



Appeal Decision

Site visit made on 31 May 2023

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/M5450/W/22/3309490

87 Burnt Oak Broadway, Harrow, Edgware HA8 5EP

- 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 conditions 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 Harrow.
 - The application Ref P/2266/22 is dated 14 June 2022.
 - The application sought planning permission for a change of use of ground floor from Pawnbrokers (Class E) to Adult Gaming Centre (Sui Generis) without complying with a condition attached to planning permission Ref P/3884/20, dated 25 March 2021.
 - The condition in dispute is No 3 which state that:
The use hereby permitted shall not open to customers outside of the following times: - 09.00 to 00.00 hours, Monday to Sunday.
 - The reason given for the condition is:
To ensure the proper functioning of the commercial properties within the locality and protect the residential amenities of adjoining occupiers.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. As part of the appeal, the appellant has submitted a Full Observation Report by Leveche Associates Limited dated September 2022 (Observation Report). The Observation Report presents the findings of two specific visits to the appeal site and a nearby adult gaming centre. This document provides clarification of the existing site conditions and does not alter the proposal. All parties have had the opportunity to comment on it through the appeal process and I do not consider that any interests would be prejudiced if I take this document into account. I have therefore determined the appeal on the basis of this additional information.

Background and Main Issues

3. Burnt Oak Broadway is a relatively busy road with a wide mix of uses. Generally commercial premises are on the ground floor and offices and residential uses on the upper floors. The appeal site occupies the ground floor of a two-storey property located on the east side of the road. Immediately adjacent to it are a variety of premises at ground floor including convenience stores, betting shops, a pawnbroker and hot food takeaways. There is also another adult gaming centre nearby, on the opposite side of the road.

4. Permission for the appeal site to be used as an adult gaming centre was given in March 2021 subject to customers not being allowed to be present on the premises between 09.00 and 00.00, Monday to Sunday. The appellant has applied for a variation of the hours of operation to allow for 24-hour opening.
5. Following the submission of the appeal against non-determination, the Council has not provided a statement of case or any development plan policies. The appellant's evidence details that there is a residential property above the premises. It also identifies that both the Metropolitan Police's North West Design Out Crime Office (DOCO) and the Licensing Enforcement Officer of the London Borough of Harrow objected to the application due to an increased risk of crime in an already high crime area.
6. Taking the above background into account, the main issues are whether condition 3 is reasonable or necessary when regard is paid to the effect of its variation on the living conditions of both:
 - the occupants of the property above with respect to noise and disturbance; and
 - residents and users of the area with respect to crime and disorder.

Reasons

Noise and Disturbance

7. A Noise Assessment by Archo Consulting Ltd, Ref PR2001_99_FINAL, dated 10 June 2022 (Noise Assessment) concludes that the site is suitable for 24-hours operation.
8. Unlike the appellant's direct consultation with the DCOC, no evidence that attempts to discuss or agree the findings of the Noise Assessment directly with the Council's Environmental Protection Officer has been provided. I therefore do not have any evidence that the Council accepted the findings of the Noise Assessment.
9. In terms of the operational internal noise, the report only provides one measurement which is noted as being based on a central location within the site with 'some of the noisier machines in demo mode'. While it is indicated that this would represent a worst-case scenario and was based on a greater number of patrons than normal, there is little substantive evidence to show this to be the case. Details and baseline data, such as the number and type of machines used, how this relates to the normal number of patrons or whether there were any noise variations across the site have not been provided. I am therefore not satisfied that the one measurement provided sufficiently demonstrates it would be the worse-case noise level for the site.
10. While internal noise impact from the measured Octave Band Frequency Levels on the above residential property were assessed and found to be acceptable, no evidence that the measured L_{Aeq} and L_{Amax} levels would not adversely affect this property has been provided. I therefore cannot be certain that the louder noise levels identified would not impact on the living conditions of the property's occupants.
11. I acknowledge that the report refers to a number of examples where 24-hour opening has been consented. However, the details provided moreover relate to

justification of the external activity and noise levels. No comparison of the worst-case scenario noise measurements was provided and while some of the examples do refer to measured noise level data, the L_{Amax} figures detailed shows these to be significantly lower than the appeal site. The examples are therefore not comparable to the proposal and do not change my concerns identified.

12. I also appreciate that the area already has existing 24-hour businesses operating. However, the circumstances of these in terms of noise levels and relationship to the above residential property are different to the appeal site and are not comparable. In any event I have considered the appeal site on its own planning merits.
13. Overall, the Noise Assessment does not sufficiently demonstrate that the proposal's noise levels would not adversely affect the living condition of the occupants of the above property. While the occurrence of louder noise risks each night may be low, it would still only take intermittent occasions to cause disturbance. Accordingly, the proposal presents a high risk of adversely affecting neighbours' quality of life.
14. In conclusion, the proposal would lead to unacceptable noise and disturbance to the occupants of the neighbouring above property. It would be contrary to paragraph 130(f) of the National Planning Policy Framework (the Framework) which, amongst other matters, seeks that planning decisions create places that are to a high standard of amenity for existing and future users and do not undermine the quality of life.

Crime and disorder

15. As noted above, the DOCO objected to the proposal on the basis that increasing the opening hours of the appeal site would increase crime in an area with an overly high crime rate. The appellant has provided the DOCO consultation response to the application. This summarises the crime and anti-social behaviour data for the Edgware Ward and within 100 metres of the appeal site over the periods of December 2019 to November 2020 and July 2021 to June 2022 and also for June 2022.
16. It is evident that the Edgware Ward has a history of serious crime such as violence, burglary and motor vehicle crime, thefts and anti-social behaviour and is well known to the local police. I acknowledge that the data highlights that most crime types, other than anti-social behaviour and motor vehicle crime, have increased over the period presented. However, limited detail such as incident records or police logs is provided to confirm the circumstances and cause of the incidents. Little substantive evidence is therefore provided to show the appeal site is linked to the crime types and numbers detailed.
17. Furthermore, while the June 2022 crime map identifies crime number hotspots in the Edgware Ward, as with the 12-month data, it provides little clarity on the circumstances of these. The mapping does highlight a relatively wide and extensive number of crime hotspots across the Ward but it also shows that there are a significant number of hotspots which are suffering higher crime numbers than the one the appeal site sits in. With this evident hotspot variation and lack of detail, there is no conclusive evidence to show the appeal site is contributing to the hotspot crime numbers.

18. In their consultee response the Licencing Enforcement Officer advises that the DOCO states that 24-hour adult gaming centres are proven crime generators which lead to an increase in crime and anti-social behaviour in the nearby areas. However, no substantive evidence is provided to support this or show that the proposal would increase crime and disorder, anti-social behaviour or would reduce the peaceful amenity of the public.
19. The appeal site currently has management procedures in place which are designed to alleviate any disturbance associated with the premises. Although only a snapshot in time, the Observation Report confirms that these premises are well managed. I consider it also demonstrates that, due to its non-alcoholic beverages policy, it is unlikely the proposal would contribute to anti-social behaviour relating to excessive alcoholic drinking.
20. Overall, while I have carefully considered the DOCO and Licencing Enforcement Officer's concerns, no conclusive evidence that the appeal site is, or the proposal would cause or contribute to crime and disorder in the area has been presented. Given the management and operation procedures of the adult gaming centre, there is no basis to conclude that 24-hour operation would cause or result in anti-social behaviour or criminal activity in the area.
21. The proposal would not have an adverse effect on the living conditions of residents and users of the area with respect to crime and disorder. It would not be contrary to paragraphs 92(b) and 130(f) of the Framework which, amongst other matters, seeks that planning decisions create places that are safe and where crime and disorder, and the fear of crime, do not undermine the quality of life.

Conclusion

22. While the proposal would not have an adverse effect on the living conditions of residents and users of the area with respect to crime and disorder, it would lead to unacceptable noise and disturbance to the occupants of the property above. It would be contrary to the Framework when read as a whole. Consequently, condition 3 is reasonable and necessary.
23. For the reasons given above I conclude that the appeal should be dismissed.

J Symmons

INSPECTOR