

Appeal Decision

Site visit made on 29 August 2024

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 23 September 2024

Appeal Ref: APP/Q0505/W/24/3344052

50 Burleigh Street, Cambridge CB1 1DJ

- 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 Luxury Leisure against Cambridge City Council.
 - The application Ref 23/03317/S73, dated 25 August 2023, was refused by notice dated 22 February 2024.
 - The application sought planning permission for Change of use from retail to Adult Amusement Centre without complying with conditions attached to planning permission Ref 18/1491/S73, dated 13 February 2019.
 - The conditions in dispute are Nos 2 and 3 which state that:
 - 2. The external area to the rear of the premises shall not be used by patrons of the premises between the hours of 8pm and 11pm Monday to Sundays.
 - 3. The use hereby permitted shall only be operated from the premises during the hours of 0900 to 2300 Monday to Saturday and 1100 to 2000 on Sundays.
 - The reasons given for the conditions are:
 - 2. In the interests of residential amenity (Cambridge Local Plan 2018 policies 55, 57/58).
 - 3. To protect the amenities of the occupiers of adjacent properties (Cambridge Local Plan policy 35).
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from retail to Adult Amusement Centre without complying with conditions previously imposed on planning permission Ref 18/1491/S73, dated 13 February 2019, subject to the attached schedule of conditions.

Main Issue

2. The main issue is whether conditions 2 and 3 are necessary to protect against noise and disturbance to nearby residents.

Reasons

3. An Adult Gaming Centre (AGC) has operated at No 50 Burleigh Street for some years, the change of use from a retail unit being allowed on appeal in 2007. At that time opening hours were limited to 9 am - 8 pm Monday to Saturday and 11 am - 5 pm on Sunday. Opening 24 hours a day was refused on appeal in 2017 after which opening was extended in 2019 to 9 am - 11 pm Monday to Saturday and 11 am - 8 pm on Sunday. The current application is to extend opening hours again to 9 am - 2 am Monday to Saturday and 11 am - 2 am on Sunday. The external area to the rear would be closed as now at 8 pm with the relevant condition adjusted to reflect the new hours.

4. Burleigh Street is a busy pedestrianised shopping area with a variety of retail and other commercial premises at ground floor level on each side. At first floor level and above the buildings are occupied by office, storage and residential uses with a flat immediately above the AGC at No 50 and a further residential use to the rear. Some nearby redevelopment has also included flats on upper floors including Kite House on the corner of Adam and Eve Street just to the south and Gibson House to the north. The Council's concern is that extended opening into the early hours each morning would lead to noise and disturbance for these residents and an increase in the perceived threat of crime and anti-social behaviour.
5. However, there is no objection to the extended hours of opening from the local police who have assessed relevant information in relation to crime and disorder and advise 'there are no issues around this venue and we are supportive of the application'. There is no evidence, even anecdotal, to the contrary.
6. Turning to the impact on nearby residents, a noise impact assessment from Hepworth Acoustics dated November 2023 based on internal and external noise readings concludes that the sound insulation provided by the building envelope would reduce break out noise to the front and rear to below background noise levels. In addition, the measured sound insulation of the ceiling would be sufficient to limit noise intrusion within the first floor flat to the recommended levels in British Standard 8233:2014 such that no enhanced insulation measures are required. Finally, the impact of intermittent noise from external condensers to the rear of the building on the nearest habitable room window 8 m away would cause 'no discernible loss of amenity' to the occupiers during the extended hours of opening. The Council's environmental health officers do not dispute these findings and have no objection to the application.
7. This leaves potential noise and disturbance from noise break out when the front door is opened or when customers talk on leaving the building, or if customers talk whilst smoking just outside (smoking is prohibited within the building). The former is not addressed in the report but based on the use of similar premises elsewhere the number of visitors is likely to be less than 6 per hour, so door opening would be infrequent. Customers tend to arrive/leave singly or in pairs, making little noise, and any talking outside at about 65 dB(A) would reduce to below background levels at the nearest bedroom windows.
8. Extending opening hours to 2 am would lead to further late-night pedestrian activity in the area which is primarily used for daytime shopping with a few early evening restaurant/takeaway premises. However, the AGC lies within the Fitzroy/Burleigh Street/Grafton Area of Major Change where Policy 12 of the Cambridge Local Plan 2018 (the CLP) promotes retail and leisure uses and the related Masterplan SPD 2018 recognises the increasing importance of evening economy uses, noting that footfall increase in the post 5 pm period is evidence for 'a strong leisure offer as a footfall driver'.
9. Indeed, there are now two late night licensed premises operating not far away at the end of Burleigh Street, the Six Six Bar, a live music venue, open until 1 am Sunday – Wednesday and 2 am Thursday – Saturday, and WTs Sports Bar with pool, poker etc open until 2 am Monday – Saturday and midnight on Sunday. Any noise and disturbance in the area is more likely to arise from customers leaving these premises than the AGC, particularly as no alcohol is allowed or sold in the AGC and anyone 'under the influence' is refused entry.

With these opening hours already operating nearby the proposal would not be out of character with the nature of Burleigh Street up to 2 am and given the likely patronage of the AGC use it would not significantly contribute to noise and disturbance for residents occupying upper floors along the road.

Conclusion

10. For these reasons condition No 3 can be relaxed to allow opening until 2 am each day but is otherwise necessary to protect against noise and disturbance of nearby residents. Condition No 2 should be adjusted accordingly to preclude use of the outside area to the rear during the extended hours. The extended hours would not conflict with CLP Policies 35, 55 and 56(g) which seek to protect people from noise impacts, require development to respond to its context and not threaten community safety.
11. The effect of this decision is to create a new planning permission with amended conditions 2 and 3. There is no reason to remove or amend any other condition as these continue to be necessary for the reasons previously given.
12. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan
Reason: In the interests of good planning, for the avoidance of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.
2. The external area to the rear of the premises shall not be used by patrons of the premises between the hours of 8 pm and 2 am Monday to Sundays.
Reason: In the interests of residential amenity (Cambridge Local Plan 2018 policies 55, 57/58).
3. The use hereby permitted shall only be operated from the premises during the hours of 9 am to 2 am Monday to Saturday and 11 am to 2 am on Sundays.
Reason: To protect the amenities of the occupiers of adjacent properties. (Cambridge Local Plan policy 35).
4. The use hereby permitted shall be restricted to the playing of amusements with prizes machines, ancillary catering and ancillary retail sales.
Reason: To ensure that the use makes a positive contribution to the vitality, viability and diversity of the City Centre, in accordance with Policy 11 of the Cambridge Local Plan 2018.
5. The ground floor window of the premises shall at all times contain a retail window display.
Reason: To ensure that the use makes a positive contribution to the vitality, viability and diversity of the City Centre, in accordance with Policy 11 of the Cambridge Local Plan 2018.