



Appeal Decision

Site visit made on 25 March 2024

by C Livingstone MA(SocSci) (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2024

Appeal Ref: APP/N5090/W/23/3328090

214 Station Road, The Hale, Barnet, Edgware HA8 7AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Chongie Entertainment Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/1247/FUL.
 - The development proposed is change of use from restaurant/takeaway (sui generis) to adult gaming centre (sui generis).
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Decision

1. The appeal is allowed, and planning permission is granted for change of use from restaurant /takeaway (sui generis) to adult gaming centre (sui generis) at 214 Station Road, The Hale, Barnet HA8 7AR in accordance with the terms of the application, Ref 23/1247/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments.
3. The Council has referred in its decision to policies within Barnet's Draft Local Plan (BDLP). I note that the draft plan is at Regulation 24 stage and the policies referred to in the delegated report, TOW03 and TOW04 have been subject to suggested modifications by the Inspector. The main parties have been invited to comment on the recommended modifications to each policy.
4. The BDLP is at examination stage and may be subject to additional modifications. Further, although the BDLP is at an advanced stage and is a material consideration, at the current time it does not form part of the statutory development plan. As such I give it only limited weight in my assessment of the appeal.
5. The Appellant has suggested amended hours of operation to address concerns raised by the Council, closing at 2am and opening at 7am rather than opening for 24 hours a day. As the restriction of opening hours could be applied via condition accepting this change would not cause any procedural unfairness to any parties.

Main Issues

6. The main issues are:

- the effect of the proposal on the vitality and viability of Edgware town centre;
- whether the proposal would be likely to increase opportunities for crime, disorder and antisocial behaviour (ASB) in Edgware town centre; and
- the effect of the proposal on the living conditions of the occupants of neighbouring properties with particular regard to noise.

Reasons

Effect on town centre

7. The appeal site is located on the primary shopping frontage in Edgware town centre. The building reflects others in the area and comprises of a hot food takeaway on the ground floor with residential accommodation above. The frontage comprises a variety of retail and commercial uses.
8. The appeal seeks to convert the ground floor to an adult gaming centre (AGC). Policy DM11 of Barnet's Local Plan (Development Management Policies) Development Plan Document 2012 (DMP) seeks to support the continued vitality and viability of town centres and avoid retail uses falling below 75% and the over-concentration of similar uses which detract from the retail function of the town centre. Given the current use, the proposal would not result in the loss of a unit in retail use.
9. While there are notable differences between AGCs and betting shops in terms of how they are managed and the type of gambling that takes place within them, they are similar in that they are both gambling based uses. The Council says that there are three betting shops along Station Road. Policy DM11 does not specify what would constitute an 'over concentration' of similar uses. Based on the evidence before me a relatively modest proportion of units are gambling based establishments. As such, the proposed change of use would not result in the over concentration of similar uses.
10. There is a William Hill betting shop one unit away from the appeal site. While this would result in two similar uses being in close proximity, there is no current policy that restricts the proximity of similar uses, or highlights this to be an indicator of over concentration.
11. For the reasons detailed above the proposed change of use would not have a harmful effect on the vitality and viability of Edgware town centre. The proposal is in accordance with Policy SD6 of the London Plan 2021 (LonP), Policy CS6 of Barnet's Local Plan (Core Strategy) Development Plan Document 2012 (CS) and Policy DM11 of the DMP which seek to support the vitality and viability of town centres avoiding the over-concentration of similar uses and supporting uses that contribute to a healthy evening economy.
12. Policy DM01 of the DMP relates to character and amenity and it is not determinative in my assessment of the vitality and viability of the town centre.
13. Within their delegated report the Council have also assessed the proposal against two policies within the BDLP, TOW03 and TOW04. The Inspector has suggested modifications to both policies, since the Council's assessment of the planning application, and they may be subject to further change. I note that the Inspector has included a modification that removes the requirement for

AGCs to be more than 400m from the boundary of an existing school or youth centre. As an AGC is only accessible to those over 18 I agree with this modification.

Crime and disorder

14. Based on my site visit and the evidence before me there are established shops and businesses that are open in the evening in Edgware town centre. However, there may be less people visiting outside typical opening hours, resulting in a decrease in natural surveillance; which can be a deterrent for crime, disorder, and antisocial behaviour. The 24 hour opening time initially proposed may attract members of the public at all times of the day and night to an area that the Metropolitan Police have described as 'currently generating large volumes of ASB (anti-social behaviour), crime and disorder'.
15. There is no substantive evidence before me to suggest that the use of a building as an AGC would encourage or exacerbate anti-social behaviour. Restricting the hours of operation and closing the AGC at 2am, would reduce the length of time that the business would be open outside of typical opening hours. This would mitigate the potential risk identified by the Metropolitan Police.
16. Further, a condition requiring that the ground floor of the building achieves a Secured by Design Accreditation would ensure that a suitable standard of security for customers is achieved and implemented.
17. For the reasons detailed above the proposal would not be likely to increase opportunities for crime, disorder and ASB in Edgware town centre. The development is therefore in accordance with Policies SD6 and D8 of the LonP, Policies CS6 and CS12 of the CS and Policies DM01 and DM11 of the DMP, which seek to ensure that new entertainment uses do not have a harmful effect on the local area. They also aim, among other things, to enhance town centres through improvements in safety and security, achievement of a safe public realm and aim to tackle crime, fear of crime and anti-social behaviour.

Living conditions

18. There is a residential flat above the ground floor commercial unit. This is typical of Edgware town centre where it is common for buildings to have retail and commercial uses on the ground floor and residential accommodation on upper floors.
19. The submitted Noise Impact Assessment Report calculates that noise transfer between the unit on the ground floor and the first floor flat above would be at a level that would have no observed adverse effect. A degree of disturbance is to be expected for occupants of properties in town centres where the mix of uses can lead to increased footfall and vehicular movements. The proposed AGC was initially proposed to be open 24 hours a day. This would potentially result in patrons entering and leaving the building at all times of the day and night or congregating outside of the building. While there is evidence before me to suggest that there are evening uses within the town centre there are a limited number of 24 hour uses and there is a marked reduction in the number of units that are open in the evening compared to the daytime. As such, the proposal would increase the potential for occupants of neighbouring properties in the area to be disturbed by noise, over and above what would be typically

expected within Edgware town centre in the early hours of the morning; when background noise would be lower.

20. The Appellant has suggested a condition limiting the opening hours of the business to close 2am as detailed above. This would prevent the potential for the disturbance of neighbouring occupants in the early hours of the morning. I am satisfied that the noise mitigation measures proposed in the submitted noise report and amended hours of operation would ensure that reasonable living conditions would be maintained for the occupiers of neighbouring properties.
21. In conclusion the proposal would not have a harmful effect on the living conditions of the occupants of neighbouring properties in terms of noise. The development is therefore in accordance with Policy D8 of the LonP, Policy CS6 of the CS and Policy DM11 of the DMP, which seek to ensure a mutually supportive relationship between surrounding buildings and their uses and do not have a harmful effect on the amenity of local residents.
22. Policy SD6 of the LonP relates to the vitality and viability of town centres and high streets, Policy CS12 of the CS relates to community safety and Policy DM01 of the DMP relates to character and amenity; none of these policies are determinative in my assessment of residential amenity in terms of noise.

Other Matters

23. The protection of vulnerable groups from being harmed or exploited by gambling falls within the scope of the licencing regime and is not a matter that I can consider within the context of a planning appeal.

Conditions

24. The Council suggest four conditions should the appeal be allowed. I have added two additional conditions and edited the conditions suggested by the Council for precision and enforceability. These are accepted by the appellant. The Council raised concerns regarding the suggested closing time of 2am and sought a closing time of midnight. For the reasons detailed above a closing time of 2am is reasonable. I am therefore satisfied that the conditioned opening hours, as well as the other conditions, would meet the tests set out in paragraph 56 of the Framework.
25. In addition to the standard implementation time limit it is necessary to define the approved drawings in the interests of certainty. Conditions are also needed to control the hours of opening and to secure any necessary noise mitigation measures to protect the amenity of nearby residents.
26. I have also included conditions relating to the achievement of a Secured by Design Accreditation in the interests of safety and security and the maintenance of an active frontage to protect the vitality of the town centre.

Conclusion

27. For the reasons given above the appeal should be allowed.

C Livingstone

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 plans: P01 Rev A, P03, Sheet 6 Rev A, Sheet 5 Rev A, Sheet 4 Rev A, Sheet 3 Rev A, Sheet 2 Rev A, Sheet 1 Rev C.
- 3) Prior to the occupation of the development hereby permitted, the mitigation measures detailed in the Noise Impact Assessment Report, 20305.NIA-RPT.01 (dated 30th January 2023) shall be implemented in their entirety and retained as such thereafter.
- 4) The premises shall only be open for customers between the following hours: 07.00 to 02.00 hours on Mondays to Saturdays, and 08.00 to 02.00 hours on Sundays and Public Holidays.
- 5) A window display shall be provided at all times at the ground floor window fronting Station Road and the glass shall not be painted, tinted or otherwise obscured and no furniture, fixings or display wall which may obscure visibility shall be placed within 1 metre of the inside of the glass.
- 6) Prior to the occupation of the development hereby permitted, the ground floor of the building shall obtain a Secured by Design Accreditation. The development shall be carried out in accordance with the approved details and maintained as such thereafter.

**** end of conditions****