

**Application Number: 18/11552** Full Planning Permission

**Site:** 9 THE PARADE, ASHLEY ROAD, ASHLEY,  
NEW MILTON BH25 5BS

**Development:** Use as restaurant/winebar (Use Class A3/A4) (Retrospective)

**Applicant:** Mrs Bowen

**Target Date:** 26/03/2019

**Extension Date:** 03/05/2019

<b>RECOMMENDATION: Grant Subject to Conditions</b>
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<b>Case Officer: Jo Chambers</b>
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**1 REASON FOR COMMITTEE CONSIDERATION**

Contrary to Town Council view (in part) with regard to the level of control proposed.

**2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS**

Built-up Area  
Local Shopping Frontage  
Plan Area  
Planning Agreement  
Aerodrome Safeguarding Zone

**3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES**

**Core Strategy**

**Objectives**

- 1. Special qualities, local distinctiveness and a high quality living environment
- 4. Economy
- 6. Towns, villages and built environment quality

**Policies**

- CS1: Sustainable development principles
- CS2: Design quality
- CS5: Safe and healthy communities
- CS10: The spatial strategy
- CS20: Town, district, village and local centres

**Local Plan Part 2 Sites and Development Management Development Plan Document**

DM17: Local shopping frontages in the built-up areas of Totton, Hythe, Lyminster, New Milton, Ringwood and Fordingbridge

## **NPPF**

NPPF Ch.2 - Achieving sustainable development  
NPPF Ch. 6 - Building a strong, competitive economy  
NPPF Ch.8 - Promoting healthy and safe communities  
NPPF Ch.15 - Conserving and enhancing the natural environment

## **4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE**

Section 38 Development Plan  
Planning and Compulsory Purchase Act 2004  
National Planning Policy Framework

## **5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS**

SPD - New Milton Local Distinctiveness - Character Area 4 Ashley

## **6 RELEVANT PLANNING HISTORY**

Proposal	Decision Date	Decision Description	Status
15/10564 Use as coffee shop & bistro	02/10/2015	Granted Subject to Conditions	Decided

## **7 PARISH / TOWN COUNCIL COMMENTS**

### **7.1 New Milton Town Council: acceptable - (non-delegated)**

The Committee whole heartily supports the application, as supported by New Forest Core Strategy policy CS20 (f) regarding Town, district, village and local centres. There is concern however that the restriction suggested by Environmental Health, forcing trading to cease at 14:00hrs on Sundays and Bank Holidays will unfairly penalise the business when nearby takeaways operate until 2300hrs. This is inconsistent. Also the Premises Licence could be called for review should its operations disturb residents.

### **7.2 Additional comments:**

The members reluctantly agree with the suggestion of 1800hr closure Sundays and Bank Holidays. We would like officer reassurance that if the premises seek an amendment to this closure time after a suitable period without complaint, that it would be treated favourably. The EHO states that no assessment has been made on the partitions effectiveness to prevent noise to residents. It appears that the site is not going through the same process that 8 Station Road had to, on application 16/11594. Condition 2 refers to sound proofing. Surely if this aspect was sorted the premises could open for longer and not negatively affect the nearby residences. It may cost more initially, but would put the premises in a much stronger trade position. Please could we have your reassurance that the two sites are being treated in the same way, or that the current soundproofing is adequate. NMTC would be happy to drop the non-delegated status of their comment if officers are able to confirm the above.

### **7.3 Further Comments:**

Whilst its appreciated that there has been positive change since Town Council initially responded [regarding proposed condition requiring 18:00hrs closing on Sundays and Bank Holidays], it is considered that the site is not being treated in the same way as its neighbouring outlets or that within the town that have residences above.

## **8 COUNCILLOR COMMENTS**

None

## **9 CONSULTEE COMMENTS**

9.1 NFDC Environmental Health (Pollution) :no objection but recommend conditions regarding cooking equipment and hours of use.

## **10 REPRESENTATIONS RECEIVED**

None

## **11 CRIME & DISORDER IMPLICATIONS**

None

## **12 LOCAL FINANCE CONSIDERATIONS**

Local financial considerations are not material to the decision on this application

## **13 WORKING WITH THE APPLICANT/AGENT**

In accordance with paragraph 38 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case all the above apply and discussions have taken place with the applicant regarding the need for planning conditions to restrict the types of cooking equipment/processes and hours of opening. These conditions have been agreed and as planning consent is recommended

## **14 ASSESSMENT**

14.1 This application is retrospective and was submitted as a result of an enforcement investigation which revealed the premises were being used for mixed A3 (Restaurants and cafes) /A4 (Drinking establishments) use.

14.2 9 The Parade is a ground floor unit located within a parade of other units. forming part of a Local Shopping Frontage, as identified on both the proposals map of the Local Plan Part 2: Sites and Development Management Development Plan. It is also within the New Milton Local Distinctiveness SPD. There are residential properties opposite and residential flats occupy the upper floors above the parade. Both the ground floor unit at no. 9 and the flat above are in the same ownership but are subject to separate lease arrangements. Notice has been served on the owner of the premises.

14.3 Permission was granted in 2015 (15/10564) for a coffee shop and bistro (A3 Restaurants and cafes). This planning permission was granted in the context that the business and the flat above were in the same ownership and use. This allowed for the sale of food and drink for consumption on the premises. The planning permission includes conditions restricting hours and the cooking processes/type of cooking equipment. These conditions specified that there should be no activity on the site beyond the hours of 08:00 and 23:00 Mondays to Saturdays and 8:00am to 14:00 on Sundays and Bank Holidays; and no food or drink consumed on the outside areas other than between the hours of 9:00am to 21:00pm hours Monday to Saturdays and 9:00am to 14:00 on Sundays and Bank Holidays.

14.4 The current application seeks to formulate the change of use from A3 to allow a mixed A3/A4 use and an increase in opening hours until 23:00hrs on all days of the week. A4 Drinking establishments allows for the use as a public house, wine bar or other drinking establishments.

14.5 The main issues for consideration in the determination of this planning application relate to:

- Principle of development /use;
- Impact on amenity;
- New Milton Town Council Comments

14.6 Principle of Development/Use

This Local Shopping Frontage provides for the day to day shopping and service needs of the area (Policy DM17). Policy CS20 seeks to ensure active ground floor frontages and permits new retail and other commercial, service and leisure uses to help meet the day to day needs of the local community and be of a scale appropriate to the role of the local centre. Therefore, the proposed change to mixed A3/A4 use is acceptable in principle with regard to Policies DM17 and CS20.

14.7 Impact on Amenity

The original planning application for A3 use at these premises was retrospective. At the time of considering that application it was noted that the first floor flat was under the same ownership as the café and that the cafe use had taken place at the premises for some months without complaints. It was considered that the amenity of residential properties on the upper floors of the parade and opposite could be protected by planning conditions restricting opening hours and the type of cooking appliances to be used. These factors negated the need for a full extraction system and limited the potential associated noise related matters. With regard to possible noise transference to the residential flat, it was considered that the absence of any complaints regarding the application and the common ownership with the ground floor unit would minimise the impact making it acceptable subject to the specified conditions. The existing A3 use and restrictive conditions are an important material consideration in the determination of the current planning application.

14.8 Paragraph 180 of the NPPF requires new development to be appropriate for its location and to mitigate potential adverse impacts to avoid noise giving rise to significant adverse impacts on health and quality of life.

- 14.9 Environmental Health has records of two complaints (one in 2017, the other in 2018) regarding noise from patrons on the pavement and noise from inside the premises at 00:30hrs and 03:00hrs. This was a breach of planning control.
- 14.10 Environmental Health has recommended conditions similar to those attached to the existing planning permission with regard to the type of cooking equipment (plus air fryer used by the applicant) and hours of opening. The limitation of the type of cooking equipment negates the need for extraction ventilation equipment that would raise further issues. Limiting the hours of use is intended to provide some period of quiet for residents above, particularly as no assessment has been made regarding the effectiveness of the partition between the properties to provide mitigation of noise from such a use.
- 14.11 These concerns reflect the planning requirement to mitigate potential adverse impacts arising from the proposed A3/A4 use thereby safeguarding the satisfactory amenity of the first floor residential accommodation and other nearby housing. In securing this, there is an expectation that the planning system will be proportionate in its actions.
- 14.12 The level of control will be influenced by the planning conditions attached to the existing A3 use operating at this site; absence of objections received from neighbours in response to the current planning application and no objection from Environmental Health Officers subject to appropriate planning conditions on the basis of the site's history and that the activities of the unit are not subject to other controls.
- 14.13 Consideration has been given to a condition requiring the submission of acoustic reports. However, this is not considered proportionate given the extant A3 planning permission and agreement by the applicant to proposed conditions. Therefore, conditions are recommended restricting opening hours and cooking equipment/processes.
- 14.14 It is considered that the proposed conditions are reasonable and proportionate given the presence of a flat above and the requirement of para 180 of the current revised NPPF to 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. In particular this is balanced with the requirement in para 80 NPPF that significant weight should be placed on the need to support economic growth. It is considered that the proposed conditions strike an appropriate balance and meet the required tests in this case.

#### New Milton Town Comments

- 14.15 New Milton Town Council has recommended approval of the applied for opening times to 23:00hrs, suggesting other legislation is available to control potential nuisance. It has also been suggested that acoustic reports should be required for the premises as was the case at 8 Station Road (planning permission 16/11594). The Town Council wishes to ensure a consistency of approach.

14.16 In response to comments from New Milton Town Council, it is felt that a termination time on Sundays and Bank Holidays of 18:00hrs for internal use only, and would still afford residents some period of quiet, with no alteration to the condition for the use of outside space.

14.17 Each planning application must be determined on its own merits. With regard to the Town Council comments, there are important differences between the current application at 9 The Parade and that previously considered at 8 Station Road:

- 9 The Parade already benefits from an A3 use with restrictive conditions on opening hours. It seeks permission for a change to mixed use A3/A4 (Drinking Establishments).
- In contrast, 8 Station Road sought permission for a change of use from A1 (shops) to A4 (Drinking Establishments). Objections were received from residential properties regarding potential noise and disturbance from the change of use.
- There is a greater potential effect on residential amenity arising from a change of use from A1 (shops) to A4 (Drinking establishments) than from A3 (Restaurants & cafes) to a mixed A3/A4 use as proposed at 9 The Parade.
- Residential properties were located above, opposite and to the rear of 8 Station Road, which warranted a condition relating to acoustic matters.

14.18 In that context, given the greater potential for noise and disturbance to residential properties at Station Road, a condition regarding an acoustic report was required. In the circumstances, this was appropriate and justified given the requirement in the National Planning Guidance that noise needs to be considered when new developments may create additional noise and disturbance and the requirement to prevent both new and existing development from contributing to or being adversely affected by noise pollution.

14.19 It would not be possible to control concerns regarding the residential amenity of the first floor flat via the Licensing Act 2003. These concerns lie with non-licensable activities, and the proposal is unlikely to cause nuisance to sufficient numbers of properties to constitute a public nuisance.

14.20 Furthermore, the applicant has been consulted and has agreed to the proposed conditions.

#### 14.21 Other Matters

It is noted that there is a layby outside The Parade which offers off-street parking. This remains unchanged from the previous application on this site. No parking concerns have been raised or identified in the consideration of this application.

#### 14.22 Conclusion

Officers are in agreement with New Milton Town Council regarding the need for consistency in planning decision-making. However, each application must be determined on its own merits. The circumstances of the current application differ from those at 8 Station Road as identified in

the assessment set out above. There is clear planning justification for the proposed conditions responding to the material planning considerations relating to this site and that the proposed conditions are necessary, relevant to the development to be permitted and reasonable in all other respects. They protect residential amenity whilst allowing the needs of the local community to be supported and a young local business the opportunity to develop. As such the application is recommended for approval, subject to conditions restricting hours of operation and the types of cooking equipment to be used.

- 14.23 In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

## **15. RECOMMENDATION**

### **Grant Subject to Conditions**

#### **Proposed Conditions:**

1. The development permitted shall be carried out in accordance with the following approved plans: Site Location Plan #00382513-5A42FA, Block Plan #00382511-D1EADE  
  
Reason: To ensure satisfactory provision of the development.
2. No cooking processes shall be undertaken other than the preparation of hot and cold beverages, the use of soup kettle, toaster, the heating of food in a microwave oven and/or a sandwich/panini type toaster and/or a waffle iron and hot plate and griddle and/or airfryer. No other cooking equipment shall be used without the prior written approval of the Local Planning Authority.  
  
Reason: To minimise odour nuisance, in the interests of environmental health and to comply with Policy CS2 of the Core Strategy for New Forest District outside the National Park.
3. No activity shall take place within the building in connection with the approved use other than between the hours of 08:00 - 23:00 Mondays to Saturdays and 08:00 - 18:00 on Sundays and Bank Holidays.  
  
Reason: To safeguard the amenities of nearby residential properties in accordance with Policy CS2 of the Core Strategy for the New Forest District outside the National Park.

4. The outside area shall not be used other than between the hours of 09:00 - 21:00 Mondays to Saturdays and 09:00 -14:00 on Sundays and Bank Holidays.

Reason: To protect the amenities of the surrounding residential properties in accordance with Core Strategy policy CS2 of the adopted New Forest District Local Plan First Alteration.

**Notes for inclusion on certificate:**

1. In accordance with paragraph 38 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case all the above apply and discussions have taken place with the application regarding the need for planning conditions to restrict the types of cooking equipment/processes and hours of opening. These conditions have been agreed with the applicant and as such planning consent is recommended.

**Further Information:**

Jo Chambers

Telephone: 023 8028 5588





# New Forest DISTRICT COUNCIL

Tel: 023 8028 5000  
www.newforest.gov.uk

David Groom  
Service Manager  
Planning and Building Control  
New Forest District Council  
Appletree Court  
Lyndhurst  
SO43 7PA

**Planning Development  
Control Committee**  
May 2019

Item No: 3c  
9 The Parade  
Ashley Road  
Ashley New Milton  
18/11552

Scale 1:1250

N.B. If printing this plan from  
the internet, it will not be to  
scale.

