

Development Management Report

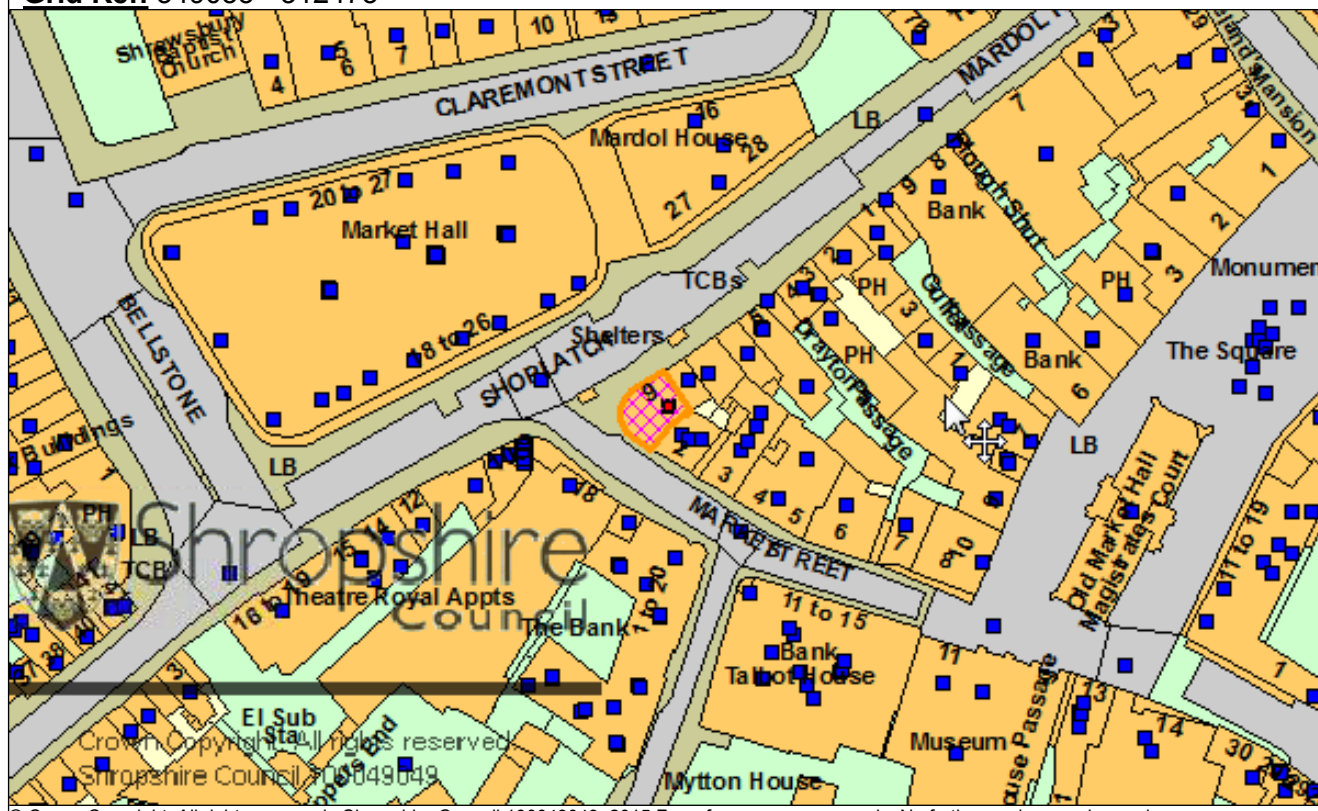
Responsible Officer: Tim Rogers

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Summary of Application

Application Number: 16/00371/VAR	Parish:	Shrewsbury Town Council
Proposal: Variation of Condition No. 5 attached to Planning Permission 10/01178/COU dated 03 June 2010 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) (hours of opening)		
Site Address: Ashley's Wine Bar Ltd 9 Shoplatch Shrewsbury Shropshire SY1 1HF		
Applicant: Ashley's 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 Variation of Condition No. 5 attached to Planning Permission 10/01178/COU dated 03 June 2010 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) (hours of opening)

1.2 Condition 5 of 10/01178/COU states:
Between the hours of 2330 and 0800 the following morning, all tables, chairs or equipment associated with the use of the pavement seating area hereby approved shall be cleared from the pavement and stored within the building.

Reason: In the interests of amenity and highway safety.

1.3 The application as first submitted sought to vary the existing condition as follows:

Between the hours of 0200 and 0800 all tables, chairs or equipment associated with the use of the pavement seating area hereby approved shall be cleared from the pavement and stored within the building.

1.4 Discussion with the applicant has resulted in the proposal being amended to:

Tables, chairs and equipment associated with the pavement seating area shall not be used after 2330 and shall be cleared from the pavement and stored within the building between the hours of 0230 and 0800.

Reason: In the interests of amenity and highway safety.

1.5 A second planning application has been submitted concurrently seeking to extend the hours of operation inside the premises (16/00370/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**

The application 16/00371/VAR would appear to be seeking an amendment to extend opening hours of the business. The Highway Authority raises no objection to the principle of this with the Authority's concern being to maintain an appropriate and safe pedestrian/disabled access past the obstruction of the seating area on the highway.

The removal of the wording 'the following morning', would not appear to tie in with amendments to the opening times as sought in the application referenced above. The application would not however appear to be amending the agreed seating area from that previously approved and on that basis the Highway Authority raises no objection to the proposal.

4.2 SC Conservation - no comments received**4.3 SC Archaeology - We have no comments to make with respect to archaeological matters****4.4 SC Public Protection**

Having considered the proposals the application is looking to vary a condition to allow furniture used on the street to remain until 02:00 as opposed to 23:30 as is currently conditioned. This would have the effect of potentially bringing street furniture inside half an hour before the closing time specified on the premises license. I do not consider this achievable as there is no space inside for furniture to be placed while the premises remains open. I would advise that the times specified is altered to state 02:30 08:00 to ensure that this can be achieved in practise.

If the applicant were to propose this the condition would change to read as follows:

Between the hours of 02:30 and 08:00 the following morning all tables, chairs or other equipment associated with the use of the pavement seating area hereby approved shall be cleared from the pavement and stored within the building.

I would advise that the word OR in the above condition is not appropriate as it can be read as asking for tables and chairs OR other equipment to be brought inside. I

suggest Ashley applies to alter the wording to state AND not OR. This would provide clarity for all parties in future.

Should these alterations be accepted by the applicant I have no objection as I am of the opinion that between the planning and licensing regimes with the addition of pavement permitting and statutory nuisance powers adequate control of the premises functions will take place affording a suitable level of protection to local residents in respect to noise.

UPDATE: Following the amendments made to the proposal, Public Protection have further commented:

The only issue that this brings is the fact that there is not consistency between the regimes which introduces uncertainty for residents in the area regarding what is what which has been the issue causing complaint in the past however I have no objection to the proposed. From a noise perspective I have no objection to use of the external area until 00:00.

I can confirm that up until the beginning of this week no complaints have been received about this premises in the past 12 months which have been substantiated by the Public Protection.

4.5 Shrewsbury Town Council

Members are somewhat confused as to what the applicant is requesting. It would suggest that the applicant is not only requesting extensions to trading outside until 2.00am but also there shall no longer be any requirement to remove the furniture outside licensable times.

Members do not see that parity with a neighbouring premise is justifiable reason for extension of licensable hours. 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) all activity outside should cease at 10.00pm in line with the existing permission.

Members also see that given the location on a busy footway with bus stops in the vicinity it is not unreasonable in the interests of highway safety that those tables and chairs be put away. This application would however need to be tied with application 16/00370/VAR so as not to conflict with hours of operation.

4.6 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.

4.7 **Public Comments**

27 objections have been received. Issues raised are summarised as:

- Disregard by applicant for current conditions set by Council
- Outdoor seating will inconvenience visitors, shoppers and users of nearby bus stop
- Disturbance to local residents
- Installation of outdoor heating environmentally harmful
- Conflict with Human Rights legislation
- Use of outdoor seating cannot be controlled by noise reduction measures (as can be indoors)
- Disturbance to University students nearby
- Health implications of sleep deprivation
- Anti-social behaviour will stretch police and A&E services
- A petition of 8 signatures has been received from residents of Cross Hill Sheltered Housing, objecting on the grounds of excessive noise.

5.0 **THE MAIN ISSUES**

Principle of development
Residential Amenity

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.

Paragraph 21 of the NPPF goes further and states that investment in business should

6.1.2 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.

The business premises is set within the main town centre of Shrewsbury in close

6.1.10 proximity to other drinking establishments. The principle of outdoor seating is established by way of 10/01178/COU which secured planning permission for *the change of use of pavement area for external seating and erection of 2no. awnings and 4no. heaters.*

6.1.11 It is noted that Morgans, approximately 75m to the south west also has permission for outdoor seating by way of 09/00342/FUL (Change of use of public pavement to seating area and installation of window awnings). Condition 5 of that permission states:

The pavement seating area hereby approved shall not operate outside of the hours 0800 to 2200 on any day.

6.1.12 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 in line with CS2 and 13, and also against CS6.

6.2 Residential Amenity

6.2.1 It is noted that objections relate to the first submitted proposal, which if approved would have extended the use of outside seating until 0200. At least in part, the reason for the application being necessary is due to the separate proposal to extend hours of operation inside the premises. With customers inside, there is nowhere to store tables and chairs.

6.2.2 A revised proposal has been agreed with the applicant. This would permit tables and chairs to remain in situ after 2330, but not be used. Given that outdoor monitoring is required under the licensing arrangements, there is considered to be a sufficiently low risk of tables and chairs being used after the permitted times. The Council also has a monitoring team working within the town centre.

6.2.3 Once customers leave the premises after 0230, the proposed condition requires tables and chairs to be stored inside the premises for the remainder of the night.

6.2.4 It should be noted that the occupiers of Cross Hill Court Sheltered Housing of whom eight signed a petition against the application are in excess of 100m from the premises with no direct view due to a number of buildings between.

6.2.5 A representation has been received from a member of Shrewsbury Town Centre Residents Association, which is copied in full below for reference. The very comprehensive diary/log to which the representation refers shows that from 18 May 2015 to 20 March 2016, there were 79 occasions when tables were deployed after 2330, 66 occasions when the premises was open after midnight, and 4 occasions when loud music was heard by the diarist. Some additional instances are said to have been reported, but they are not accounted for in the log. Most relevant to this application is that no more than a single incident of “drinks on tables” is recorded.

6.2.6 *Members of the Shrewsbury Town Residents Association have monitored the above premises subsequent to the Licensing Hearing held 18th May last year. In*

general it would appear that the premises have largely complied with the revised conditions of the Premises Licence and fewer incidents of loud music and other disturbance have been recorded.

However the premises continue to flout the conditions of the current Planning Consent as can be seen from the many incidents recorded in the attached diary. We respectfully suggest that the application to vary the existing Planning conditions, specifically designed to protect the wellbeing of the many close residents, should be refused.

Although we are not aware of any recent enforcement that has taken place regarding Ashleys the many incidents of infringing Planning conditions by these premises raises the following important question. If the current Planning conditions are frequently ignored what guarantee is there that any revised conditions, allowing far later opening hours, will be honoured?

I hope the enclosed information will assist in Planning deliberations on this application.

6.2.7 The log appears to be indicating that residents' concerns are largely based upon non-compliance with existing conditions and the fear of harmful disturbance in the future.

6.2.8 It is considered that the evidence points otherwise- that the applicant has demonstrated his intention to balance his business interests with those of local residents. The applicant has implemented measures to significantly reduce disturbance and permission cannot reasonably be withheld because existing conditions are alleged to have been breached.

7.0 **CONCLUSION**

7.1 On balance, it is considered reasonable to permit tables and chairs to remain on the pavement without being used until 0230, after which time they should be cleared. There is the prospect of enforcement action in the event of non-compliance. The proposal is considered to achieve the aims of the NPPF, CS2 and CS13, whilst also secure reasonable residential amenity for local residents in accordance with CS6. 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, CS6, CS13

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)
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Cabinet Member (Portfolio Holder) Cllr M. Price
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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 5 of planning permission 10/01178/COU dated 3 June 2010, is hereby varied to read: Tables, chairs and equipment associated with the pavement seating area shall not be used after 2330 and shall be cleared from the pavement and stored within the building between the hours of 0230 and 0800.

Reason: In the interests of residential amenity and highway safety.