



Appeal Decision

Site visit made on 24 February 2021

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2021

Appeal Ref: APP/V2004/W/20/3263077 106 Newland Avenue, Hull, HU5 3AA

- 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 Cashino Gaming Ltd against the decision of Hull City Council.
 - The application Ref 20/00400/FULL, dated 31 March 2020, was refused by notice dated 10 July 2020.
 - The application sought planning permission for use as an adult gaming centre without complying with a condition attached to planning permission Ref 17/01691/S73, dated 13 February 2018.
 - The condition in dispute is No 1 which states that:
No customer shall be permitted to be on the premises after 2330 and before 0800 hours on any day of operation.
 - The reason given for the condition is:
In the interests of residential amenity and to comply with Policy 12 of the Local Plan.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal site is located within Newland Avenue Local Centre and is situated within a two-storey parade of shops and premises on the eastern side of the street. The premises have been occupied as a sui generis adult gaming centre or amusement premises for a considerable period of time with the original application permitting the use indicated as dating back to 1987.
3. The most recently approved hours of operation date from February 2018 and allow customers to be present on the premises between 0800 and 2330 daily. The appellant had originally applied for a variation of the hours of operation to allow for 24-hour opening, but this proposal was revised during the course of the planning application to extend operating hours only until 0200, with the Council determining the planning application on the basis of the revision.
4. The council has concluded that the extended hours of operation of the premises would result in an unacceptable impact on the living conditions of the occupiers of nearby residential properties as a consequence of the likelihood of noise and disturbance emanating from customers arriving and leaving the premises. Further concerns in this regard relate to the potential for additional vehicular movements generated, as well as from other activities associated with the running of the premises and the potential for anti-social behaviour.

5. Taking the above background into account, I am satisfied that the main issue is whether the disputed condition is reasonable or necessary in order to protect the living conditions of neighbouring occupiers, having particular regard to noise and disturbance, and crime and disorder.

Reasons

6. The Local Centre is surrounded by predominantly residential areas with the appeal premises adjoining dwellings on Lambert Street to the south. Residential flats have also been identified as being in situ above Nos. 93, 98 and 102 Newland Avenue close to the site.
7. From the submitted evidence and my own observations of the Local Centre, there is a clearly active evening economy along Newland Avenue being comprised of bars, restaurants and hot food takeaways (HFTA). The majority of these uses would appear to have restricted opening up until 2300 – 2330 hours, with the exception of a few indicated 'historic' uses, including the nearby *Piper Club* and *Pizza Hot* identified as being able to open until 0000 and 0330 respectively.
8. Given the commercial nature of the Local Centre and the uses accommodated within, I do not consider it to be unreasonable in the context of the mixed character of the area to expect there to be a certain level of noise and disturbance attributable to the evening economy. However, it must also reasonably be the case that the hours of operation of busy or noisy premises and their closing times must be reflective of the location of the appeal site in close proximity to noise-sensitive residential uses. I have noted that the Council's Environmental Health Officer, having reviewed the appellant's Noise Assessment, did not object to the extension of hours to 0200.
9. The appellant commissioned Archo Consulting to undertake a Noise Assessment (dated 31 March 2020), to consider the potential noise impacts from the extension of the opening hours. I have carefully considered the report, but see no reason to disagree with the overall conclusions regarding the limited noise impact attributed to visitors to the existing premises during the periods of measurement corresponding to the reported busiest periods of the premises between 1200 – 1800 and 2100 – 2330 on Fridays.
10. I recognise that the baseline noise measurements taken on a quieter Tuesday night between 0130 – 0330 would undoubtedly represent the worst-case scenario. However, I am not persuaded that the comings and goings of individuals or movement of vehicles during these later periods would differ in their characteristics with any significance from those measurements taken during the earlier periods. Any comings and goings would be unlikely to result in any more than momentary interjections of noise within the existing vicinity, and given the described baseline, would not be uncharacteristic of existing reported occurrences of noise from people or vehicles.
11. In addition to the issue of noise, the Council's concerns also focus on disturbance and the impact of the proposed development on an existing environment of anti-social behaviour and disorder in the vicinity of the site. On this matter, Humberside Police have submitted a detailed objection highlighting a significant draw on police resources within the area for the period 1 January 2019 – 29 February 2020, with incidents and calls relating alcohol, anti-social behaviour, damage, public order offences, as well as reports of violence and

assault. This evidence and these demands have led to an approach being taken by Humberside Police to seek to clear the area as quickly as possible late at night and work with the community and businesses to limit the growth of late-night establishments, a stance with which the appellant has stated their agreement.

12. I am satisfied given the characteristics of the adult gaming centre that there is no basis from which to conclude that the operation of the premises until late or 0200, having regard to the described typical customers of the business, and when considered in isolation, would in itself cause or result in anti-social behaviour or criminal activity. However, in considering the matter, I have been mindful of paragraphs 91 and 127 of the National Planning Policy Framework (the Framework) and the need for planning decisions to address crime and disorder and the fear of crime.
13. In this regard, whilst the appellant has indicated that control would be exercised as to who gains access to the premises, I do not see the extended opening hours as complementing the existing actions and efforts being made to address crime and disorder in the immediate vicinity of the site. It is not unreasonable to assume that the later opening of the premises would become a focus of attention and conflict between staff of the premises and individuals intent on gaining access whilst intoxicated and exhibiting anti-social behaviour leading to additional demands on police resources. Furthermore, I am also not persuaded that customers of the premises would in such circumstances be immune from the aforementioned focus and attention and their safety would therefore be placed at risk.
14. Beyond control over access to the premises, the appellant has provided no indication as to how the proposed extension of hours would address the very realistic concerns over crime and disorder and a fear of crime, and I consider there would be a genuine risk to the safety of customers of the premises. I do accept that adult gaming centres can reasonably be described as being a constituent part of town centre uses, which are considered to be appropriate for Local Centres, but this cannot be at the expense of a reasonable assessment of suitability in respect of other constraints.
15. For the above reasons, I find the condition to be reasonable and necessary to make the development acceptable, having regard to the living conditions of neighbouring occupiers and in particular the potential for disturbance from crime and disorder and failure to satisfactorily address a fear of crime. Therefore, I find that the variation of the condition would result in conflict with Policies 12 and 23 of the Hull Local Plan 2016 to 2032, which address development in District, Local and Neighbourhood Centres and seeks to ensure that employment development should have regard to surrounding context and minimises impacts such as noise and disturbance where the site is adjacent to residential properties. There would also be conflict with paragraphs 91 and 127 of the Framework for the reasons as set out.

Other Matters

16. The appellant has referred me to another appeal decision where planning permission was approved for a change of use of a retail unit to an adult amusement centre at 290 Holderness Road, Kingston upon Hull (*Appeal Ref: APP/V2004/W/20/3246195*). However, it is quite clear that the principal issue related to this permission revolved around the loss of a retail unit and the

impact on the viability and vitality of the Holderness Road District Centre. There was no indication that the same circumstances related to disturbance and crime and disorder were a point of dispute, but in any event my decision has been premised on the circumstances and evidence specific to the appeal proposal and its context.

Planning Balance and Conclusion

17. I must attribute some very limited weight to the contribution which the extension of hours would have on economic activity in the local centre. Whilst it is contended there is a known demand for such uses, I have seen no compelling evidence supporting this contention, and given the existing operation of the unit, I am not persuaded that any improvement to the vitality and viability of the centre would be any more than negligible.
18. I am therefore satisfied that the benefits of the proposal would not outweigh the harm as set out. For these reasons, the appeal is therefore dismissed.

M Seaton

INSPECTOR