



Appeal Decision

Site visit made on 27 March 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2023

Appeal Ref: APP/Y3940/W/22/3307641

28 High Street, Malmesbury, Wiltshire SN16 9AU

- 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 Mr Andrew Croft of H Backhouse (Baker St) Ltd against the decision of Wiltshire Council.
 - The application Ref PL/2022/02369, dated 22 March 2022, was approved on 14 June 2022 and planning permission was granted subject to conditions.
 - The development permitted is Change of use of ground floor from Class E to part Betting Office (sui generis) and part Class E.
 - The condition in dispute No 3 which states that: There shall be no customers/members of the public on the site outside the hours of: 09:30 – 21:00 Mondays to Saturday, 11:00 – 16:00 Sundays and Bank or Public Holidays.
 - The reason given for the condition is: To ensure the creation and retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.
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Decision

1. The appeal is allowed and the planning permission Ref PL/2022/02369 for Change of use of ground floor from Class E to part Betting Office (sui generis) and part Class E at 28 High Street, Malmesbury, Wiltshire, SN16 9AU granted on 14 June 2022 by Wiltshire Council, is varied by deleting condition No 3 and substituting it for the following condition:
 - 1) There shall be no customers/members of the public on the site outside the hours of: 07:00 – 22:00 Mondays to Saturday, Sundays and Bank Holidays.

Background and Main Issue

2. Planning permission was granted for the change of use of ground floor from Class E to part Betting Office (sui generis) and part Class E in June 2022 at 28 High Street, Malmesbury. The appellant wishes to vary the opening hours condition so that both the betting office and remaining Class E unit can operate 07:00 – 22:00 Mondays to Saturday, Sundays and Bank Holidays.
3. The main issue, therefore, is whether the condition is reasonable or necessary in the interests of the amenity of the area, with particular regard to noise and activity.

Reasons

4. The appeal site is a commercial property situated along the High Street in the primary shopping frontage of Malmesbury. The development permitted has created two separate units, with the betting office fronting onto the High Street

and the rear unit being retained as Class E, with a frontage onto Cross Hayes Lane, adjacent to the Cross Hayes car park. The surrounding uses in the area are predominantly commercial, including retail, cafes, a pub and a takeaway, with some residential units above. To the north is a car showroom and to the south is a charity shop.

5. The justification for the restricted opening hours set out in the Case Officer's Report is 'to ensure the opening and closing times are in line with town centre policy and noise is kept to a minimum'. However, the Council does not explain what part of the 'town centre policy' requires the opening hours to be restricted. The appeal site is in a primary shopping frontage in a town centre location, so the longer hours requested would not be out of keeping with a busy town centre location, where some of the nearby commercial uses are open earlier or later than the extended opening hours requested. Subsequently, the extended hours would not be out of character with the area.
6. The betting shop would likely attract a lower level of activity than that associated with the surrounding commercial uses. As acknowledged by the Council themselves, the betting shop use would not produce a level of noise that would harm the living conditions of occupants of neighbouring properties. I also note that no alcohol is permitted on the premises, which is clearly publicised on the entrance door to the premises. The Council also acknowledge that any future antisocial behaviour would be addressed under other legislative provisions. I am therefore satisfied that whilst a restriction on the opening hours is required in the interests of the amenity of the area, to ensure the use does not operate 24 hours a day, the extended opening hours requested would not result in an intrusive level of noise and activity in the area.
7. I also note the previous Class E use could operate without any opening hours restrictions so it would be unreasonable and unnecessary to restrict the new smaller Class E unit to the shorter hours also.
8. Concerns have been raised by local residents in regard to the betting office being an incongruous use in Malmesbury, as well as the allegation that it would not improve the vibrancy of the town. The objectors also express a general concern about the impact of gambling as a social problem. However, such establishments are common features of high streets across the country. The Council do not object to the principle of the use of No 28 as a betting office and I see no reason to come to a different conclusion.
9. I acknowledge that the hours requested by the appellant would be longer than those previously approved. However, just because they are longer opening hours does not necessarily equate to material harm to the noise and activity in the area to such a magnitude that would warrant restricting the opening hours.
10. Therefore, whilst a condition to restrict the opening hours would be reasonable and necessary, I am satisfied that the opening hours could be extended without causing harm to the amenity of the area, with particular regard to noise and activity. The development, with the varied opening hours condition, would comply with Core Policy 57 of the Wiltshire Core Strategy (adopted January 2015) and Saved Policy NE18 of the North Wiltshire Local Plan 2011 (Adopted 2006). These policies, in combination, state that development will only be permitted where it would not generate, or itself be subject to, harm upon public health or cause pollution to the environment by the emission of excessive noise, light intrusion, smoke, fumes, other forms of air pollution,

heat, radiation, effluent or vibration. Development should also have regard to the compatibility of adjoining buildings and uses, and the impact on the amenities of existing occupants.

11. It would also comply with paragraph 185 of the National Planning Policy Framework 2021 which requires decisions to ensure that new development is appropriate for its location, taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
12. Therefore, in conclusion, I allow the appeal, deleting condition 3, and substituting it for the condition set out above.

Laura Cuthbert

INSPECTOR