



Appeal Decision

Site visit made on 14 June 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

Appeal Ref: APP/U5930/W/22/3307485

133 High Street, Waltham Forest, Walthamstow E17 7DB

- 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 Limited against the decision of the Council of the London Borough of Waltham Forest.
 - The application 221256 dated 27 April 2022 was refused by notice dated 29 July 2022.
 - The development proposed is the change of use from betting shop (sui generis) to adult gaming centre (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from betting shop (sui generis) to adult gaming centre (sui generis), at 133 High Street, Waltham Forest, Walthamstow E17 7DB in accordance with the terms of the application Ref 221256 dated 27 April 2022, 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: Drawing No. 1 Existing Plan – Ground Floor dated 08/03/2022; Drawing No. 2 Proposed Plan – Ground Floor dated 08/03/2022; Drawing No. 3 Existing Elevation dated 08/03/2022; and Drawing No. 4 Location Plan dated 08/03/2022.

Main Issues

2. The main issues are effect of the development on (i) the viability and vitality of the Walthamstow Major Centre; and (ii) crime and anti-social behaviour

Reasons

Vitality and viability

3. The appeal site is a ground floor unit, comprising a vacant former betting shop. It forms part of a row of 15 units ranging from Nos. 121 to 143 High Street, within a Primary Retail Area in the Walthamstow Major Centre. The proposal seeks to change the use of the site to an adult gaming centre (AGC).
4. Policy DM25 of the Waltham Forest Development Management Policies Local Plan 2013 (the DMP) states that uses other than Class A1 retail uses will only be permitted in primary shopping frontages where it 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. This 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.

5. The Council has not provided information on the current proportion of non-retail uses in the relevant frontage. I noted the immediate row of 15 units to which the site belongs is comprised primarily of traditional retail shop uses, with the exception of 5 units, being the site, a dentist, a money transfer shop and two butchers. This equates to greater than 30% of the total length of this particular frontage being non-retail uses.
6. However, the main parties agree that the proposal would lead to no net change in the amount of retail frontage. Although vacant, the current lawful use of the site is a betting shop and the proposed change to an AGC would not increase the number of non-retail uses in the frontage, such that there would be no change from the current situation. In addition, it would not lead to the equivalent of a group of three or more adjoining shops in non-retail uses.
7. As a Class E use, the current betting shop at the site could change use to a retail unit without planning permission but the proposal, as a sui generis use, could not. However, there is nothing substantive before me to guarantee that the site would be brought back into retail use at any time, such that this remains simply a theoretical possibility that carries little weight. While there is also no evidence the site has been marketed for Class E uses, this is not a requirement of Policy DM25.
8. The Council has not specifically argued that the AGC is not directly related to a shopping trip, but has cited a lack of evidence that the proposal would create linked trips or generate footfall. In this regard I note that Policy DM25 sets out other factors to consider, including the extent to which the proposal is capable of attracting a significant number of shoppers/ visitors to the centre and the contribution it would make to the vitality and viability of the proposed frontage, the centre, and the shoppers' experience.
9. The site has been vacant for more than a year and there is nothing before me to suggest that this would not remain the case if the proposal were dismissed. The proposal would bring the unit back into productive use thereby attracting a significant number of visitors when compared to the current vacant site, at least some of which would inevitably use other nearby shops and services. Although an AGC is not specifically cited as a main town centre use in the National Planning Policy Framework (the Framework), it remains a leisure and entertainment use that in the present day would not appear out of place in a town centre and would be no less related to shopping trips or less likely to generate linked trips than some Class E uses such as health services.
10. It has been raised that an AGC would have a dead frontage, with a customer base that would linger indoors and have limited interaction with the public realm. However, the shopfront of the proposal would nevertheless appear more active and attractive than that of the currently vacant premises. This would add to the range of active units in the frontage and thus contribute to the vitality and viability of both the frontage itself and the wider centre, assisting in the regeneration of this immediate part of the local area.

11. I have no information before me on whether the proposal would meet an important local need, and note the Council's reference to the objective of tackling social deprivation. However, Policy DM25 is worded such that local needs and objectives are points to consider, rather than requirements. In any event, there is no clear evidence that the proposal would adversely affect the ability to cater for local needs.
12. With regard to tackling social deprivation, the Operational Management Plan is clear that AGCs do not feature fixed odd betting terminals but rather 'low stakes' machines. It further outlines the approach taken in other AGCs operated by the appellant with regard to 'Think 25', 'Self-Exclusion' and 'Know Your Customer' approaches to promote responsible habits. There is nothing to suggest similar approaches would not be taken at the proposal or that the ability to tackle social deprivation would be negatively impacted due to the introduction of this AGC in the town centre.
13. Reference has been made to other AGCs in the immediate and wider area, including at Nos. 124 and 196 High Street, in addition to nearby betting shops, all of which I observed on my visit. However, the proposed use differs from a betting shop. With regard to the surrounding AGCs, these are not sited in the immediate row of 15 units to which the site belongs and in the context of the wider High Street and the number and variety of units present along this road, the addition of a further AGC would not lead to a proliferation or over concentration in this instance.
14. For the reasons given, the proposal would not cause harm to the viability and vitality of the centre. As such, it would comply with 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.

Anti-social behaviour

15. The Council's reasons for refusal state that the proposal would have an adverse effect with regard to crime and anti-social behaviour. However, the submissions do not explain in what way the proposal would have such an impact, with no specific evidence to support this assertion. Reference is made to Policy CS16 of the Core Strategy, which is clear that development should be designed so as to minimise opportunities for criminal behaviour. This is echoed by Policy DM27 of the DMP, which particularly focuses on public safety, crime prevention and reduction of anti-social behaviour.
16. The Operational Management Plan outlines security measures in place across the AGCs operated by the appellant, including CCTV, no serving of alcohol on the premises, notices that alcohol is not to be consumed in front of the premises under risk of a ban from the establishment, and licenced security guards. With these measures in place, the limited incidents of crime and anti-social behaviour that have occurred per week in these other establishments have been highlighted. There is nothing to suggest similar measures would not take place at the proposal. I further note the witness statement provided by a licensing and security authority compliance consultant, which cites a lack of wider evidence that AGCs create crime and disorder problems.
17. In light of the above, and given that the Council has offered no substantive evidence or reasoning as to why the introduction of an AGC at the site would

cause such problems, I find that the proposal would not have an adverse effect with regard to crime and anti-social behaviour.

18. For the reasons given, the proposal would comply with Policy CS16 of the Core Strategy and Policy DM27 of the DMP in addition to Policy DM33 of the DMP insofar as it seeks to avoid a cluster of uses that would result in an increase in crime and anti-social behaviour. While Policy DM24 of the DMP has also been cited, this relates to noise and disturbance, which the main parties agree would not be an issue in this case.

Conditions

19. 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. No external changes are proposed as part of the proposal, such that a condition specifying external materials is not necessary. I further note the agreement of the main parties to the 24 hour operation of the site, such that no condition relating to opening hours is required.

Conclusion

20. For the reasons given, the proposal would accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be allowed subject to the conditions at paragraph 1 of this decision.

C Rafferty

INSPECTOR