The Planning Inspectorate

Appeal Decision

Site visit made on 20 October 2021

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date:09 November 2021

Appeal Ref: APP/X5990/W/21/3271781
Basement and Ground floor, 74 Queensway, London W2 3RL

- 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 Ltd against the decision of City of Westminster Council.
- The application Ref 20/06000/FULL, dated 25 September 2020, was refused by notice dated 26 November 2020.
- The development proposed is change of use from betting office (sui generis) to amusement centre (adult gaming centre) (sui generis).

Decision

1. The appeal is allowed, and planning permission is granted for change of use of betting office (sui generis) to amusement centre (adult gaming centre) (sui generis) at basement and ground floor, 74 Queensway, London W2 3RL, in accordance with the terms of the application Ref 20/06000/FULL, dated 25 September 2020, subject to the following 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-Block Plan, WH/Q/01extg, WH/Q/02prop.

   3) The premises shall only be open to customers between the following hours: 0700 and 2200 hours, Mondays to Sundays.

   4) Gaming machines shall be restricted to the ground floor of the premises only.

   5) A shop window display shall be maintained at all times in the ground floor shop window of the Queensway elevation of the building.

Procedural Matters

2. Following the determination of the application and during the course of the appeal, the Westminster City Plan 2019 – 2040 (the WCP) was formally adopted in April 2021; the London Plan 2021 (the LP 2021) was formally adopted in March 2021; and a revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021.

3. The main parties have had the opportunity to comment on the implications of these changes for the appeal. My decision is made in the context of the relevant policies and guidance within the WCP, the LP 2021 and the Framework. I am satisfied that no parties' interests have been prejudiced by this approach.

4. The reason for refusal refers to the appeal site being within the District Shopping Area as identified in the former Development Plan. The WCP identifies that the appeal site is within the Queensway/Westbourne Grove Major Centre and I have considered the appeal accordingly.

5. The application form does not set out the hours of operation of the business. The appellant confirms that when originally submitted it was proposed that the premises would operate 24 hours a day. Subsequently, as confirmed in the appellant's statement of case and the Council's delegated report the proposal is that the opening hours of the premises would be limited to 0700 to 2200 hours. I have considered the appeal on this basis.

Main Issue

6. The main issue is the effect of the development on the character, function and vitality and viability of the Queensway/Westbourne Grove Major Centre.

Reasons

7. The appeal site is the ground floor and basement of a 4-storey property formerly operating as a betting office but currently vacant. The premise is located on the east side of Queensway within the Queensway Conservation Area. Queensway includes a mix of uses where generally commercial premises are at ground floor with offices and residential uses at upper floors.

8. Immediately adjacent to the appeal site there is a wide variety of businesses at ground floor including fast food outlets, restaurants, pubs, general retail as well as the access to the Bayswater underground station. Moscow Road, the side street nearest to the appeal site, appears to be predominantly residential in nature, although commercial uses extend along the ground floor frontage close to the junction with Queensway.

9. The Queensway/Westbourne Grove Major Centre is designated as such due to the scale and nature of its mix of convenience and comparison retail activity and complementary town centre uses. Within the Centre Policy 14 of the WCP supports a mix of commercial and community uses to meet resident's day to day shopping needs, provide local employment opportunities, and support opportunities for community interaction. The text to the policy acknowledges that other town centre uses that are not within Class E can help support key clusters of commercial activity, although a predominance of sui generis uses can undermine town centre vitality and viability and be detrimental to public health and should be avoided.

10. Policy 16 states that proposals for food and drink and entertainment uses will be of a type and size appropriate to their location. The over-concentration of those uses will be further prevented where this could harm residential amenity, the viability and character of the local area or the diversity that defines the role and function of the town centre. Applications for entertainment uses will need to demonstrate wider benefits for the local community where appropriate.

11. As the proposal would change an existing non-retail use into another non-retail use there would be no change in the proportion of sui generis uses within the street frontage. Moreover, there are no other amusement centres or betting shops in the stretch of frontage containing the appeal site and there is no evidence that the proposal would lead to an over-concentration of such uses.

12. The Council indicates that the development would be unlikely to generate footfall and would not compliment the centres retail function. However, there is evidence before me which indicates that the proposal would generate footfall and that gaming centre customers also tend to visit shops. In addition, the appellant sets out that the proposed use would create 7 full time equivalent jobs, introduce a new use and investment in the premises and the centre. The shop front would incorporate a display that would fit in with the characteristics of other shops. The Council does not refer to any adverse effects of the proposal on other traders in the centre. Accordingly, the proposal would bring a vacant unit back into use with the potential for some linked trips, thereby complementing and helping to maintain the vitality and viability of the Centre.

13. I acknowledge that the appeal site is within a Community Protection Zone designated by the Metropolitan Police and the Police have pointed to significant incidents of anti-social behaviour (ASB) in the area. However, the rise in incidents of ASB appears to be after the betting shop ceased to operate, it does not seem therefore that the betting shop use has contributed to the recent increase in ASB. There is no evidence before me about what has caused the recent rise nor has any evidence been provided that the proposal would lead to additional instances of ASB.

14. There are also concern from Councillors and residents that more vulnerable people would be attracted to a gaming centre. In addition, there are concerns that the proposal would attract rough sleepers and begging in an area with an existing problem. Risks to problem gamblers and other vulnerable persons would be more directly relevant to the appropriate licensing and regulatory functions. In this respect I note that the premises can not operate without a licence, a conditional licence has been granted for the operation of the premises and the Metropolitan Police have contributed to its terms. I have been provided with a copy of the licence; the comprehensive licence conditions would directly influence the operation of the business and would address concerns about the safety and wellbeing of the local community. Furthermore, there is little evidence to support the view that quality of life and community cohesion would be detrimentally impacted by the proposed use.

15. There are residential properties above the appeal building and within the area. The resident's associations and neighbourhood watch representations express concerns about the effect of the development on the living environment for local residents and the effect of the development on measures undertaken to improve the public realm; I have carefully considered these.

16. Nonetheless, the tube station and many other shops and restaurants in the area open later into the evening than the appeal site would. The operating hours of the proposal would be the same as the previous use and there is no evidence that the operation of the betting office was a concern. Activity on the street would not be noticeably altered because of the anticipated comings and goings to the proposal. The Council do not suggest that the proposed use would result in an environment inside the building that would generate noise at

a level detrimental to the residential accommodation in the upper floors. Therefore, there is limited evidence that the living conditions of nearby residents or others staying in the area would be harmed because of the development. Nor has it been shown that the development would be detrimental to the recent public realm improvements.

17. Overall, I am satisfied that the proposal would not detract from the character, function or vitality and viability of the Queensway/Westbourne Grove Major Centre. The development would comply with the requirements of Policies 7, 14 and 16 of the WCP in so far as these policies seek to protect living conditions of residents, maintain the vitality and viability of town centres and ensure that entertainment uses are of a type and size appropriate to their location. It would also accord with the Framework where it takes a positive approach to the growth, management, and adaptation of town centres.

18. The Council has not drawn my attention to conflict with any specific policies in the LP 2021 against which the proposal should be considered.

Other Matters

19. The appeal site is located within Queensway Conservation Area (QCA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

20. The building is part of relatively complete mid-Victorian terrace in yellow stock brick which is characteristic of the local area. The proposal would bring an existing vacant unit back into use without external alterations to the building. The maintenance of a window display may be sought by condition. Overall, in the context of the street scene, the character of the conservation area would be preserved. Consequently, the impact on the character, appearance, and significance of this part of the QCA would be neutral. As such, the proposal would accord with the Act and the Framework where it seeks to protect the significance of designated heritage assets.

21. I agree with the Council that the effects of the introduction of Class E under the Town and Country Planning (Use Classes) Order 1987 (as amended) and the coronavirus pandemic on the vitality and viability of town centres are ongoing, however, these matters are not determinative in this appeal.

Conditions

22. The Council did not provide a list of suggested conditions. I therefore sought the comments of the parties on a list of proposed conditions, and I have taken comments received on these into account.

23. In addition to the standard time limit condition, I have imposed a plans condition in the interests of certainty. Conditions are necessary to restrict the opening times to accord with the development applied for and to mitigate against adverse effects on the character and function of the Queensway/Westbourne Grove Major Centre, to maintain a shop window display to protect the character and appearance of the QCA and to restrict gaming machines to the ground floor only to be clear about the extent of the approved development.

24. No information has been provided to show that restricting the use to 'amusement only' machines as suggested by the appellant is necessary. My attention has not been drawn to any specific problems with waste disposal and recycling in the area. The building has been in commercial use for an extensive period therefore, the Council's proposed waste and recycling condition is not considered to be necessary.

Conclusion

25. For the reasons set out above and, having regard to all other matters raised, I conclude that the proposal would accord with the development plan and the Framework when read as a whole. Therefore, the appeal is allowed subject to conditions.

Diane Cragg

INSPECTOR