

9. 19/0366/FUL – Removal of Conditions 4 (hours of use) and 5 (external seating area) pursuant to planning permission 18/0983/FUL (Single storey front and rear extensions, internal alterations and extension to residential dormer) at PAVILION, GREEN LANE, OXHEY HALL, WD19 4LT.
(DCES)

Parish: Watford Rural Parish Council

Ward: Oxhey Hall and Hayling

Expiry of Statutory Period: 22 April 2019

Case Officer: Freya Clewley

Recommendation: That Planning Permission be granted (conditions to be varied not removed).

Reason for consideration by the Committee: The Council has an interest in the land.

1 Relevant Planning History

- 1.1 8/238/90 – Established use certificate: Use for bars, function rooms, changing rooms and residential flat – Permitted 06.04.1990.
- 1.2 8/335/90 – Single storey front and rear extensions – Permitted 12.07.1990, implemented.
- 1.3 8/353/93 – Single storey side extension – Permitted 19.07.1993, not implemented.
- 1.4 95/0024 – Extensions and alterations and alterations to car park to provide an additional 25 spaces – Permitted 20.04.1995.
- 1.5 15/0090/FUL – Change of use of existing changing rooms from D2 (Assembly and Leisure) to B1a (Offices) – Permitted 31.03.2015.
- 1.6 16/1517/FUL – Single storey rear extension and alterations to landscaping – Permitted 05.09.2016.
- 1.7 18/0983/FUL – Single storey front and rear extensions, internal alterations and extension to residential dormer – Permitted 21.08.2018.

2 Description of Application Site

- 2.1 The application site is located to the south of Green Lane, Oxhey Hall and is within the Metropolitan Green Belt. The Pavilion is a two storey building comprising a public house (The Pavilion) with residential accommodation at first floor. The building has an overall irregular shaped footprint. The building has a mainly hipped roof form incorporating eaves level dormers with gable projections. The western part of the building provides the public house and residential accommodation whilst the eastern part of the building is currently disused but was previously in use as four changing rooms associated with the use of South Oxhey Playing Fields to the south of the application site.
- 2.2 Externally, the building is finished in concrete render, white render and black timber boarding and includes ground and first floor level glazing. To the east of the application site, a two storey building provides a sports pavilion and changing facilities associated with South Oxhey Playing Fields to the south of the site. To the west of the site are tennis courts and a bowling green. To the north of building is a large car park.

3 Description of Proposed Development

- 3.1 Planning permission was granted via application reference 18/0983/FUL on 21.08.2019 for the following development as described within the Officer's Committee Report;

The proposed single storey front extension would hold a depth of 2.4m and a width of 10m and it would comprise a waiting area and reception. A flat roof open canopy would abut the frontage of the proposed extension with a depth of 2m and a width of 3m. The proposed front extension and open canopy would have a flat roof form with a height of 2.9m. A set of doors would be inserted within the frontage of the extension.

The proposed single storey rear extension would hold a depth of 3.4m and a width of 1.9m, constructed to the rear of the rear of the eastern aspect of the building. The extension would be set in approximately 6.6m from the eastern flank elevation of the building. The proposed extension would comprise a disabled toilet facility.

The existing two flat roof dormers within the front roofslope of the rear aspect of the building would be adjoined and extended in width by 2.5m to create an additional bedroom within the existing residential flat within the roof accommodation.

The proposal includes internal alterations to replace the existing office space at ground floor level with a bar/restaurant area, extending the banqueting area 1 into the space which is currently occupied by the bar/restaurant area and the existing office space at mezzanine floor level would be replaced with additional seating.

- 3.2 The officer recommendation to Committee for application 18/0983/FUL included a condition restricting the hours of use of the building (Condition 4), with the hours suggested by officers reflecting those specified in the application form submitted at the time. Following discussion of the application at the Committee, Members resolved to grant planning permission subject to an additional condition restricting the hours of use of the external seating area (Condition 5). This was considered necessary to safeguard neighbouring residential amenity. Conditions 4 and 5 are set out below:

C4 The development hereby permitted shall not operate other than between the hours of 12:00 and 23:00; Mondays to Fridays (inclusive) and 12:00 and 23:00; Saturdays and 12:00 and 23:00; Sundays or Bank Holidays.

Reason: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

C5 The external seating area at the premises shall not be used other than between the hours of 12:00 and 22:00; Mondays to Sundays (inclusive of Bank Holidays). No other external areas surrounding the building shall be used as external eating or drinking areas or for any other purpose associated with the use.

Reason: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

- 3.3 This application seeks to remove the above conditions restricting the hours of use of the building and the external seating area. During the course of the application further information in relation to the openings hours which would be considered acceptable by the applicant were requested by the Local Planning Authority (LPA), however the applicant stated that no further details would be submitted in this respect.

- 3.4 Whilst the application seeks permission for the removal of the conditions, it should be noted that the legislation enables the LPA, should planning permission be granted, to remove, vary or add conditions where they meet the relevant tests.

4 Consultation

4.1 Statutory Consultation

4.1.1 Watford Rural Parish Council: No response received.

4.1.2 National Grid: No response received.

4.2 Public/Neighbour Consultation

4.2.1 Number consulted: 36 No of responses received: 1 objection, 0 supporting

4.2.2 Site Notice: Expired 22.03.2019. Press notice: Not required.

4.2.3 Summary of Responses:

- A jogging group starts at 9.00am on Saturday mornings, with the football starting at 10.00am. I do not consider that there would be any problem with them catering for the early morning activities.
- Later openings hours would affect neighbours. There have been a number of events/parties that have happened at the pub during the time neighbour has lived in close proximity, and on some occasions they have continued late into the night/early morning. As they were isolated occasions, no formal complaint was made however it is felt that this would change as there would be a greater potential for noise disturbance late into the night.
- Neighbouring properties are approximately 50m from the Pavilion pub however the trees are not dense (especially in autumn) and provide little, if any, acoustic dampening.

5 Reason for Delay

5.1 None

6 Relevant Planning Policy, Guidance and Legislation

6.1 National Planning Policy Framework and National Planning Practice Guidance

In February 2019 the new National Planning Policy Framework was published. This is read alongside the National Planning Practice Guidance (NPPG). The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another. The 2019 NPPF is clear that “existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework”.

The NPPF states that ‘good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities’. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would ‘significantly and demonstrably’ outweigh the benefits.

6.2 The Three Rivers Local Plan

The application has been considered against the policies of the Local Plan, including the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development

Document (adopted November 2014) as well as government guidance. The policies of Three Rivers District Council reflect the content of the NPPF.

The Core Strategy was adopted on 17 October 2011 having been through a full public participation process and Examination in Public. Relevant policies include Policies PSP3, CP1, CP6, CP8, CP9, CP10, CP11 and CP12.

The Development Management Policies Local Development Document (DMLDD) was adopted on 26 July 2013 after the Inspector concluded that it was sound following Examination in Public which took place in March 2013. Relevant policies include DM1, DM2, DM6, DM7, DM9, DM12, DM13 and Appendices 2 and 5.

The Site Allocations Local Development Document (SALDD) was adopted on 25 November 2014 having been through a full public participation process and Examination in Public.

6.3 Other

The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).

The Localism Act received Royal Assent on 15 November 2011. The growth and Infrastructure Act achieved Royal Assent on 25 April 2013.

The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010, the Natural Environment and Rural Communities Act 2006 and the Habitat Regulations 1994 may also be relevant.

7 **Planning Analysis**

7.1 Removal of Conditions

7.1.1 The applicant has referred to the wording of the two conditions as unclear within the submitted application form for the current application, as they consider that neither 'the development' or the 'outdoor seating area' are defined within the Decision Notice or application documents. The description of the proposed development was outlined within the Officer's Committee Report for the application reference 18/0983/FUL and is replicated in full at 3.1 above.

7.1.2 The Officer's Committee Report for 18/0983/FUL in relation to the impact of the proposal on neighbouring amenity is outlined below:

Whilst the concerns outlined are acknowledged, and it is noted that two additional doors are proposed within the rear elevation of the building, the closest residential neighbours, Oxhey Warren and Oxhey Warren Cottage, are located approximately 55m to the south east of the Pavilion. Therefore, given the separation distance between the building and these neighbours, the scale of the extensions, that the internal alterations to create additional bar and restaurant space would not significantly alter the scale and nature of events held at the building and subject to a condition attached to any granted consent to limit the hours of use, it is not considered that the proposed development would result in detrimental harm to any neighbouring property so as to justify the refusal of planning permission. Notwithstanding the grant of planning permission, the building is still required to abide by the licensing conditions of their premises licence as set out by the Local Licensing Authority.

7.1.3 Paragraph 54 of the NPPF states; 'Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions'. Paragraph 55 of the NPPF states; 'Planning conditions should only be imposed where they are *necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*'.

- 7.1.4 As outlined above, subject to a condition to restrict the hours of use, the proposed development is not considered to result in demonstrable harm to neighbouring amenity so as to justify the refusal of planning permission. Condition 4 (Hours of Use) would limit the hours of use of the building to between 12.00 and 23.00; Mondays to Fridays (inclusive) and 12.00 and 23.00 Saturdays and 12.00 and 23.00; Sundays and Bank Holidays. It is noted that the times specified within the condition are consistent with the times set out within the application form submitted as part of the previously approved application reference 18/0983/FUL at section 20 which states the hours of opening for each non-residential use proposed.
- 7.1.5 Condition 5 restricting the hours of use of the external seating area was added to the previously granted application by Members after concerns were raised in relation to the increase in capacity as a result of the proposed development resulting in additional noise generated due to an overspill into the external seating area.
- 7.1.6 Policy DM9 of the Development Management Policies document sets out that planning permission will not be granted for development which; *has an unacceptable impact on the indoor and outdoor acoustic environment or existing or planned development or would be subject to unacceptable noise levels or disturbance from existing noise sources whether irregular or not.* Furthermore, it states that *'the Council will ensure that noise from proposed commercial, industrial, recreational or transport use does not cause any significant increase in the background noise level of nearby existing noise-sensitive property such as dwellings'*.
- 7.1.7 In terms of Condition 4, whilst it was noted during a site visit that neighbouring properties were located approximately 55m from the Pavilion, the proposal would result in the creation of a significantly larger area for banqueting and events with a large separate restaurant and bar area as a result of the conversion of the office space. Therefore, the opportunity for the building to accommodate large events would be significantly increased, as would the capacity of the building. In addition, additional openings have been proposed and approved within the rear elevation of the building, giving additional opportunities for noise to travel from the building.
- 7.1.8 Condition 4 was attached to the previously granted planning permission as the LPA considered it necessary to restrict the hours of use of the commercial elements of the development permitted to ensure the development would not have an unacceptable impact on neighbouring amenity in terms of noise or disturbance. Furthermore, the impact of a development on neighbouring amenity, including unacceptable impact on the indoor and outdoor acoustic environment is a material planning consideration and by virtue of the increased banqueting, bar and restaurant area of the permitted development, the condition is relevant to the development. It is acknowledged that the applicant states within the submitted application form that due to a dense tree belt with 'obvious acoustic screening properties' and that there has been no historical formal complaint of noise coming from the venue, the condition should be removed. The trees surrounding the neighbouring properties were noted during a site visit, however it was also acknowledged that these trees are deciduous and regularly do not have dense canopies so as to form the dense tree belt described by the applicant. Trees should not be relied upon due to loss of leaves in winter or the possibility of storm damage or disease and no technical evidence has been submitted to prove the impact the trees may have on travelling noise. Furthermore, no noise impact assessments have been submitted in support of this application which demonstrate the spread of noise as existing.
- 7.1.9 In terms of enforceability, it is considered that Conditions 4 and 5 are enforceable by virtue of the LPA's ability to identify that the commercial elements are being used outside of the permitted hours due to noise coming from these aspects of the building and external areas. Furthermore, evidence could be collected from neighbouring occupiers in terms of disturbance caused by events held due to the increased capacity of the building.

- 7.1.10 In relation to the hours set out within Condition 4 being reasonable in all other respects, it is acknowledged that the applicant has expressed a need to utilise the community facility to offer refreshments to morning users of the site. It is not considered that the use of the commercial elements of the building would result in any additional harm should the hours of use be altered to 9.00 to 23.00 Monday – Sunday (inclusive of bank holidays) to enable the applicant to offer these facilities. As these details were not specified on the submitted application form for the previous application, and section 20 of the application form indicated that the building would be required to be in use from 12.00 until 23.00 Monday – Sunday (inclusive on bank holidays), it is not considered that the LPA have acted unreasonably in this respect in terms of the imposition of the original condition, however, it would be appropriate to vary the condition to enable earlier use.
- 7.1.11 Condition 5 refers to the external seating area at the premises which was indicated on the site plan for the previously approved application as an existing playground area. During a site visit it was ascertained that this area contained benches, bins and a small shelter area. This condition was added by Members at Planning Committee with a Cllr stating; *'increasing the capacity and therefore allowing people to spill outside into the existing seating area would generate more noise'*. It is considered that the increased capacity of the building and thus the increased size of events held at the venue would result in potential harm to neighbouring amenity should the visitors use the external seating area to the rear of the building after 10.00pm. As no noise impact assessments have been submitted in support of this application and given that the applicant would rely on deciduous trees to reduce the impact of the resultant noise from the development, Condition 5 is considered necessary and relevant to planning and the development permitted.
- 7.1.12 In terms of using the external seating area to the rear of the site prior to 12.00 for morning visitors to the site, it is not considered that this would result in unacceptable harm and as such, it is considered that the hours of use of the external seating area could be altered to 9.00 to 22.00 Monday – Sunday (inclusive of bank holidays) as the harm identified is directly linked to the larger scale events held in the evening resulting in disturbance to neighbouring occupiers.
- 7.1.13 The submitted application form for the current application states that the applicant would be prevented from offering refreshments to early morning dog-walkers and runners and visitors to morning football events by virtue of the hours set out within Condition 4 and 5. During the course of the application, the applicant has been contacted to discuss alternative hours which they would consider more acceptable. The applicant has stated that they do not wish to add anything further in this regard, and therefore the LPA consider that as the applicant has expressed a need to use the building and external seating area for early morning visitors, and that use of the building and external seating area at this time would not result in any additional harm, Condition 4 and 5 should not be removed but should be amended as follows;

C4 The banqueting area and restaurant and bar of the commercial aspects of the development hereby permitted shall not operate other than between the hours of 09:00 and 23:00; Mondays to Fridays (inclusive) and 12:00 and 23:00; Saturdays and 09:00 and 23:00; Sundays or Bank Holidays.

Reason: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

C5 The external seating area to the rear of the premises shall not be used other than between the hours of 09:00 and 22:00; Mondays to Sundays (inclusive of Bank Holidays). No other external areas surrounding the building shall be used as external eating or drinking areas or for any other purpose associated with the use.

Reason: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

- 7.1.14 Whilst it is acknowledged that the applicant states that the hours of use of the commercial elements of the building and the external seating area would impact and restrict the viability of the venue as a wedding venue and the existing and future use of the building, there has been no evidence submitted to suggest that the hours of use would impact this use. Furthermore, the LPA has considered the applicants request to extend the hours of use such that the site can be used by morning visitors.
- 7.1.15 In summary, it is considered that the removal of Condition 4 (hours of use) and Condition 5 (external seating area) would result in harm to the indoor and outdoor acoustic environment of neighbouring occupiers by virtue of the increased capacity of the venue due to the changes of use of the various aspects of the building to provide additional banqueting and restaurant and bar space. Therefore, the removal of these conditions are not considered to be acceptable, however, for the reasons set out above it is considered appropriate to vary both conditions.
- 7.1.16 The conditions as varied are considered to meet the tests set out in paragraph 55 of the NPPF in that they are necessary; relevant to planning and; to the development to be permitted; enforceable; precise and; reasonable in all other respects.

8 Recommendation

8.1 That PLANNING PERMISSION IS GRANTED subject to the following conditions:

C1 The development hereby permitted shall be begun before 1 August 2021.

Reason: In pursuance of Section 91(1) of the Town and Country Planning Act 1990 and as amended by the Planning and Compulsory Purchase Act 2004.

C2 The development hereby permitted shall be carried out in accordance with the following approved plans: 01A, 02A, 03, 04, 05, 06, 07A, 08, 09, 10, 11, 12, 13, 14A and 20.

Reason: For the avoidance of doubt and in the proper interests of planning and to safeguard the character and appearance of the Metropolitan Green Belt, area and the residential amenity of neighbouring occupiers, in accordance with Policies PSP3, CP1, CP6, CP8, CP9, CP10, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM2, DM6, DM7, DM9, DM12, DM13 and Appendix 5 of the Development Management Policies LDD (adopted July 2013).

C3 The building shall not be erected other than in the materials as have been approved in writing by the Local Planning Authority as shown on Drawing Number 13; and no external materials shall be used other than those approved.

Reason: To ensure that the external appearance of the building is satisfactory in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011).

C4 The banqueting area and restaurant and bar of the commercial aspects of the development hereby permitted shall not operate other than between the hours of 09:00 and 23:00; Mondays to Sundays (inclusive of bank holidays)..

Reason: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

- C5 The external seating area to the rear of the premises shall not be used other than between the hours of 09:00 and 22:00; Mondays to Sundays (inclusive of Bank Holidays). No other external areas surrounding the building shall be used as external eating or drinking areas or for any other purpose associated with the use.

Reason: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

8.2 **Informatives:**

- 11 With regard to implementing this permission, the applicant is advised as follows:

All relevant planning conditions must be discharged prior to the commencement of work. Requests to discharge conditions must be made by formal application. Fees are £116 per request (or £34 where the related permission is for extending or altering a dwellinghouse or other development in the curtilage of a dwellinghouse). Please note that requests made without the appropriate fee will be returned unanswered.

There may be a requirement for the approved development to comply with the Building Regulations. Please contact Hertfordshire Building Control (HBC) on 0208 207 7456 or at buildingcontrol@hertfordshirebc.co.uk who will be happy to advise you on building control matters and will protect your interests throughout your build project by leading the compliance process. Further information is available at www.hertfordshirebc.co.uk.

Community Infrastructure Levy (CIL) - Your development may be liable for CIL payments and you are advised to contact the CIL Officer for clarification with regard to this. It is a requirement under Regulation 67 (1), Regulation 42B(6) (in the case of residential annexes or extensions), and Regulation 54B(6) (for self-build housing) of The Community Infrastructure Levy Regulations 2010 (As Amended) that a Commencement Notice (Form 6) is submitted to Three Rivers District Council as the Collecting Authority no later than the day before the day on which the chargeable development is to be commenced. DO NOT start your development until the Council has acknowledged receipt of the Commencement Notice. Failure to do so will mean you will lose the right to payment by instalments (where applicable), lose any exemptions already granted, and a surcharge will be imposed.

Care should be taken during the building works hereby approved to ensure no damage occurs to the verge or footpaths during construction. Vehicles delivering materials to this development shall not override or cause damage to the public footway. Any damage will require to be made good to the satisfaction of the Council and at the applicant's expense.

Where possible, energy saving and water harvesting measures should be incorporated. Any external changes to the building which may be subsequently required should be discussed with the Council's Development Management Section prior to the commencement of work.

- 12 The applicant is reminded that the Control of Pollution Act 1974 allows local authorities to restrict construction activity (where work is audible at the site boundary). In Three Rivers such work audible at the site boundary, including deliveries to the site and running of equipment such as generators, should be restricted to 0800 to 1800 Monday to Friday, 0900 to 1300 on Saturdays and not at all on Sundays and Bank Holidays.
- 13 The Local Planning Authority has been positive and proactive in its consideration of this planning application, in line with the requirements of the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015. The development maintains/improves the economic, social and environmental conditions of the District.