

West Area Planning Committee

13th June 2012

Application Number: 12/00683/VAR

Decision Due by: 14th May 2012

Proposal: Application to vary condition 2 of planning permission 05/01355/VAR to enable the premises to be open between the hours of 18:00 - 02:00 Mondays to Thursdays; 18:00 - 04:00 on Fridays and Saturdays; 12:00 - 00:00 on Sundays; 12:00 - 04:00 on Sundays prior to Bank Holidays; and on 30th April each year to be open until 06:00 the following day (May Day)

Site Address: The O2 Academy, 190 - 194 Cowley Road (**Site Plan: Appendix 1**)

Ward: St Marys Ward

Agent: Blake Laphorn Solicitors

Applicant: Academy Music Group Ltd

Application called in by Councillors Price, Coulter, McManners, Malik, Van Nooijen, and Humberstone on grounds of the capacity for disturbance and anti-social behaviour

Recommendation:

The West Area Planning Committee is recommended to approve planning permission for the following reasons:

- 1 The proposed variation of opening hours would be consistent with the licensed hours agreed by the Licensing Authority. The variation would not significantly alter the existing operating hours of this venue within the Cowley Road District Centre, and in the absence of any significant objection from the Thames Valley Policy and Licensing Officers, it would be difficult to demonstrate that it would have a significant impact upon neighbouring residential properties in terms of increased noise, disturbance, and anti-social behaviour. The variation would therefore accord with the aims and objectives of Policies CP1, CP19, and CP21 of the Oxford Local Plan 2001-2016, and Policy CS19 of the Oxford Core Strategy.
- 2 In considering the application, officers have had specific regard to the comments of third parties and statutory bodies in relation to the application, however officers consider that these comments have not raised any material considerations that would warrant refusal of the applications, and any harm

identified could be successfully mitigated by appropriately worded conditions.

- 3 The Council considers that the proposal accords with the policies of the development plan as summarised below. It has taken into consideration all other material matters, including matters raised in response to consultation and publicity. Any material harm that the development would otherwise give rise to can be offset by the conditions imposed.

Conditions:

- 1 Hours of opening
- 2 Noise limits

Main Local Plan Policies:

Oxford Core Strategy 2026

CS19_ - Community safety

CS1_ - Hierarchy of centres

Oxford Local Plan 2001-2016

CP1 - Development Proposals

CP19 - Nuisance

CP21 - Noise

RC4 - District Shopping Frontage

Other Material Considerations:

National Planning Policy Framework

Relevant Site History:

The applications of most relevance to the proposal are listed as follows:

03/01820/VAR - Variation of condition No. 8 of permission 97/561/NF to include opening (i) 1900-0400 hours Friday to Saturday and (ii) 1200-2400 hours Sunday: Approved

05/00760/FUL - Raise roof over rear ground floor extension, alterations to front and side elevations, change of use of part of shop to provide bar and toilets in association with existing nightclub.(Amended Plans): Approved

05/01355/VAR - Variation of condition 8 of 97/00561/NF to allow opening hours of 19.00 to 04.00 Fridays and Saturdays, 12.00 to 24.00 on Sundays: Approved

06/01952/FUL - Raise roof over rear ground floor extension, alterations to front and side elevations, change of use of part of shop to provide bar and toilets in association with existing nightclub (Amended Plans): Approved

Representations Received:

Letters of objection have been received from the following addresses. A summary of their comments is set out in **Appendix 2** of this report.

28 Aston Street; 24, 30 Boulter Street; 87 (Flat 2) Bullingdon Road; 305 Cowley Road; 27, 37 Cross Street; 120 Charles Street; 4, 5 Denmark Street; 64, 72, 111 Divinity Road; 55, 71 East Avenue; 1, 9, 20, 22 Essex Street; 8 Hawkins Street; 23, 24 Henley Street; 14, 18, 26, 47, 89, 106 Hurst Street; 255 Iffley Road; 23, 38, 40 (Flat 1), 55, 57, 60, 84a James Street; 10 Leon Place; 12 London Place; 19, 25a Leopold Street; 41, 142 Magdalen Road; 12, 37, 51 Marston Street; 35 Oxford Road; 18, 24, 38 Rectory Road; 9, 12, 31 Regent Street; 8, 14, 20, 36, 41, 71, 78 St Mary's Road; 40, 44 Southfield Road; 20 Tyndale Road; 76 Valentia Road; 5, 66 Warwick Street; Divinity Road Residents Association; London Place Residents Association; East Oxford Residents Association Forum

Statutory and Internal Consultees:

Thames Valley Police:

Having consulted with the Neighbourhood Police Team, Licensing Officers, and the applicant, and reviewed the crime and disorder reported from this area. The Thames Valley Police, after consideration, would not object to the planning application to align the building operating hours to that of the agreed licensing hours.

The Licensing Authority will impose appropriate operating conditions on the venue as required.

Oxfordshire County Council Highways Authority:

The Highway Authority is sympathetic to the local residents in terms of the likely outcomes (anti-social behaviour, littering and vandalism) the proposal may bring to the area and its vicinities. These issues however, are not within the remit of the Highway Authority to recommend refusal to the proposal. In light of the above, Highway Authority has no objection in principle to the application.

Issues:

- Impact of variation of condition upon surrounding area
- Other matters

Officers Assessment:

Site Location and Description:

1. The site is located on the southern side of Cowley Road and comprises the O2 Academy Venue (formerly Carling Academy) which is situated within the Cowley Road District Centre (**site plan: appendix 2**)
2. The area is predominately commercial but there are residential properties situated to the rear of the site and on the upper floors of premises fronting the Cowley Road. The wider area surrounding the Cowley Road is primarily residential.

Proposal

3. The application is seeking permission for a variation of condition 2 of planning permission 05/01355/VAR which restricts the operating hours for the premises.

4. The following table sets out the existing operating hours which are set by the condition, and the proposed variation to these hours which is being sought.

	05/01355/VAR	Proposed
Mon - Thurs	19.00 – 02.00	18.00 – 02.00
Fri - Sat	19.00 – 04.00	18.00 – 04.00
Sundays	12.00 – 00.00	12.00 – 00.00
Sundays prior to Bank Hols	12.00 – 00.00	12.00 – 04.00
30 th April	Normal closing time as above dependant on day	Until 06.00 the following day (May Day)

5. The current hours of operation allowed by the planning condition do not coincide with those allowed under the terms of the premises licence, and therefore the overall purpose of the application is to align the two sets of operating hours together.

Impact of the variation of condition

6. At the outset it should be made clear that this is not a licensing application and the guidance issued under section 182 of the Licensing Act 2003 makes clear that planning and licensing regimes involve consideration of different (albeit related) matters. For instance, licensing considers public nuisance and safety issues whereas planning considers amenity issues.
7. The proposed variation would simply enable the facility to open an hour earlier on Monday to Saturday. There is no proposal to extend the existing late night opening hours on a daily basis (Monday – Sunday) beyond those already set by the condition. The only extension of late night hours would be until 4.00am on the Sunday before a Bank Holiday and until 06.00am on the day after the 30th April to reflect the May Day celebrations.
8. During the consultation process a significant number of representations have been made by local residents and resident associations objecting to the proposal on grounds that the current opening hours give rise to significant noise and disturbance issues throughout the local area and this will be exacerbated if they are extended. The majority of comments appear to attribute the problems arising from the venue to the student 'Fuzzy Ducks' night on a Wednesday, although others make reference to problems occurring at other times.
9. The Oxford Local Plan has general policies that relate to environmental impacts arising from development. Policy CP19 states that permission will not be granted for proposals that cause unacceptable nuisance, and where such a nuisance is controllable planning conditions will be imposed. In addition Policy CP21 also states that permission will be refused for proposals that cause unacceptable noise, with conditions also used to minimise any adverse impact from noise. The Oxford Core Strategy also has Policy CS19 which considers community safety,

and while this relates to new development, the overall aims are to ensure that proposals promote safe and attractive environments which reduce the opportunity for crime and the fear of crime.

10. While officers are sympathetic to the concerns of local residents with regards to any problems they may be experiencing in the local area, the O2 Academy is located within the Cowley District Centre which is predominately a commercial area where leisure and entertainment uses are encouraged. Therefore a balance needs to be found between the commercial needs of these uses and those of residents within the surrounding streets. It should also be recognised that the Academy is not the only late night venue within the Cowley Road as there are a number of other similar type uses (public houses, restaurants) throughout the street and also at St Clement's which contribute to the night-time economy. The concerns of local residents are nevertheless important as is the potential increase in noise and disturbance that may arise from the variation.
11. The proposed variation will only result in a minor change to the approved hours, with the premises opening an hour earlier on a daily basis rather than any later than approved. A significant number of the commercial premises throughout the Cowley Road would be open at this time, and as such the impact of allowing the Academy to open at 6pm would be imperceptible within the District Centre and surrounding area. The only extension of late night hours for the premises would be for the limited number of Sundays prior to a Bank Holiday and on the 30th April for May Day and therefore it would be difficult to justify withholding permission for these additional hours when they would only occur on a limited basis throughout the year.
12. The Thames Valley Police have raised no objection to the proposal having liaised with the Neighbourhood Police Team, Licensing Officers and after a review of the crime and disorder reported from this area. The Oxford City Council Environmental Health Licensing Officers have also raised no objection to the proposal on the basis that they would be consistent with the hours already agreed under the terms of the licence. It should also be recognised that the Licensing Authority has already deemed it appropriate to allow the venue to operate at the hours proposed within this variation, and in reaching their decision regard would have been given to any potential public nuisance that may arise as a result. The licensed hours would remain unchanged as a result of this application.
13. Therefore in the absence of any significant objection from the Thames Valley Police and Licensing Officers, it would be difficult to demonstrate that the proposed variation would have any significant additional impact upon neighbouring residential properties in terms of increased noise and disturbance. As a result officers are of the view that the proposal would accord with the aims and objectives of Policies CP1, CP19, and CP21 of the Oxford Local Plan 2001-2016.

Other Matters

14. The proposed extension will have no impact upon servicing issues for the venue, and will not increase traffic problems on the Local Highway or illegal parking in

the area. The Local Highway Authority has raised no objection to the proposal.

15. The previous permission (05/01355/VAR) also included an application setting the noise levels from the venue, and this should also be carried over into this application.

Conclusion:

16. The proposal is considered to be acceptable in terms of the relevant policies of the adopted Oxford Core Strategy 2026 and the Oxford Local Plan 2001-2016 and therefore officer's recommendation to the Members of the West Area Planning Committee is to approve the development.

Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant planning permission, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Officers have also considered the interference with the human rights of the applicant under Article 8 and/or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the rights and freedoms of others and to control the use of property in accordance with the general interest. The interference is therefore justifiable and proportionate.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to grant permission, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Contact Officer: Andrew Murdoch

Extension: 2228

Date: 24th May 2012

Appendix 1 – Site Plan

O2 Academy – 190-194 Cowley Road



Appendix 2 – Summary of third party representations

Letters of objection have been received from the following addresses, their comments are summarised as follows

28 Aston Street; 24, 30 Boulter Street; 87 (Flat 2) Bullingdon Road; 305 Cowley Road; 27, 37 Cross Street; 120 Charles Street; 4, 5 Denmark Street; 64, 72, 111 Divinity Road; 55, 71 East Avenue; 1, 9, 20, 22 Essex Street; 8 Hawkins Street; 23, 24 Henley Street; 14, 18, 26, 47, 89, 106 Hurst Street; 255 Iffley Road; 23, 38, 40 (Flat 1), 55, 57, 60, 84a James Street; 10 Leon Place; 12 London Place; 19, 25a Leopold Street; 41, 142 Magdalen Road; 12, 37, 51 Marston Street; 35 Oxford Road; 18, 24, 38 Rectory Road; 9, 12, 31 Regent Street; 8, 14, 20, 36, 41, 71, 78 St Mary's Road; 40, 44 Southfield Road; 20 Tyndale Road; 76 Valentia Road; 5, 66 Warwick Street; Divinity Road Residents Association; London Place Residents Association; East Oxford Residents Association Forum

- Affect local ecology
 - Close to adjoining properties
 - General dislike of the proposal
 - Inadequate parking provision
 - Increase in traffic
 - Increase in pollution
 - Inadequate public transport provisions
 - Loss of parking
 - Loss of privacy
 - Noise nuisance
 - Not enough information given on the application
 - Out of keeping with the character of the area
 - Strain on existing community facilities
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- There is no information given to the additional impact this will have upon the wider locality and neighbours of the increased hours or any impact assessment
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- The proposal to extend the hours to 2am on most nights and 4am on Fridays, Saturdays and some Sundays is in conflict with the City Plan policies on designing our crime and noise
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- It should be recognised that the academy is on the edge of a residential area. There is already late night disturbance from a wide range of activities on the Cowley Road especially at the O2 including Wednesday night 'Fuzzy Ducks'. This will exacerbate the problem
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- The Fuzzy Ducks night is the most destructive and causes anger and distress to residents. It is disliked by the community and even criticised by the University and Brookes for the negative messages it sends to students and it is time for that to stop.

- The residents in the streets surrounding the Cowley Road and the Academy, many of which include respectful students, working people, small children are frequently disturbed at night by people coming back in the early hours making noise, violence, and vandalism in association with the O2. To extend the opening hours will make matters worse.
- While a few people on the streets of East Oxford may have come from the city centre, the majority of trouble arises from O2 customers.
- It is socially irresponsible on the part of the owners of the academy to suggest extending the opening hours to a Sunday, as locals are already disturbed on a Friday and Saturday.
- Extending the nuisance beyond the current licence, to every weekday night would put great strain on the residents in streets in East Oxford.
- It is unreasonable to have a club open until 4.00am in the morning.
- It does not seem sensible to offer all-night drinking to youngsters on the 30th April who will spill out onto Magdalen Bridge, and this date can often be a working night. Therefore protracted late night clubbing would be disruptive and unwelcome.
- There are problems with dispersal of groups leaving the Academy with groups of people walking through the side streets in the early hours of the morning.
- While the O2 staff appear to adhere to the licensing policy by ejecting customers from the venue and moving them on, all they do is move them a few metres down the Cowley Road and so customers still wander the streets at 4/5am
- The licensing hours allowed at the establishment and others in the area need to be curbed and not extended
- There will be illegal parking in residents parking areas and on double yellow lines every night of the week and so residents will have nowhere to park on their return
- The proposed earlier opening hours run the risk of further increasing the extent of disruption caused by the parking of coaches that create traffic congestion and the blocking of the pavement by large queues for some events
- Late night opening needs to be carefully considered as it runs contrary to creating mixed and balanced communities and will erode the areas being a mix of household types.
- The increase in hours will cause traffic problems with loading and unloading from the O2.
- Local residents have already asked for better policing on Friday and Saturday nights, but with cuts this will be difficult

- The proposal will increase alcohol related crime, such as criminal damage, violence and public order offences
- The proposal will place an additional and disproportionate burden on local resources in particular street cleaning, policing, environmental health, and local health services
- Granting these hours of licensing would not significantly increase the 'night-time' economy of East Oxford but would deter people from living in the area and visiting other bars, shops and restaurant.
- The O2 management have shown reluctance to engage with local residents to discuss problems caused by their existing club nights

Divinity Road Residents Association

- Objects
- It will create a precedent for every other licensed establishment to follow suit
- Add further to night time disturbance suffered by residents of the streets used by their customers to return home
- Add further to drunken anti-social behaviour
- Licensed establishments should stop serving alcohol at 1.00am unless there are exceptional circumstances e.g. May morning, New Years Day

London Place Residents Association

- Objection
- Residents have ongoing and increasing problem of noise and disorderly behaviour in the early hours of the morning by person(s) returning to Headington along London Place
- This has lead to several complaints a week including a 999 call to break up a street brawl
- The Association strongly objects to any extension of opening into the early hours

East Oxford Residents Association Forum

- Objects
- The EOAF represents the majority of streets surrounding the O2 Academy and its members are already troubled on a regular basis by the customers of the O2 and in particular the 'Fuzzy Duck' night.
- Despite the efforts of police, licensing and the O2, the same problems remain, namely; crime and disorderly behaviour caused by patrons; dangers to public health posed by urination, vomit, broken glass and vandalism; the harmful effect on local children caused by broken sleep, dangerous litter and vomit and urine on the street and in gardens; and public nuisance caused by fights, noise, vandalism and litter.
- The opening hours and treatment of the community by the O2 and its customers have been the cause of numerous complaints
- Extending these hours of opening would amplify these problems and cause new ones benefiting only the owners of the O2 at the cost of the local community, taxpayers of Oxford, and reputation of students in the area.

- Apart from the above-mentioned issues, the application should also be refused as the extended hours will impinge on servicing arrangements; will impact on negatively on local businesses; there will be traffic generation at times when public transport is poor.
- The EORAF objects to any change in planning or licensing for the O2 Academy until the existing problems are resolved
- We would also suggest the curtailment of the Fuzzy Ducks night and its transfer to a city centre location

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