



Appeal Decision

Site visit made on 30 September 2024

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2024

Appeal Ref: APP/U5360/W/24/3339475

165 Stoke Newington High Street, Hackney, London N16 0NY

- 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 against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/1886.
 - The application sought planning permission for the change of use of the ground floor and basement from betting shop (sui generis) to adult gaming centre (sui generis) and shopfront alterations without complying with a condition attached to planning permission Ref 2020/4007, dated 18 February 2021.
 - The condition in dispute is No 4 which states that:
The use hereby permitted may only operate between the following hours: Monday - Thursday: 0800 -2400 hours, Friday - Saturday: 0800 - 0100 hours and Sunday and Bank/Public Holidays: 0800 -2400 hours.
 - The reason given for the condition is:
In the interests of protecting the amenity of neighbouring properties and the character of the street scene.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor and basement from betting shop (sui generis) to adult gaming centre (sui generis) and shopfront alterations at 165 Stoke Newington High Street, Hackney, London N16 0NY in accordance with the application Ref 2023/1886, without compliance with condition number 4 previously imposed on planning permission Ref 2020/4007 dated 18 February 2021 and subject to the following conditions:
 1. The development hereby permitted shall be carried out in accordance with the plans submitted with planning permission Ref: 2020/4007.
 2. The sound insulation, as implemented in accordance with the details approved in application Ref: 2021/1009, shall be retained permanently in accordance with the approved details.
 3. Improvements to the building fabric, recommended by the noise report prepared by Hepworth Acoustics approved under condition 2 of planning permission Ref: 2020/4007, shall be implemented prior to the occupation of the unit.

Background and Main Issue

2. Planning permission was granted for the use of the appeal property as an adult gaming centre¹ (the original permission) subject to a number of conditions. The opening hours of the use were controlled via condition 4, the details of which are noted above. The appellant seeks to remove the condition concerning opening hours so as to allow the premises to operate 24 hours a day, 7 days a week.
3. Accordingly, the main issue is the effect of extending the opening hours of the premises on the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance.

Reasons

4. This appeal concerns an adult gaming centre (AGC) located on the ground floor and basement of a four-storey building on Stoke Newington High Street. Commercial uses at ground floor level line both sides of this stretch of the high street. The upper floors of the appeal building and those surrounding it appear to be in residential use.
5. The AGC is currently open between 0800 and 2400 on Mondays to Thursdays, Sundays and bank/public holidays, and between 0800 and 0100 on Fridays and Saturdays.
6. There are a range of other late night uses and premises open 24/7 in the surrounding area, and this stretch of Stoke Newington High Street appears to be a busy thoroughfare. As such, it is likely that residents in the locality currently experience a degree of noise and disturbance throughout the day and night.
7. The evidence before me suggests that limited additional customers would visit the AGC during the extended opening hours. The low levels of comings and goings throughout the extended opening hours would not therefore result in a discernible change to levels of activity currently experienced by local residents in and around the appeal site.
8. Furthermore, whilst there are other late night uses nearby there is not a significant concentration of such whereby a negative cumulative impact would arise. Moreover, there is no conclusive evidence before me which directly attributes high levels of antisocial behaviour, which may in turn lead to noise and disturbance, to the AGC at the appeal site.
9. I also note that details of sound insulation between the application site and adjoining residential properties have been agreed by the Council. The operators of the AGC also employ security measures on site in order to mitigate and manage any incidents of anti-social behaviour and the AGC would also be subject to other licensing controls. These measures would further mitigate against levels of noise during unrestricted opening hours which may give rise to excessive and harmful noise and disturbance.
10. Taking all the above into consideration, the proposed extended opening hours would not result in harm to the living conditions of neighbouring residential occupiers. As such, the proposal accords with policies D13 and D14 of The

¹ Council Ref 2020/4007

London Plan: The Spatial Development Strategy for Greater London (March 2021) and policies LP2 and LP58 of the Hackney Local Plan 2033, Strategic Planning (July 2020) which seek to ensure proposals minimise, manage and mitigate noise and nuisance so as to avoid significant adverse noise impacts to neighbouring occupiers. Therefore, the condition restricting opening hours is not necessary. I shall remove it as requested and grant a new planning permission.

Other Matter

11. As the site is located within the Stoke Newington Conservation Area (the CA) I have a duty under Section 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. Taking into account that the proposal does not seek any external alterations, the AGC is currently operating, and the commercial characteristics of the area, I am satisfied that the removal of the opening hours condition would preserve the character and appearance of the CA.

Conditions

12. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. In this case, the development has commenced and the premises is currently operating as an AGC as granted under the original permission. As such, the time limit condition is no longer necessary. I have attached the approved plans condition, with amended wording, for the avoidance of doubt and in the interests of certainty.
13. The evidence before me indicates that condition 3 of the original permission has been discharged thus there is no need for me to restate it in its entirety. It is however important to reimpose the retention element of the condition to avoid the possibility that the details as approved and carried out are not subsequently changed.
14. I do not have any information before me regarding the improvements to the building fabric as required by condition 5 thus I shall re-attach this condition. If this condition has been complied with, this is a matter which can be addressed by the parties.

Conclusion

15. I conclude that the appeal should be allowed.

H Ellison
INSPECTOR