

Committee Date: 03/10/2024 Application Number: 2024/03302/PA
Accepted: 24/05/2024 Application Type: Full Planning
Target Date: 04/10/2024
Ward: Soho & Jewellery Quarter

173-175 Soho Road, Handsworth, Birmingham, B21 9SU

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

Applicant: Luxury Leisure
Fifth Avenue Plaza, Queensway, Team Valley Trading Estate,
Gateshead, Tyne and Wear, NE11 0BL

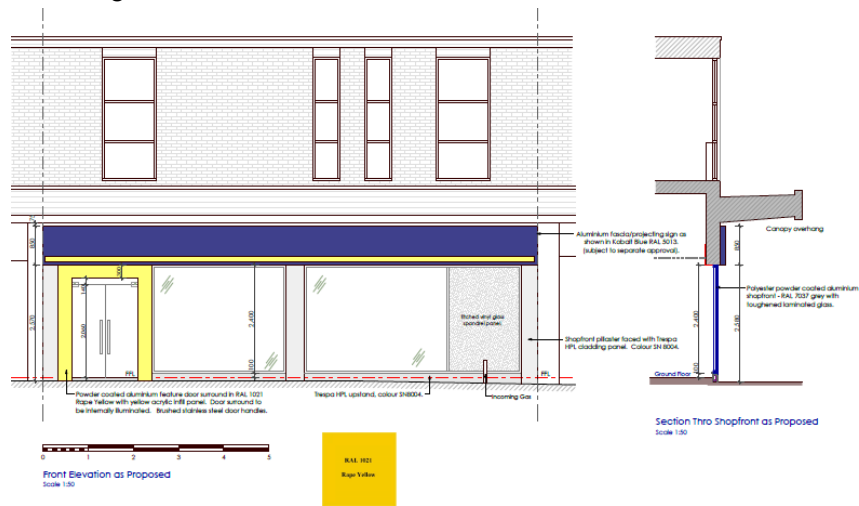
Agent: Bradley Hall Ltd
1 Hood Street, Newcastle-upon-Tyne, Tyne and Wear, NE1 6JQ

Recommendation

Approve subject to Conditions

1. Proposal:

- 1.1 This application is for the change of use of the ground and first floor from a vacant bank premises (Class E) to an Adult Gaming Centre (Sui Generis) with first floor associated storage and staff area including external alterations and associated works. The application description refers to a change of use from retail (Class E). Both retail and banks fall under Use Class E.
- 1.2 The change of use would incorporate a storeroom, an office, staff room and a W/C over both floors in addition to the gaming area being introduced on the ground floor.
- 1.3 External alterations would include changes to the glazing on the front elevation and relocating the entrance as well as A/C extraction units to be fitted to the rear of the application building.



Proposed Soho Road frontage

1.4 The proposed hours are 24hours 7 days a week.

1.5 [Link to Documents](#)

2. Site & Surroundings:

2.1. The application site is currently a vacant bank unit and is within a parade of other Class E uses. The application site is on Soho Road which is a mixed-used area and is within a district centre, consisting of both commercial and residential properties.

3. Planning History:

3.1 This site – none of relevance.

3.2 272a Soho Road – 2021/09176/PA. Change of use of ground floor from retail (Use Class E) to and Adult Gaming Centre (AGC) (Sui Generis). Refused 20/10/22 on the grounds of increased fear of crime and anti-social behaviour, against officer recommendation. This decision was not appealed.

4. Consultation Responses:

4.1. Transportation Development raise no objections.

4.2. Regulatory services - no objections subject to operating time of 08:00 until 00:00 Monday to Sunday and noise levels from plant and machinery being controlled.

4.3. West Midlands Police object to the proposal on the grounds that the proposal will adversely impact on the location and will further impact on crime and the fear of crime around the location. The representation includes reports from both the Lozells and East Handsworth and Soho Road Neighbourhood Policing Teams based upon the Policing experience of these areas. If minded to approve, conditions are recommended on opening hours up to 22:00, CCTV and security measures such as physical security deterrent and secure by design.

5. Third Party Responses:

5.1. Residents, Neighbourhood Forums and Associations, and ward councillors were notified. A site notice was displayed. 103 letters of objection were received including an objection from the Soho BID, Antrobus Road Residents and Councillor Chaman Lal.

5.2. The BID objects to the proposal for the following reasons:

- Proposal creates an unsafe environment;
- Increased anti-social behaviour within the area; and
- The safety of local residents.

5.3. Councillor Chaman Lal objects to the proposal for the following reasons:

- Detrimental to the wellbeing of the local area; and
- Brings no benefit to the wider area.

5.4. 103 Objections were submitted which related to:

- Creating an unsafe environment;
- Having a negative impact upon the local area;
- Increase in Anti-Social behaviour; and
- Influx of betting stores within the Local Centre.

6. Relevant National & Local Policy Context:

- a. National Planning Policy Framework
 - Paragraph 86 states that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.
 - Paragraph 130 states that planning decisions should create places that are safe, inclusive and accessible and which promote health and well-being, and where crime and disorder, and the fear of crime do not undermine the quality of life or community cohesion and resilience.
- b. Birmingham Development Plan 2017

The application site is identified as being within a Local District Centre in the Birmingham Development Plan 2017 and relevant Policies are:

 - Policy PG3 Place Making
 - TP21 The Network and Hierarchy of Centres
 - TP24 Promoting a Diversity of Uses within Centres
- c. Development Management DPD: (if relevant)
 - DM2 Amenity of the DMB-PDP
- d. Supplementary Planning Documents & Guidance:
 - Birmingham Design Guide.
 - Car Parking SPD

7. Planning Considerations

- 7.1. *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.
- 7.2. 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.
- 7.3. *Visual Amenity* - The applicant has proposed alterations to the front of the site which are appropriate for this unit within this commercial context. The proposed A/C condenser units to the rear would not have a negative impact upon the building and are acceptable with regards to visual amenity.
- 7.4. *Residential Amenity* - The application site is within the Soho Road Local Centre. The main source of noise would be from customers' coming and goings and it is reasonable to expect that this would not result in noise nuisance as this is commonly seen within a busy district centre where the background noise is high due to noise from road traffic and commercial activities.

- 7.5. The applicants are seeking a 24hrs 7 days a week operation. However, considering Regulatory Service's technical advice that Soho Road is not a 24hrs 7 days a week centre, a condition restricting opening hours to between 8:00 – 00:00 is more appropriate to safeguard neighbour amenity and be consistent with other licenced premises.
- 7.6. *Highway Safety* - The proposal is unlikely to cause any risk to highway safety around the application site. There is sufficient parking provision within the vicinity for the site and Transportation Development raise no objection. Taking this into consideration the proposal is seen as acceptable.
- 7.7. *Crime and Safety* - Objections have been received relating to the negative effect the gaming centre will have on the residents of the local area, an increase in anti-social behaviour, an increase in crime within the local area and the safety of residents.
- 7.8. West Midlands Police have raised an objection due to the proposal having an adverse impact on the location and will further impact on crime and the fear of crime around the location.
- 7.9. Comments from the Lozells and East Handsworth Neighbourhood Policing Team highlight problems surrounding loitering, drinking and the abuse of alcohol that causes anti-social behaviour and fear to local shop owners and school children. It adds that there are a lot of licensed premises selling alcohol and betting shops, which causes groups of adults to loiter on the street. A location where people who gamble and drink loiter is a few minutes' walk from the application site. There is concern that the application site would become an attraction, and the location does not fit another gambling establishment. It is at a lower level that the main road and the area has the potential for groups to loiter and commit anti-social behaviour. The only positive is that a premises would be in use rather than left void. There are dedicated patrols at certain times in a specific location which is tailored to reduce violence and offending with weapons. The application site falls within this patrol area. There is also a Public Space Protection Order (PSPO) which is aimed at curbing anti-social behaviour, and Soho Road in the main location.
- 7.10. Comments from the Soho Road Neighbourhood Team identify that the area sees a high volume of anti-social behaviour, including Waverhill Park which sees drug usage, street drinking as well as loitering. Waverhill Park is a two-minute walk from the application site and a licensed premises within walking distance will undoubtedly see an increase in such activities. An adult gaming centre may increase the vulnerabilities of people with alcohol and drug addictions, in an attempt to make money to fuel their addictions. Having a location that provides money as winnings also exacerbate existing issues with robberies on and off public transport. Premises like these experience ASB and assaults on staff generally as a result of entry being refused or large losses of money. It is anticipated that the proposal is going to increase offences.
- 7.11. In support of the application, the applicants state that "There is no evidence to suggest such uses cause problem gambling or contribute towards other negative health and wellbeing outcomes. They offer a safe and monitored environment for visitors to game as a quasi-social activity... alleged risks to problem gamblers, young people and other vulnerable persons are matters relevant to licensing and management functions, not planning".
- 7.12. The applicant has submitted a Security and Social Policy Document within their Planning Statement where they have proceeded to include details on how the proposed use would operate to ensure the safety and security of the site and its customers as well as safeguarding the adjoining neighbouring occupiers. It highlights

that Adult Gaming is a regulated industry aimed at individuals over the age of 18 years old. Children entering such venues are prohibited by law. It adds that the operation of adult gaming centre is subject to Licence Conditions and Codes of Practice from the Gambling Commission which address matters such as protection of children and other vulnerable persons, access to premises and age checks, responsible gambling etc. As such the proposed use would be subject to a separate licensing regime that would need to demonstrate how the use would be operated in a manner that would address concerns around matters such as anti-social behaviour, criminal behaviour, drug taking, drunkenness and encourage an increase in gambling.

- 7.13. Crime and the fear of crime are a material consideration. They must be shown to be reasonable and justified to be a material consideration. This is a matter that is commonly raised with applications relating to such uses and there are a number of appeals that discuss the issue. Relevant sections of the decision are detailed below.
- 7.14. 2022/02444/PA related to a change of use of a bank to a betting shop at 56 High Street, Erdington and was refused on the viability and vitality of the local centre as well as anti-social behaviour. The Inspector did not observe any anti-social behaviour outside any of the existing betting offices, or any particularly significant signs of anti-social behaviour or public nuisance along the High Street. Adding that the betting offices appeared to be well maintained and had no reason to believe the proposed betting shop would be similarly well-maintained and managed.
- 7.15. Furthermore, the Inspector added *“The Erdington Neighbourhood Policing Team refer to the wide demographic of the area, including people recovering from addictions whereby a betting shop 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... 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*

Furthermore, there are licensing regimes to regulate gambling. Indeed, the Police advice that the use as a betting office would be regulated and licensed and many of the issues raised by objectors would fall under licensing obligations on the part of the operator. Any breaches of the licence conditions would bring their own sanctions”.

- 7.16. The Inspector concluded that the proposal would not directly lead to an increase in anti-social behaviour, or that fear of crime would be a material consideration upon which to withhold planning permission and allowed the appeal.
- 7.17. 2018/09039/PA related to a change of use to an amusement arcade at 54-57 High Street, in the City Centre, and was refused on the grounds of the increase opportunities for crime and fear of crime as well as the design of the shopfront. The Inspector recognised that the appeal site is within an area where there are a disproportionately high number of calls to West Midlands Police relating to criminal activity and acts of anti-social behaviour. Also, there is in place a Public Space Protection Order which includes the appeal site due to environmental issues such as misuse of telephone kiosks and large numbers of bus stops and benches nearby where people can loiter. The inspector highlighted that *“Whilst the Council and the police consider that the proposed change of use would have an exacerbating impact on the existing levels of anti-social behaviour, there is limited evidence to show that the appeal proposal would facilitate or increase the likelihood of criminal activities occurring. There are issues with crime in the area and the presence of the empty unit is not assisting in managing*

any crime issues. The occupation of a currently vacant unit would be likely to provide some natural surveillance and remove the opportunity for groups to gather outside a vacant shop. The presence of CCTV which can be conditioned would provide some monitoring and may act as a deterrent for anti-social behaviour...

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 Inspector concluded that, subject to conditions, the proposal would not increase opportunities for crime and fear of crime and allowed the appeal.

- 7.18. 2022/09551/PA related to a change of use to an Adult Gaming Centre at 750 Bristol Road South. Whilst the application was refused on the grounds of the viability and vitality of Northfield District Centre, the matters of increase crime, anti-social behaviour and gambling addition were raised. In response the Inspector noted that *"According to the West Midlands Police, crime incidents recorded within the vicinity of the appeal site could not be attributed to the existing AGCs"*. The appeal was allowed and in awarding costs against the Council for unreasonable behaviour the Inspector highlighted *"The Committee Report noted that the proposal complied with Policy and would assist in retaining investment in the area. The Committee Meeting minutes does not include the contents of members discussions only their recommendation. However, the appellant's transcription of some of the members' comments indicates that they centred on issues relating to anti-social behaviour, problem gambling and the fear of crime, rather than viability concerns. The Council's Statement focuses on justifying the Officer's case for recommending restricted opening hours and provides no evidence to demonstrate the effect of the proposal on the vitality and viability of the centre to substantiate the reason for refusal"*.
- 7.19. In terms of this appeal, it is recognised that each proposal must be determined on its own planning merits, but at the same time the similarities that can be drawn from these appeal decisions are relevant and must also be taken into consideration.
- 7.20. It is clear that the wider locality of the application site experiences existing high levels of crime and anti-social behaviour and is understandably an area for concern. Furthermore, it is recognised that such uses could represent an attraction for some of the most vulnerable in society. Within their submission, West Midlands Police has provided evidence of calls to an existing AGC within the City Centre over a 3-year period, with approximately half of these occurring after 2200hours. A Statement by the Neighbourhood Policing Team indicates that 3 existing betting shops in the proximity of the application site do not directly create issues and, where issues do arise, they rarely spill out on to the street.
- 7.21. It is also noted that the area is currently subject to dedicated patrols and there is a PSPO in place. This order provides the Police and Council Officers with additional powers across a defined geographical area, to tackle a wide range of anti-social behaviours. The order requires that any person found in breach with drug or alcohol issues will be referred to the appropriate Drug and Alcohol rehabilitation services. Furthermore, any person found in breach for begging will be referred to the Street Intervention Team for housing and benefit support. Furthermore, adult gaming centres are subject to Licence Conditions and Codes of Practice from the Gambling Commission which address matters such as protection of children and other vulnerable persons, access to premises and age checks, responsible gambling etc. It would be subject to a separate licensing regime that would need to demonstrate how the use would be operated in a manner that would address concerns around matters such as

anti-social behaviour, criminal behaviour, drug taking, drunkenness and encourage an increase in gambling. It is not the role of the planning system to regulate these matters.

- 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.

8. Conclusion

- 8.1. Concerns over the potential for an increase in anti-social and criminal behaviour in an area that is already affected by such activities is fully recognised. However, in the absence of substantive evidence that the proposed use in this location will have an adverse impact, it is considered that on balance and to be consistent with relevant appeal decisions highlighted in the report, a reason for refusal could not be defended. It is also important to acknowledge the role of the separate licensing regime for such uses/premises.
- 8.2. Furthermore, the proposal would introduce a use visited by members of the public into a vacant premises within a local centre. In addition, with the reduce opening hours as well as other safeguarding conditions, the impact on neighbour amenity and highway safety would be acceptable.

9. Recommendation:

- 9.1 Approve subject to conditions.

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- 1 Implement within 3 years (Full)
 - 2 Requires the scheme to be in accordance with the listed approved plans
 - 3 Limits the hours of operation (0800-0000)
 - 4 Limits the noise levels for Plant and Machinery
 - 5 Requires the submission of a CCTV scheme
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Reason for Approval

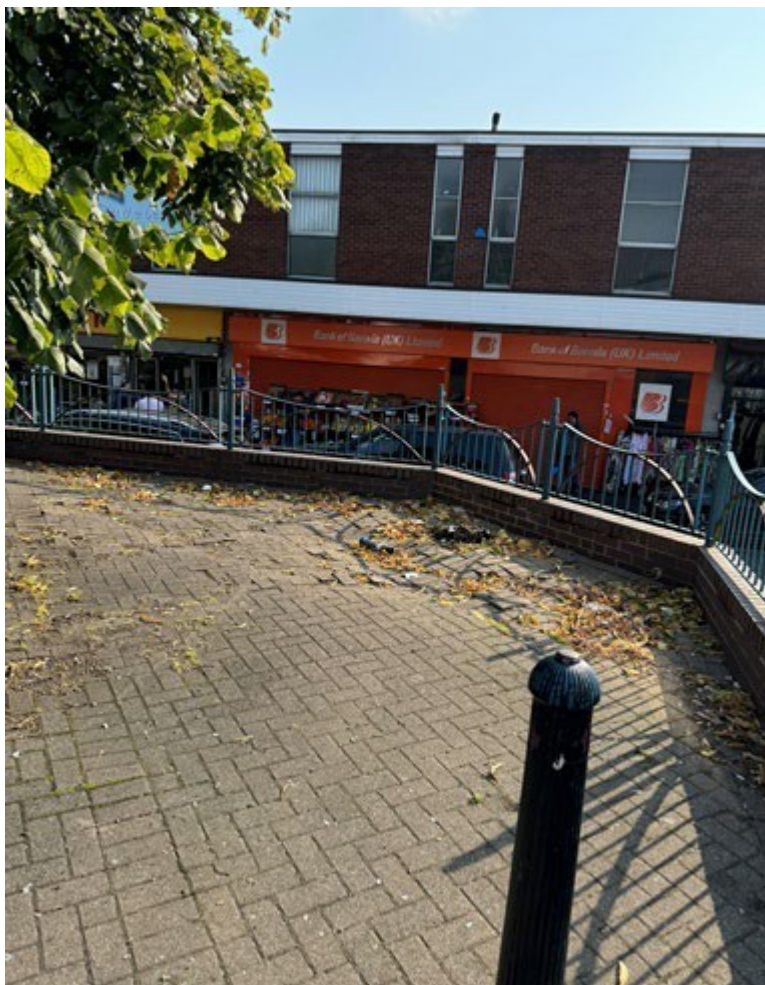
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- 1 Based on the information available this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements in the list below is/are considered to apply. In this case that the development is considered to be below the de minimis threshold.
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Case Officer: Hamzah Rehman

Photo(s)



View from service road



View from Soho Road

Location Plan

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