

Report to: PLANNING COMMITTEE **Date of Meeting:** 6th February 2019

Subject: **DC/2018/01439**
84 College Road, Crosby Liverpool, L23 0RP

Proposal: Variation of conditions 3 and 4 pursuant to planning permission S/2004/0096 (approved 30.03.2004) to allow the premises to operate as a restaurant open between 09:00 and 18:00 Monday to Wednesday and 09:00 to 22:00 Thursday to Sunday

Applicant: A.S.C BARS LTD **Agent:** Mr Bill Wadkin

Ward: Victoria Ward

Summary

The proposal seeks to allow the premises to operate within the wider A3 Use Class (restaurants and cafes) given that it is currently restricted to a coffee lounge only and for extended opening times. The main issues to consider are the impact a more extensive use and longer opening times would have on neighbouring residents and the general environment and matters relating to access, parking and highway safety.

Overall it is considered that the proposal is acceptable, the applicant has reduced the opening times on what was initially proposed and agreed to a condition preventing live/amplified music and entertainment. A detailed Noise Assessment has been submitted recommending enhanced soundproofing. It is not considered that comings and goings or external activities would significantly harm neighbouring residential properties. There are no highway safety concerns or unacceptable implications in terms of parking provision.

The proposal therefore complies with adopted local and national policy and is recommended for approval.

Recommendation: Approve with Conditions

Case Officer Mr Steven Healey

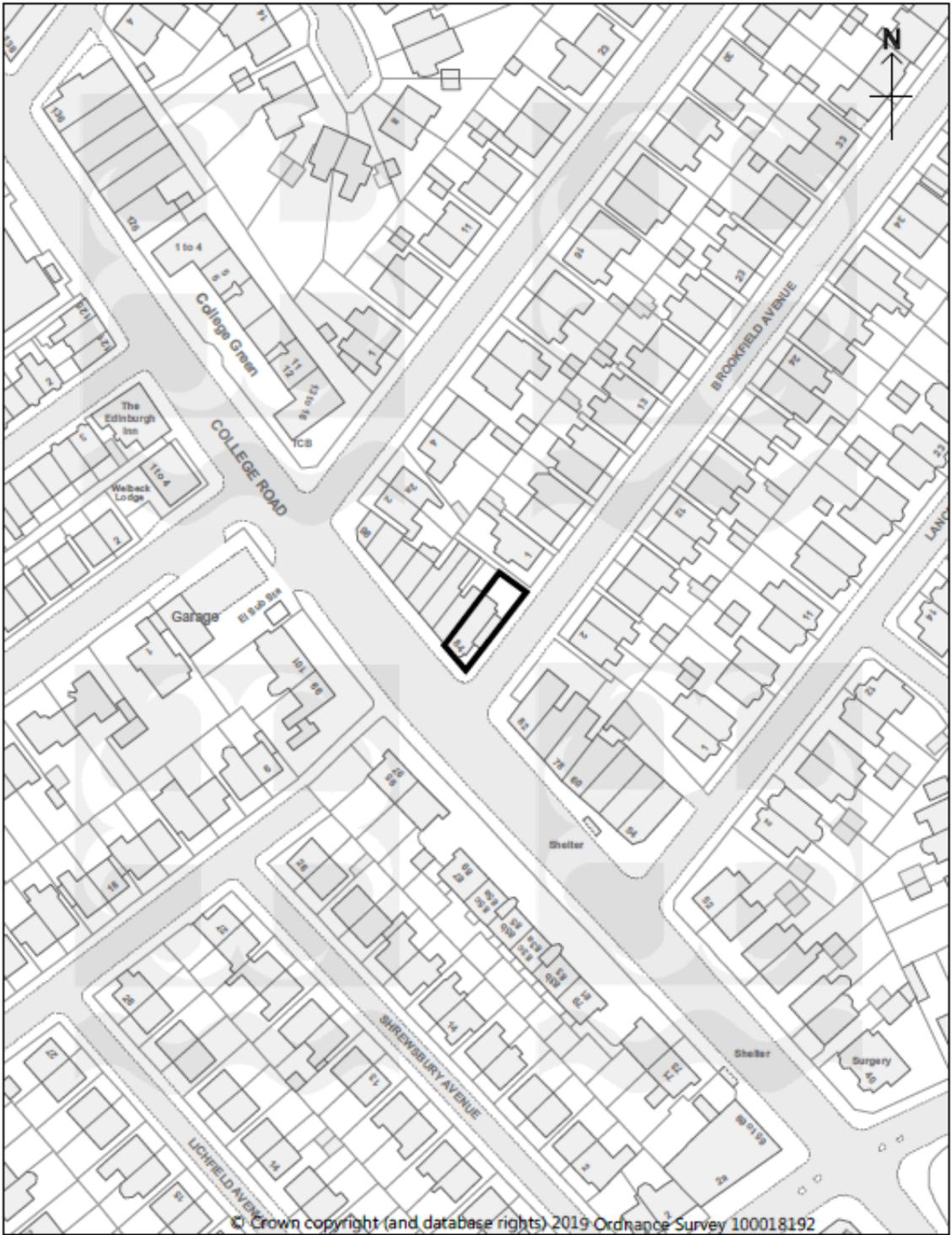
Email planning.department@sefton.gov.uk

Telephone 0345 140 0845 (option 4)

Application documents and plans are available at:

<http://pa.sefton.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=PCOEWDNW06900>

Site Location Plan



Sefton Council



Reference: Map reference
Date: 25/01/2019
Scale: Scale: 1:1250
Created by: Initials

The Site

The application site comprises the ground floor and external areas of 84 College Road which is located at the junction with Brookfield Avenue in Crosby. It features a distinctive lean-to conservatory and is currently occupied by 'Mustard & Co.' having been known as 'Olive Tree' for ten years previously.

History

Planning permission was granted in March 2004 to change the use of the ground floor from retail to a coffee shop (reference S/2004/0096). The application was granted subject to the condition that the premises only open for business between 10:00 and 18:00 hrs and that it shall only be used as a coffee shop and for no other Class A3 purpose.

Planning permission was granted in November 2006 for the erection of a conservatory to the side of the premises alongside an area of outdoor seating (S/2006/0856).

Planning permission was refused in September 2008 to vary the conditions attached to permission S/2004/0096 in order to allow the premises to operate as a bistro and extend the permitted opening times to between 09:00 and 22:00 (reference S/2008/0608). The application was refused due to noise and disturbance likely to be caused by comings and goings up to 22:00 hrs in the evening.

Consultations

Environmental Health

Based on the submitted Noise Assessment and subsequent correspondence with the applicant's noise consultants there is no objection to the proposal to vary conditions 3 and 4. The Noise assessment has used a relatively stringent target level of NR14 for noise break out from the premises in to the nearest sensitive receptor (first floor dwelling). The assessment indicates that noise mitigation would be required to achieve this standard and recommends an independent ceiling treatment which can be secured by condition.

The Noise Assessment accounts for background music however not for amplified music or live entertainment which may require a greater level of protection. Bottle bin collections often provoke complaints and as such the Environmental Health team investigate these concerns under the Environmental Protection Act 1990.

Based on the location it recommended that the outdoor seating area should be closed by 20:30/21:00. The kitchen extraction system details are acceptable.

Highways Manager

No objection as there are no highway safety implications. It is however noted that if the gates to the rear yard are to open onto the public highway as shown on the submitted plans this would be an offence under the Highways Act.

Neighbour Representations

58 signature petition (primarily signed by residents of Brookfield Avenue, Woodville Avenue and College Road) endorsed by Councillor Byrom was received by Planning Services on 30th August 2018. The reasons for opposing the application are 'a loss of residential amenity, noise and disturbance and increased on-street parking'. The same petition was also submitted to the Licensing Committee although this was granted by the Council on 18th October 2018.

Individual letters of objection received from four addresses on Brookfield Avenue, two on College Road and one on Woodville Avenue on the following grounds:-

- Late night noise and disturbance associated with comings and goings in a residential area with most of the premises fronting Brookfield Avenue
- Area is home to many elderly residents and families
- Possibility of music/entertainment, alcohol related rowdy behaviour and noise associated with emptying bottle bins in yard
- Increased demand for on-street parking worsening existing issues for residents and encouraging parking on pavements
- Application was refused in 2008 for extended hours, nothing has changed since however issues with noise and parking have worsened in area
- Premises is breaching existing permission by opening later and advertising alcohol sales on signage
- Kitchen extraction system already installed contrary to what is permitted and odour/smells are evident
- Poorly kept rear yard with rubbish piled up which is visible from the street given removal of gates and likely to attract vermin
- Issues regarding anti-social behaviour, urination and smoking in alley to rear of premises
- Numerous similar establishments in the area already with an increasing number which have worsened traffic and noise.
- Applicant's name 'A.S.C. Bars' indicates the intended activity and not a restaurant.

Policy Context

The application site lies within an area designated as residential in the Sefton Local Plan which was adopted by the Council in April 2017.

Assessment of the Proposal

The proposal is to vary an existing planning permission on site (*'Change of use of the ground floor of the premises to a coffee shop'*) to allow the premises to operate within the wider A3 Use Class (as a restaurant) with extended opening times Thursday to Sunday only between 09:00 and 22:00.

The applicant initially applied for a change of use to a bistro/bar. It subsequently emerged that the intended business model is for a restaurant with ancillary alcohol sales falling under Use Class A3. Given that the premises already benefit from a restricted A3 use a revised application was submitted to vary the existing permission. Firstly this sought extended opening times between 08:00 and 22:30 hrs. However, through further discussion with the Council, an alternative proposal was submitted seeking extended opening times Thursday to Sunday only between 09:00 and 22:00 hrs.

The diversified business model of the premises has already been implemented in the form of a rebranding from 'Olive Tree' to 'Mustard & Co.' External signage reads 'Breakfast, Brunch, Lunch, Coffee, Craft, Wine' and it is understood the premises are offering a variety of themed nights including an Italian menu.

The main issues to consider are the principle of development, impacts on local amenity and matters relating to access, parking and highway safety.

Principle of Development

The application site is situated within a Primarily Residential Area subject to Local Plan policy HC3, which only permits non-residential development when it can be demonstrated that an unacceptable impact will not be had on the living conditions of neighbouring properties and that the character of the area will not be harmed.

In terms of character, the College Road corridor consists of various commercial uses at ground floor level including the application site which has functioned as a food and drink establishment for some time. The proposal to diversify from solely a coffee lounge to a restaurant is considered to be consistent with the prevailing characteristics of the area. While there are similar businesses operating to the northern end of College Road there are no such dine-in restaurants within 100m of the application site. This indicates there would not be an unacceptable grouping of similar uses and the proposal would contribute towards the vitality and viability of the immediate parade in which it sits.

Impact on Neighbouring Residents

The application site occupies a corner plot where College Road meets Brookfield Avenue which is wholly residential. It is noted that permission was granted in 2004 to change the use of the premises from a vacant retail unit to a coffee shop while an application for extended opening times was refused in 2008. The premises are relatively small-scale with a seating capacity of around 30. A key consideration is noise and disturbance associated with both internal and external activities.

The previous application to extend opening hours at the premises was refused due to the proximity of residential properties and 'their reasonable expectation of relative quiet in the late evening'. While it is acknowledged the site is separated from the main commercial stretch of College Road there are in fact numerous established uses within close proximity

to the site which operate outside of standard business hours such a public house and Hot Food Takeaways - one of which has been through the planning system.

Since the 2008 decision there has been a distinct shift in the makeup of uses along College Road from a focus on retail to more food, drink and leisure uses which is a nationwide trend spurred by changing. This has ultimately led to more visitors to the area outside traditional business hours however there no evidence has been provided that cumulatively these are causing significant harm to the residential amenity of the area. It is thus not considered reasonable to single out the current proposal as unacceptable when there are other late evening and night time uses with similar relationships and proximities to residential properties including situations where such uses share party walls with residential properties.

Noise particularly fuelled by drinking and live entertainment has been cited as a cause for concern and, while rowdy and possibly anti-social behaviour is a legitimate concern, to refuse the application on this ground would have to be founded on strong evidence. Restaurants are only associated with such activities in exceptional situations and the focus of these premises on fresh high quality food is considered unlikely to attract individuals with the sole motivation to drink to excess. The alley to the rear of the premises is not directly accessible for patrons and is therefore unlikely to lead to anyone using it in ways which would harm the living conditions of adjoining residents.

In terms of general comings and goings 22:00hrs is considered a reasonable cut off point on weekdays given both the late evening and night time uses in the immediate vicinity and the changing dynamic of the area. This closing time has also been reduced from 22:30 hrs as was initially proposed. Recent planning approvals on College Road (Café V76 and Livin' Kitchen) are subject to 22:00 hrs closing times on weekdays, therefore it would not be appropriate to allow later here. It is noted the premises only have a licence for alcohol sales between 10:00 and 22:00 hrs daily. It is not considered that the proposal in combination with the nearby pub or Hot Food Takeaways would lead to an unacceptably greater level of noise and disturbance.

The applicant has submitted a Noise Assessment based on the proposed opening times and activities within. While the applicants secured Temporary Events Notices from the Licensing Committee during December 2018 and January 2019, live or amplified music and entertainment has not been factored in to the Noise Assessment. The applicant has however confirmed that their intention was only ever for such activities to take place on rare occasions and has agreed to a condition to be attached to any permission preventing this. The noise assessment does however consider background music and the noise levels created within a 'busy restaurant' environment. Subject to enhanced soundproofing between the premises and flat above it is considered that no harm would be caused to adjoining or neighbouring residential properties as a result of noise from the premises.

Environmental Health are satisfied with this approach and in terms of the outdoor seating area considers 20:30 hrs an appropriate cut off point to remove the furniture and ultimately discourage groups of people from staying outside. The report also makes

recommendations in terms of when bottle bins are emptied; it would be difficult to control this through planning. However given the infrequency with which this would occur, it is not considered to be a major issue. If this recommendation is not implemented, the Environmental Health Manager has the powers to investigate under possible Statutory Nuisance.

While the Council does not endorse development taking place without the appropriate permissions in place it is understood that the premises have been operating fully as a licensed restaurant with extended hours on various days (predominantly weekends at present) since at least mid-November 2018 and neither the Planning or Environmental Health Managers have received any complaints regarding noise or disturbance.

Overall it is considered that the proposal has not had, and will not have, an unacceptable impact on neighbouring properties by virtue of noise and disturbance. The character of the area has altered since the previous planning refusal on site and the applicant has worked proactively with Planning Services to seek solutions which were not considered during the previous application – these being the submission of a Noise Assessment supported by the Environmental Health and Planning Managers and a commitment to not hosting live events, entertainment or amplified music on site.

General Environmental Issues

A number of complaints have been received regarding odour. The applicant has submitted an odour risk assessment and statement advising that a 'domestic' extraction system has been installed based on the type of cooking taking place on site. Sample menus and photographs on social media indicate that there are no 'invasive' cooking techniques taking place (i.e. deep fat frying) which have the greatest potential to cause odour and smoke if not controlled effectively. The proposal certainly has no greater potential to cause odour than the nearby Hot Food Takeaways. The Environmental Health Manager has reviewed details of the extraction system which has been installed and considered the odour control in place is acceptable (i.e. filtration and fans).

The proposal makes provision for waste storage and recycling within the large rear yard which is considered acceptable. While residents have submitted evidence of the yard being poorly kept good waste management practices would resolve this. If managed properly there would be no unacceptable visual impacts. The Environmental Health Manager is able to intervene should this be causing harm or attracting vermin.

Access, Parking and Highway Safety

The Council's Highways Manager has raised no objection to the proposal. While there may be high demand for parking given the busy commercial nature of College Road, it is considered that sufficient capacity exists within the area to accommodate parking during the additional hours for which permission has been applied. This also reflects there would generally be less demand for parking into the evening.

There are double yellow lines which encompass the junction at College Road and Brookfield Road to prevent dangerous parking. The increase in vehicle movements associated with use of the premises as a small-scale restaurant into the evening/night would not be so significant as to cause ongoing disturbance to existing residents. The majority of trips are likely to be made via College Road as opposed to Brookfield Road which is the area's principal arterial road. This would blend in with existing traffic and patrons of the nearby Hot Food Takeaways especially.

Other Matters

It has been pointed out that the applicant's trading name includes the word 'bar'. However the application is for a restaurant with no 'vertical drinking' (i.e. standing in groups with an alcoholic drink), the menu is consistent with this. Any material change which results in drinking becoming the dominant use of the premises would require a change of use application.

Conclusion

Taking all of the above into account the proposal is considered acceptable. It is considered that, subject to conditions, there would be no unacceptable harm to neighbouring residents as a result of extending the permitted opening times while the Highways Manager considers there is sufficient parking to accommodate the proposal without causing harm to highway safety. The application therefore complies with adopted local policy and is recommended for approval.

Recommendation - Approve with Conditions

Approve with Conditions

Conditions

This application has been recommended for approval. The following conditions and associated reasons apply:

- 1) The development hereby granted must be carried out strictly in accordance with the following details and plans:- Block Plan (Drawing Number 18/45/02 Rev A) received by the Council on 30th July 2018, Proposed Floor Plan (18/45/02 Rev A) received on 23rd August 2018 and Equipment Specification contained within the Odour Control Risk Assessment received on 21st January 2019.

Reason: To ensure a satisfactory development.

- 2) The sound insulation scheme or another scheme of the same sound reduction performance as detailed in section 8.2 of Soundtesting (14th January 2019) Environmental Noise Report, Ref: 11865 Rev 1 shall be installed within two months of the date of this permission and be retained thereafter.

Reason: To protect the first floor flat from unacceptable noise and disturbance.

- 3) No live music, amplified music or live entertainment shall take place within the premises or in external areas.

Reason: To prevent noise and disturbance to nearby residents and to prevent the emission of noise above a level that would be detrimental to the aural amenity of the area.

- 4) The premises shall not be open for business outside the hours of 09:00 to 18:00 Monday to Wednesday and 09:00 to 22:00 Thursday to Sunday.

Reason: To protect nearby residents from unacceptable levels of late evening and night time noise and disturbance.

- 5) The outdoor seating area shall not be open for business and shall be removed from the external pavement outside the hours of 09:00 to 20:30 Monday to Sunday.

Reason: To protect nearby residents from unacceptable levels of late evening and night time noise and disturbance.

Informatives

- 1) Background music is not prescribed under the Licensing Act 2003 and is exempt from other activities regarded as regulated entertainment. It shall be defined as any amplified music, which has a music noise level not exceeding LAeq 10min 65dB. Measurements to determine the music level shall be made at a position not less than 1 metre from any loudspeaker, instrument or wall.