

Appeal Decision

Site visit made on 26 September 2024

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2024

Appeal Ref: APP/Q1445/W/23/3335996

9 - 10 St James's Street, Brighton, BN2 1RE

- 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 Merkur Slots UK Ltd against the decision of Brighton and Hove City Council.
- The application Ref is BH2023/02171.
- The application sought planning permission for change of use of ground floor from betting shop (Sui Generis) to adult gaming centre (Sui Generis) and associated shopfront alterations without complying with conditions attached to planning permission Ref BH2021/01276, dated 3 September 2021.
- The conditions in dispute are Nos 3, 4 and 5 which state that: 3 - All activities and operations associated with the adult gaming centre shall take place only between the hours of 07:00am and 00.00 on any day, including Bank or Public Holidays. 4 - No customers shall remain on the premises outside the hours of 07.00am to 00.00 daily and no activity within the site shall take place between the hours of 00.00 and 07.00am daily. 5 - The use hereby permitted shall not be open to customers except between the hours of 07:00am and 00.00 on Mondays to Sundays, including Bank or Public Holidays.
- The reasons given for the conditions are: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan. To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan. To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. In September 2021 planning permission was granted for the change of use of the appeal property from a betting shop to an adult gaming centre with associated shopfront alterations subject to conditions. In November 2023 the

Council refused permission to remove a number of these conditions in order to facilitate 24 hour opening hours. It is these conditions which are in dispute.

3. The Council's reason for refusal was due to concerns that the increased opening hours would result in increased comings- and goings and noise and disturbance to the detriment of residential amenity. The Council also stated that the extended opening could exacerbate existing issues with crime in a high crime priority area.
4. Prior to this refusal, in July 2023, the Council's Licensing Committee permitted the variation of the premises licence by removing the default hours for bingo and removing a condition on the license which restricted the hours where machines were able to be made available.
5. As such, the main issues are whether or not conditions 3, 4 and 5 of planning permission ref BH2021/01276 are necessary with particular regard to:
 - the effect of the proposal on the living conditions of neighbouring residents with particular regard to noise and disturbance; and
 - the effect of the proposal on crime.

Reasons

6. The appeal property is a fairly large ground floor unit in use as an adult gaming centre. The business currently operates until midnight 7 days a week. The proposal would allow the appeal property to operate 24 hours daily. The property is situated on a busy high street with a variety of ground floor commercial and retail uses with residential uses above.

Living conditions

7. St James's Street is a fairly narrow single carriageway road. Close-knit residential properties line both sides of the road. Though the closest residential properties are directly above the appeal site, others are sited immediately opposite and alongside. Due to the narrow width of the road properties are close to one another.
8. The majority of commercial properties in the area are businesses which do not open late into the night. The evidence before me, suggests that the area is reasonably quiet in the early hours of the morning.
9. The appeal proposal is accompanied by a noise assessment¹ (the NIA) which includes a baseline noise level assessment that was carried out after 01.00am at the front of the appeal site. This assessment indicates that baseline noise levels within the area are generally reasonably low.
10. The assessment provided by the NIA is supported by the full observation report² submitted by the appellant which indicates that the majority of local venues close by around midnight to 01.00am (with the exception of the nearby club which the Council state closes at 03.00am on weekend days) and noise levels in the area are low.

¹ Archo Consulting Noise Assessment Reference PR2001_149_FINAL dated 27/07/2023

² Full Observation Report by Mr Nicholas Mason of Leveche Associates Limited.

11. The appeal proposal, if allowed, would introduce an active use at a time when the area has begun to exhibit a degree of quiet and local residents would be likely to be resting or sleeping. I note that the NIA sets out that internal noise from the premises would not cause an issue.
12. In addition to the noise levels which would be directly associated with patrons during their time at the premises, the comings and goings associated with the use would add further noise and disturb local residents.
13. The evidence before me indicates that other nearby restaurants and bars close between around midnight and 03.00am, in my view, it would be highly possible that those leaving these establishments may visit the appeal property at this time, potentially in larger groups as they move on to other nearby establishments which remain open. I note the appellant's view that most patrons attend the venue alone or in pairs and behave reasonably. However, the behaviour of patrons outside of the premises and the size of the groups of which they are part cannot be controlled effectively.
14. In my view, for the reasons set out above, the extended opening hours at the appeal property would be likely to give rise to additional noise and activity. Given the close proximity of properties to one another and the low baseline noise levels in the area, the additional footfall and the associated noise, such as car doors slamming or voices, would be highly noticeable by those living nearby and would be likely to cause disturbance at a time when they should expect to be able to peacefully enjoy their homes.
15. I note that the appellant would be prepared to implement an operational management plan (OMP). However, the measures set out within the OMP cannot control the behaviours of patrons in the street before they arrive or after they leave the premises over which the appellant would have no control. I am therefore unconvinced that the proposed OMP would be an effective tool for preventing unneighbourly behaviour locally during hours of the night where local residents should reasonably be able to enjoy a degree of peace.
16. I do not doubt that the appellant is responsible. Indeed, as was noted in the full observation report submitted, I recognise that the premises is operating effectively, and appears to have been doing so for a number of years. However, at present the venue operates until midnight at the latest and the successful operation of the business within these hours is not sufficient to persuade me that extending the opening hours would not cause harm to the living conditions of those living nearby.
17. The appellant states that there is another adult gaming centre nearby which operates 24 hours daily. However, the evidence before me indicates that this operation is subject to enforcement action and is not evidence that a similar operation has been deemed acceptable elsewhere in the area. I also note the appellant's statement that a 24 hour gym operates nearby. However, the operation of a gym is different to that proposed in this instance whereby larger groups of individuals are more likely to frequent the premises late into the night and early morning. In my view, attending a gym is generally a solitary activity and it would be highly unlikely that patrons of the nearby establishments would choose to frequent a gym in a larger group after an evening socialising at a bar or restaurant.

18. I note that the NIA suggests that the venue would be suitable for 24 hour operation. However, the evidence which leads to this conclusion includes studies of external noise taken at other Merkur sites with 24 hour consent. Though I recognise that there may be some similarities between the appeal site and the other Merkur operations, each case must be determined on its own merits based on the specific circumstances at each site. The size and precise locations, including the other establishments which are nearby, of the businesses would vary for example. These circumstances will rarely, if ever, be identical. Moreover, these observations, along with those contained within the full observation report, represent a small snapshot in time and must be considered in that context.
19. I also note that the Council's Environmental Protection Officer did not object to the proposal and further acknowledge that a license for the extended opening hours has been granted. However, the licensing regime is separate from the planning process and whilst I have considered these alternative perspectives it is a matter of planning judgement as to whether or not the proposal would cause harm and I am not satisfied on the basis of the evidence before me that the proposal would not be detrimental to the living conditions of nearby residents.
20. The appellant has suggested that a temporary planning permission could be granted. Though this would indeed give an opportunity for the effects of the proposal to be identified it would nevertheless cause harm to the living conditions of local residents albeit temporarily. This would not, in my view, overcome the harm I have identified.
21. For the reasons set out above I consider that the proposed removal of conditions 3, 4 and 5 of application BH2021/01276 to permit 24 hour opening hours would cause harm to the living conditions of neighbouring residents with particular regard to noise and could exacerbate existing issues with crime in a high crime priority area. Consequently, the proposal would conflict with Policy DM20 of the Brighton and Hove City Council Development Plan: City Plan Part One, March 2016 which states that planning permission for development including change of use will be granted where it would not cause unacceptable loss of amenity to the proposed, existing, adjacent or nearby users, residents, occupiers or where it is not liable to be detrimental to human health.

Crime

22. The evidence before me indicates that the area has been identified as one of seven high crime spots for serious violent crime and the area also has high numbers of reported crimes in relation to theft and anti-social behaviour. As such, Sussex Police have objected to the proposal.
23. However, much of the evidence provided is anecdotal with little detail. The evidence before me indicates that alcohol would not be served at the premises and, as such, related issues of anti-social behaviour would not occur in direct relation to the increased opening hours of the gaming centre. The gaming centre is already in operation and the proposal would simply extend the opening hours. There is no evidence before me which satisfies me that crime in the area is greater after midnight or that crime in the area is related to the

gaming centre and would be increased by an increase in the hours of operation.

24. On the basis of the information I have read I can find no compelling reason to conclude that the proposal would have a detrimental impact on crime within the area. In this regard, the proposal would not, therefore, conflict with the aims of the National Planning Policy Framework which sets out that planning policies and decisions should aim to achieve safe places, so that crime and disorder, and the fear of crime, do not undermine the quality of life.

Conclusion

25. For the reasons set out above, and having regard to all other matters raised, I dismiss the appeal.

L J O'Brien

INSPECTOR