

Appeal Decision

Site visit made on 3 September 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th September 2024

Appeal Ref: APP/X3540/W/24/3336662

78-80 London Road North, Lowestoft, Suffolk NR32 1ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Luxury Leisure against the decision of East Suffolk Council.
 - The application Ref DC/23/3254/FUL was approved on 7 December 2023 and planning permission was granted subject to conditions.
 - The development permitted is the change of use of the ground floor from a retail unit (Class E) to an Adult Gaming Centre (Sui Generis) and staff area with external alterations and associated works.
 - The condition in dispute is No 7 which states that: The premises hereby permitted shall only be open to the public/in-operation between the hours of 06.00 (6am) to 00.00 (midnight). This applies to all 7 days of the week, including bank holidays.
 - The reason given for the condition is: in the interest of local amenity, a 24-hour operation has the potential to cause adverse impact and this condition is therefore necessary to control the use.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue is the effect that removing condition 7 would have on the living conditions of the occupiers of neighbouring properties with regards to noise and disturbance.

Reasons

3. Planning permission has been granted on the appeal site for a change of use from a retail shop to an adult gaming centre (AGC). The appeal seeks to remove condition 7 of this planning permission to change the stipulated opening hours of the premises from 06.00 to 00.00 on all days to allow 24 hour trading on all days.
4. The appellant indicates that there is no residential occupation in the appeal building, in the immediate vicinity of the appeal site or within the wider area on London Road North, which is commercial in character. However, the Council contends that Lowestoft Town Centre is characterised by a wide mix of retail, commercial and residential uses within the vicinity of the appeal site. A number of planning approvals for residential development on London Road North have been highlighted, although it is unclear as to whether these have

been implemented. Nevertheless, there are nearby residential properties on roads located off of the main commercial road, including Grove Road and Surrey Street, which are in relatively close proximity to the appeal site.

5. These neighbouring properties are a sufficient distance from the appeal site to ensure that any potential noise within the AGC, such as background music or conversation, is unlikely to be audible. However, the use would generate additional comings and goings to and from the appeal site and in the surrounding roads, where groups of customers would be likely to create additional noise. Any noise generated from these comings and goings would be particularly noticeable during the nighttime in this area when other uses are not in operation, footfall is limited and background noise is at a minimum. Therefore, unrestricted opening hours would be likely to result in additional noise and disturbance to the occupiers of neighbouring properties at a time when the area is generally quiet and residents are usually sleeping.
6. Condition 4 of the planning permission requires the submission and approval of a noise management and monitoring plan to control the noise emitted from the site. However, this has a limited impact on the noise generated through comings and goings which the appellant can do little to control outside of the appeal site. Similarly, the operation of the business within a strict corporate social responsibility policy and the responsible gaming code would do little to impact the behaviour of customers when entering or exiting the premises.
7. It is noted that a nearby AGC at 54-56 London Road North is operating 24 hours a day, contrary to a condition restricting opening hours. The appellant contends that this demonstrates that such a use can successfully operate without restrictions to opening hours without incident or complaint. However, a lack of complaints does not guarantee that such a use does not harm the living conditions of occupiers of nearby properties. As such, this does not set a precedent for the provision of unrestricted opening hours.
8. It is also noted that a nearby public house is open until 01:00. However, whilst such a use may result in more disturbance than an AGC, this closing time is vastly different to being open 24 hours. A fast food restaurant highlighted by the appellant, which is open 24 hours, is located some distance from the appeal site in a location which is well separated from neighbouring properties. Therefore, these uses are not directly comparable to the appeal before me.
9. I therefore conclude that removing condition 7 to allow for 24 hour trading would have a harmful impact on the living conditions of the occupiers of nearby neighbouring properties with regards to noise and disturbance. It would therefore conflict with Policy WLP8.29 of the Waveney Local Plan 2019 which seeks to ensure that development proposals protect the amenity of the wider environment and neighbouring users. It would also be contrary to paragraph 191 of the National Planning Policy Framework which states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on living conditions as well as the potential sensitivity of the wider area to impacts that could arise from the development.

Other Matters

10. The appellant has stated that without 24 hour trading the business in this location is no longer commercially viable and that the decision to locate on this site would need to be re-evaluated. Whilst I understand that the use is intended to serve customers who work unsociable hours, no evidence has been provided to suggest that the business would be unviable in this location with the restricted hours set out in condition 7. Therefore, this would not outweigh the harm identified.
11. It is noted that such unrestricted operational hours may have been permitted in similar town centre locations and several appeal decisions have been brought to my attention which the appellant states specifically allow 24 hour trading. However, limited details have been provided in relation to these locations and appeal decisions, such as their position in relation to residential accommodation and the surrounding environment, which could be wholly different to the appeal site before me. Therefore, these decisions do not set a precedent for unrestricted opening hours in this location.
12. Correspondence with the Council does appear to indicate that 24 hour operation would be supported and, it is noted that no specific objections have been received from the Police or the Council's Environmental Health team. However, a restrictive condition was included in the planning permission by the Council, after consultation with the relevant parties, which takes precedence over any previous communication and which is what this appeal decision is based upon.

Conclusion

13. For the reasons given above, I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR