
Appeal Decision

Site visit made on 27 July 2022

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 19th August 2022

Appeal Ref: APP/T5720/W/22/3294932

11 The Broadway, London SW19 1PS

- 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 Reels Casino Slots Limited against the decision of the Council of the London Borough of Merton.
 - The application Ref 21/P4396, dated 13 December 2021, was refused by notice dated 3 February 2022.
 - The application sought planning permission for variation of condition 3 attached to planning permission 20/P1324 for change of use from betting shop (sui generis) to adult gaming shop (sui generis).
 - The condition in dispute is No 3 which states that: The use hereby permitted shall not be open to customers except between the hours of 9:00am and 11:00pm from Monday to Sunday and Bank Holidays and no staff shall be present at the premises one hour after the closing time.
 - The reason given for the condition is: To safeguard the amenities of surrounding area and to ensure compliance with the following Development Plan policies for Merton: policy 7.15 of the London Plan 2016, policy CS7 of Merton's Core Planning Strategy 2011 and policy DM EP2 of Merton's Sites and Policies Plan 2014.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from betting shop (sui generis) to adult gaming shop (sui generis) at 11 The Broadway, London SW19 1PS in accordance with the application Ref 21/P4396 dated 13 December 2021, without compliance with condition number 3 previously imposed on planning permission Ref 20/P1324 dated 29 June 2020.
2. Planning permission is granted subject to imposition of the remaining relevant condition attached to planning permission Ref 20/P1324 and the additional conditions that are described at paragraphs 15 and 16 of this decision.

Procedural matters

3. With the agreement of the parties, I have used the description of development as it appears on the Council's decision notice as it most clearly describes what is proposed.

4. Planning law requires that applications for planning permission be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. In this case, the relevant parts of the development plan are the Merton Core Strategy (Core Strategy), the Merton Sites and Policies Plan (Policies Plan) and the London Plan. The National Planning Policy Framework (the Framework) is a material consideration. Paragraph 56 of the Framework relating to use of conditions is of particular relevance.
5. The reason for refusal in the Council's decision notice cites development policies that are not referred to the reason for imposing Condition 3. The Council have provided no explanation as to the reason for this. Nevertheless, for the avoidance of doubt, I have reached my conclusions against the development plan as a whole and have not simply limited myself to the reasons provided for imposing Condition.

Main Issues

6. The main issues are whether Condition 3 is necessary when regard is paid to effects resulting from its removal on:
 - Living conditions in terms of changes in noise and activity.
 - The character and appearance of the Wimbledon Broadway Conservation Area (Conservation Area).

Reasons

Living conditions

7. The site is located within Wimbledon Town Centre. The policy approach set out in Policies CS6 and CS7 of the Core Strategy collectively aims to maintain and build on the current vitality and viability of the centre. Although the Core Strategy is of some age, I find nothing within its policy approach that leads me to regard it as inconsistent with the Framework, in particular national policy in Section 7 (Ensuring the vitality of town centres).
8. Paragraphs 16.12 and 16.13 of the Core Strategy specifically address night time activity and the role it plays in supporting the local economy and serving a wide range of users. This is to be balanced against potential negative impacts in relation to noise, disturbance and anti social behaviour.
9. The Broadway itself is a road of considerable length that forms part of the spine of the town centre, off which can be found a mixture of commercial areas and residential neighbourhoods. Although The Broadway is overwhelmingly commercial in character, its functionality and associated character varies in a way that is not any uncommon of a lengthy high street in London or elsewhere. What might generally be regarded as larger town centre uses are centred closer to Wimbledon Station, with lower key local centre provision experienced increasingly as you move away from the station with associated lower levels of pedestrian and vehicular activity.
10. The parade of shops in which the site sits is close to the transport hub of the town centre and includes access to the railway station and a number of bus stops. The immediate area is more closely aligned with the larger town centre character described above.

11. It is also heavily influenced by the busy vehicular junction with Hartfield Road. The uses within parade of shops are mixed in terms of their commercial nature but include a number of night time establishments.
12. Paying regard to the characteristics of the area described above there is a level of activity around the day and night. This includes noise from vehicles and passing pedestrians. As such, the area is one that is able to accommodate a concentration of well operated night time uses without significant risk of noise and disturbance to those living nearby. This risk is reduced further as the main concentrations of residential uses are set way from The Broadway on surrounding roads.
13. Paying regard to the scale and nature of the use, and subject to the comments below regarding the upper floor apartments, I am not persuaded on the evidence provided that material harm to living conditions would result from increased activity within the site later at night.
14. Although activity outside the site cannot easily be controlled, its proximity to residential neighbourhoods is such that dispersal of customers in small groups is unlikely to be of a level that would be harmful to living conditions, particularly when regard is paid to the proximity of the site to the main concentrations of residential uses.
15. There is reference to a number of apartments above the site premises. I have limited evidence relating to these apartments, the access arrangements or levels of sound insulation. As such, it is necessary to introduce further mitigation to ensure reasonable living conditions are maintained for the occupiers of the apartments.
16. In this regard, I have noted the Appellant's suggested conditions, which restrict numbers of people who can be on the premises and management of the access to the premises. Paying regard to the tests at Paragraph 56 of the Framework, I am satisfied that these conditions would provide the necessary mitigation.
17. In conclusion on this issue, the proposal would have acceptable effects on Living conditions in terms of changes in noise and activity. Consequently, there is no conflict with Policies DM D2, DMD3 and EP2 of the Policies Plan 2014 in relation to impacts on amenity.

Conservation Area

18. As the site is within the Wimbledon Broadway Conservation Area (Conservation Area) I have paid regard to the duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 relating to preserving or enhancing its character or appearance. The Conservation Area is also a designated heritage asset for the purposes of policy in the Framework, including section 16 (Conserving and enhancing the historic environment).
19. Neither the Council nor the Appellant have provided a great deal in the way of specific detail relating to the significance of the Conservation Area. Nevertheless I have been provided with a copy of the Wimbledon Broadway Conservation Area Design Guide. The document highlights the importance of preserving the physical aspects of the built surroundings, in light of the high concentration of historic buildings. It does not assist with forming a fuller view on significance. However, some aspects are self evident from the appearance of historic buildings and the general character described above.

20. As the use is already in situ, an extension of opening hours is unlikely to represent an enhancement in conservation area terms. However, there is nothing compelling in the evidence provided by the Council to establish a credible agreement that harm would result to the character and appearance of the Conservation Area.
21. Consequently, the proposal would not have a harmful effect on the character and appearance of the Conservation Area. As such, there is no conflict with policies in the development plan for the area, in particular Policy DM D4 of the Policies Plan relating to the management of heritage assets.
22. The Council's officer report cites Policy DM D2 on design considerations in relation to this issue. The relevance of this policy is not explained. Nevertheless, I find no conflict with the policy would arise from the proposal.

Other Matters

23. I have paid regard to comments from other interested parties. Comments relating to the main issues have been considered as part of my conclusions elsewhere in this decision.
24. As the use is in situ, opinions relating to the general nature of the use and whether the local community benefits, or not, is not a matter that carries material weight.
25. The circumstances that led to condition 3 being imposed carries limited weight in this case as each proposal must be assessed on its own merits.
26. No material evidence has been provided linking crime or disorder to the existing use.
27. I have paid regard to all other comments received, which do not affect my conclusions on the main issues.

Conclusion

28. For the above reasons the appeal is allowed

D.R. McCreery

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be carried out in accordance with the following plan: L-REE-017
2. Between the hours of 00:00 and 06:00, when the premises is open, the following shall apply, unless otherwise agreed in advance and in writing with the Local Planning Authority :
 - a) A minimum of 2 members of staff shall be on the premises at all times.
 - b) The front door will remain closed and locked at all times.
 - c) Entry to the premises by each customer will only be gained via the front door and following it being unlocked by a member of staff who will greet the customer.
 - d) Exit from the premises by each customer will only be via the front door and following it being unlocked by a member of staff who will use their reasonable endeavours to ensure that customers exit quietly and do not remain outside the site following exit.