

Report for Resolution

Report to Planning Applications Committee
Date 29 March 2012
Report of Head of Planning Services
Subject Wafou, 15 Prince of Wales Rd , Norwich

Item
6

SUMMARY

Description:	Unauthorised bar
Reason for consideration at Committee:	Enforcement Action recommended
Recommendation:	Authorise enforcement action to cease the use of the premises as a bar – revert to previous A3 restaurant use.
Ward:	Thorpe Hamlet
Contact Officer:	Richard Divey / Ali Pridmore 01603 212319 / 212308

INTRODUCTION

The Site

Location and Context

1. The licensee and owner of the licensed premises currently known as Wafou which is located at 15 Prince of Wales Road, Norwich applied for planning permission to change the use from (Class A3) Restaurant to (Class A4) Drinking Establishment on the 29th September 2010 [App. No.10/01765/U]. A Decision Notice was issued on the 17th February 2011 which granted planning permission subject to the proper discharging of a number of planning conditions.

Three pre-commencement conditions, namely conditions 3b, 5b and 17 have not been discharged despite the Local Planning Authority and Environmental Protection reminding the applicant of the need to discharge these conditions on a number of separate occasions over a 14 month period. The three pre-commencement conditions are shown below:

- 3b) There shall be no commencement of the use hereby permitted, until details of the maximum noise levels, expressed in dB LAeq(5 mins), measured at a point 2 metres from every loudspeaker forming part of the amplification system, shall be first submitted to and approved in writing by the Local Planning Authority. Thereafter the permitted maximum noise levels emanating from the amplification system as agreed by condition 3a) of this permission shall not be exceeded at any time.*
- 5b) Further to the requirements of Condition 3, there shall be no use of the premises for the development hereby permitted until details of any further internal insulation works as necessary have been agreed (which shall be arranged in tandem with agreeing maximum noise levels required by Condition 3b)), and have been provided and made ready and operational for first use (in accordance with the requirements*

of the conditions as set out below). The proposals shall use as their basis the acoustic survey approved here (Ref 10511/1) and shall be sufficient to secure a reduction in the level of noise emanating from the premises, such that noise levels from the application premises shall not exceed NR 30 over the full frequency range, as measured at a position 1 metre outside any noise sensitive premises, and shall not exceed NR 20 over the full frequency range as measured inside any adjoining noise sensitive premises.

17) *Prior to the commencement of the use of the premises hereby permitted, the following details of all new doors, internal and external, shall be submitted to and approved in writing by the Local Planning Authority, and shall be used in the development thereafter:*

a) noise insulation capabilities.

The doors shall thereafter be installed in accordance with the detail as approved and retained thereafter for the duration of the planning permission.

To date none of the above pre-commencement conditions have so far been discharged. The purpose of these conditions was to protect residential and business premises in the vicinity from excessive noise emission which might be detrimental to the amenity of the adjacent and surrounding properties or a nuisance.

2. The granting of planning permission [App. No.10/01765/U] was also subject to the operation of the premises being conditioned to between 08:00am and 01:00am hours, see condition 13 below.

13. *The premises the subject of this permission shall not be open to customers between the hours of 01:00am and 08:00am on any day.*

The Norfolk Constabulary and residents have complained that the Wafou premises operates well beyond its permitted hours up until 05:00am or 06:00am in the morning. The operation of Wafou beyond its permitted hours has resulted in complaints from residents living in the vicinity. On the 5th March 2012 noise monitoring equipment was installed in a residential property located within the Maidstone Road flats complex at the rear of Wafou. On the 14th March 2012 the data from this installation was analysed which indicated that the amplified music emanating from Wafou was a statutory nuisance. As a consequence of this a Section 80 Abatement Notice was served on the applicant on the 17th March 2012.

The level of the amplified music from Wafou has also caused a loss of amenity to residents living in the vicinity as witnessed by two Environmental Protection Officers working during the early morning hours on Sunday 18th March 2012 between 01:00am and 05:00am. The level of the amplified music was assessed over the aforementioned four hour period. The level of the amplified music increased throughout the evening such that it was determined to be detrimental to the local amenity. The level of amplified music at 04:20am was found to be excessively loud having a very heavy bass beat. A number of tracks were clearly identifiable with all of the words of the songs being audible. The level of the bass was such that the small plywood panel covering a small window and a poorly insulated first floor window were witnessed to be rattling audibly due to the excessive bass beat. The standard of insulation was so poor that a track which had a particularly high frequency vocal component was clearly audible which demonstrated that there was very little attenuation of the higher frequency bands. The level of the amplified music was found to be very intrusive and was considered detrimental to the

amenity of residents.

Due to the time taken to comply with the three pre-commencement conditions and the negative impact of the Wafou premises on residents living in the vicinity, it is considered that the lawful use of the premises as an (Class A4) Drinking Establishment has not been implemented in accordance with planning application 10/01765/U. This was confirmed in writing to the applicant on the 15th March 2012.

Planning History

- a. Application 10/01765/U was received on the 28th September 2010 for the change of use of 15 Prince of Wales Road from (Class A3) Restaurant to (Class A4) Drinking Establishment. The application was approved subject to conditions.
- b. Application 11/00547/D was received on the 21st March 2011 for approval of details of reserved conditions. The application was not validated due to the lack of sufficient information and was cancelled on the 16th September 2011 after several attempts to obtain the required information. Similarly, application 11/00549/VC was also received on the 21st March 2011 for the variation of conditions (attached to 10/01765/U) but was also not validated due to lack of information. This application was also cancelled on the 16th September 2011.
- c. A second application to seek to satisfy the conditions of 10/01765/U (App. No. 11/01837/D) was received on the 14th October 2011 and was determined for part approval – part refusal. This was issued to the applicant on the 14th March 2012..
- d. The lawful use of 15 Prince of Wales Road as a (Class A4) Drinking Establishment has not been accepted.

3. Equality and Diversity Issues

There are no significant equality or diversity issues.

The Use

- a. The premises were used as (Class A3) restaurant use for a number of years. There has been a material change of use since January 2011 to (Class A4) Drinking Establishment.

Human Rights Implications

- b. The Human Rights Act 1998 came into effect on 2nd October 2000. In so far as its provisions are relevant:
 - Article 1 of the First Protocol (the peaceful enjoyment of ones possessions), is relevant in this case. Parliament has delegated to the Council the responsibility to take enforcement action when it is seen to be expedient and in the public interest.
 - Article 6: the right to a fair hearing is relevant to the extent that the recipient of the enforcement notice and any other interested party ought to be allowed to

address the Committee as necessary. This could be in person, through a representative or in writing.

ASSESSMENT OF PLANNING CONSIDERATIONS

Relevant Planning Policies

4. Relevant National Planning Policies

PPS1 - Delivering Sustainable Development

PPS4 – Sustainable Economic Development

PPS5 – Planning for the Historic Environment

PPG24 – Planning and Noise

Relevant saved policies of the adopted City of Norwich Replacement Local Plan 2004

HBE8 - Development in Conservation Areas

EP10 – Noise protection between different uses

EP22 - High standard of amenity for residential occupiers

AEC1 – City Centre Leisure Area and Late Night Activity Zone

Principle of Development

- a. The use of the premises as a (Class A4) drinking establishment would be acceptable if the applicant were to implement the pre-commencement conditions in full and there was satisfactory management in place.

Environmental Issues

5. Noise

- a. The close proximity of residential properties to the rear of WAFOU and the lack of management control in discharging a number of pre-commencement conditions has led to excessive noise emanating from Wafou. The use of the premises as a (Class A4) drinking establishment would be acceptable in principle if the applicant was to satisfactorily implement the pre-commencement conditions and to manage the premise effectively.

Conclusions

The current unauthorised use of the site as a (Class A4) Drinking Establishment is considered unacceptable due to its significantly detrimental impact on residents and businesses in the vicinity. The applicant has so far operated Wafou as he pleases and has operated well beyond his permitted operating time of 01:00am despite being warned by the Norfolk Constabulary on several occasions. There are no realistic expectations that the applicant will operate Wafou within the permitted times although he has had 14 months to do so. As the current use has not been accepted (by satisfactorily discharging the pre-commencement conditions) there is considered to be no planning permission for change of use to a (Class A4) Drinking Establishment.

RECOMMENDATIONS

To authorise enforcement action to secure the cessation of the unauthorised use of the premises as a (Class A4) Drinking Establishment and the taking of legal proceedings, including prosecution and the use of a stop notice is recommended if necessary.