



Appeal Decision

Site visit made on 27 February 2025

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2025

Appeal Ref: APP/T5150/W/24/3350311

67 High Street, London NW10 4NS

- 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 Brent.
 - The application Ref is 24/1331.
 - The development proposed is change of use of the basement, ground and part of the first floor from a vacant unit (Class E) to an Adult Gaming Centre (AGC) (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the basement, ground and part of the first floor from a vacant unit (Class E) to an Adult Gaming Centre (AGC) (Sui Generis) at 67 High Street, London NW10 4NS in accordance with the terms of the application, Ref 24/1331, 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 the following approved drawings: Site Location Plan, Site Plan, 893-EX-001 00-Existing Basement, Ground & First Floor, 893-PL-101 00 Proposed Basement, Ground and First Floor.
 - 3) The premises 67 High Street shall not be open to customers other than between the hours of 08:00 to 23:00.
 - 4) Prior to the first use of 67 High Street as an Adult Gaming Centre hereby approved, a scheme of sound insulation measures shall be submitted to the local planning authority for approval. The insulation shall be designed so that noise from the Adult Gaming Centre use accords with the noise levels specified within BS8233:2014 'Guidance on sound insulation and noise reduction for buildings' in all residential accommodation above the ground floor. The scheme shall be implemented prior to the first use of 67 High Street, and thereafter maintained and retained for the lifetime of the development.

Preliminary Matters

2. The National Planning Policy Framework was updated in December 2024. This does not raise any further implications for the appeal. Where relevant I have referred to new Framework paragraph numbers in my decision.

3. Since the appeal was submitted, the appellant has been granted a Bingo Premises Licence by the Council of the London Borough of Brent. As this stipulates various conditions under other legislation namely the Gambling Act 2005, I have accepted this document and have considered it insofar as it is material to the case.

Main Issues

4. The Council has referred to multiple issues within its first reason for refusal. As the Council did not submit a statement of case, based on the officer report, I have considered the main issues as follows:
 - the effect on the vitality and viability of Harlesden town centre with particular regard to whether the proposal would result in a concentration of similar uses, the appearance of the proposal, and the effect of the proposal on the health and wellbeing of citizens within the locality; and
 - the effect of the proposal on the living conditions of nearby residents with particular regard to noise and disturbance.

Reasons

Vitality and viability

5. The appeal site is located within the Harlesden town centre. It comprises the basement, ground floor and part of the first floor of a vacant commercial unit, located at the end of a substantial and impressive cluster of four-storey buildings. Being located on the corner facing an access road called The Croft, as well as Harlesden High Street, it occupies a prominent position in the primary shopping frontage area. The host building at 67 High Street also houses residential properties at the first floor with residential indicated at second and third floors. The proposal is for an adult gaming centre (AGC) which would be open 24 hours every day with the creation of 6 full time jobs.

Concentration of uses

6. Policy E9 of the London Plan, The Spatial Development Strategy for Greater London, March 2021 (the London Plan) seeks to manage clusters of retail and associated uses having regard to their positive and negative impacts on town centre vitality, viability and diversity. It requires that in Development Plans, Boroughs should set out policies to secure an appropriate mix of shops and other commercial units of different sizes, informed by local evidence and town centre strategies. Policy SD7 of the London Plan advises that borough Development Plans should set out policies for their town centres in light of assessments for town centre uses. Although not referred to in the reasons for refusal London Plan Policy SD6 seeks to enhance the vitality and viability of town centres.
7. In relation to the above, Policy BE5 of the Brent Local Plan 2019 – 2041, February 2022 (the Local Plan) reflects the Policies of the London Plan. It sets specific criteria to prevent an accumulation of betting shops, AGCs and pawnbrokers, with the aim of protecting retail in the Borough's town centres. Local Plan Policy BE5 makes no distinction between primary and secondary shopping frontages in the town centre and does not require marketing of vacant premises.
8. Criterion b) of Policy BE5 states that AGCs will be permitted where they would result in no more than 3% of the town centre frontage consisting of AGCs or

pawnbrokers/payday loan shops. At criterion d) it also refers to a minimum of 4 units in alternative use in-between each. The officer report evidenced does not identify any breach of the parameters in criteria b) and d) and therefore states the proposal is in accordance with Policy BE5.

9. The Harlesden Neighbourhood Plan, 2019 – 2034, May 2019 (the Neighbourhood Plan) describes how Harlesden has the second highest amount of betting office/casino floorspace of the London Boroughs. Although it asserts some non-retail uses are less of an attraction and an over-concentration can lead to a centre being less attractive to shoppers and other visitors, no specific policy has been identified in the Neighbourhood Plan which would require the proposed change of use to be further assessed.
10. However, the Council has indicated that other considerations are relevant in this case. They indicate that there are clusters of similar uses in the north of the town centre and at the corner of the High Street and Park Parade. They have provided a list of a combined total of six AGCs, betting shops and pawnbrokers within 142m of the site. Two of the units are located close to the appeal site but are on the opposing side of the busy High Street. The remaining properties are located around the sharp bend of the High Street or some distance from it with numerous other units and the busy Manor Park Road in between.
11. My observations were that the High Street and all parts of the town centre were busy and the variety of uses were attracting customers during the early afternoon on a weekday up and down the High Street and on both sides of the road. This was despite the vacancy of the unit, its size and position in the primary shopping frontage. I find that the limited visual and physical relationship, afforded by busy roads between the other AGCs, would prevent a noticeable cluster of such uses. From my observations, I am not convinced its presence would be likely to deter people visiting other businesses beyond the appeal site in any direction or at any particular time of day.
12. Whilst the business would not be accessible to under 18s, the Glossary contained in Annex 2 of the Framework identifies that similar uses such as casinos and bingo halls are main town centre leisure uses, which would attract footfall. Even though the Council and interested parties do not consider the footfall survey to be relevant, there would undoubtedly be an increase in footfall compared to a vacant unit. It is also not unreasonable to presume linked journeys, making use of other services provided within the town centre, would also be undertaken.
13. I have also been referred to an appeal decision in a different London Borough¹ (the Islington appeal). I have not been provided with the full details of this appeal site or the other betting shops referred to in that decision. However, setting aside that the Inspector found harm to the health and wellbeing of citizens, a matter which I return to, the circumstances surrounding the views that the proposal would not be acceptable in terms of the vitality and viability of the town centre, were primarily a failure of the proposal to accord with that Borough's development plan on marketing in respect of retaining a critical mass of retail uses.
14. Whilst the proposal would increase the number of non-retail uses, for the reason set out above, I am not convinced it would result in a harmful concentration of similar uses which would harm the vitality of viability of Harlesden town centre.

¹ APP/V5570/W/20/3257308

Character and appearance

15. Local Plan Policies DMP1 and SD7 seeks to ensure that proposals are appropriately located, not compromised in terms of street frontage and thus support the diversity of town centres. The ground floor of the appeal building has an existing shop front which would be retained. However, a display window at ground floor could be provided. In any event, the proposed development would bring a vacant unit back into use and reintroduce an active rather than wholly blank or vacant frontage. Even taking into account the size and position of the unit, the proposal would be no more harmful than another non-retail use which could occupy the unit without planning permission, such as a financial service, which does not necessarily provide a window display.
16. I have been provided with an appeal decision in Derby² of some age which refers to the effect of an AGC on the primary retail frontage. I have not been provided with any substantive details of that proposal or the evidence before that Inspector. I am not persuaded that the circumstance of that appeal are sufficiently similar to the case before me now in order to reach a similar conclusion to warrant withholding permission on this basis. I have considered the appeal proposal on its own merits in the light of the site specific surroundings.

Health and wellbeing

17. The Council has commented that the London Plan asserts particular emphasis to strategic areas for regeneration and Harlesden has been identified as such. The neighbourhood plan advises that the vitality of the town centre is linked with the social as well as economic well-being of the area. I have been referred to Brent's Inclusive Growth Strategy 2019 – 2040 and the Brent Retail and Leisure Study 2018. Although I have not been provided with these documents the Council advise they set out Harlesden is characterised by high levels of deprivation and high unit vacancy rates in the town centre. This is reflected in the Neighbourhood Plan.
18. The Inspector who determined the Islington appeal based their decision on evidence which set out that those living in deprived areas were more vulnerable to gambling related harm and thus needing to avoid the clustering of AGCs and betting shops. However, as far as I am aware, this evidence was specific to that Borough, pertaining from the Islington Retail and Leisure Study, Town Centre Supplementary Planning Document and Local Plan Topic Paper on Retail, Leisure and Services, Culture and Visitor Accommodation. I have not been provided with this information, and whilst I note similar concerns, I cannot be certain that the context of that appeal decision is anything other than of general relevance to the proposal.
19. The evidence before me in this appeal does not provide substantive demonstration that problem gambling is already an issue or any links between deprivation in Harlesden and gambling. Even if there are links, it has not been clearly articulated how this might be increased by the proposal. Nor have I been provided with any regional or national evidence on the links between gambling, poor health or the vitality of the high street.
20. Furthermore, the Council issued a licence for the use of the premises as an AGC in October 2024 under the Gambling Act 2005. Licensing conditions agreed with

² APP/C1055/W/17/3173476

the Council's licensing committee and the Police in relation to CCTV, 'a Challenge 25 Refusals' register, door lock devices, staffing levels, identification of problem offenders, seating, alarms, toilets, signage, staff training, measures to prevent street drinking, and incident logs have been imposed. The appellant is required to abide by these and the operation is subject to reviews, if necessary, under the licensing arrangements.

21. There is no substantive evidence before me either, to suggest that the use of the premises would be detrimental to the health, social and wellbeing of the local population such as through street drinking, anti-social behaviour from lack of facilities or detrimental to the enjoyment of families using the town centre. As such Instances of anti-social behaviour purported to arise from such uses is largely attributable to individuals rather than the proposed use being inherently harmful.

Overall conclusion on vitality and viability

22. Notwithstanding the requirements of policies, which seek to protect the town centre retail uses, the proposal would accord with Local Plan Policy BE5, which specifically seeks to manage a concentrations of AGCs. I have found the proposal would not lead to an unacceptable clustering of similar uses. The proposal would introduce a use which would not deter people from traversing High Street or the town centre, nor would the appearance of the frontage deter visitors. It has not been demonstrated that there are significant gambling problems within Harlesden or that even if there are, the extent by which this would be exacerbated by the proposal. Measure are in place to secure compliance with the licensing regimes which seeks to limit and address instances of anti-social behaviour.
23. On the basis of the evidence before me, I conclude that the proposal would not have a harmful effect on the vitality and viability of Harlesden town centre with particular regard to whether the proposal would result in a concentration of similar uses, the appearance of the proposal, and the effect of the proposal on the health and wellbeing of citizens within the locality.
24. The proposal would therefore be in accordance with Local Plan Policy DMP1 insofar as it seeks to ensure development is of a use and concentration that complements the locality. The proposal would accord with London Plan Policies SD7 and E9. Together these seek to ensure, amongst other matters, that development is safe, secure, reduces the potential for crime, secures inclusive neighbourhoods and provides support for town centres. For similar reasons, the proposal would accord with paragraph 96 of the Framework where it seeks to achieve healthy, inclusive and safe places.
25. The proposal would not conflict with the Brent Design Guide SPD1, November 2018 and the Shopfronts Supplementary Planning Document SPD3, June 2018. Together, insofar as they are relevant to this matter, these seek amongst other things, to provide guidance on shopfront design and to ensure development integrates with its surroundings.

Living conditions

26. The AGC would be open 24-hours a day. There is no substantive evidence that any significant number of surrounding businesses are open for a similar duration or that the night time activity on the High Street is particularly vibrant and dynamic. However, there are residential occupiers nearby, including to the upper floors of

the appeal building and adjacent premises. Occupiers of such properties could be particularly affected by 24-hour activity.

27. Notwithstanding that the Licence was granted for 24-hour use, the licensing regime is separate from that for planning, with different considerations. It is not clear if the considerations go into further detail in terms of analysing the effect on the living conditions which involves other considerations such as the potential for activity and noise.
28. However, the appellant has submitted a Noise Assessment (NA) which concludes that the site would be suitable for a 24-hour operation, subject to a number of mitigation measures being undertaken. Analysis of the internal noise that could be generated has been derived from the appellant's existing operations. However, it has not been demonstrated that the other units are of the same scale as this proposal or would have the same number or type of equipment. I therefore have doubts if the analysis is directly applicable and or whether the proposed mitigation covers the entire site beyond Noise Sensitive Receptor 1 (NSR1).
29. However, mitigation between the separating floors, and entrance door could be modelled and designed to attenuate noise levels and noise breakout from within the unit. This mitigation could be achieved through a suitably worded planning condition, to ensure that noise levels would be acceptable within the first floor units from internal noise generated by the proposal. However it is not unreasonable for a scheme to be submitted to the Council as the evidence is not clear whether the assessment includes the area beyond NSR1 or that the noise environment is the same as the submitted examples.
30. With regard to external noise generated by the proposal, the assessment outlines the findings of surveys undertaken at other AGCs with 24-hour use. It suggests that noise is mainly derived from brief conversations with patrons entering and leaving the premises, and to smoke. The survey identifies most venues have relatively few movements between 00:00 and 02:00. However, this pattern of activity cannot be guaranteed, such that there is no certainty that this would be the case. A 24-hour operation would still allow a constant level of activity due to the arrival and departure of customers, combined with associated noise and potential for congregation and odour from smoking outside the site, at all times of the day and night.
31. There is no evidence before me of more than one other unit with a 24-hour use, or later uses in the area. As such, external activity associated with the proposal beyond the opening hours of surrounding uses would to my mind be unusual in the quietest times of the night and morning when surrounding noise levels would be lower. During these hours, background noise levels, for which no evidence has been provided, would be reduced. In this context such activity would be readily discernible in the immediate area, causing an undue level of disturbance to nearby occupiers. Although based on the purported worst case scenario open window assessment, it is not specific to the host building or neighbouring windows and given the likelihood of smoking outside the units it is not clear if this addresses this element.
32. While the occurrence of louder noise risks each night may be low, single events can cause disturbance, particularly in warmer months when residents are likely to want to open their windows during the night. Accordingly, the proposal could

adversely affect the living conditions of residents above the proposed operation and in the immediate vicinity of the site. Whilst I have carefully considered the appellants suggested closing time of 02:00, even on a temporary basis, this could still result in instances of noise and harm to living conditions.

33. The Council suggested a 22:00 closing time, in the event the appeal is allowed. However, whilst I cannot be certain that a later closing time would be suitable, the site is on a main public transport bus route, with busses and transport likely generating noise and vibrations after 22:00. The nearby takeaways would also be open beyond this time. As such the noise environment and activity would be present and a later opening time beyond 22:00 would not be unreasonable.
34. I am satisfied that internal noise could be mitigated to prevent unacceptable levels of noise and disturbance to neighbouring occupiers. However, it is not clear that the 24-hour operation would not result in unacceptable harm from external noise and activity in the early hours. Therefore, in the absence of substantive evidence to the contrary of surrounding closing times or a noise survey, I am satisfied that the imposition of a condition with a closing time of 23:00 would reasonably maintain the living conditions of the occupiers of nearby homes.
35. For the reasons given above and subject to the imposition of a condition controlling the hours of operation and mitigation, I conclude that the proposal would not harm the living conditions of nearby residents with particular regard to noise and disturbance. The proposal would therefore be in accordance with Local Plan Policy DMP1 where it seeks to ensure development provides a high level of internal and external amenity and complements the locality.

Other Matters

36. The appeal site is within the Harlesden Conservation Area (the CA). The significance of the CA is derived from the traditional layout, architectural quality of buildings and its historic use and communal value as a consequence of the town centre. The appeal site as part of a substantial building contributes towards the significance. As such, I have had regard to the special duty placed on decision makers in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
37. I note the Council does not consider that the proposal would be detrimental to the character or appearance of the CA. For the above reasons I see no reason to disagree with this. There are no external changes to the shop front, within this appeal. Therefore as I have found that there is no evidence a window display would not be maintained the proposal would not be detrimental to the CA and thus preserve its significance.

Conditions

38. I have imposed the standard time condition. A condition requiring compliance with submitted plans is necessary for the avoidance of doubt. A condition for opening hours is necessary and imposed for the avoidance of doubt and to protect the living conditions of nearby residents. A condition requiring a scheme for the sound proofing measures is also necessary to protect the living conditions of residents in the units above. I have noted the appellants concerns regarding the opening hours and mitigation conditions suggested by the Council. I have set out in my reasoning above, why I consider they are necessary. I have not imposed the Council's

suggested condition on window displays as there is no substantive evidence that the frontage of the premises would not be suitably maintained.

Conclusion

39. The material considerations do not indicate that a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be allowed.

K Williams

INSPECTOR