
Appeal Decision

Site visit made on 31 January 2023

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/W5780/W/22/3300312

167 High Road, Ilford IG1 1DG

- 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 East Kent Leasing Limited against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 0500/22, dated 15 February 2022, was refused by notice dated 20 April 2022.
 - The development proposed is change of use of the ground floor from temporary retail use to an Adult Gaming Centre (sui generis).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposed change of use on the retail function of a Primary Shopping Frontage (PSF) and on the living conditions of occupiers of nearby properties.

Reasons

Primary Shopping Frontage

3. The appeal site comprises a ground floor commercial unit. The site is located within a PSF as identified in the Redbridge Local Plan 2015 – 2030 (LP) (adopted March 2018). At the time of my site visit the unit appeared vacant, although the signage was still evident which related to its use as a homeware store.
4. Policy LP10 of the LP seeks to promote the vitality and viability of the borough's town centres and diversify the range of uses. This includes supporting the primary retail function of primary shopping frontages by seeking that a minimum 70% of ground floor units are used as A1 retail uses as per Policy LP10(b). Proposals for non-A1 uses in defined PSFs that do not meet this target will only be supported where the criteria of part (d) of LP10 is met.
5. The Town & Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force in September 2020, which included the revocation of Class A in its entirety and the creation of a new Class E (Commercial, business and service). The former retail use class (A1) is now Class E(a) (the display or retail sale of goods, other than hot food). As

such, while Policy LP10 refers to Class A1, it is clear in its intended aim to support retail among a suitable mix of other uses.

6. There are a myriad of figures and numerical exercises before me with regards to the percentage of units in the PSF that are in retail use, as well as the extent of the PSF itself. I note that the appellant refers to their February 2022 survey which concludes that the proposal would not harm the vitality or viability of the PSF, although this includes some businesses within other part of Class E(a). The appellant's April 2022 survey is referred to as an updated survey and concludes that counting all of Class E uses would put the figure at 87%, although if retail (Class E(a)) only is included this figure is 68%. The Council calculates retail use at 65%.
7. As such, although there is disagreement as to the percentage, there appears to be general agreement between the Council and the appellant's April 2022 survey that the proposal would contravene this 70% retail requirement of Policy LP10(b). In this scenario, the criterion of LP10(d) are applicable.
8. Although the appellant states that the property has been the subject of continuous marketing during the last two years, with no interest from retail customers, I have not been provided with any evidence of this. Moreover, given the location of the unit on a PSF, this would be a prime retail opportunity which would in turn be capable of attracting a significant number of shoppers/visitors. I observed this on my site visit despite the weekday mid-afternoon time, while the appellant refers to the opportunity passing trade would present to the proposed use.
9. Although similar gaming centres are found on high streets in other areas, Policy LP11 of the LP seeks to resist the proliferation and overconcentration of betting/gambling shops, among others, in the sui generis use class. The site would be located within the Metropolitan town centre and would evidently be separated by at least two units from other sui generis uses. These would comply with LP11(a) & (b).
10. However, LP11(c) requires these uses provide active frontages which would have a positive visual impact on the street scene. Although the appellant advises the proposal would include an active frontage, with examples of this shown in photographs of other establishments, there are no elevation plans or other details of how this would be achieved. As such, I cannot be certain that this part of LP11 would be satisfied.
11. My attention is drawn to other appeal decisions which have been reached for similar proposals. I do not have the whole appeal decisions before me or plans/drawings. As such it is unclear as to how these relate to the proposal before me other than their similar use. In any event, the site-specific circumstances of this proposal have been assessed on their own merits based on the evidence before me and my own observations.
12. To conclude on this main issue, the proposal would be harmful to the retail function of the PSF. Given the suggested 15-year lease, this would remove the appeal unit from potential retail use for a significant period of time when retail uses already fall below the 70% requirement. This would be contrary to Policies LP10 and LP11 of the LP and Policy SD6 of the London Plan (March 2021), which seek, among other things, to promote the vitality and viability of the borough's town centres.

Living Conditions

13. Evidently, the upper floors of buildings along High Road include residential properties. The appellant has outlined how the change of use would operate, and that noise would be controlled. However, the business is proposed to be open 24 hours a day seven days a week, although I am advised that other similar businesses in the area are also operated on this basis.
14. I have no reason to doubt that the operators of the business have extensive experience in this type of industry and measures are suggested to control noise. The appellants advise that the operation would not emit any more noise than an 'ordinary shop'. However, that kind of establishment would likely not operate 24/7. Regardless of whether it was requested by the Council, I do not have a noise impact assessment which would establish baseline noise levels and predicted impacts of the proposal on nearby residents. Without this information I share the concerns of the Council in this regard, despite a lack of objection from consultees on this matter.
15. I have had regard to the extracts from similar appeal decisions included in the statement of case. I do not have full decision letters before me. As such, it is unclear as to the site-specific circumstances which led to those decisions to be made with regards noise and disturbance. However, I note that one of these appeal decisions¹ concluded the proposed development site was located facing a large public house which would have mitigated some of the noise of the proposal, while another² was located in an area with other 24/7 uses nearby. In any event, the acceptance of those schemes does not convince me the proposal before me is acceptable as each is assessed on its own merits.
16. Based on the foregoing, the proposal has not demonstrated that it would ensure suitable living conditions for occupiers of nearby dwellings. This would be contrary to Policies LP11, LP12 and LP26 of the LP which seek to resist proposals that have a significant impact on residential amenity in terms of noise, among other things.

Other Matters

17. I understand that the appellant has concerns with the manner in which the planning application was handled by the Council. While unfortunate, it is not a matter which carries any weight in the determination of the planning appeal. For the avoidance of doubt, I have considered the evidence before me.
18. The premises has been granted a gambling licence by the Council. This includes a number of conditions by which the operators must comply. However, this was granted under different legislation and procedures, and it does not alter my assessment for development management purposes.

Planning Balance and Conclusion

19. I have had regard to the points raised in support of the proposal. I accept that there would be significant economic benefits in terms of money raised by the business, jobs and knock-on trade to other businesses during opening hours. These economic benefits are worthy of some positive weight in favour of the scheme.

¹ APP/P1045/W/19/3228235

² APP/B0230/W/20/3256275

20. However, the scheme runs contrary to the vitality and viability aspirations of the LP in ensuring retail accounts for the requisite percentage of use in PSFs. This would accord with the aims of the National Planning Policy Framework (the Framework) in ensuring the vitality of town centres which advises policies should define the extent of town centres and primary shopping areas and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre.
21. Moreover, there is insufficient evidence to demonstrate that the proposal would not cause undue noise and disturbance to occupiers of nearby residential properties. This would be contrary to the development plan and social and environmental aims of the Framework. These attract considerable weight against the proposal and as such would outweigh the benefits of the scheme.

Conclusion

22. Drawing everything together, the proposal would conflict with the development plan when read as a whole. I have had regard to material considerations, including the economic benefits of the scheme in relation to the Framework. However, this does not lead me to conclude that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR