

Appeal Decision

Hearing held on 12 April 2016

Site visits made on 11 April 2016 and 12 April 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 02 June 2016

Appeal Ref: APP/X5210/W/15/3140916
64 Kilburn High Road, London, Camden NW6 4HJ

- 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 Power Leisure Bookmakers Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref 2015/1549/P, dated 16 March 2015, was refused by notice dated 2 July 2015.
 - The development proposed is change of ground floor use of retail unit (class A1) to a betting shop (sui generis).
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has requested that the description of the development is altered to remove reference to 'ground floor'. Additional plans of the upper floors of the building have also been submitted. As the adjoining retail unit wraps around the rear of the appeal unit, there is no separate access to the upper floors of the appeal building. The upper floors can only be accessed via an internal staircase. As such I consider that the entire building forms a single planning unit.
3. There would be no change to the red line boundary of the application and I consider that a condition could have been attached to restrict the betting office operation to the ground floor unit of the building had I decided to allow the appeal. Consequently, I consider that the change to the description of the development would not be prejudicial to the interests of anyone. I have, therefore, determined the appeal on this basis. The Council's decision notice referred to a plan number 14487-06, however, this did not form part of the application. I have not, therefore, taken the Plan into account in my decision.
4. The Mayor of London published Minor Alterations to the London Plan on 14 March 2016. However, there is no policy change relevant to the appeal proposal introduced by the new policy document.

Main Issues

5. The main issues in this case are:
 - The effect of the proposal on the retail character, function and vitality of the Core Shopping Frontage of Kilburn High Road Centre; and
-

- Whether the proposal would result in an over-concentration of betting shops and if so whether this would have an effect on community safety and the fear of crime.

Reasons

Retail character, function and vitality

6. The appeal property is a four storey building situated within a terrace of commercial properties on Kilburn High Road, a busy shopping centre. The ground floor is a retail unit whilst the upper floors provide ancillary space for storage and staff facilities. The unit is currently vacant, having previously been occupied by a temporary discount store. Prior to that it was occupied on a long term basis by a national shoe retailer and a national card retailer.
7. Kilburn High Road is defined as a town centre in Policy CS7 of the Camden Core Strategy 2010-2025 (CS) 2010 which seeks to protect and enhance the role and unique character of each of Camden's centres. It also seeks to protect and promote small and independent shops and resist the loss of shops where this would cause harm to the character and function of a centre. The CS defines specific objectives for each of the centres including Kilburn High Road. It states that emphasis will be placed on three 'zones': a shopping core to the centre; a mixed use, cultural zone to the north; and a mixed use zone to the south of Kilburn High Road Station. The Centre has a large number of small, independent shops which mostly serve the day to day needs of the local population. The appeal site lies within the Core Shopping Frontage of the centre.
8. Policy DP12 of the Camden Development Policies 2010-2025 (DP) 2010 seeks to support strong centres and manage the impact of food, drink, entertainment and other town centre uses. Policy DP10 of the DP states that the Council will encourage the provision of small shop premises suitable for small and independent businesses through a number of measures set out in criteria a-c. The unit is a size which is suitable for an independent retailer and I, therefore, consider that criterion c is relevant which encourages the occupation of shops by independent business and the provision of affordable premises. Policy DP24 of the DP seeks to secure high quality design and I consider that criterion d of the Policy is particularly relevant as it seeks to ensure the provision of visually interesting frontages at street level.
9. Camden Planning Guidance 5 (CPG 5) Town Centres, Retail and Employment (2013) expands upon Policy CS7 of the CS and Policy DP12 of the DP and designates Core and Secondary Frontages in order to protect the retail function of Kilburn High Road. It states that the Council will generally resist proposals that would result in less than 75% of the premises in Core Frontages being in retail use. The site lies within the Core Frontage. The document is a formal Supplementary Planning Document and I, therefore, consider that it can be afforded significant weight in my decision.
10. There is no dispute between the parties that Kilburn High Road is a vibrant, busy centre. The centre has excellent public transport links and has a good representation of both national and independent retailers. The centre has a low level of vacancies (8.9%), below the national average. The appellant has prepared a health check which confirms that the centre is '*performing relatively well in its role as a Major Centre*'. There appeared to be a high level of footfall in the centre at the time of my visits (1600 and 1720).

11. The relevant frontage for assessing the proportion of A1 and non-A1 uses in the Core Shopping Frontage is nos 42 to 72 Kilburn High Road. The frontage is made up of 10 units. At the time of the determination of the application the frontage contained 7 A1 units, an unoccupied unit and 2 non-A1 units. The appeal proposal would reduce the percentage of units in A1 use to 70%.
12. However, planning permission has recently been granted for the change of use of a vacant retail unit (A1) to a restaurant (A3) at 42 Kilburn High Road (Council ref 2015/5457/P). Appendix 3 of CPG 5 states that permissions with potential to be implemented should be included in the calculations of the number of premises within a specific use. On this basis 70% of the units are classed as being in A1 use. Parties agree that the number of units within the frontage in A1 use would reduce to 60% as a result of the appeal proposal. This would be significantly below the 75% threshold set out for Kilburn High Road Centre in CPG5, and the proposal is, therefore, clearly in conflict with CPG5. The proposal would not, however, result in more than two consecutive units in non-A1 retail use.
13. It is acknowledged that the wording of paragraphs 3.50 to 3.54 of CPG5 have an element of flexibility. However, it is reasonable that the Council identify a level at which further non-retail development would be harmful to the functioning of the block and the Centre and that a line be drawn at some point in order to protect the critical mass of retail in the Core Shopping Frontage which is essential to the success of the Centre.
14. The appellant has calculated that the percentage of A1 use, as a proportion of the measured frontage, would reduce to approximately 78% as a result of the proposal, above the Council's 75% threshold. However, the test set out in CPG5 clearly relates to the number of units, not the measured frontage. Furthermore, following the grant of consent for an A3 use at 42 Kilburn High Road, the percentage of A1 uses, as a proportion of the measured frontage, would, in any event, reduce to approximately 57%.
15. It is suggested that the Council has been flexible in its interpretation of CPG 5 when considering the application for a change of use of an A1 retail unit to an A3 café/restaurant at no 42 Kilburn High Road. However, the Council has clarified that this unit has been vacant for 3 years and consequently has not been able to contribute to the retail character and function on Kilburn High Road. The A3 use of the site would attract customers to the area from 11am until the evening, thereby increasing footfall when compared to the existing vacant unit. I also note that it is a large corner unit which would be less attractive to a smaller independent retailer. The circumstances of this case are not, therefore, directly comparable which limits the weight which I can attach to it.
16. Attention is drawn to two banks on the relevant frontage and recent changes to the Town and Country Planning (General Permitted Development) (England) Order 2015 which allow the change of use from Class A1 Retail to Class A2 Financial and Professional Services. However, this does not imply that banks are quasi-retail simply that they can change from one use class to another without requiring planning permission.
17. The appellant has calculated that A1 retail use as a proportion of the entire Core Shopping Frontage, as opposed to the specific frontage in which the appeal property is situated, is approximately 78%. However, this only takes account of the Camden side of the town centre and is, therefore, not a true reflection of the whole Core Shopping Frontage of the centre which limits the weight which I can attach to it.

18. There is conflicting evidence from the parties regarding the contribution that betting shops make towards footfall in comparison to A1 retail. The appellant refers to an independent report by ESA Retail (2014) who carried out customer counts in the frontage adjacent to the existing Paddy Power in Kilburn High Road. This shows that the Paddy Power unit was the busiest unit when compared to the other 5 units monitored.
19. The Council refers to 'A Fair Deal: Betting Shops, Adult Gaming Centres and Pawnbrokers in Brent' 2012. Brent Council commissioned independent consultants to undertake pedestrian counts in 2009, 2012 and 2013. The results are summarised in a chart showing the footfall for Kilburn Centre in 2012 which shows that the highest footfall in each survey was recorded adjacent to retailers. The footfall was significantly lower adjacent to betting shops, pawnbrokers and payday lenders. This is reinforced by additional pedestrian count surveys undertaken in 2009 and 2013. Counts were undertaken in units within the same frontage as the relevant betting shop etc in order to account for differences in footfall between primary and secondary frontages.
20. I acknowledge that the ESA Retail survey was undertaken in a number of centres across the country, however, I note that it only appeared to undertake counts at 6 units within Kilburn High Road centre (including the existing Paddy Power). The Brent survey undertook counts at a higher number of locations within the centre in both primary and secondary frontages. I consider the larger sample size to be more statistically reliable and the survey provides a more balanced view across the centre as a whole than the ESA Retail survey.
21. Furthermore, the ESA retail survey indicates that over 48% of customers surveyed said that visiting the Paddy Power shop was their main reason for visiting the centre that day. However, I agree with the Council that the survey question '*was your visit to Paddy Power the main purpose for visiting this shopping parade today?*' is a leading question. My concerns regarding the limited sample size together with the phrasing of the questions limits the weight which I can attach to the ESA retail survey.
22. It is clear from the Brent survey that betting shops consistently attract lower footfall than their A1 counterparts in the adjacent frontage whether this be Core Shopping Frontage or Secondary Frontage. Furthermore, it is acknowledged by the appellant that the proposal would draw some custom from the existing Paddy Power shop to the north of the centre and also other betting shops.
23. I do not dispute that a betting shop would attract footfall. However, on the basis of the evidence before me I do not consider that the footfall attracted by a betting shop is likely to be as high as an A1 retail use situated in a Core Shopping Frontage. An A1 retail use would be likely to appeal to a wider range of customers than a betting shop.
24. The survey by ESA undertaken on behalf of the appellant also considers the issue of linked trips. The survey suggests that in Kilburn almost half of those surveyed said that they either always or regularly visited other shops when visiting the Paddy Power shop. However, there is no evidence to suggest that those people would not have visited the centre in any event. In addition an A1 retail unit could also attract linked trips to other shops in the centre.
25. During my site visits I looked at a number of betting shops along Kilburn High Road and noted that most had a static display in the window with limited views beyond

the display inside. Consequently, these premises did not have such an active frontage as compared to other A1 retail units which I observed in the centre.

26. The Council are concerned about the effect an over-concentration of betting shops and gambling facilities would have on the diversity and attractiveness of the centre. However, betting shops only account for 8 units out of a total of 403 units in total. Furthermore, there is a relatively high level of footfall in the Centre, which I consider is due to the number of intervening retail uses. Consequently, there is no evidence before me that a saturation point has been reached or that the existing level of betting shops is affecting the health of the Centre as a whole at present. However, I have no doubt that a 'tipping point' could be reached at which saturation would occur. However, the point at which the threshold is set will be a matter for the emerging Plan.
27. Paragraph 2.9-2.10 of CPG 5 states that where a planning application proposes the loss of a shop in retail use the Council will consider whether there is a realistic prospect of such use continuing on the basis of evidence pertaining to the marketing of the unit etc.
28. A letter from the current marketing agent lists the marketing activity which has taken place including a to-let board; advertising on-line; and sending the marketing particulars to a mailing list of local agents. Whilst a copy of the particulars is provided there is only very limited evidence included to support this. Furthermore, no evidence is provided from the previous marketing agent. The agent states that the price was not included in the particulars so as not to deter prospective tenants. On the basis of the evidence before me I cannot, therefore, be certain that the premises has been advertised for a continuous period or importantly at a realistic price.
29. It is suggested that the reason for the lack of interest in the unit for A1 use is due to the upper floors of the unit being included in the rental value of the property which increases the rental cost and rateable value. Discussion took place as to whether the unit could be reconfigured in order to allow the use of the upper floors for another use. As the adjacent retail unit wraps around the rear of the appeal unit, the only way to access the upper floors of the property would be via a fire exit which could extend over the rear of the adjacent roof. There may also be scope to reconfigure the shop window at the front to create a separate access, perhaps in conjunction with the adjoining retail unit which has a separate door allowing access to the upper floors. However, no such options have been explored.
30. The unit is situated in a prime position within a Centre which parties agree is vibrant and busy. The unit has been occupied by two national retailers in the past on long term leases and on a temporary basis by retailers very recently, albeit at a reduced rent, which indicates that there is demand for the unit. There appear to have been no long term periods of vacancy. I, therefore, consider that there is no cogent evidence before me to demonstrate that the appeal unit would not be viable for A1 retail use in the future. Moreover, there is no convincing evidence to demonstrate that a business occupying the premises for A1 use would not be forthcoming in the future. Consequently, I am unable to concur with the appellant's argument that there is no realistic prospect of demand to use the site for continued retail use.
31. Whilst there may be some short term benefits of the proposal in terms of employment, bringing a vacant unit back into use and increased footfall, these must be set against the long term need to protect A1 retail use as the dominant use

within the Core Shopping Frontage as defined in the Core Strategy. Furthermore, these benefits could in any event be achieved in the longer term by an A1 retail use.

32. I, therefore, conclude that the loss of this A1 retail unit and the consequential lower levels of footfall and loss of active frontage would harm the retail character, function and vitality of the Core Shopping Frontage. Furthermore, the proposal would undermine the critical mass of A1 retail which is required in order to retain footfall and also attract other retailers to the area which is essential to the success of the centre. Furthermore, the proposal would undermine the identified priority of focusing shopping provision in the core of Kilburn High Road Centre. This amounts to significant harm which weighs considerably against the proposal. It would conflict with Policy CS7 of the CS, Policies DP10 and DP24 of the DP; criteria a of DP12 of the DP which considers the effect of non-retail development on shopping provision. Conflict also arises with CPG5 and the third bullet point of paragraph 23 of the Framework.

Over-Concentration of Betting Shops

33. Criterion B g of Policy 4.8 of the London Plan 2015 (LP) seeks to manage clusters of uses having regard to their positive and negative impacts on the objectives, policies and priorities of the London Plan. Paragraph 4.50A states that over-concentrations of betting shops can give rise to particular concerns. The Town Centres Supplementary Planning Guidance 2014 (SPG) Mayor of London identifies that there are genuine planning issues associated with betting shops such as amenity, community safety, diversity of uses and the continued success of town centres which justifies allowing planning authorities to consider the merits of proposals for betting shops (paragraph 1.2.29).
34. SPG Implementation Policy 1.2 seeks to manage over-concentrations of activities, for example betting shops, hot food takeaways and payday loan outlets. Paragraph 1.2.28 states that if the concentration of a use has reached saturation levels where the negative impacts outweigh benefits, local authorities can set thresholds at this level of saturation. Council's should impose policies to avoid clustering when the current position has reached saturation point, however, there is no definition of 'saturation point' in the SPG. This is left to individual Council's to define in their areas.
35. Policy TC4 of the emerging Camden Local Plan (Submission draft 2016) seeks to prevent the proliferation of betting shops by resisting schemes which would result in more than one betting shop, payday loan store or pawnbroker within 400m of one another. However, as the Policy is emerging, it can only be afforded limited weight.
36. There is no dispute between the parties that there are 7 betting shops within the Kilburn High Road Centre with an additional betting shop located outside of the town centre boundary at no 3 Kilburn High Road. 1 betting shop is located on the Camden side of the centre within the Secondary Shopping Frontage. The appeal proposal would result in 8 betting shops in the town centre boundary and 9 in total.
37. The Council identify that the appeal site is within 400m of 5 betting shops including Ladbrokes at 3 Kilburn High Road; William Hill at 40 Kilburn High Road; Ladbrokes at 69-71 Kilburn High Road; Coral at 127 Kilburn High Road and William Hill at 141 Kilburn High Road. Attention is also drawn to other gambling facilities, pay day loan shops and pawnbrokers within the vicinity of the appeal site. Representations from the local community indicate that there is certainly a perception of a cluster of such uses in the centre.

38. However, the appellant has calculated that betting shops currently account for 1.7% of the total number of units (403) within the town centre as a whole. This would increase to 2% as a result of the proposal. It is also suggested that there would be no more than 1 betting shop on any defined retail frontage. I acknowledge that the overall proportion of betting shops is relatively low as a percentage of the total number of units in the centre as a whole.
39. Furthermore, whilst the presence of betting shops and gaming centres is obvious whilst walking up and down the Kilburn High Road, due to the length of the centre, the dispersed location and the number of intervening uses I did not get the sense that betting shops and other gambling facilities dominated the centre when considered as a whole or resulted in a 'cluster' or concentration of such uses.
40. Attention is drawn to two appeal decisions (APP/U5930/A/14/2229533; APP/U5930/A/14/2229533) in which the Inspectors concluded that betting shops would not lead to a clustering effect in other centres. However, I consider that this issue is unique to each centre given the significant number of variables to be taken into account. I have, therefore, considered this case on its own merits.
41. Even if there was a cluster it does not necessarily mean that harm would arise. Consideration of whether a 'saturation point' has been reached must be made taking into account whether there are negative effects arising from such a cluster and if so whether the negative effects would outweigh the benefits. The Council consider that an over-concentration of uses would result firstly in harm to the character and function of the town centre which is addressed above and secondly the potential effect on community safety and fear of crime which is addressed below.
42. The Council's case relies heavily on an objection received from the Designing Out Crime Officer at the Metropolitan Police which states that *'in general a betting shop allows people the excuse to legitimately loiter in an area. This opportunity allows offenders to commit crime such as drugs and anti-social behaviour'*. A local sergeant also identifies problems with the William Hill by the underground station which *'is attracting numerous crime, drug users anti-social behaviour'*. However, firstly these concerns appear to relate to one specific betting shop and secondly no evidence in terms of crime statistics has been submitted in order to support this view.
43. It is accepted that the licence is a separate matter and is limited to considering certain issues, however, one of the licensing objectives is *'preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime'*. Notably the Police did not raise any objections to the licensing application or suggest that any conditions be attached to the licence.
44. A significant number of objections were received to the proposal from the local community and strong representations were heard at the hearing from local residents groups and the Kilburn Fair Credit Campaign who fear that the proposal would exacerbate problems in respect of crime and anti-social behaviour. Specific concerns were raised regarding the impact that gambling addiction is having on vulnerable and low income groups. However, whilst I do not underestimate the challenges faced by local communities arising from those issues, I have insufficient evidence before me to link the occurrence of crime and anti-social behaviour with betting shops. Furthermore, the appellant drew attention to policies and procedures within the organisation to promote socially responsible gambling. As such I cannot find that the proposal would have an impact on community safety or fear of crime.

45. I, therefore, conclude on the second main issue that the proposal, in combination with existing betting shops would be unlikely to compromise community safety or increase the risk of crime.
46. The proposal would not, therefore, conflict with Policy CS17 of the CS which seeks to make Camden a safer place. Furthermore, no conflict would arise with Policy DP26 of the DP which seeks to manage the impact of development on occupiers and neighbours. Moreover, there would be no conflict with criterion B g of Policy 4.8 of the LP or SPG Implementation Policy 1.2.

Conclusion

47. I have concluded that the proposal would not result in an over-concentration of betting shops or that any such over-concentration would have an adverse effect on community safety or fear of crime. However, this does not outweigh the significant harm which I have identified to the retail character, function and vitality of the Core Shopping Frontage by virtue of the loss of an A1 unit which would undermine the critical mass of A1 retail which is required in order to retain footfall and also attract other retailers to the Centre. The proposal would, therefore, be contrary to the development plan as a whole.
48. Whilst the proposal would bring some benefits in terms of employment provision, bringing a vacant building back into use and contributing to footfall these benefits would not outweigh the significant harm which I have identified. Furthermore, those benefits would also arise from an A1 retail use.
49. For the reasons stated and taking into account all other considerations I consider that the appeal should be dismissed.

Caroline Mulloy

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Miss M Cook, of Counsel	Cornerstone Barristers
Helen Cuthbert	Planning Potential
Niall Hanrahan	Planning Potential
Adrian Studd	Club Safe Services
Nindi Dhanjal	Paddy Power
David Newton	Paddy Power
Kevin MacPherson	Paddy Power

FOR THE LOCAL PLANNING AUTHORITY:

Johnathan McClue	Planning Officer
John Diver	Planning Officer

INTERESTED PERSONS:

Josie Warshaw	Brent Eleven Streets
Councillor Eslamdoust	Camden Council
Ajay Kumble	Kilburn Fair Credit Campaign Kingsgate Watch Neighbourhood Watch
Caroline Lynch	Brondesbury Residents and Tenants Association

DOCUMENTS

1. Planning application 2015/5457/P committee report.
2. Licensing Statement by Nindi Dhanjal
3. Betting shop address chronology
4. Emails of 24 March and 5 April 2016 setting out Council's response to late evidence
5. London Assembly 'Open for Business-Empty shops on London's high streets (March 2013)
6. Letter from Camden Council dated 5 April 2016 in response to appellants late submission
7. Planning application 2015/5457/P Decision notice
8. Revised Statement of Common Ground (updated 12 April 2016)