

14 November 2019

**Reference:**  
**APP/19/01245**

**Area Team:**  
**Development**  
**Management Team**

**Case Officer:**  
**Mr B Bechka**

**Ward:**  
**Wallasey**

**Location:** The Cheshire Cheese, 2 WALLASEY VILLAGE, CH44 2DH  
**Proposal:** Application for variation of Condition 3 on planning permission APP/19/00499 to extend the hours of the background music externally from 7pm to 10pm.

**Applicant:** Mr Hitchmough  
**Agent :** JSA Design

**Qualifying Petition:** Yes

**Site Plan:**



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**Development Plan designation:**

Primarily Residential Area

**Planning History:**

Location: The Cheshire Cheese, 2 WALLASEY VILLAGE, CH44 2DH  
Application Type: Full Planning Permission  
Proposal: The extension of a Public House into the existing yard to house a female WC

Application No: APP/11/00581  
Decision Date: 08/07/2011  
Decision Type: Approve

Location: The Cheshire Cheese, 2 WALLASEY VILLAGE, CH44 2DH  
Application Type: Full Planning Permission  
Proposal: Retrospective application for the bar area and erection of a Pergola with retractable fabric roof.  
Application No: APP/19/00499  
Decision Date: 11/07/2019  
Decision Type: Approve

Location: Land to the south east of 30, Wallasey Village and North West of 'The Old Rectory' Church Hill, Wallasey Village L45 3LZ  
Application Type: Deemed  
Proposal: Erection of 12 dwellings and construction of access road  
Application No: DPP/81/19250  
Decision Date: 29/04/1982  
Decision Type: Withdrawn

Location: The Cheshire Cheese, 2 WALLASEY VILLAGE, CH44 2DH  
Application Type: Full Planning Permission  
Proposal: Retrospective application for the extension of an existing external covered area.  
Application No: APP/18/01549  
Decision Date: 14/01/2019  
Decision Type: Withdrawn

Location: The Cheshire Cheese 2 Wallasey Village Wallasey  
Application Type: Advertisement Consent  
Proposal: The display of two internally illuminated projecting box signs  
Application No: ADV/74/01515  
Decision Date: 15/01/1975  
Decision Type: Conditional Approval

**Summary Of Representations and Consultations Received:****1.0 WARD MEMBER COMMENTS**

- 1.1** Councillor Lewis enquired about additional information relating to complaints about the premises previously received by Environmental Health being provided and what the last date was for removing the application from delegation. A qualifying petition has since been received and as such Councillor Lewis has taken no further action.

**2.0 SUMMARY OF REPRESENTATIONS**

A total of 38 consultation letters were sent out to neighbouring properties. In addition a site notice was posted.

**REPRESENTATIONS**

A signed petition of 26 signatures was received. A summary of these representations are listed below:

- to prevent noise nuisance
- to allow for quiet occupation of our homes

4 no. objection were received. A summary of these representations are listed below:

- untrue and misleading proposal description which states proposal is 'in line with the agreement made with licensing and EHO' will unfairly prejudice assessment
- disagrees with applicant's statement that 'tenant has worked closely with the local neighbours to appease all parties'
- incomplete application form and missing supporting statements/assessments
- intensified use of beer garden leading to increased and regular noise nuisance in to the late evening from entertainment/music/events impacting on amenity
- intensified use leading to increased traffic and parking and impacting on Highway safety
- questions and seeks clarification of submitted noise management plan
- use of beer garden forms a public nuisance; aggregates rather than addressing existing issues relating crime, disorder and anti-social behaviour; and does not address any increase in public safety issues
- provides no sound insulation to mitigate noise disturbances
- venue not appropriate siting within primarily residential area
- Concern that existing planning condition contradicts with that of Licensing
- does not comply with Policy DCAN 07

### CONSULTATIONS

#### Environmental Protection:

No objection based on that despite there having previously been problems concerning noise nuisance, that recent monitoring by Environmental Health Officers have found no further evidence of noise nuisance. Environmental Protection believe the adoption of a greater number of strategically placed speakers within outside area to be played at a lower volume and coupled with a noise monitoring sound system will be suffice to control sound levels. In the event evidence of statutory noise nuisance is obtained, formal action under the provisions of The Environmental Protection Act 1990 can be taken Environmental Health can also request the Licensing Panel to review the tenant's Premises Licence.

### **3.1 Reason for referral to Planning Committee**

- 3.1.1 A signed petition with 26 signatures and 4 individual objections, referring to material planning considerations were received. Under the Council's 'Scheme of Delegation to Officers for the Determination of Planning Applications and Planning Related Matters' it requires that when the number of signatories on the petition equals 25 or above and/or 15 for the number of individual objections, that the application be referred to the Planning Committee.

### **3.2 Site and Surroundings**

- 3.2.1 The application site relates to the beer garden area of an existing pub, 'The Cheshire Cheese. It is located to the north-eastern side of Wallasey Village (Road), within a primarily residential area and approximately 175m outside Wallasey Village Traditional Suburban Centre.
- 3.2.2 Wallasey Village (Road) is a classified road that is relatively busy as it leads to the retail area of Wallasey Village, the building itself is located behind St Hilarys Church and the Old Rectory which are both listed buildings, although both of these properties are sited on a higher land level to that of the application site and Wallasey Village (Road).
- 3.2.3 The beer garden comprises of a bar area, pergola and a number of associated furnishings, of which some are to be retained and others removed/altered as part of approved planning permission APP/19/00499.

### **3.3 Proposed Development**

- 3.3.1 Permission is sought for the variation of Condition 3 of previously approved planning permission APP/19/00499, which states:

*'No music, public address system or any other amplified sound shall be played in the external bar area or the pergola, as shown on drawing 233-403 Rev A, after 7pm.*

*Reason: To safeguard the amenities of the adjoining occupiers.'*

The applicant wishes to vary this condition in order to allow for background music to be played in this outside area till 10pm.

3.3.2 Added Value

At the request of the case officer the applicant has agreed to the use of a greater number of smaller speakers to be played at a lower volume, whilst using a noise limiting device.

**3.4 Development Plan**

- 3.4.1 Policy HS15 - Non-Residential Uses in Primarily Residential Areas  
Policy CH1 - Development Affecting Listed Buildings and Structures  
Policy PO3 - Noise Policy

**3.5 Other Material Planning Considerations**

- 3.5.1 DCLG published the National Planning Policy Framework (NPPF) in February 2019. The NPPF will be referred to as appropriate within this report.

**3.6 Assessment**

- 3.6.1 The main issues pertinent in the assessment of the proposal are;

- Principle of development;
- Design; and
- Amenity

3.7 Principle of Development:

- 3.7.1 Although sitting within the a primarily residential area, the existing pub is an established use within the area. The principle of development has previously been established under APP/19/00499. The variation of condition is therefore considered acceptable subject to its compliance with Policy HS15 of Wirral's UDP.

3.8 Effect of significance and visual amenity:

- 3.8.1 Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 advises that 'in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority ... shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Paragraph 193 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 196 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

- 3.8.2 The application site is located approximately 18m to the south-west of the 'Old Rectory', a Grade II listed building and approximately 80m to the south-west of the 'Tower' to St Hilary's Church, a Grade II listed building.

3.8.3 Besides the introduction of a number of speakers to the beer garden area, no additional external works are proposed as part of this variation of condition application. It is therefore considered unlikely to have any significant visual impact to the character and setting of the application property, surrounding streetscene, or to the above-mentioned Grade II listed buildings, according with Policies CH1 and HS15 of Wirral's UDP.

3.9 Amenity:

3.9.1 Policy HS15 of Wirral's UDP states that '*non-residential uses will only be permitted where the proposal will not cause nuisance to neighbouring uses, particularly in respect of noise and disturbance.*'

3.9.2 Policy PO3 of Wirral's UDP states that '*Development will only be permitted where noise arising from the proposal will not cause unacceptable intrusion or persistent nuisance. In considering such proposals, the Local Planning Authority will have particular regard to:*

*(i) the location of the proposal in relation to noise-sensitive development or land-uses;*

*(ii) the existing overall level of background noise within the locality;*

*(iii) the level, tone, duration and regularity of noise likely to be emitted by the proposal, including any subsequent increase that may be expected in the foreseeable future; and*

*(iv) the provision made within the proposals for the mitigation or insulation of noise.*

*Where anticipated noise levels are considered to be within manageable proportions, the Local Planning Authority may grant planning permission subject to conditions related to the siting, screening or enclosure of noise sources; the limitation of operating times, especially outside normal working hours; the restriction of noisy activities to specified areas of the site; and other measures designed to reduce noise levels at source. Where relevant, the Local Planning Authority may specify target noise limits and seek to enforce them by means of legal agreement'*

3.9.3 The application site is bound to three sides by residential properties. The residential properties to the opposite side of Wallasey Village (Road) are sited approximately 35m to the south-west of the beer garden. The residential properties bounding the application site to its north-western boundary are sited approximately 36m away from the beer garden. To its rear and sited approximately 18m to the north-east of the beer garden, it is bound by a residential property, which sits on significantly higher ground above the beer garden.

3.9.4 The pub and beer garden form part of an established use, and prior to application APP/19/00499 were not subject to any planning conditions limiting their use. This had historically been dealt with under licensing. Previous application APP/19/00499 dealt with the structures that had been erected within the beer garden and not the use of the beer garden, an established use. The assessment, however, concluded that these structures introduced a formal bar area to an otherwise informal outside space, leading to an intensified use of the beer garden area. Conditions were therefore attached to help mitigate this intensified use.

3.9.5 In seeking to vary Condition 3, the applicant wants to allow for the playing of low-level amplified background music within the beer garden up until 10pm every night.

3.9.6 Neighbouring properties have voiced concern over the use of the term 'entertainment' within the application, with their amenity having previously been adversely impacted on by live entertainment/music and showing of live sporting events within the beer garden. Whilst the original proposal description and application form referenced the extension of hours of music/entertainment to be played externally, the applicant has confirmed in writing that they only seek an extension of hours for the playing of background music and not for 'entertainment'.

- 3.9.7 Other than the background music, it is not the intention of the applicant to allow for a public address system or any other amplified sound to be played beyond than 7pm.
- 3.9.8 Background music by its very definition should be in the background and should be barely audible above the voices of the patrons. The applicant has agreed to use a number of small speakers, placed strategically around the beer garden (as shown on the Proposed Speaker Layout drawing). This will allow patrons to enjoy the background music at a localised level, whilst removing the need for the music to be played at a high volume, which would otherwise result in an unacceptable level of noise and disturbance to neighbouring properties.
- 3.9.9 The applicant has proposed the use of a noise pollution control system. A condition is recommended to ensure that this device be installed, and that all music will be played through this device, thus ensuring that noise emissions from the background music played through the speakers are at an acceptable level.
- 3.9.10 An additional condition is recommended requiring that the level to be set on the noise pollution control system be agreed first with Environmental Health.
- 3.9.11 Environmental Health have been monitoring sound emissions from the application site since initial complaints were received from neighbouring properties in relation to noise from music believed to be emanating from the applicant's beer garden. They worked with the Licensee to bring the music emissions properly under control and confirm that this has subsequently resulted in a definite improvement in the situation, with far fewer complaints having been received in 2018 and only a couple of complaints in 2019. Environmental Health generally followed up any complaints received, by sending out an Environmental Health officer to carry out noise monitoring on Friday/Saturday evenings, normally between the hours 8-10pm. The visits carried out at the application site in 2018 and 2019 failed to produce any evidence of noise nuisance.
- 3.9.12 It should be noted that in the event evidence of statutory noise nuisance is obtained, the Council has the ability to take formal action under the provisions of The Environmental Protection Act 1990, as well as requesting the Licensing Panel to review their Premises Licence.
- 3.9.13 Combined with the planning conditions proposed above, these powers should enable the Council to effectively control any noise and disturbance resulting from the playing music, a public address system or any other amplified sound.
- 3.9.14 However, given the particular history of the site, it is recommended that a condition be set restricting this variation of condition for a period of twelve months, thus allowing for any further noise monitoring deemed necessary by Environmental Health to be carried out.
- 3.9.15 It is considered therefore that the proposal would not result in any significant harm to the amenity of residential neighbours and other sensitive land users and that the proposed development complies with the relevant criteria set out in Policies HS15 and PO3 of the Wirral Unitary Development Plan and the NPPF and is recommended for approval.
- 3.10 Other
- 3.10.1 Application and original proposal description made reference to 'in line with agreement made with licensing and EHO' Whilst it is clear that the applicant had meetings with the different departments, there appears to have been some confusion on the applicant's side as to what was agreed. Environmental Health and Licensing have confirmed that no agreement was made with regard to the extension of hours for the playing of music externally. Objections have been received from neighbouring properties that the proposal description is therefore false and misleading and unfairly prejudice the decision. The case officer has corrected this by removing from the proposal description any reference to an agreement having been made with EHO and Licensing.
- 3.10.2 Neighbours refute the claims made by tenant in their application, which states that they

have worked closely with neighbours and the community to find a solution. The case officer has no way of verifying which account is true. And whilst such communication is encouraged at pre-planning stages, it is unlikely to materially impact on any decision.

- 3.10.3 The applicant has submitted a noise management plan as part of this application to which neighbours have raised a number of queries. However, this noise management plan appears to have been agreed between Licensing and the applicant. Planning and Licensing are completely separate from one another, governed by completely different legislation. The plan holds no material planning weight in the determination of this application and any questions relating to it should be directed towards Licensing.
- 3.10.4 Equally, any breach of a Licensing condition should be directed towards the Licensing department.
- 3.10.5 Other objections received from neighbours, relate to prevention of crime, disorder and anti-social behaviour, prevention of public nuisance, parking issues and the requirement for a travel plan.
- 3.10.6 It should be noted that The Cheshire Cheese pub is a well-established use, under current licensing its beer garden is able to be used by patrons up until 23:00. Being an established use, the previous application APP/19/00499 and this current application are limited in their scope to deal with many of the concerns raised by neighbours. The majority of which should be dealt with under the separate legislation pertaining to Licensing and Environmental Health.
- 3.10.7 Within its planning scope, previous planning permission APP/19/00499 had a number of conditions attached which sought to help mitigate any intensified use of the beer garden resulting from the introduction of the outside bar area. These related to limiting the opening hours of the external bar area and the limiting of hours for the playing of amplified sounds within the beer garden. As discussed in depth above, this application seeks to vary the hours for the playing of background music within the beer garden. One objection makes reference to a Policy DCAN7: Public Houses, however, this policy relates to the Northern Irish planning system and is not a material consideration in the determination of this application.

#### **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 policy advice. In reaching this decision the Local Planning Authority has considered the following:-

The variation of condition being considered as part of this application would not cause nuisance to neighbouring uses, particularly in respect to noise and disturbance. As such complies with the relevant criteria set out in Policies HS15 and PO3 of Wirral's Unitary Development Plan and the National Planning Policy Framework.

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

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

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

**Reason:** To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. The development hereby permitted shall be carried out in accordance with the approved plans received by the local planning authority on 16 May 2019 and listed as follows:

233-403 Rev A, received 16th May 2019;



233-404 Rev A. received 16th May 2019; and  
233-405, received 24th October 2019.

**Reason:** For the avoidance of doubt and to define the permission.

3. With the exception of background music, no music, public address system or any other amplified sound shall be played in the beer garden including the external bar area or the pergola as shown on drawing 233-403 Rev A, between the hours of 7pm and 10am.

**Reason:** To safeguard the amenities of the adjoining occupiers.

4. The external bar area shown on drawing number 233-403 Rev A, shall be closed to customers during the following hours: 1030pm to 1130am Mondays to Saturdays and 10pm to 1130am Sundays and Bank Holidays.

**Reason:** To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

5. For a period not exceeding 12 months from the date of this decision no background music shall be played in the beer garden including the external bar area or the pergola, as shown on drawing 233-403 Rev A, between the hours of 10pm and 10am. Thereafter, unless a further planning permission is granted by the local planning authority, no music shall be played in the external bar area or pergola between the hours of 7pm and 10am.

**Reason:** To safeguard the amenities of the adjoining occupiers.

6. Only the multiple speaker system, as detailed on hereby approved drawing 233-405 'Speaker Proposal', should be implemented and thereafter retained.

**Reason:** To safeguard the amenities of the adjoining occupiers.

7. Prior to the playing of any music within the beer garden including the external bar area or the pergola, the noise monitoring sound system, as detailed on the submitted technical specification document 'G920D Professional Noise Pollution Control System' shall only be installed. All external speakers as identified on drawing 233-405 'Speaker Proposal' shall be played through the noise monitoring sound system, the level(s) of which shall first be agreed in writing with the Local Planning Authority.

**Reason:** To safeguard the amenities of the adjoining occupiers.

**Further Notes for Committee:**

**Last Comments By:** 13/11/2019 13:23:34  
**Expiry Date:** 04/10/2019