Planning Inspectorate

Appeal Decision

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2026

Appeal Ref: 6001983
Merkur Slots, 32-33 Hall Place, Spalding, Lincolnshire PE11 1SG

- 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 Merkur Slots (UK) Ltd against the decision of South Holland District Council.
- The application Ref is H16-0841-25.
- The application sought planning permission for change of use from former E use class to adult gaming centre (sui generis) without complying with conditions attached to planning permission Ref H16-0789-21 granted on appeal reference APP/A2525/W/21/3285049, dated 12 July 2022.
- The conditions in dispute are No's 3 and 5 which state that:
  No. 3 - The premises shall only be open for customers between the following hours: 0700 - Midnight on Mondays to Saturdays and 10:00 - Midnight on Sundays.
  No.5 - The approved use shall be operated in compliance with the operational and security measures specified within the 'Operational Management Plan and Security Measures' document, dated August 2021.
- The reasons given for the conditions are: in the interests of protecting the living conditions of neighbouring residents.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted subject to conditions via appeal, for the change of use of a Class E premises to an adult gaming centre (AGC) in Spalding town centre[1]. The use has been implemented. This proposal seeks to remove condition 3 to allow unrestricted opening of the AGC 24 hours per day, and to vary condition 5 to allow compliance with an updated Operational Management Plan (OMP).

3. The internal sound levels generated by the AGC are not a matter in dispute. The greater concern lies with external noise associated with customers arriving, leaving, or congregating outside the appeal site. The main issue in respect of this appeal is therefore, the effect that removing condition 3 and varying condition 5 would have on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance during sensitive night-time hours.

Reasons

4. The AGC comprises a ground floor premises on the principal shopping street within Spalding town centre, where retail and other commercial uses at ground floor level are common. The closest noise sensitive receptors are the residential units located at first floor level opposite the appeal site.

[1] Appeal reference APP/A525/W/21/3285049 granted on 12 July 2022.

5. The existence of a licence for the AGC to operate for 24 hours under the Gambling Act does not automatically infer acceptability of such use in planning terms. Policy 2 of the South East Lincolnshire Local Plan (SELLP) 2019, the Planning Practice Guidance and the National Planning Policy Framework (the Framework) are clear that new development should not adversely affect the living conditions of existing residents at the point that a planning decision is made.

6. During my visit I observed characteristics typical of a small market town with shops, cafes and banks providing services to visiting members of the public. Daytime activity was steady, in part, due to the presence of an outdoor market. However, I found the overall ambience calm and pleasant, with periods of quiet in which birdsong and conversation were easily discernible.

7. There was no indication of a vibrant night-time economy extending beyond midnight. Evening uses were limited to an occasional pub or restaurant dispersed around the town centre, rather than in a concentrated cluster. My observations therefore align with the description given by the Council and with the context described by the Inspector who imposed the planning conditions for the AGC.

8. The proposal would result in the creation of a new late-night/early morning use and activity not presently characteristic of the area. This would increase the opportunities for comings and goings at a time when residents could reasonably expect a quieter environment in the evening compared to day-time activity, even in a town centre.

9. Whether or not the BS 8233:2014 should be relied upon, the appellant's Noise Assessment (NA) seeks to demonstrate the baseline noise levels for the appeal site through surveys carried out during a half an hour period between 23:30 to 00:00 and 02:30 to 03:00 hours on the 18 July 2023, and 02:00 to 03:00 on 8 August 2025. These survey's took place on single nights over short time frames during the summertime. Short-duration attended measurements do not capture variability or peaks. They do not demonstrate how background sound varies throughout the year, across different weather conditions, or on different days of the week. I do not consider such short surveys on one night/year, as being 'highly representative' of the prevailing sound environment at the appeal site.

10. The results indicate high background noise levels attributed to traffic. I find this surprising given that the appeal site is not located on a through road, and there is no obvious reason for people to be passing through during the early hours of the morning. The NA is unclear where the traffic noise was from and whether it includes Hall Place. Without this contextual explanation, I cannot be satisfied that the recorded levels reflect a typical night-time/early hours of the morning baseline for the area. Neither is there any quantifiable data with regard to the expected number of evening customers and/or expected number and timing of entrance/exit door opening events per hour. The limitations of the surveys makes it difficult to draw firm conclusions about the normal night-time/early morning sound environment, or the likelihood of intermittent noise being perceptible.

11. The NA's 'worst case' scenario of 3 people speaking loudly, does not robustly encompass more unpredictable or larger groups, nor does it address the potential for voices, laughter, shouting, car doors, engines or mobile devices to contribute to disturbance. These sources are often intermittent and therefore more noticeable against an otherwise quiet environment in the early hours of the morning. Based

on my observations and the Council's description of the town centre in the early hours of the morning, I have no reason to think that traffic on neighbouring roads is sufficiently loud enough at night to drown out such sounds.

12. The appellant has also provided case studies from other Merkur sites. However, 3 were conducted during the Covid-19 pandemic, when patterns of social activity were atypical. Insufficient contextual detail is available for the remaining sites to allow a meaningful comparison with the specific circumstances of the appeal site. Even then, what may be acceptable at one site does not automatically translate to it being acceptable at other sites.

13. It has been put to me that head count data and on-site observations consistently demonstrate the late-night patron numbers are very low across all Merkur venues. Such information has not been supplied and I am required to determine the appeal based on the information that was before the Council at the time of its decision. It would not however, appear logical for a business to open through the night and early morning, if patron numbers are very low as suggested by the appellant. It would not make financial sense to do so. Without evidence to the contrary, it appears that the use of the site through the early hours has been downplayed.

14. The appellant proposes an updated OMP to discourage loitering, manage smoking breaks and promote quiet behaviour among patrons. While these measures are well-intentioned, they rely heavily on customer cooperation and staff intervention. In practice, staff, no matter how experienced or qualified, would have limited ability to control noise taking place off the premises. The OMP contains matters such as the tone and volume of conversation, that are difficult to monitor or enforce through planning controls. Even if alcohol is not served, it would not prevent someone that has consumed it from entering the premises. Whilst it is suggested that intoxicated individuals would be refused entry, this would push the issue into the street where the disturbance would affect neighbouring residents. An OMP is not a substitute for a condition that restricts opening hours where harm from late night/early morning activity is reasonably foreseeable.

15. Given the quiet character of the area, any noise generated from comings and goings and any congregation of people outside the appeal site during the early hours of the morning, is likely to be perceptible and intrusive. This would be particularly so in warmer months when bedroom windows may be open. I am advised that public transport does not operate in the town between midnight and 05:00 hours. Therefore, early morning users would likely rely on cars to reach the appeal site, adding further potential for engine noise and car doors shutting to be generated. Such bursts of activity would be more intrusive in the early hours of the morning than continuous or low-level background noise, even where measured levels fall below formal guideline thresholds.

16. The proposal seeks unrestricted 24-hour operation such that the resulting pattern of activity would not be limited to weekends or peak times. The cumulative effect of activity would be likely to erode the reasonable expectation of residents to enjoy restful conditions conducive to sleep during the early hours. I am mindful that the Framework recognises that residential development often plays an important role in ensuring the vitality of centres and therefore, there is a balance to be struck between differing uses being able to coexist effectively.

17. The Police and the Council's Environmental Protection Officer (EPO) did not object to the proposal. However, the Police appear to have been considering crime prevention, not the living conditions of existing residents. In respect of the EPO, I am advised that their assessment was based on statutory nuisance considerations, which differ from the broader planning judgment required here. Planning policy requires regard to be paid to the effect of noise on the general living conditions of occupiers, not only to levels that would constitute a statutory nuisance.

18. There have been no complaints since the operation of this AGC and few objections to the proposal. However, the absence of complaints or objections, does not indicate a lack of harm. The PPG advises that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. I note that my reasoning concurs with that of the Inspectors in the Hornsey and Ashford decisions[2].

19. In this case, the limited and short-term noise surveys, the potential for unpredictable bursts of activity during the quietest hours, and the limited enforceability of management measures, mean that I cannot be satisfied that 24-hour operation, would not give rise to noise generating activity that would be harmful to the living conditions of neighbouring residents. The PPG is clear that the onus is on the agent of change i.e. the appellant, to identify the effects that its operation may cause in terms of potential nuisance.

20. In light of my concerns with regard to the weaknesses in the baseline data, I am not convinced that a condition restricting the 24-hour use for a temporary period of 12 months would meet the test of reasonableness[3]. I am also cognisant of the fact that there was no mention of a temporary 12-month period of use in the original planning application considered and consulted upon by the Council. I cannot be certain that this would not be prejudicial to interested parties, particularly those living nearby, given that any harm arising would endure for 12 months.

21. Reference has been made to two 24-hour gyms elsewhere in Spalding. The Council advises, and the appellant does not dispute, that these are located in materially different contexts, including one within an industrial estate. They do not alter my findings in relation to the specific context of the appeal site. Although I am referred to a Merkur venue in Acocks Green, I have not been supplied with detailed evidence of the circumstances of its context or relevant planning decisions, to be able to consider it comparable.

22. For reasons given, the proposed opening hours would adversely affect the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. In the absence of compelling evidence to the contrary, the disputed conditions therefore remain reasonable and necessary. The proposal would conflict with Policy 2 of the SELLP and with the Framework, as set out above.

Other Matters

23. The proposal would enable 24-hour use of the AGC for which additional employees are likely to be required. However, there is no evidence to suggest that the proposal would make anything other than a limited contribution to local

[2] Appeal references APP/Y5420/W/24/3341466 and APP/Z3635/W/24/3348201.
[3] With reference to the 6 tests of conditions as laid out within paragraph 57 of the Framework.

employment. The daily operation of the AGC already supports the local economy and the vitality of the town centre during its current wide-ranging opening hours.

24. The need for the AGC and the morality of gambling are not relevant to the main issue and I am not required to consider these matters further.

Conclusion

25. The development with the conditions removed or varied as proposed would fail to accord with the development plan. I have found harm in respect of the effect on the living conditions of neighbouring residents, with particular regard to noise and disturbance. This harm would not be outweighed by the limited benefits of the proposal. For the reasons give, the appeal is dismissed.

M Clowes

INSPECTOR