



COMMITTEE DATE 20/07/2022 **WARD** Hucknall North

APP REF V/2022/0299

APPLICANT L Westerman

PROPOSAL Application to remove condition 2 – sound amplifying equipment of planning permission V/2019/0728.

LOCATION 4A, Annesley Road, Hucknall, Notts, NG15 7AB

WEB-LINK <https://www.google.co.uk/maps/place/Havana+Blue/@53.039911.2053069,17z/data=!3m1!4b1!4m5!3m4!1s0x487995dcd125ac2f:0xb97acd77fb9c56eb!8m2!3d53.03991!4d-1.2053069?hl=en-GB>

BACKGROUND PAPERS A, B, E

App Registered 13/04/2022

Expiry Date 07/06/2022

Consideration has been given to the Equalities Act 2010 in processing this application.

This application has been referred to Planning Committee by Cllr Hennigan to discuss impact on the street scene and impact on residential amenity.

The Application

This is an application for Application to remove condition 2 – sound amplifying equipment of planning permission V/2019/0728.

Consultations

A press notice has been posted along with individual notification of surrounding residents. During the process it was found that the application reference number referred to in the description was not the latest approved application and needed amending. Once the description was amended a re-consultation was undertaken.

Residents:

1st consultation

6 letters of objection have been received raising the following:

- Parking issues, patrons parking on pavement and junctions
- Extended opening hours could cause further parking issues
- Noise already unbearable

- Flashing lights and flood light come from property
- Already nuisance
- Cannot have windows open
- Disturbed sleep, ear plugs needed
- Patrons gather outside whilst open and after closing
- Loud intoxicated customers walking street
- Different to those located on pedestrianized area which are surrounded by more business than residential
- Impact resident well being
- Disturbance to residents
- Homes were there before the bar
- Rear service door and front entrance used frequently
- Volume of music will increase as doors open
- Venue will go from no noise to as loud as other bars on high street
- Has acoustic testing been done with doors open

7 letters of support were received raising the following:

- Owners are considerate and approachable
- No bottles smashed into bins at night anymore
- Security light rarely comes on
- Owners don't park on street
- Other pubs, clubs have music
- Support local businesses
- Feel safe at this pub
- Noise expected from town centre
- No issue with bar
- Previous issues have been resolved
- Bar would not contribute excessively to existing noise in area
- No issue with noise
- No issue with people leaving

2nd Consultation

2 letters of objection have been received raising the following:

- Experience rowdy people
- Vandalized cars
- Environmental health were involved when the previous pub was open and playing music which was deemed too loud
- Noise unbearable already
- Cant have windows open
- Have to sleep in ear plugs
- Patrons gather outside

ADC Environmental Health:

1st Consultation

- Newly submitted Environmental Noise conducted by E2 consultant addresses some of the outstanding comments made in the planning inspectors dismissal

of the appeal related to V/2019/0575 and comments made by ADC Environmental Health on withdrawn application V/2022/0023

- Noted the mitigation measures in place as part of the assessment which included windows remained closed, doors remained closed excluding the existing and entering of patrons and noise limiter set to 80-82dB
- Combination of measures implemented by the applicant is suggested in the supporting statement to indicate that the playing of amplified music will not impact the existing background noise levels and will not result in a detriment to residential amenity
- Minded to accept the conclusion of the Acoustic Consultants and recommend removal of the condition subject to all of the control measures referenced in the report being implemented in full and retained thereafter.
- Notwithstanding the comments above the music noise level is relatively low for music lead entertainment and it is a concern that this may be lower than what is desired by patrons.
- Music noise level may present practical difficulty to manage when patrons desire higher level of noise immersion during such events.

2nd Consultation

- E2 Environmental Noise consultants completed a noise survey of music being played through the noise limiting systems which included:
 - o Windows to remain closed and sealed,
 - o Doors to remain closed excluding the existing and entering of patrons and
 - o The noise limiter machine set to 80-82dB
 - o The noise limiter would only limit sounds emitted via electronic means and would not consider non amplified acoustic instruments and live vocals and singing etc.
- Music noise level may present practical difficulty to manage when patrons desire higher level of noise immersion during such events.
- If the mitigation measures are adhered to, this should suitably abate nuisance in theory.
- Notwithstanding the comments above the music noise level is relatively low for music lead entertainment and it is a concern that this may be lower than what is desired by patrons.
- Previous history of the premises in 2018 and then under new management in 2019 resulted in complaints about noise and general disturbance and music which affected the residential amenity of the area.
- On that basis, it is believed that there may be an increased level of complaints about this venue due to the proximity of it to residential dwellings and in particularly taking into account the proposal of entertainment until midnight.

Policy

Having regard to Section 38 of the Planning and Compulsory Purchase Act 2004 the main policy considerations are as follows:

Ashfield Local Plan Review (ALPR) (2002)

ST1 – Development

ST2 – Main Urban Area

SH1 – District Shopping Centre

National Planning Policy Framework (NPPF) (2021)

Part 2 – Achieving sustainable development

Part 6 – Building a strong, competitive economy

Part 8 – Promoting Healthy and safe communities

Part 12 – Achieving well designed places

Relevant Planning History

V/2017/0616 - Change of use from A1 to A4 – Cocktail and Prosecco Bar –
Conditional

V/2018/0735 - Application to vary condition 4 of planning permission V/2017/0616 –
to alter opening hours to 18:00PM to 23:00PM Monday to Thursday, 17:00PM to
00:00AM Friday, 12PM to 00:00AM Saturday, 12PM to 23:00PM Sunday and
Closing hours for Christmas Eve and New Years Eve 1AM – Conditional

V/2019/0407 - Application to Vary Condition 3 of Planning Permission V/2018/0735 -
Alter Opening Hours to 12:00pm - 01:00am Monday to Saturday and 12:00pm -
00.0am Sunday – Refused

V/2019/0575 – Application to remove condition 2 of V/2018/0735 – To allow sound
amplifying equipment – Appeal Dismissed

V/2019/0728 - Application for a Variation of Condition 3 of Planning Permission
V/2018/0735 - to Alter Opening Hours to 12.00pm to 23.00pm Monday to Thursday
and 12.00pm to 00.00am Fridays, 12.00pm to 00.00am Saturdays and 12.00pm to
23.00pm Sundays – Conditional

V/2022/0023 – Remove Condition 2 of Planning Permission V/2018/0735 – To Allow
Sound Amplifying Equipment - Withdrawn

Comment :

The Site

The application site is located on Annesley Road in the main urban area of Hucknall. Although the site falls within the designated district shopping centre boundary it is located within a predominantly residential area. There are residential properties located opposite, above and to the rear of the site.

Planning permission was granted in 2017 for the change of use for the premises from retail to a cocktail and prosecco bar (V/2017/0615). As part of this permission a condition was placed on the decision restricting sound-amplifying equipment stating the following:

‘(3) No sound-amplifying equipment shall be installed within the hereby approved premises, with only background/acoustic music to be played in the main bar area’,

In 2018 planning permission was granted (V/2018/0735) to extend the opening hours. This allowed the premises to be open on Christmas Eve and New Years Eve. The above condition restricting sound-amplifying equipment was again applied. Planning applications were submitted in 2019 (V/2019/0407 and V/2019/0575), one was to vary the opening hours under condition 3 of V/2018/0735 and one was to remove condition 2 of V/2018/0735. Both applications were refused however the applicant appealed against the refusal of removing condition 2 and the appeal was dismissed.

Further to these two applications another application was submitted (V/2019/0728) to vary condition 3 of V/2018/0735 and extend the opening hours of the business. This application was granted condition consent. The above-mentioned condition restricting sound amplifying equipment was included on the conditional consent.

Similar Uses in the Vicinity

There are a number of similar small scale bars within Hucknall that have all forms of sound-amplifying equipment restricted by condition because of their location in a predominantly residential area. For example:

- ‘Damo’s’ 30a Annesley Road (V/2017/0091)
- ‘Baker and Bear’ 19 Watnall Road (V/2019/0084)
- ‘The Hideout’ 2 Yorke Street (V/2018/0101)
- ‘Door 57’ 57 Nabbs Lane (V/2019/0401), Application V/2020/0148 to allow background music refused

Whereas sites located in more central Hucknall locations that are not located in predominantly residential areas, do not require sound-amplifying equipment to be restricted. For example:

- 'Byron's Rest' 8 Baker Street (V/2016/0789)
- 'H20' 76-78 High Street (V/2012/0207)

Main Considerations

The main issues to consider in the determination of this application are:

- Principle of Development
- Residential Amenity

Principle of Development

Policy ST1 of the Ashfield Local Plan Review (2002) sets out that development will be permitted where it does not adversely affect the character, quality amenity or safety of the environment. This is also reflected in paragraph 130 of the National Planning Policy Framework (2021), which seeks to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Residential Amenity

A number of letters of support and objection have been received from residents in the local area. The letters of support suggest that there are no current issues with noise from the bar, patrons and parking issues. They have commented that the owners are considerate and have resolved any previous issues and that the bar would not contribute excessively to the existing noise in the area. They have also commented that other pubs are allowed it and allowing sound-amplifying equipment would support a local business. As raised above there are other situations where bars in predominantly residential areas have a condition to stop the use of sound-amplifying equipment therefore it is considered that the restriction is not unreasonable to protect the amenity of nearby residents.

The letters of objection raise various concerns surrounding increased on street parking, increased noise, increased disturbance and impact on wellbeing of residents. Comments raised that residents cant have their windows open, have to sleep with ear plugs in and experience noise and vandalism from patrons. The letters have also raised that the noise increases when the doors to the premises are opened and they already experience noise and disturbance from the property.

Sound-amplifying equipment consist of a number of forms which include: live music performances, live sport played via televisions, pub quiz, bingo nights and karaokes. All forms of sound amplifying equipment result in intermittent bursts of noise which are uncontrollable.

As part of the application a supporting statement and noise assessment were submitted. The noise assessment confirmed that the applicant has installed a noise limiter which is proposed to be set at 80-82dBA. It also sets out different measures the applicant has taken such as insulation to mitigate against potential noise. The assessment was carried out by playing amplified music within the premises.

Ashfield District Councils Environmental Protection team were consulted as part of the process and have reviewed the submitted information. They have commented that they are minded to accept the conclusions of the submitted report. However further comments were provided which outlined that previous complaints had been made in relation to noise, disturbance and music at the property. They also commented that the music noise levels may present a practical difficulty to manage when patrons desire higher levels of noise and that the proposed music noise level is relatively low for music lead entertainment and it is a concern that this may be lower than what is desired. The additional comments concluded that it is believed that there may be an increased level of complaints about the venue due to the proximity of it residential dwellings especially taking into account the proposal of entertainment until midnight.

The level of sound was queried with the agent and they confirmed in a an email that the noise limiter is already installed and the applicant is happy with the level of sound, as this is the max output of the sound system installed.

Whilst it is acknowledged that the noise assessment claims that the proposed sound-amplifying equipment would not have a detrimental impact there are still concerns over the impact on residential amenity. The survey does not take into account sound-amplifying equipment required for entertainment events nor does it reflect noise disturbances generated by the comings and goings that would likely be exacerbated from the proposal.

The removal of this condition was applied for and dismissed at appeal in 2020(V/2019/0575). Within the decision the inspector reported that *“noise from the sound amplifying equipment when the doors to the premises are open was much greater. I find that the noise may be of a level that would be harmful to residents of nearby properties on Annesley Road, particularly in warmer months when windows may be open.”* The inspector also recognised that noise spill from customers entering and existing the property would not last for an extended time and would be restricted to the opening hours of the business. However the inspector raised the point that there is no guarantee that the doors would remain shut throughout the use of the equipment and at busy times could be opened and closed frequently resulting in the potential to cause harm to the living conditions of neighbouring resident.

The concerns raised by the inspector are considered to still be valid even with the submission of the new noise assessment and were also one of the points raised by objecting residents. Due to the concerns around the level of noise when opening and closing the door it was queried with the agent whether a lobby could be provided within the premises to mitigate against some of the impact. The agent confirmed in an email that the applicants have explored the possibility of forming a lobby area however to ensure it meets building regulations etc this would take a significant area of the property which would make it not viable. They also confirmed that all doors are fitted with closers and can not be left open. There are also doormen in the evening

who ensure the doors are closed when not being used so that people cannot hold them open for prolonged periods of time.

Whilst it is acknowledged that the doors are self closing there is still potential for them to be opened frequently. It is also acknowledged that the door men will do their best to keep the doors shut. However it is considered that these mitigation measures would not stop the impact that the sound-amplifying equipment would have on the amenity of nearby residents and there may be instances when the doormen cannot stop the door from being opened.

In addition to the above the application site benefits from extended opening hours within a predominantly residential area. As such whilst the local planning authority have recognised the need to support local businesses, this need does not outweigh the significant impact that allowing sound amplifying equipment would have on the amenity of neighboring properties.

Conclusion :

The removal of condition 2 to allow sound amplifying equipment at the premises is considered to create an unacceptable level of additional noise and disturbance to neighbouring and nearby residential occupiers, to the detriment of their amenity and the enjoyment of their homes. A further condition ensuring a restrictor is in place could be imposed, but is this realistic in stopping noise being generated from the property. A restrictor would not stop the resulting singing and noise from patrons which would cause a disturbance especially each time when music or commentary cuts out.

It is therefore considered that the application does not accord with the relevant saved policies contained within the Ashfield Local Plan Review (2002), and also those outlined within the National Planning Policy Framework (2021). It is therefore recommended that this application is refused for the reason outlined below.

Recommendation: - Refuse Planning Permission

REASONS

- 1. The removal or variation of condition 2 of planning permission V/2019/0728, to allow sound amplifying equipment at the premises with a noise limiter will have a significant impact on the living conditions of nearby residents by virtue of additional noise and disturbance emanating from the premises, above what can reasonably be expected in a predominantly residential area. As such the proposal is contrary to policy ST1 of the Ashfield Local Plan Review 2002 which seeks to ensure that development will not adversely affect the character, quality or amenity of the environment and will not conflict with an adjoining or nearby land use. Furthermore the proposal would also be contrary to**

part 12 of the National Planning Policy Framework 2021 which seeks to ensure that development creates places that are safe, inclusive and accessible and which promote health and well-being with a high standard of amenity for existing and future users.