



JMS PLANNING & DEVELOPMENT

STATEMENT OF CASE

14 - 16 STATION ROAD
HAYES
LONDON
UB3 4DY

LPA REF: 28554/APP/2023/3714



Client: Chongie Entertainment Limited
Project: 14/16 Station Road, Hayes, London, UB3 4DY
Date: March 2024

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SECTION 1: INTRODUCTION

- 1.1. This Statement of Case has been prepared on behalf of Chongie Entertainment Ltd (*“the Appellant”*) and is submitted in support of an Appeal against the refusal of planning permission by London Borough of Hillingdon (*“the Council”*) by decision dated 21 February 2024 in respect of an application referenced 28554/APP/2023/3714 seeking a *“Partial change of use from Use Class E to adult gaming centre (Sui Generis) and shopfront alterations including the insertion of an additional front door”*.
- 1.2. The decision notice records that the application was refused for two reasons:
 1. *The proposed development by virtue of the use class and operation proposed, would result in an overconcentration of restricted uses within a designated Town Centre and Primary Shopping Area. As such the proposed development would result in detrimental harm to the vitality of both the Town Centre and Primary Shopping Area thus would fail to comply with Policies DMTC 2, DMTC 3 and DMTC 4 of the Hillingdon Local Plan - Part Two (2020), SD6 of the London Plan (2021)*
 2. *The proposed development by virtue of the excessive hours of operation proposed, would result in an unacceptable increase in noise and disturbance within an area where there is also a high concentration of residential properties, particularly in the early hours of the morning when the High Street will be at it's quietest, to the detriment of the amenity of adjoining residents, contrary to Policy DMTC 4 and DMHB 11 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020).*
- 1.3. The Appellant considers the above reasons for refusal to be without merit.
- 1.4. In accordance with Planning Inspectorate (PINS) guidance, a copy of the decision notice and relevant Officer's Report is not attached. These will be provided by the Council as part of its Appeal submission.
- 1.5. This Statement addresses the matters raised in the reasons for refusal; those being impact on the vitality and viability of the shopping parade and potential for noise and disturbance.
- 1.6. In support of the application, an overnight observation of Hayes Centre was undertaken by Darrel Butterworth – a retired, former, senior police officer with extensive experience in the gambling and licensing trade. This investigation is attached at **Appendix 1** and should be considered in conjunction with his two previous reports dated 19th July 2022 and 4th May 2023 attached at **Appendix 2** and **Appendix 3** respectively.



- 1.7. In the report dated 19th of July 2022, Mr Butterworth outlines his experience in visiting town centres across England and Wales in relation to Alcohol and Gambling venues. In the report dated 4th of May 2023, Mr Butterworth outlines his visits to three London Borough's where he observed Little Vegas type venues and other Adult Gaming Centre operators.
- 1.8. This Statement sets out the Appellant's case and concludes that the proposal is of merit and that this Appeal should be allowed, and planning permission granted.



SECTION 2: THE APPEAL SITE AND SURROUNDING AREA

- 2.1 The Appeal site is located on the western side of Station Road some 400m north of Hayes & Harlington Station (Elizabeth Line, Great Western Rail). The site comprises a ground floor unit with residential flats above. The unit is within Hayes Town Centre, with retailers in the immediate vicinity including McDonalds (Sui Generis), Scope (Use Class E), Costa (Use Class E), and Superdrug (Use Class E).
- 2.2 The Appeal site is located within the Primary Frontage of Hayes Town Centre and has a Public Transport Accessibility Level (PTAL) of 5. The site is, therefore, in a highly accessible location.
- 2.3 Hayes is designated as a District Town Centre within the London Plan and is designated NT3 Night-time economy classification i.e. an area with more than local significance.
- 2.4 The site is located within Flood Zone 1.
- 2.5 The site is not located within a Conservation Area. Neither is the application site a Listed or Locally Listed Building.



SECTION 3: APPEAL SITE PLANNING HISTORY

- 3.1 The Appeal site's planning history is set out within the Planning Statement prepared by JMS Planning submitted with the appealed application. This confirms that aside from various advertisement/shopfront applications, alongside a satellite dish and extension application dating back to 1996 and 1990 respectively, there is no pertinent planning history on the site.



SECTION 4: APPEAL PROPOSAL

- 4.1 Chongie Entertainment Limited is a new entrant in the adult gaming centre (AGC) UK market. The Company operates to the highest standards and is fully aware of its social responsibilities in respect to issues associated with gambling which it takes very seriously. The appealed application seeks to provide a new 24-hour use within Hayes District Centre, increasing the vitality and viability of the centre along with the creation of up to eight new jobs.

- 4.2 Full details are contained in the submitted Planning Statement.

Retail Unit

- 4.3 As well as the proposed adult gaming centre, part of the former bank unit will be retained in Class E use, and operated as a retail unit. This means there will be no net loss in the number of Class E units in the primary shopping area. The former, long-vacant bank unit is a large unit for which there has been no interest from retailers, or Class E operators generally. By changing the use of part of the former bank, a smaller, more affordable, more attractive retail unit will be created.

Adult Gaming Centre

- 4.4 By way of background to the proposed new use, this form of amusement centre, now known as an adult gaming centres under the Gaming Act which came into force in 2007, provides casual amusement and relaxation for adult shoppers and other adult passers-by. There is a statutory obligation to exclude under 18s.
- 4.5 Amusement establishments such as that proposed, are now found at the heart of virtually all shopping centres in England, Scotland and Wales. They fit into the shopping scene and contribute to the enjoyment of the shopping experience for a proportion of the public. It is the combination of such individual small businesses catering for various and individual different elements of the public which go to make up the overall appeal of a town centre shopping area.
- 4.6 Like shops, establishments of this type require reasonable pedestrian flows in order to operate satisfactorily. Because they are complementary to shopping uses, they cannot trade satisfactorily in areas remote from retail activity and the pedestrian flows which go with it.
- 4.7 The proposed use is quite different from amusement arcades found “on the front” in seaside resorts in appearance, facilities, clientele and impact. It would not have “amusement only” machines such as video games and pinball tables which are deliberately noisy to make them more attractive to a youthful clientele. The premises will be fully enclosed, low key and “shop like” in appearance and effect and will be complementary in this major centre location.



- 4.8 The premises will be carpeted and attractively fitted out. The shopfront will incorporate a display to attract the interest of passers-by. The display can be favourably compared with those of many shops and non-retail uses.
- 4.9 The characteristics of the proposed use make it entirely appropriate in the location proposed. The AGC will contain fruit machines, which are subject to a strict legal code in respect to pay out. AGCs have never been allowed fixed odds betting terminals, which were once permitted in betting offices.
- 4.10 As will be set out later within this Appeal Statement, it is important to recognise that AGCs are a totally different use from betting shops. It is noted within the Officer's Report that the Council has in its assessment of the appealed application incorrectly conflated these two uses in order to support its Appeal case. This is an inappropriate approach which is addressed later within this Statement.



SECTION 5: PLANNING POLICY CONTEXT

- 5.1 The full suite of planning policies considered relevant to the Appeal proposal are contained within the accompanying Planning Statement submitted as part of the planning application. It is not considered necessary to repeat these here. This Section of the Statement thus focuses only on those policies relating to the Council's reasons for refusal.
- 5.2 For the purposes of Section 38 of the Planning and Compulsory Purchase Act 2004 the statutory Development Plan for the Appeal site comprises The London Plan (March 2021), The Hillingdon Local Plan Part 1 (Strategic policies) (November 2012), and The Hillingdon Local Plan Part 2 (Development Management Policies, Site Allocations and Designations and the Policies Map) (January 2020).
- 5.3 The Council's reason for refusal makes reference to seven policies.
- The Hillingdon Local Plan Part Two (Development Management Policies) Policies DMTC 2 (Primary and Secondary Shopping Areas), DMTC 3 (Maintaining the Viability of Local Centres and Local Parades), DMTC 4 (Amenity and Town Centre Uses), and DMHB 11 (Design of New Development).
 - London Plan (2021) Policy SD6 (Town Centres and High Streets).

Other Material Considerations

National Planning Policy Framework (December 2023)

- 5.4 The National Planning Policy Framework (December 2023) (The Framework) forms a material consideration to the Local Development Framework. It sets out the Government's planning policies and how these policies should be applied with those relevant covered under the following Sections:
- Section 2 – Achieving Sustainable Development;
 - Section 7 – Ensuring the Vitality of Town Centres;
 - Section 8 – Promoting Healthy and Safe Communities.

The London Plan 2021

- 5.5 The London Plan 2021 is the Spatial Development Strategy for Greater London. It sets out a framework for how London will develop over the next 20-25 years and the Mayor's vision for Good Growth.
- 5.6 The London Plan, through Policy HC6 (Supporting the night-time economy), suggests that planning decisions should diversify and promote the night-time economy in appropriate areas. The London Plan has designated Hayes as an



area with more than local significance (NT3) in respect to its night-time economy.



SECTION 6: APPELLANT'S RESPONSE TO THE FIRST REASON FOR REFUSAL

6.1 This Section sets out the Appellant's response to the first reason for refusal and provides the justification as to why planning permission should be granted for the Appeal proposal.

6.2 The first reason for refusal is set out again below for completeness.

The proposed development by virtue of the use class and operation proposed, would result in an overconcentration of restricted uses within a designated Town Centre and Primary Shopping Area. As such the proposed development would result in detrimental harm to the vitality of both the Town Centre and Primary Shopping Area thus would fail to comply with Policies DMTC 2, DMTC 3 and DMTC 4 of the Hillingdon Local Plan - Part Two (2020), SD6 of the London Plan (2021).

6.3 Accordingly, it is considered that the reason for refusal above gives rise to two main issues:

- Is the Appeal Site an appropriate location for an AGC?
- Will an AGC in this location have a harmful effect on the vitality of Hayes District Town Centre?

6.4 It is the Appellant's position that rather than having any adverse effect on the vitality and viability of Hayes District Centre, the proposed AGC use will have a positive effect on the Centre and that there is no harm occurring from the proposed use. Each of the above matters are considered below, with an assessment of the appropriateness of the Appeal proposal locating within Hayes.

6.5 Notably the reason for refusal makes no reference to the "use class and operation proposed" for the Class E portion of the site, rather it is a sweeping, unqualified statement. Notwithstanding, it is assumed that the assertion of "detrimental harm" does not apply to that aspect.

Is the Appeal Site an appropriate location for a new AGC?

6.6 Sections 6 and 7 of the National Planning Policy Framework are relevant here. Paragraph 90 of the Framework seeks to ensure that both planning policies and decisions support the role that town centres play at the heart of local communities, by taking a "*positive approach to their growth, management and adaption*". The paragraph confirms that planning policy should, inter alia, define town centres and promote their long-term vitality and viability, allowing them to grow and diversify in response to "*rapid changes in the retail and leisure industries*".

- 6.7 The Framework confirms planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and where there are opportunities for development. Paragraph 001 of PPG Town Centres and Retail (July 2019 Update) acknowledges that LPAs need to consider structural changes in the economy, in particular changes in shopping and leisure patterns and format. The paragraph goes on to state that a wide range of complementary uses can, if suitably located, help to support the vitality of town centres, including residential, employment, office, commercial, leisure/entertainment [our emphasis], healthcare and educational development.
- 6.8 The adopted London Plan confirms that Hayes is designated as a District Centre, the second order centre in Hillingdon, second only to Uxbridge. It also confirms that Hayes is designated as an area with “*more than local significance*” with regards to its night-time economy. The London Plan notes that London’s night-time economy is generally focused in the Central Activities Zone (CAZ) and within town centres across the city. Different areas of nighttime activity function at different scales and have different catchments, and the London Plan has classified all its centres into three broad categories:
- NT1 – Areas of international or national significance
 - NT2 – Areas of regional or sub-regional significance
 - NT3 – Areas with more than local significance
- 6.9 Hayes, as an NT3 centre, is identified as an area which should draw visitors from other parts of London and tend to feature smaller venues and premises. It is therefore an appropriate location for a late-night town centre use.
- 6.10 The London Plan (March 2021) also contains a number of policies which support the Appeal proposal.
- 6.11 Policy GG1 (Building Strong and Inclusive Communities) promotes the crucial role town centres have in central, civic, cultural and economic lives of Londoners and plan for places that provide important opportunity so building relationships during the daytime, evening and night-time. Policy GG2 (Making the Best Use of Land) encourages prioritising development within town centres.
- 6.12 Policy GG5 (Creating a Good Economy) promotes and supports London’s role as a 24-hour city. Policy SD6 (Town Centres and High Streets) confirms that the vitality and viability of London’s varied town centres should be promoted and enhanced by encouraging strong, resilient, accessible and inclusive hubs with a diverse range of uses [our emphasis] that meet the needs of Londoners including main town centre uses, night-time economy, civic, community, social and residential uses. The policy confirms that the management of vibrant daytime, evening and night-time activities should be promoted to enhance

town centre vitality and viability, having regard to the role of individual centres in the night-time economy and supporting the development of cultural uses and activities. It is confirmed that the varied role of London's high streets should be supported and enhanced. It is considered that this '*varied role*' can include use for entertainment and leisure.

- 6.13 Policy SD8 (Town Centre Network) of The London Plan 2021 confirms the changing roles of town centres should be practically managed in relation to the town centre network.
- 6.14 At a Local Level, the Hillingdon Local Plan makes clear the Council's commitment to delivering sustainable development within the borough. The Hillingdon Local Plan (Part 1) provides a series of strategic objectives in order to ensure delivery of the Local Plan vision. One of these objectives is to manage appropriate growth, viability and regeneration of town and neighbourhood centres.
- 6.15 Policy DMTC 1 (Town Centre Developments) states that the Council will support 'main town centre uses' where the development proposal is consistent with the scale and function of the centre.
- 6.16 The nature and characteristics of the proposed sui generis and Class E uses are complementary to the shopping frontage and the wider town centre. This is a matter confirmed in many Appeal decisions including those contained within the Appellant's submitted Planning Statement.
- 6.17 For example, in an Appeal by East Kent Leasing Ltd Vs Luton Borough Council (Ref: APP/B0230/W/20/3256275 - 29th December 2020), the Inspector recognised that amusement centres (and betting shops) are an established part of high streets and shopping centres across the country and "complement their retail function". Meanwhile, an Appeal in Kingston-Upon-Hull (Ref: APP/V2004/W/19/3233244 - 22nd October 2019) noted that the new AGC: "*would be complimentary to the shopping environment... [and] would not undermine the vitality and vitality of the centre*".
- 6.18 The above Appeal decisions are attached at **Appendix 5** and **Appendix 6** respectively. These confirm that an AGC is a use which contributes to the function of the centre both in terms of the size of the unit, the length of its frontage and the location of the unit within the centre.
- 6.19 It can therefore be seen from the preceding overview of relevant planning policy that the proposed AGC is located in an appropriate location within Hayes District Centre which is to be a focus for a wide range of leisure and night-time economy uses.



- 6.20 AGCs clearly fall within the definition of “*main town centre uses*” set out at Annexe 2 of the NPPF and therefore such activity is subject of the general provisions of Section 2 of the NPPF. This does not preclude AGCs from occupying positions within primary shopping frontages. Furthermore, the nature of the use is considered to be appropriate operating alongside other town centre uses. This includes other uses which contribute to the evening economy of a centre, as well as residential uses which are appropriate within town centres.
- 6.21 The size of the proposed AGC is appropriate and consistent with the size, role and function of the centre. It is also notable that as set out in Section 4, the Appeal proposal is for only the partial change of use of the existing unit, consequently bringing back into use a long-time vacant unit through the provision of an AGC and a new Use Class E retail unit. The Appeal site is the correct location for a proposal of this nature to be located.

Will the proposal have a detrimental impact on the vitality of the town centre?

- 6.22 The decision notice confirms, through refusal Reason 1, that the Council considers the proposal “*would result in detrimental harm to the vitality of both the Town Centre and Primary Shopping Area*” insofar that it will “*result in an overconcentration of restricted uses within a designated Town Centre and Primary Shopping Area*”.
- 6.23 The lawful use of the Appeal site is a Bank (Use Class E, formerly Use Class A2). This Appeal therefore seeks to partially replace the existing vacant Use Class E unit with a split unit comprising a sui generis adult gaming centre and a Use Class E retail unit. The Appellant asserts that the proposal will not cause any harm to Hayes District Centre, but rather that the proposal provides benefits to the centre through the provision of new “*linked trips*” between the proposed AGC and other shops and services in the centre. The Appellant has already identified above that the proposed location of the new AGC at the Appeal Site is entirely appropriate.
- 6.24 The ‘Little Vegas Factsheet’ at **Appendix 8** sets out the results of a recent survey of linked trips and behaviours which has been undertaken with reference to two existing Little Vegas adult gaming centres. It shows that in both cases, the adult gaming centre is the first or second most popular unit in terms of footfall within that part of the centre. It shows that other “town centre” uses, whilst they may be shops or services in the former ‘A’ use classes, are not necessarily those which encourage greater customer activity. As such, an adult gaming centre should be seen as a positive addition to a town centre, capable of adding significantly to a centre’s vitality and viability.

- 6.25 The Appeal proposal will provide Hayes with a new entertainment use that will in turn generate activity including through extended opening hours. The character and diversity of the centre will not be harmed, and the proposals will not detract in any way from its retail function or have a detrimental impact on the vitality and viability of the centre. The proposed AGC will result in a number of benefits including associated high levels of footfall, linked trips and the creation of up to eight jobs.
- 6.26 Consideration should also be given to the fact the proposal would see a long-term vacant unit (last occupied in June 2021) brought back into active use. the proposal would see with both a Class E unit and a Sui Generis Adult Gaming Centre operating from the site. Despite marketing efforts and its prominent location, the vacant site is not contributing to the activity and vitality of the District Centre. Moreover, the proposed development would provide jobs and investment to the area, an active frontage, and footfall.
- 6.27 In an Appeal (APP/W0734/W/21/3289652 - 11th May 2022) made by Merkur Slots Ltd against the decision of Middlesbrough Council, the inspector is quoted as stating *"...in the context of a long standing inactive and vacant shop and shopfront with little evidence or prospect of alternative retail or Class E use, the particular details of the appellants' approach to the proposal are such that it would not cause material harm to the character or appearance of the PSF or town centre. Conversely, the benefit of bringing a long-vacant unit back into complementary use is a matter which carries significant weight."* This Appeal decision is attached at **Appendix 15**.
- 6.28 Similarly, in an Appeal (APP/P4225/W/21/3268541 - 1 July 2021) made against the decision of Rochdale Metropolitan Borough Council, the inspector noted that although the proposal would not be permitted by the UCO Amendment Regulations, it would provide some benefits in respect of footfall, diversity of uses, and bringing vacant premises back into use. It was therefore concluded that the benefits outweigh the conflict with the development plan, and on balance the proposal would not be harmful to the vitality and viability of Middleton Town Centre. The above Appeal decision is attached at **Appendix 16**.
- 6.29 Turning to the policies referred to in the Council's reason for refusal (Reason 1), the Officer notes in their report that the assessment against Policy DMTC 2 provided in the Planning Statement is unnecessary, and that DMTC 4 is the relevant policy. As such, the primary consideration for this appeal is the proposal's assessment against Policy DMTC 4.
- 6.30 Policy DMTC 4 (Amenity and Town Centre Uses) relates to a variety of uses including amusement centres (otherwise known as Adult Gaming Centres), restaurants, hot food takeaways, drinking establishments, betting shops, night clubs, casinos, minicab offices and other similar uses. The Policy states that proposals for these uses will only be supported where they:

- i) would not result in adverse cumulative impacts due to an unacceptable concentration of such uses in one area;
- ii) would not cause unacceptable disturbance or loss of amenity to nearby properties by reason of noise, odour, emissions, safety and security, refuse, parking or traffic congestion; and
- iii) would not detrimentally affect the character or function of an area by virtue of the proposed use or visual impact.

6.31 The Officer Report indicated the council considered the application conflicted with both part (i) and (ii). Part (i) is addressed directly below, while part (ii) will be addressed in the following section.

6.32 Supporting text to Policy DMTC 4, at paragraph 3.20, notes that the Mayor of London's Town Centres SPG encourages boroughs to manage over concentrations of certain activities, such as betting shops, hot food takeaways and pay day loan outlets. The text goes on to state that the Council will apply the maximum threshold for these uses of 15% of primary and secondary frontages set out in criteria A ii) and B ii) of Policy DMTC 2: Primary and Secondary Shopping Areas.

6.33 In order to assess the proposal against the requirements of the Local Plan, a survey was conducted of Hayes Town Centre Primary Shopping Area (PSA) in December 2023. A total of 117 units were surveyed. Currently, the uses listed in Policy DMTC 4 (AGCs, restaurants, hot food takeaways, drinking establishments, betting shops, night clubs, casinos, minicab offices) comprise 25.6% of the PSA, with the proposed change of use resulting in this figure rising to 26.3%.

6.34 The original application featured a figure that differed from the one outlined above due to the exclusion of restaurants from its calculation. However, since Policy DMTC 4 encompasses restaurants within its scope, a revised figure has been provided to reflect this inclusion. To ensure complete transparency, a table summarising the survey results has been provided below at Figure 1.

	A1	A2	Restaurants (A3) and hot food takeaways (A5), drinking establishments (A4), betting shops, night clubs, casinos, amusement centres, minicab offices (Policy DMTC 4 Uses)	Other Sui Generis	TOTAL
Existing	71 (60.7%)	15 (12.8%)	30 (25.6%)	1 (0.9%)	117
Proposed	72 (61%)	14 (11.9%)	31 (26.3%)	1 (0.8%)	118

Figure 1. Table displaying the results of the Hayes Primary Shopping Area Survey, dated December 2023

6.35 The appellant acknowledges that the proportion of uses within Hayes PSA listed in DMTC 4 is above the threshold mentioned in the policy's supporting text used to define over concentration (15%). Is it *already* over the threshold, without the Appeal proposal. However, it is considered that the Policy relies on an overly

restrictive figure which prevents the introduction of recognised town centre uses, including for example Class E(a) restaurants.

- 6.36 This is especially damaging bearing in mind that the government now favours a diversity of use in town centre locations with Class E permitted development. The impact of this change in legislation brought about by the long-term decline in traditional high street retailing, which has been amplified by the Covid-19 pandemic, is that it essentially negates town centre development plan policy on change of use and primary and secondary shopping frontages, allowing all sorts of uses to be deemed acceptable in a town centre location without restriction. The government now actively promotes an approach of encouraging any use that increases footfall to a centre, so much so that even office uses are permitted development at ground floor retail sites and primary/secondary frontages have little tangible meaning in planning policy terms.
- 6.37 Furthermore, the introduction of Use Class E to the Use Classes Order 1987 (as amended) means that Policy DMTC 4 should be considered out of date and attached limited weight. This is because, for example, the introduction of a new restaurant (Class E) within the Hayes Town Centre would not be considered development requiring planning permission where it would result from the change of use from another Class E unit. However, Policy DMTC 4 seeks to restrict the development of Use Class E units, and is therefore in conflict with general direction of travel for National Planning Policy. Numerous relevant Appeal decisions support this direction.
- 6.38 In seeking a more practical application of the definition of overconcentration, the Inspector's attention is directed to one of the key findings in a recent Appeal decision (**Appendix 19** – PINS Ref: APP/F5540/W/22/3296792) in the London Borough of Hounslow where the term over concentration was not defined within the respective development plan. The Inspector states (at paragraph 15):

“Taking the usual meaning of the term over-concentration to be having too much of something in one place, two AGCs near to each other would not, in my view, amount to an over-concentration, given their separation by Bell Road. Moreover, the two AGCs would be experienced in the context of a broad range of other uses within the immediate surroundings. My attention has been drawn to the presence of four betting shops close to the site, all of which I observed during my site visit. However, as both AGC and betting uses do not fall within a defined use class, they are classed as sui generis or ‘of its own kind’ and, irrespective of any other similarities between them, planning permission is required to change from a betting shop to an AGC, or vice versa”.

- 6.39 This is a particularly relevant situation to the Appeal site, where there is one other AGC within the Town Centre and four betting shops. Therefore, in the

absence of a Development Plan Policy relating to overconcentration which takes into account the latest Use Class Order changes, it is considered the above test for overconcentration demonstrates that the proposal would not lead to an overconcentration of AGCs within Hayes District Centre. This assumption is further reinforced when considering the proposal comprises the splitting of the existing unit to provide a Class E unit as well as the Sui Generis Adult Gaming Centre.

- 6.40 Furthermore, the unit is clearly appropriate and consistent with the size, role and function of Hayes which is a District Centre. In addition, the proposal will sustain and enhance the vitality and viability of the town centre network by reinstating an active unit within the Centre, bringing additional footfall and linked trips.
- 6.41 The contribution the proposal will make to the viability and vitality of Hayes is perhaps most apparent through the recent appeal decision dated 24th April 2023 (**Appendix 17** – PINS Ref: APP/C5690/W/22/3304891) which considered whether the proposed change of use from a retail use to an AGC would have an impact on the vitality and viability of Catford Town Centre. Here, the Inspector concluded the proposal would introduce an active use into a currently vacant and unsightly unit, and would therefore be of benefit to the vitality and viability of this Town Centre, and would be considered to be a use appropriate to the night time economy
- 6.42 AGCs are proven to bring good levels of footfall to centres and the benefits of “*linked trips*”, where users of the centre also visit other shops and services as part of the same visit. The ‘*Little Vegas Factsheet*’ at Appendix 8 sets out the results of a recent survey of linked trips and behaviours which has been undertaken with reference to two existing Little Vegas adult gaming centres. It shows that in both cases, the adult gaming centre is the first or second most popular unit in terms of footfall within that part of the centre. It shows that other “*town centre*” uses, whilst they may be shops or services in the former ‘A’ use classes, are not necessarily those which encourage greater customer activity. As such, an adult gaming centre should be seen as a positive addition to a town centre, capable of adding significantly to a centre’s vitality and viability.
- 6.43 The Local Plan recognises the difference between adult gaming centres (otherwise known as amusement centres) and betting shops, by listing them as separate uses within Policy DMTC 4 (Amenity and Town Centre Uses). At paragraphs 5.22 and 5.33 of the planning statement, the practical differences between the two uses set these out.
- 6.44 The Officer Report makes no analysis of London Plan Policy SD6. That policy pertains to town centres and high streets, stating that the vitality and viability of centres should be “*promoted and enhanced*”. Much of the detail of these policies has been analysed above in this section, but to summarise, the Appeal

proposal will add to the diversity of uses in Hayes District Centre, and in particular will add to the night-time economy by being open 24/7. This in turn will enhance the centre's vitality and viability by attracting customers through the increased choice of activities.

- 6.45 Part I of London Plan Policy SD6 refers to the *"varied role"* of high streets. The nature of high streets across the country is changing, with services and leisure uses expected to *"save high streets"*. This is set out in greater detail in the Planning statement with reference to research funded by the Economic and Social Research Council. The supporting text for this policy also notes the importance of providing employment opportunities in London's high streets (which the proposal will do) and allowing centres to *"evolve and diversify in response to current and future economic trends... and the development of the 24-hour city"*. Again, the proposal will assist in this aspiration.
- 6.46 The Appeal proposal will result in an active frontage, with customers coming in and out of the unit as they would a shop. A window display and signage will be included, though that is not the subject of this Appeal, which deals only with the change of use. The Appeal proposal will add to the diversity of offer within this frontage and within Hayes District Centre as a whole. The resultant mix of uses will attract shoppers and leisure seekers throughout the day and into the evening, enhancing vitality and viability.
- 6.47 On the basis of the above policy assessment, none of the policies referenced by the Council within the reason for refusal are considered to conflict with the proposed change of use of the Appeal site from a bank to a Sui Generis AGC / Class E Retail Unit. AGCs are an established town centre use which complement retail and service uses during the day and contribute to a town's night-time economy in the evenings.
- 6.48 The Planning Statement submitted with the application details a number of Appeal decisions relating to AGCs. One of the key points of principle which arises from the various appeal decisions are that AGCs are an accepted main town centre use and can add to the variety of uses within a town centre and can lead to further investment and consequently can add to the vitality and viability of the town centre as a whole.
- 6.49 The above assessment of the proposal against the first reason for refusal demonstrates the proposed location is entirely suitable for a late-night AGC use which would contribute to the viability and vitality of Hayes Town Centre.
- 6.50 Sections 6 and 7 of the National Planning Policy Framework emphasise supporting town centre's growth and vitality, allowing them to adapt to changes in retail and leisure industries. The London Plan designates Hayes as a District Centre of "more than local significance" with regard to its night-time economy, making it a suitable location for late-night town centre uses.

- 6.51 While the proposal may exceed the threshold for certain uses outlined in Policy DMTC 4 (Amenity and Town Centre Uses), the context of the area and the changing landscape of town centre development should be taken into account. The proposal aims to bring a long-vacant unit back into use, contributing to the vitality and viability of the centre.
- 6.52 Moreover, the proposal aligns with the changing role of town centres as highlighted in London Plan Policy SD6, which encourages centres to evolve and diversify to meet current and future economic trends. The AGC is expected to enhance the diversity of uses in Hayes District Centre, attracting customers throughout the day and evening and contributing to its vitality and viability.



SECTION 7: APPELLANT'S RESPONSE TO THE SECOND REASON FOR REFUSAL

7.1 The second reason for refusal states.

The proposed development by virtue of the excessive hours of operation proposed, would result in an unacceptable increase in noise and disturbance within an area where there is also a high concentration of residential properties, particularly in the early hours of the morning when the High Street will be at it's quietest, to the detriment of the amenity of adjoining residents, contrary to Policy DMTC 4 and DMHB 11 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020).

7.2 It is the Appellant's strong view that there will be no increase in noise and disturbance resulting from the proposal. The operator, Little Vegas, operates 10 number of units on a 24-hour basis in a range of local, district and town centres. Such locations include:

- Reading;
- Peterborough;
- Aldershot;
- Croydon;
- Hammersmith;
- Walthamstow;
- Northampton;
- Ilford;
- Luton; and
- Crawley.

7.3 In all cases, to date, there have been no significant incidences of anti-social behaviour, police attendance or otherwise. There is no evidence, at the operation of the Company's sites to date, that the Company's 24-hour use gives rise to anti-social behaviour or problems to local neighbours. As noted in Paragraph 38 of the Witness Statement, the proposed AGC will not give rise to opportunities for noisy or notable events, including antisocial behaviour. The AGC is simply a quiet place in which customers can spend their leisure time, usually alone rather than in groups. There has been no evidence provided by either the Metropolitan Police or the local planning authority to support the assertions made in the reason for refusal.

Will the proposal harmfully increase noise levels for neighbouring residents?

7.4 On the matter of noise, the Officer Report states that *"Residents who live above the commercial units in this area are used to a reduction in noise and disturbance after 6pm or early evening when most of the surrounding business*

close. After this time, background noise will be limited in this part of the centre; this is further enhanced due to no pubs or nightclubs close by. Officers conclude that customers of the proposal, will cause noise and disturbance to residents in the flats above and nearby therefore harming their amenity, especially at night time when just the AGC is open in the immediate vicinity. The proposal therefore fails to satisfy part (ii) of policy DMTC4 and is detrimental to neighbouring amenity and warrants refusal on such grounds. "

- 7.5 The Planning Statement, at paragraphs 5.34 and 5.35, submitted with the application addressed the matters raised directly, stating:

"The night-time use would be low key with few customers and will offer a facility for night workers and shift workers, generating employment and natural surveillance. In an appeal decision from January 2014 for a change of use to an adult gaming centre in Cricklewood (Appendix 3 [of the Planning Statement] – PINS Ref: APP/N5090/A/13/2201162) the Inspector, in allowing the appeal, acknowledged that "residents living within a commercial area might reasonably expect to experience some noise and disturbance because of evening and night time activities".

It is considered that the central and commercial nature of the site makes it an acceptable location for a 24-hour use. Taking the above into account, the proposal is not considered to have any detrimental impact upon the amenities of neighbouring occupiers with regard to noise or nuisance. Furthermore, any issues could be offset by the generation of night-time employment and natural surveillance which will assist in managing external issues such as crime. "

- 7.6 In respect to the general issue of noise and disturbance, attached at **Appendix 2**, is a Witness Statement prepared by Darrell John Butterworth, a retired former senior police officer with extensive experience in the gambling and licensing trade. Darrell Butterworth has unrivalled experience in this regard and is familiar with both betting shop operations and AGC operations, and particularly the differences between the two.
- 7.7 Full details of Mr Butterworth's experience is set out in the accompanying Witness Statement. The Statement concludes that AGCs create significantly less disturbance than betting shops and that Mr Butterworth has not known any AGC to create adverse noise and disturbance. Given Mr Butterworth's significant and lending experience in the licensing sector, his Witness Statement must be given significant weight. This further provides justification that the use of the site as an AGC for extended hours through the night is unlikely to create any undue effects and that the proposed reason for refusal is without merit.

- 7.8 In July 2023 Mr Butterworth was requested by Chongie Entertainment Ltd to undertake an extensive period of observation in relation to existing Little Vegas units – a total of 36 hours over six nights at 12 venues in three separate locations. The observations took place on weekday and weekend trading periods at each of the three locations (Wood Green, Crawley, Croydon) between 22:00 hours and 04:00 hours.
- 7.9 Regarding Mr Butterworth’s observation of the existing Little Vegas units across the above three town centres, a record was kept of noise observations, general footfall, customer numbers, method of arrival, method of departure, numbers smoking outside, and other venues open in the area. Each venue differed in respect to residential, mixed use, vehicle access and location. Mr Butterworth’s observations were fully impartial and have not been amended for the purposes of this application. These observations are attached at **Appendix 3**.
- 7.10 Similarly, in December 2023 Mr Butterworth was requested by Chongie Entertainment Ltd to undertake an extensive period of observation in Hayes Town Centre. The observations here took place on a weekend trading period between 1500 hours and 0100 hours.
- 7.11 Mr. Butterworth’s observation of Hayes highlighted that at least 19 businesses were open at midnight on the Saturday night. This included the Admiral Casino (Adult Gaming Centre) which currently operates 24/7. This is in alignment with the general policy direction promoting the nighttime economy of London, particularly the designation of Hayes as NT3 (nighttime economy with more than local significance), therefore it is deemed that this proposal for a 24-hour leisure use is entirely appropriate at this location. This is further reinforced when considered in the context of Hayes’ accessibility of 24/7 public transport services.
- 7.12 The officer stated in their report that *“the majority of commercial uses in this part of Hayes town close at 6pm or early evening and are mostly Class E, the introduction of a 24 hour AGC results in the applicant becoming an agent of change.”* Given nearly 20 establishments are operating beyond midnight in Hayes, coupled with an NT3 Nighttime economy designation per the London Plan, suggesting that the introduction of a 24-hour AGC results in the proposed use becoming an agent of change appears unjustified. Indeed, the Council has asserted that the majority of establishments close by 6pm or early evening, and argue for this as justification for not allowing a late night use, however this would appear to be a situation that seems problematic for an NT3 Major Town Centre and warrants action i.e. permitting further late-night uses, to align with the objectives of the London Plan.
- 7.13 As is the nature of Hayes District Centre, where most “high street” commercial premises feature residential dwellings on the upper floors, it appears reasonable to conclude that this proposal to allow trading throughout the night at the application site would not have a significant impact on residential



amenity compared to the existing late-night function of the centre where around twenty premises are open well into the night.

- 7.14 As already stated, an AGC is a low-key use. It does not attract large groups of people. Little Vegas's sites are operated in strict accordance with an Operational Management Plan – attached here at **Appendix 7**. The venue operates a Think 25 entry policy; no alcohol is served; and those considered to be under the influence of alcohol are denied entry.
- 7.15 Operationally, AGCs do not have (and have never had) the Fixed Odds Betting Terminals that betting shops had and the machines offer low stakes – the average stakes from customers is 30-40 pence. As such, AGCs tend to be venues for customers to relax and the customer base reflects this. A large proportion of customers are female, with many people attending as couples and the customer base of AGCs which are open after midnight is predominantly the local entertainment workforce and shift workers who like to relax after their busy shifts.
- 7.16 Notably, in an Appeal (Ref: APP/U5930/W/18/3193121) determined in July 2018 on a site in Waltham Forest, when considering whether the proposal would have an impact on crime and disorder, the Inspector concluded at para 13 that: *“those are matters that are addressed by ‘other legislation’ and are therefore not for my consideration in determining this appeal”*. That Appeal decision is attached at **Appendix 13**)
- 7.17 Furthermore, in an Appeal determined recently, in July 2023 (at **Appendix 18**), the Inspector concluded that the *“Operational Management Plan outlines security measures in place across the AGCs operated by the appellant, including CCTV, no serving of alcohol on the premises, notices that alcohol is not to be consumed in front of the premises under risk of a ban from the establishment, and licenced security guards. With these measures in place, the limited incidents of crime and antisocial behaviour that have occurred per week in these other establishments have been highlighted. There is nothing to suggest similar measures would not take place at the proposal. I further note the witness statement provided by a licensing and security authority compliance consultant, which cites a lack of wider evidence that AGCs create crime and disorder problems.”*

- 7.18 At **Appendices 9-12** of this Statement are the Appellant's Advertising and Media Policy; Complaints Procedure; Proceeds of Crime and Anti Money Laundering Policy; and the Responsible Gambling Policy. These four documents further demonstrate the Appellant's commitment to creating a safe environment both in terms of gambling and the actual shop unit. This is in direct contrast to the lack of any evidence supplied by the Council that the proposal to replace an existing betting shop with an Adult Gaming Centre will *"result in an increase in the cumulative adverse effect of problems of anti-social behaviour and problems of disorder and nuisance that would compromise community safety and increase the risk of crime taking place in the area"*.
- 7.19 The submitted Noise Impact Assessment Report (NIA) submitted with this Appeal analyses the noises created by the proposed development as their impacts across three key areas:
- Noise transfer through the floor separating the ground floor AGC from the first-floor residential use;
 - Noise breakout from the façade of the premises to the windows directly above; and
 - Noise associated with customers outside.
- 5.7 Based on an assessment of the construction of the floor using against insulation prediction software, predicted levels of direct noise transfer via the party floor separating the ground floor AGC from the first floor residential dwelling would be expected to be well within the set criteria, ensuring the amenity of the occupants of the first-floor flat would not be compromised due to direct noise transfer. Note that this is providing that party floor is upgraded between the units, as detailed within the NIA – the applicant has agreed to comply with this recommendation. This is detailed further in Section 4 of the submitted NIA.
- 7.20 A similar conclusion is reached having assessed noise breakout from the façade of the AGC, which is set out in Section 5 of the NIA.
- 7.21 The concept of potential noise from patrons entering and leaving the premises is more abstract in assessment terms. This is also clearly one of the prominent issues which the Council have taken with the potential noise impact of the application, with the Officer's report stating *"officers conclude that customers of the proposal, will cause noise and disturbance to residents in the flats above and nearby therefore harming their amenity, especially at night time when just the AGC is open in the immediate vicinity"*. However, the submitted NIA, at Section 6, provides a full assessment based on Mr Butterworth's observations in Hayes, and in Wood Green, Crawley and Croydon (having observed behaviour around existing adult gaming centres).
- 7.22 The assessment indicates that any customer's speech which could occur outside would be sufficiently below the average ambient noise level such that speech would be non-intrusive to the first-floor residential receptor. To clarify, the

worst-case scenario as observed by Mr Butterworth's observation of Wood Green, included 5 customers stood as a group outside of the AGC, smoking. The NIA highlights that the existing level of internal noise at the above residential receptor when the window is open is 51 dB(A). In comparison, the predicted internal level inside the receptor room due to the scenario of five customers smoking outside is 41 dB(A).

- 7.23 As demonstrated by the calculations on page 19 of the NIA, any customers' speech which could occur outside would be sufficiently below the average ambient noise level such that speech would be non-intrusive to the first-floor residential receptor. Furthermore, as noted by the observations by Mr Butterworth, customers smoking outside typically only remain in a group smoking for around one minute and are rarely conversing (as they typically would not know one another). It is noted that the potential for speech occurring outside of the building is already present with respect to pedestrians passing by the site.
- 7.24 With regards to customers arriving and/or leaving the site, it takes circa 12 seconds to reach a position 20 metres from the establishment, and therefore the duration of potential impact is very low. Furthermore, Mr Butterworth's observations found that on only two occasions across the six-night investigation (Wood Green, Crawley, and Croydon) did a group of over two people enter/exit the premises. It was also determined that as one group only stayed inside for six minutes, it was likely that they had entered out of curiosity rather than being regular customers. On all other occasions, customers arrived and left the venues alone or occasionally in pairs.
- 7.25 Based on this professional assessment completed by a competent acoustician with vast experience of such uses, there is no predicted impact on residential amenity from noise created by the adult gaming centre. The submitted NIA provides evidence of the assessments, based on observations, experience, and scientific calculations. The Council's assumptions, based on no evidence, therefore, carry little weight in justifying the reason for refusal.
- 7.26 The proposal will create a new night time economy activity for Hayes Town Centre, helping reinforce its role and significance of as an area suitable for leisure and night time economy uses. Many of Little Vegas' patrons are shift workers, ending nightshifts in the early hours of the morning, and therefore seeking the opportunity to relax after work.
- 7.27 Indeed, data provided by the Office for National Statistics (ONS) allows for the exploration of employees in specific areas and by specific industry groupings. The most recent results (2022) (figs: 14 & 19 below) indicate that 50% of those employed in Hillingdon are employed in night-time industries. While in comparison, the average percentage of employees working in night-time industries is 27% both across London and across the entire nation. (see

<https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/articles/thenighttimeeconomyuk/2022#the-number-of-employees-in-night-time-industries-in-your-area>

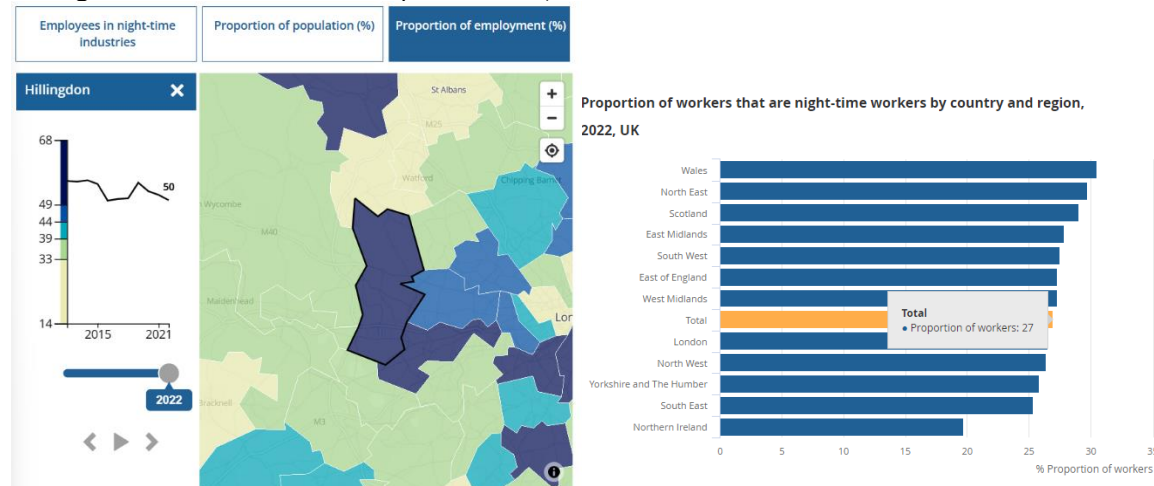


Figure 2. Figures 14 and 19 side by side

Gambling

7.28 The licensing regime runs alongside planning and will ensure further control of the premises through the requirement to hold a Gambling Premises Licence to operate at the proposed later hours. The Gambling Premises Licence is an ongoing regulatory tool. At any time, the licence can be made the subject of an application for review, as a result of which the conditions can be changed, or the licence revoked. It follows that licensing is a flexible and responsive regulatory tool and any sustained or serious objection can be tackled by way of a review of the licence. At all times, and regardless of any controls of the LPA, the Licensing Authority therefore has many methods of recourse, if the operation of the Appeal Site failed to respect the amenities of the local area, including ultimately revoking the Licence.

7.29 It should be noted that Chongie strictly adheres to a Responsible Gaming Code, which ensures that it can operate responsibly within any of the communities it operates in. This is submitted as part of the submitted planning application. This code includes:

- Recognising that prevention is the best form of player protection;
- Protecting children and minors;
- Encouraging responsible communication;
- Reinforcing the need for player responsibility;
- Employing professional staff;
- Keeping players informed;
- Guaranteeing fair gaming; and
- Working with experienced partners.



- 7.30 The Chongie Entertainment Limited Responsible Gaming Policy (September 2020) confirms that the Company recognises the importance of social, responsible gambling and regularly reviews its policies and procedures and their effectiveness to those that partake in gambling activities. The Company is required to meet responsibilities and guidance outlined by the Gambling Act 2005 and the Social Responsibility Code provisions of the Gambling Commissions license conditions and code of practice (LCCP). The Company is legally obligated to follow the requirements specified in the Gambling Act 2005 and the LCCP as issued by the Gambling Commission. Compliance with these would be a condition of any AGC operating license.
- 7.31 The Company operates self-exclusion and takes reasonable steps to ensure that any customers on the self-exclusion register are prevented from using their existing account or opening a new account. The Company operates a 'time out' facility for those who want to take a short break and within the unit. Posters and leaflets will be clearly displayed of key organisations which can help anybody with gambling problems.
- 7.32 Chongie implements an age verification policy to prevent children and young people from entering the premises and operates a Challenge 21/Challenge 25 (as appropriate) on its sites.
- 7.33 In addition, Chongie Entertainment Limited makes a contribution to problem gambling charities on an annual basis which supports research into the prevention treatment of problem gambling, for visitors to learn how to gamble safely and the identification and treatment of problem gamblers.
- 7.34 One critical point which is reiterated in most appeal decisions is that matters relating to gambling and social responsibility issues are not for the planning system to determine, rather these are the subject of a separate licensing regime. In the appeal dated 9 May 2018 (PINS Ref: APP/T5150/W/17/3189944 – included at **Appendix 14** of the Planning Statement) the Inspector dismissed any connection between AGCs and social concerns such as gambling, alcohol abuse and mental health effects noting at paragraph 26 and 30 that:

"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 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."

"Moreover, vulnerable persons in the area would, whether the proposal was approved or not, still have access to betting shops, off-licences, public houses, pay-day lenders and pawnbrokers as they would in many high streets across London and the country".

- 7.35 The policy assessment and comprehensive evidence set out clearly undermines the Council's unqualified assertions that the use of the Appeal site as a part-sui generis and part-Class E use would create noise and disturbance. Users of an AGC do not have access to alcohol; do not arrive or leave in a rowdy manner; and do not congregate in large groups. It appears the Council has not reviewed the submitted Noise Impact Assessment in any detail, nor the detailed observations and assessment by Darrell Butterworth. To ignore the submissions, and make assumptions with no basis is at best disappointing and at worst negligent.



SECTION 8: SUMMARY

- 8.1 This Statement of Case has been prepared on behalf of Chongie Entertainment Ltd (“the Appellant”) and is submitted in support of an Appeal against the refusal of planning permission by London Borough of Hillingdon (“the Council”) by decision dated 21 February 2024 in respect of an application referenced 28554/APP/2023/3714 seeking a “Partial change of use from Use Class E to adult gaming centre (Sui Generis) and shopfront alterations including the insertion of an additional front door” at 14/16 Station Road, Hayes, London, UB3 4DY.
- 8.2 The lawful use of the Appeal site is a bank (Class E)). As well as the proposed adult gaming centre, part of the former bank unit will be retained in Class E use and operated as a retail unit. This means there will be no net loss in the number of Class E units in the primary shopping area. The former, long-vacant bank unit is a large unit for which there has been no interest from retailers. By changing the use of part of the former bank pursuant to this Appeal proposal, a smaller, more affordable, more attractive retail unit will be created.
- 8.3 The Appellant, Chongie Entertainment Limited, is a new entrant in the adult gaming centre (AGC) UK market. The Company operates to the highest standards and is fully aware of its social responsibilities in respect to issues associated with gambling which it takes very seriously. There are 10 such units run by the applicant on a 24-hour basis across England.
- 8.4 This Statement sets out a number of key Appeal decisions which detail how relevant matters in respect to AGCs should be considered. The Appeals confirm that matters relating to concerns over gambling are not for the planning system to consider, but rather are the subject of the licensing regime. It is confirmed that AGCs are an appropriate town centre use which contributes to the vitality and viability of an existing centre. Recent Appeal decisions have also highlighted the need for a common-sense approach to be taken to High Street policies relating to percentage splits between A1 uses and other uses in respect to the new Use Class Order changes, which were introduced on 1 September 2020.
- 8.5 Given the evidence above, it is not considered the proposal would conflict with the policies referenced within the reasons for refusal. Rather the Appeal proposal would improve the diversity of uses within Hayes District Centre, encourage footfall and economic activity in the centre and it would provide 8 jobs. Further, the Appeal proposal would not diminish customers’ experience and behaviour in the centre, as the proposed AGC would be a complementary use that would not be unexpected in such a location. Indeed, the Appeal Site is a town centre location where retail, commercial and culture and leisure development is directed.



- 8.6 The associated benefits that have been commented on by Inspectors on varying applications for AGCs are clearly material to the Appeal proposal. It is not considered the Appeal proposal will harm the vitality and viability of Hayes District Centre rather, it would be beneficial to it in the following ways:
- i. The proposed use would contribute to the vitality and viability of Hayes District Centre;
 - ii. It will be open throughout the day and trading into the night, benefitting the evening economy;
 - iii. It would benefit the vitality and viability of the street and Centre;
 - iv. Significant investment would result;
 - v. The proposal represents a popular and complementary activity to retail and other town centre uses;
 - vi. In terms of the number of customers, the use would be similar to a shop;
 - vii. The proposal would be beneficial in terms of jobs created.
 - viii. The proposal would allow part of the former bank to be retained in Class E use, and operated as a retail unit.
- 8.7 Additional evidence is provided from a highly experienced licensing professional as to the acceptable nature of AGCs in respect to the issues of noise and disturbance. Darrell Butterworth's extensive observations of Hayes indicate that Hayes benefits from a thriving night-time economy, meanwhile his observations of existing AGC across the country indicate that the majority of patrons enter/leave AGCs on foot and usually alone, and that customers rarely congregate outside.
- 8.8 It is considered that this Statement, along with the accompanying Noise Impact Assessment prepared by ES Acoustics, in addition to Mr Butterworth's Witness Statements and Observation Logs provide comprehensive justification that Appeal proposal should be allowed.