



Appeal Decision

Site visit made on 27 February 2018

by J P Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 09 May 2018

Appeal Ref: APP/T5150/W/17/3189944

9A Walm Lane, Willesden Green, London NW2 5SJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Future Leisure Limited against the decision of the Council of the London Borough of Brent.
 - The application Ref 17/3472, dated 8 August 2017, was refused by notice dated 28 September 2017.
 - The development proposed is change of use from pay day loans establishment to adult gaming centre (both sui generis use).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from pay day loans establishment to adult gaming centre (both sui generis use) at 9A Walm Lane, Willesden Green, London NW2 5SJ in accordance with the terms of the application, Ref 17/3472, dated 8 August 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The shop window of the premises shall contain a retail window display.
 - 3) Customers shall only be permitted on the premises between the following hours: 1000 - 2000.
 - 4) No amusement only machines/games shall be installed at the premises.

Application for costs

2. An application for costs was made by Future Leisure Limited against the Council of the London Borough of Brent. This application will be the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposal on the vitality and viability of Willesden Green Town Centre, with particular regard to safety, security, anti-social behaviour and crime.

Reasons

4. The appeal premises consist of the ground floor of a mid-terrace property located in the Primary Shopping Frontage of Willesden Green Town Centre. It

- previously operated as a pay day loans shop but has been vacant since June 2015. The site falls within the Willesden Green Conservation Area (CA).
5. It is proposed to use the shop unit as an adult gaming centre (AGC), which would involve some changes to internal layout. It would be an amusement centre comprising gaming machines, with a maximum stake of £2, and offer some ancillary catering and ancillary retail sales.
 6. As stated in paragraph 11 of the National Planning Policy Framework (the Framework)¹, planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.²
 7. Policy DMP 2, 'Supporting Strong Centres', of the London Borough of Brent Local Plan Development Management Policies, November 2016 (DMP) is relevant to the proposal. It says that non-A1 or A2 uses will be permitted within town centres where: it would not reduce the proportion of frontage in A1 and A2 use to less than 65% of the primary frontage; or if vacancy rates exceed 10% of primary frontage it would not reduce the proportion of frontage in A1 and A2 use to less than 50%; and the proposal provides, or maintains, an active frontage.
 8. As the previous use and proposed use are both sui generis, there would be no reduction in the proportion of frontage in A1 or A2 use. It is not suggested that the second criteria concerning vacancy rates is relevant. In terms of an active frontage, the submitted 'Existing and Proposed Floor Plans' and the Design and Access Statement indicate that a window display with goods for sale would be incorporated into the existing shopfront. The appellant submits that such a retail window display would compare favourably with those of shops and non-retail uses in the area and that it could be secured by condition. The Council has suggested such a condition and is satisfied that the proposal complies with DMP policy DMP 2. I see no reason to disagree with that assessment.
 9. DMP policy DMP 3 'Non-Retail Uses' states that betting shops, adult gaming centres and pawnbrokers will be permitted where it will result in: no more than 4% of the town centre frontage consisting of betting shops; no more than 3% of the town centre frontage consisting of adult gaming centres or pawnbroker/payday loan shops; no more than 1 unit or 10% of the neighbourhood parade frontage, whichever is the greater, consisting of betting shops, adult gaming centres or pawnbrokers/payday loan shops; and, a minimum of 4 units in an alternative use in-between each.
 10. The Council refers to a survey of Willesden Green Town Centre carried out on 23 September 2017, which found that there were four betting shops and three pawnbrokers but no adult gaming centres. The Council's policy team advises that when last reviewed only 1% of the town centre frontage consisted of payday loan shops/pawnbrokers with no adult gaming centres. On that basis the Council considers that the proposal would comply with DMP policy DMP 3.
 11. The Willesden Green Town Team (WGTT), a local community group, refer to five betting shops and three pawnbrokers in the area, which suggests that the number of betting shops may have increased marginally since the Council's

¹ Published March 2012

² s38(6) Planning and Compulsory Purchas Act 2004 and s70(2) Town and Country Planning Act 1990

- survey. However, that minimal change would not affect compliance with the criteria of policy DMP 3 relevant to adult gaming centres. Therefore, I agree with the Council that the proposal would comply with DMP policy DMP 3.
12. WGTT also refer to a lack of diversity in the high street and suggest that such establishments cause long term damage to the vitality and viability of the town centre. However, the Council accepts that the proposal complies with policies DMP 2 and DMP 3 of the DMP. Those policies deal specifically with diversity of uses in town centres and non-retail uses such as betting shops, adult gaming centres and pawnbrokers.
 13. Notwithstanding, the Council submits that the proposal would be contrary to DMP policy DMP 1 'Development Management General Policy'. Amongst various criteria aimed at ensuring acceptable forms of development, criterion 'f' indicates that development will be acceptable if it is '*safe, secure and reduces the potential for crime.*' However, the supporting text to policy DMP 1, which can be used as an aid to interpretation, says that in seeking to limit the potential for crime the preference is through good design. Although it also refers to 'use' as a consideration, it is clear from DMP policy DMP 3 that 'use' as an AGC is considered acceptable in town centre locations, provided that there is no over-concentration of betting shops, AGCs and pawnbrokers/payday loan shops, which that policy controls.
 14. At the outset, it is appropriate to clarify the following matter: The Council Officer's Report suggested that the AGC would include 'Fixed Odds Betting Terminals'. However, the appellant advised that such machines, which I understand allow stakes of up to £100 per play, are not permitted in AGCs. That fact has since been accepted by the Council and they have not disputed the appellant's advice that the fruit machines that would be within the AGC are subject to a strict legal code which allows 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.
 15. The Council refers to the number of objections that it received including from its own Licensing Manager, Brent Police Licensing Unit, WGTT and other groups and local residents. I appreciate that the proposal has raised local concern.
 16. Brent Police Licensing Unit says that children and vulnerable persons must be protected against the harmful impact of betting and gambling, which is a licensing objective. Similarly, the Council's Licensing Manager refers to the harmful impact of AGCs on children and vulnerable persons (such as those with mental health issues). In particular the proximity of various facilities which provide accommodation and/or support to vulnerable persons, including those with mental health issues and addiction problems, is referred to by those consultees and other objectors.
 17. With regard to the impact on children, there is a statutory requirement to exclude under 18s from AGCs. The appellant advises that it operates 3 similar premises in the north London area where appropriate management and supervision by trained staff ensure compliance with that legal requirement. Ultimately, failure to exclude under 18s would be an enforcement issue to be dealt with by the relevant licensing authorities. It would not be appropriate to reject a planning application for a legitimate form of use on the basis of an assumption that the premises would not be run in accord with the relevant statutory regulations.

18. Risks to problem gamblers, young people and other vulnerable persons, would be more directly relevant to licensing and management functions. As acknowledged by the Council, planning and licensing are separate functions with different procedural and policy frameworks. The Gambling Commission sets out the Licence Conditions and Codes of Practice (LCCP), which are applicable to operators of AGCs. Monitoring and enforcement is undertaken by local authority licensing officers and the Gambling Commission's licensing officers. It is that regulatory, licensing and enforcement framework which is intended to enable safe gambling as a leisure activity whilst protecting children and vulnerable persons and ensuring that there is no association with criminal activity.
19. The Council's Licensing Unit suggests that *'once the change of use is granted then, under the Gambling Act, the licensing Authority must grant the application with conditions unless we can prove there is serious crime (such as money laundering) taking place.'* However, the appellant has provided a copy of the Council's 'Statement of Principles 2016-2019 Under Section 349 Gambling Act 2005' (SoP)³ which indicates that the Council has a broad range of discretionary powers in regulating gambling through its licensing function.
20. The appellant accepts that there are various facilities and accommodation for vulnerable people in the area. The appellant advises that of those, Abbots Hotel, near the junction with Walm Lane, is close to the appeal premises and that the Star Hotel at 132 Chatsworth Road is about 300 metres away. The hostel at 247 Chatsworth Road is some 900 metres away with the homeless centre at 115 Pound Lane in the region of 1200 metres away. There whilst in the general area, a number of those facilities are not in immediate proximity.
21. A Samaritans charity shop is sited next door to the premises. It is suggested by Brent Police Licensing Unit that vulnerable persons visit the charity shop. However, charity shops in a high street are likely to attract a range of shoppers. In any event, vulnerable persons are likely to visit a range of premises across the town centre and along Walm Lane, which is a busy shopping area. Therefore, a charity shop would not, of itself, attract vulnerable people to a location where they would not otherwise be.
22. Whilst other facilities assisting vulnerable persons have also been referred to, the appellant advises that they are closer to other existing AGCs in the wider area than to the appeal site. Furthermore, no evidence has been submitted to suggest that the situation in Willesden Green is unique or rare in those respects compared with many other similar town centres location across London and the country, which also have vulnerable persons within their populations who are likely to frequent shopping centres.
23. The objections express a generalised concern about the effect of betting and gambling facilities on vulnerable people. Reference is also made to AGCs attracting street drinkers, causing nuisance to local residents. However, the fact remains that local and national planning policies allow 'uses' such as betting shops, AGCs, pawnbrokers/payday lenders, public houses and off-licences, subject to regulatory control. Such establishments are common features of high streets and shopping centres up and down the country, some of which are also likely to have similar types of facilities for vulnerable people nearby.

³ January 2016

24. In its consultation reply the Council's Licensing Unit refers to research undertaken by Barking & Dagenham Council which it says found that demographics, the proximity of schools and colleges to betting shops, local mental health problems, the presence of homeless shelters, food banks and pay day loan shops all contribute to gambling addictions. WGTT refer to a study published in the British Medical Journal in 2005 which identified links between gambling, alcohol abuse and mental health disorders. WGTT also refer to strong evidence of a link between gambling addiction and criminal activities, including theft and fraud, although no copies of the relevant research papers have been submitted in evidence.
25. Whilst such associations may exist, ultimately it is for national government to consider appropriate policy in relation to such major social issues affecting communities across the country. However, national and local planning policies do not proscribe such uses. Rather, national government seeks to regulate gambling, alcohol sales and pay day loans by other statutory methods, including licensing regimes.
26. Moreover, if such general social concerns about harmful effects and alleged links between gambling, alcohol abuse and mental health disorders were accepted as a sound basis for rejecting planning applications for such uses, it is unlikely that planning permission would be given for any betting shops or AGCs or indeed other types of premises, such as pawnbrokers/payday lenders, off-licences, public houses or takeaways.
27. Furthermore, the Council's DMP policy DMP 3 accepts betting shops, AGCs and pawnbrokers/payday lenders within town centres, provided that there is not an over-concentration of such non-retail uses within any single length frontage, as explained in paragraph 3.8 of its supporting text. It is also apparent from paragraph 3.9 that, in preparing the DMP, the Council was cognisant of the Framework's requirement that local planning policies should take account of and support local strategies to improve health, social and cultural wellbeing for all.
28. Although the Council accepts compliance with DMP policies DMP 2 and DMP 3, it refers to conflict with London Plan (LP)⁴ policy 2.15, with particular regard to part C, subsection f, which indicates that development proposals should '*promote safety, security and lifetime neighbourhoods.*' That relates to issues similar to those referred to in DMP policy DMP 1 criterion f, already cited.
29. However, the Council does not clearly explain or evidence in what specific way the proposed AGC would fail to meet those requirements. The proximity of facilities for vulnerable groups would not, of itself, justify withholding permission, given that the Council's DMP and relevant statute accepts AGCs as a legitimate form of planning use, albeit that they are also subject to a separate licensing and regulatory regimes.
30. Moreover, vulnerable persons in the area would, whether the proposal was approved or not, still have access to betting shops, off-licenses, public houses, pay-day lenders and pawnbrokers as they would in many high streets across London and the country. As the Council advise that there are no AGCs in the town centre, on the basis of the evidence presented, it is not apparent why the introduction of one such establishment should undermine safety, security, or

⁴ March 2016

- promote criminal activity. The Council's Licensing Unit states that AGCs attract street drinkers, as alcoholic drinks cannot be consumed within the premises, which would cause a nuisance to local residents. However, no specific evidence is provided to support that assertion. The Council also has other powers to control street drinking.
31. The Council's decision notice refers to the 'use' giving rise to the 'perception of crime'. I have not been directed to a specific local or national planning policy which seeks to control the perception of crime. Given that the Council's own DMP accepts AGCs as a legitimate use, I afford that alleged harm little weight.
 32. Limited evidence has been submitted by the Council to support its contention of a relationship between gambling venues and crime or anti-social behaviour. However, the Council's SoP, supplied by the appellant, refers in paragraph 5.2.1 to reports of anti-social behaviour and crime in connection with some gambling premises. However, it is not clear if they concerned AGCs or other types of establishment. In any event, that information is presented in the context of the Council's licensing function, which is separate from the planning process. Moreover, given that the SoP is dated January 2016, it predates the DMP adopted in November 2016. Therefore, the Council was aware of that information prior to its adoption of policies relating to town centre planning uses which accept AGCs.
 33. The Council also refers to conflict with other elements of LP policy 2.15 in part D, subsections 'c3' and 'd', which refer to meeting '*local community needs*', '*strengthening the offer of the centre as a whole*' and encouraging '*community engagement, town centre management, partnerships and strategies including business improvement districts to promote safety, security, environmental quality and town centre renewal.*' However, part D of LP Policy 2.15 is intended to advise London Boroughs what their Local Development Frameworks should do. The Council has recently adopted its DMP which forms a central plank of its Local Plan (i.e. its Local Development Framework), where policies DMP 2 and DMP 3 articulate its approach to town centres and non-retails uses. In any case, the Council does not make clear why an AGC would conflict with those objectives.
 34. The Council further maintains that the proposal would conflict with LP policy 4.8, paragraph B part g, which advises that local planning authorities should '*manage clusters of uses having regard to their positive and negative impacts on the objectives, policies and priorities of the London Plan*' including a centre's broader vitality and viability, community safety and security and its role in promoting health and well-being.
 35. The Council Officer's report simply says that the presence of a gaming centre would conflict with those aims without providing any detailed analysis. The appellant advises that there are a number of existing AGCs in other locations across the borough. However, no compelling evidence has been presented by the Council or the objectors to show that this location differs from other town centres or that there is a direct causal link between AGCs, with low stake fruit machines, and problem gambling amongst more vulnerable groups of people or indeed that AGCs facilitate crime.
 36. Moreover, '*managing clusters of uses*' appears to be the function of DMP policies DMP 2 and DMP 3 which refer to diversity of uses and limit percentages of non-retail uses, including AGCs. Issues of health and well-being also appear

to have been considered in the preparation of policy DMP 3, as indicated in paragraph 3.9 of its supporting text.

37. My attention has been drawn by the appellant to various appeal decisions⁵ spanning a number of decades. In those appeals it has been accepted that, provided that there is compliance with relevant policies designed to prevent an over concentration of such 'uses', there is no reason why AGCs should be considered to undermine the vitality and viability of town centres. All the appeals were allowed, including one decision relating to premises at 232 Neasden Lane, within the London Borough of Brent, issued as recently as 23 February 2017. Therefore, I see no reason why the proposed AGC should not contribute to the mix of retail and non-retail uses offered within the town centre.
38. The Council seeks to distinguish those appeals from the appeal before me. It says that those appeals did not relate to appeal sites where there were facilities and accommodation for vulnerable people nearby, which is a key component of the Council's reasons for refusal. However, the appellant argues that the reason that those issues did not emerge in the other appeals is because there is no evidence that AGCs, when properly run, adversely impact on that group. As no evidence has been presented to indicate that Willesden Green Town Centre is unique in the prevalence of facilities for vulnerable groups and limited evidence of the effect of AGCs has been submitted, I am more persuaded by the appellant's view.
39. I understand that WGTT and some local residents would prefer an alternative use to be made of the appeal premises or for it to remain vacant rather than becoming an AGC. However, leaving properties vacant for long periods is normally considered detrimental to the viability and vitality of town centres. Whilst it has been suggested that independent businesses have been taking on vacant units in the area, the property consultants tasked with disposing of the property advise that it was marketed for more than 2 years prior to agreement being reached with the appellant. Moreover, my role is to consider the appeal proposal before me rather than to speculate on preferable uses.
40. Overall therefore, the above factors lead me to conclude that the proposal would not harm the vitality and viability of Willesden Green Town Centre, with particular regard to safety, security, anti-social behaviour and crime. Therefore, the proposal would not conflict with policy DMP 1 of the DMP, or LP policies 2.15 and 4.8, the content of which has already been detailed above. The proposal would also comply with DMP policies DMP 2 and DM 3 which are intended to control uses in high street locations. There are no material considerations sufficient to indicate that the proposal should be determined other than in accordance with the development plan.

Other Matters

41. The appeal site lies within the CA. The proposal is for a change of use and does not involve external alterations to the building. Given that there could be a condition to retain a retail window display and the site is on a busy urban

⁵ APP/T5150/W/16/316392, APP/X5210/A/12/2187117, APP/T5150/A/08/208629, APP/T5150/A02/1103105, APP/T5150/A09/2094508, T/A99/G0908/A/00/1035631, T/APP/F4410/A/97/278517/P9, T/APP/R4408/A/94/243908/P2, T/APP/N4720/A/00/1035590, T/APP/X4725/A/99/1018226/P7, APP/G5180/A/14/2229227

high street, the change of use would not have an adverse effect on the character or appearance of the CA.

Conditions

42. The Council has suggested conditions which I have considered, amending them if necessary to comply with the tests contained in the Planning Practice Guidance (PPG). A condition setting a time limit for commencement of the development is required by statute. It is necessary to include a condition regarding the window display to ensure an active shop front. A condition restricting opening hours is necessary and reasonable to protect residential occupiers above the premises and on the opposite side of the road from possible noise and disturbance caused by persons entering or leaving the premises late into the night or early in the mornings. I note that similar restrictions on opening hours were imposed in a number of the appeal decisions, relating to similar premises, supplied by the appellant.
43. The appellant suggested a condition to exclude 'amusement only' machines such as video games and pin tables, which the appellant advises are deliberately noisy to make them more attractive to a youthful clientele. Given the proximity of residential occupiers above and general concerns expressed by objectors about potential effects of young people, I have included that condition.

Conclusion

44. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

J P Tudor

INSPECTOR