



## Appeal Decision

Site visit made on 7 March 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2023

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Appeal Ref: APP/F5540/W/22/3296792

Neals Corner, 1-5 Staines Road/2-6 Bath Road, Hounslow TW3 3HJ

- 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 Chongie Entertainment Ltd against the decision of the Council of the London Borough of Hounslow.
  - The application Ref 00083/AL/P10, dated 7 February 2022, was refused by notice dated 29 March 2022.
  - The development proposed is the change of use of part ground floor and part first floor for the creation of an Adult Gaming Centre (Sui Generis) with an associated new shopfront
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### Decision

1. The appeal is dismissed insofar as it relates to the new shopfront. The appeal is allowed insofar as it relates to the change of use and planning permission is granted for the change of use of part ground floor and part first floor for the creation of an Adult Gaming Centre (Sui Generis) at Neals Corner, 1-5 Staines Road/2-6 Bath Road, Hounslow, TW3 3HJ in accordance with the terms of the application, Ref 00083/AL/P10, dated 7 February 2022, so far as relevant to that part of the development hereby permitted and 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, insofar as they relate to the change of use:
    - P08 rev 00 – Location Plan
    - P07 rev 00 – Proposed Layout

### Preliminary Matters

2. Changes to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the UCO Amendment Regulations), amending the Town and Country Planning (Use Classes) Order 1987 (the UCO), came into force on 1 September 2020. This introduced a new Commercial, Business and Service Use Class E (Class E) replacing several classes including, Class A3 – Food and Drink which includes restaurants. Based on the evidence before me, although vacant at the time of my site visit, the appeal site was previously used as a restaurant with ancillary storage space.

3. Following the determination of the appeal planning application, another planning application comprising the installation of a new shopfront at the appeal property has been approved, subject to conditions, by the Council<sup>1</sup>. A request has subsequently been made by the appellant to consider only the proposed change of use as part of the appeal. However, this is not the proposed development that was considered by the Council, upon which interested party views were sought and the subject of the appeal. Therefore, if I were to determine the appeal based solely on the proposed change of use, given the number of interested party representations on both the application and the appeal, there is the potential that the views of interested parties would be prejudiced. As a result, my decision is based on the development as submitted with the appeal application.

#### Main Issues

4. The main issues are the effect of the proposed development on:
- the character and appearance of the area, with particular regard to the locally listed building; and
  - the vitality of Hounslow Town Centre (the Town Centre).

#### Reasons

##### *Character and appearance*

5. The appeal site comprises the majority of the ground floor and part of the first floor of a five-storey plus basement level building on the corner of an area **known as 'Neal's Corner'**. Although not located within a conservation area, nor a listed building, the appeal property is a Locally Listed Building. Whilst not afforded the same protection as a designated heritage asset, in accordance with paragraph 203 of the National Planning Policy Framework (the Framework), the effect of the proposed development on the significance of a non-designated heritage asset should be taken into account.
6. I consider the significance of the appeal property to derive from its prominent location at one end of the High Street adjacent to Bell Square, its historical architectural detailing and its use of a variety of colours and types of material. Concerning the existing shopfront, although not considered to be the original, it comprises many traditional features **identified in the Council's Shop front design guidelines – Supplementary planning document (2013) (the SPD)** including risers, mullions, fascias, corbels and pilasters. As such, I consider these features contribute to the overall significance of the locally listed building.
7. The proposed shopfront comprises the installation of modern windows and surrounds to the **property's facades at ground floor level**, with large areas of glazing. This would result in the removal of many of the mullions separating the panes and the risers beneath the windowsills. The fascias would also be replaced with glazing and materials would be removed from the corbels and the pilasters to expose the brickwork beneath. Notwithstanding the poor quality materials used in the existing shopfront, its bright yellow colour, or the fact that many sections need repair or replacing, the loss of these traditional

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<sup>1</sup> Planning application ref: 00083/AL/P11

features would cause harm to the significance of the non-designated heritage asset.

8. Based on the reasons set out above, in my view, the proposed shopfront would result in limited harm to the significance of the non-designated heritage asset. In the words of the Framework, in these circumstances, a balanced judgement is required having regard to the scale of any harm or loss and the significance of the non-designated heritage asset.
9. Whilst the proposed shopfront is associated with the proposed change of use of currently vacant premises, the implementation of these proposals is not dependent upon the other. Therefore, any benefits from the replacement of the existing shopfront alone would be minimal, despite their poor condition and bright colour. As a result, I attach limited weight to the benefits associated with their replacement.
10. Consequently, I conclude that the benefits set out above do not outweigh the harm I have identified to the non-designated heritage asset and, therefore, the proposed development does not satisfy the requirements of paragraph 203 of the Framework. It would also conflict with policies CC1 and CC2 of the London Borough of Hounslow Local Plan 2015-2030 (the Local Plan) which require, amongst other provisions, development to conserve and take opportunities to enhance the special qualities and heritage of the Borough through the use of high-quality design. The proposed shopfront would also conflict with the design objectives set out in the SPD, irrespective of **the SPD's age**, which seeks to retain the traditional features within shopfronts in the Borough.

#### *The vitality of the Town Centre*

11. The proposed development comprises the change of use of part of the ground floor of the appeal site, labelled Retail Space 1 on the Proposed Layout Plan<sup>2</sup> submitted with the planning application, plus the small area within the first floor, to an adult gaming centre (AGC) (Sui Generis). No change of use is proposed for the remaining area of the ground floor accessed off Bath Road, labelled Retail Space 2 (Class E).
12. While the Officer Report states that the appeal site is located outside the Town Centre, the Council has subsequently confirmed that it is located within its **boundary. However, it is located outside Hounslow's Primary Shopping Area** and does not form part of a primary or secondary retail frontage. As such, policies TC2, TC3 and TC4 are relevant, which collectively seek to ensure the future vitality of the town centres in the Borough by managing the growth of retail and other uses within them.
13. Although primarily seeking to encourage retail towards the town centres, policies TC2 and TC3 also direct other **'town centre uses' to these locations** intending to promote them as places that provide diverse retail, service, business, cultural and leisure offers. Such an approach accords with the sequential test set out in paragraph 87 of the Framework.
14. Policy TC4 identifies the need to consider the cumulative impact of proposals by avoiding the over-concentration of non-retail uses to maintain and enhance the role of retail in the town centres. However, as units formerly within an A1 (retail) use class now fall within the recently introduced Class E and a change

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<sup>2</sup> Drawing Ref: P07 Revision 00, dated 27 January 2022

to another Class E use would not be an act of development requiring planning permission, this policy has reduced weight. Furthermore, the changes to the UCO are intended, as noted in the Explanatory Memorandum to the UCO Amendment Regulations, to better reflect the diversity of uses found in town centres, to provide flexibility for businesses to adapt and diversify to meet changing demands and support the viability of these areas.

15. Notwithstanding this, there is no further detail, either in Policy TC4 or its **supporting text, defining the term 'over-concentration'** or an indication of the threshold above which the cumulative impact of non-retail uses would be harmful. Whilst Policy TC4 covers the Town Centre as a whole, the Council's Officer Report refers to the number of uses within the immediate area. During my site visit, I observed a wide range of uses, including retail, recruitment agencies, estate agents, hot food takeaways, restaurants and cafes, a public house, betting shops and another AGC within the immediate area. Taking the usual meaning of the term over-concentration to be *having too much of something in one place*, two AGCs near to each other would not, in my view, amount to an over-concentration, given their separation by Bell Road. Moreover, the two AGCs would be experienced in the context of a broad range of other uses within the immediate surroundings.
16. My attention has been drawn to the presence of four betting shops close to the site, all of which I observed during my site visit. However, as both AGC and betting uses do not fall within a defined use class, they are classed as *sui generis* or '**of its own kind**' and, irrespective of any other similarities between them, planning permission is required to change from a betting shop to an AGC, or vice versa. Furthermore, my attention has been drawn to a range of other differences between the uses including the types of gaming machines permissible, the mix of activity within each of them and opening hours.
17. Whilst I note the reference to the efforts of the Council to diversify and enhance the cultural destination at Bell Square, as part of the wider regeneration ambitions of the Town Centre, I see no reason to conclude that the proposed change of use would be detrimental to or limit these ambitions. Given the appeal premises have been vacant following fire damage in February 2019 despite marketing efforts and its prominent location, it is not contributing to the activity and vitality of the Town Centre. Moreover, the proposed development would bring the majority of the vacant premises back into use, and provide jobs and investment to the area. It would also assist in supporting pedestrian footfall at this end of the High Street given the complementary nature of the use to shopping activity, and contribute to the evening economy focused around Bell Square. These factors weigh in favour of the grant of planning permission.
18. Consequently, I conclude that the proposed change of use would form part of a suitable mix of uses which would be complementary to the Town Centre's **retail** function, the cultural destination at Bell Square and the vitality of the Town Centre would not be undermined. It would accord with policies TC2, TC3 and TC4 of the Local Plan in this respect. It would also accord with Chapter 7 of the Framework which seeks to ensure the vitality of town centres by allowing them to grow and diversity in a way that can respond to rapid changes in the retail and leisure industries.

## Other Matters

19. During the appeal, the appellant submitted a Unilateral Undertaking (UU), pursuant to Section 106 of the Town and Country Planning Act 1990. This obligation seeks to tie the approved planning permission for a new shopfront to this decision, should I be minded to allow the appeal in respect of the proposed change of use. However, the change of use element of the appeal scheme can be implemented, irrespective of any changes to the shopfront. Given this and my decision in respect of the change of use, it has not been demonstrated that the UU is necessary in this circumstance.
20. I acknowledge the strong objections and concerns raised by many interested parties about anti-social behaviour, and the safety of the public and other occupiers of the building, including those attending the learning centre. However, as there is a statutory requirement to exclude under-18s from AGCs, failure to do so would ultimately be an enforcement issue for the relevant licensing authorities. Similarly, risks to vulnerable persons, including those visiting nearby employment services, are more relevant to licensing requirements. Notwithstanding the lack of substantive evidence that the appellant has the appropriate license in place for the premises, the appeal documentation confirms the 'Think 25' entrance policy would be implemented by AGC staff and no alcohol would be served.
21. As recognised by the Council, there is no definitive evidence linking AGC uses with crime, disturbances or disruptive behaviour, and any noise from the use would be reasonable given the adjacent cultural destination of Bell Square and the promotion of the night-time economy. Comments from interested parties also include references to the shared use of toilet facilities in the building. However, I have no substantive evidence before me to indicate that customers of the AGC would be permitted to access these facilities.

## Conditions

22. In addition to the standard time limit condition, I have imposed a condition, for the avoidance of doubt, specifying the approved plans.
23. Both parties have suggested a condition should be imposed restricting the use of Retail Space 2 to Class E(a) – retail. However, PPG states that **"conditions can...enable development to proceed where it would otherwise have been necessary to refuse planning permission"**. Given the existing use of the appeal site falls under Class E, I do not consider limiting its use to retail only is necessary to make the change of use acceptable, nor relevant to the development being permitted. Furthermore, given the difficulties in marketing the premises already demonstrated<sup>3</sup>, imposing such a condition would limit the potential for Retail Space 2 to be brought into use. I have not, therefore, imposed this condition.

## Conclusion

24. The proposed development, insofar as it relates to the new shopfront, conflicts with the development plan when considered as a whole, and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. Therefore, I conclude the appeal should be dismissed insofar as it relates to the new shopfront.

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<sup>3</sup> Letter from jrbt Commercial Property dated 26 January 2022

Insofar as it relates to the change of use of part ground floor and part first floor for the creation of an Adult Gaming Centre (Sui Generis), I conclude that the appeal should be allowed.

*Juliet Rogers*

INSPECTOR