

Bath and North East Somerset Council			
MEETING: Development Control Committee	AGENDA		
MEETING DATE: 05 June 2013	ITEM NO:		
REPORT OF David Trigwell, Divisional Director of Planning and Transport Development.			
REPORT ORIGINATOR: Ms Lisa Bartlett, Development Manager (Tel. Extension No. 7281).			
DATE PREPARED: 18 th April 2013			
AN OPEN PUBLIC ITEM			
BACKGROUND PAPERS: Enforcement file 08/00552/NONCOM			
TITLE: Enforcement Report: Opa 14 North Parade Bath			
WARD : Abbey Ward			

1.0 PURPOSE OF REPORT

To seek Members' view on the harm caused to neighbours and the area with respect to the unauthorised material change of use of a restaurant to a mixed use of restaurant, nightclub and bar. Officers are seeking authority from Members to take enforcement action to remedy the breach of planning control.

2.0 LOCATION OF PLANNING CONTRAVENTION

Opa, 14 North Parade, Bath ("the Premises"), as outlined in bold on the attached site location plan (Appendix 1).

3.0 OUTLINE OF PLANNING CONTRAVENTION

Without planning permission the material change of use of the Premises from a restaurant to a mixed use of restaurant, bar and nightclub.

4.0 RELEVANT PLANNING HISTORY

5816/3 - Use of basement as a restaurant - Permitted (1973)

06/00246/FUL - Demolition of existing lean-to toilet block and erection of new glazed extension, change of use of adjacent vaults (nos. 1 and 10) and lower ground floor Toll House into part of restaurant and minor alterations - Permitted.

06/1805/FUL - Change of use of vaults and lower ground floor Toll House to restaurant and erection of glass conservatory after demolition of existing toilet block - Permitted.

08/02077/VAR - Variation of Condition 05 of permission 06/00246/FUL, to extend the use of the outside terraced area from 10.00 to 19.30 hours daily to the following revised times:- Sunday to Thursday inclusive (save for Bank Holidays) from 10.00 to

00.01 hours. Fridays and Saturdays from 10.00 to 01.00 hours. Sunday and Monday of Bank Holidays from 10.00 to 01.00 hours. - Refused.
08/02486/LICPL - Licence application (not Planning) that granted permission for use of the outside terraced area until 23:00 – Granted.
09/01794/FUL - Change of use of part of Parade Gardens to smoking area in association with Opa – Permitted on a temporary basis until 31/10/2010.
10/00054/FUL- change of use restaurant to mixed use of restaurant, bar and nightclub - Refused.
08/00243/NONCOM – Enforcement enquiry regarding the hours of opening – closed July 2008 following submission of planning application for variation of opening hours condition reference 08/02077/VAR.

5.0 BACKGROUND

On 4th July 2008 a license was granted by licensing to allow use of an outside terrace area until 23:00 hours. However licensing and planning are different statutory regimes and the grant of a licence does not absolve an operator of the need to also obtain any necessary planning permissions. The grant of the licence does not alter the fact that the terrace only has planning permission for use in association with the restaurant use of the Premises until 19:30 hours.

On 19th August 2008 planning permission was refused for the Variation of Condition 05 of permission 06/00246/FUL, to extend the use of the outside terraced area as it was considered that the proposed increased opening hours would be detrimental to the amenities of the occupiers of, adjoining and nearby premises by reason of increased noise and traffic, reference 08/02077/VAR. On 2nd November 2009 temporary planning permission was granted for the change of use of part of Parade Gardens to use associated with Opa, reference 09/01794/FUL. This permission expired on 31st October 2010.

In March 2011 the operator responded to a formal Planning Contravention Notice (“PCN”) stating that the use of the Premises since June 2006 has been a Greek restaurant and bar providing musical entertainment to which some customers choose to dance.

In April 2011 following lengthy investigations, it was concluded that, whilst the activity at Opa sometimes went beyond what might be expected of a restaurant, there was insufficient evidence to demonstrate that a material change of use had taken place and officers would therefore continue to monitor the Premises.

In June 2012 following continued complaints in relation to the hours of opening and noise this matter was reinvestigated by Officers.

The authorised use of the Premises is as a restaurant, although evidence obtained by Officers shows that the Premises is currently being used for a mixed use of restaurant, bar and nightclub. Furthermore, evidence obtained shows the use of Parade Gardens continues.

The main issue in this case is considered to be the effect of the unauthorised use of the Premises on the living conditions of nearby residents, particularly by reason of any

increased noise and disturbance caused by loud music emanating from the Premises and also that patrons of the Premises have caused nuisance to surrounding properties by reason of noise and nuisance.

From site visits to the Premises and nearby flats, undertaken between December 2012 to April 2013 it is clear that the current use of the Premises causes noise and disturbance to occupiers of nearby dwellings.

The evidence obtained by Officers includes information gathered from social internet sites, as well as site visits by multi agency staff, planning enforcement officers and visits to adjoining properties by environmental health officers. The monitoring of social internet sites has proved a minimum of 50 non-restaurant events during 2012 (the evidence also suggests that there were more non-restaurant uses that were not specifically advertised). It is clear that a number of the events are organised by separate promoters such as 'Spanish Way', 'Sublime', 'CocoLoco' and 'Clique'. These nights feature DJs, photographers, discounted drinks promotions and, in the case of 'Clique', a 'cocktail luge' (an ice sculpture into which drinks are poured which then run into a patron's mouth or glass) a fire dancer and smoking super chilled drinks.

Despite correspondence from your officers in August of last year and subsequent confirmation from the operator that the use being carried out still accorded with that described in the 2011 PCN, complaints continued to be received.

At 23.40 hours on 30th January 2013 Officers attended the 'Spanish Way' night and observed that there were no diners (the dining area was cordoned off) and the premises were filled with people who were drinking and dancing to loud music.

On 18th February 2013 a letter was sent to Opa advising that the unauthorised use should cease immediately. To date, despite this request, nights such as 'Spanish Way' and 'Clique' continue to be actively promoted on social media, as well as being advertised by way of posters on the Bath University campus.

On 21st March 2013 a Noise Abatement Notice served confirmed the nuisance being created 'from amplified music and voice'. However, the Premises' use has continued unabated with the 'Spanish Way' event being noted on four separate dates this year, 'Clique' being noted on five separate dates this year with the added use of the riverside terrace for smoking 'shisha' pipes up to 11:00pm on those nights.

The Police Authority confirm that since January this year there have been seven complaints received of late night noise and nuisance from customers queueing, leaving the premises, being sick and depositing bottles and other items into the basement wells of adjacent properties.

14 North Parade itself, above Opa, known as Nunes House, is used by Advanced Studies in England ("ASE"), who offer American undergraduate students single term, full year and summer courses. Nunes House is used as residential accommodation for these students. The accommodation comprises 5 flats and a common room and all are affected to some extent by this unauthorised use.

ASE has previously stated that they are no longer able to offer this flat to students, owing to the high level of complaints about noise from previous occupants.

The next building to Nunes House is Georgian House, which is converted into a number of flats. Many of these flats also have windows that front onto the pavement outside Opa, and are also unacceptably affected by noise and disturbance from patrons of the Premises, as evidenced above.

The operator has in the past suggested that, if permission was granted for the nightclub use then they would be prepared to limit usage of the riverside terrace to before 22:00 hours (instead of the current unauthorised 23:00) and to accept a one year temporary permission. This would then give them a one year period to lease the separate smoking area adjacent to the park and see if the Premises can be run in this way without causing undue nuisance.

This part of Bath is very much part of the night-time economy, and many other restaurants, bars and clubs are nearby. The operator suggested that the continued use of the Premises could take place in a more controlled manner, and would allow a one year 'test' to see if a harmonious solution could be found. An application for this option was refused on reference 10/00054/FUL as it was considered there were a number of problems with this way forward. These are:-

- the permitted smoking area was itself subject to a temporary permission that expired on 31 October 2010;
- the use of the smoking area was restricted to between the hours of 12:00 and 23:00 – at the very time, after 23:00, when its use would most benefit local residents by moving smokers away from the pavement, it would not be available; and
- the offer to reduce the use of the riverside terrace from up to 23:00 (in accordance with the licence) to up to 22:00 ignored the fact that a planning condition already restricted the use of the terrace to before 19:30.

In addition, the harm caused by the unauthorised use is not just as a result of the use of the riverside terrace and smoking area, but also as a result of loud music from within the Premises and the coming and going of patrons late into the night.

Complaints in relation to noise and disturbance continue to be received and despite numerous requests the proprietors continue to use the Premises and part of Parade Gardens (garden terrace) as a restaurant, bar and nightclub outside any approved hours.

On 4th July 2008 a license was granted by Licensing to allow use of the same area until 23:00 hours. However licensing and planning are different statutory regimes and the grant of a licence does not absolve an operator of the need to also obtain any necessary planning permissions. The grant of the licence does not alter the fact that the terrace only has planning permission for use in association with the restaurant use of the Premises until 19:30 hours.

6.0 DEVELOPMENT PLAN

Of particular relevance to this matter is the Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007 (the Local Plan). Of particular relevance is Policy ES 12 relating to noise and vibration.

The following Policies are also considered relevant:

D.2 - General Design and public realm considerations

D.4 - Townscape considerations

BH.1 - Impact of Development on a World Heritage Site

BH.2 - Listed Buildings and their settings

BH.6 - Development within Conservation Areas

BH.9 - Parks and Gardens of Special Historic Interest.

7.0 EXPEDIENCY OF ENFORCEMENT ACTION

In this case, the lawful use of the Premises as a restaurant would have the potential to give rise to some noise and possible disturbance from patrons. However, patrons at a restaurant, bar and nightclub, as now being carried out, arrive and leave later, drink more alcohol, and as evidenced above, behave in a rowdier fashion, and make more noise than patrons from a restaurant alone. In addition, the inclusion of a nightclub use has led to a higher volume of amplified music being played later at night. These noise issues have been confirmed by site visits to the Premises and locality as well as by a formal Noise Abatement Notice served by our Environmental Health Officers. In the circumstances of this long running use being monitored by your Officers, formal enforcement action against the unauthorised bar and nightclub use is therefore considered expedient.

The very proximity of the unauthorised use to adjoining residential properties is causing environmental issues not experienced in the same way elsewhere in the City centre. The basement use is within a structure physically attached to residential properties not in the same ownership or control. The character and effect of the unauthorised bar and nightclub uses is very different to a purely restaurant use. It is considered that the noise issues cannot be adequately controlled by condition so as to obviate the real nuisances being created. In your officers' view, the proximity to residential properties means that this is simply the wrong location for a bar and nightclub.

The National Planning Policy Framework ("NPPF") was published in March 2012 and is a material consideration. Local Plan policies are consistent with national policy contained in the NPPF.

8.0 HUMAN RIGHTS AND EQUALITIES

8.1 It is considered that Article 1 of Protocol 1 (peaceful enjoyment of possessions) of the European Convention on Human Rights may apply in this case. However, those rights must be weighed against the negative effects of the unauthorised use on neighbours and on this sensitive part of the historic city. Given that the unauthorised use is harmful and contrary to the Development Plan, and given that there are no material considerations which outweigh the harm being caused, it is considered that enforcement action would be a proportionate interference in the wider public interest.

Regard has also been had to the Council's duty under s149 of the Equality Act 2010 to pay due regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics and to foster good relations between different groups when discharging its functions.

Whilst Opa is, in part, a Greek restaurant, the unauthorised nightclub/bar use appears to attract a mixed, predominantly student clientele. It is therefore considered that the taking of planning enforcement action in this case would not have any particular negative impact on any group with protected characteristics, especially as any enforcement action would not affect the ability of the operators to run the Premises as a Greek restaurant within the terms of their planning permission.

9. RECOMMENDATION

That delegated authority be granted to the Development Manager, in consultation with the Planning and Environmental Law Manager, to take any necessary enforcement action on behalf of the Local Planning Authority in respect of the alleged planning contravention outlined above, by exercising the powers and duties of the Authority (as applicable) under Parts VII and VIII of the Town and Country Planning Act 1990 (including any amendments to or re-enactments of the Act or Regulations or Orders made under the Act) in respect of the above Premises .

General Note

This specific delegated authority will, in addition to being the subject of subsequent report back to Members in the event of Enforcement Action either being taken, not being taken or subsequently proving unnecessary as appropriate, be subject to:

- (a) all action being taken on behalf of the Council and in the Council's name;*
- (b) all action being subject to statutory requirements and any aspects of the Council's strategy and programme;*
- (c) consultation with the appropriate professional or technical officer of the Council in respect of matters not within the competence of the Divisional Director of Planning and Transport Development; and*
- (d) maintenance of a proper record of action taken.*