

**9 DCCE2005/2024/F - APPLICATION TO VARY  
CONDITION 1 OF PLANNING INSPECTORS APPEAL  
DECISION CE2000/0448/F TO ALLOW OPENING  
BEYOND 1:30 A.M. AT PLAY NIGHTCLUB, 51-55 BLUE  
SCHOOL STREET, HEREFORD, HR1 2AR**

**For: Mr. Reynolds per R & B Leisure Ltd, 51-55  
Blueschool Street, Hereford, HR1 2AR**

**Date Received: 17th June, 2005    Ward: Central    Grid Ref: 51232, 40231**

**Expiry Date: 12th August, 2005**

Local Member: Councillor D.J. Fleet

**1. Site Description and Proposal**

1.1 The site is located north of Blueschool Street in between Kwik Fit Tyres to the west, Franklin Barnes building to the south east and adjacent to the Commercial Square junction. A detached two storey brick building occupies the majority of the site which is used as a nightclub known as Play. North east of the site are further commercial premises and the northern boundary is bordered by Catherine Street, to the north of which is a development of affordable housing completed approximately three years ago. The site lies within a Conservation Area and is also designated as an Area of Archaeological Importance.

1.2 Planning permission was approved on appeal on 30th August, 2000 for the extension of opening hours at the night club. The Inspector in allowing the appeal imposed a new restriction on opening hours as follows:

"The use hereby permitted shall not be open to customers outside the following hours: Monday to Thursday midnight to 0100 hours and 0800 to 2400 hours, Friday to Sunday midnight to 0130 hours and 0800 to 2400 hours".

The applicants now seek to vary this condition to enable the club to open as follows: Monday to Wednesday/Thursday(AM) 10am to 3am, Thursday to Saturday/Sunday (AM) 10am to 4am and Sunday/Monday(AM) 12 noon to 2am except on Bank Holiday Sundays which would be to 3am. Exceptions to this are New Years Eve through to New Years Day to have 24 hour opening and Christmas Eve to be able to open from 12 noon to 2am on Christmas Day.

**2. Policies**

2.1 Planning Policy Statement 6 – Planning for Town Centres  
Planning Policy Guidance 24 – Planning and Noise  
Circular 11/95 – The Use of Conditions in Planning Permissions

2.1 Hereford Local Plan:

ENV17                    -                    Safety and security

CON12 - Conservation areas

2.2 Herefordshire Unitary Development Plan (Revised Deposit Draft);

DR2 - Land Use and Activity  
DR13 - Noise  
TCR1 - Central shopping and commercial areas  
TCR2 - Vitality and viability  
HBA6 - Development within conservation areas

### 3. Planning History

- 3.1 DCCE2005/1013/F Variation of Condition 1 of Planning Permission CE2000/0448/F. Application withdrawn 17th May, 2005.
- 3.2 CE2004/2436/F - Continued use as a nightclub, Approved 21st September, 2004.
- 3.3 CE2000/0448/F - Variation of Condition 5 of HC/960403/PF/E to allow opening from 0800 until 0130. Allowed on Appeal 30th August, 2000.
- 3.4 CE2000/0447/F - Variation of Condition 5 application HC/960403/PF/E to allow opening from 0800 until 2am. Appeal dismissed 30th August, 2000.
- 3.5 CE1999/2884/F - Variation of condition allowed by planning permission CE1999/1607/F to allow opening on 0800-0330 on 31 December 1999 and 01 January 2000 only, Approved 8th December, 1999.
- 3.6 CE1999/1697/F - Variation of condition 2 of planning permission HC/970260/PF/E and condition 5 of planning permission HC/96/0403/PF/E to allow opening from 0800-0100, Approved 9th September, 1999.
- 3.7 HC97/0260/PF - Variation of condition 5 of planning permission HC/960403/PF/E to allow opening from 0800 – 0100, Approved 14th August, 1997.
- 3.8 HC96/0403/PF/E - Change of use from workshop to A3 food and drink with ancillary accommodation, Approved 1st May, 1997.

### 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 would have no impact on the Conservation Area and is therefore acceptable.
- 4.4 Environmental Health and Trading Standards Manager:

"I visited Play nightclub on 30th September, 2005 and viewed and discussed the works that have been carried out on the building in an attempt to improve sound insulation and reduce the noise emitted from the club. I have also read the acoustic report by Ambient Acoustics dated 9th September 2005 and visited the rear of the club on the morning of Friday 1st October 2005 to witness the current level of noise.

I do not entirely agree with the conclusions drawn in the acoustic report and having looked at the submitted figures feel the difference between the open and closed levels are closer to 5dBA than the reported <2dBA. The noise report also refers to Document PPG24, however, this guidance is for applications near transport-related noise sources and therefore cannot be used as a comparison in this case. Any comparisons made would be misleading as the noise exposure time used in PPG24 is over a period of 8 hours (23.00 - 07.00) and as Play is currently only open until 01.30, the noise source is only present 31.25% of the total assessment time, making the result biased. In addition the guidance clearly states '*the NEC procedure is only applicable where consideration is being given to introducing residential development into an area with an existing noise source, rather than the reverse situation*'. In this case the residential development is already in place and therefore this guidance is not relevant to the application that has been submitted.

Although the level of noise has reduced following my previous visit to the rear of the premises in May 2005 I still have concerns regarding the noise impact the proposed extended hours will have on the occupiers of the residential properties in Catherine Court. During my visit to the rear of play on the 1st October 2005, the base could clearly be heard to the rear of Play and outside the flats of Catherine Court. However, taking into account the levels measured in the acoustic report and the planned work to improve further the sound insulation at the premises, I am satisfied that should any complaints be received in the future that these can be dealt with using the powers of the new Licensing regime and the Environmental Protection Act 1990.

## **5. Representations**

- 5.1 Hereford City Council: Sees no reason to vary extended condition and therefore opposes the application.
- 5.2 Conservation Advisory Panel: Members of the Panel thought the application would be detrimental to the area and the city.
- 5.3 Two letters of objection have been received one from Mrs. Elizabeth Telling, 17 Catherine Court which is also accompanied by a petition with 12 signatures and a letter from Brian C.W. Hubbard, (Deacon for Hereford Baptist Church on Commercial Road) of 52 Dorchester Way, Belmont. The main points raised are:
  - Various degrees of disturbance and noise nuisance from the Club arising from the noise of the music and the base beat, rear door of the Club being left open allowing noise to travel through to Catherine Court, occasional drunken brawling in the vicinity of the Club, noise from customers and staff leaving the Club. This all causes general disruption to sleep particularly in the summer when there is the need to have windows open.
  - Extended hours will increase the number of alcohol related crime and disorder incidents in the vicinity of the Club.

- The original noise survey was undertaken on a night when the Club was not particularly busy and the results may be misleading as the Club would be aware that the noise emissions were being recorded.
- The noise intensifies the higher up you go, this has meant us not being able to sleep in the bedroom on the third floor for 18 months.
- I assist in running the Night Shift Project on Saturday nights between 11pm and 3am at the Church which provides a safe place for people to sober up and wait for a taxi etc. Most of the visitors to the Night Shift emanate from Play and longer drinking hours will lead to greater consumption of alcohol, more yobish behaviour, damage to property general crime and disorder and poor health.

5.4 The full text of these letters can be inspected at Central Planning Services, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

## 6. Officers Appraisal

6.1 Planning permission was granted on appeal on the 30th August, 2000 to vary Condition 5 of application HC960403/PF/E. Condition 5 was attached to the original planning permission for Play Nightclub and restricted opening hours from 8am until midnight. The appeal allowed a variation to enable the Club to effectively open until 1am Sundays to Thursdays and 1.30am on Fridays and Saturdays. The reasoning for the condition was based on crime and disorder issues rather than residential amenity.

6.2 The applicants now seek planning permission to vary this condition to enable them to effectively remain open until 3am Monday to Wednesday, 4am Thursday, Friday, Saturday, 2am on Sunday. The exception to these opening times would be Bank Holiday Sundays where they will remain open until 3am, New Years Eve running into New Years Day to remain open 24 hours and Christmas Eve to remain open until 2am.

6.3 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)

6.4 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.

6.5 A number of licensed premises in the locality have already been granted a license to open until at least 3am on most days with most other public houses and night clubs and late night takeaways applying for similar operating hours. Play has also been granted their license for the hours requested under this application.

- 6.6 The condition controlling operating hours 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.
- 6.7 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.
- 6.8 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.
- 6.9 The nearest residential properties whose amenity may be affected by the extension of hours are located to the rear (north) of the Club fronting onto Catherine Street. This development known as Catherine Court was approved in 2000 with the nearest properties being around 20 metres from the rear of the Club. In view of concerns over the potential disruption to amenity principally as a result of noise emanating from the Club, the applicants were required to undertake a noise survey including carrying out on site noise monitoring. The report has been assessed by the Head of Environmental Health whose inclusions are contained within Par. 4.4 of the report. In summary, whilst the noise emanating from the Club will be above the existing background noise levels, the difference (2-5 dBA) is such that there is unlikely to be any unacceptable disruption to amenity. If complaints are made in the future as a result of the extended hours, powers under the Licensing Act and Environmental Protection Act are sufficient to control any possible nuisance.
- 6.10 In recognising the need to be a "good neighbour", the owners of the Club have undertaken a number of measures in recent years to reduce the audible noise to the rear of the Club. These include blocking up of most openings on the rear elevation, provision of double glazing for all window openings that remain, additional insulation on all internal and external doors, additional sound proofing to walls and they also propose to provide further insulation to the loft and roof including the provision of acoustic felt to minimise any noise travelling through the roof which appears to be of particular concern of one objector.
- 6.11 The Planning Inspector in allowing the appeal in 2000 to enable the Club to remain open until 1.30am also summarises the situation as follows:

"I appreciate that the Council is concerned about noise and related disturbances that can arise from the normal activities associated with leaving this type of premise. The Council have in mind the possible future occupiers of residential accommodation that may be built on land behind the appeal premises. This noise and disturbance will arise whatever the closing time is and will be heard against the background of general traffic and other noise in the area. Also, the premises can already remain open until late at night and if the Council grant planning permission for residential development on land to the rear it must presumably be satisfied that late departures from the premises would not adversely affect the living conditions of the occupiers of such dwellings".

- 6.12 Therefore, whilst the concerns of local residents are appreciated, the information and evidence provided by the applicants and assessed by the Council's noise experts indicate that the extended opening hours will not lead to any unacceptable disruption to the amenity of nearby residents and therefore the requirements of Policies ENV17 of the Hereford Local Plan and DR13 of the Herefordshire Unitary Development Plan (Revised Deposit Draft) are satisfied. However, the hours granted under Play's new licence are less than that which is applied for under this application largely due to concerns expressed by the police. It is therefore considered reasonable that the opening restrictions under both the licence and this planning application are the same, which will also further reduce any impact on the amenity of residents in the locality.
- 6.13 Notwithstanding the acceptance of the application, the longer opening hours requested will place an additional burden on the operation of the existing CCTV system within Hereford generally and on the Commercial Square area in particular. The existing system does not operate 24 hours and in this particular part of town is only manned until 3am. Play 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 Play 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. 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 subject to the following condition and any further condition(s) considered necessary by officers.**

**The use hereby permitted shall only be open to customers during the following hours:**

**Monday 1000 hours to Tuesday 0330 hours;  
Tuesday 1000 hours to Wednesday 0200 hours;  
Wednesday 1000 hours to Thursday 0200 hours;  
Thursday 1000 hours to Friday 0330 hours;  
Friday 1000 hours to Saturday 0330 hours;  
Saturday 1000 hours to Sunday 0330 hours;  
Sunday 1200 hours to Monday 0230 hours (except Bank Holiday Sunday until Monday 0300 hours);  
These hours will apply with the exception of Christmas Day 0200 hours, New Years Eve 1100 hours to New Years Day 2300 hours.**

**Reason: In order to protect the amenity of occupiers of nearby properties and to define the terms of the permission.**

Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.

