



Appeal Decision

Hearing (Virtual) held on 15 February 2022

Site visits made on 15 February 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2022

Appeal Ref: APP/T5150/W/21/3272089 251-253 Neasden Lane, London NW10 1QG

- 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 Luxury Leisure against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/2546, dated 14 August 2020, was refused by notice dated 23 October 2020.
 - The development proposed is change of use of the ground floor from licensed betting shop (sui generis) to adult gaming centre (sui generis) with shopfront alterations and associated plant.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the ground floor from licensed betting shop (sui generis) to adult gaming centre (sui generis) with shopfront alterations and associated plant at 251-253 Neasden Lane, London NW10 1QG in accordance with the terms of the application Ref 20/2546 dated 14 August 2020 subject to the conditions in the attached schedule.

Preliminary Matters

2. Insofar as it is relevant to the appeal proposal, the development plan in place when the Council determined the application comprised the London Plan 2016, the Core Strategy 2010 (CS) and the Development Management Policies 2016 (DMP). Before the appeal was submitted, the London Plan 2021 (LP) was published and superseded the previous iteration. After the closure of the hearing, the Brent Local Plan 2019-2041 (BLP) was adopted by the Council on 24 February 2022, superseding relevant policies of the CS and DMP and making changes to the Policies Map, including in relation to the designated boundary and frontages of the Neasden Town Centre.
3. The main parties were able to comment on any implications for the appeal of these changes as well as the weight to be given to the BLP depending on its status at the time of my decision in their written submissions and at the hearing. I have taken the comments made into account, and I am satisfied that no prejudice would be caused by my determination of the appeal giving full weight to the LP and BLP.
4. The agreed Statement of Common Ground (SoCG) sets out that crime and antisocial behaviour is no longer a matter of dispute between the parties, and confirms that reference to crime and antisocial behaviour should be removed

from the first reason for refusal. Following clarification by the appellant that the proposed shopfront alterations include painting of the aluminium frame and mullions but not of the glazing, the Council is also satisfied that its second reason for refusal concerning the effect of the proposal on the character and appearance of the street scene and the Neasden Town Centre could fall away. I have considered the appeal and framed the main issues accordingly.

Main Issues

5. Having regard to the above, the main issues are:
- i) the effect of the proposal on the vitality and viability of the Neasden Town Centre; and
 - ii) the effect of the proposal on the living conditions of nearby occupiers with particular regard to noise and disturbance.

Reasons

Vitality and Viability of Neasden Town Centre

6. The appeal site is located within a Secondary Frontage of the Neasden Town Centre as defined by the BLP. It includes a ground floor unit which was last in use as a licensed betting office, but which the SoCG notes has been vacant since October 2019. The appellant proposes an Adult Gaming Centre (AGC) on the site.
7. Policy BE5 of the BLP outlines that AGCs will be permitted where they would result, amongst other things, in no more than 3% of the town centre frontage consisting of AGCs or pawnbrokers/payday loan shops. There are no pawnbrokers/payday loan shops in Neasden Town Centre, but the appellant accepts that the proposal together with existing AGCs at 304 and 322 Neasden Lane would result in around 3.38% of the designated Town Centre frontage comprising AGC use. It would not therefore be supported by Policy BE5.
8. However, the appellant's evidence indicates that the appeal property was marketed between September 2019 and December 2021 through a marketing board on the property, circulation to mailing lists, and listing on company and retail database websites. Other than the appellant, the agent instructed to carry out the marketing advises that there were very few enquiries and no interested parties of note or offers received, and that no inspections have taken place since 2019. The Council's appeal statement records that it had been unable to find listings for the property on any of the named websites, but it was confirmed at the hearing that searches were carried out after the marketing agent's instruction had ended. It is therefore unsurprising that details were no longer online, and I have no firm reason to doubt that the unit was actively marketed for a considerable period in accordance with the details outlined by the appellant, albeit that this has now ceased.
9. The marketing agent has commented that they consider the price that the property was marketed at to be overrented, but that it was made clear during the marketing that incentives were available and the advertised rent would not in their opinion have dissuaded interested parties. The submitted marketing particulars do not refer specifically to the availability of incentives, and the Council has drawn my attention to provisions within the BLP specifying that marketing should be undertaken at an appropriate rent/a price that genuinely reflects market value. However, these provisions relate to policies that are not

directly relevant to the proposal before me, and while they offer some guidance on approach, I do not therefore consider it would be reasonable to apply these as requirements that the appeal development must comply with.

10. The appellant suggests that it is standard for incentives not to be disclosed in marketing details, and that most businesses looking for a property would be cognisant of potential for negotiation. The marketing was carried out by an experienced agent, and while I acknowledge the Council's concern that the valuation could have deterred some potentially interested parties from pursuing the property further, I consider it unlikely that this would be so widespread as to lead alone to the lack of interest in the property.
11. In this regard, I further note the location of the appeal site towards the outskirts of this part of the Town Centre and within a frontage that was reclassified from Primary to Secondary Frontage on adoption of the BLP. The marketing agent comments that the primary factor in the lack of demand for the property is its location, advising that demand for edge of prime and secondary units has fallen, and suggesting that this trend will continue and accelerate. I have no substantive evidence to the contrary, and irrespective of the rent level within the marketing particulars for the site, I consider having regard to the evidence before me that there is little realistic prospect of the unit coming forward for alternative use.
12. In addition, I observed a number of other vacant units in the Town Centre. While overall vacancy levels may not be high, there is no clear evidence before me of unmet demand for space from independent traders or other occupiers, nor to demonstrate that the proposal would adversely affect the ability of the Town Centre to cater for local needs or to accommodate cultural activity. The Council advised that Neasden had been identified as performing more poorly than other town centres in London. However, it confirmed that the designated boundary was subsequently altered as part of the BLP to provide greater focus to the Town Centre and support the offer that can be maintained. The Town Centre was also relatively busy when I visited, even in poor weather conditions, and I have not been provided with any firm evidence demonstrating that the proposal would cause actual detriment to its health.
13. To the contrary, the site has been unoccupied for over 27 months now, and as a fairly large, vacant unit offers no meaningful contribution to the vitality or viability of the Town Centre. The proposal would bring the unit back into active use. The Council points to data from 'A Fair Deal: Betting Shops, Adult Gaming Centres and Pawnbrokers in Brent 2013' indicating that footfall associated with AGCs is much lower than other town centre uses. Be that as it may, there would undoubtedly be an increase in footfall relative to a vacant unit which I have found has little realistic prospect of alternative use, and even town centre users who did not visit the premises would benefit from an active and occupied unit rather than an empty frontage.
14. Furthermore, the appellant has provided the results of surveys suggesting that a proportion of customers to AGCs will also visit surrounding businesses. The sample size is relatively limited, and I do not have full details of the survey methodology, nor of the AGCs and town centres considered. As a consequence, I am unable to draw direct comparison with the circumstances of the appeal site or reach any firm conclusions on the likely level of linked trips that would stem from the appeal proposal. Even so, I do not doubt that at least some

customers would also use other nearby shops or services, supporting these businesses and contributing to the vitality and viability of the Town Centre as a whole. The development would also employ staff, and while employee levels may be no higher than for alternative town centre uses, there would be an increase over a vacant unit.

15. Moreover, the BLP explains that Policy BE5 seeks to prevent uses including AGCs locating in close proximity to units in the same use to ensure that there is not an over-concentration of particular uses within any single length of frontage. The other AGCs in the Town Centre are located to the opposite side of Neasden Lane, and given the separation and overall mix of other uses that are present between the units, I am satisfied that AGCs would be reasonably well spread-out. I do not therefore find that there would be an impression of a predominance or particular cluster of AGCs within the Town Centre.
16. Insofar as it would result in more than 3% of the Neasden Town Centre frontage consisting of AGCs or pawnbrokers/payday loan shops, the proposal would not be supported by BLP Policy BE5. Nevertheless, the exceedance would be relatively slight, and I find taking the above factors in combination that the development would not cause actual detriment to the overall health or diversity of uses within the Town Centre or its ability to meet local needs, and would not result in an unacceptable over-concentration of AGCs. In my judgement, the proposal would make a small but nevertheless positive contribution to the vitality and viability of the Town Centre, and I conclude that the benefits of the proposal would in this case be sufficient to outweigh the failure to accord with one limb of BLP Policy BE5.
17. The proposal would also comply with Policy DMP1 of the BLP which advises that development will be acceptable provided it is, amongst other things, of a location, use and siting that complements the locality. It would further accord with the National Planning Policy Framework (the Framework) insofar as it endorses a positive approach to the growth, management and adaptation of town centres.

Living Conditions

18. The appeal proposes that the AGC would be open 24 hours a day. There are residential occupiers nearby, including to the upper floors of the appeal building and adjacent premises. However, the site is located within a Town Centre with a fairly diverse mix of uses nearby, including a number that I saw were open late into the evening.
19. I note that examples of premises near to the site highlighted by the appellant do not operate 24 hours a day. Even so, there is a bus stop close to the appeal site which I saw is served by a large number of routes. These include services which operate through the night, and which would therefore be likely to result in some associated noise and activity close by. Furthermore, no restriction was placed on the opening hours of 322 Neasden Lane when permission was granted for its use as an AGC, and signage advertises that it is open 24 hours a day. I saw that the AGC at 304 Neasden Lane and a supermarket at 295-299 Neasden Lane also advertise 24 hour opening. The Council was unable to find any record of a restriction that was imposed on the opening hours of No 304 when planning permission was originally granted having been formally varied. Even without this unit though, Neasden Lane appears to be a fairly busy road, and it seems to me having regard to the above that a degree of activity is

likely to continue in the Town Centre through the night and early morning, and that some background noise and activity would be reasonably expected by residential occupiers near to the site.

20. Moreover, the appellant has provided a Noise Assessment which concludes that noise likely to result from the numbers of customers expected to arrive at or leave the site would not be distinguishable against measured night-time noise levels at the nearest residential window. The expected customer numbers are based on survey data of similarly sized premises in London and the appellant's experience showing that most customers arrive at and leave AGCs alone or in pairs, and are broadly consistent with my observations of visitors to the existing AGCs in Neasden. I appreciate that my visits represent a snapshot and reflect the offer of the existing AGCs, and that it would not be possible to control actual numbers of customers. However, I have no firm reason to find that the assumed numbers of customers would be likely to differ significantly from premises of similar size elsewhere in London, and the Council's evidence in relation to the first main issue also indicates that footfall to AGCs is typically fairly low. I further note that the measured night-time noise levels have not been adjusted to account for the survey having been carried out during the COVID-19 pandemic when the night-time economy remained subject to restrictions, and the assessed baseline is therefore likely to be somewhat below post-pandemic levels.
21. The Council and interested parties refer to crime and antisocial behaviour in the Town Centre, and the police have provided lists of incidents that have been recorded including in relation to the existing AGCs. However, it is not clear whether these occurred inside the relevant premises, whether there was associated noise or disturbance of any significance. Nor do I know the time at which these incidents took place and therefore whether they were during periods that occupiers would be more sensitive to noise. In any event, there is no compelling evidence demonstrating that the specific proposal that is before me would attract or harmfully exacerbate crime or antisocial behaviour so as to result in noise or disturbance that would undermine the appellant's assessment.
22. In my view, the Noise Assessment offers a suitable basis on which to consider the proposal, and I note that the Council's Environmental Health consultee raised no objection to the proposal on grounds of noise. Having regard to the evidence before me, I do not consider that there would be uncharacteristic or intrusive noise or disturbance associated with comings and goings to the appeal site so as to stand out or detract from the quality of life of surrounding residents. Subject to appropriately worded planning conditions, I also agree with the main parties that activity taking place within the premises and proposed plant equipment would not result in unacceptable noise or disturbance to nearby residential occupiers.
23. In contrast to the appeal before me, the Council confirmed at the hearing that proposals for AGCs at 141 Kilburn High Road and at 5-6 Park Parade, Harlesden which were the subject of recent appeal decisions were not advanced with specific noise assessments. I have not therefore attached significant weight to the conclusions within these appeal decisions that there would be harm to the living conditions of neighbouring occupiers through noise and disturbance, and I have instead reached my own conclusions on the appeal proposal on the basis of the evidence before me.

24. For these reasons, I conclude that the proposal would not cause unacceptable harm to the living conditions of nearby occupiers by reason of noise or disturbance. Accordingly, I find no conflict with Policy DMP 1 of the BLP which outlines that development will be acceptable subject to criteria including that it does not unacceptably increase exposure to noise and general disturbance.

Other Matters

25. Notwithstanding the Council's position, I acknowledge representations by interested parties regarding potential crime and antisocial behaviour, and that these are already matters of local concern. However, as set out under the second main issue above, there is no substantive evidence demonstrating that the specific proposal that is before me would attract or increase crime or antisocial behaviour.
26. AGCs are a legitimate form of use, and risks of problem gambling or to young or vulnerable people would be addressed by management functions and regulatory control including through the licensing regime. Given these factors and that the current use of the site would already permit forms of gambling, the nature of the AGC use involving gambling would not be a reasonable justification to withhold planning permission.
27. While I have taken into account representations by interested parties, I am satisfied that none of the other matters raised, either individually or collectively, would result in a level of harm that would justify dismissal of the appeal, and they do not alter my findings on the main issues.

Conditions

28. As well as the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. A condition to control the treatment of the shopfront is necessary to maintain an active frontage in the interests of the character and appearance of the area and the vitality of the Town Centre. However, I do not consider that a restriction on the display of promotional material would be reasonable or necessary given that this would be subject to control under other regulatory regimes, and I have amended the Council's suggested condition accordingly.
29. There is some uncertainty over the internal construction of the appeal building and the details of the plant equipment to be installed at the site. Conditions to require full details of plant equipment and further noise assessment and implementation of measures necessary to mitigate the effects of noise are therefore necessary in the interests of the living conditions of neighbouring occupiers and the character and appearance of the area. I have also imposed a condition requiring provision for staff cycle storage in the interests of supporting travel by sustainable modes and to meet the requirements of the development plan.
30. Given my conclusion on the second main issue, a condition suggested by the Council to restrict operational hours would not be reasonable or necessary, and I have not imposed it.

Conclusion

31. I have found that the development would not harm the living conditions of nearby occupiers, and there would be no conflict with BLP Policy DMP1. While

the proposal would not accord with one of the limbs of BLP Policy BE5, it would not harm the viability or vitality of the Neasden Town Centre and would result in benefits that I consider would in this case outweigh this failure. I find that material considerations therefore indicate that the appeal should be determined otherwise than in accordance with the development plan, and that planning permission should be granted.

32. Accordingly, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise amended under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved drawing: 3386(B)01.
- 3) A clear and unobstructed window display shall be maintained at all times with no signage and/or visual obstructions to views into the premises above a height of 1.2 metres from external ground level and with non-tinted/non-obscured glass to the entrance door or any front windows.
- 4) No external plant or noise generating equipment shall be installed other than in accordance with a scheme, including details of the plant/equipment and existing and proposed elevations, which has first been submitted to and approved in writing by the Local Planning Authority.
- 5) The site shall not be first occupied for the use hereby permitted until a noise assessment and scheme of mitigation to protect neighbouring residential occupiers from noise from within the appeal premises and from external plant or noise generating equipment has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the approved scheme of mitigation to protect neighbouring residential occupiers from noise from within the appeal premises shall be implemented in full before the site is first occupied for the use permitted and shall be retained thereafter. All works which form part of the approved scheme of mitigation to protect neighbouring residential occupiers from noise from external plant or noise generating equipment shall be implemented in full before the equipment is first brought into use and shall be retained thereafter.
- 6) The site shall not be first occupied for the use hereby permitted until space has been laid out within the site for staff bicycles to be parked in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority, and the space shall thereafter be kept available for the parking of bicycles.

APPEARANCES

FOR THE APPELLANT:

Dennis Pope	Lichfields
Thomas Bailess	Hepworth Acoustics
Ian Miller	Luxury Leisure
Shaun Hooper	Luxury Leisure
Mark Thompson	Luxury Leisure

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Dilley	Development Management, London Borough of Brent
Paul Lewin	Planning Policy, London Borough of Brent

DOCUMENTS SUBMITTED AT THE HEARING

1. Extracts of the Development Management Policies 2016 and Brent Local Plan 2022 containing supporting text referring to marketing.
2. Extract of Appeal Decision APP/T5150/A/02/1103105.
3. Appeal Decision APP/T5150/W/16/3163392 dated 23 February 2017.