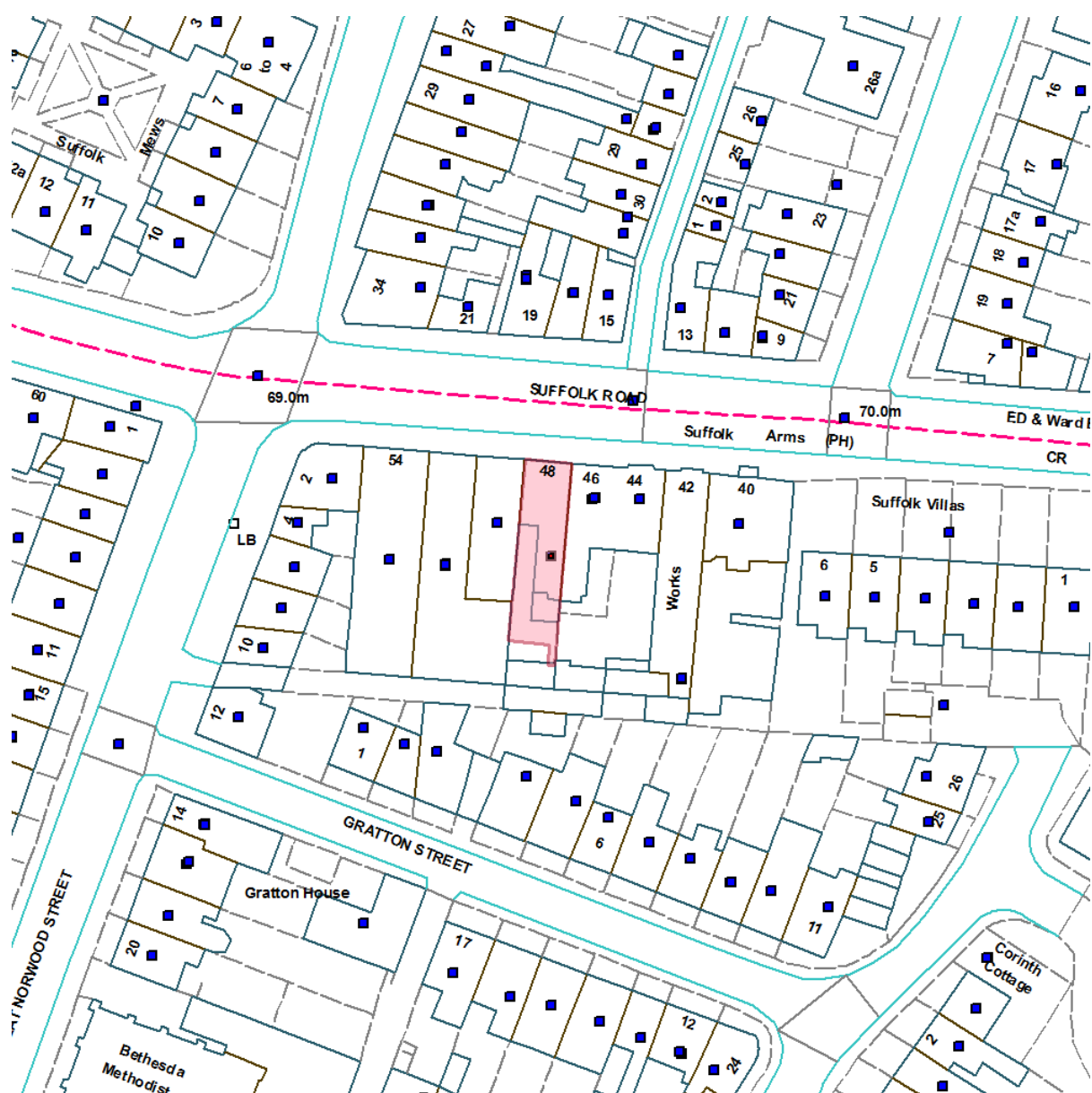


<b>APPLICATION NO: 18/02337/CONDIT</b>		<b>OFFICER: Mr Gary Dickens</b>	
<b>DATE REGISTERED:</b> 12th December 2018		<b>DATE OF EXPIRY:</b> 6th February 2019	
<b>DATE VALIDATED:</b> 12th December 2018		<b>DATE OF SITE VISIT:</b> 25th January 2019	
<b>WARD:</b> Park		<b>PARISH:</b>	
<b>APPLICANT:</b>	Mr Ryan Bennett		
<b>AGENT:</b>	Ridge and Partners LLP		
<b>LOCATION:</b>	48 Suffolk Road, Cheltenham		
<b>PROPOSAL:</b>	Variation of condition 4 on 17/00960/COU for alternative hours of extractor fan use and additional attenuation measures		

**RECOMMENDATION:** Permit



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application relates to 48 Suffolk Road which is currently occupied by 'Baker and Graze' and operates as a bakery and café / restaurant premise.
- 1.2 The application is seeking to vary an existing condition (cond. 4 on 17/00960/COU) which restricts the operating hours of the existing extraction fan to only be used between the hours of 07:30 to 20:30 Monday to Saturday and 09:00 to 16:00 Sundays and Bank Holidays.
- 1.3 The application is before committee at the request of Cllr Dilys Barrell due to potential impact on neighbouring amenity. Members will visit the site on planning view.

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

### **Constraints:**

Conservation Area  
Neighbourhood Shopping Area

### **Relevant Planning History:**

**09/00442/PREAPP CLO**  
Change of use from A1 (shop) to A3 (restaurant)

**03/01005/COU 1st September 2003 PER**  
Change of use of workshop to dwelling

**06/00113/COU 5th August 2011 DISPOS**  
Change of use of ground floor from shop (Class A1) to form coffee/pastry/sandwich/pasta bar (Class A3), erection of rear conservatory, and erection of rear spiral staircase.

**10/01166/COU 23rd August 2011 DISPOS**  
Retrospective application for the change of use from A1 (shop) to A3 (restaurant - brasserie)

**16/00698/PRIOR 15th June 2016 NOOBJ**  
Notification of change of use from shops (Class A1) to restaurants and cafes (Class A3)

**17/00960/COU 10th November 2017 PER**  
Garden change of use from shops (class A1) to restaurants and cafe (class A3) and changes to existing kitchen extract fan

**18/01166/CONDIT 4th September 2018 PER**  
Variation / removal of conditions on planning permission ref. 17/00960/COU - amend condition 3 (garden area hours of use), amend condition 4 (operating hours of extractor fan) and remove condition 5 (temporary permission). Please see accompanying Planning Statement.

## 3. POLICIES AND GUIDANCE

### National Planning Policy Framework

Section 4 Decision-making

Section 6 Building a strong, competitive economy

Section 8 Promoting healthy and safe communities

Section 16 Conserving and enhancing the historic environment

Saved Local Plan Policies

CP 4 Safe and sustainable living

CP 7 Design

Adopted Joint Core Strategy Policies

SD4 Design Requirements

SD8 Historic Environment

SD14 Health and Environmental Quality

Supplementary Planning Guidance/Documents

Central conservation area: The Suffolks Character Area and Management Plan (July 2008)

## 4. CONSULTATIONS

### Environmental Health

*16th January 2019*

I have reviewed this application and offer the following comments and recommendations:

In this application the applicant has not provided an assessment of noise levels likely to be produced by the revised extractor equipment when it is fitted with an attenuation system. However, the attenuator system indicated appears to be the same as that specified in application 18/01166/CONDIT. In connection with this earlier application, the applicant indicated that the revised system would produce a noise level not in excess of 33dB(A) at 1m from the façade of the nearest residential receiver. If we use this figure as the "Operational Level" for a calculation to BS 4142 standards, we have a rating level of 39, compared to an evening average background level (L90) in the range of 48-55dB. This is a negative difference, which suggests any adverse impact is unlikely. The current application only seeks to vary conditions to allow evening opening of the premises, rather than early morning opening, which could be considered a more sensitive time of the day.

Therefore I would recommend the following:

Please request the applicant confirms that the same noise attenuation plant is proposed as in the previous application.

Should this be confirmed, I have no objection to the extended hours of operation of this equipment requested.

If you have queries, let me know.

## 5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	<b>17</b>
Total comments received	<b>5</b>
Number of objections	<b>4</b>
Number of supporting	<b>1</b>
General comment	<b>0</b>

- 5.1 Seventeen letters were sent to neighbouring properties, a site notice displayed and an advert published in the Gloucestershire Echo. Five responses have been received, one in support and four in objection.

- 5.2 The comments for this application will be circulated in full to members together with previous comments received in relation to this application. However, in brief the concerns raised relate to the impact of noise and activity which could be created by increasing the hours of operation.

## **6. OFFICER COMMENTS**

### **6.1 The site and its context**

- 6.2 The application site is located on a main road within the Suffolks area of Cheltenham. The site forms part of a vibrant and active environment where there are a variety of uses in the area which include retail, restaurants, bars and residential. In the immediate vicinity, there is an estate agency and a bar adjacent to the site, whilst to the rear lie a small number of residential properties and their respective amenity space.
- 6.3 There is recent and relevant planning history for this site. This includes a prior approval application (ref: 16/00698/PRIOR) in 2016 enabling the premises to change from use class A1 (retail) to A3 (restaurant and café). A change of use application (ref: 17/00960/COU) for the garden area to be used for A3 purposes was approved with conditions in 2017. An application to vary two and remove one of these conditions was submitted and processed in 2018 (ref: 18/01166/CONDIT).
- 6.4 Following these applications, the site (including the garden area) is able to be used as an A3 use class subject to restrictions on the hours of use of the garden area (cond. 3) and restrictions on the hours of operation of the current extraction fan (cond. 4), together with the garden only being used in accordance with the agreed garden area management plan (cond. 5).
- 6.5 This application is seeking to vary condition 4 on 17/00960/COU and allow the extraction fan to be operated between the hours of 07:30 to 22:30 Monday to Saturday; and 09:00 to 17:30 Sundays and Bank Holidays.

### **6.6 Determining considerations**

- 6.7 The consideration for this application is whether the extension to the extraction fan operating hours will have an unacceptable impact on neighbouring properties balanced against the need to support a thriving, local business.
- 6.8 The applicant considers the current condition restricts the business from operating as it wishes. The officer report for 17/00960/COU states how the inclusion of this condition *“will reduce and limit the impact on surrounding properties to an acceptable level”* and *“prevent... the extraction fan being used at times of the day which could be considered to have a harmful impact on neighbouring properties”*.
- 6.9 With regards to this application, the applicant has sought to mitigate the noise from the current extraction fan through additional noise attenuation which involves the introduction of a rectangular silencer and vertically redirecting the fan hood. The Environmental Health Officer has been consulted and they raised no objection to this application as they felt the proposed attenuation system would prevent any significant disturbance to neighbouring properties.
- 6.10 Whilst these points are acknowledged, it is important to differentiate between the views of Environmental Health and Planning when assessing noise. Planning Officers look to protect amenity whereas Environmental Health Officers seek to prevent a statutory nuisance. When considering impact on amenity, JCS Policy SD14 and Local Plan Policy CP4 are relevant in determining applications. National Planning Policy Guidance is also

clear that applications which result in a change of behaviour for adjacent occupiers should be avoided.

- 6.11** The most recent application (ref: 18/01166/CONDIT) sought to change the operating hours of the extraction fan to 04:30 to 22:00 Monday to Saturday, and 05:00 to 21:00 on Sundays and Bank Holidays. The same attenuation system was proposed and the change in hours was supported by the Environmental Health Officer. This was rejected by Officers however as it was felt the operation of the extraction fan system at this time in the morning would result in neighbouring occupiers 'changing their behaviour'. This application is seeking to extend the operating hours of the extraction fan in the evening only and the morning hours will remain the same.
- 6.12** The National Planning Policy Framework (NPPF) states in paragraph 80 how *"significant weight should be placed on the need to support economic growth and productivity"* whilst *"planning policies and decisions should help to create the conditions in which businesses can invest, expand and adapt"*. The business appears to be a successful one which contributes to the economy and sustainability of this neighbourhood shopping area as well as the town as a whole.
- 6.13** Any decision must therefore be balanced against the need to protect the amenity of adjoining land users whilst also supporting local businesses.
- 6.14** After careful consideration, it is officer's opinion that extending the evening operating hours of the extraction fan is acceptable. Officer's consider the potential economic benefits of the application to outweigh the potential harm to neighbouring properties. The proposed additional attenuation measures will reduce the current noise levels to an acceptable level, as confirmed by the Local Authority's Environmental Health Officer. Given this point, it is not felt increasing the evening operating hours will result in a neighbouring occupiers having to 'change their behaviour'.

## **7. CONCLUSION AND RECOMMENDATION**

- 7.1** Based on the above, it is officer's conclusion that the variation of the operating hours for the amended extraction fan system is acceptable and is not contrary to the relevant policies within the JCS or the Local Plan and is in accordance with Section 6 of the NPPF.
- 7.2** The recommendation to members is therefore to approve the variation of condition 4 on application 17/00960/COU and grant planning permission subject to the following schedule of conditions, which reflects those on the previous application.

## **8. CONDITIONS**

- 1 The planning permission hereby granted shall be begun not later than the expiration of three years from the date of this decision.  
  
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The planning permission hereby granted shall be carried out in accordance with the approved plans listed in Schedule 1 of this decision notice.

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

- 3 No customers shall be admitted to or allowed to remain within the garden area of the premises outside the following hours: 08:30 to 21:00 Monday to Saturday and 09:00 to 17:30 Sundays and Bank Holidays.

Reason: To safeguard the amenities of residents of neighbouring properties, having regard to Policy CP4 of the Cheltenham Borough Local Plan (adopted 2006).

- 4 The extractor fan shall not be operated outside the following hours: 07:30 to 22:30 Monday to Saturday, 09:00 to 17:30 Sundays and Bank Holidays.

Reason: To safeguard the amenities of residents of neighbouring properties, having regard to Policy SD14 of the Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury (adopted 2017) and Policy CP4 of the Cheltenham Borough Local Plan (adopted 2006).

- 5 The garden area will be used in accordance with the submitted Garden Area Management Plan.

Reason: To safeguard the amenities of residents of neighbouring properties, having regard to Policy SD14 of the Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury (adopted 2017) and Policy CP4 of the Cheltenham Borough Local Plan (adopted 2006).

## **INFORMATIVES**

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the application constitutes sustainable development and has therefore been approved in a timely manner.