

Planning Committee

21 October 2015

Reference:
APP/15/00958

Area Team:
North Team

Case Officer:
Mr K Spilsbury

Ward:
Oxton

Location:

7-9 ROSE MOUNT, OXTON, CH43 5SG

Proposal:

Variation of Condition 3 of APP/11/00283 (opening hours): Monday to Thursday open at 09:00, last entry 23:30, trading to cease 00:00 (midnight), premises closed to the public 00:30; Fridays and Saturdays: open 09:00, last entry 23:30, trading to cease 01:00 with premises closed to public 01:30; Sundays open 09:00, last entry 23:00, trading to cease at 23:30 with premises closed to the public at 00:00 (midnight)

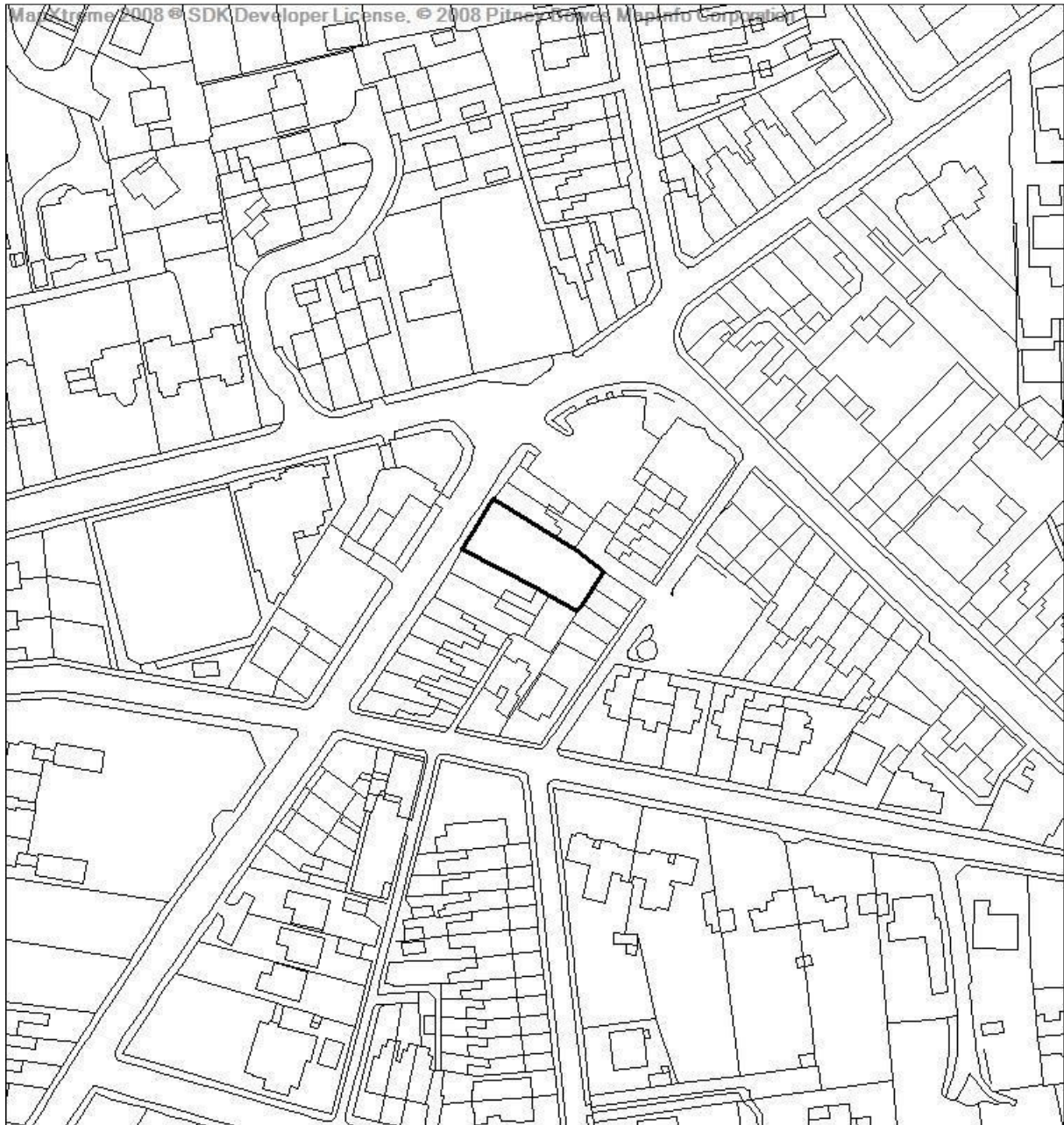
Applicant:

The Courtyard

Agent :

CLA

Site Plan:



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Development Plan allocation and policies:

Density and Design Guidelines Area

Primarily Residential Area

Conservation Area (for illustrative purposes)

Planning History:

Location: 7-9 ROSE MOUNT, OXTON, CH43 5SG

Application Type: Full Planning Permission

Proposal: Variation of condition 3 of planning determination APP/2011/00283 (for the refurbishment of existing bar/restaurant 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, and installation of air conditioning units to rear), to allow the premises to be open from 09.00 to 00.00 (last entry 23.30) Mondays to Saturdays including Bank Holidays; and 09.00 to 23.30 (last entry 23.00) on Sundays.

Application No: APP/12/00621

Decision Date: 19/10/2012

Decision Type: Approve

Location: 7-9 ROSE MOUNT, OXTON, CH43 5SG

Application Type: Full Planning Permission

Proposal: Planning application for completed works encapsulating the extension of restaurant at the rear to the full length of the courtyard, erection of 2no canopies, erection of 2no heaters (external) at the front elevation, installation of an external store at 1st floor level and installation of CCTV.

Application No: APP/12/00622

Decision Date: 19/10/2012

Decision Type: Approve

Location: 7-9, Rose Mount, Oxt. L43 5SG

Application Type: Full Planning Permission

Proposal: 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.

Application No: APP/90/05908

Decision Date: 19/08/1991

Decision Type: Approve

Location: 7-9 ROSE MOUNT, OXTON, CH43 5SG

Application Type: Full Planning Permission

Proposal: 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)

Application No: APP/11/00283

Decision Date:

Decision Type: Approve

Location: The Courtyard, 7 ROSE MOUNT, OXTON, CH43 5SG

Application Type: Full Planning Permission

Proposal: Application for a Lawful Development Certificate for an existing use or operation - use as a restaurant including the provision of entertainment in the form of amplified and live music Monday-Saturday 11am-12am and Sunday 11am-11.30pm.

Application No: LDC/11/01408

Decision Date: 03/04/2012

Decision Type: Refuse

Location: 7-9 ROSE MOUNT, OXTON, CH43 5SG
Application Type: Full Planning Permission
Proposal: Amended Description: Variation of condition 3 of APP/11/00283 and condition 1 of APP/12/00622
Application No: APP/14/01211
Decision Date: 21/01/2015
Decision Type: Refuse

Location: 7-9 ROSE MOUNT, OXTON, CH43 5SG
Application Type: Full Planning Permission
Proposal: 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
Application No: APP/11/00061
Decision Date: 08/04/2011
Decision Type: Withdrawn

Location: 7-9 ROSE MOUNT, OXTON, CH43 5SG
Application Type: Full Planning Permission
Proposal: 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
Application No: APP/11/00215
Decision Date: 14/04/2011
Decision Type: Withdrawn

Location: 7-9 ROSE MOUNT, OXTON, CH43 5SG
Application Type: Full Planning Permission
Proposal: Amended Description: Variation of condition 3 of APP/11/00283 and condition 1 of APP/12/00622
Application No: APP/14/01211
Decision Date: 21/01/2015
Decision Type: Refuse

Summary Of Representations and Consultations Received:

REPRESENTATIONS:

Having regard to the Council's Guidance for Publicity on Planning Applications, notifications were sent to adjoining properties and a site notice was displayed near the site. At the time of writing this report objections have been received from the occupiers of 29 Christchurch Road, 37a Rose mount, The Oxtan Society, 10 Prices Lane, 26 Claughton Firs, 2, 8, 9 and 19 Victoria Mount, 7a Village Road, 31 Fairview Road, 5 Roslin Court, 12 South Bank, 13 Templemore Road, 3 Yewdale Park, 14 Palm Hill and 2 Prices Lane. We have also received a qualifying petition in objection to the development from Councillor Brighthouse. The objections are summarised as follows:

1. noise and disruption caused by the proposal,
2. litter,
3. anti-social behaviour,
4. impact of late night taxis,
5. parking problems and traffic.

In addition, a qualifying petition of objection containing 71 signatures has also been received.

CONSULTATIONS

Head of Environment & Regulation (Pollution Control Division) - No objection

Head of Environment & Regulation (Traffic and Transportation Division) - No objection

Director's Comments:

REASON FOR REFERRAL TO PLANNING COMMITTEE

The Council has received more than 15 separate letters of objection to the proposed application in addition to a qualifying petition of objection from Councillor Alan Brighouse. Under the Council's current scheme of delegation the application must be submitted to planning committee.

INTRODUCTION

The proposal is for the variation of opening hours as described in condition 1 of approved application APP/12/00622. This application was approved as a variation of hours to condition 3 of APP/11/00283. The variation in hours seeks to bring the planning hours in line with the approved licensing hours.

As with the previous planning application; APP/14/01211 that was refused at planning committee on 20th January 2015, the hours of operation are as follows:

	Open	Last Entry	Trading shall Cease	Closed to the public
Monday	9.00	23.30	00.00 (Midnight)	00.30
Tuesday	9.00	23.30	00.00 (Midnight)	00.30
Wednesday	9.00	23.30	00.00 (Midnight)	00.30
Thursday	9.00	23.30	00.00 (Midnight)	00.30
Friday	9.00	23.30	01.00	01.30
Saturday	9.00	23.30	01.00	01.30
Sunday	9.00	23.00	23.30	00.00 (Midnight)

PRINCIPLE OF DEVELOPMENT

The premises benefits from planning permission for use as a restaurant, the proposal is to amend the approved opening hours and as such subject to the planning policies which seek to ensure proposals do not cause a nuisance to neighbouring uses.

SITE AND SURROUNDINGS

The premises are an established restaurant within Oxton Village and comprises of a mid-terrace commercial property with flats above. The site is situated at the heart of Oxton Village and its surrounding conservation area. There are restaurants and other commercial uses located either side of the application property and facing on Rose Mount, but residential properties are close at the rear on Prices Lane – these properties are accessed by a narrow road which is used to service a small number of commercial properties fronting onto Rose Mount. Oxton village is designated as a Primarily Residential Area under the Unitary Development Plan, but in the centre of the village commercial and residential properties are characteristically in close proximity to one another.

POLICY CONTEXT

The premises is an established restaurant within Oxton Village, the Village is designated as within the Primarily Residential Area, the proposal will be assessed in accordance with Wirral's UDP Policies HS15 & SH4, Supplementary Planning Document SPD3 and the National Planning Policy Framework (NPPF).

Policy HS15 states; Within the Primarily Residential Areas as defined on the Proposals Map, proposals for small-scale built development and changes of use for non-residential uses will only be permitted where the proposal will not:

- (i) be of such scale as to be inappropriate to surrounding development;
- (ii) result in a detrimental change in the character of the area; and,
- (iii) cause nuisance to neighbouring uses, particularly in respect of noise and disturbance, on-street parking and deliveries by vehicle.

Proposals should make adequate provision for off-street car parking standards and servicing requirements.

Policy SH4 states; Within small shopping centres and parades in Primarily Residential Areas, development falling within Class A1, Class A2 and Class A3 of the Town and Country Planning (Use Classes) Order 1987, will be permitted, subject to Policy HS15 and the following criteria as appropriate:

(i) where a proposal for Class A3 uses is located on a street containing similar establishments, cumulative levels of noise and disturbance, from both the existing and proposed activities, should not exceed a level likely to be detrimental to the amenity of the area;

(ii) proposals for Class A3 uses should include measures to mitigate smell and internally-generated noise - these measures should not be visually intrusive in the street scene and should be fully installed before the business commences trading;

(iii) the proposal does not cause nuisance to neighbouring uses, or lead to loss of amenity, particularly in respect of noise and disturbance, on-street parking or delivery vehicles - where necessary a suitable condition will be imposed on hours of opening/ operation;

(iv) proposals for Class A3 uses should be located a reasonable distance from the principal elevation of the nearest dwelling house or block of flats;

(v) proposals for Class A2 uses should incorporate the provision of a shop front and permanent window display.

SPD3 states; Proposals for restaurants, cafes, drinking establishments and hot food takeaways will be directed to the Key Town Centres, Traditional Suburban Centres and Primarily Commercial Areas designated in the UDP. Only small-scale changes of use will be permitted within groups of existing shops within the designated Primarily Residential Areas.

One of the main themes in UDP Policies SH4, and HS15 is to ensure that the character and function of the area is not adversely affected and that the proposal will not cause a nuisance to the neighbours. A number of site related factors could be taken into account when this is assessed. These would include:

- the existing number of hot food and drinking establishments in the immediate area and their proximity to each other;
- the nature and type of other uses in the surrounding area, e.g. housing, shops, offices etc;
- the function of the centre and number of shops remaining to serve the community;
- vacancy rates and the condition of the unit;
- wider economic and social benefits; and
- any unresolved amenity, traffic or safety issues relating to existing uses in the area.

Supplementary Planning Document SPD3 indicates that in the past, the degree of subjectivity involved when assessing the potential impact from noise and disturbance on the neighbours' amenity has been questioned. To help address this, the following measure would be applied in the assessment of future planning applications:

- All proposed uses within Use Classes A3, A4 and A5 i.e. restaurants, cafes, drinking establishments and hot food takeaways should be at least 40 metres away from the main elevation of a dwelling house or a building used solely for self-contained flats, when measured along the public highway.

The sale of alcohol and the supply of hot food and drink, the latter between 11.00pm and 5.00am, are also controlled under the Licensing Act 2003. The granting of a license is subject to the Council's

Statement of Licensing Policy. The Local Planning Authority will consult the Licensing Authority, Merseyside Police and Environmental Health Officers prior to the determination of any application to use premises for the purposes listed in Use Classes A3, A4 and A5. Planning applications found to be in conflict with the prevention of public nuisance or the prevention of crime and disorder are unlikely to be approved. In this instance the premises is an established A4 use and as such the variation of hours are acceptable in principle.

APPEARANCE AND AMENITY ISSUES

As with the previous planning application refused by committee the proposal is for a variation of opening hours of the existing premises, the proposed variation to the planning approvals is to bring the planning permission in line with the approved licensing hours. Having regard to APP/12/00622, the premises currently has planning permission for the following hours; Opening Monday to Saturday between 9am and Midnight and 9am to 11.30pm on Sundays and Bank Holidays. With the exception of Friday and Saturday, the changes to the closing times are increased by 30 minutes. The difference in the current hours and the proposed hours on a Friday and Saturday is at the end of the evening, the proposal is to retain last entry at 11.30pm, trading to cease at 1am and the premises closed at 1.30am. This would allow for an additional hour of trading on Fridays and Saturdays with 30 minutes additional time for closing the premises.

Unlike the previous application the current application includes an acoustic report that assessed the site with regards to the extension of opening hours. This document concludes that the noise levels show us that the area is quite noisy but entirely in keeping with an area of this character, and that there is no significant difference between the current closing times and the proposed closing times. They go on to state that the qualitative assessments which show that the Courtyard is making almost no contribution to the overall noise climate which is dominated by taxis and noise from the Oxton Bar and Kitchen smoking area.

The premises is a non-residential use within the designated residential area, there are within the immediate vicinity a number of evening uses, including hot food take-aways, restaurants and bars. Whilst the area is designated as residential the nearest sole residential property when measured along the public highway is 4 Village Road which is approximately 45m from the premises.

The additional 30 minutes proposed for Monday to Thursday and Sunday will have a minimal impact onto the character of the Village, the last time for entry is to be restricted to 11.30pm (11pm on a Sunday) with trading finished at Midnight or 11.30pm, respectively. The main impact from the proposed variation in hours is on Fridays and Saturdays, the premises have proposed to control nuisance by restricting last entry to 11.30pm on all nights of the week except for Sundays. The restriction in last entry seeks to control patrons in terms of noise and disturbance and comings and goings to the premises.

A similar premises The Oxton Bar and Kitchen 2-2a Claughton Firs has licensing hours; Sunday to Thursday 10am to Midnight (30 minutes drinking up time) and Friday to Saturday 10am to 1am (30 minutes drinking up time). The Oxton Bar and Kitchen is historically a public house and is not controlled in terms of planning conditions.

At the time of writing this report objections have been received from the occupiers of 29 Christchurch Road, 37a Rose mount, The Oxton Society, 10 Prices Lane, 26 Claughton Firs, 2, 8, 9 and 19 Victoria Mount, 7a Village Road, 31 Fairview Road, 5 Roslin Court, 12 South Bank, 13 Templemore Road, 3 Yewdale Park, 14 Palm Hill and 2 Prices Lane. We have also received a qualifying petition in objection to the development from Councillor Brighthouse. Their objections relate to noise and disruption caused by the proposal, litter, anti-social behaviour, impact of late night taxis, parking problems and traffic.

Both the Head of Environment & Regulation (Pollution Control Division) and the Head of Environment & Regulation (Traffic and Transportation Division) have been consulted with regards to the scheme and have raised no objection to the scheme having regards to the impact of the proposed increase in operating hours or the impact upon the local highway having regards to traffic and parking.

The proposed variation of hours to the premises will bring the hours of trading in line with a similar premises within Oxton Village, the frontage of the premises is set further than 40m from the nearest

residential property as set out in SPD3. Having regard to the current policies, the character of the area and the proposed controls to the premises, the application to vary the opening hours is considered to be acceptable.

SEPARATION DISTANCES

Separation distances do not apply in this instance.

HIGHWAY/TRAFFIC IMPLICATIONS

There are no Highway Implications relating to this proposal. The Head of Environment & Regulation (Traffic and Transportation Division) has been consulted and raised no objection to the scheme.

ENVIRONMENTAL/SUSTAINABILITY ISSUES

There are no Environmental/Sustainability issues relating to these proposals. The Head of Environment & Regulation (Pollution Control Division) has raised no objection to the proposed scheme.

CONCLUSION

The use of the premises is established, Oxton Village contains a number of retail, commercial and residential properties, it is considered that the proposed variation in hours will not have a detrimental impact onto the character of the area and will seek to protect the neighbouring residential properties by restricting admittance to the premises.

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 use of the premises is established, Oxton Village contains a number of retail, commercial and residential properties, it is considered that the proposed variation in hours will not have a detrimental impact onto the character of the area and will seek to protect the neighbouring residential properties by restricting admittance to the premises.

**Recommended Approve
Decision:**

Recommended Conditions and Reasons:

1. The premises shall be closed between 00.30 hours (midnight) and 09.00 hours Monday to Thursday, 01.30 hours and 09.00 Fridays and Saturdays and 00.00 (midnight) hours and 09.00 hours on Sundays.

Reason: To protect the amenities of nearby residential occupiers having regard to Wirral's UDP Policy HS15.

2. All windows and doors must be kept closed at all times, except for access and egress.

Reason: In the interests of residential amenity having regard to Wirral's UDP Policy HS15.

3. No live or amplified music, other than low level background music which must not be audible from beyond the site boundary shall be played at the premises at any time.

Reason: In the interests of residential amenity having regard to Wirral's UDP Policy HS15.

4. The public shall not be granted entry into the premises after 23.30 Monday to Saturday or after 23:00 on Sunday.

Reason: In the interests of residential amenity having regard to Wirral's UDP Policy HS15.

5. This permission is for a temporary period only and shall expire after 12 months, starting from the date of this grant of approval.

Reason: In the interests of residential amenity having regard to UDP Policy HS15.

Further Notes for Committee:

Last Comments By: 19/08/2015 08:31:57

Expiry Date: 01/09/2015