

APPLICATION NO.	P16/S2543/FUL
APPLICATION TYPE	FULL APPLICATION
REGISTERED	25.7.2016
PARISH	HENLEY-ON-THAMES
WARD MEMBER(S)	Joan Bland Lorraine Hillier Stefan Gawrysiak
APPLICANT	Mr Cau
SITE	Cau Restaurant, 38 Hart Street, Henley-on-Thames, RG9 2AU
PROPOSAL	Removal of Condition 5 (no customer access to patio) of planning permission P08/E0834 to allow limited use of the rear courtyard.
AMENDMENTS	None
OFFICER	Simon Kitson

1.0 **INTRODUCTION**

- 1.1 This application is referred to Planning Committee as the officers' recommendation conflicts with the views of the Town Council.
- 1.2 The Cau Restaurant (which is shown on the OS extract **attached** as Appendix A) is situated on the southern side of Hart Street, between Duke Street and Thameside. This is towards the middle of the Henley Town Centre and the Main Conservation Area. Although the premises is not itself a listed building it is adjoined on either side by listed buildings.
- 1.3 The premises has been lawfully used as a café/restaurant (class A3) since 1998. From 1998 through 2008 this use was subject to a condition of planning permission agreed to by two planning inspectors limiting the use of the rear garden for the outdoor seating of customers to between the hours of 0900 to 1800 Monday to Friday only.
- 1.4 Following a series of breaches of the hours condition by the former occupier of the site (La Bodega Tapas), the council subsequently imposed a condition (No.5) upon a 2008 planning permission for a restaurant extension ([P08/E0834](#)), prohibiting the use of the patio and garden area by customers.
- 1.5 The most recent planning approval ([P15/S2523/FUL](#)) granted a variation of condition 5 of planning permission P08/E0834, reinstating the hours of use of the rear courtyard for outdoor customer seating to the hours of 0900hrs -1800hrs Monday to Friday only. This was for a temporary trial period of 12 months. The decision notice is **attached** as Appendix B

2.0 **PROPOSAL**

- 2.1 Following the previous temporary approval, and the expiry of the 12 months 'trial period', permission is now sought for the permanent removal of the aforementioned condition, in order to allow limited use of the courtyard.
- 2.2 The accompanying statement and plans are **attached** as Appendix C. All associated documents and consultation responses can be viewed on the council's website: www.southoxon.gov.uk

3.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

3.1 Henley-on-Thames Town Council – Objection

- Recommend refusal

Health & Housing - Env. Protection Team - No objection on the basis of noise, dust or odour.

Neighbour Object (3)

- The applicant is trying to overturn a previous decision by South Oxfordshire District Council which restricted use of the courtyard. This condition was imposed to protect neighbouring amenity
- There will be further residential developments affected by this application following other recent planning approvals within the locality
- This application should be viewed in conjunction with the large unauthorised air conditioning unit now erected in the courtyard

4.0 **RELEVANT PLANNING HISTORY**

4.1 [P15/S2523/FUL](#) - Approved (21/09/2015)

Variation of condition 5 (no customer access to patio) of planning permission P08/E0834 to allow limited use of the rear courtyard area by customers for a temporary trial period.

[P12/S2260/FUL](#) - Approved (30/01/2013)

Retention of housing for a refrigeration plant unit in the rear garden of the La Bodega restaurant, positioned on an existing concrete base where the original shed was located.

[P08/E0834](#) - Approved (08/09/2008)

Construction of a conservatory to provide a dining room extension.

[P06/E0536](#) - Refused (11/07/2006) - Approved on appeal (23/04/2007)

Variation of condition 5 of planning permission P97/S0544, to allow customers to use the patio area between the hours of 09:00 and 21:00 daily.

[P97/S0165](#) - Other Outcome (08/10/1997) - Refused on appeal (02/12/1997)

Change of use of off-licence (A1) to cafe/bar (A3). Alterations to front facade. Minor demolitions and replacement extensions to rear of property. (As amended by agents' letter dated 25 June 1997 and accompanying plan no. AGF.97.145.11).

[P97/S0544](#) - Refused (08/10/1997) - Approved on appeal (26/02/1998)

Change of use of off-licence (A1) to cafe/bar (A3). Minor demolitions. Replacement extensions and conservatory to rear.

5.0 **POLICY & GUIDANCE**

5.1 The Joint Henley and Harpsden Neighbourhood Plan (JHHNP)

5.2 South Oxfordshire Core Strategy (SOCS) policies;

CS1 - Presumption in favour of sustainable development
CSEM1 - Supporting a successful economy
CSEM4 - Supporting economic development
CSEN3 - Historic environment
CSHEN1 - The Strategy for Henley-on-Thames
CST1 - Town centres and shopping

5.3 South Oxfordshire Local Plan 2011 (SOLP) policies;

- CON7 - Proposals in a conservation area
- D5 - Compatible mix of uses
- E5 - Business, industrial, warehousing and storage proposals
- EP2 - Adverse affect by noise or vibration
- EP3 - Adverse affect by external lighting
- G2 - Protect district from adverse development
- TSM3 - Conversion of existing buildings to tourist faculties, pub and restaurants
- TSM4 - New hotels, pubs and restaurants in the built up area

South Oxfordshire Design Guide 2008 (SODG)

5.4 National Planning Policy Framework (NPPF)

National Planning Policy Framework Planning Practice Guidance (NPPG)

6.0 **PLANNING CONSIDERATIONS**

6.1 The main issues for consideration in this application are as follows:-

- The impact upon the charcter of the area and the historic environment
- The impact upon the amenity of the neighbouring properties
- Other material considerations

Other developments

6.2 It is noted that comments have been received from some of the nearest residential properties. However, the objections substantially relate to the installation of an air-extraction unit to the rear of the property without planning permission, following a recent fire. There is no reference to any specific impacts associated with the use of the courtyard over the preceding 12 months. The construction activity is the subject of a separate investigation by the council's planning enforcement and environmental health teams. As such, it is not relevant to the determination of this application. If a subsequent application is received by the planning service, the proposal will be assessed on its own merits.

Character and heritage issues

6.3 The previous application ([P15/S2523/FUL](#)) considered in depth the impact upon the historic environment and the charcter of the area, in the context of SOCS Policies CSEN3 and SOLP Policies CON7, TSM3 and TSM4. The proposal was also weighed against the economic benefits associated with the prosperity, vibrancy and vitality of the town centre, in accordance with SOCS Policies CSEM1, CSEM4, CST1 and CSHEN1. Officers are satisfied that the continued use of the courtyard for dining would not be in conflict with the council's statutory duty to preserve or enhance the character and appearance of the conservation area. The economic benefits to the town centre associated with improved visitor accommodation would contribute to its economic objectives and the strong emphasis on sustainable economic growth expressed within the NPPF.

6.4 Although the Town Council now raise objection to the proposal following their previous recommendation of approval for a temporary period, officers do not consider that there is any conflict with the JHHNP as this document recognises the importance of restaurants to the commercial success of the town centre.

Neighbouring amenity

- 6.5 SOLP Policy EP2 states that proposals which would by reason of noise or vibrations have an adverse effect on existing occupiers will not be permitted, unless effective mitigation measures will be implemented. Policy D5 provides that a compatible mix of uses will be retained and encouraged in town centres provided that there is no harmful effect on the amenity of adjoining uses.
- 6.6 Until the 2008 planning consent for a dining room extension, the property benefitted from an open seating area for customers, with a 09:00 – 18:00 weekday hours of use condition imposed by two planning inspectors in 1998 and 2007. Both inspectors regarded the above hours of use of the garden for outdoor customer seating to be consistent with the reasonable amenity of neighbouring residential properties.
- 6.7 It was only as a result of repeated breaches of the above hours of use by the previous operator that the council in 2008 sought to prohibit altogether the use of the garden area. However, officers maintained in 2015 that limited use of the courtyard by the current operator would still be consistent with the reasonable amenity of neighbouring occupiers, provided that some appropriate restrictions remain in force. The use of the courtyard within restricted hours is entirely consistent with conditions imposed on the outdoor eating areas of other restaurants and cafes in the Henley town centre (e.g. Maison Brilliant, Hot Gossip, Café Nero).
- 6.8 Following the subsequent grant of temporary permission, no noise complaints were received by the council in relation to the use of the courtyard for dining purposes and the Environmental Health team have no objections to any aspect of the current proposal on the basis of neighbouring amenity.
- 6.9 The courtyard continues to be afforded a reasonable level of screening by the existing 2m-high brick and flint boundary wall and officers accept that there have been no demonstrable adverse impacts associated with the lawful use of the courtyard within the hours previously permitted. Officers therefore consider that there is no reasonable basis to refuse planning permission for the permanent use of the courtyard by diners, provided that the previous conditions relating to the weekday hours, music and openings are retained. These conditions are considered to be appropriate, enforceable and proportionate to the potential level of impact upon the amenity of the neighbouring residents.

7.0 CONCLUSION

- 7.1 Subject to the attached conditions, the proposed use of the rear courtyard for customer seating during the hours proposed would not be harmful to the amenity of neighbouring occupiers. The proposed development would not have any adverse impacts on the character or appearance of the conservation area or the setting of any nearby listed building. The proposed development would, however, contribute to the vitality, viability and attractiveness of the town centre.

8.0 RECOMMENDATION

- 8.1 **That planning permission be granted subject to the following conditions:**

- 1. No part of the patio and garden shall be open to and used by customers outside the times of 0900hrs and 1800hrs Monday to Friday and not at all on Saturday, Sundays or Bank Holidays.**
- 2. No music, either live or recorded, shall be provided in the external courtyard area at any time.**

3. All door and window openings on to the rear garden and patio areas shall remain closed at all times other than for access to and from the garden.

Author: Simon Kitson

Contact No: 01235 422600

Email: planning@southoxon.gov.uk

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