



Appeal Decision

Site visit made on 19 April 2024

by P D Sedgwick BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13.05.2024

Appeal Ref: APP/P4605/W/23/3328966

750 Bristol Road South, Northfield, Birmingham, B31 2NN

- 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 I Miller on behalf of Luxury Leisure against the decision of Birmingham City Council.
 - The application Ref 2022/09551/PA, dated 21 December 2022, was refused by notice dated 28 April 2023.
 - The development proposed is Change of Use from Class E Commercial, Business and Service to Sui Generis Adult Gaming Centre (AGC).
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Decision

1. The appeal is allowed and planning permission is granted for Change of Use from Class E Commercial, Business and Service to Sui Generis Adult Gaming Centre (AGC) at 750 Bristol Road South, Northfield, Birmingham, B31 2NN in accordance with the terms of the application, Ref 2022/09551/PA, dated 21 December 2022, and the plans submitted with it, 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: Location Plan and drawing no 006.
 - 3) The premises shall only be open to customers between the hours of 0800 and 2200 hours, Mondays to Sundays.
 - 4) A scheme for the provision of a network of closed circuit television cameras, including the proposed location of the cameras, mounting columns, proposals for the use and management of the system and proposals for its installation shall be submitted to and approved in writing by the Local Planning Authority prior to occupation. The CCTV system shall be installed in accordance with the approved details prior to first occupation and thereafter maintained.

Application for costs

2. An application for costs was made by I Miller on behalf of Luxury Leisure against Birmingham City Council. This application is the subject of a separate decision.

Preliminary Matters

2. I have taken the description of the proposal in the banner heading above from the Council's decision notice as it removes some of the superfluous wording given on the planning application form.
3. The address on the planning application form was given as 750-752 Bristol Road South. However, it is clear from the location plan that the appeal relates to No 750 only. I have therefore used that address in the banner heading above, which is consistent with the address used in the Council's decision notice and on the appeal form.

Main Issue

4. The main issue is the effect of the proposed development upon the viability and vitality of Northfield district centre.

Reasons

5. The appeal property is one of two adjoining vacant retail units which were previously occupied by a chemist. It is set back behind a wide pavement in a parade of shops within the designated primary shopping frontage of Northfield, which is identified as a district centre in Policy TP 21 of the Birmingham Development Plan (2017) (BDP). There is a mix of uses within the parade including a solicitor's office, a barber's shop, a hot food takeaway, a convenience store, and another adult gaming centre (AGC). The surrounding area contains a wide range of shops sufficient to meet the day to day needs of local residents and includes a shopping centre close to the appeal site.
6. Policy TP 21 identifies centres as the preferred location for a range of uses which contribute to the vitality of centres and supports proposals which bring vacant buildings back into use. According to the appellant, the appeal property has been vacant for several years. The unit and its adjoining neighbour, No 252, are currently shuttered and share a blank fascia resulting in a dead double frontage. Bringing the unit back into use would enliven the frontage, increase footfall, and provide employment and thus improve the vitality and viability of the centre. The Council's Officer Report notes that its use as an AGC is appropriate to the location and would help retain economic investment in the area.
7. The Council's recent retail survey data indicates that, despite the proposal leading to the loss of a retail unit, Northfield would retain more than 55% ground floor retail units within the Primary Shopping Area, the threshold set out in Policy TP24 of the BDP to protect the retail function of centres. Overall, I conclude that the proposed development would not harm the vitality and viability of Northfield district centre or undermine its retail role and there would, therefore, be no conflict with Policy TP21 of the BDP and the National Planning Policy Framework (2023) which seek to maintain the vitality and viability of centres.

Other Matters

8. Representations made by local residents, the local MP, a local Councillor and business representatives raised concerns about the potential for increased crime, anti-social behaviour and gambling addiction and the effect of the proposal on the character of the area and residential amenity.

9. Whilst the courts have held that the fear of crime and adverse effects on health can be a material consideration there must be some reasonable evidential basis for that fear. According to the West Midlands Police, crime incidents recorded within the vicinity of the appeal site could not be attributed to the existing AGC's. Nonetheless, they raised concerns regarding operating hours and security measures. Most of these were addressed by the appellant in a letter providing details of the Company's security and social responsibility provision and the West Midlands Police subsequently confirmed they have no objection to the proposal, subject to details of security measures, such as CCTV, being provided and restrictions on opening hours, which can be conditioned.
10. The appellant initially agreed to limit opening hours to no later than midnight but has stated they now wish to open 24 hours and provided examples of appeals in which the Inspectors chose not to restrict opening hours¹. However, in both cases the appeal properties were in town centre locations with 24 hour uses in the area, which is not the case in Northfield. Examples of other Council decisions allowing AGC's to operate 24 hours, provided by the appellant, were in Birmingham City Centre where there are other 24 hour uses and Acocks Green which although a District Centre according to the Council had no residential uses close by.
11. As there are residential properties above the shops within the parade in which the appeal site is located, the examples provided by the appellant are not directly comparable to the appeal proposal. Customers entering and leaving the premises throughout the night would cause noise and disturbance to nearby residents. I also note that other gambling establishments near the appeal site have restricted opening hours and I therefore consider it reasonable to impose a condition with similar restrictions.
12. No evidence has been provided to me that existing gambling establishments within the area have led to an increase in problem gambling or deprivation which might be made worse by the proposal and therefore warrant withholding planning permission on the grounds of its effect on health and wellbeing.
13. Betting shops and AGCs are a feature of High Streets. Although there is another AGC a few doors down from the appeal site and a betting shop opposite they are surrounded by other shops and businesses. In my view, the proposal would not therefore lead to an overconcentration of gambling establishments, or non-retail development, such that it would harm the character of the area.

Conditions

14. I have had regard to the conditions suggested by the Council. In addition to the standard time limit condition, a condition specifying the approved plans is necessary to provide certainty. A condition restricting opening hours is necessary to safeguard the living conditions of neighbours and a condition regarding the installation of CCTV cameras is necessary to safeguard against crime and antisocial behaviour.

Conclusion

15. For the reasons given above I conclude that the appeal should be allowed.

¹ APP/B0230/W/20/3256275 and APP/B4215/W/23/3316418

P D Sedgwick

INSPECTOR