

Item Number: 13
Application No: 21/01590/73A
Parish: Welburn (Malton) Parish Council
Appn. Type: Non Compliance with Conditions
Applicant: Mr and Mrs Stewart Holt
Proposal: Variation of Condition 03 of approval 09/00241/FUL dated 11.06.2009 to set opening hours of the cafe including any hot food takeaway and the retail use as 08.00 to 18.00 Monday to Saturday and 08.00 to 17.00 on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day) (retrospective application)

Location: Dogh Main Street Welburn Malton YO60 7DX

Registration Date: 2 December 2021
8/13 Wk Expiry Date: 27 January 2022
Overall Expiry Date: 2 February 2022
Case Officer: Alan Goforth **Ext:** 43332

CONSULTATIONS:

Welburn (Malton) Parish Council	No objection
Highways North Yorkshire	No objection
Environmental Health	No objection
Ellie Hook AONB Manager	Comments

Representations (14): *Objections (3):* Ian Leadbeater, Matthew Kenyon, David Ashurst.

Support (11): Nicola Kingston, Shannon Curtis, John Ryan, Julie Ryan, Kerry Schofield, Peter Simpson, Hilary Stubbs, JC Robson, Dinah Keal, Ian Hunt, Sue Jefferson.

BACKGROUND:

The application is to be determined by Planning Committee as representations received in response to the consultation exercise have raised objections based on material planning considerations.

SITE:

The application relates to a two-storey building located centrally within the village of Welburn. The building stands to the south of Main Street, and occupies an elevated position in relation to the public highway which runs through the village. The building, along with surrounding properties to the east and west, is set back from the public highway behind an area of open, grassed village green and private access ways.

The ground floor of the building is currently operated under the name 'Dogh' and is an established mixed use unit which provides a shop and café. The remaining part of the building to the rear and at first floor level is used as flats and a holiday let.

The site lies within the development limit of Welburn and is within the village Conservation Area. It is also within the Howardian Hills Area of Outstanding Natural Beauty (AONB). In addition to falling within land designated as village green the grassed areas to the front of the building which flank the access are within a Visually Important Undeveloped Area (VIUA).

The two storey building has a gable front elevation in brick with tile hanging on the first floor and a clay pantile roof. The front elevation at ground floor level comprises two large display windows which flank a central doorway.

At present there are two wooden picnic benches abutting the front, north facing elevation of the building flanking the main entrance door. Further to the north, on the grassed area forming part of the village green, is additional outdoor seating associated with 'Dogh' which flank the access road. The seating comprises two picnic benches on the raised grassed area on the eastern side of the access and a 'love seat' and a further picnic bench on the raised grassed area on the western side of the access. All of the seating is of timber construction with the two picnic benches on the eastern side and the 'love seat' having a white painted finish.

Properties either side of the application site are occupied for residential purposes (Cherry Tree House & White House). The dwelling immediately to the east (Cherry Tree House) is under the applicant's ownership and shares a rear, private driveway with the application site. St Annes Cottage is further to the east beyond Cherry Tree House. The Crown and Cushion Public House stands opposite the site to the north of Main Street and Pear Tree House is opposite to the north east.

There are several listed buildings in the vicinity of the site the nearest being the Grade II listed Cherry Tree House which is immediately adjacent to the east of the site and also Grade II listed Pear Tree House which stands opposite to the north-east of the site.

HISTORY:

21/01499/FUL- Siting on the service road and village green of outdoor seating for Dogh Cafe and sale of hot food for consumption off the premises (retrospective application). UNDER CONSIDERATION.

09/00613/COND- Discharge of Condition Nos. 04 and 05 of approval 09/00241/FUL dated 11.06.2009. APPROVED 13.07.2009. The conditions/approved details relate to the materials and finishes for the external staircase and windows and doors.

09/00241/FUL- Alterations to internal layout to increase retail area with cafe area adjacent, change of use of part of ground floor residential area to commercial kitchen, and sub-division of ground and first floor residential accommodation to form 1 no. one bedroom ground floor flat and 1 no. two bedroom first floor flat with access by erection of external staircase. APPROVED 11.06.2009.

08/00163/FUL- Change of use of shop to shop and cafe, including outside cafe seating area to front of building (retrospective application). APPROVED 24.11.2008. On 16 April 2009 details were approved in relation to conditions 4 (storage and disposal of refuse) and 6 (extent of outdoor seating).

PROPOSAL:

Planning permission is sought for the variation of Condition 03 of approval 09/00241/FUL dated 11.06.2009 to set opening hours of the cafe including any hot food takeaway and the retail use as 08.00 to 18.00 Monday to Saturday and 08.00 to 17.00 on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day) (retrospective application).

Condition 3 currently states:-

'The tearoom and retail use hereby permitted shall not be open to customers outside the following times - 8am to 5pm each day'.

The application seeks retrospective permission to extend opening hours by one additional hour Monday- Saturday with closing at 18:00 hours on those six days. The opening hours for Sundays are unchanged.

During the course of processing the application it was confirmed by the applicant that the Sunday opening hours also apply to Bank/Public Holidays with the exception of Christmas Day and Boxing

Day when it is closed.

POLICIES:

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 planning authorities are required to determine each planning application in accordance with the planning policies that comprise the Development Plan unless material considerations indicate otherwise. The Development Plan for the determination of this particular application comprises the following:

- The Ryedale Plan- Local Plan Strategy (2013)

The Ryedale Plan - Local Plan Strategy (2013)

Local Plan Strategy - Policy SP13 Landscapes

Local Plan Strategy - Policy SP19 Presumption in Favour of Sustainable Development

Local Plan Strategy - Policy SP20 Generic Development Management Issues

Material Considerations

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (PPG)

REPRESENTATIONS:

The LPA has received a total of 14 representations from local residents and members of the public of which 3 raise objections to the application and 11 support the proposal. The representations made in support include one from Ryedale District Councillor Dinah Keal.

Full copies of all the representations received by the LPA can be accessed via the Council's Online Planning Register.

The reasons given in objection can be summarised as follows:-

- The opening hours are quite specific, 8am to 5pm and imposed to *"ensure the amenities of nearby residents are not unreasonably affected"*. Any extension permitted would set a precedent for further extensions to opening hours.
- The busy nature of the café/shop and associated impact on traffic, congestion and road safety.

The reasons given in support can be summarised as follows:-

- Additional hours for a much appreciated local service and support for the employment created.
- Extended hours maintain the café/shop viability during difficult times
- Extended hours benefit local community and visitors.
- *"A minor change in opening hours will have no significant impact on the village. Indeed the pub opposite Dogh is open much later and is not criticised for its operating hours"*.

APPRAISAL:

Principle of the development

Paragraph 84 of the NPPF (2021) sets out national policy supporting a prosperous rural economy. It states *"Planning policies and decisions should enable (inter alia): d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship"*.

It is considered that the rationale for the extension of the hours accords with national policy, in terms of

supporting the rural economy and the provision of local services. As such it is considered that the principle of the change to the previously permitted opening hours is acceptable.

Impact on amenity

The main consideration in the assessment of this variation of condition application is whether the additional hour Monday- Saturday and Bank/Public Holiday opening would result in harm to nearby residential properties. The hours of opening would also apply to any hot food takeaway permitted for the premises. The application site is in close proximity to residential receptors although it is relevant to note that it stands opposite a pub/restaurant which has significantly later opening hours.

The reason for Condition 03 of approval 09/00241/FUL reads as follows:

‘To ensure that the amenities of nearby residents are not unreasonably affected and to satisfy the requirements of Policy R2 of the Ryedale Local Plan’.

Since the adoption of the Ryedale Local Plan Strategy in September 2013, the policies of the Ryedale Local Plan referred to above have expired. Policy SP20 (Generic Development Management Issues) of the Ryedale Local Plan Strategy is now relevant stating:

“New development will not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity to neighbouring land uses. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or to be an overbearing presence.”

The café (including takeaway) and shop already exist and have been operating with the extended opening hours. It is acknowledged that the application is retrospective and seeks to regularise the current opening hours which extend beyond those permitted by the extant planning permission.

The LPA is not aware of any complaints in relation to the operating hours and there are no objections to the proposal based on any adverse impacts on residential amenity. The Council’s Environmental Health Officer has confirmed that the department has not received any complaints in relation to noise or odour associated with the café/takeaway/shop.

The hours of opening do not extend into the early morning, late evening or night and as a result do not have the potential to introduce any noise, nuisance or disturbance during unsociable hours. The Council’s Environmental Health Officer acknowledges that the hours of opening are outside of any ‘anti-social’ hours and has confirmed no objections to the application.

It is considered that the extended hours would not have an unacceptable adverse impact upon the amenities of neighbouring properties and would not conflict with the existing ambience of the immediate locality and the surrounding area in compliance with Policy SP20.

Impact on the AONB

The land is within the Howardian Hills Area of Outstanding Natural Beauty. National planning policy (paragraph 176 of the NPPF) states that *“Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty”.*

The AONB Manager has highlighted some concerns in relation to the impact of additional trading hours on tranquillity. Tranquillity is one of the special qualities of the Howardian Hills AONB and the AONB Manager notes that the new opening hours may have an effect on the tranquillity of one of the key Howardian Hills AONB villages. The AONB Manager requests that any additional disturbance to residents resulting from the change should be monitored and assessed.

As stated above there are no objections from the EHO and it is considered that the proposal would not result in any unacceptable nuisance, disturbance or pollution to any users of neighbouring land or buildings. The hours of opening are not inappropriate within this setting and can be accepted in this designated landscape without conflicting with national or local planning policy.

Highways

There are no objections from the Local Highway Authority. It is considered that the modest extension of openings hours would not have a detrimental impact on road safety, traffic movement or the safety of pedestrians and cyclists in compliance with Policy SP20.

Conditions

Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. For the purpose of clarity the conditions imposed on the earlier approval continue to have an effect and are relevant and as a result are carried forward taking account of operational development already completed and/or details submitted under the terms of condition which have previously been deemed acceptable.

Conclusion

Planning policy recognises the economic and social role played by village facilities such as the café/shop in Welburn. The modest extension to the previously permitted opening hours would help maintain the viability of the café/shop and contribute to the vitality of the village.

In the planning balance weight is afforded to the benefits of the additional hours of trading. In this case there is an absence of any material harm to residential amenity, highway safety or the special qualities of the Howardian Hills AONB. As a result the conclusion of the balancing exercise is favourable to the proposal.

It is considered that the proposal represents sustainable development and the recommendation to Members is one of conditional approval.

RECOMMENDATION: Approval

- 1 Notwithstanding the provision of any Town & Country Planning General Permitted or Special Development Order for the time being in force, the areas shown on Drawing No. 2009-02 BR3 for parking spaces, turning areas and access shall be kept available for their intended purpose at all times.

Reason: In accordance with Policy SP20 and to ensure these areas are kept available for their intended use in the interests of highway safety and the general amenity of the development.

- 2 The café (including any hot food takeaway) and retail use hereby permitted shall not be open to customers outside the following times – 08:00 – 18:00 hours Monday- Saturday and 08:00 – 17:00 hours on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day).

Reason: To ensure that the amenities of nearby residents are not unreasonably affected and to satisfy the requirements of Policy SP20.

- 3 The two residential units hereby permitted shall be, and shall remain, under the ownership of the owner of the retail unit and tearooms and shall not be sold off separately.

Reason: The proximity of the mixed uses, access from the public highway and shared amenity space are such that the separation of the residential from the commercial (or vice versa) requires further consideration to be given in accordance with Policy SP20.

- 4 The development hereby permitted shall be carried out in accordance with Drawing No. 2009-02-BR3 received by the Local Planning Authority on 18 May 2009.

Reason: For the avoidance of doubt and to ensure that the preparation area and tearoom do not encroach on the retail area, and to ensure the satisfactory development of the site in accordance with the approved plans, and in order to comply with the requirements of Policy SP20.

- 5 No part of the site outside any building shall be used for the storage or display of any goods or materials without the prior approval in writing of the Local Planning Authority. Any goods or materials currently displayed outside the existing building shall be removed within 28 days from the date of this planning permission, unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure that the appearance of the area is not prejudiced by the external storage of materials and to protect residential amenities, and in order to comply with the requirements of Policy SP20.

- 6 The ground floor toilet identified on Drawing No. 2009-02-BR3 shall only be used by customers and staff of the café and shop and for no other purpose.

Reason: To protect the amenities of adjoining properties in accordance with Policy SP20.