



Appeal Decision

Site visit made on 5 April 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2023

Appeal Ref: APP/C5690/W/22/3304891

95 Rushey Green, Lewisham, London SE6 4AF

- 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 Lewisham.
 - The application Ref DC/22/125636, is dated 21 February 2022.
 - The development proposed is change of use of vacant commercial unit (Class E) to Adult Gaming Centre (Sui Generis) at ground floor level.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of vacant commercial unit (Class E) to Adult Gaming Centre (Sui Generis) at ground floor level at 95 Rushey Green, Lewisham, London SE6 4AF in accordance with the terms of the application, Ref DC/22/125636, dated 21 February 2022, subject to the conditions set out in the attached schedule.

Preliminary Matter

2. I have dealt with 2 other appeals on this site relating to a new shopfront and advertisements at the premises. Those appeals are the subject of separate decisions.

Background and Main Issues

3. The appeal has been submitted on the basis of the failure of the Council to give notice within the prescribed period. However, the Council has submitted an officer report which indicates that it would have refused planning permission for the change of use had it been in a position to do so. The Council's officer report and Statement of Case identify concerns in respect of the vitality and viability of this town centre area, and potential noise and disturbance of neighbouring residents.
4. On that basis, the main issues in this appeal are the effect of the proposal on the:
 - Vitality and viability of the town centre; and
 - Living conditions of nearby residents in respect of noise and disturbance.

Reasons

Vitality and Viability

5. The appeal site is located in the Major Town Centre of Catford, as set out in Policy 6 of the Council's Core Strategy 2011. The appellant confirms that the site is within the Town Centre's Secondary Shopping Frontage. Paragraph 2(b) of Policy 6 sets out that secondary frontages will help provide for the uses appropriate to the night time economy. The Council also confirms that in regard to the proposed use, that there are no policies preventing changes of use to adult gaming centres (AGC).
6. However, the Council expresses concern about the overconcentration of certain uses, and refers to the supporting text of both the London Plan 2021 and the Development Management Local Plan 2014 (the DMLP) to support this concern. However, the London Plan does not specifically refer to AGC's such as that proposed, and the text of the DMLP relates to a policy on District Centres rather than Major Town Centres. Nevertheless, an overconcentration of uses such as AGC's may give rise to concerns including the impact on vitality and viability, as well as the diversity of uses in town centres.
7. The appellant sets out that there is only one existing AGC in Catford Town Centre, and even when combined with betting shops there is no existing over-concentration of these uses. This reflects my own observations, where I saw that gambling uses were relatively well spaced throughout this town centre, and there was no sense that the distribution, including the appeal site, would represent an over-concentration of such uses within the Town Centre as a whole. There is a bookmakers opposite the appeal site, but this is of a relatively small scale and is distinctly separate from the appeal site. Even when considered cumulatively with the bookmakers opposite, the appeal proposal would not appear as an unacceptable extent of gambling uses within this area of the Town Centre.
8. Furthermore, the evidence suggests that the appeal site has been vacant since the premises was constructed as part of a mixed-use redevelopment of the site, despite active marketing for retail and financial/professional operators. The frontage was boarded up at the time of my visit and was of an unkempt appearance. The proposed AGC would introduce an active use into a currently vacant and unsightly unit. This would therefore be of benefit to the vitality and viability of this Town Centre, rather than detracting from it as contended by the Council. Indeed, the proposal could be considered to be a use appropriate to the night time economy, and would therefore comply with Paragraph 2(b) of Policy 6 of the Core Strategy regarding such uses within secondary frontages.
9. The Council refers to the Core Strategy which states that the Index of Multiple Deprivation ranked Lewisham as the 29th most deprived local authority in England. Reference is also made to the level of deprivation in the centre of Lewisham and specifically at Rushey Green. However, the Council has not demonstrated the extent to which this affects the vitality and viability of this town centre, and particularly how this relates to the appeal proposal on this main issue. Consideration of the level of deprivation in this area does not therefore lead me to a different conclusion in respect of the effect of the proposal on the vitality and viability of this town centre.

10. I therefore conclude that the proposal would not lead to an over-concentration of AGC and similar gambling uses in the vicinity, and would not harm the vitality and viability of this town centre. The proposal would therefore not conflict with Policies E9 and SD6 of the London Plan, and Policy 6 of the Core Strategy which together seek to promote a diverse range of uses to support the vitality and viability of town centres. The proposal would also not conflict with the National Planning Policy Framework (the Framework) in respect of ensuring the vitality of town centres.
11. I have had regard to the supporting text of DM Policy 14 of the DMLP, including in respect of the location and concentration of certain uses. However, this policy relates to District Centres rather than Town Centres, and is therefore not directly relevant to the appeal proposal.

Living Conditions

12. In response to concerns about noise and disturbance, the appellant has submitted a Noise Assessment (NA) which concludes that the site is suitable for 24-hours operation subject to a number of mitigation measures being undertaken.
13. However, I have some concerns in relation to the NA. It refers to BS8233¹ and claims that the proposal would be compliant with this. However, BS8233 states that claims of compliance cannot be made to it². I am also not persuaded that sounds associated with the proposal would be without specific character, even given the low noise levels referred to in respect of people talking and from gaming machines.
14. That said, the assessment of noise rating curves in the NA would appear to be suitably appropriate and robust. The NA is also based on a worst case scenario of the structure between the corrugated metal sheeted ceiling of the appeal premises and the flats above being timber joists. Furthermore, the Council's Environmental Protection Officer has not objected to the proposal subject to mitigation measures identified in the NA. Despite the Council's concerns in relation to noise, it has not provided substantive evidence to demonstrate that noise from within the unit would be of an unacceptable level.
15. Nevertheless, due to the proximity of residential flats above the site, I consider that residents would be aware of comings and goings from the proposal as well as from people congregating and talking near the entrance.
16. The appeal site is located in a busy town centre and it is reasonable to accept a degree of noise commensurate with this commercial character during the day and evening. There would also be a degree of noise and disturbance from the appeal site should it be opened under its permitted Class E commercial use.
17. However, due to the nature of the proposed use as an AGC, I consider that users of the appeal proposal are likely to congregate outside at times, for example during a smoking break. Noise from customers talking outside the appeal site would be particularly intrusive to residents of the flats at unsocial hours overnight and early in the morning, when residents could expect a reasonable degree of peace and quiet even given the commercial nature of this

¹ BS 8233:2014 - Guidance on sound insulation and noise reduction for buildings

² Use of this document, page iii

- area. This would particularly be the case should residents have their windows open.
18. The appellant has indicated that the operating hours of the proposal can be controlled by condition if 24-hour operation is not considered acceptable. The Council has also indicated a condition regarding hours of operation which it considers should be imposed if planning permission is granted. Even given the context of this town centre area and the associated noise environment, I consider that such a condition would be appropriate mitigation in respect of noise and disturbance to nearby residents at unsocial hours.
 19. There are a number of other uses in this area which operate on a 24-hour basis, including a shop close to the site as well as other retail and leisure uses in the wider area. However, it has not been demonstrated that these represent a direct parallel to the appeal proposal, including in respect of the relationship with residential properties or the history of the site.
 20. The appellant highlights background noise from passing vehicles. However, this is of a different character to the noise from customers accessing the appeal site and talking outside, and does not lead me to a different conclusion in respect of potential noise and disturbance at unsocial hours.
 21. The Council refers to noise issues from a gym elsewhere in the building. However, the noise generated by a gym would be materially different from those generated by the proposal, such as the impactful character of weights being dropped. The evidence also suggests that a Noise Management Plan for the gym has been approved by the Council. Subject to the mitigation measures proposed in the NA and controls over opening hours, I consider that the proposal would not add unacceptably to the noise issues generated by the gym.
 22. Drawing the above together, I conclude that the proposal would not lead to unacceptable noise and disturbance to nearby residents, subject to conditions controlling the hours of operation as well as mitigation works. On that basis, the proposal would not be contrary to the noise and amenity considerations of Policies 15 and 19 of the Core Strategy; DM Policy 26 of the DMLP; and Policies D13 and D14 of the London Plan. The proposal would also not be contrary to the Framework which seeks to ensure a high standard of amenity for existing and future users of places.

Other Matters

23. Concerns have been raised about potential increases in anti-social behaviour and a fear of crime arising from the proposal. The courts have held that the fear of crime can be a material consideration if there is some reasonable, cogent evidential basis linking the proposed use or occupiers with criminal activity. Reference is also made to problems arising from the effect of gambling, particularly on vulnerable members of society.
24. However, the appellant emphasises that these are matters dealt with as part of the licencing regime, and that a licence has been granted for the appeal proposal with no objection from the police. The Council's officer report also refers to the licensing objectives in relation to matters including crime and disorder as well as protecting children and other vulnerable persons. Based on the evidence before me, the proposal would not directly lead to an increase in

anti-social behaviour, or that fear of crime and the effect on vulnerable people would be material reasons to withhold planning permission.

25. Reference has also been made to the effect on property values and resale. However, it is a long established principle that the planning system does not exist to protect private interests such as the value of land and property, even if there was substantive evidence that the proposal would lead to this effect.
26. My attention has been drawn to the appearance of a similar premises elsewhere. However, a new facade is proposed as part of the wider scheme for the site, and this has been considered by a separate appeal decision. There is no substantive evidence that the frontage of the premises would not be suitably maintained.

Conditions

27. The Council and consultees have suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance. This includes conditions referred to in the Council's officer report but which were not included in the list of suggested conditions.
28. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interests of certainty.
29. The comments from Transport for London refer to surveys to demonstrate that there is sufficient space to accommodate two extra cycles arising from the proposed change of use. However, the proposal relates to a change of use from a commercial town centre use and would not generate significant extra demand for short-term cycle parking compared to the existing permitted use. There is also existing visitor cycle parking in the footway to the front of the site. I do not therefore consider that further surveys on this matter or the provision of short-term bicycle parking are necessary.
30. However, it would be appropriate to provide long-stay cycle parking for staff of the proposal. The appellant has submitted an amended site plan which shows that covered cycle parking can be provided to the rear, although this plan has the same reference number as the original site plan. Due to this uncertainty, a condition requiring the submission of details of long-term cycle parking is appropriate in the interests of sustainable transport.
31. A condition requiring details of servicing and waste management is required in the interests of the amenity and highway safety of the area. Conditions regarding the implementation of sound mitigation measures and the hours of operation are required in the interests of the living conditions of nearby residents.

Conclusion

32. For the reasons given above, I conclude that the appeal should be allowed.

David Cross

INSPECTOR

Schedule of 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: Site Location Plan; Block Plan; and Existing & Proposed Ground Floor General Arrangement Plan 999-PR-01 Revision 01.
- 3) Prior to the development hereby approved being brought into use, a scheme for the provision of at least one long-stay bicycle parking space shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the development hereby approved being brought into use, and shall thereafter be kept available for bicycle parking.
- 4) Prior to the development hereby approved being brought into use, details of servicing and waste management associated with the development shall be submitted to and approved in writing by the Local Planning Authority. Any works required by the approved details shall be implemented in full prior to the development hereby approved being brought into use, and the development shall be operated in accordance with the approved details thereafter.
- 5) Prior to the development hereby approved being brought into use, the noise mitigation measures set out in the recommendations of the Noise Assessment ref. PR2001_61_FINAL, dated 08/10/2021 by Archo Consulting shall be implemented in full and be retained thereafter.
- 6) The premises shall only be operational between the hours of 09:00 and 23:00 Monday to Sunday.

End of Schedule