



Appeal Decision

Site visit made on 18 January 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2022

Appeal Ref: APP/G5750/W/21/3279165

201–203 High Street North, London E6 1JG

- 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 I Miller of Luxury Leisure against the decision of the Council of the London Borough of Newham.
 - The application Ref 21/00239/FUL, dated 29 January 2021, was refused by notice dated 6 April 2021.
 - The development proposed is a change of use from betting office to adult gaming centre, with minor alterations to shopfront.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from betting office to adult gaming centre, with minor alterations to shopfront, at 201–203 High Street North, London E6 1JG in accordance with the terms of the application, Ref 21/00239/FUL, dated 29 January 2021, 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 and documents, except in respect of the "Aluminium fascia/projecting sign as shown in Kobalt Blue RAL 501" shown on plan 3402(B)01 which does not form part of this permission:
 - APC 29.01.21 Planning Statement
 - 3402(B)01 Ground floor plan & elevations as existing & proposed
 - 3402(B)02 Ordnance Survey location plan
 - 3402(B)03 Proposed block plan
 - P20-545-R01 Noise Impact Assessment
 - 3) Prior to the first use of the premises as the adult gaming centre hereby permitted, details of the security measures to be incorporated into the venue, demonstrating crime prevention measures and products in line with achieving certification via the "Secured by Design" scheme to protect staff, users and property, shall be submitted in writing to the Local Planning Authority. Once approved in writing by the Local Planning Authority, the security measures shall be carried out and maintained in accordance with the approved details for the lifetime of the venue as an adult gaming centre.

- 4) Prior to the first use of the premises as the adult gaming centre hereby permitted, the operator shall provide to the Local Planning Authority a letter or Secured by Design certification demonstrating that full compliance with the approved scheme required by and described in Condition 3 has been achieved, to the satisfaction of the Metropolitan Police Designing Out Crime Office.

Procedural Matters

2. The description of development originally used on the planning application form did not refer to the physical works which form part of the proposal. The description used in the banner heading and my formal decision above is therefore taken from the Council's decision notice and the subsequent appeal form, as it provides a more accurate description of the proposal.
3. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. In this case, the amendments to the Framework have not had a significant bearing on the most relevant issues in this appeal. I am therefore satisfied that there is no requirement for me to seek further submissions on the revised Framework, and that no party's interests have been prejudiced by my taking this approach. Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

Main Issue

4. The main issue is whether or not the proposal would result in there being an overconcentration of adult gaming centres in the area, with particular regard to the development plan's objectives of supporting "quality leisure uses" as part of creating successful town and local centres.

Reasons

5. The appeal site is a double ground floor unit on the western side of High Street North, East Ham, within East Ham town centre. The premises have most recently been used as a betting shop, although at the time of my site visit the unit was not trading and the shopfront appeared to be in a poor state of repair. The upper floor, which is not within the scope of the appeal proposal, contains separate residential accommodation. The appellant is seeking permission to use the appeal site as an adult gaming centre ("AGC"), along with some relatively limited physical works to the shopfront to facilitate such a change.

Relevant development plan policy

6. Among other things, Policy SD6 of the 2021 London Plan ("the London Plan") and Policies INF5 and SP6 of the 2018 Newham Local Plan ("the NLP") seek to support the development and maintenance of vibrant and vital town centres, with a diverse range of uses alongside a strong retail core. SP6 seeks to prevent non-retail uses either clustering excessively or reaching disproportionate levels within or adjacent centres, while INF5 seeks to improve the comparison, "quality leisure" and community offer within East Ham town centre.
7. Policy SP9 of the NLP aims to ensure that development proposal do not create or add to a range of "problematic cumulative impacts" arising from certain

- uses. In respect of town centres, Paragraph 3.a.i. of SP9 seeks to ensure that 70% of units within Primary Shopping Frontages are in Class A1 use, while Paragraph 3.a.ii. seeks to ensure that at least two thirds of town centre leisure uses are "quality leisure" uses. Quality leisure is defined within the policy as being within Use Classes D2, A4 or A3; Use Class A5, amusement arcades and betting shops are identified as not being "quality leisure". Paragraph 3.b. of SP9 also seeks to avoid over-concentrations of particular uses (specifically betting shops, hot food takeaways and nightly-stay hostels) in all areas of the borough.
8. As a result of changes to the Use Classes Order ("the UCO")¹ made in September 2020 by the UCO Amendment Regulations², many uses within the former A1, A2, A3, D1 and D2 use classes were incorporated into a new "commercial, business and services" Class E. Premises in variety of typical town centre uses can therefore be put to a wider range of other purposes without requiring planning permission for a change of use than was the case at the time the NLP was adopted. As the Explanatory Memorandum to the UCO Amendment Regulations notes, this change was intended to better reflect the diversity of uses found on high streets and in town centres, to provide flexibility for businesses to adapt and diversify to meet changing demands, and to support the viability of these areas now and in the future. It is also important to note that the status of both betting offices and AGCs as *sui generis* uses was not changed by the UCO Amendment Regulations.
 9. Of the use classes referred to in Paragraph 3.a.ii. of SP9, drinking establishments (previously Class A4) and hot food takeaways (previously Class A5) are now *sui generis*, along with some of the "assembly and leisure" uses previously within Class D2. Other former D2 uses are now either within Class E or a new "local community uses" Class F2. Restaurants and cafés (previously Class A3) also now fall into Class E. The appellant argues that the changes to the UCO have made Policy SP9 redundant. However, in my view the "quality uses" which the policy defines by reference to their Use Class (as it was at the time) in Paragraph 3.a.ii. can still be clearly understood and applied in decision making when the policy is read in its full and proper context, which of course includes an appreciation of the effects of the UCO Amendment Regulations. Furthermore, the changes have *not* had the effect of increasing the range of non-"quality leisure" uses which could be introduced to the centre without requiring planning permission. The usefulness of the policy as a means of managing the cumulative impact of those specific uses is therefore unchanged.
 10. While the quantitative threshold set out in Paragraph 3.a.i. of SP9 is perhaps more obviously rendered out-of-date by the changes to the UCO, the appeal site is not within a Primary Shopping Frontage, and that part of the policy is not therefore directly relevant to my decision in this appeal. Furthermore, the aims of Policy SP9 as a whole reflect, among other things, continuing Government policy which seeks to protect primary shopping areas and to ensure the vitality of town centres, as set out in Paragraph 86 of the Framework. Because of this, although I consider that Policy SP9 is partially out-of-date, I nonetheless give it significant weight in determining this appeal.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

² The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Effect of proposed development on East Ham town centre

11. East Ham town centre is one of Newham's major centres which, by the appellant's assessment, contains 261 ground-floor commercial premises. A survey conducted by, or for, the Council in 2019 found that only 43% of the leisure uses within the centre were "quality" uses in the terms described in Policy SP9 of the NLP. The Council also noted that there are five betting shops within a 400m radius of the appeal site (although one of these is the appeal property itself), and that therefore it would support the loss of a betting shop in the area, subject to there being "an appropriate replacement". The appellant's own more recent evidence from July 2021 found that 33 of the 261 ground-floor commercial premises were not in Class E use, of which 28 were in the uses which Paragraph 3.b. of Policy SP9 seeks to control.
12. Although the main parties presented their evidence about the range of uses within East Ham town centre in slightly different terms, based on my observations on site neither seems inaccurate. I saw that although there are several betting shops, the vast majority of the uses within the centre which Policy SP9 seeks to control are hot food takeaways. I also saw that there are at present two existing AGCs within East Ham town centre; one at 157 High Street North (around two minutes' walk from the appeal site), and another at 34 High Street North (a further four or five minutes' walking time from the appeal site). The proposal would introduce a third AGC to East Ham town centre, albeit in the context of a major urban centre of more than 260 units, and at a reasonable distance from the two existing similar premises. I also accept that there are differences between AGCs and betting shops, including their patterns of usage, as stated by the appellant. However, both are defined by Policy SP9 as non-"quality leisure" uses, and the proportion of such uses (among all leisure uses within East Ham town centre) would remain above the threshold sought by SP9.
13. The appellant has drawn my attention to a planning permission for a change of use from a vacant betting shop to AGC at 368–370 Barking Road, which the Council granted in 2021³. The Council's officer report for that application noted that "as the application site is already falls within category of 'subject to control' uses, the proposal will not increase the number of 'subject to control' uses within the local centre and as such the proposed development is considered acceptable in principle". There are some differences between the two cases; most notably, the Barking Road site is within a local centre rather than a town centre, and the requirements of Paragraph 3.a. of Policy SP9 apply only to town centres. However, while the two cases are not analogous and the Council's decision in respect of Barking Road does not set a precedent, it nevertheless illustrates a pragmatic balancing of material considerations which in my view could also be applied in this appeal.
14. The use of the appeal property as a betting shop could be restarted without requiring planning permission for a change of use. This is a fallback position which I consider carries considerable weight, while the proposal would reduce the concentration of betting shops in the area in line with the aims of Paragraph 3.b. of Policy SP9. Although an AGC is not within the types of "quality leisure" uses of which the Council is broadly supportive, the overall quantity or proportion of "non-quality" uses described in Paragraph 3.a.ii. of

³ LPA Ref: 20/02546/COU

SP9 would not be increased. The development would also bring a vacant unit back into use with the estimated creation of 12 jobs, representing a modest economic benefit.

Findings on main issue

15. While the proposed development of an AGC would not represent a “quality leisure” use in the terms set out in Policy SP9 of the NLP, as it would replace an existing betting shop use and would not in itself lead to a harmful overconcentration of AGCs in the area, I find that no significant harm would be likely to arise from this conflict with policy. I find that the modest benefits of bringing the vacant premises back into use, as well as the weight which I give to the potential fallback position, outweigh the limited conflict with the development plan in this respect.
16. I also conclude that there would be no conflict with Policies SP1, SP2, SP6 and INF5 of the NLP, nor with Policies GG3 and SD6 of the London Plan 2021, which together (and among other things) seek to maintain the vitality and viability of London’s town centres and East Ham town centre in particular, and to support safe and healthy communities and neighbourhoods.

Other Matter

17. The appeal site lies across the road from East Ham Station, a Grade II Listed Building. I therefore have a statutory duty to pay special attention to the desirability of preserving the Listed Building. As heritage assets are irreplaceable, the Framework states that they should be conserved in a manner appropriate to their significance (paragraph 189). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 200) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 202).
18. The proposed physical works to facilitate the change of use would consist of minor alterations the shopfront, including repainting, removing the pilaster cladding and replacing with a grey ceramic tiled finish, and removing the existing roller shutter. An internally illuminated fascia sign and is shown on the proposed plans, although though this has been the subject of a separate application for advertisement consent⁴ and it does not fall within the scope of this appeal. The Council was satisfied that as a result of the scale and nature of the works proposed they would have a neutral impact upon the heritage assets. None of the evidence before me, including my observations on site, leads me to a different view; I am therefore satisfied that the setting of the Listed Building would be preserved.

Conditions

19. As well as the standard time limit condition (1), in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans (2); as the fascia sign shown on the submitted drawings was clearly stated not to form part of the appeal scheme planning application, this condition specifically excludes it from the permission. Conditions requiring the development to incorporate appropriate crime prevention and security features, and to achieve Secured by Design status

⁴ LPA Ref: 21/00240/ADV

ahead of the first use of the premises as an AGC, are necessary in the interests of crime prevention and community safety (3 and 4).

Conclusion

20. The development would result in some conflict with the development plan read as a whole. However, the benefits of the development and the other material considerations set out above outweigh the limited conflict with the development plan. Therefore, for the reasons given, the appeal is allowed and planning permission is granted.

M Cryan

Inspector