

Development Management Report

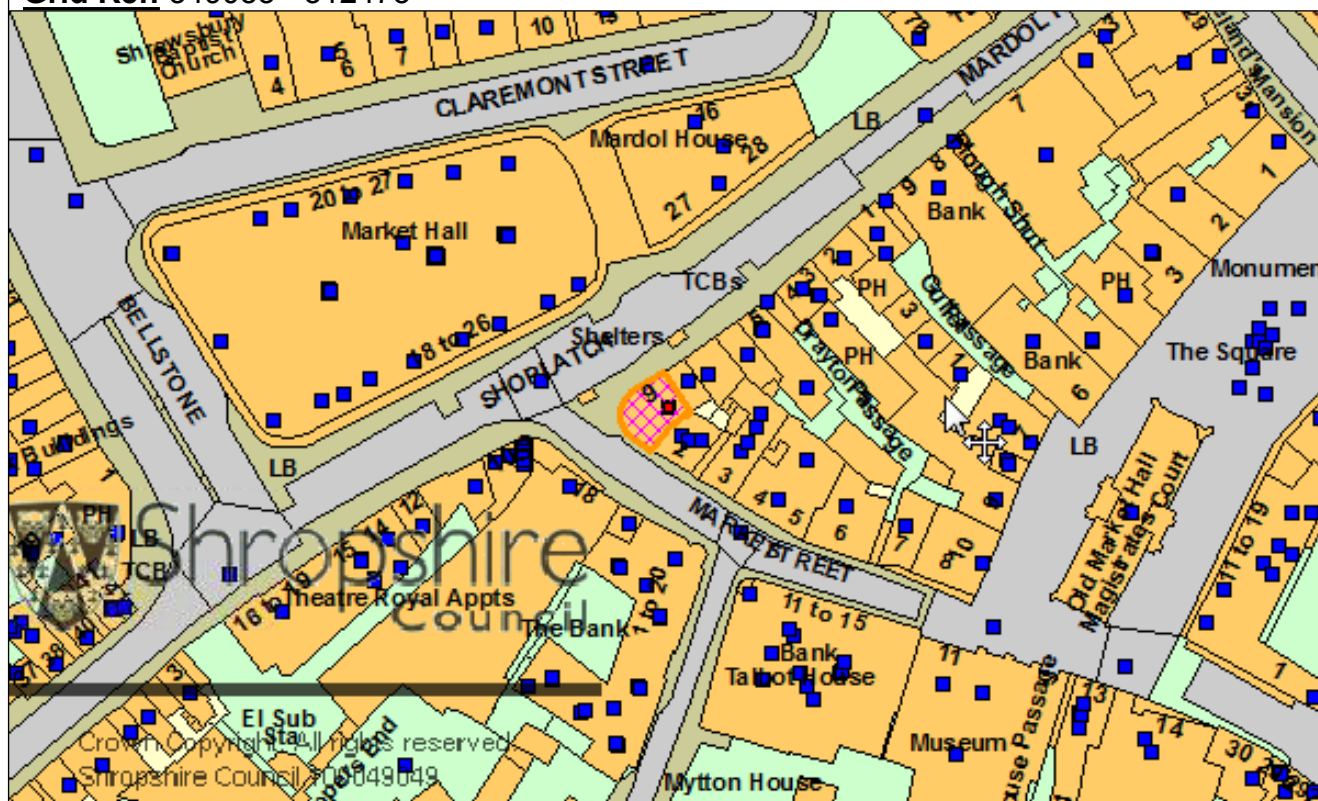
Responsible Officer: Tim Rogers

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Summary of Application

Application Number: 16/00370/VAR	Parish:	Shrewsbury Town Council
Proposal: Variation of Condition No. 4 attached to Planning Permission 09/00505/COU dated 08 July 2009 for change of use from A1/A2 to A3/A4 wine bar and cafe (hours of opening)		
Site Address: Ashleys Wine Bar Ltd 9 Shoplatch Shrewsbury Shropshire SY1 1HF		
Applicant: Ashleys Wine Bar Ltd.		
Case Officer: Frank Whitley	email: planningdmc@shropshire.gov.uk	

Grid Ref: 349053 - 312475



Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

- 1.1 The application seeks to vary Condition No. 4 attached to Planning Permission 09/00505/COU dated 08 July 2009 for change of use from A1/A2 to A3/A4 wine bar and cafe (hours of opening).
- 1.2 The application seeks to extend the currently approved closing time from 0000hrs to 0230hrs throughout the week, and from 0200hrs (as currently approved) on New Years morning to 0430hrs.
- 1.3 Condition No. 4 of 09/00505/COU states:
The premises shall not be open to the public/customers, nor any services be available to the public/customers outside the following hours: 10:00 to 24:00 Sunday, 08:00 to 24:00 Monday to Saturday and 08:00 to 02:00 the following morning on New Years Eve, nor shall any member of the public/customers remain on the premises outside these hours.
Reason: To safeguard the amenities of the locality.
- 1.4 A second planning application has been submitted concurrently to vary arrangements for outdoor seating (16/00371/VAR).

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is a four storey building (including basement) located on the corner of Shoplatch and Market Street with its entrance facing Shoplatch. The adjoining property in Market Street is an Estate Agent and the adjacent property in Shoplatch is a Sandwich Shop. Opposite is the Market Hall with predominantly retail premises beneath including a Pizza take-away. Opposite in Market Street and further along in Shoplatch on the same side of the road are residential apartments.
- 2.2 Within 100 metres of the site (in addition to Dominos Pizza) are a variety of late night restaurants and bars including Morgans and The Hole in The Wall.
- 2.3 The site is within Shrewsbury Conservation Area and is characterised in this part of the town by a mix of commercial, retail and residential properties.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The proposal does not comply with the delegation to Officers as set out in Part 8 of the Shropshire Council Constitution, as it falls within the following exception. The Town Council has submitted a view contrary to officers based on material planning considerations and the Local Member is supportive of the Town Council view.

3.2 The Chair of the Central Planning Committee has agreed that the issues raised are material considerations which should be debated by committee.

4.0 **Community Representations**

Consultee Comments

4.1 **SC Highways - no objection**

No objection to the variation of the condition in respect of the opening times of the business.

The application would appear to be seeking an amendment to the opening hours of the business to extend the time customers are able to drink. This is in essence an amenity matter and raises no highway implications.

4.2 **SC Archaeology - no comments**

4.3 **SC Public Protection**

Having considered this application I have no objection. It has been mentioned by residents that since the license review last year there has been an improvement in noise controls by the business. With the premises license controlling management aspects of the premises the licensing regime has the ability to control noise aspects to protect residents in the area. There is a condition on the premises license ensuring that a noise management plan is in place and followed to reduce any impacts of noise on the surrounding area. Additional controls using nuisance legislation and permit pavement restrictions offer additional control mechanisms.

4.4 **SC Conservation- no comments received**

4.5 **Shrewsbury Town Council**

Members do not see that the hours of operation of a neighbouring premise is justifiable reason for hours of licensable operation to be extended. This premise is nearer the town centre where there is an established precedence for earlier closing. In the interests of residential amenity (of which there is a greater concentration of residencies nearer to this premise than the neighbouring premise the applicant refers) opening hours should be restricted to 12.00am closure particularly during weekdays.

4.6 **Public Comments**

45 representation of support have been received, which state that the proposal would benefit the economy of the town centre and that there are unlikely to be noise problems associated with the late hours of operation.

39 objections have been received, including a petition (8 signatures) received from the residents of Cross Hill Sheltered Housing. Objections are mainly based upon concerns about noise impacts to residential amenity. The full range of issues is listed as follows:

- Will allow drinking on the street
- Effect on sleep patterns of local residents and children
- Assisting customers to smoke

- Establishment has flagrantly ignored previous restrictions
- Interference with reasonable passage of pedestrians on public footpath
- Breach of human rights to local residents
- Cannot open windows nearby due to noise
- Residents are entitled to undisturbed sleep during night
- Obstruction of highway
- Limited resources of Council to enforce drinking hours
- Effects of sleep deprivation to residents is a safety hazard putting lives at risk
- Drunkenness and anti-social behaviour, alcohol abuse
- Loss of character of town centre
- Ashleys wine bar has insufficient sound proofing
- Sets a precedent for late night drinking in town
- Morgans nearby has outside seating but for different clientele
- Risk to drunk pedestrians on road

4.7 **Shrewsbury Civic Society**

We understand this application is to vary the conditions laid down in the original change of use applications, permitted in 2009 and 2010. These were specifically set in order to retain this listed building's character and that of the immediate area.

We consider these applications to be inappropriate and detrimental to this part of the town centre. It would also undermine the considered views represented then in the variations. It is commonly known that these conditions have been flouted and needed a licensing review. To approve these applications would further tempt others to flout conditions and extend early morning drinking to new parts of the town.

We are already concerned about the way in which local voices appear to receive insufficient consideration in town centre applications. We hope that this application will be considered by councillors who can represent local experience. If allowed, the image that the buildings (and indeed the nearby area) will gain will undermine the importance of this streetscape. While the applicant suggests a need to keep up with "neighbouring" establishments, the fact is that late night drinking is some distance away – not in this area, that borders on residential and heritage buildings. Furthermore, it would be a disservice to undergraduates to suggest that most living in Mardol House will not require a good night's sleep in order to study well.

The granting of these applications is likely to encourage bit-by-bit erosion of the town's historic image; it's currently well-managed night-time economy; and the street pavement passage in this prominent position. It is therefore detrimental to the town's long-term economic future.

We therefore strongly object to this application and hope it will be rejected.

5.0 **THE MAIN ISSUES**

Principle of development
Residential Amenity
Other matters raised in objections

6.0 **OFFICER APPRAISAL**

6.1 Principle of development

- 6.1.1 Paragraph 18 of the NPPF states that the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.
- 6.1.2 Paragraph 21 of the NPPF goes further and states that investment in business should not be over-burdened by the combined requirements of planning policy expectations. Planning policies should recognise and seek to address potential barriers to investment, including a poor environment or any lack of infrastructure, services or housing.
- 6.1.3 The NPPF states at para 120 that to prevent unacceptable risks from pollution (in this case noise) planning decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account.
- 6.1.4 The importance of economic development and employment growth in Shrewsbury is integral to the strategy for the town. This will support the prosperity of Shropshire and ensure the sustainable and balanced development of the town. As well as the major employment land provisions made, Policy CS2, linked to Policies CS13, CS14 and CS15, also allows Shrewsbury to fulfil its strategic retail and commercial role and, as part of that, the safeguarding and enhancement of the role of the town centre.
- 6.1.5 Policy CS13 states that Shropshire Council, working with its partners, will plan positively to develop and diversify the Shropshire economy, supporting enterprise, and seeking to deliver sustainable economic growth and prosperous communities. In doing so, particular emphasis will be placed on:
- Promoting Shropshire as a business investment location and a place for a range of business types to start up, invest and grow, recognising the economic benefits of Shropshire's environment and quality of life as unique selling points which need to be valued, conserved and enhanced;
 - Raising the profile of Shrewsbury developing its role as the county town, growth point and the main business, service and visitor centre for the Shropshire sub-region, in accordance with Policy CS2;
- 6.1.6 Shrewsbury Town Development Strategy states that the Shrewsbury Vision is to provide a sustainable and complementary mix of retail, community, employment and residential uses.
- 6.1.7 Core Strategy CS6 states that, in amongst other objectives, that development should contribute to the health and wellbeing of communities, including safeguarding residential and local amenity.
- 6.1.8 According to SAMDev Plan MD10A Shrewsbury is a Category C settlement with a

primary shopping area which includes primary and secondary frontages. Ashleys Wine Bar falls within a secondary frontage.

- 6.1.9 Within the Secondary Frontage additional main town centre uses will be acceptable where they would maintain an active and continuous frontage and would not result in an over concentration or undue dominance of non-retail uses. Generally, there is a presumption in favour of proposals for main town centre uses within the wider town centre.
- 6.1.10 The business premises is set within the main town centre of Shrewsbury in close proximity to other drinking establishments. The main town centre is considered as a primary location for this type of use and it is considered appropriate that consideration is given to extending the hours of use of this business, though at the same time, striking a balance in relation to the impact made by extending these hours on levels of residential amenity.
- 6.1.11 A significant number of objections have been received. The vast majority are concerned about residential amenity, noise and anti-social behaviour. However those impacts, whether perceived or actual have to be considered against the established objective of strengthening the town centre economy, the approved operating hours of neighbouring premises. Although the planning merits of the application should be determined on their own, the existing licencing arrangements for Ashleys Wine Bar are a material consideration. The intention of the applicant at least is to align as far as possible the permitted hours of operation with the existing licence, so as to avoid confusion between the two permitting regimes.
- 6.1.12 The principle of development is established by way of 09/00505/COU which secured approval for change of use from A1/A2 to A3/A4 wine bar and café. However the determination of the application must have regard to whether the proposal will cause an unacceptable additional impacts upon other town centre uses, and in particular whether the proposal achieves a sustainable and complementary mix of town centre uses. In particular the determination must have regard to Core Strategy CS6, which amongst other objectives seeks to ensure that development contributes to the health and wellbeing of communities, including safeguarding residential and local amenity.
- 6.1.13 The principle of flexible hours of operation, if there is demand for it is considered established, though is subject to ensuring the this flexibility is not at the expense of reasonable residential amenity, in accordance with CS6.
- 6.2 **Residential Amenity**
- 6.2.1 The starting point for considering the impacts upon the amenity of the area is to review existing planning controls for similar establishments. Historically, drinking establishments have evolved in the town centre with no planning controls imposed, simply because there is no mechanism available to impose such controls unless a planning application is made for development which would in turn allow conditions to be imposed to control operating hours.
- 6.2.2 The accepted regime for controlling the sale of alcohol and the operation of licensed premises is licensing which is reviewed for individual premises. For

example neither the Hole in the Wall or Morgans Exchange have any planning controls relating to hours of operation. That said, Morgans Exchange can only use outdoor seating up to 2200hrs (by way of Condition 5, 09/00342/FUL, Change of use of public pavement to seating area and installation of window awnings).

6.2.3 A summary of planning and licensing controls (hours of operation only) in place currently is as follows: (Note- there are special provisions for 1st January).

	Planning condition control (hours of operation)	Licensing control (hours of operation)
Ashleys	0000 Mon-Sun 0200 1 st Jan	0230 Mon-Sun 0430 1 st January
Morgans	None	0200 Mon-Sun
Hole in the Wall	None	0030 Mon/Tues 0130 Wed/Thurs 0230 Fri/Sat

6.2.4 Ashley’s Wine Bar is currently licensed to sell alcohol until 0200hrs throughout the week and is required close to customers by 0230hrs.

6.2.5 The Hole in the Wall is licensed to be open until 0230hrs Friday and Saturday and Morgans is licensed until 0200hrs Monday to Sunday. It is therefore necessary to consider whether continued imposition of the existing planning condition at Ashleys Wine Bar requiring midnight closing is reasonable in the context, when Morgans and The Hole in the Wall currently have no controls in place by way of the planning regime. It should also be noted that Ashley’s is described as a “wine bar”, but is permitted to be used as a drinking establishment under A4 Use Class, according to its 2009 permission.

6.2.6 The licensing regime already controls issues of disturbance from noise generated within the premises during opening hours, and noise from patrons leaving the premises late at night. Perhaps more importantly, the licence can be revoked if there are grounds to do so. This power extends far beyond that of a planning permission with conditions imposed.

6.2.7 Shropshire Council Public Protection has been consulted on this application and it is noted that since the licence review in 2015, there has been a substantial reduction in problems relating to local residential amenity. The consultation response states that the licensing regime has the ability to control noise in order to protect the amenity of residents. A noise management plan forms part of the licence and there is no evidence that this is not being followed. Nuisance legislation and permit pavement restrictions offer additional controls. It has been reported that Ashley’s Wine Bar is already operating beyond the existing planning condition limit of midnight and no complaints have been received by Shropshire Council. Overall, officers consider that there is insufficient justification to refuse the application having regard to residential amenity since it appears that objections are more related to the perception and fear of disturbance rather than being evidence based on existing problems or specific incidents. The fallback position is that

issues of non-compliance can be dealt with if necessary through existing controls placed on Ashley's Bar through the licensing regime.

- 6.2.8 It should be noted that the occupiers of Cross Hill Court Sheltered Housing of whom eight signed a position are in excess of 100m from the premises with no direct view due to a number of buildings between.
- 6.2.9 The application proposes only an extension of hours of operation within the premises, and not outside the application site. Overall, it is not considered that the extended hours will cause disturbance such that residential amenity, and a sustainable mixed use in the town centre cannot be maintained in accordance with the requirements of CS6.
- 6.2.10 It is considered reasonable to extend opening hours to 0430 on 1st January, having regard to this being an exceptional provision and the licensing arrangements which already permit opening until this time.

6.3 **Other matters**

- 6.3.1 A range of concerns have been raised by way of representations received, beyond that simply of residential amenity impacts. Although they are legitimate concerns, they relate to the licensing regime and it is understood that any premises licence can be revoked if it is found to directly lead to, for example, anti-social behaviour. On balance there are considered no reasonable material planning grounds to justify a refusal of this application.

7.0 **CONCLUSION**

- 7.1 Overall the application to extend the hours of operation is considered acceptable, in the context of existing planning controls for similar premises in the locality, and having regard to existing licensing arrangements for premises locally. The application is considered to accord with the requirements of CS6, whilst achieving a sensible balance between the aims of CS2 and CS13. Planning permission is recommended.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so

unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

Central Government Guidance:
NPPF

Core Strategy and Saved Policies:

CS2, CS13, CS6

RELEVANT PLANNING HISTORY:

09/00505/COU Change of use from A1/A2 to A3/A4 wine bar and cafe GRANT 8th July 2009

10/01178/COU Application under s.73 for the change of use of pavement area for external seating and erection of 2no. awnings and 4no. heaters to front elevation (amended). GRANT 4th June 2010

10/02196/LBC Application under Section 73a The Town and Country Planning Act 1990 for the Installation of 4 No. radiant patio heaters, 2 No. extendable awnings and 6 No. downlighters GRLBC 27th August 2010

SA/92/0225 Street lighting improvements at the following locations within Shrewsbury Town Centre. 3, 69, 12, 62, 19, 22 and 28 Mardol, 22, 25, 37, 10A St John's Hill, 6 and 3 Cross Hill, 16 Swan Hill, Swan Hill House, 6, 3 Swan Hill, 1 Swan Hill Court, 13A, 8A College Hill, Music Hall - rear of College Hill, 2 College Hill, 9 Shoplatch, 2-5 Princess Street, 2-3 Milk Street, 20 Belmont, 11, 4, 13 Belmont, St. Winefride's Convent - College Hill, 5 Belmont, Granville House - Belmont Bank, Sycamore House - Belmont Bank, 3 and 4 Belmont Bank, Cornhouse Restaurant - St. Julian's Friars, The Acorn - St. Julian's Friars, 24 St. Julian's Friars, 40 and 45 High Street, 16A Princess Street, 5 Shoplatch, 6 Market Street, Hole in the Wall - Mardol Head, 1 Gullet Passage, 7 The Square, Music Hall, 72 Wyle Cop, Lion Hotel - Wyle Cop, Mews Apartments - Barracks Passage, 70 Wyle Cop, Oxleys Florist - Wyle Cop, 5 Belmont Bank. PERCON 1st July 1992

SA/99/0543 Erect and display 1 No. non illuminated hanging sign. PERCON 14th July 1999

SA/03/1503/ADV Erection of 5 no. non illuminated hanging signs REFUSE 5th January 2004

11. Additional Information

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Cabinet Member (Portfolio Holder) Cllr M. Price
Local Member Cllr Andrew Bannerman
Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

1. Condition 4 of planning permission 09/00505/COU dated 8 July 2009 , is hereby varied to read: The premises shall not be open to the public/customers, nor any services be available to the public/customers outside the following hours: 10:00 to 02:30 Sunday, 08:00 to 02:30 Monday to Saturday and 08:00 to 04:30 the following morning on New Years Eve, nor shall any member of the public/customers remain on the premises outside these hours.

Reason: To safeguard the residential amenities of the area, in accordance with Policy CS6 of the Shropshire Local Development Framework Adopted Core Strategy.