



Appeal Decision

Site visit made on 22 January 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23RD February 2024

Appeal Ref: APP/Z5060/W/23/3324791

Cashino, 62 East Street, Barking IG11 8EQ

- 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 the Council of the London Borough of Barking and Dagenham.
 - The application Ref 23/00258/VAR, dated 20 February 2023, was refused by notice dated 2 May 2023.
 - The application sought planning permission for the change of use to amusement centre with ancillary retail sales and catering without complying with a condition attached to planning permission Ref 18/00415/FUL, dated 6 June 2018.
 - The condition in dispute is No 1 which states that: The premises shall only be used between the hours of 09:00am to 2:00am the following day, Monday to Sunday.
 - The reason given for the condition is: In order to prevent the creation of a noise nuisance adversely affecting the residential amenity of adjacent residents and in accordance with Policy BP8 of the Borough Wide Development Policies DPD (March 2011).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use to amusement centre with ancillary retail sales and catering, at Cashino, 62 East Street, Barking IG11 8EQ, in accordance with the terms of the application, Ref 23/00258/VAR, dated 20 February 2023, without compliance with Condition No 1 previously imposed on planning permission Ref 18/00415/FUL, dated 6 June 2018, but subject to the following conditions:
 - 1) The use of the outdoor smoking area to the rear of the premises shall be prohibited other than between the hours of 07:00 and 23:00. Except in case of emergency, the rear door to the premises opening to the smoking area shall be kept closed at all times other than for the purpose of access or egress.
 - 2) The mechanical plant to the rear of the premises shall have an acoustic screen installed which covers the air conditioning units from above (20kg/m² and mineral wool to the underside of the panel). To absorb the noise levels and reflection, acoustic panels shall be installed within a framework that will be secured to the wall of the building. All works shall be carried out in accordance with the details indicated in paragraph 5.2 of the noise impact assessment dated 26 February 2018 submitted with the application Ref 18/00415/FUL.

Preliminary Matter

2. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts of the Framework most relevant to the appeal have not substantively changed from the previous iteration. Consequently, this update does not fundamentally alter the main parties' cases, and it is not necessary to seek further comments. References hereafter in the decision to the Framework are to the December 2023 version.

Background and Main Issue

3. The application made to the Council sought to vary a condition attached to a planning permission granted in 2018, which was itself granted as a variation to an original planning permission, granted on appeal in 1998¹ for the use of the premises as an adult gaming centre (AGC). Condition No 4 of the original permission limited opening hours to between 9:00am and 10:00pm from Monday to Saturday and 11:00am to 8:00pm on Sundays. Condition No 1 of the 2018 permission replaced this original condition with one allowing opening between the hours of 9:00am and 2:00am the following day. The proposal seeks to remove this condition so as to permit opening on a 24-hour basis.
4. Paragraph 56 of the Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (PPG) provides further advice in this respect, confirming that these six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.²
5. The main issue, therefore, is whether the disputed condition meets these tests, having regard to the living conditions of nearby residents and crime prevention.

Reasons

6. The appeal site is located on East Street, a commercial area with retail and other town centre uses occupying the ground floor units on both sides of the street and residential uses above. The street is pedestrianised and market trading takes place along much of its length. The town centre extends to the north-east along Station Parade, including an indoor shopping centre and Barking Station, and to the south-east along Ripple Road. The existing AGC sits within this commercial frontage and is a town centre use. A second AGC is located a short distance away and operates on a 24-hour basis.
7. The existing condition was imposed to prevent the creation of a noise nuisance adversely affecting the residential amenity of adjacent residents, in accordance with Policy BP8 of the Borough Wide Development Policies DPD (March 2011) (the BWDP). The appellant has provided a noise assessment demonstrating that the noise associated with the premises is likely to be of low impact. The Council's Environmental Protection Officer (EPO) agrees with this conclusion, pointing out that no complaints have been recorded in the time the premises have been opening until 2:00am.
8. The appellant has provided an observation report by a licensing consultant for an overnight period in June 2023. This report, to which the Council has not

¹ Appeal Ref T/APP/Z5060/A/98/290039/P9

² Paragraph: 003 Reference ID: 21a-003-20190723

responded, describes a generally quiet area with a small number of well-operated late night venues that do not cause demonstrable noise or disturbance within the area. Across the additional opening hours sought, there are other venues open nearby, including De Lounge bar on Linton Road until 04:30am on Fridays and Saturdays. There is also a 24-hour gym a short distance from the appeal site, as well as the existing 24-hour AGC around 100 metres away. Night buses and taxis also pass regularly through the area. The evidence shows a lull in activity between 5:00am and 6:00am, with activity then increasing, with market traders starting to set up and businesses starting to receive deliveries. I also noted on site that a number of businesses open from 5:30am onwards to serve people travelling to work.

9. Overall, the evidence paints an impression of a town centre with a modest level of activity continuing through the night which is not at a level that causes demonstrable disturbance to residents. Based on the observations made by the appellant's consultant, and those in the noise assessment, the level of customer activity to be expected between the additional hours of 2:00am and 9:00am would be low, at a level that staff would be able to manage. The fact that alcohol is not served on the premises further lessens the risk of customers being noisy or causing disturbance.
10. On this basis, I find that the extended opening hours would not be likely to lead to demonstrable noise or disturbance to neighbouring occupants, and therefore would accord with the requirements of Policy BP8. However, the Council has gone on to consider the implications of extended opening hours in respect of crime and public safety, and its reason for refusal cites concerns over the potential for 24-hour opening to increase the risk of crime and anti-social behaviour, which would be contrary to its aspirations for regeneration of the town centre.
11. The Council reached this conclusion despite the application being reviewed by the Metropolitan Police Design Out Crime Officer (DOCO) who raised no objection to the extended opening hours. The Council points to crime statistics within the DOCO's response showing anti-social behaviour as the most prevalent crime in the immediate postcode area. However, the response makes clear these statistics are indicative and the data covers a busy town centre area where incidents are more likely to be concentrated. Moreover, none of the data specifically identifies anti-social behaviour arising either from the use of the appeal premises or generally during the hours of 2:00am to 9:00am. Therefore, the evidence does not establish a clear causal relationship between late night opening of AGCs and anti-social behaviour in the area.
12. The Council's concerns with regeneration of the town centre appear to stray into concern over the use of the site as an AGC in principle. However, that matter and any wider concerns over the appropriateness of gambling premises within the area are not for me to consider as part of this appeal. The lawful use of the site as an AGC is long established and, on the evidence before me, opening on a 24-hour basis would have no material effect on the street scene or the wider vitality and viability of the town centre, with if anything a small economic benefit arising from longer trading hours.
13. For these reasons, I conclude that 24-hour opening of the appeal premises would not lead to any demonstrable harm to the amenity of the area through noise, disturbance, anti-social behaviour or increased risk of crime, and it

would not materially undermine the Council's ambitions for regeneration of the area. No conflict therefore arises with Policy BP8 of the BWDP, nor with the crime prevention aims of Policy D11 of the London Plan (March 2021) and Policy BC7 of the BWDP; with the aims of Policy CP3 of the Core Strategy 2021 to create a high quality built environment; or with the regeneration aims of emerging Policy SPP1 of the Draft Local Plan 2037 (Autumn 2021).

14. Consequently, Condition No 1 of planning permission Ref 18/00415/FUL is no longer necessary to make the development acceptable in planning terms, and it should therefore be removed.

Other Matters

15. The appeal site lies within the Abbey and Barking Conservation Area (the ABCA). The Council makes no argument of harm to the heritage significance of the ABCA and given that the proposal would not result in any physical alterations, or any change to the nature of the use carried on, I am satisfied that the proposal would preserve the character and appearance of the ABCA.
16. The appellant states that the premises already benefits from a 24-hour licence, though this is disputed by the Council's Senior Licensing Officer. Whilst the evidence is not clear, whether the premises currently have a licence to trade on a 24-hour basis is ultimately a separate matter to obtaining planning permission, and not decisive to my considerations. It would be for the appellant to ensure any and all other legal and regulatory requirements beyond the planning permission are met.

Conditions

17. The PPG makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged.
18. The Council seeks the re-imposition of conditions relating to the use of the outdoor smoking area and installation of acoustic panels over air-conditioning units to the rear. Both were imposed to protect the living conditions of nearby residents. I have no reason to dispute the reasons for the imposition of these conditions, and in the absence of any evidence that either condition is not still required, I shall reimpose them.
19. The Council also seeks conditions regarding upgrading of internal insulation and various security measures. However, the EPO subsequently confirmed no remedial work was required to remedy defects in noise insulation. As a result, the Council's recommended Condition No 3 is not necessary.
20. In respect of crime prevention measures, the comments of the DOCO are written in generic terms and appear targeted at new businesses, not long established premises. There is no evidence that the existing premises are in fact deficient in any of the areas mentioned by the DOCO, nor is there any substantive evidence that opening between 2:00am and 9:00am would introduce new or different security risks that would justify specific additional measures. Therefore, I am not satisfied that the Council's recommended Condition No 4 is necessary to make the development acceptable in planning terms and I shall not impose it.

Conclusion

21. I conclude that the proposed removal of Condition No 1 of planning permission Ref 18/00415/FUL is acceptable. I therefore allow the appeal and grant a new planning permission for the development without the previous condition restricting opening hours, but subject to the other conditions previously imposed which remain relevant.

K. Savage

INSPECTOR