

SHEFFIELD CITY COUNCIL

Report Of The Head Of Planning
To the West and North Planning and Highways Committee
Date Of Meeting: 05/03/2013

LIST OF PLANNING APPLICATIONS FOR DECISION OR INFORMATION

NOTE Under the heading "Representations" a Brief Summary of Representations received up to a week before the Committee date is given (later representations will be reported verbally). The main points only are given for ease of reference. The full letters are on the application file, which is available to members and the public and will be at the meeting.

Case Number	13/00208/CHU
Application Type	Planning Application for Change of Use
Proposal	Application to allow opening until 2200 hrs on any day (Application to vary condition 3 (hours of use) of application 11/02106/CHU)
Location	258 Langsett Road Sheffield S6 2UE
Date Received	21/01/2013
Team	West and North
Applicant/Agent	Mr L Homar
Recommendation	Grant Conditionally

Subject to:

- 1 The development must be begun not later than the expiration of three years from the 14th September 2011.

In order to comply with the requirements of the Town and Country Planning Act.

- 2 The development must be carried out in complete accordance with the following approved documents;

Plans titled 'Existing Floor Plan for Ground Floor' Existing Floor Plan for First Floor' Existing Floor Plan for Second Floor' and 'marked Proposed Floor Plan for Ground Floor' Proposed Floor Plan for First Floor, Proposed Floor Plan for Second Floor' dated 17th June 2011.

unless otherwise authorised in writing by the Local Planning Authority.

In order to define the permission.

- 3 The building shall only be used for the purpose hereby approved as a spa/massage parlour between 1100 hours and 1900 hours on any day except for a period of 12 months from the date of this decision when the building shall only be used for the purpose hereby approved as a spa/massage parlour between 1100 hours and 2200 hours on any day.

In the interests of the amenities of the locality and occupiers of adjoining property.

- 4 Prior to the commencement of the use hereby approved, the first floor windows to the rear of the building shall be obscure glazed to a minimum privacy standard of Level 4 Obscurity and shall not at any time be re-glazed with clear glass whilst the building is in use for the purpose hereby approved without the prior written agreement of the Local Planning Authority.

To protect the amenity of adjoining residential properties.

- 5 The use of the building hereby approved shall be limited to the accommodation as shown on the approved plans with the spa/massage rooms within Rooms 1, 2 and 3 and the bathroom facility within Room 4 with no additional spa/massage use extending to either the ground floor or 2nd floor, which shall remain in ancillary use as a reception area and ancillary residential accommodation respectively at all times.

To ensure that there is no increase in the intensity of the use without proper assessment of the impact on the amenity of adjoining residents.

- 6 The yard to the rear of the application site with access onto Cuthbert Bank Road shall not be used at any time for car parking or as a dropping-off/collection point by members of staff or customers visiting the premises for the purpose hereby approved.

To protect the amenity of adjoining residential occupiers.

Attention is drawn to the following justifications:

1. The decision to grant permission and impose any conditions has been taken having regard to the relevant policies and proposals from the Sheffield Development Framework and the Unitary Development Plan set out below:

IB6 - Development in Fringe Industry and Business Areas

IB9 - Conditions on Development in Industry and Business Areas

The proposed extension of hours for use of the premises for massage/spa purposes (sui-generic) from 11am to 7pm previously approved to 11am to

10pm is considered acceptable in this instance on the grounds that the application premises is relatively small and comprises only three rooms and is therefore unlikely to generate an undue number of people arriving and exiting the premises via Langsett Road. There have also been no complaints about the operation of the premises or any suggestion that the business is causing any undue concerns to the amenity of adjoining residents by virtue of noise or disturbance.

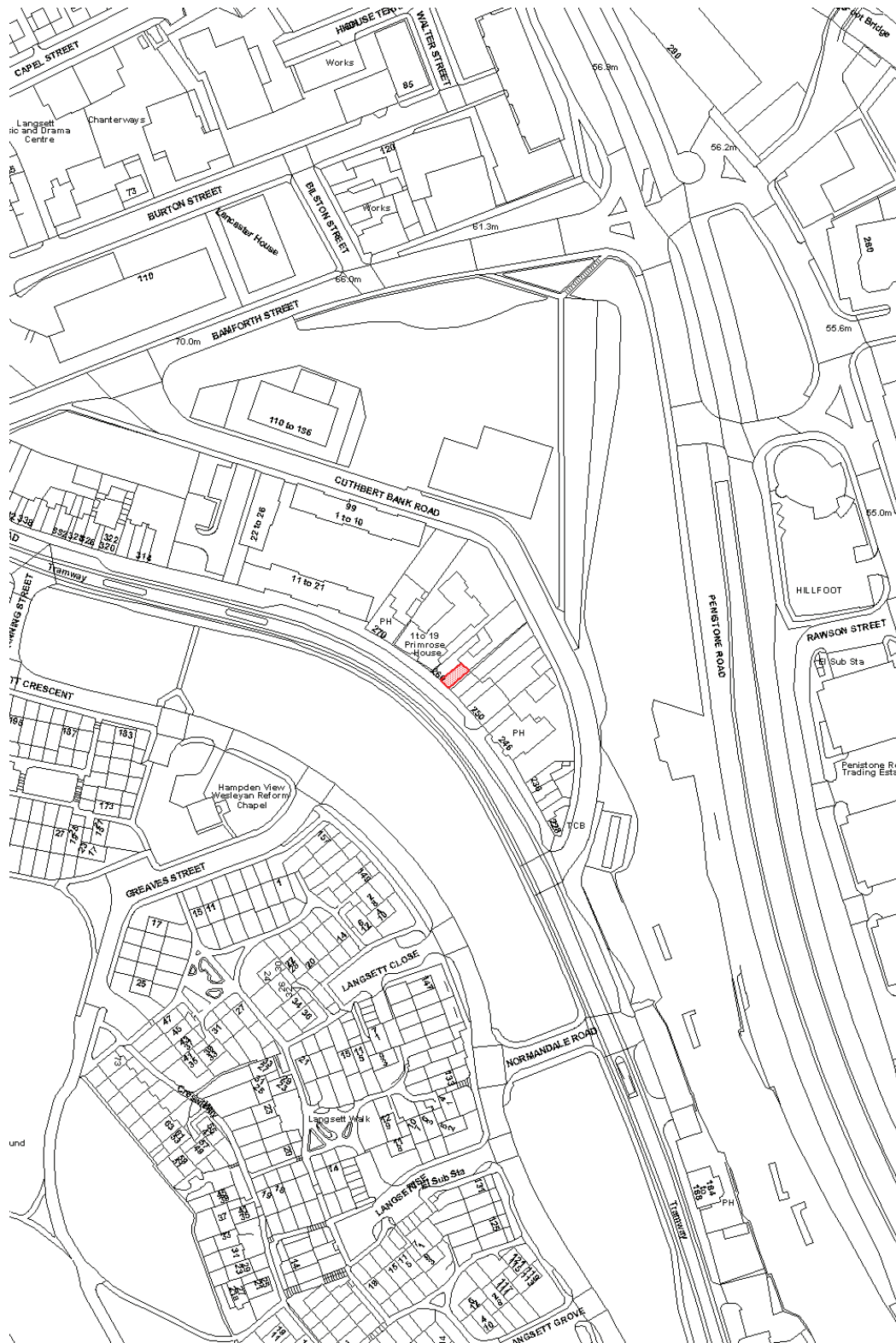
The Local Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application.

This explanation is only intended as a summary of the reasons for grant of planning permission. For further detail on the decision please see the application report at www.sheffield.gov.uk/planningonline or by calling the planning officer, contact details are at the top of this notice.

Attention is drawn to the following directives:

1. The applicant is advised that condition No(s) 2 and 4-6 were imposed by planning permission No. 11/02106/CHU and are reproduced on this notice to provide you with a complete record of all conditions, regardless of whether some may have already been discharged.

Site Location



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INTRODUCTION

Members may recall that at the West and North Planning Committee on 14th September 2011, planning permission was granted for the change of use of the above premises to a building for massage and spa purposes (sui-generis) in accordance with 11/02106/CHU. This permission was granted subject to a number of conditions including Condition 3 below:

The building shall only be used for the purpose hereby approved as a spa/massage parlour between 1100 hours and 1900 hours on any day.

The premises have now been operational since 1st August 2012 and the applicant is now seeking to vary Condition 3 above to allow the spa/massage parlour to open between 1100 and 2200 on any day. The applicant advises that to give the business a better chance of success, they need evening customers as many male and female customers find it difficult to visit the premises during the daytime. They also note that there are other businesses in the area that open late.

LOCATION AND PROPOSAL

The application site comprises a two-storey mid-terrace building with a traditional style ground floor shop front window and main entrance with accommodation above. The surrounding area is mixed in character; the application site sits within a terrace of four units of which the remaining three appear to be vacant at ground floor level; the use of the upper floors is unclear but it may provide residential accommodation above the shops. To the north-east, the terrace is adjoined by Primrose House, which is a modern residential block comprising approximately 19 apartments in an 'H' shaped development that projects towards the rear of the site. Adjoining Primrose House is the Masons Arms Public House and then further residential units within Cuthbert Bank, which is a supported housing unit operated by South Yorkshire Housing Association. To the south-east is a commercial property at No.250 Langsett Road, which is used as a garage, a further Public House (The Burgoyne Arms) at 246 Langsett Road, which is presently closed and then a terrace of residential properties at 228-236 Langsett Road. To the rear of the application site is a yard shared with the adjoining terrace units, which extends for approximately 27 metres to the north towards Cuthbert Bank Road to which the application property has a vehicular access and a stone boundary wall with conifer trees. On the opposite site of Cuthbert Bank Road is a rough area of grassland between Cuthbert Bank Road and Penistone Road. On the south-west of the application site lie further residential properties on Langsett Crescent and Greaves Street, albeit at a distance of 65 metres to the boundary of the nearest residential property and separated by a grassed area to the east of Langsett Road.

The site is located within 100 metres of Bamforth Street Supertram stop and within 200 metres of the Langsett Primrose View Supertram stop. There are also a number of bus stops within close proximity of the site and parking available (subject to a 2 hour restriction during the day) on Langsett Road.

Following the granting of planning permission for use of the building for spa and massage purposes on 14th September 2011, the premises became operational on

1st August 2012. They are presently operating in accordance with 11/02106/CHU with the ground floor used as a reception area to greet customers with a kitchen for staff with four rooms on the 1st floor fitted with a spa bath for spa bath/massage in three rooms with the fourth room used as a bathroom. Further accommodation is provided within the roof space, which is retained in residential use and is not accessible to customers.

This application seeks to amend Condition 3 of 11/02106/CHU to allow the applicant to extend the closing times from the present restriction imposed by Condition 3 of 7pm to a new closing time of 10pm on any day. As such, it is proposed that Condition 3 be amended to the following:

The building shall only be used for the purpose hereby approved as a spa/massage parlour between 1100 hours and 2200 hours on any day.

RELEVANT PLANNING HISTORY

The most relevant planning history is the previous application as noted above:

11/02106/CHU: Use of building for massage and spa purposes (sui-generis)
Granted: 14th September 2011

SUMMARY OF REPRESENTATIONS

The application has been advertised by means of neighbour notification and a total of 29 letters were sent to adjoining occupiers to advise them of the proposed variation of condition. It is noted that as part of the previous application to change the use of the premises to a spa/massage parlour, the Council received nine objections and one letter of support. In this case, the same residents have been notified and to date, one letter of objection has been received from an occupier of Primrose House raising the following concerns:

'Why does a massage/spa building need to be open until 22:00 unless it's operating a certain type of business, which residents do not want to see in this area? There are young children who live very close that shouldn't be exposed to these kinds of places at young ages'.

PLANNING ASSESSMENT

This application proposes to vary Condition 3 of 11/02106/CHU to allow the premises to operate as a building for massage and spa purposes (sui-generis) between the hours of 11am and 10pm on any day rather than operating between 11am and 7pm as presently approved.

The principle of the change of the premises to a building for massage and spa purposes was clearly established by the previous planning permission (11/02106/CHU); given that this application seeks only to vary a condition of that approval, it is not appropriate to reconsider the principle of development, particularly as an amendment to the opening hours to 10pm is not considered to unduly alter the nature of the permission, which will continue to operate as a

massage/spa parlour. It is noted, however, that at Paragraph 12 of the National Planning Policy Framework it is advised that 'proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise'.

Accordingly, the key issues to consider in the determination of this application include the following:

- (i) Impact on the amenity of adjoining residents.
- (ii) Traffic and highway considerations.

The Council is also required to have due regard to the representations received as a result of the public consultation exercise.

Impact on the amenity of nearby residential properties

The application site lies within a Fringe Industry and Business Area as defined within the Adopted Unitary Development Plan. Policy IB9(b) of the UDP relates to 'Conditions on Development in Industry and Business Areas' and advises that new development should not cause residents or visitors to suffer from unacceptable living conditions. Within the NPPF, Paragraph 123 notes that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions. Paragraph 58 also notes that planning decisions should aim to ensure that developments will create safe and accessible environments where crime and disorder and the fear of crime, do not undermine quality of life or community cohesion.

In granting the previous planning permission in 2011, a key issue was the impact of the proposal on the amenity of adjoining residents as it caused concern amongst local residents in terms of the nature of the business and whether it was appropriate in principle in an area that includes residential use and supported housing. The closest housing block lies to the north of the application site at Primrose House, which is separated from the application site by the premises at 260 Langsett Road. Members were previously advised that there is extensive case law in the consideration of massage/spa uses and guidance on planning case law specifically in relation to massage/spa uses suggests that it remains a conventional stance of decision makers that moral objections to developments are given little weight in decision making unless there is some tangible land use or amenity impact deriving from such activities which can be shown. This is reflected in various appeal decisions where Planning Inspectors have set aside any moral objections and focused upon the effect on the living conditions of nearby residents. In the report to Committee in September 2011, it was also acknowledged that the fear of crime can be a material consideration in the determination of planning applications and this was considered by a Planning Inspector in relation to a retrospective application for a massage parlour in Manchester where it was determined that customers using the parlour were likely to be discreet and would

not wish to draw attention to themselves so that the risk of disturbance or crime was low. The objection to the use on moral grounds was therefore deemed not to be relevant to planning, which is an approach reflected in numerous appeal decisions.

When submitting the 2011 application, the applicant originally wished to open between 11am and 11pm every day but agreed to revise the opening hours to between 1100 and 2000 on any day, which was subsequently amended at the West and North Planning Committee to between 1100 and 1900 on any day. In granting the principle of a massage/spa premises, this closing time was considered to sufficiently balance residents' concerns at that time regarding the impact of the proposal from the perspective of noise and disturbance.

In considering an extension to the opening hours, the assessment is primarily to determine whether allowing the property to open until 10pm on any day rather than 7pm as approved as part of 11/02106/FUL would result in increased detriment to the amenity of adjoining residents to an extent that would be unacceptable, primarily by way of noise or disturbance as a result of visitors arriving and departing from the premises and also, whether it would add to the fear of crime in the locality.

In this regard, it is noted that the application site is within a Fringe Industry and Business Area with a public house in close proximity to the site as well as housing. Moreover, it also fronts a busy road with Sheffield Supertram operating along Langsett Road approximately between 6am and midnight during the week and approximately between 8am to 11pm on a Sunday as well as a number of buses serving that route. As a result, Langsett Road is a reasonably busy thoroughfare with public transport operating beyond the proposed opening times, which will ensure activity and a sense of natural surveillance. Given the findings of the previous appeal decision noted above, that customers using a massage premises are likely to be discreet and would not wish to draw attention to themselves so that the risk of disturbance or crime was low, in conjunction with the activity generated by Langsett Road as a public transport route, it is considered that a fear of crime arising from the extension of hours cannot be justified as a reason to refuse the application.

With regard to amenity, it is advised that the main entrance to the premises is via Langsett Road such that visitors will arrive and depart onto the main street. It is also the case that the building is relatively small and comprises only three rooms such that it is unlikely to generate an undue number of people arriving and exiting the premises. In addition, since their opening in August 2012, it can be confirmed that the Planning Service have received no complaints about the operation of the premises or any suggestion that the business is causing any undue concerns to the amenity of adjoining residents by virtue of noise or disturbance. Within an urban environment such as Langsett Road, a closing time of 10pm is not considered unduly late or unreasonable and given that the existing premises have not given rise to any complaints about noise and disturbance, it is considered that there are no grounds to refuse the extension of opening hours until 10pm in this case. However, as the premises have only been fully operational since August 2012, a temporary extension is proposed to allow Officers the opportunity to

monitor the additional hours of opening. In principle, however, the proposed development is in accordance with Policy IB9(b) and is not considered to contravene the guidance within the NPPF.

Highways

In granting the original permission for the change of use of the building for massage and spa purposes it was acknowledged that the application does not include the provision of any specific car parking. However, it is the case that the application site lies within 100m of Bamforth Street Supertram stop and within 200 metres of the Langsett Primrose View Supertram stop, as well as a number of bus stops such that it must be considered to be a highly sustainable location. In addition, street parking is permitted with restrictions (2 hours between 8am and 8.30pm) along Langsett Road and is presently unrestricted on Cuthbert Bank Road such that there is parking provision within the locality of the site. In extending the hours to 10pm, it is also noted that the parking is unrestricted from 8.30pm. On this basis, and given the highly sustainable location of the development, there is no objection on highway grounds to the extension of hours.

RESPONSE TO REPRESENTATIONS

The issues raised by the objector primarily relate to the nature of the use and whether such a use is appropriate within the area. However, as noted in the report above, the principle of the use is already established. Concerns about the impact of such a proposal on the amenity of adjoining occupiers are fully addressed in the report above.

SUMMARY AND RECOMMENDATION

This application proposes to vary Condition 3 of 11/02106/CHU to allow the premises to operate as a building for massage and spa purposes (sui-generis) between the hours of 11am and 10pm on any day rather than operating between 11am and 7pm as presently approved.

The principle of the change of the premises to a building for massage and spa purposes was clearly established by the previous planning permission (11/02106/CHU); given that this application seeks only to vary a condition of that approval, it is not appropriate to reconsider the principle of development, particularly as an amendment to the opening hours to 10pm on a busy thoroughfare within the City is not considered to unduly alter the nature of the permission.

With regard to residential amenity, it is concluded that the application site falls within an area designated for Fringe Industry and Business within the UDP and it also fronts a busy road such that the character of the area is mixed notwithstanding the proximity to residential properties. It is also noted that the application premises is relatively small and comprises only three rooms and it is considered that this is unlikely to generate an undue number of people arriving and exiting the premises via Langsett Road. Furthermore, since their opening in August 2012, it can be confirmed that the Planning Service has received no complaints about the

operation of the premises or any suggestion that the business is causing any undue concerns to the amenity of adjoining residents by virtue of noise or disturbance. The proposal to extend the opening hours until 10pm is still at a time of the evening when Langsett Road is likely to be relatively active in terms of public transport and given that the existing premises have not given rise to any complaints about noise and disturbance, it is considered that there are no grounds to refuse the extension of opening hours until 10pm in this case and it is therefore in accordance with Policy IB9(b) and does not contravene the guidance within the NPPF. However, given that the premises have only been fully operational since August 2012, a temporary extension of hours is proposed to allow Officers the opportunity to monitor the site.

With regard to highways, the proposal to extend the hours is unlikely to give rise to an undue increase in demand for parking and moreover, parking in the vicinity of the site after 8.30pm is unrestricted. It is also highly accessible to public transport such that there is no objection on highway grounds to the extension of hours.

On the basis of the above, it is concluded that the proposed application accords with up-to-date planning policy and in accordance with Paragraph 12 of the NPPF, it should therefore be approved. Accordingly, the application is recommended for approval subject to conditions with the variation of Condition 3 of 11/02106/CHU to the following:

The building shall only be used for the purpose hereby approved as a spa/massage parlour between 1100 hours and 1900 hours on any day except for a period of 12 months from the date of this decision when the building shall only be used for the purpose hereby approved as a spa/massage parlour between 1100 hours and 2200 hours on any day.

In the interests of the amenities of the locality and occupiers of adjoining property.