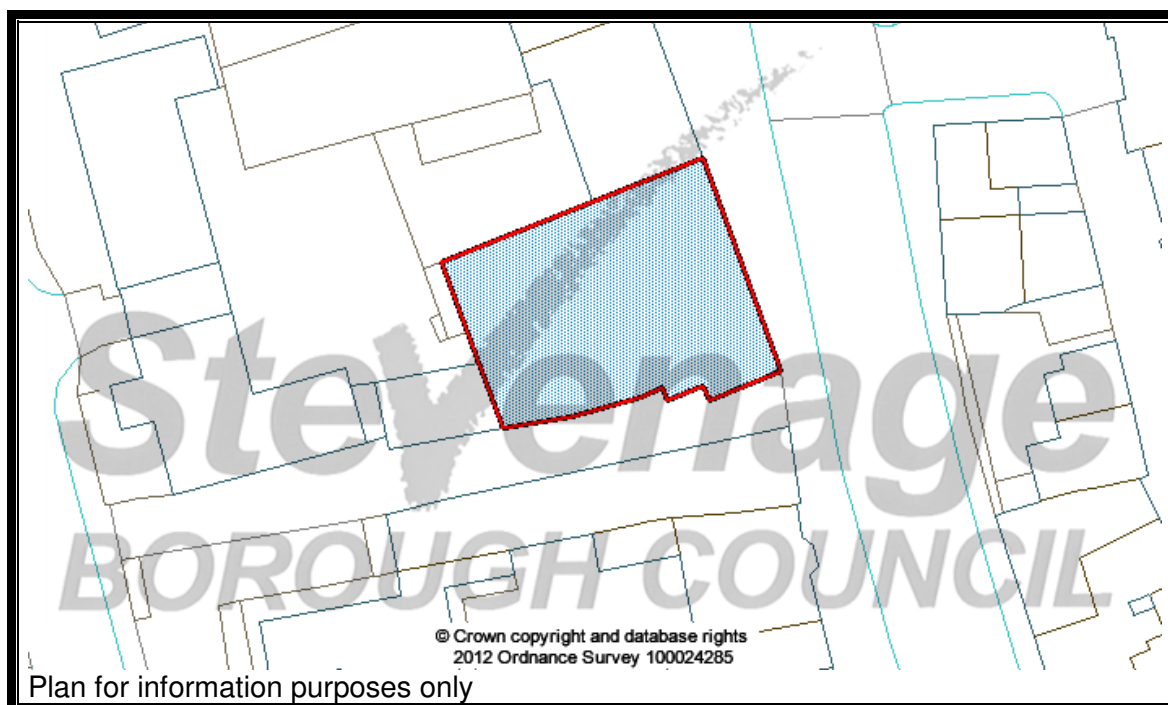


Meeting:	Planning and Development Committee	Agenda Item:	4
Date:	16 July 2013		
Author:	Clive Inwards		01438 242837
Lead Officer:	Viv Evans		01438 242257
Contact Officer:	Clive Inwards		01438 242837

Application No:	12/00613/FP
Location:	The Bank Lounge Bar, 68 High Street, Stevenage
Proposal:	Variation of condition 3 attached to planning permission reference number 11/00531/FP to extend opening hours from 08.00 to 00.00 Sundays to Tuesdays; 08.00 to 02.00 (the following day) Wednesdays to Saturdays and Public Holidays and 08.00 to 04.30 New Years Eve.
Drawing Nos.:	Not applicable.
Applicant:	Mr Robert Dettmer
Date Valid:	21 January 2013
Recommendation:	GRANT PLANNING PERMISSION



1. SITE DESCRIPTION

- 1.1 The application site comprises the ground floor of no. 68 High Street which was the former Barclays Bank in the Old Town. The application property is adjoined to the north by no. 66 High Street and to the west by Kestrel House. The site is bounded to the east by the High Street and to the south by Rookery Yard, which is a pathway that leads to Primett Road. The building is grade II listed, however the proposal does not include any operational

development and therefore there is no need for an accompanying listed building consent application. The application property is within the Old Town High Street Conservation Area.

2. RELEVANT PLANNING HISTORY

- 2.1 11/00531/FP Change of use from class A2 (Financial & Professional Services) to use classes A3 (Restaurants & Cafes) and A4 (Drinking Establishments). Planning permission granted 21st December 2011.

3. THE CURRENT APPLICATION

- 3.1 The application seeks planning permission to vary condition 3 of the above planning permission to extend the hours of opening of the premises. Planning permission 11/00531/FP was granted subject to three conditions. Condition 3 of this permission states that:

‘The use of the premises for the purposes hereby permitted shall operate only between the hours of 08.00 and 00.00 Mondays to Saturdays and 08.00 to 23.00 on Sundays and Bank Holidays’.

The applicant originally applied for 03.30 closing Wednesdays to Saturdays and Bank Holidays and 04.30 New Years Eve. However, the application has since been amended to:

‘08.00 to 00.00 Sundays to Tuesdays

08.00 to 02.00 (the following day) Wednesdays to Saturdays and Bank Holidays

08.00 to 04.30 New Years Eve.’

- 3.2 The application does not propose any operational development or increase in floor area.

4. PUBLIC REPRESENTATIONS

- 4.1 The proposal has been publicised by way of letters to adjoining premises and two site notices. The second site notice was erected to publicise the amended opening times applied for. At the time of drafting this report one letter of objection has been received from no. 12 Matthews Close. The occupier of no. 12 Matthews Close has objected to this application on the following grounds:

- Their tenant at 2A Middle Row has complained of noise disturbance and anti-social behaviour and has subsequently left this flat;
- The establishment is a nightclub and not a local bar;
- The establishment results in noise and anti-social behaviour generated by clientele congregating outside the front of the premises;
- Stevenage Leisure Park was created specifically to house this type of premises and remove noise and disturbance from the town’s residential population;
- The establishment is already in contravention of the provisions of the Human Rights Act allowing for the ‘peaceful enjoyment of property’;
- Confused as to why ‘The Bank’ is currently opening until the early hours when it does not appear to have the appropriate planning permission;
- It is to be expected that a bar in the High Street closing at midnight will naturally create some noise and disturbance. A nightclub closing at 3.30am or later is a different matter.

5. CONSULTATIONS

5.1 Hertfordshire Constabulary.

- 5.1.1 Have provided the hours that the property can operate under the terms of its entertainment licence.

5.2 Environmental Health

- 5.2.1 Although one complaint was received when The Bank first opened, there have not been any since. As such no objections are raised. It is imperative that the occupants comply with all the licensing conditions to ensure that no noise nuisance is caused to residents.

6. RELEVANT PLANNING POLICIES

6.1 Background to the Development Plan

- 6.1.1 In the determination of planning applications development must be in accordance with the statutory development plan unless material considerations indicate otherwise. For Stevenage the statutory development plan comprises:

- Saved policies in the Hertfordshire Structure Plan 1998
- Hertfordshire Waste Local Plan 1999
- Hertfordshire Minerals Local Plan 1998
- The Stevenage District Plan Second Review 2004.

The former Draft Core Strategy and Development Management Policies were withdrawn on 1st February 2012. However, the Site Specific Policies Plan, the Old Town Area Action Plan and the Gunnels Wood Area Action Plan have all been approved locally by the Council's executive as material considerations in the determination of planning applications and continue to be used for Development Management purposes. Additionally, the Council's Interim Planning Policy Statement adopted in April 2012 is a material consideration in the determination of planning applications registered on or after the 18 April 2012.

- 6.1.2 Where a Development Plan Document has been submitted for examination but no representations have been made in respect of relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted. The converse may apply if there have been representations which oppose the policy. However, much will depend on the nature of those representations and whether there are representations in support of particular policies.
- 6.1.3 In considering the policy implications of any development proposal the Local Planning Authority will assess each case on its individual merits, however where there may be a conflict between policies in the existing Development Plan and policies in any emerging Development Plan Document, the adopted Development Plan policies currently continue to have greater weight.

6.2 Central Government Advice

- 6.2.1 In March 2012 the National Planning Policy Framework (NPPF) was published and in doing so it replaced many documents including all Planning Policy Guidance Notes and Planning Policy Statements. The NPPF sets out the Government's planning policies for England and how these are expected to be applied. Annex 1 of the NPPF provides guidance of how existing local plan policies which have been prepared prior to the publication of the NPPF

should be treated. Paragraph 214 states that for 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework. However this only applies if the development plan has been adopted in accordance with the Planning and Compulsory Purchase Act 2004. Whilst the District Plan Second Review was adopted in December 2004 it is not in accordance with The Planning and Compulsory Purchase Act 2004. Accordingly the advice at paragraph 215 of the NPPF applies which states that only due weight should be afforded to the relevant policies in the adopted local plan according to their degree of consistency with this framework.

- 6.2.2 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is itself a material consideration. Given that due weight can only be given to relevant policies in the local plan depending on their degree of consistency with the NPPF, it will be necessary in the determination of this application to assess the weight given to the relevant local plan policies. The overriding aim of the NPPF is the presumption in favour of sustainable development.

6.3 Adopted District Plan

OT6 Secondary Shopping Frontages
EN9 Archaeology and Development
EN27 Noise Pollution

7 APPRAISAL

- 7.1 The only issue for consideration in the determination of this application is the acceptability of the extended hours of opening having regard to the impact on the amenities of neighbouring occupiers.

7.2 Land Use Policy Considerations

- 7.2.1 The application site is designated as a secondary shopping frontage and is within the Old Town High Street Conservation Area and an Area of Archaeological Significance. However, the proposal does not involve any operational development or change of use and as such would not materially affect these policy designations.

7.3 Impact on the Amenities of Neighbouring Occupiers

- 7.3.1 The amended application seeks to increase the opening hours of the premises for a further two hours from Wednesday to Saturdays, from the currently permitted midnight finish until 02.00am (the following day). It also seeks to extend the opening hours of the premises until 04.30am New Years Eve / New Years Day but given that this is a once-a-year event when many other people would be celebrating this closing time is considered to be acceptable and the focus of this report is on the additional two hours on Wednesdays to Saturdays.
- 7.3.2 Firstly, the applicant has provided a noise survey undertaken on the 28th January which concludes that due to the high ambient noise levels and the distance to the nearest residential properties, that it is unlikely that the premises would result in a specific noise nuisance. Whilst this is useful as a guide it is not known what time of day the survey was undertaken and it is obvious that the background noise levels would be lower in the early hours of the morning due to less traffic. Whilst the survey is useful in providing an indication of noise levels emitted from the property and background noise levels, it is not considered that this is the key determining factor in assessing the application.

- 7.3.3 Secondly, whilst each application is considered on its own individual merits, in this instance regard has to be had to other noise generating uses in proximity to the application property. An exercise has been undertaken to look at both the hours of opening allowed under relevant planning permissions and also hours of opening that are licensed through the Council's Environmental Health department for commercial properties in proximity to the application site.
- 7.3.4 With regard to hours of opening that may be restricted through the grant of planning permission, the Taj Mahal restaurant, The Proverbial, The White Lion, the Cinnabar Café, The Standing Order and the Cromwell Hotel have all been considered. Out of these premises only the Standing Order has any restrictions on its opening hours through a planning permission. The Standing Order's opening hours are restricted to 06.00 to 01.00 Sunday to Thursday, 06.00 to 01.30 Friday to Saturdays and days preceding a Public Holiday and 06.00 to 02.30 on other specified special days. As such the other premises could all open unrestricted hours without being in breach of any planning permission.
- 7.3.5 The same six premises have also been considered with regard to how they are restricted through the licensing regime. Under licensing the Taj Mahal has to close at 01.00 Sundays to Wednesdays and 02.00 Thursday to Saturday. The Proverbial currently has to close at 00.30 Sundays to Thursdays and 01.30 Fridays and Saturdays. The White Lion has to close by 23.30 Sundays to Thursdays and 01.30 on Fridays and Saturdays. The Cinnabar has to close by 00.45 Mondays to Wednesdays, 01.30 on Thursdays and 03.30 on Fridays and Saturdays. The Standing Order has to close by 01.30 Sundays to Thursdays and 02.00 Fridays and Saturdays. Finally, the Cromwell Hotel has to close at Midnight, although the Cromwell Suite in the hotel may stay open until 02.00 Mondays to Saturdays only when regulated entertainment is provided.
- 7.3.6 Given the hours that similar premises and commercial units in close proximity to the application site can operate, it is considered that a reason for refusal on the basis of a noise nuisance and disturbance could not be substantiated in this instance. The application premises is located in a commercial area of the Old Town High Street where there would be expected to be a higher level of noise and activity than predominantly residential areas. It is considered that it would be unreasonable to unduly restrict the hours of opening and rather the activity in the premises could be controlled by a suitable hours of opening condition, the appropriate management of the premises and through compliance with conditions attached to its entertainment licence.
- 7.3.7 Finally, it is noted that the applicant has amended the application from the originally applied for 3.30am finishes until 2.00am finishes from Wednesdays to Saturdays. This is considered to be a suitable concession and would be similar to the closing times of other premises in the locality. The 2.00am finishes are considered to be appropriate and at a point where the Local Planning Authority could not sustain a reason for refusal based on a detrimental impact to neighbouring residential amenity.
- 7.3.8 With regard to the comments raised by the objector to the application, many of these issues can be addressed by the appropriate management of the facility and compliance with the licence for the premises. Anti-social behaviour occurring outside of the front of the premises is an issue for the applicant to address with suitably trained door staff and management of the dispersal of customers at closing time.

8 CONCLUSIONS

- 8.1 The proposed extension of the opening hours until 02.00 (the following day) Wednesdays to Saturdays and Public Holidays at these premises is considered to be acceptable in this instance. Given the location of the application property within a commercial area of the Old

Town High Street and the similar hours of opening of other commercial premises in close proximity to this property, it is not considered that the Local Planning Authority could substantiate a reason for refusal based on noise and disturbance of the increased hours of opening. It is considered that it would be unreasonable to unduly restrict the hours of opening of this property, when similar properties in close proximity can operate to similar times. It has been shown that both Hertfordshire Constabulary and the Council's Environmental Health department have not objected to the application. Having regard to the location of the application property and nearby similar uses, it is considered that the proposal would not conflict with Policy EN27 of the Local Plan relating to noise pollution. With a condition attached to ensure the hours of opening as applied for, the proposal is considered to be acceptable and it is therefore recommended that planning permission be granted.

9 RECOMMENDATIONS

9.1 Planning permission be GRANTED subject to the following conditions:-

- 1 The development hereby permitted shall be carried out in general accordance with the following approved plans: HGD11-32-5.1.

REASON: - For the avoidance of doubt and in the interests of proper planning.

- 2 The use of the premises for the purposes hereby permitted shall operate only between the hours of 08.00 and 00.00 Sundays to Tuesdays; 08.00 to 02.00 (the following day) Wednesdays to Saturdays and Public Holidays and 08.00 to 04.30 New Years Eve.

REASON: - To protect the amenity of the occupiers of adjoining and nearby properties.

Pro-active Statement

Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.

10 BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents having the reference number relating to this item.
2. Stevenage District Plan Second Review 1991-2011.
3. Central Government advice contained in the National Planning Policy Framework March 2012.
4. Letters received containing representations referred to in this report.
5. Responses to consultations with statutory undertakers and other interested parties referred to in this report.

