

Delegated Report (Members Briefing)		Analysis sheet		Expiry Date:		26/03/2013	
		N/A / attached		Consultation Expiry Date:		20/02/2013	
Officer				Application Number(s)			
Hugh Miller				2013/0488/P			
Application Address				Drawing Numbers			
8-10 Neal's Yard London WC2H 9DP				See draft decision			
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature				
Proposal(s)							
Variation of condition 1 (agreed opening hours) of planning permission PSX0004601 dated 25/09/2000 (Dual use of the ground floor for either retail (Class A1) or Food & Drink (Class A3) purposes) to amend the opening hours from 7am to 9pm daily to 7am to 11pm daily.							
Recommendation(s):		Grant permission					
Application Type:		Variation or Removal of Condition(s)					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	00	No. of responses	00	No. of objections	00
				No. Electronic	00		
Summary of consultation responses:		Application advertised in Ham & High 07/02/2013, expires 28/02/2013. Site Notice displayed 01/02/2013, expires 22/02/2013. No responses were received.					
CAAC/Local groups* comments: <small>*Please Specify</small>		<u>Covent Garden Community Association</u> - Objection. The CGCA objects to extending the restaurant's hours to 23:00. Neal's Yard is a completely enclosed space, so noise is easily amplified, particularly to the residential properties on the upper floors of Neal's Yard. The fact that the applicant is not aware of any complaints is not grounds for extending the restaurant's hours of operation later, particularly into a period when people can reasonably expect the area to be quiet and would cause substantial harm to residential amenity. Thus, we believe the reasons for limiting the restaurant's hours that were outlined in the original decision in 2000, "to safeguard the amenities of the adjoining premises and the area generally," are still relevant and necessary today.					

The CGCA would not have an objection to the planning hours extending to 22:00, which is the end of the licensed hours.

Officer Comment: Please see paras 3.0- 5.1 below

Site Description

Nos. 8-10 is a 4-storey building which is located within Neal's Yard and lies to the east of buildings in Monmouth Street. The application building comprises commercial (retail shop, café, office uses) and residential uses on the upper floors. To the west, is located Monmouth Street which also comprises commercial on residential uses within the neighbouring buildings. The application building is located within Seven Dials conservation area. It is not listed.

Relevant History

December 1994 – PP Granted - Change of use of the ground floor from retail (Class A1 in the Town and Country Planning (Use Classes) Order 1987) to a shop for the sale of hot food (Class A3) and the installation of a new shopfront and the erection of a ventilation duct as shown on drawing number P94/129-01 and 4 unnumbered drawings of elevations (existing and proposed) revised by letters dated 11 May 1994 2 June 1994 and 22 June 1994;- Personal condition attached; ref. 9400323.

September 2000 – PP Granted - Dual use of the ground floor for either retail (Class A1) or Food & Drink (Class A3) purposes, as shown by drawing numbers TW/P1309, 15886/5, 15886/mw/1, 15886/mw/2, 15886/mw/3 and 2 photographs of kitchen extract duct (internal and external view); ref. PSX0004601/R1. Condition is as follows:

- The use hereby permitted shall not be open to customers outside the following times 7.00am - 09.00pm.

Relevant policies

LDF Core Strategy & Development Policies

CS5 – Managing the impact of growth and development

CS7- Promoting Camden's centres and shops

CS14 – Promoting high quality places and conserving our heritage

DP12- Supporting strong centres and managing the impact of food, drink and entertainment and other town centre uses

DP24 – Securing high quality design

DP25 - Conserving Camden's heritage

DP26 - Managing the impact of development on occupiers and neighbours

DP28 – Noise and vibration

CPG 2011 - CPG6 – Amenity

CPG5: Town Centres, Retail and Employment

Seven Dials Conservation Area Appraisal and Management Strategy

London Plan 2011

Revised Planning Guidance for Central London, Food, Drink and Entertainment, Specialist and Retail Uses October 2007 (RPG).

NPPF 2012

Assessment

1.0 Proposal

- Variation of condition 1 (agreed opening hours) of planning permission PSX0004601 dated 25/09/2000 (Dual use of the ground floor for either retail (Class A1) or Food & Drink (Class A3) purposes) to amend the opening hours from 7am to 9pm daily to 7am to 11pm daily.

1.1 The thrust of the applicants position is as follows:

- ✓ The restaurant use has been in operation within the property since 1994. That no formal complaints have been made against the restaurant and consider the use has operated in harmony with the surrounding restaurant, retail and residential uses.
- ✓ The applicant states Condition 1 prevents customers on the premises and activities associated with the restaurant use, including preparation and cleaning up to cease by 09:00pm. The condition restricts the operations within the premises to shorter operating hours than the surrounding restaurant uses such as nos. 4/5 Neal's Yard, 13 and 14/15. That a number of the surrounding restaurants do not have any conditions restricting opening hours; and consider the 09:00pm closing time to be early for a central London location.
- ✓ There is a mismatch of operating hours between **a]** planning condition opening hours (07:00 - 09:00pm), **b]** tables & chair license (08:00am – 10:00pm) and **c]** licensing opening hours (08:00am – 10:00pm).
- ✓ Presently, the restaurant has operated later than 09:00pm over the past 13 years with no impact on the surrounding.

2.0 Land Use

2.1 LDF DP12- (Supporting strong centres and managing the impact of food, drink and entertainment and other town centre uses) states, The Council will ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours. It also states, To manage potential harm to amenity or the local area, the Council will, in appropriate cases, use planning conditions and obligations to address the following issues:

- h)** hours of operation;
- i)** noise/ vibration, fumes and the siting of plant and machinery.

2.2 CPG8 para. 5.17 (*Hours of operation*) states. "Ambient noise levels reduce around midnight, and consequently residential amenity can be badly harmed by amplified music, plant and machinery and on-street activity that continues late at night. ... In some instances, depending on the location, character of the area, the nature of the proposed use and its likely impact on amenity, earlier closing times may be more appropriate. Generally, earlier closing times will be more appropriate in neighbourhood centres and residential areas than in town centres and other commercial areas. Closing time will be considered to be the time by which all customers should be off the premises and all noise-generating clearing up activities audible from outside of the premises should cease. Where appropriate, hours of operation may be set to prevent premises in close proximity to each other closing at the same time to avoid the cumulative potential for antisocial behaviour.

2.3 Para. 5.18 states, " In more commercial areas within the Town Centre, that have significant amounts of food, drink and entertainment uses, limited residential development and are well served by public transport during the late evening/night, later closing times (beyond midnight) may be applied. All such applications will be assessed on a case-by-case basis and will be subject to impact assessment as set out in Appendix 4".

2.4 Para. 5.19 states, "As a result of licensing legislation for the UK, which came into effect in 2003, Local Authorities now have responsibility for liquor licensing. The new legislation relaxes some of the controls over licensed premises, particularly in terms of operational hours. The planning authority is aware that there is the potential for the hours of operation for food drink and entertainment uses to conflict between what is granted through planning consents and those granted in licensing applications. While the two regimes are entirely separate, where the planning authority has placed a condition controlling the hours of operation on a development, these hours will override any licensing hours granted should they be outside those allowed through a planning permission. If a use does not have its opening hours controlled through a planning consent then the operational hours will be dependent on those granted by the licensing department".

2.5 The Revised Planning Guidance for Central London, Food, Drink and Entertainment, Specialist

and Retail Uses; section 8 (Covent Garden), para. 8.3, 3rd point acknowledges the large number of restaurants, cafes and similar uses in the area that contribute to economic vitality and viability of the area. It noted too the negative impact on residential amenity.

2.6 Para. 8.5 acknowledge the development pressures for restaurant uses in the Covent Garden area. Whilst para.8.6 highlighted the juxtaposition of the Covent Garden location, the intricate mix of residential and night-time economy uses and the impacts of food, drink and entertainment uses.

3.0 Hours of opening

3.1 The applicant confirmed that the restaurant has in the last 13 years has been opening beyond 09:00pm, which is a breach of condition, in this instance, condition 01 as originally approved. . The Council has no records of complaints of noise disturbance associated with the restaurant use of the host building and in particular, no records of nuisance beyond the 09:00pm extant approved hours of opening. No breach of condition notice has been served by the Council to have the use cease opening later than opening hours of condition 01.

3.2 The Council's records show that 4 complaints were received regarding noise disturbance in association with no.14-15 Neal's Yard during the summer of 2012; (loud music during the day time – background music within retail unit). Two complaints were made against no.13 Neal's Yard in the last ten years. No complaints of noise disturbance were reported in relation to no.4-5 Neal's Yard.

3.3 The differing opening hours as referred to above and as they relate to a single restaurant use appears confusing and it seems logical to unify them. However, it is the planning condition restricting the restaurant hours of opening that takes precedent. Notwithstanding, the key issue here is would the formalising of the opening hours cumulatively harm the vitality and viability of this area in view of its 13 years existence?

3.4 The closest residential units are located on the upper floors of nos. 11-13, 14 & no.17 Neal's Yard also at the upper floors at nos.17 – 27 Monmouth Street. The host building lies on east side of Monmouth Street. There are existing plant machinery at roof level on neighbouring buildings both with Neal's Yard and on the upper level/ roof on buildings in Monmouth Street. No responses were received from these residential occupiers; with an objection form the Covent Garden Community Association who suggested that limiting opening time to 22:00hours pm in line with the licensing opening hours would be acceptable.

3.5 There are a number of other restaurant units within Neal's Yard with the following lawful hours:

- 2 Neal's Yard – Permitted hours until 11pm (ref 9600112)
- 3 Neal's Yard – No restrictions on hours (ref PSX0304286)
- 4/5 Neal's Yard – Permitted hours until midnight (ref PS9604554/R1)
- 13 Neal's Yard – No restrictions on hours (ref P9400320/R1)
- 14/15 Neal's Yard – No restrictions on hours (ref 9100701)

3.6 In view of no formal recorded complaint regarding noise disturbance from the application site in the last 13 years and given the examples referred to above regarding hours of operation for other units, it is considered reasonable to vary condition 01 to extend the restaurant opening hours to between 07:00am – 11:00pm. It is considered that the additional 2 hours of opening would not cause any significant additional noise disturbance to nearby resident occupiers and the varying of the condition is considered to be in compliance with DP26 and is considered acceptable.

Recommendation: Grant.

DISCLAIMER

Decision route to be decided by nominated members on Tuesday 2 April 2013. For further information please click [here](#)