
Appeal Decision

Site visit made on 30 January 2020

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th February 2020

Appeal Ref: APP/Q3060/W/19/3240601

202-206 Southchurch Drive, Nottingham NG11 8AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Luxury Leisure against the decision of City of Nottingham Council.
 - The application Ref 19/00596/PVAR3, dated 18 March 2019, was refused by notice dated 14 May 2019.
 - The application sought planning permission for use of premises as a gaming centre comprising gaming machines, bingo and betting shop with ancillary retail, catering and tanning facilities without complying with a condition attached to planning permission Ref 11/00736/PVAR3, dated 26 May 2011.
 - The condition in dispute is No 3 which states that: The Gaming Centre and Betting Shop uses hereby permitted shall not be open to customers outside the following hours – Gaming Centre – 8.00am to 11.30pm Monday to Saturday and 9.00am-10.00pm on Sundays. Betting Shop – 9am to 9.30pm Monday to Saturday and 10am to 5pm on Sundays.
 - The reason given for the condition is: To protect the amenities of the occupants of nearby property in accordance with Policy NE9 of the Nottingham Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for use of premises as a gaming centre comprising gaming machines, bingo and betting shop with ancillary retail, catering and tanning facilities in accordance with the application Ref 19/00596/PVAR3, dated 18 March 2019, without compliance with condition number 3 previously imposed on planning permission Ref 11/00736/PVAR3, dated 26 May 2011 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the new condition 3 as detailed below and the proposed additional condition 6:
 - 3) The Betting Shop use hereby permitted shall not be open to customers outside the following hours: 0900 to 2130 Monday to Saturday and 1000 to 1700 on Sundays.
 - 6) There shall be no amplified music played in the lobby of the premises, or the use of microphones for promotional activity anywhere in the premises between the hours of 2200 and 0830.

Preliminary Matter

2. In 2009 planning permission was granted for the use of the appeal site as a gaming centre comprising gaming machines, bingo and betting shop with ancillary retail, catering and tanning facilities¹. A condition attached to that permission restricted the opening hours of the gaming centre to 0800 to 2200 Monday to Saturday and 0900 to 1900 on a Sunday. The betting shop element was restricted to 0900 to 2130 Monday to Saturday and 1000 to 1700 on a Sunday.
3. Planning permission was granted in 2011² extending the opening hours of the gaming centre to 0800 to 2330 Monday to Saturday and 0900 to 2200 on a Sunday. Although that was a S73 application, the Council, for reasons that are not clear, amended the description of development to include reference to the hours of operation which were sought at that time. The description does not therefore reflect the description of development as set out on the original 2009 'root' permission.
4. The S73 application the subject of this appeal sought to 'vary' the hours of operation for the gaming centre element to allow it to operate 24 hours a day every day of the week. The application makes no reference to altering the permitted hours of operation for the approved betting shop element.
5. For the reasons that follow, I am minded to allow this appeal. Therefore, having regard to the advice in the Planning Practice Guidance (PPG)³, I have, with the express agreement of both parties amended the description of development to that on the original permission, which is reflected in the header above. I am content that there would be no prejudice to the interests of any party in this regard.
6. During the course of the appeal the Council adopted its Planning Policies Development Plan Document Local Plan Part 2 2020 (the DPD) which replaced the Nottingham Local Plan 2015. I therefore have had regard to the relevant policies in the DPD in my assessment of the appeal.

Main Issues

7. In that context the main issues are:
 - The effect of the proposed opening hours of the gaming centre on the living conditions of occupiers of nearby residential properties with particular regard to noise and disturbance; and,
 - The effect on the health, social and cultural wellbeing of citizens within the locality.

Reasons

Living conditions

8. The appeal site is located within a three storey terrace with commercial uses at ground floor and residential properties on the first and second floor of some of

¹ 09/01933/PFUL3

² 11/00736/PVAR3

³ 014 Reference ID: 17a-014-20140306

- the units. The terrace is set back from the road behind a wide footway with bus and tram stops.
9. The appellant submitted a Noise Impact Assessment (NIA) with the planning application. It is no part of the Council's case that, should the opening hours be extended as proposed, the noise levels as a result of the internal operations of the gaming centre would be other than acceptable. Rather, the Council's primary concern relates to the potential for noise and disturbance associated with the comings and goings of people to and from the premises throughout the night, at unsociable hours when background noise levels would be particularly low.
 10. Currently, both the existing hot food takeaway in the parade and the appeal site open until 2330 at night. Beyond that, no businesses are permitted to open during the night. An updated NIA submitted by the appellant showed that the noise generated by people going to and from the appeal site at night-time is significantly lower than the existing background noise. The NIA also confirms that the dominant noise sources at the site during the late evening are road traffic (including buses) and passing tram movements. It goes on to state that trams passing the site run up until 00:53 and begin again at 05:53. Although no information is provided regarding the bus service through the night, it is likely, in my view, to be less frequent in the early hours of the morning.
 11. The World Health Organisation Guidelines on Community Noise (1999) state that for a good sleep, indoor sound pressure levels should not exceed approximately 45 dB L_{Amax} more than 10-15 times per night (Vallet & Vernet 1991). The NIA notes that the highest maximum levels attributable to customer arrivals and departures are L_{AFmax} 66 dB. Noise levels exceeding that were recorded between 124-172 times through the night-time period (defined as 2300 to 0700).
 12. The appellant also refers to headcount data from five other gaming centres operating over 24 hours in similar District Centres. It is apparent from that, that levels of visitors through the night are very low. Nothing in the evidence before me suggests that visitor levels would be any different at the appeal site. Therefore, I am satisfied that customer movements would be expected to be at a level that are unlikely to materially add to the current noise environment at the site during the night. I appreciate that the Council's concern relates to general noise and disturbance rather than a statutory noise nuisance. However, it has not challenged the findings of the NIA, nor has it provided any substantive evidence of its own regarding its concerns in relation to noise and disturbance.
 13. The Council refers to three appeal decisions⁴ submitted by the appellant regarding the use of premises as gaming centres. Each appeal was allowed subject to conditions restricting the hours of operation to protect the living conditions of surrounding residents. I am not aware of the specific surroundings of each of those appeal sites, or the detailed evidence considered by the Inspector in each decision. In one, the Inspector comments that he has not been provided with any evidence as to how significant the income generation might be during the early morning period. I however, have some indication of the likely levels of use. Therefore, I am not persuaded that the circumstances of these appeal decisions are sufficiently similar to the case before me now in order to reach a similar conclusion. I confirm, in this regard, that I have considered the appeal proposal on its own merits in the light of the site specific surroundings of the premises.

⁴ APP/U5930/W/18/3193121, APP/J2373/W/18/3196247, APP/T5150/W/17/3189944

14. For the reasons above, I conclude that varying the opening hours of the gaming centre would not have a material or unacceptable impact on the living conditions of the occupiers of nearby residential properties with particular regard to noise and disturbance. Therefore, there would be no conflict with Policy DE1 of the Land and Planning Policies Development Plan Document Local Plan Part 2 2020 which requires that there is a satisfactory level of amenity for occupiers of neighbouring properties.

Health social and cultural wellbeing

15. The appeal site lies within the Ward of Clifton East. The Council's Director of Public Health has objected to the proposed development on the basis of the negative impact of gambling on health and wellbeing particularly given the high levels of deprivation within the Ward. This is reinforced by concerns raised by the Neighbourhood Policing Team regarding the proposal being close to Lanthwaite Flats where many vulnerable people are housed, the suggestion being that the appeal proposal would encourage them out at anti-social hours, which could leave them vulnerable and exposed to exploitation.
16. Statistics provided by the Council show that compared to the national average, Nottingham City has higher levels of deprivation and a relatively young population. Citizens of Nottingham are also generally in poorer health, have a lower life expectancy than average, are more likely to smoke and are more likely to experience harms associated with alcohol (PHE 2015).
17. The Council suggests that this demographic profile may mean that the population is at higher risk of problematic gambling, as there is evidence to suggest that levels are higher in people who are younger, who are unemployed, who smoke and in those who report high levels of alcohol consumption (para.7.3 British Gambling Prevalence Survey 2010). On that basis it is suggested that the relatively high levels of deprivation within the Clifton East ward mean that the risk of harm to the local population by the proposal is increased.
18. Paragraphs 8 and 91 of the National Planning Policy Framework (the Framework) seek to support strong, vibrant and healthy communities and promote healthy and safe places. Furthermore the PPG states that planning and health need to be considered together in two ways: in terms of creating environments that support and encourage healthy lifestyles, and in terms of identifying and securing the facilities needed for primary, secondary and tertiary care, and the wider health and care system (taking into account the changing needs of the population)⁵.
19. The Council points to research literature with professional bodies concurring that the most effective approach to tackling gambling harms is likely to combine population-level measures, particularly decreasing availability, with targeted measures for high risk or vulnerable groups⁶. On a locality-specific level, the Gambling Commission's directives state that Licensing Authorities need to consider local area risks and take steps to militate against harm. In this instance I note that the appellant holds a Bingo and Gaming License granted by the Council which allows it to operate gaming machines over 24 hours.

⁵ Paragraph: 001 Reference ID:53-001-20190722

⁶ Faculty of Public Health. Gambling Position Statement 2018

20. I have also had regard to the appeal decisions⁷ submitted by the appellant where the Inspectors consider that the issues raised here by the Council are outside the control of the planning legislation.
21. While there well may be a link between the make-up of the city and the community of the Clifton East Ward and the characteristics of problem gamblers, and even if I were to accept that the issues raised are capable of control by planning legislation and policy, the Council provides no corroborated evidence to demonstrate that problem gambling is already an issue within the Ward and if so at what level, which might be exacerbated by the opening hours proposed.
22. There is no substantive evidence before me either, to suggest that increasing the hours of operation would lead to a material increase in the numbers of people using the premises to the detriment of the health, social and cultural wellbeing of the local population. This is particularly so given the evidence from the appellant regarding the relatively low level of users of facilities such as this in the early hours of the morning. Furthermore, it has not been demonstrated that the appeal proposal would necessarily lead to an increase in problem gambling within the Ward. Moreover, the appellant refers to its Social Responsibility Policies and Procedure Documents which set out a range of measures to make gambling more responsible.
23. For the reasons above, on the basis of the evidence in front of me, I conclude that opening the gaming centre at all times would not have a materially harmful effect on the health, social and cultural wellbeing of citizens within the locality. There would therefore be no conflict with Policy 10 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan 2104 and paragraphs 8 and 91 of the Framework which amongst other things seek to provide healthy environments and communities.

Conditions

24. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, or are no longer relevant, that is a matter which can be addressed by the parties.
25. The Council suggest that a further condition is required regarding the transmission of amplified sound and music to the application premises. The appellant is agreeable to this, as well as suggesting the restriction of the use of microphones in the unit. I have imposed a condition, in these respects, to protect the living conditions of surrounding residents.

Conclusion

26. I have found that 24 hour operation of the gaming centre would not have a materially harmful effect on the living conditions of neighbouring residents or on the health, social or cultural wellbeing of local citizens. Therefore, it is not reasonable or necessary to restrict the hours of operation of the gaming centre as imposed by condition 3. However, those hours relating to the betting shop, which are set out in the appealed condition, are not in dispute and need to be

⁷ APP/T5150/W/17/3189944 & APP/U5930/W/18/3193121

retained. I shall amend the condition accordingly. The proposal would be in accordance with the development plan and there are no material considerations that would suggest making a decision other than in accordance with the development plan. Therefore, the appeal should be allowed.

Zoe Raygen

INSPECTOR