



Appeal Decision

Site visit made on 19 January 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th March 2023

Appeal Ref: APP/Y5420/W/22/3304481

17 High Road, Wood Green, London N22 6BH

- 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 Chongie Entertainment Ltd against the decision of London Borough of Haringey.
 - The application Ref HGY/2022/0520, dated 21 January 2022, was refused by notice dated 22 March 2022.
 - The application sought planning permission for change of use from betting shop (Sui Generis) to adult gaming centre (Sui Generis) without complying with a condition attached to planning permission Ref HGY/2020/2996, dated 22 January 2021.
 - The condition in dispute is No 3 which states that:
"The use hereby permitted shall not be operated before 08:00 hours or after 23:00 hours Monday to Sunday and Bank Holidays".
 - The reason given for the condition is:
"This permission is given to facilitate the beneficial use of the premises whilst ensuring that the amenities of adjacent residential properties are not diminished consistent with Policy DM1 of The Development Management DPD 2017".
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Following the approval of application HGY/2020/2996 the appeal site can currently operate between 08.00 hours and 23.00 hours Monday to Sunday and on Bank Holidays. The appeal seeks permission to remove condition 3 of permission HGY/2020/2996 allowing for 24 hour opening.
3. The main issues are the effect of the proposal on (i) the living conditions of occupiers of neighbouring properties with respect of noise; and (ii) the character and function of the area.

Reasons

Living conditions

4. The appeal site sits within a shopping area with commercial uses at ground floor level. There is residential accommodation, primarily at first floor level, within close proximity to the appeal site.
5. The proposal would result in an increase of comings and goings to the appeal premises into the evening and early morning. This could result in disturbance

- to neighbouring occupiers from customers talking whilst outside the appeal premises and also noise from customer vehicles including opening and shutting of doors and vehicle engines. Customer movements during hours when noise levels are usually low would be prominent and much more noticeable which would result in occupiers of surrounding properties being unduly disturbed.
6. Sound power levels for human speech have been provided as well as results from a survey undertaken providing data on representative background noise levels and average ambient noise levels for daytime and night-time. Whilst this data infers that two persons speaking would not be above the night-time background or average ambient noise levels, this data does not include noise levels of multiple people talking outside of the premises nor does it include other associated noises such as customer vehicles. There is insufficient evidence to confirm that customers would not arrive or leave the premises in groups of more than two people.
 7. Whilst residents living within a commercial area may not expect a level of noise and activity in the evening to be similar to that of a residential area. Residents nevertheless should still not expect to have their living conditions unduly compromised. Due to additional customer movements in the evening and early morning, and the proximity to residential accommodation, the proposal would create noise levels that would disturb and have an adverse effect on the living conditions of neighbouring occupiers.
 8. The premises is different to a bar, public house or a club, there would be signage requesting customers be respectful when leaving the premises and staff would be trained to ensure customers are quiet when leaving the premises and not to congregate, including the use of an Operational Management Plan and Operations Manual as well as compliance with Responsible Gaming Code. These matters, however, do not outweigh the harm identified above, particularly as it would be difficult for staff to enforce behaviour of customers once they have left the premises.
 9. The appellant explains that there are other evening uses within Wood Green including 24 hour uses and other Adult Gaming Centres (AGCs) as well as reference to other AGCs that the appellant operates. Insufficient evidence has been provided on these other uses and establishments and I do not consider them to be directly comparable to the appeal scheme particularly with regards to proximity to residential uses, operating hours and noise levels.
 10. The existing occupants of the residential unit directly above have indicated that they have not experienced any negative effects in terms of noise. This does not mean that these occupants would not be disturbed by the proposal or that neighbouring occupants would not be disturbed. Noise data has been provided indicating that internal noise levels within the appeal premises would be within an acceptable range and that no sound insulation would be required. I have also had regard to evidence submitted relating to the acceptability of plant use, the installation of a lobby area and specialist witness statement. These matters, however, do not alter my findings above with regards to external noise levels.
 11. I have had regard to the appellants statement of case and submitted evidence including reference to planning appeals¹. These appeals are not directly

¹ Planning Inspectorate Reference Numbers: APP/N5090/A/13/2201162 & APP/B6855/A/10/2135314

comparable to the proposal subject of this appeal including in respect of location and use of the premises. In any case, I have determined this appeal on its own merits.

12. The proposal would have a harmful effect on the living conditions of occupiers of neighbouring properties with respect of noise. The proposal would be contrary to Policy SD7 of the London Plan 2021, Policy SP10 of the Haringey's Local Plan Strategic Policies 2017 and Policy DM1 of the Haringey Development Management DPD 2017 which seeks proposals to ensure a high standard of amenity for neighbours and address potential impacts of noise and disturbance.

Character and function

13. The Council's decision notice states that the proposal would have a detrimental impact on the character and function of the area. The use of the premises would not change as a result of the proposal. Therefore, the opening of the premises for 24 hours would not directly adversely affect the character of the area in terms of its primary use at ground floor level of being a commercial shopping function.
14. Concerns are raised that the proposal may result in added pressure for other premises in the area to extend their opening hours. My attention has not been drawn to any other proposals in the area and I have determined this appeal on its own merits.

Other Matters

15. The proposal would create job opportunities that would be an economic benefit. Given the number of jobs proposed to be created I attribute minimal weight to this benefit.
16. The appellant details that the licensing of the premises is separate to planning matters. It is noted that the appellant is required to meet responsibilities and guidance outlined by the Gambling Act 2005 and the Social Responsibility Code provisions of the Gambling Commissions license conditions and code of practice. The appellant also implements an age verification policy to prevent children and young people from entering the premises and operates a Challenge 21/Challenge 25 on its sites.

Conclusion

17. I have found that the proposal would not have an adverse effect on the character and function of the area. However, this and the other matters detailed above would not outweigh the harm I have identified with regards to the living conditions of neighbouring occupiers with regards to noise.
18. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the National Planning Policy Framework, which outweigh this finding.
19. For the reasons given above, I conclude that the appeal should be dismissed.

Chris Baxter

INSPECTOR