



Appeal Decision

Site visit made on 1 April 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 MAY 2022

Appeal Ref: APP/U5930/W/21/3281134

842-844 High Road, Leyton E10 6AE

- 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 Ltd against the decision of Waltham Forest London Borough Council.
 - The application Ref 210744, dated 10 March 2021, was refused by notice dated 5 May 2021.
 - The development proposed is change of use of vacant unit from Class E to *sui generis* to form an Adult Gaming Centre.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed change of use on the vitality and viability of the Bakers Arms District Centre.

Reasons

3. The appeal site is a vacant double ground floor unit, formerly a household goods store, within the Bakers Arms District Centre. The centre is focused around the junction of High Road Leyton/Hoe Street and Lea Bridge Road, with primary shopping frontages to all four corners and extending along each road, transitioning to secondary frontage beyond. At the time of my visit, I saw the area was busy, with healthy pedestrian footfall and most units occupied, providing a good range of shopping and complementary town centre uses.
4. The proposed use would be an adult gaming centre (AGC) (*sui generis* use) within the primary shopping frontage of the centre. The appellant sets out that such uses are now found in virtually all town centres and complement the shopping offer as they rely on passing footfall as do retail shops and other town centre uses. There are two existing AGCs within the district centre, which I saw were within 100 metres or so of the appeal site, one within the same frontage.
5. Policy SP6 of the London Plan (2021) (the LP) seeks to promote and enhance the vitality and viability of London's town centres by, among other things, ensuring town centres are the primary locations for commercial activity and supporting diversification in response to changes in how people shop. The appellant refers to other LP policies, including GG1, GG2, GG5 and SD8 which generally support development of town centres, promote London as a 24-hour city and recognise the need to practically manage the changing role of town centres.

6. Policy CS14 of the Waltham Forest Local Plan Core Strategy (2012) (the CS) seeks to promote successful and vibrant centres throughout the Borough, including consolidating the role of district centres as complementary centres to Walthamstow Town Centre, by encouraging the provision of main bulk and convenience food shopping and a reasonable range of comparison shopping facilities and other services.
7. Policy DM25 of the Waltham Forest Local Plan Development Management Policies (2013) (the DMP) sets further criteria in respect of the percentage and sequence of non-retail uses permitted in relevant shopping frontages, along with other considerations. Part G of the policy sets additional criteria to be considered where a *sui generis* use is proposed, including the nature of the business operation; the number of such occupiers in the designated centre; the concentration or clustering of such businesses in particular locations and the impact on the retail image of the designated centre; the extent to which the proposal can be demonstrated to contribute to the Council's regeneration objectives or help to tackle social deprivation in the local area; and the implications for crime and anti-social behaviour.
8. Policy DM25 was adopted prior to substantial changes to the Use Classes Order (UCO)¹ introduced in September 2020², designed 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. These changes saw the creation of a new Commercial, Business and Service use class (Class E), which incorporates the previous Classes A1, A2, A3, B1 and parts of Classes D1 and D2. This change represents a material consideration in this appeal. That said, the proposal in this case is a *sui generis* use falling outside of the new Class E.
9. Policy DM25 is now inconsistent with the UCO in so far as it refers to the previous use classes. However, the aim of policy is to ensure that retail uses predominate on the ground floors of the primary frontages. In these respects, the policy remains consistent with the National Planning Policy Framework (the Framework), which still supports the concept of primary shopping areas and sets out that policies should be clear as to the range of uses permitted in such locations. Moreover, as the proposed use is *sui generis*, it falls outside of the scope of the UCO changes, and part G of the policy is therefore still relevant. Consequently, I find that the aims of Policy DM25 still merit significant weight in the assessment of the proposal.
10. A number of public representations refer to Policy 55 of the Council's emerging local plan³ which refers to betting shops and payday loan shops. I note from its delegated report that the Council considers the draft local plan to be at an early stage in its preparation and that its policies should be afforded no more than limited weight at this stage. In any event, the Council has not relied upon this policy, and it is not before me in evidence. Accordingly, I have considered the proposal against the aforementioned policies of the LP, CS and DMP.
11. The Council identifies 21 units in the relevant primary frontage, from 652 Lea Bridge Road to 838 High Road Leyton. In doing so, it considers the appeal site as two units. However, the plans indicate that the premises are a single unit

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

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

³ Shaping the Borough – London Borough of Waltham Forest Draft Local Plan 2020 - 2035

- internally and only have one entrance door from the street. Consequently, I regard the appeal site as one unit, and the parade as having 20 ground floor units. Based on the Council's data and my own observations, 10 of 20 units (50%) are in non-retail use, already above the 30% threshold of Policy DM25(A)(i). The percentage in non-retail use would increase to 55% as a result of the proposal, putting retail uses into the minority and conflicting with the requirement of DM25(A) that retail uses predominate on the ground floors.
12. The appellant takes a different approach and instead assesses that 18 of 20 units (90%) within the relevant frontage are now in Class E use, the other two being *sui generis*, an AGC and a hot food takeaway. However, this does not alter the fact that more than 50% of the uses would be non-retail as a result of the proposal. I acknowledge that the changes to the UCO mean that the mix of retail and non-retail uses could change over time without planning permission. However, I have no evidence to suggest this is likely to occur on a significant scale, and I have based my decision on the existing makeup of the frontage.
 13. I also recognise that the appeal site could change to a non-retail Class E use under permitted development (PD). However, there is no alternative proposal before me which indicates this is likely to occur should permission be denied. Moreover, the implication of non-retail uses being designated Class E is that they are complementary to town centres. AGCs are not explicitly defined as a main town centre use under the Annex 2 Glossary of the Framework. I note that they have been accepted as such by inspectors in appeal decisions referred to me, as being a form of leisure or entertainment use. However, the fact that they have been excluded from the more flexible provisions of Class E indicates to me that they are not regarded in principle as a use considered necessary to the vitality and viability of town centres, but whether they do depend on the specific evidence in each case.
 14. Given this, the potential PD fall-back of an alternative Class E use would be preferable in terms of the aims of Policies CS14 and DM25 than a *sui generis* use. As such, the fall-back position is not a factor weighing in favour of the appeal scheme. Rather, as set out above, the loss of a double width retail unit in a prominent location close to the main crossroads at the heart of the district centre would further restrict the prospects for maintaining the frontage in predominantly retail use.
 15. The Council also points to the proposal resulting in three consecutive non-retail uses, contrary to DM25(A)(ii). To one side is a bank, now closed, but to the other side, the former estate agents has become a retail shop/café. Therefore, as I have already indicated that I consider the appeal site to be one unit, the proposal would not result in a run of three consecutive non-retail uses.
 16. Policy DM25 sets further criteria to be considered, including whether the use is directly related to a shopping trip; whether it is capable of attracting significant numbers of shoppers/visitors to the centre; whether it contributes to the Council's regeneration objectives and its overall contribution to the vitality and viability of the centre.
 17. Across the wider district centre, my observations were that the primary frontages are generally well-occupied, with very few vacant units noted and a wide variety of retail and complementary non-retail uses. Indeed, both main parties refer to the Council's Town Centres and Retail Study (June 2019) (the TCRS) which concluded that Bakers Arms 'is a healthy centre' which

concentrates on *'day to day uses such as services and food shopping which keep vitality levels in the centre high.'* Whilst this study was undertaken prior to the unprecedented period of the Covid-19 pandemic, my observations indicate a centre which has generally coped well and maintained strong vitality and viability, though I accept that the appeal site is an exception, in that the previous business closed during the pandemic and has not reopened.

18. The appellant states that the proposed use would be complementary to the district centre, in that it would help generate linked trips to other businesses, would operate later opening hours which would benefit the evening economy, would bring investment, and would create jobs. The evidence before me in respect of footfall and linked trips is limited. I accept that at least some linked trips would occur, particularly given the presence of large supermarkets and other national retailers nearby. The proposed evening opening hours may also provide linked trips with restaurants, bars, and takeaways, but the expected level of this is unsubstantiated. In the absence of further evidence in this respect, it has not been demonstrated that the proposal would attract significant numbers of visitors to the centre or contribute demonstrably to the Council's regeneration objectives, including those to grow the food and drink offer and the evening economy, contrary to Policy DM25(A)(v) and (vii).
19. I note that the proposed use would create up to 8 jobs, but I have little evidence as to the overall level of investment that might accrue. There would be investment and job opportunities of some level associated with any business which occupied the site. As such, this is a matter of limited weight in my considerations.
20. The proposal would bring a vacant double width unit back into use. However, whilst not an explicit policy requirement, no marketing or other evidence has been put to me to indicate that the premises are of no interest to potential operators of retail or other complementary Class E uses. Given the very low vacancy rates that I observed and the prominent location of the site in the heart of the district centre, it is reasonable to consider that there would be some interest in the premises from a retail or other Class E use that would provide the same or greater benefits to the vitality of the centre, with the likelihood of this increasing as the retail sector emerges from the pandemic. Nor has any substantive evidence been provided that suitable alternative premises are not available outside of the primary frontage, contrary to Policy DM25(A)(ix). I accept that removing a vacant and shuttered building from the street scene would still be of some benefit, but in the circumstances, this is a factor attracting only limited weight.
21. There are two AGCs within 100 metres or so of the appeal site, and also four betting shops within around 150 metres. Their number would not be significant in the context of the overall centre, and they would not be clustered in such a manner as to materially harm its retail image. However, I have no evidence before me to indicate there to be an identified demand for additional AGCs within the district centre. Conversely, I note the results of the 2019 TCRS that none of those surveyed visited the district centre for leisure uses. Ultimately, those seeking to use AGCs and/or betting shops are catered for within the district centre. A further AGC would make a negligible contribution to increasing the diversity of services on offer within the district centre as a whole but would conversely reduce the retail offer and the potential for new services to be introduced, contrary to Policy DM25(A)(viii).

22. Furthermore, AGCs can have 'dead' frontages with no window displays or internal view of the premises. The appellant stresses that the application is solely for the change of use and any changes to the shopfront or advertising would be subject to separate applications. However, how the internal use would present externally is a factor to be considered. The appellant indicates that there would be a window display that would create an active frontage, though I have no details of what this would entail. However, any display is likely to screen internal views of the gaming machines, and therefore would appear enclosed and inactive compared to traditional shop window displays. I saw this was the case for existing AGCs and betting shops within the district centre, which despite having advertisements in the window, appeared closed off and uninviting. I have little evidence to suggest that would not be the case here, and the fact that the site is double width and located very visibly on a prominent corner adds to my concern that the proposed use would not make a positive contribution to shoppers' experience or the overall vitality of the district centre, contrary to Policy DM25(A)(viii).
23. I have had regard to the significant number of representations from members of the public raising concerns at the potential for crime and anti-social behaviour and the negative impact of gambling on the community. However, with reference to Policy DM25(G)(iii) and (iv), I have no substantive evidence from the Council in relation to crime and anti-social behaviour levels, nor evidence which details levels of social deprivation in the area or what effects existing gambling uses within the district centre have had on the community.
24. The appellant sets out that the use would be subject to strict regulation, with the appellant required to hold a Gambling Premises Licence and meet the requirements of the Gambling Act 2005. It is indicated that the premises would be restricted to over-18s and would not serve alcohol. Ultimately, national and local planning policies do not proscribe gambling uses. They are separately regulated by government, and the business would be subject to these regulatory controls outside of the planning system. Whilst I have considered the appeal on its own merits, I note this is a conclusion reached by other Inspectors in the appeals referred to me. Overall, the evidence before me does not clearly indicate that the proposed use would directly increase problem gambling or lead to greater crime and/or social deprivation in the local area, and so this does not weigh against the proposal.
25. In reaching a view, I have had regard to several allowed appeal decisions referred to me by the appellant, including one of my own in Broxtowe. That case differs from this in that there were increased vacancy rates and no other AGCs within the town centre. The other decisions before me have different policy contexts and material considerations, including the existing use of the premises and the mix of uses in the area. A number also precede the recent changes to the UCO. Ultimately, I do not regard these decisions as directly comparable to the appeal before me, and therefore they attract limited weight in my determination of the appeal, which I have considered on its own merits.
26. Drawing my findings together, the proposal would not constitute a retail use as favoured by Policy DM25 and would result in more than 30% non-retail uses within the relevant primary shopping frontage, in conflict with the policy. Moreover, the evidence before me indicates that the proposal would not complement or enhance the retail function of the district centre as it would result in the loss of a large retail unit in the heart of the shopping area; it

would have limited potential for linked trips and increasing visitor numbers; it would fail to provide an active frontage and it would not contribute positively towards the Council's regeneration objectives. Therefore, I conclude that the proposed use would harm the vitality and viability of the Bakers Arms District Centre and the proposal would conflict with the overall aims of Policies SD6 of the LP, CS14 of the CS and DM25 of the DMP.

Other Matters

27. I also note that the machines would operate at low volumes with low level background music played internally. The town centre location means that there are multiple sources of noise surrounding the appeal site. Consequently, I am satisfied that the proposed use would not cause significant noise and disturbance that would harm the living conditions of neighbouring occupants.
28. The appeal site lies within the Bakers Arms Conservation Area (BACA), with the immediate surroundings having an obvious commercial character, which the proposal would also have. No external alterations are proposed. Therefore, the proposal would preserve the character and appearance of the BACA.

Conclusion

29. The proposal would conflict with the development plan, taken as a whole, to which I afford significant weight. Material considerations in this case attract neutral or limited weight and taken cumulatively, do not indicate that permission should nevertheless be forthcoming in spite of this conflict. Therefore, I conclude that the appeal should be dismissed.

K. Savage

INSPECTOR