

Appeal Decision

Site visit made on 14 August 2024

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th September 2024

Appeal Ref: APP/R5510/W/24/3340769

14 - 16 Station Road, Hayes, Hillingdon UB3 4BY

- 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 Chongie Entertainment Ltd against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref is 28554/APP/2023/3714.
 - The development proposed is partial change of use from Use Class E to adult gaming centre (Sui Generis) and shopfront alterations.
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Decision

1. The appeal is allowed and planning permission is granted for partial change of use from Use Class E to adult gaming centre (Sui Generis) and shopfront alterations at 14 - 16 Station Road, Hayes, Hillingdon UB3 4BY in accordance with the terms of the application, Ref 28554/APP/2023/3714, subject to the following conditions:
 - The development hereby permitted shall begin not later than three years from the date of this decision.
 - The development hereby permitted shall be carried out in accordance with the following approved plans: PO3, PO2, PO1 Rev A.
 - The development hereby permitted shall be carried out in accordance with the Planning Statement prepared by JMS Planning & Development dated December 2023.
 - Prior to first operation of the development hereby permitted the shopfront hereby approved shall ensure step-free access for wheelchair users from the public footway, via a profiled threshold or water bar not exceeding 15 mm in height and a doorway width of no less than 1000 mm. Thereafter the step-free access should be maintained with all such features remaining in place for the life of the building.
 - Prior to first operation of the development hereby permitted the upgrade works to the separating floor between the development and the first-floor flats above shall have been implemented in accordance with the upgrade measures set out in the Noise Impact Assessment Report, Reference: 20620.NIA-RPT.01 and shall achieve a minimum sound insulation value of

48 dB $D_{nTw} + C_{tr}$. Thereafter, this standard of sound insulation shall be retained and maintained.

Main Issues

2. The main issues in this appeal are the effect of the proposal on the:
- living conditions of nearby residents, with particular regard to noise and disturbance; and
 - vitality of the town centre and primary shopping area.

Reasons

Noise and disturbance

3. The appeal property is located on Station Road in Hayes Town Centre. The town centre radiates from the convergence of Botwell Lane, Coldharbour Lane and Station Road, and is largely dominated by these roads and the frequent movement of traffic. Many of the ground floor commercial units, throughout the town centre, have residential units above, including the appeal property.
4. The appeal proposal relates to the ground floor of the appeal property, which was previously used as bank, but has now been vacant for some time. The proposed adult gaming centre would operate 24 hours a day.
5. There is no substantive evidence before me that demonstrates that the appeal proposal would result in an unacceptable level of noise and disturbance. To the contrary, the witness statement¹ submitted as part of the application advises that the proposed adult gaming centre is unlikely to increase crime, disorder, or nuisance to residents.
6. As part of the application, the appellant submitted a Noise Impact Assessment²(NIA). The Council has not disputed the methodology used for the NIA, which assessed noise transfer through the party floor separating the ground floor unit from the first-floor residential use; noise breakout from the façade of the ground floor premises to the windows directly above; and potential noise associated with customers outside.
7. The NIA found, subject to mitigation measures, that the predicted levels of direct noise transfer and noise breakout would be expected to be well within set criteria, ensuring the occupants of the first-floor flat would not be compromised. Also, noise associated with customers outside the proposed adult gaming centre would be sufficiently below the average ambient noise level such that speech would be non-intrusive to the first-floor residential receptor.
8. I saw on site that there is already an adult amusement/gaming centre, Admiral Casino, not far from the appeal property, which operates 24 hours a day. In addition, many of the existing businesses along this section of Station Road open late into the evening. To name a few, Chaiiwala, which is located adjacent to the appeal property, opens from 8.00am until 12.00am,

¹ Witness Statement of Darrell John Butterworth dated 18th December 2023.

² Noise Impact Assessment Report to Support a Planning Application for a Proposed Partial Change of Use and Extension of Operating Hours, 14-16 Station Road, Hayes, London, UB3 4DY, Report Reference: 20620.NIA-RPT.01, prepared by ES Acoustics Limited, dated 21st December 2023.

McDonald's is open from 6.00am until 11.00pm, and Iceland, with the exception of Sundays, is open from 7.00am until 10.00pm. There are also several hot food takeaways nearby, which are likely to open until late in the evening. Furthermore, Station Road is the most direct route from other parts of the town centre to Hayes and Harlington station and the bus stop located close to the appeal property includes night services.

9. Therefore, residents who live above the commercial units in this part of the town centre already experience a certain level of noise and disturbance generated from the operation of existing businesses late into the evening and other night-time activities such as people accessing public transport. This is part and parcel of town centre living. From the evidence before me and my observations on site, subject to the mitigation measures set out in the NIA, any additional noise generated by the appeal proposal is likely to be limited and not to a degree that it would result in any appreciable harm to the living conditions of residents who live nearby.
10. Accordingly, the appeal proposal would comply with Policy DMTC 4 and Policy DMHB 11 of the London Borough of Hillingdon Local Plan Part 2 Development Management Policies (2020) (Local Plan Part 2), in this regard. These seek to protect the amenity of adjacent properties.

Vitality of Town Centre and Primary Shopping Area

11. There is no dispute between the parties that, for the purposes of the Local Plan Part 2, the appeal property forms part of the primary shopping area. The proposed adult gaming centre is a main town centre use, as set out in Appendix 2 of the National Planning Policy Framework, and the proposal would bring a unit back into use that has been vacant for a long time. This is supported by Policy DMTC 1 of the Local Plan Part 2, which seeks to ensure proposed development enhances the town centre's offer and is compatible with the nature, scale, and function of the town centre.
12. Policy DMTC 2 of the However Part 2 deals specifically with development within the primary and secondary shopping areas. To ensure the viability of the Borough's retail centres and an appropriate level of diversity of retail development, it seeks to ensure that primary shopping areas are a focus of retail activity and that interruptions in the shop frontage are minimised by dispersing supporting uses. Policy DMTC 2 does not support the ground floor use of premises in primary shopping areas for adult gaming centres. The criteria set out in this policy are therefore not applicable in this case.
13. Adult gaming centres, such as the appeal proposal, are dealt with by Policy DMTC 4 of the Local Plan Part 2, which seeks to ensure a mix and balance of complementary night-time and daytime uses that can co-exist successfully with neighbouring residential areas and create an attractive and vibrant area. The policy supports proposals for restaurants and hot food takeaways, drinking establishments, betting shops, night clubs, casinos, amusement centres, minicab offices and other similar uses provided certain criteria are met. I assess the proposal against each in turn below.
14. Criterion i) requires the proposal to not result in adverse cumulative impacts due to an unacceptable concentration of such uses in one area. Both parties refer to Paragraph 3.20 of the supporting text, which explains that the Council

will apply a maximum threshold of 15% of primary and secondary frontages to certain uses. The 15% threshold is not referred to in Policy DMTC 4 itself, rather paragraph 3.20 signposts criteria A ii) and B ii) of Policy DMTC 2.

15. In terms of primary shopping areas, criterion A ii) limits hot food takeaways to a maximum of 15% of the frontage. It does not apply the 15% threshold to any other uses in the primary shopping area. Criterion B ii), which refers to the uses specified in Policy DMTC 4 relates specifically to the secondary shopping area. The 15% threshold would therefore not appear to be applicable in this case.
16. I appreciate that the Council considers that the appeal proposal would result in a high percentage of units within the primary shopping frontage being in gaming uses. Nonetheless, from my observations on site, there is a well-balanced mix of units along Station Road. These are largely in Class E, commercial, business and service use, which is confirmed by the Council in its Officer Report. Other uses, including the existing betting shops, are well dispersed among them. The appeal proposal is only the second amusement centre in the town centre and, although it would be located reasonably close to the existing amusement centre, Admiral Casino, the two uses would be physically and visually separated by several units in Class E use, as well as the entrance to a rear access lane. Thus, in this case, the proposal would not result in an unacceptable concentration of these uses.
17. I note the Council has a target for 70% of the units within the primary shopping area to be in A1 retail use, now use Class E(a). This is reflected in the criteria set out in Policy DMTC 2. Both parties recognise that the current percentage of units in A1 retail use in the primary shopping area is well below the 70% target at around 59%. However, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 have introduced a more flexible range of commercial, business and service uses suitable for a town centre location. I can therefore only afford limited weight to the Council's target. The appellants evidence shows over 80% of the Town Centre would be in Class E use, even after the partial change of use proposed as part of this appeal was implemented.
18. I have before me a summary report of two Little Vegas Footfall Surveys, which show adult gaming centres in other town centres to generate similar levels of footfall to other main town centre uses. I am therefore satisfied that the appeal proposal would be acceptable in terms of its effect on the vitality and viability of the shopping area.
19. I note the concerns of interested parties that consider the proposal would have a negative social impact on people already afflicted by gambling problems, many of whom are already on a low income. Nevertheless, there is no substantive evidence before me to demonstrate that the appeal proposal would result in any adverse impacts, cumulatively with other similar uses or alone.
20. Moving on to criterion ii) of Policy DMTC 4 of the Local Plan Part 2, my findings above conclude that the appeal proposal would not cause unacceptable disturbance or loss of amenity to nearby properties by reason of noise. The Council has not raised any concerns regarding odour, emissions, safety and security, refuse, parking, or traffic congestion. From the evidence

before me and my observations on site I am also of the view that unacceptable impacts would not result in these regards. The appeal proposal would therefore accord with this criterion.

21. There is also nothing before me to suggest the appeal proposal would conflict with criterion iii) of Policy DMTC 4 of the Local Plan Part 2. The Council in its Officer Report considers the proposed shop front changes, which include a new entrance door, to be acceptable in terms of any impact on the character and appearance of the area. From the evidence before me and my observations on site, I can find no reason to disagree. Given this, and that I am satisfied that the appeal proposal would be acceptable in terms of its effect on the vitality and viability of the shopping area, it would accord with this criterion.
22. Overall, while the adult gaming use proposed is not listed as an approved use within the primary shopping frontage by Policy DMTC 2 of the Local Plan Part 2, in this case, it would be supported by Policy DMTC 4 of the Local Plan Part 2. It would also accord with Policy DMTC 1 of the Local Plan Part 2 and Policy SD6 of the London Plan (2021), which seeks to promote the management of vibrant daytime, evening, and night-time activities to enhance town centre vitality and viability, having regard to the role of individual centres in the night-time economy.
23. The Decision Notice refers to a conflict with Policy DMTC 3 of the Local Plan Part 2. However, this is not advanced in the Officer Report or the Council's Statement of Case. Policy DMTC 3 seeks to protect and enhance the function of local centres and local parades. Given the appeal proposal is within a District Centre within the Borough hierarchy, it is not applicable in this case.

Conditions

24. In addition to the statutory time limit condition, conditions specifying the plans that are approved and that the development shall be undertaken in accordance with them and the associated planning statement, are required in the interests of certainty.
25. To ensure an accessible and inclusive development, a condition requiring step-free access for wheelchair users prior to the adult gaming centre opening is needed, as set out in the Officer's Report. I have also imposed a condition requiring compliance with the separating floor upgrade measures set out in the NIA prior to the adult gaming centre opening, to protect the living conditions of the occupants of the first-floor flats above the development.
26. The Council suggested several informatives to be added to a grant of permission. These were not framed as conditions and have therefore not been treated as such. They have been drawn to the appellant's attention.

Conclusion

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

Hannah Guest INSPECTOR