

Development Management Report

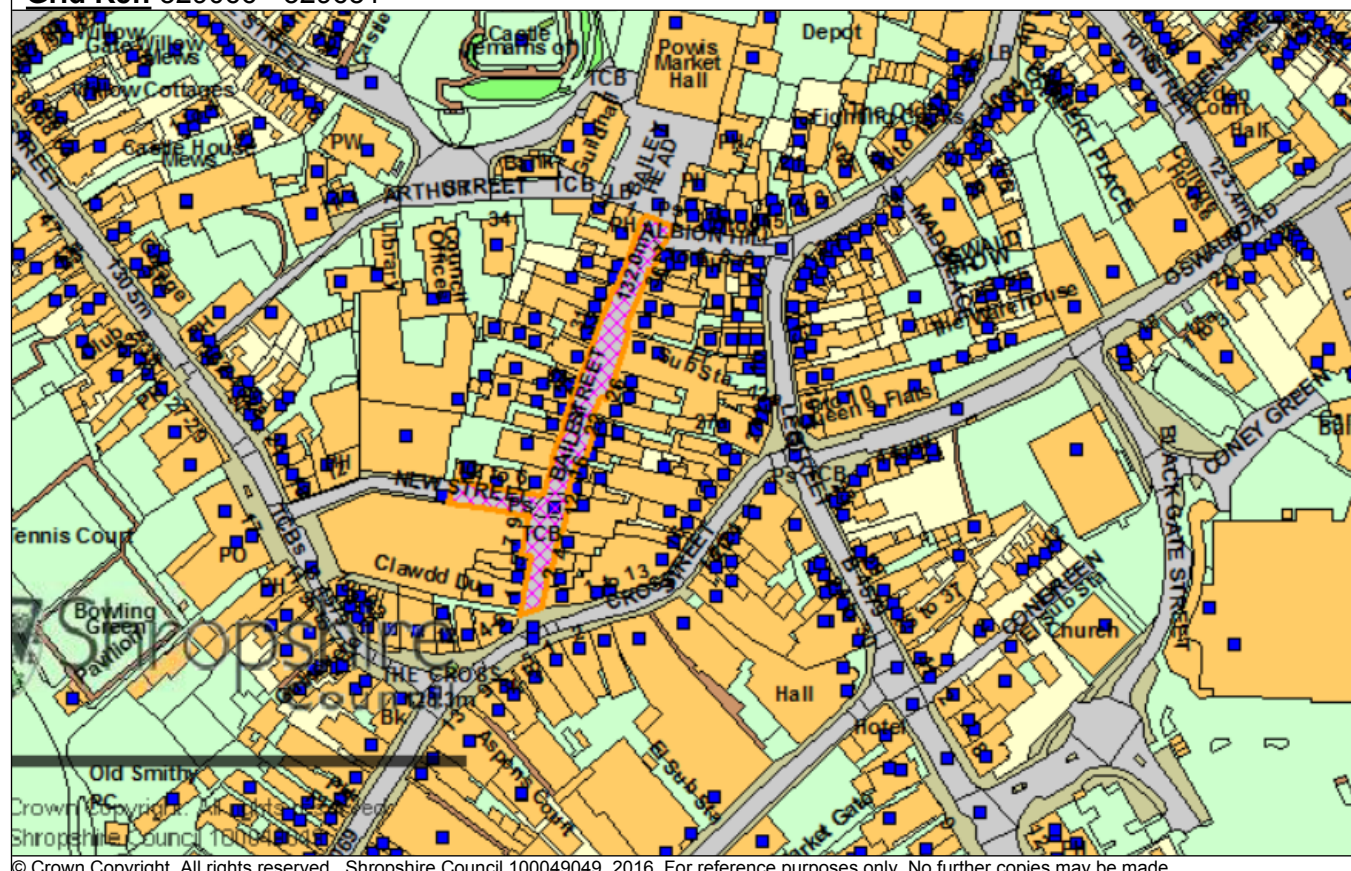
Responsible Officer: Tim Rogers

Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

<u>Application Number:</u> 17/00985/FUL	<u>Parish:</u>	Oswestry Town
<u>Proposal:</u> Change of use of highway to mixed use - highway and outdoor market		
<u>Site Address:</u> Bailey Street And New Street Oswestry Shropshire		
<u>Applicant:</u> Oswestry Town Council		
<u>Case Officer:</u> Janet Davies		<u>email:</u> planningdmnw@shropshire.gov.uk

Grid Ref: 329066 - 329651



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

- 1.1 The application is lodged by Oswestry Town Council and is for the change of use of the highway to mixed use as highway and outdoor market at Bailey Street and New Street within Oswestry town centre.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The application site area covers around 0.15 hectares to include the whole of Bailey Street, a paved pedestrian area extending from Bailey Head at its northern end down to Cross Street, and just under half of New Street (as far as 10 New Street), which connects Bailey Street with Willow Street.
- 2.2 The affected streets are both lined with a mix of shopping and commercial buildings, some with residential space above.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The application is on land owned by Shropshire Council and is not considered to be a statutory function of the Council as such the application is required to be heard by planning committee in accordance with the scheme of delegation.

4.0 Community Representations**4.1 Consultee Comments**

- 4.1.2 **SC Drainage** – no comment from the drainage and flood risk perspective.
- 4.1.3 **SC Archaeology** – no comment to make with respect to archaeological matters.
- 4.1.4 **SC Trees** – no objection.
- 4.1.5 **SC Conservation** - no objection from a Historic Environment perspective.
- 4.1.6 **SC Highways** – none received at time of writing report but any update received in the meantime will be reported to committee.
- 4.1.7 **SC Public Protection** – no objection subject to informatives ensuring that relevant Pavement Permit is obtained, any businesses selling food are registered as a food business and any site users are aware of any traffic restrictions which may be in place to protect the safety of highways users and reduce congestion.
- 4.2 **- Public Comments**
- 4.2.1 None received as result of application. However, information submitted with application explains that Town Council consultation was carried out with traders in Bailey Street and New Street, the Oswestry Chamber of Commerce and the Oswestry BID group. Responses were reported to have been limited but generally supportive of the proposals.

5.0 THE MAIN ISSUES

- Principle of development
- Background to Proposal
- Impact on Town Centre
- Heritage Impact

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Core Strategy Policy CS 15 (Town and Rural Centres) is applicable and states:

6.1.2 ‘The Market Towns of Oswestry; Market Drayton; Whitchurch; Ludlow and Bridgnorth will act as principal centres to serve local needs and the wider service and employment needs of communities within their respective spatial zones. Appropriate convenience and comparison retail, office, and other town centre uses will be permitted to support these roles.’

6.1.3 Further to CS15 Primary Shopping Areas and Primary and Secondary Frontages are identified within SAMDev and both Bailey Street and New Street are located within the Primary Shopping Area as identified on the Oswestry Inset Map.

6.1.4 SAMDev Policy MD10a (Managing Town Centre Development) states that within the Category C centres (Shrewsbury & Oswestry) there is a presumption in favour of Retail proposals (Use Class A1) in ground floor premises within the Primary Shopping Areas.

6.1.5 Section 2, paragraph 23 of the National Planning Policy Framework (Ensuring the Vitality of Town Centres) is also relevant to the consideration of this application and states:

6.1.6 ‘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 centre as the heart of their communities and pursue policies to support their viability and vitality.....
- Promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres;
- Retain and enhance existing markets and, where appropriate, re-introduce or create new ones, ensuring that markets remain attractive and competitive...
- Where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity.’

6.1.7 Therefore, subject to other criteria the general principle of an extension to the existing market is deemed to fall generally in line with the above policy framework relating to Oswestry town centre.

6.2 Background to Proposal

6.2.1 The Planning Statement provides the history and background to the proposal and explains that the Town Council is working closely with the Business Improvement District (BID) Project to raise the quality of the town centre retail offer, in order to

attract new visitors and improve the town centre generally.

6.2.2 The current Wednesday and Saturday outdoor markets on Horsemarket and Bailey Head are stated to have been severely affected by the increasing trend for internet shopping and other competition. This is also considered to have had a knock on affect in terms of the number of customers using the Indoor Market on Bailey Head.

6.2.3 It is reported that a Mary Portas project in the town centre found that the town centre needed to be revitalised and that one way of doing this could be to increase activity within the streets in order draw in additional shoppers.

6.2.4 In response to this conclusion the Town Council has trialled an 'Artisan' Market on Bailey Street and New Street on the last Friday of each month since June 2016 which has proved popular. It is claimed that this has been successful in drawing shoppers into the full length of Bailey Street, Bailey Head and the indoor market.

6.2.5 Under permitted development rights the number of the markets held is restricted to 14 a year and therefore the submitted proposal seeks to allow the outdoor market to extend into Bailey Street and New Street, throughout the year.

6.3 **Impact on Town Centre**

6.3.1 It is stated that the days of operation are generally proposed to be confined to Wednesdays and Saturdays, between 9am and 5pm, and the same times every last Friday of the month but that a degree of flexibility would be required to allow the Town Council to operate a market at other days and times, such as during special events, or during bank holidays.

6.3.2 This aspect could be controlled by way of a condition restricting the days and hours of operation whilst the flexibility for the market to operate on an additional 14 days in any calendar year would be allowable in any case under permitted development rights.

6.3.3 The proposed stalls would comprise the use of normal market stalls together with some 'Gazebo' type stalls.

6.3.4 A block plan is submitted which indicates the likely position of the stalls from a point near to the top of Bailey Street, around the area of the Age UK shop and Kenyan Schools Project, down to the junction with Cross Street and into New Street to extend as far as the area between Home Bargains and Grape Tree.

6.3.5 However, some flexibility would be required to allow for changes in circumstances such as vacant shop units, or to take account of special events on Sundays and Bank Holidays, when shops in the area might be closed or where works are being carried out to premises, involving scaffolding etc.

6.3.6 The Statement explains that the proposed positioning is to take account of the following:

- Maintain safe and free movement of pedestrians throughout the street;
- Allow safe access for emergency vehicles;
- Avoid blocking the window displays and entrances to existing shops;

- Avoid those cafes with approved outside seating areas;
- Avoid blocking access to the existing telephone box and areas of fixed seating.'

6.3.7 With regard to the temporary parking of Traders' delivery vehicles and the setting up and breaking down of stalls the extended area involved may require the provision of vehicular access for Traders from New Street, Bailey Head and Cross Street.

6.3.8 In cases where traders are unable to park by their stalls it is noted that arrangements are already in place to use existing loading bays such as those in Cross and transfer goods by hand cart. It is intended that stalls would be set up by the Council by 8am and that stall holders would be set up in advance of 9am. The Town Council would be responsible for clearing stalls and removal of rubbish.

6.3.9 A lettings policy is proposed to be drawn up and adopted by Town Council to ensure no duplication or conflict over the type of goods being sold with the existing shops on Bailey Street and New Street.

6.4 **Heritage Impact**

6.4.1 The whole of the proposal site is located within the town centre conservation area and the Council's Conservation team have been consulted. No objection is raised but the Conservation Officer has indicated that the quality and colours of the stalls themselves and potentially any permanent lighting and signage which may arise from this would need careful consideration. It is therefore suggested that any signage is dealt with separately and in consultation with SC conservation.

6.4.2 In the event that the application is approved it is recommended that a condition could be attached to ensure the use of traditional market stalls (i.e. demountable pole structures erected on site) or open table top type stalls and to safeguard against large numbers of motorised or trailer self-contained retail units or fairground type facilities such as bouncy castles in order to protect the amenity of the area.

6.4.3 Subject to the above details, it is considered that the anticipated increase in visitor and shopper numbers could contribute to the overall vitality and viability of the town centre and as such could help to secure the upkeep of existing premises to the benefit of the character and appearance of the designated area as a whole.

6.4.4 The Council's Trees Officer has been consulted on account of existing trees located within Bailey Street but raises no objection.

7.0 **CONCLUSION**

7.1 It is considered that the proposed extension of the outdoor market into Bailey Street and New Street would be beneficial to the future of the indoor and outdoor markets and for trade within the wider town centre in line with local and national policy relating to town centres. The proposal appears to be generally well received by residents and no public protection or heritage objections have been raised. Therefore the application is recommended for approval in accordance with CS15 and SAMDev Policy MD10a.

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

Relevant planning history:

No relevant history

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 Duncan Kerr
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).

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

2. The market use shall relate solely to the sites edged red on the submitted location plan, received by the Local Planning Authority on 2nd March 2017 and no market use including stalls, parking or storage shall take place on other parking areas outside of the defined areas

Reason: To define the permission for the avoidance of any doubt.

3. The outdoor market shall not operate and no stalls shall be unloaded/loaded and erected/dismantled, outside the hours of 7.00am to 7.00pm Wednesdays and Saturdays, and on the last Friday of every month. Additional occasional markets may be held on other days, such as during special events or during bank holidays, up to 14 times in any calendar year.

Reason: To retain adequate weekday parking in the town and to safeguard the living conditions of nearby residents.

4. The market shall comprise solely of traditional market stalls (i.e. demountable pole structures erected on site), open table top type stalls and no more than four motorised or trailer self-contained retail units of which there shall be no more than one of the lorry/articulated/rigid box van type. There shall be no fairground type facilities such as bouncy castles.

Reason: In the interests of the visual and residential amenities of the area.