

DEL 1

Variation of planning condition 5 of planning permission 13/00963/FUL to extend the opening times so that they reflect the premises licence.
The Chequered Flag, 32 Borough Street, Castle Donington, Derbyshire, DE74 2LA.

Case Officer:
Adam Mellor

Application Reference:
14/00739/VCI

Applicant:
Mr M Willies

Date Registered:
21 July 2014
8 Week Date:
15 September 2014
Consultation Expiry:
9 September 2014

1. Proposals and Background

This is an application under Section 73 of the Town and Country Planning Act 1990 to "vary" condition 5 of planning permission 13/00963/FUL to extend opening times so that they reflect the premises licence at The Chequered Flag, 32 Borough Street, Castle Donington, which was approved on the 12th February 2014. Section 73 relates to development of land without complying with conditions subject to which a previous planning permission was granted. The Council, in considering this application, is only entitled to consider the question of the conditions subject to which planning permission should be granted. Condition 5 attached to 13/00963/FUL which the applicant wishes to vary is listed below:

Condition 5

"Operations or uses authorised under this permission shall be carried out within the application site only between the following times:

*Between 1200hrs and 2130hrs Mondays to Thursdays;
 Between 1200hrs and 2230hrs Fridays and Saturdays; and
 Between 1200hrs and 2130hrs on Sundays and Bank Holidays.*

Reason – to ensure against noise disturbance to the surrounding area or properties."

The applicant wishes to vary this condition by increasing the hours so that they reflect those of the premises licence which would be as follows: -

Between 1100hrs and 2230hrs Mondays to Thursdays, Sundays and Bank Holidays (except New Years Eve);
 Between 1100hrs and 2300hrs Fridays and Saturdays; and
 Between 1100hrs and 0030hrs on New Years Eve.

It is indicated on the application forms that the development started on the 18th February 2014 with the works being completed on the 16th April 2014.

The planning history of the site is as follows: -

- 04/01467/FUL – Erection of a single storey rear extension – Approved 8th November 2004;
- 05/01697/FUL – Change of use from retail use (A1) to office use (A2) and erection of a satellite dish – Approved 3rd March 2006.

2. Publicity

7 No. neighbours notified 7 August 2014.

A site notice was displayed on the 19 August 2014.

3. Consultations

Castle Donington Parish Council consulted 7 August 2014.

East Midlands Airport Safeguarding consulted 7 August 2014.

Leicestershire County Council Highways Authority consulted 7 August 2014.

North West Leicestershire District Council Environmental Protection consulted 7 August 2014.

4. Summary of Representations Received

The following summary of representations is provided.

Castle Donington Parish Council has no objections but raises concerns due to the proximity of residential accommodation.

East Midlands Airport Safeguarding has no objections.

Leicestershire County Council – Highways has no observations.

NWLDC – Environmental Protection has no objections.

Third Party Representations

Two no. representations have been received from the occupants of the Sailors & Soldiers Club, 7 Clapgun Street and an unknown address objecting to the application with the comments raised summarised as follows: -

- Extending the operating times of the premises will impact on the potential custom generated by our premises which is hidden away on a parallel street to Borough Street;
- Extending the hours will lead to additional people congregating on the street which will result in detriment to residential amenities.

5. Relevant Planning Policy

National Planning Policy Framework (NPPF) – March 2012

The Department of Communities and Local Government published the National Planning Policy Framework (NPPF) on 27 March 2012. The NPPF brings together Planning Policy Statements, Planning Policy Guidance Notes and some Circulars into a single consolidated document. The NPPF contains a number of references to the presumption in favour of sustainable development. It states that local planning authorities should:

- approve development proposals that accord with statutory plans without delay; and
- grant permission where the plan is absent, silent or where relevant policies are out of date unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.

The NPPF (Para 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

Paragraph 123 indicates that planning policies and decisions should aim to, amongst other things:

- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
- mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;

Paragraph 131 outlines that in determining planning applications, local planning authorities should take account of, amongst other things, the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;

Paragraph 132 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional;

Paragraph 134 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use;

The following policies of the North West Leicestershire Local Plan are consistent with the policies in the NPPF and should be afforded weight in the determination of this application:

North West Leicestershire Local Plan

Policy S2 of the Local Plan provides that development will be permitted on allocated sites and other land within the Limits to Development, identified on the Proposals Map, where it complies with the policies of the Local Plan;

Policy E3 seeks to prevent development which would be significantly detrimental to the amenities enjoyed by the occupiers of nearby dwellings;

Policy E4 seeks to achieve good design in new development and requires new development to respect the character of its surroundings;

Policy T3 requires development to make adequate provision for vehicular access, circulation and servicing arrangements;

Policy T8 requires that parking provision in new developments be kept to the necessary minimum, having regard to a number of criteria;

Policy R1 states that shopping and related development such as food and drink uses will be permitted within Coalville Town Centres as shown on the Proposals Map, subject to other material considerations.

Policy R19 provides that, in addition to local shops, only certain ground floor frontage uses (listed under the policy) will be permitted within existing and proposed local shopping centres, subject to environmental and traffic considerations, and other criteria relating to vitality and viability.

Submission Version Core Strategy

At a meeting of the Full Council on 29 October 2013, the District Council resolved to withdraw the Submission Core Strategy.

Other Guidance

National Planning Practice Guidance

In March 2014 the Government published National Planning Practice Guidance (NPPG) to supplement the NPPF. The Guidance does not change national policy but offers practical guidance as to how such policy is to be applied.

6. Assessment

The principle of the use of the ground floor building as a micro pub (an A4 use) was assessed and considered to be acceptable under application reference 13/00963/FUL. In these circumstances the only matter for consideration relates to whether the increase in the hours of operation would result in sufficient detriment to residential amenities by virtue of a noise impact. Any issues associated with the competition between premises offering similar products is not a material planning consideration which can be taken into account in an assessment of the application.

Residential Amenity

The buildings on Borough Street are utilised for a variety of uses including retail, financial businesses, restaurants, drinking establishments, flats and houses. No. 34 Borough Street is used for retail purposes and No. 30 is a residential dwelling. In assessing the merits of the proposed use on application reference 13/00963/FUL the case officer stated that *"the use of the premises as a standard public house would be likely to lead to an adverse impact on the residential amenities of the adjoining residential of the adjoining residential unit. However, the use of the premises as a micro-pub would be unlikely to adversely impact on residential amenities due to the nature of the operation since there would be no louder intermittent noises from televisions, gaming machines, pool tables or sound systems. The size of the premises (some 40 sqm total) limits the extent of the operation, and if A4 use was granted it would be unlikely to be a suitable business prospect as a standard brewery."*

The proposed working hours would be see the premises open one hour earlier on all days of the week, including Bank Holidays, with a one hour extension in the evening Monday to Thursday, Sunday and Bank Holidays (except New Years Eve) and a 30 minute extension on Friday and Saturday. An extension until 0030hrs would be proposed on New Years Eve. With regards to the working hours of premises within the vicinity of the site it is noted that the A3 (Restaurants and Cafes) use at Nos. 36 to 38 Borough Street (The Apiary) currently operates between the hours of 0900hrs until 2330hrs Monday to Saturday and 0900hrs to 2200hrs on Sundays and Bank Holidays. In respect of the alterations to the hours of operation the Council's Environmental Protection team have raised no objections and in the context of the hours of operation of neighbouring businesses, as well as the nature of the use, it is considered that there would not be an adverse impact on neighbouring residential amenities by virtue of comings and goings from the site at unsocial hours. The operation of the business until 0030hrs on New Years Eve would also not have a significantly detrimental impact on the amenities of neighbours as to warrant a refusal of the application given that these hours would be limited to one day of the year and have been deemed appropriate by the Council's Licensing team.

In terms of the representation received in relation to the congregation of people in the street it is considered that Condition 5 of the consent outlines that the uses of the site shall be confined to the application site, outlined in red on the site location plan submitted in support of application reference 13/00963/FUL, which does not include the public highway. Should people be consuming goods purchased from the premises on the street then this would result in a breach of the planning permission and as such would be enforced by the Council's Planning Enforcement team. In these circumstances the potential congregation of people from the premises, as well as neighbouring premises, on Borough Street at the operational times of the business would not result in sufficient detriment to the amenities of neighbours as to justify a reason for refusal particularly in the circumstances that the increase in the hours of use are not significant.

Overall, therefore, the proposed change to the hours of operation would not conflict with the aims

of Paragraph 123 of the NPPF or Policy E3 of the Local Plan.

Summary Reasons for Granting Planning Permission

The site has the benefit of permission for the operation of a micro pub from the premises and this has been implemented on the site. It is considered that the alterations to the hours of operation would not result in sufficient detriment to neighbouring residential amenities given that the hours would not be too dissimilar to other business premises within the vicinity of the site and the fact that the Council's Environmental Protection team has no objections. In these circumstances the development would accord with Paragraph 123 of the NPPF and Policy E3 of the Local Plan. It is therefore recommended that the application be permitted.

The proposed amendments will require alterations to condition 5 to reflect the revised hours all other conditions remain the same as imposed on application reference 13/00963/FUL, although a note to the applicant will be imposed on the consent to bring to the applicant's attention the need to address Condition 4 of the consent given that the use of the site has commenced.

RECOMMENDATION - PERMIT, subject to the following conditions;

1. The development shall be begun before the expiration of three years from the date of this permission.

Reason – to comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. The proposed development shall be carried out strictly in accordance with the following schedule of plans, unless otherwise required by a condition of this permission:

Site location plan 1:1250;
Existing ground floor layout 20/11/13; and
Proposed ground floor layout and rear elevation 20/11/13.

Reason – to determine the scope of this permission.

3. The use hereby permitted relates to the use at the ground floor level of the premises only.

Reason – to determine the scope of this permission and for the avoidance of doubt.

4. The use hereby permitted shall not commence until the condenser/ventilation system and internal noise insulation measures required in connection with the use hereby permitted have been submitted to and agreed in writing by the Local Planning Authority. Those facilities and system shall be provided in accordance with the agreed details and maintained as such.

Reason – to ensure against a noise disturbance to the surrounding area or properties.

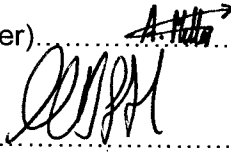
5. Operations or uses authorised under this permission shall be carried out within the application site only between the following times:

Between 1100hrs and 2230hrs Mondays to Thursdays;
Between 1100hrs and 2300hrs Fridays and Saturdays;
Between 1100hrs and 2230hrs Sundays and Bank Holidays (except New Years Eve); and
Between 1100hrs and 0030hrs on New Years Eve.

Reason – to ensure against noise disturbance to the surrounding area or properties.

Notes to applicant

1. Planning permission has been granted for this proposal. Discussion with the applicant to seek an acceptable solution was not necessary in this instance. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended).
2. As of the 22nd November 2012 written requests to discharge one or more conditions on a planning permission must be accompanied by a fee of £97.00 per request. Please contact the Local Planning Authority on (01530) 454665 for further details.
3. The developers should note that this permission does not authorise any new shop front advertisement which may require advertisement consent. You may wish to contact the Local Planning Authority in relation to any new adverts which may be required.
4. Your attention is drawn to the fact that the use of the premises as a Micro Pub has commenced without compliance with Condition 4 of the consent and as such satisfactory information should be submitted to discharge this condition at your earliest convenience in order to avoid the Local Authority considering the pursuit of any formal enforcement action.

Checked by (Case Officer)..... ~~AMH~~ 

Date..... 4/9/15

Decided by..... 

Date..... 4.9.15