

**DELEGATED**

**AGENDA NO  
PLANNING COMMITTEE**

**6<sup>th</sup> June 2019**

**REPORT OF DIRECTOR,  
ECONOMIC GROWTH AND DEVELOPMENT  
SERVICES**

**19/0527/VARY**

**48A High Street, Yarm, TS15 9AH**

**Section 73 application to vary condition no5 (Opening Hours) of planning approval**

**09/1379/FUL- Change of use from office (Use Class A2) to restaurant/cafe (Use Class A3)**

**Expiry Date 3<sup>rd</sup> May 2019**

**SUMMARY**

The application site is 48A High Street an upper floor premises located centrally within Yarm High street within the Yarm Conservation Area. At ground floor level, below the application site is M&Co, Coral bookmakers, Your Move estate agent. Directly in front of the application site is the Town Hall and parking area while to the rear are a warehouse serving a potato merchant, residential cottage at Cross House and beyond flats at Merryweather Court.

Planning permission was previously granted for a change of use of the premise from the previous A2 office use to an A3 restaurant use in 2009. As part of that planning approval the opening hours were restricted to 8am – 11.30pm with the premise being vacated by midnight.

The application seeks planning permission to vary the approved opening hours of the premise {Macy Browns} to to 2.30 am.

The use of the facility has also been queried with the applicant and following information supplied it is apparent that an element of food and drink which is typically associated with a café is being served and Officers are satisfied that on the basis of the information provided the A3 use will remain the predominant use.

Following dialogue with Environmental Health Officers, the original proposed hours (2.30am) were considered to be excessive. However, more limited opening hours are considered to be more acceptable as there are already approved opening hours of 12.30am (with the premise vacated by 1am) at neighbouring restaurant uses. Consequently it is considered to be appropriate and consistent that the premise could be granted an extension in hours on this basis.

Provided that the hours are restricted to 12.30am (with the premise vacated by 1am) the proposal is considered to be acceptable in respect of the impacts on the amenities of neighbouring premises, such a requirement is subject to a planning condition and the application is recommended for approval with conditions.

**RECOMMENDATION**

**That planning application 19/0527/VARY be approved subject to the following conditions and informative below;**

- Variation of condition:**  
01 ***This approval relates solely to this application for the variation of condition 5 approved opening hours and does not in any way discharge the conditions contained in planning approval 09/1379/FUL dated the 4<sup>th</sup> August 2009 which conditions apply to this consent.***

***Reason: For the avoidance of doubt***

- Hours of opening:**  
02 ***The premises to which this permission relates shall not be open for business outside of the hours of 8.00 hours and 0.30 hours and shall be vacated by all visiting members of the public by 01:00 hours.***

***Reason: In the interests of the amenities of the occupants of residential properties in the locality from excessive noise and disturbance at unsociable hours.***

### **INFORMATIVE OF REASON FOR PLANNING APPROVAL**

#### **Informative: Working Practices**

The Local Planning Authority has worked in a positive and proactive manner and sought solutions to problems arising in dealing with the planning application by gaining additional information required to assess the scheme and by the identification and imposition of appropriate planning conditions.

### **BACKGROUND**

1. Planning permission was granted for a change of use of the premise from the previous A2 office use to an A3 restaurant use in 2009.
2. As part of that planning approval a restriction on opening hours was applied through condition 5:

***The premises to which this permission relates shall not be open for business outside the hours of 08.00 hours and 23.30 hours, and the premises vacated by 24.00 hrs.***

***Reason: In the interests of the amenities of the occupants of residential properties in the locality***

### **SITE AND SURROUNDINGS**

3. The application site is 48A High Street an upper floor premises located centrally within Yarm High street within the Yarm Conservation Area.
4. At ground floor level, below the application site is M&Co, Coral bookmakers, Your Move estate agent, a former bank use with prior approval use for A3 (not yet implemented) and a betting shop. There is an existing access to the property from Yarm High Street, there is also an additional emergency access to the rear.
5. Directly in front of the application site is the Town Hall and parking area. To the rear of the application site is a warehouse serving a potato merchant, residential cottage at Cross House and beyond flats at Merryweather Court.
6. Yarm High Street is a designated District Centre within the adopted Local Plan and provides a range of services including A1, A2, A3, A4, A5 and B1 uses.

## **PROPOSAL**

7. The application is a section 73 application, which seeks to vary the approved hours of use condition (condition 5) of planning approval 09/1379/FUL which permitted a change of use from office (Use Class A2) to restaurant/cafe (Use Class A3).
8. The only consideration of the current application is the impact of the proposal in respect of the variation of opening hours and the resulting impact.
9. The existing condition of application 09/1379/FUL and the approved hours of use are:  
  
*The premises to which this permission relates shall not be open for business outside the hours of 08.00 hours and 23.30 hours, and the premises vacated by 24.00 hrs.*  
  
*Reason: In the interests of the amenities of the occupants of residential properties in the locality.*
10. The applicant seeks to vary this approval to allow for the premises to be open to customers until 2.30am.
11. Clarification has also been sought over the use of the facility to confirm that the use remains within the A3 use classification. The applicant has provided additional information and it is apparent that an element of food and drink which is typically associated with a café is being served. A sample menu and photographs of the 'deli and cake counter' are provided within appendix B. Officers are therefore satisfied that on the basis of the information provided the A3 use will remain the predominant use.

## **CONSULTATIONS**

12. The following Consultations were notified and any comments received are set out below:-

### **Environmental Health Unit**

I have checked the documentation provided and reassessed the details of the change of use to a A3 premises and compared the opening hours with other similar premises in the vicinity and I have significant concerns

The proposed opening hours are beyond the current closing times of other nearby commercial premises which may set a precedence to longer trading hours. I would recommend in order to limit disruption from the premises to nearby residential properties; the opening hours should be restricted.

Opening hours of nearby properties;

<b>Address Use</b>	<b>Planning Ref</b>	<b>Approved open times</b>
77a High Street, Yarm A3,	18/1436/VARY	9.00 - 00.00(22.00 on Sun/Bank Holidays)
85 High Street, Yarm A3	14/1404/VARY	8.00 - 00.30 (vacated by 1 am)
104 High Street, Yarm A3	14/1408/VARY	8.00 - 00.30 (vacated by 1 am)
137 High Street, Yarm A3	13/2685/COU	9.00 - 00.00 (vacated by 1 am)
16 High Street, Yarm A3	12/0198/COU	8.00 - 23.30(vacated by midnight)
49 High Street, Yarm	05/2743/ARC	8.00 - 23.30 (vacated by midnight)

I would therefore object to the opening hours of this premise being 02:30 Monday- Sunday as requested in this application and would recommend a closure hour of 00:30Hr (vacated by 01:00hr) which is in line with the sale of alcohol License and the other commercial premises.

**Councillors, Parish Council & Cleveland Police**- no comments received

### **PUBLICITY**

13. Neighbours were notified and letters of objection have been received from the following:

1. E A Swainston , 10 Merryweather Court Central Street
2. Mr P Mozley , 16 Merryweather Court Central Street
3. Martin Maggorie , 3 Merryweather Court Central Street
4. M J Wade , The Orchard Worsall Road
5. Mr Ian Holland , 1B South View Eaglescliffe
6. Lichfields- On behalf of Cleveland Cable Properties

Concerns are raised in respect of:

1. Unacceptable noise levels
2. Anti-social behaviour/crime
3. Concerns that an outside rear terrace is being created
4. Reduced ability to lease property due to adverse impacts
5. The impact on residential amenity which would result from the proposed extending of the opening hours;
6. Macy Brown's is clearly a cocktail bar chain, their operations would represent a change of use of the premises from Use Class A3 as previously approved to Use Class A4. Because of this, full planning consent needs to be sought from the local planning authority for the proposed use.

### **PLANNING POLICY**

14. Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plan(s) for the area, unless material considerations indicate otherwise. In this case the relevant Development Plan is the Stockton on Tees Borough Council Local Plan 2019.

15. Section 143 of the Localism Act came into force on the 15 January 2012 and requires the Local Planning Authority to take local finance considerations into account, this section s70(2) Town and Country Planning Act 1990 as amended requires in dealing with such an application the authority shall have regard to a) the provisions of the development plan, so far as material to the application, b) any local finance considerations, so far as material to the application and c) any other material considerations.

### **National Planning Policy Framework**

16. The purpose of the planning system is to contribute to the achievement of sustainable development. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives.

17. So that sustainable development is pursued in a positive way, at the heart of the Framework is a **presumption in favour of sustainable development** (paragraph 11) which for decision making means;

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

**Paragraph 127.** Planning policies and decisions should ensure that developments:

f) create 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 and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

**170.** Planning policies and decisions should contribute to and enhance the natural and local environment by:

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution

**180.** Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life

### **Local Planning Policy**

18. The following planning policies are considered to be relevant to the consideration of this application.

#### Strategic Development Strategy Policy 1 (SD1) - Presumption in favour of Sustainable Development

1. In accordance with the Government's National Planning Policy Framework (NPPF), when the Council considers development proposals it will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. It will always work proactively with applicants jointly to find solutions which mean that proposals for sustainable development can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

2. Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.

3. Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise - taking into account whether:

- Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or,
- Specific policies in that Framework indicate that development should be restricted.

#### Strategic Development Strategy Policy 8 (SD8) - Sustainable Design Principles

e. Privacy and amenity of all existing and future occupants of land and buildings;

2. New development should contribute positively to making places better for people. They should be inclusive and establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit.

3. All proposals will be designed with public safety and the desire to reduce crime in mind, incorporating, where appropriate, advice from the Health and Safety Executive, Secured by Design, or any other appropriate design standards.

#### **MATERIAL PLANNING CONSIDERATIONS**

19. The main consideration of the application are the effect of the works in respect of amenity of the area and neighbouring properties as a result of the extension of existing opening hours until the early morning.
20. The site lies in the centre of Yarm High Street and is an existing commercial premises, granted consent to operate at an A3 restaurant use until 23.30 hours, and the premises vacated by 24.00 hours.
21. The principle of the use is therefore established and the main considerations of this application surround the increase in the opening hours and the impacts of the extended opening hours on neighbouring properties, with particular regard to residential amenity.
22. Yarm High Street is a mixed use area of commercial and residential uses in close proximity. The balance between these uses is key to creating a vibrant and sustainable district centre. The existing A3 use of the premises is extant and the principle of the use already established within this location. There are a good number of cafes, restaurants, bars and public houses along the High Street so that local residents will inevitably experience some noise and disturbance from the associated comings and goings of patrons in the evening, as well as from through traffic. This is a matter to be balanced against the benefits of living in a town centre and it would clearly be unreasonable to expect that the same levels of quietness and tranquillity as would be found in wholly residential areas. Indeed, the commercial area and close proximity to such service provision is part of the attraction of living within the town centre.
23. However, it would also not be unreasonable for residents to expect a measure of peace and quiet from the end of the evening onwards, and especially after midnight when traffic flows are likely to be at their lightest and other sources of noise correspondingly more intrusive.
24. The NPPF states that planning decisions should prevent new and existing development from contributing to, or being put at unacceptable risk from unacceptable levels of noise and should

mitigate adverse impacts resulting from noise from new development. In addition decisions should avoid noise giving rise to significant adverse impacts on health and the quality of life. Additionally policy SD8 of the Local Plan states that proposals should respond positively to the privacy and amenity of all existing and future occupants of land and building.

25. General problems associated with restaurants and public house uses often includes excessive noise, disturbance and additional traffic arriving and leaving the area. This can lead to a higher level of activity during unsocial times of day. It is also noted that during the late evening hours the occupiers of nearby dwellings would be particularly susceptible to noise and disturbance from users of the premises.
26. There have been 6 letters of objection received in relation to the application. With primary concerns relating to noise, nuisance and antisocial behaviour.
27. Yarm High Street has a number of approved uses of restaurant/public houses and evening economy uses. The hours approved for these restaurants, is with regards in ensuring the protection of residential amenity within the High Street, and do not in general exceed 12.30-1am.
28. However, the local public houses in the vicinity have opening hours ranging from 12.30am to 2.30am. These are often historic planning uses and therefore there are no planning conditions in respect of opening hours and the hours of operation are controlled only through licensing
29. The current application seeks opening hours which would exceed those of existing approved restaurants in the centre. The proposed opening hours to 2.30am are considered excessive by the Environmental Health Team and are not considered appropriate for a restaurant which may lead to increased pressure for other uses to follow suit.
30. Although it is recognised that there are existing public houses with later opening times, these are not in the control of the Local Planning Authority and a cumulative increase of later opening hours in respect of restaurants and other similar uses would create a greater degree of noise and disturbance at unsociable hours.
31. It is however considered that allowing an extended opening time to 12.30 am with customers vacated by 1am would be in line with other restaurant approvals in the High Street. (Further information in respect of these are set out in appendix B for members information)
32. Therefore, whilst there are adjoining residential uses in close proximity this is considered to be no different than extant situations found elsewhere in the High Street in respect of close proximity to neighbouring residential uses
33. Additionally the Environmental Health team have provided comments in respect of the application and raise no objection to the proposed opening hours of 12.30am with the premises vacated of customers by 1am.
34. It is not considered that extending the opening hours of this particular unit in line with others in the vicinity would have an undue adverse impact on the amenities of adjoining residential properties to a harmful degree that would warrant refusal of the application on these grounds.
35. Consideration is also given to meeting the economic objectives of the NPPF and the challenging economic conditions facing the High Street. Which requires properties/uses to have a degree of flexibility in use to ensure a vibrant and sustainable economic climate to support and sustain businesses in challenging economic times. Allowing the property more flexible trading hours would be in accordance with this objective.

### Residual matters

36. Whilst concerns are raised that the brand Macys Brown is a cocktail bar and the proposed operation would not be in accordance with the approved A3 use class and would be operating as an A4 use.
37. As detailed above in the report, clarification has been sought from the applicant who states that daily food provision will be provided in the form of cakes, scones, paninis, cold meat boards with coffees served throughout the day until 5pm. Cold Boards will be available all evening and therefore Officer are satisfied that the use will be operating as an A3 use.
38. This is not dissimilar to a number of restaurant operations in the area that reduce food provision in the evening and largely become drinking establishments but operate under an A3 consent. Should the operation of the premise change then a new consent may be required and the applicant has been advised of this. Any resulting implications of a change of use would be considered at that time and is not a consideration of the current section 73 application.

### **CONCLUSION**

39. In view of the above considerations and subject to the requisite planning conditions, it is considered that on balance the scheme would not result in a significant adverse impact on the amenity of existing and future occupiers of adjoining or surrounding properties in terms of noise disturbance as to warrant a reason for the refusal of the application. The proposal is therefore considered to satisfy the provisions of the NPPF in this respect.
40. It is recommended that the application be Approved with Conditions for the reasons specified above.

**Director of Economic Growth and Development**  
**Contact Officer Fiona Bage Telephone No 01642 526271**

### **WARD AND WARD COUNCILLORS**

<b>Ward</b>	<b>Yarm</b>
<b>Ward Councillor(s)</b>	<b>Councillor Tony Hampton</b>
<b>Ward Councillor(s)</b>	<b>Councillor Julia Whitehill</b>
<b>Ward Councillor(s)</b>	<b>Councillor Andrew Sherris</b>

### **IMPLICATIONS**

#### **Financial Implications:**

As report

#### **Environmental Implications:**

As report

#### **Human Rights Implications:**

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report.

#### **Community Safety Implications:**

The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report

### **Background Papers**



Stockton-On-Tees Local Plan 2019