2 2DS

- 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 City of Westminster Council.
 - The application Ref 20/05549/FULL, dated 3 September 2020, was refused by notice dated 26 November 2020.
 - The development proposed is the change of use from vacant betting shop (sui generis use) to adult gaming centre (sui generis use).
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use from vacant betting shop (sui generis use) to adult gaming centre (sui generis use) at 182-184 Edgware Road, London W2 2DS in accordance with the terms of the application, Ref 20/05549/FULL, dated 3 September 2020, and the plans submitted with it, subject to the conditions in the schedule at the end of this decision.

Procedural Matter

2. The National Planning Policy Framework (the Framework) was revised during the consideration of the appeal. Both parties were given the opportunity to comment on any implications for the appeal.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the vitality and viability of the Edgware Road (South) (No.8) Central Activities Zone (CAZ) Retail Cluster and,
 - the health and well-being of surrounding residents with particular regard to crime and anti-social behaviour.

Reasons

The vitality and viability of the Edgware Road Retail Cluster

4. I understand the Council's desire for units to benefit from the flexibility provided by Class E¹ uses. However, as the proposed sui generis use would replace an existing sui generis use, there would be no disadvantage to the viability of the area in terms of flexibility of change of use. In any event, the Council would retain the power to deal with any change of use with flexibility in considering any future planning application.

¹ Class E of the Town and Country Planning (Use Classes) Order 1987, as amended

5. The proposed use would reflect similar uses on the same side of the street, and the betting shop on the opposite side. However, given the last use of the site as a betting shop, and the small proportion of non-retail to retail uses in this retail cluster, the proposal for an adult gaming centre (AGC) would not cause an over-concentration of these non-retail uses.
6. Moreover, the vitality of this retail cluster depends not solely on shops; other, complementary uses, such as the banks and restaurants also contribute to the overall viability of this Town Centre Retail Cluster in the Central Activities Zone by attracting different people at different times of the day. This is recognised in the Westminster City Plan 2019-2040 (City Plan), which describes, in paragraph 14.19 how CAZ Retail Clusters meet the needs of a combination of residents, workers and visitors, adding to central London's wide appeal.
7. The trading floor area of the proposed use would be smaller than the previous area of the betting shop. Its complementary use would reflect and enhance the role and function of the retail cluster. It would respond to the variety of uses in the retail cluster, reflecting its mixed character in terms of both its scale and its nature of use. The change of use would be in accordance with City Plan policy 14 which says that CAZ retail clusters will provide complementary town centre uses to meet the needs of residents, workers, and visitors, as well as City Plan policy 15 which seeks to balance the needs of visitors, businesses and local communities.
8. The principal benefit of the AGC would be the complementary nature of its use alongside the other uses in the retail cluster, and the potential to generate linked trips and to stimulate additional footfall. This would bolster the vitality and viability of the retail cluster, sustaining its attractiveness to a wide section of residents, workers and visitors, in accordance with City Plan policy 16 which requires applications for entertainment uses to demonstrate wider benefits to the local community, where appropriate.
9. I appreciate that AGCs tend to limit visibility into the unit, but this would be little different to a betting shop, the last use. There are no alterations proposed to the frontage of the building which would change the local character or the historic environment, and a window display could be secured by condition, avoiding conflict with City Plan policies 7 and 38 in this respect, which require exemplary standards of design and protect local character and local environmental quality.
10. I understand the Council's concern for the attractiveness of the Edgware Road frontage. However, there is no evidence that the last use of the site as a betting shop could not be continued in the event of this proposal for an AGC being dismissed. The proposal would not result in the loss of a retail use. Rather, it would replace one sui generis, licensed use with another sui generis, licensed use.
11. In this context, the difference to the vitality and viability of this retail cluster between the last use and the proposed use would be marginal and not harmful. The proposal would bring back into use a unit last used 2 years ago, the disuse of which presently detracts from the vitality of this section of the retail cluster, which in this section, at the time of the appeal, was part of a row of 4 empty shops. It would bring additional visitor footfall to the retail cluster, and with it, additional employment. I conclude that the proposed change of use would have

a positive effect on the vitality and viability of the Edgware Road (South) (No.8) Central Activities Zone Retail Cluster.

12. While City Plan policies 6 and 33, to which the Council refers and which respectively concern development of the Church Street/Edgware Road and Ebury Bridge Estate housing renewal areas, and local environmental impacts, are less relevant to this issue, I can identify no conflict from it with the other City Plan policies to which the Council refers, policies 7, 14, 15, 16, and 38, as discussed above. The proposal would also accord with the guidance in section 7 of the Framework which indicates that 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.

The health and well-being of surrounding residents

13. I note the representations from local residents and the drug crimes register submitted by the Harrowby and District Residents' Association, and the objection from the Police, and their concern that another AGC would increase crime and anti-social behaviour in the ward. I acknowledge the risk of AGCs attracting anti-social behaviour, as might any licensed premises. However, there is no substantive evidence that the reported incidents of anti-social behaviour and crimes reported in this ward were connected to AGCs in this retail cluster.
14. The appellant's observations of the area around the site recorded people sleeping in the doorways of shops, and some street begging, but no disorder, anti-social behaviour, street-drinking or drug-dealing. The appellant's visits to AGCs in Charing Cross Road and Tottenham Court Road, in Tooting and in Neasden revealed that the management and licensing controls of the AGCs were effective at excluding crime and anti-social behaviour inside and outside the premises. There is no evidence that a well-managed operation in these premises could not achieve similar controls over the potential for crime and anti-social behaviour.
15. I note the Council's concern about addiction to gambling and the effect on people's well-being. However, I need to take into account in the balance the last use of the premises which was a betting shop. The detailed control over the operation of the day-to-day use is controlled by other legislation, many matters of which would be controlled by the licence already granted which contains conditions concerning problem gambling, protecting the vulnerable, staffing, and CCTV.
16. I am mindful of the proximity of places of worship, schools and the homes in the neighbourhood, however these are concentrated behind the premises rather than directly around it. The closest dwellings are those at 4th floor, around 32m distant. The noise assessment has applied the noise characteristics of similar premises to the appeal location and shown how, after minor repairs, the predicted noise levels, because of the high level of activity on Edgware Road, would be below the criteria in the relevant British Standard, including during the night-time. In this light, there is no material risk of disturbance from noise to the living conditions of surrounding occupiers.
17. I conclude therefore that there would be no harm to the health and well-being of surrounding residents with particular regard to crime and anti-social behaviour, and no conflict with City Plan policy 33 which protects the quality of life and health and well-being of existing occupiers.

Conditions

18. In addition to the statutory time condition [1] I have imposed a plans condition [2] to avoid confusion over what has been approved. There is no evidence that the opening hours sought by the appellant and granted in the licence would harm the living conditions of surrounding occupiers. I recognise the very small risk of indirect disturbance to surrounding occupiers from the unpredicted comings and goings of customers visiting at the quietest times of the night, in which light closure at 02:00 hours is necessary to prevent their loss of privacy. I see no reason why, on such a busy road through a retail cluster, there would be any harm from opening at 07:00, when the premises might serve those finishing night-shift work. I have therefore imposed the hours condition [3].
19. The Operational Management Plan and Security Measures already submitted, together with the drawings, provides the information the Council seeks to secure the effective management of the premises. There is no justification for another round of submissions and consideration. A condition [4] is necessary only to ensure these are adhered to during the lifetime of the development. To protect the retail character of the area, a condition [5] to ensure a window display is necessary, though there is no justification to require the Council to approve a strategy to secure this, as sought in its suggested condition. The appellant's floor plan indicates the location for refuse and recycling storage. A condition [6] to ensure that the refuse and recycling bins shown on the amended floor plan, accepted by the Council, are provided and retained, is necessary to protect the living conditions of surrounding occupiers.
20. The Council's suggested condition restricting the playing of music is unenforceable, so I have not applied it. The appellant's noise report identified repairs to the premises which would ensure that the anticipated noise levels from sound passing through the shopfront and ceiling towards the adjoining premises would be well below the recommended levels in British Standard BS 8233:2014. An implementation condition to secure the repairs would only mitigate the effects anticipated today rather than any future effects which may reasonably be anticipated. I have therefore applied the more precautionary, performance conditions [7,8,9], with the alternative to seek a fixed maximum noise level, as suggested by the Council.
21. As the building shares an alleyway with the neighbouring buildings and the proposal reuses the existing frontage, the scope to provide cycle storage on-site is severely constrained. I note that there are Sheffield stands outside the premises. In these circumstances, staff and customers could use the on-street stands to park bicycles without prejudicing the attractiveness of visiting the premises by bicycle or compromising the environmental aims of sustainable development. I have not therefore applied the on-site bicycle storage condition sought by the Council.

Conclusion

22. The change of use would not harm the vitality and viability of the Edgware Road (South) (No.8) Central Activities Zone (CAZ) Retail Cluster. Nor would it harm the health and well-being of surrounding residents with particular regard to crime and anti-social behaviour. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Patrick Whelan

INSPECTOR

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 PLAN (1:1250@A3); SITE PLAN 1:500@A3; 999-EX-01 EXISTING GROUND FLOOR GENERAL ARRANGEMENT PLAN; 999-PR-01 Rev 02 PROPOSED FLOOR PLANS DATE 8/10/20.
- 3) Customers shall be permitted on the premises only between 07:00 on any day and 02:00 the next day.
- 4) The provisions in the Operational Management Plan & Security Measures document, dated August 2020, shall be adhered to throughout the lifetime of the development.
- 5) A window display shall be provided at all times in the ground floor window fronting Edgware Road.
- 6) Two 1,100 litre bins for storing refuse and recycling shall be provided in accordance with drawing 999-PR-01 Rev 02 PROPOSED FLOOR PLANS DATE 8/10/20, and shall be retained thereafter.
- 7) Where noise emitted from the proposed internal activity in the development will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the use hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the permitted hours of use. The specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest.
- 8) Where noise emitted from the proposed internal activity in the development will contain tones or will be intermittent, the 'A' weighted sound pressure level from the use hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the permitted hours of use. The specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest.
- 9) Following the implementation of the use, an application may be made to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report including a proposed fixed noise level for written approval by the City Council. The noise report must include:
 - (a) The location of the most affected noise sensitive receptor and the most affected window of it;
 - (b) Distances between the application premises and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;

- (c) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (a) above (or a suitable representative position), at times when background noise is at its lowest during the permitted hours of use. This acoustic survey is to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (d) The lowest existing LA90, 15 mins measurement recorded under (c) above;
- (e) Measurement evidence and any calculations demonstrating that the activity complies with the planning condition;
- (f) The proposed maximum noise level to be emitted by the activity

END OF SCHEDULE OF CONDITIONS