



Appeal Decision

Site visit made on 17 January 2023

by Ann Veevers BA(Hons) DipCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Appeal Ref: APP/F5540/W/22/3304456 237-239 High Street, Hounslow TW3 1EA

- 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 Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00610/237-239/P19, dated 8 March 2022, was refused by notice dated 17 May 2022.
 - The application sought planning permission for the change of use from payday loan shop to adult gaming centre at ground and part first floor level without complying with a condition attached to planning application Ref. 00610/237-239/P18, dated 1 October 2020.
 - The condition in dispute is No.3 which states: *The use hereby permitted shall not be open to customers outside the following times: Sunday to Thursday 9am to 1am and Friday and Saturday 9 am to 2am (Sunday).*
 - The reason given for the condition is: *To protect nearby residents' living conditions and to discourage inappropriate late night activity in the interests of public safety.*
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from payday loan shop to adult gaming centre at ground and part first floor level at 237-239 High Street, Hounslow TW3 1EA in accordance with the terms of the application Ref: 00610/237-239/P19, dated 8 March 2022 without compliance with condition 3 previously imposed on planning permission Ref: 00610/237-239/P18, dated 1 October 2020 and subject to the following conditions:
 - 1) The proposed development shall be carried out in all respects in accordance with the proposals contained in the application and the plans submitted (Unnumbered Location Plan, HS/HSL/01, HS/HSL/02, The Praesepe Group Brochure and Cover Letter Dated 18 June 2020. Received: 22 June 2020).
 - 2) Within one month of the date of the development hereby approved, an Operational Management Plan (OMP) shall be submitted to and approved in writing by the Local Planning Authority. The OMP shall include details of how the 24 hour operation of the site will be managed. The OMP shall be implemented thereafter in accordance with the approved details.

Applications for costs

2. An application for costs was made by Merkur Slots UK Ltd against the Council of the London Borough of Hounslow. This is the subject of a separate decision.

Preliminary Matters

3. The appellant submitted an Observation Report (Leveche Associates Limited, June 2022) (OR) and Noise Assessment (Archo Consulting, August 2022) (NA) at the outset of the appeal. They also submitted, at a later date, a copy of a recent appeal decision close to the appeal site for a similar proposal which was allowed¹. The appeal procedural guide makes it clear that the Inspector should be alerted where *a decision has been made, or enforcement action taken, on a local similar development since the appealed application was decided, (either by the local planning authority or on appeal)where it is clear that it would not have been possible for the party to have provided the evidence when they sent us their full statement of case.*²
4. The Council has been provided the opportunity to comment on all of the above. As such, I do not consider that either party has been prejudiced by me taking them into account for the purposes of this appeal.

Main Issues

5. The main issue is whether Condition 3 is necessary with regard to the effects resulting from its removal on the living conditions of neighbouring residential occupiers with particular regard to noise and disturbance and public safety.

Reasons

6. The site is within the Primary Shopping Frontage of Hounslow Town Centre and currently operates as an adult gaming centre. It is located along the wide and linear pedestrianised area of the town centre which includes a mix of retailers, cafes, leisure and entertainment uses and professional services commonly found on lengthy high streets. The area was, at the time of my site visit on a week day lunchtime, generally bustling with pedestrians. There are residential occupiers in the upper floors of the appeal property and above other premises in the block. The appeal building has a part single storey and part two storey flat roof projection at the rear that is used as extended accommodation for the adult gaming use.
7. Policy TC2 of the Hounslow Local Plan (HLP) states that Hounslow Town Centre will be promoted as a focus for retail, leisure and entertainment growth, including a vibrant evening economy. However, this is required to be balanced with the aims of Policy TC4 of the HLP which seeks to manage uses in town centres and Policy CC2 of the HLP to ensure, amongst other matters, noise issues are mitigated.
8. Although not specifically referred to in the Council's decision notice, the officer report and statement suggests that the living conditions of nearby residents would be impacted by noise and disturbance from 24 hour use of the appeal premises. The appellant has provided a NA and I note the Council accept the findings of this in so far as it is acknowledged that there would be no discernible noise impact upon any residential occupants from noise emanating from within the building.
9. In terms of external noise, there is an emergency access door from the first floor of the appeal premises that leads out onto a flat roof area directly facing,

¹ Appeal Ref: APP/F5540/W/22/3292704

² Planning Inspectorate Guidance 'Procedural Guide: Planning appeals-England, Annex B'

and at close proximity to the rear elevation of residential properties on the upper floors of the block. Concerns have been raised that staff congregate in this area. An electro-magnetic lock connected to the fire alarm is proposed to be fitted to the fire exit which would prevent use of the door other than in an emergency. Provided this is incorporated within an operation management plan and secured by a planning condition, I consider noise and disturbance would be limited.

10. Both main parties refer to a number of other adult gaming premises within the town centre which are open 24 hours and the Council express concern that the cumulative effect of an additional 24 hour use would increase noise and disturbance in the town centre such to effect the living conditions of nearby residents. I saw at my site visits that there were three similar premises in the town centre and, as referred to above, one further premises at 150 High Street has been allowed on appeal. There were other late night opening businesses in the area, such as McDonalds, the Bell Pub and night club at 236A High Street, although I recognise that not all these businesses are open to the public 24 hours.
11. Even if the other adult gaming premises are not authorised to open 24 hours, as suggested by the Council, it is clear that they have been operating for 24 hours for a considerable period of time. Even without the proposed unit opening 24 hours, having regard to the above, a degree of activity is likely to continue in the town centre through the night and early morning, and some background noise and activity would be reasonably expected by residential occupiers within a town centre location.
12. Moreover, the NA concludes that noise likely to result from the numbers of customers expected to arrive at or leave the site would not be distinguishable against measured night-time noise levels at the nearest residential window. The expected customer numbers are based on survey data taken at an existing operational Merkur adult gaming premises at 146 High Street, during night-time. Night-time assessments were also carried out at 3 different venues in the UK which operate 24 hours. The evidence presented shows that, even within a pedestrian zone without high levels of background traffic noise, the predicted noise level within the first-floor residential unit above the appeal site would be below the maximum night-time threshold stipulated within British Standard 8233:2014 (as amended) *Sound insulation and noise reduction for buildings – Code of practice*.
13. For the reasons given above, having regard to the evidence before me, I am unpersuaded that there would be uncharacteristic or intrusive noise associated with the appeal site or that the proposal would cumulatively significantly increase noise in the area. The proposal would therefore comply with Policy CC2 of the HLP which seeks to ensure an acceptable noise environment.
14. I acknowledge there is some concern regarding the potential adverse social and public safety effects of adult gaming centres, notwithstanding that I have found the proposal to be compliant with Policy CC2 of the HLP with regards to noise. The appellant has provided an OR that sets out the observed activities taking place along Hounslow High Street in the vicinity of the appeal site over a weekend, including night time and early morning hours, as well as observations made in the appeal site and another 3 adult gaming premises in the area. The OR concludes that the adult gaming premises are well-run, do not serve alcohol

and do not lead to an increase in anti-social behaviour, noise or any other crime and disorder in the area.

15. Although the OR was only undertaken over a short period of time and during times when the appeal premises was closed (after 2am), even if the premises operated 24 hours, due to the limited size of the site and the sale of non-alcoholic drinks only, I find it unlikely that the outcome would be different between the hours of 2am and 9am (the current closing time of the appeal site).
16. I note that no contrary evidence has been provided regarding this matter such as crime statistics or details of disturbances or disruptive behaviour associated with the existing adult gaming premises in the town centre. Neither the Council's Environmental Health team nor the Police commented on the proposal. Furthermore, a 24 hour gaming licence was obtained for the appeal premises in March 2022. Whilst this is issued under a different regime, it nonetheless provides an indication of the anticipated effect of the use upon the surrounding area.
17. I have not been provided with substantive evidence which would lead me to conclude that the use of the appeal site, in the town centre where similar uses already take place, for 24 hours, would increase the level of anti-social behaviour or public safety in the area such to harm the living conditions of nearby residents or other town centre users.
18. This conclusion is reinforced by the recent appeal decision referred to above dealing with the same point. The Inspector there found the proposal for an adult gaming centre with 24 hour opening would not be an anti-social use in the town centre and that in any event, there are other regimes, including licensing and environmental protection, which provide certain additional safeguards if untoward effects might arise.
19. Policy HC6 of the London Plan 2021 (LP) seeks to support the night-time economy within the Central Activities Zone (CAZ) of which Hounslow Town Centre is recognised as an 'Area of regional or sub-regional significance', being one of London's larger town centres. This policy notes that here are many benefits to promoting night-time economic activity such as generating jobs, improving income from leisure and tourism, providing opportunities for social interaction, and making town centres safer by increasing activity and passive surveillance. It states that Boroughs should explore the benefits of diversifying the night-time mix of uses which can help attract a more diverse range of visitors, including those who feel excluded from alcohol-based entertainment activities and that such uses can also help decrease crime, anti-social behaviour and the fear of crime. The proposal would comply with this policy.
20. For all the above reasons, I conclude that the use of the adult gaming centre at the appeal site for 24 hours would not harm the living conditions of neighbouring residential occupiers with particular regard to noise and disturbance or public safety. Accordingly, the condition is not necessary in order to protect nearby residents' living conditions and to discourage inappropriate late-night activity in the interests of public safety.

Other Matters

21. A nearby resident has expressed concern that the security light and camera at rear of the first floor of the appeal site is directed towards their living accommodation. This is a civil matter and is not material to the planning considerations of the proposal before me.

Conditions

22. The PPG³ indicates that all the conditions from the original planning permission that continue to have effect should be restated in the interests of clarity. I have therefore repeated the condition specifying the original application and plan details as this provides certainty.
23. I have also considered the further conditions suggested by the Council. However, a condition relating to a delivery and servicing management plan is not necessary as no such condition was imposed on the original permission and I have no evidence to suggest that the delivery and servicing arrangements currently in place are unacceptable.
24. In order to prevent frequent use of the first floor door leading onto the flat roof by staff and customers, other than in an emergency or for maintenance purposes, I have imposed a condition requiring details of an operational management plan as this is necessary to protect the living conditions of nearby residents. The appellant has agreed to this condition.

Conclusion

25. I conclude that the appeal should be allowed and condition 3 removed.

Ann Veevers

INSPECTOR

³ Planning Practice Guidance, Paragraph: 040 Reference ID: 21a-040-20190723.