

LDC (Proposed) Report		Application number	2023/2628/P
Officer		Expiry date	
Brendan Versluys		18/08/2023	
Application Address		Authorised Officer Signature	
1 Amusement Arcade And Premises At Basement And Ground Floor Euston Road London NW1 2SA			
Conservation Area		Article 4	
King's Cross		Article 4 Direction (basements)	
Proposal			
Use of the existing adult gambling centre with operating hours between 8:00am - 02:00am, 7 days a week			
Recommendation:		Issue Certificate	
Introduction			
<p>The application site is a single-level building with a basement floor, situated on the southern side of Euston Road, at the corner with Birkenhead Street, directly opposite to King's Cross station.</p> <p>The site is not listed and is located within the King's Cross Conservation Area.</p> <p>The building's sole tenancy, 'Reel Time', operates as an adult gambling centre. The adult gambling centre is owned/operated by a company, Family Leisure Holdings Limited (the applicant) with a number of other similar sites in London.</p> <p>Planning permission (reference PS9704859) was granted on 28 May 1998, for the continued use of the ground floor and basement floors as an amusement arcade for a further limited period. Condition 1 of the planning permission specified '<i>The limited period for the use shall be until 4th December 2001 by which date the use shall be discontinued and determined</i>'. Condition 2 restricted the use to only operate between the hours of 8am and 12pm (midnight).</p> <p>Planning permission (reference PS9905295) was granted on 18 February 2000, for the removal of condition 1 of the 1998 planning permission, 'with the effect that the continued use of the site as an amusement arcade is granted permanently'.</p> <p>An Adult Gaming Centre Premises Licence (reference CAM-LIC/097) for use of the site as an adult gambling centre, came into effect on 1 September 2007.</p> <p>The ownership of Family Leisure Holdings Limited, including the adult gambling centre at the application site, was taken over by a new management team in 2019.</p> <p>The application covering letter advises that the current management team were informed that whilst the premises has planning permission to operate until midnight, the previous management team had agreed with the local police that the premises would close at 02:00am. The letter states that the applicant's understanding of the position when they obtained ownership of the premises, was that the premises had planning permission and a licence to operate 24/7, but were only operating until 02:00am.</p> <p>The application seeks to demonstrate that, on the balance of probability, the use of the property</p>			

as an adult gambling centre with operating hours between 8:00am - 02:00am, 7 days a week, began at least ten years before the date of the application, such that a retention of the use would not require planning permission.

Applicant's Evidence

The applicant has submitted the following documents in support of the application:

- The hourly "floor check" for the premises dated 6 July 2017 which shows the floor checks were undertaken by staff until 02:00.
- A further floor check dated 30 April 2017 which shows that checks of the premises were undertaken by staff until 02:00.
- A manager's rota for 2017 lists the operating times and staff shifts of the London venues and Kings Cross is shown as having staff on duty from 08:30 to 02:30.
- A Family Leisure managers rota for October 2015 which shows managers on duty until 02:30
- Statutory Declaration of Sonia Muhoi (Family Leisure Limited employee)

Council's Evidence

A representative of the Carlton Hotel on Birkenhead Street, located opposite to Reel Time, made a noise complaint in relation to Reel Time's operations, earlier in 2023.

There is no other relevant planning or enforcement history for the subject site.

Assessment

In regard to applications for a Certificate of Lawfulness, the Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the 'balance of probability', and authorities are advised that if they have no evidence of their own, nor any from others, to contradict or otherwise make the applicant's version of events less probable, there is no good reason to refuse the application, provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

The applicant's evidence includes a statutory declaration of an employee of Family Leisure Holdings Limited. The employee has been employed by Family Leisure Holdings Limited since October 2005. The statutory declaration states that the employee has been aware of the operating hours of all Family Leisure Holdings Limited's adult gambling centre sites since they started work with Family Leisure Holdings Limited in 2005, and the employee confirms the adult gambling centre at the application site has at all times since 2005 traded until 2am or later, without any break in such operating hours.

The statutory declaration is supported by floor checks and management rotas, dating from 2015, which indicate the adult gambling centre has operated until 2:00am. The statutory declaration acknowledges that in 2019, Family Leisure Holdings Limited, was acquired by a new management team and a large amount of paperwork was lost following the acquisition, as the company moved to online documentation. The statutory declaration advises that the floor checks and management rotas would have been the same prior to 2015.

Despite there being limited documentation detailing the operating hours for the adult gambling centre prior to 2015, this is not considered sufficient evidence to outweigh the applicant's evidence that the property has operated as an adult gambling centre from 8:00am to 2:00am, seven days a week.

Overall, therefore, it is considered that the information provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the building has been used as a property has operated as an adult gambling centre from 8:00am to 2:00am, seven days a week of more than ten years prior to the date of this application, despite there being limited documentation detailing the operating hours for the adult gambling centre prior to 2015. This being the case, and given the fact that the Council does not have any acceptable evidence to contradict or undermine the applicant's version of events, the use of the property as adult gambling centre operating from 8:00am to 2:00am, seven days a week, is lawful and would not require planning permission. In this respect, it is recommended that a Certificate of Lawfulness be granted.

RECOMMENDATION: Grant Certificate of Lawfulness

