



Appeal Decision

Site visit made on 22 June 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2023

Appeal Ref: APP/W1905/W/22/3305685

Unit 2, 8 Eleanor Cross Road, Waltham Cross, Hertfordshire EN8 7LA

- 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 Merkur Slots (UK) Ltd against the decision of Broxbourne Borough Council.
 - The application Ref 07/22/0144/F, dated 8 February 2022, was refused by notice dated 1 July 2022.
 - The application sought planning permission for change of use from (A1) retail to amusement centre and installation of new shopfront without complying with a condition attached to planning permission Ref 7/0410/06/F/WX, dated 13 October 2006.
 - The condition in dispute is No.4 which states that: The use hereby permitted shall not be open to customers outside the following times: 0900 to 2200 Mondays to Saturday; 1000 to 1600 Sundays.
 - The reason given for the condition is: To preserve the amenities of the adjoining residential occupiers.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from (A1) retail to amusement centre and installation of new shop front at Unit 2, 8 Eleanor Cross Road, Waltham Cross, Hertfordshire EN8 7LA, in accordance with application ref 07/22/0144/F, without complying with condition 4 of planning permission 7/0410/06/F/WX, granted on 13 October 2006 and subject to the following condition:
 - 1) Except for the purposes of entering and exiting the premises, the external doors shall remain closed at all times when the amusement centre is in use.

Procedural Matter

2. On 8 January 2018 planning permission reference 07/17/1179/F was granted for "*Variation to condition 4 of planning permission 7/0410/06/F/WX to permit opening from 8.30 to 24.00 Mondays to Saturdays inclusive and from 9.00 to 19.00 on Sundays*". The evidence before me suggests that the business has been operating these hours since that time, despite the fact that the 2018 planning permission includes no condition controlling the hours of opening, or reasoning for requiring such a condition. However, I have dealt with the appeal on the basis that it was submitted, which seeks to remove the opening hours condition.

Main Issue

3. The main issue is whether the opening hours imposed by condition 4 of the original planning permission is necessary to protect the living conditions of

occupiers of nearby residential properties with particular regard to noise and disturbance.

Reasons

4. The appeal site is located near the edge of a pedestrianised area of the town centre. It is surrounded by a variety of retail and commercial premises including the Pavillions Shopping Centre, Waltham Cross Bus Station, a Royal Mail Delivery Depot, a 24 hour taxi rank and 24 hour car parks. Although the majority of shops in the town centre would close early in the evening, nearby pubs, restaurants and take aways operate until late at night and into the early hours of the morning. Buses run from 04:50 until 00:35 the following day and the taxi rank operates 24 hours per day, every day of the week. As such there will be some activity from vehicular and pedestrian movements in this area at most times of the day and night.
5. The County Crime Prevention Advisor and the Council's Community Safety Manager have raised concerns that the proposed increase in hours would encourage increased amounts of anti-social behaviour, street drinking and criminal related activity. Whilst this fear is based upon there being 192 reported incidents of crime within a 100 metre radius of the site in 2021, there is no evidence that any of these incidents were directly or indirectly related to the use of the appeal premises or its customers.
6. The Council consider that the removal of the opening hours restriction would have an unwholesome and negative impact on the environment and its amenities and would not contribute positively to the economic, social or environmental needs of the town. I have not been advised of what the towns needs are, or what negative impact would result from the extended opening hours of a well-established business in the town centre, which would increase employment. However, the reason for imposing the condition was to preserve the amenities of the adjoining residential occupiers.
7. The ground floor of the two-storey mid terraced property is used as an amusement centre. The first floor of the property is for back office/staff use only. I observed that the ground floor contains in the region of 30 single use arcade machines and a small bar area serving hot and cold soft drinks and snacks. No alcohol is sold on the premises. There is also an accessible customer toilet on the ground floor. Low level background music is played, and tablets are available for use by customers playing bingo. The noise from the machines and background music at the time of my visit was minimal and could not be heard outside the premises. There is a condition requiring the external doors to be kept closed, to keep any noise inside, and this could be reimposed. I noted the premises were clean and smartly maintained and that CCTV was in operation.
8. The nearest residential properties are the flats above the adjacent commercial premises on Eleanor Cross Road. The use has been operating since 2007, with extended hours since 2018. There is no evidence before me of any noise or disturbance being caused to nearby residents by the use during that time. The submitted noise report confirms that the premises have a high level of insulation and that there is no internal noise transmission between floors. As such, the only likely source of noise to nearby residents would be from people entering and leaving the premises and talking outside of the premises whilst smoking. Such events would be brief and irregular, and little different to the

noise experienced from people walking by the premises and talking in the street enroute to the nearby bus and taxi station.

9. I acknowledge that background noise and activity in the town centre will be much lower in the early hours of the morning than at other times. However, given the small scale and nature of the use, the evidence before me in the undisputed noise report and survey of behaviours in this establishment, and in similar establishments that are already in 24 hour operation, I see no reason why the removal of the opening hours condition would result in unacceptable levels of noise and disturbance to nearby residents. In this respect I also note that no objections have been received from local residents, Environmental Health or Licensing, and that the premises licence issued under the Gambling Act does not restrict the hours of opening.
10. I therefore conclude that the restricted opening hours condition is not necessary to protect the living conditions of occupiers of nearby residential properties. Accordingly, the use of the premises without such a condition, would accord with Policies WC1, RTC2 and RTC3 of The Broxbourne Local Plan (June 2020), which support proposals that accord with town centre priorities including ensuring Waltham Cross has a vibrant town centre throughout the daytime and evening, taking into consideration the role of the centre and services it provides and any adverse impacts upon the centre or residents in terms of noise, fumes, smells, litter and general disturbance. Evening and night-time uses are also supported in centres subject to consideration of their impacts.

Conditions

11. As the change of use commenced many years ago it is not necessary to reimpose the time limit condition. The original permission also included conditions restricting the use of the premises and requiring a window display be provided at all times. As the use is restricted by the planning permission and the appearance of the building is preserved by the shop front, which would require planning permission to be altered, I do not consider these conditions to be necessary and as such I have not reimposed them. I also note that these conditions were not re-imposed on the 2018 planning permission reference 07/17/1179/F.
12. The Council has not suggested the imposition of any conditions other than a temporary 12 month consent to assess any effects of the increased opening hours on the town centre locality and wider society. Taking into account the reason for the original condition and the evidence before me, I do not consider that such a condition would meet the test of necessity as set out in paragraph 56 of the National Planning Policy Framework (2021).
13. However, in order to ensure that noise generated inside of the premises is not heard outside of it, I have re-imposed the requirement for the external doors to remain closed.

Conclusion

14. For the reasons given above, and taking all other material considerations into account, the appeal is allowed.

R Bartlett

INSPECTOR