



## Appeal Decision

Site visit made on 16 January 2024

**by N Teasdale BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6<sup>th</sup> February 2024**

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**Appeal Ref: APP/H0738/W/23/3332172**

**Ground Floor, 106 High Street, Stockton-On-Tees TS18 1BB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 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 Ltd (UK) against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 23/1308/VARY, dated 12 July 2023, was refused by notice dated 11 October 2023.
  - The application sought planning permission for Section 73 application to vary condition no5 (opening hours) of planning approval 05/0126/COU - Change of use from retail (A1) to amusement arcade on ground floor and cafe on first floor without complying with a condition attached to planning permission Ref 21/2670/VARY, dated 21 December 2021.
  - The condition in dispute is No. 3 which states that: The premises to which this permission relates shall not be open for business outside the hours of 0900 to 1200am Monday to Sunday.
  - The reason given for the condition is: to ensure that adjoining residential properties are not adversely affected by the development.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The decision notice does not cite any development plan policies. I have therefore had regard to those listed in the officer report and the provisions of the National Planning Policy Framework (The Framework) on this matter.

### Background

3. Planning permission was granted for a Section 73 application to vary condition no5 (opening hours) of planning approval 05/0126/COU - Change of use from retail (A1) to amusement arcade on ground floor and cafe on first floor. A condition controlling the opening hours of the premises was imposed in the interests of residential amenity. Condition 3 therefore states, the premises to which this permission relates shall not be open for business outside the hours of 0900 to 1200am Monday to Sunday. The proposed development seeks to vary this condition to amend the opening hours to allow opening from 09:00 to 06:00 hours.

## **Main Issue**

4. The main issue is the effect that varying the condition would have on the living conditions of occupiers of nearby properties in relation to noise and disturbance and the impact upon the character of the surrounding area.

## **Reasons**

5. The appeal site relates to an existing commercial unit on Stockton High Street, situated in a prominent location on the corner of the High Street and Ramsgate.
6. The location is a busy commercial area with a range of uses including shops, services and public houses located nearby and there is a public car park located directly to the east of the site. Although the area is a busy commercial area, it is undisputed that there are residential properties situated above the premises and in other adjacent buildings.
7. The functioning of an amusement arcade is one where the level of noise and disturbance would be difficult to control, including the comings and goings of customers and staff both on foot and by vehicle, people conversing both inside and outside, disturbances associated with car doors opening and closing, noise from engines and car music etc when being picked up/dropped off or general traffic movements to and from the venue. I appreciate the low levels of internal noise including noise from machines, mitigation measures including sound insulation, the control of noise breakout from patrons with appropriate staffing/signage, control of background music inside the premises, no tannoy systems as well as the main entrance doors not being fixed or propped open. I also note the appellants' evidence regarding the implementation of an Operational Management Plan which is suggested to be conditioned. However, even taking such matters into account, the external noise associated with the overall functioning and use of the premises would likely be audible given the close proximity of the residential uses that are located nearby particularly in the summer months when residents may choose to open their windows. The later opening hours would result in comings and goings throughout the night and early morning and at times when ambient noise levels are low enough to enable sleep.
8. I accept that given the location of the appeal site, a certain level of noise and evening activity can be expected by nearby residents and that such uses are not uncommon in this location. However, background noise throughout the night and early morning would be lower due to there being less traffic and less people around. The sudden and intermittent types of noise associated with the use would be unreasonable and excessive in the early hours of the morning in such a setting where residents would expect it to be much quieter.
9. In reaching these conclusions, I have had regard to the opening times of other commercial uses nearby and I am aware from the evidence before me and my own observations on site that many nearby uses do not appear to operate beyond 1am. It appears undisputed that Admiral Casino located further north is open 24 hours a day and some public houses to the south also benefit from a later closing time on Fridays and Saturdays. The 24-hour opening of Admiral Casino has not been granted permission by the Council and in any event would not justify further development which would result in amenity issues.

10. I recognise that the number of customers reduces during nighttime hours, and thus there would be a reduction in customers/trips including vehicle movements. Although such users may be local entertainment workforce and late shift workers etc usually travelling on their own or in couples and are quiet, this is in relation to the current opening times and an extension of the opening hours would likely attract a different customer base. It cannot be assumed that customers would visit on their own or in couples or that other customers including groups would not visit the premises particularly when public houses and restaurants that are located closest to the site have closed and the availability of other sources of entertainment is limited. It also cannot be assumed that customers would not gather around outside of the premises before or after entering or leave quickly and quietly. Given the convenient location of the public car park to the direct east, it is likely that customers would be picked up/dropped off around this point or park here when visiting the premises in the early hours of the morning which would be within very close proximity to nearby residential properties and their windows. All of which would cause disturbance and would be difficult to manage or control. The premises does not sell or serve alcohol and Cleveland Police did not have any comment to make. Nevertheless, the extended opening times would still result in comings and goings at an unsociable time which when considering the cumulative impact alongside the nearby Admiral Casino which is open 24 hours a day, it would result in an adverse impact in terms of both noise and overall character of the area.
11. The property may benefit from an unrestricted 24-hour license, with licensing having never been revoked or reviewed although such applications are determined under different legislation to that of planning. The appellant claims that no objections have been raised on grounds of nuisance in response to consultations with local residents or statutory consultees on the planning application or complaints regarding noise from the premises. However, despite the lack of objection/complaints in regard to this specific application or in general, the absence of any complaints/objections does not mean that there would be no harm caused. I must determine the appeal based on its merits including the evidence before me and I have identified the harm that would arise. Further, I am also mindful that at present the premises is only open until midnight when some noise within this town centre location is to be expected and a lack of complaint in this respect would not be determinative as an extension of the opening hours until 6am would be much different to that of the existing operations as the background noise levels would generally be lower.
12. I have had regard to the appellant's Noise Assessment and Observation Report although the findings do not convince me that the revised opening times would not have an adverse impact on the living conditions of existing occupiers nearby. I note the difficulty of collecting data given the existing opening hours. Even so, the assessments of other operational venues elsewhere with a 24-hour consent cannot be considered comparable as the character of the surrounding areas and site-specific circumstances are likely to be very different to that of the appeal site. Additionally, the Noise Assessment sets out that the patron assessments were carried out between 0:00 and 02:45, therefore it does not give an accurate reflection of potential noise disturbance in the early hours up until 6am. To this end, the images shown in the observation report show nighttime activity associated with the bars/pubs nearby after this period

where movements to and from the venue and gatherings could reasonably take place if the venue operated later into the morning as proposed. I do not dispute the contents and findings of the Observation Report and that the premises is a well-run establishment/operates correctly in line with their company brochure. However, this is only a snapshot of time which can vary significantly throughout the year and thus is therefore not determinative. The nearby Admiral Casino is surrounded by more commercial/retail uses which differs from the appeal site which is surrounded by more evening venues such as bars/pubs and thus the observations of Admiral Casino are also not entirely representative.

13. Even if there are strict policies in place including vetting procedures regarding those allowed to enter the premises, denying entry to those under the influence of excessive alcohol and dispersal measures etc, the extended opening hours would still result in noise disturbance to surrounding residents and would impact on the character of the area. Such policies/measures in themselves could also cause issues outside of the premises which would further impact the character of the area and result in noise disturbance to surrounding residents.
14. The Council has raised concern regarding other applications coming forward which would be difficult to resist creating an unwelcome precedent. I am determining the appeal based on its own merits and the evidence before me. Any future application would be subject to its own assessment. A temporary permission of 12 months has been suggested by the appellant which is claimed to have been accepted and successful elsewhere. Considering this site on its own merits and site specifics, the harm is such where a temporary consent would not be appropriate in this instance and could indeed result in a significant adverse impact on living conditions for up to 12 months.
15. For the reasons given above, I conclude that the proposal would harm the living conditions of occupiers of nearby properties in relation to noise and disturbance and would therefore have an unacceptable impact upon the character of the surrounding area. It would therefore conflict with Policy SD8 of the Stockton-on-Tees Borough Council Local Plan, 2019 which amongst other matters, requires new development to respond positively to quality, character and sensitivity of the surrounding public realm and nearby buildings as well as the amenity of all existing and future occupants of land and buildings. For the same reasons, the development would also conflict with the aspirations of the Framework relating to achieving well-designed and beautiful places.

### **Other Matters**

16. The site is situated within the Stockton Town Centre Conservation Area (CA) and the adjoining property to the south is 104 and 105 High Street which is a grade II listed building. As such, I have a duty under Section S66(1) and 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 and requires special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Council do not appear to raise any particular concern in relation to the impact on the character and appearance of the CA or nearby listed building given the nature of the development which relates to opening hours only and does not propose any alterations to the

exterior of the building. Based on the evidence before me and my own observations on site, I also have no reason to raise concern in this regard.

17. I understand that the extended opening times would ensure the long-term commitment to the site. It would allow the key customer base to further enjoy their favourite past time enhancing this offer during the night whilst also providing for a level of natural surveillance. Such matters however have not affected my findings on the main issue and would not sufficiently overcome the harm identified.

### **Conclusion**

18. For the reasons given, having had regard to all other matters raised, the proposed development would not accord with the development plan and the appeal should therefore be dismissed.

*N Teasdale*

INSPECTOR