

**17 DCCE2005/2442/F - REMOVAL OF CONDITION 3 OF
PLANNING PERMISSION CE2000/0855/F J D
WETHERSPOONS 49-53, COMMERCIAL ROAD,
HEREFORD, HEREFORDSHIRE, HR1 2BP**

**For: J D Wetherspoon PLC, Hephher Dixon, 100 Temple
Chambers, Temple Avenue, London, EC4Y 0HP**

Date Received: 25th July, 2005 Ward: Central

Grid Ref: 51386, 40213

Expiry Date: 19th September, 2005

Local Member: Councillor D.J. Fleet

1. Site Description and Proposal

1.1 The site is located on the southern side of Commercial Road near the junction with Union Walk in Hereford City. A pitched roof brick building occupies the majority of the site which is used as a public house known as The Kings Fee. A vehicular access runs to the east leading to a service yard and outside seating area to the rear (south). The site lies within a Conservation Area, an Area of Archaeological Importance and the Central Shopping Area with the frontage being designated as Secondary Shopping Frontage as defined in the Hereford Local Plan.

1.2 Planning permission was approved on appeal on 30th January, 2001 for a new public house subject to conditions. Condition 3 states that:

The premises shall not be open to customers outside the hours of 8am to midnight on any day.

1.3 This application seeks the removal of Condition 3.

2. Policies

2.1 Planning Policy Statement 6 – Planning for Town Centres
Circular 11/95 – The Use of Conditions in Planning Permissions

2.2 Hereford Local Plan:

ENV17 - Safety and security
CON12 - Conservation areas

2.3 Herefordshire Unitary Development Plan (Revised Deposit Draft):

DR13 - Noise
TCR1 - Central shopping and commercial areas
TCR2 - Vitality and viability
HBA6 - Development within conservation areas

3. Planning History

- 3.1 CE2002/2353/A - Illuminated fascia sign, two projecting signs, applied lettering, amenity boards and menu boxes. Advertisement Consent approved 15th January, 2003.
- 3.2 CE2002/2352/F - Alterations to front, side and rear elevations. Approved 7th January, 2004.
- 3.3 CE2001/1591/F - Alterations to front and rear elevations. Approved 16th August, 2001.
- 3.4 CE2000/0855/F - Application to form new public house including alterations to existing facade, two storey rear extension and external beer garden to rear. Approved on appeal (APP/W1850/A/00/1049412) 30th January, 2001.

4. Consultation Summary

Statutory Consultations

- 4.1 West Mercia Police: No comments received.

Internal Council Advice

- 4.2 Traffic Manager: No objection.
- 4.3 Conservation Manager: The proposal will have minimal impact on Hereford's Built Heritage and therefore will be acceptable.
- 4.4 Environmental Health and Trading Standards Manager: Whilst the reasons for the condition to restrict opening times remain valid, I am of the opinion that in this instance the new licensing regime should provide adequate controls. I therefore do not wish to make any objection to this application.

5. Representations

- 5.1 Hereford City Council: Hereford City Council is opposed to this application being granted. The reason for the condition remains unaltered.

6. Officers Appraisal

- 6.1 Planning permission was approved on appeal on the 30th January, 2001 for a public house subject to conditions. Condition 3 states that the premises shall not be open for customers outside the hours of 8am to midnight on any day. The reason for the condition given in the Planning Inspector's explanatory comments on conditions states that: *"In the interests of crime prevention and the amenities of nearby occupiers I shall impose conditions regarding hours of use..."*.
- 6.2 On the 24th November, 2005, the Licensing Act 2003 will come into force. This act removes standard licensing hours enabling licensed premises to apply to remain open for longer. In fact, it is stated that the act should:

"...enable flexible opening hours for premises, with the potential for up to 24 hours opening, seven days a week, subject to consideration of the impact on local residents,

businesses and the expert opinion of a range of Authorities in relation to licensing objectives. This will help to minimise public disorder resulting from fixed closing times". (Licensing Act 2003)

6.3 The four licensing objectives referred to in the above quote which underpin the new act are:

1. The prevention of crime and disorder;
2. Public safety;
3. The prevention of public nuisance; and
4. The protection of children from harm.

6.4 Two premises in the locality have already been granted a license to open until at least 3am on most days (O'Neils and Play Nightclub) with all other public houses and nightclubs and some late night takeaways applying for similar operating hours. Wetherspoons have requested under their license application to be open to the public from 7am till 1.30am Sunday to Thursday and 7am to 3am Friday and Saturday. However, in order for the requested hours to be implemented, if permitted, it is necessary for the relevant planning condition to be removed.

6.5 The condition was clearly felt reasonable and necessary by the Planning Inspector in allowing the appeal decision and the need for some control over operating hours still applies. Circular 11/95 entitled 'The Use of Conditions in Planning Permissions' provides guidance as to the appropriate use of conditions or as in this instance, circumstances where it is appropriate for a condition to be removed.

6.6 A condition should only be retained on a planning permission where it is 1) necessary, 2) relevant to planning, 3) relevant to the development to be permitted, 4) enforceable, 5) precise, and 6) reasonable in all other respects. There is no doubt that the condition meets criteria 2 to 6 of the relevant legislation. The issue for consideration is essentially whether the condition is necessary. In this regard, the Circular states:

"Other matters are subject to control under separate legislation, yet also of concern to the planning system. A condition which duplicates the effect of other controls will normally be unnecessary, and one whose requirements conflict with those of other controls will be ultra-vires because it is unreasonable." (Circular 11/95, par. 22)

A condition cannot be justified on the grounds that a concurrent control (in this instance the Local Planning Authority as the licensing authority) is not permanent but is subject to expiry and renewal as is the case with licenses.

6.7 The Circular also states where other controls are available, a condition may, however, be needed when the considerations material to the exercise of the two systems of control are substantially different. In this instance one of the key reasons for imposition of the condition as outlined in the Planning Inspector's appeal decision i.e. crime prevention is one of the principle objectives of the new licensing regime. However, protection of amenity is a related but separate matter. There are a number of residential properties in the locality but many are near to or even above other licensed premises which do not have their hours restricted by planning conditions. It is therefore considered that the removal of the condition will not cause any significant change in local residents amenities.

6.8 Finally, the Circular states:

“The argument that a condition will do no harm is no justification for its imposition; as a matter of policy, a condition ought not to be imposed unless there is a definite need for it”. (Circular 11/95, par 15)

6.9 There is therefore insufficient basis to refuse permission on residential amenity grounds and the licensing process will deal with crime and disorder issues. The requirements of Policies ENV 17 of the Local Plan and Policy DR13 of the UDP are therefore satisfied. As such, the condition is no longer needed. The view is supported by the Environmental Health and Trading Standards Manager who does not object to the application.

6.10 Notwithstanding that the condition is no longer considered to be necessary, the longer opening hours requested will place an additional burden on the operation of the existing CCTV system within Hereford generally and on Commercial Road in particular. The existing system does not operate 24 hours and in this particular part of town is only manned until 3am. Wetherspoons along with many other bars and clubs are requesting to remain open until at least 3am which will therefore necessitate the existing CCTV operations to be extended by a minimum of 2 hours and subject to resources, operated 24 hours. Whilst Wetherspoons have their own CCTV security on the premises itself, it is considered reasonable that they along with other bars and clubs contribute towards the continued and extended operation of CCTV in their respective parts of Hereford. Therefore, an annual financial contribution is requested for this purpose. No response has been received from Wetherspoons as yet and therefore a delegated recommendation is required in order that the possibility of a financial contribution under Section 106 of the Planning Act can be discussed and negotiated.

RECOMMENDATION

That Officers named in the Scheme of Delegation to Officers be authorised to negotiate the possibility of a financial contribution towards the operation of CCTV in the locality of the application site and if agreement is reached;

The County Secretary and Solicitor be authorised to complete a planning obligation/unilateral undertaking under Section 106 of the Town and Country Planning Act 1990; and

Upon completion of the planning obligation the Officers named in the Scheme of Delegation to Officers be authorised to issue planning permission.

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.

