

Planning Committee

26 July 2012

Reference:
APP/12/00530

Area Team:
North Team

Case Officer:
Mrs S Lacey

Ward:
Hoylelake and Meols

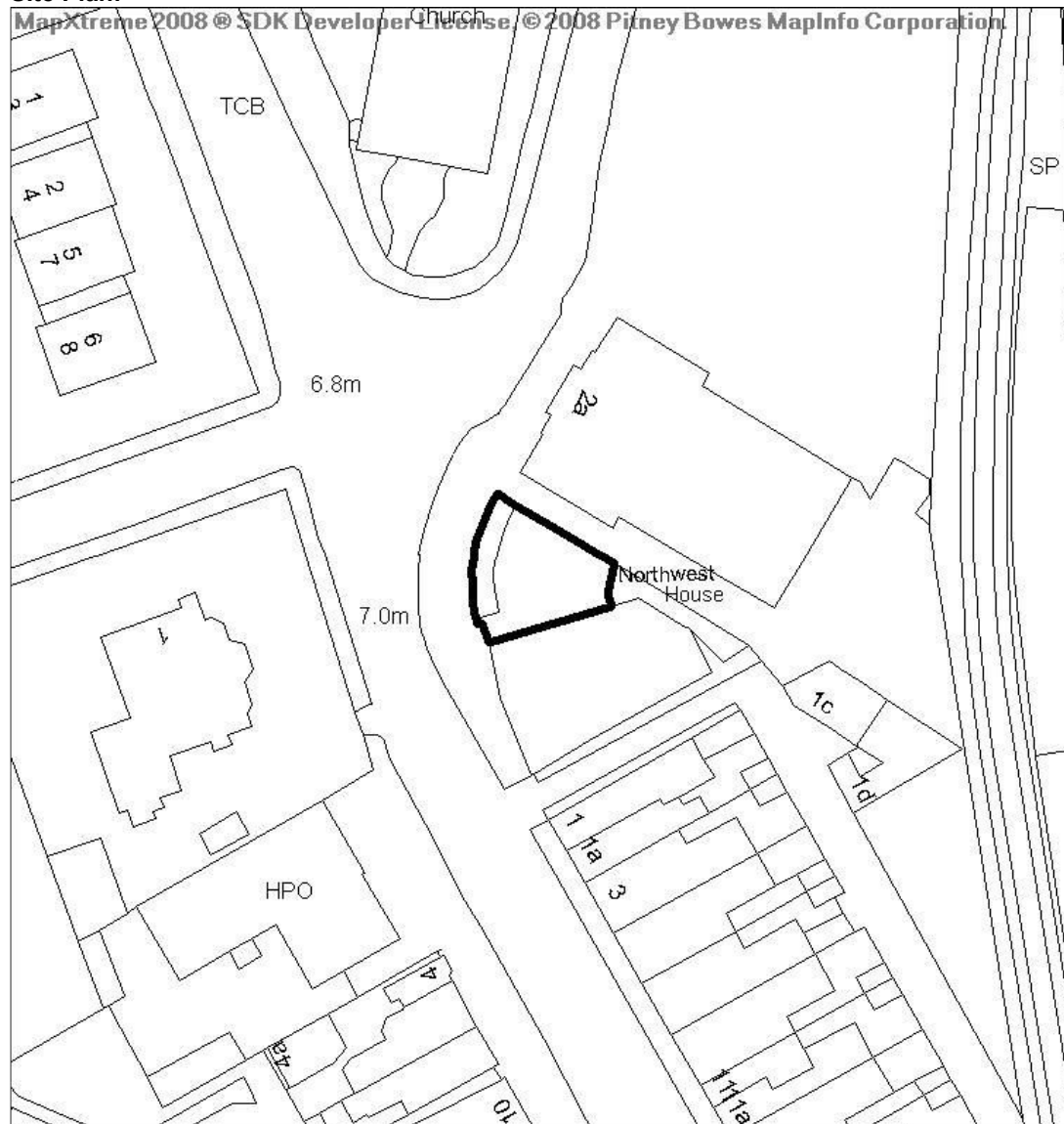
Location:
Proposal:

The Wro GRANGE ROAD, WEST KIRBY
Variation of condition 4 of approved planning application APP/99/06362. The proposed condition shall read "the premises shall be closed between 00.30 and 09.00 hours except on the following occasions; the premises shall be closed between 01.30 and 09.00 hours on Christmas Day, and shall be closed between 02.30 and 09.00 hours on 27th December, and shall be closed between 02.30 and 09.00 hours on New Year's Day."

Applicant:
Agent :

The Wro
Strutt & Parker LLP

Site Plan:



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Development Plan allocation and policies:

Key Town Centre
Tourism Development Site

Planning History:

APP/1999/6362 Change of use to restaurant (ground floor only) - Approved 10/09/1999

APP/2008/5733 Introduction of pavement café – Approved 04/08/2008

APP/2008/6601 Change of use from first floor office to lounge bar café Approved 13/11/2008

APP/11/01449 Variation of condition 4 of approved planning application APP/99/06362. The proposed condition shall read "The premises shall be closed between 23.30 hours and 09.00 hours except on the following occasions: the premises shall be closed between 00.30 hours and 09.00 hours on up to 10 occasions a year, and shall be closed between 01.30 hours and 9.00 hours on Christmas day, and shall be closed between 02.30 hours and 09:00 hours on 27th December in each calendar year and shall be closed between 02.30 hours and 09:00 hours on New Years day". - Refused 10/02/2012

Summary Of Representations and Consultations Received:

REPRESENTATIONS:

Having regard to the Council Guidance on Publicity for Applications, 8 letters of notification were sent to neighbouring properties and a site notice was displayed on the highway.

Objections were received from no.8 Riverside Court (on behalf of all 10 residents at Riverside Court) and no. 1, 4, 6 and 7 Riverdale Road. The objections are summarised below:

1. The site is in a residential area, and families are woken late at night to revellers returning to their vehicles;
2. Noise and nuisance including shouting and vehicle doors slamming;
3. The extension of hours on Christmas Day, Boxing Day and New Years day are unacceptable as residents still work these days;
4. Double glazing does not combat the problem;
5. Concerns regarding security and safety;
6. Private driveways are used as a turning point for people exiting Riversdale Road;
7. Vomit on the pavement outside the Wro bar and Wro Lounge;
8. Broken glasses and bottles on Riversdale Road;
9. The site is located near a busy and difficult to navigate junction. Taxis negotiating a U-turn to collect passengers is an increasing issue. They show no regard to pedestrians and cause noise and result in a hazard. Extended hours would cause more noise later at night;
10. Extended opening times will extend delivery times. The double yellow lines are ignored by drivers and cause a hazard on the highway;
11. To grant the application would seriously damage residents' quality of life and potentially further jeopardise the health and safety of residents. The measures the owners of the Wro propose are unreliable and do not address many of the negative issues an extension of hours will bring;
12. An offensive banner has been displayed from the balcony of the Wro bar;
13. The statement submitted with the application includes untrue assertions;
14. Whilst there is inconsistency between the licensing hours and the planning conditions, these are assessed under different criteria. Planning consent takes into account social and environmental conditions. Conditions are imposed for the protection of the amenity of the local community;
15. Each property is considered on its individual and specific location. In the case of the Wro it is located on the edge of a town centre, in a concentration of six licensed premises, immediately abutting a residential area consisting mainly of houses occupied by families with children;
16. Mojos is used as a comparison, but this is situated in the town centre surrounded by commercial properties, and a few residential flats above shop premises;
17. The Planning conditions reflect different circumstances and logically to remove inconsistency the licensing hours should be changed to reflect the planning conditions;
18. It is claimed by the applicant local planning policy is out of date, however the local planning policy is current and has been enacted by the elected representatives of the local community on how they wish the community to be regulated, and carries more weight than non-specific planning

- policy;
19. The claims of improvements to the property are misleading - the installation of noise limiters to regulate noise was a requirement of Environmental Health following monitoring of external noise levels resulting from complaints of excessive noise. A complaint was made to the Police, Licensing and Environmental Health on 24 April 2012 at 22.45. It seems clear the Wro management switch off the limiters when it is inconvenient, and the wide glazed frontage is not soundproof;
 20. The issue is not just about noise from the property but consequent noise and general disruption generated by customers as they access and exit the premises;
 21. The applicant claims the impact of deliveries to Aldi is likely to provide more disturbance than the proposal. This demonstrates complete lack of understanding that the essence of residents complaints relates to timing. Noise at 21.00 hours is significantly different to noise at 00.30 hours when ambient noise is at its lowest and ever normal conversation carries some distance. The absence of any off-street car parking exacerbates this situation with Riversdale Road being the nearest and preferred place for customer parking;
 22. The social and economic arguments put forward by the applicant are not justified. Claims of unfairness resulting from differing opening hours suggest all licensed premises should be treated equally irrespective of their location. This argument is illogical and unreasonable. The comment about commercial disadvantage is useful because it emphasises that if the application was approve, applications can be expected from the other bars for ever increasing opening hours at the expense of the amenity of the local community;
 23. The applicant claims the application is supported by a number of stakeholders, which is misleading. Inspector Blease and the Licencing Manager of Wirral Council have confirmed they are in no position to support the application. This casts doubt on the veracity of other claims presented.
 24. The applicant's petition of support is not from local residents whose lives are tainted by the presence of the Wro;
 25. The Council has not consulted widely enough;
 26. The previous planning application was refused on noise and disturbance and this remains valid;
 27. The distances measured between the Wro and residential properties are misleading.

Councillor Hale objected to the application on the grounds it will give rise to noise and nuisance to residents in the area, which is why a similar application by a bar next door was refused.

A petition of support was submitted with the application with 650 signatures and 3 individual letters of support.

CONSULTATIONS:

The Director of Law, HR and Asset Management (Environmental Health): No objection.

The Director of Technical Services (Highway Management): No objection.

Director's Comments:

REASON FOR REFERRAL TO PLANNING COMMITTEE

The application has been removed from delegation by Councillor Jeff Green on the grounds that the Wro is in a town centre location and that it is only right that the significant contribution this business makes to the Borough in terms of investment, employment opportunities and economic contribution be evaluated by Members before a decision is taken.

INTRODUCTION

The application proposes the variation of condition 4 of approved planning application APP/99/06362. The proposal is for the extension of opening hours 09:00 until 00:30 hours 7 days a week, and to open until 01:30 on Christmas Day, and 2:30 on 27th December and New Years Day.

A previous planning application for the variation of hours was refused February 2012. The description of the refused application is as follows: "The premises shall be closed between 23.30 hours and 09.00 hours except on the following occasions: the premises shall be closed between 00.30 hours and 09.00 hours on up to 10 occasions a year, and shall be closed between 01.30 hours and 9.00 hours on Christmas day, and shall be closed between 02.30 hours and 09:00 hours on 27th December in

each calendar year and shall be closed between 02.30 hours and 09:00 hours on New Years day". The application was refused on loss of amenity to neighbouring residential properties by resulting in excessive noise and disturbance.

PRINCIPLE OF DEVELOPMENT

The proposal is acceptable in principle subject to the provisions of policy SH1 Criteria for Development in Key Town Centres of the adopted Wirral Unitary Development Plan, SPD3 Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments and the National Planning Policy Framework (NPPF).

SITE AND SURROUNDINGS

The unit comprises of a restaurant/drinking establishment situated within the commercial Key Town Centre area of West Kirby, and adjacent to a Primarily Residential Area. There is a good mix of uses within the immediate vicinity of the site including A1, A3, A4 and A5 uses at ground floor and residential at first floor. No.1 Riversdale Road is a residential dwelling situated 26m from the proposal.

POLICY CONTEXT

The proposal shall be assessed against the relevant Unitary Development Plan Policy SH1 Criteria for Development in Key Town Centres of the adopted Wirral Unitary Development Plan (UDP), SPD3 Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments and the National Planning Policy Framework (NPPF). It is considered there is no conflict between the UDP and NPPF, and the UDP should be given due weight in the decision making process.

UDP policy SH1 requires that development within Key Town Centres should not undermine the vitality and viability of the area and should have no detrimental impact on highway safety. Care must be taken that the proposal will not cause nuisance to neighbouring occupiers as a result of noise and disturbance, on street parking or delivery vehicles. It recommends suitable conditions should be imposed on hours of opening/operation. Supplementary Planning Guidance 3 states that restaurants, drinking establishments and hot food takeaways are generally acceptable within Key Town Centres provided it does not harm nearby residential properties.

The NPPF encourages sustainable development, sustainable meaning ensuring better lives for ourselves and future generations, and development meaning growth. The three dimensions of sustainability are the economic, social and environmental roles, none of which should be taken in isolation because they are mutually dependant.

APPEARANCE AND AMENITY ISSUES

The principle concern with extending hours of opening of a late night use to 00:30 hours throughout the week and until 01:30 on Christmas Day, and 2:30 on 27th December and New Years Day is the impact on residential amenity by reason of noise and disturbance.

UDP Policy SH1 requires that development within Key Town Centres should not undermine the vitality and viability of the area and shall not cause nuisance to neighbouring occupiers as a result of noise and disturbance. Supplementary Planning Guidance 3 states that restaurants, drinking establishments and hot food takeaways are generally acceptable within Key Town Centres provided it does not harm nearby residential properties.

It is considered the proposed extension in the hours of use into the night would generate excessive noise to the detriment of residential amenity, and is contrary to the requirements of the UDP and NPPF. Objections received from residents cited concerns of existing noise and disturbance from the late night use, and a potential rise in noise and disturbance. Disturbance issues specifically included customers leaving the premises, when they are beyond the noise mitigation controls the applicant proposes.

No.1 Riversdale Road is a residential dwellinghouse, the principle elevation of which is 26m from the site, and is situated in a Primarily Residential Area. Whilst properties in Key Town Centres should reasonably expect higher levels of disturbance, it is deemed the properties situated in Primarily Residential Areas and within 40m of the site should expect a higher level of residential amenity. The proposal for the operation of the business into the morning hours 7 days a week is deemed unacceptable given the nature of the use and the proximity of neighbouring dwellings. In addition the

later opening times into the mornings of Christmas Day, the 27th December and New Years Day are considered to be Bank Holidays where families are likely to be home and expect higher levels of residential amenity.

An application for a change of use to a drinking establishment was approved at the adjacent site, the Red Door, by the Planning Inspectorate (appeal reference APP/W4235/A/09/2110313) subject to conditions to protect the living conditions of nearby residents. The Inspector's report states "*The potential for noise and disturbance can, in my view, be mitigated by imposing appropriate planning conditions... Given the proximity of residential uses, I consider the conditions relating to hours of operation are reasonable and necessary to protect the living conditions of nearby residents*". The opening hours imposed were 12.00 hours - 23.30 hours daily.

A further application to extend the hours of use of the Red Door was submitted and refused by the Local Planning Authority. Whilst the appeal was allowed on appeal, the Inspector only allowed the earlier opening hours, and did not allow the extension of the evening hours (appeal reference APP/W4325/A/10/2136535/NWF), and the Red Door closes at 23.30 hours. Both these appeal decisions are considered to be material in the determination of this application due to their proximity to the site.

The other late night uses in the vicinity are also restricted to 23.30 hours. This includes no. 1-1a Grange Road (Use Class A3), 2 Grange Road (Use Class A3), 9 Grange Road (Use Class A3), 13 Grange Road (Use Class A3), 15 Grange Road (Use Class A3), and 9 Dee Lane (Use Class A5).

Policy SH1 clearly states proposals which would cause nuisance to neighbouring uses or lead to loss of amenity will not be permitted. The NPPF states development must give equal weight to its economic, social and environmental roles for it to be sustainable. It is considered the proposal to extend the opening hours later into the night would result in additional noise and disturbance that would be more intrusive at a time when ambient noise level are lower and residents should expect higher levels of amenity. As such the application is considered contrary to policy SH1 Criteria for Development in Key Town Centres of the Wirral Unitary Development Plan (adopted February 2000), Supplementary Planning Document 3 Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments and the National Planning Policy Framework.

RESPONSE TO APPLICANTS COMMENTS

The applicant suggests the NPPF puts emphasis on the economic role and achieving growth.

The Wro bar has achieved the accolade "Wirral's Most Professional Bar Team" on four occasions, was shortlisted for "Merseysides Best Bar" in 2009, an award which it won in 2010 and 2011. It attracts customers across the Wirral and outside the area. As such it is considered to be an important business which contributes socially and economically. The National Planning Policy Framework encourages economic growth. However no evidence has been presented that would form a material consideration that would override the LPA concerns regarding noise and disturbance, and the extension of hours is not considered to be sustainable. The applicant provided information to demonstrate the number of sales of drink has reduced since last year. No full set of business accounts has been submitted, and the information submitted does not demonstrate the business is not profitable. The applicant submitted a list of people requesting a midnight bar for private functions. Whilst there may be a demand for longer hours it is not within the remit of the LPA to grant planning permission on this basis. No evidence has been submitted to suggest the current hours of opening would jeopardise the viability of the business, it is not considered the current hours of opening are unreasonable, and the needs of local residents holds weight alongside the needs of customers.

The applicant suggests the granting of a Premises Licence is a material consideration and planning permission should be in line with this decision.

Planning and licensing are separate legislative frameworks and whilst the objectives are similar, proposals are assessed separately. Whilst the licence may be a material consideration this does not override planning policy and there are other material considerations with the potential for harm in this instance. Under appeal reference APP/W4325/A/10/2120945 the Inspector noted the appellant traded in line with their premises license, however he concluded licensing and planning restrictions are separate legislative regimes with different objectives, and because planning permission runs with

the land rather than the operator this did not form a material consideration and the appeal was dismissed 4 June 2010. Therefore in refusing the application, limited weight was given to the surrounding licensing operating practices.

The applicant suggests the adopted Wirral Unitary Development Policy (UDP) is out of date and the National Planning Policy Framework (NPPF) must be given greater weight.

The NPPF states policies adopted before 2004 should be given due weight according with their degree of consistency with the NPPF, the closer the policies in the local plan to the policies in the framework, the greater the weight that may be given (Annex 1). Both the Wirral UDP and the NPPF refer to residential amenity. The NPPF states planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life, and 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. As such the UDP and NPPF are not considered to be in conflict and the UDP should be given due weight in the decision making process.

The applicant suggests the noise mitigation measures including a noise limiter monitor and closing the main front doors when live music is playing.

The noise mitigation measures the Wro proposes cannot control the level of noise when customers leave the premises, which is a principle concern of residents in the adjacent properties.

SEPARATION DISTANCES

Separation distances do not apply in this instance, as no residential properties will be affected by the proposed development in terms of overlooking or loss of privacy.

HIGHWAY/TRAFFIC IMPLICATIONS

Objections were received relating to taxis and delivery vans causing hazards on the highway. The proposed extension of hours is not considered to result in highway implications.

ENVIRONMENTAL/SUSTAINABILITY ISSUES

The proposal is considered unacceptable in noise and disturbance and is not considered to be a sustainable development.

HEALTH ISSUES

There are no health implications relating to this application.

CONCLUSION

It is considered the proposal would result in noise and disturbance that would be detrimental to the amenities neighbouring residents should expect to enjoy at a time when ambient noise levels are lower. As such the application is considered contrary to policy SH1 Criteria for Development in Key Town Centres of the Wirral Unitary Development Plan (adopted February 2000), Supplementary Planning Document 3 Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments, and National Planning Policy Framework.

Recommended Refuse
Decision:

Recommended Conditions and Reasons:

1. It is considered the proposal would result in noise and disturbance that would be detrimental to the amenities neighbouring residents should expect to enjoy at a time when ambient noise levels are lower. As such the application is considered contrary to policy SH1 Criteria for Development in Key Town Centres of the Wirral Unitary Development Plan (adopted February 2000), Supplementary Planning Document 3 Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments and National Planning Policy Framework (March 2012).

Further Notes for Committee:

Last Comments By: 12/06/2012 15:17:57
Expiry Date: 28/06/2012