

Location: Bar One 43 Market Street Hoylake Wirral CH47 2BG

Proposal: Variation of condition 3 of APP/2001/7190 to extend opening hours. Sunday to Thursday 0800 to 0100; Friday and Saturday 0800 to 0130; Thursdays preceding Good Fridays and Sundays preceding Bank Holiday Mondays 0800 to 0130; Christmas Eve, Christmas Day,

Applicant: Mr Adam Bale
R & R Bar Ltd
6 Highcroft Avenue
Bebington
Wirral
CH63 3EZ

Development Plan allocation and policies: Key Town Centre
Policy SH1 Criteria for Development in Key Town Centres
SPD3 - Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments
PPS23 - Planning and Pollution Control.

Planning History: 20017190 - Change of use to wine bar Approve conditionally 11/01/2002.

20056815 - Variation of condition 3 on 2001/7190 to extend opening hours to 0100 hours. Refuse 30/09/2005.

20065339 - Variation of condition 3 on 2001/7190 to extend opening hours from 23.30 hours to midnight. Refuse 10/04/2006. Appeal Decision: dismissed 23/01/2007.

Representations and consultations received: Representations:

A site notice was displayed on the shop front. A total of 11 letters of notification have been sent to properties in the area. At the time of writing this report no letters of objection had been received.

Councillor Hale requested the application should be taken out of delegation on the grounds of nuisance and disturbance to residents in the area.

Consultations:

Director of Regeneration - Housing & Environmental Protection Division: No objection subject to a sound limitation device.

Directors comments: PROPOSAL
Condition 3 of approved planning application 2001/7190 states trading at the premises shall not take place between 23.30 hours and 08.00 hours. The applicant has requested to extend the opening hours as follows:
Sunday to Thursday 0800 to 0100;
Friday and Saturday 0800 to 0130;
Thursday preceding Good Fridays and Sundays preceding Bank Holiday Mondays 0800 to 0130;
Christmas Eve, Christmas Day and Boxing Day 0800 to 0130;
New Years Eve 0800 to 0230.

PRINCIPLE OF DEVELOPMENT

The proposal is considered contrary to Policy SH1 Criteria for Development in Key Town Centres, SPD3 Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments and PPS23 Planning and Pollution Control.

SITE AND SURROUNDINGS

Bar One is located within a row of commercial and retail properties in Hoylake, which is designated as a Key Town Centre in the adopted Wirral Unitary Development Plan. The Key Town Centre contains a mix of uses including café/restaurants, public houses and takeaways. Although located in a Key Town Centre there are residential flats and houses nearby. Immediately to the west of the application site is a Primarily Residential Area. It is approximately a 40 metre walk from the entrance to the bar to the nearest residential house (no. 2 Wood Street), which has its front door and windows positioned close to the public pavement. There is a flat above the nearby Ship Inn and nos. 35, 33A and 80 Market Street also contain residential flats as do 13, 14, 15 and 16 The Row.

POLICY CONTEXT

The proposal shall be assessed against the relevant Unitary Development Plan Policy SH1 Criteria for Development in Key Town Centres and SPD3 Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments. This is to be evaluated against the Government's key objectives in PPS23 - Planning and Pollution Control.

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. SPD3 recommends a 40-metre separation distance from the main elevation of a dwelling house or a building used solely for self contained flats when measured along a public highway.

The planning system plays a key role in determining the location of development and the impacts of the use which may give rise to pollution, whilst promoting a sustainable pattern of land use that will contribute to meeting the country's economic, social and environmental needs. Planning Policy Statement 23 Planning and Pollution Control states any consideration of the quality of land, air or water and potential impacts arising from development is capable of being a material planning consideration. The Government attaches great importance to controlling and minimising pollution. Its commitment to the principles of sustainable development was set out in A Better Quality of Life - A Strategy for Sustainable Development for the UK. The strategy promotes social progress which recognises the needs of everyone and the effective protection of the environment.

APPEARANCE AND AMENITY ISSUES

A previous application for change of use to a drinking establishment was approved with a restricting hours condition (APP/2001/7190) stating that trading at the premises shall not take place between 23.30 hours and 08.00 hours.

Two previous planning applications have been refused to extend the hours of trade (from 23.30 hours to midnight) for reasons of noise and disturbance. The Council's decision was appealed and dismissed by the Planning Inspectorate 23rd January 2007 to extend the hours of trade from 23.30 hours to midnight. The Inspector commented that condition 3 on the original grant of permission was reasonable and necessary to protect the living conditions of the occupiers of nearby residential properties, and it would be contrary to the objectives of UDP Policy SH1 to permit the appeal premises to operate without compliance with condition 3 as originally worded. The Inspector does not specify in her conclusion which neighbours were most at harm, but the contents of her report refers to the property on Wood Street and Rudd Street. This decision forms an important basis for the decision of the resubmitted application.

It is considered an extension to the hours of use would generate excessive noise to the detriment of residential amenity. Disturbance issues may include customers congregating outside the premises and generate noise and the comings and goings of customers by car generates noise, particularly late at night, and as there is no off-street parking space available directly outside the site it is likely the disturbance will spread to the neighbouring residential properties. It is deemed the current hours of opening are reasonable and restrict the levels of noise and disturbance, and to remove this condition would be detrimental to neighbouring amenity.

Whilst properties in Key Town Centres should reasonably expect higher levels of disturbance, it is deemed the properties situated in Primarily Residential Areas should expect a higher level of residential amenity. The existing opening hours are considered sufficient to provide a reasonable living environment at night-time, particularly for the residents in the neighbouring residential streets, whilst sustaining the economic viability of the business. Policies SH1 clearly states proposals which would cause nuisance to neighbouring uses or lead to loss of amenity will not be permitted.

It is deemed the current hours of opening are reasonable and restrict the levels of noise and disturbance, and to vary this condition would be detrimental to neighbouring amenity.

COMMENTS ON THE APPLICANT'S STATEMENT

The applicant submitted a written statement setting out their special circumstances to support an extension of the trading condition.

The applicant states the restrictive trading hours are 'crippling' his business giving an unfair advantage to competitors. He questions whether condition 3 is reasonable and necessary. The condition was implemented to reduce noise and disturbance to neighbouring properties. Whilst it is difficult to quantifiably measure the potential increase in noise and disturbance, it is deemed the most noise and disturbance is likely to arise around closing time. It should be noted the Planning Inspector clearly stated in her report condition 3 is reasonable and necessary. This forms important case law in order to form a decision.

In response to the Inspectors decision, the applicant has the following comments:

- 56 people surveyed in the surrounding area support the extension of hours and have signed a petition (Source 2);
- Environmental Health have set sound levels so that all closest neighbours may have peaceful enjoyment of their own property. They have monitored sound levels over the past couple of months and found no problems;
- JD Wetherspoon had a similar request approved to extend license;
- Crime is not an issue in Hoylake (no major incidents since takeover of Bar);
- The Market Street area already has a night time economy;
- Local newspaper articles suggest that people don't have issues with later licenses, just more bars being opened;
- States Hoylake has low crime rates due to 'Pub Watch' which involves pubs/bars working with the police to stop crime within the night time economy. The applicant states that since he took over the bar, there have been no police call-outs to the premises;
- The closest dwelling (2 Wood Street) is situated outside SPD3's 40 metre policy;
- Crime Reduction (Wirral Chamber of Commerce & Industry) considers undue restrictions with regards to licensing hours is having a detrimental effect on trading in the area.

The applicant proposes measures to limit noise and disturbance:

- The commencement of alcohol sales at 1000 hours and cease 30 minutes before stated closing times.
- If the extension is passed, Bar One will fit a 'limiting key' which only Environmental

Health will have the key to. If sound levels were exceeded, equipment would be cut.

The petition of support has been considered not sufficient to discount planning policy or the Inspectors comments.

The application at Wetherspoons which was granted permission for extended trading hours does not set a precedent. All applications are assessed on their individual merits. Crucially, it is not situated as close to residential areas as is the case of Bar One.

Planning and other departments may have similar objectives, however proposals are assessed separately. Whilst evidence supplied by the applicant may form a material consideration this does not override planning policy and there are other material considerations with the potential for harm in this instance.

The Ship Inn is approximately 17 metres away across the road and The Punch Bowl is approximately 117 metres to the north of the application site. Both pubs are on Market Street and have been pubs for a number of years and are not subject to any planning restrictions with regards to hours of operation. Although they are to be taken into consideration when considering the cumulative levels of noise and disturbance in the immediate area.

The separation distances of the properties on Wood Street and Rudd Street were not stated in the Inspectors report, who concluded their proximity to the site were cause for concern.

HIGHWAY/TRAFFIC IMPLICATIONS

There are no highway implications relating to this proposal.

ENVIRONMENTAL/SUSTAINABILITY ISSUES

The Director of Regeneration Housing & Environmental Protection had no objections to the proposal subject to a condition. Whilst this forms a material consideration this does not override planning policy and there are other material considerations with the potential for harm in this instance.

HEALTH ISSUES

There are no health implications relating to this application.

SUMMARY OF DECISION

The application for a drinking establishment (2001/7190) was approved with a condition restricting the hours of opening. The applicant has not demonstrated there has been any change in circumstance since the previous hours restriction was imposed or since the Planning Inspector refused the appeal for a shorter extension to the hours of opening. As such the Planning Department cannot justify approving an extension of trading hours.

Recommendation: Refuse

Reason(s):

- 1 The proposal is deemed to result in an unacceptable loss of amenity to the occupiers of the surrounding properties that is contrary to the adopted Unitary Development Plan policy SH1 and associated SPD3. No supporting information has been submitted with the application to demonstrate a change in circumstances to justify approval contrary to UDP policy SH1.

Last Comments By: 14 May 2009

56 Day Expires On: 04 June 2009

Case Officer: Miss S Hesketh