

2.5 REFERENCE NO - 21/506027/FULL		
APPLICATION PROPOSAL		
Section 73 - Application for removal of condition 8 (noise levels) pursuant to application 21/503772/FULL for - Section 73 - Application for Variation of condition 2 (permanent change of use), 4 (to allow external lighting) and 7 (to allow music to cease Sun-Thu at 10 PM Fri-Sat at 11 PM) pursuant to application 18/501494/FULL for - Change of Use of the space to re-instate it's previous early historical use for the local community and as a centre for the local cultural arts and to provide food and drink.		
ADDRESS St Saviours Church Whitstable Road Faversham Kent ME13 8BD		
RECOMMENDATION - Grant		
REASON FOR REFERRAL TO COMMITTEE The Head of Planning considers that this application raises sufficiently unusual or difficult issues which warrant Member determination		
WARD Abbey	PARISH/TOWN COUNCIL Faversham Town	APPLICANT Mrs Romana Bellinger AGENT
DECISION DUE DATE 04/01/22		PUBLICITY EXPIRY DATE 15/12/21

Planning History**21/503772/FULL**

Section 73 - Application for Variation of condition 2 (permanent change of use), 4 (to allow external lighting) and 7 (to allow music to cease Sun-Thu at 10 PM Fri-Sat at 11 PM) pursuant to application 18/501494/FULL for - Change of Use of the space to re-instate it's previous early historical use for the local community and as a centre for the local cultural arts and to provide food and drink.

Approved Decision Date: 15.10.2021

18/502720/LBC

Listed Building Consent for proposed alterations to the layout of the joiners partitioned storerooms in the hall for use as a kitchen area, toilet and disabled toilet. To include drainage and damp repairs, underfloor insulation, erection of interior CCTV and reinstating dwarf wall with picket fencing. Insert guttering where missing.

Approved Decision Date: 10.10.2018

18/501494/FULL

Change of Use of the space to re-instate it's previous early historical use for the local community and as a centre for the local cultural arts and to provide food and drink.

Approved Decision Date: 20.07.2018

1. DESCRIPTION OF SITE

1.1 The property is a late C19 'tin' church, a type of building now increasingly rare to find; as such, the building is Grade II listed. The building is situated on Whitstable Road, opposite the Faversham Recreation Ground, within the established built-up area boundary and within the Faversham conservation area. The immediate surroundings comprise rows of terraced housing dating to the turn of the 20th Century to the

northeast, later 20th century semi-detached housing to the north and an area of recently completed development to the west. The area south of the church comprises an open recreation ground, with tree-lined paths. There is a zebra crossing a short distance to the east of the site along Whitstable Road.

- 1.2 The building consists of the church itself, and an extension to the rear, also in 'tin' and dating to the 1920s. The rear extension is in residential use, with the main body of the church having had a temporary three year permission for use as a centre for the local cultural arts and to provide food and drink.
- 1.3 The building was for many years used as a joinery workshop, and after which it had been used as an artist's studio with residential use at the rear.
- 1.4 The current applicants sought planning permission in 2018 for 'Change of Use of the space to re-instate it's previous early historical use for the local community and as a centre for the local cultural arts and to provide food and drink' (application 18/501494/FULL). The application was approved on a three year temporary basis with the following conditions:

(1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

(2) The use hereby permitted shall cease on or before 24th July 2021

Reason: In order that the position may be reviewed at the end of the period stated.

(3) Details of any mechanical ventilation system that is to be installed shall be submitted to and approved by the Local Planning Authority and upon approval shall be installed, maintained and operated in a manner that prevents the transmission of odours, fumes, noise and vibration to neighbouring premises.

Reason: In the interests of residential amenity.

(4) No floodlighting, security lighting or other external lighting shall be installed or operated at the site.

Reason: In the interests of visual amenity and the residential amenities of occupiers of nearby dwellings.

(5) The premises shall be used for the purpose of a community café and arts centre and for no other purpose, including any other purpose within the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

Reason: In the interests of the amenities of the area.

(6) The use of the premises hereby permitted shall be restricted to the hours of 8 am to 11pm, seven days a week.

Reason: In the interests of the amenities of the area.

(7) No recorded or live music or singing shall be permitted on the premises after 10pm.

Reason: In the interests of the amenities of the area.

- 1.5 In October 2021 Members considered application 21/503772/FULL to renew the planning permission with the following changes:

Section 73 - Application for Variation of condition 2 (permanent change of use), 4 (to allow external lighting) and 7 (to allow music to cease Sun-Thu at 10 PM Fri-Sat at 11 PM) pursuant to application 18/501494/FULL for - Change of Use of the space to re-instate it's previous early historical use for the local community and as a centre for the local cultural arts and to provide food and drink.

- 1.6 The renewal application was recommended for approval with the following suggested conditions:

(1) Details of any mechanical ventilation system that is to be installed shall be submitted to and approved by the Local Planning Authority and upon approval shall be installed, maintained and operated in a manner that prevents transmission of odours, fumes, noise and vibration to neighbouring premises.

Reason: In the interests of residential amenity.

(2) No floodlighting, security lighting or other external lighting shall be installed or operated at the site without the prior written consent of the Local Planning Authority other than a traditional lantern over the main entrance door.

Reason: In the interests of residential amenity.

(3) Prior to the installation of the lantern referred to in condition (2) above, manufacturers details of the proposed lantern shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of residential amenity.

(4) The lantern hereby approved shall not be illuminated except during the hours that the premises to which it relates is open for business.

Reason: In the interests of residential amenity.

(5) The premises shall be used only for the purposes of a community café and arts centre and for no other purpose, including any other purpose within Classes E, F/1 or F.2 of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended).

Reason: In the interests of the amenities of the area.

(6) The use of the premises hereby permitted shall be restricted to the hours of 8am to 11pm, seven days a week.

Reason: In the interests of the amenities of the area.

(7) No recorded, or live music or singing shall be permitted on the premises after 10pm on any Sunday to Thursday and after 11pm on any Friday and Saturday.

Reason: In the interests of the amenities of the area.

1.7 After consultation with the Environmental Health Manager (EHM) who had taken noise readings at the site after the drafting of the report, I recommended at the meeting that a further condition (8) be added to address late night noise nuisance in this largely residential area, given the poor insulation qualities of the building concerned. This condition is as set out below. I also indicated to Members that this condition could in fact replace condition (7) as it brought in an earlier noise limit making the 10pm limit on activities in condition (7) largely redundant, and giving added flexibility to the applicants about what activities could be carried on beyond 9pm provided they did not result in unacceptable noise nuisance.

(8) Noise from recorded music, live music, singing and amplified voice emanating from the premises shall not exceed the pre-existing background noise level of 37 dB LA90 (5mins) after 21:00 hours on any day at any point on the site boundary as shown edged red on the plan submitted with planning application 18/501494/FULL.

Reason: In the interests of the amenities of the area.

1.8 As Members discussed the application Cllr Winkless suggested that condition (7) was amended such that no recorded music, live music or singing is permitted past 10pm on any day. Cllr Martin then queried whether this amendment to condition (7) was instead of the inclusion of condition (8), which Cllr Winkless then confirmed. However, there was a misunderstanding on my part and, whilst condition (7) was amended as per Cllr Winkless's motion, condition (8) was still included on the subsequent approval in error. Therefore, the **approved** conditions for the permanent continuation of the approved use contained condition (8) and were as follows:

(1) Details of any mechanical ventilation system that is to be installed shall be submitted to and approved by the Local Planning Authority and upon approval shall be installed, maintained and operated in a manner that prevents transmission of odours, fumes, noise and vibration to neighbouring premises.

Reason: In the interests of residential amenity.

(2) No floodlighting, security lighting or other external lighting shall be installed or operated at the site without the prior written consent of the Local Planning Authority other than a traditional lantern over the main entrance door.

Reason: In the interests of residential amenity.

(3) Prior to the installation of the lantern referred to in condition (2) above, manufacturers details of the proposed lantern shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of residential amenity.

- (4) The lantern hereby approved shall not be illuminated except during the hours that the premises to which it relates is open for business.***

Reason: In the interests of residential amenity.

- (5) The premises shall be used only for the purposes of a community café and arts centre and for no other purpose, including any other purpose within Classes E, F/1 or F.2 of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended).***

Reason: In the interests of the amenities of the area.

- (6) The use of the premises hereby permitted shall be restricted to the hours of 8am to 11pm, seven days a week.***

Reason: In the interests of the amenities of the area.

- (7) No recorded, or live music or singing shall be permitted on the premises after 10pm on any Sunday to Thursday and after 10pm on any Friday and Saturday.***

Reason: In the interests of the amenities of the area.

- (8) Noise from recorded music, live music, singing and amplified voice emanating from the premises shall not exceed the pre-existing background noise level of 37 dB LA90 (5mins) after 21:00 hours on any day at any point on the site boundary as shown edged red on the plan submitted with planning application 18/501494/FULL.***

Reason: In the interests of the amenities of the area.

2. PROPOSAL

- 2.1 The current application seeks to continue the approved use without compliance with condition (8) as this was included in the permanent planning permission in error, after Members resolved not to accept the recommendation of the Environmental Health Manager to impose that condition. In other words, the applicant is asking to continue the approved use only on the basis of conditions (1) to (7) above, as also set out at the foot of this report.
- 2.2 The applicant has not applied to vary or remove any of the other conditions that were included on the most recent decision notice.
- 2.3 Given the error in imposing condition (8) I have made it clear to the applicant that the Council will not take any enforcement action to secure compliance with condition (8) until this application is determined.

3. PLANNING CONSTRAINTS

Potential Archaeological Importance

Conservation Area Faversham

Environment Agency Flood Zone 2

Environment Agency Flood Zone 3 136741

Listed Buildings MBC and SBC Ref Number: 1107/SW

Description: G II ST SAVIOURS CHURCH, WHITSTABLE ROAD, FAVERSHAM, ME13 8P

4. POLICY AND CONSIDERATIONS

4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies:

CP1 (Building a strong economy)

CP6 (Community facilities to meet local needs)

CP8 (The historic environment)

DM1 (Maintaining and enhancing the viability of town centres and other areas)

DM14 (General development criteria)

DM32 (Listed Buildings)

DM33 (Conservation areas)

4.2 National Planning Policy Guidance (NPPG) contains the following advice on noise:

Can noise override other planning concerns?

It can, where justified, although it is important to look at noise in the context of the wider characteristics of a development proposal, its likely users and its surroundings, as these can have an important effect on whether noise is likely to pose a concern.

What are the observed effect levels?

Significant observed adverse effect level: This is the level of noise exposure above which significant adverse effects on health and quality of life occur.

Lowest observed adverse effect level: this is the level of noise exposure above which adverse effects on health and quality of life can be detected.

No observed effect level: this is the level of noise exposure below which no effect at all on health or quality of life can be detected.

How can it be established whether noise is likely to be a concern?

At the lowest extreme, when noise is not perceived to be present, there is by definition no effect. As the noise exposure increases, it will cross the 'no observed effect' level. However, the noise has no adverse effect so long as the exposure does not cause any change in behaviour, attitude or other physiological responses of those affected by it. The noise may slightly affect the acoustic character of an area but not to the extent there is a change in quality of life. If the noise exposure is at this level no specific measures are required to manage the acoustic environment.

As the exposure increases further, it crosses the 'lowest observed adverse effect' level boundary above which the noise starts to cause small changes in behaviour and attitude, for example, having to turn up the volume on the television or needing to

speak more loudly to be heard. The noise therefore starts to have an adverse effect and consideration needs to be given to mitigating and minimising those effects (taking account of the economic and social benefits being derived from the activity causing the noise).

Increasing noise exposure will at some point cause the ‘significant observed adverse effect’ level boundary to be crossed. Above this level the noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present. If the exposure is predicted to be above this level the planning process should be used to avoid this effect occurring, for example through the choice of sites at the plan-making stage, or by use of appropriate mitigation such as by altering the design and layout. While such decisions must be made taking account of the economic and social benefit of the activity causing or affected by the noise, it is undesirable for such exposure to be caused.

At the highest extreme, noise exposure would cause extensive and sustained adverse changes in behaviour and / or health without an ability to mitigate the effect of the noise. The impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be avoided.

5. LOCAL REPRESENTATIONS

5.1 Eleven letters of support from ten separate addresses have been received and can be summarised as follows:

- The owners are scrupulous about security, noise levels and the behaviours of concert attendees
- Unique arts and cultural venue with a great café
- Owners have been diligent in their approach to the concerns of their neighbours
- Worked hard to bring a great building back in to use as a public space
- Support the application as a means to correct the discrepancy between what was resolved at planning committee and what was written in to the decision notice issued
- Positive comments were made at committee about its provision of a pleasant meeting place for coffee or lunch but it has to be understood that these uses don't cover their overheads without cross subsidy of the main use for weekly public events such as film screenings and concerts which was the major use specified in the original application
- A condition which requires virtual silence after 9pm is one which renders the operation unviable in its entirety
- The Hot Tin is one of the most exciting initiatives to have been given to East Kent and has proved an ability to attract artists of international renown
- For music to cease at 9pm will have grave effects on the business and will see an end to The Hot Tin as a community cultural centre
- There is another venue within several hundred metres that is allowed to perform live music until well after 9pm
- Venues like this need support not restrictions and obstructions

- The restrictions of condition 8 severely restrict the viability of the venue and do not seem to apply to any other local venues presenting or playing music including those that are very close by or events like the Hop Festival
- It is unrealistic and unfair to expect a cultural venue to operate successfully if it has to essentially cease operating from 9pm
- As a central location most visitors can come on foot and its close to bus stops and a short walk to the station

5.2 Nine letters of objection from seven different addresses (one outside the borough) have been received and can be summarised as follows:

- When loud amplified music was played before lockdown it was extremely intrusive and detrimental to our quality of life
- Impossible to carry out a normal conversation in the house without shouting
- Couldn't hear television or enjoy our garden in the evenings
- Sunday 7th November music was extremely loud and at an antisocial level despite having double glazing installed since the previous concerts before lockdown
- The level of noise with houses close by on a regular basis is totally unacceptable
- There is no parking for a venue like this
- The Environmental Health Officer has consistently recommended restrictive measures; no amplified music in 2018 and a maximum noise level after 9pm in October this year
- The noise survey measured the LA90 background noise as 37 decibels which confirmed evening noise levels are low
- Since the committee meeting there have been two live music events which have taken place on Sunday evenings
- The noise levels on Sunday November 7th were particularly intrusive measuring up to 92 decibels by our back door so were relieved when the event stopped by 9pm – to have to listen to this any later on a Sunday evening would be particularly upsetting
- Respectfully request that the committee consider again the recommendation of a noise limit in order to give us some protection from the stress and anxiety of the noise nuisance that it creates
- The site has been advertised as a live music venue since reopening
- The noise from music on 7th and 21st November was travelling through the area from a notable distance away from the building as the music played was unrelenting and base heavy
- Visiting family who live close to the venue on 7th November – the intrusive nature of the sound was very evident and made it very difficult to continue our evening as normal
- It seems clear that without significant soundproofing the proposal is unreasonable and anti-social, preventing people being able to relax in their own homes
- If there are no limits on noise we will need to raise noise nuisance complaints with EH which is not the way we want to live our lives
- It is not good for mental health or for neighbour relations

- There is a large amount of psychological strain living next to a noisy building and it is in the power of the Planning Committee to change this
- The only logical way to protect the area is to limit the noise production, where this may impact the business, the function of a music venue was not projected as a core principle of its use, so presumably wont hamper it too drastically – unless the use was always intended to be for live music, in which case I would argue that the site was set up under false pretences

6. CONSULTATIONS

6.1 Faversham Town Council has commented on the application stating:

1) Due to the complexity and technicality of the application the Town Council wishes to comment but not make a recommendation.

2) Members support the applicants' ambitions for their business, which when operating during the day and early evening was considered an asset to the town.

3) It considered that issues have arisen since the venue started to operate as a music venue opening later. The building is not sound insulated and is in a residential area.

4) It was considered that a limit on noise should be set, whilst the Town Council felt that the present level of 37db was not appropriate for the venue it did not wish to comment on what an appropriate level would be. Members suggest that SBC seek expert advice and liaise with residents in neighbouring properties before setting a reasonable level. Consideration should be given to what is appropriate for this type of venue, in this type of structure, in this location.

5) Members considered that having music till 11pm on Friday and Saturday would be appropriate on condition that the set sound level is enforced.

6) The Town Council asks to be consulted on license application for this venue.

6.2 The Council's Environmental Health Manager (EHM) has said:

I would re-iterate the comments made regarding the previous application (21/503772/FULL) namely:

Temporary permission for this use was granted 3 years ago. The building is of lightweight construction and as such offers little in respect of sound insulation. In this respect, the premises is unsuitable for regular amplified entertainment (live or recorded) and is more suited to acoustic/non-amplified music. I am aware that the previous planning permission permitted both amplified and non-amplified music until 10pm. With regards to Condition 2, Environmental Protection does not have any objection to the permission being granted permanently. We have not received any complaints about the current use or about music or other noise emanating from the premises. However, I am aware that both Licensing and Planning Enforcement received complaints in January 2020 regarding loud music after 10pm on 2 occasions.

In order to demonstrate the impact a noise source can have on an area, the appropriate measurement is LA90. This is a measurement of the background noise level and can be used to demonstrate what the existing or current ambient noise level is like in an area before a noise source is introduced. Ideally, when a new noise source comes into an area, it shouldn't result in any obvious change to the existing background noise level. In terms of National Planning Policy Guidance, a hierarchy of the effects of noise exposure is provided. There should again ideally be 'No Observed Adverse Effect' (NOAEL). This means that although a new noise may be able to be heard, it does not result in any change in behaviour. It can slightly affect the acoustic character of an area but not such that there is a perceived change in quality of life. An example of this is that residents do not need to close windows, turn up the TV etc.

In this respect, the best way to address the music/entertainment noise is to ensure that noise emanating from the application site does not give rise to a change in background noise levels.

In relation to that representation, noise measurements were undertaken on a Friday night in order to ascertain the background noise levels of the area. As a result of that, the following condition (condition 8) was proposed:

Noise from recorded music, live music, singing and amplified voice emanating from the premises shall not exceed the pre-existing background noise level of 37 dB LA90(5 mins) after 21:00 hours on any day at any point on the site boundary as shown edged red on the plan submitted with planning application 18/501494/FULL. Reason: In the interests of the amenities of the area.

Unfortunately, since the planning committee meeting that determined the previous application, complaints have been received regarding amplified music from 2 events held at The Hot Tin. These events were on Sunday 7th November and Sunday 21st November. The complainants have advised that on both occasions, music was clearly audible inside their home at a level that interfered with the quiet enjoyment of their home.

RECOMMENDATIONS:

Without some form of control over amplified music events being held in this building, I have concerns that the volume of noise (and bass beat) will result in a marked increase in background noise levels in the area. This has the potential to cause disturbance to local residents and complaints are likely to continue. I must therefore re-enforce the recommendation made last time that a condition relating to this is applied to the permanent planning permission.

7. BACKGROUND PAPERS AND PLANS

7.1 All plans and documentation relating to 21/506027/FULL.

8. APPRAISAL

8.1 The purpose of the current application is solely to allow the planning permission to continue on a permanent basis without complying with condition (8) which was imposed

in error after Members had in fact resolved not to impose it at the October Planning Committee. That condition (8) was recommended by myself based on advice from the EHM after noise readings had been taken locally. I was disappointed by that outcome as I strongly believe that this additional condition is necessary to prevent the venue becoming a nuisance to local residents. At the meeting I sensed that, although the Council had at that time received no complaints about noise from the property other than in relation to two particular events in January 2020, Members too were concerned to protect local amenity, and I consider that by omitting condition (8) that protection will be very much reduced. I believe that my suggestion of imposing condition (8) instead of condition (7) may have contributed to that decision, although it was intended to have the opposite effect.

8.2 Whilst I note the most recent comments of the neighbouring residents and the Environmental Health Manager, the matter of noise nuisance was thoroughly debated at the October meeting and Members decided not to impose condition (8) despite my recommendation, which is their right. Since the use has resumed, I note that complaints have been received about noise relating to the two events held in November. Other than that fact, I do not believe that circumstances have changed since the October meeting and, with Members having made their decision then, unless Members now consider that circumstances have changed, or new evidence is available to point towards a different decision being made, I can see no other option in this case but to recommend the application for approval without condition (8) which is what Members resolved in October.

9. CONCLUSION

9.1 Whilst there is some evidence arising since the October meeting that noise from this property can adversely affect local amenity, Members imposed such safeguards as they saw fit when resolving to renew the planning permission on a permanent basis. Whilst they resolved not to impose condition (8) that condition was imposed in error, and this application is simply intended to put the applicants back in the position that Members intended.

10. **RECOMMENDATION** – Grant subject to the following conditions:

CONDITIONS

(1) Details of any mechanical ventilation system that is to be installed shall be submitted to and approved by the Local Planning Authority and upon approval shall be installed, maintained and operated in a manner that prevents the transmission of odours, fumes, noise and vibration to neighbouring premises.

Reason: In the interests of residential amenity.

(2) No floodlighting, security lighting or other external lighting shall be installed or operated at the site without the prior written consent of the Local Planning Authority other than a traditional lantern over the main entrance door.

Reason: In the interests of residential amenity.

(3) Prior to the installation of the lantern referred to in condition (2) above,

manufacturers details of the proposed lantern shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of residential amenity.

- (4) The approved lantern hereby approved shall not be illuminated except during the hours that the premises to which it relates is open for business.

Reason: In the interests of residential amenity.

- (5) The premises shall be used only for the purpose of a community café and arts centre and for no other purpose, including any other purpose within Classes E, F.1 or F.2 of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended).

Reason: In the interests of the amenities of the area.

- (6) The use of the premises hereby permitted shall be restricted to the hours of 8 am to 11pm, seven days a week.

Reason: In the interests of the amenities of the area.

- (7) No recorded or live music or singing shall be permitted on the premises after 10pm on any day.

Reason: In the interests of the amenities of the area.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

