



Appeal Decision

Site visit made on 2 April 2025

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Appeal Ref: APP/W2465/W/24/3356975 35-37 Narborough Road, Leicester LE3 0LE

- 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 Shipley Estates Limited against the decision of Leicester City Council.
- The application Ref is 20240961.
- The application sought planning permission for change of use of ground floor from shop (Class E) to adult gaming centre (Sui Generis) without complying with a condition attached to planning permission Ref 20222478, dated 3 April 2023.
- The condition in dispute is No 3 which states that: Notwithstanding the hours of use applied for, the use hereby approved shall not be open to customers outside of the following times: Sundays to Thursdays: 08:00 of that day to 00:00 of the following day; and Fridays & Saturdays: 08:00 of that day to 02:00 of the following day.
- The reason given for the condition is: To safeguard the amenity of the neighbouring occupiers and of the wider environment, in accordance with Policy CS03 of the Leicester Core Strategy (2014) and saved Policies PS10 and PS11 of the City of Leicester Local Plan (2006).

Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor from shop (Class E) to adult gaming centre (Sui Generis) at 35-37 Narborough Road, Leicester LE3 0LE in accordance with the terms of the application, Ref 20240961, subject to the conditions in the attached schedule.

Preliminary Matter

2. While the application form refers to only 35 Narborough Road, as set out in the evidence and in reference to the previous planning permission to change the use of the premises, the appeal relates to 35-37 Narborough Road.

Background and Main Issue

3. Planning permission has been granted, subject to conditions, for an adult gaming centre, which is now trading at the appeal premises. The condition subject of this appeal limits the hours of operation of the gaming centre. The appellant wishes to remove the condition, so the gaming centre use can operate for 24 hours daily.
4. The main issue in this appeal is the effect of removing the hours of use restriction would have on the living conditions of occupiers of nearby residential properties, in particular regard to noise and disturbance.

Reasons

5. The appeal site is located within a district centre along a busy main road, within a row of commercial premises, with a library opposite and bars, restaurants, and takeaways further along the road. There are residential properties above some of the commercial premises, including above the appeal site. Additionally, to the rear of the site, beyond an alleyway, there are terraced residential properties.
6. From my daytime site observations, Narborough Road is a busy road, with a high level of traffic and pedestrian movement. This creates a generally high ambient noise level within the local area. Also, evidence provided by the main parties¹, sets out that there are relatively high ambient noise levels in the area in the evenings and early hours. Additionally, the Council's Pollution Control officer noted that at the time of their early hours monitoring, noise impact from the appeal premises was low.
7. The evidence provided sets out that a low number of customers generally visit other similar gaming centres operated by the appellant during the early hours. Therefore, it is unlikely that the movement of customers to and from the appeal premises would be significant during the early hours. This low level of comings and goings from the appeal site would not likely be discernible above the ambient noise levels already experienced in the local area. Additionally, any vehicle movement associated with visiting customers to the appeal premises would not be significant and so, would unlikely lead to noise and disturbance particularly appreciable from the movement and noise of traffic along the busy main road.
8. The residential flats above the appeal premises are currently vacant and may have been for some time. However, the residential units above are owned by the appellant, and noise monitoring undertaken within the flats when the gaming premises were open, did not detect any noise from the appeal premises. Therefore, with the required acoustic measures implemented and appropriate owner/management measures in place, the proposal would not likely cause undue noise and disturbance to any future occupiers of the residential units above.
9. No substantive evidence has been provided of complaints about the operation of the existing premises or that the Local Area Risk Assessment and Operational and Security Plan for the business have not been complied with. Also, while the appeal site is within a district centre rather than within the central commercial zone, no evidence has been provided that there have been noise and disturbance complaints raised in regard to other gaming centres operated by the appellant in Leicester either. Therefore, while some concerns have been raised about the proposal, I have not been provided with any compelling evidence to justify that the proposed daily 24 hour use of the gaming centre would be harmful to the living conditions of nearby residents.
10. While there may have been instances of people gathering in the alleyway at the rear of the appeal premises, there are several commercial and residential properties which boarder the alleyway that such people could have been related to. Furthermore, the customer entrance to the gaming centre is from the main road at the front and, the appeal site is more centrally located along the stretch of commercial premises, with no immediate access to the rear alleyway close to the

¹ Including the Big Sky Acoustics report and the one evening monitoring undertaken by the Council's Pollution Control officer.

appeal site. Therefore, it is unlikely that the proposal would directly lead to people gathering in the rear alleyway.

11. Having regard to the above, the proposal to remove the hours of use restriction would not have a harmful effect on the living conditions of occupiers of nearby residential properties, in particular regard to noise and disturbance. Therefore, there would be no conflict with saved policies PS10 and PS11 of the City of Leicester Local Plan (January 2006) or Policy CS03 of the Leicester Core Strategy (2014), which amongst other matters, require consideration of the amenity of existing and proposed residents and good quality design.

Other Matters

12. Even though lights from the premises are visible from nearby residential properties all night, changing the hours of operation of the business, would not subsequently guarantee that lights are turned off when the premises are not in use. Therefore, light disturbance to occupiers of nearby properties is unlikely to change as a result of the proposal.
13. Although nearby residents currently experience disturbance associated with air conditioning units at other adjacent premises, this is not demonstrated to be directly related to the appeal property and so, would not justify refusal of the proposal.

Conditions

14. The guidance in 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. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. This is subject to slight amendments to the wording of the conditions, so the requirements are in place for the lifetime of the development and to appropriately define the approved plans. In the event that some have already been discharged, this would be a matter that can be addressed by the parties. However, as the original development has commenced and the premises are currently in use, it is not necessary to impose a time limit condition.

Conclusion

15. For the reasons given above, the appeal would accord with the development plan read as a whole and there are no material considerations that indicate otherwise.
16. Accordingly, the appeal is allowed.

C Billings

INSPECTOR

See overleaf for Schedule of Conditions

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following plans: Location Plan, Reference Number TQRQM22318101416565 and Proposed Ground Floor Plan Dwg No. 617/11 Rev A.
2. The use hereby approved shall not commence until sound insulation has been fitted in accordance with the details proposed at section 7.1 of the Blue Acoustics NS443/9 report (dated 27/01/2023) included in the Planning Statement submitted with planning application ref 20222478. The sound insulation so fitted shall thereafter be retained for the lifetime of the development.
3. The use hereby approved shall be carried out and maintained in accordance with the provisions of the Operational and Security Plan (dated March 2023) as submitted with planning application ref 20222478.

End of Schedule