
Appeal Decision

Site visit made on 6 July 2021

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2021

Appeal Ref: APP/X5990/W/21/3266795
182-184 Edgware Road, London W2 2DS

- 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 Cashino Gaming Ltd against the decision of City of Westminster Council.
 - The application Ref 20/05549/FULL, dated 3 September 2020, was refused by notice dated 26 November 2020.
 - The development proposed is the change of use from vacant betting shop (sui generis use) to adult gaming centre (sui generis use).
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use from vacant betting shop (sui generis use) to adult gaming centre (sui generis use) at 182-184 Edgware Road, London W2 2DS in accordance with the terms of the application, Ref 20/05549/FULL, dated 3 September 2020, and the plans submitted with it, subject to the conditions in the schedule at the end of this decision.

Procedural Matter

2. The National Planning Policy Framework (the Framework) was revised during the consideration of the appeal. Both parties were given the opportunity to comment on any implications for the appeal.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the vitality and viability of the Edgware Road (South) (No.8) Central Activities Zone (CAZ) Retail Cluster and,
 - the health and well-being of surrounding residents with particular regard to crime and anti-social behaviour.

Reasons

The vitality and viability of the Edgware Road Retail Cluster

4. I understand the Council's desire for units to benefit from the flexibility provided by Class E¹ uses. However, as the proposed sui generis use would replace an existing sui generis use, there would be no disadvantage to the viability of the area in terms of flexibility of change of use. In any event, the Council would retain the power to deal with any change of use with flexibility in considering any future planning application.

¹ Class E of the Town and Country Planning (Use Classes) Order 1987, as amended

5. The proposed use would reflect similar uses on the same side of the street, and the betting shop on the opposite side. However, given the last use of the site as a betting shop, and the small proportion of non-retail to retail uses in this retail cluster, the proposal for an adult gaming centre (AGC) would not cause an over-concentration of these non-retail uses.
6. Moreover, the vitality of this retail cluster depends not solely on shops; other, complementary uses, such as the banks and restaurants also contribute to the overall viability of this Town Centre Retail Cluster in the Central Activities Zone by attracting different people at different times of the day. This is recognised in the Westminster City Plan 2019-2040 (City Plan), which describes, in paragraph 14.19 how CAZ Retail Clusters meet the needs of a combination of residents, workers and visitors, adding to central London's wide appeal.
7. The trading floor area of the proposed use would be smaller than the previous area of the betting shop. Its complementary use would reflect and enhance the role and function of the retail cluster. It would respond to the variety of uses in the retail cluster, reflecting its mixed character in terms of both its scale and its nature of use. The change of use would be in accordance with City Plan policy 14 which says that CAZ retail clusters will provide complementary town centre uses to meet the needs of residents, workers, and visitors, as well as City Plan policy 15 which seeks to balance the needs of visitors, businesses and local communities.
8. The principal benefit of the AGC would be the complementary nature of its use alongside the other uses in the retail cluster, and the potential to generate linked trips and to stimulate additional footfall. This would bolster the vitality and viability of the retail cluster, sustaining its attractiveness to a wide section of residents, workers and visitors, in accordance with City Plan policy 16 which requires applications for entertainment uses to demonstrate wider benefits to the local community, where appropriate.
9. I appreciate that AGCs tend to limit visibility into the unit, but this would be little different to a betting shop, the last use. There are no alterations proposed to the frontage of the building which would change the local character or the historic environment, and a window display could be secured by condition, avoiding conflict with City Plan policies 7 and 38 in this respect, which require exemplary standards of design and protect local character and local environmental quality.
10. I understand the Council's concern for the attractiveness of the Edgware Road frontage. However, there is no evidence that the last use of the site as a betting shop could not be continued in the event of this proposal for an AGC being dismissed. The proposal would not result in the loss of a retail use. Rather, it would replace one sui generis, licensed use with another sui generis, licensed use.
11. In this context, the difference to the vitality and viability of this retail cluster between the last use and the proposed use would be marginal and not harmful. The proposal would bring back into use a unit last used 2 years ago, the disuse of which presently detracts from the vitality of this section of the retail cluster, which in this section, at the time of the appeal, was part of a row of 4 empty shops. It would bring additional visitor footfall to the retail cluster, and with it, additional employment. I conclude that the proposed change of use would have

a positive effect on the vitality and viability of the Edgware Road (South) (No.8) Central Activities Zone Retail Cluster.

12. While City Plan policies 6 and 33, to which the Council refers and which respectively concern development of the Church Street/Edgware Road and Ebury Bridge Estate housing renewal areas, and local environmental impacts, are less relevant to this issue, I can identify no conflict from it with the other City Plan policies to which the Council refers, policies 7, 14, 15, 16, and 38, as discussed above. The proposal would also accord with the guidance in section 7 of the Framework which indicates that decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.

The health and well-being of surrounding residents

13. I note the representations from local residents and the drug crimes register submitted by the Harrowby and District Residents' Association, and the objection from the Police, and their concern that another AGC would increase crime and anti-social behaviour in the ward. I acknowledge the risk of AGCs attracting anti-social behaviour, as might any licensed premises. However, there is no substantive evidence that the reported incidents of anti-social behaviour and crimes reported in this ward were connected to AGCs in this retail cluster.
14. The appellant's observations of the area around the site recorded people sleeping in the doorways of shops, and some street begging, but no disorder, anti-social behaviour, street-drinking or drug-dealing. The appellant's visits to AGCs in Charing Cross Road and Tottenham Court Road, in Tooting and in Neasden revealed that the management and licensing controls of the AGCs were effective at excluding crime and anti-social behaviour inside and outside the premises. There is no evidence that a well-managed operation in these premises could not achieve similar controls over the potential for crime and anti-social behaviour.
15. I note the Council's concern about addiction to gambling and the effect on people's well-being. However, I need to take into account in the balance the last use of the premises which was a betting shop. The detailed control over the operation of the day-to-day use is controlled by other legislation, many matters of which would be controlled by the licence already granted which contains conditions concerning problem gambling, protecting the vulnerable, staffing, and CCTV.
16. I am mindful of the proximity of places of worship, schools and the homes in the neighbourhood, however these are concentrated behind the premises rather than directly around it. The closest dwellings are those at 4th floor, around 32m distant. The noise assessment has applied the noise characteristics of similar premises to the appeal location and shown how, after minor repairs, the predicted noise levels, because of the high level of activity on Edgware Road, would be below the criteria in the relevant British Standard, including during the night-time. In this light, there is no material risk of disturbance from noise to the living conditions of surrounding occupiers.
17. I conclude therefore that there would be no harm to the health and well-being of surrounding residents with particular regard to crime and anti-social behaviour, and no conflict with City Plan policy 33 which protects the quality of life and health and well-being of existing occupiers.

Conditions

18. In addition to the statutory time condition [1] I have imposed a plans condition [2] to avoid confusion over what has been approved. There is no evidence that the opening hours sought by the appellant and granted in the licence would harm the living conditions of surrounding occupiers. I recognise the very small risk of indirect disturbance to surrounding occupiers from the unpredicted comings and goings of customers visiting at the quietest times of the night, in which light closure at 02:00 hours is necessary to prevent their loss of privacy. I see no reason why, on such a busy road through a retail cluster, there would be any harm from opening at 07:00, when the premises might serve those finishing night-shift work. I have therefore imposed the hours condition [3].
19. The Operational Management Plan and Security Measures already submitted, together with the drawings, provides the information the Council seeks to secure the effective management of the premises. There is no justification for another round of submissions and consideration. A condition [4] is necessary only to ensure these are adhered to during the lifetime of the development. To protect the retail character of the area, a condition [5] to ensure a window display is necessary, though there is no justification to require the Council to approve a strategy to secure this, as sought in its suggested condition. The appellant's floor plan indicates the location for refuse and recycling storage. A condition [6] to ensure that the refuse and recycling bins shown on the amended floor plan, accepted by the Council, are provided and retained, is necessary to protect the living conditions of surrounding occupiers.
20. The Council's suggested condition restricting the playing of music is unenforceable, so I have not applied it. The appellant's noise report identified repairs to the premises which would ensure that the anticipated noise levels from sound passing through the shopfront and ceiling towards the adjoining premises would be well below the recommended levels in British Standard BS 8233:2014. An implementation condition to secure the repairs would only mitigate the effects anticipated today rather than any future effects which may reasonably be anticipated. I have therefore applied the more precautionary, performance conditions [7,8,9], with the alternative to seek a fixed maximum noise level, as suggested by the Council.
21. As the building shares an alleyway with the neighbouring buildings and the proposal reuses the existing frontage, the scope to provide cycle storage on-site is severely constrained. I note that there are Sheffield stands outside the premises. In these circumstances, staff and customers could use the on-street stands to park bicycles without prejudicing the attractiveness of visiting the premises by bicycle or compromising the environmental aims of sustainable development. I have not therefore applied the on-site bicycle storage condition sought by the Council.

Conclusion

22. The change of use would not harm the vitality and viability of the Edgware Road (South) (No.8) Central Activities Zone (CAZ) Retail Cluster. Nor would it harm the health and well-being of surrounding residents with particular regard to crime and anti-social behaviour. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Patrick Whelan

INSPECTOR

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 plans: LOCATION PLAN (1:1250@A3); SITE PLAN 1:500@A3; 999-EX-01 EXISTING GROUND FLOOR GENERAL ARRANGEMENT PLAN; 999-PR-01 Rev 02 PROPOSED FLOOR PLANS DATE 8/10/20.
- 3) Customers shall be permitted on the premises only between 07:00 on any day and 02:00 the next day.
- 4) The provisions in the Operational Management Plan & Security Measures document, dated August 2020, shall be adhered to throughout the lifetime of the development.
- 5) A window display shall be provided at all times in the ground floor window fronting Edgware Road.
- 6) Two 1,100 litre bins for storing refuse and recycling shall be provided in accordance with drawing 999-PR-01 Rev 02 PROPOSED FLOOR PLANS DATE 8/10/20, and shall be retained thereafter.
- 7) Where noise emitted from the proposed internal activity in the development will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the use hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the permitted hours of use. The specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest.
- 8) Where noise emitted from the proposed internal activity in the development will contain tones or will be intermittent, the 'A' weighted sound pressure level from the use hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the permitted hours of use. The specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest.
- 9) Following the implementation of the use, an application may be made to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report including a proposed fixed noise level for written approval by the City Council. The noise report must include:
 - (a) The location of the most affected noise sensitive receptor and the most affected window of it;
 - (b) Distances between the application premises and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;

- (c) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (a) above (or a suitable representative position), at times when background noise is at its lowest during the permitted hours of use. This acoustic survey is to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (d) The lowest existing LA90, 15 mins measurement recorded under (c) above;
- (e) Measurement evidence and any calculations demonstrating that the activity complies with the planning condition;
- (f) The proposed maximum noise level to be emitted by the activity

END OF SCHEDULE OF CONDITIONS



Appeal Decision

Site visit made on 4 April 2022

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th May 2022

Appeal Ref: APP/W0734/W/21/3289652

58 Linthorpe Road, Middlesbrough, TS1 1RA

- 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 Merkur Slots Ltd against the decision of Middlesbrough Council.
- The application Ref 21/0677/COU, dated 6 September 2021, was refused by notice dated 10 December 2021.
- The development proposed was described as '*Full planning permission for of the change of use of the ground floor at 58 Linthorpe Road from Class E to an AGC (Sui Generis). Advertisement consent is also sought for 2 x internally illuminated fascia signs and 1 x internally illuminated Fascia sign with a Sun logo inlaid with 5mm Opal 050 acrylic disc.*'

Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor from Class E to an Adult Gaming Centre (Sui Generis) at 58 Linthorpe Road, Middlesbrough, TS1 1RA in accordance with the terms of the application, Ref 21/0677/COU, dated 6 September 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 plans: site location plan (1:1250@A4); block plan (1:500@A3); 999-PR-01 Rev 03 and 999-EX-02.
 - 3) A window display in all ground floor windows fronting Linthorpe Road shall be installed before the use commences and shall be retained for the lifetime of the use.

Preliminary Matters

2. The development was initially described in the manner set out above, although a separate application for advertisement consent¹ was granted for the installation of internally illuminated fascia signs in connection with the use sought by the appellant. I have adopted the more concise development description set out on the decision notice as being for the: *change of use of ground floor from Class E to an adult gaming centre (Sui Generis)*.
3. My attention has been drawn by both parties to a similar proposal previously considered at appeal by another Inspector at the current appeal site². I have had regard to the conclusions reached in that instance.

¹ LPA Ref No: 21/0678/ADV – approved 13 December 2021

² APP/W0734/W/21/3269738

Main Issues

4. The main issues are the effects of the proposed development upon:
- The vitality and viability of the town centre; and
 - The character and appearance of the appeal site and surrounding area.

Reasons

Vitality and viability

5. The appeal site is a vacant ground floor unit on Linthorpe Road, a Primary Shopping Frontage (PSF)³ within Middlesbrough town centre's shopping area. Formerly occupied by Burger King until 2015, the unit has since only been temporarily occupied by a retail operator for a short period between late-2016 and early-2017.
6. Middlesbrough Local Plan (LP) policy REG20 sets out, amongst other things, the Council's approach to supporting the role of the town centre. Its provisions are supported by LP policy REG21 (together with the proposals map) which identifies primary shopping frontages (PSF) where use class A1 retail uses will be appropriate. The latter LP policy also goes on to state that other uses falling within use classes A2 and A3, together with other complementary uses, may be acceptable provided that they do not harm the character and function of the shopping area, or impact upon the vitality and viability of the town centre.
7. However, since the LP's adoption, the Use Classes Order (the Order) has been changed, the effect of which has been to incorporate uses previously falling within Use Class A1 (as well as classes A2, A3, D1 and D2) within a new Use Class E. Whilst the proposed adult gaming centre is a sui generis use, which does not fall within Use Class E, the new Order is clearly material to this matter in respect of how it would affect the LP policies' ability to retain retail uses and its support for, and protection of, uses categorised within the now superseded Order.
8. With regard to the LP policies' approach, the extent to which they are able to directly resist non-A1 retail uses has been diminished by the latest Order as such uses may now move, unfettered, within the new Class E. There is, therefore, the very real prospect that the Order may facilitate the introduction within the PSF of uses which the LP policies previously sought to resist. Although of limited direct relevance to a proposal for a sui generis use such as the appeal proposal, the new Order recognises a greater flexibility of uses within, and a changing role for, town centres and their retail function.
9. The approach set out in the previous appeal decision relating to this site concisely and accurately set out the flexibility inherent in the wording of LP policies REG20 and REG21, and particularly their reference to other complementary uses. I agree with this approach which means that significant weight may still be afforded to these policies as a whole, although their aim to support and protect Class A uses within the town centre's PSF carries only limited weight. The National Planning Policy Framework (the Framework) continues to recognise the importance of town centres, but notes the

³ As identified in the Middlesbrough Local Plan

importance of growth, management and adaptation in making clear the range of uses permitted within town centres and primary shopping areas.

10. Including vacant units, the appellants' submission demonstrates that the proportion of non-A1 uses and Class E uses within the block in which the appeal site lies did not change between February and December 2021. Whilst it also shows that the proportion of non-(former) A1 uses exceeded the 15% threshold set out within LP policy REG21, neither had this figure increased over the same period. Tellingly, of the 21 units within this block the level of vacancies rose from 5 to 7 of the 21 units.
11. The proposal would remove the appeal unit from a Class E / former Class A1 designation and further shift the proportion of non-Class A1 uses beyond LP policy REG21's threshold. However, as set out above, this carries limited weight in the context of the new Order which would allow unfettered movement of uses within Class E, and also therefore potentially away from former Class A1 uses. The matter of whether or not Class E uses will be PSF compliant in policy terms in the future is not one to which I give any significant weight at the time of determination of this appeal.
12. The appeal unit is flanked by retail uses in a part of the PSF where Class E, and particularly retail uses falling within the former Class A1 remain dominant. It would however also bring a long vacant unit back into active and sustained use in a manner absent since 2015 and would counteract the recent increase in vacant units within this block, as demonstrated by the appellants' 'Health Check' of units⁴, between February and November 2021.
13. There is broad agreement that the bringing back into use of a currently vacant unit can support the vitality and viability of a town centre in a way that a vacant unit would not. However, the Council state that the proposed use would potentially deter groups and individuals from visiting this part of the town centre as well as discouraging 'the right kind' of investment but have not presented any evidence to support how this might be so.
14. Instead, relying upon vague and unsupported statements, no compelling effort has been made by the Council to challenge the appellants' footfall analysis of three adult gaming centres in other locations across the country. These show adult gaming centres to be at least comparable, if not more so, in terms of footfall within a town centre location than their retail neighbours.
15. The previous Inspector's conclusion that Linthorpe Road had a bustling character was largely in line with my observations, even taking account of the late afternoon timing of my visit to the site. Nevertheless, on the basis of the evidence presented to me by the appellants, it seems to me that adult gaming centres are capable of generating footfall rather than discouraging it, and no evidence to the contrary has been presented to me by the Council. It is not therefore clear the basis upon which the Council consider that the proposal would not have a positive impact upon the PSF in light of the appeal unit's long-term vacancy.
16. I am mindful that the appeal proposal was previously considered to not be a complementary use within the PSF. However, I am satisfied that the appellant has demonstrated, through comparison with other similar proposals in a range

⁴ Statement of Case: Figure 6.1 – Health Check Results of Appeal Site's Frontage Block

of town centres, that the proposal would not harm footfall within Linthorpe Road or the PSF. It is also clear to me that in the context of a unit which has suffered from long term vacancy levels and in a particular block within the PSF where those levels have been shown to have increased in recent times, the bringing back into use would be beneficial.

17. The property has been marketed for a continuous and lengthy period, with submissions showing that rental and sale expectations for it have been reduced during the course of that period. In the absence of a detailed critique of the marketing process, I am satisfied that sufficient weight can be afforded to its conclusions to support the contention that the proposal would be beneficial to the vitality and viability of the town centre and, in these terms, would be a complementary use. I am satisfied therefore that the proposal would result in a complementary use of the appeal premises for the purposes of LP policies REG20 and REG21 without causing demonstrable harm to the vitality or viability of the town centre.

Character and appearance

18. The appeal premises has a contemporary and heavily glazed shopfront, albeit like its neighbours, recessed beneath a heavy canopy. The appellant has undertaken to ensure that the glazed shopfront would be retained without the application for vinyl to the glazing. A large display screen would also be position within the largest portion of shopfront glazing.
19. The measures outlined by the appellants demonstrate an awareness of the potential shortcomings of adult gaming centres in terms of their external appearance. The Council are correct to be concerned about such matters. However, whilst it is also the case that traditional retail units typically have more active shopwindow displays, it is by no means always the case that that should be so. Moreover, in the context of the new Order where uses may move more freely within Class E, it cannot necessarily be expected that once active shopwindows are retained as such.
20. The Council highlight the supporting text to LP policy REG21 which describes features of complimentary uses. I have no reason to believe that the appeal proposal would not be open during the day, whilst the submitted plans and evidence shows that the display screen would provide moving and engaging images whilst maintaining otherwise unobstructed views into the unit's interior. I have already concluded that the appellants have adequately demonstrated that the proposal would not, based on evidence of other similar units, lead to a reduction in footfall levels and thus I am satisfied that the proposal would not have a harmful effect on the character or appearance of the surrounding area.
21. Nor, in views into such units, would the scene be notably different. Thus, 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.
22. For these reasons, the proposed development would not be in conflict with the aims and objectives of LP policies REG20 or REG21 in their support for the town centre and Primary Shopping Frontages and the role that complementary uses

play therein. Nor would the proposed development be at odds with LP policy CS5 which seeks to secure a high standard of design in all development proposals in terms of, amongst other things, their effect on the character and appearance of the area.

Conditions

23. The Council have not suggested any conditions in the event that the appeal should succeed. Nevertheless, it should come as no surprise to either party that I have imposed time limit and approved plans conditions. These, I consider, are necessary and reasonable in the interests of proper planning and to provide certainty.
24. In addition to the proposed ground floor plan, which is covered by the approved plans condition, a further condition requiring the provision and retention of a window display at all times in the windows fronting Linthorpe Road is necessary in the interests of character and appearance.

Conclusion

25. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

G Robbie

INSPECTOR



Appeal Decision

Site Visit made on 28 September 2021

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2021

Appeal Ref: APP/N5090/W/21/3270129

48 Golders Green Road, Golders Green, London NW11 8LL

- 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 Cashino Gaming Ltd. against the decision of the London Borough of Barnet.
 - The application Ref 20/5698/FUL, dated 26 November 2020, was refused by notice dated 22 January 2021.
 - The development proposed is change of use of ground floor from vacant estate agents (Class E) to adult gaming centre (SG use).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor from vacant estate agents (Class E) to adult gaming centre (SG use) at 48 Golders Green Road, Golders Green, London NW11 8LL in accordance with the application 20/5698/FUL, dated 26 November 2020, subject to the Schedule of conditions at the end of this decision.

Procedural Matters

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, amending the Town and Country Planning (Use Classes) Order 1987 have come into force. These amendments revoke the previous Class A uses and create a new broad 'Commercial, business and service' use, under Class E. The appeal site falls into this new Class E, previously occupied as an estate agent falling within financial and professional services (A2) use. I have applied the development plan policy approach to retail and non-retail uses.
3. The London Plan (2021) (LP) has been adopted in between the time the application was determined and submission of the appeal. Policy 4.8 of the London Plan (2016), listed in the Council's first reason for refusal, has been superseded by LP Policy E9. The aims of both sets of policies are broadly similar and I am satisfied that no interested party has been prejudiced by this change of policy.
4. The revised National Planning Policy Framework (the Framework) has been published since the appeal was submitted. Both main parties have been given the opportunity to comment on this. My decision is made in the context of the revised Framework and I am satisfied that no interested party has been prejudiced by my approach.

Main Issues

5. The main issues are:

- The effect of the proposed development upon the vitality and viability of Golders Green town centre; and
- The effect of the proposal upon the living conditions of nearby residents with regard to noise and disturbance.

Reasons

Vitality and viability

6. Golders Green town centre is largely linear focused along Golders Green Road and around the war memorial in front of the station. The town centre has a vibrant mix of daytime and evening uses, with a relatively low number of vacant units. The ground floor of the property is vacant with the previous use an estate agent having vacated the premises in 2016. The property is statutory listed and is located within the Golders Green Town Centre conservation area (CA).
7. Policy DM11 of the Development Management Policies Development Plan Document (2012) (DMP) relates to development principles in town centres and encourages a suitable mix of appropriate uses in such areas to support their vitality and viability. Part b sets out that proposals in primary retail frontages should not reduce retail uses below 75% and should not result in an over-concentration of similar uses which detract from the retail function of the town centre.
8. During my site visit, on a weekday morning, I observed betting shops on Golders Green Road and Finchley Road. However, due to the total number of units and the presence of intervening uses, gambling facilities do not dominate the primary retail frontage or the centre as a whole. Nor would the addition of the adult gaming centre result in a cluster or concentration of such uses. Whilst the proposal may result in a duplication of uses within the centre; the same can be said for the previous estate agent and other uses such as cafes. Furthermore, adult gaming centres and betting shops, for that matter, are an established part of high streets across the country and complement their retail function.
9. I note the Council's comments in respect of marketing evidence. However, there is no requirement under Policy DM11 to provide such information for changes of use from non-retail uses. Nevertheless, the appellant has set out that the property has been vacant for a number of years and demonstrated that active marketing has taken place with limited interest. This evidence has not been challenged by the Council and I have no reason to dispute its credibility. Despite the Council's assertion the evidence before me indicates that there is little prospect of the premises being occupied by another operator use falling within Class E in the near future.
10. The proposal would not unacceptably reduce the number of retail units in the town centre and nor would it result in an over-concentration of adult gaming centres or non-retail uses within it. I note that the policy is designed to prevent the loss of shops which, given the previous use was an estate agent, would not

be the case here. It would also lead to a unit which has been vacant for around five years being brought back into use and would generate notable footfall.

11. The Council contends that the proposed development would not create an active street frontage. However, this is not a determining factor as the policy sets out that community uses are expected to present active frontages. This requirement does not extend to other uses. Despite this, the appellant has indicated that the window display would include a television to create interest and activity. I am satisfied that this approach would create interest along the street frontage.
12. As such, I conclude that the proposed development would not undermine the vitality and viability of Golders Green town centre. It would accord with Policy CS6 of the Core Strategy (2012) and Policies DM01 and DM11 of the DMP which, amongst other things, seek to promote successful and vibrant centres; preserve or enhance local character and encourage a suitable mix of appropriate uses in such areas to support their vitality and viability. It would also accord with LP Policy E9 which, amongst other things, seeks the enhancement of local and neighbourhood shopping facilities and the management of clusters of retail and associated uses having regard to their impacts including in respect of town centre vitality, viability and diversity.

Living conditions of existing occupiers

13. The Council contend that the proposal would give rise to noise and disturbance to nearby occupants through the comings and goings of customers to the premises.
14. Whilst the Council's Environmental Health Officer raised concerns regarding the planning application, this was based on 24 hour opening hours. The appellant has revised the opening hours to 0700 until midnight daily. This would bring the opening hours in line with a number of uses in the area.
15. Given the town centre location of the appeal property it is not unreasonable for nearby residents to expect a certain degree of noise and disturbance from traffic and commercial uses, including the comings and goings of customers visiting businesses in the area. The nature of the use and the opening hours proposed is unlikely to result in undue noise and disturbance from comings and goings given its location and the presence of evening uses in the area.
16. The appeal site is within a highly accessible town centre location accessible on foot and by different means of public transport including by bus and underground providing choice for visitors. Whilst some customers may well drive to the premises the resultant additional activities and vehicle comings and goings along Golders Green Crescent and surrounding roads is unlikely to be significant and would not unduly harm the living conditions of nearby occupiers in respect of noise and disturbance.
17. I conclude that the proposed development would not adversely affect the living conditions of nearby occupants in respect of noise and disturbance. As such, it would accord with DMP Policies DM01, DM04 and DM11 which, amongst other things, seek to mitigate noise impacts and for developments not to have an adverse effect on the amenity of local residents.

Other Matters

18. Concerns have been raised about the potential for anti-social behaviour with groups of people gathering and loitering in the area and the potential for crime and disorder. However, based on the evidence before me there is nothing to suggest that such occurrences would be attributed to the proposed development. In my judgement crime and disorder are not an inevitable consequence of the proposal but rather a matter of individual behaviour and appropriate management. Moreover, I am not aware of any objection from the local police force.
19. I note that representations have been received in respect of gambling, gambling addiction, associated social deprivation and mental health issues. Concerns have also been expressed on moral and religious grounds and that the area attracts a high footfall of children and families and the proposed development would conflict with the beliefs, wellbeing and way of life of the local community. Whilst these concerns may be legitimate, planning is concerned with land use matters. As such, they are not matters for my consideration as national and local planning policies do not prevent adult gaming centres or betting shops from operating. Moreover, such matters are regulated by other legislation including the licensing regime.
20. I note the ambition to create a sense of place or community hub in the area. However, there is no substantive evidence that the proposed development would have a harmful material effect on this ambition, social cohesion or the promotion of safe and healthy communities.
21. I note that the Council consider the proposal would not harm the character or appearance of the building as a statutory listed building or the CA and I have no reason to disagree. The proposal would bring the property back into a functional use improving the appearance of the unit's frontage to the benefit of the CA and would help to sustain the significance of this designated heritage asset, in accordance with the Framework.

Conditions

22. In addition to the standard time limit condition, I have imposed a condition specifying the relevant drawings as this provides certainty.
23. I note that the Council have suggested opening hours of 0800 – midnight daily, which based on the evidence before me, is different to those suggested by the appellant and the Council's Environmental Health Officer. In my view opening the premises at 0700 would not unduly affect the living conditions of nearby occupants as it is likely that activity is already taking place in the area including in the form of deliveries and people going to and coming back from work.
24. The Council has suggested a condition for details of the refuse and recycling facilities. However, given the previous use such facilities are already likely to be present at the premises. As such, I find it is not necessary to impose such a condition.

Conclusion

25. I have no reason to make a decision other than in accordance with the development plan. I conclude that the proposed development accords with the development plan, when read as a whole. There are no other considerations that outweigh my conclusion.

26. For the reasons set out above the appeal succeeds.

B Thandi

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin no 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 plans: Site Plan and Existing and Proposed Floor Plans Drawing Number GGR/GG/04.
- 3) The premises shall only be open for customers between the following hours: 0700 – 0000 daily.