



Appeal Decision

Site visit made on 12 December 2023

by K Allen MEng (Hons) MArch PGCert ARB

an Inspector appointed by the Secretary of State

Decision date: 17 January 2024.

Appeal Ref: APP/J0405/W/23/3322734

55 High Street, Aylesbury, Buckinghamshire HP20 1SA

- 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 Buckinghamshire Council.
 - The application Ref 23/00228/VRC, dated 25 January 2023, was refused by notice dated 19 April 2023.
 - The application sought planning permission for the change of use from retail to amusement centre with retail facilities without complying with a condition attached to planning permission Ref 03/03135/APP, dated 30 January 2004.
 - The condition in dispute is No 4 which states that: "The Amusement Centre hereby permitted shall take place only between the hours of 09:00-22:00 on weekdays and 11:00-22:00 on Sundays."
 - The reason given for the condition is: "To safeguard residential and public amenity and to comply with the adopted Aylesbury Vale District Local Plan policies GP95 and GP97."
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use from retail to amusement centre with retail facilities at 55 High Street, Aylesbury, Buckinghamshire HP20 1SA in accordance with the terms of the application, Ref 23/00228/VRC, dated 25 January 2023 without compliance with condition No 4 previously imposed on planning permission Ref 03/03135/APP, dated 30 January 2004, but subject to the conditions set out in the attached schedule.

Preliminary Matter

2. The Government published a revised version of the National Planning Policy Framework (the Framework) on 19 December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the main issues of this case are largely unchanged. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework from the parties, and that no party would be disadvantaged by such a course of action.

Background and Main Issue

3. The amusement centre was originally granted permission at appeal in 1986¹ subject to several conditions, one of which restricted the operating hours.

¹ Appeal Reference: APP/J0405/A/85/034524

Subsequently, planning permission was granted in 2004² which varied the hours of operation by extending Sunday opening hours. The appeal before me seeks to remove condition 4, thereby allowing 24-hour operation of the premises.

4. Consequently, the main issue is the effect of the proposed operating hours on the living conditions of neighbouring occupiers, with particular regard to noise.

Reasons

5. The area is urban with a wide range of uses and opening hours, including 24-hours. The appeal property forms part of a row of commercial properties and is located towards the end of the High Street. It comprises a commercial unit on ground floor which is currently occupied by an amusement centre known as Merkur Slots with a residential unit located at first floor. There are a handful of other residential units in the surrounding area, including to the rear of the site.
6. The approved operating hours of the premises are 09:00-22:00 on weekdays and 11:00-22:00 on Sundays. The proposal would remove the restriction on operating hours allowing the premises to remain open 24 hours a day. Consequently, there would be additional noise generated from the property overnight internally and externally. The additional noise would originate from a variety of sources such as music and machinery, staff, and patrons including their comings and goings.
7. The appellant has provided detailed information regarding the existing sound insulation and noise levels at the appeal property as well as the surrounding area. It is noted that the measured baseline noise levels within the area are considered to be high and given the busy city centre location, I see no reason to disagree with this assessment. Further, supplementary information regarding other Merkur Slots locations throughout the country that are open 24 hours a day has been provided to indicate noise trends at similar premises and highlight potential issues, including when patrons may smoke outside the premises.
8. Whilst the Noise Assessment contains unverifiable data, this would be expected of a site-specific survey, where the data could not be replicated in an alternative location. The Council asserts that there have been complaints regarding noise from the property, however I have not been provided with the details of any such complaints. Overall, I am satisfied that the Noise Assessment provided has been completed by a competent authority on the subject and is in accordance with the appropriate standards and accurately reflects the existing and proposed noise environments.
9. Notwithstanding the likely increase in noise levels overnight, the Noise Assessment indicates that internal noise impacts are highly unlikely and that the separating elements between the premises and the first floor flat would attenuate noise levels sufficiently to comply with the required criteria. The Assessment also indicates that external noise from comings and goings as well as smoking would be within the required limits. I have no reason to conclude that these results are not an accurate representation of the proposal and its noise effects.

² Application Reference: 03/03135/APP

10. In addition, the Noise Assessment and the environmental health officer recommend control measures to further reduce the effects of unpredictable noise events. The recommended measures include signage, restrictions on the rear yard, windows, and doors as well as active staff management of patrons. I note that the Council considers that conditions regarding these control measures would not be enforceable. However, regardless of the time of day, appropriately worded conditions could be implemented to impose such control measures and mitigate against unpredictable noise events. Further, there is no substantive evidence that such conditions would not be enforceable. If the conditions were not complied with, enforcement action could be sought.
11. Consequently, I conclude that the proposed operating hours would not harm the living conditions of the neighbouring occupiers with particular regard to noise. The proposal would accord with Policy BE3 of the Vale of Aylesbury Local Plan 2013-2033 (September 2021) where it requires that development to not unreasonably harm any aspect of the amenity of existing or future residents and notes that conditions will be imposed to appropriately eliminate or appropriately control any potential adverse impacts.
12. Similarly, the proposal would accord with the Framework where it requires development to create places which promote health and well-being, with a high standard of amenity for existing and future users.

Conditions

13. This appeal grants a new planning permission. The Planning Practice Guidance (PPG) 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. I have considered the previously imposed conditions, as well as those suggested by the Council and the appellant's comments in response. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
14. I have amended the time limit of the permission to three years in line with PPG guidance. As I have concluded above that 24-hour opening would not detrimentally affect the living conditions of neighbouring occupiers with regard to noise, I have not reimposed a condition limiting the hours of operation.
15. I have amended the condition requiring a sound proofing scheme to be submitted. As I am satisfied that adequate sound proofing is already in situ, it is necessary to ensure that it remains in place for as long as the use continues. I have reimposed the conditions regarding the types of facilities/games provided and the max noise levels in order to ensure the living conditions of neighbouring occupiers are not detrimentally affected by the ongoing use.
16. As mentioned previously, due to the change in operation hours, it is necessary to impose further conditions regarding noise control measures including the submission of a noise management plan and restrictions on the use of the rear yard as well as all windows and doors. These conditions will work in tandem to ensure that appropriate measures are taken to reduce the effects of noise on neighbouring occupiers and ensure they have satisfactory living conditions at all hours of the day.

17. I have reimposed the condition regarding the front part of the premises to be retained for retail purposes only as I have not been provided with sufficient detail to determine if this condition remains relevant.

Conclusion

18. For the reasons given above, the proposal accords with the development plan as a whole and the Framework, and therefore the appeal is allowed and planning permission is granted subject to the terms set out in the formal decision above.

K Allen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) No games of a sessional character shall be played on the premises, and no shooting galleries, pin tables or juke boxes shall be installed.
- 3) The sound insulation identified in the Noise Assessment, Ref: PR2001_125_FINAL, dated 24 January 2023, prepared by Archo Consulting, shall be retained for as long as the use continues.
- 4) Noise attributable to activities within the Amusement Centre shall not exceed the background noise level when measured at a distance of 1m from any part of the centre. Both the background noise and Amusement Centre noise shall be measured as a 15 minute LAeq recorded at a comparable time of the day/week.
- 5) Prior to the operation of the premises beyond the hours set out in condition 4 of planning permission Ref 03/03135/APP, a noise management plan, which specifies the measures to be taken to control noise associated with entertainment, staff, and patrons, shall be submitted to and approved in writing by the local planning authority. The approved plan shall be fully implemented before such operation commences and shall thereafter be retained.
- 6) Members of the public or staff shall not be permitted to enter or remain in the rear yard of the premises between 23:00 and 07:00.
- 7) All windows and external doors on the front and rear elevations of the premises shall be kept closed between 23:00 and 07:00 hours except for the immediate access and egress of persons.
- 8) The front part of the premises as shown in Plan D (plans accompanying an application approved subsequent to that subject of this appeal for an extension to the premises) shall be retained at all times for retail purposes and for no other use. The shop window shall be used at all times for the display of goods in connection with the retail use.

***** End of Conditions *****