



Appeal Decision

Hearing held on 26 February 2025

Site visit made on 26 February 2025

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/P4605/W/24/3356275

173-175 Soho Road, Birmingham B21 9SU

- 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 Luxury Leisure against the decision of Birmingham City Council.
 - The application Ref is 2024/03302/PA.
 - The development proposed is for a change of use of the ground and first floor from a retail unit (Class E) to an adult gaming centre (Sui Generis) with first floor associated storage and staff area including external alterations and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of the ground and first floor from a retail unit (Class E) to an adult gaming centre (Sui Generis) with first floor associated storage and staff area including external alterations and associated works at 173-175 Soho Road, Birmingham B21 9SU in accordance with the terms of the application, Ref 2024/03302/PA, subject to the following 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 drawing Nos 3553(C) 01; 3553 (B) 02; 3553 (B) 03 and 3553 (B) 05.
 - 3) The use hereby permitted shall only take place between the following hours: 08:00 – 00:00 (midnight).
 - 4) The level of noise emitted from all plant and machinery at the property shall not exceed 5dB below the existing LA90 background levels and 10dB below the existing LAeq at any noise sensitive premises as assessed in accordance with British Standard 4142 (2014) or any subsequent guidance or legislation amending revoking and or reenacting that standard with or without modification.
 - 5) A scheme for the provision of a network of closed-circuit television cameras, which shall include the location of the cameras and mounting columns, proposals for the use and management of the system and details for its installation shall be submitted to and approved in writing by the local planning authority. The use hereby permitted shall not commence before the scheme has been implemented as approved and shall be retained in that form thereafter.

- 6) Details of the design measures to meet the specific needs of the site and the approved use necessary to minimise the risk of crime and anti-social behaviour shall be submitted to and approved in writing by the local planning authority. The use hereby permitted shall not commence before the details have been implemented as approved and shall be retained in that form thereafter.

Applications for costs

2. An application for costs has been made by the appellant against the Council. This is subject of a separate decision.

Preliminary Matters

3. Although originally the appellant sought for the proposed adult gaming centre to operate twenty-four hours daily, during completion of the conditions contained within the Statement of Common Ground (SoCG) it was agreed between the main parties that it would operate between the hours of 08:00 and 00:00 (midnight) and I have determined the appeal on that basis.

Main Issue

4. The main issue is whether or not the proposal would create a safe environment that promotes positive social interaction with particular regard to the fear of crime and anti-social behaviour.

Reasons

5. The appeal property is currently vacant having previously been used as a bank and is located within a row including a peri peri chicken restaurant, a desert restaurant, a supermarket, clothes shops and a cash generator shop specialising in gold and silver. The peri peri chicken restaurant and the desert restaurant stay open until midnight seven days a week. Although the row of shops and restaurants is set down and back from the main part of Soho Road with a parking area in between, I observed at the site visit that visibility is not significantly restricted between the main road and the row of shops and restaurants.
6. The row of shops and restaurants that includes the appeal site is consistent with the overall character of this part of Soho Road which is a vibrant commercial and shopping area. I observed at the site visit that there is a good mix of uses including banks, building societies, restaurants, supermarkets, specialist wedding shops, clothes shops, takeaways, betting shops, jewellers, pharmacies, dry cleaners, cake shops, money transfer and currency exchange premises, cash exchange shops for gold, silver and gadgets, pawn brokers, hair and beauty salons, solicitors and many other types of use. Above some shops and other uses and alongside roads that link to the main shopping area there are residential dwellings, including houses in multiple occupation. There are also a number of schools, colleges and places of worship within walking distance of the appeal site.
7. The appeal property is in the designated primary shopping frontage within the Soho Road District Centre (SRDC). The SoCG sets out that according to the latest Shopping and Local Centres SPD Monitoring Report undertaken in 2024, 65% of the ground floor units within the SRDC are in retail use. Policy TP24 of the Birmingham Development Plan adopted January 2017 (BDP) indicates that 55% of ground floor units in District Centres should be retained in retail use. The SoCG

sets out that there are no issues identified with regards to the loss of the E class use within this district centre. Given that even with the proposed change of use the SRDC would comfortably exceed the 55% ground floor retail use requirement, I agree with this analysis.

8. I entirely accept, based on the evidence submitted prior to and at the hearing, as well as my own observations at the site visit that the area currently suffers from significant levels of anti-social behaviour. Further I accept the evidence of West Midlands Police (WMP) and other interested parties that the area suffers from a significant level of crime. This is reflected by the fact that the appeal site falls within an area covered by a Public Space Protection Order which aims to curb anti-social behaviour and also WMP have identified it as a crime hotspot and have allocated additional resources to police the area.
9. I also accept that there are many vulnerable adults, including drug addicts, street sex workers and street drinkers who live and frequent the area and who have a tendency to loiter on the street and in other areas. The evidence indicates that this may sometimes be outside existing betting shops, and that loitering can be linked with crime and anti-social behaviour. However, I note that other uses are also highlighted, including Waverhill Park, an area of open space outside South and City College, bus shelters, an off license, a 24-hour supermarket, a bank and a pub. Consequently, I am not sure that any particular type of use can be solely linked to the existing issues but rather it seems to be a problem that affects many parts of the area.
10. I have taken account of the significant concerns expressed by interested parties, including the local Member of Parliament, the City Councillor for the area, Soho Road Business Improvement District, the neighbourhood planning forum for the area and many residents and businesses that the proposed use would exacerbate the existing situation. However, I agree with the Council's position set out at the Hearing that there is insufficient evidence to find that the proposed change of use would result in an actual increase in crime or anti-social behaviour.
11. In reaching that view I have taken account of the information provided by WMP in relation to crime and anti-social behaviour in general as well as the information supplied about incidents and offences at two premises, similar to the appeal proposal, in different parts of Birmingham at Alcester Road South and Warwick Road¹. However, I am not persuaded that the information provides a compelling case that the proposed change of use would result in any direct link to an unacceptable level of crime or anti-social behaviour.
12. I say that because, the figures deal with other premises in different parts of Birmingham and the data lacks sufficient detail to understand what crime or anti-social behaviour had actually taken place. Moreover, of the incidents/call for service only three at Alcester Road South and one at Warwick Road took place during the intended opening hours of the proposed use. Further, the information lacks context as there is no comparison with other uses within the same area and in any event, given that the information for both premises covers a period of nearly three years the level of activity does not appear to be excessively high, and I note that of all incidents/call for service only two involved a 999 call.

¹ 12-14 Alcester Road South B14 7PU & 1105 Warwick Road B27 6RA

13. Case law has determined that fear of crime and anti-social behaviour can be a material consideration. However, there must be some reasonable evidential basis for that fear and the object of that fear is the use, in planning terms of the land². As outlined, there is insufficient evidence to find that the proposed use would result in an actual increase in crime or anti-social behaviour or that the use in general is the type associated with such problems, to justify a reasonable evidential basis for fear of crime and anti-social behaviour.
14. That said, as also outlined above, I accept that the area already suffers from significant levels of anti-social behaviour and crime and that there are vulnerable adults who live in and frequent the area. Therefore, it is understandable that those most likely to be affected, including local residents, local businesses and those that represent them as well as the WMP would be concerned with any potential increase in crime and/or anti-social behaviour linked to the proposed change of use.
15. However, I am satisfied that the proposed adult gaming centre (AGC) would be well managed, and that the appellant has confirmed that they would implement measures to ensure that crime and anti-social behaviour would not become an unacceptable problem. Such measures would include suitably trained staff, the implementation of a CCTV system, implementation of a live monitored hold up alarm system, implementation of strict no under 18 years of age policy, and a no alcohol policy.
16. I have taken account of the concern that although the appellant would be able to effectively manage any issues that take place within the appeal property itself, they would be less able to control what happens outside, which may include people loitering within the vicinity of the appeal property.
17. However, the appellant has considerable experience of managing AGCs across the country and I accept their evidence that loitering outside of their AGCs is not a particular problem and where it has occurred in the past for instance in Tottenham, they were able to address the issue by employing security staff on the door and working proactively with the Metropolitan Police. Given that it would be in the best interest of the appellant to satisfactorily resolve any similar issues at the appeal property, in-order to avoid losing custom, I have no reason to doubt that any loitering or other anti-social issues outside the appeal property would be satisfactorily addressed by the appellant in the unlikely event that they did occur in the future.
18. Further, the addition of a well-managed establishment incorporating the security measures set out above employing specially trained staff would provide further surveillance over an area where there are already two restaurants that stay open until midnight. This may help to alleviate some of the wider crime and anti-social behaviour evident in this part of Soho Road. Moreover, this would help to facilitate a safer environment that promotes positive social interaction and that the proposed AGC would not unacceptably undermine the quality of life or community cohesion. It follows that although younger people would be travelling to and from school and college in proximity to the appeal property, including some students with special needs, I am satisfied that the proposal would not have an unacceptably harmful impact on them.

² Smith v FSS [2006] JPL 386

19. I have been provided with some limited evidence in relation to crime and anti-social behaviour at other AGCs in Birmingham and I accept that the object of the fear of the Council, WMP and other interested parties is the use of the appeal property as an AGC. I therefore have taken account of the fear of crime and anti-social behaviour as a material consideration. However, given my findings as set out above, this matter has insufficient weight to justify dismissing the appeal on that basis.
20. Similarly, I have taken account of the Council's wider concerns about public health and problem gambling, which they point out are linked to economic, social and health issues, including the prevalence of rough sleeping. However, based on the available evidence I am not persuaded that the proposal should necessarily result in problem gambling and consequently these public health concerns do not provide a compelling reason to withhold granting planning permission for the proposed AGC.
21. I therefore conclude that the proposed development would create a safe environment that promotes positive social interaction with particular regard to the fear of crime and anti-social behaviour. Consequently, the proposal would accord with Policy PG3 of BDP which among other things seeks to ensure that new development demonstrates a high design quality that creates a safe environment that designs out crime and that promotes positive social interaction.
22. Moreover, the proposal would also accord with the National Planning Policy Framework (the Framework) which among other things aims to achieve inclusive and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.

Other Matters

23. I have taken account of the fact that the Council refused planning permission for an AGC at 272a Soho Road³ which is located in the same area as the appeal site. Interested parties highlight that the application was refused as it did not comply with Policy PG3 of the BDP and as that site is close by, they consider that I should adopt the same approach and dismiss the appeal.
24. However, unlike the Council in that other case I have found no conflict with Policy PG3 of the BDP. Moreover, as set out above I have found that the proposal would facilitate a safer environment that promotes positive social interaction with particular regard to the fear of crime and anti-social behaviour. It follows that taking account of the available evidence and the particular merits of the case before me I have reached a different decision to the Council and in the circumstances, it is reasonable to do so.
25. I note that in the event that planning permission is granted the appellant would have to apply for and implement a licence under the Gambling Act 2005 which specifically includes a requirement to prevent the proposed use from being a source of crime or disorder or being associated with crime and disorder. Although a separate process, this parallel control provides some reassurance that the appellant would have to fully address crime and disorder as part of a separate licencing regime. Moreover, going forward if in future the proposed use does become an unacceptable source of crime or disorder or is unacceptably associated

³ 2021/09176/PA

with crime and disorder there would be sanctions available under that licencing regime.

Conditions

26. I have had regard to the conditions agreed by the parties taking account of the advice in the Framework and Planning Practice Guidance (PPG) and where necessary I have amended them in the interests of precision and clarity.
27. In addition to the standard commencement condition, a condition is needed to secure compliance with the approved plans for the avoidance of doubt and in the interests of proper planning. Further, to ensure that the living conditions of local residents are protected it is necessary and reasonable to impose conditions to limit opening hours and to control noise levels from plant and machinery. In-order to create a safe environment, it is necessary to impose conditions to secure the installation of a CCTV system and to ensure that measures to minimise the risk of crime and anti-social behaviour are incorporated into the design of the development.

Conclusion

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

S Rawle

INSPECTOR

APPEARANCES

For the Appellant:

Alexander Greaves	Francis Taylor Building, Counsel to Luxury Leisure
Haris Kasuji BA MA MRTPI	Planning Consultant, rrplanning
Philip Coombes BSc (Hons)	Property Consultant, Luxury Leisure
Richard Carr	Regional Operations Manager, Luxury Leisure
Steve Suggett	National Security Manager, Luxury Leisure

For the Council

Jeremy Guise BSc (Hons) Dip TP MRTPI	Principal Planning Officer, Birmingham City Council
Hamzah Rehman BSc (Hons)	Senior Planning Officer, Birmingham City Council
Lucia Hamid LLB (Hons) LLM MRTPI	Principal Planning Officer, Birmingham City Council
Sue Joyce Dip Crime Prevention	Design out crime team, West Midlands Police
Mark Silvester	Design out crime manager, West Midlands Police
PS Samantha Bonehill	Ladywood West Neighbourhood Team, West Midlands Police
PC Sultan	Handsworth Neighbourhood Team, West Midlands Police

Interested Parties

Cllr Chaman Lal	Councillor for Soho and Jewellery Quarter
Rakesh Soni	Soho Road Business Improvement District
Shuranjeet Singh	Soho and Handsworth Neighbourhood Planning Forum

DOCUMENT – submitted at the Hearing

1. Appellant's Cost Application

DOCUMENT – submitted after the Hearing

2. Agreed condition – Designing out Crime