

**Application Ref:** 19/01212/WCPP

**Proposal:** Variation of Condition C6 (hours of use of the development) of planning permission 17/01167/FUL

**Site:** The Blue Bell, 10 High Street, Glinton, Peterborough

**Applicant:** Mr Chris Cocker  
Greene King PLC

**Agent:** Miss Emma Arnold  
Concept IDL Ltd

**Referred by:** Head of Planning

**Reason:** Previous Committee decision

**Site visit:** 24.10.2019

**Case officer:** Mr Jack Gandy

**Telephone No.** 01733 452595

**E-Mail:** jack.gandy@peterborough.gov.uk

**Recommendation:** **GRANT** subject to relevant conditions

## 1 Description of the site and surroundings and Summary of the proposal

### Site and Surroundings

The application site comprises the Grade II Listed Blue Bell public house in Glinton, located within the Glinton Conservation Area. The designated heritage asset itself is predominantly stone built with welsh slates tiles to the roof. The Blue Bell public house is set back approximately 60 metres from High Street, which allows for the provision of an access, parking and recreational green space to the front. Surrounding uses to the area include St Benedict's Church, a primary school, a village shop/post office and various residential properties.

### Proposal

Permission is sought to vary condition 6 of planning permission reference 17/01167/FUL. This permission granted was for an outdoor dining area comprising of jumbrella with seating, with an extension of the hard surface serving the existing patio area. Timber posts, 'square arches', lighting, screens partially enclosing a dining area and finally acoustic fencing were also approved, with the removal of the willow tree along with additional landscaping also accepted.

The proposed variation seeks to allow the extended hours granted temporary consent (09:00 to 23:00) to be made permanent. For the avoidance of doubt, the approved condition is as follows:

*For a temporary period up to the 30 November 2018, the development hereby permitted shall not be open for use by patrons of the Bluebell Public House or members of the public outside the hours of 09:00 and 23:00 on any day. Thereafter, the development hereby permitted shall not be open for use by patrons of the Bluebell Public House or members of the public outside the hours of 09:00 and 21:00 on any day.*

*Reason: To allow the extended hours to be tested to see whether issues that arise from the development hereby permitted would unacceptably harm the amenity of surrounding neighbours, in accordance with Policy PP3 of the Peterborough Planning Policies DPD (2012).*

For Members information, a copy of the previous Committee Report is appended.

## **2 Planning History**

<b>Reference</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
17/00273/FUL	Construction of pergola, works to trees, erection of three shed structures, five square arches, timber posts with festoon lighting, addition of fixed seating, steps and disappearing path	Refused	06/06/2017
17/01167/FUL	A new alfresco dining area, to include loose and fixed seating with Jumbrella; Works to Willow tree and planting of replacement trees; New step and disappearing path to the grass field; New timber posts, festoon and wall lighting; New screens to partially enclose dining area ; New fencing and new planting; New green oak square arches down the garden	Permitted	22/09/2017

## **3 Planning Policy**

Decisions must be taken in accordance with the development plan policies below, unless material considerations indicate otherwise.

### **National Planning Policy Framework (February 2019)**

#### **Paragraph 180 - Pollution**

New development should be appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment. In doing so they should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life, identify and protect tranquil areas which have remained relatively undisturbed by noise and limit the impact of light pollution from artificial lighting on local amenity, intrinsically dark landscapes and nature conservation.

### **Peterborough Local Plan 2016 to 2036**

#### **LP17 - Amenity Provision**

LP17a) Part A Amenity of Existing Occupiers- Permission will not be granted for development which would result in an unacceptable loss of privacy, public and/or private green space or natural daylight; be overbearing or cause noise or other disturbance, odour or other pollution; fail to minimise opportunities for crime and disorder.

## **4 Consultations/Representations**

### **PCC Pollution Team (08.11.19)**

Objection - The original permission granted the temporary use of the development permitted under 17/01167/FUL during the hours of 09:00 to 23:00. Throughout this time, this section did not receive any noise complaints in relation to this use.

As stated in comments in the previous application, specific regard to the use of outdoor areas the Institute of Acoustics Guide for Noise from Pubs and Clubs recommends that:

- "Careful consideration should always be given to the siting of gardens ... intended for the use of patrons, in order to minimise the risk of disturbance to neighbours. The use of gardens ... where noise disturbance has arisen, or may arise, should not commence before the start of normal trading hours (12:00hrs) and should normally cease at dusk or 21:00hrs whichever is the earlier".

- "... where there are nearby noise sensitive premises (residents) the use of external lighting in garden ... areas late into the evening is undesirable, unless required for health and safety or security reasons. The provision of such lighting may encourage patrons to congregate in these areas, and cause noise disturbance at this more sensitive time."

These statements are clear that noise from people socialising in environments such as this is inherently hard to control, therefore hours of use are generally the most effective method. The hours proposed are in excess of the hours recommended in the IOA guide.

The Blue Bell is in close proximity to 4 residential properties along Rectory Lane and one property on the High Street, that are likely to be affected by the use of this area, albeit as already stated this section has not received any noise complaints.

Noise levels are not a suitable mechanism for establishing the likely acceptability of use (as with many other leisure activities), since there are no accepted standards for comparing any predicted levels against in these instances (unlike, for example, the comparison of the effect of industrial noise upon residential premises [BS4142:2014]). Subjective assessments are the most suitable way of judging likely acceptability, where each person is entitled to a view as to whether the activities are acceptable, and there not being a right or a wrong way to come to any conclusion in these respects.

When considering complaints of nuisance under the Environmental Protection Act 1990, it is important to note that planning decisions that alter the character of the area and therefore affect the acceptability of particular noise and use, impact on whether certain activities would be judged as nuisances [Wheeler v JJ Saunders Ltd, 1996]. The designation via the planning regime of areas suitable for certain uses is has an important contribution to the operation of the decision making process in the statutory nuisance regime. Consequently, should following the granting of this application, residents complain about noise emitted from this development it is highly unlikely that any action would be possible under the statutory nuisance regime. Therefore the means of retort for complainants is likely to be limited to the Licensing regime and a review of the premises licence.

**PCC Tree Officer (11.09.19)**

No objections - This proposal has no bearing on tree/landscape issues on site.

**PCC Conservation Officer (10.09.19)**

No objection - This is a matter of amenity consideration and not one for the Conservation Officer to comment upon.

**Glington Parish Council (20.09.19)**

Objection - Glington Parish Councillors are unanimous in their opposition to the removal of condition C6 (opening hours) of Planning Permission 17/01167/FUL and request that the temporary condition is made permanent.

The draft minutes of Glington Parish Council's meeting are as follows: The concerns of the nearest neighbours in two properties in Rectory lane were noted and their stated observations that despite the nature of the condition restricting the hours of operation, customers could be heard in the grounds until long after 9pm and at times until midnight. Councillors also observed that customer behaviour up to 9pm was no indication of the behaviour after 9pm to later hours. Glington Parish Council unanimously supported the legitimate concerns of neighbours and requested the planning authority to make permanent Condition C6 (opening hours) and furthermore raised concerns as to how the restrictions were enforced".

## Local Residents/Interested Parties

Initial consultations: 9  
Total number of responses: 1 (Glinton Parish Council)  
Total number of objections: 0  
Total number in support: 0

No public / neighbour representations have been received from local residents. A site notice was erected adjacent to the access to the public house.

## 5 Assessment of the planning issues

Given that this application seeks variation to Condition 6 (hours of use of the development) of planning permission 17/01167/FUL, only the impacts arising from this variation can be considered. The only consideration is therefore the impact upon neighbour amenity.

### a) Neighbour amenity

The rear pub garden to the Blue Bell is surrounded by residential properties, with the nearest neighbour to the outside seating area at No. 1 Rectory Lane. Prior to the approval of 17/01167/FUL, the rear garden had long been used by customers of the Blue Bell Public House.

As set out in Section 1, the elements that required planning permission and were subsequently approved included:

- the extension of the patio area and additional hard surfacing;
- Green oak timber screens and square arches;
- The erection of 1.8 metre high fencing; and
- Jumbrella and 'L-shaped' fixed seating area

Since the planning application (reference 17/01167/FUL) was permitted, the works to the rear garden have been completed. There are not outstanding elements that are required to be constructed or be installed.

The pub garden has unrestricted use in terms of planning, given that the use of the pub and garden have long been established without restrictions imposed by planning condition in terms of hours of use. In order for a condition to be imposed, it must meet 6 key tests as set out in paragraph 55 of the National Planning Policy Framework (NPPF). One of these tests requires that conditions relate only to the development to be approved and therefore, in determining the earlier application, Officers could not impose a conditions that restricted the hours of use of the wider pub garden. Accordingly, Condition 6 related only to the hours of use of the development approved under 17/01167/FUL, and not the opening hours of the rear garden.

At the time of granting planning application reference 17/01167/FUL, it was acknowledged that the intensified use of the pub garden, resulting from the development, could result in increased noise and general disturbance to occupants of No. 1 Rectory Lane, given the proximity of the development to this property along with the increased intensity of customers within the rear pub garden. Furthermore, it was acknowledged that it was not possible to take action under statutory noise nuisance powers in respect of noise arising from people talking, and therefore it was the role of the planning system to ensure this impact is fully considered.

In light of this, it was considered appropriate to restrict the hours of use of the development (primarily the fixed seats and 'jumbrella') to 21:00hrs to protect the amenities of neighbouring occupants. However, given the viability implications that could impact upon the Blue Bell (a material planning consideration), in line with Officer recommendation, Members of the Committee agreed to allow the development to be used up to 23:00hrs for a temporary period up to 30 November 2018. This temporary period was granted to give the owners/operators of the Public House sufficient time to demonstrate whether the development could be operated without causing

unacceptable harm to surrounding neighbour amenity.

The development was completed on 15 May 2018 (as confirmed by the Applicant), and to date, no complaints have been made to either the Planning, Licensing or Environmental Health departments. It is noted that Glinton Parish Council have raised objection to the proposal and advised that residents adjacent to the Blue Bell have been in contact with the Parish Council to state the use has been open up until midnight (outside the hours permitted by condition), with varying customer behaviours observed. However, no formal complaints have been raised.

It is also noted that the Council's Pollution Control Officer has raised objection to the proposed variation of hours, as they consider that the proposed hours are in excess of established guidance and could pose an unacceptable harm to neighbour amenity that could not be dealt with through statutory noise nuisance measured.

These concerns are acknowledged however it is considered that the Applicant has adequately demonstrated that the development, and extended hours of use of the development, have not resulted in significant additional harm to neighbour amenity above and beyond the lawful use of the pub garden that has been long-established. It is therefore considered that the variation of condition to allow the development to operate on a permanent basis is acceptable and could not reasonably be sustained at appeal if refused.

On the basis of the above, the proposal is considered to be in accordance with Policy LP17 of the Peterborough Local Plan (2019).

#### **b) Other matters**

As a variation of condition application, if approved, re-grants planning permission and is a decision in its own right, any relevant conditions relating to the 'parent' permission must be re-imposed. In respect of application reference 17/01167/FUL, some conditions required details to be submitted for approval to the Local Planning Authority. As these submission elements were complied with, the conditions should be amended to reflect this. In addition, as the development was fully completed, conditions relating to compliance with materials and an arboricultural method statement are no longer required.

## **6 Conclusions**

Subject to the imposition of the attached conditions, the proposal is acceptable having been assessed in the light of all material considerations, including weighing against relevant policies of the development plan. Specifically, the proposal variation of condition would not unacceptably impact upon the amenity of surrounding residents, in accordance with Policy LP17 of the Peterborough Local Plan (2019).

## **7 Recommendation**

The Executive Director of Place and Economy recommends that the amendment to the existing Planning Permission is **GRANTED** subject to the following conditions:

- C 1 The development hereby permitted shall be maintained in accordance with the following approved plans and details:
- Proposed Elevations (Drawing number No 2177-04 Revision D);
  - Tree Positions Plan (Drawing number 2177-08 Revision B);
  - Proposed Layout Plan (Drawing number 2177-02 Revision K);
  - Tree Protection Plan (Drawing number 2177-09 Revision B);
  - Proposed Block Plan (Drawing number 2177-06 Revision E);
  - Existing Elevations (Drawing number 2177-03 Revision A);
  - Existing Block Plan (Drawing number 2177-05 Revision B);
  - External Details (Drawing number 2177-07 Revision B);

- Existing Layout Plan (Drawing number 2177-01 Revision B);
- Tree Protection Plan Statement Revision A (Dated 9th June 2017);
- Heritage Statement Revision A;
- Design and Access Statement Revision A (Dated 2nd June 2017); and
- Visual Tree Assessment (Dated 7th April 2017).

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

- C 2 The development hereby permitted shall not be open for use by patrons of the Bluebell Public House or members of the public outside the hours of 09:00 and 23:00 on any day.

Reason: In the interests of neighbour amenity, in accordance with Policy LP17 of the Peterborough Local Plan (2019).

- C 3 The acoustic fencing shown on drawing number 2177-04 Revision D "Proposed Elevations" and Drawing number 2177-02 Revision K "Proposed Layout Plan" shall be maintained as such in perpetuity.

Reason: In the interests of protecting the amenity of the occupiers of No 1 Rectory Lane from the impacts of noise from the proposal, in accordance with Policy LP17 of the Peterborough Local Plan (2019).

Copies to Councillors Hiller and Holdich