



Appeal Decision

Site Visit made on 19 October 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2021

Appeal Ref: APP/V5570/W/21/3278006

310-312 Caledonian Road, Islington, London N1 1BB

- 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 City Gaming Ltd against the decision of London Borough of Islington.
 - The application Ref P2021/1009/FUL, dated 31 March 2021, was refused by notice dated 27 May 2021.
 - The development proposed is the change of use from vacant betting shop to adult gaming centre.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from vacant betting shop to adult gaming centre at 310-312 Caledonian Road, Islington, London N1 1BB in accordance with the terms of the application, Ref P2021/1009/FUL, dated 31 March 2021, 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 development hereby permitted shall be carried out in accordance with the following approved plan: 2111_12 Rev A.
 - 3) An Operational Management Plan shall be submitted to and approved in writing by the Local Planning Authority prior to the adult gaming centre first being brought into use. The plan shall provide particular details on health and safety measures and mitigation inside the site, security systems, crime prevention and measures to prevent adverse noise outbreak to adjacent neighbouring properties. The use shall only be operated in accordance with the approved details and no changes shall take place unless otherwise approved in writing by the Local Planning Authority.

Applications for costs

2. An application for costs was made by City Gaming Ltd against the London Borough of Islington. This application is the subject of a separate Decision.

Preliminary Matters

3. The decision notice refers in error to Policy E6 of the London Plan 2021 (LP), however the Council has confirmed that this should instead refer to Policy E9. I proceed on that basis.
4. In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special

attention to the desirability of preserving or enhancing the character or appearance of the Barnsbury Conservation Area (CA).

Main Issue

5. The main issue is the effect of the proposed development on the character and function of the Caledonian Road Local Shopping Area (LSA).

Reasons

6. The appeal property was previously in use as a betting shop but is now vacant. It is located within a LSA where a number of different uses are present, including shops, cafes, restaurants and hot food takeaways. Other betting shops are located at 289-291 and 325 Caledonian Road.
7. Policy DM4.2 of the DMP refers primarily to entertainment and the night-time economy within town centres. With regard to entertainment and night-time activities outside of such centres it makes direct reference to Policy DM4.3. Policy DM4.3 states that certain uses will be resisted where they would result in negative cumulative impacts due to an unacceptable concentration of such uses in one area or would cause unacceptable disturbance or detrimentally affect the amenity, character and function of an area. They will also be resisted where they are in proximity to schools or sensitive community facilities. Whilst adult gaming centres (AGCs) are not specifically listed in Policy DM4.3, they are a use similar to casinos, betting shops and amusements centres. Policy DM4.6 states that proposals will only be permitted where an appropriate mix and balance of uses within the LSA, which maintains and enhances the retail and service function of the LSA, is retained.
8. The Local Plan Topic Paper *Retail, Leisure and Services, Culture and Visitor Accommodation 2020* has been written to inform the policies of the emerging Local Plan (eLP). Within the paper, emphasis is placed on the negative impacts that betting shops and AGCs can have, particularly where there are high concentrations of these uses. Reference is made to evidence which shows certain people are more vulnerable to gambling related harm, including those with substance misuse problems, poor mental health and those living in deprived areas. A key aim of eLP Policy R8 is therefore to restrict the presence of betting shops and adult gaming centres (combined) to less than 4% of units within LSAs of 26 units or more; or a maximum of two units in LSAs with 25 units or less. It is advised at the time the paper was written that no LSAs would fail this policy test, which would allow flexibility and allow for the potential for additional betting shops or AGCs to be accommodated.
9. I have not been made aware as to the current progress of the eLP, but there is no indication that it has been adopted as part of the development plan. Furthermore, it is not suggested by the Council that there would be a conflict with eLP Policy R8 in terms of the specific regulation of the number of betting shops/AGCs in the LSA in which the appeal site is located. Therefore, I give emerging policy R8 only limited weight at this time. Emerging Policy R4 refers to the previous A class uses which have subsequently been subject to legislative change, and as a result it is not clear in what form this policy may be carried forward. It also predominantly seeks to prevent the loss of retail uses and resist residential uses at ground floor, which are not applicable to the appeal case. It too can therefore only be afforded limited weight.

10. The policies of the development plan do not preclude the addition of AGC in LSAs. Instead, they seek to restrict their numbers in order to ensure that proposals maintain and enhance the retail and service function of the LSA and that they do not result in an unacceptable concentration of uses or in unacceptable effects on the amenity, character and function of the area. In this instance there would not be conflict with the aims of the relevant policies as there would not be a net increase in the number of betting shops/AGCs within the LSA, as the existing use is a betting shop and the proposed use an AGC. Whilst reference is made by the Council to the presence of other sui generis and takeaway uses in the vicinity of the appeal site, these are existing uses and it is unclear from the submissions made as to how they could specifically cause cumulative harm, in the context of the existing and proposed uses of the appeal property.
11. A number of concerns have been raised that the proposed use would increase anti-social behaviour, criminal behaviour, drug taking, drunkenness and encourage an increase in gambling. However, the proposed use would be subject to the separate licensing regime and a copy of a license granted under the Gambling Act 2005 has been provided. This demonstrates how the proposed use would be operated in a manner that would address concerns that have been raised in these respects. It is also suggested that the use would not improve the area or be compatible with current regeneration plans such as those outlined in the Cally Plan 2014 or the We are Cally Community Plan 2021-2024. However, for the reasons I have set out there would be no conflict with the relevant development plan policies.
12. Whilst interested parties have referred to the proximity of the appeal site to schools, a children's centre and other uses that may provide services for vulnerable people, and Part B of Policy DM4.3 of the DMP refers to this consideration, this is not a matter of concern that has been raised by the Council. There is also no substantive evidence before me to suggest that the proposed use could result in harm in this respect.
13. The appeal property has not been vacant and marketed for a period of 2 years or more, however Policy DM4.6 requires this only with respect to ground floor retail units. I have also not been made aware of any planning policy which requires that marketing evidence be provided to demonstrate that there is a realistic prospect of the unit being used for other purposes that do not relate to gambling. Reference is made to another appeal decision in Islington¹, however this related to a property that was in A1 retail use and it would have resulted both in a loss of a retail unit and an increase in the number of betting shops/AGC, which the Inspector found would result in an unacceptable concentration. It is therefore not directly comparable to the circumstances of the appeal proposal but, in any event, I must consider the appeal primarily on its own merits.
14. It is suggested that hours of opening should be restricted to between 09:00 to 23:00, however there is no substantive evidence before me to support this need or to justify the restriction to the particular hours that have been put forward. No objection was received from the Council's Acoustic Officer subject to a condition requiring the approval of an operational management plan on how noise would be controlled. In addition, as previously noted, the use would

¹ APP/V5570/W/20/3257308

be subject to a separate licensing regime which provides control in relation to the operation of the use. Whilst there are residential properties located on the upper levels of the appeal property, of adjoining properties and to the rear of the appeal site, the use proposed would not be likely to generate significant levels of noise from within. Furthermore, it is located within an LSA and on a main arterial road with associated traffic levels. I am not therefore persuaded that it is necessary or reasonable to prevent 24-hour opening to protect the living conditions of the occupiers of nearby residential properties.

15. For these reasons, I conclude that the proposed development would not cause harm to the character and function of the LSA. Consequently, the proposal would accord with Policy E9 of the LP and Policies DM4.2, DM4.3 and DM4.6 of the DMP. I have also had regard to the policies of the eLP, to the documents referred to by interested parties where the relevant details have been provided and to the National Planning Policy Framework, but they do not indicate individually or cumulatively that a decision should be taken otherwise than in accordance with the policies of the development plan.

Other Matters

16. The existing approved use of the premises is not a matter in dispute between the parties and there has been no evidence provided to suggest that its use should be considered as anything other than a betting shop (*sui generis*).
17. Whilst the site is located within a CA, the plans submitted show that there would be no physical changes to the form of the shopfront. Given that the appeal property is located within an LSA, the proposed use would also not cause harm to the character of the CA. There would, therefore, be no harm to the character and appearance of the CA as a result of the appeal proposal.
18. There is no substantive evidence before me to suggest that the proposal would increase traffic, litter or that it would hinder the recovery of the local economy from the Covid-19 Pandemic.

Conditions

19. Conditions relating to the time period for commencing development and the approved plans are necessary to provide certainty. A condition relating to the submission and approval of an operational management plan is necessary and reasonable on the basis of the recommendations of the Designing Out Crime Group and to protect the living conditions of the occupiers of adjacent residential properties with respect to noise. I have reworded the Council's suggested condition in the interests of precision. As set out earlier in this decision, it is not necessary or reasonable to restrict opening hours.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed.

Graham Wraight

INSPECTOR