



Appeal Decision

Site visit made on 22 October 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/C5690/W/24/3344539

53 Sydenham Road, Lewisham, London SE26 5EY

- 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 Merkur Slots Ltd (UK) against the decision of the Council of the London Borough of Lewisham.
- The application Ref is DC/24/134565.
- The development proposed is a change of use of ground floor from vacant Class E unit to Adult Gaming Centre (AGC) (Sui Generis) and external alterations to the front of the unit.

Decision

1. The appeal is allowed, and planning permission is granted for a change of use of ground floor from vacant Class E unit to Adult Gaming Centre (AGC) (Sui Generis) and external alterations to the front of the unit at 53 Sydenham Road, Lewisham, London SE26 5EY in accordance with the terms of the application, Ref DC/24/134565, subject to the conditions in the attached schedule.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.
3. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework as published in December 2023, and any reference to paragraph numbers are to this version.
4. The appellant has suggested an amendment to its hours of operation to address concerns raised by the Council. The amendment seeks to operate between the hours of 0900 until 0200 hours Monday to Sunday rather than opening for 24 hours a day, which would accord with the hours granted under a licensing application¹. As the restriction of opening hours could be applied via condition accepting this change would not cause any procedural unfairness to any parties.

¹ Licence issued under Section 164 of the Gambling Act 2005 by the London Borough of Lewisham Ref: GPL116 dated 21st May 2024

Main Issues

5. The main issues are the effect of the proposal on:
- the vitality and viability of Sydenham district centre;
 - the character and appearance of the shopfront and whether it would preserve or enhance the Sydenham Thorpes Conservation Area (STCA);
 - alternative forms of transport; and
 - safety and security

Reasons

Effect on Sydenham District Centre

6. The appeal site is located in Sydenham district centre. Policy DM14 of the Lewisham Local Development Framework: Development Management Local Plan (LDMP), adopted November 2014 seeks to protect shops and the retail function of district centres, of which Sydenham is one. The frontage along Sydenham Road comprises a variety of retail and commercial uses. The proposal would provide an adult gaming centre (AGC) into a currently vacant unit.
7. Unlike bookmakers, AGCs do not operate Fixed Odds Betting Terminals (FOBTs). Whilst AGCs do operate gambling machines these are low stakes machines which I am informed range from 10p to a maximum of a £2 stake. While there are notable differences between AGCs and bookmaker establishments 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.
8. Policy DM14 stipulates that changes of use involving the loss of ground floor level shops will only be considered where all if the following criteria have been met: a) no harm to predominant retail character of the shopping frontage; b) not create an over-concentration of non-retail uses; c) generate a significant number of pedestrian visits; d) occupies a vacant unit; and e) not resulting in adverse effects caused by crime, disorder and anti-social behaviour.
9. With regard to criteria a), c) and d) the proposal would provide a new establishment within a site that is currently vacant and has been for some time. By occupying the vacant unit, the proposal could increase footfall within the area and the proposed use could support diversity and vitality within the district centre, including the night time economy, thereby improving its viability.
10. In respect to criterion b) the Council indicates that there would be an increase in gambling establishments in the area leading to an over concentration of such facilities. During my site visit I noted three bookmakers² within the district centre. The Council also referred to a Bingo Hall and an additional bookmakers both located to the north of the site in Kirkdale. From the information before me these premises appear to be located outside the Sydenham district centre, and as such I have given these premises limited weight.

² Ladbrokes – No 85; Paddy Power – No 89 and William Hill – No 93

11. Policy DM14 specifies what would constitute an 'over concentration' of non-retail uses. Specifically, a break in the retail frontage of 3 or more non-A1³ uses, and less than 70% of A1 uses within the primary shopping frontage. In regard to the first limb, the proposal would not create a break in the retail frontage of 3 or more non-A1 uses.
12. In regard to the second limb, I have not been supplied with figures in respect to whether there are less than 70% of non-retail uses within the district centre. However, based on the evidence before me only a small proportion of units are gambling based establishments. Whilst, I acknowledge there maybe some other non-retail premises in the vicinity, in my view, the proposed change of use would not result in an over concentration of gambling establishments in the shopping parade, as stated in the Councils reason for refusal.
13. In respect to criterion e) concerns have been raised about anti-social behaviour increasing in the area, as a result of the proposal, and it is evident from the third-party representations that anti-social behaviour and crime is a concern locally. I acknowledge that there is anecdotal evidence in respect to violent crimes in the area. However, I am also mindful that this is a proposal for a licenced gambling facility and there is no substantive evidence before me that indicates patrons would be involved in criminal and/or antisocial behaviour.
14. Whilst concerns regarding acts of anti-social behaviour and a fear of crime can be material considerations, in planning terms, the focus has to be the use of the land. Consequently, there must be some reasonable evidential basis. Submissions linked solely to the characteristics of potential patrons would not justify a refusal of permission. The Metropolitan Police Designing Out Crime Officer (DOCO) was consulted on the application, and whilst they raised some concerns in respect to the other sites within London operated by the appellant, there was no objection to the proposal subject to the provision of suitable conditions.
15. I have no doubt that concerns of third parties are real, however there is not a sufficiently robust evidential base before me to conclude that the scheme would result in adverse effects caused by crime, disorder and anti-social behaviour. Nevertheless, I share the Councils concerns that a 24-hour operation would result in the additional footfall at times when most of the other shops and uses in this part of the district centre are closed. As such, it would be more appropriate for the use to cease at 0200 hours in line with the aforementioned gambling licence and would provide an appropriate use for the night time economy. This can be secured by condition.
16. Accordingly, I do not find the proposal contrary to LDMP Policy DM14; Policy 6 of the London Borough of Lewisham Core Strategy (LCS), adopted June 2011; and Policies SD6 and E9 of The London Plan (LP), adopted March 2021 insofar as they collectively seek to ensure essential services are maintained and contribute to the vitality and viability of district centres, supporting convenience retail and securing inclusive neighbourhoods.

³ Classes A1, A2, A3, B1, D1 and D2 are replaced by Class E in Part A of Schedule 2 of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

Character and appearance

17. Given its location in the STCA, I am conscious of my statutory duty arising from Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
18. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
19. The significance of the STCA is principally derived from the architectural and historic interest of the Thorpes Estate, an Edwardian residential development consisting of six roads laid out between 1901 and 1914 by Edmondson and Sons. The STCA has a special character created by the consistency of style and materials of the houses and interesting detailing. The area's character is enhanced by its compact layout of tightly packed houses, small front gardens and tree-lined streets.
20. In 2007 the conservation area was extended to include the parade of shops lining Sydenham Road to the south where the appeal site is situated. These purposely built commercial terraces, are of three storeys plus attics built in red brick with stone dressings, with some having decorative curved Dutch gables at the upper floor. As with the residential properties, the special character is created by the strong cohesiveness and uniformity of the buildings, many of which were built at the same time, possibly by the same developer.
21. Whilst Sydenham Road has a cohesive nature in terms of the materiality and treatments at the upper floor level, the ground floor level has been subjected to various changes over time, and there is a significant variety in terms of the shopfront and signage treatments, detracting from its traditional and consistent nature. Nevertheless, there are several examples of console brackets between the fascia's, along with small stall risers that provide evidence of the original consistent and traditional architectural composition of the buildings.
22. The existing shop front already appears to have been altered from its original design albeit the console brackets have been retained along with the pilasters. However, the proposal before me contains the use of non-traditional materials. The scheme also lacks traditional design elements, such as a stall riser and other details. These factors would neither preserve nor enhance the STCA, adding further discord to the area thus harming the significance of the heritage asset.
23. The appellant draws my attention to two recently approved applications, which relate to permission for an alternative shop front⁴ and advertisement consent for signage⁵ at the appeal site. The approved shop front will reinstate some of

⁴ LB Lewisham Planning Ref: DC/24/136729

⁵ LB Lewisham Planning Ref: DC/24/136730

the more traditional elements with timber incorporated on the door and a small hardwood stall riser. The appellant has indicated a Grampian condition could be attached to any approval, to secure that the alternative shop front approved under permission DC/24/136729 can be delivered before the change of use can commence. I have considered that the use of the negatively worded condition to prevent occupation of the premises until the approved works have been carried out, is an obvious solution to allowing the change of use to occur.

24. The alternative shop front would reflect the evolution of shop fronts in this area and preserves the character of this part of Sydenham Road without causing harm to the historic significance of the STCA. The proposal would have only a very limited impact on the appearance of the building itself or on the wider streetscene and STCA. Furthermore, the architectural design of the existing building and the details of the shop front elevations are in harmony with the surroundings, while the colour scheme for the shop front retains a traditional appearance.
25. The proposal would not detract from the overall quality of the building in the STCA, and I am not persuaded that any material harm to the character or appearance of the STCA would ensue. The proposal would also have the added public benefit of bringing a long-term vacant property back into a viable use. The proposal would therefore not harm the character and appearance of the building itself or the conservation area thus preserving its significance. As such, it is consistent with the relevant sections of LCS policies 15 and 16; LDMP policies DM19, DM30, DM31 and DM36; and LP policy D3, which collectively seek to ensure new development affecting heritage assets conserves their significance and that the design of new development is sensitive to the local context and responds to local character. The proposal would also be consistent with the Framework which amongst other things, seeks high standards of design that would conserve and enhance the historic environment.

Alternative forms of transport

26. LP Policy T6 sets-out that car parking should be restricted in line with levels of public transport accessibility and connectivity, with car free development being the starting point for proposals in well-connected places with higher Transport for London Public Transport Accessibility Levels (PTAL). The appeal site has an excellent PTAL of 6a and is located within walking distance of Sydenham station, with several bus stops in the area and there are some cycle stands along Sydenham Road, thus benefitting from sustainable transport measures.
27. However, the Council indicate that later hours of operation mean that staff and patrons are more likely to use private transport methods, such as the car, particularly when the trains and buses cease operation. The appellant has highlighted that the proposed development cannot provide any off-street car or cycle parking spaces. As such the proposal could increase demand for parking on the street, where opportunities for on-street parking appear limited.
28. At the time of my site visit I observed that many of the on-street parking spaces were occupied, and the surrounding area appeared heavily parked limiting available spaces. However, I noted that there are parking bays along Sydenham Road which prevent parking between 0700 – 1900 hours thus would be available later in the evening and in the early morning hours. Whilst

I have been presented with no information from the appellants regarding a parking stress survey, it is likely that spaces would be available during the early hours, and from the information before me there are no Highways objections to the scheme.

29. As stated, the site is accessible by public transport, cycling and walking and customers would have a choice of alternative means of travel other than the private car. Moreover, staff and patrons' arrivals and departures are likely to be spread across the opening hours and the potential increase in parking pressure would, therefore, be limited. Nevertheless, the provision of a Travel Plan/ Management Strategy requiring details of how the appellant intends to promote suitable places to park and promote alternative modes of transport other than the private car, would be appropriate in this case, given that it could be adapted to meet the Council requirements.
30. For the above reasons, and subject to suitable planning conditions I find the proposal would not cause a significant adverse effect on highway safety and parking provision and would promote more sustainable forms of transport. The proposal would therefore accord with the relevant provisions of LP policies T5 and T6; LCS policy 14 and LDMP policy DM29. It would also accord with paragraph 111 of the Framework which among other things, seeks to provide appropriate parking standards that reflect the accessibility, type of development and availability for public transport.

Safety and security

31. The DOCO highlighted some concerns in respect to the sparse level of detail in the proposed floor plan, and issues pertaining to staff safety. Nevertheless, the DOCO also indicated that the use of suitable conditions could ensure that the proposal meets the Secured by Design (SBD) accreditation. Measures could include security plans, the addition of security rated products, and a security rated internal lobby, which would allow staff to 'vet' customers before allowing secondary access. Subject to conditions, this would accord with the relevant provisions of the Framework; LP policies D3 and D11; LCS policy 11 and LDMP policy DM14 which collectively seek good design to identify the community safety needs, and provision of necessary infrastructure to maintain a safe and secure environment and reduce the fear of crime.

Other Matters

32. A significant number of representations have been made by local residents, a local Councillor and the Sydenham Society at the application and appeal stage. These include, but are not limited to, concerns about the potential for increased crime, anti-social behaviour, impacts of gambling addiction and the effect of the proposal on the living conditions of neighbouring properties with regard to noise and disturbance.
33. As I have highlighted above, limited substantive 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 crime, anti-social behaviour or health and wellbeing grounds. Furthermore, 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.

34. In respect to issues raised on the living conditions of neighbouring residents in the surrounding properties, I have no reason to disagree with the Council, that the proposal would not cause harm to the living conditions of neighbouring residents in respect of matters such as noise and disturbance. Consequently, these other matters do not lead me to a different overall conclusion that the appeal should be allowed.

Conditions

35. The Council has provided a list of suggested conditions that it considers would be appropriate. I have assessed those with reference to the advice in the Framework and Planning Practice Guidance and have amended the wording of some without altering their fundamental aims and added some where relevant. I sought the views of the parties on the conditions, including the appellant's agreement to pre-occupation conditions.
36. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. I have also attached an amended hours of operation condition which would accord with the hours granted under the licensing application.
37. It is necessary to attach a Grampian condition to ensure that the approved shop front is installed prior to the change of use commencing, in order to provide an acceptable visual effect in the interests of preserving the historic asset.
38. I have also attached a condition requiring SBD compliance as it would control security measures and internal organisational protocols in order to deal with additional safety measures for staff and patrons. I have also added a condition requiring the submission of a Travel Plan/ Management Strategy which is intended to mitigate the harm arising from the proposal and, for the reasons given above, is reasonable and related to the appeal before me.

Conclusion

39. For the above reasons, having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Robert Naylor

INSPECTOR

SCHEDULE OF 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 unnumbered drawing entitled Site Plan @1:500 scale and drawing number 886-PL-10 Rev 00.
- 3) The premises shall only be open for customers between the following hours: 0900 - 0200 Mondays – Sundays.
- 4) The change of use hereby approved shall not commence until the shopfront alterations approved under planning permission DC/24/136729 as shown in the approved drawing no. 886-PL-12, have been completed.
- 5) The change of use hereby approved 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.
- 6) The change of use hereby approved shall not commence until details of Travel Plan/ Management Strategy have been submitted to and approved by the Local Planning Authority. This shall include measures to promote the use of alternative modes of transport to the private car, a timetable for implementation and details of the mechanisms for implementation, monitoring and updating. The Travel Plan shall be implemented in accordance with the approved details and timescale and the site shall be operated and managed in accordance with the updated and approved Travel Plan/ Management Strategy including the approved implementation timetable.

END OF CONDITIONS