



London
Magdalen House
148 Tooley Street
London
SE1 2TU
T: 020 7357 8000

Harrogate
Suite 19, 1 Cardale Park
Beckwith Head Road
Harrogate
HG3 1RY
T: 01423 502 115

Bristol
Runway East
1 Victoria Street
Bristol
BS1 6AA
T: 0117 214 1820

Newcastle
Merchant House
30 Cloth Market
Newcastle upon Tyne
NE1 1EE
T: 01423 502 115

Planning Department
South Holland District Council
Priory Road
Spalding
Lincolnshire
PE11 2XE

28 July 2023

Our Ref: 21/6082

Dear Sir/Madam

Section 73 to remove Condition 3 (Opening Hours) restrictions and vary Condition 5 (Operational Management Plan) attached to Appeal A Ref: APP/A2525/W/21/3285049 at 32-33 Hall Place, Spalding, PE11 1SG

This covering letter is submitted on behalf of Merkur Slots Ltd (UK) to support an application pursuant to Section 73 of the Town & Country Planning Act 1990 (As Amended) seeking to remove Condition 3 (opening hours) attached to planning appeal A ref: APP/A2525/W/21/3285049 - Change of use from former E use class to Adult Gaming Centre (Sui Generis) use at 32-33 Hall Place, Spalding, PE11 1SG, to allow for 24-hour opening.

The unit falls within Spalding Conservation Area but is not locally or nationally listed.

The AGC has been in operation since 10th October 2022.

Proposal & background

Condition 3 attached to Appeal A ref: APP/A2525/W/21/3285049 states as follows:

- The premises shall only be open for customers between the following hours: 0700 - Midnight on Mondays to Saturdays and 10:00 - Midnight on Sundays.

The reason the Inspector included an opening hours restriction was the appeal site is within what appears to be a quiet street at night, that is unlikely to accommodate late night traffic, background noise levels would be expected to be low. As a result, 24-hour use could harm the living conditions of existing residents. There is insufficient evidence to demonstrate that the town has a late-night culture. As such, despite the appellant's requested hours of use I have imposed the Council's requirement for the use to cease trading at midnight.

Merkur Slots Ltd typically operate 24 hours therefore a 12:00 (Midnight) closing time is an early closing time for a leisure use that relies on evening/night-time trade. Due to there being robust evidence justifying 24-hour opening at this location, they wish to remove condition 3 thereby allowing 24-hour operation daily. The amendment sought will enable Merkur Slots' key

Managing Director
Helen Cuthbert

Directors
Stuart Slatter | Claire Temple | Alastair Close
Dan Templeton | Elliot Jones | Katie Turvey

Consultant
Lorna Byrne

Associate Directors
Heather Vickers | Alan Williams | Sally Arnold
Sam Deegan | Niall Hanrahan

Associates
Rob Scadding | Charlotte Hunter | Charlotte Perry
Grace Mollart | Charlotte Parry | Jamie Pert

www.planningpotential.co.uk

info@planningpotential.co.uk

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customer base to benefit from the offer and service provided by the AGC. The evening/late-night customer base is predominantly shift workers looking to relax after evening shifts.

Condition 5 attached to Appeal A ref: APP/A2525/W/21/3285049 states as follows:

- 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.

A revised operational management plan has been included within the submitted noise report to reflect 24hr operation meaning the applicant seeks to vary Condition 5 to reflect the operational management plan within the submitted noise report (Appendix E within the Noise report).

Application Site & Surroundings

The application site relates to the ground floor and first floor at 32-33 Hall Place, Spalding, PE11 1SG and has been operating as an Adult Gaming Centre since 10th October 2022. The application site is situated on the north side of Hall Place and is surrounded by a number of national retailers and is located within the Primary Shopping Area (PSA) of Spalding town centre and forms part of the PSF.

The site falls within Spalding Town Centre Conservation area but is not locally or nationally listed.

Justification

A noise report by Archo Consulting Ltd has been submitted to support our justification for the removal of Condition 3. It confirms that the mitigation measures suggested within the noise report for the change of use application have been implemented and additional. However, the assessment for this application is more robust than the report submitted as part of the change of use application/appeal. The report includes case study sites, observations of customer behaviour when arriving and leaving my client's AGCs that operate 24-hour opening, as well as focused assessments of potential noise impacts from customers smoking outside and unpredictable noise impacts. Measurements of operational noise levels were made in the venue and measurements of external baseline noise levels during the most noise sensitive period of the night (after 1am) have been undertaken for context. To avoid the need for a condition requiring submission of a management plan, an Operational Management Plan has been included within the noise report to manage unpredictable noise events and to ensure customers do not congregate outside the premises. The report concludes that internal and external noise impacts are highly unlikely to occur, with the key findings as follows:

- There is no noticeable transmission of noise from the current operation of the adult gaming centre to the nearest residential property, which is situated on the opposite side of Hall Place.
- The predicted noise from smokers and patrons standing outside would be below the British Standard criteria.
- Observations of the application site and six 24-hour Merkur venues show customers do not visit in large groups, conversations are at normal volumes and customers do not engage in activities that might cause disturbance.
- The site is suitable for 24-hour operation without any harmful noise impacts. Additionally, the number of customers reduces significantly during night-time hours. There will be a member of staff available at all times to ensure customers respect the surrounding amenities of residents in addition to the further measures outlined in the OMP in appendix E of the submitted noise report. Further, a benefit of 24-hour opening is that it provides natural surveillance through the night.
- An assessment of source level measurements of operational noise levels were made within 32-33 Hall Place to provide an accurate approach to the noise impact assessment noise levels. Measurements were made after 19:00

in various locations in the venue to obtain a representative spatial average sound reading and staff were asked to turn on some of the noisier machines in demo mode to measure a worst-case scenario of operational noise (i.e. greater number of patrons than normal). Source level measurements at 10 other Merkur Slots venues across the UK have also been included, demonstrating operational noise levels do not vary.

All these additional assessments and empirical data together with the fact that, at time of writing, there have been no complaints regarding noise. This demonstrates that removing opening hours restrictions to allow to 24hr opening on a permanent basis is acceptable in noise terms.

Similarly, the number of customers reduces significantly during night-time hours. There will be a member of staff at all times to ensure customers respect the surrounding amenities of residents. A benefit of later opening hours is that it provides natural surveillance through the night.

In order to justify the proposed removal of condition 3 further and demonstrate compliance with relevant policy, it is important to fully explain and understand how a Merkur Slots, adult gaming centre operates. Merkur Slots typically operate 24-hours a day, 7 days a week. Whilst longer hours of operation are sought, it is important to consider that Merkur noise levels are generally very low and impacts on disturbance to surrounding residences are effectively mitigated and minimal. For example, as set out in the supporting company brochure, only background music is played within venues (similar to shops) and there are no tannoy systems. Further, the late-night customer base is predominately late shift workers looking to relax and larger groups are very rare due to the offer within the AGCs. As such, the nature of the use proposed would not result in adverse noise in night-time hours and the use is appropriate to the Town Centre context.

Despite common misconceptions, the brochure also clearly demonstrates how Merkur AGCs are smart well-run establishments, which do not give rise to problems, as follows:

- Complementary refreshments, teas and coffees are provided.
- AGCs are where people go to spend their spare change, have a game of bingo and enjoy their favourite pastime (these machines have been around for many years).
- Customers visit on their own or in couples – large groups are rare.
- The customer base during the late evening and into the early hours is predominantly the local entertainment workforce and shift workers who like to relax after their busy shifts.
- The machines generate low levels of noise, only background music is played (similar to shops) and there are no tannoy systems; and
- Merkur have never had a licence revoked or reviewed and incidents are extremely rare.

It has therefore been demonstrated that condition 3, in its current form no longer meets the necessary condition tests in that it is no longer necessary, and it would be unreasonable to insist the conditions remain unchanged. The proposals clearly comply with the National Planning Policy Framework and Policies 1, 24, 25, 26 and 29 of the Southeast Lincolnshire Local Plan (2019).

Operational Management Plan

As mentioned, an operational management plan forms part of the submitted noise impact assessment and will be in place to control, among other things, potential noise incidents. The submitted noise assessment highlights key criteria, but for completeness, key measures are as follows:

Preventative Anti-Social Behaviour Measures

- As with all our AGCs, we will not sell or serve alcohol on the premises. Only complementary refreshments, teas and coffees will be available.
- Individuals who are deemed to be under the influence of excessive alcohol will not be allowed to enter the premises.
- We will place a notice visible from the exterior of the premises stating that drinking of alcohol directly outside the premises is forbidden and that those who do so will be banned from the premises.
- The on-duty manager shall implement a policy of banning any customers who engage in any anti-social behaviour within or outside the premises.

Dispersal measures

- Staff will encourage customers leaving the premises to respect our neighbours and not generate noise when exiting the premises.
- Waiting outside the premises will be discouraged.
- Customers found to be loitering near the building will be politely encouraged by staff to move on.
- Staff, on request, will provide relevant information to customers who require a taxi or directions to the nearest station or bus stop.

With the above in mind, my client seeks to vary Condition 5 to ensure the updated operational management plan is conditioned as part of any forthcoming decision and reflects 24hr operation.

Temporary 24-hour permission

In the event that it is found that, in practice, the proposal causes harm, a temporary permission would limit the duration of any harm and allow a return proposed permanent hours (midnight). This notion has been recently accepted and encouraged by several local authorities, including areas whereby 24hrs is not the norm. For instance, recent permissions include:

1076 Warwick Road, Acocks Green (planning app ref: 2022/040802) (Birmingham City Council)

220 High Street, Erdington (Planning App ref: 2022/0607/PA) (Birmingham City Council)

The reason these sites are relevant to the application site are due to the fact that permissions were all granted within a town centre location and set a precedent for 24-hour operation in the locality. When considering the above, it is important to reiterate that Merkur Slots noise levels are generally very low and impacts on disturbance to surrounding residences are effectively mitigated and minimal. For example, as set out in the brochure, only background music is played within venues (similar to shops) and there are no tannoy systems. As such, the nature of the use proposed would not result in adverse noise in either the day or night-time hours and the use is appropriate to the busy high street context and complies with the National Planning Policy Framework and Policies 1, 24, 25, 26 and 29 of the Southeast Lincolnshire Local Plan (2019).

The Planning Practice Guidance sets out that it may be appropriate to grant planning permission on a temporary basis where a "trial run" is needed in order to assess the effect of the development on the area. This approach has been commonly advocated from several authorities across the country, enabling the close monitoring of 24-hours.

With the above in mind, and despite providing robust evidence in support of 24hr operation at the application site, the client could be willing to accept a temporary 12-month period to enable 24hr operation to be closely monitored by the Council and

the impact unfettered hours would have on Spalding Town Centre. The reason Merkur Slots Ltd seeks later hours is due to the late-night customer base.

Whilst a 12-month temporary permission is not sought as a preferred outcome, the appellant would deem this as a suitable fall-back position, as accepted at the four example planning permissions details in 5.35 above. The appellant would accept the following condition:

- The permission hereby granted (to extend the opening hours of the existing use of the premises as an Adult Gaming Centre to 24 hours a day, 7 days a week) is limited to a temporary one-year period commencing from the date on which the applicant/agent has informed the Local Planning Authority in writing of the commencement of these extended opening hours. after this time the permitted use shall only operate between the hours of 0700 - Midnight on Mondays to Saturdays and 10:00 - Midnight on Sundays.

Conclusion

The contents of the company brochure and Noise Assessment demonstrates that Merkur adult gaming centres are well-run premises, that do not attract and/or generate noise impacts and disturbance that would in-turn affect the character of an area or indeed result in nuisance, noise and safety concerns. The technical evidence to support the later night opening of 24hrs is based on the site assessments of internal/external noise and noise from patron behaviour in three different locations in the UK during night-time hours and robustly confirms that the removal of Condition 3 and variation of Condition 5 is appropriate and justified at, and in line with local policy and approved hours in the town centre.

In summary, we request that the removal of restrictions on opening hours, as set out above, is granted. This is due to considerate operation of the premises by our client and the sustainable location of the application site, justified in the non-existence of noise, disturbance or associated complaint received since opening in October 2022. It should be noted that the site has not received any noise complaints since operating until midnight since October 2022.

In addition to this covering letter, please find enclosed the following documents as part of our submission package for the application:

- Completed Application Forms
- Site Layout Plan at scale 1:500
- Appeal Notice - Appeal A ref: APP/A2525/W/21/3285049
- Noise Impact Assessment, prepared by Archo Consulting (including operational management plan)

We trust that the information submitted is sufficient for the determination of the application and we look forward to receiving confirmation the application has been validated in due course. Should you have any queries, please do not hesitate to contact us in the Harrogate office.

Yours sincerely,

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