



Appeal Decision

Site visit made on 22 October 2024

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Appeal Ref: APP/L5240/W/24/3344053

91 High Street, Thornton Heath, Croydon CR7 8RY

- 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 Croydon.
 - The application Ref is 23/03216/CONR.
 - The application sought planning permission for change of use of the ground floor to adult gaming centre (Sui Generis) and external alterations and associated works without complying with a condition attached to planning permission Ref 18/06057/FUL (allowed at appeal Ref APP/L5240/W/19/3232831), dated 13 January 2020.
 - The condition in dispute is No. 5 which states that:
The operating hours of the use hereby permitted shall be limited to 07:00 to 00:00 hours Monday to Saturday and 07:00 to 23:00 hours on Sundays and Bank Holidays.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the ground floor to adult gaming centre (Sui Generis) and external alterations and associated works at 91 High Street, Thornton Heath, Croydon CR7 8RY in accordance with the application Ref 23/03216/CONR, without compliance with condition number 5 previously imposed on planning permission Ref 18/06057/FUL (allowed at appeal Ref APP/L5240/W/19/3232831), dated 13 January 2020 and subject to the conditions in the attached schedule.

Background and Main Issue

2. Planning permission was granted on appeal¹ for the use of the premises as an adult gaming centre in January 2020 with the permitted use commencing in October of that year. The permitted hours of use were 07:00 to 00:00 hours Monday to Saturday and 07:00 to 23:00 hours on Sundays and Bank Holidays.
3. The hours of use proposed are 07:00 to 02:00 on every day of the week including Bank Holidays. The previous decision did not explicitly refer to the reasons for this condition, however, reading the decision in its entirety it indicates that the reason for its imposition was in the interests of the living conditions of neighbouring residents.
4. The Planning Practice Guidance (PPG) makes it clear that a decision maker shall only consider the question of the conditions subject to which planning permission should be granted. It is not a complete re-consideration of the original application for the use of the premises as an adult gaming centre. In

¹ APP/L5240/W/19/3232831

this regard, this decision is confined to the effects of an additional 2 hours of operation Mondays to Saturdays and 3 hours of operation on Sundays and Bank Holidays.

5. As such, the main issue is the effect of the proposed increase in hours of operation on the living conditions of nearby residents.

Reasons

6. The appeal premises comprises a unit which is set amongst a parade of shops along High Street. It forms part of a designated Secondary Frontage within the Thornton Heath District Centre. This is a busy and vibrant area with a multitude of commercial uses at street level and, commonly, residential uses at first floor level and above.
7. I have not been provided with detailed evidence about the trading hours of all premises in the locality. However, it is reasonable to conclude that this may vary based upon the diversity of uses which exist. There are many restaurants and take away establishments which will, at least in some instances, trade until late evening or into the night. The appellant has noted a number of establishments that trade until as late as 03:30 on weekends however this example appears to be an outlier and, in any case, is 250 metres from the site. Only two further examples of uses occurring after midnight were given.
8. I have not been provided with specific evidence about the number of people that are expected to visit this site between 23:00 and 02:00. However, I have had regard to the typical averages for other similar premises that are operated by the appellant in a range of locations within the hours of 20:00 to 01:00 and later. Whilst these figures do, understandably, vary; they rarely exceed 12 customers per hour and, typically, are in-and-around half this number. I have also had regard to evidence that indicates that most customers will arrive and leave alone, and that alcohol is not served or permitted on the premises. Mitigation is already in place internally to avoid noise exposure to the exterior of the premises. It is therefore reasonable to conclude that the use is relatively low-key for a late-night town centre use.
9. Balanced against this, I do recognise the Council's concerns regarding extending hours of use into the early morning. This is where noise and disturbance may be appreciated most significantly by nearby residents. Further, there are residents living in close proximity to the site. However, no evidence of complaints being made about the site have been presented to me and the proposal has only attracted one objection from a neighbour. This objection appears to relate to general late-night noise in the vicinity in relation to drinking and anti-social behaviour. I have no evidence to suggest that such behaviour is attributable to this site.
10. Weighing these matters altogether, I am unable to conclude that the proposed extended hours could demonstrably cause additional noise and disturbance as there is no evidence to support this. Even so, and being mindful of the previous Inspectors conclusions, I recognise the potential for this to occur.
11. The appellant has indicated that they would be satisfied with a temporary permission for a period of 18 months. The appellant was willing to accept a trial period at the determination phase, and remains willing to do so at this appeal, notwithstanding that a permanent consent is sought. The PPG notes that a

temporary permission may be appropriate where a trial run is needed in order to assess the effect of the development on the area. This would allow the Council to reconsider the proposal in light of circumstances gained in the intervening period at the end of the temporary permission. As such, were issues to be highlighted, it remains within the gift of the planning authority to decline a further permission for late night operation.

12. Accordingly, I find that the development complies with policy DM10 of the Croydon Local Plan 2018 and policies D13 and D14 of the London Plan insofar as these policies aim to reduce, manage and mitigate noise to improve health and quality of life. This is subject to a condition for a limited trial period.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

Conditions

14. I have considered the Council's recommended conditions with modifications and additions as detailed below. I have not imposed a condition to accord with the approved plans as, for this decision, made under S73 of the Town and Country Planning Act 1990 (as amended) (the Act), this is not necessary.
15. Condition 1 is a time limit condition in order to accord with the provisions of the Act and is imposed here to ensure that any implementation of the extended hours of use occurs in reasonable time.
16. Conditions 2 and 3 secure adherence to the details that were approved by the Council pursuant to those imposed on planning permission 18/06057/FUL. Whilst I have not been provided with these details, I have seen evidence from both parties that they were submitted and approved by the Council and there is no suggestion that the terms of them have not been met.
17. I have removed the disputed condition and replaced it with one that permits longer opening hours for an 18-month period, with the opening hours returning to those of the original permission thereafter. This condition requires due notice to be given to the local planning authority of the commencement of the longer operating hours such that there is no ambiguity on this matter in due course.
18. Finally, I have imposed the Council's recommended condition relating to the provision of a noise management plan to which the appellant has agreed in their final comments. I have removed reference to the condition being in perpetuity and replaced this with 'for the duration of the use' in the interests of clarity.

Nick Bowden

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be begun within three years of the date of the permission.
2. The noise mitigation measures approved under application 20/02791/DISC shall be retained for the duration of the use.
3. Any external illumination of the premises shall only be in accordance with the approved details under application 20/02791/DISC.
4. The operating hours of the use hereby permitted shall be limited to 07:00 to 02:00 hours Monday to Sundays including Bank Holidays for a period of 18 months from the date of the commencement. The applicant shall provide the local planning authority with written notification of that date of commencement at least working 10 days in advance of that said commencement. At the cessation of that 18-month period the operating hours shall be limited to 07:00 to 00:00 hours Monday to Saturday and 07:00 to 23:00 hours on Sundays and Bank Holidays.
5. Prior to the commencement of the hours of use of the premises hereby permitted, details of a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan approved shall be retained for the duration of the use.

End of schedule