

LB Redbridge  
Local Plan 2015--2030  
Submission  
Hearing Statement

Name: Power Leisure Bookmakers Ltd  
Representor: Planning Potential  
Policy / Issue / Matter: Policy LP11 / Issue 7 / Matter V  
Hearing Session – Tuesday 18<sup>th</sup> July



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**Report Reference:**

16/3255

## 1. Background

- 1.1. In September 2016, we wrote on behalf of our client, Power Leisure Bookmakers Ltd, to make representations on the Pre-Submission Consultations on the Local Plan 2015-2030 (see **Appendix 1**).
- 1.2. In advance of the Examination in Public Sessions (EIP) on the 18th July, please find enclosed our 'Hearing Statement' relating to Redbridge's Local Plan.
- 1.3. This Statement is produced based on the Inspector's Main Issues and Questions raised in advance of the Hearing.
- 1.4. Power Leisure Bookmakers Ltd consider that the Local Plan is unsound.

## 2. Response to the Inspector's Main Issues and Questions: Policy LP11

2.1. The Inspector has asked the following questions in relation to Policy LP11:

*"Issue 7 – Are the policies relating to town centres and employment (Policies LP9, LP10, LP11 and LP14), and other policies relating to promoting and managing growth in Section 3 justified, consistent with national policy and will they be effective?"*

*V) In Policy LP11 what is the evidence justifying the restrictions in criteria (a)-(c) for hot food takeaways, criterion (c) for betting/gambling shops and money lenders and criterion (b) for shisha bars? Is it reasonable to expect all proposals for betting/gambling shops and money lenders and shisha bars to be located in town centres and to demonstrate how they will promote the health and well-being of borough residents?"*

- 2.2. Prior to turning to the Matters raised by the Inspector, it is important to note that since the Use Class Order changed in April 2015, betting shop uses are now considered as 'Sui Generis' and an application is now always required for betting shop uses.
- 2.3. We have no issue with the fact that the Council will want to scrutinise new betting shop applications and ensure that they will not lead to any concentrations which would lead to negative impacts, however, to assert unnecessary vetoes on areas where Betting Shop operators can locate as a starting point for all new applications (when there is no robust evidence to support the approach) is wholly unsubstantiated and does not allow officers/members to make objective decisions. It also places unnecessary burdens on betting shops operators who already need to submit an application when looking for new units. If the council's policies are found sound, it will mean that new betting shop operators will effectively be forced out of certain areas in Redbridge, as there are simply too many hurdles to overcome.
- 2.4. We are concerned that the council's stated justification for seeking to implement further restrictions on betting shops, specifically that a) local residents are concerned about these uses, b) that the uses can undermine the vitality and viability of town centres and the amenity of adjoining occupiers, and c) that betting shops can attract anti-social behaviour, has no evidence base to support the claims made.
- 2.5. In addition, it is unclear why betting shops and money lenders have been grouped together within the policy. These uses, which are both Sui Generis and always require an application to be made, offer significantly different services/products. Specifically, betting shops offer a leisure activity, whilst money lenders offer a formal financial service – they should therefore not be linked together.
- 2.6. We respond specifically on the Matters raised by the Inspector overleaf, making it clear why the Policy is unsound.

### 3. Issue 7 Part V

#### **What is the evidence justifying the restrictions in criteria (C) for betting/gambling shops and money lenders: "Criteria C – No more than one betting/gambling shop or payday lender is located within a 50m radius of an existing betting shops or payday lender unit"**

- 3.1. The wording of Criterion C suggests that betting shops and payday lender units are linked together within the policy. The intention of the policy should be clarified in the first instance.
- 3.2. As touched on above, betting shops and payday lender units offer an incomparably different service in centres. To make such a link between the two is no less inappropriate to comparing a bingo hall with a high-street accountancy firm. We therefore request that the uses should be separated within all policy wording.
- 3.3. In relation to the proposed 50 metre radius between betting shops uses, it is unclear why the Council have suggested the 50m distance.
- 3.4. The London Plan forms part of the Development Plan and was adopted in March 2016. The Local Plan should be in general conformity with the London Plan. Policy 4.8 is concerned with Supporting a Successful and Diverse Retail Sector and Related Facilities and Services and states that the Mayor will, and boroughs and other stakeholders should, support a successful, competitive and diverse retail sector which promotes sustainable access to the goods and services that Londoners need. The London Plan Town Centres SPG (July 2014) states that Councils are encouraged to manage over-concentrations of activities, for example betting shops, hot food takeaways and pay day loan outlets. The supporting text outlines current and potential mechanisms for managing the over-concentration of such uses. In particular, 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".
- 3.5. We consider that in line with the London Plan and Town Centres SPG (2014) the starting point for Plan policy making is whether there is an existing over concentration or cluster of uses (including betting shops) which has reached saturation levels where positive impacts are outweighed by negative impacts.
- 3.6. Passing references are made within the Local Plan Draft Submission to '*growing concern amongst local residents in Redbridge*' (para 3.18.1), that these uses '*can severely undermine the vitality and viability of town centres and the amenity of adjoining occupiers*' (para 3.18.2), and that '*betting shops and payday lenders can attract anti-social behaviour*'. However, importantly, none of these claims are supported by evidence and should be removed from the Document.
- 3.7. It should be noted that betting shops actually represent less than 4% of the country's retail units and in most inner London areas less than 3%. Indeed, numbers of betting shops have in fact decreased by about a half across the country since the 1970s.
- 3.8. It is clear that the Council have a perception of what constitutes an over-concentration that is not shared when analysis of its centres is comprehensively undertaken. This is evident not only from the omission of any justified identification

of existing over-concentrations within the Council's evidence base but also from recent appeal decisions we refer to below.

- 3.9. An appeal was allowed at 620 High Road, Leytonstone on the 22 April 2015 (reference: APP/U5930/A/14/2229533 - attached as **Appendix 2**). The proposals would result in 6 betting shops in the centre, meaning betting shops would account for just 3.5% of the overall centre, a figure which the Inspector considered to be "a low figure when compared with a comparison of other non-A1 uses in the centre". *The proposals would also result in 3 betting shops within 60 Metres of one another. The Inspector stated that "the proposal would not result in any significant clustering concerns"*.
- 3.10. Although a further appeal at 64 Kilburn High Road (reference: APP/X5210/W/15/3140916 – attached as **Appendix 3**) was refused on the basis that it had not been demonstrated that the unit could not continue in A1 use, the Inspector was clear in that she did not consider that 8 units in the centre represented an overconcentration of betting shops or gambling facilities in the area despite the Council's concerns (para 26). The Inspector commented, "even if there was a cluster, it does not necessarily mean that harm would arise" (para. 41) and that *"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"* (para. 41). She then concluded that she did not feel that an over-concentration had arisen which would have an adverse effect on community safety or fear of crime (para 47). *The proposals would have resulted in 3 betting shops within 100m of one another.*
- 3.11. Finally, an appeal at 325 Caledonian Road, Islington, was allowed on 30 August 2016 (reference: APP/V5570/W/16/3145635 – attached as **Appendix 4**). In relation to anti-social behaviour, the Inspector concluded that the proposed betting shop "would also introduce a well-lit use, providing a degree of passive evening surveillance, which might also deter such problems" and *"on balance, I can find no substantial harm arising from this proposal due to an increase in crime and anti-social behaviour"*. Comments from the Police are also attached at **Appendix 5**.
- 3.12. In summary, to give any credibility to the statement that there is growing concern amongst local residents in Redbridge, evidence must be produced to prove that this is the case. It has been clearly demonstrated through the referenced appeals above that high numbers of betting shops do not necessarily undermine vitality and viability and that evidence of harm with a saturation point identified for each centre is required in order to set appropriate limits. It has also been demonstrated that the notion that betting shops can attract anti-social behaviour is unfounded.
- 3.13. On this basis, Criterion C is **not Sound** as it is not justified or based on a robust and credible evidence base. Indeed, evidence to the contrary has been produced.

**Is it reasonable to expect all proposals for betting/gambling shops to be located in town centres and to demonstrate how they will promote the health and well-being of borough residents?**

- 3.14. In its current format, the policy provision for betting shops to be located within town centres is unclear as it does not specifically outline what a 'town centre'

designation entails. It is unclear whether a town centre comprises all of the following: Metropolitan, District and Local Centres as well as shopping parades (as per Figure 13 of the Local Plan). Betting shops provide a supportive role to other services within all centres and should therefore not be excluded from any designated shopping area, whether that be a town centre or a smaller shopping parade. The definition of 'town centres' should therefore be specified within the policy.

- 3.15. In the relation to the proposed provision for betting shop operators to demonstrate how they will promote the health and well-being of borough residents, this is completely unreasonable and not a planning consideration. The promotion of health and well-being of borough residents should not be introduced as a planning consideration as this will undermine the role of the licensing authority whose duty it is to assess such matters.
- 3.16. When applying for a gaming licence, betting shop operators must provide information and evidence demonstrating that they have appropriate training and management procedures/policies in place to show that they will comply with these objectives, including the protection of children and other vulnerable people, something that betting shop operators take very seriously. It would be unnecessary and inappropriate for this process to be duplicated via planning policy.

## 4. Summary

- 4.1. In our view Policy LP11 and supporting text paragraphs 3.18.1 - 3.18.2 are not 'justified', 'effective' or 'consistent with national policy'. The policy and reasons are not founded on a robust and credible evidence base and as demonstrated within this statement, have been found to be based on inaccurate assumptions and perceptions.
- 4.2. Furthermore, the policy and supporting text is not consistent with national policy nor with the London Plan. The overly onerous approach taken by the Council in relation to betting shops is not compliant with the spirit and aspirations of the NPPF or with guidance set out in the London Plan Town Centres SPG. The policy therefore amounts to a conflict with Section 19 of the Planning and Compulsory Purchase Act 2004 and also conflicts with Part 4 Regulation 8 of the 2012 Town and Country Planning (Local Planning) (England) Regulations.
- 4.3. We have no issue with the fact that the Council will want to scrutinise new betting shop applications and ensure that they will not lead to any clusters or concentrations which would lead to negative impacts, however, to assert unnecessary exclusion zones as a starting point for all new applications that are not based on a robust and credible evidence base is wholly unsubstantiated and does not allow officers/members to make objective decisions. It is important to remember that betting shops now operate as a Sui Generis use and an application is required for any change of use to a betting shop. This already gives Council's control over proposals for a betting shop.
- 4.4. We conclude that the introduction of a 50m exclusion zone around existing betting shops is not based on robust evidence or sufficient analysis of the borough's centres. It is a knee-jerk reaction to a popular political issue and significant and convincing research into the benefits and negatives of betting shops is required in order to justify an overly onerous and unfounded policy. Adoption of the policy will create a moratorium on potential new operators and spell an end to healthy competition between betting shops. This would, of course, belittle the NPPF and its strategic aims for our town centres in encouraging town centre shops and services to locate within centres, rather than out of centre.
- 4.5. In addition, clarity needs to be provided in relation to the requirement for betting shops to be located within centres.
- 4.6. We also strongly contest the proposed requirement to demonstrate how betting shops will promote the health and well-being of borough residents. As discussed above, this would create an undermine the licensing process which already comprehensively covers such considerations.



Redbridge Local Plan 2015 -2030,  
London Borough of Redbridge  
Freepost FLSR-JACE HSUG  
Ilford  
IG1 1DD

28 September 2016

Our Ref: PP Redbridge Representations

Dear Sir / Madam,

**RE: Representation to Pre-Submission Consultation on the Local Plan 2015 – 2030**  
**On Behalf of Power Leisure Bookmakers Ltd**

### Introduction

We write on behalf of our client, Power Leisure Bookmakers Ltd, to make representations to the pre-submission consultation on the Local Plan which is currently running until the 30 September 2016.

Section 19 of the Planning and Compulsory Purchase Act 2004 requires that development plan documents or any other local development document must have regard to national policy documents and guidance as in the NPPF.

Part 4 Regulation 8 of the 2012 Town and Country Planning (Local Planning) (England) regulations prescribes that that local plans must contain a reasoned justification of the policies. As set out in the NPPG (Paragraph 014. Reference ID: 12-014-20140306) *“appropriate and proportionate evidence is essential for producing a sound Local Plan”* and *“evidence should be focused tightly on supporting and justifying the particular policies in the Local Plan”*. Paragraph 182 of the NPPF states that a local planning authority should submit a plan for examination which it considers is sound – namely that it is: positively prepared; justified; effective; and consistent with national policy.

The Council will also be aware that as a regulator they must comply with the Regulators’ Code (April 2014), laid down in parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006. The Code seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate to reduce regulatory burdens on businesses.

**Directors**  
Helen Cuthbert | Stuart Slatter | Claire Temple  
**Associate Director**  
Alastair Close

**Consultants**  
Caroline Dawson | Dan Templeton  
**Associates**  
Rob Scadding | Katie Turvey | Heather Vickers | Alan Williams

Our client's comments concern the provisions of Policies LP10: Managing Town Centres and Retail Uses and LP11: Managing the Clustering of Town Centre Uses. Specific comments can be found below and a summary of our comments can be found at the end of the letter.

## Comments

### LP10: Managing Town Centres and Retail Uses

Policy LP10 sets out the thresholds of A1 that the Council would seek to protect in each frontage. It notes at Part 1(b) that within 'primary' shopping frontages, the primary retail function should be supported and primary shopping frontages should maintain 70% of units as retail uses. Part 1 (c) of the policy states that within 'secondary' frontages and key retail parades, it diversity should be supported and 50% of the units should be maintained for retail use.

Policy LP10 does not provide an explanation as to why the A1 threshold figures have been set at 70% and 50% respectively. We had expected that the document to provide an explanation as to why these specific threshold figures have been chosen to assess concentration of uses, but disappointingly the document is silent on this point. In addition, on review of the documentation online, there is no reference to an evidence base document which could support the above policy controls. This is concerning, and signifies that the policy is not Sound as it is not justified or based on a robust and credible evidence base. We suggest that the Council review its position on the policy, and demonstrate clear evidence as to why the specific threshold figures are appropriate.

We consider the other policy requirements of Part 1 acceptable, however, we do have concerns relating to the requirements of Part 2 of LP10. Part 2 covers the loss of existing shops outside of town centres and key retail parades. Although the requirements of part 2(a) seem reasonable, parts (b) and (c) require further explanation.

Part 2(b) states that the Council will take into consideration *'whether there is a realistic prospect of a shop unit remaining viable in that location'*, however, there is no clear guidance on how an applicant is expected to demonstrate this point. In addition, Part 2(c) states that the Council will take into account *'whether the proposed alternative use is compatible with the surrounding area'*. However, there is no definition as to what 'compatible' means in this sense – this is purely subjective and can be interpreted differently from one applicant to the next. It is considered that in both cases, the Council should be clearer about how they expect applicants to interpret these parts of the policies and how they are to be assessed. At present, the policy is not effective on this basis as it is considered that these elements cannot be easily demonstrated by the applicant.

### LP11: Managing the Clustering of Town Centre Uses

This policy seeks to manage the proliferation of Hot Food Takeaways, betting shops, Shisa Bars and money lenders which the Council states are a *'growing concern amongst local residents In Redbridge'* (para 3.18.1). The Council also note under paragraph 3.18.2, that high numbers of these uses *'can severely undermine the vitality and viability of town centres and the amenity of adjoining occupiers'*. It is also stated under the same paragraph that *'betting shops and payday lenders can attract anti-social behaviour'*.

Interestingly, there is no evidence demonstrated by the Council to suggest that local residents are concerned about these uses; that the uses can undermine the vitality and viability of town centres; that the uses would have an impact on amenity; or

encourage anti-social behaviour, so our client is unsure what evidence this statement is actually based upon. Indeed, there is no evidence submitted at all that relates to betting shop use and suggests that a policy for betting shop uses is actually necessary.

Policy LP11 deals with the uses listed above separately, which is commendable as we do not consider it is appropriate to group betting shops, hot food takeaways, shisa bars and money lenders together as each offers an entirely different service to their respective customers. These uses are all typical town centre uses and collectively they will no doubt amount to a high proportion of uses within existing centres. However, the Council does group betting/gambling shops and money lenders together which does not seem reasonable. We suggest that these different uses (A2 and Sui Generis) are split into different components of the policy, particularly as when grouped together, there will be a direct impact on the outcome of part (c) of the policy (which we touch on further below).

The policy states that the council will resist the proliferation and overconcentration of betting/gambling shops and money lenders (A2) in the borough by requiring them to overcome a series of points. Prior to turning to the specific policy stipulations, it is important to note that since the Use Class Order changed in April 2015, Betting Shop Uses are now considered under the 'Sui Generis' use class (rather than A2) and an application is now always required for Betting shop uses.

Turning to the specific policy stipulations, it is clear that under the provisions of Policy LP11 part (a) betting shops are required to be located within 'the boroughs town centres and in accordance with Policy LP10'. In its current format, the policy is unclear as it does not specifically outline what a 'town centre' designation entails. For example, it is unclear whether the policy seeks to restrict betting shops locating within smaller centres in favour of town centres, and / or, whether a town centre comprises all of the following: Metropolitan, District and Local Centres as well as shopping parades (as per the provisions of Figure 13). This needs further thought and clarification by the Council and the definition of 'town centres' should be specifically outlined within the policy.

We have no issue with the fact that the Council will want to scrutinise new betting shop applications and ensure that they will not lead to any clusters or concentrations which would lead to negative impacts, however, to assert unnecessary vetoes on areas where Betting Shop operators can locate as a starting point for all new applications (when there is no robust evidence to support the approach) is wholly unsubstantiated and does not allow officers/members to make objective decisions. It also places unnecessary burdens on betting shops operators who already need to submit an application when looking for new units. If the Council's policies are found Sound, it will mean that new Betting Shop operators will effectively be forced out of certain areas in Redbridge, as there are simply too many hurdles to be overcome.

Part (b) of the policy states that betting/gambling shops would need to demonstrate how they will promote the health and wellbeing of the boroughs residents. This part of the policy is not a planning matter, it is a licensing matter and it is rather concerning that the Council's planning department considers it necessary to introduce these requirements into planning policy because such issues are already covered by other regulations such as the licensing regime and health and safety regulations. On this basis, it is considered that this part of the policy should be deleted. The fact that the Council's planning department is seeking to implement these requirements shows a distinct lack of understanding of the industry and how it is currently

regulated and controlled. The Council's policy in this regard wholly duplicates the licensing regime and are therefore entirely unnecessary.

If part (b) of the policy remains, this would result in burdensome requirements on an already well regulated and socially responsible industry. When applying for their gaming licence, betting shop operators must provide information and evidence demonstrating that they have appropriate training and management procedures/policies in place to show that they will comply with these objectives, including the protection of children and other vulnerable people, something that betting shop operators take very seriously. This of course includes being members of various schemes. For example, Paddy Power was a founding member of the Senet Group, an independent body set up to promote responsible gambling standards. They are also certified by Gamcare, as are the majority of the major betting shop operators. Failure to demonstrate compliance with the objectives means that a license will not be granted, and of course, if at any time a betting shop operator is found not to be complying with the objectives in the future, their licence can be reviewed and ultimately revoked. Where the licensing authority has any concerns about a new operation when considering a licence application, they are perfectly entitled to impose conditions on a licence to ensure that additional measures/policies/procedures are put in place.

Part (c) of the policy requires that no more than one betting/gambling shop or payday lender should be located within a 50m radius of an existing betting shop or lender unit. Firstly and importantly, this wording is open to interpretation. One would assume that betting shops and lender units are linked together under the policy wording and therefore, when assessing applications against part (c), many applications will fail to comply as collectively the two uses will be more likely to be located within 50m of an existing betting shop/lender unit site. This needs clarification, and indeed if this interpretation is correct, it is considered that the policy should be amended to reflect betting shop uses separately to money lenders.

Although we do not disagree that a 50m radius would be appropriate (indeed this equates to on average 10 shopfronts), it is unclear why the Council have suggested the 50m distance, and we would suggest that the Council provide evidence or an explanation as to why this distance has been chosen.

Our client has no objection to Part (d) of the policy which states that betting shop operators should be required to provide active frontages that have a positive impact on the streetscene.

In summary our comments are as follows:

- Policy LP10 Part 1 – There is no explanation or evidence provided to demonstrate why the A1 threshold figures have been set at 70% and 50% respectively. At present the policy is not justified as it is not based on a robust and credible evidence base. The Council should provide evidence to demonstrate why these figures are appropriate;
- Policy LP10 Part 2 (a) and (b) – The Council should be clearer about how they expect applicants to interpret these parts of the policies and how they are to be assessed. At present, the policy is not effective on this basis as it is considered that these elements cannot be easily demonstrated by any applicant;
- There is no evidence presented by the Council which states that the statements made in paragraphs 3.18.1 and 3.18.2 are correct;

- Policy LP11 – Betting shops / money lenders – Part (a) should make sure the definition of ‘town centre’ is made clear in the policy. In addition, part (b) is not a planning matter, it is a licensing matter and therefore is not applicable and should be deleted. Part (c) should not consider betting shop uses alongside money lenders as these are completely separate uses.

We suggest that LB Redbridge consider the points raised within this letter and take our clients comments into consideration in the preparation of the plan and request that you keep us informed on further progress and consultations.

Yours sincerely



Sally Arnold (MRTPI) Senior Planner

PLANNING POTENTIAL

London

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## Appeal Decision

Hearing held on 2 April 2015

Site visit made on 2 April 2015

**by G J Rollings BA(Hons) MA(UD) MRTPI**

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

**Decision date: 22 April 2015**

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**Appeal Ref: APP/U5930/A/14/2229533**  
**620 High Road Leytonstone, London, E11 3DA**

- 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 Ltd against the decision of the Council of the London Borough of Waltham Forest.
  - The application Ref 2014/0996, dated 7 May 2014, was refused by notice dated 17 September 2014.
  - The development proposed is a change of use to a betting office (*sui generis* use).
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### Decision

1. The appeal is allowed and planning permission is granted for a change of use to a betting office (*sui generis* use) at 620 High Road Leytonstone, London, E11 3DA in accordance with the terms of the application, Ref 2014/0996, dated 7 May 2014, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 12937-07; 12937-08.
  - 3) The use hereby permitted shall not be open to customers outside the following times: 08:00-22:00 on any day of the week.
  - 4) The use hereby approved shall commence operations until details of crime prevention measures, including the siting of external CCTV camera monitoring, have been submitted to and approved in writing by the Local Planning Authority, and implemented. The measures shall include a monitoring and maintenance plan, and the approved measures shall be maintained as such unless otherwise agreed in writing by the Local Planning Authority.

### Procedural Matters

2. *The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015* came into force on 15 April 2015. This excluded betting shops from a use class. As such, betting offices no longer fall within the A2 use class, and are instead considered to be a *sui generis* use. The implications of this were discussed at the Hearing. As set out in the updated *Statement of Common Ground* (March 2015), the main parties have agreed to alter the description of

the development to reflect this change. I have used the updated description in the details and decision above.

3. I have taken account of the *Further Alterations to the London Plan* and the updated policies of *The London Plan* (March 2015) in my decision.
4. The name of the appellant differed between the appeal form and the application form for planning permission. The correct name has been confirmed and appears in the details at the start of this letter.

### **Main Issues**

5. The main issues are:
  - The effect of the proposed development on the retail vitality and viability of the town centre; and
  - The effect of the proposed development on the conditions of surrounding occupiers, and other users of the town centre, with particular regard to any potential for anti-social behaviour.

### **Reasons**

#### *Retail vitality and viability*

6. The appeal site accommodates a disused unit which most recently operated as a shopfront. The appeal is solely for a change of use. The unit is currently vacant, and located within the Leytonstone District Centre. The parade in which the site is located is designated as a secondary shopping frontage<sup>1</sup>, one of several within the centre, which also contains a core primary shopping frontage area. Policy DM25 of the Council's *Development Management Policies Local Plan* (2013) (DMP) states that although shops are encouraged at ground floor level, other uses will be considered under certain circumstances.
7. The appeal site's parade currently comprises 8 units, with a total shopping frontage length of around 70.5m, 33.3% of which does not currently serve an A1 retail use. No A1 retail use would be lost as a result of the development. Using the figures supplied within the updated Statement of Common Ground, A1 uses currently comprise less than 50% of the length of secondary shopping frontages within the centre. Policy DM25 uses the 50% figure as a 'waterline'. Although there is more than 50% of frontage length occupied by non-A1 uses within the centre's total length of secondary frontage, in this case the relevant frontage is occupied by less than 50%.
8. Of the 174 or so units in the centre, taking account of unit amalgamations, the existing and proposed betting offices would account for six units. This is a small overall percentage, although I appreciate that the impression of an oversupply of betting offices within an area can be formed through the establishment of two or more in the one area. Six units of 174 represents slightly less than 3.5%, which I consider a low figure when compared with a comparison of other non-A1 uses in the centre, such as hot food takeaways (7 units, 4% of units), or restaurants (8 units, 4.5%). The occupation rate is also comparable to other nearby centres within and outside the borough in which

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<sup>1</sup> DMP Schedule 6 and Policies Map.

relatively recent appeals for changes of use to betting offices have been allowed<sup>2</sup>.

9. The proposed use would add a third betting office within the immediate area. While all are not generally visible or apparent in the one view, especially when the centre is busy, their presence is obvious in a typical high street journey. I note the Council's evidence suggesting that there is limited potential for linked trips. Nonetheless, the mix of other uses around each of the betting offices is sufficient to ensure that this part of the centre offers an overall impression of being retail-led. Although this is less apparent outside of traditional shopping hours, a number of other retail and non-retail units are open after hours, and betting shops do not appear as an overly dominant use in the area during these times. For these reasons, I do not consider that an additional betting office within the immediate area would result in a significant alteration to this balance, or result in a clustering effect that would be detrimental to the retail attraction of the immediate area or wider centre.
10. The appellant's retail health check suggests that the centre has a good level of vibrancy. This was apparent during my visit to the site and survey of the centre. Indeed, the secondary shopping frontage around the site appeared to be well-patronised, and was as busy as the main primary frontage area. The vacant shopfront on the appeal site makes no contribution to the health of the centre, and its occupation would assist in maintaining or improving the area's retail appeal. Other betting offices in the centre obscure their street-facing windows with static displays, but many of the other uses in the centre, including shops, have similarly obscured shopfronts, and as such the proposal would not result in significant townscape harm.
11. The appellant operates a chain of betting offices, and although the use would not make a large contribution to local regeneration or have a significantly positive effect in tackling social deprivation, its corporate responsibility policies are clear and links with the local community are encouraged. Taking account of all of the above evidence, I therefore conclude that the proposed development would not have a harmful effect on the retail vitality and viability of the town centre. It would not conflict with the Council's Core Strategy (2012) Policy CS14 which supports the borough's retail hierarchy and seeks to protect its town centres, or Policy DM25 of the DMP, for the reasons set out above.

#### *Potential for anti-social behaviour*

12. DMP Policy DM33 seeks to ensure that development manages its contribution to the safety of the community in a measured manner, with clustering of uses which could result in an increase in anti-social behaviour to be avoided. It assists Policy DM25, which sets out evidence in the accompanying text that gambling could influence criminal activity, and that proliferation in some areas should be controlled.
13. As I found within the previous section, the proposal would not result in any significant clustering concerns. However, there are local concerns that the police presence within the centre has been recently reduced. The Metropolitan Police's Crime Prevention Officer did not raise this as a concern when consulted

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<sup>2</sup> Appeal refs: APP/U5930/A/13/2205847 and APP/U5930/A/13/2204805, date of decisions 19 February 2014; APP/V5570/A/12/2189530; decision date 26 June 2013.



as part of the application, nor were any other concerns raised to the change of use. Local crime rates have in fact reduced in the past few years but I have insufficient evidence to link this data with local police presence, or the location of the betting offices. As such, I cannot find that the proposal would have any real impact on anti-social behaviour within the area.

14. I acknowledge that the presence of betting shops may contribute to a fear of crime amongst users of the centre, for the reasons identified by the Council. I consider that the strict controls offered as part of the licensing of the premises would be sufficient to address the main sources of such fears. Closed-circuit television (CCTV) monitoring of the front of the premises with CCTV would also moderate any risk of loitering outside the premises and assist in allaying local concerns.
15. I therefore conclude that proposed development would not have a significantly harmful effect on the conditions of surrounding occupiers, and other users of the town centre, with particular regard to any potential for anti-social behaviour. The proposal would not conflict with DMP Policies DM25 or DM33, for the reasons set out above.

### **Conclusion and conditions**

16. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.
17. The Council has specified conditions which I have considered in light of the tests set out in the Practice Planning Guidance (PPG). These were discussed at the Hearing. Conditions 1 and 2 are required in the interests of proper planning and for the avoidance of doubt.
18. Condition 3 is required so that the development would preserve local conditions, including those of residents with respect to noise and disturbance. I have extended the allowed hours of opening from those suggested by the Council, as these would be in line with the operating times of other betting offices in the centre, and there is no compelling evidence as to why such a restriction would be necessary. I have added condition 4 for similar reasons.

*G J Rollings*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Kevin MacPherson	Paddy Power plc
Nindi Dhanjal	Paddy Power plc
Mary Cook	Cornerstone Barristers
Helen Cuthbert	Planning Potential
Katie Turvey	Planning Potential
Niall Hanrahan	Planning Potential
Michael Smart	Michael Smart & Associates

### FOR THE LOCAL PLANNING AUTHORITY:

Rob Hewson	Planning Officer
Cllr Clyde Loakes	Leytonstone Ward Councillor

## DOCUMENTS SUBMITTED AT THE HEARING

- 1 A bundle containing the following documents was submitted by the appellant at the start of the Hearing:
  - Statement of Common Ground (dated March 2015);
  - *The London Plan* (March 2015) extracts;
  - *Town Centres Supplementary Planning Guidance* (Mayor of London) (July 2014) extract;
  - *Open for Business: Empty Shops on London's High Streets* (London Assembly Economy Committee) (March 2013) extract;
  - London Borough of Waltham Forest *Development Management Policies* (October 2013) Policy DM33 and accompanying text;
  - Covering note.

## 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**

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**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).
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### 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)

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## Appeal Decision

Hearing held on 27 July 2016

Site visit made on 27 July 2016

by **Jonathan Price BA(Hons) DipTP MRTPI DMS**

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

Decision date: 30<sup>th</sup> August 2016

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**Appeal Ref: APP/V5570/W/16/3145635**

**325 Caledonian Road, Islington, London N1 1DR**

- 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 Islington.
  - The application Ref P2015/3360/FUL, dated 13 August 2015, was refused by notice dated 6 January 2016.
  - The development proposed is change of use from a solicitors (A2) to a betting shop (Sui Generis).
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### Decision

1. The appeal is allowed and planning permission is granted for change of use from a solicitors (A2) to a betting shop (Sui Generis) at 325 Caledonian Road, Islington, London N1 1DR in accordance with the terms of the application, Ref P2015/3360/FUL, dated 13 August 2015, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plan: 14569-13.
  - 3) The use hereby permitted shall not be open to customers outside the following times: 0800 – 2200 on any day of the week.

### Procedural Matter

2. Subsequent to the Council's decision on this proposal the *Location and Concentration of Uses Supplementary Planning Document* was adopted in April 2016. Therefore, full weight is now given to this as an adopted Supplementary Planning Document (SPD) insofar as it relates to this decision.

### Main Issues

3. The Council has explained that the reason for refusal is based on one substantive reason, which concerns this proposal leading to a harmful over-concentration of betting shops. However, the effects of this are considered by the Council to be two-fold.
  4. Firstly, the Council considers this over-concentration to be to the detriment of the amenity, character and retailing function of the Local Shopping Area. I am
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considering 'amenity, character and retailing function' to be similar in meaning to '*viability and vitality*' as used in paragraph 23 of the National Planning Policy Framework.

5. Secondly, the Council considers this would result in an excessive cluster of betting shops within a 500m radius of each other in close proximity to local schools and other sensitive community facilities, and within an area of high economic deprivation, particularly susceptible to any harm that might arise.
6. Therefore, I consider the main issues in this case are the effects of this proposal on:
  - i) the viability and vitality of the Caledonian Road (Central) Local Shopping Area (LSA), and
  - ii) the well-being of the general area, with particular regard to the proximity of sensitive facilities and the economic characteristics of the surrounding community.

## Reasons

### *Background and Policy Framework*

7. The appeal relates to a vacant ground floor former solicitors' office situated at the end of a terrace adjacent the junction to Lyon Street and facing onto the Caledonian Road. The site, which is within the Barnsbury Conservation Area, is on the west side of this road and towards the northern end of the LSA which, in the main, comprises the continuous commercial frontages along either side of the road south of the railway bridge to the junction with Richmond Avenue.
8. Although the parade where the appeal site is located has a relatively high proportion of vacant or dead frontage units, the LSA as a whole appeared generally vibrant and well-occupied providing a variety of shops and services that would meet the regular requirements of the surrounding community.
9. Core Strategy<sup>1</sup> (CS) Policy CS14 promotes a healthy retail and service economy in Islington by seeking to protect the use and character of defined LSAs, limiting the excessive loss of shops to other uses within them and enabling people to shop locally.
10. The Cally Plan SPD<sup>2</sup> relates specifically to this part of the Borough and supports the CS policies to protect retail units to maintain this important local shopping area and prevent an over concentration of other commercial uses, such as betting shops and hot food takeaways.
11. Policy DM4.6 of the Council's Development Management Policies<sup>3</sup> (DMP) seeks to control proposals within LSAs to retain an appropriate mix and balance of uses and maintain and enhance their retail and service function. This restricts the change of use of existing ground floor units from retail unless continuously vacant for at least two years, with marketing evidence that demonstrates no realistic prospect of the current use being retained, and proposals not resulting in a harmful break in the continuity of the retail frontage.

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<sup>1</sup> Islington Council Core Strategy – February 2011

<sup>2</sup> Islington Council's Cally Plan Supplementary Planning Document – January 2014

<sup>3</sup> Islington's Local Plan: Development Management Policies June 2013

12. DMP Policy DM4.3 deals with the location and concentration of specific uses. It refers to a number of uses<sup>4</sup>, including betting shops, which will be resisted where an unacceptable concentration in one area would result in negative cumulative impacts. The Location and Concentration of Uses Supplementary Planning Document (LCUSPD), adopted by the Council in April 2016, complements this policy and gives more detailed guidance over identifying and addressing the concentration of such uses.
13. The Mayor's Town Centre SPG<sup>5</sup> refers to where the saturation of uses might give rise to negative impacts, including in respect of community safety and security and issues relating to health and well-being. It specifically supports councils controlling the proliferation of betting shops where this has implications for the viability, vitality and safety of town centres.

*Viability and vitality of the LSA*

14. This proposal is clearly within a parade of units with a high proportion of vacant or dead frontage. However, this is not representative of the LSA as a whole where vacancy rates have in recent years decreased and now stand at 11%. The Council's case is that the LSA is generally performing well and therefore little weight should be placed upon this proposal bringing a vacant unit into use.
15. However, I consider that this proposal would restore an active use, result in frontage improvements of benefit to the character and appearance of the Conservation Area and provide 6 jobs. These are all positive benefits which must be weighed against any harm found from this particular use.
16. The Council considers that the concentration of betting shops should not be assessed in terms of visibility and numbers within this particular shopping frontage but should factor in a radius of an accessible walking distance. However, in respect of how this proposal might affect the viability and vitality of this shopping centre, I consider it appropriate to consider the degree of concentration of betting shops within the boundary of the LSA.
17. There are three existing betting shops within a 500m radius of this proposal and two just outside this zone. The two outside this radius are along York Way, a separate main road leading north from Kings Cross and running roughly parallel to the Caledonian Road. Within the 500m zone another betting shop is to the east of the Caledonian Road on Roman Way. Whilst not long distances away I consider these three betting shops, outside the LSA, not to have a significant influence on its functionality.
18. This leaves the two existing betting shops within this section of the LSA, both of which are double-width shop fronts, wider than the single width unit the subject to this appeal, and which similarly front onto the main road.
19. The two betting shops currently comprise 1.6% of the 125 LSA units and this proposal would increase this to 2.4%. Although this case must be determined on its own merits some weight can be placed on the Leytonstone appeal decision<sup>6</sup> where the Inspector recently found a figure of 3.5% of betting shops

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<sup>4</sup> Specifically cafés, restaurants, drinking establishments, off-licences, hot food takeaways, lap dancing clubs, nightclubs, casinos, betting shops, amusement centres and other similar uses

<sup>5</sup> Mayor of London's Town Centre Supplementary Planning Guidance – July 2014

<sup>6</sup> APP/U5930/A/14/2229533

- in a District Centre of 174 units to be a small overall percentage. My conclusion would be similar in this case.
20. The appellant points to the percentages of units in other uses in this LSA, such as 5.6% for hairdressers, 8.8% for takeaways and 4% for estate agents, all of which would be significantly greater than the percentage of betting shops resulting from this proposal. Furthermore, I agree the resulting three betting shops would be reasonably well spread out within the LSA.
  21. The appeal decision at 344 Caledonian Road<sup>7</sup> supports the Council's case that takeaways and non-retail uses have reached significant, and in this location, dominant proportions. However, the Council's May 2016 retail survey clearly reveals that A1 remains the dominant use. The evidence does not suggest this proposal would have materially adverse effect on a generally well performing, retail-led LSA.
  22. The Council considers the 26% of night-time economy uses in the LSA is beginning to detract from its retail role. At the hearing the appellant challenged the inclusion of betting shops within this night-time use category given that these uses also contribute to the day-time economy and to its overall footfall, linked trips and expenditure within this LSA. Whilst betting shops are a part of the evening economy they also provide an active role during the day. The Council has not provided conclusive substantiation to persuade me that that this proposal, combined with the existing betting shops, pubs, cafés, takeaways and other night-time economy uses in the proximity of the appeal site, would significantly detract from the vitality and viability of this area as a retail location.
  23. Accordingly, the evidence leads me to the view that the three betting shops in the LSA would not result in an over-concentration or give rise to negative cumulative impacts such that the appeal proposal would conflict with DMP Policy DM4.3.
  24. The unit at No. 325 is vacant and therefore this proposal would have little effect on the current mix and balance of uses in this LSA and its retail and service function would be maintained. This proposal would therefore satisfy Part A of Policy DM4.6.
  25. The Council maintains that the protective intention of part B to this policy is not specific or limited to A1 uses but applies to all retail and service uses in the wider 'A' class that represent the range of uses appropriate to a LSA. I am also aware that the previous solicitor's office A2 use can become an A1 retail uses as permitted development. I have had regard to the Council's submissions, including those on a previous appeal decision elsewhere on Caledonian Road<sup>8</sup> However, I consider that this intention of part B of Policy DM4.6 should be clearer from the wording of the policy and its supporting text. In my view, there remains appreciable ambiguity that 'retail' for the purposes of the policy should apply to all A class uses, including the former A2 solicitor's office use as is this case.
  26. Nonetheless, the relevant criterion in Part B has been addressed through the provision of evidence of prior marketing relating to No. 325. Whilst there was a hiatus in the marketing campaign when negotiations with Tesco were

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<sup>7</sup> APP/V5570/W/15/3134904

<sup>8</sup> APP/V5570/W/15/3006078

ongoing, I consider the efforts made generally to have been adequate and over a sufficient period of time to reasonably attempt to secure a retail use. Additionally, given the adjoining mix of uses and the end of terrace position, the proposal would not result in a harmful break in the continuity of the retail frontage. Therefore, it is reasonable to consider criterion in part B to have been satisfied in this regard.

27. I therefore conclude that the appeal proposal would not adversely affect the vitality and viability of the LSA and consequently would satisfy the requirements of CS Policy CS14 and DMP Policies DM4.3 and DM4.6. It would also accord with the objectives of the Cally Plan SPD and the LCUSPD in terms of securing an appropriate mix of uses in the LSA. Additionally, the proposal would be consistent with Section 2 of the NPPF by virtue of being an appropriate scale and type of activity to support the viability and vitality of the LSA as a centre for this part of the Borough.

*Well-being of the area*

28. The Council's evidence that this proposal is located within one of the most economically deprived parts of the Borough is accepted. The Council also refers to the strong body of evidence that has found there to be a higher prevalence of problem gambling in more deprived areas. Although no specific evidence is provided to support this I can generally accept this to be the case and the argument that economically deprived neighbourhoods would be relatively more susceptible to the adverse financial, social and health impacts of problem gambling arising from significant clusters of betting shops.
29. Policy DM4.3 sets no thresholds on density of betting shops and its supporting text indicates a 500m radius around a proposal as a generally appropriate area of search for similar uses that might indicate whether or not there was an over-concentration. The further advice on appropriate catchment areas in the LCUSPD has been considered. However, ultimately a decision on when the tipping point leading to an over-concentration is reached remains a matter of judgement.
30. The three existing betting shops within this 500m radius would mean that this proposal results in a 33% increase which the Council and others consider significant in this catchment. However, had there already been more betting shops in this area, and therefore a greater concentration, this percentage increase would have been less pronounced. I therefore give limited weight to this statistic and consider it more appropriate to consider the actual number of existing betting shops and the relative impact of this proposal.
31. I have also considered the Council's argument that the high population density of this Borough amplifies the effect of the number of betting shops due to the proximity of a large number of potential problem gamblers. However, I consider that the level of all services and facilities are a product of the population density of the catchment area and so do not see this as a reasonable basis for an assessment of an appropriate number of betting shops.
32. This proposal would result in four betting shops within the 500m radius and two just outside. In my judgement this would not be a significant cluster or an over-concentration. Consequently, I cannot find that this single betting shop would cause material harm due to an increased incidence of problem gambling in this area.



33. I can also appreciate the general arguments made over how the close proximity of a cluster of betting shops to facilities or centres accommodating or supporting more vulnerable persons could have the potential for harm. The Council has referred to the various community facilities close to this proposal. However, there is no detailed correlation made between the numbers and location of these and this proposal. I can find no persuasive evidence that the location of this particular proposal would result in a significant cluster of betting shops or result in material harm due to it being within a notably high concentration of sensitive facilities.
34. The concerns raised by local residents, at the application and appeal stages and made at the hearing, have been considered. I have paid particular attention also to those made in writing by the local ward Councillor. I recognise the area around the appeal site has experienced high levels of crime and anti-social behaviour, including a specific on-street drinking problem in the Lyon Street cul-de-sac. However, whilst the betting shop could exacerbate these problems it would also introduce a well-lit use, providing a degree of passive evening surveillance, which might also deter such problems. I also note that neither the police nor the Council's environmental health service raised concerns about the appeal proposal. On balance, I can find no substantial harm arising from this proposal due to an increase in crime and anti-social behaviour. Nor I am persuaded, given the character of the appeal location, that there would be significant harm to living conditions of adjacent residents subject to a condition controlling the hours of trading.
35. Overall I consider that the Council has relied on general and quite valid concerns relating to betting shops but not produced a persuasive case over the harm to the well-being of the community that would arise as a result of this particular proposal. The location of this proposal would not result in a harmful concentration of betting shops and would therefore satisfy DM Policy DM4.3 and the LCUSPD.

### **Conclusions and conditions**

36. On the basis of the foregoing this proposal would not have a negative cumulative impact on the viability or vitality of the LSA or result in an excessive cluster of betting shops harmful to the well-being of the surrounding community. It would therefore not be in conflict with the aims of CS Policy CS14, DMP Policies DM4.3 and DM4.6, the adopted Cally Plan SPD, the LCUSPD and paragraphs 1.2.27 to 1.2.32 of the Major of London's: Town Centre Supplementary Planning guidance (July 2014).
37. I have considered those conditions suggested by the Council. In addition to the standard time limit a condition is necessary, in the interests of certainty, that the permission relates to the plan of the premises to which the approved change of use applies. In the interests of the living conditions of surrounding occupiers a condition is necessary which restricts the hours of opening. Subject to these conditions, and having taken into account all other matters raised, I conclude that this appeal should be allowed.

*Jonathan Price*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

Mary Cook	Cornerstone Barristers - Counsel
Helen Cuthbert	Planning Potential - Planning Consultant
Niall Hanrahan	Planning Potential - Planning Consultant
Narinder Dhanjal	Power Leisure Bookmakers Limited
Kevin MacPherson	Power Leisure Bookmakers Limited

FOR THE LOCAL PLANNING AUTHORITY:

Joseph Aggar	London Borough of Islington
Paul Conboy	London Borough of Islington
Ben Johnson	London Borough of Islington

INTERESTED PERSONS:

Amy Lacey	Local Resident
Robert Milne	Local Resident
Miss Jasmine Tailor (observing)	Ladbrokes

**DOCUMENTS SUBMITTED AT THE HEARING**

Statement of Common Ground – 26 July 2016



Wed 07/10/2015 16:33

[REDACTED]  
RE: P2015/3360/FUL - 325 Caledonian Road

To Aggar, Joe

Joe,  
I have no objections to this change of use. Betting shops, whilst often used by members of the criminal fraternity as a means to waste their ill gotten gains - There is nothing to suggest the the betting shops actually act as a crime generator. It is also far less likely to be a target for criminals than the solicitors that currently occupy that building. Architects and solicitors seem to be preferred targets for the wave of moped enabled criminals currently operating within London. I hope this is of some assistance, but please do not hesitate to contact me if I can be of any further help.  
Kind Regards  
Martin

**Martin Brown | Detective Constable | Metropolitan Police Service  
MPS Crime Prevention & TP Capability**

**MetPhone:** [REDACTED] | **Telephone:** [REDACTED] | **Mobile:** [REDACTED]

**E-mail:** [REDACTED]

**Office Email:** [REDACTED]

**Address:** North West DOCO Office, Ruislip Police Station, The Oaks, Ruislip, HA4 7LE

**MetSec Code:** **NOT PROTECTIVELY MARKED**

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**From:** Aggar, Joe [[mailto:\[REDACTED\]](mailto:[REDACTED])]

**Sent:** 06 October 2015 08:54

**To:** Brown Martin G - TP - C&S

**Subject:** P2015/3360/FUL - 325 Caledonian Road

Morning Martin,

I have an app at 325 Caledonian Road for a change of use to a betting shop.

Your comments on the application are welcome.

Regards