

REPORT TO THE WESTERN AREA PLANNING COMMITTEE

Date of Meeting	15.06.2011		
Application Number	W/11/01190/FUL		
Site Address	8 Merlin Way Bowerhill Wiltshire SN12 6TJ		
Proposal	Part change of use of existing building from D2 to Nightclub for evening works; proposed single storey side extensions and associated works		
Applicant	Mr Gary Cooke		
Town/Parish Council	Melksham Without		
Electoral Division	Melksham Without South	Unitary Member:	Roy While
Grid Ref	391037 162526		
Type of application	Full Plan		
Case Officer	Mr James Taylor	01225 770344 Ext 15169 james.taylor@wiltshire.gov.uk	

Reason for the application being considered by Committee

Councillor Roy While has requested that this item be determined by Committee due to:

“The Melksham Without Parish Council are very concerned about late night noise and disorder problems affecting residents who live in the vicinity. Also about lack of on-site parking and transport access from Pathfinder Way”.

1. Purpose of Report

To consider the above application and to recommend that planning permission be granted.

Neighbourhood Responses

No comments received, although noted that an earlier application reference W/10/03845/FUL (Withdrawn on 10 February 2011) was subject to some public objection.

Parish Council Response

Melksham Without Parish Council objects.

2. Report Summary

The main issues to consider are:

- * Noise and environmental health issues
- * Residential amenity
- * Highway safety including parking, and pedestrian/vehicular access

3. Site Description

The application site is located within the commercial area of Bowerhill. The site is currently occupied by a large industrial style building which is used as a children's play centre with ancillary facilities such as a café, office space and storage. Part of the building has a dedicated 'laser quest' area for themed parties and groups. The surrounding land uses are industrial and agricultural including a brewery and a steel fabricating/engineering firm.

To the front of the building is a dedicated area for parking laid to hard standing; to the north and east are small outdoor areas connected to the existing use or underused with agricultural land beyond. To the south of the site is a further ancillary outdoor space with a brewery beyond the natural hedge boundary.

The existing parking area can accommodate up to 60 cars, with approval (reference W/09/03317/FUL) for further parking provision to the north; this was detailed as 44 cars in the application. Access to the site is either on foot or by car via the Merlin Way and Lancaster Road. For those not visiting from within Bowerhill, Pathfinder Way is generally the most logical route.

4. Relevant Planning History

W/09/03317/FUL - Change of use of agricultural land to form outdoor leisure and recreational use – Permission on 08.02.2010

W/10/03845/FUL - Proposed part change of use to a section of existing unit from D2 to Night Club and proposed single storey extension – Withdrawn on 10.02.2011

5. Proposal

This is a proposal to add single storey extension to the south elevation of the building, an outdoor decked area to the east elevation; new secure boundary fence to the eastern boundary and new retaining wall to the southern boundary; all of which to facilitate the part change of use of the building to allow a D2 night club use of the site. The remainder of the building remains in use as an existing children's play facility during the day.

The application has been submitted with the usual scaled plans and design and access statement; but in addition to previous application reference W/10/03845/FUL, an acoustic noise survey has been submitted which has helped inform a revised design approach to the proposals.

6. Planning Policy

West Wiltshire District Plan 1st Alteration (2004)
C31a Design
C38 Nuisance
E2 Employment Policy Areas

National guidance
PPS1: Delivering Sustainable Development
PPS4: Planning for Sustainable Economic Growth
PPG13: Transport

7. Consultations

Melksham Without Parish Council

Objection:

"...the Council does strongly object to plans having a late-night club especially to 3am on Fridays and Saturdays. The Council therefore asks that previous comments be reiterated as follows:

1. Bowerhill is a large and quiet residential area. The proposed site is adjacent to residential homes which will inevitably suffer noise and disorder problems from other late-opening night club on their doorstep. The drink-related problems from other late-night establishments nearby in Melksham are well documented. It is requested that opening hours be kept in line with existing pub hours i.e. 12 midnight as the latest time.

2. The late night opening hours will attract both pedestrian and motor traffic from The Pilot and other nearby drinking establishments when they close. Popular night-clubs can also attract large groups from other towns, resulting in noise and disorder disturbance.

3. The large outside seating area will encourage people to be outside until very late which will also lead to noise disturbance for residents.

4. The proposals as they stand are inadequate because

(a) It is unclear what the intended capacity of the club is. There is no clear strategy for dealing with additional visitors and ensuring that there are no disorder problems as a result.

(b) The past history of late-night opening clubs in Melksham indicates that these proposals will have Crime and Disorder implications for the local Police who are already stretched to capacity. There is no full CCTV at present either in the town or on roads leading to the site to enable easy identification of those who misbehave.

(c) There is no transport strategy to ferry users to and from the site at times being proposed for use. There is no public transport for Melksham in the early hours. Any transport strategy would need to include permanent provision of a night-club minibus which takes clients right to their homes. Please note the last buses in Melksham are as follows: Melksham to Chippenham – 21.43; Bowerhill to Bath – 22.18; Melksham to Trowbridge – 22.30 and Bowerhill to Devizes – 23.52.

(d) In the absence of any workable transport strategy, there will be a reliance on private car transport. The existing car parking of 60 spaces may be inadequate and could lead to parking around the residential and industrial estate roads of Bowerhill. This in itself could lead to noise and risk to residential and industrial property.

5. For the Parish Council to give support to these proposals, the following revisions would be required:

(a) The night club opening hours be restricted to 12.00 midnight and an hours restriction be imposed on use of the outdoor seating area.

(b) The applicant in liaison with Police agree the club capacity and a strategy for dealing with those who seek to “gate-crash” if they are refused entry.

(c) The main access and egress to the club be sited away from residential and industrial estate to avoid any disorder and security issues. It is suggested that provision be made for the club to be accessed directly from the new link road between Bowerhill and the A350 Diversion road when it is built. Wiltshire Council needs to address the outstanding issues relating to the link road so that it can be built as soon as possible.

(d) Inner and outer doors should be provided with inner door being self closing to ensure that no noise disturbance can be heard when people leave the club.

(e) Care be taken that no flashing lights inside the club are visible from the outside.

(f) CCTV to be installed on roads from town to Bowerhill and in all the external areas around the site.

(g) A new safe and lit crossing be installed on Pathfinder Way to ensure safe passage for those using the club at night.

(h) A condition be imposed to ensure a minibus service is provided permanently to ensure users can be driven to/from the site and can be taken home safely when the club closes.

Highways

No objection subject to conditions:

“The proposal is to change the use of Laser Quest and storage areas at the Boomerang Children's Centre to a Nightclub consisting of two separate function rooms plus a covered decking area on the north eastern facade and a single storey extension on the south eastern facade accommodating toilets and a kitchen. The site has some 60 car parking spaces and consent, under planning reference W/10/3317, for a 44 space overflow car park in the field to the north west.

For general use of the nightclub, outside of the operating hours of the children's centre, I consider the permanent car park will be adequate as the majority of clients would not be expected to drive to the site because of the 'drink-drive' laws. The applicant is also proposing to operate a mini-bus service between the site and Melksham town centre. This should be secured by the preparation of a Travel Plan that will also address the wider travel arrangements for the site. To encourage the use of bus travel, possibly linked to an extended 'late' service to Bowerhill, a continuous footpath should be provided from Merlin Way to the building entrance.

With the various dual uses of the function rooms, particularly when overlapping with operation of the children's centre, there is a risk that the permanent car park will prove inadequate. This could be the case if a wedding reception, for instance, was held at the same time as the centre. It is for this reason that I consider the provision of the overflow car park will be necessary for the proposed change of use.”

Environmental Health

No objection subject to conditions:

“The applicant has submitted an acoustic report carried out by Hepworth Acoustics Ltd, Ref 30901.1v1. The report has indicated that in order to prevent noise problems at the nearest residential properties a number of measures will need to be implemented prior to operation.

The measures required are specified in Sections 5.1 to 5.6 in the report and provided that the level of music within the venue is limited to those values specified in Table 2 with the corresponding sound reduction indices set out in Table 3 then music noise break out from the venue should not be a problem. There are other measures included surrounding fires exits, lobby doors etc but these have been addressed in the report.

Finally the report has briefly addressed the issue of noise from fixed plant, Sections 5.4 to 5.6. Whilst a cumulative noise value has been provided, which should protect against noise from impacting on nearby residential properties there are no specific details given and therefore I would advise that all external plant be subject to a separate planning condition.”

Melksham Police Division

No response. Although it is noted that on the previous application reference W/10/03845/FUL they raised no objection and they have been involved in pre-application discussions.

8. Publicity

The application was advertised by site notice and neighbour notification.

Expiry date: 13 May 2011

Summary of points raised:

* No comments received. Although it is noted that on the previous application reference W/10/03845/FUL there were 8 local objections. These have been given consideration in reaching a conclusion on this application.

9. Planning Considerations

All planning applications should be assessed against the relevant policies of the development plan and then in light of any other material planning considerations. If no demonstrable harm can be identified in planning terms then the application should be approved. The principal development plan policy pertaining to this application is E2 of the West Wiltshire District Plan 1st Alteration (2004). This states that proposals for employment development including extensions and changes of use will be permitted provided that they meet set criteria. These are addressed below:

i) They do not create an adverse impact on the appearance and character of the surroundings. The proposed extensions and alterations to the building pose no concerns. The site and surroundings are characterised by utilitarian development and the proposals are sympathetic to this context, indeed they are relatively minor. In terms of the change of use the character of the area is already established as an industrial/commercial area which in principle is a suitable location for this type of development. The applicants' design and access statement has detailed the measures that they are incorporating including all the recommendations of the police and their acoustic surveyor to ensure that any impact on the character and appearance is minimised. All reasonable measures to design out crime have been taken in light of advice from the police and those measures can be controlled by condition as appropriate.

ii) They provide adequate services for disposal of surface water without risk of flooding. The site is located in flood zone 1, the lowest risk of flooding. Furthermore the physical alterations are relatively minor and would not create a significant increase in surface water flows.

iii) Provide adequate water supplies, sewerage and sewerage treatment. This is an existing site and all the existing facilities will be utilised for these extensions and the change of use.

iv) Provide safe and convenient connection to existing and planned transport networks and the highway. The proposals have been subject to consultation with highway officers and they have raised no objection to the proposals subject to conditions. It is noted that they request an extension to the footway facilities, a Green Travel Plan and the completion of the previously approved overspill car parking by condition. It is considered that the latter two conditions are reasonable in light of the additional use being created and the nature of the change of use. However the former requiring extension to the pedestrian facilities is considered to be unnecessary and unreasonable in this case as there is a pavement directly to the site already. It is however considered reasonable to require the entrance gate to be widened to avoid having to step off the raised kerb when leaving the site. The highway conditions would ensure that there is provision of a bus, as detailed by the applicant. Although there would be an inevitable increase in traffic at a different time of day compared to the existing levels this is not considered to be unreasonable as the access network is designed to cater for commercial/industrial traffic.

v) That the development does not conflict with other development plan policies. In this case it is considered that policy C31a on design and C38 on nuisance are relevant. Issues of noise have been raised in this application and in the previous application by some local residents. The environmental health officers have raised no objection to the proposals and in discussions it has been agreed that many of the issues raised can be handled through their own licensing regulations or through appropriate planning conditions. The applicants own noise survey has informed this revised application so that with the implementation of the survey recommendations the internal use would have no impact on residential amenity over night time background levels. The new plant equipment for the new kitchen area can be controlled by condition. The outside area would be required as a smoking area during the late opening hours. However licensing presents the best opportunity to ensure that the outside bar is closed, the area is constantly staffed and no drinks are allowed, thus reducing the likelihood of customers dwelling in this area. Furthermore a condition can be imposed to prevent amplified music being played outside.

Other material considerations.

The proposals have given rise on previous applications and indeed on this occasion by the Parish Council on the basis of anti-social behaviour and late night noise. These issues are frequently raised

with uses such as this, but given the location of this site in an industrial/commercial area, it is not considered that this would have an adverse impact on the amenity of local residents as there are no houses adjacent to the site.

The Parish Council has requested that the opening hours be restricted, but this is deemed to be better controlled under licensing regulations. The police have been in discussions with the applicants and previously raised no objection to the change of use. The provision of a separate access to the site is not considered to be reasonable. The provision of CCTV cameras on the site and a minibus service are considered to be reasonable requests and can be required by conditions.

In conclusion the proposed extensions to the building and the partial change of use to allow a night club pose no significant concerns subject to the appropriate use of conditions. For the reasons detailed above it is considered that the proposals would not create any significant harm in planning terms and on that basis the application is recommended for permission subject to conditions.

Recommendation: Permission

For the following reason(s):

The proposed development conforms to the Development Plan and there are no objections to it on planning grounds.

Subject to the following condition(s):

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2 No development shall take place until a specific noise assessment is carried out with regard to the proposed plant, in this instance a kitchen extract unit. The measurement and assessment shall be made in accordance with BS4142: 1997 and the report must include any attenuation measures, if required. The assessment and mitigation works if necessary shall be submitted to and approved in writing by the local planning authority prior to any works taking place and shall be implemented prior to the extraction unit being brought into use.

REASON: In the interests of amenity.

POLICY: West Wiltshire District Plan 1st Alteration (2004) Policies E2 and C38.

- 3 In order to prevent noise break out from the venue the development shall be constructed in accordance with Section 5.1 to 5.3 of the Acoustic Report, Ref 30901.1v1, submitted as part of the application. The noise level of music within the proposed development shall not exceed the levels given in each frequency specified in Table 2 of the report and consequently the SRI values set out in Table 3 must be achieved. The applicant will need to submit written details for approval by the Local Planning Authority (LPA) that all the measures in the above Sections have been implemented prior to the use commencing and the details shall also include post installation acoustic testing showing compliance. If there are any proposed changes to the measures outlined in the report or the figures used (Table 2 and Table 3) they must be agreed in writing by the LPA prior to being implemented. Upon completion of the works forming part of the scheme no alterations to the structure, roof, doors, windows or external facades of the building shall be undertaken without the prior written approval of the LPA.

REASON: In the interests of amenity and in order to define the terms of this permission.

POLICY: West Wiltshire District Plan 1st Alteration (2004) Policies E2 and C38.

- 4 The hereby approved development shall not be first brought into use until the access gates have been widened to allow safe pedestrian access onto the existing raised pavements. Details of which shall be submitted to and approved in writing by the local planning authority prior to the works taking place.

REASON: In the interests of highway safety.

POLICY: West Wiltshire District Plan 1st Alteration (2004) Policy E2.

- 5 No part of the development hereby permitted shall be first brought into use until overflow parking spaces have been provided in accordance with the details previously approved under planning permission W/09/03317/FUL. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

POLICY: West Wiltshire District Plan 1st Alteration (2004) Policy E2.

- 6 No development shall commence on site until a Green Travel Plan (including the provision of a shuttle bus service) has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include details of implementation and monitoring and shall be implemented in accordance with these agreed details. The results of the implementation and monitoring shall be made available to the Local Planning Authority on request, together with any changes to the plan arising from those results.

REASON: In the interests of road safety and reducing vehicular traffic to the development.

POLICY: West Wiltshire District Plan 1st Alteration (2004) Policy E2.

- 7 Outside of the building, including the hereby approved "Covered Decking Area" no sound amplifying equipment, loudspeaker or public address system shall be installed/operated or music played.

REASON: In the interests of local amenity.

POLICY: West Wiltshire District Plan 1st Alteration (2004) Policies E2 and C38.

- 8 Prior to the hereby approved development first coming into use details of CCTV monitoring of the premises and its curtilage shall be submitted to and approved in writing by the Local Planning Authority, and then subsequently installed in accordance with those approved details.

REASON: In the interests of public safety and the character of the area

POLICY: West Wiltshire District Plan 1st Alteration (2004) Policy E2.

- 9 The development hereby permitted shall be carried out in accordance with the following approved plans:

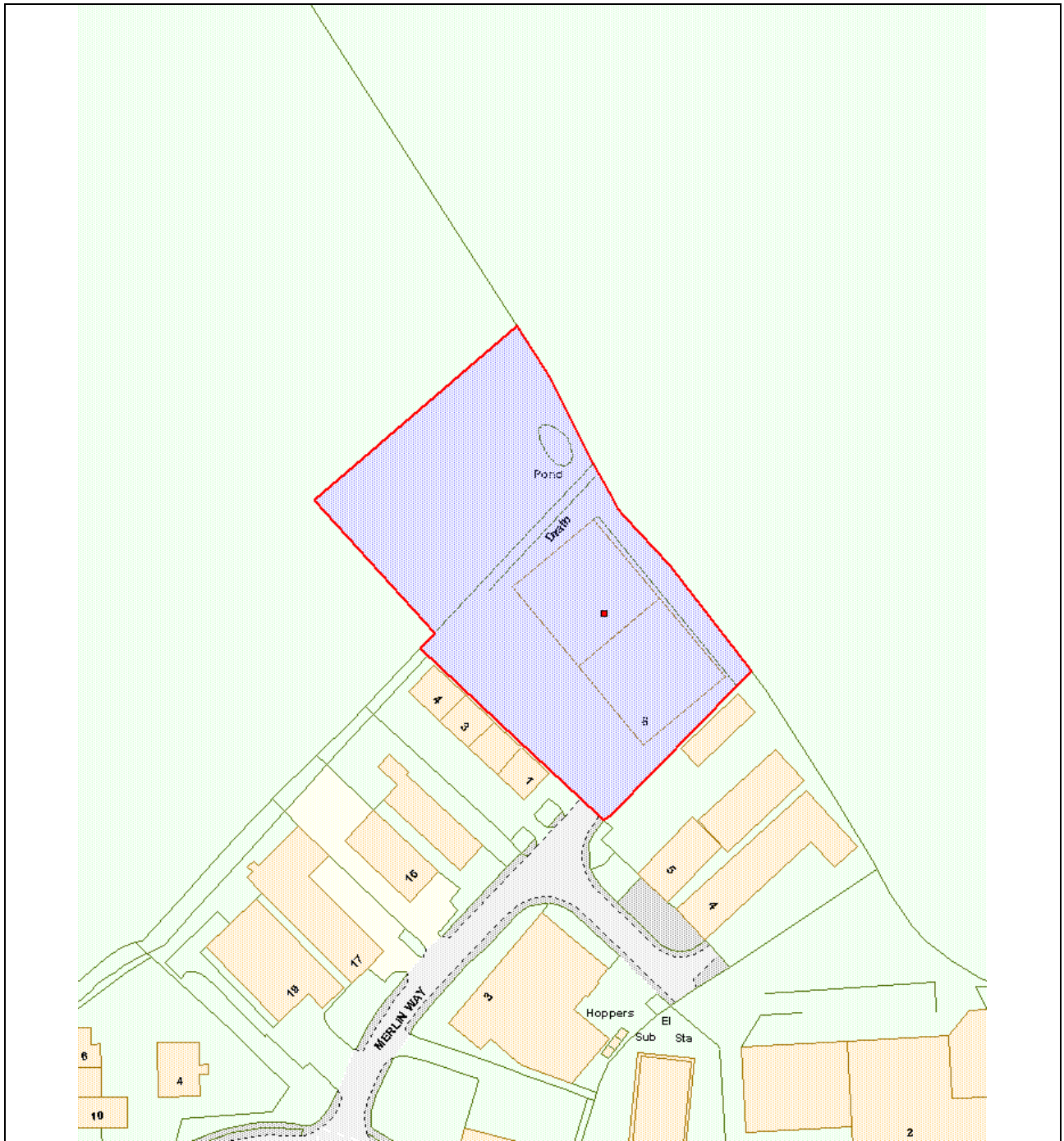
Drawing: AH2010/41 sheet 1 of 7 received on 4 April 2011;
Drawing: AH2010/41 sheet 2 of 7 received on 4 April 2011;
Drawing: AH2010/41 sheet 3 of 7 received on 4 April 2011;
Drawing: AH2010/41 sheet 4 of 7 received on 4 April 2011;
Drawing: AH2010/41 sheet 5 of 7 received on 4 April 2011;
Drawing: AH2010/41 sheet 6 of 7 received on 4 April 2011;
Drawing: AH2010/41 sheet 7 of 7 received on 4 April 2011;
Document: Design and Access Statement received on 4 April 2011; and
Document: Hepworth Acoustics Noise Assessment received on 4 April 2011.

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

Informative(s):

- 1 The developer will need to obtain a premises licence under the provisions of the Licensing Act 2003 and should contact the Licensing Department.
- 2 The developer is advised that under the terms of the Wildlife and Countryside Act 1981, it is an offence to disturb nesting birds. You should note that the work hereby granted consent does not override the statutory protection afforded to nesting birds and you are advised to seek expert advice if you suspect that the works, including hedge works, would disturb any nesting birds.

Appendices:	
Background Documents Used in the Preparation of this Report:	



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