



Appeal Decision

Site visit made on 2 January 2024

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Appeal Ref: APP/H0520/W/23/3323717

Ground Floor, 49 High Street, Huntingdon PE29 3AQ

- 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 Huntingdonshire District Council.
 - The application Ref 23/00222/S73 is dated 7 February 2023.
 - The application sought planning permission for Change of use from Retail Shop use (Class E) to an Adult Gaming Centre (Sui Generis) use without complying with a condition attached to planning permission Ref 20/02467/FUL, dated 27 August 2021.
 - The condition in dispute is No 3 which states that: The use hereby permitted shall not operate on the site before 07:00 hours or after 00:00 hours each day.
 - The reason given for the condition is: To minimise noise disturbance for adjoining residents in accordance with Policy LP14 of Huntingdonshire's Local Plan to 2036.
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Decision

1. The appeal is allowed and planning permission for a trial period is granted for Change of use from Retail Shop use (Class E) to an Adult Gaming Centre (Sui Generis) use without complying with condition No 3 previously imposed on planning permission Ref 20/02467/FUL, dated 27 August 2021, subject to the attached schedule of conditions.

Main Issue

2. From the Council's appeal statement the main issue is whether Condition No 3 is necessary to protect against noise and disturbance to nearby residents.

Reasons

3. In August 2021 planning permission for an adult gaming centre (AGC) use was granted for the ground floor of No 49, a commercial unit on the south side of the High Street, subject to conditions including one limiting the hours of opening to between 7 am and 12 midnight daily. The current application is to remove this restriction to allow opening 24 hours a day.
4. The AGC opened in February 2022 giving nearly two years' experience of its operation. Unfortunately, no estimates are provided by the appellant of likely customer numbers for the midnight – 7 am period given the number of visitors during current opening hours and experience elsewhere. The Council's primary concern is that opening during the night would lead to noise and disturbance to nearby residents but no evidence is offered of existing problems in the late

evening or at closing time which might suggest that there could be a significant issue in the small hours.

5. Cambridgeshire Constabulary have no record of any crime or anti-social behaviour incidents associated with the AGC use and raise no objections subject to three conditions to ensure adequate security. Apparently on one occasion entry was refused to a drunk member of the public but this was in line with the company's security policy.
6. A noise assessment from Archo Consulting dated January 2023 submitted with the application observes that with commercial premises on both sides and above the AGC the nearest noise sensitive receptor is a first-floor residential window on the High Street some 15 m away to the west. Based on actual internal noise readings and an inspection of the structure the report concludes that the building envelope would sufficiently attenuate any internal noise transmission to avoid adversely impacting neighbouring properties.
7. The noise environment in the High Street outside the premises at 1 am was affected by the occasional vehicle movement and pedestrian, with the most likely sources from the proposal being noise escaping from the front door when opened and customers talking outside whilst smoking. The experience of other Merkur Slots premises, not disputed by the Council, is that customers generally come singly or in pairs. The report's worst-case analysis concludes that at the nearest residential window noise levels arising from three people talking loudly outside the front door would be about 45.4 dBA, well below the figure which might breach the recommended internal noise level for a bedroom during the night.
8. The Council's environmental health officers do not dispute these findings and advise that due to the distance to the nearest noise sensitive property the proposal is unlikely to cause a significant adverse noise impact subject to good management practice. However, every location is different and the apparent experience of Merkur Slots premises in Camberwell, Hull and Boston may not be replicated in Huntingdon.
9. Whilst opposed by the Council, in the circumstances the obvious solution is for midnight to 7 am opening to be allowed for a trial period to enable an accurate assessment to be made of customer numbers and the level of noise nuisance and/or anti-social behaviour, if any, to be accurately assessed before a final decision is made. The Council argue that a trial would be hard to monitor but the appellant supports such an approach and offers examples of trial 24 hour opening elsewhere¹. Planning Practice Guidance² states that a temporary permission may be appropriate when a trial run is needed and contrary to the views of the Council monitoring of any incidents by means of complaints, noise measurements or CCTV would be possible³.
10. The appellant suggests a one-year trial period for which there is precedent but to give adequate time for the Council to fully investigate any emerging patterns of behaviour two years would be more appropriate.

¹ Such as Newcastle City Council Ref. 2021/1976/03/RVC & Medway Council Ref. MC/22/2868

² Paragraph: 014 Reference ID: 21a-014-20140306

³ For example, the 'Operational Management Plan & Security Measures' dated August 2021 requires a CCTV system during opening hours and the maintenance of an incident log which can be inspected by the Council.

Conclusion

11. For these reasons Condition No 3 may not be necessary to protect against noise and disturbance to nearby residents but a two-year trial period is needed to assess the effects in practice. This will enable a final judgement to be made as to whether midnight to 7 am opening complies with Policy LP14(c) of the Huntingdonshire Local Plan 2019 and Policies TC1 and TC2 of the Huntingdon Neighbourhood Plan 2019. These seek to ensure a high-quality public realm and that adverse noise impacts, including internal and external levels, timing, duration and character, are acceptable.
12. The effect of this decision is to create a new planning permission. In addition to defining the trial period and the approved plans in the interests of certainty a further condition is necessary to ensure compliance with the Operational Management Plan & Security Measures document dated August 2021. This document includes the provision for an annual review. Such a review should be submitted and approved within three months of the date of this decision to take account of the latest trading and behaviour patterns at the premises and the 24-hour opening trial.
13. The Council state that the three conditions suggested by Cambridgeshire Constabulary relate to licensing rather than planning matters and should not be imposed.
14. Having regard to the above the appeal should be allowed for a two-year trial period only.

David Reed

INSPECTOR

Schedule of Conditions

- 1) 24 hours a day opening shall only be permitted for a trial period expiring two years after the date of this decision after which the use hereby permitted shall not operate from the premises before 07:00 hours or after 00:00 hours each day.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Location Plan/Site Plan received 09.12.2020
Existing and Proposed Ground Floor Plans HS/HUN/04 received 09.12.2020
- 3) The use hereby permitted shall be carried out strictly in accordance with the operational and security measures specified within the 'Operational Management Plan & Security Measures' document dated August 2021 and received 27.08.2021 or its successor document. A review of the August 2021 document shall be submitted to and approved in writing by the local planning authority within three months of the date of this decision.