

CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 15 December 2015	Classification For General Release	
Report of Director of Planning		Wards involved Bayswater	
Subject of Report	78 Chepstow Road, London, W2 5BE		
Proposal	Variation of Condition 6 and and removal of condition 7 of planning permission dated 6 January 2015 (RN: 14/08179/FULL) for use of ground and basement level shop unit as a mixed retail and cafe/restaurant use (sui generis). Namely to extend the permitted hours of use of the courtyard and associated opening of windows and doors onto the courtyard to 0800 to 2100 daily and to allow live or recorded music inside or outside the premises.		
Agent	Straight Law Ltd		
On behalf of	Straight Law Ltd		
Registered Number	15/07742/FULL	TP / PP No	TP/21852
Date of Application	06.08.2015	Date amended/ completed	07.09.2015
Category of Application	Other		
Historic Building Grade	Unlisted		
Conservation Area	Westbourne		
Development Plan Context - London Plan July 2011 - Westminster's City Plan: Strategic Policies 2013 - Unitary Development Plan (UDP) January 2007	Outside London Plan Central Activities Zone Outside Central Activities Zone		
Stress Area	Outside Stress Area		
Current Licensing Position	Not Applicable		

1. RECOMMENDATION

Refuse permission - amenity.



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Data Source:

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78 CHEPSTOW ROAD, W2

2. SUMMARY

The application site comprises of a three storey plus basement mid terrace building on the east side of Chepstow Road near its junction with Talbot Road. The property is not listed, but is located within the Westbourne Conservation Area. The building is not located within a designated shopping frontage.

The lawful use of the ground and basement level shop unit is as a mixed retail and cafe/restaurant use (sui generis) having been granted permission for such a use on 6th January 2015 (RN: 14/08179/FULL). This application is for the variation of condition 6 of that permission and the removal of condition 7 to extend the permitted hours of use of the rear courtyard of the premises and associated opening of windows and doors onto the courtyard to 0800 to 2100 daily and to allow live or recorded music inside or outside the premises. Condition 6 currently restricts the courtyards use to between 09.00 and 18.00 hours Monday to Friday and to not at all at weekends, bank holidays or public holidays and requires that the windows and doors opening out onto this area shall be shut outside these hours. Condition 7 prevents the playing of live or recorded music inside or outside the premises. Both these conditions were attached to the planning permission for the change of use to protect neighbouring residents from noise nuisance. A planning enforcement investigation is currently open into the breach of these conditions.

The key issue in this case is:

- The impact of the proposed variation of condition 6 and removal of condition 7 on the amenity of neighbouring residents.

It is considered that the proposed extension of hours of use of the courtyard and the playing of live or recorded music would have a significant detrimental impact on the amenity of neighbouring properties in terms of noise nuisance and therefore would be contrary to S24, S29 and S32 of the Westminster City Plan and ENV6 of Westminster's Unitary Development Plan.

3. CONSULTATIONS

WESTBOURNE NEIGHBOURHOOD ASSOCIATION

Objection. Initial comments objected to playing of music but suggested the applicant is able to use the courtyard on Saturday until 2.30pm. Later comments state that the amenity society opposes the application. Raise concerns over noise resulting from use and the condition of sewers. Reiterate concerns of neighbours with regards to the use of private space.

SOUTH EAST BAYSWATER RESIDENTS ASSOCIATION

Objection. Fully support objection letters and believe application should be refused on grounds of noise, loss of amenity to neighbours.

ENVIRONMENTAL HEALTH

Any response to be reported verbally.

HIGHWAYS PLANNING MANAGER

No objection on transportation grounds.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS

No. Consulted: 69; Total No. of Replies: 39.

Twenty six supporting the application; One neither objecting or supporting the application; Twelve raising objection on all or some of the following grounds:

Amenity

Noise disturbance

- Noise and disturbance would be disruptive to residents quality of life.
- Tightly packed residential area and people should not have to tolerate additional noise.
- Those supporting proposal do not live in immediate area and have to suffer the noise.
- Object to intensification of noise through internal amplified music.
- Little attempt to keep garden doors and windows closed at night.
- Music will cause disturbance to people who work during the day.
- Conditions were attached to planning permission for cafe/restaurant use as a compromise which struck a fair balance between the cafes interests and those of local residents.
- Some events that take place in cafe would cause more than simple ambient noise .
- Small children who go to bed early will be disturbed.
- Outdoor space is not used for quiet reading as stated by applicant but parties, singing and loud music

Lack of privacy

ADVERTISEMENT/SITE NOTICE: Yes.

4. BACKGROUND INFORMATION

4.1 The Application Site

The application site comprises a three storey building on the east side of Chepstow Road close to its junction with Talbot Road. The application site is located next to the Bonaparte Public House at No.80 Chepstow Road. The property is not listed, but is located within the Westbourne Conservation Area. The premise is not located within a designated shopping frontage.

The application relates to the ground and basement unit and its rear courtyard area at ground floor level. There is a residential flat on the upper floors. The lawful use of the unit is as a mixed retail shop and café/restaurant.

4.2 Planning History

Planning permission was granted for the use of ground and basement level shop unit as a mixed retail and cafe/restaurant use (sui generis) on 6th January 2015 (RN: 14/08179/FULL).

There is currently a planning enforcement investigation open into the potential breach of conditions 6 and 7 of that permission.

5. THE PROPOSAL

The application is for the variation of Condition 6 and the removal of condition 7 of the planning permission dated 6th January 2015. Condition 6 currently restricts the courtyards use to between 09.00 and 18.00 hours Monday to Friday and to not at all at weekends, bank holidays or public holidays and requires that the windows and doors opening out onto this area to be shut outside these hours. Condition 7 prevents the playing of live or recorded music inside or outside the premises.

The proposed variation to condition 6 would allow an extension of the permitted hours of use of the rear courtyard of the premises and associated opening of windows and doors onto the courtyard to 0800 to 2100 daily. The proposal also involves the removal of condition 7 which prevents live or recorded music being played inside or outside the premises.

6. DETAILED CONSIDERATIONS

6.1 Townscape and Design

There are no external alterations requiring planning approval proposed as part of the scheme. As such, no design concerns arise from the submission.

6.2 Amenity

6.2.1 Noise

The principal concern of neighbours is the increase in noise disturbance arising from customers using the rear yard area for extended hours and from the removal of the restriction on playing live or recorded music. Under the current conditions the courtyard can be used by customers between 09.00 and 18.00 hours Monday to Friday and not at all at weekends, bank holidays or public holidays. Windows and doors opening out onto this area shall also be shut outside these hours. The proposal is to allow these hours to be extended to allow the courtyard to be used between 0800 to 2100 daily.

These conditions were specifically added to the January 2015 planning permission for the use of the premises as mixed retail shop and café/restaurant to protect the residential properties which are within very close proximity of the courtyard while allowing the applicant to regularise the use of the premises. It was felt that these restrictions were appropriate and necessary in order for the proposed change of use to be considered acceptable.

The potential for noise and disturbance is acknowledged, particularly with reference to the rear courtyard area on the site. The application site is surrounded by residential properties and the upper floor flat at No.78 Chepstow Road has a balcony area, which overlooks the rear yard area. It is apparent that the use of the rear yard area to provide customer seating in the evening has the potential to cause significant noise disturbance to the occupiers of the upper floor flat and other nearby residents.

The circumstances since planning permission was granted have not changed. Due to the close proximity of neighbours and the likely noise disturbance to residents of extending the hours of use of the courtyard and removing the condition preventing the playing of live or recorded music in the premises it is recommended that the application is refused.

6.2.2 Overlooking

Concerns have been raised that customers using the rear yard area of the site are presented with views back towards windows in the rear elevations of neighbouring residential properties. However, it is not considered that the impact in terms of overlooking is unacceptable given the significant height of the boundary walls around the rear yard area and the oblique angle of views up towards neighbouring windows from within the rear yard area. The impact would be increased by extending the hours of use of the courtyard however it is not considered that this would be sufficient to refuse the application on these particular grounds.

6.3 Economic Considerations

The applicant has claimed that the restrictions set by the conditions will in the long term put him out of business however a balance between the business and the impact on amenity of nearby neighbours has to be established hence the original permission for the use was granted with conditions to limit its detrimental effects on amenity.

6.4 Central Government Advice

The policies referred to above are consistent with NPPF.

6.5 London Plan

The proposal is of insufficient scale to raise strategic issues and does not have significant implications for the London Plan.

6.6 Planning Obligations

The application is of insufficient scale to require planning obligations.

6.7 Environmental Assessment including Sustainability and Biodiversity Issues

Not applicable.

6.8 Other Matters

A number of patrons of the restaurant have made representations supporting the application. They largely assert that the restrictions should not be imposed on the premise, that they enjoy the courtyard area and that they don't believe that noise from the courtyard is creating a problem. These comments are noted but are not considered to overcome the amenity implications of the proposal on the premises immediate neighbours.

7. CONCLUSION

The proposed extension of hours of use of the courtyard and the playing of live or recorded music would have a significant detrimental impact on the amenity of neighbouring properties in terms of noise nuisance and therefore would be contrary to S24, S29 and S32 of the City Plan and ENV6 of Unitary Development Plan.

BACKGROUND PAPERS

1. Application form.
2. Emails from the Notting Hill East Neighbourhood Forum dated 30 September 2015 and 24 November 2015.
3. Email from the South East Bayswater Residents Association dated 9 November 2015.
4. Email from Planning Enforcement dated 11 September 2015.
5. Memo from the Highways Planning Manager dated 15 September 2015.
6. Email from the owner/occupier of Flat 1, 76 Chepstow Road dated 8 October 2015
7. Email from the owner/occupier of 15 Courtnell Street dated 22 October 2015
8. Email from the owner/occupier of 24 Pembroke Square dated 1 October 2015
9. Emails from the owner/occupier of Flat 2, 76 Chepstow Road dated 23 November and 8 October 2015.
10. Email from the owner/occupier of 3 Chepstow Road dated 10 October 2015.
11. Email from the owner/occupier of 43 Chepstow Road dated 9 October 2015.
12. Email from the owner/occupier of 35 Talbot Road dated 30 September 2015.
13. Email from the owner/occupier of 30 Bridstow Place dated 01 October 2015
14. Email and letter from the owner/occupier of 78 Chepstow Road dated 30 September 2015 and 12 October 2015
15. Emails from the owner/occupier of Flat 1, 76 Chepstow Road dated 19 September 2015
16. Email from owner /occupier of 76 Chepstow Road dated 13 September 2015
17. Letter from owner/occupier of 28 Bridstow Place dated 14 September 2015.
18. Email from the owner/occupier of 257 Ladbrooke Grove dated 2 October 2015

19. Email from the owner/occupier of 138 Chepstow Road dated 2 October 2015
20. Email from the owner/occupier of 8 Shrewsbury Road dated 2 October 2015
21. Email from the owner/occupier of 11 Brewster Gardens dated 12 October 2015
22. Email from the owner/occupier of 104 Drayton Road dated 2 October 2015
23. Email from the owner/occupier of 4a Talbot Road dated 2 October 2015
24. Email from the owner/occupier of 10 Hereford dated 3 October 2015
25. Email from the owner/occupier of 245 Ladbrooke Grove dated 2 October 2015
26. Email from the owner/occupier of 7c Porchester Square dated 5 October 2015
27. Email from the owner/occupier of 61 Kilravock Street dated 3 October 2015
28. Email from the owner/occupier of 2 Chepstow Road dated 2 October 2015
29. Email from the owner/occupier of 122 Broadfield Broadhurst Gardens dated 2 October 2015
30. Email from the owner/occupier of 8d Shrewsbury Road dated 3 October 2015
31. Email from the owner/occupier of 39 Fourth Avenue dated 3 October 2015
32. Email from the owner/occupier of 3B St Marks Road dated 14 October 2015
33. Email from the owner/occupier of 7 Oxford Gardens dated 9 October 2015
34. Email from the owner/occupier of 61 Chepstow Road dated 29 September 2015
35. Email from the owner/occupier of Flat 28 46-47 Coram Street dated 2 October 2015
36. Email from the owner/occupier of 122 Stanley Crescent dated 18 September 2015
37. Email from the owner/occupier of Flat 3, 50 Sutherland Place dated 19 September 2015
38. Email from the owner/occupier of Flat 5, 35 Hook Road dated 22 September 2015
39. Email from the owner/occupier of 20 Belmont Road dated 25 September 2015
40. Email from the owner/occupier of 47 Chepstow Road dated 18 September 2015
41. Email from the owner/occupier of 111 St Annes Road dated 18 September 2015
42. Email from the owner/occupier of 10 Place Abbe Porcaro Saint GERmain en Laye dated 20 September 2015
43. Letter from owner/occupier of 29a Bridesow Place dated 18 September 2015.
44. Email from the owner/occupier of 59 Sandbourne Dorset dated 17 September 2015

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS PLEASE CONTACT NATHAN BARRETT ON 020 7641 5943 OR BY E-MAIL – NBARRETT @westminster.gov.uk

DRAFT DECISION LETTER

Address: 78 Chepstow Road, London, W2 5BE

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Plan Nos: 01; 02; 03; Statement of Joseph Perry; Statement of Alex Sokolowski; Statement of Ariam Seleba; Statement of Rajesh Shah; Statement of Lamlem Akale; Draft Accounts; Conditions 6 and 7 of Committee; Letter of Thomas Sharpe; Letter from A Chapman; Undated petition;

Case Officer: Richard Langston

Direct Tel. No. 020 7641 7923

Recommended Reason(s) for Refusal:**Reason:**

The proposed variation of condition 6 and removal of condition 7 of the planning permission dated 6th January 2015 to extend the hours of use of the courtyard and allow the playing of live or recorded music would have a significant detrimental impact on the amenity of neighbouring properties in terms of noise nuisance and therefore would be contrary to S24, S29 and S32 of the Westminster City Plan and ENV6 of Westminster's Unitary Development Plan.

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way so far as practicable. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan: Strategic Policies adopted November 2013, Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service. However, we have been unable to seek solutions to problems as the principle of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.