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## Appeal Decision

Site visit made on 18 December 2018

**by Beverley Wilders BA (Hons) PgDurp MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 January 2019**

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**Appeal Ref: APP/L3245/W/18/3201632**

**The Dog and Pheasant, 20 Severn Street, Shrewsbury SY1 2JA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Andy Cutler (Marstons Plc) against the decision of Shropshire Council.
  - The application Ref 17/05969/FUL, dated 12 December 2017, was approved on 8 March 2018 and planning permission was granted subject to conditions.
  - The development permitted is minor works to rear to improve toilet access, fire escape and provide shelter to yard area.
  - The condition in dispute is No 4 which states that: *"the external rear courtyard area shall not be used by members of the public after 21:00 hours and before 11:00 hours the following day"*.
  - The reason given for the condition is: *"to reduce residential amenity impacts such as smoke and noise on the nearest sensitive premises"*.
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### Decision

1. The appeal is allowed and the planning permission Ref 17/05969/FUL for minor works to rear to improve toilet access, fire escape and provide shelter to yard area at The Dog and Pheasant, 20 Severn Street, Shrewsbury SY1 2JA granted on 8 March 2018 by Shropshire Council, is varied by deleting condition 4.

### Background and Main Issue

2. Planning permission was granted for relatively minor works to an existing public house located in a Conservation Area. These works include a modest extension to the rear elevation to enable internal access to the existing toilet facilities which are currently accessed externally via the rear yard area. In addition a small bench seat and shelter are proposed in the rear yard area.
3. The permission includes a condition which prevents the use of the rear yard area by members of the public between the hours of 21:00 and 11:00 the following day. The condition appears to have been imposed following concerns raised by the Council's Regulatory Services department about the proposed seat and shelter in the rear yard area and the potential for the future use of this aspect of the proposal to cause problems for the occupiers of a neighbouring residential property.
4. The appellant objects to the condition stating that the rear yard area is already used by members of the public for smoking and/or drinking and that the proposal is not for a change of use of this area. The proposal merely proposes a fixed seat for the comfort of one or two patrons who may otherwise stand or

sit on removable chairs under a removable umbrella. In addition the appellant states that the proposal would remove the need for members of the public to use the yard area as a means of access to the toilet facilities, thereby reducing the intensity of its use.

5. Having regard to the background to the application and the imposition of the condition, the main issue is whether the condition is reasonable and necessary having regard to the living conditions of occupiers of nearby residential properties.

## **Reasons**

6. The appeal site comprises a public house located mid terrace in a residential street in a predominantly residential area. The pub has a modest sized rear yard area which currently provides access to the toilet facilities and to a store room. In addition it appears that the yard area is and has historically been used as an outside drinking and smoking area and at the time of my visit there were a number of chairs and a large parasol in the yard as well as a number of ashtrays. The side wall of the dwelling and a high brick boundary wall mark the common boundary with the adjacent dwelling at 21 Severn Street. Though the walls prevent any view of the ground floor or rear garden of No 21 from the rear yard, at my visit I noted that No 21 has a first floor window in its rear elevation positioned near to the appeal site.
7. I agree with the Council that the provision of a fixed seat and shelter in the yard area would provide a more permanent covered seating space for use by customers of the pub to drink and/or smoke outside. However noting the modest size of the seat and shelter, its position set away from the common boundary with No 21 and the existing and historic use of the yard area in connection with the pub, I do not consider that this aspect of the proposal would be likely to materially increase the amount of drinking and/or smoking taking place in the yard to the extent that it would be harmful to the living conditions of any nearby residential occupiers. In addition and as accepted by the Council, the proposed alterations would result in a reduction in footfall and noise from customers accessing the toilet facilities.
8. In reaching my decision I note that no objections were received in relation to the proposal from nearby residents and I have seen no evidence of any complaints in relation to the existing use of the yard for drinking and/or smoking by customers. Whilst I have had regard to the concerns raised by the Council's Regulatory Services department about the potential for the use of the rear yard area to create a public nuisance, I do not consider that there is any substantive evidence to suggest that this would be the case.
9. The condition not only restricts the use of the proposed seat and shelter but restricts the use of the whole of the rear yard area notwithstanding that the Council's delegated report stated that the proposal would not result in any material harm to living conditions acknowledging the existing use of the rear yard. Having regard to this and for the reasons stated above I do not consider that the condition is either reasonable or necessary noting the existing use of the rear yard, the modest scale and location of the seat and shelter and having regard to the living conditions of occupiers of nearby residential properties.

**Conclusion**

10. For the above reasons and having regard to all matters raised, I conclude that the appeal should be allowed and the permission varied to delete condition 4.

*Beverley Wilders*

INSPECTOR