



Appeal Decision

Site visit made on 21 February 2023

by Ann Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/W5780/W/22/3307658

3 Goodmayes Road, Goodmayes, Ilford IG3 9UH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Reels Casino Slots Limited against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 1728/22, dated 24 May 2022, was approved on 12 August 2022 and planning permission was granted subject to conditions.
 - The development permitted is change of use of ground floor from betting office to adult gaming centre.
 - The condition in dispute is No 4 which states that: *The adult gaming centre hereby permitted shall not be open for the admission of customers to the premises outside the following times: Monday to Friday: 09:00 - 23:00 Saturday: 09:00 - 23:00 Sunday: 10:00 - 22:00 Bank or Public Holidays: 10:00 - 21:00.*
 - The reason given for the condition is: *In order to prevent the use causing an undue disturbance to occupants of neighbouring property at unreasonable hours of the day, and to accord with Policies LP9 and LP26 of the Council's Local Plan.*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The opening hours originally proposed by the application were for 24-hour opening, seven days a week, but planning permission was granted for the use of the appeal premises restricting the hours of use by condition to 09:00 to 23:00 Monday to Saturday, 10:00 to 22:00 on Sundays and 10:00 to 21:00 on Bank or Public Holidays. The appellant objects to these opening hours and seeks to use the premises 24 hours a day, 7 days a week. The Council's statement indicates that the condition is necessary to protect the living conditions of nearby residents, particularly those living above the commercial premises in the area, as a consequence of the likelihood of noise and disturbance emanating from customers arriving and leaving the premises.
3. The main issue is therefore whether the condition is reasonable and necessary in the interests of the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance.

Reasons

4. The site is located along an active street which includes a mix of retailers, cafes, leisure and entertainment uses and professional services commonly found on high streets. The area was, at the time of my site visit on a week day

lunchtime, vibrant and bustling with pedestrians and a significant amount of traffic passing through the area.

5. There are residential occupiers in the upper floors of the appeal property and above other premises in the surrounding area. The condition at issue was imposed due to the location of the use and its proximity to these nearby residential properties.
6. The site is located within Goodmayes Local Centre, as defined in the hierarchical approach to town centres set out in Policy LP9 of the Redbridge Local Plan 2015-2030, adopted March 2018 (RLP). Policy LP9 and Policy LP10 of the RLP both seek to promote the regeneration of such town centres and support their vitality and viability, as well as, amongst other things, diversifying the range of uses within them. Policy LP10 seeks to balance this aim with ensuring development does not result in harm to nearby occupiers. This reflects one of the objectives of Policy LP26 of the RLP which seeks development that, amongst other things, 'does not result in an adverse impact upon the amenity of neighbouring occupiers in relation to noise'.
7. The proposal would result in the Adult Gaming Centre (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. Given the location of the site within a group of commercial properties that lie between Goodmayes station and the busy vehicular junction of Goodmayes Road and High Road, it would not be unreasonable to expect that there would be a certain level of noise and disturbance in the area into the early hours of the morning on a regular basis.
8. Furthermore, I saw at my site visit, a large supermarket at the rear of the site which advertised 24 hour opening, except on Sundays, along with a number of bars, takeaways and other entertainments venues in the Local Centre, although no evidence is before me that these are open to the public 24 hours.
9. I have limited information relating to the residential units above the appeal premises and the surrounding area. While the appellant has indicated that the proposed use would not give rise to any noise, there is insufficient evidence to support this claim as well as little information to confirm whether internal noise levels from customers, employees and other operations of the proposed use would not compromise the living conditions of occupiers residing above the premises.
10. As such, I cannot be certain of the level of noise that would be likely to be generated as a result of the proposal during late night and early morning hours. Although customer levels at the site are not anticipated to be high during the night and early morning, with likely customer numbers and behaviour patterns based on other AGCs operated by the appellant, this pattern of activity cannot be guaranteed. A 24 hour operation 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 when the environment is generally quieter. Consequently, customer movements would be prominent and noticeable, leading to the potential for residential occupiers in the area being adversely disturbed.
11. The appellant indicates that they operate other AGCs in several locations without any noise complaints being received. However, I have no information

regarding the specific locations of the other AGCs nor their hours of use or operational details. While I recognise that AGCs can be found in other locations and are also regulated by premises licences, the hours of operation of such premises and their closing times must be reflective of the location of the appeal site in close proximity to noise-sensitive residential uses.

12. I acknowledge that activity outside the site cannot easily be controlled, and I have no doubt that the appellant is an experienced operator of AGCs. Nevertheless, no compelling evidence is before me to indicate the proposal would not give rise to a level of noise and disturbance that would be harmful to living conditions for residents above the premises or in the immediate area.
13. I have carefully considered the appellants suggested 'Proposed Conditions and Operational Statement' and any other condition. Beyond control over access to and exit from the premises and numbers of staff, the appellant's operational statement does little to address concerns I have regarding the effect of noise and disturbance on occupiers of nearby residents. Furthermore, in acknowledging the tests at Paragraph 56 of the National Planning Policy Framework (the Framework) as no evidence has been submitted to enable a full assessment of the effect of noise and no sufficiently detailed operational management plan is before me, I cannot be certain that a suitably worded condition would meet the tests.
14. Therefore, from the evidence before me, I find the condition to be reasonable and necessary to make the development acceptable, having regard to the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance. Accordingly, I find that the removal of the condition would result in conflict with Policy LP9, Policy LP10 and LP26 of the RLP in relation to impacts on amenity, specifically noise and disturbance. There would also be conflict with the aims of London Plan Policy D14 which seeks to protect residents from the impacts of noise-generating activities and conflict with the aims of the Framework in its approach to living conditions.

Other Matters

15. The Council's decision notice cites Policy LP9 of the RLP as one of the policies for imposing Condition 4, whereas the officer report refers only to Policy LP26 of the RLP. The Council have provided no explanation as to the reason for this. Nevertheless, for the avoidance of doubt, I have reached my conclusions against the development plan as a whole and have not simply limited myself to the reasons provided for imposing Condition.
16. I note there are some contradictions in the Council's officer report with regards to the assessment of noise upon surrounding residential occupiers. However, it is clear in the section on opening hours that the Council considered the proposed 24 hours a day 7 days a week was not acceptable. In any event, the Council's handling of the application has not affected my findings on the planning merits of the scheme.
17. While there were no objections to the proposed development, a lack of objection is not a reason to approve unacceptable development.
18. I acknowledge the contribution that 24 hour, 7 days a week opening hours would have on the vitality of the local centre and economic activity in the area. However, I have seen no compelling evidence supporting this contention, and

given the existing operation of the unit, I am not persuaded that any improvement to the vitality and viability of the centre would be any more than negligible and would not outweigh the harm as set out.

Conclusion

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

Ann Veevers

INSPECTOR