

Bradley Hall

Statement of Case on Behalf of the Appellant

**173-175 Soho Road. Handsworth.
Birmingham. B21 9SU**

**TCPA 1990 (AS AMENDED) SECTION 78 PLANNING APPEAL AGAINST REFUSAL OF
PLANNING PERMISSION. BIRMINGHAM CITY COUNCIL REF: 2024/03302/PA**

November 2024




RTPI
Chartered Town Planners

Confirmation of Instruction

Client	Luxury Leisure
Site	173 - 175 Soho Road, Handsworth, Birmingham, B21 9SU
Prepared By	Fraser Tinsley MA (Hons) MBA MRTPI, Principal Planner
Our Ref	BHPD00559
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Report Signatories

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1. Introduction

- 1.1 This Statement of Case has been prepared by Bradley Hall, on behalf of the applicant / appellant, Luxury Leisure. The appeal site comprises 173 - 175 Soho Road, Handsworth, Birmingham, B21 9SU, a vacant unit most recently operating as a bank (Use Class E).
- 1.2 The planning application seeking the change of use (Ref: 2024/03302/PA) was lodged on 23rd May 2024. The description of the proposal, as stated on the Council's decision notice, was as follows:

Change of use of the ground and first floor from a retail unit (Class E) to an Adult Gaming Centre (Sui Generis) with first floor associated storage and staff area including external alterations and associated works.

- 1.3 The LPA cited the following reason for refusal in the Decision Notice provided at Appendix A:

1. The proposed development would result in an increased fear of crime and anti-social behaviour and would fail to create a safe environment that promotes positive social interaction. As such, the application conflicts with Policy PG3 of the Birmingham Development Plan 2017 and the NPPF.

The planning application was refused permission at the Birmingham City Council Planning Committee meeting on 3rd October 2024. This was contrary to Officers recommendation to grant planning permission subject to conditions. A separate application for costs associated with this appeal is submitted.

- 1.4 Luxury Leisure is part of Novomatic UK Ltd who operate low-stake Adult Gaming Centres ("AGCs") under the Admiral brand across the UK. They are the leading operator of amusement gaming within the UK and account for approximately a quarter of the UK's Adult Gaming Centre market.
- 1.5 Luxury Leisure together with its sister company, Talarius, currently employ in excess of 3000 staff within over 280 AGCs across the UK. This application was submitted in the context of a growth and full rebranding and refurbishment programme to develop and consolidate the Admiral brand. New and refurbished venues provide the latest interactive and technological features in their existing AGCs thus reflecting their quality and excellence gained from many years of experience in this market sector.
- 1.6 The remainder of this Statement of Case comprises the following sections:

Section 2.0 – Describes the Appeal Site and Development Context;
Section 3.0 – Describes the Appeal Proposals;
Section 4.0 – Sets out the Relevant Planning Policy Framework and Guidance;
Section 5.0 – Common Ground Assessment.
Section 6.0 – Appellant's Case.
Section 7.0 – Summary and Conclusions

Appendix A – Decision Notice (Ref: 2024/03302/PA);
Appendix B – Appellant's Social Responsibility Policy;;
Appendix C – Case Officer's delegated report (Ref: 2024/03302/PA)
Appendix D – relevant appeal decision (PINS ref. Ref: APP/P4605/W/19/3229958)
Appendix E – relevant appeal decision (PINS ref. Ref: APP/P4605/W/22/3307082)

2. Site Description & Development Context

- 2.1 The appeal relates to the former Bank of Baroda branch which is located on the southern side of Soho Road in Handsworth, approximately 2.5 north west of Birmingham City Centre. Soho Road is one of the main arterial routes into the city linking Birmingham and West Bromwich. The unit is located in a parade of commercial units exhibiting a mixed character incorporating retail / commercial including former A3 use (Use Class E) and sui generis use.

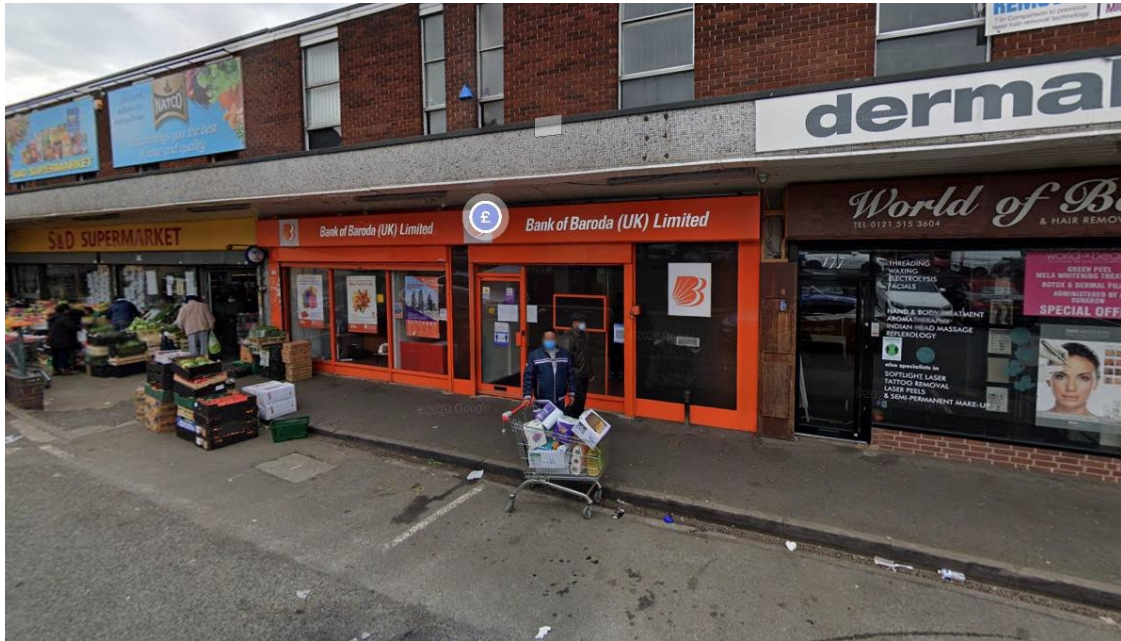


FIGURE 1: FORMER BANK OF BARODA BRANCH, 173 - 175 SOHO ROAD, HANDSWORTH, BIRMINGHAM 2023

- 2.2 Bank of Baroda ceased trading to the public from the store in late 2023 and the unit has remained vacant since that time.
- 2.3 The ground floor shopfront of the building is modern format and contains no features of architectural or historical merit. It forms part of a parade of 10 retail / commercial units which are set back from Soho Road.
- 2.4 The site has excellent levels of public accessibility on a main arterial route into the City Centre as is evident on the map provided at Figure 2 overleaf.

Planning History

- 2.5 There is planning history relevant to the current proposal for the site.
- A0574619 173-175 Soho Road Handsworth Birmingham Fascia Board Final Decision 18-04-1980 Approve subject to Conditions.
 - 2018/09952/PA Bank of Baroda 173-175 Soho Road Handsworth Birmingham B21 9SU Retention of 1 internally illuminated fascia sign Final Decision 10-12-2018 Approve Temporary.

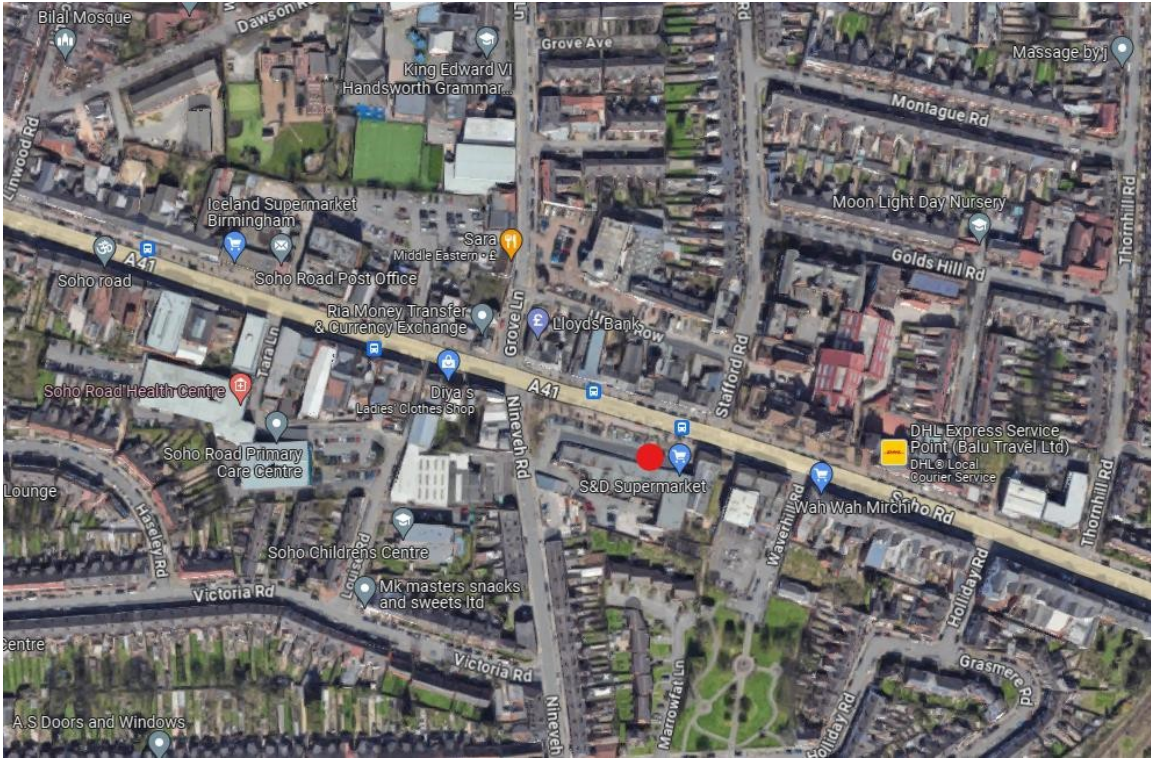


FIGURE 2: SITE LOCATION ON SOHO ROAD, HANDSWORTH (RED INDICATOR)



FIGURE 3: SITE VIEWED FROM SOHO ROAD, HANDSWORTH 2024 (GOOGLE MAPS)

3. Appeal Proposals

- 3.1 The proposed development would involve the change of use of the ground floor and first floor of 173 - 175 Soho Road from its existing lawful use as a retail / commercial unit (Use Class E) to an AGC (Sui Generis) with external alterations and associated works to the building. The first floor of the premises would be used for storage and staff areas ancillary to the ground floor AGC use.
- 3.2 The principal operation of the unit as an AGC would be on the ground floor only. This would provide gaming for adults aged over-18 in accordance with relevant legislation. There would be an internal linkage to the first floor of the building which would provide storage and staff areas only.
- 3.3 A new shopfront at ground floor level which would assist in maintaining an active frontage and add activity to the street scene. Figure 4 below shows the proposed shopfront with the fascia signage being the subject of a separate permission for advertisement consent (Ref: 2024/03515/PA). The shopfront has been designed to complement the upper floors of the building which in themselves would be cleaned and restored as part of the proposed façade works.



FIGURE 4: PROPOSED SHOPFRONT

- 3.4 The proposed front elevation of the building would significantly enhance this part of the parade compared to the current inactive and degraded frontage to the premises.

Economic Characteristics

- 3.5 Paragraph 11 of the NPPF identifies that there is an economic element to sustainable development. In this context the proposed development would introduce economic activity into Handsworth and constitute an expansion of the existing leisure and recreational economy.
- 3.6 The proposal would secure the use of this commercial building of which its future is currently uncertain since the premises became vacant and there is anticipated very limited, interest in retail use of the premises in the current retailing climate. The development would also provide investment in jobs (circa

12 jobs to be created) and would provide a high-quality and accessible working environment with excellent staff facilities.

- 3.7 Luxury Leisure and their parent company, Novomatic UK, operate within strict Corporate Social Responsibility (CSR) policies and adhere to the Responsible Gaming Code which contains a number of key criteria. These are as follows:
1. Recognising that prevention is the best form of player protection;
 2. Protecting children and minors;
 3. Encouraging responsible communication;
 4. Reinforcing the need for player responsibility;
 5. Employing professional staff;
 6. Keeping players informed;
 7. Guaranteeing fair gaming; and
 8. Working with experienced partners.
- 3.8 Operationally this means that the company implements a range of best-practice measures across their AGCs to mitigate any risk of anti-social behaviour and/or negative social outcomes. These include:
1. Enforcement of a 'Think 25' policy and staff training;
 2. Participation in local policing strategies/partnerships;
 3. Use of CCTV as appropriate;
 4. Employing professional staff and providing extensive training;
 5. Keeping players informed and extensively communicating the risks of problem gambling;
 6. Staff-led monitoring to identify those at risk of problem gambling and referral of them to support networks; and
 7. Making available to customers gambling management tools as well as the ability to self exclude from the premises.
- 3.9 A copy of the Applicant's "Security and Social Responsibility Statement" is attached at Appendix B of this Appeal Statement to help inform the Council's assessment of the proposed AGC use.
- 3.10 The design of the development would abide by 'Secured by Design' principles. Details of such measures could be secured by condition. This approach has been adopted in respect of other appeals by the appellant allowing AGCs elsewhere including a recent example at 163-167 Fore Street, Edmonton, Enfield, London N18 2XB (Appeal Ref: APP/Q5300/W/24/3341158).

4. Legislative and Policy Context

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the “development plan” unless material considerations indicate otherwise. Such material considerations can include Government policy statements, including the National Planning Policy Framework (NPPF) of which a revised version was published by the Government in December 2023.

Local Planning Policy

- 4.2 The development plan relevant to this application is the Birmingham Development Plan (BDP) 2011 - 2031 which was adopted by Birmingham City Council on 10 January 2017. The BDP sets out a spatial vision and strategy for the sustainable growth of Birmingham for the period 2011 to 2031.
- 4.3 The site is located within the Primary Shopping Area of Soho Road District Centre which is described at paragraph 7.23 of the BDP as –

‘District Centre - A major group of shops, including at least one foodstore or superstore and a range of non-retail and public services’.

Paragraph 7.28 of the BDP provides support for leisure and evening uses is reiterated and is described as ‘important and will continue to be supported in suitable centres’

- 4.4 Policy TP21 deals with the network and hierarchy of centres and states that:

‘The vitality and viability of the centres within the network and hierarchy identified below will be maintained and enhanced. These centres will be the preferred locations for retail, office, and leisure developments and for community facilities (e.g. health centres, education and social services and religious buildings). Residential development will also be supported in centres having regard to the provisions of policy TP24. Proposals which will make a positive contribution to the diversity and vitality of these centres will be encouraged, particularly where they can help bring vacant buildings back into positive use.’

- 4.5 Policy TP24 of the BDP ‘Promotion of Diversity of Uses within Centres’ promotes a diverse range of uses and states:

‘A diverse range of facilities and uses will be encouraged and supported in centres within the hierarchy, set out in Policy TP21, consistent with the scale and function of the centre, to meet people’s day-to-day needs. This will include:

1. *Leisure uses.*
2. *Offices.*
3. *Restaurants, takeaways, pubs, and bars.*
4. *Community uses.*
5. *Cultural facilities.*
6. *Tourist-related uses (including hotels).*
7. *Residential on upper floors where it provides good quality, well designed living environments.*
8. *55% of all ground floor units in the Sub-Regional and District Centres (including District Growth Points) should be retained in retail (Class A1) use.’*

- 4.6 In addition to the BDP, the adopted Shopping and Local Centres SPD (March 2012) provides further policy guidance in relation to change of use. Policy 1 of the SPD identifies that a minimum 55% threshold

of retail shop uses to be retained in District Centres. Policy 2 advises that regard will be had in relation to the following factors:

- The need to avoid an over concentration or clustering of non-retail uses such as to create a dead frontage.
- The type and characteristics of other uses in proximity to the application site.
- The size and type of unit. For example, the retention of larger retail units will be encouraged.
- The impact of the proposal on the character and function of the centre including opening hours, window displays, and footfall generated.

National Planning Policy Framework (NPPF)

- 4.7 Adult Gaming Centres fall within the definition of “main town centre uses” as defined in the NPPF Glossary. Paragraph 87 details sequential testing which main town centre uses are subject to with the presumption being in favour of town centre locations. Paragraph 86 confirms that Local Planning Authorities should support the vitality and viability of town centres; define the extent of town centres and primary shopping areas; and set policies that make clear which uses will be permitted in such locations. Paragraph 81 also requires Local Planning Authorities to recognise the requirements of different forms of businesses and economic development.

Conservation and Shopfront Design

- 4.8 The application site is not located within a designated Conservation Area and the building is not statutory or locally listed.

5. Common Ground Assessment

- 5.1 The Planning Officer's delegated report (Appendix C) sets out the relevant material planning considerations against which the proposed development has been assessed. The appellant reasonably considers that the following will not be disputed by the Local Planning Authority (LPA). These issues are not identified in the Decision Notice (Appendix A) refusing permission for the proposals and were not specifically referred to by Members at the Planning Committee Meeting on 3 October 2024. They are matters which Planning Officers specifically identified the proposed development as being in compliance with relevant planning policy. This is detailed at Paragraphs 7.1 and 7.2 of the Planning Officers Report.

Principle of Development

- 5.2 The Officers Report states in this regard:

1.1. Principle - The site forms part of Soho Road District Centre and falls within its primary shopping area. BDP policy TP21 sets out the City's network and hierarchy of centres and states that these centres will be the preferred locations for retail, office and other development such as leisure, education, community uses. An Adult Gaming Centre (AGC) is not listed within the NPPF as a main town centre use; however, it does share many characteristics with other uses which attract visiting members of the public. Therefore, the siting of this use within a defined centre is considered appropriate in principle.

1.2. The proposal would not result in the loss of a retail unit as the former use of the application site was as a bank. Notwithstanding this, the most recent Shopping and Local Centres SPD Monitoring Report carried out in 2024 identified that there were some 257 units within the Primary Shopping Area, of which 65% were in retail use. Policy TP24 states that 55% of ground floor units in District Centres should be retained in retail use. There are existing betting shops located at 154a, 198, 209/211 and 262 Soho Road and they are not clustered together. In conclusion, there are no issues identified with regards to the mixture of retail and other uses in this centre.

There is agreement with the Planning Officers report that the principle of development is acceptable. This matter was not referred to in the discussion at the Planning Committee Meeting on 3 October 2024.

Other Matters

- 5.3 There is agreement relating to *Visual Amenity*, *Residential Amenity* and *Highways Safety*. These matters are addressed in Paragraphs 7.3 to 7.6 of the Planning Officers Report and these matters were not referred to in the discussion at the Planning Committee Meeting on 3 October 2024.

6. Appellant's Case

- 6.1 Below we detail the applicant's response to the reason for refusal outlined in Section 1.3 above and set out their case addressing this matter. The key consideration of the appeal relates to the impact of the proposed development on increased fear of crime and anti-social behaviour and that it would fail to create a safe environment that promotes positive social interaction.
- 6.2 The Planning Officer provided a detailed analysis of this issue and the potential for the development to generate crime and anti-social behaviour (ASB) at paragraphs 7.7 to 7.22 of their report attached at Appendix C. This considered the comments by Lozells and East Handsworth Neighbourhood Policing Team and the applicants submissions contained in the Planning Statement. It also had regard to wider planning policy and several other planning appeals in the area which specifically addressed this issue of crime and ASB as it relates to AGCs.
- 6.3 The appellant accepts that potential for the development to generate crime and anti-social behaviour (ASB) is a material consideration in the determination of planning applications. Paragraph 135 of the National Planning Policy Framework (the Framework) states that planning decisions should create places that are safe, inclusive and accessible and where the fear of crime does not undermine the quality of life or community cohesion and resilience. The courts have held that the fear of crime can be a material consideration if there is some reasonable, cogent evidential basis linking the proposed use or occupiers with criminal activity.
- 6.4 In this instance there is no reasonable, cogent evidential basis to link the proposed development with the potential for crime or ASB. In the first instance, Lozells and East Handsworth Neighbourhood Policing Team have objected to the appeal proposal on the basis that the number of calls relating to gambling industry establishments is high and that the proposed use would adversely impact upon the location and crime and fear of crime. There is however limited evidence that the appeal proposal would facilitate or increase the likelihood of these activities. No evidence is submitted by the police in this regard.
- 6.5 Furthermore, the Council have not provided any evidence that the proposed development would generate crime and ASB. The reason for refusal is based on an assertion without evidential basis.
- 6.6 The police also object to the appeal proposal operating 24 hours a day. The appeal site is situated in an area where the surrounding development is largely retail on the ground floor with commercial premises at higher levels which would generally be closed at night. Soho Road is one of the main arterial routes in Birmingham linking the City Centre with West Bromwich. There are numerous premises in the area trading late into the evening including restaurants and bars. There is a regular bus service (No 74) running late into the evening and other facilities are available in close proximity to the premises. The proposed AGC operating late into the evening is in accordance with this character. An alternative to 24-hour opening is 2am opening. This is a trading hours profile engaged elsewhere which balances patron demand with other issues. This is a trading hours option for the Inspector to consider which could be controlled by means of condition.
- 6.7 There is no evidence to suggest that AGCs cause problem gambling or contribute towards other negative health and wellbeing outcomes. AGCs offer a safe and monitored environment for visitors to game as a quasi-social activity. This has discernible benefits compared to other forms of gambling such as online and in less secure environments. Nevertheless, alleged risks to problem gamblers, young people and other vulnerable persons are matters relevant to licensing and management functions, not planning. All Admiral units operate a Think 25 policy to reinforce that under 18-year olds are not able to gamble. In addition, they do not serve alcohol nor do they allow the consumption of alcohol on the premises.

- 6.8 A copy of the Applicant's "Security and Social Responsibility Statement" is attached at Appendix B of this Planning Statement to help inform the Council's assessment of the proposed AGC use. Luxury Leisure and their parent company, Novomatic UK, operate within strict Corporate Social Responsibility (CSR) policies and adhere to the Responsible Gaming Code which contains a number of key criteria. These are identified at Paragraph 3.7 above.
- 6.9 Operationally this means that the company implements a range of best-practice measures across their AGCs to mitigate any risk of anti-social behaviour and/or negative social outcomes. These are identified at Paragraph 3.8 above.
- 6.10 The issue of AGCs and their role as a potential catalyst for crime and anti-social behaviour (ASB) has been addressed at appeal elsewhere. At 54-57 High Street, Ladywood, Birmingham B4 7SY an appeal against a LPA refusal for and AGC in similar circumstances was upheld and permission granted (Appeal Ref: APP/P4605/W/19/3229958). The Inspector in that instance stated in the Decision Notice attached at Appendix D:

'10. The police have objected to the appeal proposal on the basis that the number of calls relating to gambling industry establishments is high and that the proposed use would adversely impact upon the location and crime and fear of crime. There is however limited evidence that the appeal proposal would facilitate or increase the likelihood of these activities. The appellant has for example indicated that its sister premises at Priory Square which is approximately 90 metres away has had no reported incidents.

.....

13. On balance, subject to suitable conditions, I do not therefore consider that the appeal proposal would increase opportunities for crime and fear of crime. It would therefore not be contrary to Policy PG3 of the Birmingham Development Plan 2017 amongst other things states that new development should create safe environments that design out crime, designing buildings that promote positive social interaction and natural surveillance.'

The circumstances in the current application are very similar to this appeal. In both instances proposals were refused permission by the LPA without a reasonable, cogent evidential basis linking the proposed use or occupiers with criminal activity or ASB

- 6.11 A further appeal at 56 High Street, Erdington, in a location similar in character to the appeal site, was allowed in similar circumstances. This was for a change of use of ground floor from a bank (Use Class E) to a betting office (Sui Generis) (Reference: APP/P4605/W/22/3307082). The Inspector stated in their Decision allowing the appeal against refusal attached at Appendix E:

'15. The Erdington Neighbourhood Policing Team refer to the wide demographic of the area, including people recovering from addictions whereby a betting office could add temptation and lead to a spike in crime. However, no crime reports, data or evidence has been submitted to demonstrate a link between crime levels or anti-social incidents associated with existing betting offices, or that an additional betting office would significantly increase such behaviours. Vulnerable persons in the area already have access to a number of betting offices and amusement and gaming centres on Erdington High Street, as well as off-licences and public houses in the area.

16. Through the Freedom of Information Act, the appellant has secured data from West Midlands Police of anti-social behaviour incidents logged in Erdington during a 5-year period

from July 2017–June 2022 (which includes periods of national ‘lockdown’ during the Covid-19 pandemic). The data reveals there was 1 logged anti-social behaviour incident linked to a betting office. While there may be associations between gambling and crime and wider social issues affecting communities generally, in the absence of evidence to the contrary the data before me would indicate there is no direct correlation between betting offices and anti-social behaviour and/or increase in crime in the area.’

Again, in this instance, the police have failed to provide crime reports, data or evidence to demonstrate a link between crime levels or anti-social incidents associated with existing betting offices, or that an additional betting office would significantly increase such behaviours.

Conclusion

- 6.12 The appellant supports the Planning Officers conclusions at paragraph 7.22 of their report regarding this application (appeal) which is attached at Appendix C:

‘7.22. Therefore, in the absence of substantive evidence showing a direct correlation between the proposed use and anti-social behaviour and/or an increase in crime, it is considered that on balance a reason for refusal could not be sustained.’

The LPA have failed to provide substantive evidence to support the reason for refusal for the proposed development and the appeal should be upheld.

7. Summary & Conclusions

7.1 This Statement of Case has been prepared by Bradley Hall, on behalf of the applicant / appellant, Luxury Leisure. The appeal site comprises 173 - 175 Soho Road, Handsworth, Birmingham, B21 9SU, a vacant unit most recently operating as a bank (Use Class E). This follows the decision of Birmingham City Council to refuse permission for the change of use of the premises to and Adult Gaming Centre (AGC) for the following reason:

1. The proposed development would result in an increased fear of crime and anti-social behaviour and would fail to create a safe environment that promotes positive social interaction. As such, the application conflicts with Policy PG3 of the Birmingham Development Plan 2017 and the NPPF.

7.2 The refusal of a planning application for an Adult Gaming Centre (AGC) is appealed, countering the claims that it would lead to increased crime and anti-social behaviour (ASB) and fail to create a safe environment. Key points include:

- **Lack of Evidence:** The appellant accepts that crime and ASB are valid concerns in planning decisions but contends that there is no substantive evidence linking the proposed AGC to increased crime. The police objected due to the high number of calls related to gambling establishments, but no specific evidence was provided to demonstrate that the proposed use would escalate these issues.
- **Context and Operating Hours:** The appeal site is located on Soho Road, Birmingham, an area with commercial and retail activities. The proposed 24-hour operation aligns with the character of the area, which includes late-night businesses. The appellant suggests an alternative trading hour option (up to 2 am) as a condition for consideration.
- **Corporate Responsibility and Safety Measures:** The appellant emphasizes that AGCs provide a monitored and safe environment for visitors, contrasting with the risks associated with online gambling. The company adheres to a strict Corporate Social Responsibility policy and implements measures like enforcing a 'Think 25' policy, employing professional staff, using CCTV, and collaborating with local policing strategies.
- **Precedents from Similar Appeals:** The appellant references previous successful appeals for AGCs in Birmingham, where objections based on crime and ASB concerns were overturned due to insufficient evidence. In each case, inspectors found no direct correlation between AGCs and increased crime, supporting the argument that the proposed development would not significantly impact crime or ASB.

7.3 The proposal has not been demonstrated to be contrary to Policy PG3 of the Birmingham Development Plan 2017 and the NPPF. The appellant supports the planning officer's view that, without substantive evidence demonstrating a link between the proposed AGC and crime or ASB, the refusal cannot be justified. The appeal should therefore be upheld.

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