

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No:	DM/22/02292/VOC
FULL APPLICATION DESCRIPTION:	Variation of condition 2 of planning permission 4/99/00534/FPA to allow a change in opening hours.
NAME OF APPLICANT:	Luxury Leisure
ADDRESS:	5 North Road Durham DH1 4SH
ELECTORAL DIVISION:	Elvet and Gilesgate
CASE OFFICER:	Lisa Morina Senior Planning Officer Telephone: 03000 264877 Lisa.morina@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is located on North Road in Durham and is currently being operated as an amusement centre for adult gaming, namely Admiral. The site is considered to be within the commercial centre of the city as defined by the County Durham Plan and as such the immediate locality is characterised by commercial uses although there are some residential properties within the vicinity of the site.
2. The property is located between two retail units, one being vacant at present and the other occupied by Sainsburys.
3. Planning permission was granted for the change of use of the property in 1999 to amusement centre with ancillary retail sales and catering. This was subject to a planning condition which restricted the opening hours to between 09:00 and 22:00 on any day. In April 2022 complaint was received by the LPA that the use was operating beyond the times restricted by this condition and as such this planning application seeks to regularise that breach of planning control via the variation of the previous condition.

The Proposal:

4. Specifically, planning permission is sought to vary condition 2 of planning permission 4/99/00534/FPA in order to allow a change in opening hours to 09:00 to 02:00 from the currently permitted hours of 09:00 and 22:00.
5. The application originally sought permission to vary the condition to allow 24 hours opening but has since been amended to reflect the above.

6. In submitting the application the applicant advises that the condition was attached to the original planning permission which was granted some 20 years ago and that the use has operated without complaint in the intervening period, and as a consequence believes there to be scope for expanding opening hours. In doing so they consider it to be of relevance that town centres are increasingly evolving reflecting a greater focus on leisure uses to help bolster vitality and viability. The application is supported by a review of potential noise impacts supplied by a noise consultant.
7. The application is reported to planning committee at the request of the City of Durham Parish Council due to noise and disturbance issues.

PLANNING HISTORY

8. 4/99/00534/FPA - Change of use to amusement centre with or without ancillary retail sales and catering. Approved 22/10/99.
9. EN/22/00353 – Operation of business outside of conditioned hours relating to planning permission 99/00353/FPA

PLANNING POLICY

NATIONAL POLICY

10. A revised National Planning Policy Framework (NPPF) was published in July 2018 (with updates since). The overriding message continues to be that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
11. *NPPF Part 2 Achieving Sustainable Development* - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
12. *NPPF Part 4 Decision-making* - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
13. *NPPF Part 6 Building a Strong, Competitive Economy* - The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
14. *NPPF Part 8 Promoting Healthy and Safe Communities* - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive

communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

15. *NPPF Part 12 Achieving Well-Designed Places* - The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.

16. *NPPF Part 15 Conserving and Enhancing the Natural Environment* - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.

<https://www.gov.uk/guidance/national-planning-policy-framework>

NATIONAL PLANNING PRACTICE GUIDANCE:

17. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters.

<https://www.gov.uk/government/collections/planning-practice-guidance>

LOCAL PLAN POLICY:

County Durham Plan

18. Policy 31 (Amenity and pollution) sets out that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that they can be integrated effectively with any existing business and community facilities. Development will not be permitted where inappropriate odours, noise, vibration and other sources of pollution cannot be suitably mitigated against, as well as where light pollution is not suitably minimised. Permission will not be granted for sensitive land uses near to potentially polluting development. Similarly, potentially polluting development will not be permitted near sensitive uses unless the effects can be mitigated.

Neighbourhood Plan

19. The application site is located within the Durham City Neighbourhood Plan (DCNP) and as such the following policies are considered relevant:

20. Policy E4 - (Evening Economy) supports development that would promote/support the early evening and night time economy provided that they contribute to the vitality and viability of the centre and add to/improve the cultural and diversity offer. Such developments are required to provide a strategy for public safety and provide evidence in relation to impacts upon amenity.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

21. Durham Police Architectural Liaison Officer – Objected to the proposed 24 hour opening as originally submitted, and subsequently maintained that objection in response to the proposed times of 09:00 to 02:00. In objecting they cite concerns around the intensification of gambling generally and that the extended opening hours (even though no longer 24 hours) would nevertheless still exacerbate existing issues of noise and antisocial behaviour created by customers leaving late night commercial uses within this area.

22. City of Durham Parish Council - Objects to the proposal for the following reasons:

- Planning Conditions have previously been disregarded.
- No noise assessment has been received
- Opening hours should be similar to neighbouring properties.
- Residential Amenity Issues
- Similar application has a restriction on opening hours

INTERNAL CONSULTEE RESPONSES:

23. Environmental Health (Nuisance) Section – Objected to 24 hour opening but removed that objection after the application was amended to propose opening hours of between 09:00 to 02:00 subject to the inclusion of a planning condition restricting the use of external areas to the front and rear of the property outside of the hours of 09:00 to 22:00 and that the development be carried out in accordance with the mitigation measures detailed in the review of potential noise impact submitted by Apex Acoustics.

PUBLIC RESPONSES:

24. The application has been advertised by means of site notice and by notifying neighbouring residents by letter.

25. To date, three letters of objection including one from the City of Durham Trust have been received citing the following points of concern:

- The proposed opening hours will exacerbate the gambling problem.
- Noise issues
- Night-time disturbance to City residents is very well documented and cannot be disputed.
- Opening hours should be similar to neighbouring properties.
- Residential Amenity Issues
- Similar application has a restriction on opening hours

26. Cllr Ormerod, Ward Councillor for the area, objects to the application and considers that the extended opening hours would have an adverse impact on the local community as there are many residential properties nearby. There would be a significant and detrimental impact in terms of noise and disturbance to residents in this area.

APPLICANT'S STATEMENT:

27. Luxury Leisure has been trading its adult gaming centres across the UK for decades and they are popular leisure destinations. It has many premises nationally, of which c 100 trade 24 hours a day, 7 days per week. Following the grant of planning permission (ref. FPA/P/4/99/0534/AS) for a change of use they have been trading from 5 North Road in Durham since 1999. A condition attached to this planning permission restricted the current opening hours of the premises from 9 AM to 10 PM in any one day.
28. Given the condition was attached as part of the original permission issued in 1999, over 20 years ago, as well as the fact the unit has operated successfully and with no complaints in the intervening period, it is considered there is scope for an easing of these opening hour restrictions. This is particularly the case as town centres are increasingly evolving to focus more on leisure uses to help bolster their vitality and viability. There are also other uses present on North Road which operate beyond the historic restrictions imposed on our client, including Sainsbury's Local, the Three Bridges public house, Babylon Nightclub, the Waterhouse public house, Loft nightclub, the Head of Steam, and Tesco Express. Planning permission has also recently been granted for another adult gaming centre at 12 North Road, which is able to open until 2 AM.
29. As identified at Objective of the County Durham Plan (Objective 5 – Town Centres) is to “Maintain a clear hierarchy of vibrant, diverse and distinct retail centres that are the focus for commercial, retail, leisure, culture and other appropriate uses.” As such the presence and focus of leisure uses in this location is to be expected and this should be a material consideration when balancing any impact upon amenity within the city centre arising from the increased opening hours. Policy 9 (Retail Hierarchy and Town Centre Development) also states that proposals that would positively contribute to the evening economy will be supported provided they contribute to the vitality and viability of town centres, promote public safety and accord with this and other relevant policies in the Plan.
30. In terms of impact, the site is surrounded by a mix of predominantly commercial premises, and the upper floors of the site are not in residential use. Notwithstanding this, in consultation with the Council's Nuisance Action Team, the applicant has submitted a Noise Assessment prepared by Apex Acoustics. This confirms that, in the context of the existing sound environment, and Luxury Leisure's nature of operation, noise control measures, and noise sources and levels associated with the premises, the extended operation of the premises is unlikely to result in an adverse impact or be distinguishable against other residual noise sources at the nearest noise sensitive receptors.
31. In terms of Luxury Leisure's current operation, the premises also already incorporate measures to mitigate against unacceptable levels of noise disturbance. For example, Luxury Leisure display signs at its premises asking customers to leave the premises quietly to respect neighbours during night time hours. They also already have a smoking policy and designated smoking area to control noise levels from smokers congregating outside the premises. Such noise levels are limited relative to the nature of uses within the immediate surrounding area, which comprises a busy city centre location, and the proposed use is not an activity that generates amplified sound or is known to be particularly noisy.
32. Moreover, from previous experience and data provided in respect of night-time customer numbers at other similar Luxury Leisure sites, it is unlikely that the proposed extension of the unit's opening hours would result in significant numbers of

new customers using the premises. From other sites, it is estimated that customer numbers in any hour at night are a maximum of 10, and more typically a maximum of six. These customers are generally single individuals, and the sites do not attract large groups of people. At other similar sites, noise from patrons leaving and arriving at the premises has not been detectable or measurable, and has had no material impact on the surrounding noise environment.

33. Overall, the Nuisance Action Team has reviewed the applicant's submissions and recommended that the application can be approved, subject to planning conditions which effectively replicate similar conditional restrictions imposed upon a the recent planning permission at 12 North Road. In conclusion, therefore, the proposed variation of condition is considered to comply with the development plan, and it is respectfully requested that the application be granted planning permission.

The above is not intended to list every point made and represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P8X9C0GDL8J00>

PLANNING CONSIDERATIONS AND ASSESSMENT

34. Section 73 of the Town and Country Planning Act 1990 (as amended) applies to the determination of applications to develop land without the compliance with conditions previously attached. S73 states that on such an application the Local Planning Authority (LPA) shall consider only the question of the conditions subject to which planning permission should be granted. The LPA should decide whether planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted or that it should be granted unconditionally. If the LPA decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they should refuse the application.
35. In considering such an application, the Development Plan and any other material considerations under section 38(6) of the Planning and Compulsory Purchase Act, are relevant in the determination. LPAs should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.
36. Planning permission was originally granted in 1999 for the use of the premises as an adult amusement centre subject to a condition which restricted the hours of opening to between 09:00 to 22:00 on any day. The reason for the inclusion of the condition was in the interests of the amenities of the area.
37. As noted, that application seeks to vary the condition in order to allow extended hours of operation and is submitted in response to an enforcement complaint reported to the LPA regarding the use of the property outside of those hours restricted by the condition. It originally sought permission to vary the previous condition to allow 24 hour opening on all days. In response, concerns were raised by Durham Police, the Council's Environmental Health Section and other consultees and residents regarding noise and disturbance and the likely impact on nearby residents. As such the scheme was subsequently amended to restrict the hours of use to between 09:00 to 22:00.
38. The acceptability of the principle of the development was established through the previous planning permission and as such the principal issue for consideration in the determination of the application is the extent to which the proposal would lead to an

unacceptable increase in noise and disturbance, to the detriment of residential amenity of surrounding occupiers and other uses within the locality.

39. Policy 31 of the CDP states that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that can be integrated effectively with any existing business and community facilities. Proposals which will have an unacceptable impact such as through overlooking, visual intrusion, visual dominance or loss of light, noise or privacy will not be permitted unless satisfactory mitigation measures can be demonstrated whilst ensuring that any existing business and/or community facilities do not have any unreasonable restrictions placed upon them as a result. Policy E4 of the City of Durham Neighbourhood Plan is also relevant and supports development that would promote/support the early evening and night-time economy, provided that they contribute to the vitality and viability of the centre and add to improve the cultural and diversity offer. Such developments are required to provide a strategy for public safety and provide evidence in relation to impacts upon amenity.
40. Whilst the proposed opening hours have been amended those objections from the City of Durham Parish Council, The City of Durham Trust, Durham Police Architectural Liaison Officer and other interested parties remain unchanged. They continue to consider that the level of noise and disturbance from patrons entering and leaving the property during the later hours would have a detrimental impact to residential amenity, and add to issues of noise, disturbance and antisocial behaviour already present in the area during this period. Concern was also raised that the application is not supported by a Noise Impact Assessment.
41. In response, the applicant has provided a review of potential noise impacts resulting from the proposal prepared by Apex Acoustics who are a recognised acoustic consultant. Whilst not a noise impact assessment the document nevertheless provides an assessment of likely sources of noise associated with the use, using an example of another property operated by the applicant in Chester-le-Street. It also provided details of some basic noise control measures which they consider would mitigate any impact to within acceptable levels and includes restricting noise generating activity to day-time periods only (such as the use of bingo callers), the use of a lobbied entrance and proactive management to ensure that patrons leave the premises quietly.
42. The Council's Environmental Health Section has reviewed the information and considers that subject to planning conditions the extended opening hours could be supported and would not result in a level of impact upon the residential amenity. Those conditions advised relate to restrictions on the use of the front and rear as smoking areas, that the sound attenuation measures listed in the acoustic memo from Apex Acoustics is fully implemented prior to the extended hours becoming operational, no bingo callers to operate after 22:00 on any day, that internal noise levels shall not exceed 67dBA after 22:00 and that the premises is not open outside of the hours of 09:00 to 22:00 Sundays. Whilst the applicant has sought an opening time beginning at 09:00 Monday to Saturday, the Council's EHO has advised that an 08:00 opening time on those days would not have any detrimental impact upon the amenities of nearby occupiers, and that in order to ensure consistency with other commercial uses in the locality, an earlier time of 08:00 could be secured via planning condition. The applicant raises no objection to a planning condition in this regard.
43. Whilst one of the conditions advised by the EHO seeks to restrict customers from congregating to the front of the property, it is noted that this area forms part of the

public highway and as such the planning authority is unable to include any restriction in this regard. Any planning condition which specifically seeks to prohibit this would therefore fail the required tests in that it is not enforceable, related to planning or reasonable in all other respects.

44. Those conditions attached to the planning permission 4/99/00534/FPA which remain relevant should be reproduced and attached to the new planning permission if the committee is minded to approve this application.

Other Issues

45. Some respondents raised concern that the extended hours would encourage gambling and exacerbate associated problems which they consider to be well documented. In response however, it is noted that the principle of the use of the property as an adult gaming and gambling centre is well established and the extended opening hours would not materially alter the fundamental nature of that use. Therefore, and notwithstanding the wider concerns raised, it is not considered that in this instance they would amount to material considerations capable of sustaining refusal of the application.
46. Concern has been raised that, by the applicant's own admission, the previous condition restricting the hours of use has been breached. Whilst it is clearly disappointing that the condition has not been fully complied with, it is important to note that planning legislation makes provision for planning applications to be submitted retrospectively in order to resolve breaches of planning control where they occur. As such, the retrospective nature of the application, although disappointing, cannot be afforded weight in the determination of this application.

Public Sector Equality Duty

47. Section 149 of the Equality Act 2010 requires public authorities when exercising their functions to have due regard to the need to i) the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct, ii) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share that characteristic.
48. In this instance, officers have assessed all relevant factors and do not consider that there are any equality impacts identified.

CONCLUSION

49. The proposed variation of opening hours is considered to have an acceptable impact on the surrounding residents due to the opening hours of nearby properties in accordance with policy 31 of the County Durham Plan.
50. The proposal is therefore recommended for approval.

RECOMMENDATION

That the application be **APPROVED**, subject to the following conditions:

1. The use of the premises as an adult gaming centre shall not be open to customers outside the hours of 08:00 to 02:00 Monday to Saturdays and 09:00 to 22:00 on Sunday. No bingo caller shall operate from the property after 22:00 on any day.

Reason: In the interests of the residential amenity of surrounding properties in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework

2. The external area to the rear of the premises as shown on Drawing No. L-11-6-01 Rev E shall not be used by customers outside the hours of 09:00-22:00 hours on any day

Reason: In the interests of the residential amenity of surrounding properties in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework

3. The premises to which this planning permission relates shall be used for the playing of amusement-with prizes machines, and there shall be no amusement only machines or games of a sessional nature.

Reason: To reserve the rights of the Local Planning Authority with regard to these matters in the interests of the amenities of the area.

4. Prior to the implementation of the amended hours as identified in Condition 1, all sound attenuation measures as detailed in the Apex Acoustics Memo reference 10344.1C, dated 24 October 2022 and published on the planning portal on 24 October under the heading 'REVIEW OF POTENTIAL NOISE IMPACT DUE TO EXTENDED OPERATION' shall be fully implemented and permanently retained thereafter.

Reason: In the interests of the residential amenity of surrounding properties in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework

5. Notwithstanding the information shown on the submitted plans there shall be no music transmitted from the premises or loudspeakers mounted externally on the building.

Reason: To protect the area against noise intrusion.

6. The internal noise levels measured within the building shall not exceed 67dBA Leq after 2200hrs on any day.

Reason: In the interest of the amenity of existing and future occupants in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

STATEMENT OF PROACTIVE ENGAGEMENT

In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF.

BACKGROUND PAPERS

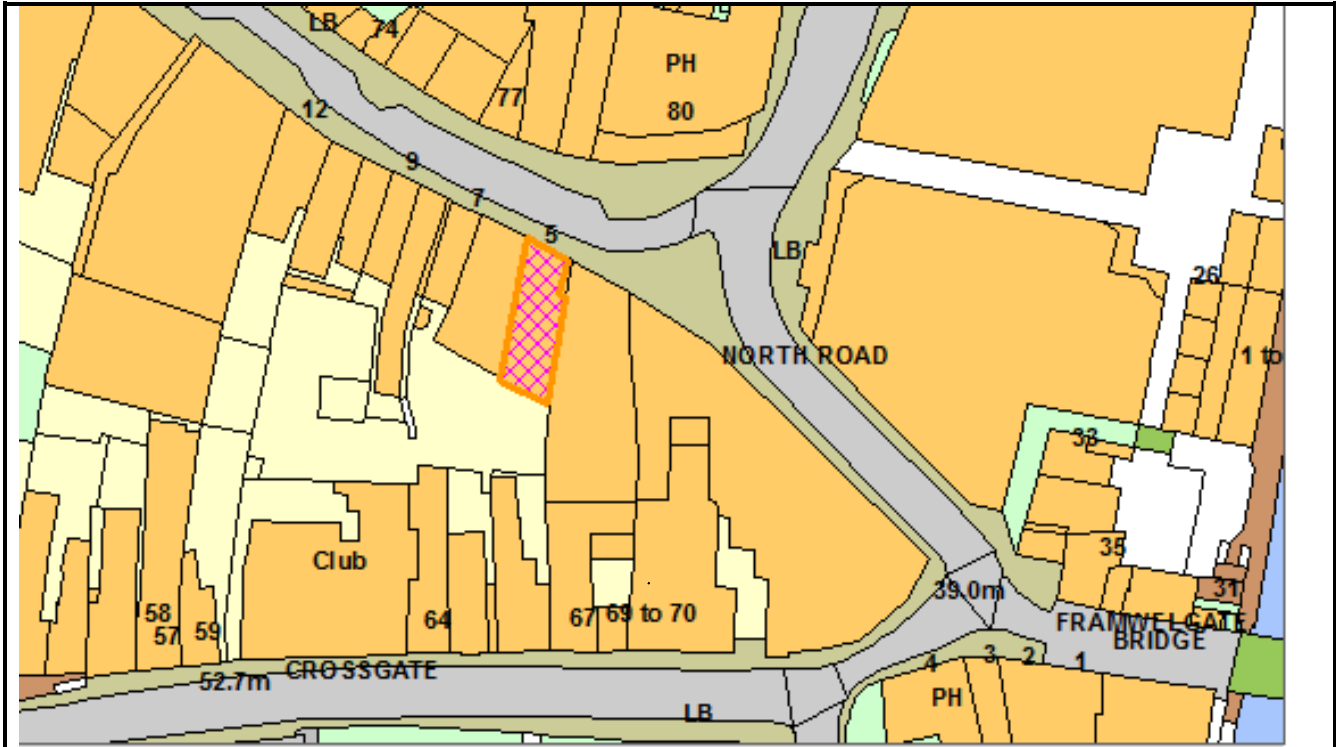
Submitted application form, plans, supporting documents and subsequent information provided by the applicant

The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan

Statutory, internal and public consultation responses



<p>Planning Services</p>	<p>Variation of condition 2 of planning permission 4/99/00534/FPA to allow a change in opening hours from 09:00 to 02:00 previously restricted to 09:00 and 22:00 at 5 North Road, Durham, DH1 4SH Application Reference: DM/22/02292/VOC</p>	
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