



Appeal Decision

Site visit made on 27 February 2023

by David English BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th April 2023

Appeal Ref: APP/Q5300/W/22/3310305

1-2 St Onge Parade, Southbury Road, Enfield EN1 1YU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Merkur Slots UK Ltd against the Council of the London Borough of Enfield.
- The application Ref 22/02133/VAR is dated 14 June 2022.
- The application sought planning permission for Change of use of ground floor from recruitment agency (Use Class E) to Adult Gaming Centre (Sui Generis) without complying with a condition attached to planning permission Ref 20/03935/FUL, dated 31 March 2021.
- The condition in dispute is No 5 which states that: The use as an Adult Gaming Centre hereby approved shall only operate between the hours of 08.00 to 00.00 (Midnight) on Mondays to Saturdays and 09:00 to 23:00 on Sundays or Bank Holidays.
- The reason given for the condition is: To protect the amenities of adjoining residential occupiers from noise disturbance.

Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. The appeal results from the Council's failure to determine the planning application within the statutory period. Their evidence sets out that had they been in a position to determine the application they would have refused it on the grounds of the proposal being detrimental to the town centre and the amenities of residents in the surrounding area. I have taken this into account.
3. The reason given for the imposition of condition No 5 is to protect the amenities of adjoining residential occupiers from disturbance. I am not persuaded by the Council's argument that allowing the appeal property to remain open for 24 hours would detract from the retail function of this part of the town centre, nor do I believe this would have a detrimental impact on the vitality and viability of the shopping parade, and I have been provided with no evidence to substantiate the Council's position in respect of these matters. Accordingly, the original reason for imposing the condition has been the focus of my attention when defining the main issue in this case.

Background and Main Issue

4. An adult gaming centre (AGC) is currently operating at the appeal property. The appellant wishes to extend the opening hours of the AGC so that it can operate for 24 hours every day. The main issue is the effect that removing condition No 5 would have on the living conditions of adjoining residential occupiers in respect of noise and disturbance.

Reasons

5. The appeal property comprises a commercial unit on the ground floor of a three-storey building, St Onge Parade, that wraps around the junction of Southbury Road and Genotin Road in a location towards the edge of Enfield town centre. The block contains other town centre commercial uses including a hot food takeaway with a small sitting area inside, a barber, coffee shop, and a recruitment consultancy. The first and second floors are in residential use.
6. There are various town centre uses in the vicinity including a handful of restaurants, several hot food takeaways, and I saw two public houses situated towards the centre of the town a short walk from the appeal site. All of these will generate activity and associated noise from customers arriving and leaving those facilities and passing into, through and out of the town centre in the evening. Based on the current commercial uses in the vicinity, I would expect there to be an active evening economy in Enfield town centre. However, it did not appear to be a town centre where leisure and other activity late into the night throughout the week was a main characteristic, and I have no specific evidence before me to confirm that there are multiple bars that open until 02:00 as has been suggested.
7. I visited the site, the wider town centre, and the residential streets close to the appeal site around mid-day, and late in the evening. I saw that the streets close to the appeal property were very busy with traffic and pedestrian activity during the daytime. However, the town centre as a whole and the area close to the appeal property was noticeably quiet late in the evening. Local late-night businesses appeared to be very few in number, the trains do not run long after midnight from the nearby Enfield Town overground train station, and my attention has not been drawn to any local business or facility operating for 24 hours every day.
8. The Noise Assessment submitted with the planning application demonstrates that any transmission of noise through the building to the flats above is limited, and the nature of the activities that take place inside the premises ought not to be unacceptably harmful to adjoining residents in respect of noise. However, the entrance opens onto the public highway and is directly below the adjoining flats. Given how quiet I would expect the streets around the appeal property to be during the early hours of the morning, I find it likely that, notwithstanding the appellant's assessment of activity at other similar premises in Hull, Camberwell, and Boston to which I have had regard, occasionally, noise and disturbance from customers leaving or arriving would occur.
9. Having regard to the current low levels of late-night activity locally, it is reasonable that residents in the flats above the property would expect to continue to have a period in the night without disturbance. The proposal would be likely to introduce harmful noise and disturbance arising from customers arriving and leaving the appeal property during the early hours of the morning,

and from customers congregating and smoking below the adjoining flats which, from the appellants comparator evidence, is an activity noted outside their other premises. I accept that there may be few occasions where large groups of customers arrive, leave, or congregate at the same time. Nevertheless, this is possible and would bring with it further concerns regarding the potential for noise and disturbance to adjoining residential occupiers.

10. The Council's Environmental Health Officer (EHO) confirms there have been no complaints about noise from the existing operations at the site. However, the representation from the EHO comments only that noise reduction levels '*should be being achieved in the residential premises in relation to noise from the machines...*'. This does not address the matter of external noise and disturbance which may take the form of relatively low-level activities during the early hours of the morning. I therefore attribute little weight to the lack of complaints, also noting the significant change in opening hours associated with the proposal.
11. The appellant has drawn to my attention two recent decisions taken by the Council elsewhere in Enfield Borough which allow the operation of AGCs for 24 hours, making the case that those premises are not in town centres as defined in the development plan (Council refs. 22/03549/FUL and 20/03849/FUL). While there may be similarities between the cases, they are both some considerable distance from the appeal site, each will have their own specific circumstances and they are not therefore comparable to the appeal proposal before me. I have reached my decision based on the merits of the proposal having regard to the information available to me and from my observations during my site visits.
12. I appreciate that a licence has been granted under the Gaming Act 2005 and that the appellant appears to have arrangements in place for managing customer activity on the premises. However, the main objectives of that legislation differ from those of the planning system, and I still consider that harm would arise for the reasons I have set out above.
13. For these reasons I conclude that removing condition No 5 would have an unacceptably harmful effect on the living conditions of adjoining residential occupiers in respect of noise and disturbance. Condition No 5 is necessary and it meets the relevant tests set out at paragraph 56 of the National Planning Policy Framework (the Framework). Accordingly, the proposal would conflict with Policies D13 and D14 of The London Plan (March 2021), and Policies DMD 26 and DMD 68 of the Improving Enfield Development Management Document (November 2014) (the DMD), all of which seek to resist development that would result in an adverse impact on the amenities of nearby occupiers. The proposal would also conflict with paragraph 130 of the Framework which seeks the same outcomes.

Other Matters

14. The appeal site is located in the Enfield Town Conservation Area (the Conservation Area). Accordingly, the Council advertised the planning application. The press advertisement refers to 'condition 02' of planning permission 20/03935/FUL as being the subject of the planning application. This is incorrect, but it is evident from the press advert that the relevant condition concerns a restriction on opening hours. I am satisfied that this typographical

error is unlikely to have prejudiced the interests of any party likely to have wanted to make representations on the application.

15. The Council do not raise any concerns regarding the effect of the proposal on the Conservation Area. In my view there would be no material effect on the significance of the Conservation Area and therefore the proposal would preserve the character and appearance of the Enfield Town Conservation Area. In any event, I have dismissed the appeal for reasons unrelated to that designation.
16. The appellant expresses concern regarding the relevance of some matters raised by the Police in respect of crime and anti-social behaviour in the vicinity of the appeal site. I have been provided with no substantive evidence of any anti-social behavioural issues linked to the appeal premises. Accordingly, I afford this matter very little weight having regard to the main issue I have identified in this case.
17. I recognise that the appellant would control entry based on the age of potential customers, and I note their evidence that many customers are female, and many customers use their facilities for relaxation after evening or night shift working. However, none of these customer attributes would necessarily be specifically associated with generating less noise and disturbance than the wider population and are therefore neutral factors.
18. Natural surveillance may arise through the comings and goings of customers, and I attribute moderate weight to this benefit given the times at which this could occur during the early hours of the morning when few people would normally be active in the vicinity. The appellant indicates that the proposal would result in the creation of new jobs, and I attribute moderate weight to this benefit. However, the benefits that would arise from allowing the proposal would not outweigh the harm that I have identified.

Conclusion

19. For the reasons given above, having had regard to the development plan as a whole, along with all other relevant material considerations, the appeal is dismissed, and planning permission is refused.

David English

INSPECTOR