



Appeal Decision

Site visit made on 11 June 2023

by Elaine Benson BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd July 2023

Appeal Ref: APP/M5450/W/22/3310290

320 Station Road, Harrow HA1 2DX

- 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 the London Borough of Harrow Council.
 - The application Ref P/0593/22, dated 22 February 2022, was refused by notice dated 23 June 2022
 - The development proposed is change of use from a sui generis betting shop to a sui generis adult gaming centre.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a sui generis betting shop to a sui generis adult gaming centre at 320 Station Road, Harrow HA1 2DX in accordance with the terms of the application, Ref P/0593/22, dated 22 February 2022, subject to the following 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: Existing and Proposed Ground Floor Plan 21.0038 01 01 and General Layout Plan Rev G 1.
 - 3) An Operational Management Plan shall be submitted to and approved in writing by the Local Planning Authority prior to the adult gaming centre first being brought into use. The plan shall provide details of health and safety measures and mitigation inside the property, security systems, crime prevention and measures to prevent adverse noise outbreak to adjacent neighbouring properties, including amplified speech and music. Specified noise attenuation measures shall be based upon the conclusions and recommendations of the submitted Noise Impact Assessment. The approved use shall only be operated in accordance with the approved details and no changes shall take place unless otherwise approved in writing by the Local Planning Authority.

Preliminary Matters

2. At the site visit, the frontage of the appeal site was screened by hoardings. The planning history indicates that planning permission has been granted for redevelopment of the site. However, no information has been provided by the main parties about the nature of works currently being carried out. In the absence of any evidence to the contrary, I shall determine the appeal on the

same basis that the application was refused planning permission – namely as a change of use of the building.

3. The appellant company provided an internal layout plan of the premises with this appeal. The absence of such a plan formed the basis of one of the Council's reasons for refusing the planning application. Comments on this layout from the Metropolitan Police (the Police) Secured by Design consultee were also provided with the appeal.
4. I am satisfied that what is under consideration in this appeal is essentially the same scheme that was considered by the local planning authority and interested parties at the application stage. The Council has had the opportunity to comment on this evidence as part of the appeal process. Furthermore, it is clear from the Council's evidence that the layout of the premises would have been required by a condition had the proposal been acceptable to them in all other regards. For these reasons the additional information has been accepted and considered in the determination of this appeal.

Main Issues

5. The Council raised no objection to the principle of an adult gaming centre (AGC) in the appeal property, indicating that the proposal would provide a recreation/leisure function appropriate within a town centre primary shopping frontage. There are no reasons to reach a different conclusion. I shall therefore focus only on the matters in dispute in this decision.
6. The main issues therefore, are firstly whether the 24-hour operation of an AGC at the appeal site would harm the residential amenities of neighbouring occupiers and secondly, whether the appeal proposal has been designed to deter crime.

Reasons

7. The appeal property is a vacant betting shop in the busy Harrow Metropolitan Centre which contains a number of typical town centre uses with a variety of operating hours. There are residential properties above the neighbouring property. To the rear of the site is a service road with a part 6 and part 7 storey residential building on its eastern side.
8. There was no noise report with the planning application or indication of how the management and mitigation of any noise would be carried out. This information has been provided with the appeal and includes a Noise Impact Assessment (NIA). This used internal noise surveys undertaken within three Little Vegas AGCs operated by the appellant company to establish accurate operational noise levels. The Council made no representations on this during the appeal process.
9. Using the worst-case source noise levels from within the AGC, noise breakout calculations from the façade demonstrate that there would be No Observed Adverse Effect Level on the nearest residential properties. In respect of external noise levels, the NIA indicates that the existing noise levels at the nearest residential properties already exceed the Lowest Observed Adverse Noise Level which is typical of a town centre location where noise and activity during the evening and at night is to be expected. The report concludes that the operation of the proposed use during the night-time hours would have no negative impact upon the nearest residential occupiers.

10. In reaching my conclusions I have taken into account the nature of the machines that would be installed, that there would be only background music, the type of customers and how they would play the machines, that there would be no groups of people, and that no alcohol would be served. The transmission of noise and amplified noise could be limited, including by measures including positioning machines away from the glazing in the shopfront. These noise attenuation measures should be included in the Operational Management Plan.
11. The appellant company provided an expert witness statement relating to AGCs which states that AGCs create significantly less disturbance and anti-social behaviour than betting shops, which is the current use of the appeal property, and have not been known to create adverse noise and disturbance. This indicates that the use of the site as an AGC for extended hours through the night is unlikely to create any harm. There is no evidence to the contrary and I give significant weight to this witness statement.
12. Although there are residential properties nearby, based on the technical and expert evidence provided I conclude that the proposal would not give rise to an unacceptable level of noise and disturbance. Furthermore, residents living in a commercial area might reasonably expect to experience some noise and disturbance because of evening and night-time activities.
13. Given the foregoing conclusion, there is no convincing evidence to indicate that it would be necessary or reasonable to prevent 24-hour opening to protect the living conditions of the occupiers of nearby residential properties due to noise and general disturbance. For the reasons set out above, the proposed change of use complies with Local Plan Policy DM1.C which requires developments to have regard to the context provided by neighbouring buildings, which in this case includes the town centre. The proposal would also be consistent with Policy D13 of the London Plan, parts C and D which require that new noise generating development uses appropriate mitigation against impacts on residential receptors through good design and good ongoing management. The proposal would also comply with Policy D3 of the London Plan, parts 7 and 9 which has similar noise and amenity considerations. There would be no conflict with the general aims of the National Planning Policy Framework (2021) (the Framework) to protect amenity.
14. Turning to the second main issue; as set out above, a layout plan was submitted to the Design Out Crime Officer of the Police and was revised to take account of comments made. The appeal evidence indicates that the Police are satisfied that the proposal could achieve 'Secured By Design' compliance. There are no reasons to reach a different conclusion. However, for completeness and in accordance with the Council's policies. I have required the formal submission of the Secured By Design requirements in the Operational Management Plan. There is no evidence with the appeal or otherwise which would counter the expert witness statement which states that AGCs have limited potential for generating crime.
15. I conclude that it has been satisfactorily demonstrated that the proposal has been sufficiently designed to deter crime in accordance with Policy D11.C of The London Plan (2021) which requires developments to include measures to design out crime and policy DM1.A of the Harrow Development Management Policies Local Plan 2013 which requires a high standard of design and layout; and the aspirations of the Framework.

16. Other objections to the appeal proposal that were received largely relate to the matters already discussed above. They do not affect the overall decision. There is a reference to the planning permission for redevelopment of the appeal site which allows the ground floor to be used for A1, A2 or A3 purposes, in addition to its use as a betting shop. The objector states that only the approved uses should be permitted. Whilst these comments are noted, the appeal has been determined on its own merits.
17. For the reasons set out above and having regard to all other matters raised, the appeal is allowed.
18. Conditions relating to the approved plans are necessary to provide certainty. A condition relating to the submission and approval of an Operational Management Plan is necessary and reasonable based on the recommendations of the Designing Out Crime consultee and to protect the living conditions of the occupiers of adjacent residential properties with respect to noise.
19. The appellant company indicates that it would accept a condition to ensure that no amplified speech or music generated from the site will be audible within the adjoining residential premises during night-time hours. I consider it both reasonable and necessary to impose such a requirement, which would also provide certainty if the building fell under the control of other operators. However, it would be more appropriate to include such matters in the Operational Management Plan. As set out in this decision, it is not reasonable or necessary to restrict opening hours as the Council contends.

Elaine Benson

INSPECTOR