

Delegated Report (Members Briefing)		Analysis sheet		Expiry Date:	10/05/2012
		N/A		Consultation Expiry Date:	17/04/12
Officer			Application Number(s)		
Adrian Malcolm			2012/1637/P		
Application Address			Drawing Numbers		
130 Kilburn High Road London NW6 4JD			Site Location Plan; Drawing no(s) 1919-00 S;		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Change of use of basement and ground floor from retail (Class A1) to amusement centre comprising use of electronic gaming machines (Sui Generis Use).					
Recommendation(s):		Grant Planning Permission			
Application Type:		Full Planning Permission			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	15	No. of responses	01	No. of objections	01
			No. Electronic	01		
Summary of consultation responses:	<p>Site notice expiry: 17/4/12</p> <p><u>Councillors Katz and Gardiner:</u> Object as</p> <ul style="list-style-type: none">-Consider that an amusement centre would not achieve the aim of providing a high quality shopping frontage that would increase the quality and attractiveness of Kilburn Town Centre and would thus be contrary to Policy CS7.-The site falls in the middle zone of three identified for Kilburn Town Centre in the LDF where the Council will focus shopping provision. The other zones are for mixed use to the south and a mixed use cultural zone to the north. In relation to entertainment uses in the town centre, it identifies the cultural zone at the northern end of Kilburn High Rd where there is a desire to enhance its character and quality by consolidating and building on the success and attractiveness of existing uses such as the Tricycle Theatre, music and comedy venues, the range of diverse shops, restaurants, cafes and pubs. They are not clear whether an amusement arcade would fall within the description of high quality venues.-The LDF lays down a condition of seeking to improve safety and the perception of safety in Kilburn High Rd by requiring development to include appropriate design measures to prevent crime and anti-social behaviour. In light of the clientele and later opening hours, they are not clear that an amusement arcade would be compliant with this policy.-The arcade would be adjacent to the junction with Quex Rd and within 250m of the site there are two schools and two churches in L.B. Camden that make this location unsuitable, as the Council has a duty of care in respect of protecting primary school pupils in particular.-There has been a proliferation of bookmakers, especially on the Brent side of Kilburn High Rd and it is inappropriate to add to the quantum of gambling premises on Kilburn High Rd, which is contrary to Camden's aspiration for the overall look and feel of the High Rd as a destination for good, high quality independent retail and family friendly shopping. <p>One letter of OBJECTION received from a <u>local resident</u> on the basis that there are already a few similar uses nearby, the closest being at 108 Kilburn High Rd less than 100m from the application site. Would cause issues of crime and vandalism, as customers linger around the site late in the afternoon causing an issue for local residents as most shops in the parade close at 7pm.</p> <p><u>Metropolitan Police:</u> Such types of uses can be associated with loitering (persons being in an area without legitimate reason) that can be associated with crime such as theft or robbery or anti social behaviour such as youth disorder. There may be a fear of crime or anti social behaviour. The Police have no record of crimes in the last 15 months linked to adult gaming centres in the borough and therefore not in a position to object based on this type of use generating crime. Gaming licence control is in place, should a series of incidents occur, to hold the management of such venues to account. Note the decision made by L.B. Brent in respect of 87-89 Kilburn</p>					

	<p>High Rd.</p> <p><i>Officer response:</i> See assessment</p>
<p>CAAC/Local groups comments:</p>	<p><u>London Borough of Brent</u>: Object to unacceptable loss of retail use in a primary shopping frontage in a Major Town Centre that would have a detrimental impact on the vitality and viability of the retail centre, contrary to policies in Brent's Core Strategy and UDP.</p>

Site Description

The application premises is a retail shop in Class A1 retail use in a shopping parade in the Kilburn High Rd Town Centre. The premises above the shop are in residential use.

There are other amusement centres at 40,108 and 357 Kilburn High Rd.

The application premises are not listed and are not in a conservation area.

The western side of Kilburn High Rd lies in LB Brent.

Relevant History

L.B Camden:

130 Kilburn High Rd:

May 2009- Planning permission granted, subject to legal agreement for conversion of three existing self-contained flats to form six self-contained flats (2008/5047/P).

June 2004- Planning permission refused for the installation of a new setback shopfront to the ground floor retail unit, including a roller shutter and an awning (2004/1431/P).

108 Kilburn High Rd:

May 1992- Planning permission granted for change of use from shop to an amusement arcade (9200293)

40 Kilburn High Rd

This unit has no record of change of use to an amusement centre, although the name 'Cooke's Amusements' appears on planning applications dating back more than 10 years.

L.B.Brent:

87-89 Kilburn High Road:

March 2012- L.B. Brent refused a planning application in for the change of use from Retail (A1) to Adult Gaming Centre (Sui Generis) (L.B.Brent reference: 12/0125) for the following reasons-

1. The proposal, by way of introducing an inappropriate non-retail use to a primary shopping frontage would by reason of the fact that it is a double unit and would fail to provide an active frontage be detrimental to the vitality and viability of a primary shopping frontage. It would therefore be contrary to policy SH6 and SH13 of the Adopted Unitary Development Plan 2004.
2. The proposed use of the premises as an 'Adult Gaming Centre' (Sui Generis) would exacerbate the existing over-concentration of non-retail units including other similar uses within the both the locality and wider Primary Shopping Frontage and would fail to enhance the range of services that is already provided causing harm to the vitality of Kilburn Town Centre and lessen its attractiveness to shoppers contrary to policy SH6 and SH7 of the London Borough of Brent Unitary Development Plan 2004.

This decision is currently the subject of a planning appeal. This Council has supported Brent's refusal of planning permission on appeal (though it does not appear to have been consulted at the time of Brent's consideration of the application).

November 2010- L.B. Brent refused a planning application in for the change of use from Retail (A1) to Adult Gaming Centre (Sui Generis) (L.B.Brent reference: 10/2370). This Council were consulted upon this application at the time and raised no objection to the proposal (L.B. Camden ref: 2010/5368/P)

Relevant policies

LDF Core Strategy and Development Policies

Camden Core Strategy

CS1 (Distribution of growth)

CS3 (Other Highly Accessible Areas)

CS5 (Managing the impact of growth and development)

CS7 (Promoting Camden's centres and shops)

CS17 (Making Camden a Safer Place)

Camden Development Policies

DP10 (Helping and promoting small and independent shops)

DP12 (Supporting strong centres and managing the impact of non retail town centre uses)

DP26 (Managing the impact of development on occupiers and neighbours)

DP28 (Noise and vibration)

Camden Planning Guidance, or CPG, (especially CPG5, Section 5)

Assessment

Proposal

The proposal involves the change of use of the existing retail (Class A1) to amusement centre comprising use of electronic gaming and gambling machines (Sui Generis Use).

Such centres are subject to age restrictions to persons over 18 years of age as the premises would include machines used for licenced gaming.

The applicants currently operate the premises at 108 Kilburn High Rd, which they advise they will be vacating if planning permission is granted (however they do not own the property and the owner is unwilling to relinquish the use as an amusement centre at that property).

The applicants seek to operate the premises from 9am-10pm every day.

This application was previously considered by the Member Briefing Panel in May 2012, when this application was deferred in order to seek the views of ward members and the Crime Prevention Officer.

Considerations

Impact upon retail character of shopping area

The application site is currently in retail use and is situated in the Core retail frontage of the Kilburn High Rd Town Centre.

The applicant advises that the owners have had difficulty in letting the unit to long term occupiers since the last major occupier ceased trading in December 2009 and despite some initial interest that was not ultimately pursued by the prospective lessees, but has continued to be marketed. They have only been able to secure temporary lettings. The premises is currently occupied by a retail clothes outlet. In their experience of the Kilburn retail market they assert that they consider the unit to be too large and expensive for local traders and too small for national multiple traders.

Policy DP12 states that the Council will ensure that town centre uses other than Class A1 retail uses do not cause harm to the character, function, vitality and viability of a centre. CPG 5 notes that Kilburn High Rd has a large number of small, independent shops that mostly serve the day-to-day needs of the local population.

Policy CS7 states that the Council will promote successful and vibrant centres by protecting and enhancing the role and unique character of each of its centres; providing for a range of shops, services,

food, drink and entertainment and other uses to provide variety, vibrancy and choice; protecting and promoting small and independent shops, and resisting their loss where this would cause harm to the character of a centre make sure that food, drink and entertainment uses do not have a harmful impact on residents and the local area and focusing such uses in Town Centres (amongst other designated locations) and pursue individual planning objectives for each centre.

The specific section relating to Kilburn High Rd in the supporting paragraphs to Policy CS7 note that Kilburn's evening economy is strong, especially at its northern end where there is a range of cultural and leisure uses, which continues Kilburn's historical role as a meeting place and cultural destination and that the centre's economic performance was improving according to the 2008 Camden Retail Study. It states the Council will generally seek to make the area cleaner, safer and more successful and improve the overall balance and quality of retail available, working with partners such as L.B. Brent and the Police. However it recognises that in improving what already exists matters, such as the provision of more high quality shop frontages to increase the quality and attractiveness of the centre, go beyond the scope of planning and relate to management and partnership working and may need funding and advice to shop owners. The Council will take advantage of the centre's strengths in making the centre vibrant and diverse, including an emphasis on three zones- a mixed use cultural zone to the north, a shopping core to the centre and a mixed use zone to the south of Kilburn High Rd Station. Shopping provision will be focussed on the core of the centre and a wider range of uses will be allowed elsewhere. The section refers to Camden Planning Guidance for more detailed advice on the Council's approach.

CPG5 indicates that the Council will resist proposals that would result in less than 75% of the Core Frontage being in retail use. In the Core Frontage 128-200 Kilburn High Rd, 86% of units are currently in retail use and 82% would remain in retail use if this proposal were to be implemented. The proposal would not result in more than 2 consecutive units being in non-retail use, as both neighbouring units are Class A1 retail. The proposal thus passes the tests set out in CPG5 that support Policies DP12 and CS7.

The supporting paragraphs to Policy DP12 states that amusement arcades are unlikely to be acceptable in the busiest parts of centres and the supporting paragraphs to Policy CS7 state that shopping provision will be focussed in the core of the centre and a wider range of uses will be allowed elsewhere. Although the site falls in a Core frontage, as just discussed it does unduly disrupt its retail character by way of number of retail units. As recognised in CPG5, this frontage is mostly comprised of fairly small retail outlets and it is a linear centre stretching for some distance. This parade has a reasonable footfall, but not as great for example as the area around Kilburn Market (on the LB Brent side of the road) where there are also larger retail outlets such as supermarkets. It is recognised that there is a sprinkling of non retail uses in the area, particularly on the opposite side of the road (in LB Brent), including a bank directly opposite the application site, however the shopping frontage on which the proposed use would be located has a satisfactory proportion of retail uses and passes the relevant test in CPG. The issue of concentration of amusement centres is returned to in the next section below.

The applicants would be prepared to maintain a window display to prevent the creation of a 'dead' frontage.

It is appreciated noted that Brent have objected to this proposal (there are more non retail uses in the parades on the opposite side of Kilburn High Rd in LB Brent), however given that the proposal meets the guidance set out in Camden's Planning Guidance, it is not considered that there are reasonable grounds to object to this proposal for loss of retail use.

The application at 87-89 Kilburn High Rd (220m from the application site) referred to in the relevant history section above, that was refused London Borough of Brent and is the subject of a current planning appeal, is also noted. The circumstances of that proposal differed from those of the current application in a number of respects. That application was for a double unit, and would have resulted in 80% of the parade in which it is set being in non-retail use, if the proposal were to go ahead. It would also have resulted in 35.8% of the primary frontage being in non-retail use, which would exceed Brent's maximum permitted threshold of 35%. The double unit would have been in close proximity to

two other existing amusement arcades and Brent did not consider that the further addition of a gaming centre would particularly enhance the range of services available in the centre and would have conflicted with Brent's policy that specifically excludes permitting amusement in Brent's Primary Shopping Centres (which it considers not to be complementary to the retail function of its town centres).

In respect of the impact on the retail character of the area, the proposal is considered to be acceptable, subject to recommended conditions.

Impact upon amenities in the area and community safety

An objector has raised concern that there are a number of similar such premises in the vicinity. The closest amusement centre is at 108, less than 100m south of the application premises (the applicant would vacate these premises, but the owner is unwilling to enter into an agreement to return the premises to a Class A1 retail use, thus it may be that another user takes up the authorised amusement centre use at those premises). The other amusement centres on Kilburn High Rd (at no 40 and 357 near Kilburn High Rd Station to the south and the railway bridge to the north), but these are some distance from the application premises. The uses are thus currently spread over different areas of the centre and even with two amusement centres potentially within 100m of each other, it is not considered that this would result in an undue concentration of these uses in such a busy commercial centre that has a wide variety of town centre uses (also note the current appeal at 87-97 Kilburn High Rd referred to above, 220m from the application site).

Supporting paragraph 12.16 to Policy DP12 states that amusement arcades, massage parlours and saunas are unlikely to be considered to be acceptable in the busiest parts of centres (discussed above) or near housing, schools, places of worship or hotels. The sensitivity of some of the use mentioned in the latter group varies according the relevant use in the former group. Potentially schools could be considered most relevant in relation to the location of an amusement centre. St Mary's Church of England Primary School lies a little under 200m around the corner on Quex Road (Kilburn Nursery lies less than 100m from the site in L.B. Brent on Victoria Rd). The site is on a busy road in a town centre rather than a residential area, CS7 favours the location of entertainment uses in Town Centres, provided these do not have a harmful impact on residents or the local area and there are other gambling uses already in the vicinity. The premises would be restricted to persons of adult age and already has a gaming licence, which considers the protection of children and other vulnerable persons from being harmed by gambling. Limitations on hours of use and requirements for installation of sound proofing can be used to protect residents living above the premises from disturbance.

The Police have not raised objection to this proposal. They have noted that there is no empirical evidence of any incidents of crime being associated with any gaming centre in this borough in the last 15 months. Furthermore, the Police note that licensing controls could be used should any incidents of crime or anti social behaviour occur. The Council has granted a gaming licence for the premises (no objections were received to consultation) on the basis the applicants surrender their licence for no 108 (the amusement arcade planning permission for these premises could still be continued if not interrupted by another use, however). In considering a gaming licence, the Council is required to give consideration to prevent gambling from being a source of crime or disorder, or premises being associated with crime or disorder or being used to support crime. The Council's environmental health licensing section has no record of any complaints or incidents associated with the applicant's operation of the gaming centre at 108 Kilburn High Road (N.B. the applicant has referred to the need to determine applications on the basis of evidence, not supposition, as is set out in Circular 03/2009 on awards of costs for planning appeals).

It is therefore considered that there is no compelling evidence to suggest that a well-managed premises (with separate licensing controls) should cause issues of crime, vandalism or other anti-social behaviour.

As in many locations in Camden, there are residential premises in the vicinity, plus there are places of worship set a little way off the main Kilburn High Rd on Kingsgate Rd and Quex Rd, however it is not considered in this instance that the proposed amusement centre on Kilburn High Rd should cause any

significant impact on the places of worship on other roads to the rear (it is appreciated the reference in paragraph 12.16 could have more relevance to the juxtaposition of a massage parlour use relative in very close proximity to a place of worship, for instance). Similarly, the existence of a hotel on Priory Park Rd, off of the western side of Kilburn High Rd less than 200m from the site, is not considered to present any issue of incompatibility or harm to amenities of the area that would give reason to refuse this proposal.

Kilburn High Rd is a town centre with a variety of uses, including pubs and restaurants. The road carries high volumes of traffic, during the day and into the evenings. The hours requested by the applicant are considered to be acceptable for a use of this size (together with the provision of suitable sound proofing) without causing harm to the amenities of the area.

Mayor's Crossrail CIL

This proposal is for change of use with no construction of additional floorspace or new residential units, thus the Mayor's CIL does not apply.

Recommendation: Grant Planning Permission

DISCLAIMER

Decision route to be decided by nominated members on Monday 20th August 2012.

For further information see

<http://www.camden.gov.uk/ccm/navigation/environment/planning-and-built-environment/planning-applications/development-control-members-briefing/>