



Appeal Decision

Site visit made on 15 October 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2025

Appeal Ref: APP/N5660/W/24/3346218

371 Brixton Road, Lambeth, London SW9 7DE

- 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 Family Leisure Holdings Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref is 23/02932/VOC.
 - The application sought planning permission change of use of ground floor and basement including the basement at no 369 from a pay day loans establishment (sui generis) to an amusement centre (Adult Gaming Centre) (sui generis) without complying with a condition attached to planning permission Ref 20/02155/FUL, dated 4 December 2020.
 - The condition in dispute is No 3 which states that: The use of the premises hereby permitted shall not be open to members of the public than other than between the hours of 08:00 and 22:00 on Mondays to Sundays (including Bank Holidays).
 - The reason given for the condition is: To ensure that no nuisance or disturbance is caused to the detriment of the amenities of adjoining occupiers or users of the area generally (policies Q2 and T6 of the London Borough of Lambeth Local Plan (2015)).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor and basement including the basement at no 369 from a pay day loans establishment (sui generis) to an amusement centre (Adult Gaming Centre) (sui generis) at 371 Brixton Road, Lambeth, London SW9 7DE in accordance with the application Ref 23/02932/VOC, without compliance with condition number 3 previously imposed on planning permission Ref 20/02155/FUL dated 4 December 2020 subject to the conditions in the attached schedule.

Background and Main Issue

2. The appeal seeks to remove condition 3 to enable the premises to trade 24 hours a day, 7 days a week. The main issue is the effect that removing the condition would have on the quality of life and community cohesion of nearby occupiers with regard to crime and disorder, particularly the fear thereof and safety in relation to it, and the character of uses in the area.

Reasons

3. The appeal site is situated within a busy part of the Brixton town centre and is occupied by a four-storey building. The ground and basement levels are

already in use as an Adult Gaming Centre (AGC) and there are residential units situated above it.

4. The use of part of the building as an adult gaming centre is controlled by a premises license granted on 15 September 2021 under the Gambling Act 2005. This enables the centre to stay open for 24 hours, throughout the week, subject to a considerable number of conditions. While the licensing regulatory framework is separate from that for planning, and there are often different considerations, in this instance crime prevention, noise and the safe operation of the premises were all relevant considerations to the granting of the license.
5. I acknowledge the concerns raised by the Council and consultees with regard to the potential effect of the extended hours on local crime, public safety, and to women in particular. The effects of gambling on the local community would have been considered when the licence was granted for the use as an adult gaming centre and I have no evidence before me that there have been any changes in circumstances since the granting of the licence or of issues with the operation of the premises. I also note that the premises would not be licenced for the selling of alcohol.
6. I have had regard to the Statement of Principles for Gambling 2022-2025, the government's Violence Against Women and Girls Strategy and Lambeth Made Safer Violence Against Women and Girls Strategy 2021-2027 and acknowledge that there could be potential for conflict between late night gambling establishments and vulnerable members of the public including women and girls in Brixton town centre. However, the documents do not highlight that there have been any significant changes since the licence for the premises was issued in 2021.
7. In addition, the council state that the appeal site is within an area of identified problem gambling and that the additional hours could exacerbate this problem. There is a dispute between the main parties as to whether there are no other gambling establishments open for 24 hours, but there are other premises such as shops and off-licences which are open for these hours. The evidence from the appellant for the AGC in Kilburn High Road, indicates that the usage of them is limited during unsociable hours, and even if there was an increase due to people being attracted to the premises during these hours, patronage is likely to remain low. There is no compelling evidence before me that would lead me to conclude that the patronage of the AGC would be amplified by allowing the change of operating hours or that this would be harmful.
8. Accordingly, I conclude that the removal of the condition and the subsequent operating hours would not harm the quality of life and community cohesion of nearby occupiers with regard to crime and disorder, particularly the fear thereof and safety in relation to it, and the character of uses in the area. It would comply with Policies Q3 and ED8 of the Lambeth Local Plan (2021) which together amongst other matters seek to ensure that evening uses are located in town centres and do not cause unacceptable harm to community safety.

Other Matters

9. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving or enhancing the character or appearance of the Brixton Conservation Area (CA). The Council state that significance of the CA derives in part from the

commercial development, public buildings, covered and open markets and elevated railway lines. From what I have seen on my site visit I have no reason to disagree. On this basis the nature of the use being in a commercial and busy area would preserve the character of the CA subject to noise and management controls in the additional conditions. Additionally, the property is already in use as an adult gaming centre and there are no proposed external alterations. I am satisfied that the proposal would preserve the character and appearance of the CA.

Conditions

10. This appeal grants a new planning permission. The Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I have considered the previously imposed conditions, as well as those suggested by the Council and the appellant's comments in response. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
11. In this case, the development has commenced, and the premises is currently operating as an adult gaming centre. As such, the standard commencement condition is no longer necessary. However, I have repeated the approved plans condition for the avoidance of doubt and in the interests of certainty. The appellant has confirmed that the cycle parking and cycle track have been constructed. I have therefore amended the condition to require that their use is retained and removed the tailpiece to the condition as it would circumvent the statutory route to vary conditions and could deprive interested parties of the opportunity to comment. In addition, the required sound insulation is also in place such that the pre commencement condition is no longer necessary.
12. I have included conditions in relation to noise and security measures to protect the living conditions of nearby occupiers and for the safety of the community.

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.

H Senior

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos: Site Location Plan; Existing Ground Floor Ceiling Plan; Ground and Lower Ground Floor Plan; Covering Letter (dated 1 June 2020); Heritage Statement; 20002/001; 20002/002; 20004/003; Planning and Design & Access Statement.
- 2) An active shopfront through which activity can be seen from the street must be provided and shall be permanently retained and maintained through the life of this planning consent.
- 3) The 2 cycle spaces within the basement and the cycle access track between the ground and basement floors, having been implemented in full, shall be retained solely for their designated use.
- 4) Noise from any source of amplified sound, speech or music in connection with the use hereby approved shall not exceed the background noise level L90B (A) 15 minutes, when measured from outside the premises at the nearest residential unit.
- 5) The development hereby permitted shall at all times be operated in compliance with the recommendations and management procedures set out in the Noise Report prepared by Hepworth Acoustics, dated August 2023, Report No: P23-265-R01.
- 6) The development hereby permitted shall incorporate security measures to minimise the risk of crime and to meet the specific security needs of the development in accordance with the principles and objectives of Secured by Design.

End of Schedule