

**Application Number:** 15/10228 Full Planning Permission

**Site:** OLD DOLPHIN HOUSE, QUAY STREET, LYMINGTON SO41  
3AS

**Development:** Use as cafe/coffee shop (Use Class A3)

**Applicant:** Miss Albosh

**Target Date:** 30/04/2015

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15/10228

**1 REASON FOR COMMITTEE CONSIDERATION**

Contrary to Town Council View

**2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS**

Primary Shopping Area  
Listed Building  
Town Centre  
Conservation Area

**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

CS2: Design quality  
CS3: Protecting and enhancing our special environment (Heritage and Nature Conservation)  
CS5: Safe and healthy communities  
CS10: The spatial strategy  
CS20: Town, district, village and local centres  
CS25: Developers contributions

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

DM1: Heritage and Conservation  
DM14: Primary shopping frontages

**4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE**

Section 38 Development Plan

**5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS**

SPD - Lymington Local Distinctiveness

**6 RELEVANT PLANNING HISTORY**

None of direct relevance

**7 PARISH / TOWN COUNCIL COMMENTS**

Lymington Town Council: Recommend refusal

**8 COUNCILLOR COMMENTS**

None

**9 CONSULTEE COMMENTS**

Environmental Health (Pollution): The only concern is the transmission of sound between the ground floor use and flat above and further information is required regarding the sound insulation provided by the current structure. This would be from both patrons in the customer area and the operational noise from the kitchen area.

Environmental Design (Conservation Officer): No objection

Environmental Design (Policy): The current proportion of non-retail uses in Lymington is 34% so the further loss of retail uses should generally be resisted. DM14 states that exceptions may be allowed where the proposed use would add to the vitality and attractiveness of the area and would generate customer activity levels similar to a typical retail use. The survey carried out in 2014 was the first time the premises were recorded as being vacant following a long period of occupancy. Therefore, there would appear to be no evidence of long term vacancy which might suggest a departure from policy is justified at present.

**10 REPRESENTATIONS RECEIVED**

1 letter of objection concerned that the area is already saturated with A3 uses.

**11 CRIME & DISORDER IMPLICATIONS**

No relevant considerations

**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 paragraphs 186 and 187 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 take 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.

This is achieved by

- Strongly encouraging those proposing development to use the very thorough pre application advice service the Council provides.
- Working together with applicants/agents to ensure planning applications are registered as expeditiously as possible.
- Advising agents/applicants early on in the processing of an application (through the release of a Parish Briefing Note) as to the key issues relevant to the application.
- Updating applicants/agents of issues that arise in the processing of their applications through the availability of comments received on the web or by direct contact when relevant.
- Working together with applicants/agents to closely manage the planning application process to allow an opportunity to negotiate and accept amendments on applications (particularly those that best support the Core Strategy Objectives) when this can be done without compromising government performance requirements.
- Advising applicants/agents as soon as possible as to concerns that cannot be dealt with during the processing of an application allowing for a timely withdrawal and re-submission or decision based on the scheme as originally submitted if this is what the applicant/agent requires.
- When necessary discussing with applicants/agents proposed conditions especially those that would restrict the use of commercial properties or land when this can be done without compromising government performance requirements.

In this case all the above apply and as the application was acceptable as submitted no specific further actions were required.

## **14 ASSESSMENT**

- 14.1 This planning application proposes the change of use of a vacant ground floor unit into a café/coffee shop (A3 Use Class). The existing two storey building is Grade 2 Listed and was previously used as a shop (A1 use Class) on the ground floor and there is a residential flat above. It is understood that the unit has been vacant for over 1 year and the premises has been marketed without any interest from potential Class A1 users.
- 14.2 The site lies along the central part of Quay Street within the defined Primary Shopping Frontage in Lymington. Along Quay Street there is a mixture of uses including several retail units (including clothes, food and gift shops), cafes, a restaurant directly opposite and an estate agent. Quay Street is a narrow cobble pedestrian street which connects the main Lymington High Street to the Quay, which is a popular tourist attraction. There is a collection of attractive buildings along Quay Street including listed buildings with residential uses above the shops and commercial uses.
- 14.3 The application has been submitted with relatively limited information about the specific type of A3 use. The applicant has stated that the only interest in the premises has been from potential A3 users and the main objective of this application is to gain planning permission for an A3 use so that the premises can be marketed and to make it more attractive for the premises to be occupied. The applicant has stated that the intention is for a low key A3 use such as a coffee shop or cafe and it is not

intended to create a restaurant where high volumes of cooked food are provided and they do not seek any extraction ventilation systems or flues. The applicants are seeking an A3 use which would only require small cooking appliances such as toasters/ panini makers, coffee/ tea machines and microwave ovens.

- 14.4 In assessing this application, from a policy position, the premises fall within the defined Primary Shopping Frontage in Lymington where policies seek to retain A1 retail uses. Core Strategy Policy CS20 provides for a presumption against the loss of retail uses except where it can be demonstrated that an alternative use would be complementary to the retail function and would enhance the vitality of the centre. Policy DM14 advises that non-retail uses will be permitted provided the proportion of non-retail uses would not exceed 30% of the overall length of the Primary Shopping Frontage. DM14 states that exceptions may be allowed where the proposed use would add to the vitality and attractiveness of the area and would generate customer activity levels similar to a typical retail use.
- 14.5 The current proportion of non-retail uses in Lymington is 34% so the further loss of retail uses would not strictly accord with policy. The site lies within the central part of Quay Street but the premises do not have a significant floor space. On either side of the site there are retail uses, with a restaurant opposite. There are other cafes within Quay Street but not directly next to or close to the site. The premises has been vacant for a considerable period of time and given the nature and character of Quay Street which does attract tourists, a cafe/ coffee shop type use or low key food establishment is likely to be appropriate in this location and generate activity in the area.
- 14.6 In terms of central government guidance, it is clear that there is a general steer towards greater flexibility of uses in town centres in which Class A1 uses are permitted to change to A2 uses and other uses, subject to a Prior Approval process. Under the Town and Country Planning (General Permitted Development) Order 2013, Class C, allows the change of use from Class A1 to A3, together with any building or other operations for the provision of facilities for ventilation and extraction provided that the floor space of the existing building does not exceed 150 square metres and the building is not listed. This would be subject to the submission of a Prior Approval Application where there is a set of key issues to be assessed which include noise, odour, waste impacts, hours of operation and highway related matters. In addition, whether it would be undesirable for the building to change in relation to its location in the key shopping area.
- 14.7 In this case, the proposal cannot be considered under these new procedures solely because the building is listed. It is considered that these factors are material planning considerations and clearly show the government's stance towards encouraging economic growth in town centres and providing a flexible mix of uses, bringing vacant units back into use. On the basis of the government's stance of supporting a mixture of uses in the town centre, an exception to policy can be made in this case. Indeed, a reason for refusal on the grounds that the proposed A3 use would affect the vitality and viability of the town centre would be unlikely to be substantiated on appeal.

- 14.8 A further consideration is that the building is listed. The Conservation Officer welcomes the re-occupation of the building but would raise concerns over any requirement of extraction flues and ventilation systems internally and externally that would impinge on the fabric of the structure. The Conservation Officer considers that any A3 use should have limitations and perhaps be specific due to the need to encourage a type of use that would benefit the listed building. This could be tied to an agreement for a repair schedule and be an exception to policy. The applicants do not intend to have any extraction flues and are seeking a low key A3 use. There may be issues in terms of noise and potential fumes but these could be adequately dealt with by ventilation and the types of food and cooking appliance used.
- 14.9 With regard to residential amenity, there are residential properties located close to the site including a flat immediately above on the upper floor. The application does not propose any extraction flues and it should be noted that this would require planning permission. The proposed opening hours would be from 9:00 to 21:00.
- 14.10 The Environmental Health Officer considers that a low key Class A3 use would be acceptable, their only concern being the transmission of sound between the ground floor use and flat above. The Environmental Health Officer considers that this would be from both patrons in the customer area and the operational noise from the kitchen area and concludes that further information is required in relation to the existing acoustic insulation between the ground and first floor.
- 14.11 In response, Officers consider that the proposed use would be a low key Class A3 use with minimal cooking. The opening hours would not be late into the evening and the types of cooking appliances would include a waffle iron, coffee machine and toaster, which would not generate any noise. The premises have a relatively small floor area and do not offer space for a considerable number of patrons. Moreover, the lawful use of the premises as a Class A1 use could generate noise from customers or playing background music. Accordingly, given the proposed low key use of the unit, and the controls that can be imposed by planning conditions relating to hours of operation and the types of cooking, it is not considered reasonable to seek further information in relation to acoustic insulation.
- 14.12 In conclusion, while it is considered that the proposal would not be fully in accordance with local plan policy, given the governments steer to encourage economic growth in town centres and the benefit the proposed use would bring to the area by providing a cafe use in a busy vibrant area, the application is supported by Officers.
- 14.13 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 hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development permitted shall be carried out in accordance with the following approved plans: Location plan.

Reason: To ensure satisfactory provision of the development.

3. No activity shall take place on the site in connection with the approved use other than between the hours of 07:00 and 21:00 on any day.

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. 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. 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.

#### Notes for inclusion on certificate:

In accordance with paragraphs 186 and 187 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 as the application was acceptable as submitted no specific further actions were required.

#### Further Information:

Major Team  
Telephone: 023 8028 5345 (Option 1)



**New Forest**  
DISTRICT COUNCIL

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

Chris Elliott  
Head of Planning & Transportation  
New Forest District Council  
Appletree Court  
Lyndhurst  
SO43 7PA

**Planning Development  
Control Committee**  
**July 2015**

**Schedule: a**  
Old Dolphin House  
Quay Street  
Lymington  
15/10228  
SZ3295

Scale 1:1250

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

