

PETITION & LOCAL MEMBER OBJECTIONS

COMMITTEE DATE: **19/05/2021**

APPLICATION No. 21/00420/MNR

DATE RECEIVED: 19/02/2021

ED: **CYNCOED**

APP: TYPE: Variation of Conditions

APPLICANT: Mr Lukaris

LOCATION: Terra Nova Café, Roath Park, Lake Road West, Roath Park,
Cardiff, CF23 5PH

PROPOSAL: VARIATION OF CONDITION 4 OF 08/01271/E FOR OPENING
HOURS TO BE EXTENDED BY 1 HOUR FROM 21.00 - 22.00

RECOMMENDATION: That planning permission be **GRANTED** subject to the following conditions:

- 1 C01 – Statutory Time Limit
- 2 The development shall accord with the approved drawings numbered A042666[D]07 Revision B, 08 Revision B and 09 Revision B.
Reason: For the avoidance of doubt in line with the aims of Planning Policy Wales to promote an efficient planning system.
- 3 Drainage of the site shall accord with the details agreed by the Local Planning Authority on 18/05/2010, unless otherwise agreed by the Local Planning Authority.
Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.
- 4 Members of the public shall only be admitted to or allowed to remain on the premises between the hours of 08:00 and 22:00 on any day.
Reason: To ensure that the amenities of other premises in the vicinity are protected, in accordance with policy EN13 of the Local Development Plan.
- 5 Refuse storage shall accord with the details agreed by the Local Planning Authority on 30/03/2009, unless otherwise agreed by the Local Planning Authority.
Reason: To secure an orderly form of development and to protect the amenities of the area in accordance with Policy W2 of the Local Development Plan.
- 6 Members of the public shall only be permitted to use the outdoor area of the premises between the hours of 08:00 and 21:00 on any day.

Reason: To ensure that the amenities of other premises in the vicinity are protected, in accordance with policy EN13 of the Local Development Plan.

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 The application seeks permission to vary condition 4 of planning permission 08/01271/E to allow later opening at a café premises. Condition 4 was imposed as follows:

4) No members of the public shall be admitted to or allowed to remain on the premises between 21.00 hours and 8.00 hours on any day.

Reason: To ensure that the amenities of occupiers of properties in the vicinity of the site are protected.

- 1.2 Opening until 10pm is proposed. The application originally proposed opening until 11pm, however the proposal was revised at the request of the applicant.

2. **DESCRIPTION OF SITE**

- 2.1 The site comprises a detached building adjacent to the south west corner of the lake within Roath Park.

3. **SITE HISTORY**

- 3.1 08/01271/E – planning permission granted for alterations and single storey extension to existing cafe.

4. **POLICY FRAMEWORK**

- 4.1 Relevant National Planning Guidance:

Planning Policy Wales (Edition 11, 2021)
Future Wales - the National Plan 2040

- 4.2 Relevant Cardiff Local Development Plan (2006-2026) policies:

Policy EN13 (Air, Noise, Light Pollution and Land Contamination)
Policy R8 (Food and Drink Uses)

- 4.3 Relevant Supplementary Planning Guidance

Food, Drink and Leisure Uses (2017)

5. **INTERNAL CONSULTEE RESPONSES**

- 5.1 Neighbourhood Services – no objection to extension of opening hours by 2 hours from 21.00 - 23.00. A condition is request to restrict members of the public from using any of the outside seating areas after 21.00 and before 08:00.

5.2 Parks Services – Given that the park is currently not locked at night and this is unlikely to change in the foreseeable future, the issue of access for people using the café is not an operational problem. Therefore Parks have no difficulties with the 10pm proposal. Should there be a change in the future, which will require locking of gates to occur again, this would need to be discussed between the applicant and Parks to find a suitable solution.

6. **EXTERNAL CONSULTEE RESPONSES**

6.1 None.

7. **REPRESENTATIONS**

7.1 The application was publicised by letter and site notice. A petition of objection was received, signed by 69 residents with addresses in Cardiff and 2 outside Cardiff, 63 of which could reasonably be affected by the matter. Full details are viewable online.

7.2 Objections have been received from the following addresses:

- 75, 77, 83, 85, 87, 135, 181 Lake Road West.
- 19, 27, 59, 78 Windermere Avenue.
- 1, 4 Cunningham Close.
- 182 Lake Road East.
- 10 Keswick Avenue.
- 14 Beatty Avenue.
- 12 Jellicoe Gardens.
- 5 Ullswater Avenue
- 18 Cefn Coed Avenue.
- 48 Ty-Draw Road.
- 41 Paget Street.
- Ten undisclosed addresses.

Full details are viewable online, their comments are summarised as follows:

- a) *Increased noise and disturbance;*
- b) *Increased antisocial behaviour in the park;*
- c) *Increased litter;*
- d) *Sale of alcohol;*
- e) *Impact upon parking;*
- f) *Impact upon wildlife.*
- g) *Unlocking of the park at night.*

7.3 Councillors Bablin Molik and Robert Hopkins object, as follows:

We also wish to draw your attention to the application below for a licence to serve alcohol at the same premises which is being considered by the licensing committee on the 26th March 2021.

We believe that a decision in response to this planning application should not be considered in isolation. We appreciate that the application for a licence to serve alcohol is a separate matter. However, in this case it is clearly tied to the question of opening hours which itself is also connected to future decisions about the opening hours of Roath Park.

Permission was previously sought to make alterations and a single storey extension to the then existing café through a planning application. This was granted following a determination by the planning committee dated 13/08/2008. Several elements of the report giving permission are relevant to this planning application and are set out below.

Recommendation 4 required that “no member of the public shall be admitted or allowed to remain on the premises between 21.00 hours and 08.00 hours on any day.” The reason given for this requirement was “to ensure that the amenities of occupiers of properties in the vicinity are protected.”

Paragraph 1.7 of the report confirmed that the applicant intended to continue operating the premises as a cafeteria selling hot and cold food for consumption on and off the premises.

The intended hours of operation were described as dictated by the applicant’s lease with the council and related to the park’s current closing times: November-January 08.00-17.00; February 08.00-18.00; March and October 08.00-19.00; April and September 08.00-20.00; May to August inclusive 08.00-21.00.

Paragraph 8.6 made clear that these conditions were applied “to allay residents’ fears about the impact on the vicinity.”

Paragraph 1.8 confirmed that the applicant has a long lease with the council which owns the freehold. The lease allows for the sale of hot and cold food on and off the premises.

The Permission For Development document 08/01271/E confirmed the conditions in the planning grant relating to opening hours.

The planning application asks for an extension to opening hours from 21.00 to 23.00. However, this reflects the opening hours of the park between May and August and makes no reference to the earlier closure times during other months of the year.

The application makes an assumption about the opening times of the park in the future which is at best premature. Opening until 23.00 would appear to require a change to the permanent conditions governing the park’s operating arrangements as set out in the original planning grant. Roath Park is currently open twenty-four hours a day, but we understand that this is intended as a temporary measure to provide greater access to open spaces and healthy outdoor pursuits within the city during the Covid-19 pandemic. As far as we are aware, there has been no decision relating to the opening of the park on this basis as a permanent feature. Indeed, we understand that should any

such proposal be made it would need to be subject to ward member consultation. No such consultation has taken place. In this context, it is difficult to understand how the application could be approved without a change to policy on the opening times of the park.

We have been contacted by a few residents who are in support of the application for longer opening hours and the application to serve alcohol alongside food. However, the communications we have received from the large majority of residents have expressed significant concerns about the application. This is further evidenced by the large number of people signing a petition organised by local residents to object to the application for longer opening hours. A separate petition objecting to a licence to serve alcohol reached over 500 signatures.

We have summarised the concerns expressed below:

Fears of local residents, protection of the amenities of occupiers of properties in the vicinity

- Under the current temporary operating conditions in the park, residents have already complained about increased noise late at night, the discarding of rubbish in gardens, incidences of damage to private property, increased evidence of litter in the park including that related to drug use and alcohol consumption.*
- They are concerned that late-night opening and the serving of alcohol alongside unregulated access to the gated parks at night will cause further disturbance and disruption especially to those living in the vicinity and to their properties. They are concerned that this will be exacerbated by the serving of alcohol until 23.00.*
- Residents are concerned about evidence showing that levels of crime near establishments serving alcohol increase. Some have expressed concern about the resource implications and capacity of both the police and parks department to monitor the area adequately should the opening hours extend until 23.00.*
- Residents have complained about anti-social behaviour since the park gates are no longer locked and have watched police deal with incidents on a number of occasions.*

Concerns about safety

- There are particular concerns about the paths in the vicinity of the café and in the gated areas of the park. These are not lit and are difficult to monitor. Premises that are open late are usually in areas that are well lit and able to be monitored. Because of the demands of nature conservation additional lighting around the park is not possible.*
- Some residents have raised concerns about fear for personal safety at night for those using the park and lake for exercise and are concerned that this will increase and have a negative impact on the immediate and wider area around Roath Park with opening hours to 23.00. These concerns have been brought to the attention of the police.*

- *Given that the café is adjacent to the lake, promenade, waterfall and boat stands, concerns have been expressed about the risk of accidents from access to these areas of the lake at night.*
- *Current parking restrictions have created parking problems in the roads in the adjoining residential area. There are concerns that increased traffic resulting from the application will exacerbate these problems and increase hazards for those using the roads around the park entrance especially as there are no crossings on Lake Road West.*

Environmental and other concerns

- *Concerns have been expressed about the risk to the park's and lake's green flag status from increased litter and debris resulting from an extension of opening hours well into the night and the disruption and damage referred to above.*
- *Some residents have pointed out that there are safe nesting sites for birds within the park and lake and are concerned that increased activity late at night will cause significant noise disturbance to the sensitive wildlife living in the park.*
- *Concerns have also been expressed about the nearby children's playground, which is heavily used by local families and visitors to the park. These concerns relate particularly to the risk of damage to the playground as well as risks from broken glass and other debris from late night opening alongside the sale of alcohol.*
- *In this context, some residents have expressed the concern that such a development would be out of step with Cardiff's commitment to being recognised as a UNICEF Child Friendly City.*

In summary, we wish to reiterate that this planning application has been made alongside an application for a licence to serve alcohol and is closely tied to the future permanent arrangements for opening times at Roath Park. The original planning grant contained certain conditions relating to the opening hours of the café as set out in recommendation 4 and paragraph 8.6 above. These were specifically to ensure that the "amenities of occupiers of properties in the vicinity are protected" and "to allay residents' fears about the impact on the vicinity." We believe that these conditions were made for good reason then and are still important today. We are asking that due weight is given to the objections expressed in this letter. We are also asking, given the nature of the decision and the context, that this matter is brought before the chair and consideration given to examining the application at the planning committee.

7.4 Comments of support have been received from the following addresses:

- 19, 25 Lake Road West.
- 7 Beatty Avenue.
- 25 Morlais Street.

Full details are viewable online, their comments are summarised as follows

a) *Support the expansion of a local business, the cafe has the potential to*

- become a lovely destination for residents;*
- b) The café would not become a pub, customers will be able to enjoy a glass of wine with an evening meal;*
 - c) The proposal will create more positive activity and safety for local residents.*

8. **ANALYSIS**

8.1 **Residential Amenity**

The use as a café is already established by permission 08/01271/E and is permitted to open until 21:00 on all days. It is considered that the proposed extension of opening by one additional hour to 22:00 would not have any unreasonable impact upon the amenity of nearby residents, having regard to the position of the café in relation to nearby residential dwellings. The nearest residential dwellings on the west side of Lake Road West are sited approximately 40m from the café, and the café is also separated from the road by an area of trees and landscaping adjacent to the east side of Lake Road West. Condition 4 would restrict the opening hours to the revised times proposed (08:00 – 22:00). It is noted that a small part of the adjacent external seating area to the north of the café is designated as being within the application site and use of this area during the same extended evening hour as the interior of the premises could have an unreasonable amenity impact. Paragraph 5.26 of the Food, Drink & Leisure Uses SPG states that ‘*any external seating area should also be restricted to no later than 9.00pm in the interests of residential amenity*’. Condition 6 is therefore considered necessary to restrict the hours of use of the associated external area to 08:00 – 21:00. Neighbourhood Services have no objection to the proposal. Having regard to the above it is considered that the proposal would not have any unreasonable amenity impact.

8.2 **Other Matters**

It is noted that conditions 3 & 5 were imposed upon permission 08/01271/E requiring details of drainage and refuse storage to be agreed prior to commencement of development. As these conditions have been previously discharged, they have been revised accordingly to require the agreed details to be retained.

It is also noted conditions 6, 7 & 8 were imposed upon permission 08/01271/E requiring details of landscaping and external materials to be agreed prior to commencement. As these conditions were discharged and the development completed it is not necessary for these conditions to be re-imposed.

8.3 **Representations**

The representations received from the local residents and Ward Councillors are noted. Specific issues are addressed as follows:

- a) **Increased noise**. It is considered that the proposal would not result in

unacceptable noise consequences as detailed within the above analysis. Replacement condition 4 would restrict opening to the hours of 08:00 – 22:00, and additional condition 6 would restrict the hours of use of the external area to 08:00 – 21:00.

- b) Increased antisocial behaviour: It is considered that the proposed extended opening of the café would not result in unacceptable impact, the application does not propose any change of use to a public house. Replacement condition 4 would restrict opening to the hours of 08:00 – 22:00, and additional condition 6 would restrict the hours of use of the external area to 08:00 – 21:00.
- c) Sale of alcohol. Sale of alcohol cannot be controlled by planning, it is regulated by the licensing regime under relevant licensing legislation.
- d) Increased litter. It is considered that the extended opening of the café would not intrinsically result in increased litter.
- e) Impact upon parking: It is considered that the extended opening of the café would not result in unacceptable traffic impact, as the use of the has been approved by permission 08/01271/E. The use is compliant with the Council's adopted Managing Transportation Impacts (Incorporating Parking Standards) SPG.
- f) Impact upon wildlife. It is considered that the extended opening of the café would not intrinsically impact upon wildlife.
- g) Unlocking of the park at night. Parks Services have advised that the current arrangement of the park not being locked at night is unlikely to change in the foreseeable future, and should there be a change in the future which will require locking of gates this would be discussed between the applicant and Parks Services at the time to find a suitable solution.

The representations received in support are noted.

8.4 Other Legal Considerations

Crime and Disorder Act 1998 – Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

Equality Act 2010 – The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council's duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic.

Well-Being of Future Generations Act 2016 – Section 3 of this Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to

ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

8.5 Conclusion

It is concluded that the application is acceptable in accordance with the planning policies listed, and is recommended that planning permission be granted, subject to conditions.



We hereby certify this to be a true copy of the original document.

[Signature]
O'KEEFE & COMPANY

14/08/09.

The Lake

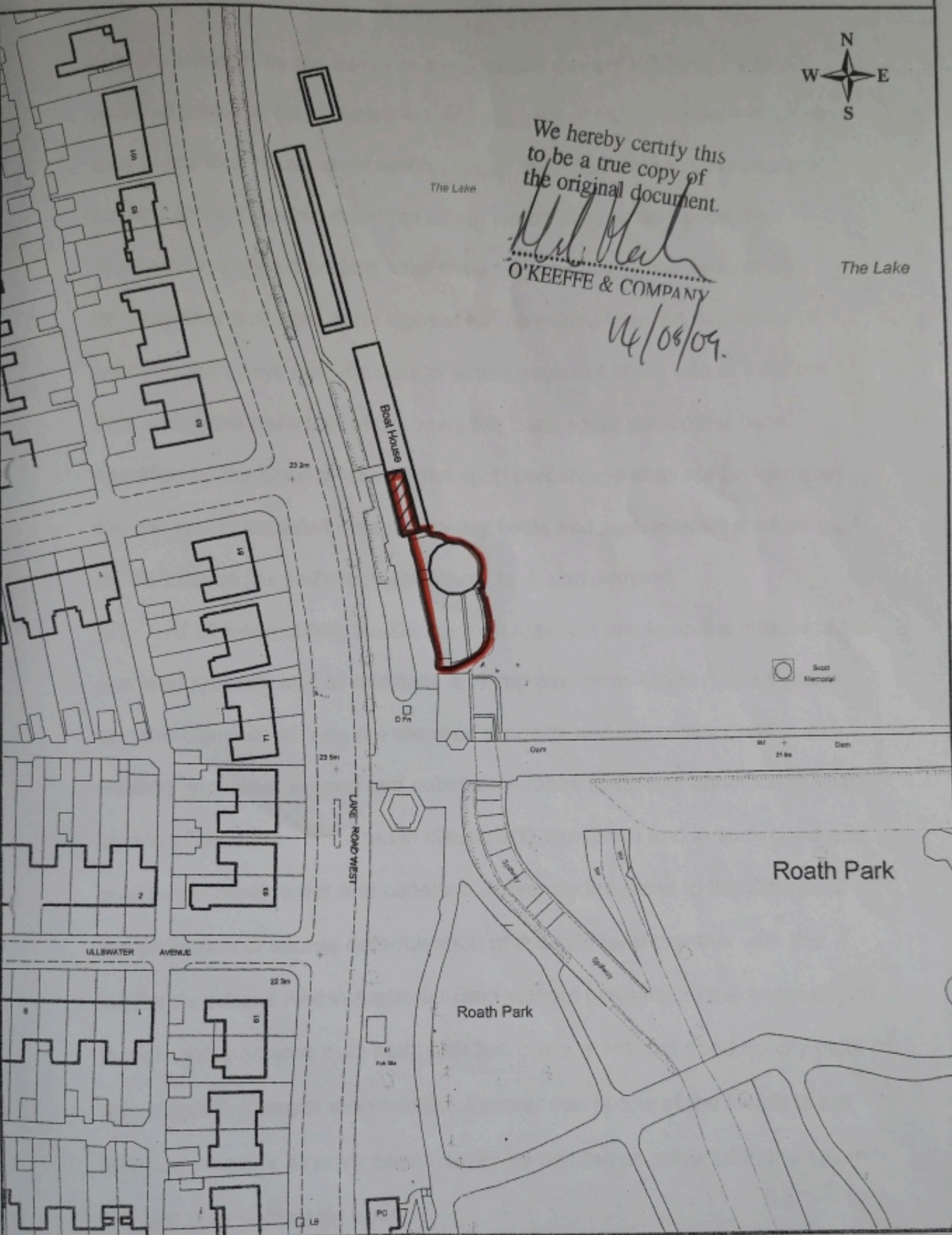
The Lake

Boat House

Scott Memorial

Roath Park

Roath Park



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