

## Development Management Report

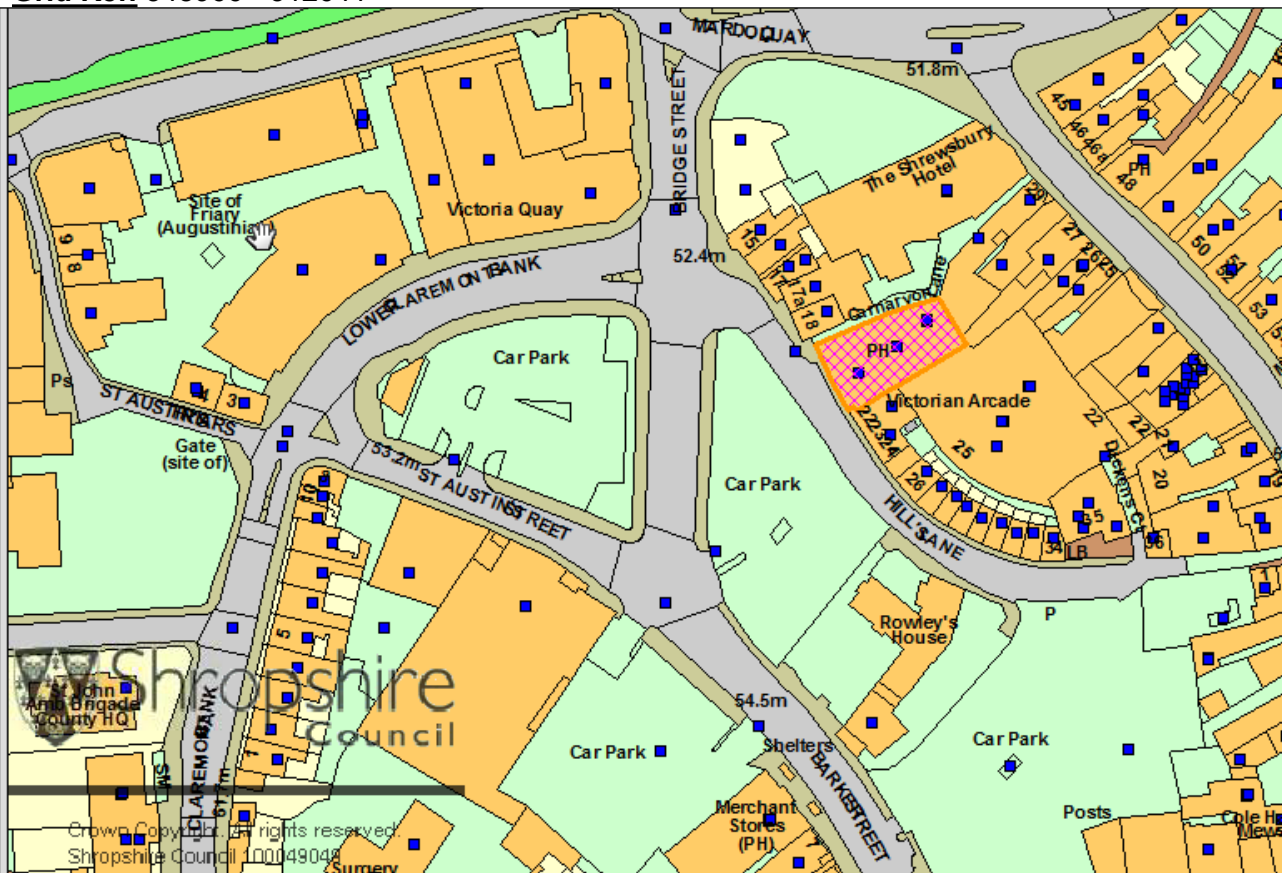
Responsible Officer: Tim Rogers

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### Summary of Application

<b>Application Number:</b> 16/01776/FUL	<b>Parish:</b>	Shrewsbury Town Council
<b>Proposal:</b> Change of use of first floor from office to A4 use (pubs and bars)		
<b>Site Address:</b> 19-21 Hills Lane Shrewsbury SY1 1QU		
<b>Applicant:</b> Mr Nigel Blair		
<b>Case Officer:</b> Jane Raymond	<b>email:</b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a>	

**Grid Ref:** 348966 - 312641



**Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.****REPORT****1.0 THE PROPOSAL**

1.1 This application relates to change of use of the first floor from office to A4 use (pubs and bars) as an extension to the existing ground floor bar known as 'The Beach'. The proposed floor area the subject of this change of use is 215sqm and the application is seeking permission to remain open between 9pm and 4am seven days a week.

**2.0 SITE LOCATION/DESCRIPTION**

2.1 The application relates to the first floor above a bar known as 'The Beach' situated in Hills Lane, Shrewsbury. 'The Beach' already has planning permission for use as a drinking establishment with a floor area of 316 sqm and the current actual opening hours are from 9pm until 4am Wednesday, Friday, Saturday and Sundays proceeding a bank holiday. The licensable opening hours are 11am to 4am seven days a week. 'The Beach' was previously a public house known as 'The Queen Victoria' and then 'Lloyds' with no planning conditions restricting its hours of opening attached to the original planning permission (85/0039/195/84). The first floor is vacant and was last used as office.

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

3.1 The scheme does not comply with the delegation to officers as set out in Part 8 of the Shropshire Council Constitution as the Town Council have submitted a view contrary to officers and the application has been requested to be referred by the Local Member, and the Area Planning Manager in consultation with the Committee Chairman agrees that the application should be determined by committee.

**4.0 Community Representations****4.1 - Consultee Comments**

4.1.1 **Drainage Comment:** Part of the building is in Flood Zone 2, however, the change of use is on the first floor from office to late night bar (A4) should be acceptable.

4.1.2 **SC Archaeology:** We have no comments to make with respect to archaeological matters.

**4.1.3 SC Conservation:****Background to Recommendation:**

This change of use application proposes the conversion of the first floor of 19-20 Hill's Lane, a prominent unlisted possibly late 19th Century commercial building which presents an attractive decorative red brick front elevation to Hill's Lane and which completes the long Grade II listed three storey brick terrace to the east. While not listed, we would consider the building to be a non-designated heritage

asset that contributes to the visual character of the street scene and to the character and the appearance of the Conservation Area, which in this location comprises part of the 'Town Centre Special Character Area. The building and much of Hill's Lane is visible in wider views from main routes through the Conservation Area and from the public parking areas directly to the front of the building.

Principles of Scheme:

In considering this proposal, due regard to the following local and national policies, guidance and legislation has been taken: CS6 Sustainable Design and Development and CS17 Environmental Networks of the Shropshire Core Strategy, Policies MD2 and MD13 of the SAMDev component of the Local Plan, the National Planning Policy Framework (NPPF) published March 2012, the Planning Practice Guidance, and Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

While in terms of historic environment matters we are generally not opposed in principle to this application, we would note that the current colourful fascia signage and colourful window vinyls at ground floor level are dominant visual elements which negatively impact on the appearance of the building and on the street scene. Should the upper floors be occupied by a late night bar use, the windows at first floor level should remain free of advertising, and consideration of a reduced scheme of signage at ground floor level to reduce visual impact is recommended. Inappropriate or dominant lighting schemes should not be encouraged in this location.

Recommendation:

While in principle we do not generally oppose the change of use, please note comments above in terms of external signage and lighting, and relevant conditions are recommended to be included.

- 4.1.4 **SC Public Protection:** A noise assessment is required to ensure that noise produced in this area does not spill out into the surrounding area or into any adjoining properties. The noise assessment must be suitably detailed and robust and must consider break out noise through the fabric of the building including walls and ceiling. In order to provide a detailed assessment details of all noise making and amplifying equipment will be required. The assessment must consider noise from all sources including any extraction for air conditioning and additional plant and equipment.

Initially advised that an assessment is produced and submitted prior to determination of this application in order that comments can be made which answer questions in relation to the impact on the amenity of the general area and residential properties in the locality. Subsequently recommended a condition to state the following:

Prior to use a noise assessment will be carried out in order to establish background noise at locations to be agreed in advance with the local planning authority. Mitigation will be required to ensure no increase in noise is caused by the proposed development. Reason: to protect the amenity of the area.

## 4.2 - Public Comments

4.2.1 **Shrewsbury Town Council objects:** Members are aware of the proximity to residential properties to this site and whilst the applicant wishes to expand his operation Members are of the view that opening times till 4am are unsuitable and unnecessary in this location. They fear if agreed, this could have a cumulative impact on the area in terms of anti-social behaviour, noise nuisance and disrespect for the public realm thereby setting an unwanted precedence within the town. Members have agreed that were the applicant to amend opening times to a more suitable 2am watershed they would withdraw their objection.

4.2.2 **Cllr Bannerman objects:** I wish to object to this application. If you are minded to approve it, I would ask that it be referred to committee.

I realise there is little chance of preventing the late Licence application being approved, because of the 2003 Act's presumption in favour of allowing 24 hour drinking. However I believe that Planning offers a better opportunity of consideration of residents' amenity and the wider aspects of further extending the Late Night Economy.

Hills Lane is still in part a residential street - there are nine dwellings in the eastern part of the street, there are further dwellings in Mardol, which is very close. Across the car park are the dwellings on Claremont Bank. So despite the denomination of the West End as the hub of the Late Night Economy, residents still live there and, with the arrival of 200 students in the planned buildings on Barker St, this number will increase substantially. So noise and antisocial behaviour are real concerns.

The Beach Bar already accommodates 350 customers. This extension will substantially increase this number. All these people will have to disperse after 4am, mostly past residences. Trip Advisor is already recording adverse comments from customers in hotels and B and B's, who were unable to sleep at night. The already disturbing number of incidents of antisocial Behaviour, street fouling and damage to property in the town will increase.

In response to growing concerns, Shropshire Council, with the support of Shrewsbury Town Council, is in the process of drawing up some planning guidance for applications for licensed premises in the town centre. It would be wise to refrain from granting further extension of the Late Night economy until this guidance has appeared.

## 5.0 THE MAIN ISSUES

Principle of development  
Impact on local and 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.
- 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 Paragraph 23 seeks to ensure that planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should:
- recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;
- 6.1.4 Core Strategy CS1 (Strategic Approach) identifies Shrewsbury as *'a sub-regional centre and Shropshire's growth point, and will be the focus for significant retail, office and employment development'*. It states that the role for Shrewsbury *'reflects the Shrewsbury Vision and the aspirations of the community in Shrewsbury to continue to thrive as a centre for employment and services, whilst maintaining its outstanding natural, built and historic environment'*.
- 6.1.5 Core Strategy CS2 states that *'Shrewsbury will develop its role as Shropshire's primary retail, office and commercial centre, and the vitality and viability of the town centre will be promoted, protected and enhanced. The Riverside and West End areas of the town centre will be redevelopment priorities.*
- 6.1.6 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 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.
- 6.1.7 Shrewsbury Town Development Strategy states that the Shrewsbury Vision is to provide a sustainable and complementary mix of retail, community, employment and residential uses. Policy CS13 supports enterprise and seeks to deliver sustainable economic growth and prosperous communities and that particular emphasis will be placed on *'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'*.
- 6.1.8 The site is within Shrewsbury Town centre in close proximity to other drinking

establishments. The main town centre and in particular the Riverside and West End are considered to be primary locations for this type of use and it is considered appropriate that consideration is given to extending the existing business to the upper floor subject to material considerations in relation to the impact on existing levels of residential amenity.

- 6.1.9 The NPPF states at para 120 that to prevent unacceptable risks from pollution (which includes 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.
- 6.1.10 Core Strategy CS6 states that, amongst other objectives, development should contribute to the health and wellbeing of communities, including safeguarding residential and local amenity.
- 6.1.11 Objection has been raised in relation to an increased floor area with late night opening attracting more users to the area and the resultant noise and disturbances that might result, and this will be addressed later on in the report. However it is considered that the proposed extension of the premises and existing business accords with CS1, CS2 and CS13 and that bringing more people into the town centre should be considered as both appropriate and necessary in promoting and enhancing the vitality, viability and sustainability of Shrewsbury.

## 6.2 **Impact on local and residential amenity**

- 6.2.1 The main impact on local and residential amenity is in two parts – the impact of noise emanating from within the building and the impact of customers leaving the venue and returning home in the early hours of the morning.
- 6.2.2 Noise from within the building:  
Public protection initially considered that prior to determining the application a noise assessment should be submitted to consider break out noise through the fabric of the building including walls and ceiling and should include an assessment of all noise making and amplifying equipment and noise from other sources including any extraction for air conditioning and additional plant and equipment. The agent subsequently submitted the following statement:
- 6.2.3 *We have traded in Shrewsbury for five years and are an asset to the late night economy and we believe taking the upper floor of the premises will enhance our customer experience, When we took the site we invested heavily in sound proofing five years ago as we have a restaurant partially above our premises also, We used a sound proofing company DB attenuation who we will be using again if our planning permission is approved, I am aware that I will need to do a full noise / sound escape survey at the premises. I am more than happy to commit to a condition of planning being approved that we will carry out a survey and then implement the recommendations.*

6.2.4 On receipt of this statement Public Protection have no objection to the application subject to a condition requiring a noise assessment and any proposed mitigation to be carried out prior to use. Subject to this condition it is not considered that noise from within the premises would result in any noise and disturbance to surrounding premises or residents. Furthermore if noise is heard from within the establishment this is already controlled under alternative legislation and enforced against via the Councils' public protection function.

6.2.5 Opening hours: It is recognised that extended late night uses can cause issues in relation to the amenity of residents living in close proximity to the site or on routes leading to or away from the site and other venues. In assessing the application it is therefore necessary to consider whether the additional premises with the hours proposed will lead to an increase in people attending this part of the town centre at the hours requested and whether this would cause harm to residential amenity. In considering this issue recognition should be given to the fact that there are already a number of establishments operating during these later, early morning hours.

6.2.6 The following provides the existing late night opening hours and licensing hours in relation to other venues in proximity to the application site:

	<b>Planning control</b>	<b>Licensing control &amp; Closing time</b>
The Beach Hills Lane	85/0039/195/84 No control	Mon- Sun: 11:00- <b>04:00</b> (close 04:30)
Waterfront Victoria Avenue	95/0827/080/77 No control	Mon – Sat: 10:00 - <b>02:00</b> Sun: 12:00 - <b>00:30</b> (close 30 mins later)
Bonds Lower Claremont Bank	95/0827/080/77 No control	Mon - Sat: 10:00- <b>04:00</b> Sun: 10:00 - <b>02:00</b> (close 30 mins later)
Armoury Victoria Avenue	95/0517/080/77 No control	Mon – Sat: 10:00 - <b>00:00</b> Sunday: 12:00 - <b>22:30</b> (close 30 mins later)
Vodka Source Barker Street	Historic Public House No control	Mon – Tue: 09:00 - <b>02:00</b> Wed – Sat: 09:00 - <b>04:00</b> Sun: 12:00 - <b>02:00</b> (close 30 mins later)
Montgomerys Lower Claremont Bank	15/04044/VAR Sun – Tues: 0800 to <b>0130</b> Wed – Sat: 0800 to <b>0230</b>	Sun – Tues: 08:00 - <b>01:00</b> Wed: 08:00 – <b>03:00</b> Thursday: 08:00 - <b>02:00</b> Fri & Sat: 08:00 – <b>03:00</b> (close 30 mins later)

6.2.7 It can be seen from the above table that here are a range of opening hours (the majority of which are controlled by licensing) and on the busiest nights (Wed, Fri and Sat) the closing times range from midnight until 4 in the morning. This late

night activity is an already established activity so should not be considered as something alien within this part of the town centre. It is considered that allowing an additional floor of accommodation for A4 use to the same opening hours as the ground floor where there is an established use will not result in a significant increase in noise and activity in this part of town or within streets or routes to or away from the site above that which already exists.

- 6.2.8 If considering refusing this application or imposing conditions restricting the opening hours, where other business's have already attained such permissions and are operating within legally allowed time frames, it would be difficult for the Council to successfully defend any subsequently submitted appeal. The Council has already determined that the existing and other premises in the locality can operate at the hours currently under consideration.
- 6.2.9 The licensing regime already controls issues of disturbance and noise generated from patrons leaving the premises late at night and a licence can be revoked if there are grounds to do so. This power extends beyond that of a planning permission with conditions imposed.
- 6.2.10 The town centre is a location within which an active and thriving late night economy should be promoted, and with adequate public protection provided by the Council and external agencies, it is considered that this proposal would have no significant impact on local and residential amenity and that this proposal should be supported and viewed favourably.

## 7.0 **CONCLUSION**

- 7.1 The proposed change of use of the upper floor to A4 drinking establishment accords with the aims and provisions of the NPPF and Shropshire Core Strategy policies CS1, CS2 and CS13. It is also considered that the proposed hours of opening are acceptable having regard to the existing opening hours of premises in the locality and that the proposal would not result in a significant increase in noise and disturbance in the locality above that which already exists and therefore accords with CS6. Approval is therefore 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: CS1, CS2, CS6 and CS13

**RELEVANT PLANNING HISTORY:**

SA/85/0039 Alterations to change the use of former 'High Speed Tyres' Depot into a Public House, and existing vehicular access doors blocked up and insert new windows and doors on ground floor. PERCON 21st February 1985

SA/02/0411/F Change of Use of First Floor Mythstories Museum, including alterations to create three one bed apartments and one office (amended description) PERCON 24th May 2002

SA/03/0145/F Change of use and alterations of first floor from Mythstorie Museum to 3 no. 1 bedroom apartments and additional dining area for existing restaurant PERCON 8th April 2003

SA/04/0100/F Change of use of first floor from museum to 3 no. offices PERCON 3rd March 2004

**11. Additional Information**

List of Background Papers: File 16/01776/FUL
Cabinet Member (Portfolio Holder): Cllr M. Price
Local Member: Cllr Andrew Bannerman
Appendices APPENDIX 1 - Conditions

**APPENDIX 1****Conditions****STANDARD CONDITION(S)**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

**CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES**

3. Prior to the approved development first being brought into use a noise assessment and any mitigation required to ensure no increase in noise is caused by the proposed development, shall be submitted to and approved in writing by the LPA. The noise assessment shall be carried out in order to establish background noise at locations to be agreed in advance with the

local planning authority. Any approved mitigation shall be implemented prior to the approved development first being brought into use and maintained for the lifetime of the development.

Reason: to protect the amenity of the area.

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

4. The premises shall not be open to the public/customers, nor any services be available to the public/customers outside the following hours: 21:00 to 04:00 Monday to Sunday, 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.