



Appeal Decision

Site visit made on 14 May 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2024

Appeal Ref: APP/V4630/W/23/3335676

9-11, Park Street, Walsall WS1 1QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Luxury Leisure Ltd against the decision of Walsall Metropolitan Borough Council.
 - The application Ref is 23/0913.
 - The application sought planning permission for Change of use of the ground floor from an electronic bingo centre (Sui Generis) to an Adult Gaming Centre (ACG) (Sui Generis), without complying with a condition attached to planning permission Ref 22/0587, dated 9 February 2023.
 - The condition in dispute is No 3 which states that: *The development hereby permitted shall not be open to customers otherwise than between the hours of 10.00 am until 2.00am.*
 - The reason given for the condition is: *To ensure appropriate crime prevention in accordance with saved policy S4 of the Unitary Development Plan, Policy ENV3 of the Black Country Core Strategy and Policy DW2 of Designing Walsall Supplementary Planning Guidance.*
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor from an electronic bingo centre (Sui Generis) to an Adult Gaming Centre (ACG) (Sui Generis) at 9-11, Park Street, Walsall WS1 1QS in accordance with the terms of the application, Ref 23/0913, without compliance with condition No 3 previously imposed on planning permission Ref 22/0587, dated 9 February 2023, and subject to the following condition;
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Existing and Proposed Plans DWG 3439(B)01 Received 26/04/2022 and Existing and Proposed Elevations DWG 3439(B)02 Received 26/04/2022.

Preliminary Matter

2. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Background and Main Issue

3. Planning permission was granted in February 2023 for the use of the ground floor of the appeal property as an Adult Gaming Centre (AGC). The planning application now subject of this appeal seeks to remove condition 3 of the planning permission Ref: 22/0587, to allow the premises to operate 24 hours a day, 7 days a week.
4. The main issue is the effect of the proposed additional opening hours on public safety, with regard to crime and the fear of crime.

Reasons

5. The appeal property is located within Walsall town centre, a pedestrianised shopping area with a preponderance of retail and other commercial properties along Park Street and neighbouring streets within the vicinity of the site.
6. These include a number of establishments that are likely to be open for business late at night. During my site visit I observed another premises in close proximity to the appeal site that was advertising 24-hour opening. I also observed the existing AGC on Bradford Street, a short distance from the appeal site, which is operated by the appellant. I am advised that this also has 24-hour opening.
7. According to the Council, the police did not object to the original change of use to an AGC but raised concerns about an increased risk to public safety. These concerns were reportedly based on two serious incidents occurring in proximity to the site, prior to the AGC development. For this reason, condition 3 was imposed to restrict the opening hours of the premises. The police are reported by the Council to have raised similar concerns in relation to the current proposal 'due to recent crime and disorder incidents in the vicinity of the site'. However, no further detail has been provided and it remains unclear how these incidents relate to the AGC and potential extended opening hours.
8. Although the opinion of the police attracts considerable weight, evidence has not been provided that demonstrates that there would be an increase in risk to public safety from extended opening hours. The presence of staff members and patrons within the town centre during quieter times would increase surveillance, as opposed to contributing to the possibility of crime. I also acknowledge that the premises would also be the subject of other licensing controls.
9. Furthermore, no evidence has been provided to demonstrate that there would be any increase in fear of crime. Therefore, I have not seen a need to consider this matter further.
10. Accordingly, for the reasons given above, I conclude that the proposed additional opening hours would not result in unacceptable harm to public safety, with regard to crime and the fear of crime. As such, it would not conflict with saved Policy S4 of the Unitary Development Plan, Policy ENV3 of the Black Country Core Strategy, Policy AAPLE1 of the Walsall Town Centre Area Action Plan, DW2 of Designing Walsall Supplementary Planning Guidance and Paragraph 96b of the Framework. Taken together, these, amongst other things, seek to achieve places that are safe and secure so that crime and disorder do not undermine quality of life, whilst also contributing towards the creation of a strong evening and night-time economy.

Other Matters

11. The site is located within the Bridge Street Conservation Area (the CA) and is opposite Lloyd's Bank, which is a grade II listed building. As such, I have duties under Section 56(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA and special regard to the desirability of preserving the setting of the listed building. Taking into account that the proposal does not seek any external alterations, the AGC is currently trading, and the characteristics of the area as an historic, vibrant commercial core, I am satisfied that the removal of condition 3 would preserve the character and appearance of the CA and would preserve the setting of the listed building.
12. While I acknowledge that representations from interested parties have been submitted with the Council's appeal questionnaire, these appear to be duplicates from the original permission. The Council's Delegated Officer Report identifies that no objections were received to the current application, and I have therefore determined the appeal on this basis.

Conditions

13. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under s73 of the Town and Country Planning Act 1990 should repeat the relevant conditions from the original permission that continue to have effect.
14. In this case, the development has commenced, and the premises is currently operating as an AGC, as granted under planning permission Ref: 22/0587. As such, the standard commencement condition is no longer necessary. However, I have repeated the approved plans condition for the avoidance of doubt and in the interests of certainty.

Conclusion

15. For the above reasons, and having regard to all other matters raised, I conclude that the appeal is allowed, and a new planning permission is granted.

N Bromley

INSPECTOR