



Appeal Decision

Site visit made on 21 December 2022

by J Wellstead BA(Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2023

Appeal Ref: APP/D1590/W/22/3296242

13-15 London Road, Southend on Sea SS1 1PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Merkur Slots UK Ltd against the decision of Southend-on-Sea Borough Council.
 - The application Ref 21/02310/FUL, dated 17 November 2021, was refused by notice dated 7 February 2022.
 - The development proposed is the change of use of part of vacant ground floor bank unit (Class E) to Adult Gaming Centre (Sui Generis Use).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue of this appeal is the effect of the proposal on the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance.

Reasons

3. The appeal relates to the ground floor of a three-storey detached building that is enclosed by a supermarket and respective service yard, restaurant, and London Road. The area is predominantly characterised by commercial premises and is situated within the Southend Central Area, the London Road Policy Area as identified in the Southend Central Area Action Plan, and within the Secondary Shopping Frontage of the Town Centre Primary Shopping Area. There are residential flats on the second floor of the commercial premises and a block of student halls of residence opposite the appeal site.
4. The host property has prior approvals for conversion of the first and second floors to residential flats, which have been implemented. Prior approval has also been recently granted for additional residential flats on the remainder of the ground floor.
5. This proposal seeks a change of use from a vacant ground floor bank unit to an Adult Gaming Centre (AGC). It would be open over 24-hours a day, 7-days a week as a Merkur Slots site. The AGC would create noise in the form of background music, patrons talking and gaming machine sounds, and would attract patrons to the venue throughout the day and night.
6. The area surrounding the appeal site is characterised by being a lively and busy commercial area along London Road. During my site visit I saw that there are

businesses in the immediate vicinity of the site which operate during the day, evening and night. I noted that although some of these premises may be open until the early hours of the morning, they are not part of the host building nor do they adjoin it.

7. The appellant has undertaken a Noise Assessment (NA) including onsite surveys and case studies of operational noise levels and patron behaviour at different Merkur sites. However, the NA, lacks in detail and the comparisons and case studies are limited with very little information provided on the context of the locations, including whether they are similar to the appeal site in terms of proximity of neighbouring residential occupiers. Furthermore, it does not set out any measurements of noise levels within the host building that would be expected due to the operational noise of AGC, that would relate to this proposed development.
8. The NA also focuses on the transmission of conversational sounds travelling out from within the buildings, rather than the transmission of all potential noise and disturbance generated by an AGC within the building itself, including to those to residential occupiers adjacent and above the appeal unit. In addition, the case studies in the NA focus only on a snapshot in time, and not the cumulative effect of noise disturbance over a 24-hour period.
9. The NA recommends that part of the noise mitigation would be by way of specification of the walling, ceiling, and shopfront glazing. However, it, does not set out the precise details for the construction elements of the proposed internal and external alterations. It does not identify any other potential mitigation measures considered, or why they have been rejected. It is also unclear how the works would be carried out and by whom. Particularly as some of these works would be carried out for other parts of the host building, which are potentially under separate ownership or already occupied.
10. The immediate proximity of residential properties to the proposed AGC within the same building, and which share floor, ceiling, party walls with the appeal unit has the potential to create a sensitive relationship. This would result in occupiers experiencing unacceptable levels of noise and disturbance to the detriment of their existing living conditions. These effects would be acute as they would be experienced on effectively a permanent 24-hour basis and would therefore cause significant harm to the living conditions of those residents. In addition, noise and general disturbance generated by the comings and goings of customers late into the night, and early hours of the morning would also be experienced by those occupiers and other nearby residential properties.
11. Furthermore, the NA states that the predicted noise level in the proposed gaming centre would be of a "low level" and with no specific character. However, I consider that background music, gaming machines and patrons talking are more likely to create intermittent noise. Although this activity might not be excessively loud, especially if the property received appropriate sound insulation, the impact of intermittent noise throughout the day and night would impact negatively on the existing living conditions of residents within and near to the building. There is also the likelihood of the use of external spaces for patrons which would lead to further noise disturbances at the frontage of the AGC and on to London Road.
12. The appellant has also provided a footfall survey report. Although this report states that AGCs do not generate the levels of footfall that retail units do, the

proposed 24-hour, 7-days a week opening hours would be constant, and it would be for a significant period throughout the daytime and night-time.

13. Although the appeal seeks opening hours of 24 hours a day, 7 days a week, the appellant has suggested in the appeal submission that alternative, restricted hours, midnight Sunday to Thursday and up to 02:00 hours on Fridays and Saturdays, could be considered in the event the unrestricted hours were not acceptable. However, I consider that it is highly likely that the AGC operations would still create high levels of activity in the evening, and early hours when local residents, particularly those living on the first and second floors and to the rear of the appeal unit, would expect a quieter environment.
14. Therefore, I do not consider that conditions would adequately mitigate the harm to the living conditions of neighbouring occupiers, nor make the proposal otherwise acceptable. Moreover, I am not satisfied from the evidence before me that any such noise could be adequately attenuated from the insufficient details of works, and given the sensitive relationship between the commercial and residential elements of the host property. It would not be reasonable to leave the acceptability of any such measures by way of planning conditions.
15. Whilst the proposal would bring economic benefits through the re-use of the vacant unit and the employment of staff members, these benefits would be significantly outweighed by the harm to neighbours' living conditions, which I have outlined above.
16. For the reasons given above, I conclude that the proposal would have a significant harmful impact on the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance. This would be contrary to the aims of policies KP2 and CP4 of the Southend on Sea Core Strategy (2007), policies DM1 and DM3 of the Development Management Document (2015) and policy DS1 of the Southend Central Area Action Plan (February 2018), which seek to ensure - among other matters - the protection of amenities, appeal and character of residential areas and the avoidance of undue noise and disturbance to neighbours.
17. It would similarly fail to meet the National Planning Policy Framework's core planning principles of mitigating and minimising potential adverse noise impacts from new developments on health and quality of life.

Other Matters

18. Interested parties have expressed additional concerns about the development relating to health, patrons congregating outside the venue and security issues. There is no substantive evidence before me to suggest there would be any impact on health, anti-social behaviour or security issues. Furthermore, these concerns were not found to justify refusing planning permission by the Council.

Conclusion

19. For the reasons given, I conclude that the proposed development conflicts with the development plan, read as a whole. No material considerations have been shown to carry sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, the appeal is dismissed.

J Wellstead

INSPECTOR