

KIRKLEES METROPOLITAN COUNCIL

PLANNING SERVICE

UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY

PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

13 JUNE 2019

Planning Application 2019/91110

Item 15 – Page 69

**Change of use from A1 (retail) to A1 (retail) and A3
(restaurant/cafe/drinking establishment) (within a Conservation
Area)**

Ginger Whale, 344, Oxford Road, Gomersal, Cleckheaton, BD19 4JR

Following the publishing of the agenda, concern has been raised by the applicant in regard to the conditions suggested by officers on page 74. The applicant contends that the business has been operating for the last 3 years without complaint (which is not disputed by officers) and this includes opening on Sundays as well as late night openings. Concern was also raised regarding the 2 weeks' notice period suggested by officers as well as the restriction to 12 late night events throughout the year.

Further discussions subsequently took place between the applicant and officers regarding these concerns. Officers maintain their view that management of the opening hours is necessary because any subsequent planning permission goes with the land and not the person. Therefore, should circumstances change at the site, for example, the premises were sold or leased to another operator who had a different business model than the applicant, when taking into account the close proximity of unrelated residential properties to the application site, harm could be caused to residential amenity if not managed accordingly.

However, the applicant advised that should the opening hours be restricted to those set out in the suggested conditions contained in the agenda, there would be an adverse impact on the business and its existing business model i.e. product launches / tasting events take place at the premises and are currently held into the evening and therefore, to restrict this would be harmful to the business.

In light of the above, the applicant has asked for members to consider the following:-

- 1) No conditions for Sunday openings apart from hours set out by law.
- 2) That it is not necessary for 2 weeks' notice to be given if we are to open late.
- 3) That we will be restricted to a maximum of 2 'late' nights a week.

In addition to the above, it is also highlighted by the applicant that they have a current License granted under the Licensing Act 2003. Officers have reviewed the License, and this specifies under 'Activities – Times Granted' that the operator is permitted to *supply alcohol for consumption on and off the premises* between Monday to Sunday 09:00 to 23:00. However, in terms of '*Premises Open Hours Granted*', these are specified as:-

Monday to Wednesday	09:00 to 16:00
Thursday	09:00 to 19:00
Friday	09:00 to 18:00
Saturday	09:00 to 17:00

Having perused the licencing application, the additional hours agreed as part of the license in relation to activities for the supply of alcohol is because the applicant stated that *"the extension to the hours for the sale of alcohol relate mainly to special events and they would be ticketed or invite only and they would be held outside of the normal opening hours"*.

It does need to be acknowledged that planning permission and premises licences are determined against different statutory guidance, each with their own set of rules. It is however, accepted that there is some overlapping of the issues to be considered in both applications, particularly in terms of nuisance.

In a recent planning Appeal Decision received by the Council (reference APP/Z4718/W/18/3213285), it was acknowledged that it is not unusual for different decisions to be reached in relation to planning and licencing matters. This is because, and as previously set out above, planning relates to land use and a grant of permission would be permanent. Whereas with a licence, this can be revised or revoked and relates more to public nuisance caused by users of the premises as opposed, for example, to noise generated from use of the building or from associated equipment. It was further highlighted in the appeal decision that the two regimes are deliberately separate because they consider different aspects of similar, but not identical, issues.

Taking the above into account, officers consider that some further flexibility would be appropriate in this instance and suggest some revisions to the conditions stated in the agenda. It is the opinion of officers that the revised conditions would reach a suitable balance between economic benefits and residential amenity. Furthermore, it should also be acknowledged that, should the applicant, or any successor, wish to change the hours specified in the conditions (should the application be approved), they do have the option of submitting a variation of condition application (under Section 73 of the Town & Country Planning Act) which would be assessed accordingly.

REVISED RECOMMENDED CONDITIONS:

1. Other than the prior approved hours permitted under condition 2, the use hereby permitted shall not be open to customers outside the hours of 8:00 to 20:00 Monday to Saturday and on Sundays 10:00 to 16:00.
 2. The premises may be open to customers for the serving of alcohol for consumption on and off the premises limited to tasting events and invite only events between the hours of 20:00 and 23:00 on not more than two evenings per week between Monday and Saturday, on condition that details of the time and date have been provided to the neighbouring occupants of Nos.342 Oxford Road, nos.348 – 352a (inclusive) Oxford Road and nos. 2 – 12 (inclusive) Grove Square in advance of such events.
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