

**R05**

**F/TH/24/0538**

PROPOSAL: Variation of Condition 3 of planning permission F/TH/07/0985  
'Change of use of Terrace Deck above the Victorian Shelter on  
LOCATION: Marine Drive for the siting of tables and chairs' to allow the  
restriction of amplified music being played, removed and allow  
amplified music to be played from the hours of 11.00 am to 9.30  
pm daily from 01 April to 31st October

Victorian Shelter Marine Drive MARGATE Kent CT9 1DH

WARD: Margate Central

AGENT: No agent

APPLICANT: Mr Iain Maxstead

RECOMMENDATION: Refuse Permission

For the following reasons:

1 The proposed variation of condition to allow the use of amplified music on an open terrace deck of the Victorian shelter would result in significant harm by virtue of disturbance to nearby residential neighbours that would be unacceptable and result in material change in behaviour and/or attitude. As such the development would be contrary to policy QD02, QD03, CM01 and SE06 of the Thanet Local Plan and paragraphs 135, 180 and 191 of the National Planning Policy Framework.

#### SITE, LOCATION AND DESCRIPTION

The site relates to the terrace deck above the Victorian Shelter that fronts Marine Drive in Margate. The site is within Margate Conservation Area

At the time of the application site visit, picnic tables and benches, benches (street furniture style) with a portaloo located at the end nearest Marine Gardens were in situ. Chairs were stacked and a BBQ (portable) located at the northern end of the site.

To the rear the site flanked by properties in Albert Terrace is a carpark, the site being enclosed by railings. Enclosing the car park to two sides are the residential properties in Albert Terrace, these vary in height but between four storey with a semi-basement, four storey and three storey with semi-basement level. The properties that front Albert Terrace to the east and south east of the site are listed (nos. 3-15). To the south is Marine Gardens.

## RELEVANT PLANNING HISTORY

F/TH/07/0985 - Change of use of terrace deck above Victorian shelter on Marine Drive for the sitting of tables and chairs. Approved 28/09/2007

## PROPOSED DEVELOPMENT

Full planning consent is sought to vary condition 3 attached to planning reference F/TH/07/0985 which stated prohibited amplified music. The condition stated:

*At no time shall there be any amplified music be played within the area hereby granted planning permission.*

### **GROUND:**

*In the interest of the amenities of the occupiers of surrounding dwellings, in accordance with Thanet Local Plan Policy H13.*

The applicant seeks to remove this restriction so that amplified music can be played between 11am and 9.30pm daily between the 1st April and the 31st October in any year.

The additional tables and chairs mentioned on the application form are no longer part of this application as there were numbers of tables and chairs were not controlled by planning conditions in the 2007 application.

## DEVELOPMENT PLAN POLICIES

### **THANET LOCAL PLAN 2020**

SP10 - Margate  
SE06 - Noise Pollution  
CM01 - Provision of new community facilities  
HE02 - Development in Conservation Areas  
QD02 - General Design Principles  
QD03 - Living Conditions  
TP02 - Walking  
TP03 - Cycling

## NOTIFICATIONS

Letters were sent to adjoining occupiers, a site notice posted close to the site and the application publicised in a local newspaper.

118 representations were received, this includes 90 letters of support.

28 letters objecting to the proposal were received raising the following summarised concerns.

- Noise pollution

- After 7pm is disruptive
- Affects quality of life of residents
- Anti social behaviour
- Affects mental health
- Music does not stop until 3am
- Buildings in the terrace have no soundproofing and are listed so have limited scope to have double glazing

90 representations have been received supporting the application, which raise the following summarised points.

- Always been used for shows since 2017
- Source of entertainment and enjoyment - should be allowed to continue
- Job opportunities
- Safe environment for LGBTQ+ people
- Not allowing this could hinder the survival of the venue
- Creates revenue for the town

## CONSULTATIONS

**KCC Highways:** Non protocol application and therefore no comment is given.

**TDC Environmental Health:** Environmental Health recommends the application be refused on the following grounds.

The original condition was recommended by Environmental Health based on concerns that the proposed use, given the proximity to dwellings, would have potential for significant observable adverse effects if not controlled. Therefore, a curfew and condition that prevents all music was imposed.

It appears that since the original consent the operators started having music on the terrace in breach of condition 3 in April 2021 following government loosening some licensing restrictions post covid.

Our records show that Environmental Health have since received 14 separate complaints relating to music on the terrace from 9 separate households.

The terrace has no sound mitigating properties, it has many residential properties at the rear in Albert Terrace and some of these are less than 10m away. This means any music will be audible even at background levels but at levels associated with live and recorded music will have significant adverse effects on neighbours.

The terrace area may be licenced for the sale of alcohol and as such will benefit from the Live Music Act but this must not influence planning decisions. The Licensing Act objective for the prevention of public nuisance relates to the management of the site which is transient unlike planning which will establish ongoing land use. Planning cannot rely upon the potential that a review of the licence could be instigated if there were noise problems as this is uncertain and dependent on many variables. There could be a scenario where problems

arise and a review does not take place, the harm would prevail, as would the conflict with the development plan. Planning should give limited weight to the fact that the Council has granted a licence under the Licensing Act 2003.

The variation application to remove music restriction would be contrary to policy SE06 - Noise Pollution - 'Proposals that would have an unacceptable impact on noise-sensitive areas or uses will not be permitted'.

**TDC Conservation Officer:** Following a review of the proposed application I would like to state that I have no objections and believe there to be less than substantial implication to the setting and appearance of the surrounding conservation area.

## COMMENTS

This application is referred to the Planning Committee at the request of Cllr Packman to allow Members to consider whether the economic benefit of the amplified music outweigh the noise impact on the residential amenities of surrounding occupiers.

The main considerations in assessing the submitted scheme are the principle of development, the impact upon the character and appearance of the area, the impact upon living conditions of neighbouring property occupiers and the impact upon highway safety.

### **Principle**

In line with Section 38(6) of the Planning and Compulsory Purchase Act 2014, planning decisions must be taken in accordance with the 'development plan' unless material considerations indicate otherwise. The requirements of the National Planning Policy Framework (NPPF) are a significant material consideration in this regard.

The site is covered by policy SP10 of the Local Plan that relates specifically to Margate. The main thrust of this policy is to support the continued regeneration and development of Margate as a contemporary seaside resort. More specifically in the Margate seafront and harbour arm it details that leisure and tourism uses will be permitted, including retail, where they enhance the visual appeal of these areas and protect the seafront character and heritage.

As such, there is general support for commercial uses within such areas, however the specific details of the proposal now need to be considered.

### **Background**

Planning permission was granted for a change of use of the terrace deck above the Victorian Shelter on Marine Drive for the siting of tables and chairs under planning reference number F/TH/07/0985). During the consultation period of the original application Environmental Health raised concerns with the proposal over the potential for noise and disturbance generated by the proposal. However, it was agreed that subject to the hours of "operation" being limited, this would be kept to a minimum. As such a condition was imposed limiting the hours of use of the terrace deck until 10.30pm, to protect the amenities of the neighbouring

occupiers, in addition a condition was attached relating to the prohibition of amplified music. The grounds for both conditions were "In the interests of the amenities of the occupiers of surrounding dwellings, in accordance with Thanet Local Plan Policy H13.

The condition reads:

*At no time shall there be any amplified music be played within the area hereby granted planning permission.*

### **Character and Appearance**

The site is located within the Margate Conservation Area. The Council must, therefore, take into account Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that in relation to conservation areas, 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area.'

Paragraph 203 of the National Planning Policy Framework (NPPF) requires local planning authorities to take account of the desirability of sustaining and enhancing the significance of heritage assets, and the desirability of new development making a positive contribution to local character and distinctiveness. The NPPF requires that where a development causes substantial harm, or less than substantial harm but where the harm is not outweighed by public benefit, permission should be refused.

Policy SP36 of the Council's Local Plan is a strategic policy which states that the council will support, value and have regard to the historic or archaeological significance of Heritage Assets. Policy HE02 of the Thanet Local Plan requires that appropriate materials and detailing are proposed and that developments would not result in the loss of features that contribute to the character or appearance of the conservation area. New development which would detract from the immediate or wider landscape setting of any part of a conservation area will not be permitted. Local Plan HE03 sets out that the Council supports the retention of local heritage assets, including structures, features and gardens of local interest. Proposals that affect both designated and non-designated heritage assets will be assessed by reference to the scale of harm or loss of the significance of the asset in accordance with the criteria set out in the NPPF.

Paragraph 135 of the NPPF states decisions should ensure that developments will function well and add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping, sympathetic to local character and history, establish or maintain a strong sense of place, and optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development and create places that are safe, inclusive and accessible. Policy QD02 of the Thanet Local Plan outlines that the primary aim of new development is to promote or reinforce local character and provide high quality and inclusive design that is sustainable in all other respects. Proposals should therefore relate to surrounding development, form and layout, be well designed, pay particular attention to context and identity of location, scale, massing, rhythm, density, layout and materials, and be compatible with neighbouring buildings and spaces. Any external spaces and landscape features should be designed as an integral part of the scheme.

It is considered that the use of amplified music would not affect the visual amenities of the area, including the Conservation Area or the setting of the listed buildings that are in close proximity to the site (Albert Terrace). The ambience of the area is that of an outside bar area so there is social interaction already occurring at this site. This level of commercial activity has already been accepted with this seafront location. It is, however, noted that this site and the surrounding area, whilst still a seafront area which attracts tourists, is different in nature and character from the likes of Dreamland, takeaways, shops and amusement arcades in Marine Terrace where music is common into the evenings particularly in the summer months. Whilst there are restaurants and bars (such as the host building) in the location of the site, they sit with other uses, such as, hotels and the turner contemporary which on the whole are quieter in nature and whilst amplified and live music may be heard (again particularly in the summer months) it is likely that such music would be within buildings.

### **Living Conditions**

Paragraph 123 of the NPPF states that planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.

Local Plan Policy QD03 (Living Conditions) states that all new development should:

- 1) Be compatible with neighbouring buildings and spaces and not lead to the unacceptable living conditions through overlooking, noise or vibration, light pollution, overshadowing, loss of natural light or sense of enclosure.
- 2) Be of appropriate size and layout with sufficient usable space to facilitate comfortable living conditions and meet the standards set out in QD04.
- 3) Residential development should include the provision of private or shared external amenity space/play space, where possible.
- 4) Provide for clothes drying facilities and waste disposal or bin storage, with a collection point for storage containers no further than 15 metres from where the collection vehicle will pass.

Local Plan policy SE06 (Noise Pollution) details that proposals that would have an unacceptable impact on noise-sensitive areas or uses will not be permitted.

Policy CM01 (provision of community facilities) details improvements to existing community facilities will be permitted provided they would not significantly impact upon the amenity of neighbouring residents. In this case the bar is a community facility however, the area we are now considering is part of that as it has the consent for use in association with the bar.

The application seeks the use of amplified music on the terrace deck for the hours between 11.00am and 9.30pm from the 1st April to the 31st October every year. It is considered that the use of amplified music could add to the user attraction to its current/potential patrons and potential tourism and visitor experience in Margate seafront.

Environmental Health has strong concerns in relation to the lifting of the restriction to allow amplified music being played on the terrace deck. They note that the use of amplified music

started in April 2021 and that Environmental Health have received fourteen complaints in this regard.

Given its outside location, acceptable mitigation could not be put in place to limit noise emanating from the amplified music to try and protect the residential properties in Albert Terrace which are in very close proximity to the site (approximately 10 metres). If acoustic fencing were required- it is not clear the height that this would need to be given the height of the surrounding properties and notwithstanding this this would have a clear and unacceptable harm to the character and setting of the Conservation Area and listed buildings. Environmental Health notes that any music will be audible even at background levels but at levels associated with live and recorded music will have significant adverse effects on neighbours.

Given the close proximity of residential neighbours it is reasonably likely that the noise would result in a material change in behaviour and/or attitude of adjoining residential occupiers, e.g. having to keep windows closed most of the time, avoiding certain activities during periods of intrusion. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. As such it is considered that neighbour residents' quality of life would diminish due to change in acoustic character of the area if this variation is permitted.

The proposed development is, therefore, considered to be unacceptable in terms of the living conditions of adjacent neighbouring properties, contrary to Policies SE06, CM01 and QD03 of the Thanet Local Plan and paragraph 135, 180 and 191 National Planning Policy Framework.

## **Transportation**

Paragraph 115 of the NPPF states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual impacts on the road network would be severe.

Policy QD02 relates to general design principles and states amongst other principles that developments must incorporate a high degree of permeability for pedestrians and cyclists, provide safe and satisfactory access for pedestrians, public transport and other vehicles, ensuring provision for disabled access and improve people's quality of life by creating safe and accessible environments, and promoting public safety and security by designing out crime. Policy TP02 details that new development will be expected to be designed so as to facilitate safe and convenient movement by pedestrians including people with limited mobility, elderly people and people with young children. Policy TP03 states new development will be expected to consider the need for the safety of cyclists and incorporate facilities for cyclists into the design of new and improved roads, junction improvements and traffic management proposals.

The site already operates in association with Sundowners, however the variation would allow amplified music, this may increase patrons for special events however this is not considered likely to be significant. Notwithstanding this, the site is sustainably located within Margate, close to public car parks as well as bus and train links.

The proposal is, therefore, not considered to have any harmful impact upon highway safety or result in traffic generation that would create harm.

## **Conclusion**

This application is not concerned with the use itself, as the application is only for the variation of condition 3 of F/TH/07/0985 to allow amplified music to be played from the hours of 11am to 9:30pm daily from 1st April to 31st October in perpetuity.

It is appreciated that the use of amplified music may attract more patrons to Sundowners from both local residents and also visitors to the area (economic benefit), however, this needs to be weighed against the harm that it could also result in.

The Council's Environmental Health team has strong concerns regarding the use of amplified music that can't be mitigated against and that is within close proximity to residential units. Given that amplified music has been used at the site since April 2021 and the number of complaints received by that team it is clear there are noise issues for neighbours, and this would be particularly prevalent in the warmer months of the year when the applicant wishes to use amplified music. As such officers consider that there is a direct conflict. Your officers concur with the views of the Environmental Health team and do not consider that there is a compromise on this occasion that could safeguard residential amenity and allow the use of amplified music in an unenclosed area.

Whilst this application would support an existing business that the Council in principle would look to support this can't be to the significant detriment of residential occupiers, which allowing this variation of condition would.

It is, therefore, recommended that Members refuse the application for a variation of condition as there would be an adverse impact upon the residential amenity of occupiers of nearby residential units if allowed.

## **Equalities Act**

In considering this application, due regard has been had to the Public Sector Equality Duty (PSED), as set out in Section 149 of the Equality Act 2010. The protected characteristics referred to in the Act are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Planning decisions are primarily about the development and use of land, not about who is using it. In this case the unacceptable impact to residential amenity is considered unacceptable by officers.

## **Case Officer**

Gillian Daws



TITLE: F/TH/24/0538

Project Victorian Shelter Marine Drive MARGATE Kent CT9 1DH

Scale:

