

Report for Resolution

Report to Planning Applications Committee
Date 14th October 2010
Report of Head of Planning Services
Subject 10/01590/VC Workshop Cafe Bar, 53 Earlham Road
Norwich NR2 3AD

Item
5 (5)

SUMMARY

Description:	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 10.30pm on any day of the week'.
Reason for consideration at Committee:	Objection
Recommendation:	Refuse
Ward:	Mancroft
Contact Officer:	Mr Jonathan Bunting Planner, Development Management 01603 212506
Valid date:	9th September 2010
Applicant:	Mr Warren Bryant
Agent:	Mr Philip Mason, Overbury's Solicitors

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, (which include a ground floor café area and bar servery and a separate basement dining area offering some music and entertainment) 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 2004. 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 three tables with capacity for 9 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, adjoining the customer toilet block at the back of the building. There is currently no customer access to the rear garden and this is roped off during normal trading hours.

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.

Relevant Planning History

4880959/F - Change of use from second hand furniture store to restaurant with construction of toilets and covered passage way. (Approved 9th February 1989)

4890260/D - 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." (Approved 20th March 1990)

4900088/CU - Continued use as restaurant. (Approved 1st March 1990). Appeal lodged against the re-imposition of Condition 2 (restriction to restaurant only with no takeaway service) and Condition 3 (permission personal to the named applicants and use to be discontinued on cessation of their occupation of the premises). Appeal upheld 29th November 1990: conditions varied by Inspector to delete personal occupancy condition 2 and to modify condition 3 to allow operation of takeaway food service between 9am and 8pm on weekdays.

4/2002/0160/A - Internally illuminated fascia sign. (Refused 11 March 2002; detrimental to visual amenity, character of locally listed building, character of Heigham Grove Conservation Area)

4/2002/0646/A - Externally illuminated fascia sign. (Approved 3rd July 2002)

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.

The Proposal

5. This is an application for the variation of Condition 5 of the planning permission initially granted in 1988 and re-issued in 1990, relating to the permitted hours of use of the forecourt at the front of the premises. The planning condition currently in place prohibits public use of the forecourt as part of the restaurant area after 8pm on any day. The current application seeks to vary condition 5 to extend this to 10.30 pm (2230 hours).
6. Members should be aware that a concurrent application has been made to vary the premises licence on the Workshop, which includes:
 - increasing the number of covers at the front of the premises from 9 to 12 and to increase the hours for the consumption of alcohol from 2000 hours (8pm) to 2300 hours (11pm) on any day; and
 - removing the current restriction prohibiting public use of the rear patio area and allowing the area to be used for the consumption of alcohol until 2300 on any day.

The Head of Planning has lodged an objection to this license variation on the grounds of impact on residential amenity through potential noise and disturbance. The licensing hearing originally scheduled for 13 September was postponed to allow a site inspection at a time more convenient for objectors and the hearing will now take place on Wednesday 13 October (the day before this Committee). The outcome will be reported orally at your meeting.

7. The applicant's agent stated at the original licensing hearing that he would be amenable to a seasonal restriction on consumption of alcohol on the forecourt (so that it operated to 10.30 only between March and September) but has not confirmed this in writing and has not sought to amend this variation of condition application on the same basis.
8. Because there are concurrent planning and licensing applications before the Council at the same time, local residents are understandably concerned with the combined impact of both proposals. However, Members should be clear that the planning application before them relates solely to an extension in the hours of use of the forecourt area at the front of the premises and does not apply to the rear patio area or to any other part of the building.

Representations Received

9. Advertised on site and in the press on 15th September 2010. Adjacent and neighbouring occupiers were notified in writing on 8th September 2010. 22 letters of representation (3 objections from immediate neighbours and 19 expressions of support) have been received citing the issues as summarised in the table below. The formal consultation period expires on 6th October and any further representations received up to that date raising issues not covered here will be taken into account and reported verbally at the meeting.

Comments of Objection

Issues Raised	Response
Extension of hours will cause inevitable noise nuisance in this quiet residential area.	See para. 20-23
Noise impact of up to 10 people eating and	See para. 20-23

drinking on the forecourt will tend to penetrate through front windows of adjoining family houses at 43-51 Earlham Road and not be masked by ambient traffic noise which is at a generally low level in the evenings. Noise level known to rise in direct proportion to level of alcohol consumption.	
Extended use of forecourt will attract drinkers from other establishments potentially contributing to disorder.	See para. 20-23
Noise and smoke pollution from outdoor tables will impact directly on the front rooms of adjoining upper floor flats (55a and 55b) which are occupied by tenants including a care nurse; tenants are Muslims whose culture is opposed to smoking and drinking.	See para. 20-23, 26, Adverse impact on living conditions and neighbour amenity is a valid material planning consideration. Members attention is also drawn to the authority's duties under the Equality Act 2010 detailed at the beginning of the agenda.
Extension of opening hours will lead to depression in residential property values in general and loss of rental income on the flats in particular.	Impact of development and change of use on property and rental values is not a material planning consideration.

Comments in Support (précis)

19 expressions of support for the proposal have been received commenting in the main that the Workshop offers a unique ambience distinct from other bars in the City. Supporting letters comment that the venue is civilised, welcoming, conversational and socially-conscious and that the clientele would be unlikely to be particularly rowdy or disruptive.

Issues Raised	Response
The business is a local family run success story.	See para 19, 27, 28
The venue is civilised, welcoming, conversational and socially-conscious and that the clientele would be unlikely to be particularly rowdy or disruptive.	See para 19, 27, 28
Venue appeal and flexibility is limited by lack of outdoor space. Limitation on outdoor seating is unreasonably restrictive to the business and tends to discourage customers from staying into evening. Extended forecourt use would support success of business.	See para 28
Impact on noise in the area would be minimal. Earlham Road is a main route from the City centre which already experiences a level of noise from passers by and other venues in the vicinity, the impact of the proposals would therefore be minimal.	See para. 20-23

The venue provides a safe and secure environment for parents and children, the young and elderly and women, who feel comfortable enough to visit on their own. It is responsibly managed to prevent misuse and promotes community cohesion in encouraging co-operation between cultures and ethnic groups: is also involved in a wide range of community-based projects and crime reduction initiatives.	See para 19, 27, 28
Vibrant and diverse venue offering arts, music, drama and exhibition space as well as food and drink: is hub of a large number of community groups, clubs and societies: epitomising Norwich “café culture”. Limited extension of hours of forecourt would support and sustain this vital and valued role in the cultural life of the City.	See para 19, 27, 28

Consultation Responses

10. Officers from the Council's Transportation, Environmental Health and Design and Conservation teams were each consulted on 15th September. The Transportation Planner has raised no objection on traffic grounds as the forecourt is set back from the footway and extended use for outdoor seating would not obstruct it. The Conservation section do not wish to comment on this proposal as no substantive development is involved.
11. The Environmental Health Officer has objected to the proposed variation, stating that the extension of the use of the forecourt into the evening would change its focus from an early evening dining area to an area predominantly for outdoor drinking. The likelihood is that later evening users of the area, having been drinking for longer, would inevitably be louder and more voluble/vocal than early evening users, thus unacceptably concentrating the impact of ambient noise on living accommodation directly above the shopping parade and nearby.

ASSESSMENT OF PLANNING CONSIDERATIONS

Relevant Planning Policies

National Policy

Planning Policy Statement 1 (PPS1) – Delivering Sustainable Development
Planning Policy Statement 1 supplement – Planning and Climate Change
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

Saved Policies of the 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

A Conservation Area Appraisal is in preparation for the Heigham Grove area, but cannot be used in the consideration planning applications pending community consultation, agreement and adoption.

Principle of Development

Policy Considerations

12. 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.
13. 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.
14. The main policy considerations here are the potentially detrimental impact of the proposed extended hours of use of the front forecourt area on the quiet enjoyment and living conditions of adjoining and nearby residential occupiers in Earlham 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

15. City of Norwich Replacement Local Plan saved policy EP22 provides 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.

Appeal History

16. 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 when permission was again applied for. The Council opted to re-impose the original 1988 conditions on a fresh permission (ref. 4900088/CU) and the case was taken to appeal.
17. 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 curfew 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, the more recent proposal by the present applicant to extend the opening hours of the 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.

Combined Impact

18. The present application seeks what might appear to be only a fairly modest 2½ hour extension in the public use of the front forecourt to 10.30pm. It is, however, accompanied by a licensing application which originally asked for public drinking on the same forecourt until 11pm, and which provides for an increase in the number of tables on the forecourt from 3 to 4, as well as extending outdoor drinking on the premises to the rear patio area, again until 11pm. Consequently the overall impact of the planning and licensing changes requested would be significantly greater in intensifying the present use than it might first appear, albeit that not all of those impacts can be controlled directly through planning powers.
19. Much has been made of the positive contribution of the Workshop to the café culture of Norwich and the desirability of fostering and encouraging such cafés in city centres. Neither of these matters are in dispute. The Workshop is known to be a unique and characterful venue which clearly benefits many aspects of the cultural and social life of the City and has little in common with more typical pubs and bars in Norwich. However, although not wholly suburban, this is not a city centre location where late opening and outdoor and pavement drinking is routinely sanctioned and accepted, but a mixed use area with residential occupiers in very close proximity, including those in first floor flats directly above the bar and forecourt area and families occupying the houses and using the residential gardens directly to the east.
20. It was to protect those occupants' quiet enjoyment and preserve their quality of life that the 8pm forecourt curfew was imposed in 1988 and 1990 and the overall opening hours of the premises were limited to 11pm, notwithstanding the trend toward later opening in more recent years. There are certainly 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 an 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 premises are still appropriate and necessary and there have been no material changes in planning policy which would alter the Council's view since they were last challenged in 2006.
21. 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 occupier of the flat immediately above the premises, so would not himself object to the

extended use of the forecourt for eating and drinking. Furthermore, the occupant of one of the other flats in the parade has expressed his support for the proposal (though immediate neighbours maintain their objection). The house immediately next door (51) is understood to be unoccupied at present and would be initially unaffected by the change. However, this situation will not continue indefinitely. 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.

22. The concerns of the Environmental Health Officer are relevant here. The extension of use of the forecourt into the later evening would shift its focus from eating to drinking and, however considerate customers may feel, the effect of alcohol consumption is to release social inhibitions and make people more relaxed and talkative, especially in a venue which is conducive to that mood. Consequently the noise level from the forecourt would inevitably rise in a location which is directly below the habitable rooms of residential properties.
23. For the reasons above it is considered that the proposed variation of condition would be detrimental to the living conditions of adjacent residential occupiers.

Conservation Area – Impact on Setting

24. PPS5 allows local planning authorities to assess any harm to the significance of designated heritage assets arising from development, which can include the impact of particular uses of buildings or any proposed change in the character of those uses. Although objectors have described the Workshop, as a thriving café bar, as a use perhaps better suited to the City Centre, a wide diversity of local food and drink outlets and meeting places can have a positive and beneficial impact on the character and ambience of Conservation Areas. The locality already offers a wide and complementary range of cafés, bars and restaurants. It is felt that the extension of the use of the forecourt to 10.30 at night would not in itself have a harmful impact on the heritage significance of the Conservation Area as a whole and a refusal of permission could not be supported on that basis.

Transport and Access

Highways Impact

25. 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.

Environmental Issues

Noise and Air Quality

26. The issues relating to neighbourhood noise are covered in paragraphs 15 to 23 above. In relation to air quality, the Environmental Health Officer has confirmed that the limited

impact of smoking outside the building by a small number of customers cannot be regarded as contributing significantly to air pollution.

Economic and Cultural Benefits

Contribution of the business to the local economy

27. In the current difficult economic conditions it is incumbent on the Council to foster and encourage local enterprise and business development and expansion wherever possible. Saved City of Norwich Replacement Local Plan Policy EMP2 accepts expansion of existing businesses where there is no adverse environmental or visual impact, taking particular account of the character of residential areas or other adjoining uses. The Workshop has been an exceptional local success not only in terms of its business development, but self-evidently in the positive contribution it has made to the artistic, cultural and social life of the local community and the City as a whole. The venue is clearly popular and thriving and strenuously supported by its customer base for its unique and valued qualities. 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.
28. The applicant's wish to expand and develop the business is acknowledged and accepted. The capacity of the Workshop premises and its curtilage is, however, demonstrably limited. The proximity of adjoining residential accommodation was a crucial consideration in the Council's decision in 1990 to impose the original 8pm curfew on the forecourt and limit the hours of opening of the premises as a whole (and also to refuse to extend the 11pm closure in 2006). That situation still applies and there is still residential accommodation in very close proximity. Planning officers have carefully weighed the impact of the proposed extension in hours of use of the forecourt and taken into account the additional flexibility and greater custom this would bring to a successful, popular and socially responsible local business. On balance however, it is considered that planning circumstances have not altered sufficiently to justify a departure from the hours originally imposed and the need to protect the amenity of neighbours from the impacts of the café bar use remains a material planning consideration and should, in this case, take precedence.

Conclusions

29. The planning arguments in this case are balanced. On the one hand the Workshop is a deservedly successful and popular local venue serving a broad and diverse section of the community and (as supporters note) its relaxed and welcoming "café culture" atmosphere and varied clientele is distinctly different from many conventional pubs and bars. However, planning cannot influence the particular business model or management ethos of a venue but must consider the potential impacts of any café-bar use which might be able to operate from the premises within the terms of the current permission. Any permitted extension in hours of use of the forecourt would apply in the long term, irrespective of who ran the premises and however its customer focus might change and evolve. There is, in short, no guarantee that the lively and cosmopolitan atmosphere of the Workshop as it exists now would continue indefinitely.
30. Even with a responsible management and a socially conscious customer base it is highly likely that an extension in the hours of use of the forecourt would change its emphasis from eating to outdoor drinking and some increase in the level of ambient noise would

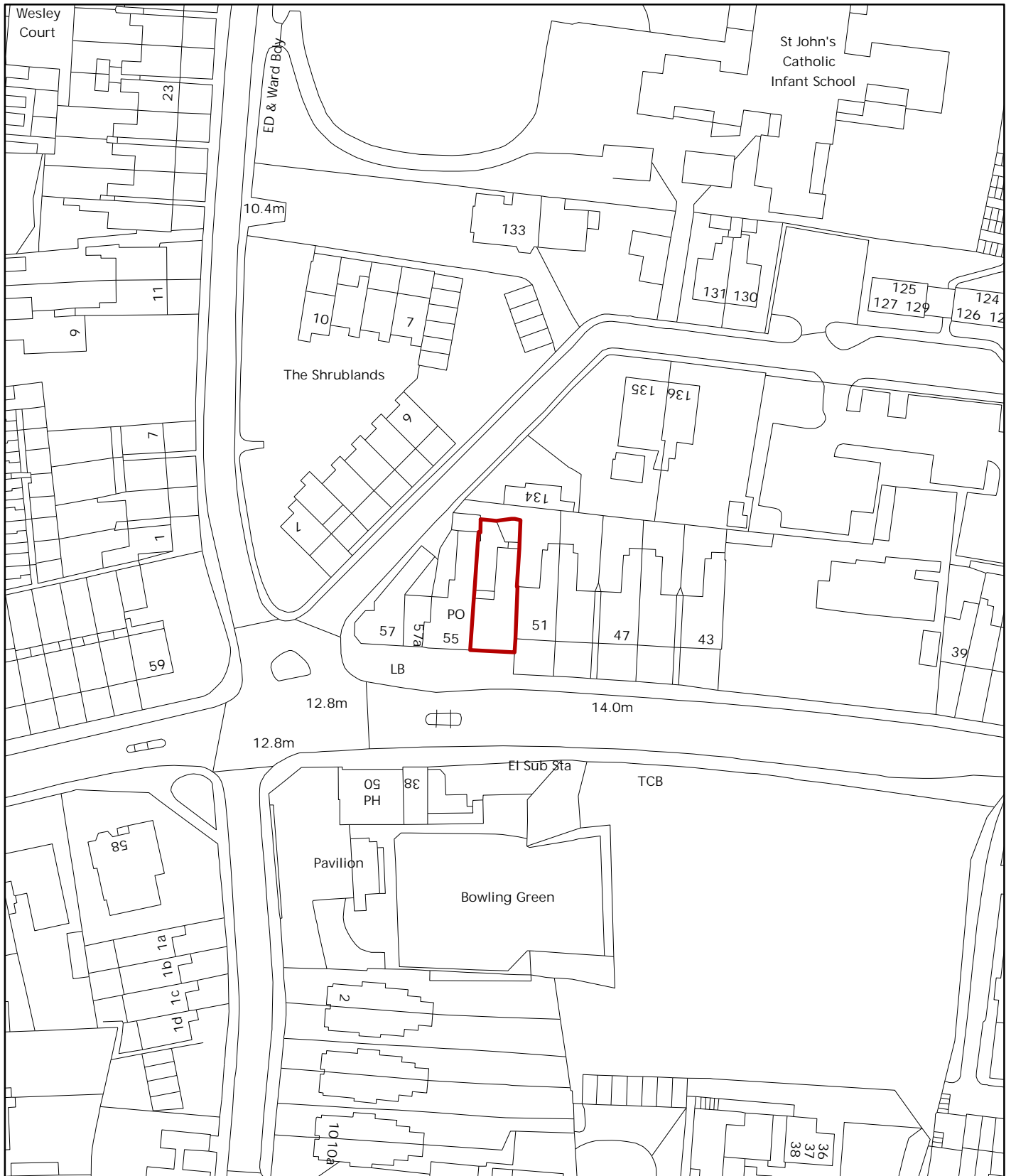
inevitably occur. This would impact unacceptably on the living conditions of immediately adjoining residents especially those in the upper floor flats at a time in the evening when a period of quiet enjoyment might be reasonably expected. The previous restrictions on the hours of use of the forecourt remain relevant and are considered necessary in the interests of protecting residential amenity and to secure the proper planning of the area.

31. Accordingly, and for the reasons given in the report, the proposed variation of condition 5 of planning permission reference 4900088/F is recommended to be refused for the reasons given below.

RECOMMENDATIONS

To REFUSE planning permission for Application No 10/01590/F, 53 Earlham Road for the following reason(s):-

1. The extended use of the forecourt as part of the restaurant until 10.30pm would result in more intensive and increased use of the forecourt area and would consequently result in an unacceptable increase in customer noise directly adjacent to habitable rooms of first floor residential flats in this small shopping parade, as well as increasing noise to other residential properties in close proximity. The proposal would therefore result in a reduction in the standard of residential amenity and a detrimental impact on the living conditions of existing residential occupiers in the vicinity in the evening, contrary to saved policies EMP2 and EP22 of the City of Norwich Replacement Local Plan (adopted November 2004).



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Planning Application No - 10/01590/VC
 Site Address - Workshop Cafe Bar 53 Earham Road
 Scale - 1:1,000



NORWICH
 City Council

PLANNING SERVICES

