



Appeal Decision

Site visit made on 6 December 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 December 2023

Appeal Ref: APP/T5150/W/23/3325003

169-171 Cricklewood Broadway, Brent, London NW2 3JB

- 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 Golden Slots (Southern) Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 22/3943, dated 17 November 2022, was refused by notice dated 12 January 2023.
 - The development proposed is the change of use of basement and ground floor from a vacant bank to an adult gaming centre (AGC)
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of basement and ground floor from a vacant bank to an adult gaming centre (AGC) at 169-171 Cricklewood Broadway, Brent, London NW2 3JB in accordance with the terms of the application Ref 22/3943, dated 17 November 2022, subject to the conditions set out in Schedule 1.

Preliminary Matters

2. Reference has been made by the main parties to additional plans submitted with the appeal. These plans relate to a separate application for planning permission at the site that, on the evidence, has not yet been decided. For the avoidance of doubt, I have considered the current appeal solely on the plans that were before the Council at the time of its decision.

Main Issue

3. The main issue is the effect of the development on the viability and vitality of Cricklewood Town Centre.

Reasons

4. The site is a vacant basement and ground floor unit at the corner junction of Cricklewood Broadway and Chicele Road which, on the evidence, was last in use as a bank. It is situated in the primary shopping frontage of Cricklewood town centre. While Chicele Road is largely residential in nature, along Cricklewood Broadway the site forms part of a frontage featuring a variety of retailers and commercial uses, including betting shops at Nos. 163 and 167.
5. The proposal seeks to convert the unit to an adult gaming centre. Policy BE5 of the Brent Local Plan 2019 – 2041 (the BLP) states that betting shops, adult gaming centres and pawnbrokers will be permitted where it will result in (a) no more than 4% of the town centre frontage consisting of betting shops; (b)

no more than 3% of the town centre frontage consisting of adult gaming centres or pawnbrokers/ payday loan shops; (c) no more than 1 unit or 10% of the neighbourhood parade frontage, whichever is the greater, consisting of betting shops, adult gaming centres or pawnbrokers/ payday loan shops; and (d) a minimum of 4 units in an alternative use in-between each.

6. The proposal seeks permission for an adult gaming centre such that criterion (a) is not applicable in this case. The main parties agree that the proposal does not conflict with criterion (b) and the Council has raised no issue with regard to the criterion (c). The dispute is therefore whether the proposal would be compliant with criterion (d) of Policy BE5.
7. The Council argues the reference in Policy BE5 to betting shops, adult gaming centres and pawnbrokers/ payday loan shops is as a combined category, requiring four alternative uses between any of these, and that the listing of each specific use in criteria (a) – (c) should not detract from the fact that criterion (d) is also applicable to the combined category. As such, due to the presence of betting shops at Nos. 167 and 163, the Council contends that the proposal would fail to comply with criterion (d).
8. The appellant argues the policy does not require an alternative to any of the betting shop, adult gaming centre, pawnbroker/ payday loan shop uses, but an alternative to the single use in question, in this case the adult gaming centre. As such, it contends the proposal would comply with Policy BE5 due to the 4 uses either side of the site not being adult gaming centres. I note that there is no reference in the wording of Policy BE5 to 'individual' uses as it relates to criterion (d). Nevertheless, it remains that each of the listed uses has their own distinct and different properties, as demonstrated by their separate listing within the policy.
9. In explaining the intention of the policy as protecting retail in town centres, the Council has pointed to Policy E9 of the London Plan, which states '*over-concentrations of some uses such as betting shops, pawnbrokers, pay-day loan stores, amusement centres...can give rise to particular concerns regarding the impact on...vitality, viability. The proliferation and concentration of these uses should be carefully managed...particularly in town centres that are within Strategic Areas for Regeneration*'. Even acknowledging Cricklewood as a strategic area for regeneration, the supporting text to Policy BE5 clearly states that the policy seeks to prevent adult gaming centres, pawnbrokers, betting shops and takeaways locating in close proximity 'to a unit in the same use'. Such specific reference to 'the same use' indicates that the policy seeks to protect retail in town centres by managing the overconcentration of individual uses, rather than viewing the listed uses as a combined category.
10. A previous appeal decision¹ that addresses this point has been provided. This relates to Policy DMP3 of the Brent Local Plan Development Management Policies 2016, which has now been superseded by the BLP. However, the wording of Policy DMP3 as it relates to criterion (d) is the same as that of Policy BE5. The Inspector found the uses referred to have different characteristics, hence their explicit listing in the policy, and that the policy required an alternative to the single use in question. In doing so it was held that the aims and purposes of Policy DMP3 were not undermined.

¹ APP/T5150/W/16/3163392

11. On the evidence before me, I have no reason to disagree with this approach in the current case and, as there are no adult gaming centre uses within four units of the appeal site, I find that the proposal would satisfy criterion (d) of Policy BE5. While the Council has made reference to another refusal of permission for the change of use from betting shop to adult gaming centre due to an overconcentration of betting shops, adult gaming centres and pawnbrokers in close proximity², this does not alter my interpretation and application of Policy BE5 as it relates to the specifics of the case before me.
12. I observed adult gaming centres elsewhere within the area, visible from the site. However, criterion (d) of the policy makes specific reference to units 'in-between' each other. The other adult gaming centres in the immediate surrounds are separated from the site by intervening road junctions, and visually relate to separate frontages such that their presence would not cause the proposal to conflict with criterion (d) of Policy BE5. Similarly, while the Council states harm would be caused to the vitality and viability of the town centre due to the corner plot location of the site, there is nothing substantive before me or observed on my visit to conclude this would be the case.
13. For the reasons given above I find that the development would comply with Policies BE5 and DMP1 of the DMP insofar as they seek to ensure development is of a use and concentration that complements the locality; does not result in an over-concentration of adult gaming centres within the area; and would not have a significant adverse effect on the vitality and viability of Cricklewood Town Centre.

Conditions

14. I have had regard to the conditions suggested by the Council and the appellant's comments on these. I have received and considered the response from the appellant confirming they are agreeable to those which are pre-commencement conditions.
15. 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. I have also imposed a condition specifying the opening hours of the premises in the interests of certainty and to safeguard the living conditions of surrounding occupiers. I have imposed a condition relating to window displays to ensure an active frontage is maintained in the interests of the vitality and viability of the area. Finally, in the interests of the living conditions of surrounding residents, I have also imposed a condition for the submission and approval of a scheme of sound insulation measures, to be implemented prior to first use of the proposal.

Other Matters

16. Concerns have been raised by interested parties that the proposal would harm the living conditions of occupiers of surrounding properties due to noise and disturbance. However, in addition to the largely commercial nature of the immediate area, I note that the Council has found this could be adequately addressed by way of an appropriately worded condition requiring a scheme of sound insulation measures to be submitted and approved. Based on my observations I have no reason to disagree.

² Ref 23/0989

17. I note reference to the current Class E use of the property that would allow some flexibility for the site to be put into a different use that the Council deems more desirable in meeting the needs of the locality. However, there is nothing before me to demonstrate that at this stage there is anything more than a theoretical possibility of this happening, such that this carries limited weight.
18. Reference has also been made to the proximity of the site to primary schools, the fact that the unit has not been vacant for an extended period of time, and a lack of marketing information. However, this would not cause the proposal to conflict with the provisions of Policy BE5.

Conclusion

19. 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 set out in Schedule 1.

C Rafferty

INSPECTOR

SCHEDULE 1 – 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: 169/BAGC/FUL/22/01 Existing and Proposed Block Plan; 169/BAGC/FUL/22/02 Existing Basement and Ground Floor Plan; and 169/BAGC/FUL/22/03 Proposed Basement and Ground Floor Plan.
3. The use hereby permitted shall only be open to customers between the hours of 0800 and 0030 Monday to Friday; 0900 and 0100 Saturday; and 0900 and 0030 Sunday and Bank Holidays.
4. A clear and unobstructed window display shall be maintained at all times with non tinted/ obscured glass in the entrance door and front windows. Additionally, signage and/ or visual obstructions on the entrance door and any of the windows may be allowed to a maximum height of 1.2 metres from ground level. No promotional material shall be displayed on the windows or entrance door.
5. The development hereby permitted shall not be brought into use until a scheme of sound insulation measures has been submitted to and approved in writing by the local planning authority, to include sound insulation measures to ensure that noise from the permitted use does not exceed the indoor ambient noise levels specified in BS8233:2014 'Guidance on sound insulation and noise reduction for buildings' in the flats above and adjacent to the use. The approved sound insulation measures shall be implemented before the use is commenced.