



## Appeal Decision

Site visit made on 6 November 2023

**by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 November 2023**

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### **Appeal Ref: APP/X5990/W/23/3324056**

### **100-102 Century House, Ground Floor, Oxford Street, London W1D 1LL**

- 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 Luxury Leisure against the decision of the City of Westminster Council.
  - The application Ref 22/04944/FULL, dated 26 July 2022, was refused by notice dated 9 February 2023.
  - The development proposed is the change of use of the ground floor from a retail unit (Class E) to an adult gaming centre (*sui generis*) with external alterations and associated works.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor from a retail unit (Class E) to an adult gaming centre (*sui generis*) with external alterations and associated works at 100-102 Century House, Ground Floor, Oxford Street, London W1D 1LL, in accordance with the terms of the application Ref 22/04944/FULL dated 26 July 2022 subject to the conditions in the attached schedule.

### **Application for costs**

2. An application for costs was made by Luxury Leisure against the City of Westminster Council. This application is the subject of a separate decision.

### **Procedural Matters**

3. The description of development in the banner heading above is taken from the planning application form as there is no evidence before me that the appellant agreed to the altered description in the Council's decision notice. I have determined the appeal accordingly.
4. At the time of my visit the appeal premises was contained by hoardings due to ongoing shop fitting works for a new retail use. From what I was able to see and the evidence before me, I am satisfied that I have sufficient information before me to properly assess the impact of the proposed development on the character and function of the area. In reaching my decision I have assessed the development as shown on the submitted plans.
5. In September 2023 the Government published a revised National Planning Policy Framework (the Framework). The revisions relate to national planning policy for onshore wind development, rather than anything relevant to the main issue in this appeal. Consequently, I have not sought the views of the parties.

### **Main Issue**

6. The main issue in relation to this appeal is the effect of the proposal on the character and function of the area.

## Reasons

7. The appeal site comprises a ground floor unit located on the northern side of Oxford Street where there is a vibrant mix of town centre and commercial uses. I am advised that the last use of the premises was for retail purposes<sup>1</sup> and it was undergoing shop fitting works for a new store at the time of my visit. The pavement to the front of the appeal site is wide and footfall is considerable. The appeal site therefore contributes positively to the lively commercial character of the area.
8. Oxford Street is an iconic area of London, internationally renowned as a prime retail destination. The parties agree that the appeal site is the subject of several designations including the Central Activities Zone (CAZ), the West End International Centre (WEIC) and the West End Retail and Leisure Special Area (WERLSPA). These designations seek to acknowledge, protect and enhance the local, national and international function of the area for amongst other things, retail, leisure, business and residential purposes.
9. Policy E9 of the London Plan (LP) 2021 seeks to support a successful, competitive and diverse retail sector in line with the objectives of Policy SD6, which promotes a diverse range of uses to support the vitality and viability of town centres. The supporting text to Policy E9 recognises that over-concentrations of some uses including amusement centres such as that proposed, can give rise to concerns regarding the impact on mental and physical health and wellbeing, amenity, vitality, viability and diversity.
10. Policy 2 of the City of Westminster City Plan (CP) 2021 sets priorities for development within the WERLSPA including amongst other things, significant jobs growth, an improved retail and leisure experience and a diverse evening and night-time economy. It also seeks to protect the unique character of central London's distinct and iconic places. Policy 14 of the CP requires development in existing town centres and high streets to enhance and diversify their offer as places to shop, work and spend leisure time (14A). It seeks active frontages for ground floor premises (14B) and that all development within the town centre hierarchy to be of a scale, type and format that reflects and enhances the role and function of the centre within which it is proposed. Whilst Policy 14C seeks to provide a focal point for large format comparison retail within the WEIC, it does not preclude other complimentary town centre uses that increase customer dwell time.
11. In addition, Policy PR3 of the Fitzrovia West Neighbourhood Plan (FWNP) 2021, supports new entertainment uses in the WERLSPA, so long as there is no loss of residential floorspace or adverse effects on local amenity. Cumulatively, the policy position is that a range of uses can be permitted within the CAZ, WEIC and WERLSPA and that amusement centres are not excluded, other than if there is a proliferation of such uses or specific detrimental impacts such as on the living conditions of neighbouring occupiers.
12. The proposal would introduce a 24-hour adult gaming centre (AGC) that the parties do not dispute would constitute a town centre use. It would therefore be appropriate in its context of existing commercial uses and with an active frontage would generate footfall from visiting members of the public, compatible with the lively character of the area.

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<sup>1</sup> As set out in the Council's Sub Committee Report and the Appellant's Statement of Case.

13. The appellant's survey of customers visiting other AGC's in London and the south-east indicates that the primary purpose of customers is to visit the AGC itself, but that roughly half would undertake linked trips to other shops and services. Even if I was to accept the Council's position that the proposed use would not generate new footfall to Oxford Street, it would nonetheless add to the diversity of leisure uses within the WEIC, CAZ and WERLSPA, increasing the opportunity for people to dwell in the area for longer. This is likely to be beneficial to the retail and commercial uses nearby. The provision of a number of jobs and evening opening hours would provide additional minor benefits to the local economy.
14. There are no other AGC's within the immediate vicinity of the appeal site, where retailing predominates. The proposal would not therefore undermine the mix of uses expected within such an area, nor would it necessarily result in an increase of AGC premises given the prestige of the Oxford Street address in attracting top retail brands.
15. The Council advises that a business case has been approved for public realm improvement works to the entirety of Oxford Street which demonstrates the status in which it is held as a premier shopping street. The proposal would not interfere with or prevent such works from going ahead. As the appeal site relates to 1 ground floor unit on a 1.8km length of road,<sup>2</sup> comparison retail and large department stores would continue to dominate the character and function of Oxford Street, regardless of the AGC.
16. Although the Council's concerns regarding the appropriateness of an AGC within an iconic area of London are noted, there is no compelling evidence that a single AGC would be inappropriate or harmful to the character or function of the area as a whole. Neither has evidence been presented that the proposal would not enhance and diversify the town centre offer as a place to spend leisure time.
17. Interested party representations point to potential crime and antisocial behaviour arising from the proposed use. I note that the Designing Out Crime Officer (DOCO) suggests that the Oxford Street Ward experiences a high level of theft and anti-social behaviour, and that Westminster more generally has a particularly high volume of rough sleepers. Whilst crime figures for the area have been provided, there is no comparison data such that I can determine if the crime level is indeed high. Even if it is, whilst understanding the concerns, there is no substantive evidence before me to demonstrate that the AGC would attract or increase crime and anti-social behaviour. Stolen bank or credit cards could be used in any Oxford Street premises.
18. Paragraph 188 of the Framework states that the focus of planning policies and decisions should be on whether the proposed development is an acceptable use of land in land use terms, and the impacts of those uses, rather than the control processes or issues that are subject to approvals under other regimes such as licensing. Risks of problem gambling, or to young or vulnerable people including the homeless, would be addressed by management functions such as the 'Think 25' policy<sup>3</sup>, and controls through the licensing regime.
19. Given the management and operation procedures of the AGC, there is no basis to conclude that 24-hour operation would cause or result in increased anti-social behaviour or criminal activity in the area. The Gambling Commission and

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<sup>2</sup> As set out at paragraph 4.4 of the Council's statement of case.

<sup>3</sup> As set out in the appellant's Security and Social Responsibility Statement (appendix to their statement of case).

the local licensing authority have the power to revoke licenses where necessary. It is in the interests of the appellant to ensure that their business is operated professionally and within the law, otherwise they risk closure.

20. I note the Council's comments that there is a need to continue to plan for retail growth in Westminster through the intensification of existing centres and high streets. Be that as it may, there is no evidence before me that indicates the loss of existing retail space should be prevented. Furthermore, the Council's evidence indicates that town centres across Westminster buck the nationwide trend with healthy diverse centres.
21. For the above reasons, the proposal would not adversely affect the character and function of the area. Consequently, it would accord with Policies E9 and SD6 of the LP and Policies 2 and 14 of the CP as set out above. The development would also comply with the Framework which expects decisions to support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation, in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses, and reflects their distinctive characters.

### **Other Matters**

22. The appeal site lies within the East Marylebone Conservation Area (EMCA) and I am mindful of the duty under section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (The Act) which requires that special regard should be had to the desirability of preserving or enhancing the character or appearance of the conservation area.
23. The EMCA is characterised by its historic street pattern and predominantly late 19<sup>th</sup> and early 20<sup>th</sup> century buildings of high-quality materials and fine architectural detailing. It therefore has historic, aesthetic and evidential value that contributes positively to its significance. The Council does not object to the proposal on the basis of any harm to the EMCA. Given it would not include any external alterations of great substance beyond those to the modern shopfront, I am inclined to agree. The character and appearance of the EMCA would therefore be preserved.
24. At the time of my visit construction works were pending completion for the opening of a new retail store on 10 November 2023<sup>4</sup>. Regardless, the appeal remains to be determined, but vacancy of the unit is not a determinative factor in this instance.
25. Reference is made to a number of appeal decisions, most of which are in different local authority areas, where different development plan policies were applicable<sup>5</sup>. Based upon the evidence before me they are not directly comparable to this proposal, which I have considered on its own merits and impacts. Nevertheless, my findings are generally consistent with the approach taken by the Inspectors with regard to the contribution of AGC's to town centre locations, their contribution to pedestrian footfall and concerns regarding anti-social behaviour and crime.
26. The impact on the living conditions of neighbouring occupiers is not in dispute. Nevertheless, there are residential properties on the opposite side of Oxford Street. The location of the appeal site within a lively and active shopping and

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<sup>4</sup> As observed from the advert on the hoarding outside the shopfront.

<sup>5</sup> APP/F5540/W/22/3296792, APP/V4630/W/21/3285845, APP/T5150/W/21/3272089, APP/U5930/W/21/3282618, APP/H5390/W/20/3257225, APP/B0230/W/20/3256275 and APP/V2004/W/19/3233244.

leisure area where uses operate late into the evening, on a main vehicular and bus route where servicing is permitted 24 hours a day, will result in relatively high ambient noise levels such that harm is unlikely to occur to the living conditions of neighbouring occupiers as a consequence of noise and disturbance, over and above existing uses/conditions.

### **Conditions**

27. The Council's suggested conditions have been considered and the wording varied where necessary, to ensure compliance with the Planning Practice Guide and paragraph 56 of the Framework. Whilst the Council's comments with regard to the use of 'prior to first use' and 'approved in writing' have been carefully considered, these are somewhat standard phrases for planning conditions that indicate when information is required to be submitted and that formal written approval is required. Alternate AGC's would be required to continue to comply with the relevant conditions or, apply to vary them if they wish to deviate from the previous scheme. As such, the suggested wording is necessary to make the conditions reasonable and enforceable. I have also altered the order of the conditions to assist the appellant with compliance.
28. As well as the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. A condition to control the treatment of the shopfront is necessary to maintain an active frontage in the interests of the character, appearance and vitality of the area. Cycle storage facilities are conditioned in the interests of promoting sustainable transport, along with facilities to ensure appropriate separation and management of waste and recycling. Restrictions on the hours of audible construction noise is also considered relevant and necessary, given the potential to cause noise and disturbance.
29. Although the Council suggested a condition relating to safety, security and operational measures, some of the requirements such as the number of staff on the shop floor at a time and the continual presence of an outdoor security person would be difficult to enforce and would go beyond the reasonableness test. As the secured by design condition would adequately control security measures and internal organisational protocols would deal with safety measures, I find a further condition to be unnecessary.

### **Conclusion**

30. The proposal would be in accordance with the development plan as a whole and material considerations do not lead me to decide otherwise. For these reasons and having regard to all other matters raised, the appeal is allowed.

*M Clowes*

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 drawings;  
  
Ordnance survey location plan drawing number 3473(B) 02  
  
Proposed block plan drawing number 3473 (B) 04  
  
Floor plans and elevations as proposed drawing number 3473 (C) 01.
- 3) Prior to the use coming into operation, details and drawings in accordance with the Secured by Design (SBD) Commercial 2015 version 2 guide, shall have been submitted to and approved in writing by the Local Planning Authority. The details shall include lighting, door security including the provision of a Maglock (or equivalent secure locking system), glazing, internal and external CCTV, internal offices and measures to ensure adequate means of external communication. The approved details shall be implemented prior to the first use of the premises and shall be retained thereafter.
- 4) Prior to the first use of the adult gaming centre details of secure cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The approved secure cycle storage shall be implemented prior to the use coming into operation, made available for use at all times and retained thereafter.
- 5) Prior to the use coming into operation, details of provisions for waste and recycling separation and storage shall have first been submitted to and approved in writing by the Local Planning Authority. The refuse and recycling storage shall be implemented in accordance with the approved details prior to the first use of the premises and shall be retained for their intended purpose thereafter.
- 6) Notwithstanding the approved alterations to the shopfront, all new work to the outside of the building shall match the original building in terms of the choice of materials, method of construction and finished appearance. The works shall be retained thereafter.
- 7) No building work that is audible at the boundary of the site shall be carried out outside of 08:00 and 18:00 hours Monday to Friday, 08:00 and 13:00 hours on Saturday. There shall be no building work on Sundays, bank and public holidays.  
  
No piling, excavation and demolition work shall take place outside of 08:00 and 18:00 hours Monday to Friday.
- 8) The shopfront window must not be obscured and the internal area immediately behind the shopfront window must remain clear at all times.