



Appeal Decisions

Site visit made on 14 February 2024

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08.03.2024

Appeal A Ref: APP/N5660/W/23/3329529

97 Clapham High Street, London SW4 7TB

- 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 Merkur Slots Ltd against the decision of The London Borough of Lambeth Council.
 - The application Ref 23/01729/FUL, dated 26 May 2023, was refused by notice dated 15 August 2023.
 - The development proposed is the change of use of the ground floor unit (Use Class E) to an Adult Gaming Centre (Sui Generis).
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Appeal B Ref: APP/N5660/W/23/3329534

97 Clapham High Street, London SW4 7TB

- 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 Merkur Slots Ltd against the decision of The London Borough of Lambeth Council.
 - The application Ref 23/01730/FUL, dated 26 May 2023, was refused by notice dated 15 August 2023.
 - The development proposed is the replacement of the shopfront together with the display of 1 internally illuminated fascia sign and 1 internally illuminated projecting sign.
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Appeal C Ref: APP/N5660/Z/23/3329528

97 Clapham High Street, London SW4 7TB

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Merkur Slots Ltd against the decision of The London Borough of Lambeth Council.
 - The application Ref 23/01786/ADV, dated 26 May 2023, was refused by notice dated 15 August 2023.
 - The advertisement proposed is replacement of the shopfront together with the display of 1 internally illuminated sign and 1 internally illuminated projecting sign.
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Decisions

Appeal A Ref: APP/N5660/W/23/3329529

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor unit (Use Class E) to an Adult Gaming Centre (Sui Generis) at 97 Clapham High Street, London SW4 7TB in accordance with the terms of

the application Ref 23/01729/FUL, dated 26 May 2023, subject to the conditions in the attached Schedule.

Appeal B Ref: APP/N5660/W/23/3329534

2. The appeal is allowed and planning permission is granted for the replacement of the shopfront together with the display of 1 internally illuminated fascia sign and 1 internally illuminated projecting sign at 97 Clapham High Street, London SW4 7TB in accordance with the terms of the application Ref 23/01730/FUL, dated 26 May 2023, subject to the conditions set out in the attached schedule.

Appeal C Ref: APP/N5660/Z/23/3329528

3. The appeal is allowed, and express consent is granted for the display of the advertisements as applied for. The consent is for five years from the date of this decision and, as well as being subject to the five standard conditions set out in the Regulations, is also subject to the condition set out in the attached schedule.

Procedural Matters

4. The National Planning Policy Framework has been revised subsequent to the decisions made by the Council on applications to which these appeal relate. I have therefore made my decisions with regard to the National Planning Framework (December 2023) (the Framework).
5. The plans submitted with the applications related to **Appeals B & C** show the proposed fascia and projecting signs to be internally illuminated. As the type of illumination indicated in descriptions of the proposal varies between documents submitted for these appeals, I have reflected the type of illumination proposed in the descriptions of the proposals I have used above.
6. As part of their appeal statement for **APPEAL A** the appellant has submitted a noise report including further detail on the management of the premises and noise attenuation measures. As I am satisfied that this does not alter the proposal and that the Council and that other parties have had an opportunity to comment on it, I have accepted this report accordingly.

Main Issues

7. The main issues are the effect of the proposal on:
 - The percentage of the ground floor units in retail use in the Clapham High Street District Centre Primary Shopping Frontage; and
 - The quality of life and community cohesion within the wider area.

Reasons

8. As set out above, there are 3 appeals on this site. The main issues in each appeal relates solely to the proposed change of use. I have considered each proposal on its individual merits.

Percentage of ground floor units in retail use

9. The appeal site is a currently vacant (Class E) retail unit that sits within the Clapham High Street District Centre Primary Shopping Frontage (the PSF). Policy PN5 (B) of the Lambeth Local Plan 2020-2035 (2021) (the Local Plan)

requires no less than 50 percent of ground floor retail units to be in retail use. From the information before me it would appear that the percentage of ground floor units in retail use in the PSF is below this level, with the Council indicating that this stood at 46 percent in May 2023.

10. From my site visit it would appear that Clapham High Street and the PSF, although generally appearing as a busy and vibrant town centre, has a number of vacant retail units. As such, it would appear to be experiencing the long term effects of commercial and societal shifts away from traditional models of retailing and the lasting effects of the Covid Pandemic. These are well documented effects that are affecting the vitality and viability of town centres across the country.
11. The Framework recognises the challenges that town centres are facing, with Paragraph 90 of the Framework setting out that town centres should be allowed to grow and diversify in a way that can respond to the rapid changes in the retail and leisure industries, allowing a suitable mix of uses and reflect their distinct character.
12. The appellant has drawn to my attention instances of changes of use in the PSF from Class E retail use to banks and nail bars, and Class E also allows for permitted changes within the class that provide for a wide variety of types of retail such as to Gyms. These are evidently changes that support the continued vitality and viability of Clapham High Street and the PSF as envisaged by the Framework and the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.
13. Although the proposed Sui Generis use as an Adult Gaming Centre is not a retail use, I find that it is a leisure use of the type more usually found in retail and town centres. As such, it would represent a diversification of uses in town centres envisaged by the framework. Further, the proposed shopfront and associated signage would also reflect the character of Clapham High Street and the PSF.

Quality of life and community cohesion

14. The Council have raised the issue of noise and disturbance as a result of the proposed change of use. It would appear from the material before me that these concerns relate solely to users of the proposed AMG causing noise and disturbance in the vicinity of the unit, rather than noise and disturbance from the unit itself.
15. The proposal is for an AMG that would be open 24 Hours. I note that the premises would not be licensed for a sale of alcohol. Whilst the proposal would involve customers entering and existing the premises throughout the 24 hours that is proposed to be open, this would be within the context of a busy high street and active transport corridor with night bus stops. As such I do not find that the level of noise and disturbance related to street activity that would be generated by the scale of the proposal would inherently result in greater noise and disturbance than that already to be found in the street during a 24 hour period.
16. The Council have also raised the issue of community safety with reference to street based crime, particularly the potential for conflict between late night users of the proposed AMG and women along Clapham High Street. I note that

the Council's consultation with the Design Out Crime Officer (Metropolitan Police) suggested a Secure by Design condition related solely to the security of the premises.

17. Whilst I acknowledge the concerns raised by the Council and consultees with regard to the potential effect of the proposed AGC on local crime, public safety, and to women in particular, there is nothing in the information before me that demonstrates that the users of the AGC would inherently constitute a greater risk in this regard than other members of the public using Clapham High Street or the PSF at any time of the day. Further, the council have not provided any formal material relating to any previous or existing issues that they are aware of, that would lead me to conclude that they would be amplified by allowing the change of use.
18. It is important to note that the licensing of AGC's provides, separately from the planning system, for changes to hours of operation, suspension or revocation of licences, and is intended to respond to clearly documented need for such intervention by the licencing authority.
19. Whilst the proposal does not accord with Policy PN5 (B) of the Lambeth Local Plan 2020-2035 (the Local Plan), requiring 50 percent of the ground floor units in the PSF to be in retail use, I find that it accords with Policy ED7 of the Local Plan and Section 7 of the Framework, which collectively seeks to ensure the predominant retail function and viability and vitality of town centres. In particular, paragraph 90 of the revised Framework seeks to allow town centres to grow and diversify in a way that can respond to the rapid changes in the retail and leisure industries, allowing a suitable mix of uses and reflect their distinct character. In this instance, I have given great weight to the revised Framework, and less than substantial weight to Policy PN5 of the Local Plan which predates it.
20. Further, for the reasons given above, I find that the proposed change of use would not result in any significant harm to the quality of life and community cohesion within the wider area. As such, the proposed change of use would accord with Policies Q2 and Q3 of the local plan and Paragraphs 94 and 135 of the Framework. These collectively seek development that secures public amenity from noise nuisance and that create places that are safe and inclusive. Particularly where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. Lack of harm in this instance is a neutral factor in my considerations.
21. For the reasons given above, I find that the proposed change of use of the appeal unit (Use Class E) to an Adult Gaming Centre (Sui Generis) would result in a public benefit by providing a town centre use in a location that would contribute to the vitality and viability of this town centre location. I find that this public benefit outweighs the harm of the reduction in units in Class E in the PSF, notwithstanding that this is currently slightly below the 50 percent required by the Local Plan.

Appeal A: Conditions

22. As I have found that the proposal as applied for is of public benefit and would not result in harm to the quality of life or community cohesion and resilience of the wider area, the appellants suggested condition limiting the hours of

operation is not necessary, and would not, therefore, comply with the provisions of the Framework.

23. The council have suggested conditions to be applied to a planning permission should I be minded to allow this appeal. These included pre-commencement conditions. I find that there are no exceptional circumstances that would require any pre-commencement conditions in this instance, and that compliance conditions satisfy the requirements. Along with the standard condition on the timing of implementation of the condition, and in the interests of clarity and I have attached a condition requiring compliance with approved plans.
24. In the interest of the protection of local amenity I have attached a condition requiring compliance with the recommendations and management procedures set out in the submitted Noise Report, which includes details on management measures, including security, noise levels and attenuation. I have also attached a condition requiring security measures in accordance with the principles and objectives of Secured by Design.
25. Appeals B & C relate to the provision of a shop front and internally illuminated fascia and projecting signs respectively. In both appeals the reason for refusal in the Council's decision notices solely relate to the refusal of the change of use to which Appeal A relates. As I have allowed Appeal A subject to the above conditions, there are no longer any outstanding issues relating to the refusals by the Council. For this reason, I find that the proposed shop front and associated signage would not result in any significant harm.

Appeal B: Conditions

26. I have not included the Council's suggested condition requiring that the proposal should have a shopfront through which internal activity can be seen from the street. I find that would not be inherently necessary for the proposed shopfront to maintain the visual continuity of the of the commercial frontage or the future viability or vitality of the Clapham District Centre, where a variety of shop fronts with widely differing external expressions are evident. Along with the standard condition relating to the timing of implementation, and in the interests of design quality, I have attached conditions requiring compliance with approved plans and making good to match existing materials.

Appeal C: Conditions

27. In the interests of highway safety and the character and appearance of the streetscene of the local area, I have attached a condition requiring that the level of illumination of the lighting of the proposed advertisements will be controlled by a light sensor and to not exceed 500 CD/SQM during the hours of darkness.

Conclusion

28. **Appeal A** is allowed.
29. **Appeal B** is allowed.
30. **Appeal C** is allowed.

Victor Callister

INSPECTOR

Schedule of Conditions

APPEAL A Ref: APP/N5660/W/23/3329529

- 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 plan: 870-PL-10.
 - 3) The development hereby permitted shall at all times be operated in compliance with the recommendations and management procedures set out in Noise Report prepared by Archco Consulting, dated 7 September 2023, Ref: PR2001_132_Final.
 - 4) The development hereby permitted shall incorporate security measures to minimise the risk of crime and to meet the specific security needs of the development in accordance with the principles and objectives of Secured by Design.
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APPEAL B Ref: APP/N5660/W/23/3329534

- 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: 870-PL-12 and 870-PL-11.
 - 3) Except where indicated otherwise on the approved plans new external works and finishes and making-good shall match the existing original adjacent materials and their finished appearance.
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APPEAL C Ref: APP/N5660/Z/23/3329528

- 1) To ensure that the maximum luminance level of the advertisements hereby approved shall not exceed 500 cd/sqm during the hours of darkness the intensity of illumination shall be controlled by a light sensor and dimming mechanism.