



Officer Report

Application Number:	HGY/2026/2159
Application Type:	Lawful development: Existing use
Address:	Shop, 475 High Road, Tottenham, London, N17 6QA
Proposal:	Certificate of Lawfulness of Existing Use or Development - For 24-hour use in breach of Condition 1 of Planning Permission HGY/31070, which restricted the hours of use to 9am to 10pm Mondays to Saturdays, at 475 High Road, Tottenham, London N17 6QA. The premises have been open and trading on a continuous 24-hour basis, 7 days a week, since at least 25 September 2011.
Case Officer:	Josh Parker
Valid Date:	29/07/2026
Applicant:	I Miller
Agent:	Mr Haris Kasuji

RECOMMENDATION

Approve

1. PLANNING AND ENFORCEMENT HISTORY

The relevant planning history is as follows.

Permission HGY/25651 for 'Change of use of ground floor to a high-class amusement centre' was originally approved on 30 June 1982.

Permission HGY/31070 for 'Renewal of temporary permission on a permanent basis for use as an Amusement Centre' at the subject property was approved on 06 August 1985.

Condition 3 of the original consent was carried over as:

Condition 1 on the extant permission:

The use hereby permitted shall not be operated after 10p.m. or before 9a.m. on Mondays to Saturdays and not at all on Sundays or Bank Holidays. Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

2. REPRESENTATIONS

Planning Practice Guidance on Lawful Development Certificates confirms that there is no statutory requirement to consult third parties, although it may be reasonable for a Local Planning Authority to seek evidence from such sources where there is good reason to believe they may possess relevant factual information. The guidance makes clear that views on the planning merits of the case, or on private rights, are irrelevant to the determination of an application for a certificate.

No representations have been received in connection with this application

3. RELEVANT PLANNING LEGISLATION AND GUIDANCE

The application has been made under section 191 of the Town and Country Planning Act 1990, as amended. This is not a planning application seeking permission, but a request for confirmation that an existing use, activity, or breach of planning control is lawful.

Section 191 of the Act provides that a use or activity is lawful if no enforcement action may be taken in respect of it, including because the relevant enforcement time limits have expired, and if it does not contravene any enforcement notice currently in force. Where a Local Planning Authority is satisfied of lawfulness, it must issue a certificate, and in all other cases must refuse the application.

National Planning Practice Guidance explains that, when determining an application for a lawful development certificate, the Local Planning Authority must consider only matters of fact and law. Planning merits are not relevant at any stage in this process. Consequently, issues such as noise impact, residential amenity or the character of the area cannot be taken into account when determining this application.

Legal Test and Case Law

In this case, the relevant enforcement time limit is set out in section 171B(3) of the Act, which provides that enforcement action in respect of a breach of planning condition may not be taken after the end of the ten-year period beginning with the date of the breach.

Case law has clarified the manner in which this test is to be applied. The Courts have confirmed that the alleged breach must have occurred and continued throughout the whole of the relevant 10 year period and the intermittent, occasional, trivial or remedied breaches are insufficient to establish immunity. These principles are established in cases such as *Nicholson v Secretary of State for the Environment and Maldon District Council* and *Basingstoke and Deane Borough Council v Secretary of State for Communities and Local Government* and *Stockdale*.

The burden of proof also rests entirely with the applicant and in *Gabbitts v Secretary of State for the Environment and London Borough of Newham*, the Court confirmed that the applicant must demonstrate lawfulness on the balance of probabilities and that evidence relied upon must be sufficiently precise, unambiguous and credible to justify the grant of a certificate.

4. EVALUATION

An application for a Certificate of Lawfulness is concerned solely with matters of fact and law and does not involve any assessment of planning merits. The burden of proof lies with the applicant to demonstrate, on the balance of probabilities, that the alleged breach of Condition 1 has occurred and continued continuously for a period of at least ten years prior to the date of the application (2011).

Condition 1 on the extant permission (ref: HGY/31070):

The use hereby permitted shall not be operated after 10p.m. or before 9a.m. on Mondays to Saturdays and not at all on Sundays or Bank Holidays. Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

Agent's Submissions

The agent contends that the gaming lounge area since September 2011 and that this activity has continued during operating hours. The application relies on a Planning Support Statement and

signed witness statements from the former and current proprietors, which assert that the site has been in use 24 hours 7 days a week of amplified music has been a long-standing and continuous feature of the use of the premises except for Christmas day and Covid 19 Lockdown. The different aspects of the evidence as set out and commented on below.

- Google street views from 2016- 2025 advertising 24/7 open time advertised.
- HGY/2016/2151 – Application (refused) showing the 24/7 open advertising.
- A signed statutory declaration from Mr Paul Monkman – Gaming and Service director of Luxury Leisure, Talarius and RAL Ltd who has been employed by the company since September 2011 confirming 24/use for the sated period

It is argued on behalf of the applicant that the above attachments should be accepted as sufficient to demonstrate a continuous breach of Condition 1 for a period exceeding ten years.

LPAs position

While the Local Planning Authority must consider all evidence submitted, it is not required to accept assertions at face value. The evidence must be sufficiently precise, unambiguous and credible to demonstrate that the statutory test has been met. Where evidence is generalised, lacks sufficient detail, or is equally consistent with either lawful or unlawful scenarios, the burden of proof is not discharged.

In this case, the evidence submitted consists primarily of broad assertions contained within witness statements. While these statements indicate that amplified music has been played at the premises over an extended period, they do not provide adequate detail regarding the regularity, frequency or consistency of such activity across the full ten-year period relied upon.

While much of the evidence is derived from witness testimony, it is supported by additional documentary evidence, including historical advertising material, planning application records and licensing information. Taken together, the evidence is sufficiently precise, unambiguous and credible to demonstrate, on the balance of probabilities, that the premises have operated beyond the hours permitted by Condition 1 throughout the relevant period.

Local representations

No representations have been received.

Planning Enforcement History

Comment – There's no enforcement history

Noise Nuisance Complaints

Comment - N/A

Licensing Controls/ evidence

Comment: A 24-hour gambling premises licence has been associated with the property since September 2011. While the existence of the licence does not in itself demonstrate a breach of planning control, it provides supporting evidence consistent with the applicant's claim that the premises have operated continuously throughout the relevant period.

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The Local Planning Authority therefore considers that the applicant has discharged the burden of proof required to demonstrate that the breach of Condition 1 is lawful.

5. RECOMMENDATION

The application for a Certificate of Lawfulness of Existing Use or Development under section 191 of the Town and Country Planning Act 1990 is recommended for approval.

From the documentation and evidence provided, the Local Planning Authority is satisfied that, on the balance of probabilities, site has been in 24 hour use, 7 days a week, in continuous breach of Condition 1 for a period of 10 years prior to the date of the application. The alleged breach is therefore immune to enforcement under section 171B of the Town and Country Planning Act 1990.