



Appeal Decision

Site visit made on 12 January 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24th March 2022

Appeal Ref: APP/T5150/W/21/3279627

Ground Floor of 574 High Road, Wembley HA0 2AA

- 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 Chongie Entertainment Limited against the decision of Brent Council.
 - The application Ref 21/1541, dated 27 April 2021, was refused by notice dated 22 June 2021.
 - The development proposed is the change of use from betting office (sui generis) to adult gaming centre (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from betting office (sui generis) to adult gaming centre (sui generis) at Ground Floor of 574 High Road, Wembley HA0 2AA in accordance with the terms of the application Ref 21/1541 dated 27 April 2021, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan Drawing No: 5162 R03 dated January 2021; and Existing and Proposed Ground Floor Plan Drawing No: 5162 R04 dated January 2021.
 - 3) A clear and unobstructed window display shall be maintained at all times with non-tinted/obscured glass in the entrance door and front windows. Signage and/or visual obstructions on the entrance door and any of the windows shall be to a maximum height of 1.2 metres from ground level with no promotional material displayed on the windows or entrance door.

Application for Costs

2. An application for costs was made by Chongie Entertainment Limited against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. Policy DMP3 of the London Borough of Brent Local Plan Development Management Policies, November 2016 has now been superseded by Policy BE5 of the London Borough of Brent Local Plan 2019 – 2041 (the BLP). The parties have had the opportunity to comment on this and these comments have been taken into account.

Main Issue

4. The main issue is the effect of the development proposed on the viability and vitality of Wembley Town Centre.

Reasons

5. The appeal site comprises a vacant ground floor commercial unit on High Road in Wembley, last in use as a betting office. It is located within the secondary shopping frontage of Wembley, defined as a major town centre. The frontage is made up of a variety of retailers and commercial uses.
6. The proposal seeks to convert the unit from a betting office to an adult gaming centre. Policy BE5 of the BLP states that betting shops, adult gaming centres and pawnbrokers will be permitted where it will result in (i) no more than 4% of the town centre frontage consisting of betting shops; (ii) no more than 3% of the town centre frontage consisting of adult gaming centres or pawnbrokers/ payday loan shops; (iii) no more than the greater of 1 unit or 10% of the parade frontage consisting of betting shops, adult gaming centres or pawnbrokers/ payday loan shops; and (iv) a minimum of 4 units in an alternative use in-between each.
7. As the proposal seeks permission for an adult gaming centre, the first criterion is not relevant. Furthermore, the main parties are now in agreement that the proposal would meet the second criterion, while the Council has not raised an issue with regards to the third. There is nothing before me, nor anything I saw, to indicate otherwise. The remaining issue in dispute is therefore whether the proposal would be compliant with criterion 4 of Policy BE5.
8. The Council interprets the reference to betting shops, adult gaming centres and pawnbrokers in Policy BE5 as being a combined category of uses, requiring four alternative uses between any of these. As such, the Council argues that the nature of the surrounding units means that criterion 4 of Policy BE5 would not be satisfied by the proposal, pointing to a betting shop to the west of the appeal site, and a payday loan shop to the east.
9. However, the appellant has contested the view that the unit to the east is a payday loan shop. In any event, they argue that the policy does not require an alternative to any of the betting shop, adult gaming centre and pawnbroker uses, but an alternative to the single use in question.
10. Given the explicit reference to the different uses within the text, despite all being sui generis, I broadly agree with the appellant's interpretation of Policy BE5 (aside from pawnbrokers and payday loan companies which the supporting text to BE5 indicates are 'often indistinguishable from each other'). By setting out the uses separately, and referring specifically to 'each', on a plain reading the policy seeks to deal with each of these uses on an individual basis for the purposes of criterion 4. This conclusion is reinforced by a previous decision¹ dealing with the same point. The Inspector there found the uses referred to have different characteristics and concluded that the interpretation requiring an alternative to the single use in question was correct, and did not undermine the aims and purposes of the policy.
11. On the evidence before me, I have no reason to disagree with this approach and, as there are no adult gaming centre uses within four units of the appeal site, I find that the proposal would satisfy criterion 4 of Policy BE5. In any

¹ APP/T5150/W/16/3163392

event as the unit was most recently in use as a betting shop, this use could be restarted at any time, notwithstanding the nature or use of surrounding units.

12. It is acknowledged that there is an adult gaming centre across the street from the site. While the supporting text to Policy BE5 does state that its purpose is to prevent adult gaming centres, pawnbrokers, betting shops and takeaways locating in close proximity to a unit in the same use, it also refers to ensuring no over-concentration of particular uses 'within any single length of frontage'. In addition, criterion 4 of the policy does not address units on opposite sides of the street, but makes specific reference to units 'in-between' each other. The unit opposite is separated from the site by the road, and visually relates to a separate frontage. As such I do not consider that the presence of an adult gaming centre opposite the site would cause the proposal to fall foul of criterion 4 of Policy BE5 or significant detriment to the nature of the area. Given the proposal's compliance with the other criteria of Policy BE5 there is nothing to indicate that an adverse over-concentration of properties in such a use would occur here.
13. For the reasons given above I find that the development would comply with Policy BE5 of the BLP. Accordingly, it would not result in an over-concentration of adult gaming centres within the area and as such would not have a significant adverse effect on the vitality and viability of Wembley Town Centre.

Conditions

14. I have had regard to the conditions suggested by the Council. The standard time limit condition as well as a condition that the development is carried out in accordance with the approved plans are necessary in the interests of certainty. The Council have suggested a condition relating to window displays. I have imposed this condition to ensure an active frontage is maintained in the interests of the vitality and viability of the immediate surrounding area, as is the appellant's intention.
15. However, while the Council made reference to a condition relating to opening hours, given the largely commercial nature of the area, the surrounding uses and the current level of night time activity with other examples of 24 hour operation, I do not deem this to be necessary. Similarly, as the appeal relates to the change of use only a condition relating to external materials is not necessary.

Other Matters

16. I appreciate there is some concern regarding the potential adverse social and amenity effects of adult gaming centres, notwithstanding that I have found the proposal to be compliant with Policy BE5 in this regard (and thus acceptable insofar as the planning aims of that policy are concerned). I accept the proposal may entail some footfall, noise and bustle associated with use. However there are other regimes, including licensing and environmental protection, which provide certain additional safeguards if untoward effects might arise. Moreover the site is within a bustling major town centre where many of the uses have extended hours of operation and a certain level of liveliness is inherently to be expected. Consequently I am not of the view that the proposal would be unacceptable in other respects in that particular context, noting the previous authorised use here.

Conclusion

17. For the reasons given, the proposal would accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be allowed subject to the conditions set out above.

C Rafferty

INSPECTOR