

# Planning Committee

26 April 2011

**Reference:**  
**APP/11/00283**

**Area Team:**  
**North Team**

**Case Officer:**  
**Miss K Elliot**

**Ward:**  
**Oxton**

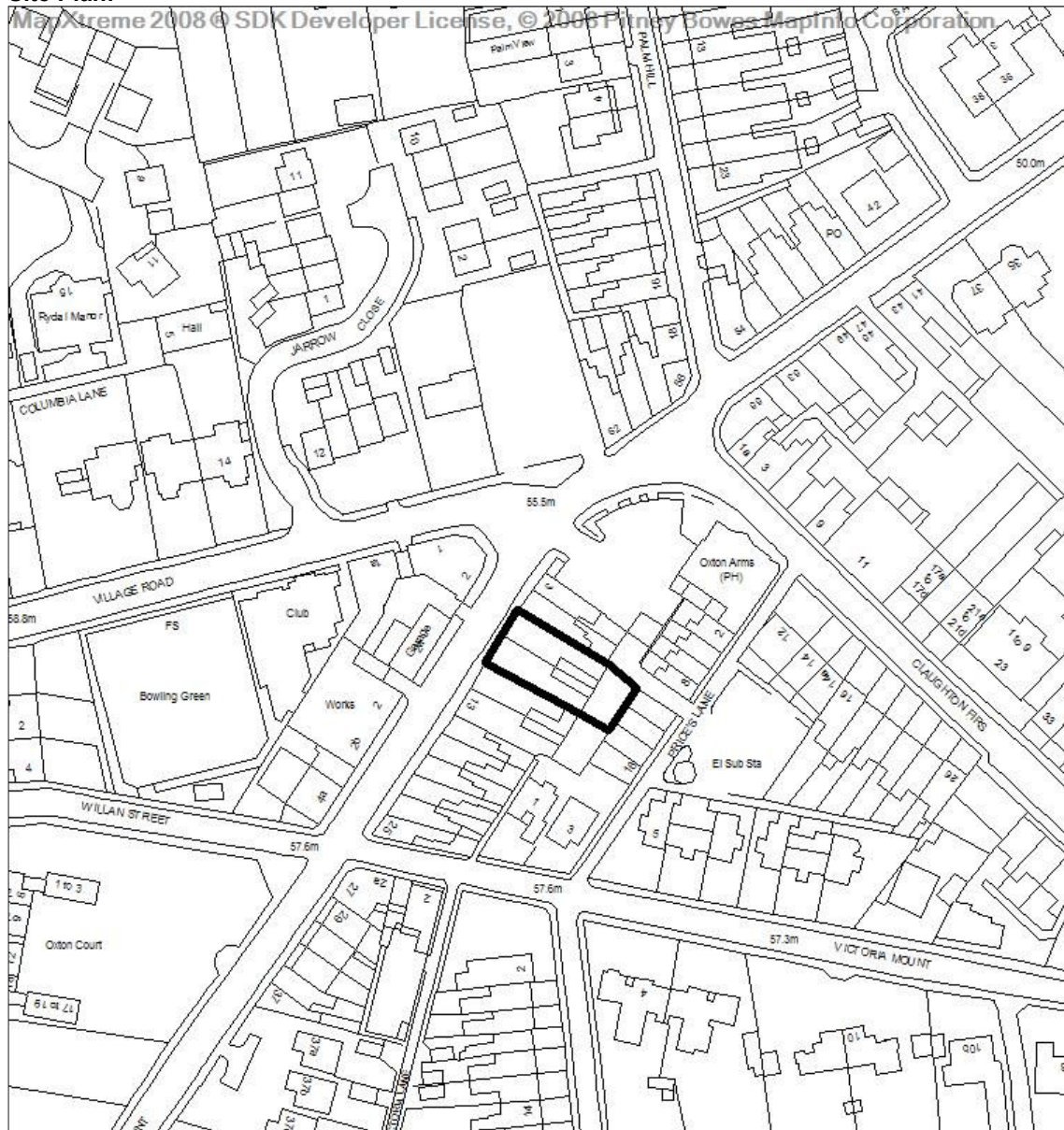
**Location:**  
**Proposal:**

7-9 ROSE MOUNT, OXTON, CH43 5SG  
Proposed refurbishment of existing restaurant/bar with the erection of a conservatory within the rear courtyard and change of apartment within outrigger to become part of restaurant/bar and supporting office accommodation, installation of air conditioning units to rear (Amended description)

**Applicant:**  
**Agent :**

Mr J Mitchell & Holland  
Condy Lofthouse Architects

## Site Plan:



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**Development Plan allocation and policies:**

Density and Design Guidelines Area  
Primarily Residential Area  
Conservation Area

**Planning History:**

APP/1990/5908 - Change of use of ground floor to restaurant, erection of a single storey rear extension, conversion of part of ground, 1st and 2nd floors to three flats and construction of new frontage - Approved 19/08/1991

APP/11/00061 - Proposed refurbishment of existing restaurant/bar with the erection of an external canopy within the rear courtyard and change of apartment within outrigger to become part of restaurant/bar and supporting office accommodation – Pending

APP/11/00215 - Variation of condition 5 of APP/1990/5908 to allow the premises to open from 09:00 to 00:00 Sunday to Thursday (including Bank Holidays) and 09:00 to 01:00 Friday and Saturday - Pending

**Summary Of Representations and Consultations Received:****REPRESENTATIONS**

Twenty five letters of notification were sent to the occupiers of neighbouring properties and a site notice was displayed. At the time of writing this report a total of three letters of objection had been received and these can be summarised as follows:

1. the proposals threaten the quality of life of local residents and result in high levels of noise;
2. the proposals include use of the premises as a live music venue and potential beer garden in a quiet village environment;
3. works proposed at the site have already been carried out including the premises hosting a private party;
4. the premises is shown as a bar rather than a restaurant;
5. the proposal would result in a change in the character of the area
6. the use of the rear yard as a smoking/drinking area is not acceptable;
7. the proposal will have a negative impact on the character of the conservation area.

**CONSULTATIONS**

Director of Corporate Services, Conservation Team have no objection to the proposal.

The Oxtan Society did not comment on the proposal.

Director of Law, HR & Asset Management, Environmental Protection Division have no objection to the proposal subject to a condition preventing the playing of live or amplified music within the premises.

**Director's Comments:****REASON FOR REFERRAL TO PLANNING COMMITTEE**

The application was removed from delegation by Councillor Brighthouse on the grounds that the development would lead to noise and disturbance to neighbouring properties.

**INTRODUCTION**

The proposal is for the refurbishment of the former Villa Jazz restaurant and bar with the erection of a conservatory within the rear courtyard and change of use of the apartment within the rear outrigger to become part of the premises with supporting office accommodation above. There are two concurrent applications for the same site, one for the erection of a canopy at the rear and another to increase the opening hours of the premises, which are yet to be determined.

**PRINCIPLE OF DEVELOPMENT**

The principle of the development is acceptable subject to the provisions of Policies HS15, CH2 and CH7 and its impact on neighbouring properties and uses and the character of the area.

## **SITE AND SURROUNDINGS**

The site comprises a previously vacant mid-terrace commercial property with flats above. The site is situated at the heart of Oxton Village and its surrounding conservation area. Historically, the property was used as a restaurant and is situated in a small parade of other commercial uses. There are restaurants located either side of the application property and residential properties at the rear on Prices Lane, which abut the access at the rear of the properties on Rose Mount. Oxton village is designated as a Primarily Residential Area under the Unitary Development Plan where commercial and residential properties are characteristically in close proximity to one another.

## **POLICY CONTEXT**

Policies HS15, CH2 and CH7 are directly relevant in this instance.

## **APPEARANCE AND AMENITY ISSUES**

The proposed refurbishment of the site will reinstate the previous use of the premises as a restaurant, which was originally granted planning permission in 1991. The original planning consent which permitted the use of the premises as a restaurant was inclusive of the rear yard and thus it would not be unreasonable to restrict the use of this area of the application site now. The conservatory proposed within the rear courtyard is enclosed, albeit with glass, and has one opening door. It will be a conditional part of the approval that all doors and windows are kept shut at all times, except for access and egress, to contain any noise. There is a further partition wall and gated access beyond this thus the conservatory does not face directly on to the residential properties at the rear of the site in Prices Lane.

The proposal is not considered to result in an intensification of activity at the property that would result in a detrimental change in the character of Oxton village as a whole. There are a variety of other A3, A4 and A5 uses along Rose Mount and Claughton Firs. One of the main objections raised by local residents was that the proposal refurbishment works are more akin to a bar than a restaurant. In order for the premises to be considered as an A4 use it would have to be clearly presented as a public house, wine bar or other drinking establishment. It is considered that when comparing the premises to the likes of The Oxton Bar and Terrace and Shrewsbury Arms Public House elsewhere in the village, the application site proposes a mix of eating and drinking but that the restaurant is the primary use. The application is not presented as a change of use proposal and neither should it be assumed that one will take place. The internal layout of the premises has remained largely the same as the previously approved application with an allocated bar/lounge area and large kitchen. The outrigger at the rear, previously a self-contained flat, is to be converted in to a small booth with ancillary office accommodation above. The fascia of the building has been retained in accordance with Policy CH7 and the modern conservatory addition within the rear courtyard area is considered acceptable in terms of scale and design and is not directly visible from the street scene.

In terms of the objections raised and the impact of the proposal on neighbouring uses and residential properties, the main concerns appear to be potential noise and disturbance from the premises and reduction in the general quality of life of residents. The use and hours of trading at the premises is established and the requested conditions of Environmental Health are considered sufficient to contain noise levels. The previously approved hours of operation were that the premises must not be open to the public after 11.00pm and trading shall cease by 11.30pm Monday to Saturday. These hours still apply but will be repeated for the current proposal in the interests of clarity due to the increase in floor space created by the conversion of the outrigger. The planning application to vary the opening hours of the premises has not yet been determined.

Objections were raised in relation to the proposed alterations already having been carried out and whilst the majority of the works have been completed, the Town and Country Planning Act does permit retrospective applications and any work undertaken is done entirely at the risk of the applicant. In addition to this allegations relating to a private party being held at the premises can not form any basis in the granting of planning permission in this instance and would be a matter for licensing. It should also be highlighted that a licensing application is also ongoing for dance and live music and although this is a separate regime, a planning condition is recommended to restrict live or amplified music being played on the premises to protect residential amenity. The use of the rear area for smoking cannot be controlled unless the provision of a specific smoking shelter is intended. Such a shelter would then be required to comply with separate legislation which controls such areas. The reason the rear area cannot be controlled as set out by the objectors is because the necessary

planning conditions that would be required for such control would not meet the tests for imposing planning conditions as set out in Circular 01/95, specifically in that such conditions would be unreasonable and unenforceable.

In terms of the installation of air conditioning units at the rear these are not directly visible from the conservation area thus their visual intrusion is reduced. In terms of noise generated by the units Environmental Health have no objection to their size or siting. In conclusion the proposal is considered to contribute positively to the character of Oxtan Village and has brought a previously vacant unit back in to use. The refurbishment of the property has been carried out to a high standard and there is no objection from a Conservation point of view. The proposal is acceptable in terms of scale and design and is recommended for approval.

#### **SEPARATION DISTANCES**

Separation distances do not apply in this instance, as no residential properties will be affected by the proposed development.

#### **HIGHWAY/TRAFFIC IMPLICATIONS**

There are no Highway Implications relating to this proposal.

#### **ENVIRONMENTAL/SUSTAINABILITY ISSUES**

There are no Environmental/Sustainability issues relating to these proposals.

#### **HEALTH ISSUES**

There are no health implications relating to this application.

#### **CONCLUSION**

The proposal complies with Policy HS15, CH2 and CH7 of Wirral's Unitary Development Plan and is deemed not to have an adverse impact on the character of the area, nearby properties, or detract from the Primarily Residential Area and surrounding Oxtan Village Conservation Area.

#### **Summary of Decision:**

Having regards to the individual merits of this application the decision to grant Planning Permission has been taken having regards to the relevant Policies and Proposals in the Wirral Unitary Development Plan (Adopted February 2000) and all relevant material considerations including national and regional policy advice. In reaching this decision the Local Planning Authority has considered the following:-

The proposal complies with Policy HS15, CH2 and CH7 of Wirral's Unitary Development Plan and is deemed not to have an adverse impact on the character of the area, nearby properties, or detract from the Primarily Residential Area and surrounding Oxtan Village Conservation Area.

**Recommended            Approve**  
**Decision:**

#### **Recommended Conditions and Reasons:**

1. No live or amplified music, other than low level background music which should not be audible beyond the site boundary, shall be played on the premises at any time.  
**Reason:** In the interests of residential amenity.
2. All windows and doors must be kept closed, except for access and egress, at all times.  
**Reason:** In the interests of residential amenity.
3. The premises shall not be open to the public before the hours of 9.00am nor after 11.00pm and trading shall cease not later than 11.30pm Monday to Saturday and the premises shall not be open to the public at any time on Sundays or any Bank Holidays.  
**Reason:** In the interests of amenity.

**Further Notes for Committee:**

**Last Comments By: 21/04/2011 08:55:41**

**Expiry Date: 04/05/2011**