

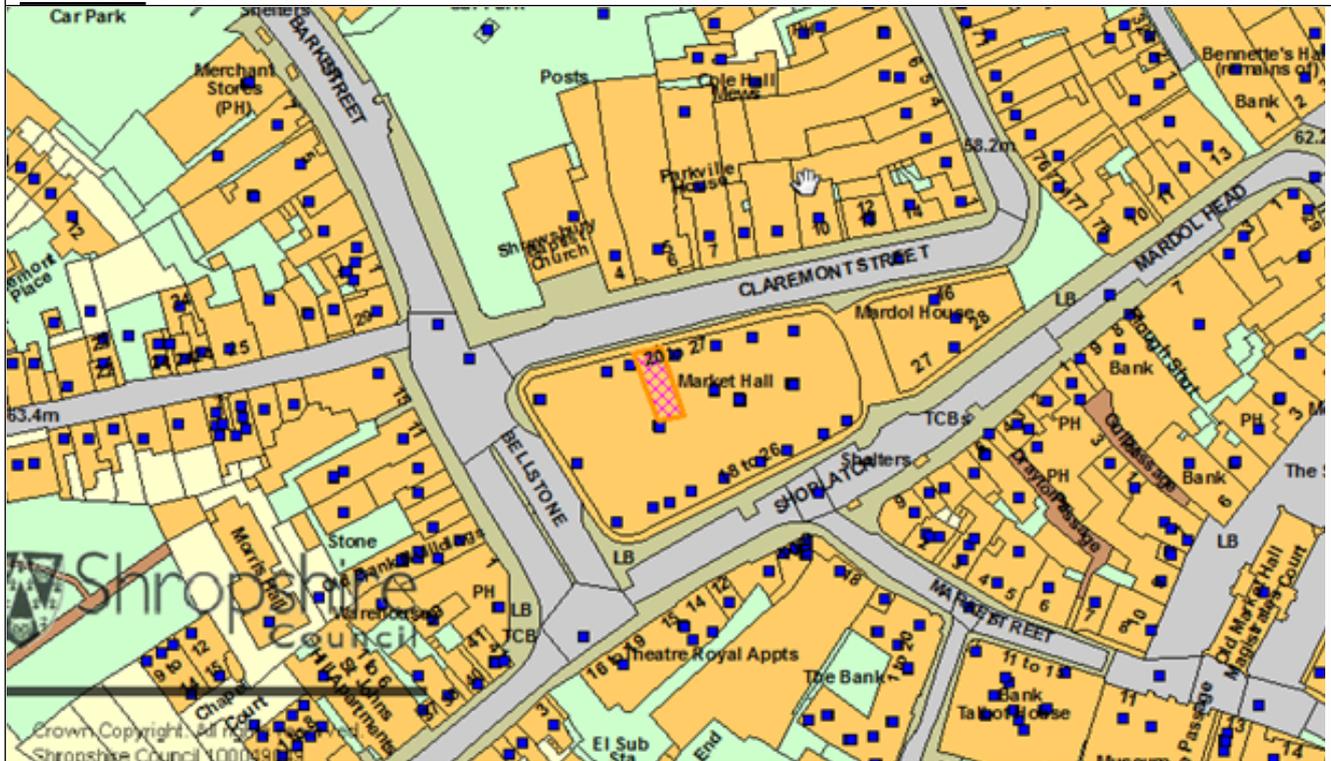
## Development Management Report

Responsible Officer: Tim Rogers  
Email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

### Summary of Application

<b>Application Number:</b> 17/01861/VAR	<b>Parish:</b>	Shrewsbury Town Council
<b>Proposal:</b> Variation of Condition no.7 of Planning Permission SA/04/1625/F to regularise opening hours to bring them in line with premises licence		
<b>Site Address:</b> Subway 27 Claremont Street Shrewsbury SY1 1QG		
<b>Applicant:</b> Mr Michael Gries		
<b>Case Officer:</b> Jane Raymond	<b>email:</b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a>	

**Grid Ref:** 348991 - 312504



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

## REPORT

### 1.0 THE PROPOSAL

1.1 This application relates to the variation of condition no.7 of Planning Permission SA/04/1625/F to regularise opening hours to bring them in line with the premises licence hours.

1.2 Condition 7 states the following:

*The premises shall not be open to the public, nor any services be available to the public between the hours of 18:30 and 08:00 Monday to Sunday and no member of the public shall remain on the premises between these hours.*

*Reason: To ensure that an uncontrolled intensification of this use does not occur, to the detriment of the amenities of the surrounding area.*

1.3 The licensing hours and hours applied for are as follows:

Monday: 07.00 to 23.00

Tuesday: 07.00 to 23.00

Wednesday: 07.00 to 03.00

Thursday: 07.00 to 23.00

Friday: 07.00 to 03.00

Saturday: 07.00 to 03.00

Sunday: 07.00 to 23.00 (and to 03:00 prior to a bank holiday)

### 2.0 SITE LOCATION/DESCRIPTION

2.1 The application site is 27 Claremont Street, which is a retail unit beneath the Market Hall in Shrewsbury Town Centre.

### 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 Area Planning Manager in consultation with the Committee Chairman and Vice Chairman (also Local Member) agrees that the application should be determined by committee.

### 4.0 Community Representations

#### 4.1 - Consultee Comments

4.1.1 **SC Archaeology:** We have no comments to make on this application with respect to archaeological matters.

4.1.2 **SC Conservation:** No Conservation comments

## 4.2 - Public Comments

4.2.1 **Shrewsbury Town Council:** Has concerns over the cumulative affect of late night opening of establishments and the creep of late night opening beyond the established area around the west end of town; therefore the Town Council opposes this application whilst the opening hours remain as stated. Members are mindful to support midnight opening on Friday and Saturday but are insistent that any opening beyond 11pm on Wednesdays is inappropriate for the area. Furthermore, the Town Council requests that conditions are imposed that requires door security at this location when opening hours extend beyond 11pm.

### 4.2.2 **One letter of objection received from the previous local member:**

The argument of the applicant is that varying the Planning permission to the times stated would bring the Planning Permission in line with the Licence.

However Public Protection has recently objected to a proposed bar right opposite Subway on Claremont St staying open till 2am, on the grounds that there would be no way of controlling the noise created outside the establishment at closing time. Claremont St is now heavily residential, not only because of the student accommodation in Mardol House, but because of residential accommodation opposite Subway.

By remaining open till 3am three nights a week, Subway would be attracting large numbers of people leaving the Late Night Bars in the adjacent West End, so making it very difficult for residents (and visitors in nearby hotels) to enjoy a reasonable night's sleep.

The ENTEPG has reached a stage, where it is generally agreed that the overall welfare of the town is more important than increasing the profit of a few establishments. I hope that this application will be refused for this reason.

## 5.0 THE MAIN ISSUES

The main issue is the Impact on local and residential amenity as a result of extending the hours.

## 6.0 OFFICER APPRAISAL

### 6.1 Impact on local and residential amenity

6.1.1 Core Strategy CS6 states that, amongst other objectives, development should contribute to the health and wellbeing of communities, including safeguarding residential and local amenity. The planning permission for change of use from a shop to a sandwich shop and café was approved in 2004 and the condition imposed limited the opening hours to those applied for at that time. The licensing hours have been extended so that the business can remain open for customers later into the evening.

- 6.1.2 It is recognised that 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 extended hours proposed will lead to a significant increase in activity and 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 late evening / early morning hours.
- 6.1.3 There a variety of pubs and restaurants within the immediate vicinity of the site and some further afield within the Town Centre all with a range of closing times and some very late into the early hours of the morning. The late night / early morning closing times and management of all licenced premises are controlled by Licensing.
- 6.1.4 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 an extension of the opening hours to match that already granted by licensing 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.
- 6.1.5 The licensing regime already controls issues of disturbance and noise generated from patrons leaving 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 (even with conditions imposed) and the licencing regime is therefore considered the most appropriate tool to control the opening hours and any potential noise issues in future should they arise.
- 6.1.6 It is considered appropriate to remove the opening hours condition completely and is therefore considered acceptable to vary the condition as applied for.

## 7.0 **CONCLUSION**

- 7.1 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 Councils Licensing department and external agencies, it is considered that this proposal would have no significant impact on local and residential amenity. It is 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: CS6

RELEVANT PLANNING HISTORY:

SA/04/1625/F Change of use from retail (Class A1) to cafe/sandwich shop PERCON 13th December 2004

**11. Additional Information**

List of Background Papers: File 17/01861/VAR
Cabinet Member (Portfolio Holder): Cllr R. Macey
Local Member: Cllr Nat Green
Appendices APPENDIX 1 - Conditions

## **Conditions**

### **STANDARD CONDITION(S)**

1. Condition 7 attached to planning permission SA/04/1625/F is hereby varied to read as follows:

The premises shall not be open to the public/customers, nor any services be available to the public/customers, nor shall any member of the public/customers remain on the premises outside the following hours:

Monday: 07.00 to 23.00

Tuesday: 07.00 to 23.00

Wednesday: 07.00 to 03.00

Thursday: 07.00 to 23.00

Friday: 07.00 to 03.00

Saturday: 07.00 to 03.00

Sunday: 07.00 to 23.00 (and to 03:00 prior to a bank holiday)

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

2. This permission only varies condition 7 attached to Planning Permission SA/04/1625/F and this notice must be read in conjunction with planning permission reference SA/04/1625/F where all conditions that are still subsisting and capable of taking effect are unaffected by this notice and remain in force.

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the original planning permission.