
PRE-APPLICATION ADVICE



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Ms Wardley



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Date: 09/03/2015

Dear Ms Wardley

TOWN & COUNTRY PLANNING ACT 1990 (as amended)
PRE-APPLICATION ENQUIRY

At: THE HORACE JONES VAULT, SHAD THAMES, LONDON, SE1 2UP
Proposal: Pre application advice for variation of Condition 5 of 14/AP0893

Summary of Advice

The issue of extending the hours of use of the external terrace has been considered before by the Council, both in response to a planning application (11/AP/0782) and in the context of an enforcement notice(10/EN/0244). On both occasions it was assessed that extending the hours of use would be harmful to amenity, in particular of adjoining or nearby residential uses. If those assessments are to be altered an application would need to demonstrate some, or all of the following factors.

- 1) That harm to amenity will not arise
- 2) that the context of site and area has changed since previous decisions
- 3) that a reduced extension in hours is sought.

If those factors are addressed, in particular harm to amenity, an application may succeed. However, it would be wrong to give false hope. The history of Council decision making is that 7:30pm has been found on more than one occasion to be the balance at which harm to amenity arising from use of the terrace begins to be unacceptable.

Site description

The site is an open terrace alongside Tower Bridge to the west, the Thames to the north, the former Anchor brewery to the east, now residential over commercial. Admiral Court & Compass Court also residential over commercial and the office development on the south side of Shad Thames Tower Bridge Court.

To the west of the site is the engine room of Tower Bridge, Potters fields and the new 1 Tower Bridge development. At this point Shad Thames is pedestrianised. It forms part of Thames path and is within the Tower Bridge Conservation Area and Thames Policy area. It is not in a Town Centre.

Relevant Planning History

04-AP-1718 permission for conversion of existing shop into cafe/coffee shop serving licensed alcoholic drinks, with external seating area adjacent on Portland Wharf.

Granted 12/4/2005 subject to conditions

Condition 2 The use hereby permitted for the use of a cafe bar/coffee shop, serving licensed alcoholic drinks, shall not be carried on outside of the hours 8.00am to 11pm on Monday to Saturday or 8.00am to 10.30pm on Sundays. The use of the outside seating area shall not be carried on outside of the hours 8.00am to 7.30pm Monday to Saturday or 8:00am to 7.30pm on Sundays

Reason

In the interests of residential amenity in respect of noise and disturbance, to be in accordance with policy E.3.1 'Protection of Amenity' of the Southwark Unitary Development Plan 1995 and 3.2 'Protection of Amenity' of the Southwark Plan (Revised Draft Unitary Development Plan) February 2005.

10/EN/0244 Breach of Condition

Condition 2 hours of use and Condition 5 table and chairs storage of planning permission 04-AP-1718 for conversion of existing shop into cafe/coffee shop serving licensed alcoholic drinks, with external seating area adjacent on Portland Wharf

Notice served 1/8/2013

11/AP/0796 Application type: Full Planning Permission (FUL)

Retention of change of use of land adjacent to the permitted seating area of Most Cafe to form an extension to this seating area.

Decision date 05/05/2011 Decision: Refused (REF)

Reason(s) for refusal: It is considered that the extension of the seating area without the provision of suitable storage facilities for the tables and chairs when not in use would be detrimental to the amenity of surrounding occupiers having regard to the potential for anti-social behaviour. As such the proposal is contrary to saved Policy 3.2 'Protection of Amenity of the Southwark Plan (2007).

14/AP/0893 Application type: S.73 Vary/remove conds/minor alterations (VAR)

Variation of Condition 5 of planning permission 04-AP-1718 for conversion of existing shop into cafe/coffee shop serving licensed alcoholic drinks, with external seating area adjacent on Portland Wharf to allow for the tables and chairs used on the external seating area to be locked and secured in situ outside of the permitted hours of operation of the bar instead of being removed from the site by 21:00 hours each day.

Decision date 11/06/2014 Decision: Granted (GRA)

14/EN/0286 Enforcement type: Unauthorised building works (UBW)

Unauthorised selling of food from a kiosk Sign-off date 17/11/2014 Sign-off reason: Final closure - breach ceased (FCBC)

14/EN/0288 Enforcement type: Breach of condition and unauthorised advert (BOC)

Unauthorised advert on umbrellas and installation of seating not in accordance with an approved layout. Advert Notice served 6/10/14 Planning Enforcement Notice 4/11/14.

Both Notices complied with.

Nearby Sites

34 Shad Thames

11/AP/2287 Use of highway for tables, chairs and jumbrella as an extension to existing outdoor seating area for restaurant. Refused and upheld on appeal 30/8/2012, harm to amenity and character of the conservation area.

Proposed development

I believe you have not yet decided on the revised terminal hour that you are seeking, but you appear to be minded to seek an extension to 10:30pm. You are clear that you are not seeking to alter the permitted layout of the terrace, the number of covers, or the ability to prepare food externally.

Residential amenity

Harm to amenity is the main reason for past refusal and enforcement action. Neighbours have complained when hours have been exceeded and when extended hours have been proposed. Unfortunately, as recently as last summer there was a period in which the terrace was used for corporate functions with vertical drinking and for an event with a band. This resulted in service of a noise abatement notice. It is my understanding that since that notice was served the current terminal hour has been observed. Any application to extend hours is likely to be objected to on the basis that the proposal has been refused before and that past use of the site in breach of the hours condition has been problematic.

I consider harm to amenity to arise from noise arising from the use of the site, rather than servicing, or people coming and going to it. Noise can take the form of a background hubbub of conversation and occasional boisterousness that from time to time will arise from people socialising and relaxing. Your client has taken steps to monitor noise in the area which is welcome. Your clients study suggests a relatively high level of background noise of 54 to 55 dB of background noise. Unfortunately you have not been able to get any measure of noise from the terrace above background noise. In a sense this is favourable, because the explanation is that this reflects the relatively low level of noise and low concentration on the terrace. Personally though I think it is unfortunate a measure was not obtained. I suspect that residents will report that they can definitely detect noise from the terrace as distinct from background noise. It would be helpful to quantify this rather than try to demonstrate that it does not occur. At other sites in the Butlers Wharf development noise from outside seating is detectable and at All bar one potentially problematic. You are confident that your noise consultant can demonstrate that noise from your operation will not have the same characteristic by virtue of the lower density of occupation of the terrace and the lower overall numbers. You are confident that a persuasive noise report can support an application for extended hours and demonstrate why harm to amenity will not arise. Your application will be heavily dependent upon this document. It is not within the scope of a pre application enquiry to rigorously test expert opinions put forward. I do suggest though that any report is passed to a critical friend to take a counter view and test its conclusions before being submitted, because the history of this issue on this site is such that a noise report is likely to be challenged and not universally accepted.

I do accept that in principle it might be possible to show that over the period of a noise study, 40 people sat outside will on average make a noise at an acceptable level. However, noise from outside drinking can be variable, there can be outlier's or isolated customers who may make above average noise intermittently that does disturb the amenity of adjoining occupiers. I understand that you propose to minimise this through management of the terrace. At present the premises licence restricts drinks outside to plastic glasses, but has no other specific condition about management of the terrace. The proposed application would be to vary the hours of use condition (section 73). I do not see that this precludes other additional conditions relevant to the variation from being proposed or considered. However, I'm reluctant to consider planning conditions that relate to licensing matters. An application could be accompanied by a statement setting out how the terrace is managed, which could include waiter/waitress only service to seated patrons. I think additional conditions prohibiting music and vertical drinking could be imposed, but the application should show how management of the terrace will minimise the likelihood of problems occurring.

In my view it maybe helpful to note level of footfall along Shad Thames compared to other roads. I don't know but it may have a very high footfall which might support the contention that a road that appears narrow quiet and devoid of vehicular traffic is actually much busier and therefore noisier than its appearance might suggest. I think the level of evening footfall could be relevant to harm arising from terrace customers.

I think the fact that any noise report is prospective whereas past problems are recorded, as well as the fact that a noise report cannot cover intermittent disturbance or boisterousness is problematic. I think there will be a reluctance to alter previous decisions and allow a permanent change of hours to 10:30pm. I have suggested a

compromise that instead of a permanent extension of hours your client apply for a temporary permission for hours to be extended to 9:00pm. The purpose being to allow the management of the terrace and noise generated to be monitored. In a years time there would be a summers worth of data to assess and guide a future decision on hours. The extension in hours would be quite minimal and not permanent, which in my personal view would give decision makers greater confidence that such a proposal could be considered without causing a lasting harm that in the past as been strongly resisted. It is a compromise position, but on balance has a prospect of success which I do not consider a permanent extension of hours is likely to receive.

I do accept that your client is currently compliant with planning control. There is not a history of compliance though. A temporary permission would have the advantage of allowing a history of compliance to be generated. At present your clients application will be along the lines that past breaches will not be replicated for X reasons. In my view your clients position is strengthened over the long term, if she can say, in 2016. "In 2015 I complied with temporary permission, no complaints were received, monitoring confirmed no noise issues occurred." Obviously I can't guarantee that a temporary permission will be successful over its course, but the prospect I set out above does seem possible. Furthermore I cannot guarantee that this reduced proposal would receive permission

Planning policy

There is no significant policy issue to be considered. The principle of the use of the terrace is already accepted and permitted. It is a question of finding the appropriate level of restriction to protect amenity. The Council has a longstanding policy on protection of amenity (3.2 Southwark Plan), which Core Strategy 13 High Environmental Standards supports. It is clear that your clients trade will increase if the hours are varied, but this does not appear to be a site where the viability of an established business is threatened by the continuation of the existing condition. I'm mindful of the NPPF support for both economic activity and protection of amenity, but consider this to be a question of planning judgment as to what the impact on amenity will be of increasing permitted hours.

Conclusion

I agree that obtaining data on noise in the area is the correct way to inform a decision as to whether the hours of operation can be increased. I understand that you are confident that a noise report will clearly support your desired change. I remain more cautious and suggest the route of seeking a temporary permission first before seeking a permanent change, you should be prepared for even this intermediate step failing to gain consent due to amenity concerns.

Yours sincerely

Gavin Blackburn