



Appeal Decision

Site Visit made on 28 September 2021

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2021

Appeal Ref: APP/N5090/W/21/3270129

48 Golders Green Road, Golders Green, London NW11 8LL

- 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 the London Borough of Barnet.
 - The application Ref 20/5698/FUL, dated 26 November 2020, was refused by notice dated 22 January 2021.
 - The development proposed is change of use of ground floor from vacant estate agents (Class E) to adult gaming centre (SG use).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor from vacant estate agents (Class E) to adult gaming centre (SG use) at 48 Golders Green Road, Golders Green, London NW11 8LL in accordance with the application 20/5698/FUL, dated 26 November 2020, subject to the Schedule of conditions at the end of this decision.

Procedural Matters

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, amending the Town and Country Planning (Use Classes) Order 1987 have come into force. These amendments revoke the previous Class A uses and create a new broad 'Commercial, business and service' use, under Class E. The appeal site falls into this new Class E, previously occupied as an estate agent falling within financial and professional services (A2) use. I have applied the development plan policy approach to retail and non-retail uses.
3. The London Plan (2021) (LP) has been adopted in between the time the application was determined and submission of the appeal. Policy 4.8 of the London Plan (2016), listed in the Council's first reason for refusal, has been superseded by LP Policy E9. The aims of both sets of policies are broadly similar and I am satisfied that no interested party has been prejudiced by this change of policy.
4. The revised National Planning Policy Framework (the Framework) has been published since the appeal was submitted. Both main parties have been given the opportunity to comment on this. My decision is made in the context of the revised Framework and I am satisfied that no interested party has been prejudiced by my approach.

Main Issues

5. The main issues are:

- The effect of the proposed development upon the vitality and viability of Golders Green town centre; and
- The effect of the proposal upon the living conditions of nearby residents with regard to noise and disturbance.

Reasons

Vitality and viability

6. Golders Green town centre is largely linear focused along Golders Green Road and around the war memorial in front of the station. The town centre has a vibrant mix of daytime and evening uses, with a relatively low number of vacant units. The ground floor of the property is vacant with the previous use an estate agent having vacated the premises in 2016. The property is statutory listed and is located within the Golders Green Town Centre conservation area (CA).
7. Policy DM11 of the Development Management Policies Development Plan Document (2012) (DMP) relates to development principles in town centres and encourages a suitable mix of appropriate uses in such areas to support their vitality and viability. Part b sets out that proposals in primary retail frontages should not reduce retail uses below 75% and should not result in an over-concentration of similar uses which detract from the retail function of the town centre.
8. During my site visit, on a weekday morning, I observed betting shops on Golders Green Road and Finchley Road. However, due to the total number of units and the presence of intervening uses, gambling facilities do not dominate the primary retail frontage or the centre as a whole. Nor would the addition of the adult gaming centre result in a cluster or concentration of such uses. Whilst the proposal may result in a duplication of uses within the centre; the same can be said for the previous estate agent and other uses such as cafes. Furthermore, adult gaming centres and betting shops, for that matter, are an established part of high streets across the country and complement their retail function.
9. I note the Council's comments in respect of marketing evidence. However, there is no requirement under Policy DM11 to provide such information for changes of use from non-retail uses. Nevertheless, the appellant has set out that the property has been vacant for a number of years and demonstrated that active marketing has taken place with limited interest. This evidence has not been challenged by the Council and I have no reason to dispute its credibility. Despite the Council's assertion the evidence before me indicates that there is little prospect of the premises being occupied by another operator use falling within Class E in the near future.
10. The proposal would not unacceptably reduce the number of retail units in the town centre and nor would it result in an over-concentration of adult gaming centres or non-retail uses within it. I note that the policy is designed to prevent the loss of shops which, given the previous use was an estate agent, would not

be the case here. It would also lead to a unit which has been vacant for around five years being brought back into use and would generate notable footfall.

11. The Council contends that the proposed development would not create an active street frontage. However, this is not a determining factor as the policy sets out that community uses are expected to present active frontages. This requirement does not extend to other uses. Despite this, the appellant has indicated that the window display would include a television to create interest and activity. I am satisfied that this approach would create interest along the street frontage.
12. As such, I conclude that the proposed development would not undermine the vitality and viability of Golders Green town centre. It would accord with Policy CS6 of the Core Strategy (2012) and Policies DM01 and DM11 of the DMP which, amongst other things, seek to promote successful and vibrant centres; preserve or enhance local character and encourage a suitable mix of appropriate uses in such areas to support their vitality and viability. It would also accord with LP Policy E9 which, amongst other things, seeks the enhancement of local and neighbourhood shopping facilities and the management of clusters of retail and associated uses having regard to their impacts including in respect of town centre vitality, viability and diversity.

Living conditions of existing occupiers

13. The Council contend that the proposal would give rise to noise and disturbance to nearby occupants through the comings and goings of customers to the premises.
14. Whilst the Council's Environmental Health Officer raised concerns regarding the planning application, this was based on 24 hour opening hours. The appellant has revised the opening hours to 0700 until midnight daily. This would bring the opening hours in line with a number of uses in the area.
15. Given the town centre location of the appeal property it is not unreasonable for nearby residents to expect a certain degree of noise and disturbance from traffic and commercial uses, including the comings and goings of customers visiting businesses in the area. The nature of the use and the opening hours proposed is unlikely to result in undue noise and disturbance from comings and goings given its location and the presence of evening uses in the area.
16. The appeal site is within a highly accessible town centre location accessible on foot and by different means of public transport including by bus and underground providing choice for visitors. Whilst some customers may well drive to the premises the resultant additional activities and vehicle comings and goings along Golders Green Crescent and surrounding roads is unlikely to be significant and would not unduly harm the living conditions of nearby occupiers in respect of noise and disturbance.
17. I conclude that the proposed development would not adversely affect the living conditions of nearby occupants in respect of noise and disturbance. As such, it would accord with DMP Policies DM01, DM04 and DM11 which, amongst other things, seek to mitigate noise impacts and for developments not to have an adverse effect on the amenity of local residents.

Other Matters

18. Concerns have been raised about the potential for anti-social behaviour with groups of people gathering and loitering in the area and the potential for crime and disorder. However, based on the evidence before me there is nothing to suggest that such occurrences would be attributed to the proposed development. In my judgement crime and disorder are not an inevitable consequence of the proposal but rather a matter of individual behaviour and appropriate management. Moreover, I am not aware of any objection from the local police force.
19. I note that representations have been received in respect of gambling, gambling addiction, associated social deprivation and mental health issues. Concerns have also been expressed on moral and religious grounds and that the area attracts a high footfall of children and families and the proposed development would conflict with the beliefs, wellbeing and way of life of the local community. Whilst these concerns may be legitimate, planning is concerned with land use matters. As such, they are not matters for my consideration as national and local planning policies do not prevent adult gaming centres or betting shops from operating. Moreover, such matters are regulated by other legislation including the licensing regime.
20. I note the ambition to create a sense of place or community hub in the area. However, there is no substantive evidence that the proposed development would have a harmful material effect on this ambition, social cohesion or the promotion of safe and healthy communities.
21. I note that the Council consider the proposal would not harm the character or appearance of the building as a statutory listed building or the CA and I have no reason to disagree. The proposal would bring the property back into a functional use improving the appearance of the unit's frontage to the benefit of the CA and would help to sustain the significance of this designated heritage asset, in accordance with the Framework.

Conditions

22. In addition to the standard time limit condition, I have imposed a condition specifying the relevant drawings as this provides certainty.
23. I note that the Council have suggested opening hours of 0800 – midnight daily, which based on the evidence before me, is different to those suggested by the appellant and the Council's Environmental Health Officer. In my view opening the premises at 0700 would not unduly affect the living conditions of nearby occupants as it is likely that activity is already taking place in the area including in the form of deliveries and people going to and coming back from work.
24. The Council has suggested a condition for details of the refuse and recycling facilities. However, given the previous use such facilities are already likely to be present at the premises. As such, I find it is not necessary to impose such a condition.

Conclusion

25. I have no reason to make a decision other than in accordance with the development plan. I conclude that the proposed development accords with the development plan, when read as a whole. There are no other considerations that outweigh my conclusion.

26. For the reasons set out above the appeal succeeds.

B Thandi

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin no 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: Site Plan and Existing and Proposed Floor Plans Drawing Number GGR/GG/04.
- 3) The premises shall only be open for customers between the following hours: 0700 – 0000 daily.