
Application Number	18/1491/S73	Agenda Item	
Date Received	21st September 2018	Officer	Mr David Spring
Target Date	16th November 2018		
Ward	Market		
Site	50 Burleigh Street Cambridge CB1 1DJ		
Proposal	Section 73 application to vary condition 4 of permission APP/Q0505/A/07/2052528 (Change of use from retail to Adult Amusement Centre) to extend the opening hours until 11pm Monday to Sunday.		
Applicant	C/O Agent		

SUMMARY	The development accords with the Development Plan, and the Cambridge Local Plan 2018: for the following reason: -The proposed development would not have any significant adverse impact on the residential amenity of neighbouring occupiers;
RECOMMENDATION	Approve

1.0 SITE DESCRIPTION/AREA CONTEXT

- 1.1 The application site comprises of an adult amusement centre situated on the south side of Burleigh Street with a flat on the upper-floor. The site is situated along a pedestrianised road that has a variety of retail and restaurant uses and the surrounding context is predominantly commercial in nature with residential flats typically situated on the upper-floor. To the south –west of the site is Paradise Street which includes several flats and other residential forms. To the north of the site is the Grafton Centre.
- 1.2 The site falls within the City Centre, a Controlled Parking Zone, a Primary Shopping Frontage and the Air Quality Management Area.

2.0 THE PROPOSAL

- 2.1 The proposal is a Section 73 application to vary condition 4 of permission 07/0517/FUL (Change of use from retail to Adult Amusement Centre) to extend the opening hours until 11pm Monday to Sunday.
- 2.2 Condition 4 currently restricts the trading hours of the premises as follows:
“The use hereby permitted shall not be open for business other than during the following hours: Monday to Saturday 09:00-20:00, Sunday 11:00- 17:00”
- 2.3 The application is accompanied by the following supporting information:
1. Covering letter
 2. Drawings
 3. Noise Assessment

3.0 SITE HISTORY

05/1101/CL2PD for Application for a Certificate of Lawfulness (S192) – proposed use of first floor from ancillary use to ground floor shop to a single flat. CG dated 08.11.2005

05/1244/FUL for New windows to first floor flat above retail premises. PERM dated 10.01.2006.

07/0517/FUL for Change of use from retail to Adult Amusement Centre. REFU dated 18.07.2007. Allowed at appeal.

09/0726/ADV for Installation of one externally illuminated fascia sign and one externally illuminated projecting sign. PERM dated 28.09.2009.

17/1564/S73 for Retrospective application under Section 73 to remove condition 4 (Opening Hours) of planning permission 07/0517/FUL, decided by appeal APP/Q0505/A/07/2052528, to operate on a 24 hour basis. REFU dated 31.10.2017.

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 2018 policies, Supplementary Planning Documents and Material Considerations.

5.2 Relevant Development Plan policies

Plan	Policy Number
Cambridge Local Plan 2018	Policy 35: Protection of human health from noise and vibration Policy 55: Responding to context Policy 56: Creating successful places Policy 81: Mitigating the transport impact of development

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

Central Government Guidance	National Planning Policy Framework March 2018 National Planning Policy Framework – Planning Practice Guidance March 2014 Circular 11/95 (Annex A)
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Local Plan Inspectors' Reports.

6.0 CONSULTATIONS

Cambridgeshire County Council (Highways Development Control)

- 6.1 The Highway Authority has no comment to make upon this application.

Environmental Health Team

Original response

- 6.2 In response to previous application ref 17/1564/S73, which requested 24hr operation, an acoustic assessment was requested in order to ensure the shared partition with the application site and residential above was of a sufficient acoustic standard to ensure the amenity and quality of life of residents in the locality are protected.
- 6.3 The current application seeks to extend the opening hours from 8pm Monday-Saturday and 5pm on Sundays to 11pm on all days. In response to the above request on the previous application, the current proposal includes a noise assessment. This advises that the rear area is no longer used as access or egress for the premises, and that smoking is no longer allowed in this area after 20:00hrs.
- 6.4 There are 41 individual gaming machines on site. The calculations are based on 6 patrons being present at any one time which is not likely to be representative of the potential noise generated on site.
- 6.5 BS8233:2014 recommended internal ambient noise levels have been compared within the report, but this only covers noise without character such as traffic noise. Noise sources such as loud voices, music and TV require further investigation and likely lower limits than those recommended within BS8233:2014.
- 6.6 Further details and justification are required on the internal measuring procedure and duration. Further calculations and possibly on-site measurements were required to represent the noise potential of the site when a representative number of patrons were present.

6.7 The raw data for the internal measurements are also required.

2nd response following submission of further information

6.8 In response to the previous comments, a level vs time graph has been submitted, and the agent has also confirmed the following points:

- ☐ The estimated number of patrons focusses on the period from 8pm – 11pm (rather than during the day) and is based on customer counts from others sites under the same operator, where there was an average of 5 customers per hour.
- ☐ A 5dB penalty has been applied to account for the character of the noise.

6.9 This is considered to overcome the initial concerns, and approval is recommended subject to the use of the rear smoking area being controlled by condition as set out in the information accompanying the application.

6.10 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:

- Marc Jason Hairdressers, 49 Burleigh Street
- Vacuum Cleaner Centre, 51 Burleigh Street
- Flat 3, Appleyard House, 87 Paradise Street

7.2 The representations can be summarised as follows:

- The premises are in a residential area with 4 flats above No. 50, 4 above No. 49 and 1 above No. 51.
- Extended opening hours will affect the amenities of nearby residents due to noise, loitering etc
- The proposal would result in more anti-social behaviour.
- Burleigh Street is predominantly retail with shops open from 9a.m. to 5p.m. The extended hours by introducing late night

gambling would be out of keeping with the nature of the street.

- 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
2. Residential amenity
3. Refuse arrangements
4. Highway safety
5. Car and cycle parking
6. Third party representations

Context of site

- 8.2 Application 07/0517/FUL for a change of use to amusement centre was refused by the Council and then allowed at appeal with restrictions on hours of use to: Monday to Saturday 09:00-20:00, and Sunday 11:00- 17:00. Application ref 17/1564/S73 sought to remove this condition to enable the business to operate on a 24 hour basis. This was refused for the following reasons:

- Insufficient information has been submitted to demonstrate that the noise generated from internal use of the building during the sensitive hours of the day would be acceptable. In the absence of this information it cannot be confirmed that the living environment for neighbouring properties adjoining the premises would be adequate as a result of the removal of the hours of use condition. Therefore, due to the potential harm to the amenity of neighbours I consider the proposal to be contrary to policies 3/4 and 4/13 of the Cambridge Local Plan (2006) and paragraph 123 of the National Planning Policy Framework (2012).

- The removal of the opening hours condition would allow for the unrestricted 24 hour operation of the premises which would adversely impact on the amenity of nearby residential properties. The public house and snooker hall further to the east are situated adjacent to the busy East Road which has higher background and ambient noise levels. The application site is over 50m away from these nearby late night premises and in a more tranquil section of Burleigh Street, closer to residential flats. The removal of the opening hours condition would allow for large groups of people to enter, leave and congregate outside the premises on Burleigh Street and Paradise Street, introducing a high level of noise during sensitive hours of the day when residents are typically attempting to sleep. As such, I consider the proposal to be contrary to policies 3/4 and 4/13 of the Cambridge Local Plan (2006) and paragraph 123 of the National Planning Policy Framework (2012).

- 8.3 The current application seeks to overcome this by seeking to extend opening hours from 20:00hrs to 23:00hrs only and by ensuring the smoking area at the rear of the premises would not be used after 8pm.
- 8.4 In my opinion, and as the remainder of the report will elaborate on, the previous reasons for refusal have been overcome and the proposal is compliant with policies 1, 35, 55, and 56 of the Cambridge Local Plan 2018.

Residential Amenity

Impact on amenity of neighbouring occupiers

- 8.5 The main consideration of the application is whether the variation of the opening hours condition would have a harmful impact on the amenity of adjoining residential flats from the internal transmission of noise, as well as the associated comings and goings that may affect nearby residential flats.
- 8.6 Impact from noise transmission

I have visited the premises. The main sources of noise internally in terms of electronic equipment were in the form of amplified speakers playing music and noise emitted from the machines when they were in use. This noise was not audible

outside the premises when doors were fully closed. There may also be potential for noise to be transmitted if large groups of people visit the premises during the more sensitive noise hours beyond 20:00hrs and before 23:00hrs.

- 8.7 An acoustic assessment has been provided. Following additional clarification from the acoustic consultant and the submission of a level vs time graph requested by the Environmental Health Officer, it has been demonstrated that the shared partition with the application site and residential above will be of a sufficient acoustic standard to ensure the amenity and quality of life of residents in the locality will be protected. The Environmental Health Officer has advised that the proposed extended opening hours would be acceptable subject to the imposition of a condition restricting the use of the rear area, as stated within the Lichfields covering letter dated 20th September 2018, to protect local amenity.
- 8.8 Based on the above, I consider that extending the operating until 11pm would not have a harmful impact on the amenity of nearby flats from internal noise transmission.

Impact from comings & goings

- 8.9 Concerns have been raised by neighbouring residential properties concerning the noise and disturbance the proposed additional opening hours would cause in terms of comings and goings.
- 8.10 The applicant has explained in his response to Environmental Health that the average number of customers on-site from 20:00hrs to 23:00hrs based on usage at other sites run by the same operator is estimated to be 5 per hour.
- 8.11 At the rear of the site there is a small smoking enclosure for customers and staff. There are a few basic seats in this smoking area, as well as three large extractor units which are audible within this space. The smoking area is accessed internally through a set of large double doors. There is also a set of gates at the rear which are openable and serve as a fire exit onto Paradise Street through the undercroft area. There is an ash tray box on one of the pillar walls within the open undercroft area which suggests that this space is used as a spill out space when the premises is busy with customers. The

assessment submitted advises this rear area is no longer used as access or egress for the premise and smoking is no longer allowed in this area after 20:00hrs.

8.12 At present, the 20:00hrs Monday – Saturday and 17:00hrs Sunday closing times mean that the residential flats are not subject to any noise during the late evening hours. As a result of the restricted access to the rear which will be secured by condition, the relatively small anticipated usage and the satisfaction of Environmental Health with the proposal it is my opinion the additional opening hours from 20:00hrs to 23:00hrs would not result in significant effects on neighbouring amenity.

8.13 The proposal to extend the permissible opening hours would not in my view have a harmful impact on the amenity of nearby residential flats. The proposal adequately respects the residential amenity of its neighbours and the constraints of the site and I consider that it is compliant with Cambridge Local Plan (2018) policies 55 (58) and 35.

Third Party Representations

8.14 I have considered anti-social behaviour in terms of groups of people talking loudly outside the premises and the harmful impact that this would have on neighbours. Other anti-social behavior is a police matter. The site is a City centre location and the proposed opening times would be consistent with other businesses in the area such as The Tram Depot and The Free Press pubs.

9.0 RECOMMENDATION

APPROVE, subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.

Reason: In the interests of good planning, for the avoidance of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.

2. The external area to the rear of the premises shall not be used by patrons of the premises between the hours of 8p.m. and 11p.m. Monday to Sundays.

Reason: In the interests of residential amenity (Cambridge Local Plan 2018 policies 55, 57/58).

3. The use hereby permitted shall only be operated from the premises during the hours of 0900 to 2300 Monday to Saturday and 1100 to 2300 on Sundays.

Reason: To protect the amenities of the occupiers of adjacent properties. (Cambridge Local Plan policy 35)