

Planning Committee: 15 December 2022

Item Number: 7

Application No: [W 22 / 1042](#)

Town/Parish Council: Warwick
Case Officer: Michael Rowson
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Registration Date: 07/07/22
Expiry Date: 01/09/22

66 Market Place, Warwick, CV34 4SD

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 08:00-23:00 on any day, to 08:00-23:30 on Thursdays, Fridays and Saturdays and to extend opening hours to 08:00am-02:00am on Good Friday and Christmas Eve and 08:00am-03:00am on New Year's Eve. (Resubmission of application ref: W/21/0099) FOR The Table Ltd

This application is being presented to Committee due to the number of supportive responses and an objection from the Town Council having been received.

RECOMMENDATION

It is recommended that the 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 proposed opening times are: 8:00-23:30 on Thursdays, Fridays and Saturdays and 08:00am-02:00am on Good Friday and Christmas Eve and 08:00am-03:00am on New Year's Eve.

The premises would therefore close 30 minutes later than the condition currently stipulates on Thursdays to Saturdays; three hours later on Good Friday and Christmas Eve; and four hours later on New Year's Eve.

No internal or external alterations or other development is proposed.

THE SITE AND ITS LOCATION

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

RELEVANT PLANNING HISTORY

W/20/0042 - 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. – Refused 27/03/2020

Reason for refusal:

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.

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.

RELEVANT POLICIES

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

SUMMARY OF REPRESENTATIONS

Warwick Town Council: Objection – The opening hours for the Bank Holiday, Christmas Eve and New Year’s Eve are too late.

Highways Authority: No objection

Conservation Officer: No Objection

Environmental Health Officer:

The property in question has a history of non-compliance. In August 2015, the premises underwent an unapproved change of use from retail to restaurant and operated as 'The Table'. Shortly after trading began, complaints of customer noise and cooking odours were received from residents living above and adjacent to the premises. These complaints were investigated by Environmental Health and a Noise Abatement Notice was served on the operator.

Application W/17/1033 granted a change of use from retail to a mixed use of retail, restaurant and café, drinking establishment, and the sale of food and drink for consumption on or off the premises. This was granted subject to conditions including a restriction on opening hours and a requirement that the upper floor dwelling is occupied by individuals associated with the ground floor business.

Complaints from residents of Market Place were received by Environmental Health in April 2019 regarding noise from customers smoking in the street, music in the premises after 23:00, and parties in the flat above the premises. These complaints were investigated and witnessed by Environmental Health to be intrusive to a resident's property. During these investigations, it was found that the premises were opening beyond the hours stated on their planning permission and that the premises was operating solely as a drinking establishment and not the mixed use as originally intended. An additional noise complaint was received in early 2020 prior to the national restrictions imposed by Covid-19. Following these restrictions, no further complaints have been received by Environmental Health regarding the premises.

The applicant is seeking an amendment to the existing opening hours by 30 minutes on Thursdays, Fridays, and Saturdays as well as extended opening hours on certain public holidays. A similar amendment was refused under W/20/0042 due to the negative impacts on residential amenity. The applicant does not appear to have submitted any supporting information to detail how this reason for refusal has been addressed.

The applicant says that the current opening hours are not viable for a bar and compares the opening hours of other licensed premises in Warwick. As highlighted above, the premises has planning permission for a mixed use of retail, restaurant, and drinking establishment. Contrary to this, the premises still appears to operate as a bar. In light of previous noise complaints, we consider the current opening hours to be appropriate for the consented mixed use and would make an objection to the proposed amendment of hours in the absence of any supporting information demonstrating that negative impacts on residential amenity have been addressed.

Public Response:

3 objections received on the following grounds:

- The proposal will lead to an increase in noise and disturbance from the premises and cause an increase in traffic from taxis and other vehicles picking up customers
- When the premises opened until 11:30 and beyond it led to late night drinkers gathering, chatting and smoking in the street and waiting for taxis and that noise was unbearable.
- Trade vehicles arrive before 6am and wake residents which combined with late night noise results in significant detriment to residents' well-being.
- The bar has been poorly managed with constant noise and antisocial behaviour issues
- The later the bar opens the worse the antisocial behaviour – swearing, vomiting, urinating, shouted conversations and fighting.
- After-parties and drug taking on the premises
- Poor management at later hours as it becomes a late-night drinking destination.
- The bar is only bearable since covid when hours have been reduced to 11pm close.
- The disturbance leads to an enormous impact on the quality of life of residents including stress and anxiety.
- Neighbouring dwellings are listed, and no amount of sound proofing makes a difference to the noise levels.
- The premises should be used as a restaurant again, operate within its existing hours or relocate to the square where other late-night bars are located close to dwellings more suited to the noise.
- When the proprietor was forced to follow the licensing hours, there was less disturbance and there have been very few issues in the last couple of years, but extensions of hours will bring a return of loud inebriated people outside.
- The building does not lend itself to being a late-night bar as it's within a residential area.
- The introduction of door staff didn't help and resulted in more outdoor conversations
- The establishment does not serve food
- Impact on the reputation of the town.

21 support comments received on the following grounds:

- The proposed hours are similar to other bars in the town centre
- It is good customer service to open later
- Extended hours would create a level playing field for all traders in difficult times and improve competition
- Withholding an extension would be prejudicial
- The bar is well run by a responsible, professional, local owner
- The proposal provides more choice for late night venues in Warwick
- The building is located in a town centre location
- Refusing the application would be discriminatory towards the owner as other bars are being opened later in a residential area
- There is no loud music or disruptive patrons
- Effective management ensures customers are orderly and considerate and leave the premises at 11pm
- Music is always kept at a sensible level

ASSESSMENT

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 received complaints from neighbours and subsequently carried out an investigation. The EHO confirmed that neighbours' complaints were genuine at that time.

In 2020, the applicant submitted a similar application to that currently under assessment, to open the premises later by 30 minutes, closing at 23:30 every day. That planning application was refused at Planning Committee due to concerns over neighbouring amenity.

This application reduces the proposed days on which a closing time would be extended by 30 minutes to Thursday, Friday, Saturday and also proposes extensions on Good Friday and Christmas Eve (08:00am – 02:00am) and New Year's Eve (08:00am - 03:00am).

The applicant says that the current opening hours are not viable for a bar and compares the opening hours of other licensed premises in Warwick. However, it is noted that the premises does not have planning permission for the sole use as a drinking establishment, but mixed-use including restaurant and café uses. In light of previous noise complaints, the EHO considers that the current opening hours are appropriate for the consented mixed use, raising a strong objection to the proposal.

The most recent noise complaint was received in early 2020, prior to the national restrictions imposed by Covid-19. Following these restrictions, no further complaints have been received by Environmental Health regarding the premises. Several local residents have objected due to the premises' history of operating outside the permitted opening hours which had a harmful impact on the amenity of the neighbours, evidenced by WDC's EHO. However, they also note that the existing disturbance is less than that experienced historically, and this is evidenced by the lack of recent complaints.

It is considered that when the premises has adhered to the permitted hours, the impact to neighbour amenity is significantly reduced, highlighting the appropriateness of the current opening hours in this location.

The Environmental Health Officer considers that an extension to the opening hours would cause an unacceptable level of harm to the amenity of neighbouring residents, noting that no additional supporting information has been submitted to demonstrate that negative impacts on residential amenity have been addressed since the previous application, which was refused.

It is acknowledged that there are other Pubs and bars 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.
- Ronnie's Bar, 4 Jury Street is open Monday - Thursday 11:00 - 23:30, Friday and Saturday 11:00-00:30 and Sunday 11:00 - 23:00.

However, it is noted that these pubs and drinking establishments are not located in the immediate vicinity of the application site and therefore a direct comparison would not be appropriate when considering impact on neighbours' living conditions. Market Place is generally quiet after 23:00 and the EHO has had the benefit of witnessing first-hand the applicant's premises operating at the hours that are being sought. The other premises mentioned benefit from historic permissions and established uses, are in relatively busier locations and have fewer residential properties in close proximity.

21 letters of support have been received stating that the proposed hours are similar to other establishments within the town centre, providing more choice for local residents and that management is effective at minimising disturbance to local residents. Others state that refusing the extension of hours would discriminate against the applicant.

Taking all of the above into consideration, it is concluded that a variation of the opening hours of The Iron Works, to extend the opening hours, 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 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. This approach was also taken with the refusal of the previous application for extended opening hours and no additional supporting documentation has been provided here. To vary this condition to extend the closing time of the premises 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.

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 comply with Local Plan Policy BE3 and is recommended for refusal.

REFUSAL REASON

- 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 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.
