

AGENDA ITEM NO: 8/2(a)

Parish:	Burnham Market	
Proposal:	VARIATION OF CONDITION 3: of planning permission 17/00984/F - Proposed change of use from ground floor retail (A1) and first floor residential (C3) to two storey restaurant (A3) including extension and alterations	
Location:	No.TWENTY 9 29 Market Place Burnham Market Norfolk	
Applicant:	Mr T Roberts	
Case No:	18/01796/F (Full Application)	
Case Officer:	Mrs K Lawty	Date for Determination: 3 December 2018

Reason for Referral to Planning Committee – Called in by Councillor Sandell.

Neighbourhood Plan: No

Case Summary

Permission is sought to vary the opening hours of No. TWENTY 9, Market Place, Burnham Market to enable later opening on Christmas and New Year's Eve, and to enable extended hours in the courtyard area at the rear of the property on six days of the year.

Key Issues

Neighbour Amenity

Recommendation

Officers can recommend varying the condition as felt to be appropriate, and in this case propose agreeing to the Christmas and New Year's Eve hours, but not the later hours for the outside rear courtyard.

APPROVE

THE APPLICATION

Permission is sought to vary the opening hours of No. TWENTY 9, Market Place, Burnham Market to enable later opening on Christmas Eve and New Year's Eve, and to enable extended hours in the courtyard area at the rear of the property on six days of the year.

Currently closing time is either 22:00 or 23:00 on Christmas Eve and New Year's Eve depending on which day of the week they fall (Monday – Saturday: 23:00; Sunday: 22:00). This application seeks to enable the restaurant to stay open until 00:30 on Christmas Eve and 01:30 on New Year's Eve which would be in line with their current Premises Licence.

It also seeks to enable the use of the rear courtyard for live music events until 23:00 on six days of the year which equates to an additional 12 hours a year, as currently use of this area has to cease at 21:00.

SUPPORTING CASE

None submitted

RELEVANT PLANNING HISTORY

17/00984/F – VARIATION OF CONDITION 3 OF PLANNING PERMISSION 16/02002/F: Proposed change of use from ground floor retail (A1) and first floor residential (C3) to two storey restaurant (A3) including extension and alterations - Permitted 18 July 2018

16/02002/F - Proposed change of use from ground floor retail (A1) and first floor residential (C3) to two storey restaurant (A3) including extension and alterations - Permitted 10 February 2017

On the wider site (land to the rear of the courtyard in the applicant's ownership / control):

17/01451/F - Proposed development of 6no. suites B&B accommodation ancillary to bar & restaurant – Permitted November 2017.

RESPONSE TO CONSULTATION

Parish Council: SUPPORT

Environmental Health & Housing – CSNN: We have concerns over this application.

It is requested that the condition be varied to allow the opening hours to be increased on New Year's Eve to 0130 hours in accordance with the premises licence, allowing for alcohol to be served until 0100 and an additional 30 mins for 'drinking up' and closing, and for Christmas Eve opening until 0030 hours, with alcohol sales to cease at midnight.

We would not consider this request to be unreasonable and would not object to this aspect.

It is also requested that the conditioned use of the exterior rear area behind the orangery be altered to allow for use until 23:00 hours for 6 no. events a year.

Unfortunately we would object to this aspect of the condition being varied. We currently have an open case due to complaints from more than one resident about events at the premises over the summer season, one of which we are aware lasted for three days. The investigations in relation to these complaints have not been completed, but clearly the 6 events per year (even if one was Christmas and another New Year) could still amount to 18 days or more of disturbance to residents. It would not necessarily be the case that 6 events equate to 6 days.

I have taken account of the other establishments listed in the table on page two of the planning statement. Four of these have been investigated previously by this team following noise complaints relating to noise from events; some more than once. Several others are located with substantial separation distances or suitable attenuation measures between outdoor or events areas and surrounding dwellings, so are not directly comparable.

I am taking into account that to be too restrictive could impact on the trading of the premises, but consider that there is sufficient justification to object to the external area being used after 9pm, to afford protection to the amenity of surrounding residents.

REPRESENTATIONS

Fourteen letters of objection and two letters of support have been received. The issues raised can be summarised as:

- Noise and residential amenity because the site is largely surrounded by residential properties
- Increased vehicular activity; there is insufficient parking in the village itself and people are reluctant to use the car park
- Concerned that existing restrictions are not being fully complied with and any variation to extend the hours will only exacerbate this
- What is an 'event'
- Stringent conditions are required and it should not be down to local residents to 'police' compliance
- When the shops close, the village turns back to a peaceful residential village
- The applicant claims that No. TWNETY 9 is operating as a public house; however the original permission is for an A3 (restaurant) use

The two letters in support state that the live events are very good and that the more people that come to Burnham Market the more it helps local businesses.

LDF CORE STRATEGY POLICIES

CS01 - Spatial Strategy

CS02 - The Settlement Hierarchy

CS08 - Sustainable Development

CS10 - The Economy

CS11 - Transport

CS12 - Environmental Assets

SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016

DM1 – Presumption in Favour of Sustainable Development

DM2 – Development Boundaries

DM9 - Community Facilities

DM15 – Environment, Design and Amenity

NATIONAL GUIDANCE

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

PLANNING CONSIDERATIONS

- Background
- Residential Amenity
- Rural Employment
- Crime and Disorder

The main considerations in the determination of this application are neighbour amenity and supporting the local economy.

Background

Permission was originally approved in February 2017 for the conversion of the existing building, which was retail (A1) at ground floor and residential (C3) at first floor, to a two storey restaurant (A3). Floor plans showed a small ancillary bar, however the use class of the premises is A3 and does not include A4 'Drinking Establishments'. The permission also allowed for a rear 'orangery' extension for further dining, and a small outside courtyard area was to be retained to the rear of the orangery.

In order to make the proposal acceptable careful consideration was given to neighbour amenity issues. To this end the permission was restricted, under condition 3, as follows:

The premises shall only be used between the hours of 08:30 and 23:00 Monday to Saturday and 08:30 to 22:00 on Sundays, Bank or Public Holidays unless otherwise approved in writing by the Local Planning Authority. Use of the exterior rear area behind the orangery for patrons shall cease at 9pm.

In 2017 an application to vary this condition was received and approved under planning reference 17/00984/F. The change was to allow the opening hours to be extended on bank and public holidays from 22:00 to 23:00. The application was approved as it was considered that one additional hour, eight times a year, would not result in neighbour disamenity or result in a statutory nuisance.

As a result Condition 3 was amended, under the 2017, application to read:

The premises shall only be used between the hours of 08:30 and 23:00 Monday to Saturday and Bank or Public Holidays, and 08:30 to 22:00 on Sundays, unless otherwise approved in writing by the Local Planning Authority. Use of the exterior rear area behind the orangery for patrons shall cease at 9pm.

The current application seeks to further amend condition 3 to allow extended opening hours on Christmas Eve to 00:30 and New Year's Eve to 01:30. This would bring the Planning Permission in line with the Premises Licence.

In relation to this amendment, CSNN and third parties raise little concern and your officers believe it is a reasonable and acceptable and is unlikely to result in material disamenity.

Residential Amenity

The NPPF states, at paragraph 127 that: Planning policies and decisions should ensure that developments a) will function well and add to the overall quality of the area...and f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

This is reiterated in Chapter 16 of the SADMP which states at its opening paragraph that: Development proposals should aim to create a high quality environment without detrimental impact on the amenity of new and existing residents. Factors that could have a significant negative impact on the amenity of residents include: noise, odour,.... Policy DM15 therefore requires that: Development must protect and enhance the amenity of the wider environment including its heritage and cultural value. Proposals will be assessed against their impact on neighbouring uses and their occupants as well as the amenity of any future occupiers of the proposed development. Proposals will be assessed against a number of factors including:...noise...Development that has a significant adverse impact on the amenity of others or which is of a poor design will be refused.

Objections have been received from both CSNN and third parties in relation to extending the use of the outside courtyard area from 21:00 to 23:00 for six live music events per year. A number of concerns raised relate to what is meant by an 'event', and the applicant has clarified that they are seeking to use the outside space six days per year.

Notwithstanding this clarification, CSNN retain their objection to extending the use of this outside space and have confirmed that as of 15.11.2018 they have a number of on-going noise complaints that they are investigating.

One of the main issues for consideration is therefore, if Members agree that the extended opening hours requested for Christmas and New Year's Eve are acceptable, whether an additional 12 hours over six days in any one calendar year is likely to result in such neighbour disamenity as to warrant refusal of the application.

Notwithstanding this, your officers consider that the original and subsequent restrictions on the use of the outside space to cease at 9pm were necessary and reasonable and the reason for them (to protect neighbour amenity) is still just as relevant.

Furthermore there are a number of ongoing statutory nuisance complaints currently being considered by the Local Authority's CSNN Team in relation to these premises. As such CSNN object to any increased use of the outside rear courtyard after 9pm. Additionally, all third party comments relate specifically to the use of the outside space.

Your officers therefore believe on balance, and whilst contrary to what is allowed by the Premises License, that to grant planning permission to use the outside space for live music events on six days of the year until 11pm would result in unacceptable neighbour amenity issues.

Rural Employment

Paragraph 80 of the NPPF states: Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.

This stance is supported under Core Strategy Policy CS10 that seeks to support local employment uses where there is no detriment to, amongst other things, residential amenity.

The applicant suggests that to compete with similar businesses in the area the requested variations are necessary. However, your officers do not consider that the applicant is comparing itself with like-for-like businesses. Indeed none of the businesses that the applicant is comparing itself to is wholly an A3 use; or has like-for-like neighbour amenity issues.

Since the original determinations, permission has been granted for 6 B&B suites to the rear of the courtyard. Whilst these two applications are currently owned by the same applicant, neither is restricted to the other and both were considered on their own merits. As such the B&B permission does not alter the premises to which the current application relates being A3.

The restrictions (or lack thereof) on the 'comparable' businesses would have taken account of their specific use and the specific neighbour relationships as well as how long they had been operating etc. That is to say, that this application needs to be assessed on its own merits, needs and locational constraints and cannot be considered wholly comparable to any of the businesses the applicant suggests it should be compared with.

The original 2016 and subsequent 2017 permissions (and any permission that may be granted under the current application) on the current site is for an A3 use; a restaurant use. This is a material consideration when considering the needs of the business, and Members will need to carefully consider whether outside music events in this locality are reasonably necessary for the business to function as a restaurant and whether the original or subsequent permissions would have been granted without such a restrictive condition on the outside space.

Crime and Disorder

It is not considered there are any specific crime and disorder issues.

CONCLUSION

The main issue in the determination of this application is the balance between neighbour amenity and the needs of an existing business.

On the issue of the request for additional hours on Christmas and New Year's Eve, your officers consider, in line with CSNN, that the request is reasonable and acceptable and is unlikely to result in disamenity of a level to warrant refusal of the application.

Likewise, but in this instance contrary to the request by the applicant, your officers consider, in line with CSNN and third party representations, and notwithstanding the limited request for the use of the outside space for live music events (12 additional hours over a year), that this request is unreasonable and is likely to result in neighbour disamenity issues of a level to warrant refusal.

This application is to vary Condition 3 of a previous permission (17/00984/F). The legislation governing such applications enables the LPA to amend the wording as they feel appropriate. That is to say that we can amend the proposed condition rather than simply refusing the application.

For the reasons outlined above it is considered that this application should be approved subject to the following conditions (amended where necessary from the previous approval), and specifically in relation to varying the condition that relates to hours of operation the condition should read:

The premises shall only be used between the hours of 08:30 and 23:00 Monday to Saturday and Bank or Public Holidays; 08:30 to 22:00 on Sundays, 08:30 to 00.30 on Christmas Eve and 08:30 to 01:30 on New Year's Eve unless otherwise approved in writing by the Local Planning Authority. Use of the exterior rear area behind the orangery for patrons shall cease at 9pm.

RECOMMENDATION:

APPROVE subject to the imposition of the following condition(s):

- 1 Condition The development hereby permitted shall be completed in accordance with the following approved plans:
 - 244/16/05E - Proposed Ground Floor Plan
 - 244/16/068 - Proposed First Floor Plan
 - 244/16/07F - Proposed Elevations & Section
 - 244/16/08C - Proposed Site Plan

- 1 Reason For the avoidance of doubt and in the interests of proper planning.

- 2 Condition No deliveries shall be taken at or despatched from the site outside the hours of 0830 - 1800 on weekdays, 0830 - 1300 on Saturdays, Sundays, Bank or Public Holidays.

- 2 Reason In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF.

- 3 Condition The premises shall only be used between the hours of 08:30 and 23:00 Monday to Saturday and Bank or Public Holidays; 08:30 to 22:00 on Sundays, 08:30 to 00.30 on Christmas Eve and 08:30 to 01:30 on New Year's Eve unless otherwise approved in writing by the Local Planning Authority. Use of the exterior rear area behind the orangery for patrons shall cease at 9pm.

- 3 Reason In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF.

- 4 Condition The development shall be operated in accordance with the approved details pursuant to condition discharge C5 (noise, waste and refuse facilities) under reference 16/02002/F.

- 4 Reason To ensure that the amenities of the locality are safeguarded in accordance with the NPPF.

- 5 Condition The element of the flue which projects above the roof shall continue to be painted in a matt black finish for the lifetime of the development unless otherwise approved in writing by the Local Planning Authority.

- 5 Reason To ensure that such details are in keeping with the Listed Building in accordance with the principles of the NPPF.