

<b>Application Number</b>	14/1252/COND12A	<b>Agenda Item</b>	
<b>Date Received</b>	29th September 2016	<b>Officer</b>	Toby Williams
<b>Target Date</b>	24th November 2016		
<b>Ward</b>	Petersfield		
<b>Site</b>	Citylife House Sturton Street Cambridge CB1 2QF		
<b>Proposal</b>	Condition 12 - Resubmission		
<b>Applicant</b>	Mr Julian Curry 2 Hills Road Cambridge		

SUMMARY	<p>The development accords with the Development Plan for the following reasons:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Travel Plan submitted accords with the terms of the condition and National Planning Practice Guidance.</li> </ul>
RECOMMENDATION	<b>DISCHARGE CONDITION 12</b>

**1.0 SITE DESCRIPTION/AREA CONTEXT**

- 1.1 The site lies adjacent to St Matthew’s Piece in the Petersfield area of the city. It is bounded on the east side by York Street, on the north side by New Street, on the west side by Sturton Street, and to the south by the open space of St Matthew’s Piece. The areas to the east, south and west of the site are primarily residential, including many small nineteenth-century terraced houses, and small modern houses and flats. The area to the north is a mixed area, which includes light industrial and retail uses as well as dwellings and student accommodation.
- 1.2 The site lies wholly within the Central Conservation Area. The northern and eastern boundaries of the site also form the boundary of the Conservation Area.
- 1.3 The trees which stand along the eastern, northern and western boundaries of the site (London planes and one lime) are

protected by Tree Protection Order (TPO) 4/2005. The majority of the site does not have any specific designation in the adopted Cambridge Local Plan of 2006, but a strip of land on the east side of the site, fronting onto York Street, is designated as Protected Open Space. This strip includes a number of Plane trees and is of an irregular shape. Part of the northern section of the Protected Open Space is currently covered by tarmac. The site is presently surrounded by hoardings and a small tarmac path has been installed diagonally across it.

## **2.0 THE PROPOSAL**

- 2.1 The application seeks to discharge condition 12 which relates to a Travel Plan for the permitted dance school/studio use. It is a re-submission for discharge of condition 12 following an earlier refusal to discharge on the basis that the Travel Plan was not submitted for a dance school use. The earlier submission against condition 12 has been appealed.
- 2.2 Following the re-submission, a number of third party issues have been raised with the Travel Plan. These have been addressed as part of an additional technical document submitted by the applicant's transport consultants. The technical document has been resubmitted to the County Council Transport Team for further comment and has also been subject to further third party representation.

## **3.0 RELEVANT SITE HISTORY**

- 3.1 The site has an extensive planning history. The most relevant history to this application is listed in the below table.

<b>Reference</b>	<b>Description</b>	<b>Outcome</b>
16/1272/S73	Section 73 application to vary condition number 2 of permission 14/1252/FUL to permit revised cycle and bin storage locations, revised internal configurations and revised location of plant from the eastern elevation to the roof.	Pending consideration
14/1252/FUL	Change of use from the	Permitted,

	permitted use as a studio/cafe bar/multimedia education centre and community facility (sui generis) granted under planning permission 97/1020 to a Class D1 dance school/studio including limited alterations to the external envelope of the building.	this is the application to which the Travel Plan submission relates
06/0567/FUL	Erection of a community innovation centre.	Appeal Dismissed
06/0631/CAC	-	Withdrawn
05/1171/FUL	Change of use of land (Howard Mallett Centre) from Sui Generis use to public open space as part of St Matthew's Piece.	Permitted (not implemented)
05/1180/CAC	Demolition of Howard Mallett Centre.	Permitted (not implemented)
C/97/1020	Change of use from a youth club to a broadcasting studio, cafe-bar and multi-media education centre, and community facility (a sui generis use), with external alterations to building, laying out of car park and landscaping.	Permitted (operative consent)
C/90/0678	USE OF LAND FOR CAR PARKING.	Appeal Allowed – temporary period ending 31/12/93
C/86/1229	CONTINUED USE OF SITE AS A CAR PARK (EXTENSION PERIOD OF CONSENT).	Approved with conditions

- 3.2 In 2014, application 14/1252/FUL was submitted for a class D1 dance school/studio use. The application was recommended and endorsed for approval by Planning Committee at its meeting of 4 March 2015. Planning permission was given on 28 October 2015.
- 3.3 The intended occupier at the time of the 2014 application had been Bodywork, a local dance school. Like most planning permissions, the permission was not personal and was not conditioned or secured as part of the S106 specifically for Bodywork. The permission is for a D1 dance school/studio use and this has been confirmed as part of the applicant's legal advice and advice from the Council's solicitor.
- 3.4 Internal and external operational works have begun and are almost complete. A number of the condition submissions have been submitted retrospectively. All required condition submissions have now been discharged except condition 12.
- 3.5 The 2014 application is also subject to a S73 material amendment application (16/1272/S73) to alter some of the approved plans as per condition 2 in respect of bin storage, plant and cycle parking and the internal layout. The proposed amendments seek to regularise works which have been done to the building which do not accord with the approved drawings.

#### **4.0 PUBLICITY**

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

#### **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 Local	3/1 Sustainable Development

Plan 2006	<p>4/13 Pollution and Amenity</p> <p>4/14 Air Quality Management</p> <p>5/11 (in respect of third party representations)</p> <p>8/2 Transport impact</p>
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### 5.3 Relevant Central Government Guidance, Supplementary Planning Documents and Material Considerations

Central Government Guidance	<p>National Planning Policy Framework 2012</p> <p>National Planning Practice Guidance 2014</p> <p>Circular 11/95 – The Use of Conditions in Planning Permissions (Annex A)</p>
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### 5.4 Status of Proposed Submission – Cambridge Local Plan

For the application for condition discharge considered in this report, there are no policies in the emerging Local Plan that should be taken into account.

## 6.0 CONSULTATIONS

### Cambridgeshire County Council (Transport)

- 6.1 No Objection: The revised Travel Plan is acceptable. The County Transport Officer has reviewed the third party representation from 6 Edward Street and does not raise an objection. The further technical note from the applicant has been submitted for further comment from the County Transport Officer and he has agreed with its findings. Condition 12 is recommended to be discharged.

6.2 The above response is a summary of the comment that has been received. Full details of the consultation responses can be inspected on the application file.

## **7.0 REPRESENTATIONS**

7.1 Councillor Robertson has called-in the application on the following grounds:

-The hours of use in the evenings and at weekends have not been adequately addressed and the Planning Committee should be asked to consider this issue if you are minded to accept the [Travel] Plan as fulfilling the requirements of the condition. Cllr Robertson references policy 8/2 in his response.

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

- 1 Athlone, East Road
- 6 Edward Street
- 106 Gwydir Street
- 81 Mawson Road
- 80B York Street

7.3 The representations can be summarised as follows:

### Technical Issues

-The baseline data is flawed, inconsistently used and not realistic. Table 5.4 from the original Transport Statement and table 5.1 in the Travel Plan show different modal splits.

-The developer has made-up information as part of survey data in relation to taxi drop-off, distorted and misrepresented Bodywork staff data and provided little clarity in terms of data sourcing.

-The technical note demonstrates that there are lots of discrepancies in the various transport related information submitted to the Council, with particular reference to modal split and survey data across different data sets and that it is not clear which parameter or data set is being reported on. Table 5.5 is flawed.

- The Travel Plan has many factual errors.
- Gaps in the provision of information, such as reference to the Chisholm Trail and evening and weekend use of the car park, including lack of a drop-off area.
- The Travel Plan should provide credible data for all users (outside of core hours) of the building, not just daytime hours (which are unspecified).
- The speed limit around the site is 20mph.
- The Travel Plan Co-ordinator would not manage out of core hour use and it is not clear who would.
- The Technical Response has not addressed all issues raised.

### Use

- The Travel Plan has not been written for a dance school/studio user.
- The illustrative timetable for Bodywork use of the Howard Mallet building shows many sessions that would be for the benefit of local children and local adults.
- CSVPA (Cambridge School of Visual and Performing Arts) are part of the CEG (Cambridge Education) Group, CSVPA do not offer dance as a course, Bodywork do and would offer this to the wider community.
- Of the three dance companies named in the Community Access Agreement that could possibly use the building out of core hours, only one is local to Petersfield.
- CSVPA is not a Dance School.
- No CSVPA staff member has a dance specific job title.
- CSVPA cannot be used as baseline data to inform the Travel Plan as it is not a dance school.
- CSVPA and Bodywork provide for different markets.

-The Travel Plan and the accompanying assessment for 14/1252/FUL are intended for Bodywork or another dance school/studio and not for a non-compliant policy 5/11, non-dance school occupier, such as CSVPA.

-There is no evidence of any assessment by any party to the planning process regarding the transport impact of use at evenings and weekends under application 14/1252/FUL of the building, particularly between the County Council and the Transport Consultants.

-Bodywork and CSVPA are different in terms of their existing provision of education. CSVPA provides higher education, English language tuition and could be described as a tutorial college or affiliated to one. Bodywork is neither of these and is compliant with policy 5/11. CSVPA occupation would not be compliant with 5/11.

-The timetables are indicative but named occupiers are included within the first draft of the community access plan and therefore relevant.

### Information Credibility

-The applicants have been disingenuous and misleading in terms of their Planning Statement and Travel Plan text and Bodywork is not involved in any ongoing negotiations with CSVPA or CEG in terms of a possible merger. The documentation cannot be relied upon and is not credible.

-TPA (The Transport Consultants) advice is contradictory.

-The Travel Plan is of very poor quality.

### Process

-This is a pre-commencement condition and cannot be submitted post-commencement of development. The 2014 permission has been invalidated.

-The fault in the delay in respect of the discharge of the planning condition is the developers.

-The breach of condition should be enforced.



-What remedy is there for the community when developers ignore conditions and commence work on the site without having discharged such conditions?

-When does the failure to discharge conditions result in invalidating planning permission?

-There is no point in setting the Travel Plan condition, if the developer can ignore it and commence development

### Other

-The description of St Matthew's Piece in relation to the site is incorrect.

-Reliance on unapproved planning applications, including phase 2 and 15/2372/FUL.

-It is agreed that no planning condition can be personal to any one organisation.

-The Travel Plan condition is a pre-commencement condition and it makes no sense for it to have been so if only credible baseline information can be gained post-occupation of the building.

-If the Travel Plan is not personal, it should not be based upon CSVPA data.

-The Travel Plan should include a mechanism for resolving complaints arising out of issues relating to travel to and from the building.

-Issues with the description of the 1997 permission and what it allowed for in terms of a café/bar as part of a sui generis use and a cafe-bar.

-City Councillors on the Planning Committee should be made aware that the setting of conditions can be ignored with impunity by the developer.

7.4 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 The key issue is whether the revised Travel Plan is sufficient to discharge condition 12 of 14/1252/FUL in respect of the dance school/studio use.

8.2 The wording of condition 12 reads:

*'No development shall take place until a Travel Plan for the Bodywork use has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be focused on encouraging sustainable modes of transports for its students, staff and visitors. The approved plan shall be implemented and monitored according to the provisions approved by the local planning authority.'*

*Reason: To increase sustainability, limit pollution, and mitigate any air quality impact of the development. (Cambridge Local Plan (2006) policies 3/1, 4/13, 4/14 and 8/2)'*

8.3 National Planning Policy Guidance sets out what Travel Plans should include and I have abbreviated that advice into the below criteria:

- a) Contain information concerning the nature of the proposed development;
- b) Evaluate and consider benchmark travel data including trip generation data and the forecast level of trips by all modes;
- c) Address all journeys resulting from a proposed development;
- d) Identify specific required outcomes, targets and measures;
- e) Include proposals to reduce the need for travel to and from the site via unsustainable modes of transport;

- f) Set out clear future monitoring and management arrangements;
  - g) Retain the ability to establish certain elements of the Travel Plan or review outcomes after the development has started operating so that it can be based upon the occupational and operational characteristics of the development.
- 8.4 The submitted Travel Plan adequately sets out the context within which the Travel Plan is being submitted, outlines the planning policy framework, the accessibility of the site and describes the planning permission.
- 8.5 In terms of transport related provision, the existing permission (14/1252/FUL) and discharged conditions, allow for 17 car parking spaces to be used, which would become available to the community for the use of the building outside of core hours. The approved scheme does not provide for any pick-up or drop-off facility. One point of vehicular access via a controlled barrier (swipe or fob operated) is proposed from New Street. 118 cycle parking spaces are provided around the building. The level of car parking and cycle parking provision, it's management and the physical layout of the site are all agreed and accord with the Local Plan standards. The Travel Plan does not provide an opportunity to revisit this level or nature of provision.
- 8.6 The Travel Plan sets out that it anticipates arounds 150 students and 30 staff members will be present on-site at full capacity during core hours. Wider community use of the building is expected from 6pm to 10pm weekdays and during Saturdays and Sundays. No estimated figures are given for the extent of community use because it is difficult to determine at this stage.
- 8.7 The applicants propose to revisit the Travel Plan no later than three months after occupation to re-evaluate the actual travel patterns to the building and adjust targets accordingly following a survey of travel to the site. This is a reasonable proposition and accords with criterion g) above.
- 8.8 The Travel Plan seeks to establish baseline travel data by using information from two D1 use class schools, Bodywork and Cambridge School of Visual and Performing Arts (CSVPA), the

latter of which intend to occupy the building for its permitted use as a dance school/studio.

8.9 Third parties have raised concerns regarding inconsistencies in baseline data sets/reporting, the credibility/origin of the data and the logic of its use, particularly as CSVPA is not a dance school. These criticisms have been put to the applicants who have produced a technical note dealing with the individual transport related issues raised. The County Council has been passed the third party representations and has reviewed the applicant's technical note in light of the representations. The County Council Transport Officer considers that the Travel Plan is satisfactory and that the condition should be discharged.

8.10 My view is that I do not consider it unreasonable to utilise data sets for both schools in the formulation of the Travel Plan. I accept that CSVPA is not a dance school but that does not mean that they could not occupy it as such as part of a change in their business plan/focus and both uses fall within the D1 use class category. As the building is to be occupied for a new use, the baseline data used to inform targets now can only ever be an estimate of likely travel patterns. Whilst there are inconsistencies in the data sets used, my view is that the modal splits are realistic and given that a post-occupation survey will be undertaken to review targets and provide a more accurate baseline, in my view it is only necessary for the baseline assumptions used within the Travel Plan to be broadly acceptable as they are estimations at this stage. The Travel Plan is not dependent on either Bodywork or CSVPA occupying the building. The approach to a requirement for a post-occupation survey is not uncommon in agreeing Travel Plans for future occupiers. The discharge of condition 12 would be on the basis of the post occupation survey being carried out, revised targets being put to the Travel Plan as necessary, continuing surveys/review annually and with a specific obligation to survey wider community use outside of core operating hours.

8.11 The Travel Plan sets out the following targets:

- For staff, to reduce the overall number of single occupancy vehicle trips by 10% within 5 years from the initial baseline staff travel survey taken post-occupation.

The current percentage of staff estimated to drive, or part-drive to the site is 34%.

- No students will be permitted to drive to the site, so the target for students will be to maintain awareness and safe sustainable travel to and from the site over a 5-year period.

8.12 The Travel Plan will encourage car sharing and promote sustainable travel options. A Travel Plan Coordinator will be appointed to implement and manage the Travel Plan who would be based at the site and who would be given the responsibility of setting up a Travel Plan Working Group to oversee its implementation. In terms of specific initiatives, the Travel Plan states the dance school will:

- Offer Bikeability Cycle Safety training.
- Publicise the health benefits of cycling and walking in promotional material.
- Provide information to students, visitors and staff regarding safe cycle and safe pedestrian routes.
- Provide and maintain covered secure cycle parking and provide additional spaces if demand requires.
- Organise promotional events, such as 'walk to work week' and 'bike week'.
- Provide information packs (at enrolment) regarding the Travel Plan and public transport options and display travel information on notice boards and on the school website.
- Promote car sharing through the County Council car sharing website.
- Making evening and weekend community users aware of the limited car parking available and communicate sustainable travel choices for hirers of the spaces to discourage driving.

8.13 Initial monitoring will take place no less than three months following first occupation to establish an accurate modal split and confirm targets. This would include monitoring of use at evenings and weekends. I appreciate that third parties raise the issue that there is no evidence of any assessment by any party to the planning process regarding the transport impact of use at evenings and weekends under application 14/1252/FUL to inform the Travel Plan. This is a criticism pertaining to the assessment of transport impact under 14/1252/FUL which the

Travel Plan cannot fix retrospectively. The Transport Plan is capable of ascertaining the actual level of community use and responding to it. Following the post-occupation survey, the use of the building will be monitored on an annual basis and the results summarised and submitted to the City and County Councils for review for a period of five years. The Travel Plan will be amended to take account of any specific issues arising during the preceding year. This is a reasonable approach.

- 8.14 My view is that the content of the submitted Travel Plan accords with the requirements of the condition and aligns with National Planning Policy Guidance. The County Council Transport Officer, who is experienced in dealing with Travel Plans and the party that requested the Travel Plan in the first place, is also of the view that the Travel Plan is satisfactory.

#### Third Party Representations

- 8.15 Third party representations raise issues of the credibility of the survey and other data being used, such as in relation to taxi drop-off and the distortion and misrepresentation of Bodywork staff data to inform modal targets. The existing and previous versions of the Travel Plan have included a number of factual/textual inaccuracies or omissions, such as the reference to the speed limit within the area, the description of the 1997 permission, the location of St Matthew's Piece, omission of reference to the Chisholm Trail, the description of CSVPA as an existing dance school and references to similarities between CSVPA and Bodywork Dance School.
- 8.16 The technical response note from the applicants has clarified and addressed the key transport related issues raised by third parties. As stated earlier, given that a post-occupation survey of the building will be undertaken to establish an accurate baseline to inform modal targets, I do not consider the technical survey issues to be fundamental to the successful operation of the Travel Plan itself.
- 8.17 The Travel Plan has been written and correctly references the permitted use as a dance school/studio in relation to application 14/1252/FUL. My view is that any dance school/studio occupier could implement the submitted Travel Plan; it does not need to be tailored to a specific occupier. Issues of speed limit, reference to the 1997 permission, St Matthew's Piece and the

Chisholm Trail are noted but not central to the assessment of the Travel Plan.

- 8.18 Third parties state that the Travel Plan includes an illustrative timetable for Bodywork Dance Company which shows that many sessions would be for the benefit of local children and local adults that would be compliant with policy 5/11. The representations state that CSVPA are part of the CEG Group, that CSVPA does not offer dance as a course, does not employ a staff member as a specific dance teacher and therefore could not comply with the Travel Plan or with policy 5/11, which was the basis upon which 14/1252/FUL was granted.
- 8.19 I recognise that current courses and the student profile offered by CSVPA do not align with those offered by Bodywork, but the assessment of the Travel Plan is not an opportunity to assess or re-assess whether CSVPA, Bodywork or any other user would meet the requirements of policy 5/11 in terms of occupation of the building and community facility protection. Continued community use of the building is not something that the Travel Plan seeks to or can secure and policy 5/11 is not referenced in the reason for condition 12. The permission for application 14/1252/FUL is not personal and neither is condition 12, which the main third party objector accepts. In order to implement 14/1252/FUL, an occupier would have to operate a dance school/studio use and it is not for the Travel Plan to pre-judge whether CSVPA could undertake this. These issues, including CSVPA and its educational profile and compliance with policy 5/11 are dealt with under the officer report for 15/2372/FUL.
- 8.20 Third party representations make reference to the draft Community Access Agreement (CAA) and named occupiers within it that could use the building, only one of which is local to Petersfield. Permission 14/1252/FUL does not require a CAA and the assessment of the Travel Plan cannot reasonably extend to the consideration of the CAA also. In any event, I note that the CAA has subsequently been revised to remove explicit reference to potential community occupiers.
- 8.21 Third party representations also claim that Bodywork is not involved in any ongoing negotiations with CSVPA or CEG in terms of a possible merger and that the documentation (Travel Plan/Planning Statement) cannot be relied upon and is not

credible. These issues relate to the commercial decisions and/or negotiations of the owners to which the Local Planning Authority has not been a party to. The adequate assessment of the Travel Plan is not reliant upon the negotiations or non-negotiations as relayed in representations to the Council.

8.22 In terms of process, third party representations state that condition 12 is a pre-commencement condition and cannot be submitted post-commencement of development and that as such the 2014 permission has been invalidated. Legal advice obtained by the applicant's QC and subsequently from the Council's solicitor, confirm that condition 12 can be discharged. Officers are of the view that the Travel Plan condition does not go to the heart of the permission and its late submission does not render the permission incapable of lawful implementation. No harm has arisen as a result of its late submission. The effect of the Travel Plan is to influence the occupation of the building – which has not yet commenced - not to influence a physical operation associated with the commencement of development, such as contaminated land remediation and mitigation, a breach of which might, in certain circumstances, prevent lawful implementation. It would not be unreasonable for a Travel Plan condition on this site to have a trigger for submission and approval relating to the pre-occupation of the building. That is the recommendation for condition 9 which secures the Travel Plan for application 15/2372/FUL. I appreciate that this undermines the trigger for condition 12 and that baseline survey information collected post-occupation, further limits the weight to be attributed to the current Travel Plan data, but the Travel Plan is an iterative document and must be flexible in its operation. The approach accords with recent Government consultation regarding the limitation of pre-commencement conditions to those conditions that are only necessary.

8.23 In my view, the delay of the submission of the planning condition undermines its pre-commencement trigger but this does not mean that any material harm has arisen or that the breach of the terms of the condition should be enforced. It would be unreasonable to instigate enforcement proceedings given that an application for discharge has been made and is before the Council and an associated appeal against an initial refusal to discharge condition 12 is also before the Planning Inspectorate.



- 8.24 There is some third party reference to the unreasonableness of the Travel Plan being reliant on unapproved planning applications, including phase 2 and application 15/2372/FUL. That is not the case. Application 15/2372/FUL would be a free-standing permission if granted and have its own associated Travel Plan for a general education D1 use. References to phase 2 relate to pre-application discussions the applicants have entered into with the Council and not a live planning application. Again, any travel impact for any subsequent phase would have to be assessed on its own merits in relation to the associated planning unit. The discharge of condition 12 is not dependant on that process.
- 8.25 If complaints arise out of issues associated with travel to and from the site following implementation, the Travel Plan is capable of review or the matter could be taken up directly with the occupier itself.

### **Conclusion**

- 8.26 The Travel Plan is fit for purpose and should be discharged subject to:
- Its terms and contents being complied with, including a survey being carried out within three months of first occupation to inform modal targets, including of community evening and weekend use and annually thereafter for five years.

## **9.0 RECOMMENDATION**

**APPROVE** discharge of condition 12.

1. No development shall take place until a Travel Plan for the Bodywork use has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be focused on encouraging sustainable modes of transports for its students, staff and visitors. The approved plan shall be implemented and monitored according to the provisions approved by the local planning authority.

Reason: To increase sustainability, limit pollution, and mitigate any air quality impact of the development. (Cambridge Local Plan (2006) policies 3/1, 4/13, 4/14 and 8/2)