

Development Management Report

Responsible Officer: Tim Rogers

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Summary of Application

<u>Application Number:</u> 16/05706/COU	<u>Parish:</u>	Much Wenlock
<u>Proposal:</u> Change of use from A1 Class Use (retail) to A3 Class Use (restaurants/cafes) and use of garden for outside seating.		
<u>Site Address:</u> 17 Barrow Street Much Wenlock TF13 6EN		
<u>Applicant:</u> Wenlock Estates		
<u>Case Officer:</u> Elizabeth Attwood	<u>email:</u> planningdmse@shropshire.gov.uk	

Grid Ref: 362388 - 299915



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

REPORT

1.0 THE PROPOSAL

- 1.1 Change of use from A1 Class Use (retail) to A3 Class Use (restaurants/cafes) and use of garden for outside seating.
- 1.2 The outside seating comprises 2 x 70cm circular bistro tables which seat 2 people and 1x 90cm square bistro table which seats 4 people.
- 1.3 Outside seating will only be during daylight hours.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The application site is located within Much Wenlock Conservation Area and comprises an early C18 three storey Grade II Listed building in a row of commercial premises on the ground floor with residential flats above. The building is the end property in the row and is a brick construction under a hipped roof and is painted white on the gable.
- 2.2 The shop front is late C19 and comprises square bay windows either side of the centrally located doorway and there are 4 sash windows with keyblocks and plain lintels above. The returned side of No 17 has 1 sash window to centre with channelled lintel and keyblock above a moulded wood doorcase with rectangular fanlight and attractive gabled rustic wood porch. The building is included in the Listing with no's 16 to 22 (consec) for the group value which the buildings have as a whole.
- 2.3 The aforementioned side door leads to a small garden which has hard and soft landscaping comprising flagstone paths and a seating area, lawned area and planted borders. The area is bounded by black painted trident topped railings.
- 2.4 The garden is a wedge shape and there is a footway and public highway running along the south east boundary and a public footpath (Church Walk) runs along the north western boundary. There are residential properties on the opposite side of Barrow Street and there is a dress shop (A1) and a gift shop (A1), and there is a dwelling on the other side of the footpath.

- 2.5 The existing Uses in the row from east to west comprise an estate agent (A2), a hardware store (A1), a bakery (A1), a tea shop (A3) and a gown embroidery shop (A1).
- 2.6 The premises (no.17) was until recently occupied by Croft Design (Ecclesiastical Outfitters) and the new occupier (The Tea Junction and More) have basically swapped premises, and Croft Design have moved to no.22.
- 2.7 The accommodation offered by the 'swapped' premises is better suited the needs of the respective businesses, in that no. 22 is a larger property with a basement which Croft Design can use as storage and no.17 has a small garden which will add an extra dimension to the tea room.
- 2.8 The Tea Junction and More was previously a mixed use in that it was a hardware store (A1) on the ground floor and a tea room (A3) in the basement. However, the hardware store element of the business has now ceased as due to the significant reduction in trade over the last few years as a result of competition from discount supermarkets which made the business unviable.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 Cllr David Turner requested that the application is considered by the Planning Committee and he is concerned about; the balance of retail uses, parking, access, neighbour amenity, including noise, cooking smells and privacy, and impact on the Conservation area. The Chair of the South Planning Committee, in consultation with the Principal Office, considers that Committee consideration of the application is warranted to assess the potential neighbour amenity impact as a result of use of the outside area as part of the café.

4.0 Community Representations

- Consultee Comments

Much Wenlock Town Council – no objections

SC Public Protection - no objection to the proposed change of use. However, recommends that a condition relating to the installation of and any changes to any extraction system is imposed. Informatives in respect of an Alcohol Premise License and Food Premise Registration are suggested.

SC Conservation – no objections.

SC Archaeology – no adverse comments.

- Public Comments

A Site Notice, Press Notice and 13 direct neighbour notifications have publicised the application. Eleven representations have been received; of these there are 4 objections, 4 in support and 3 neutral.

The comments objecting are;

- ☐ I am concerned that the Class 1 use (Retail) and Class 3 use (Cafes/Restaurants) balance of the commercial units in the town is going to be affected. To lose a valuable retail unit in the town is not good for the future of this town. The trading hours should match the other Class use A3 in the same block.
- ☐ I wish to lodge my objection to the weekday opening hours until 21.30. Our Listed property shares a boundary with the garden and the garden is less than 3.5 metres from our downstairs sitting room/study window. To the East of No. 17, Barrow Street is predominantly a residential area comprising many Listed properties and is, of course, a Conservation Area.
- ☐ I do not object to use of the garden during the day (although it will inevitably impact negatively on our privacy) I believe it is inappropriate to approve opening hours beyond 18.00 during the week.
- ☐ However well managed the use of the garden, there is bound to be an environmental impact on the residential area around it from the inevitable noise from those using it as an eating/play/smoking area and from the installation of tables, chairs, large parasols, gazebos and litter bins, etc., particularly during the summer. The size of the garden is of concern as it could accommodate a large number of people exacerbating the environmental impact.
- ☐ The use of the garden area will obviously impact negatively on our privacy, and this will be particularly irksome if the proposed opening hours i.e. until 21.30, are approved. I suspect that by the time customers leave the premises it will be much later. I do not see why this should be granted when the other tea shops have been restricted to the much earlier closing hours of 17:00.
- ☐ I would like reassurance that the permission applies to use of the building and not the "Green" enclosed by railings.
- ☐ In the past few years there has been damage to the front of the building when large vehicles, struggling to pass each other at this narrow part of the street, have hit parts of the window and fascia of No.17. This could be a danger to customers.
- ☐ I assume that the council will be concerned and adequately provide for waste disposal.
- ☐ We request that you refer to the original planning application for Tea on the Square at 21 Barrow Street which is 4 doors away in the same row of shops. Planning reference 10/04033/FUL condition number 3 and 10/04034/FUL point 10.3.3 restrict the opening hours. It states that "No

customers shall be on the premises other than between the hours of:- [09:00 - 17:00] Mondays - Saturdays, [10:00 - 16:00] Sundays and Public Holidays" These restrictions in reality mean putting closed on at 4pm and 3pm respectively to ensure that customers have finished their food and beverages by closing time. We presume the same restrictions would need to be applied if permission is granted.

The comments supporting are;

☐ I note that Much Wenlock Town Council are neutral about the application and as such do not object to it so I hope Shropshire Council will not object to it either.

☐ I wish to support this application for the following reasons: -

1. Looking back at the history of this building I can see that it has been a tea shop for some 50 years from about 1900 to 1950 so this is just returning an old building to its previous use.
2. The current tenant has merely swapped shops with Croft Designs which will allow both business to continue trading in the Town and employ more local people.
3. Most of the fixtures and fittings at the new tea shop originally came from the old Priory tea rooms, a great example of recycling.
4. It will be a boon to have a small safe peaceful garden as there are few similar businesses with these facilities within the Town.

☐ It is obvious that fears relating to noise late at night and especially in the garden are unfounded and effectively this business is going to provide some of the facilities that used to be provided by the priory tea rooms, which a number of people in the Town miss and the business is simply responding to an existing demand.

☐ The new tenants of No 22 we will not be making use of the existing permission for a tea room. This will be allowed to lapse.

☐ By relocating the existing tea room to No 17 the owner will be securing the jobs of a number of local people and will not actually be adding a new food outlet to the town as they are already trading.

☐ The tea room will no longer be central to the high street or directly next door to another tea room, therefore one objection here is quite surprising.

☐ Longer opening hours are necessary as nowhere in the town currently provides the option of a hot meal between 3-7pm for either residents or tourists. If other outlets see a problem with this, they too can request a change in their opening hours so that they are also open for longer.

☐ If it does not go through, my job along with seven others will be jeopardised.

What people seem to forget is that this tea room is already existing and not 'new'. As someone who has worked the successful bistro nights, it is evident that Much Wenlock needs to offer somewhere where food is served between

3pm and 7pm.

- ② Retail space will not be lost as the two shops are simply swapping.

The neutral comments are;

- ② In principle, we do not have any issues with this application. However, we note that the revised proposed plan includes the small outdoor area which is located less than 10 metres from our property, which is let. Most properties around this garden are grade II listed buildings and therefore do not have the benefit of noise reduction features such as double glazing. We would urge the officer in charge to ensure that the use of the garden area is not detrimental to the nearest properties, by restricting the opening hours of the garden to a reasonable time for such a residential area.
- ② We understand that Veolia will be collecting waste, and would like assurance that this will not be done at an antisocial hour and that any extraction fan from the kitchen will be quiet as it is likely to be situated facing Church Walk and our garden and will be immediately below the windows of the flats above 17 Barrow Street, accessed from Church Walk. We would also require assurance that disposal of fat is not down the probably shared drains and which could cause blockages.

5.0 THE MAIN ISSUES

Principle of development

Siting, scale and design of structure and impact upon the character and appearance of the listed building and the conservation area.

Residential Amenity

Parking and Access

6.0 OFFICER APPRAISAL

6.1 Principle of development

- 6.1.1 Core Strategy policies CS1, CS3, CS8, CS13, CS15 and CS16, together with SAMDev policies MD1 and MD10a and the NPPF recognise the need for development to maintain and enhance the vitality and viability of Shropshire's network of town and rural centres and support the delivery of appropriate comparison and convenience retail; office; leisure; entertainment and cultural facilities. The proposal is considered to comply with these policies in principle.

- 6.1.2 Much Wenlock Neighbourhood Plan (MWNP) 2013-26 states that;

Much Wenlock's town centre, with its wide range of independent shops, local market stallholders, bank, Post Office and petrol filling station is of great importance

to the community, serving the needs of local residents, visitors and a wide rural hinterland. The Plan is designed to protect Much Wenlock's retail core and promote and support its viability. Any development which compromises the town centre and its range of provision will not be supported.

6.1.3 Policy EJ5 of the MWNP states that; *The change of use of business premises from A1, A2, A3, A4, and A5 uses will not be permitted unless it can be demonstrated that the ongoing use of the premises for these purposes is no longer viable.*

6.1.4 The proposed use of the building is A3 and therefore there is no conflict with this policy.

6.1.5 The building is a grade II listed building, and the NPPF and local policy requires Local Planning Authorities to have regard to the impact of development on the character and setting of heritage assets.

6.2 Siting, scale and design of structure and impact upon the character and appearance of the listed building and the conservation area.

6.2.1 Under the Planning (Listed Buildings and Conservation Areas) Act 1990 there is the obligation to have special regard to the desirability of preserving the character or appearance of Conservation Areas in carrying out statutory functions. Core Strategy policies CS6 and CS17 are consistent with this guidance, with CS6 requiring development to protect, restore and enhance the natural, built and historic environment and to be appropriate in scale, density, pattern and design taking into account the local context and character. CS17 states that development should protect and enhance the diversity, high quality and local character of Shropshire's natural, built and historic environment. SAMDev policy MD13 encourages development which delivers positive benefits to heritage assets.

6.2.2 The application proposes the change of use from A1 use to A3 use, the property is Grade II listed. No physical changes are proposed to the building as part of the change of use, therefore it is not considered that any impacts will occur to the listed building.

6.2.3 Only three small tables as described in paragraph 1.2, and 8 associated chairs are proposed in the garden area, and a condition will prevent any additional paraphernalia e.g. gazebos or umbrellas from being used without first applying to the LPA for permission. Therefore, there will be no adverse impact upon the visual amenity of the streetscene or the character and appearance of the conservation area.

6.3 Residential Amenity

- 6.3.1 Policy CS6 seeks to ensure that all development contributes to the health and wellbeing of communities, including safeguarding residential and local amenity.
- 6.3.2 With this in mind, neighbour comments regarding loss of privacy and noise and disturbance are noted.
- 6.3.3 The premises is small with a net tradeable area of only 71sq.m. and therefore this alone will restrict the number of customers patronising the tea room at any one time. Similarly, only 8 outside seating opportunities are proposed during daylight hours.
- 6.3.4 There are flats above the unit on the 1st and 2nd floor facing Barrow Street, a dwelling to the north east (right), on the other side of a public footpath and a row of cottages on the opposite side of Barrow Street which is the main route through the town. Therefore, there will already be a degree of noise from pedestrians and traffic and Members of the Public can walk past the aforementioned residential properties, in this edge of town centre location.
- 6.3.5 Noise sensitive hours are widely recognised to be 23.00 – 07.00. The opening hours proposed are 08.30 – 21.30 Monday – Friday and 08.30 – 17.00 on Saturdays and 10.00 – 16.00 on Sundays and Bank Holidays, and therefore do not fall within noise sensitive hours.
- 6.3.6 SC Public Protection has no objections to the proposal and no hours of restriction have been suggested.
- 6.3.7 The tea room will not be selling alcohol and therefore it is unlikely that there will be any rowdy or anti social behaviour as a result of the proposed use of the premises. In the event that alcohol is to be sold in the future this will fall under the remit of SC Licensing and an Alcohol Premises License would be required. Potential impact upon residential amenity would be considered by the relevant officers prior to any License being issued. Furthermore, no fume extraction apparatus is proposed.
- 6.3.8 Government guidance contained within para. 123 of the NPPF states that;
- Planning policies and decisions should aim to:
- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
 - mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;
 - recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby

land uses since they were established.

- 6.3.9 With the above guidance in mind officers consider that the change of use of the premises from A1 to A3 would not result in a significant adverse impact and that the use can be suitably controlled via conditions. Accordingly, the proposal is compliant with policy CS6 which *inter alia* aims to protect residential amenity. Furthermore, in the unlikely event that noise or odour ever became an issue this would be a matter for SC Public Protection under the Environmental Protection Act 1990.

6.4 Parking and Access

- 6.4.1 There is no parking associated with the application however this is a town centre location with nearby public car parks and therefore this situation is acceptable in the context of the site. Furthermore, this is not a new business, it is a relocated business which has moved from a premises five doors away which did not have any parking facilities. This situation is typical for the majority of businesses in the town.

- 6.4.2 There is no change proposed to the existing access.

7.0 CONCLUSION

- 7.1 The relocation of the existing tea room to this location is acceptable and will have no adverse effect on the vitality or viability of Much Wenlock. There will be no works or alterations to the property which is a listed building and therefore there will be no impact upon the historic fabric of the building or the character or appearance of the conservation area. The modest size of the premises and proposed opening hours are not excessive and therefore it is unlikely that there would be any significant adverse impact upon the residential amenity of the nearby residential properties in this edge of town centre location.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

② 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.

② 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:
National Planning Policy Framework
National Planning Practice Guidance
The Planning (Listed Buildings and Conservation Areas) Act 1990

Shropshire Core Strategy:
CS1 Strategic Approach
CS3 The Market Towns and Other Key Settlements
CS6 Sustainable Design and Development Principles
CS8 Facilities, Services and Infrastructure Provision
CS13 Economic Development, Enterprise and Employment
CS15 Town and Rural Centres
CS16 Tourism, Culture and Leisure
CS17 Environmental Networks

SAMDev Plan:
MD1 Scale and Distribution of Development
MD10a Managing Town Centre Development
MD13 Historic Environment
S13 Much Wenlock Area

Much Wenlock Neighbourhood Plan 2013 - 26
EJ5 (Economy and Jobs)

RELEVANT PLANNING HISTORY:

BR/APP/LBC/04/1066 Display of sign board on the side elevation REFUSE 17th January 2005
BR/APP/ADV/04/1067 Display of a non-illuminated sign board on the side elevation REFUSE 17th January 2005
BR/APP/ADV/05/0473 Display of advertisement GRANT 25th July 2005
BR/APP/LBC/05/0472 Display of advertisement GRANT 21st July 2005
BR/95/0662 ERECTION OF REPLACEMENT STEEL RAILINGS. GRANT 21st November 1995
BR/95/0481 REMOVAL OF STEEL RAILINGS AND ERECTION OF REPLACEMENT RAILINGS. GRANT 13th September 1995
BR/79/0299/LB The erection of a single storey rear extension to provide a porch and store at 17 Barrow Street, Much Wenlock GRANT 14th August 1979

11. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

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 David Turner
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.
3. Prior to installation of and any changes to any extraction system details of all components shall be provided including noise information of any components (e.g. fans) and odour and noise mitigating components. This information shall be submitted in writing to the local planning authority for approval in writing prior to installation of the system.
Reason: To protect the amenity of the area and nearby residential properties

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

4. The use of the garden for outside seating for customers of the tea room shall be in daylight hours only and there shall be no use of the area as outside seating for customers of the tea room during the hours of darkness.
Reason: To protect the residential amenity of the nearby residential properties
5. There shall be no more than two 70cm diameter and one 90cm diameter tables and eight chairs in the outside seating area at any one time. There shall be no other furniture, items or paraphernalia including umbrellas or parasols erected, installed or used in the garden.
Reason: To limit the use of the outside seating area in order to protect the residential amenity of the nearby residential properties and in order to preserve and enhance the character and appearance of the conservation area.

6. The use hereby permitted shall only be carried out between 08.30 - 21.30 on Mondays - Fridays, 08.30 - 17.00 on Saturdays, and 10.00 - 16.00 on Sundays, Bank and Public Holidays.

Reason: To protect the residential amenity of occupiers of nearby properties.

Informatives

1. The above conditions have been imposed in accordance with both the policies contained within the Development Plan and national Town & Country Planning legislation.
2. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National planning policy Framework paragraph 187.
3. In determining this application the Local Planning Authority gave consideration to the following policies:

Central Government Guidance:

National Planning Policy Framework

National Planning Practice Guidance

The Planning (Listed Buildings and Conservation Areas) Act 1990

Shropshire Core Strategy:

CS1 Strategic Approach

CS3 The Market Towns and Other Key Settlements

CS6 Sustainable Design and Development Principles

CS8 Facilities, Services and Infrastructure Provision

CS13 Economic Development, Enterprise and Employment

CS15 Town and Rural Centres

CS16 Tourism, Culture and Leisure

CS17 Environmental Networks

SAMDev Plan:

MD1 Scale and Distribution of Development

MD10a Managing Town Centre Development

MD13 Historic Environment

S13 Much Wenlock Area

Much Wenlock Neighbourhood Plan 2013 - 26

EJ5 (Economy and Jobs)

4. A license will be required prior to alcohol being offered for sale and therefore it is recommended that any application is submitted as far in advance of the date that you would like to start selling alcohol. Details on alcohol licensing can be found at the following link: <https://new.shropshire.gov.uk/licensing/apply-for-a-licence-or-permit/new-premises-licence/>

5. As this application contains the proposal for a food premises and therefore a food premise registration form will need to be completed. The form can be found at the following address: <https://new.shropshire.gov.uk/environmental-health/food-safety/food-safety-for-business/register-a-food-business/>
The completed form should be completed and returned to the Health Promotion and Prevention team, Public Protection, Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND and it is recommended that it is returned prior to the food premise opening.
The applicant should ensure that the design and layout ensures that all food safety and hygiene legislation can be complied with in full.