



Appeal Decision

Site visit made on 17 July 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th August 2023

Appeal Ref: APP/H5390/W/22/3303002 141-143 King Street, London W6 9JG

- 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 Chongie Entertainment Ltd against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The application Ref 2022/00226/VAR, dated 25 January 2022, was refused by notice dated 28 March 2022.
 - The application sought planning permission for the change of use of vacant former print centre (Use Class E) to Adult Gaming Centre (sui generis) without complying with a condition attached to planning permission Ref 2020/03299/FUL, granted at appeal Ref APP/H5390/W/21/3271818 dated 26 August 2021.
 - The condition in dispute is No 8 which states that: The use hereby permitted shall only be open to customers between the following times: 0900–2200 Monday to Sunday inclusive including public and bank holidays.
 - The reason given for the condition is: In the interest of protecting the living conditions of the occupiers.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of vacant former print centre (Use Class E) to Adult Gaming Centre (sui generis) at 141-143 King Street, London W6 9JG in accordance with the application Ref 2022/00226/VAR dated 25 January 2022, without compliance with condition number 8 previously imposed on planning permission Ref 2020/03299/FUL, granted at appeal Ref APP/H5390/W/21/3271818 dated 26 August 2021, but subject to the conditions set out in the schedule of this decision.

Main Issue

2. The main issue is the effect that removing condition 8 would have on the living conditions of neighbours, having regard to noise and disturbance, as well as the amenity and attractiveness of Hammersmith town centre.

Reasons

3. Planning permission was granted at appeal for the change of use of a former print centre to a sui generis adult gaming centre (AGC)¹. The AGC is open and trading between the hours of 9am and 10pm. The appeal before me seeks to remove condition 8 to enable the unit to operate on a 24-hour basis.

¹ APP/H5390/W/21/3271818

4. As the proposal seeks to extend the operating hours to 24-hours it would not comply with the operating hours set out in Policy TLC5 of the Hammersmith and Fulham Local Plan (2018) (LP). Nonetheless, the policy sets out circumstances where extended opening hours may be permitted.
5. The AGC is located within Hammersmith Town Centre. Directly above the AGC is an office. There are properties within close proximity to the appeal site. For example, the first floor and above of 139 King Street, as well as the second and third floor of 141-143 King Street, and to the rear of the appeal site.
6. The Council's Environmental Protection team requested that the unit closed at 11pm each evening in the original application. The Inspector considered, based on the evidence presented, that an earlier closing time of 10pm was necessary in the interest of protecting the living conditions of nearby occupiers.
7. The Inspector also attached a condition relating to sound insulation (condition 4). A Noise Impact Assessment Report² (NIA) was submitted to address condition 4 and the 24-hour use of the AGC. The NIA concluded that a sound insulation scheme was not necessary. The Council did not disagree with the findings of the NIA and subsequently issued a decision granting the discharge of condition 4³.
8. The NIA also found that a 24-hour use of the AGC would be non-significant in terms of noise impact, and in all cases, result in No Observed Adverse Effect Level (NOAEL) at the closest receiver locations. The NIA highlights that typically, customers would be entering and leaving individually. Whilst the NIA concludes that the 24-hour use of the AGC would have no negative impact upon the closest noise sensitive receivers and would fall within the NOAEL category, it recommends a noise management plan which could be secured by a planning condition.
9. Within a short walking distance to the appeal site there are two other AGCs and a convenience store which are open for 24-hours⁴. In addition, there are numerous units (including drinking establishments, restaurants, and takeaways) with late opening hours nearby⁵. Given the location within Hammersmith town centre, surrounding uses and road traffic noise, there would be a level of noise and activity during the night along this section of King Street.
10. A noise statement of case has been provided with the appeal submission. This expands on the mapping exercise presented in the NIA to include the scenario of patrons smoking and conversing outside. The statement sets out that the noise associated with the AGC use would not be readily distinguishable when compared against the current noise profile/environment of King Street. The findings of the NIA and noise statement of case were not before the Inspector in the original application.
11. I understand that the site operator has a history of running AGCs across the country of which many have permission to operate 24-hours. In addition, I have considered their Operational Management Plan, and that the company is required to meet responsibilities and guidance outlined by the Gambling Act

² 23878.NIA.01 Rev A

³ 2022/00227/DET

⁴ Admiral Casino, Merkur Slots and Simply Fresh

⁵ See appendix 2 of the appellant's statement of case

2005 and the Social Responsibility Code provisions of the Gambling Commissions license conditions and code of practice.

12. A witness statement has also been submitted. This states that overnight observations on high streets across the country have not observed AGCs causing noise or disturbance issues in the early hours of the morning due to the age profile of the customer and the small number of clientele who use this type of premises during these hours.
13. The appellant has drawn my attention to appeal decisions which relate to AGCs located in a similar location to the appeal site and to demonstrate that in such locations residents might reasonably expect to experience some noise and disturbance during the evening and at night⁶. Whilst there are some similarities between these appeals and the proposal before me, the specific context of the appeal site (including distance to residential properties, nearby uses and noise profile of the locality) cannot be directly compared. In any event, I have determined the appeal proposal on its own merits.
14. An AGC is not a use which generates significant noise, and the Council (including the Environmental Protection team) has not provided any substantive evidence to dispute the findings of the NIA or noise statement of case. In this location and based on the evidence provided, the 24-hour use of the AGC would not expose neighbouring residents to harmful levels of noise and disturbance. Consequently, for the reasons given above (including characteristics of the area, findings of the NIA and noise statement of case), removing condition 8 would not have an unacceptable effect on the living conditions of neighbours, having regard to noise and disturbance. The appellant has demonstrated that there would be no undue detriment to the general amenities enjoyed by existing surrounding occupiers of their properties.
15. The proposal would not result in an additional AGC and therefore would not result in an increase in concentration of such uses. Having regard to the characteristics of the area (including other 24-hour premises and late-night premises), the AGC is trading and my findings above, the proposed 24-hour operation would not result in a cumulative impact or have an adverse impact on the amenity and attractiveness of Hammersmith town centre.
16. For the reasons set out above, the proposal would be in accordance with Policies CC11, CC13, TLC1, TLC5 and TLC6 of the LP. These collectively seek, amongst other things, to ensure developments would not have an adverse impact on local residents. In addition, they seek to manage the impact of entertainment uses, as well as supporting the night time economy in town centres and ensure that shopping areas remain diverse and balanced.
17. Removing condition 8 would also not conflict with Key Principle NN4 of the Council's Planning Guidance Supplementary Planning Document (2018). This states that all noise generating development will be subject to requirements to minimise noise to relevant criteria, where applicable, in order to protect residential and other noise sensitive amenity.

⁶ Including APP/V2004/W/19/3233244, APP/J2373/W/20/3258231, APP/V5570/W/21/3278006, APP/N5090/A/13/2201162 and APP/B6855/A/10/2135314

Other Matters

18. The appeal site is located within Hammersmith Town Hall Conservation Area (CA). As such, I have had regard to the statutory duty placed on decision makers in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Taking into account that the proposal does not seek any external alterations, the AGC is currently trading, and the characteristics of the area, I am satisfied that the removal of condition 8 would preserve the character and appearance of the CA.
19. An objection comment has raised other matters further to considerations addressed above. The concerns relate to impact on design and appearance, as well as increase in traffic. The removal of condition 8 would not be harmful in terms of design, appearance, and traffic. This is because the proposal does not seek any external alterations, the AGC is currently trading, it is located within a town centre and would not result in a significant increase in traffic. The Council did not refuse the application on these grounds. Consequently, there is no credible evidence before me that would lead me to an alternative conclusion to the Council on the other matters raised, or that could justify the dismissal of the appeal on these grounds.

Conditions

20. Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. In addition to considering the disputed condition, Section 73 provides the power to attach new conditions, to not attach conditions which were previously imposed or to attach modified versions of them.
21. A time limit condition is not necessary as the AGC is operating. Similarly, condition 4 is no longer required as this condition has been discharged.
22. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. Some of the original conditions require actions prior to the use coming into operation. The AGC use has already commenced and there is no suggestion that any of those matters remain unresolved. For completeness, however, all the other original conditions have been re-imposed and in the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
23. Additional conditions relating to amplified music and the Noise Impact Assessment Report are necessary in order to protect the living conditions of nearby occupants, as accepted by the appellant and Council.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed.

L Wilson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (Drawing Ref: 20.0061-03); (Existing and Proposed Floor Plan and Elevations (Drawing Ref: 20.0061-01); Existing and Proposed Site Plan (Drawing Ref: 20.0061-02); Flood Risk Assessment prepared by JMS Planning & Development.
- 2) The shop window of the premises shall contain a retail window display fronting Kings Road and Macbeth Street and retained for the lifetime of the development.
- 3) All flood prevention and mitigation measures as detailed within the Flood Risk Assessment shall be installed in accordance with the approved details prior to the occupation of the development.
- 4) Prior to the use coming into operation, details of cycle storage for four cycles shall be submitted to and approved in writing by the Council. Thereafter the cycle storage facilities shall be maintained for the lifetime of the development.
- 5) The development hereby approved shall not be brought into operation until provision has been made for the storage of commercial refuse and recycling. Details of which shall be submitted to and approved in writing by the Council. Thereafter the provision for refuse and recycling storage shall be maintained for the life of the development.
- 6) Amplified or other music shall not be played in the premises between the following hours 22.00 and 09:00 on any day.
- 7) The Adult Gaming Centre shall be operated in accordance with the noise management plan measures set out in section 5 of the Noise Impact Assessment Report (Report 23878.NIA.01 Rev A).

End of Schedule