

Report for Resolution

Report to Planning Applications Committee
Date 29 March 2012
Report of Head of Planning Services
Subject 12/00231/VC Workshop Cafe Bar 53 Earlham Road
Norwich NR2 3AD

Item
5(2)

SUMMARY

Description:	Variation of condition 3 of previous planning permission 10/01590/VC from '(former condition 5): Notwithstanding Condition 2 above, the forecourt shall not be used as part of the restaurant after 8pm (2000 hours) on any day of the week, excepting that this condition shall permit the use of the forecourt as part of the restaurant until 10.30pm (2230 hours) for a temporary period from 1st April 2011 to 30th September 2011 inclusive' to delete the words 'for a temporary period from 1st April 2011 to 30th September 2011 inclusive' and insert the words 'on any day from 1st April to 30th September in any year'.
Reason for consideration at Committee:	Objection and support
Recommendation:	Approve subject to an amended condition permitting the use of the forecourt as part of the restaurant until 9.30pm (2130 hours) on any day from 1 st April to 30 th September in any year
Ward:	Mancroft
Contact Officer:	Mrs Joy Brown 01603 212542
Valid Date:	1st February 2012
Applicant:	Warren And Victor Bryant
Agent:	Mr Philip Mason

INTRODUCTION

The Site

Location and Context

1. The application site, the Workshop Café Bar, is situated on the north side of Earlham Road some 400m west of the City centre. The Workshop is situated at the eastern end of a small parade of four shop units just east of the junction with Heigham Road. The premises were converted from retail to restaurant use in 1988. Initially used as a pizza restaurant, they have been operated by the current owners as a café/bar since 2005. There are residential flats at first floor level above the shops: the flat above the Workshop (53a) is occupied by the proprietor and accessed from a separate front entrance door positioned to the right of the main café bar entrance. This separate door also gives access to ground floor kitchen and staff areas attached to the café bar. The glazed shopfront, in common with its

neighbours, is relatively modern. There is a shallow forecourt area adjoining the Earlham Road footway in front of the premises, which serves as an outdoor dining and seating area and accommodates a maximum of 4 tables with capacity for 12 customers. This forecourt area is the subject of the current application. There is a small outdoor patio garden area for private use located to the rear. There is currently no customer access to the rear garden except for access to the customer toilets and for smoking in the designated area.

2. The group of shops and the terrace of five houses adjoining immediately to the east date from the late 19th century and are constructed in white brick with slate roofs. The group retains a number of architectural features, including original residential doors (with decorative door surrounds) giving access to the upper floor flats.
3. Earlham Road (B1108) is a wide and busy tree-lined main road leading west out of the City. The area is mainly residential and characterised by a mix of terrace and detached villas, together with a cluster of commercial properties at the junction of Heigham Road which includes the application site and the Black Horse Public House and its attached large beer garden directly opposite the Workshop.

Constraints

4. The Workshop occupies a relatively constrained site with limited external amenity space within the curtilage. The rear garden area immediately adjoins the residential garden of the neighbouring house at 51 Earlham Road and backs onto the gardens of residential properties in West Pottergate directly behind the site. The premises are part of a group included on the Council's local list of buildings of architectural and historic interest and are situated in the Heigham Grove Conservation Area.

Planning History

4/2002/0646 - Externally illuminated fascia sign. (ADVCON - 04/07/2002)

4/2002/0160 - Internally illuminated fascia sign. (REF - 12/03/2002)

4/1988/0959 - Change of use from second hand furniture store to restaurant with construction of toilets and covered passage way. (APCON - 09/02/1989)

4/1989/0260 - Condition 6: Details of extract ventilation and fume extraction system; Condition 7 : Details of plant and machinery; Condition 8 : Details of soundproofing. For previous permission (4880959/F)"Change of use from second hand furniture store to restaurant with construction of toilets and covered passage way." (APPR - 20/03/1990)

4/1990/0088 - Continued use as restaurant. (APCON - 01/03/1990)

06/00452/VC - Variation of Condition 4 of previous planning permission 4/1990/0088/F to now read "the use hereby authorised shall be limited to the hours of 9am to midnight on each day of the week". (Refused 21 June 2006; late night opening detrimental to amenity of occupants of upper floor flats and neighbouring residents through noise and disturbance; contrary to policies EP22 and EMP2 of adopted City of Norwich Replacement Local Plan). An appeal was lodged against the refusal of permission and dismissed on 17th July 2007, the Inspector concluding that the extension of opening hours to midnight would result in an unacceptable degree of noise and disturbance and this would be harmful to the living conditions of nearby residents.

10/01590/VC - Variation of condition 5 of previous planning permission 4/1990/0088/F (as amended on Appeal) 'Continued use as restaurant' from ' Notwithstanding Condition 4 above, the forecourt shall not be used as part of the restaurant after 8pm on any day of the week' to ' Notwithstanding Condition 4 above, the forecourt shall not

be used as part of the restaurant after 8pm (2000 hours) on any day of the week, excepting that this condition shall permit the use of the forecourt as part of the restaurant until 10.30pm (2230 hours) for a temporary period from 1st April 2011 to 30th September 2011 inclusive.' (amended description). (APPR - 22/10/2010)

Equality and Diversity Issues

5. There are no significant equality or diversity issues.

The Proposal

6. This is an application for the variation of Condition 3 of previous planning permission 10/01590/VC relating to the permitted hours of use of the forecourt at the front of the premises. Planning permission was initially granted for a restaurant in 1988 and re-issued in 1990. The planning condition currently in place prohibits public use of the forecourt as part of the restaurant area after 8pm on any day. When members considered App. No. 10/01590/VC back in October 2010 it was resolved that the forecourt be open until 10:30pm for a temporary period from 1st April 2011 to 30th September 2011 inclusive. The reason for the temporary trial period was to allow the Council a period in which to gauge the impact on adjoining and nearby residential occupiers and the character and amenity of the area of any additional noise and disturbance arising from the temporary extended use of the forecourt and to reassess the position once the initial trial period was up. It was considered that this course of action would allow the local planning authority to anticipate and prevent any potential longer term detrimental impact on residential amenity and the living condition of neighbours arising from the more intensive use of the premises.

7. The current application seeks to vary condition 3 to extend this to 10.30 pm (2230 hours) on any day from 1st April to 30th September in any year.

Representations Received

8. Advertised on site and in the press. Adjacent and neighbouring properties have been notified in writing. Twelve letters of representation (six objections from immediate neighbours and six letters of support) have been received citing the issues as summarised in the table below.

9. Comments of objection

Issues Raised	Response
The proposal will substantially elevate noise levels outside the workshop. This is a residential area and there are a number of bedroom windows within a few metres of the forecourt. The increase in noise will be noticeable in the front rooms of the neighbouring properties and will impact on resident's entitlement to 'quiet enjoyment'.	See paragraphs 16-27.
The use of the Workshop forecourt between the summer months of 2011 created noise and disturbance for the residents of the neighbouring terrace. The	See paragraphs 16-27.

<p>change in noise level is as predicted by the Environmental Health Officer. The focus after 8pm has been on outdoor drinking and the noise and disturbance is greater than that experienced before 8pm. At around 7pm noise from the roads drops considerably and there is less ambient noise to absorb the noises of the voices outside.</p>	
<p>Since the grant of the temporary consent, a tenant of 18 years moved out the neighbouring property which is an HMO because of the nightly noise. Another couple also moved out due to the smell of alcohol and as they felt intimidated having to pass a crowd of people to enter his home at night.</p>	<p>See paragraphs 16-27.</p>
<p>The value of the trial period for testing the impact on residents is questionable. During the trial period the premises was subject to a licensing condition requiring use of the front forecourt to cease at 9:30pm. Furthermore 51 Earlham Road was unoccupied for much of the summer, 47 Earlham Road was sold in November 2011 to a family who had no experience of the trial period, 45 Earlham Road was sold in July 2011 and was only occupied for one month of the trial period. Furthermore the neighbouring shops and flats have changed tenants/occupiers in the last 3-6 months.</p>	<p>See paragraphs 21-22.</p>
<p>The limit of 9:30pm should be maintained which the Magistrates sensibly decided was a good compromise when this topic was discussed previously. The Magistrates felt that 10:30pm was too late and felt that 9:30pm was a good balance between the interests of the neighbours and the interest of the owners of the Workshop.</p>	<p>See paragraphs 27 and 33.</p>
<p>This is a permanent alteration and should the ownership of the premise change; there is the possibility that demographic of those using the premises may also change – potentially rowdy 18-25 year olds, rather than the mixed-aged clientele that the Workshop attracts at the moment. This could increase noise disturbance and consequent loss of amenity and I therefore have concerns even allowing the use of the forecourt until 9:30pm on a</p>	<p>See paragraphs 24 - 26.</p>

permanent basis. A three year consent is suggested.	
43-51 Earham Road is currently a beautiful and well-cared for terrace in a conservation area. The increased noise disturbance might gradually change the ownership profile of the terrace, with non-resident landlords replacing the current family owners and possibly turning the houses into flats. This could lead to the deterioration of this attractive architectural grouping.	See paragraph 28.
The proposal has affected property values and attainable rents.	This is not a material planning consideration.

10. Comments in support

Issues Raised	Response
The workshop is a quality establishment serving its local community in many diverse and positive ways. It is a family friendly establishment which encourages a range of artists and musicians to share their talents. Business such as this should be encouraged.	See paragraphs 31 and 33.
The proposal will enhance an already agreeable and popular bistro. It would make for an agreeable ambience for customers while causing no inconvenience to passers by or residents.	See paragraphs 31 and 33.
In the summer months the Workshop experiences a diminishment of trade as customers go elsewhere to sit outside. If they could guarantee evening outdoor seating for the short summer period, then they could maintain their trade over the summer and continue to prosper as a business, which is of benefit to all in the area and beyond.	See paragraphs 31 and 33.
Having used the forecourt last year during the trial period, I found it a thoroughly enjoyable experience and the fact that the facility was available outside the city centre made it all the more enjoyable.	See paragraphs 31 and 33.

Consultation Responses

11. Transportation – No objection. The provision of seating off highway does not cause any congestion or detriment to the operation of the highway. We have not received any complaints about the provision of tables and chairs as part of our highway duties.

12. Environmental Protection Officer. As with most licensed premises, there is always likely to be a loss of amenity to those overlooking premises, particularly later into the evening as the ambience of the customers changes towards the end of trading. I can confirm that we have not received any complaints regarding the use of the area concerned, however we have no guarantee that the area has been used and therefore the lack of complaints could be explained by a lack of use. The only people that would be able to give a proper idea of whether the area has been used and whether there have been any positive or adverse effects, would be those persons living in the vicinity. Therefore I would propose that a greater weight be given to any comments that they may have.

ASSESSMENT OF PLANNING CONSIDERATIONS

Relevant Planning Policies

Relevant National Planning Policies

Planning Policy Statement 1 (PPS1) – Delivering Sustainable Development
Planning Policy Statement 4 (PPS4) – Planning for Sustainable Economic Growth
Planning Policy Statement 5 (PPS5) – Planning for the Historic Environment
Planning Policy Statement 24 (PPG24) – Planning and Noise

Relevant policies of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk 2011

Policy 12: The remainder of the Norwich urban area

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

EMP2 – Small Business Development
EP22 – Residential Amenity
TRA14 – Safe and Attractive Pedestrian Environment

Supplementary Planning Documents and Guidance

Heigham Grove Conservation Area Appraisal

Written Ministerial Statement: 23 March 2011: Planning for Growth

Support of enterprise and sustainable development.

Principle of Development

Policy Considerations

13. National planning policy in PPS1 seeks to ensure that development is located appropriately and accessibly in accordance with sustainable principles, taking account of the effects of climate change. PPS4 encourages appropriate business development to support economic growth, seeking to protect and promote local facilities and services which benefit the local economy and foster community cohesion. Planning Policy Statement 5 requires development to protect (and where appropriate, enhance) the significance of heritage assets including the character and appearance of Conservation Areas, Listed Buildings and other features of acknowledged importance. Planning Policy Statement 24 sets out the general planning considerations in relation to uses likely to cause noise.

14. City of Norwich Replacement Local Plan saved policy EMP2 supports the expansion of existing businesses subject to considerations of environmental and visual impact and the protection of the character and amenity of residential areas. Saved policy EP22 requires that development should not harm the amenity of residents through noise, odour, light pollution or loss of outlook and daylighting. Policy TRA14 gives general encouragement to measures which improve the safety and quality of the pedestrian environment including the avoidance of obstructions to footways.
15. The main policy considerations here are the potentially detrimental impact of the proposed extended hours of use of the front forecourt area on a permanent basis on the quiet enjoyment and living conditions of adjoining and nearby residential occupiers in Earlam Road, in particular the upper floor flats and the immediately adjoining houses. These must be weighed against the perceived benefits of the extended hours in supporting a well-used and popular local venue of unique character and appeal, known for its distinctive and positive contribution to the cultural, artistic and social life of the Norwich community at large.

Impact on Living Conditions

Noise and Disturbance

16. City of Norwich Replacement Local Plan saved policy EP22 states that development will only be permitted if it provides for a high standard of amenity to existing or potential residential premises in the vicinity, including avoidance of noise.

Relevant Planning History

17. The original planning permission on which an 8pm forecourt curfew was placed (ref. 4880959/F) dates back to 1988, when the premises first changed from a shop to a restaurant, at that time a conventional pizza restaurant rather than the present café-bar which has occupied the premises since 2005. Relaxation in the terms of other planning conditions on the premises, in particular the prohibition of takeaway food and the restriction of the restaurant permission to a named operator, were sought in 1990. Planning Application Committee opted to re-impose the original 1988 conditions on a fresh permission (ref. 4900088/CU) and the case was taken to appeal.
18. It should be noted that although the planning inspector at that time saw fit to vary a number of other conditions on the permission, he did not relax the 8pm restriction on the use of the forecourt area and restricted the takeaway service which he did allow to no later than 8pm. This indicates that the inspector was particularly mindful of the need to protect immediate neighbours from excessive noise and disturbance in the evening. Similarly, an application to extend the opening hours of the main premises from 11pm to midnight was refused in 2006 and again taken to appeal: in that case the Inspector dismissed the appeal outright, citing the importance of safeguarding neighbourhood amenity and protecting residents from noise and disturbance and thus supporting the Council's refusal of permission on the grounds of impact on amenity and the character of the area.

19. In 2010 permission (App. No. 10/01590/VC) was sought to allow the use of the forecourt as part of the restaurant until 10.30pm. The officer's recommendation was one of refusal; however on the 14th October 2010 the decision was taken at Planning Applications Committee to allow the proposal for a trial period between 1st April 2011 and 30th September 2011. The reason was to gauge the impact on adjoining and nearby residential occupiers of any additional noise and disturbance arising from the temporary extended use of the forecourt area by restaurant customers during the summer months, to enable a reassessment of the position once the six month trial period had finished, and to prevent any potential longer term detrimental impact on residential amenity and the living conditions of neighbours.

Relevant Licensing History

20. At the Planning Applications Committee on the 14th October 2010 when the decision was made to allow for a six month trial period until 10.30pm, it was reported that a premises license until 10:30pm had been approved the previous day at the licensing committee. However this decision was subsequently challenged and following a third party appeal against the grant of the licensing, on the 31st March 2011, the magistrate's court felt it necessary to impose conditions on the licence. The current license for the premise in relation to the forecourt area is therefore subject to the following conditions, namely that orders for food and drink will cease at 21.00hrs each day, consumption of food and drink will cease at 21.30hrs each day, tables and chairs must be cleared from the forecourt by 21.40hrs each day and that there shall be a maximum of 4 tables and 12 covers in this area.

The six month trial (Planning permission 10/01590/VC)

21. The Environmental Protection Officer has confirmed that they have received no complaints regarding the use of the forecourt during the trial period; however they have no guarantee that the area has been used and therefore the lack of complaints could be explained by a lack of use (see below). Their advice is that a greater weight be given to any comments from people living in the vicinity.

Recent Representations

22. Several representations have been received on the application, both supporting and objecting to the application and the comments are summarised in paragraphs 9 and 10 of this report. The representations indicate that the forecourt has been used during the trial period; however there are concerns in relation to the trial period. Firstly during the whole of the trial period, the license did not allow the forecourt to be used between the hours of 21.30hrs and 22.30hrs and as such the full impact of extending the opening hours to 22.30hrs has not been tested. Secondly it appears that a number of the surrounding residential properties were vacant for much of the trial period.

Assessment of impact upon residential amenity

23. The premises is situated within a mixed use area and is in very close proximity to residential properties. It was to protect those occupants' quiet enjoyment and preserve their quality of life that the 8pm forecourt restriction was imposed in 1988

and 1990 and the overall opening hours of the main premises were limited to 11pm, notwithstanding the trend toward later opening in more recent years. There are other drinking establishments in the area – in particular the Black Horse opposite – but in that case the building is clearly a purpose built and long established public house and has a large enclosed beer garden which is near, but not *directly* adjacent to, residential accommodation. The Workshop occupies a far smaller and more restricted site, was planned as a shop and not a bar, and is far closer to the nearest residents living immediately above and around it. It can be argued then that the planning restrictions on the opening hours of the forecourt are still appropriate and necessary and there have been no material changes in planning policy which should alter the Planning Application Committee's views since they were last challenged in 2006.

24. Members will be aware that planning permissions and planning conditions attached to them run with the land and are not specific to a particular individual unless personal occupancy conditions are involved - and there are no such conditions here. It is asserted by many patrons of the Workshop that the applicant makes every effort to manage the premises in a proper, considerate and socially responsible manner. The applicant is also an occupier of the flat immediately above the premises, so would not himself object to the extended use of the forecourt for eating and drinking. If Members are minded to approve this variation and accept extended use of the forecourt to 10.30pm, this would have to be accepted in perpetuity. Thus the later use of the forecourt could continue indefinitely irrespective of who ran the premises, it could be operated by a different proprietor with a far less socially responsible attitude and the clientele it might attract could well change. There would, similarly, be nothing to stop the upper floor flat being let independently. The Council could not control any of these eventualities through planning powers once permission was granted.
25. The comments of the Environmental Protection Officer where he suggests that the representations of the public are particularly relevant here and considerable weight should be given to them.
26. Furthermore although licensing and planning are two separate and distinct functions, consideration should be given to the magistrates decision to restrict the hours of opening to 9.30pm following an in depth hearing on the premises licence. As a result it is not considered that the variation of condition permission granted by Planning Application Committee in October 2010 to allow for the forecourt to be used until 10:30pm during the summer months has been satisfactorily tested. Given the potential for the proposal to be of detriment to the living conditions of adjacent residential occupiers, it is not considered that the variation of condition as proposed by the current application is acceptable. In particular it is felt that the use of the forecourt into the later evening would shift its focus from eating to mainly drinking and however considerate customers may feel, there is always likely to be a loss of amenity to neighbouring properties. An option would be to allow for another trial period in the Summer until 10.30pm however this has not been put forward as a recommendation as it is felt that the use of the forecourt until 10.30pm would result in an unacceptable increase in customer noise to neighbouring residents and without a variation of the premises license to allow the use of the forecourt until 10.30pm, it would not be possible to fully test the impact.
27. It is however considered that a satisfactory trial has taken place of the use of the forecourt until 9.30pm (up to the time allowed by the premises licence). Some of the

neighbours, who have objected to the application, feel that 9.30pm is a sensible compromise although it should be noted that others still have concerns regarding its use between 8pm and 9.30pm, particularly as it may result in the front bedrooms of the adjacent properties becoming unusable for children due to noise and disturbance.

Conservation Area – Impact on Setting

28. The site is situated within the Heigham Grove Conservation Area and the row of shops and neighbouring terrace properties are locally listed. It is not felt that the extension of the use of the forecourt to 10.30 at night would in itself have a harmful impact on the heritage significance of the Conservation Area as a whole or the character of the locally listed buildings. Furthermore although concern has been raised by neighbouring residents that increased noise disturbance from the Workshop might gradually change the ownership profile of the terrace, which in turn could lead to the deterioration of this attractive terrace, there is no evidence to suggest that this is the case and a refusal of permission on these grounds could not be supported.

Transport and Access

Highways Impact

29. The Transportation Planner has raised no objection on transport grounds. The forecourt is shallow but is set back from the footway and it is not considered that its extended use would have any significant effect on traffic and highway safety or prevent safe and convenient use of the footway by pedestrians.

Economic and Cultural Benefits

Contribution of the business to the local economy

30. Policy EMP2 of the City of Norwich Replacement Local Plan states that existing businesses will be permitted where there is no adverse environmental or visual impact, taking particular account of the character of residential areas or other adjoining uses, where development is not over-intensive and where the proposal will not result in an unsatisfactory form of development in terms of access, parking and safety.

31. The Workshop is clearly a popular and thriving café bar which makes a positive contribution to the artistic, cultural and social life of the local community and there have been several letters of representation received in support of the application. However, the Council must weigh these worthwhile objectives and wider community benefits against the need to protect the amenities of neighbours and ensure that the impacts of what can be a quite intensive café bar use can be properly contained and managed irrespective of its present business model or individual management ethos, subsequent changes to which cannot be controlled through planning powers.

Conclusions

32. The planning arguments in this case are finely balanced. However in this instance it is not considered that the trial period has been adequately tested and therefore it has not been satisfactorily demonstrated that the use of the forecourt until 10.30pm will not have a detrimental impact upon the living conditions of neighbouring

residents. It must be acknowledged that the premises is adjacent to residential properties and particularly as the emphasis changes from eating to outdoor drinking, some increase in the level of ambient noise would inevitably occur which would be unacceptable on the living conditions of immediately adjoining residents in the evening when a period of quite enjoyment might be reasonably expected.

33. The Workshop is however a very successful and popular local venue serving a broad and diverse section of the community and there is clearly a lot of support for the business. Allowing the forecourt to be used beyond 8pm in the summer months will bring additional flexibility and greater custom to this successful, popular and socially responsible local business. As such it is recommended that the application be approved with an amended condition which would allow the forecourt to be used until 9.30pm between 1st April and 30th September in any year, which is in line with the premises license for the premises.

RECOMMENDATIONS

To approve Application No 12/00231/VC, The Workshop, 53 Earlham Road and grant planning permission, subject to an amended condition 3 and the following conditions being re-applied from the earlier permission (App. No. 10/01590/VC):-

1) The operation of any takeaway food service conducted on the premises shall be limited to the hours of 09:00 (9am) to 20:00 (8pm) on weekdays.

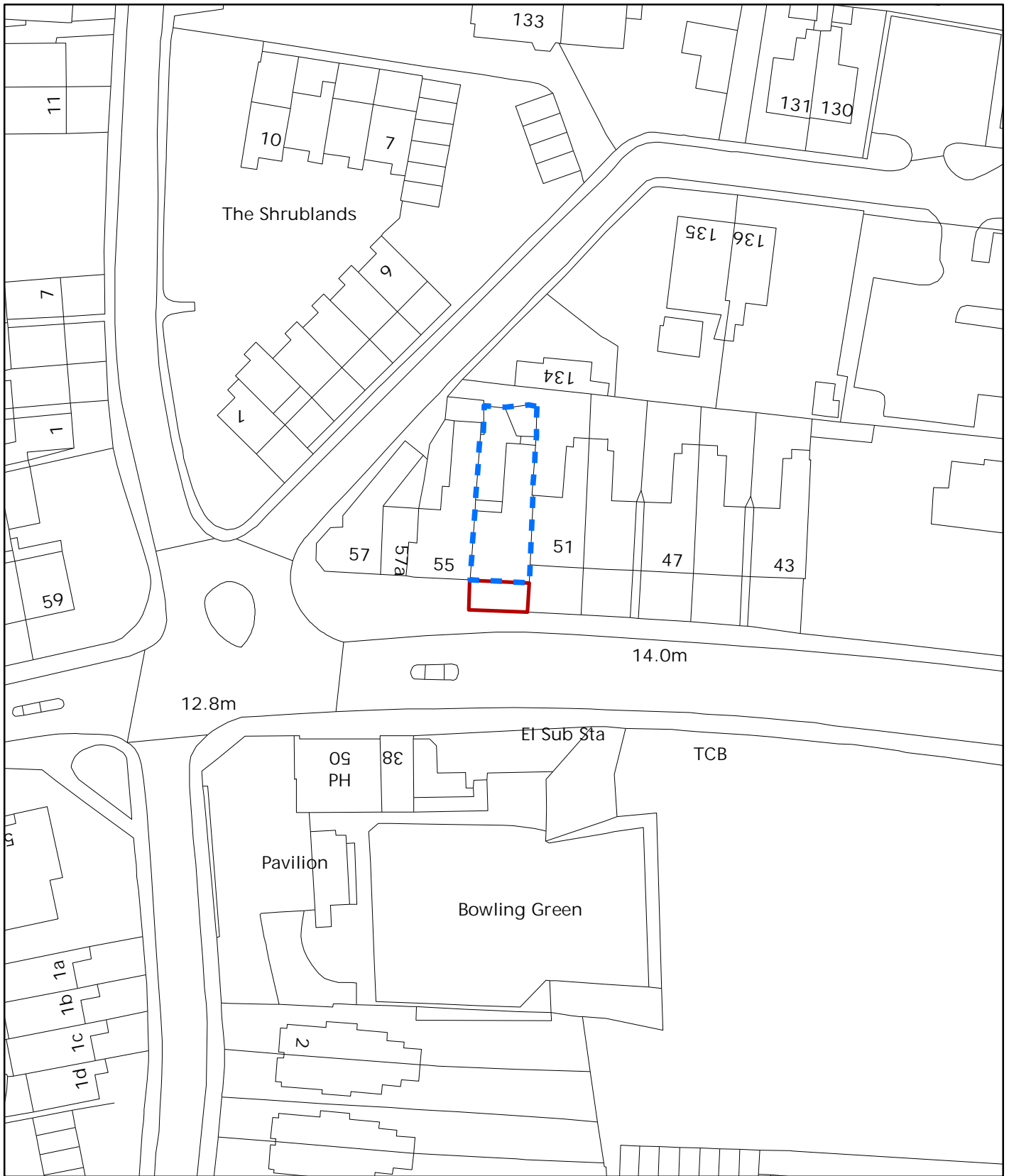
2) The use hereby authorised shall be limited to the hours 09:00 (9am) to 23:00 (11pm) on each day of the week.

3) Notwithstanding Condition 2 above, the forecourt shall not be used as part of the restaurant after 8pm (2000 hours) on any day of the week, excepting that this condition shall permit the use of the forecourt as part of the restaurant until 09.30pm (2130 hours) on any day from 1st April to 30th September in any year.

4) The extract ventilation and fume extraction system and sound insulation measures shall be retained in accordance with the details approved under Application No. 4890260/D on 20th March 1989.

5) The installation of any further plant or machinery on the premises shall be in accordance with a scheme approved by the Council for the reduction, where necessary, of the level of noise and vibration emanating from the premises.

(Reasons for approval: The decision to approve this variation of condition application (as amended to allow for the forecourt to be used as part of the restaurant until 09.30pm (2130 hours) between 1st April and 30th September in any year), has been taken having regards to PPS1, PPS4, PPS5, PPG24, saved policies EMP2, EP22 and TRA14 of the City of Norwich Replacement Local Plan (adopted November 2004), policy 12 of the Joint Core Strategy for Broadland, Norwich and South Norfolk (Adopted March 2011) and all material planning considerations. The variation as amended will not have a significantly detrimental impact upon the living conditions of neighbouring residents whilst bringing additional flexibility and greater custom to this successful, popular and socially responsible local business, thus complying with the provisions of the adopted development plan and with all other material considerations.)



© Crown Copyright and database right 2012. Ordnance Survey 100019747.

Planning Application No 12/00231/VC
 Site Address The Workshop 53 Earlham Road
 Scale 1:750



NORWICH
 City Council

PLANNING SERVICES

