

Delegated Report

Planning Ref: 26/00321/CONDIT
Applicant: Mr Mark Davies
Ward: Barwell



Hinckley & Bosworth
Borough Council

Site: 3 Chapel Street Barwell Leicester

**Proposal: Application to vary condition 2 of planning permission 99/00602/COU.
Amend opening hours to 11:00am - 02:00am (Monday - Saturday) and 12:00pm - 00:00am (Sunday and Bank/Public Holidays)**

1. Recommendations

1.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report

2. Planning application description

- 2.1. Section 73 of the Town and Country Planning Act 1990 allows applications to be made for permission to develop without complying with a condition previously imposed on a planning permission. In this case, planning permission reference 99/00602/COU granted full planning permission for the change of use of ground floor to wine bar and new shop front at 3 Chapel Street, Barwell.
- 2.2. Condition 2 of the planning permission restricted the opening hours of the premises from 11:30am – 11:00pm Monday - Friday and 11:00am – 10:30am on Sunday's and Bank Holiday's. This application seeks variation of this condition.
- 2.3. The application originally sought to change the opening hours to 11:00am – 02:00am Monday - Sunday (including Bank Holiday's), but at the request of the case officer the opening hours have been reduced to 11:00am – 02:00am Monday – Saturday and 12:00pm – 00:00am Sunday and Bank/Public Holiday's.

3. Description of the site and surrounding area

- 3.1. The application site comprises a two-storey building constructed in the late 19th century. The building comprises a mix of brick and render to the walls with anthracite painted timber cladding to the sill of the front canopy roof, and a mix of grey tiles and a felt like material to the hipped, pitched and flat roofs. Dormers sit to the front and side elevations which serve the second-floor managers flat.
- 3.2. The application building itself is situated to the corner of Chapel Street, a one way access road, with its northern elevation facing onto Shilton Road. This elevation adjoins onto Barwell Public Toilets alongside 1 Chapel Street which appears to be a storage unit.
- 3.3. The current use as a wine bar (Sui Generis) has been in operation since the late 90's, with the use prior being retail (Class E).
- 3.4. The bar has recently been under new management that resulted in a temporary stop notice served to prevent both a material change of use to an adult swingers club and a breach the permitted opening hours. The new management complied with the notice and operated the new business in accordance with the existing planning permissions.

4. Relevant planning history

99/00602/COU

- Change of use of ground floor to wine bar and new shop front
- Planning Permission
- 15.09.1999

01/00981/COU

- Change of use of 1st floor to wine bar and second floor to living accommodation together with elevational alterations and alterations to the roof including the provision of dormer windows
- Planning Permission
- 08.11.2001

02/01064/COU

- Change of use of first floor to wine bar and second floor to living accommodation together with elevational alterations and alterations to roof including dormer windows (amended scheme)
- Planning Permission
- 24.10.2002

03/00764/FUL

- Variation of condition 3 of planning application 02/01064/COU to allow first floor use of extension as a restaurant and alterations to include rear enclosure of a beer garden and a kitchen flue
- Planning Permission
- 21.08.2003

05/00985/FUL

- Creation of first floor balcony
- Refused
- 30.11.2005

06/00761/FUL

- Installation of dormer window
- Planning Permission
- 16.08.2006

14/00421/FUL

- New external seating area, with balustrading and new bi-folding doors to Chapel Street elevation
- Planning Permission
- 08.08.2014

25/00793/FUL

- Change of use from a wine bar (sui generis) with ancillary first-floor function room and second-floor manager's flat (C3) to a ground-floor retail shop (Class E(a)) with ancillary first-floor staff facilities and a retained second-floor manager's flat (C3)
- Planning Permission
- 24.11.2025

26/00056/UNUSEH

- Unauthorised change of use from wine bar (sui generis) to an adult swingers club (sui generis)
- Temporary Stop Notice issued
- 27.02.2026 – 23.04.2026

5. Publicity

5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site.

5.2. Following the publications, one objection has been received which is summarised below:

- Adverse impact upon the residential enjoyment of rear amenity area's;
- Unpleasant odour from smoking;
- Noise concerns.

Should the variation be approved the objector requests that the music volume be restricted to 60 DBA after 11.30pm and that the use of the courtyard also be restricted to standard licensing hours.

6. Consultation

6.1. Barwell Parish Council:

'The Parish Council objects to the proposed extension of opening hours to 2:00am. Due to the proximity of residential properties in the village centre, the Council is concerned this would cause unacceptable disturbance to local residents. We respectfully request that any approved extension be limited to midnight (00:00).'

6.2. HBBC Environmental Health (Pollution):

'No objection'

7. Policy

7.1. Earl Shilton and Barwell Area Action Plan (2014) (ESABAAP)

- Policy 22: Development and Design
- Policy 26: Vitalising District, Local and Neighbouring Centres

7.2. Core Strategy (2009)

- Policy 3: Development in Barwell

7.3. Site Allocations and Development Management Policies DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.4. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2024)
- Planning Practice Guidance (PPG)

7.5. Other relevant guidance

- Good Design Guide (2020)
- National Design Guide (2019)
- Leicestershire Highways Design Guide (LHDG) (2024)

8. Appraisal

8.1. As the principle of the development, impact upon the character of the area and other such details have been accepted by the earlier scheme, the main issues for consideration are therefore:

- Impact upon neighbouring residential amenity
- Conditions

Impact upon neighbouring residential amenity

- 8.2. Policy DM7 of the adopted SADMP states that all reasonable steps should be taken through design, siting and technological solutions to ensure the abatement of obtrusive light to avoid sky glow, glare and light intrusion.
- 8.3. Policy DM10 of the adopted SADMP requires that development would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings. The policy also states that the amenity of the occupiers of the proposed development would not be adversely affected by activities within the vicinity of the site.
- 8.4. Policy 22 of the Earl Shilton and Barwell AAP seeks to ensure that developments do not adversely affect the privacy and amenity of nearby residents and occupiers of adjacent buildings.
- 8.5. Paragraph 135(f) of the NPPF requires planning policies and decisions to ensure that developments create places that are safe, inclusive, and accessible, which promote health and well-being, and a high standard of amenity for existing and future users.
- 8.6. Objections have been received on the grounds of interference with the surrounding residential properties from the operation of the business in terms of noise/disturbance from comings and goings, and smells from smoking.
- 8.7. No noise/odour complaints about the current operation of the premises have been received since its operation began. Similar surrounding premises are further licenced for the proposed openings hours and the Council's Environmental Health Team raise no objections to the variation.
- 8.8. Notwithstanding the above, the Local Planning Authority consider it expedient to add a further condition restricting the hours of use of the outdoor seating area and the amplified music or other music therein to protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance. Any external doors providing access to shall further be required to be fitted with a self-closing device after these hours.
- 8.9. By virtue of the above, even though the proposal to extend opening hours will introduce comings and goings where none currently exist, subject to conditions the proposed development would satisfy Policies DM7 and DM10 of the SADMP, Policy 22 of the ESABAAP and Paragraph 135(f) of the NPPF in this regard. Any future issues could be controlled by the Council's Environmental Health Team separately using statutory nuisance legislation.

Conditions

- 8.10. The previously approved planning permission 99/00602/COU was subject to 4 conditions. The development has been implemented and therefore Condition 1 (Time) is no longer necessary. Condition 2 (Opening Hours) would need to be amended to refer to the plans submitted and approved under this application to define the new permission. Condition 3 would need to be amended to refer to the second-floor to accord with the details approved under 03/00764/FUL. Condition 4 is no longer necessary as under the most recent legislation the extant use would fall under the sui-generis use class and as so can only be used as a wine bar unless planning permission is otherwise sought to change the use.
- 8.11. The amended conditions are stated below for completeness.
 - 1. The premises shall only be open to the public between the hours of: 11:00am - 2:00am Monday – Saturday and 12:00pm – 00:00am Sunday and Bank/Public Holidays.

Reason: To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with Policies DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Policy 22 of the Earl Shilton and Barwell Area Action Plan (2014) and Paragraph 135(f) of the National Planning Policy Framework (2024).

2. The occupation of the second-floor flat shall be restricted to persons associated with the use hereby permitted or by people employed in the operation of the business.

Reason: To ensure the flat is not occupied as an independent unit of accommodation which may have additional impacts in accordance with Policies DM10, DM17 and DM18 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

- 8.12. An additional condition restricting the hours of the external setting area is also considered necessary, stated below for completeness.

3. The rear external setting area shall not be used and amplified music shall not be played therein outside the hours of: 11:00am – 11:00pm Monday - Saturday and 12:00pm - 10:30pm Sunday and Bank/Public Holidays. Any external doors providing access to this area shall be fitted with a self-closing device.

Reason: To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with Policy DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

- 8.13. No further conditions are considered necessary.

9. Equality implications

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2. Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

- 9.3. There are no known equality implications arising directly from this development.

10. Conclusion

- 10.1. The proposed increase to the opening hours is considered to have no adverse impact upon the residential amenity of the neighbouring dwellings or the occupiers of other adjacent buildings in line with Policies DM7 and DM10 of the adopted SADMP, Policy 22 of the ESABAAP and Paragraph 135(f) of the NPPF and therefore the application is recommended for approval subject to the conditions below.

11. Recommendation

11.1 Grant planning permission subject to:

- Planning conditions outlined at the end of this report

11.2 Conditions and Reasons

1. The premises shall only be open to the public between the hours of: 11:00am - 2:00am Monday – Saturday and 12:00pm – 00:00am Sunday and Bank/Public Holidays.

Reason: To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with Policies DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Policy 22 of the Earl Shilton and Barwell Area Action Plan (2014) and Paragraph 135(f) of the National Planning Policy Framework (2024).

2. The occupation of the second-floor flat shall be restricted to persons associated with the use hereby permitted or by people employed in the operation of the business.

Reason: To ensure the flat is not occupied as an independent unit of accommodation which may have additional impacts in accordance with Policies DM10, DM17 and DM18 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

3. The rear external setting area shall not be used and amplified music shall not be played therein outside the hours of: 11:00am – 11:00pm Monday - Saturday and 12:00pm - 10:30pm Sunday and Bank/Public Holidays. Any external doors providing access to this area shall be fitted with a self-closing device.

Reason: To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with Policies DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Policy 22 of the Earl Shilton and Barwell Area Action Plan (2014) and Paragraph 135(f) of the National Planning Policy Framework (2024).

11.3 Notes to applicant

- a) The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at building.control@blaby.gov.uk or call 0116 272 7533.