



Appeal Decision

Site visit made on 29 June 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2021

Appeal Ref: APP/Y5420/W/21/3267824

109 High Road, Wood Green, London N22 6BB

- 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 Mr Besnik Dedei of A Cash Ltd against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2020/3199, dated 20 November 2020, was refused by notice dated 19 January 2021.
 - The development proposed is a change of use from retail to an adult gaming centre.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision notice referred to two policies of the "Publication London Plan 2019"¹ published in December 2019. A new and final version of the London Plan was published and became part of the development plan on 2 March 2021. As the relevant policies were unchanged between the emerging 2019 plan and the 2021 final version I have simply referred to the 2021 London Plan where necessary in my reasons below. The Council's decision notice also indicated conflict with policies of the London Plan 2016, but as these have been superseded by the 2021 London Plan I have not referred to them in my reasons.
3. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. The parts of the Framework most relevant to this appeal have not been significantly amended. As a result I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach. Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

Main Issues

4. The main issues are the effect of the proposed change of use on the vitality and viability of Wood Green Metropolitan Town Centre, and on living conditions for nearby residents with particular regard to noise disturbance.

¹ Formally "The London Plan – Intend to Publish version"

Reasons

Vitality and viability

5. The appeal site is the ground floor unit of 109 High Road, a three-storey building with residential accommodation on the first and second floors. The existing lawful use of the ground floor unit is retail which, since the Town and Country Planning (Use Classes) Order 1987 ("the UCO") was amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("the UCO Amendment Regulations") on 1 September 2020, falls into the "commercial, business and services" Class E. The appellant wishes to operate the appeal site as an Adult Gaming Centre ("AGC").
6. The appeal site is within a Primary Shopping Frontage ("PSF") in the Wood Green Metropolitan Town Centre ("the town centre" or "the centre"), more or less equidistant between Turnpike Lane and Wood Green tube stations at either end of the centre. I saw at the time of my site visit that larger national retailers tend to be concentrated in and around The Mall to the north of the appeal site, whereas the area around and south of the appeal site appears to have a greater proportion of smaller units and independent retailers, although of course there were variations and exceptions within this general pattern. My site visit took place at around lunchtime on a weekday, at a time when the High Road was closed to all vehicles (including buses) south of Alexandra Road as a result of a road traffic accident outside Turnpike Lane Station. Nevertheless, while that incident may have had some effect on the numbers of people able to access the Centre, as a whole it appeared to be reasonably busy.
7. Although the planning application and the appellant's statement describe the unit as being vacant, it is apparent from the evidence before me that at some point in late 2020 it was occupied by a discount retailer selling a variety of household goods. That operator was still trading from the premises at the time of my site visit.

Relevant development plan policy

8. Part A of Policy DM42 of the 2017 Haringey Development Management DPD ("the DPD") seeks to protect the vitality and viability of the town centres within the borough by ensuring that PSFs should be characterised by a predominantly retail function. It aims to preserve a critical mass of retailing in PSFs by permitting non-retail "appropriate town centre uses" only where three criteria are complied with. These are:
 - a) the overall number of units in non-retail use will not exceed 35% across the entire frontage, unless it can be demonstrated the proposal will significantly enhance the vitality and viability of the centre;
 - b) the continuity of the centre's retail frontage will be maintained, normally with no more than two adjoining units in non-retail use; and
 - c) an active frontage is provided.
9. Following the changes made by the UCO Amendment Order, the new "commercial, business and services" Class E incorporates the previous A1, A2, A3, D1 and D2 use classes. Premises formerly within an A1 "shops" use can be changed without planning permission to a wider range of other uses than was the case at the time the DPD was adopted. As the Explanatory Memorandum to

the UCO Amendment Regulations notes, this change was intended to better reflect the diversity of uses found on high streets and in town centres, to provide flexibility for businesses to adapt and diversify to meet changing demands, and to support the viability of these areas now and in the future.

10. As a result of the changes to the UCO, I consider that criteria a) and b) of Policy DM42 are of reduced relevance, as the appeal site could be changed to certain non-retail uses without requiring planning permission; consequently the policy is out of date for the purposes of determining this appeal. However, in referring to “appropriate town centre uses” in the wording of Policy DM42 is otherwise sufficiently flexible to encompass the changes to the UCO. In that respect, and in seeking to retain active frontages within town centre, DM42 continues to reflect Government policy seeking to protect primary shopping areas and to ensure the vitality of town centres, as set out in paragraph 86 of the Framework. Furthermore, the proposed use as an AGC is *sui generis* and does not fall into the range of alternative uses which would be allowed without planning permission. Because of this, despite finding that Policy DM42 is out of date, I nonetheless give it significant weight in determining this appeal.
11. Policy SD6 of the 2021 London Plan seeks to promote and enhance the viability of London’s town centres by, among other things, ensuring that they are the primary locations for commercial activity beyond the CAZ².

Criteria a) and b) of DM42

12. The Council’s latest retail survey for Wood Green dates from 2018, and showed that 21.47% of units within the PSF were in non-retail use. By the Council’s calculation the proposed change of use would increase this figure to 22%. While some time has passed since the retail study was prepared, and I did not carry out a detailed count of units at the time of my site visit, there is no evidence before me to suggest that the situation within the PSF has changed to the extent that the threshold set out in Policy DM42 would be breached. Criterion a) is therefore complied with.
13. The unit immediately north of the appeal site (111-113 High Road) is in retail use as a Clarks shoe shop, while the neighbouring unit to the south (105-107) is a branch of The Works selling books, stationery, and suchlike. The proposed change of use would not result in two or more adjoining units being in non-retail use, so criterion b) of DM42 is also complied with.

Criterion c) of DM42 - active frontage

14. No definition of “active frontage” is provided in Policy DM42 itself, although the glossary in Appendix F of the DPD describes it as a street frontage “where there is an active visual engagement between those in the street and those on the ground floors of buildings”. That definition is reflected in the Planning Statement submitted with the planning application. The appellant commented that “many retail units along High Road [...] have obscured their windows with posters and other displays”, but suggested that a “retail type display” could be secured at the appeal site by use of a condition.
15. At the time of my site visit I saw that, while posters and displays of goods were commonplace in shop windows, as would be expected, very few of the retail

² The “Central Activities Zone”, covering much of central London including the City of London, the West End, Westminster, the South Bank, and surrounding areas.

units along the High Road had frontages where views into and out of the premises were completely obscured. In general, though this was not a hard and fast rule, it appeared to me that where mutual views between the street and internal activity within a shop unit were not possible this principally arose where the array of goods displayed for sale was so large that it occupied most of the front window, as I saw for example at a mobile phone shop a few doors north of the appeal site. While those cases do not strictly fit the “active frontage” definition above, the haphazard vibrancy of such displays does at least reflect the unit’s retail role, and as such they make some contribution to the vitality of the town centre.

16. On the other hand, AGCs I saw elsewhere within the town centre had frontages which in one way or another obscured the interior from the street. All had some form of poster or electronic display in the window, but none allowed any significant form of engagement between the street and the activity within. I acknowledge the appellant’s comment that they themselves are “not proposing to obscure the frontage” of No 109, but having seen AGCs in other centres where front windows are not obscured, or not fully obscured, my experience suggests that there is generally little in the way of engagement between those inside an AGC playing games and the street outside.
17. The appellant has drawn my attention to appeal decisions in Croydon³, Doncaster⁴, Islington⁵, and in a different centre in Haringey⁶, in which Inspectors considered the matter of active frontages and, in the Doncaster and Haringey decisions, imposed conditions requiring window displays to be installed and retained before use of the premises as an AGC commenced. However, these other decisions all relate to premises which were empty at the time of the appeal and, in the Croydon case, to a unit within a secondary retail frontage. None appears to be directly comparable to this case, and these other decisions therefore provide little weight in support of the proposal, where an existing active frontage would be lost or, at very least, diminished.
18. I acknowledge that, under the provisions of Class E, the appeal site could be used for a purpose such as an office or a nursery which would be unlikely to provide a particularly active frontage to the High Road, and which could not be controlled by condition. However, there is no substantive evidence before me to indicate that such uses are proposed for the site, while the existing retail unit has an active frontage, the loss of which would be detrimental to the vitality and viability of the centre. Taking all of this into account, in my view the proposed development would be unlikely to result in there being an active frontage in the terms described above, and criterion c) of Policy DPD42 would not be complied with.

Appropriate town centre use

19. The Council considers that that in any event an AGC would not be an appropriate use for the appeal site, having regard to its location and its likely effect on the quality and diversity of the centre. The appellant takes the opposite view, considering that the change of use would reintroduce footfall

³ PINS Ref: APP/L5240/W/19/3232831

⁴ PINS Ref: APP/F4410/W/20/3250246

⁵ PINS Ref: APP/V5570/W/20/3261104

⁶ PINS Ref: APP/Y5420/W/20/3260036

- and linked trips to the town centre, with benefits to the evening economy and the post-Covid 19 recovery of the town centre.
20. The DPD does not set out in precise terms what is an “appropriate town centre use”. While the supporting text to Policy DM42 recognises that some non-retail uses– examples listed are banks and building societies, restaurants, and cafes – are often directly linked to shopping trips, and can support town centre vitality and viability, the policy primarily seeks to direct such uses towards the secondary shopping frontages within centres.
 21. Turning to national policy, the glossary in Annex 2 of the Framework provides a comprehensive list of “main town centre uses”. While Annex 2 does not specifically include AGCs, I accept that there is nothing to suggest that the list is intended to be exhaustive, and I acknowledge that such a use could in any case arguably be encompassed by either “leisure” or, at a push, “entertainment”. The Framework also recognises at Paragraph 86(b) the significance of primary shopping areas as discrete entities within town centres, while the Planning Practice Guidance (“the PPG”) advises that a wide range of complementary uses can help to support the vitality of town centres “if suitably located”⁷.
 22. It is indisputable that shopping patterns and the retailing industry have changed significantly in recent years, and trends such as a shift towards online shopping have been accelerated by the impacts of the Covid-19 pandemic. There are of course consequences for high streets and town centres as a result; within the planning system these include a recognition of the need for diversification of town centres, and the acknowledgement that leisure and service uses can help to attract a broader range of customers to centres, with consequent positive impacts where they lead to linked trips and increased spending. The introduction to the UCO of Class E encompassing a wide range of uses reflects these changes, so there is already flexibility and scope for a far broader range of uses to be located within shopping areas (including PSFs) than was the case until very recently.
 23. However, while I acknowledge again that the unit could be converted to another Class E use, there is no substantive evidence that such a change is, or may be, on the cards. Furthermore, that AGCs have not been included within Class E and remain *sui generis* is to my mind a strong indication that they are not seen by Government as an essential part of the “broader range of compatible uses which communities expect to find on modern high streets” and which “will attract people and make these areas viable now and in the future”, as the Explanatory Memorandum to the UCO Amendment Regulations puts it. Having regard to the relevant local and national planning policies, as well as the advice in the PPG, it seems to me that whether an AGC, or an additional AGC, would be an “appropriate town centre use” is dependent on context and is very much a question of planning judgement in each case.
 24. There are several AGCs already on the High Road, at No 91 six units to the south of the appeal site, and No 117 three units to the north, as well as three slightly further afield at Nos 9, 41 and 64. None of these is more than a couple of minutes’ walk from the appeal site. The proposal would result in an already high concentration of these uses being increased further in the central part of the town centre’s PSF. I have no reason to doubt that there is a demand for

⁷ Paragraph: 001 Reference ID: 2b-001-20190722

the services of AGCs which the proposed development would help to meet. However, there is no substantive evidence before me to demonstrate that such a concentration of the same non-retail use would result in any significant growth in footfall within the town centre, or that it would make a positive contribution to the diversity of the centre. Indeed, the loss of a unit which is currently in retail use would contribute to undermining the shopping role of the centre and the PSF. The appellant states that the proposal would support six jobs, although as this would be offset by a loss of jobs within the existing retailer it is a benefit carrying only little weight in the scheme's favour.

25. The appellant's evidence included a letter indicating that the premises have been marketed to let for more than two years, but that there had been "no serious interest [...] on the basis of a permanent lease except for the appellant", and that the current business occupying the unit is there on a short-term basis. However, the unit is now occupied by a retailer, albeit one which does not as yet have a long-term commitment to the site. As such it both contributes to the predominantly retail role of the PSF, and provides an active frontage to the High Road. It therefore seems to me that the unit could remain – on the right terms – a viable location for retailing which can continue to contribute to the town centre's retail function.
26. The appellant has referred to further appeal decisions relating to sites in Broxtowe⁸, Hull⁹ and Grantham¹⁰, as well as those addressed in paragraph 17 above. The Inspectors in those other cases all reached one or more of the same conclusions; that there would be benefits arising from bringing a vacant unit back into use, that the evidence of linked trips and increased footfall justified the scheme, or that the flexibilities introduced by the UCO Amendment Regulations justified allowing an AGC as part of the overall mix of services which would be expected in a town centre. In respect of the last of these points, in my view it is relevant that in the Grantham and Haringey decisions the Inspector referred to there being only a single other AGC nearby. In the Hull case there were two AGCs near the appeal site, but the proposal was effectively to extend an existing AGC into a neighbouring vacant unit. In this case there are already five AGCs very close to the appeal site, and while the proposal would increase the options for those people who wished to visit an AGC it would make a negligible contribution to increasing the diversity of services on offer within the town centre as a whole. I have already set out above that this proposal would result in the loss of an actively-trading retail unit, as well as why the flexibilities introduced by Class E do not carry anything more than limited weight in this case.
27. The appellant also directed me to a second appeal decision elsewhere in Haringey¹¹, although that related to a proposal to change a vacant retail unit to a combined restaurant and hot food takeaway rather than an AGC. The Inspector in that case considered that the benefits of bringing a vacant unit back into use amounted to exceptional circumstances which justified allowing the appeal; as I have explained above this is not a relevant consideration in this case. In my view none of the other appeal decisions to which I have been directed is directly comparable to the specific circumstances of this case, and

⁸ PINS Ref: APP/J3015/W/18/3212670

⁹ PINS Ref: APP/V2004/W/19/3233244

¹⁰ PINS Ref: APP/E2530/W/20/3247482

¹¹ PINS Ref: APP/Y5420/W/19/3224824

consequently none adds more than very limited weight in support of this proposal.

28. The proposed development would lead to an increase in the concentration of a single type of non-retail use – namely AGCs – at the centre of the PSF, and would result in the loss of a unit currently in retail use. This would diminish the retail function of the PSF. There is no substantive evidence to indicate that the harm which this would cause to the town centre would be offset by benefits arising from linked trips, an increased diversity of services being offered within the town centre, or any other factors. I therefore consider that, in the terms set out in both the DPD and the Framework, the proposal would not amount to an “appropriate town centre use”.

Findings in respect of viability and vitality

29. Taking all of the above points together, I find that the proposal would also be likely to lead to a reduction in the extent of active frontage within the town centre. Furthermore, permitting a further AGC close to other existing AGCs would create a cluster of a single type of non-retail use, which would not be appropriate within the PSF. For these reasons I conclude that the proposal would be significantly harmful to the vitality and viability of the town centre, and so would conflict with Policy DM42 of the DPD, as well as with Policy SD6 of the 2021 London Plan which seeks to promote and enhance the viability of London’s town centres.
30. The proposal would also conflict with the requirements of national planning policy set out in Paragraph 86 of the Framework, which seek to ensure the vitality of town centres and, in particular, to support the role of primary shopping areas.

Living conditions

31. There are numerous residential units near the appeal site, including immediately above the existing shop on the upper floors of No 109. From what I was able to observe at the time of my site visit, the upper floors of the adjoining Clarks shop appeared to be used as storage space, and it was not possible to determine the use to which the floors above The Works were being put. However, various other premises close by on the High Road clearly had flats on their upper floors, while to the west on Alexandra Road houses back onto the appeal site. The appellant wishes to operate the proposed AGC at No 109 24 hours a day.
32. I understand that the High Road itself is usually busy with traffic (notwithstanding that it was closed to vehicles at the time of my site visit), and that a Metropolitan Town Centre provides a range of services some of which could be expected to operate late into the night. Furthermore, residents who live in a town centre cannot necessarily expect the same living conditions and low levels of noise as those living in predominantly residential areas. Nevertheless, there is a balance to be struck between what is reasonable and what may be excessive.
33. There is no evidence before me which suggests that the night time economy is a significant feature of the part of the town closest to the appeal site. The existing AGCs at Nos 91 and 117 already open around the clock, but these operating hours appear to be very much an exception rather than the rule. I

note also that there is no substantive evidence before me which indicates that indicate that that they cause unacceptable harm to nearby residents as a result of noise. However, the comings and goings which would be associated with a cluster of three 24-hour AGCs within a very short stretch of the High Road would in my view have a disruptive effect at the quietest times of the night and early morning, when even town centre residents would rightly expect a greater degree of peace and quiet. This would be likely to be harmful to living conditions for nearby residents. I therefore consider that, were the proposal acceptable in all other respects, it would be necessary to impose a condition limiting opening hours to protect residential amenity. I note also that the appellant indicated that he would be amenable to such a condition.

34. In terms of noise arising from within the premises, I note the appellant's comment that the ground floor ceiling would be inspected prior to occupation to ascertain its acoustic performance, and would be reconstructed if necessary to achieve a minimum 60db sound reduction. Again this is a matter which, if the proposal were acceptable in all other respects, could be secured by an appropriate condition.
35. Subject to the use of appropriate conditions to control opening hours and internal noise generation and transmission, the proposed development would not be harmful to living conditions for nearby residents. The proposal would therefore comply with Policy SP10 of the 2013 Haringey Local Plan, and Policy DM1 of the DPD, which together seek to ensure that developments, including those within the evening and night time economy, do not cause unacceptable harm to neighbours' living conditions, including as a result of noise. The use of appropriate conditions would also ensure compliance with Policy D13 of the 2021 London Plan, which seeks to ensure that noise and other nuisance-generating development close to residential uses puts in place measures to mitigate and manage any noise impacts for neighbouring residents.

Other Matter

36. As well as the other AGCs identified above there are numerous betting shops on Wood Green High Road near the appeal site. The Council and other interested parties have expressed concern that the high concentration of gambling premises has damaging effects on the health and wellbeing of residents in the borough, and that permitting a further AGC would exacerbate this harm. I note the comments made in this respect, as well as the appellant's response to these concerns, although the evidence before me on this matter is not conclusive. Concerns about gambling as a source of crime or disorder, and protecting children and vulnerable people from being harmed or exploited, can be addressed by the provisions of the licensing regime under the Gambling Act 2005, although I have no evidence to indicate whether or not a premises licence has been applied for or granted. The harm which I have found and described above, and on which I have reached my decision, relates specifically to the impact the proposal would have on the vitality and viability of the town centre and the retail function of its PSF.

Planning Balance and Conclusion

37. The proposal would result in the loss of an existing retail unit and active frontage within a PSP. Furthermore, given the existing concentration of AGCs within Wood Green town centre it would not contribute to increased diversity within the centre, and so would not represent an appropriate town centre use

in this case. The proposal would be harmful to the vitality and viability of the Centre, and I give this harm significant weight in my decision. A small number of jobs would be created, although as jobs lost from the existing occupier would be offset against these it is a benefit to which I give limited weight in the overall planning balance. A lack of harm in respect of neighbours' living conditions is a neutral factor.

38. Policy DM42 of the DPD is the most important policy for determining this appeal and, as I have already described above, I consider that it is in part out of date due to the introduction of use class E. In such circumstances Paragraph 11(d) of the Framework) advises that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
39. I have found that the proposal would be detrimental to the vitality and viability of Wood Green Metropolitan Town Centre. This harm would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole. As such, having applied the balance set out in Paragraph 11(d)ii), the presumption in favour of granting permission does not apply.
40. I have also found that the proposal would conflict with DPD Policy DM42, as well as Policy SD6 of the London Plan. While DM42 is out of date for the purposes of determining this appeal, for the reasons I have set out above I still give it significant weight in the overall planning balance. The conflict with the development plan taken as a whole adds weight to my conclusion that the appeal should be dismissed.
41. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The other material considerations identified in this case, including the Framework, do not justify a decision other than in accordance with the adopted development plan. The appeal is therefore dismissed.

M Cryan

Inspector