

Application Number	13/1358/S73	Agenda Item	
Date Received	11th September 2013	Officer	Miss Catherine Linford
Target Date	6th November 2013		
Ward	Coleridge		
Site	Nusha 7A Cambridge Leisure Park Clifton Way Cambridge Cambridgeshire CB1 7DY		
Proposal	Section 73 application to vary condition 2 of permission 08/1581/FUL to extend opening hours to allow opening until 03:00 hours on Saturdays and Sundays.		
Applicant	Mr Jorawar Bhangoo Nusha 7A Cambridge Leisure Park Clifton Way Cambridge Cambridgeshire CB1 7DY		

SUMMARY	<p>The development accords with the Development Plan for the following reasons:</p> <ol style="list-style-type: none"> 1. A precedent would not be set as any future applications for other premises would be assessed on their own merits; 2. Due to the distance between the bar and residential properties, the bar itself would not have a significant detrimental impact on neighbouring properties. Noise and disturbance on the street cannot be controlled by the planning process.
RECOMMENDATION	APPROVAL

1.0 SITE DESCRIPTION/AREA CONTEXT

1.1 The application site is "Nusha," a medium sized bar/entertainment venue located on the northern edge of the

main leisure park building located between Clifton Road and Hills Road. Nusha occupies a ground floor unit, facing the Junction nightclub and music venue, and adjacent to a restaurant unit of similar size. To the north there is an informal pick up/drop off area, and the access road leading to the multi storey car park which services the former cattle market site leisure development. There is a storage unit depot on the northern side of the car park access road. To the east are commercial units served by Clifton Road and beyond that residential properties located on Rustat Road.

- 1.2 The site is not located within a Conservation Area as designated by the Cambridge Local Plan 2006, nor is it in close proximity to any listed buildings.

2.0 THE PROPOSAL

- 2.1 The application seeks permission to vary condition 2 of permission 08/1581/FUL to allow the premises to remain open for trade until 03:00 on Saturdays and Sundays.
- 2.2 The application is brought before Committee at the request of Councillor Herbert for the following reasons:

I request that this planning application is determined by East Area Committee, if the recommendation is one of approval, so that the impacts on residential amenity can also be considered.

The Leisure Centre is adjacent to a residential area and patrons of the Leisure Centre choose to park in local streets rather than the unsupervised Clifton Road industrial estate. There are already significant issues of night time petty crime and criminal damage in the area immediately adjacent to Cambridge Leisure.

When the Leisure Centre was granted planning permission in 2000 there was a 'cinderella' commitment agreed with the developer, that additional licensed venues would normally be limited to midnight.

While Nusha already operates beyond midnight, its 2009 application to operate beyond 2am on weekends and other nights was also rejected on appeal by the Planning Inspector.

I do not hold pre-determined view on the issue, and await the officer's report.

3.0 SITE HISTORY

Reference	Description	Outcome
06/1186/S73	Section 73 application to vary conditions 30 and 31 of planning permission C/98/0355/FP to change the operating times of the units within the main leisure building as follows; cinema to open between 10:00 to 1:00 hours Sunday to Friday and Friday/Saturday and Saturday/Sunday 10:00 to 2:30 hours; the health and fitness centre to open between 6:30 and 1:00 hours; and all other units within the leisure building shall not be open to trade with the public outside the hours of 10:00 to 01:00 hours.	REF
07/0947/S73	Change in hours of operation to 1:30am on Tuesdays, Friday and Saturdays for 1 year.	A/C
C/02/0881/VC	Variation of condition 1 of planning permission C/98/0355/FP to change closing time for Unit F2 (Class A3 uses) from 2400 to 0200hrs	Refused Dismissed at Appeal
08/1382/S73	Variation of condition 31 to extend operating hours to 02:00 hours Monday - Sunday from midnight (C/98/0355/FP and 07/0947/FUL).	Refused at Area Committee
08/1581/FUL	Variation of condition 31 to extend operating hours to 1:30am on Wednesdays, Saturdays and Sundays.	Refused Allowed at Appeal

- 3.1 The decision of the Planning Inspector in the appeal on the previous application 08/1581/FUL is attached to this report as Appendix 1.

4.0 PUBLICITY

4.1 Advertisement:	No
Adjoining Owners:	Yes
Site Notice Displayed:	Yes

5.0 POLICY

5.1 See Appendix 1 for full details of Central Government Guidance, Cambridge Local Plan 2006 policies, Supplementary Planning Documents and Material Considerations.

5.2 Relevant Development Plan policies

PLAN		POLICY NUMBER
Cambridge Plan 2006	Local	3/1 & 3/7 4/13 6/10

5.3 Relevant Central Government Guidance, Supplementary Planning Documents and Material Considerations

Central Government Guidance	National Planning Policy Framework March 2012 Circular 11/95 Community Infrastructure Levy Regulations 2010
Material Considerations	<u>Central Government:</u> Letter from Secretary of State for Communities and Local Government (27 May 2010) Written Ministerial Statement: Planning for Growth (23 March 2011) National Planning Practice Consultation

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5.4 Status of Proposed Submission – Cambridge Local Plan

Planning applications should be determined in accordance with policies in the adopted Development Plan and advice set out in the NPPF. However, after consideration of adopted plans and the NPPF, policies in emerging plans can also be given some weight when determining applications. For Cambridge, therefore, the emerging revised Local Plan as published for consultation on 19 July 2013 can be taken into account, especially those policies where there are no or limited objections to it. However it is likely, in the vast majority of instances, that the adopted development plan and the NPPF will have considerably more weight than emerging policies in the revised Local Plan.

6.0 CONSULTATIONS

Cambridgeshire County Council (Engineering)

6.1 No comment.

Head of Refuse and Environment

6.2 The Premises Licence has been varied to allow the premises to open until 03:00 on Saturdays and Sundays, and recorded music is also authorised until this time. There have also been a number of Temporary Event Notices that have authorised the premises to be open until 03:00 and there have been no complaints. However, Officers have witnessed noise break out from the front of the bar. Loud music escapes as the door opens. The bar does not have a lobby so when the front door is open sound can escape directly from the dance floor. To protect the amenity of the flats in the vicinity and the Travelodge opposite I recommend that a lobby is installed. A condition is also recommended requiring a noise insulation scheme.

6.3 The above responses are a summary of the comments that have been received. Full details of the consultation responses can be inspected on the application file.

7.0 REPRESENTATIONS

7.1 The owners/occupiers of the following addresses have made representations:

- Rustat Neighbourhood Association
- Cherry Hinton and Rathmore Road Residents Association

7.2 The representations can be summarised as follows:

- Noise and disturbance
- Will set a precedent for other local establishments to extend their opening hours, which would change the character of the Leisure Park and affect amenity
- The Leisure Park was set up as a daytime and evening entertainment area and not as a late night drinking centre
- The number of residents around the Leisure Park is increasing and these new residents will be affected by noise
- Longer hours merely means noise over a longer period

7.3 The above representations are a summary of the comments that have been received. Full details of the representations can be inspected on the application file.

8.0 ASSESSMENT

8.1 From the consultation responses and representations received and from my inspection of the site and the surroundings, I consider that the main issues are:

1. Context of site, design and external spaces
2. Residential amenity
3. Car and cycle parking
4. Third party representations

Background

8.2 The premises is located within an area where there is long and well-established late night activity. Of the adjacent properties, the Junction and the cinema have permission to operate after midnight on agreed occasions, and the Travelodge to the east allows late night access for guests returning from other venues. The Junction runs events until considerably later at night, and is regularly open until (and beyond) 02.00hours.

- 8.3 The Environmental Health Officer had objections to late night opening throughout this site when permission was first granted in 2000, because of concerns about the potential for conflict between late-leavers from the Junction with: residents above the shops at the southern end of the Leisure Park site; residents further afield in adjacent residential areas; and guests in the hotel. There was however acceptance that the cinema on this site needed to compete on even terms with the cinema at the Grafton centre and later opening was therefore allowed on limited occasions in the week.
- 8.4 Previous attempts to widen the hours when Nusha could operate have been resisted and an appeal dismissed. However, in October 2007 permission was granted to allow the premises to open until 01:30 on three nights of the week for a temporary period of one year, in order to judge the impact of the bar opening late. In March 2009 permission was refused at Area Committee to allow the bar to open until 01:30 on three nights of the week permanently. The subsequent appeal was dismissed. The Appeal decision is attached to the report as Appendix 1.

Context of site, design and external spaces

- 8.5 The previous application was refused for the following reason:

The proposed extension of opening hours of this bar has the potential to lead to a change in the character of the wider Leisure Park site from one that is family-orientated to one where a late night culture would predominate. The proposal has for this reason not demonstrated that due consideration has been given to safeguarding appropriate future developments on the remainder of the site and is therefore contrary to policy 3/6 of the Cambridge Local Plan (2006).

- 8.6 In the Appeal decision, the Inspector took the view that 'even if extended hours at Nusha were to lead to some of the other operators opening for longer periods I am not persuaded that the family-orientated use of the complex would necessarily be weakened or undermined. There is nothing to suggest that the broad mix and range of uses, which are controlled by the original permission are likely to change'. He added that 'I consider the evidence points to it being unlikely that the proposal for extended hours at Nusha would give rise to any material pressure for extended hours elsewhere or encourage

those who already have that flexibility to make further use of it. I believe it follows that the proposal is unlikely to give rise to a significant increase in patronage at the Leisure complex beyond midnight'.

- 8.7 This application seeks longer hours than that previously proposed, but in my opinion, the views expressed by the Inspector still stand. Any future application for the extension of hours of other premises would be assessed on their own merits and the acceptance of extended hours at Nusha would not create a precedent. In my opinion, the main concern in the determination of this application is the potential impact upon amenity that the extended hours of operation might cause.
- 8.8 In my opinion the proposal is compliant with Cambridge Local Plan (2006) policies 3/4 and 3/7.

Residential Amenity

- 8.9 The previous application was refused for the following reason:

The proposed extension of hours of opening beyond 12 midnight, to 01.30 hours, on three nights a week, is unacceptable in that it would have an adverse affect upon the amenity of nearby residents, both those in the surrounding area and the occupiers of both the residential accommodation on the wider site and the hotel, by reason of noise and the disturbance associated with the use of the premises in the early hours of the morning. The consequence would be a serious adverse effect upon the environment and amenity and the proposal is therefore contrary to Cambridge Local Plan 2006 policy 4/13.

- 8.10 In the Appeal decision the Inspector noted that 'the premises are well within the confines of the Leisure Park...at the opposite extremity of the complex from the integral purpose-built and well-insulated residential units close to Cherry Hinton Road and well removed and separated from the older residential areas along Cherry Hinton Road and in Rustat Road and the new developments on the far side of Hills Road'. He, therefore, took the view that 'these circumstances point to the likelihood of very limited amounts of noise and disturbance to local residents in their homes from either the bar itself or from its customers within the leisure complex. To my mind the greatest potential

for impact upon living conditions arises once customers have dispersed from the Leisure Park.’

- 8.11 The premises is located as far as possible from residential premises on the site, because it is screened at least in part from the hotel by The Junction, and because of its immediate proximity to the car park and taxi pick-up/drop off location. While it is not suggested that there will be no consequences whatsoever from the proposed extended hours, if granted, it is my opinion that there would not be such harm as to justify outright refusal.
- 8.12 The Premises Licence for Nusha was varied on 29 July 2013 to allow the premises to open until 3am on Saturday and Sunday mornings. The playing of recorded music is also authorised until this time. Environmental Health have explained that a number of Temporary Event Notices have been issued, which have allowed the premises to be open until 3am, and no complaints have been received about these events. However, Environmental Health Officers have witnessed noise break out from the front of the bar. Loud music escapes directly from the dance floor when the door is opened as the bar does not have a lobby. As it is my opinion, and the Inspector’s opinion, that due to the distance from the bar to residential properties, the bar itself is unlikely to have an impact on residents in terms of noise of disturbance it is my view that it would be unreasonable to recommend a condition requiring a lobby to be installed.
- 8.13 In my opinion, the greatest potential for impact is from customers of the bar creating noise whilst cycling or walking home down residential streets. This is not something that can be controlled by the planning process, and would be a matter for the Police.
- 8.14 In my opinion the proposal adequately respects the residential amenity of its neighbours and the constraints of the site and I consider that it is compliant with and Cambridge Local Plan (2006) policies 3/4 and 3/7.

Third Party Representations

- 8.15 The issues raised in the representations received have been addressed above.

9.0 CONCLUSION

- 9.1 In my opinion, the proposed extension of hours would have no greater impact than the extended hours previously allowed by the Inspector. In this decision, the Inspector took the view that the extended hours would not set a precedent and that neighbouring residential properties were at too great a distance to be detrimentally impact on by the bar itself.

10.0 RECOMMENDATION

APPROVE subject to the following condition:

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

Reason: In accordance with the requirements of section 51 of the Planning and Compulsory Purchase Act 2004.