

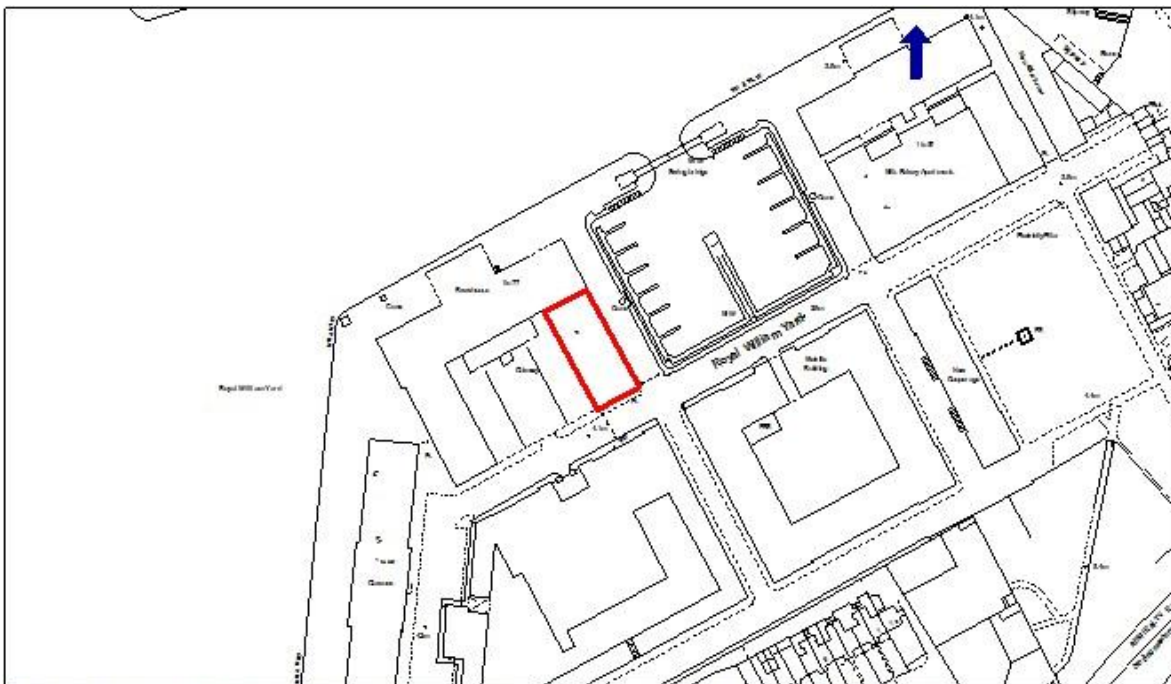
# PLANNING APPLICATION REPORT



<b>Application Number</b>	14/01300/FUL	<b>Item</b>	6.1
<b>Date Valid</b>	14/08/2014	<b>Ward</b>	St Peter & The Waterfront

<b>Site Address</b>	LAS IGUANAS, BREWHOUSE, ROYAL WILLIAM YARD PLYMOUTH		
<b>Proposal</b>	Variation of condition 11 of planning application 12/02014/FUL to read as 'Openable windows serving the ground floor restaurant, as identified on the Window Reference Plan (Drg No BRS4485_01F) shall only be opened in accordance with the restrictions set down on the plan, and at no other times		
<b>Applicant</b>	Las Iguanas		
<b>Application Type</b>	Full Application		
<b>Target Date</b>	<b>09/10/2014</b>	<b>Committee Date</b>	<b>Planning Committee: 04 December 2014</b>
<b>Decision Category</b>	Member Referral		
<b>Case Officer</b>	Adam Williams		
<b>Recommendation</b>	Grant Conditionally		

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This application has been referred to Planning Committee by Councillor Penberthy

## **1. Description of site**

The Brewhouse is part of the Royal William Yard, designed by Sir John Rennie, and constructed between 1825 and 1831. The Brewhouse was designed for brewing beer, as part of the victualing needs of the navy at the time. Beer rations were discontinued, however, and therefore it was never used for its intended purpose. The site is within the Durnford Street Conservation Area. The Brewhouse buildings are listed - Grade I.

Units 3-5 of the Brewhouse has previously had permission for the operation of an exhibition and arts area. Permission was granted for an A3 restaurant use, the unit is now occupied by Las Iguanas

## **2. Proposal description**

Variation of condition 11 of planning application 12/02014/FUL to read as 'Openable windows serving the ground floor restaurant, as identified on the Window Reference Plan (Drg No BRS4485\_01F) shall only be opened in accordance with the restrictions set down on the plan, and at no other times

## **3. Pre-application enquiry**

A meeting was held with officers on 22<sup>nd</sup> October 2014, but there have been no formal pre application discussions.

## **4. Relevant planning history**

02/01684 - Change of use, conversion and alterations to Clarence and Brewhouse buildings to form 133 residential units, change of use of parts of ground floor Brewhouse to exhibition/arts facility and to retail/hot food units (A1/A3) use of adjoining land for car parking. Permitted (includes condition 15 which requires the exhibition/arts area in Brewhouse – the subject of this current application to be primarily used for art and exhibition purposes)

02/01681 - Works of conversion and alterations to form a show flat in the North block, second floor. (LBC). Permitted

02/01682 - Works of conversion and alterations (associated with change of use of buildings to 130 residential units and use parts of ground floor Brewhouse to exhibition/arts facility and to retail/hot food units (A1/A3) use of adjoining land for car parking). Permitted

02/01683/FUL - Change of use, conversion and alterations to buildings to form 130 residential units, change of use of parts of the ground floor of the Brewhouse to an exhibition/arts facility and to retail/hot food units (Classes A1/A3). Permitted

12/01294/FUL - Retention of 130 residential units with café/bar and restaurant units on the ground floor of the Brewhouse building: Variation of condition 15 of 02/01683/FUL to state that the café/bar and restaurant uses on the ground floor shall only be used for hot food retail (A3) or general retail (A1) and for no other purpose - Withdrawn

12/02014/FUL - Change of use from exhibition/arts area to restaurant and café use (Use class A3) – permitted

13/01663/FUL - Retrospective change of use of parts of former public realm quay areas to continue use as outdoor seating areas for existing restaurants (use class A3) in Brewhouse and Mills Bakery buildings. Permitted

## 5. Consultation responses

Public Protection Unit – Recommends approval provided that the consent is limited to a 12 month period only. This will enable Las Iguanas to continue to search for other solutions to the ventilation problem as brought to their attention in an advisory during the initial change of use application.

## 6. Representations

22 Letters of representation have been received to the proposal, before the amendment. The main points in objection are as follows:

- Noise
- Content of conversations by clientele of Las Iguanas
- Lack of information, regarding noise
- Effect of cigarette smoke ingress on the flats above Las Iguanas
- Proximity to residential properties
- Hours of restaurant use
- Although A3 restaurant use is granted, the operation leans more towards A4 (Drinking establishment)
- Anti-social behaviour from patrons and staff leaving the premises
- Taxi pick-ups still taking place outside the restaurant as opposed to at the entrance of the Royal William Yard

Amongst the 22 letters, 13 wrote in support of the application.

Those writing in support speak of high temperatures leading to staff quitting and customers leaving, also noting no other restaurant in the Royal William Yard has this condition on window closure.

The re-advertised period for the amendment commenced on 12/11/14, and is due to run until 26/11/14. To date the following concerns have been noted from 1 additional letter of representation (as of writing 17/11/14, additional comments will be reported through an addendum report).

- Windows 12-17, those facing the courtyard, should remain closed at all times, a future tenant may have different trading hours, currently las Iguanas open at midday
- Restaurant remains unsuitable for this unit within the Royal William yard

## 7. Relevant Policy Framework

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan comprises of the Local Development Framework Core Strategy (Adopted April 2007).

The National Planning Policy Framework (the Framework) is a weighty material consideration. It replaces the majority of Planning Policy guidance issued at National Government Level. Paragraph 215 of Annex I to the Framework provides that the weight to be afforded to Core Strategy policies will be determined by the degree of consistency of those policies with the Framework.

At the heart of the Framework is a presumption in favour of sustainable development. In the context of planning applications, this means approving development proposals that accord with the development plan without delay but where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits; or
- specific policies in the Framework indicate development should be restricted.

## 8. Analysis

1. This application has been considered in the context of the Council's adopted planning policy in the form of the Local Development Framework Core Strategy 2007, policies CS03, CS13, CS22, CS28, CS34, and the Millbay and Stonehouse Area Action Plan, Policy MS01, and is considered to be compliant with National Planning Policy Framework guidance.

Is the development acceptable in principle?

2. This application seeks to vary condition 11 of planning permission 12/02014/FUL which currently specifies;

*(11) Openable windows serving the customer seated areas must be closed and must remain closed during trading hours.*

*Reason: To safeguard the amenity of the occupiers of adjoining properties and to comply with policy CS22 of Plymouth City Council's Local Development Framework.*

3. The condition was applied to safeguard neighbouring amenity and an informative to this condition was applied to the permission to say;

*'Noise caused by patrons has the potential to negatively impinge on local residents in the reasonable use and enjoyment of their properties. Keeping windows and doors closed during trading hours will help to minimise the impact of this noise on residents and it is advisable to ensure that windows are not openable. This condition may adversely impact on the ventilation of restaurant areas which may require further mechanical ventilation or air conditioning.'*

4. Since operation the applicants have undertaken investigations into mechanical ventilation, the reasons were explained during a meeting on 22<sup>nd</sup> October 2014. The applicants stress that failure to find an adequate solution has been due to two reasons:

- 1) The installation of an air conditioning system would likely require harmful works to the listed building
- 2) An internal system would cause harm to neighbouring amenity through noise and vibration.

5. Amendments were discussed during this meeting which led to the formal submission of an amendment to this application on 27/10/2014.

### **Amendments to Proposal as Originally Submitted**

6. Amendments were received on 27<sup>th</sup> October 2014, which included a plan revision to show which windows the applicants wish to be openable and also an alteration in the proposed wording to vary condition 11 of permission 12/02014/FUL. The description of the application was amended as appropriate. These amendments were then re-advertised for 14 days in order to highlight the changes to the proposal.

### **The proposal**

7. The applicants propose that the windows facing the basin can be opened between 08:00 to 22:00, the windows facing the road can be opened between 08:00 and 18:00 and the windows facing the courtyard can be opened between 8am and 12noon. In addition the windows serving the kitchen will be closed at all times.
8. These times are outlined on a submitted plan; therefore the proposed condition will make reference to this plan. The applicants have asked for the wording of the condition to change to: 'Openable windows serving the ground floor restaurant, as identified on the Window Reference Plan (Drg No BRS4485\_01F) shall only be opened in accordance with the restrictions set down on the plan, and at no other times'
9. The aim of the alteration is to allow for natural ventilation to occur prior to the opening of the restaurant and allow for natural ventilation to occur during trading hours in sustained periods of hot weather.

### **Residential Amenity**

10. The Royal William Yard is a mixed use area with residential units above the A3 restaurant uses in Mills Bakery and Brewhouse. The letters of representation raise the issue of noise associated with the current operation of the ground floor restaurant in the Brewhouse.
11. Section 11 of the NPPF states that 'Planning policies and decisions should aim to: 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'. As such officers recognise that the condition variation has the potential to give rise to noise related complaints.
12. Information submitted as part of the application, within an acoustic assessment and summarised within an accompanying covering letter detail that noise escape from open windows facing the basin would not have a detrimental impact upon neighbouring amenity. As such it is proposed to ensure the windows facing the basin remain closed from 12noon, when trading commences. The acoustic report details that the windows facing the road has the potential to harm neighbouring amenity upon opening, however it was concluded that to create through ventilation without opening the windows facing the courtyard, these can be opened between 8am and 6pm.
13. The Public Protection Unit has reviewed the submitted acoustic assessment and has concluded that the potential for noise disturbance is low, however, officers advise that the wording of the condition should have regard to the planning approval for the outdoor seating (13/01663/FUL) as outlined within the noise assessment, the amendment has sought to rectify this. In addition, the Public Protection Unit consider a timed condition should be used, in order to ensure an

investigation into alternative methods continues. For this reason it is proposed that the condition is reviewed after 12 months

14. Therefore officers recommend a rewording of the condition (which the applicants submitted on the 27/10/2014), should have regard to the conditions on the planning application for the outdoor seating, namely the hours of operation, which are *'1000 – 2230 hours Monday to Saturday and 1100 – 22.30 Hours on Sundays and Bank Holidays. Furthermore it was proposed that the condition shall remove the ability for customers to be allocated external seats after 2100 hours, with all areas of outdoor seating to be vacated by 2230 hours'*
15. The re wording of the condition is broadly in line with this, in which all windows must be closed by 22:00.
16. On balance, officers conclude that sufficient compromise has been made to ensure neighbouring amenity is protected whilst ensuring the existing business can continue to succeed.
17. Other issues were raised, but these do not relate to the application, but refer to more general issues relating to the use as a restaurant

## **9. Human Rights**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

## **10. Local Finance Considerations**

None

## **11. Planning Obligations**

None

## **12. Equalities and Diversities**

This recommendation has been made upon balancing the considerations for successful commercial operation against the need of the residents to enjoy a good quality of life.

## **13. Conclusions**

Officers have taken account of the NPPF and S38(6) of the Planning and Compulsory Purchase Act 2004 and concluded that the proposal accords with policy and national guidance and specifically polices CS22 and CS34 of the Local Development Framework Core Strategy 2007.

### 13. Recommendation

In respect of the application dated **14/08/2014** and the submitted drawings BRS4485\_01F, GA-001 PL2, GA-003 PL2, 15DTL 31 01 A, Design and Access Statement, Heritage Statement, Ventillation and Extraction Statement, Acoustic Submission, Refuse Procedures, Delivery Procedures, Community Consultation Statement, Transport Statement, Acoustic Testing Report, Kitchen Extract Statement, Ecology Unit Description, Brewhouse Refuse Procedures, it is recommended to: **Grant Conditionally**

### 14. Conditions

#### APPROVED PLANS

(1) The development hereby permitted shall be carried out in accordance with the following approved plans: (BRS4485\_01F, GA-001 PL2, GA-003 PL2, 15DTL 31 01 A, Design and Access Statement, Heritage Statement, Ventillation and Extraction Statement, Acoustic Submission, Refuse Procedures, Delivery Procedures, Community Consultation Statement, Transport Statement, Acoustic Testing Report, Kitchen Extract Statement, Ecology Unit Description, Brewhouse Refuse Procedures)

#### Reason:

For the avoidance of doubt and in the interests of good planning, in accordance with policy CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

#### CONTROL OF NOISE

(2) The noise emanating from the fans/ventilation equipment/air conditioning/ plant (LAeqT) should not exceed the background noise level (LA90) by more than 5dB, including the character/tonalities of the noise, at anytime as measured at the façade of the nearest residential property.

#### Reason:

To ensure that the proposed dwellings hereby permitted achieve a satisfactory living standard and do not experience unacceptable levels of noise disturbance to comply with policies CS22 and CS34 of the adopted City of Plymouth Core Strategy Development Plan Document 2007

#### ODOUR FROM KITCHEN EXTRACTION SYSTEMS

(3) Details of the specification and design of equipment to control the emission of fumes and smell from the premises have been submitted and hereby approved. Any alteration or variation to the equipment should receive the written approval of the Local Planning Authority. All equipment installed as part of the scheme shall be operated and maintained in accordance with the manufacturer's instructions.

#### Reason:

To ensure that the proposed dwellings hereby permitted achieve a satisfactory living standard and do not experience unacceptable levels of odour nuisance to comply with policies CS22 and CS34 of the adopted City of Plymouth Core Strategy Development Plan Document 2007

## DELIVERIES AND REFUSE COLLECTION

(4) Deliveries and refuse collections are restricted to the following times:-

Monday to Saturday - No deliveries or refuse collection between 6pm and 8am

Sundays and Bank Holidays - No deliveries or refuse collection

Reason:

To protect the residential and general amenity of the area from noise emanating from delivery and waste collection activities and avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

## OPENING HOURS

(5) The use hereby permitted shall not be open to customers outside the following times: 9am until 00:00 hours Mondays to Saturdays inclusive and 9am until 22:00 hours on Sundays and Bank or Public Holiday with the exception of New Years Eve to which the hours permitted shall be 9am until 2am hours.

Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, including noise and disturbance likely to be caused by persons arriving at and leaving the premises, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

## NO AMPLIFIED MUSIC

(6) No amplified (live) music shall be played in the premises outside the following times: 6pm to 22:30pm hours Monday to Saturday inclusive and 10am to 10pm hours on Sundays and Bank or Public Holidays.

Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, such as noise and vibration, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

## CONTROL OF USE

(7) The part of the building which is the subject of this planning permission shall be used for A3 restaurants and café purposes only (as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended)) Under no circumstances shall the premises be used as a Drinking Establishment, as defined in Use Class A4.



Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, including noise and disturbance, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

## REFUSE STORAGE

(8) The development shall not be commenced until details of waste and recycling storage enclosures showing the design, location, external appearance and size have been submitted to and approved by the Local Planning Authority. The approved enclosures shall be provided before the commencement of the use and thereafter permanently retained.

Reason:

To provide satisfactory refuse storage provision in the interests of the appearance of the site and locality.

## NOISE LEVELS AND MITIGATION

(9) Acoustic insulation installed within the unit to prevent any unwarranted noise transmission from the commercial unit to residential properties above, should continue to meet both clauses below:

(a) The noise mitigation level of the ceiling(s) between the development and any residential development should be a minimum of 55dB DnT, W+ Ctr for airborne noise.

(b) The insulation installed should allow the properties above to experience the Good Room Criteria as set out in BS8233:1999, such that the noise level experienced within any living room or bedroom is 30dB LA(5minute).

Reason:

To ensure that the development hereby permitted doesn't cause any unwarranted noise disturbance to the existing nearby residential dwellings as per policy CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007

## INTERNAL LOBBY

(10) Details of an internal lobby have been submitted hereby approved (Drawing number; I5DTL 31 01 A).

Reason:

To ensure appropriate sound insulation measures in accordance with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

## WINDOWS

(11) Openable windows serving the ground floor restaurant, as identified on the Window Reference Plan (Drg No BRS4485\_01F) shall only be opened in accordance with the restrictions set down on the plan, and at no other times. This condition will apply for a 12 month period following the approval date of this decision, following which the applicant will apply in writing to the local planning

authority for the continuation of this condition. If no agreement is reached the original condition will apply i.e. "Openable windows serving the customer seated areas must be closed and must remain closed during trading hours".

Reason:

To safeguard the amenity of the occupiers of adjoining properties and to comply with policy CS22 of Plymouth City Council's Local Development Framework.

## **Informatives**

### **INFORMATIVE - OUTSIDE SEATING**

(1) This grant of planning permission must not be taken as planning consent to place tables and chairs outside of the premises. Planning permission has been sought separately and approved under planning reference 13/01663/FUL.

### **INFORMATIVE: CONDITIONAL APPROVAL (NO NEGOTIATION)**

(2) In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission.

### **INFORMATIVE: WINDOWS**

(3) Noise caused by patrons has the potential to negatively impinge on local residents in the reasonable use and enjoyment of their properties. Keeping windows and doors closed during times laid out within condition 11 minimise the impact of this noise on residents and it is advisable to ensure that windows are not openable outside of these times. This condition may continue to adversely impact on the ventilation of restaurant areas which may require further mechanical ventilation or air conditioning.

### **INFORMATIVE: NOISE VERIFICATION**

(4) In terms of monitoring for condition 9 a noise verification report should detail tests to show that the criteria in condition 9 are met. This should mean an airborne noise test to verify the requirements of part (a). The requirement of part (b) will be an ongoing requirement and can be tested should complaints arise.

CS28 - Local Transport Consideration

CS34 - Planning Application Consideration

CS22 - Pollution

CS13 - Evening/Night-time Economy Uses

CS03 - Historic Environment

CS03 - Historic Environment

MS01 - Royal Williams Yard

NPPF - National Planning Policy Framework March 2012