



Appeal Decision

Site visit made on 12 October 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th November 2023

Appeal Ref: APP/C5690/W/23/3321460

40 Deptford High Street, London SE8 4AF

- 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 London Borough of Lewisham.
- The application Ref DC/23/130448 is dated 20 February 2023.
- The application sought planning permission for the change of use of vacant betting shop (sui generis) to adult gaming centre (sui generis) without complying with a condition attached to planning permission Ref DC/21/121022, dated 1 October 2021.
- The condition in dispute is No. 3 which states that: The premises shall only be operational between the hours of 09:00 and 23:00 Monday to Sunday.
- The reason given for the condition is: In order to safeguard the amenities of adjoining occupants at unsociable periods and to comply with DM Policy 14 District centres shopping frontages of the Development Management Local Plan (November 2014).

Decision

1. The appeal is allowed and planning permission is granted for the change of use of vacant betting shop (sui generis) to adult gaming centre (sui generis) at 40 Deptford High Street, London SE8 4AF in accordance with the application Ref DC/23/130448 dated 20 February 2023 without compliance with condition number 3 previously imposed on planning permission Ref DC/21/121022 dated 1 October 2021 and subject to the following condition:
 - 1) For a period of 12 months from the date of this decision, the premises shall only be operational between the hours of 09:00 to midnight Sunday to Thursday and 09:00 to 02:00 the following morning on Friday and Saturday. Following this 12-month period the premises shall thereafter only be operational between the hours of 09:00 and 23:00 Monday to Sunday.

Main Issue

2. The main issue is the effect of removing or varying the condition would have on the living conditions of occupants of surrounding residential properties in relation to noise and disturbance.

Reasons

3. The appeal property is a two-storey terrace building located on Deptford High Street. The street contains a wide range of commercial uses to the ground floor and there are residential properties above many of the units, including those close to the appeal property.

4. At the time of my afternoon site visit there was a large amount of pedestrian activity. However, owing to the single lane one-way street and other traffic restrictions, there was not a particularly high level of vehicular movements and this evidently created a quieter environment than a comparable high street with greater movements of traffic.
5. Whilst I observed several units that cater for the evening and night-time economy, and these have been referred to by the appellant, I would expect the area to be noticeably quieter during the late evening and night-time when most of the shops would be closed.
6. The appellant has submitted a Noise Assessment¹ that considers the internal noise, external noise and unpredictable noise events. The assessment includes analysis of similar establishments at other locations. The findings of the assessment are not disputed by the Council.
7. I acknowledge the findings of the assessment. Nevertheless, however well the appellant tries to control their night-time operations at the extended times sought, there could be occasions when customers at these times are careless of the need not to disturb those who live, and who are trying to sleep, nearby. The representations received from surrounding residents also raise these legitimate concerns in relation to noise and disturbance.
8. I therefore do not consider it would be appropriate to grant planning permission which entirely removes condition No. 3 as applied to the original permission. But nor do I find the evidence against any extension in the opening hours to be conclusive.
9. Planning practice guidance on the use of planning conditions outlines that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area. I consider that in this case, it would be appropriate, reasonable and necessary to limit the extended hours to a temporary period of 12 months in order that the impact on the living conditions of occupants of surrounding residential properties may be monitored.
10. I therefore find that based on the evidence before me, allowing the premises to operate at the extended hours for a temporary period of 12 months, would not cause harm to the living conditions of occupants of surrounding residential properties. It would comply with Policies DM14 and DM26 of the Lewisham Development Management Local Plan (2014) and Policies SD6 and HC6 of the London Plan (2021) in terms of avoiding harm from noise and disturbance and ensuring the vitality and viability of high streets and the night-time economy.

Other Matters

11. I note representations received in relation to gambling. This is not however a pertinent matter in this appeal. Representation also refers to the impact of the proposed development on the Conservation Area. Whilst this is also not pertinent to the main issue, like the Council, I do not consider that the extension of opening hours would harm the character or appearance of the Conservation Area.

¹ Archo Consulting PR2001-130-FINAL 14/02/2023

12. I note representation referring to an alarm going off at the premises for a prolonged period of time. I would surmise that this was an isolated incident and not related to the proposed extension of operating hours.
13. Comments have been received in relation to illuminated advertisements at the premises. These are however not before me in this appeal and are subject to separate legislation.

Conditions

14. The development has been carried out. It is therefore not necessary to impose planning conditions relating to commencement or to list the approved plans.

Conclusion

15. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR