



Appeal Decision

Site visit made on 4 July 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2022

Appeal Ref: APP/V5570/W/22/3294654

309 - 311 Caledonian Road, Islington, London N1 1DT

- 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 Betting Shop Operations Limited against the Council of the London Borough of Islington.
 - The application Ref P2021/3265/FUL, is dated 3 November 2021.
 - The development proposed is the change of use from Class E to Sui Generis (Betting Shop).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from Class E to Sui Generis (Betting Shop) at 309 - 311 Caledonian Road, Islington, London N1 1DT in accordance with the terms of the application, Ref P2021/3265/FUL, dated 3 November 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: 46865, Scale 1:1250 @A4 and Proposed Plan, Drawing no: 46865, Scale 1:100 @A3.
 - 3) The use hereby permitted shall not be open to customers outside the following times: 0800 – 2200 on any day of the week.
 - 4) The glass of the display window of the ground floor unit shall not be painted, tinted or otherwise obscured and no furniture, fixings or display wall which may obscure visibility above a height of 1.4m above finished floor level shall be placed within 1.0m of the inside of the window glass.

Application for costs

2. An application for costs was made by Betting Shop Operations Limited against the Council of the London Borough of Islington. This application is the subject of a separate decision.

Procedural Matter and Main Issues

3. This appeal was submitted following the Council's failure to give notice of its decision within the prescribed period. During the course of the appeal the Council has outlined their concerns with the proposed development and has provided two putative reasons for refusal.

4. Based on the evidence before me, the main issues are the effect of the proposal on a) the viability and vitality of the Caledonian Road (Central) Local Shopping Area (the 'LSA') and b) the amenity of the area, with particular regard to health and well-being.

Reasons

Viability and Vitality

5. The proposal would involve the loss of a large, currently vacant, retail unit within the LSA and the introduction of a betting shop. I note there are other examples (whether active or with extant planning permission) of betting shops and an adult gaming centre within the LSA and the wider area. Despite this, and even taking the Council's higher figures into account, the overall numbers are very low compared to the total number of units within the LSA and the percentage of betting shops/adult gaming centres remains below the upmost proportion mix stated in Policy R8 of the emerging Local Plan (the eLP) which the Council advise can be afforded moderate weight.
6. Without specific evidence to the contrary, retail would appear to remain the predominant use in the LSA. The location of the other betting shops also vary in their location relative to the appeal site. As such, the proposal would ensure a good mix of shops and services is retained and would not therefore result in an over-concentration of betting shops which would have a cumulative adverse effect on the predominantly retail function of the LSA.
7. I note that Part B of Policy DM4.6 of Islington's Local Plan: Development Management Policies (June 2013) (the DMP) sets out criteria which must be satisfied for a proposed change of use of existing ground floor retail units. This includes demonstrating that the premises has been continuously marketed for at least two years which demonstrates that there is no realistic prospect of it being used in its current use in the foreseeable future.
8. The evidence indicates that the appeal site has been vacant since September 2020 and I note that marketing of the unit began in early March 2021. There appears to have been limited interest up to October 2021, however one such interest appears to have been from a retailer. Nevertheless, a formal offer and terms were agreed with the appellant in August 2021. Regardless, the appellant has advised that marketing of the unit continued during the planning application and will continue through the appeal. Indeed, I observed a marketing board had been erected at the unit.
9. Whilst I do not have any up-to-date information on whether there has been any further retail interest of the unit since October 2021, and although it has been marketed short of the two year policy requirement, it seems to me that marketing has been carried out over a generous period and attempts to secure a retail use have not come to fruition.
10. Furthermore, Policy R4 of the eLP only requires proposals for the change of use from A1 to non-A1 commercial use to demonstrate that the premises have been vacant for a continuous period of at least six months. Whilst I recognise that this policy is not adopted, the Council has advised that it is relevant. There is nothing before me on which to assume that eLP Policy R4 would be materially modified prior to adoption and thus can see no reason why, similar to eLP Policy R8, this policy cannot also be afforded moderate weight. The

proposal accords with this reduced marketing approach. Overall, I am satisfied that the proposal demonstrates a lack of demand for this retail space.

11. The vision for the area, as identified within the Cally Plan Supplementary Planning Document (January 2014), is to reinforce a strong positive identity and strengthen the high street to attract new businesses and visitors. It has been indicated that the Council has introduced business support to the LSA to encourage economic revival, particularly through encouraging independent shops and businesses in order to rebuild the retail function of the LSA.
12. Although I have found that the LSA contains a wide range of shops, services and facilities, I nevertheless observed various vacant units along its length. Furthermore, the appeal unit is of a large size and the evidence indicates there is limited to no interest in it from retailers. The proposal would bring a large, vacant unit back into use which would in turn improve the offerings and enhance the function of this part of the LSA.
13. Accordingly, the proposal would not undermine the vitality and viability of the LSA. Therefore, despite not meeting one of the criteria of DMP Policy DM4.6, it would nevertheless accord with its overall aim, along with that of Policies E9 of the London Plan, The Spatial Development Strategy for Greater London (March 2021) and CS14 of Islington's Core Strategy (February 2011), of ensuring that shopping areas within the borough provide a wide range and appropriate mix of goods and services, particularly retail shops, to ensure their retail function is retained and to avoid an excessive concentration of premises controlled by licensing and gambling legislation. It would also accord with the similar aims of Policies R4 and R8 of the eLP despite these policies not being adopted.
14. The proposal would also accord with the National Planning Policy Framework (the Framework), in its aim at paragraph 86, to ensure the vitality of town centres by taking a positive approach to their growth, management and adaptation by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters.

Amenity

15. DMP Policy DM4.3 deals with the location and concentration of specific uses. It refers to a number of uses, including betting shops, which will be resisted where an unacceptable concentration in one area would result in negative cumulative impacts. The Retail, Leisure and Services, Culture and Visitor Accommodation, Topic Paper (February 2020) identifies that gambling provision has a distinct spatial pattern, with gambling venues clustering in areas of greater deprivation. It goes on to evidence that certain people are more vulnerable to gambling related harm, including those with substance misuse problems, poor mental health and those living in deprived areas.
16. I have already found that the proposal would not result in a harmful over-concentration of betting shops within the LSA. Nevertheless, the site appears to be located within an area of deprivation and close to a supported housing development, and I acknowledge that the evidence suggests there are correlations between this economic condition, vulnerable people, problem gambling, anti-social behaviour and crime, amongst other things.

17. Although this proposal would provide an additional facility in which people can gamble, there is no conclusive evidence which directly attributes the high levels of antisocial behaviour and crime rates within the LSA and the wider borough to the proposal or the existing amount of betting shops. I am also not convinced that the appeal site's location adjacent to a supermarket, and close to primary schools, a children's centre and a community centre would contribute directly to these concerns or exacerbate problem gambling. The proposal would be strictly controlled through separate licensing and gambling legislation which seeks to prevent gambling from being a source of or associated with crime or disorder, ensure that gambling is conducted in a fair and open way and protect children and other vulnerable people from being harmed or exploited, as noted in The Location and Concentration of Uses Supplementary Planning Document (April 2016).
18. The lack of active frontage, and thus natural surveillance, to the side of the appeal site would not be dissimilar to if a retail or other use occupied the appeal unit. Furthermore, the proposal would reintroduce a use to a corner unit which has been vacant for some time, thus providing a degree of surveillance which could address any existing problems at this location.
19. Therefore, the proposal would not result in harm to the amenity of the area and in particular the health and well-being of people. It would therefore accord with Policy DM4.3 of the DMP and Policy R8 of the eLP which seek to ensure that proposals do not result in negative cumulative impacts due to an unacceptable concentration of such uses in one area or cause unacceptable disturbance or detrimentally affect the amenity, character and function of an area. It would also accord with chapter 8 of the Framework which seeks to promote healthy and safe communities.

Other Matter

20. The appeal site is located within the Barnsbury Conservation Area (the CA) therefore I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA. The proposal does not include any physical changes to the external appearance of the appeal unit thus there would be no harm to the character or appearance of the CA.

Conditions

21. Conditions relating to the standard time limit and the approved plans are necessary in the interests of certainty. I have also attached a condition restricting the hours of opening, which is necessary in the interests of the living conditions of nearby residents.
22. To ensure an active frontage within the LSA, I have attached a condition requiring the glass of the shopfront to remain unobscured. Taking into consideration the comments from both main parties, I have amended the second part of the Council's suggested condition in this regard, which relates to the siting of furniture, fixings or display wall within the unit, to reflect 1 metre rather than 2 as this would be sufficient in providing an active frontage.
23. The Council has suggested conditions relating to the provision of cycle parking and refuse/recycling enclosures. The appeal site does not have any external space. Given this arrangement, the nature of the proposed use and the accessible location of the appeal site close to existing cycle parking on

surrounding footways, I have not attached these conditions as they are not reasonable or necessary.

Conclusion

24. For the reasons given above, the proposal accords with the development plan as a whole and thus the appeal should be allowed.

H Ellison
INSPECTOR