

Planning Committee: 31 March 2020

Item Number: 5

Application No: [W 20 / 0042](#)

Town/Parish Council: Warwick
Case Officer: Emma Booker

Registration Date: 03/01/20
Expiry Date: 28/02/20

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Variation of Condition 3 of planning permission ref: W/17/1033 (Change of use from Retail (Class A1) to a mixed use of Retail (Class A1), Restaurant and Cafe (Class A3), Drinking Establishment (Class A4) and the sale of food and drink for consumption on or off the premises) to vary previously approved opening hours from 08:00 to 23:00 on any day, to 09:00 to 23:30 on any day. FOR The Table Ltd

This application is being presented to Planning Committee due to the number of support responses received from the public and it is recommended for refusal.

RECOMMENDATION

It is recommended that Planning Committee refuse planning permission for the reason set out at the end of this report.

DETAILS OF THE DEVELOPMENT

The applicant seeks to vary Condition 3 of planning permission ref: W/17/1033 ("Change of use from Retail (Class A1) to a mixed use of Retail (Class A1), Restaurant and Cafe (Class A3), Drinking Establishment (Class A4) and the sale of food and drink for consumption on or off the premises"). Condition 3 limits the hours that customers are allowed on the premises to between 0800 and 2300 on any day. The reason cited for Condition 3 is "The premises are closely adjoined by residential properties and the local planning authority considers it necessary to strictly control the nature and intensity of use of the premises in the interests of the amenities of the area in accordance with Policies DP2 & DP9 of the Warwick District Local Plan 1996-2011."

The opening times proposed are: 09:00 to 23:30 all days of the week. The premise would be proposed to open 1 hour later and close 30 minutes later than the condition currently stipulates.

THE SITE AND ITS LOCATION

The application site is a Grade II Listed Building situated within Warwick Town Centre and the Warwick Conservation Area.

PLANNING HISTORY

W/19/0818 - Variation of Condition 3 of planning permission ref: W/17/1033 to extend previously approved opening hours from 08:00 to 23:00 on any day to

09:00 to 23:30 Sunday to Wednesday, 09:00 to 24:00 Thursdays and 09:00 to 01:00 Fridays and Saturdays. - Withdrawn 28.10.2019.

W/17/1033 - Change of use from Retail (Class A1) to a mixed use of Retail (Class A1), Restaurant and Cafe (Class A3), Drinking Establishment (Class A4) and the sale of food and drink for consumption on or off the premises. - Granted 20.08.2017.

W/16/0330 - Change of use from A1 retail to mixed use A1 retail and A3 restaurant (Sui Generis) – Withdrawn 28.04.2016

W/15/1496 - Change of Use from A1 Retail to a Mixed Use of A1 Retail and A3 Café – Withdrawn 13.11.2015

RELEVANT POLICIES

- National Planning Policy Framework
- The Current Local Plan
- BE3 - Amenity

SUMMARY OF REPRESENTATIONS

Warwick Town Council - Objection. Residents' objections raise concern and current licensing needs to be reviewed.

Environmental Protection - Objection, on the following grounds:

- Environmental Protection received reports from local residents of unacceptable noise, disturbance and antisocial behaviour late into the night.
- When investigating the complaints, Environmental Health Officers observed that the premises were open until 01:00, well beyond the 23:00 closing time stipulated in Condition 3 of planning permission ref: W/17/1033. Antisocial behaviour by the establishment's customers was also observed.
- The bar has provided door staff to attempt to manage the customers outside the door, but this has failed to alleviate disturbance to an acceptable level.
- The planning permission granted in 2017 envisaged a mixed use with eating and drinking until 23:00. Collective observations confirm that it has become a bar. The premises' current opening times (in breach of Condition 3) attracts antisocial behaviour, impacting on the well-being of close neighbours. We have no confidence that the applicant can manage customers to be unobtrusive.
- The way to remove the noise problem from the street drinkers / smokers associated with this bar late at night is to enforce the existing planning condition not to accommodate it by removing or weakening the condition.
- Most recent complaints have been received from residents opposite having arisen when the bar opened late over Christmas and New Year causing alleged nuisance, although not observed by an EHO due to closure of the Council over the festive period, the complaints are considered plausible.

CCTV - No objection.

Warwickshire Police, Designing Out Crime Officer - No objection.

Public Response -

Objection comments from 6 addresses:

- Circumstances at the site have not changed since the previous application was submitted.
- Noise from the Iron Works and the general behaviour of the clientele is already unacceptable and makes living in the area intolerable.
- Objectors have experienced late night noise, loud music, vomiting, urinating, swearing and general drunken behaviour. Further relaxation of the planning permission as proposed would likely increase antisocial and unneighbourly nature of the existing use.
- There is a long history of planning breaches at this site, overcome by conditioning the use of the upper floors to use by staff at the bar, however this appears to have created the opportunity for increased nuisance.
- The majority of the letters of support are from those associated with the business or living further away, and therefore do not suffer the consequences.
- The incidents of anti-social behaviour have reduced recently since the bar have started to comply with their permitted hours, although are still unacceptable. The customers congregate outside the pub taking up the pavement, make excess noise, and are allowed to drink excessively, which is uncomfortable for a local resident.
- The site is closely adjoined by residential properties where the sound from the premises carries easily due to the layout of build form, strong concerns raised regarding amenity; the proposal would increase noise levels from customers and taxis and will increase highway safety risk due to taxis double parking on a sharp bend.
- The establishment was granted permission for a mixed-use, in reality it is now exclusively operating as a drinking establishment and not a place to eat out. This attracts a different clientele and has had a negative impact on the amenity of the neighbours, which has been monitored and confirmed by Environmental Protection. The site is entirely unsuitable for a drinking establishment given the disturbance caused so far and has significantly changed the character of the area since it has been in operation.
- The Iron Works should be given the same opening hours as the restaurant nearby in keeping with the businesses within the area, which is largely residential and totally unsuitable for a bar with no smoking area.
- The bar is unable to find a solution to where to move the smokers or as to how they would manage their customers effectively in response to neighbour complaints, extended opening hours should therefore not be supported.
- The bar's history of breaching their permitted opening hours, which has negatively impacted on the neighbour's quality of life, gives little confidence that the bar would comply with any extension to these hours.
- Disturbance is caused up to 2 hours after the bar closes due to customers congregating outside.
- This planning application certainly does not comply with the Local Plan.

Support comments from 12 addresses:

- The Iron Works forms part of a row of long established businesses serving the general public in this part of Warwick.

- Refusing the application increases the risk that owners will set up their businesses in another town, contributing to a further decline in the attraction of Warwick. In the current climate, many businesses in this sector are struggling to survive. Refusal would have an adverse impact on Warwick's town centre making it a less attractive place to visit.
- The Ironworks is a responsibly run bar and preferable to another vacant plot.
- Supporters contest the claim that instances of anti-social behaviour have occurred at the site.
- The music is on at a civilised level.
- The venue should have equal rights/in keeping with the surrounding businesses. Closing earlier than the nearby drinking establishments has reduced trade, permitting an extra 30 minutes would be in line with the rest of the country. Concerns raised with regard to business competitiveness should the application be refused.
- Supporter considers that the owner always reminds customers of last orders and requests that they behave when leaving the bar.

ASSESSMENT

It is considered that the key issue to be assessed in the determination of this application is the impact of the varied opening hours on the amenity of the occupiers of nearby properties.

Impact on the amenity of neighbouring properties

Warwick District Local Plan Policy BE3 requires all development to have an acceptable impact on the amenity of nearby users or residents.

In 2019, the Council received complaints that the premises had been operating in breach of Condition 3 (restricting opening hours from 0800 to 2300 on all days), remaining open until late into the night. Environmental Protection have received complaints from neighbours and subsequently carried out an investigation. EHOs have confirmed that the neighbours' complaints are genuine and have submitted a strong objection to the proposed variation of Condition 3 to extend the business's opening hours. The Environmental Health Officer considers that an extension to the opening hours which would enable the business to operate later into the night, would cause an unacceptable level of harm to the amenity of the neighbours by virtue of increased noise, disturbance and antisocial behaviour.

Environmental Protection and neighbours acknowledge that efforts have been made to reduce the noise generated by employing a doorman, but consider that this has failed to curtail disturbance to an acceptable level. Consequently, Environmental Health Officers and members of the public objecting to the proposal have no confidence that the applicant can manage customers to be unobtrusive. It is therefore considered that the way to remove the noise problem from the street drinkers/smokers associated with this bar late at night is to enforce the existing planning condition not to accommodate it by removing or weakening the condition.

Warwick Town Council and residents of 6 nearby addresses have submitted objections to the application. Neighbours consider the location of the premises to be inappropriate for a bar on the basis that there are many residential properties

in close proximity to the site whom are subject a level of disturbance beyond what is reasonably expected from living within a town centre location.

A number of local residents have expressed that the character of the area has been changed and the street now feels less safe at night due to customers regularly congregating out on the street to smoke. Increased demand for taxis has also increased the noise from traffic late at night. Objectors express that the premises' history of operating outside the permitted opening hours has had a negative impact on the amenity of the neighbours. When the premises adhere to the permitted hours, the impact to neighbour amenity is significantly reduced, highlighting the appropriateness of the current opening hours in this location.

Objection comments received in association with application ref: W/19/0818 expressed that residents do not consider it safe to park their vehicles outside the premises due to customers' regular antisocial behaviour. It was also considered that the business's operations will discourage residents from moving into the area, having a direct impact on the future of the area designated for residential use.

It is acknowledged that there are other Pubs in Warwick Town Centre which are able to open later than the application site.

- The Globe on Theatre Street is open Monday - Wednesday 08:00 - 23:00; Thursday - Saturday 08:00 - 00:00, Sundays 08:00 - 23:30 and Sundays prior to Bank Holidays, Christmas Eve, Halloween and Bonfire Night 08:00 - 01:00.
- Thomas Lloyd on Market Place is open Sunday - Thursday 09:00 - 00:30, Friday - Saturday 09:00 - 01:00 and Christmas Eve and Boxing Day until 02:00.
- The Tilted Wig on Theatre Street is open Sunday - Thursday 10:00 - 00:00, Friday - Saturday 10:00 - 01:00, Christmas Eve and Boxing Day an additional hour into the morning; a further hour into the morning on every Friday, Saturday, Sunday and Monday for each Bank Holiday (including Friday for Easter) and on New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.
- The Rose and Crown on Market Place is open Sunday - Thursday 09:00 - 00:00 (no sales after 23:00) and Friday - Saturday 09:00 - 01:00 (no sales after 23:00). On Christmas Eve and Boxing Day until 01:00hrs.

However, the EHO has stated that these other Pubs are not located in the immediate vicinity of the application site and therefore a direct comparison would not be appropriate. In this instance, the EHO has observed that Market Place is quiet after 23:00 and has had the benefit of witnessing first-hand the applicant's premises operating at the hours that are being sought by the application. Environmental Protection have also received complaints from local residents about the premises and have witnessed first-hand the noise impacts resulting from patrons of the application premises in the street at the late hours. The other premises mentioned benefit from historic permissions and established uses, are in relatively busier locations and have fewer residential properties in close proximity.

It is important to note that the premises licence for the application site (WDC PREM00837) has later opening times than the planning permission. L

The Town Council considers that the concerns of the neighbours needs to be addressed and the licensing of the premises needs to be reviewed.

Warwickshire Police and WDC CCTV have raised no objection to the scheme.

Support comments from 12 addresses have also been received. Local residents consider The Iron Works to have had a positive impact on the local area, forming part of a row of long established businesses which serve the general public, providing a unique late night place for drinking and socialising. Concern is raised regarding the impact that the closure of the bar, as a result of enforcing earlier closing times than nearby drinking establishments, would have on the attractiveness of the town centre for visitors. Supporters are concerned about the potential of a vacant unit within Market Place. It is considered that bar has brought diversity to the town and in order to thrive, it is important to have a nightlife. A number of local residents consider the level of noise and disturbance from the business to be acceptable, and that music is on at a civilised level. A number of supporters consider that the bar is responsibly run, and should have equal rights to later opening times in line with its competition. It is also contested that incidents of anti-social behaviour occur at the site.

Taking all of the above into consideration, it is concluded that a variation of the opening hours of The Iron Works, to extend the closing time by 30 mins, would cause unacceptable harm to the amenity of the neighbours. Market Place accommodates a high number of residential properties, many in very close proximity to the site. Given that The Iron Works is located within a mixed use retail and residential area, it is considered an unsuitable space to accommodate a drinking establishment that is open late into the night beyond 23:00 when residents can reasonably expect relatively quiet surrounds.

It was acknowledged within the assessment of planning application ref: W/17/1033 that the use of the premises as a mixed A1, A3 and A4 use could potentially impact on the amenity of the neighbours. Therefore, the imposition of Condition 3 to prevent closing time beyond 2300 was considered necessary in order to protect neighbour amenity. To vary this condition to extend the closing time of the premises by 30 mins would result in a negative impact on the amenity of the neighbours by virtue of increased noise and disturbance for a prolonged period of time into the night. The proposed later opening time (9am) is not considered to mitigate the impact to neighbour amenity that a the proposed later closing time would have. Business competition is not considered a material planning consideration and has not been taken into consideration in the decision making process.

The proposal therefore fails to satisfy the criteria of Local Plan Policy BE3 and is recommended for refusal.

REFUSAL REASONS

- 1 Warwick District Local Plan Policy BE3 requires all development to have an acceptable impact on the amenity of nearby users or residents.

In the opinion of the Local Planning Authority it is considered that the proposed variation of the opening hours would result in material harm to the living conditions of neighbouring residents by reason of noise, disturbance and anti-social behaviour derived from customers leaving and congregating outside the premises later into the night.

The permitted hours, 0800 - 2300, are considered appropriate for the location of the site in a mixed commercial and residential part of the town centre in order to strike an acceptable balance between the commercial and residential role of this part of the town centre. To permit the business to open later into the night, on all days of the week, would result in an unacceptable form of development which would fail to comply with Local Plan Policy BE3.

The proposal is thereby considered to be unneighbourly and contrary to the aforementioned policy.
