

A02

F/TH/23/1449

PROPOSAL: Variation of condition 3 of planning permission F/TH/20/1060 for the "Change of use from Drinking Establishment (Sui Generis) to Drinking Establishment (Sui Generis) and Restaurant (Class E), together with erection of single storey rear extension to No. 53 Albion Street" to allow an extension of opening hours

LOCATION: 53 To 55 Albion Street BROADSTAIRS Kent CT10 1NE

WARD: Bradstowe

AGENT: Mr Will Whitelock

APPLICANT: DL Bar Ltd

RECOMMENDATION: Approve

Subject to the following conditions:

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

GROUND:

In accordance with Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Purchase Act 2004).

2 The development hereby approved shall be carried out in accordance with the submitted drawings numbered 01 received 03/11/23 and the premises noise management plan, contained in Appendix B of the submitted Noise Impact Assessment received 19/12/23.

GROUND;

To secure the proper development of the area.

3 The use of the premises hereby approved shall not be used other than between the hours of 07:00AM to 02:30AM Sunday to Thursday, and 07:00AM to 03:00am on Friday and Saturday.

GROUND

To safeguard the residential amenities currently enjoyed by the occupiers of nearby residential properties in accordance with Policy QD03 of the Thanet Local Plan.

INFORMATIVES

Information on how to appeal this planning decision or condition is available online at <https://www.gov.uk/appeal-planning-decision>

SITE, LOCATION AND DESCRIPTION

Number 53 to 55 Albion Street (known as "The Dolphin") is a public house and restaurant spanning two buildings on the corner of Albion Street and Harbour Street. It is sited in a prominent position within the lower part of Broadstairs high street and sits within the Broadstairs Conservation Area. The site sits in a very sensitive location, being within the Broadstairs Conservation Area and in close proximity to a concentrated number of listed buildings, mainly to the east and south, and immediately adjacent to the Broadstairs Promenade and Beach Front character area.

The site has its own unique history and has had its part to play in the cultural and historic development of Thanet and, in particular, Broadstairs. The building is believed to date back to the 17th century, with early records from local newspapers indicating the presence of auctions at the site for the sale of boats, and licensee lists as far back as the 1800's. Broadstairs was famously known for its boat life and difficulties with smuggling operations around the district and use of the tunnel network below many of the local buildings of the time. Many of the local public houses at that time became the haunt of fishermen and smugglers alike. The Dolphin is on the Council's 'local list', being considered a non-designated heritage asset for some of the important cultural and historic connections it has. Even today, it forms an important and vibrant part of the local night time economy and the charm of Broadstairs, both for local people and for tourists alike.

RELEVANT PLANNING HISTORY

F/TH/20/1061 - Reconstruction of roof to facilitate conversion of loft to increase living accommodation to existing maisonette. Withdrawn 15/02/2021.

F/TH/20/1060 - Change of use from Drinking Establishment (Sui Generis) to Drinking Establishment (Sui Generis) and Restaurant (Class E), together with erection of single storey rear extension to No. 53 Albion Street. Granted 01/02/2021.

PROPOSED DEVELOPMENT

Planning permission was granted in February 2021 for the change of use of the former public house known as 'The Dolphin', to a drinking establishment and restaurant, together with a single storey rear extension (application F/TH/20/1060 refers). In March 2022 the Council's Planning Enforcement Team received complaints about unauthorised works at the site and found a number of inconsistencies with the approved plans for the site.

Originally the application proposed to vary the previous approval for the change of use of the site and erection of a single storey rear extension to allow alterations to the front facade, the erection of timber structures and boundary fencing to the rear garden, alterations to the previously approved rear extension, the erection of an external flue, and an extension to the

previously agreed opening hours, seeking to address inconsistencies identify by the Enforcement Team. Most of the works had already taken place at the time of the Officer visit in December 2023.

Officers expressed concerns about a number of works and the applicant expressed concerns about the impact of the change to operating hours on business. The majority of works were therefore withdrawn from the current submission in order to address only the matter of operating hours, and the proposal is now for the variation of the approved scheme to allow for extended opening hours. Condition 3 of application F/TH/20/1060 restricted opening hours as follows:

"The use of the premises hereby approved shall not be used other than between the hours of 10:00AM to 12:00PM and through until 1:00AM Monday to Sunday.

GROUND:

To safeguard the residential amenities currently enjoyed by the occupiers of nearby residential properties in accordance with Policy QD03 of the Thanet Local Plan."

The current proposal is for the following operating hours:

07:00 AM to 02:30 AM Sunday to Thursday
07:00 AM to 03:00 AM on Friday and Saturday

DEVELOPMENT PLAN POLICIES

Thanet Local Plan 2020

SP04 - Economic Growth
SP08 - Thanet's Town Centres
SP12 - Broadstairs
SP35 - Quality Development
SP36 - Conservation and Enhancement of Thanet's Historic Environment
CM01 - Provision of New Community Facilities
CM02 - Protection of Existing Community Facilities
E04 - Primary and Secondary frontages
E06 - District and Local Centres
HE02 - Development in Conservation Areas
HE03 - Heritage Assets
QD01 - Sustainable Design
QD02 - General Design Principles
QD03 - Living Conditions
QD06 - Advertisements
TP02 - Walking
TP03 - Cycling
TP04 - Public Transport
TP06 - Car Parking

Broadstairs and St Peters Neighbourhood Plan 2023

BSP6: Sustaining Community Facilities
BSP9: Design in Broadstairs and St Peter's

NOTIFICATIONS

Letters were sent to neighbouring property occupiers, a site notice posted close to the site and an advert was posted in the local paper. No representations have been received.

Broadstairs and St Peters Town Council: The Committee unanimously recommends OBJECTION on the grounds that the structures to the rear are attached to Broadstairs & St Peter's Town Council's property without permission.

Broadstairs Amenity Group: The Society supports the application subject to any comments from the Conservation Officer.

CONSULTATIONS

TDC Conservation Officer: 53 To 55 Albion Street or locally known as The Dolphin in Broadstairs is a traditional property with a prime position within the conservation area. Although not formally designated, it would be considered to be a non designated heritage asset and a positively contributing property to the surrounding area.

Thanet's Local Plan, policy HE02, states within Section 7 'The character, scale and plan form of the original building are respected and the development is subordinate to it and does not dominate principal elevations.' As well as Section 8 which states 'Appropriate materials and detailing are proposed and the development would not result in the loss of features that contribute to the character or appearance of the conservation area. New development which would detract from the immediate or wider landscape setting of any part of a conservation area will not be permitted.'

Guidance under the National Design Guide Section C2, Paragraph 45 highlights that when determining how a site may be developed, it is important to understand the history of how the place has evolved. The local sense of place and identity are shaped by local history, culture and heritage, and how these have influenced the built environment and wider landscape and paragraph 47 which states Well-designed places and buildings are influenced positively by the local vernacular, including historical building typologies such as the terrace, town house, mews, villa or mansion block, the treatment of façades, characteristic materials and details.

Within the NPPF Section 16, 197 questions 'the positive contribution that conservation of heritage assets can make to sustainable communities including their economic viability' and 'the desirability of new development making a positive contribution to a local character and distinctiveness'.

Also within the NPPF is Section 194 which states In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be

proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

This application is to vary a previous approval on the site, proposing varying amendments to both the front, rear and side elevations of the property.

To the principle elevation on the front of the site a historic bay window has been removed and replaced with a contemporary aluminium shopfront with wide set glazing. This is hugely disruptive to the outward appearance of the site as it negatively juxtaposes with the largely traditional and historic fabric of the site totally unbalancing its appearance. The footprint of the site has also stepped forward with this conversion and the front in this location has lost the sense of recess and prominence, resulting in an unsympathetic flat frontage.

Whether this bay window was original to the form of the building is unknown but it appears to be present in all recent histories as they present themselves online. As such the loss of fabric is unacceptable in itself but also to the detriment of the setting and appearance of the surrounding conservation area.

Within the Broadstairs Conservation Area Appraisal it details key unlisted properties of which The Dolphin or 53 - 55 Albion Street is the first to be mentioned, specifically focusing on its main frontage. Under Section 5.2.3 of the same appraisal it also details, Windows are mainly timber sash, casement with some canted bays. There is a pre-dominance of well proportioned timber shop-fronts. Some historic shop-fronts with early glazing are present. Referencing this I would consider the bay as a notable example of the characteristics of this conservation area and at what point it was allowed to be converted to a shopfront that frontage would need to be timber to cohesively blend itself with the existing environment.

53 - 55 Albion Street has been a licensed public house since at least 1824 therefore the justification that the public house needs to improve its presence on the Albion Street is somewhat weak as it is a well known and prominent institution in the area and the harm caused is not outweighed by the justification suggested.

To the rear of the site under the original application a small extension was allowed for expansion of the kitchen as detailed under this variation of condition. What has been erected instead is a much larger structure, competing with two rear windows as shown in the plans. Under the previous applications no concerns were raised to this asset given they were subservient to the structure with limited implication to the setting and appearance of the property in the context of the conservation area. However, due to their increase in height and change of materials from matching render to unrated timber cladding I would have concerns that their outlook appears congested, presenting as overdevelopment and a mismatch of materials which ultimately appears poorly and should not be allowed.

This variation states that it also includes the flue element of the scheme but this is not shown on any plans but is present in some images where it appears above the height of the

unlawful extension which is taller than that approved. This would suggest that, given its scale, size and cumbersome nature it causes harm to the outlook to the rear of the site and as such should be removed.

Timber fencing has been installed along the longest side of the site of which no justification has been given as to why it was required. It does create an internal terrace and use of the existing flat roof where a shed has been erected, made somewhat visible by the fence in place. Hi level fencing or timber structures at first floor is not a common feature within the conservation area and appears highly out of place at such a height. As such I would recommend that it is removed.

Overall I do not consider that this variation of condition has fully considered the harm caused to the setting and appearance of the surrounding conservation area which is evident from the lack of justification provided and harmful design choices made. It is also in direct violation of Thanet's Local Plan, policy HE02, states within Section 7 as well as NPPF Section 16, 197. As such I object to the variation proposed and would suggest that the previous approval is complied with or enforcement action is taken.

TDC Environmental Health Officer:

Initial comment:

EP do not have any objection given the Dolphin were previously to these hours and the licence was granted to these hours. I also believe the application is retrospective and the premises has been operating to these hours without significant issue.

Further comments were received and stated:

"EH has no objection to the opening regularising opening hours to that consented within the premises licence as well as the locality and history of the site.

Condition: Opening Hours

Opening hours only between the hours of 07:00AM to 02:30AM Sunday to Thursday, and 07:00AM to 03:00AM on Friday and Saturday

However, with regard to the retrospective approval for the increase in height of the flue, we require the information requested in the original consent as height and position is determined by the compliance with Defra guidance:

(4) 'Prior to the first operation of the premises, a scheme and maintenance schedule for the extraction and treatment of fumes and odours generated from cooking or any other activity undertaken on the premises, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be designed in accordance with the DEFRA publication Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems January 2005. Any equipment, plant or process provided or undertaken in pursuance of this condition shall be installed prior to the first operation of the premises and these shall thereafter be operated and retained in compliance with the approved scheme.'

Given the flue could operate until 2.30am the following noise safeguarding condition is recommended:

Condition: External Plant

The noise rating level (LA,T) associated with the development site shall not exceed the background noise level (LA90,T) at the nearest residential facade. All measurements shall be defined and derived in accordance with BS4142: 2014 + A1:2019."

COMMENTS

This application is reported to Planning Committee at the request of Councillor Garner in order for members to consider overdevelopment and structures attached to adjacent buildings. It was clarified whether in light of the changes to the proposal Councillor Garner wished for Members to still consider the application, and confirmed that he did.

Section 73 of the Town and Country Planning Act 1990 (as amended) relates to the determination of applications to develop land without compliance with conditions previously attached. The wording of the Act indicates that the Local Planning Authority can only consider the question of the condition(s) and nothing further.

Paragraph 135 of the National Planning Policy Framework (NPPF) sets out that Local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion as a result of changes being made to the permitted scheme.

The applicant has set out in their covering letter that Condition 3 of application F/TH/20/1060 is placing a "financial burden" on the applicant by restricting both opening and closing times, that the premises cannot open for breakfast trade, and that shorter closing times does not as efficiently lead to a staggered exit of people. The condition was imposed to control general operating hours in line with those requested by the former owner of the site.

The current proposal is in respect of changes to formally agreed operating hours. Broadstairs as a town is well known for its role in leisure and tourism, late night venues and its contribution to Thanet's night time economy. Given the location of the site, the former operating hours being the same as those proposed, and nearby late night venues of a similar nature, the proposal is not considered by Officers to harmfully alter the character of the area.

In terms of the impact of the changes to neighbouring living conditions, it is understood from the Council's Licensing and Environmental Health Teams that the previous hours of operation prior application F/TH/20/1060 were in line with that proposed, and that this would be a reversion back to former opening hours.

Officers do not object to a reversion to the former operating hours and the applicant has provided a premises noise management plan in Appendix B of the Noise Impact Assessment submitted, which could be conditioned.

Conclusion

Given the reversion to former hours, and lack of objection from Environmental Health or Licensing, the proposal is considered to be acceptable and appropriate mitigation has been considered by the applicant.

Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted, subject to new or amended conditions. No other conditions imposed in application F/TH/20/1060 are relevant to this proposal or necessary to be carried over.

The application is recommended for approval, subject to conditions.

Case Officer

Vicky Kendell-Bryant

TITLE:

F/TH/23/1449

Project

53 To 55 Albion Street BROADSTAIRS Kent CT10 1NE

