



Appeal Decision

Site Visit made on 28 September 2021

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Appeal Ref: APP/T5150/W/21/3268900

141 Kilburn High Road, Kilburn, London NW6 7HT

- 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 London Borough of Brent.
 - The application Ref 20/1714, dated 12 June 2020, was refused by notice dated 8 January 2021.
 - The development proposed is described as "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 dismissed.

Applications for costs

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

Preliminary Matters

3. Since the submission of the appellant's appeal the revised National Planning Policy Framework (the Framework) was published and came into force on 20 July 2021. In light of this I have sought the views of the main parties in writing and comments received have been taken into consideration.
4. The Council's decision notice refers to policies of the emerging Brent Local Plan. This emerging Local Plan has not been adopted yet therefore my assessment of this appeal is based on the relevant statutory development plan policies.

Main Issues

5. The main issues are the effect of the proposal on the vitality and viability of Kilburn Town Centre; and the effect of the proposal on the surrounding area in terms of noise, disturbance, crime and anti-social behaviour.

Reasons

Vitality and viability

6. The London Borough of Brent Local Plan Development Management Policies 2016 (BLP) has Policy DMP3 which relates to proposals for non-retail uses, in particular betting shops, adult gaming centres (AGC) and pawnbrokers. Under bullet point two of Policy DMP3, it states that AGC will be permitted where it will result in no more than 3% of the town centre frontage consisting of AGC or pawnbrokers/payday loan shops (PPLS). I have had regard to the exact wording of Policy DMP3 including the use of the word "or" within bullet point

two, as well as the supporting explanatory text. The policy has specific bullet points for particular matters, and on this basis, I am satisfied that the 3% in bullet point two refers to a calculation of both AGC and PPLSs, and does not relate to a 3% for each use.

7. The Council have indicated that data taken from a Town Centre Compendium confirms that including the existing AGC and PPLSs in the area, as well as the proposed AGC this would result in 3.07% of the town centre frontage being taken up by these uses. The appeal premises has shop fronts on two elevations with one facing onto a side road. There are numerous examples of these along Kilburn High Road with premises having multiple shop fronts. From what I viewed at my site visit, these premises with multiple shop fronts are usually corner properties and in the context of the Kilburn High Road, whilst they may not face directly onto the main road, they still contribute to the overall Kilburn High Road frontage.
8. I have had regard to the appellants statement of case including reference to planning applications, appeal decisions, customer profile and inflow surveys, and traders questionnaires. The information provided, which in some cases relates to different locations, does not alter the findings above that the proposal would increase the percentage of town centre frontage to above 3% and therefore subsequently would be contrary to bullet point two of Policy DMP3. The appellant has indicated that under previous decisions, the Council and Inspectors have interpreted Policy DMP3 in a different manner. From the examples provided on these other decisions, there doesn't appear to be a critical dispute in terms of bullet point two of Policy DMP3 which is the crux of the matter in this appeal.
9. The appellant questions the link between AGC and PPLSs however, Policy DMP3 is clear that these uses fall within the same non-retail category and an over-concentration of non-retail uses can lead to an adverse effect on town centres. Kilburn High Road has a frontage of almost 2 kilometres and the proposal would introduce a use that increases the amount of AGC and PPLSs frontages by more than 3%. It is acknowledged that the figure would be approximately 0.7% over the 3% figure and this would be materially significant in the context of the whole of the town centre, leading to an over-concentration of AGC and PPLS uses that would adversely affect the vitality and viability of the Kilburn Town Centre.
10. The proposal would have a harmful effect on the vitality and viability of Kilburn Town Centre. The proposal would be contrary to Policy DMP3 of the BLP which seeks to ensure that there is not an over-concentration of particular uses within any single length of frontage.

Surrounding area

11. The area surrounding the appeal site has been described as commercial uses at ground floor and residential uses above. Given the close nature of commercial and residential properties, it is necessary to ensure the living conditions of nearby residential occupants are not adversely compromised.
12. The appellant has indicated that the proposed use would be quieter than a betting office and customers from the proposal would come and go in low numbers. However, there is insufficient evidence to support this claim as well as little information to confirm whether internal noise levels from customers,

employees and other operations of the proposed use would not compromise the living conditions of occupiers of nearby residential properties.

13. The proposed premises would be open during the day and evening which could lead to customer comings and goings at unsocial hours during the evenings. The evening environment is usually quieter and any customer movements during evening periods would be prominent and noticeable, leading to residential occupiers in the area being adversely disturbed.
14. From the evidence before me, I am not satisfied that the proposal would not have a harmful effect on the living conditions of the occupiers of surrounding residential properties in regards to noise and disturbance. The proposal would be contrary to Policy DMP1 of the BLP which seeks development to not unacceptably increase exposure to noise.
15. I have had regard to the Councils Officer report and statement of case, and concerns relating to crime, disorder and anti-social behaviour which includes reference to NHS estimations, the "*A Fair Deal: Betting Shops, Adult Gaming Centres and Pawnbrokers in Brent (2013), London Borough of Brent*" document, the 2005 Gambling Act, 2010 British Gambling Prevalence Survey and comments from residents and the Police Safer Neighbourhoods Team. I also note that the Council have granted a license for the proposed use.
16. There is no substantial evidence before me to suggest that the conversion of a betting shop to an AGC would result in a significant increase in crime, disorder and anti-social behaviour that would have a harmful effect on the surrounding area.

Other Matters

17. The appellant has indicated that the proposal would bring some benefits including adding choice to the area, bringing the property into use, creation of jobs and investment, providing a popular and complementary activity and in terms of customer numbers being similar to and better than some Class E uses and better than a betting office. The appellant also notes that the proposal would not conflict with the London Plan and bullet point four of Policy DMP3.

Conclusion

18. I have found that the proposal would not have an adverse effect on crime, disorder and anti-social behaviour in the surrounding area. However, this and the other matters detailed above would not outweigh the harm I have identified with regards to vitality and viability of Kilburn Town Centre and the living conditions of occupiers of neighbouring properties with regards to noise and disturbance.
19. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding.
20. Therefore, for the reasons given above, the appeal should be dismissed.

Chris Baxter

INSPECTOR