



Appeal Decision

Site visit made on 18 May 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 8th August 2022

Appeal Ref: APP/U5930/W/21/3282618

36 Old Church Road, Chingford E4 8DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Merkur Slots (UK) Ltd against the Council of the London Borough of Waltham Forest.
 - The application 211528 is dated 17 May 2021.
 - The development proposed is change of use from former bank (Use class E) to adult gaming centre (Sui Generis) use, removal of former ATM from front elevation.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use from former bank (Use class E) to adult gaming centre (Sui Generis) use, removal of former ATM from front elevation at 36 Old Church Road, Chingford E4 8DD in accordance with the terms of the application Ref 211528 dated 17 May 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have taken the description of development from the appeal form, as that given on the application form also refers to an advertisement consent which is the subject of a separate application.
3. Reference has been made to the policies of the emerging London Borough Waltham Forest Draft Local Plan. This is at the examination stage and does not form part of the adopted development plan at the time I make my decision. I therefore attach limited weight to these emerging policies.
4. The appellant submitted a Noise Impact Assessment (NIA). As the Council stated that it did not receive a copy of this, further opportunity was provided to the Council to review it and provide any comments. As such, I do not consider that either party has been prejudiced by me taking it into account for the purposes of this appeal.

Main Issues

5. The appeal was submitted due to the Council failing to make a decision within an agreed period of time. Based on the submitted policies, my site visit, and representations from the parties; I consider the main issues to be the effect of the development on (i) the viability and vitality of the South Chingford District Centre; and (ii) the living conditions of surrounding occupiers, with particular regard to noise and disturbance.

Reasons

Vitality and Viability

6. The appeal site comprises a vacant former bank located on Old Church Road within a Primary Retail Area in the South Chingford District Centre. It forms part of a row of commercial units at ground floor fronting the street, with residential use above.
7. Policy DM25 of the Waltham Forest Development Management Policies Local Plan of 2013 (the DMP) seeks to manage town centre uses. It states at section A that uses other than A1 will only be permitted in primary shopping frontages where certain criteria are met. These include where the proposal would: (i) not result or contribute to the proportion of non-retail uses in the relevant frontage exceeding 30% of its total length; (ii) not result or contribute to the equivalent of a group of three or more adjoining standard size shops in non-retail uses; and (iii) provide a service directly related to a shopping trip such as banks, building societies and cafes.
8. However, Policy DM25 predates the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, which merged A1, A2, A3 and B1 use classes into a singular Class E 'Commercial Business and Service'. As such, some non-retail uses could be introduced at the site without planning permission. This does not impact AGC use which remains sui generis, but relates to a range of other uses including offices and nurseries. On this basis the Council agrees that A(i) and (ii) of Policy DM25 are not applicable.
9. With regards to A(iii), the Council argues that AGC use is not directly related to, or frequently visited as part of, a normal shopping trip. However, shopping patterns have changed in recent years, such that AGCs are not out of keeping in busy town centre locations. While more specialised than the examples provided in Policy DM25, I do not doubt that at least some customers would also use other nearby shops and services. In addition, they would be no less related to shopping trips than many of the other uses arising from Class E that could be introduced at the site or in the frontage, such as health services.
10. It is therefore reasonable to conclude that the proposal would provide a service directly related to a shopping trip for the purposes of Policy DM25. As such, while the proposal would not offer the same flexibility as the Class E use, it is in its own right a fitting use in this location. As an entertainment use, it is appropriate for the AGC to be directed to this town centre, such that there is no requirement for the appellant to first demonstrate a lack of alternative premises elsewhere.
11. Policy DM25 lists other factors to be considered. For the proposal, the Council states this includes: the extent to which the use meets an important local need as may be identified through a local need survey; the extent to which the proposed use contributes to the Council's aspirations and priorities, in particular the regeneration objectives for the local area; and the contribution the proposed use will make to the vitality and viability of the proposed frontage and the centre generally will contribute to shoppers' experience.
12. The site has been vacant since October 2020 and on the details before me I have no evidence that this would not remain for the foreseeable future. Even acknowledging that the duration of this vacancy may be in part due to the

COVID pandemic, the proposal would bring the unit back into productive use and, in comparison to a vacant premises, would generate notable footfall. In doing so, it would add to the vitality and viability of the frontage and centre. It would promote the rejuvenation of this part of the town centre through the redevelopment of an underused site. The shopfront would therefore appear more active and attractive than that of the currently vacant premises.

13. With regards to the Council's priorities, it seeks the centre to be a vibrant location that is compatible with the surrounding uses, creating a range that primarily contribute towards the shopping trip. As observed on my visit, the frontage does not contain another AGC, such that no proliferation of such use would occur in the area. The proposal would also add a leisure and entertainment use which, rather than reading as isolated and out of place, would contribute positively to the diversity and range of units in the frontage. As such, it would be complimentary to the centre, contributing to a suitable mix of uses while, as outlined above, having potential for linked trips.
14. I have no information before me on whether the proposal would meet an important local need. However, Policy DM25 is worded such that this is a point to consider, rather than a requirement. In any event, there is also no clear evidence before me of unmet demand for space to address any such needs, or to demonstrate that, given its complimentary role within the town centre, the proposal would adversely affect the ability to cater for local needs in any way.
15. For the reasons given, the proposal would not cause harm to the viability and vitality of the South Chingford District Centre. As such, it would comply with the aims of Policy DM25 of the DMP and Policy CS14 of the Waltham Forest Local Plan Core Strategy 2012 (the Core Strategy), which seek to ensure appropriate town centre uses.

Living Conditions

16. The site is among a range of uses with a variety of opening hours. This includes a nearby pub and restaurant which operates into the evening and night. The appellant has also submitted a NIA, which sets out a variety of measures to improve the sound insulation performance at the property.
17. Nevertheless, I agree with the Council that a 24/7 operation at the site would be out of place within the area. In this regard I note that the appellant is willing to accept controls to their opening hours, which would bring the operation of the proposal more in line with nearby evening uses. As such, the movement of customers would largely assimilate with the comings and goings from other evening uses and would not occur during hours when nearby residents would reasonably anticipate a higher level of peace and quiet.
18. The combination of the mixed use of the area, including evening operation nearby, with the additional soundproofing of the NIA, and restricted opening hours would ensure the proposal would not result in noise and disturbance to residents of surrounding properties due to the movement of customers. I note the appellant and Council disagree as to the hours of operations. Based on my observations, I consider that opening hours suggested by the appellant would align with nearby uses.
19. The proposal would not therefore cause harm to the living conditions of surrounding residents with regards to noise and disturbance. As such, it would

comply with Policies DM27 and DM32 of the DMP and Policy CS7 of the Core Strategy, which seek to ensure adequate levels of residential amenity.

Other Matters

20. There is no substantive evidence before me to support the supposition that the proposal would give rise to harmful levels of antisocial behaviour. As such, I would attach limited weight to this argument.

Conditions

21. I have had regard to the conditions suggested by the Council, and the appellant's comments thereon. 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. In the interests of amenity to surrounding residents I have added the appellant's Noise Impact Assessment to the list of approved plans, and a condition relating to opening hours is also necessary for the same reason.
22. I have removed reference to the Operational Management Plan from the list of approved plans due to the concerns raised by the Council regarding its enforceability, the fact that it relates to 24/7 operation and given my findings above on anti-social behaviour. I have also removed reference to the lighting assessment as this relates to the separate application for advertisement consent.
23. The Council have suggested conditions restricting the placing of advertisements at the site. However, given the variety of frontages and illumination within the surrounding area, I do not consider this to be necessary. In any event, I note that a separate consent has been granted by the Council relating to an advert at the site where controls such as this are more relevant.

Conclusion

24. For the reasons given, the proposal would accord with the development plan when taken as a whole. The appeal should therefore be allowed.

C Rafferty

INSPECTOR

SCHEDULE OF 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: Site Location Plan; Existing and Proposed Floor Plans OCR/CHG/05 Rev A dated 18 March 2021; and Noise Assessment PR2001_51_FINAL dated 17 May 2021.

3) The premises shall only be open for business and deliveries between the following hours:

07:00 – 0:00 Sundays – Thursdays; and

07:00 – 02:00 Fridays – Saturdays.