

## **SECTION A – MATTERS FOR DECISION**

### **Planning Applications Recommended For Approval**

<b><u>APPLICATION NO:</u> P2015/0678</b>	<b><u>DATE:</u> 28/07/2015</b>
<b>PROPOSAL:</b>	Variation of Condition 2 of P2001/0452 (Opening times) approved on the 20th Jul 2001, to extend opening between 8am until 11.30pm Monday to Sunday
<b>LOCATION:</b>	2-3 Old Market Street, Neath SA11 3NA
<b>APPLICANT:</b>	Mrs Kelly Mason
<b>TYPE:</b>	Vary Condition
<b>WARD:</b>	Neath North

This application has been called to Committee by Councillor Alan Lockyer (Neath North) in respect of the impact on the adjacent residential property.

#### **Planning History:**

The site has the following relevant planning history:

83/0655	Listed building consent re-render with painted render to match front of property and reroof with dark grey imitation slates	Approved	17/11/83
88/0592	New shop front and removal of internal partitions	Approved	11/10/88
88/0602	Listed building consent new shop front	Approved	11/10/88
01/0452	Change of use from cycle shop to café / sandwich bar plus formation of toilets	Approved	03/07/01
01/0454	Listed building application - change of use from cycle shop to café / sandwich bar plus addition of staff / disabled toilets and double doors to front elevation	Approved	03/07/01
01/0715	1 shop sign and 2 projecting signs	Approved	14/08/01
01/0729	Listed building application for the erection fascia & hanging signs.	Approved	11/09/01
01/0929	Amendment to extend opening times until 10.00pm for the period 12th to 15th September 2001	Approved	10/09/01
01/1357	Variation of condition 2 of planning	Approved	14/12/01

approval no p/01/0452 regarding times of opening (opening hours until 10pm between Friday 23rd November until Monday 24th December 2001 inclusive)

02/0651	Listed building application - form opening front window - alterations to allow front window to open completely	Refused	03/12/02
04/1291	Installation of condensing unit for air conditioning	Approved	06/12/04

### **Publicity and Responses if applicable:**

2 neighbouring properties were consulted and a site notice displayed on site. In response, to date one letter of objection has been received objecting to the development on a number of grounds relating to the impact of the extended opening hours on their residential property adjacent, which are summarised as follows:

- a) The objector has made reference to the original application for the A3 use and that they objected to that application and submitted a copy of their original objection letter.
- b) The objector makes reference to the appraisal within the original report for the A3 use (P2001/0452) "The site, whilst located in the main shopping street, adjoins a residential property and any evening or late night activities are likely to adversely affect the amenities of the residents" and that this statement still true today
- c) The reason the condition was imposed was in the interest of the amenities of the adjoining residents.
- d) There are two public houses within the street and a licenced club and further public house nearby. They are all popular and play music, and naturally there is significant movement between the establishments. There are a large number of people on the pavements taking and smoking and this continues well into the early hours.
- e) The objector has experienced antisocial behaviour from the existing establishments within the area.

- f) The additional hours will result in more people using the café bar; they will leave the establishment and smoke. There will be an increased activity resulting in noise and smoke around the objectors property.
- g) Customers will remain outside smoking and talking after the premises has shut, so in reality there will be people around until the early hours of the morning.
- h) The property could turn into a public house in the future with the extended times.
- i) Change in the street with a growth of wine bars in an area close to multiple stores near to the new development within the town centre
- j) Tables and chairs being placed outside for customers, this will create a nuisance
- k) Noise levels from the café bar from the number of customers and music causing a nuisance to my property.
- l) The objector comments on the applicant's access statement in regards to the property trading as a café until Feb this year, the other empty shop was trading until March. The statement gives the impression of a street with many shops empty for a long time.
- m) The objector agrees that a good retail mix of premises should be encouraged and supported.

In addition to this 4 letters of support have been received. 3 of the letters are from traders and businesses within the town centre with general comments of support in relation to applicant and the business and how it would benefit the town centre with one letter of support from the Neath and District Chamber of Trade which is summarised as follows:

*"The Chamber of trade wish to support the application, they believe this type of development would be a welcome addition to the Town of Neath and fits in exactly with the vision for the town published by the previous leader of the Council Derek Vaughan MEP. Mr Vaughan's wish was for the Town to revert to a busy restaurant bar culture. The applicant is experienced in the catering trade and the bistro will provide eight jobs in the town"*

**Councillor Alan Lockyer** (Neath North) has requested that the application is determined by Planning Committee, noting that he does not want the conditions changed which were applied to the A3 planning for 2-3 Old Market Street in 2001 as nothing has changed regarding the attached residential property to date.

**Neath Town Council:** No reply therefore no observation to make.

**Head of Engineering and Transport (highways):** No objection

**Environmental Health (Noise):** No objection

**Environmental Health (Food Safety):** No objection

#### **Description of Site and its Surroundings:**

The property is a Grade II Listed Building, located within the designated Neath Town Centre Conservation Area. It currently has an A3 use and was last operated by Mint Café which ceased trading in February 2015.

The property lies within a designated 'main shopping street' and Town Centre as defined by Policies TRL1 and TRL2 of the Neath Port Talbot Unitary Development Plan.

Given its town centre location, the surrounding area is commercial in character, albeit immediately adjacent to the site is a residential property (No. 1 Old Market Street). On the other side of the site is Iceland food store.

It is noted that while the adjacent residential property has clearly been in use for many years – and is therefore lawful - there is no formal record of planning permission having been granted for the change of use of the ground floor which was previously used as a shop until 1994. The property was in residential use, however, when the Class A3 use was approved in 2001.

#### **Brief description of proposal:**

The application is for the variation of Condition 2 of planning permission P2001/0452 to allow opening between the hours of 8am until 11.30pm 7 days a week.

Condition 2 currently restricts the hours as follows: -

(2) The use hereby approved shall not operate between the hours of 1800 and 0800 on any day without the prior written approval of the Local Planning Authority.

Reason: In the interests of the amenities of the adjoining residents.

### **Material Considerations:**

The main issues to be considered in the determination of this application relate to the principle of increasing the opening hours, having particular regard to prevailing national and local planning policies, the impact upon the amenity of nearby residents and the character and appearance of the surrounding area.

### **Policy Context:**

#### National Policy

Paragraph 10.2.4 of **Planning Policy Wales Edition 7 (July 2014)** states that *“Although retailing should continue to underpin town, district, local and village centres it is only one of the factors which contribute towards their well-being. Policies should encourage a **diversity of uses in centres**. Mixed use developments, for example combining retailing with entertainment, restaurants and housing, should be encouraged so as to promote lively centres as well as to reduce the need to travel to visit a range of facilities. Leisure uses can benefit town and district centres and with adequate attention to safeguarding amenities can contribute to a successful evening economy.”*

Technical Advice Note 4 Retailing and Town Centres (1996) is also of relevance

#### Local Policy

The adopted Development Plan comprises the Neath Port Talbot Unitary Development Plan, within which the following Policies are of relevance:

<b>Policy TRL1</b>	Proposals within Town Centres
<b>Policy TRL2</b>	Proposals within Main Shopping Streets
<b>Policy GC1</b>	New Buildings/ Structures and Changes of Use

<b>Policy ENV18</b>	Listed Buildings
<b>Policy ENV19</b>	Proposals within a conservation area or which would affect the setting of a listed building

The fundamental issues set out within Section 10 of Planning Policy Wales are the basis of the Town centre policies within the Neath Port Talbot Unitary Development Plan. It is noted that the UDP was adopted in 2008, and therefore postdates the original grant of planning permission for the Class A3 unit in 2001.

Policy TRL1 - Proposals within Town Centres – states as follows: -

*“Proposals for retail and other town centre uses within the “Main Shopping Streets” and “other Shopping Streets” in Neath, Port Talbot and Pontardawe, proposals should meet the following criteria.*

- a) they would integrate with and strengthen the layout, retail character and pedestrian flows to and/or within the centre;*
- b) no unacceptable impacts (including those on amenity, traffic congestion, parking and servicing, environment, crime and disorder and townscape) are created;*
- c) wherever appropriate an attractive retail type ground floor frontage and display is provided unless the proposal would affect the upper floors only; and*
- d) Within the “Shopping Streets” they would not create any unacceptable adverse impacts on the amenity, security or safety of nearby residential areas outside the shopping streets.”*

Policy TRL2 – Proposals within Main Shopping Streets – then states that:

The retail vitality, attractiveness and viability of the “Main Shopping Streets” in Neath and Port Talbot will be protected. Key town centre uses (other than retail) which enhance the vitality, attractiveness and viability of the “Main Shopping Streets” will be allowed provided that the ground floor frontage would not create or magnify a significant gap in the retail frontage.

The supporting justification for Policy TRL2 goes on to state that *“Whilst the primary retail function of the shopping of the centres should not be compromised, it is important to encourage a diverse range of uses to complement their shopping function and increase their vitality. Some non-retail uses such as banks and building societies provide services that are*

*frequently used by shoppers. They generate high levels of pedestrian activity and complement the main retail function. Uses, such as coffee shops, cafes and restaurants also help to maintain the vitality of the town centres throughout the day and into the evening.” (emphasis added)*

While the proposal is not a ‘new’ proposal, and instead relates to an extension of opening hours, nevertheless the above Policies remain of relevance insofar as the need for such retail development to meet the stated criteria, and given the generally positive presumption in favour of retail development within the ‘main shopping streets’, which are deemed to contribute to their vitality, attractiveness and viability.

Within this context, it is noted that while the premises has an authorised Class A3 use, it is currently vacant. Therefore bringing the establishment back into use would help strengthen the pedestrian flows within the town centre.

There have been no reports that this premises has resulted in an increase in crime and disorder in the town centre, and there is no reason to suggest that the extended use would have an unacceptable impact in relation to crime and disorder.

Having regard to the above, it is considered that the general principle of extending the opening hours into the evening within this town centre location is acceptable in principle subject to an assessment of the acceptability of impacts in respect of matters such as residential amenity, traffic congestion and parking / servicing, albeit that such assessment should be made within the wider context of its town centre location.

### **Residential Amenity:**

As noted above, Policy TRL 1 includes criterion which require, inter alia, that development should have (b) *no unacceptable impacts ... on amenity; and (d) within the “Shopping Streets” they would not create any unacceptable adverse impacts on the amenity, security or safety of nearby residential areas outside the shopping streets.*

The proposed variation of condition would allow the existing A3 unit to remain open until 11.30pm in the evening 7 days a week. However the property is located within a main shopping street and in the town centre of

Neath as defined by the Neath Port Talbot Unitary Development Plan. The area is made up of mostly commercial premises, supermarkets, public houses and several restaurants, and the occasional residential property.

There is, however, a residential property immediately adjacent to the premises, and the occupant has noted that the Officer's report on the 2001 planning permission (P2001/0452) for the A3 use states that "The site, whilst located in the main shopping street, adjoins a residential property and any evening or late night activities are likely to adversely affect the amenities of the residents". They note that this statement is still true today.

While it is acknowledged that the report expressed such a view, and the relationship between the two properties remains the same today as it was in 2001, nevertheless it is necessary to consider this application against the current Planning Policy context described above. In this respect it is noted that since 2001 National and Local policy has evolved, with both encouraging mixed use developments so as to promote lively centres during the day and evening. Accordingly, the assessment must have regard to current Policy and any impact the development may have bearing in mind the application site is within the town centre where there is already late night activity. Moreover, within a town centre location such as this, it is also considered that residents have to accept a greater degree of noise and disturbance than might otherwise be expected in a primarily residential area, since otherwise residential properties could themselves impact on the vitality of town centres.

In light of the proximity to the adjacent residential property and the objections raised in respect of the impact on it, along with the issues raised by the Local Member, the Planning Department sought additional clarification from the Environmental Health Officer (Noise) (EHO). They advise that the application is for an extension of opening hours to the existing use of the premises, and their understanding that the applicant intends to continue playing background recorded music during the extended opening hours. The Environmental Health section has not received any noise complaints in the past concerning the activities from this premises – albeit it is accepted that the hours were previously restricted - and state that they have no objections to the application.

They also advise that Members should be mindful of the role of other regulatory regimes in controlling noise from this property. The café/bar will require a Premises License from the Licensing section which will require the



operator to take steps to prevent public nuisance. Environmental Health will be consulted during this process and if the Premises Licence application is for activities that are different to those currently undertaken at the premises, then conditions will be required to address noise issues. Furthermore Environmental Health has powers under the Environmental Protection Act 1990 to require the café / bar operators to cease noisy activities or undertake soundproofing works should a significant noise issue arise at a later date.

In respect of whether it would be reasonable to require additional noise insulation to the party wall with the adjacent residential property, given the absence of any previous noise issues with this property, the Environmental Health Officer (Noise) consider that this is not warranted at this time.

Having regard to the above, in terms of noise and disturbance it is considered there is already a late night activity in this area due to existing pubs and restaurants which currently open later than 11.30. Indeed, the objector has noted that there are two public houses within the street and a licenced club and further public house nearby stating that "They are all popular and play music, and naturally there is significant movement between the establishments. There are a large number of people on the pavements taking and smoking and this continues well into the early hours".

Within this local context, it is acknowledged that increasing the opening time of this café/bar establishment to 11.30pm would potentially increase the degree of immediate disturbance to the adjacent property. As noted above, however, there is a positive presumption in favour of developments which add to the vitality of town centres and, within this context, it is considered that residents who live within such centres have to accept a greater degree of noise and disturbance than might otherwise be expected in a primarily residential area.

Accordingly, in a wider town centre context, it is considered that the premises location, within a designated town centre and main shopping street, justifies the extended opening times requested, and the adjacent residents within a town centre would not see an impact from this proposal that would unacceptably affect their amenity through noise or disturbance over and above what already exists. The proposal is therefore considered to be acceptable in terms of residential amenity and to accord with Policies TRL 1 and TRL 2 of the adopted Unitary Development Plan.

### **Visual Amenity:**

With regards to visual amenity, it should be noted that the building is Listed and located within Neath Town centre conservation area. However as no external alternations are planned, and the proposal is to vary the opening hours only, the proposal would not impact upon the character and appearance of this or adjacent Listed Buildings, or the surrounding conservation area.

### **Highway Safety (e.g. Parking and Access):**

The property is located within the town centre, and access by vehicle is limited by Traffic Regulation Orders. Whilst the property can therefore be serviced, it is not considered that the use will create any unacceptable impacts upon highway and pedestrian safety. There are existing public car parks in the vicinity of the site and on street parking facilities in proximity of the site. As such the head of Engineering and Transport (highways) has raised no objection to the proposal.

### **Others including objections**

While the report above addresses the main issues raised by the objector, the following comments are made in relation to the letter of objection:

The objector has made reference to the original application for the A3 use and that they objected to that application and submitted a copy of their original objection letter.

**Each application must be determined on its own individual merits, base on prevailing planning policy. This application relates to the extending the opening times of an existing A3 use**

The reason the condition was imposed was in the interest of the amenities of the adjoining residents. **The original application was assessed in relation to current Policy, while the applicant at the time (“baguette de jour”) only wished to operate during the daytime, hence the reason for this condition. The condition restricts the premises’ opening hours, and allows the Planning Department to fully assess any future application that wishes to extend the opening time, having regard to residential amenity, which is what has now been assessed within this report.**

There are two public houses within the street and a licenced club and further public house nearby. They are all popular and play music, and naturally there is significant movement between the establishments. There are a large number of people on the pavements taking and smoking and this continues well into the early hours. **It is accepted that there is already a late night activity within the area that will extend beyond the times that the applicant has requested to remain open until.**

The objector has experienced antisocial behaviour from the existing establishments within the area, despite these being a distance away. **As stated within the report, the premises would still require a license which would cover such matters, while should there ever be any issue in the future the objector would be protected under the Environmental Protection Act 1990.**

The additional hours will result in more people using the café bar; they will leave the establishment and smoke. There will be an increased activity resulting in noise and smoke around the objectors property. **As stated within the report there is already late night activity in the area which will be beyond the times that the applicant has requested. It is considered that the movement of people in the streets would not be unacceptable within the town centre context. In relation to smoking the planning department has no control over people smoking in a public street.**

In response to customers remaining outside smoking and talking after the premises has shut, so in reality there will be people around until the early hours of the morning. **The planning department has no control on what people do when they are in the public domain however there is no reason to believe that clientele that frequent a café bar would stand outside for any length of time once the establishment is closed. Given the town centre location a refusal could not be justified on these grounds.**

In relation to the property being able to turn into a public house in the future with the extended times; **the property already has an A3 with no restrictions on its use within the A3 use class, therefore it could currently operate as a bar, restaurant, café etc. This application relates to the extension of time to allow a café/bar to operate later into the evening, and this report assesses whether the A3 use operating at the requested times would be acceptable at this location.**

Change in the street with a growth of wine bars in an area close to multiple stores near to the new development within the town centre. **As stated within the report, National and Local Policy encourage mixed use developments, for example combining retailing with entertainment, restaurants and housing should be encouraged so as to promote lively centres during the day and evening. This proposal does not reduce the retail offering or harm the character or vitality of the town centre.**

In relation to there being tables and chairs placed outside for customers, this will create a nuisance. **This is not considered by the planning department unless they are permanently fixed in position. However this application is a section 73 application relating the amendment of an opening hours condition and is not assessing any external seating. If this matter arises in the future it will then be considered.**

Noise levels from the café bar from the number of customers and music causing a nuisance to my property. **Issues of noise and disturbance have been addressed in the report.**

The objector comments on the applicant's access statement in regards to the property trading as a café until Feb this year, the other empty shop was trading until March. The statement gives the impression of a street with many shops empty for a long time. The applicant has stated the property is vacant has been for just over a year. This is incorrect business rates confirmed the property become vacant in February this year which means it's been vacant for approximately 7 months. However regardless of the length of time the property is currently vacant. **The applicant wishes to extend the opening times so that she can relocate her current business to these premises. The report assesses the impacts upon increasing the opening to the existing A3 use within this Town centre location and any impacts it may have**

The objector agrees that a good retail mix of premises should be encouraged and supported. **National and Local policies that cover the types of development to be encouraged within the town centre has been addressed within this report.**

## **Conclusion:**

It is considered that the variation of condition to allow opening between 8am until 11.30pm would not detract from the vitality, viability, or attractiveness of the Town Centre, nor would it undermine the centre's core retail function. There are no significant external alterations proposed, and thus the visual amenity and design of this Listed Building, within a designated Conservation Area would not be affected to the detriment of its quality and character. Having regard to its town centre location, the extended opening times would not result in any unacceptable noise and disturbance that would impact detrimentally on adjoining residential property, and there would be no unacceptable impact in relation to Highway and pedestrian safety. As such it is considered that the proposed development would comply with Policies GC1, ENV17, ENV19, TRL1, and TRL2 of the Neath Port Talbot Unitary Development Plan.

**RECOMMENDATION:    Approval with Conditions**

## **CONDITIONS**

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

Reason

To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

(2) Customers are not permitted on the premises outside the hours of: 08:00 to 23:30 Monday to Sunday including Bank holidays

Reason

In the interests of the amenities of the residents living within the vicinity of the application site.

## **REASON FOR GRANTING PLANNING PERMISSION**

The decision to grant planning permission has been taken in accordance with Section 38 of the Planning and Compulsory Purchase Act 2004, which requires that, in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise.

The variation of condition to allow opening between 8am until 11.30pm would not detract from the vitality, viability, or attractiveness of the Town Centre, nor would it undermine the centre's core retail function. There are no significant external alterations proposed, and thus the visual amenity and design of this Listed Building, within a designated Conservation Area would not be affected to the detriment of its quality and character. Having regard to its town centre location, the extended opening times would not result in any unacceptable noise and disturbance that would impact detrimentally on adjoining residential property, and there would be no unacceptable impact in relation to Highway and pedestrian safety. As such it is considered that the proposed development would comply with Policies GC1, ENV17, ENV19, TRL1, and TRL2 of the Neath Port Talbot Unitary Development Plan.