



Appeal Decision

Site visit made on 27 January 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7th February 2023

Appeal Ref: APP/H5960/W/22/3305842

26A Upper Tooting Road, Wandsworth, London, SW17 7PG

- 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 Merkur Slots UK Limited against the decision of Wandsworth Council.
 - The application Ref 2022/2050 dated 18 May 2022, was refused by notice dated 13 July 2022.
 - The application sought permission for the change of use from betting shop (Sui Generis use) to adult gaming centre (Sui Generis use) without complying with a condition attached to planning permission Ref 2020/2950 dated 28 October 2020.
 - The condition in dispute is No. 3, which states that:
The use hereby permitted shall not be open to customers other than between the hours of: (a) [1000 - Midnight] Sundays - Thursdays (b) [1000] Fridays - [0200] Saturday mornings (c) [1000] Saturdays - [0200] Sunday mornings
 - The reason given for the condition is:
To safeguard the amenities of the neighbourhood, in accordance with Council policy DMS1 of the Development Management Policies Document (adopted March 2016) coupled with the requirements of the National Planning Policy Framework 2019
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted a Noise Assessment with the appeal. As part of the appeal, the Council has had the opportunity to comment on this. I am therefore satisfied there is no risk of prejudice if I take the assessment into account and have determined the appeal on this basis.
3. The Council refers to policies of the Wandsworth Publication Version Local Plan. This is currently at the examination stage and has not yet been adopted by the Council as part of its development plan. Accordingly, I can only give such policies limited weight in the decision-making process.

Main Issue

4. The main issue is whether the disputed condition is reasonable and necessary, in the interests of the living conditions of occupiers of surrounding dwellings, with particular regard to noise and disturbance.

Reasons

5. The site is a ground floor adult gaming centre (AGC) on Upper Tooting Road in the Tooting Bec Local Centre, close to the junctions with Fircroft Road and Noyna Road. Upper Tooting Road is an active street, characterised by various commercial uses at street level. However, residential premises are located at first floor, with further dwellings along Fircroft Road and Noyna Road in the vicinity of the site.
6. The proposal would result in the AGC operating for 24 hours a day 7 days a week, such that activity associated with the use would occur during later night and earlier morning periods than at present. Such activity would introduce noise to the immediate area, arising from the comings and goings of customers and staff, in addition to noise spill from activity inside the premises when entering and exiting. This has the potential to disturb surrounding residents.
7. Fircroft Road and Noyna Road are notably different in nature to Upper Tooting Road, with a more predominant residential character. However, the 24 hour operation would not result in undue disturbance to the residents of these streets. These properties are set sufficiently back from the site such that any noise associated with the proposal, even late at night or in the early morning, would not be likely to be perceptible. Nevertheless, residents along Upper Tooting Road, particularly those above the appeal site, would be more sensitive to any such noise. This aligns with the appellant's Noise Assessment, which identifies the closest receptors as the residential units above the site.
8. I acknowledge the findings of the assessment with regard to internal noise that the ceiling tiles, additional insulation, and above ceiling plasterboard panels would ensure that the internal noise of the premises would be unlikely to be perceived as excessively loud by upper floor residents. With regard to external noise generated by the proposal, the assessment outlines the findings of surveys undertaken at other AGCs with 24 hour use.
9. It sets out that customer levels at the site are not anticipated to be high during the extended opening period, with likely customers numbers and behaviour patterns based on these other AGCs. However, this pattern of activity cannot be guaranteed, such that there is no certainty that this would be the case. A 24 hour operation would still allow a constant level of activity due to the arrival and departure of customers, combined with associated noise spill and congregation outside the site, at all times of the day and night.
10. Upper Tooting Road is a busy road, with potential for vehicular and pedestrian traffic throughout the day and night. Retail units on the road open early in the morning and takeaways, restaurants and pubs operate late into the evening. However, there is no evidence before me of other units with 24 hour use. As such, external activity associated with the proposal beyond the opening hours of surrounding uses would be an anomaly. It would be extended to the quietest times of the night and morning when surrounding noise levels would be notably lower than during the current operating hours. During these hours, ambient noise levels would be reduced and even town centre residents would reasonably expect a level of peace and quiet. In this context such activity would be readily discernible in the immediate area, causing an undue level of disturbance to nearby occupiers.

11. I acknowledge the findings of the submitted Noise Assessment, including the recommendations for signage and staff encouragement to keep customer noise levels to a minimum. Nevertheless, given the proximity of residents along Upper Tooting Road to the site and the lack of evidence of other surrounding 24 hour uses in the immediate area, I find that the introduction of noise arising from the proposal during the extended hours would cause undue disturbance that would be harmful to the living conditions of surrounding residents.
12. For the reasons given, condition No. 3 attached to planning permission Ref 2020/2950 is necessary and reasonable in the interests of the living conditions of occupiers of surrounding dwellings, with particular regard to noise and disturbance. As such, the proposal would conflict with Policy DMS1 of the Wandsworth Local Plan Development Management Policies Document and Policy D14 of the London Plan 2021 which together seek to ensure development is appropriate for its location taking account of likely effects on living conditions, and that it does not harm the amenity of nearby properties through unacceptable noise.

Other Matters

13. There are no objections from neighbouring residents or from the Council's Environmental Health Officer. Notwithstanding that, it is necessary to ensure that surrounding character is respected and that adequate living conditions are maintained. Consequently, the lack of an objection is not sufficient to outweigh the harm identified above.
14. The National Planning Policy Framework (the Framework) states that planning decisions should help create conditions in which businesses can invest, expand and adapt, with significant weight placed on the need to support economic growth and productivity and that appropriate innovation or change should not be discouraged. However, the Framework is also clear that development should avoid noise giving rise to significant adverse impacts on health and the quality of life, which I have found to be the case of the proposal. This harm therefore outweighs any benefits which may arise from the business having extended opening hours.

Conclusion

15. For the reasons given above, I conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR