

**Recommendation: Approve subject to the conditions set out in Appendix 1.**

## REPORT

### 1.0 THE PROPOSAL

1.1 This application is for change of use to a mixed use to allow for A5 use (hot food takeaway) on the ground floor in addition to the existing A3 use (restaurant) on the ground floor.

1.2 No external alterations are proposed.

### 2.0 SITE LOCATION/DESCRIPTION

2.1 The application site is part of the ground floor of Chronicle House with access off Castle Foregate.

2.2 Chronicle House is an unlisted building situated within Shrewsbury Town Centre Conservation area.

### 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 Principal Planning Officer in consultation with the Committee Chairman and Vice Chairman agrees that the application should be determined by committee.

### 4.0 Community Representations

#### 4.1 - Consultee Comments

4.1.1 **SC Regulatory Services:** As the design and access statement states that there is no internal or external fabric change such as changes to extraction system or similar, regulatory services has no adverse comments. Please note that any planning permission to A5 does not automatically confer licensing rights, the license of the premises may require modification and the licensing section should be contacted for advice.

4.1.2 **SC Conservation:** The property is located within the conservation area and whilst unlisted, would be considered as a non-designated heritage asset in a prominent location. However, it is noted that there are no internal or external alterations proposed in respect of the use and therefore no objections are raised. Should it turn out that additional signage, extraction equipment etc. is required then please consult us again.

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

4.1.4 **WSP on behalf of SC Highways:** The proposal seeks additional A5 use to the existing restaurant at 1 Chronicle House, 6 Castle Foregate. Given the existing use

and town centre location, it is considered that a highway objection would be unsustainable.

- 4.1.5 **WSP on behalf of SC Drainage:** We have no comment from the drainage and flood risk perspective, regarding this proposal as there are no proposed changes to the footprint of the building.

#### 4.2 - Public Comments

- 4.2.1 **Shrewsbury Town Council:** objects to this planning application on the following grounds:

Members feel that a hot food takeaway in this location will exacerbate existing traffic congestion problems on one of the major gateways in to the town centre and that car parking for the premises will have an adverse effect on traffic flows on a busy main road that has double yellow lines.

Members feel that the proposed opening times to 3.00am from Monday to Saturday will have an adverse impact on residential properties in the vicinity and would like to see changes made to ensure that the takeaway business hours are amended to close at 12 midnight from Monday to Thursday.

Members also feel that air quality in this location will be adversely affected from waiting cars impacted by potential traffic delays.

#### 5.0 THE MAIN ISSUES

Principle of development  
Parking/traffic implications  
Impact on local and residential amenity

#### 6.0 OFFICER APPRAISAL

##### 6.1 Principle of development

- 6.1.1 Core Strategy Policy CS15 established Shropshire's network of centres, and the principle that town centres are the preferred location for new retail, office, leisure, entertainment and cultural facilities, and other town centre uses. The relevant SAMDev policy is MD10a (Managing Town Centre Development) which refers to secondary and primary frontages within the town centre primary shopping area and an emphasis on maintaining A1 retail use.
- 6.1.2 The Castle Foregate frontage is outside of the designated primary and secondary street frontages of the Shrewsbury Town Centre area on the SAMDev proposals map.
- 6.1.3 The proposed additional A5 use is considered to be an appropriate and acceptable use in this edge of town centre location. Allowing the business to operate as both a restaurant and a takeaway would hopefully ensure that the business continues to thrive remain open and would help maintain an active and continuous frontage. The proposal is therefore considered acceptable in principle.

## **6.2 Parking/traffic implications**

- 6.2.1 The town council have objected to the application as they consider that car parking outside would exacerbate existing traffic congestion problems and that air quality in this location will be adversely affected due to waiting cars.
- 6.2.2 There are double yellow lines outside so cars are not permitted to stop or park. The site is already used as a restaurant and is situated between two pubs and a club, all of which have no parking available and are both open late into the evening.
- 6.2.3 It is expected that almost all customers to the proposed takeaway will be on foot having arrived in Shrewsbury by car or travelled by train, bus or taxi. Some customers will be residents of the town centre. The majority of late night customers will be calling in at the proposed takeaway facility on their way home after a night out and would not be driving.
- 6.2.4 Highways have no objection to the proposal having regards to its location within the town where almost all restaurant, pubs and takeaways have no parking available outside. It is considered that the proposal would not generate additional traffic and would not result in cars pulling up and waiting outside. Therefore the proposal would not affect traffic flows or result in congestion in the locality or impact on air quality.

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

- 6.3.1 Policy CS6 and MD2 seek to ensure that development contributes to the health and wellbeing of communities, including safeguarding residential and local amenity. Paragraph 127 of the NPPF states that planning policies and decisions should ensure that development 'creates places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users'.
- 6.3.2 The application form indicates that the hours of opening applied for is from 12:00 to 03:00 the following morning seven days a week. Late night takeaway restaurants have the potential to result in noise and disturbance outside the premises and in the streets surrounding the site due to the noise of customers leaving or congregating around the building.
- 6.3.3 The proposal is not for a drinking establishment but it is assumed that the late night opening has been applied for to serve customers that are leaving the pubs and clubs nearby and in the town centre. Regulatory Services have no objection to the proposal but have advised that the license for the premises may require modification and that this is applied for and considered separately.
- 6.3.4 As the site is in a busy part of town where pedestrian and vehicular activity continues into the early hours of the morning it is considered that any noise from customers entering or leaving the premises would not be discernible above the exiting noise and activity in the locality. A condition restricting the opening hours to those proposed is therefore not considered necessary particularly as the opening hours will be controlled by the licence that the applicant will also be required to apply to modify.

## 7.0 CONCLUSION

7.1 It is considered that the proposed change of use to include A5 use is acceptable in principle and would have no adverse impact upon local or residential amenity. The proposal is considered to comply with the most relevant local plan policies CS6, CS15, MD2 and 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

Central Government Guidance: NPPF

Core Strategy and SAMDev Policies: CS6, CS15, MD2 and MD10a

### RELEVANT PLANNING HISTORY:

13/02300/FUL Change of use from offices into 6 residential apartments on first and second floors and into A1 and A3 use on ground floor GRANT 27th November 2014

## 11. Additional Information

List of Background Papers: Application documents associated with this application can be viewed on the Shropshire Council Planning Webpages

Cabinet Member (Portfolio Holder): Councillor Gwilym Butler

Local Member: Cllr Nat Green

## 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.