

REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	27 th August 2014
Application Number	14/05594/VAR
Site Address	2a Silver Street Malmesbury Wiltshire SN16 9BU
Proposal	Removal of Condition 4 of Planning Permission 00/01929/COU
Applicant	Richard Pogorzelski
Town/Parish Council	MALMESBURY
Division	MALMESBURY
Grid Ref	393423 187107
Type of application	Variation of Condition
Case Officer	Richard Sewell

Reason for the application being considered by Committee

The application is being presented to Committee at the request of Councillor Simon Killane to consider the impact on highway safety, parking and residential amenity of the neighbouring properties.

1. Purpose of Report

To consider the above application and to recommend that planning permission be granted to remove Condition 4 of 00/01929/COU in order to allow the sale of take away food from the premises.

2. Report Summary

The main issues when considering this application are :

- Site location
- Impact of take away on nearby parking arrangements and highway safety
- Potential disturbance and impact on residential amenity

Malmesbury Town Council and St Paul's Without Residents Association object to the proposal.

3. Site Description

The site lies within the Secondary Town Frontage Area as defined in the Adopted North Wiltshire Plan 2011 Map 8A. The proposal site is a cafe/restaurant serving hot and cold meals between the permitted hours of 08:00 and 23:30 hrs on the ground floor and 10:00

and 22:00 on the first floor. The existing building is a two storey terraced property located in the Conservation Area at the north end of Silver Street with residential properties to either side. Silver Street is a one way street that is accessed from the south end with the north end of the street forming a junction with Cross Hayes Lane which is also a one way system. Diagonally opposite the site to the north west is the Cross Hayes Car Park. Parking in the immediate area is controlled by double yellow lines on both sides of Silver Street and on Cross Hayes Lane with Cross Hayes Car Park being pay and display but with free parking available in the evening time.

4. Planning History

88/2295/FUL- Change of Use of Ground Floor to Tea Room PERMITTED

92/1234/S73- Modification of Permission No. 2 on Permission 88/2295/FUL to Extend Opening Hours from 08:00 to 23:30 hours PERMITTED

00/01929/COU- Change of Use of First Floor to Class A3 (food and drink) PERMITTED

04/00393/S73A- Vary Condition No. 3 of 00/01929/COU to Allow Use of First Floor to 23:30 hours REFUSED

5. The Proposal

The application proposes the removal of condition No. 4 of 00/1929/COU to allow the sale of take away meals from the premises.

6. Planning Policy

NPPF Section 2: Ensuring the Vitality of Town Centres

Adopted North Wiltshire Local Plan 2011 policies:

C3 Development Control

R2 Town Centre Secondary Frontage Areas

R5 Local Shops and Services

HE1 Development in Conservation Area

7. Consultations

Malmesbury Town Council- OBJECTION. No planning or commercial reasons have been provided for the Conditions removal and because the proposed change would have a detrimental impact on neighbouring residential properties in terms of litter, noise, traffic safety and illegal parking

St Paul's Without Residents Association- OBJECTION. The Association, in support of numerous local residents, is strongly opposed to this application. The applicant seeks the removal of Condition 4 of the 2000 approval yet fails to provide any information or evidence to suggest what factors have changed since the valid neighbour amenity and highway issue safeguards were required. Silver Street is primarily a very narrow residential street with waiting restrictions on either side. If this application is granted then there will inevitably be unlawful customer parking in the vicinity of the site that will cause obstruction to other traffic. This site is situated at the narrowest point of Silver Street. Moreover, the evidence from take-away premises in general is that they generate an increase in litter and noise which is not appropriate in a residential area. Whilst the Association has a policy of encouraging commercial activity in the town, this particular proposal has too many negative aspects to gain our support. We urge you to refuse the application in order to ensure the existing Condition 4 remains in force.

Highways- NO OBJECTION. There is a public car park approximately 20 metres from the premises. At the times that people are most likely to use this facility is in the evening in which case parking in this car park is free after 6pm. There is a Traffic Regulation Order

outside the premises in the form of double yellow lines which can and should be enforced. In addition, the road is so narrow that any vehicle parked would cause an obstruction to the free flow of the carriageway which is also enforceable. The premises are located within the vicinity of a one-way system in Silver Street, St Dennis' Lane and Cross Lane. Vehicles approaching from the north, which is where a large percentage of the town's residential development is located, would follow the one-way system and use the Cross Hayes car park. In order to park outside the premises vehicles would need to detour down the High Street through Ingram Street to Silver Street, which is to little advantage. The above mentioned parking restriction should apply to any delivery service run from the property.

Environmental Health – NO OBJECTION. Do not feel that the removal of this condition will give rise to the loss of amenity in the surrounding area.

8. Publicity

9 letters of Objection received. Issues with proposal include:

- Illegal parking and impact on highway safety
- Increase in litter, noise, smell and anti social behaviour
- Impact on residential amenity of nearby properties
- Suitability of location for take away premises

9. Planning Considerations

Location of existing cafe

The proposal site is located with the Malmesbury Town Centre Secondary Frontage Area which is allocated for commercial uses where A1, A3 and A5 food premises are actively encouraged to ensure the vitality and activity within the town centre for both residents and visitors. The site has a history of mixed A3 and A1 uses and the proposed take away function will remain ancillary to the primary function as A3 use. There are two existing take away premises within a 100m walk of the proposal site. The accompanying statement states that only 20-25% of the business comes from take away sales and so it is considered that the premises will remain primarily an A3 cafe/restaurant. The original condition preventing take away sales attached to 00/01929/COU was applied as a preventative measure to test the impact the change of use of the first floor to A3 would have on the dwellings either side of the proposal site. Since then it has become clear that the COU has had no significant detrimental impact on residential amenity or highway safety and therefore it is considered appropriate to further vary this condition to allow the cafe to serve take away meals. The NPPF strongly favours sustainable development and looks to increase commercial activity and employment, especially in rural towns. Policies R2 and R5 also look to encourage commercial activities within designated town centres. Despite there being a number of residential properties in close proximity to the proposal site, it is within a designated town centre area and so the take away function is considered an appropriate use and to comply with the relevant local and national policies.

Impact on parking and highway safety

The Highways Engineer has raised no objection to the proposal as it is considered that there will be no significant impact to highway safety or the amenity of nearby residents. The proposal site is in a sustainable location where the site can be easily accessed by foot. Double yellow lines are situated directly in front of the site and there is adequate off street parking available at the adjacent Cross Hayes car park that is free in the evening time. The majority of customers will be sitting down to eat meals and so will be required to park their vehicles at a suitable location or walk to the premises. As take away sales only

make up 20-25% of the business, the potential for illegally parked vehicles is not considered a significant enough factor to prohibit the variation of condition as illegal parking is subject to other legislation and control should it take place.

Residential amenity

The Environmental Health Officer has also raised no objections to the proposal and has commented that the removal of the condition will not give rise to the loss of amenity to the surrounding residents. There is already an adequate ventilation system in place and so any additional take away sales will not further increase the risk of smell and air pollution. The objector's views that a take away service will create additional noise, litter and anti social behaviour cannot be considered to be material planning considerations as this is making a judgement on the character and potential behaviour of customers and such matters are the subject of other legislation and controls. The comments of the Inspector's Report of 04/00393/S73A are in relation to extended opening hours of the first floor to 23:30. The Inspector commented that the extended opening hours of the first floor would be harmful to the living conditions of adjoining residents. As this proposal does not seek to extend the existing opening hours it is considered that these comments do not apply to this proposal and so have not been taken into consideration as part of this assessment.

10. Conclusion

The proposal complies with all of the relevant local and national policies and has the support of the Highways and Public Protection consultees. Despite being located within close proximity to a number of residential dwellings, the proposal site is located within the town centre where commercial uses, including the sale of food for consumption on and off the premises, are considered acceptable. The Highways Engineer has confirmed that there is adequate off street parking available adjacent to the site and that all of the necessary preventions are in place to restrict illegal parking. As the sale of take away food will remain ancillary to the main A3 use of the premises as a cafe/restaurant, it is considered the proposal will not result in any significant detrimental impact to highway safety or residential amenity in terms of noise and air pollution. Taking all of the above into account it is considered that there is no sound planning justification to refuse the proposal and so it is recommended that planning permission be granted.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON:

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall be carried out in accordance with the documents (including plans) incorporated into this decision, and subsequently approved pursuant to this decision (if applicable), unless otherwise approved by the local planning authority in the form of a new application

REASON:

To ensure that the development is implemented in accordance with this decision in the interests of public amenity

- 3) The ground floor of 2A Silver Street shall not be open to customers before 08:00 hours nor after 23:30 hours and the first floor before 10:00 hours nor after 22:00 on any day for the use hereby permitted unless otherwise agreed the Local Planning Authority in the form of a new application

REASON:

In the interests of the amenity of the area.

INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

Background Documents Used in the Preparation of this Report: Application Documentation

