



Appeal Decision

Hearing held on 17 September 2024

Site visit made on 17 September 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal Ref: APP/N5090/W/24/3342724

686 High Road, North Finchley, Barnet, London N12 9PT

- 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 East Kent Leasing Limited against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/0750/FUL.
 - The development proposed is the change of use of the ground floor premises from bar/pub drinking establishment use to sui generis adult gaming centre use and minor alterations to the frontage.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor premises from bar/pub drinking establishment use to sui generis adult gaming centre use and minor alterations to the frontage at 686 High Road, North Finchley, Barnet, London N12 9PT in accordance with the terms of the application, Ref 23/0750/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. Prior to the hearing, the appellant submitted two recent appeal decisions for adult gaming centres. As these appeal decisions post-dated the deadline for submitting the appeal statement, it was not possible to submit them at that time. This information is not overly technical, and the parties present at the hearing were able to address it. As such, I am satisfied that it does not cause procedural unfairness nor is it prejudicial to any parties to accept this information and therefore I have had regard to it in reaching my decision.
3. At the hearing, the Council sought to introduce evidence relating to the health impacts of gambling, including detailed figures and statistics. The technical nature of the information meant that it would not be procedurally fair to accept this evidence and could cause prejudice to the appellant and interested parties. For this reason, I did not accept the submission of this additional evidence.
4. In the evidence and at the hearing, there were references to policies within Barnet's Draft Local Plan (BDLP). This is currently at Examination and the Council consulted on main modifications in May-June 2024. I am not aware of any outstanding objections to the relevant emerging policies and given the advanced stage that the BDLP has reached, I afford it significant weight.

5. The Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system in July 2024. The policies that are material to this decision are not subject to any significant proposed changes.

Main Issues

6. The main issues in this appeal are:
- the effect of the loss of the public house on the vitality and viability of North Finchley town centre;
 - the effect of the proposed adult gaming centre on the vitality and viability of North Finchley town centre; and
 - the effect of the proposed adult gaming centre on the health and wellbeing of local residents.

Reasons

Loss of public house – impact on vitality and viability

7. The appeal site comprises a vacant ground floor unit, formerly the Finchley Tavern public house, at the southern end of the busy North Finchley town centre. There is a mix of commercial premises at street level with flats above, and the site lies on the one-way system opposite the bus station and Arts Depot, a creative arts venue. There are residential areas and education facilities close by, outside the town centre.
8. Policy SD6 of the London Plan 2021 (LP) seeks to promote the vitality and viability of London's town centres by encouraging a diverse range of uses that meet needs, including main town centre uses, night-time economy, civic, community, social and residential uses. Policy HC6 of the LP also seeks to protect and support evening and night-time cultural venues such as pubs. Policy HC7 of the LP aims to protect public houses with heritage, cultural, economic or social value unless there is authoritative marketing evidence demonstrating that there is no realistic prospect of this use continuing in the foreseeable future. Emerging Policy CHW04 of the BDLP largely reflects LP Policy HC7.
9. Policy DM13 of the Council's Development Management Policies 2012 (DMP) relates to the loss of community uses. Nevertheless, at the hearing, the Council confirmed that it was not relying on this policy in assessing the proposal and I have no reason to take a contrary view, especially as Policies HC6 and HC7 of the LP are concerned with the loss of public houses.
10. To justify the loss of the public house under development plan policies, the Council asserts that effective marketing should be carried out. The supporting text to Policy DM11 in the DMP requires at least 12 months active marketing for rent and sale for changes of use from retail uses in certain circumstances. The appeal site has been vacant since April 2023 which is considerably less than the site at 48 Golders Green Road where a proposed adult gaming centre was allowed by an Inspector on appeal¹. However, as the premises was previously a public house and not in retail use, there is no requirement under Policy DM11 to provide marketing evidence in this case. Nevertheless, there is

¹ Appeal Ref: APP/N5090/W/21/3270129

reference to the need for at least 24 months marketing as a pub in the supporting text to LP Policy HC7.

11. The appellant carried out freehold marketing of the premises from July-October 2022 and has marketed it on a leasehold basis since December 2022. Despite this, no offers for its continued use as a public house or from the community have been received. I have no reason to doubt the robustness of the marketing, including the asking prices.
12. Concerns from those in the licensed trade include that the premises is too small and unable to compete with the traditional public houses nearby, that the pub needs to be able to offer food but the kitchen is tiny, and that there is no garden. The Viability Study indicates that the property does not generate sufficient income to offer an adequate return to either a tenant or a freehold owner and as such is unviable as a public house. I have no reason to doubt the accuracy of this. Overall, the evidence indicates that there is no realistic prospect of the premises being occupied by another public house operator in the future.
13. Although the marketing was carried out for less than 24 months, this requirement is set out in the supporting text and not the policies. In the round and given the inherent physical constraints and viability issues relating to the public house use of the site, I am satisfied by the authoritativeness of the marketing evidence that has been provided.
14. The Council considers that the use of the premises as a public house has value as a social hub and the Lodge Lane Residents Association asserts that it had cultural value when it was operating as it mainly catered to the area's Irish community. However, a significant number of objections to the proposal indicate local concern about the introduction of a gaming centre and very few express concerns about the loss of the public house. When open, the Finchley Tavern was not used as a live music venue nor as a hub by a local sports team and there was no application to list it as an asset of community value. Therefore, from the information before me, there is inadequate evidence to indicate that the appeal scheme would result in the loss of a public house with community, social or cultural value under LP Policy HC7 or emerging BDLP Policy CHW04.
15. Consequently, I conclude that the loss of the public house would not harm the vitality and viability of North Finchley town centre, including the evening and night-time economy. Therefore, I find no conflict with Policies SD6, HC6 and HC7 of the LP and Policies DM11 and DM13 of the DMP in this respect.

Adult gaming centre – impact on vitality and viability

16. The appeal site is within a secondary shopping frontage on the Council's Policies Map and in the DMP which the Council's Core Strategy 2012 (CS) defines as providing greater opportunities for a diversity of uses. The LP recognises that over-concentrations of some uses in town centres, such as betting shops, pawnbrokers, pay-day loan stores, amusement centres and hot food takeaways, can give rise to concerns including the impact on vitality and viability. Policy DM11 of the DMP requires proposals in secondary frontages to avoid an over-concentration of similar uses which detract from the retail function of the town centre.

17. A Ladbrokes betting shop within the same secondary frontage is separated from the appeal site by several commercial units. There are three other betting shops and an existing gaming centre within North Finchley town centre, most of which are clustered in the northern part of the centre, some distance from the site. Given the separation between the appeal site and Ladbrokes and its distance from the other gaming centre and betting shops, the proposal would not lead to an over-concentration of gambling uses in the secondary frontage or the wider town centre and would not harm its retail function.
18. Although not in the written evidence before me, at the hearing there were references to emerging Policy TOW03 of the BDLP relating to the over-proliferation of certain types of businesses in town centres. The appellant set out how the appeal scheme would meet the criteria in this emerging policy and the Council did not dispute this except in relation to the need for a Health Impact Assessment which I deal with below.
19. CS Policy CS6 seeks to promote successful and vibrant centres and the Council has identified North Finchley town centre as an area with opportunities for regeneration and development. The appeal premises lies within the East Wing key opportunity site identified in the North Finchley Town Centre Framework Supplementary Planning Document 2018 and this is being taken forward through the BDLP. At the hearing, it was indicated that there would be a phased approach to redevelopment, with the Council possibly using compulsory purchase powers, and that there could be future changes to the road layout. For the East Wing site, the Council seeks active ground floor frontages comprising town centre commercial uses with residential above on this southern gateway to the town centre. In addition, policy DM01 of the DMP requires proposals to ensure vibrant streets which provide visual interest, particularly at street level.
20. Gaming centres are a leisure use which fall within the definition of a main town centre use set out in the Framework and the CS, and the Framework directs such uses to town centres. The proposed gaming centre would operate 24 hours a day, seven days a week and the linked trip customer survey indicates that many gaming centre customers also visit other shops and services in centres. The proposal would include a large new glazed shopfront and the Council does not dispute that this would provide an active frontage subject to a suitably worded condition. As the scheme would not lead to an over-concentration of gambling premises which are an appropriate use in a town centre, and given the proposed active frontage, extensive hours of operation and opportunity for linked trips, the proposal would not adversely affect the vibrancy of North Finchley town centre nor be at odds with the Council's future aims for the site and wider area.
21. Consequently, I conclude that the proposed adult gaming centre would not harm the vitality and viability of North Finchley Town Centre and, in this regard, would accord with Policy CS6 of the CS and Policies DM01 and DM11 of the DMP.

Health and wellbeing

22. The LP states that over-concentrations of some uses, such as betting shops and amusement centres, can lead to concerns regarding the impact on mental and physical health and wellbeing. LP Policy SD6 seeks to promote town centres as inclusive hubs and, in relation to the night-time economy, LP Policy HC6

requires boroughs to improve inclusion and address the cumulative impact of licensed premises on health and wellbeing. CS Policy CS6 outlines the need to ensure that entertainment uses do not have a harmful effect on residents and the local area.

23. The development plan policies reflect the Framework which seeks to achieve healthy and inclusive places, and states that planning policies and decisions should take into account local strategies to improve health and wellbeing.
24. The Barnet Joint Health and Wellbeing Strategy (JHWBS) recognises the need to create a healthier place and resilient communities, committing to integrate healthier places into all policies. Both the JHWBS and Barnet's Growth Strategy support the Barnet Healthier High Streets programme which aims to make Barnet a safe, comfortable and inclusive place to shop and spend leisure time.
25. Emerging BDLP Policy TOW03 introduces a requirement for a Health Impact Assessment (HIA) in relation to proposals for adult gaming centres. However, in this instance, the Council did not seek a HIA in respect of the proposal and at the hearing was not able to articulate what this would add to the information already provided by the appellant. Therefore, any breach against emerging Policy TOW03 would not be determinative in this case.
26. The proposed gaming centre would be restricted to those aged 18 and over. It would provide prize gaming machines with a maximum stake of £2. Up to 20% of the total number of machines could allow that stake whilst the others would be lower stakes. There would be no sale of alcohol.
27. The appeal site is within a more deprived part of the Borough where significant numbers of people experience substance misuse and access treatment. It is close to education and community facilities and organisations which support homeless and other vulnerable people. The Council's delegated report includes some evidence that harmful gambling is related to deprivation and health inequalities, and there are concerns that the proposal would increase the risk of harmful gambling for people struggling with addiction, mental health or financial issues.
28. However, the Council issued a licence for the use of the premises as an adult gaming centre in January 2023. In so doing, under the Gambling Act 2005, it must have been satisfied that the proposed use meets several licensing objectives, including protecting children and other vulnerable persons from being harmed or exploited by gambling. The appellant has policies and procedures which promote the licensing objectives, including staff training to assist staff in identifying problem gambling and the 'Think 25' proof of age scheme to ensure that no-one underage is admitted. Given this, there would be sufficient measures in place to ensure that the proposed use would not harmfully affect the health of residents, including young and vulnerable people. Gaming centres are not inherently harmful subject to proper management, and in this respect, they are similar to public houses. In addition, I have found that the proposed scheme would not lead to an overconcentration of gambling uses in the area.
29. Therefore, I conclude that the proposed adult gaming centre would not harmfully affect the health and wellbeing of local residents. As such, it would accord with Policies SD6 and HC6 of the LP and Policy CS6 of the CS where they seek to prevent harmful effects from entertainment uses.

Other Matters

30. The crime officer recommends several measures, including centrally monitored CCTV, security-rated doors, and a system to remotely control the external front door to minimise the risk of crime. This can be addressed by a condition requiring the premises to meet Secured by Design standards. The Metropolitan Police do not raise any concerns for public safety beyond the application site and there is little evidence that the appeal scheme would increase criminal activity or antisocial behaviour in the locality.

Conditions

31. Following the discussion at the hearing, the Council and the appellant provided a revised list of suggested conditions. I have had regard to these and considered them against the statutory tests outlined in the Framework and the advice in the Planning Practice Guidance. I have made minor amendments, where necessary, to ensure that the conditions comply with the relevant tests.
32. In the interest of certainty, I have imposed the standard time limit condition and a condition requiring that the development is carried out in accordance with the approved plans. I have removed references to the Noise Assessment as this is addressed in another condition and to the Waste Management Plan as the plans indicate the proposed bin store arrangements.
33. A pre-commencement condition requiring the provision of a Construction Method Statement is necessary to ensure that measures are put in place prior to development to protect the living conditions of nearby occupiers and to not prejudice highway safety. The appellant has agreed to this.
34. A condition requiring information on how the development would achieve Secured by Design accreditation is required to provide security and minimise the risk of crime. I have also imposed a condition requiring at least 50% of the shop front window to be clear glazed with any displays to allow views in and out of the premises in order to maintain an active frontage. A condition restricting the level of noise emitted from the air conditioning units is necessary to ensure that the development does not harm the living conditions of the occupiers of the flat above.

Conclusion

35. I conclude that the proposal would accord with the development plan and there are no material considerations that outweigh this finding. Accordingly, the appeal is allowed.

A Wright

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: 1:1250 scale location plan and 23001/001/C.
- 3) No site works including demolition or construction work shall commence until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in full accordance with the details approved under this Statement. The Statement submitted shall include the following information:
 - access and egress arrangements within the site, hours of access and security procedures;
 - details of provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials; and
 - details of a community liaison contact for the duration of all works associated with the development.
- 4) Prior to the first use of the development hereby permitted, information shall be submitted to and approved in writing by the Local Planning Authority detailing how the development would achieve 'Secured by Design' accreditation. The development shall thereafter be implemented in accordance with the details as approved under this condition and shall remain in perpetuity thereafter.
- 5) Prior to the first use of the development hereby permitted, at least 50% of the principle shop front window, from the upstand to the upper shopfront surround, shall be clear glazed to be divided vertically, and any displays or advertisements within this section of the frontage must be positioned so that staff or patrons inside the venue can reasonably see out to the pavement and that persons on the pavement outside can see in.
- 6) The level of noise emitted from the air conditioning units hereby permitted shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property. If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

APPEARANCES

FOR THE APPELLANT:

Mr James Pereira	Francis Taylor Building Chambers
Mr Jordan Godden	Godden Gaming Organisation Limited
Mr Andrew Woods	Woods Whur Limited
Mr James Bacon	Murray Commercial Limited

FOR THE LOCAL PLANNING AUTHORITY

Miss Emily Bell	Council of the London Borough of Barnet
Miss Greta Norton	Council of the London Borough of Barnet
Ms Katherine Carr	Council of the London Borough of Barnet
Ms Eva Quille	Council of the London Borough of Barnet

INTERESTED PARTIES:

Councillor Anne Hutton	Borough Councillor for Woodhouse Ward
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