

REPORT TO: Planning Committee

MEETING DATE: Tuesday 6 May 2014

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

***Note** - this application was called off the Scheme of Delegation List by Councillor Berry for the following reasons: This has been a normal retail shop until 12/00011/P changed to a restaurant but only on Saturday. This extends all week in a building with many residents both above and across the street (sheltered housing). We need to establish the level of disturbance and why it will not be excessive.*

Application No. **13/01029/P**

Proposal Variation of condition 2 of planning permission 12/00011/P to allow additional dining places and variation of condition 4 of planning permission 12/00011/P to extend the opening hours of the cafe/restaurant to allow operation between 9am - 11pm Monday to Sunday inclusive (Part Retrospective)

Location **96 High Street
North Berwick
East Lothian
EH39 4HE**

Applicant JP's

Per WYG

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

The premises of 96 High Street occupy the ground floor and lower ground floor of a four storey, mid-terrace building on the north side of High Street, within North Berwick Town Centre and North Berwick Conservation Area. The upper floors of the building contain residential flats. The premises are part of an established commercial ground floor frontage along the north side of High Street. It is presently in use as a shop and café known as 'JP's Deli'.

Planning permission 12/00011/P was granted on 16th March 2012 for the part café use of the premises (a use within Class 3 of the (Town and Country Planning (Use Classes) (Scotland) Order 1997), as a partial change from the use of the premises as a shop (a

use within Class 1 of the Town and Country Planning (Use Classes) (Scotland) Order 1997).

Planning permission 12/00011/P for the partial café use of the premises was granted subject to a number of conditions. Of these, Condition 2 restricts the floor space to be used as a café to that coloured yellow and shown on the docketed drawings of planning permission 12/00011/P. The reason for Condition 2 is to restrict the amount of café use of the premises to that which were applied for in order to retain a predominant shop use of the premises. Condition 4 of planning permission 12/00011/P restricts the hours of operation of the partial café use of the premises to 9.00am to 7.00pm on Mondays to Saturdays inclusive and 11.00am to 6.00pm on Sundays. The reason for Condition 4 is to restrict the hours of operation of the partial café use of the premises to that which were applied for.

Planning permission is now sought for the variation of Condition 2 of planning permission 12/00011/P to allow for more of the floor space of the shop to be used as additional dining places for the café and for the variation of Condition 4 of planning permission 12/00011/P to extend the opening hours of the cafe to allow its operation between 9.00am and 11.00pm Mondays to Sundays (inclusive) rather than the presently approved hours. This application for planning permission is in part retrospective due to the additional floor space already being laid out with tables and chairs for café use and the premises operating until 11.00pm on Saturdays.

In a statement submitted with the application it is stated that the additional dining places and the extension to the hours of the café are to enable the proprietor to operate an occasional 'pop-up' restaurant, cheese and wine evenings and taster menu evenings at the premises.

There are no other proposed changes to the use of the premises and no proposed physical alterations to the premises.

Since the application was registered an amended layout drawing has been provided by the Applicant's Agent to clearly identify the retail shelving display units that would be retained in the shop and to identify the whole of the area of café use of the premises.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

Relevant to the determination of the application is Policy ENV2 (Town and Village Centres, Other Retail or Mixed Use Areas) of the adopted East Lothian Local Plan 2008.

There are no policies of the approved South East Scotland Strategic Development Plan (SESplan) relevant to the determination of the application.

Four representations to the application have been received. All of the representations raise objections to the proposed development. The grounds of objection are:

1. the use of the premises as a restaurant with ancillary delicatessen, rather than a shop/deli with ancillary café/restaurant, would have a harmful effect on the vitality and diversity of North Berwick High Street as it would lead to the loss of a popular shop/deli and would lead to the creeping loss of a retail unit;

2. there are already a wide variety of restaurants and numerous cafés on North Berwick High Street but there is only one high quality deli and its continued downsizing would be a significant loss to the High Street;

3. it would be unreasonable for the premises to open until 11.00pm each day given that the premises are below residential properties;

4. the High Street is becoming a noisy and unpleasant place in the late evenings, especially at weekends and allowing yet another venue to continue trading until late would make the situation worse, which could have a negative impact on tourist trade and for local residents;

5. the proposal represents an intensification of use of the premises which would result in noise and odour nuisance to neighbouring residential properties;

6. the premises shares an access with residential properties and the intensification of use of it would result in significant nuisance and loss of amenity to the occupiers of those residential properties;

7. the title deeds of the residential properties on the upper floors of the building state that the tenement should at all times be used as dwelling houses and shops only and this proposal goes far beyond that requirement;

8. noise from customers coming and going all evening, including smokers, cars and taxis, staff cleaning up at the end of the day and deliveries will be unpredictable and unmanageable leading to loss of amenity to residents in the flats nearby;

9. shop/café stock is piled up in the shared passageway making it difficult for residents of the flats to get past to access their property;

10. reduction in value of the flats on the upper floors of the building due to being above a restaurant;

11. the windows at the rear of the shop/café open directly onto the garden of the flats and late opening of the premises and thus use of these windows in summer will lead to a loss of amenity to the occupiers of the flats; and

12. the kitchen at the premises may not be suitable for a restaurant use.

The matter of the contents of the title deeds relevant to the four storey, mid-terrace building, and whether or not the use of the premises accords with these is a civil legal matter between the relevant parties occupying the building and is not a material planning consideration in the determination of an application for planning permission.

The matter of the impact of a use or other development on the value of a neighbouring property is not a material planning consideration in the determination of an application for planning permission.

The matter of commercial competition is not a material planning consideration in the determination of an application for planning permission.

The matter of the use of the private shared communal access to the shop/café and upper floor flats is a private civil matter between the relevant parties occupying the building and is not a material planning consideration in the determination of an application for

planning permission.

The determination of this application rests on whether or not the proposed additional floor space for the café use and the extension to the hours of use of the premises as a café on Mondays to Sundays (inclusive) would be likely to result in significant harm to the amenity of any neighbouring use, including neighbouring residential properties.

Policy ENV2 applies to North Berwick Town Centre, an area it defines as being of mixed uses and one in which uses associated with a town centre will be acceptable in principle. These uses include retailing, business and office use, restaurants, leisure and entertainment. Proposals that would have a significant environmental impact, particularly on existing housing will not be permitted. Policy ENV2 states that within town centres changes of use of retail units to other town centre uses will only be acceptable where the Council is satisfied that a retail use is no longer viable or the benefits of the proposed use to the viability and vitality of the area outweigh the loss of the shop.

The existing shop/café premises form part of the established commercial ground floor frontage along the north side of High Street and as such they are part of the mixed use area of the town centre. Part of the vitality and viability of the town centre derives from the varied uses within the town centre and the varied opening hours of those mixed commercial uses. These uses include restaurants, hot food takeaways and public houses that are open later in the evenings. Policy ENV2 does not specify the number of cafés/restaurants that can operate within a defined town centre area. By being within the mixed use area of the town centre the application premises and thus also the neighbouring residential properties are within an area where some noise and movement is likely to occur in the evenings due to the varied opening hours of the commercial businesses within the town centre.

Planning permission 12/00011/P approved the use of part of the ground floor shop premises as a café. That café use includes the provision of 4 tables each with 4 chairs, giving a total seating area for 16 people.

The proposed use of more of the floor space of the shop as a café in order to provide additional dining places would increase the total number of tables from 4 to 6. Each of the two additional tables would have 4 chairs. Thus, there would be an increase from the 16 seats approved by the grant of planning permission 12/00011/P to 24 seats, being a total increase of 8 seats.

The application drawings show that the existing retail shelving display units which are positioned at each side of the shop, below the display windows, at each side of the entrance doorway and between the approved rear café area and the remaining shop would all be retained as retail shelving. These shelving units are not shown on the application drawings as being part of the area of shop floor that is proposed to be changed to use as the extended café use at the premises. Only one low level, free-standing retail shelving display unit, that is positioned between the counter and the shelving units at the east side of the shop, would be removed to facilitate the positioning of the additional café tables and chairs. Thus, in this particular case the proposed extended café use of the premises would not result in a significant loss of retail use at the shop premises compared to the existing situation approved by the grant of planning permission 12/00011/P, as it is proposed to retain the majority of the existing retail display shelving units of that part of the ground floor shop. Thus, the retail use of the premises would not be lost.

The applicant's agent has indicated that it is the intention of the applicant to only use the proposed extended floor space of the partial café use of the premises, occasionally, after

7.00pm and that otherwise the additional tables and chairs would be stored in a storage area of the lower ground floor of the premises. Notwithstanding this, as the use of the proposed extended floor space of the café use would not result in significant loss of retail use at the shop premises compared to the existing situation approved by the grant of planning permission 12/00011/P, it would not be reasonable to restrict the proposed extended floor space of the café use to only being between 7.00pm and 11.00pm Monday to Sunday.

A café/restaurant is a use typically associated with the mixed commercial uses of a town centre. Such proposed part use of the shop premises of 96 High Street would maintain the viability and vitality of North Berwick Town Centre. It would not be incompatible with the particular mixed uses of North Berwick Town Centre.

It is acknowledged that there are already a number of cafes, restaurants and hot food takeaways in North Berwick Town Centre. In a survey carried out of the commercial premises of the town centre it is found that presently some 17% of them are in use as cafés, restaurants and hot food takeaways. Some one third of those uses are concentrated within the central part of the High Street, between the junctions with Market Place to the east and Church Road to the west. However, no evidence is presented that such concentration of use if added to by this extended café use of the shop premises at 96 High Street would have a resultant cumulative effect harmful to the amenity and vitality and viability of the town centre.

The proposed extended café use of the ground floor of the premises, with no external changes proposed to the building, would not have an appreciable effect on the architectural and historic interest of the North Berwick Conservation Area.

Thus, the proposed change of use of more of the ground floor shop from a Class 1 shop use to a Class 3 café use to be used in association with the existing shop and café uses by providing an extended café use of the ground floor of the premises does not conflict with Policy ENV2 of the adopted East Lothian Local Plan 2008.

The proposed extended openings hours of the partial café use of the premises would apply to the partial café use of the premises approved by the grant of planning permission 12/00011/P and the additional café floor space the subject of this application. Those extended opening hours between 9.00am until 11.00pm on Mondays to Sundays (inclusive) would be comparable with the later opening hours of the restaurants, hot food takeaways and public houses in North Berwick town centre.

The greatest potential impact of the proposed extension to the hours of the partial café use of the premises would be on the neighbouring residential properties that are in the floors of the building above the premises, due to their proximity to the application site.

It is acknowledged that it is possible that the extended opening hours of the cafe use would have the potential to result in some additional noise generation from its operation and from guests and staff leaving the premises at that time. However, the application premises and thus also the neighbouring residential properties are within a mixed use area of North Berwick Town Centre where noise and movement is likely to occur in the evenings due to the varied opening hours of the commercial businesses within the town centre and the free movement of members of the public on the street.

The Council's Environmental Protection Manager raises no objection to the extended opening hours of the café use of the premises between 9.00am and 11.00pm on Mondays to Sundays (inclusive). He advises that beyond 11.00pm levels of amenity afforded to any residential neighbours would be higher, however, the extended openings

hours of the café as applied for, would continue to be within what is termed 'daytime and evening' hours (i.e. 7.00am to 7.00pm and 7.00pm to 11.00pm respectively). Such 'daytime and evening' hours of operation of the café use would not have a harmful impact on the amenity of the neighbouring residential properties.

The Environmental Protection Manager further advises that noise from patrons on the street as they leave the premises is not a matter controlled by Environmental Protection as such noise/disturbance would not be actionable under statutory nuisance provisions. Any member of the public could use the street at any time, and this principle would also apply to use of the communal access/staircase of the building which could be used by any resident at any time.

The two existing rear windows of the ground floor shop/café premises face towards the communal rear garden of the flats of the upper floors of the building of which 96 High Street is a part. The two windows open immediately onto the access stairs that serve the lower ground floor of the shop/café premises of 96 High Street. It is acknowledged that it is possible that the extended opening hours of the partial café use of the premises would have the potential to result in some additional noise generation from the operation of the café use if those two windows were opened. However, the stairs to the lower ground floor of the shop/café premises could be used at any time by the owner and/or staff. Also, in this town centre location noise is likely to occur in the evenings. Thus it is not considered that the opening of those two windows during the extended hours of operation of the partial café use of the premises would have a resultant cumulative harmful effect on the amenity of the occupiers of those neighbouring flats that use the area of garden ground.

Therefore, the proposed extended hours of partial café use of the premises between 9.00am and 11.00pm on Mondays to Sundays (inclusive) would not have a significant impact on the residential amenity of the neighbouring residential properties. The proposed extension to the hours of partial café use of the premises from 9.00am until 11.00pm on Mondays to Sundays (inclusive) is not contrary to Policy ENV2 of the adopted East Lothian Local Plan 2008.

Planning permission 12/00011/P for the part cafe use of the premises is granted subject to a conditional planning control on the preparation and cooking of food. This planning control remains in place and there is a continuing requirement for compliance with it. It would equally apply to any extended hours of use of the premises or extended floor area used as a café.

The Council's Transportation service raises no objections to the proposed additional floor space being used as part of the partial café use of the ground floor premises or to the extension to the hours of the part café use of the ground floor premises from 9.00am until 11.00pm on Mondays to Sundays (inclusive).

CONDITIONS:

1 Condition 2

The cafe use hereby approved shall be limited to the three areas coloured yellow for tables and seating and for the W.C. facilities as delineated on drawing no. 100.10/Rev A docketed to this planning permission.

Reason:

To ensure that the amount of cafe use remains as applied for and hereby approved.

- 2 The hours of operation of the café use hereby approved shall be restricted to 9.00am to 11.00pm on Mondays to Sundays inclusive.

Reason:

To restrict the hours of operation of the café use to that applied for and to safeguard the amenity of the area, including the amenity of neighbouring residential properties.

Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)