



Report Reference Number 2020/1263/FUL

To: Planning Committee
Date: 7 April 2021
Author: Gareth Stent (Principal Planning Officer)
Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2020/1263/FUL	PARISH:	Selby Town Council
APPLICANT:	Mr Timothy Baldwin	VALID DATE: EXPIRY DATE:	25th November 2020 20th January 2021
PROPOSAL:	Continued use of ground and first floor cafe (being a variation to the opening hours)		
LOCATION:	The New Little Coffee Shop 8 Brook Street Selby YO8 4AR		
RECOMMENDATION:	Grant		

This application has been brought before Planning Committee, as it was deferred from the 10th March 2021 Planning Committee, due to a further considerations of noise and ventilation matters being necessary, in particular the outstanding response from the Environmental Health officer. It was originally presented to committee at the request of Cllr J Chilvers, who submitted the request in line with the respective call-in period and objects to the proposal.

1. INTRODUCTION AND BACKGROUND

Site and Context

- 1.1 This is a full application to vary the opening hours at an existing café known as 'The New Little Coffee House', 8 Brook Street Selby. The café operates at ground and first floor.
- 1.2 The application was previously presented to the 10th March 2021 Planning Committee, however elements of the response from the Environmental Health officer were still outstanding i.e. details of the provision of amplified music and extraction/ventilation arrangements. Members deferred the application to enable further consideration of these issues, in particular the chance for the Environmental Health officer to consider further information requested of the applicant. The applicant has since confirmed the type of amplified music played and sent in

pictures of the extraction unit used. Further details of the noise levels associated with the extraction equipment is currently being obtained from the manufacturer's literature and should be available before the committee meeting. If it isn't then a condition is suggested covering the need to supply this information prior to the evening uses commencing.

- 1.3 The premises lie on the south western fringe of the town centre off Brook Street, which is one of the main routes out of the town centre towards Brayton. The premises are the central property in a small terrace, with No.6 to the north being a vacant retail unit at ground floor with flats above and No.10 to the south being a residential dwelling. Part of the first floor of the application site, i.e. No.8a, is a self-contained flat.
- 1.4 The area is essentially residential in character with some commercial premises opposite and elsewhere within the street frontage, particularly on corner locations. The site lies within Development Limits, within the Selby Town Centre Conservation Area. The site lies adjacent to the shopping and commercial designated area.
- 1.5 The current opening hours are restricted by 2 permissions i.e.

Ground floor

- 2013/0821/COU – Change of use of the ground floor from A1 shop to A3 café. This was approved with the following condition (No.2) relating to opening hours: Monday to Saturday 9-5pm (closed on Sunday) limited to the ground floor by condition No.4 relating to floor plans.

First floor

- 2015/0673/COU – Change of use of part of the 1st floor from residential to A3 café. This was approved with the following condition relating to the opening hours of the upstairs café: Monday to Saturday (11am-3pm) excluding Bank Holidays.

- 1.6 On this basis, the permitted opening hours are:

- **Ground Floor:** Monday to Saturday 9am-5pm; (2013 permission)
- **First Floor:** Monday to Saturday 11am-3pm (excluding bank holidays) (2015 permission)

- 1.7 By way of overall context an application was made in 2019 (2019/0446/S73) to vary condition 02 of planning approval 2013/0821/COU and requested opening hours of Monday – Sunday 8:30am -10:30pm on a permanent basis, however this was later withdrawn as the times were deemed by Officers to be excessive. The applicant did contact the Council with a view to discussing what may be regarded as being acceptable. This has generated the current application now before Members.

- 1.8 Finally, this application was originally submitted as a Section 73 application to vary the 2015 (upstairs) consent but also requested consent to change the ground floor opening hours. This would have involved the variation of two permissions, which is not capable under a Section 73 submission. On this basis the application was converted to a 'full' consent to vary hours.

The Proposal

- 1.9 This is a full application for the continued use of ground and first floor cafe being a variation to the permitted opening hours. Following discussions with officers, the proposed hours are as follows;

Ground Floor

- Monday - Saturday 09:00 - 17:00
- Sunday 11:00 - 16:00

First Floor

- Monday - Saturday 11:00 - 15:00
- Sunday 11:00 - 16:00

Late night opening on Friday's or Saturdays from 17:00 until 22:00 for no more than 12 nights per annum and only 1 per calendar month. (12-month temporary period from when the use first occurs)

Relevant Planning History

- 1.9 The following historical application is considered to be relevant to the determination of this application.

- CO/1985/0487 - Proposed conversion of existing dwelling into furniture showroom with flat above at. Refused 29-AUG-86.
- CO/1987/0564 - Proposed conversion of existing house to provide ground floor extension to adjoining furniture showroom, for use as carpet display area, with self-contained three bedroomed flat at first floor level. Permitted 16-APR-87.
- CO/1987/0565, Proposed conversion of existing house to provide ground floor extension to adjoining furniture showrooms, for use as carpet display area, with self contained three bedroom flat at first floor level. Permitted 12-NOV-87.
- CO/1988/0686 - Proposed change of use of house and first floor flat to residential hotel at 6 (first floor flat) 8 Brook Street, Selby. Refused 12-AUG-88.
- CO/1989/0669 - Erection of double storey extension to provide extra showroom and storage accommodation to the rear elevation, conversion of first floor to self contained flat and alterations to shop front. Permitted 31-MAR-89.
- CO/1989/0670 – Proposed removal of planning conditions 5 & 6 imposed on planning decision 8/19/804B/PA dated 12.11.87. Permitted 02-MAR-90.
- CO/1993/0527 -Proposed change of use of first floor office and part ground floor office and sales area to a self contained flat at 8 Brook Street, Selby. Refused 19-AUG-93.
- CO/1995/0052 - Proposed change of use of first floor office and part ground floor sales area to bed sitting room with kitchenette and shower room. Permitted 18-APR-95.

- 2013/0821/COU - Change of use from A1 (shops) to A3 (restaurants and cafes). Permitted 14-OCT-13. Condition 2 – The use hereby approved shall be open for customers between the hours of 09:00 to 17:00 Monday to Friday, 09:00-17:00 Saturday and closed Sunday. Was limited to the ground floor only.
- 2013/1010/ADV - Application for consent to display a non-illuminated fascia sign and projecting sign. Permitted 28-NOV-13.
- 2015/0673/COU - Change of use from residential to A3 Cafe, Permitted 24-AUG-15. Although the description of the application didn't allude to it, the permission was for the first floor only. i.e. the residential use to café use and floor plans reflect this. This had condition 3 limiting its use between 11:00 -15:00 Mon - Sat.
- 2019/0446/S73 - Section 73 application for Change of use from A1 (shops) to A3 (restaurants and cafes) without complying with condition 02 of planning approval 2013/0821/COU granted on 14 October 2013 – Withdrawn 28-AUG-19. Requested hours Monday – Sunday 8:30am -10:30pm.

2. CONSULTATION AND PUBLICITY

- 2.1 Environmental Health – (18.1.2021 - comments on in respect of the previous Section 73 application) The applicant received pre-application advice in relation to a temporary 12-month permission; therefore, these comments are written in this context.
- 2.2 The premises adjoin residential properties and I would raise concerns regarding the potential for unacceptable noise impact, notably from amplified music, fixed plant installations (such as kitchen extraction/ventilation) and raised voices. Furthermore, a consequence of extending opening hours to 2200 potentially shifts the business context from café to restaurant under planning use class A3.
- 2.3 Amplified music – I would recommend that further information is sought regarding the playing of amplified music with a view to limiting disturbance at adjoining/neighbouring residential properties.
- 2.4 Fixed plant installations – I would recommend that further information is sought regarding extraction/ventilation and corresponding acoustic data often located in manufacturer's literature.
- 2.5 Raised voices – In the absence of any sound insulation testing an assumption is made that speech transmission between adjoining walls is likely, particularly in the evening when a reduction in background sound levels is observed. These concerns extend to neighbouring properties as customers leave the premises, particularly during the warmer months when residents are likely to spend more time outdoors and with windows open. Therefore, the intention to extend opening hours on a weekly basis seems excessive in the context of a café. I would recommend that this is negotiated and I would suggest operating on a monthly basis during any temporary permission.
- 2.6 Environmental Health's revised response – (16.2.2021) I have considered the additional information provided by the applicant and would make the following comments. It was previously recommended that the applicant provide further

information regarding the provision of amplified music and extraction/ventilation arrangements. I am unable to locate this within the additional information and would make the same recommendation irrespective of the amendments.

2.7 In relation to raised voices, previous concerns were raised regarding speech transmission between adjoining walls, and at neighbouring properties as customers leave the premises. The proposal to extend opening hours to 2200hrs once per calendar month for a 12-month temporary period is considered a satisfactory response to this.

2.8 Environmental Health's 3rd response following committee deferral (22.3.2021)

With regards noise from amplified music, there are no further objections, but I would recommend the following informative:

The environmental Protection Act 1990 allows for the abatement of statutory nuisance in relation to noise. It is advised that Section 79 of the Environmental Protection Act 1990 prohibits noise from premises considered to be prejudicial to health or a nuisance.

2.9 With regards fixed plant noise, could the applicant please confirm the noise levels associated with the extraction, often located in manufacturer's literature, and where it discharges to. Alternatively, the following condition attached to any approval will enable this to be agreed at a later date:

Prior to commencement, all noise and other emissions resulting from processes or installations at the buildings, the subject of this application, shall be treated to the satisfaction of the Local Planning Authority. Details of noise attenuation and/or extract systems shall be submitted to and agreed in writing before the use of the buildings commence. The agreed scheme shall be maintained throughout the life of the development.

Reason: To protect residential amenity and in order to comply with the NPPF and Selby District Council's Policy's SP19 and ENV2

2.10 Enforcement Team – No response received.

2.11 Selby Town Council - No objections to this application subject to consultation with occupants of neighbouring properties.

Neighbour and 3rd Party representations

2.12 The proposal was publicised by a site notice, press notice and direct neighbour notification of residents.

2.13 2 letters of objection were received from a resident that immediately adjoins the premises i.e. No.10 Brook Street. These were in response to the initial Section 73 application which proposed unrestricted late evening open Fridays or Saturdays all year and then to the revised Full application. The grounds of objection are as follows;

Impact on Residential Amenity

- When the premises were first granted a change of use from retail to café / restaurant in 2013 the Officers report at the time stated that Policy ENV (1) and SEL/8 should be given significant weight.
- Policy ENV (1) requires the Council to take into consideration 'The effect upon the character of the area or the amenity of adjoining occupiers'.
- The Officer report relating to the original application for change of use from A1 (shops) to A3 (restaurants and cafes) included a condition that the opening hours be restricted to 09.00 to 17.00 Monday to Saturday and closed on Sunday. The reason for this was 'In the interests of residential amenity having regard to Policy ENV1 of the Selby District Local Plan.
- There has been no material change to this policy and since the condition was put in place there has been a further intensification of amenity issues with approximately 20 additional residential properties either having been built or which are under construction within 100 meters of the Little Coffee House.
- With specific regard to the first floor room which is directly adjacent to my living room, the Officers report relating to the conditions imposed here states '... one of the core principles of the NPPF is to always seek to ensure a good standard of amenity for all existing and future occupants of land and buildings is achieved. The proposed opening hours to the upstairs café room are a reduction of the opening hours for the current downstairs premises and this can be conditioned in order to protect the amenity of the neighbouring residents.' The permitted opening hours for the first floor space are currently 11am to 3pm Monday to Saturday excluding bank holidays. In no way can removing the condition requiring the premises to close on a Sunday be seen to be protecting the amenity of the neighbouring residents. Allowing the premises to trade seven days a week gives no respite to neighbouring properties.
- In additional, an alcohol licence was granted in 2019 which was not in place when the restriction on opening hours was put in place.
- There are no hospitality / service premises in this area of Brook Street with extended opening hours and I am not aware of anything similar to this anywhere in the district. Brook Street is a quiet residential street on an evening and on a Sunday. The additional noise and disturbance from the proposed extended hours would be amplified and have a significant negative impact on the residential amenity of the area, and also set a dangerous precedent for other commercial premises in residential areas both in Selby and the rest of the district.
- There are four flats and one house directly adjoining the premise. The flat at 8a Brook Street shares the same front entrance as the Little Coffee House and its living areas are directly above the kitchen / serving area. Any additional opening hours would have a significant impact on this property as well at those adjoining and in the surrounding area.

The Local Plan

- Policy SEL/08 of the Local Plan relates to proposals for the establishment or extension of retail use within the defined shopping and commercial centre of Selby. These premises are not within the defined core shopping area of Selby (inset map 53). I am not aware of any SDC plans or policies that support either the further

commercialisation of areas outside of the core shopping area or the establishment of night time economy businesses in this area.

Additional Information

- The applicant has supplied no evidence to support the application to overturn these conditions. They have confirmed in their application that the evening opening is required for themed nights once a month for a trial basis of 12 months and whilst I appreciate the reduction in previously requested hours, in effect these additional hours have already been trialled as the applicant has held a number of events and theme nights outside of their permitted opening hours and in breach of the planning condition. I don't see what could be gained by allowing a further trial period as the Council is already well aware of the negative impact this has had on me and my property. On each occasion when events were held this was reported to the Council's planning enforcement team and on each occasion, I have been affected by increasing noise levels until gone 10.30pm. I have also had to move customers off my property where they have been smoking and dropping cigarette ends. These events include a Mexican themed night held on the evening of Saturday 24th August 2019 which offered customers a bottle of Desperado (tequila flavoured beer) and a tequila shot per person.
- There is a vast difference between customers having coffee during the day and attending a themed event with alcohol on an evening. This is changing the whole feel of the premises from a coffee shop to a bar and I believe this is completely inappropriate in a residential area. At one point in 2019 the applicant was advertising Christmas Party nights for parties of 10 or more with a fully stocked bar. Their own flyer for the events advertised themselves as 'The Little Coffee House' by day and 'The Place to B' by night.
- Whilst these events did not take place as the previous planning application was withdrawn, this type of highly charged event for large groups of people is guaranteed to create excessive noise and would have a significant negative impact on neighbouring properties. This is not simply an extension of their existing day time business operations or offering 'Sunday lunch to the elderly'.
- The consultation response of the Council's own Environmental Health department states 'The premises adjoin residential properties and I would raise concerns regarding the potential for unacceptable noise impact, notably from amplified music, fixed plant installation and raised voices.'
- I don't believe that any grounds have been submitted which would support the overturning of the original Officers' decisions which were taken in line with the Council's own planning policies in 2013 and 2015. I urge the Council to retain the existing conditions, follow its own policies and protect mine and my neighbours' residential amenity by refusing this application.

2.14 Representation from Cllr Judith Chilvers

- I am writing as ward councillor to object to this application on grounds that any extension of hours would be out of keeping with the surrounding area which is mainly residential.
- The residents would suffer due to increased noise, traffic and pollution. Brook Street is a very busy road which could be a danger to customers leaving the premises.

3 SITE CONSTRAINTS

Constraints

- 3.1 The site lies within settlement limits, within the Selby Town Centre Conservation Area and within Flood Zone 3. The site lies immediately adjacent is also within the Shopping & Commercial Centre.

4 POLICY CONSIDERATIONS

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making.
- 4.2 The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.
- 4.3 On 17 September 2019 the Council agreed to prepare a new Local Plan. The timetable set out in the updated Local Development Scheme envisages adoption of a new Local Plan in 2023. Consultation on issues and options took place early in 2020. Consultation on preferred options took place in early 2021. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies.
- 4.4 The National Planning Policy Framework (February 2019) (NPPF) replaced the July 2018 NPPF, first published in March 2012. The NPPF does not change the status of an up to date development plan and where a planning application conflicts with such a plan, permission should not usually be granted unless material considerations indicate otherwise (paragraph 12). This application has been considered against the 2019 NPPF.
- 4.5 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

"213.existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

Selby District Core Strategy Local Plan

- 4.6 The relevant Core Strategy Policies are:

SP1 - Presumption in Favour of Sustainable Development

- SP2 - Spatial Development Strategy
- SP14 - Town Centres and Local Services
- SP18 - Protecting and Enhancing the Environment.

Selby District Local Plan

4.7 The relevant Selby District Local Plan Policies are:

- ENV 1 – Control of Development
- ENV 25 - Control of Development in Conservation Area.

5 APPRAISAL

5.1 The main issues to be taken into account when assessing this application are:

- Principle of Development.
- Impact on Residential Amenity
- Impact on the Conservation Area

Principle of Development

5.2 The site lies within the Development Limits of Selby and consists of a café use that is long since established.

5.3 Whilst described as a full application, it is in effect the variation of 2 previous planning consents, which controlled the ground and first floor opening times separately. Therefore, the principle of the A3 café use is already established and is operating as such (pre-Covid). The new hours proposed are regarded as an extension of the commercial use, not physically but in terms of the operating hours.

5.4 The premises are lawfully permitted to open as per the 2013/0821/COU and 2015/0673/COU permissions as detailed in the introduction. As such the main consideration of this application, is in relation to the new proposed opening hours and the impact these will have.

5.5 The applicant wishes to develop the business through select late night opening for themed events. The applicant explains that they have operated 3 themed nights in 2019 and were unaware of the breach of planning control. Other events like baby showers and funeral wakes have been hosted at the premises in recent years and have continued outside permitted opening hours.

5.6 The current permitted hours versus the proposed hours are explained below:

Ground floor

Day	Approved	Hrs	Proposed	Hrs	Difference per day hrs
Monday	9 – 17:00	8	09:00 – 17:00	8	0
Tuesday	9 – 17:00	8	09:00 – 17:00	8	0
Wednesday	9– 17:00	8	09:00 – 17:00	8	0
Thursday	9– 17:00	8	09:00 – 17:00	8	0
Friday	9 – 17:00	8	09:00 – 22:00	13	5

Saturday	9 – 17:00	8	09:00 – 22:00	13	5
Sunday	-		11:00 – 16:00	5	5
	Total	48	Total	63	15

First Floor

Day	Approved	Hrs	Proposed	Hrs	Difference per day hrs
Monday	11 – 15:00	4	11:00 – 15:00	4	0
Tuesday	11 – 15:00	4	11:00 – 15:00	4	0
Wednesday	11 – 15:00	4	11:00 – 15:00	4	0
Thursday	11 – 15:00	4	11:00 – 15:00	4	0
Friday	11 – 15:00	4	11:00 – 15:00	4	0
Saturday	11 – 15:00	4	11:00 – 15:00	4	0
Sunday	-		11:00 – 16:00	5	5
	Total	24	Total	29	

- 5.7 The tables above demonstrate that the main aim is to continue to operate the business in 'normal' daytime trading hours but allow late night opening from 5pm until 10pm to operate theme nights for up to 12 times per year. This is proposed at ground floor only. The applicant has also agreed to trial this for 12 months once the premises are allowed to re-open. It is also the intention to operate the ground and first floor of the premises 11:00 -16:00 on Sundays.

Impact on Residential Amenity

- 5.8 One of the Core Principles of the NPPF is to always seek to ensure a good standard of amenity for all existing and future occupants of land and buildings is achieved. Policies ENV1 1) and SEL/10 2) iv) of the Local Plan requires proposals not to have a significant adverse effect on residential amenity.
- 5.9 The issue of residential amenity is the main issue for Members to consider, particularly as this has generated the most concern within the representations from the residential property immediately adjacent to the site. The representations explain in detail how previous permissions controlled the hours of operation by condition and the reasons given were 'In the interests of residential amenity having regard to Policy ENV1 of the Selby District Local Plan.' The objection states that further residential dwellings have been built since the original permission, also that an alcohol license has been granted.
- 5.10 The objection describes the area as being 'a quiet residential street on an evening and on a Sunday' stating that 'the additional noise and disturbance from the extended hours would have a significant negative impact on the residential amenity of the area. There are no hospitality / service premises in this area of Brook Street with extended opening hours.' There are four flats and one house directly adjoining the premise. The flat at 8a Brook Street shares the same front entrance as the Little Coffee House and its living areas are directly above the kitchen / serving area. Any additional opening hours would have a significant impact on this property as well at those adjoining and in the surrounding area.' This concern is noted, however the remaining surrounding residents have not objected to the proposal, in particular the flat at 8a Brook Street.

- 5.11 The application proposes late evening opening until 10pm for 12 times a year to trial the impact and give the business an opportunity to prove that the amenity concerns will not occur. The objection however explains how the hours have already been trialled over the last 18 months by themed nights outside of their permitted opening hours and explains the nuisance these have caused. This is through 'increased noise levels beyond 10.30pm and having to move customers off adjoining property my property where they have been smoking and dropping cigarette ends.' This current proposal suggests a 10:00pm closing so marginally earlier than the concern listed above.
- 5.12 The objection states that the proposed hours will change the whole feel of the premises from customers having coffee during the day and attending a themed event with alcohol on an evening which is inappropriate in a residential area.
- 5.13 The above matters are all genuine concerns, particularly given that residential dwellings exist immediately adjacent to the premises. It is inevitable that visitors coming to the premises and leaving with cause some disturbance, also when taking smoking breaks will congregate outside the premises near the windows of the private residential property adjacent. Similarly, there may be some noise transmission between party walls. All this has the potential to cause harm.
- 5.14 This has to be balanced against the needs of the business and Selby District Councils commitment to supporting "back to business" and assisting in the recovery of the local economy and the District's town centres post-Covid. The Local Planning Authority accepts the need for some element of flexibility, particularly for small businesses, as part of this economic recovery. However, it is noted that the café is located in a predominantly residential area and whilst there are some commercial premises on the other side of Brook Street, these are shops which have daytime opening hours.
- 5.15 The proposed Sunday hours (11-4pm) will mean the café is open 7 days a week, however this is not considered to be sufficiently harmful to the amenities of neighbouring occupiers given its midday and afternoon opening. The Sunday opening is therefore supported on a permanent basis.
- 5.16 The proposed 10pm closing for 12 occasions a year will obviously change the character and nature of the premises in those evenings when it occurs, and any harm created would be limited to a specific period. The applicant initially wanted unrestricted usage on Fridays and Saturday's days, however then agreed to having these controlled and initially request 26 days/events per year and then later agreed to 12 days per year, allowing one theme night per month. This equates to 3.2% of days per year. This is considered a reasonable compromise between meeting the needs and aspirations of the business and safeguarding the amenities of the adjacent occupiers for the remaining 353 days that year. The 10pm closing will also mean any disturbance will be contained to a specific period and the 10pm closing is a reasonable time considered not to significantly interrupt sleep.
- 5.17 A temporary 12-month consent to start from when the first themed night occurs will help the Local Planning Authority to monitor these events. If the events occur without cause for complaint then this could be extended in the future to a permanent 12-day allowance per year, however if the nuisance is to such a degree that its harmful then the temporary consent would not be renewed, and the opening would revert to the permanent permitted hours recommended in condition 1.

- 5.18 The Environmental Health officer raised initial concerns over the previously suggested unrestricted weekend use and the number of events proposed, however did suggest the applicant limit these to 12 per year. This reduction to 12 events per year, formed part of the full application and was reconsidered by the Environmental Health officer. The officer maintained the need for further information regarding the provision of amplified music and extraction/ventilation arrangements. The officer states "In relation to raised voices, previous concerns were raised regarding speech transmission between adjoining walls, and at neighbouring properties as customers leave the premises. The proposal to extend opening hours to 2200hrs once per calendar month for a 12-month temporary period is considered a satisfactory response to this."
- 5.19 Following the deferral from the 10th of March 2021 committee meeting, the applicant has confirmed that they do not play amplified or live music in the coffee house. The only form of music they use for a background ambiance is an Echo Dot, normally set on volume 4-5. They plan to use the same Echo Dot for the late evening theme nights proposed. This satisfied the Environmental Health Officer, who considered any further statutory noise could be controlled through the Environmental Protection Act and therefore no noise conditions were necessary. An informative was suggested reminding the applicant of this legislation and how this prohibits noise from premises considered to be prejudicial to health or a nuisance.
- 5.20 With regards fixed plant noise, the applicant supplied photographs of the recently upgraded extraction system and was trying to locate the noise output from the manufactures details and confirmation of where it discharges to. Therefore, this is still outstanding and it's hoped this information will be available before the committee meeting and will be presented as an officer update. If not, the Environmental Health officer was happy to provide a condition to cover the need to agree this prior to the evening use commencing.
- 5.21 The applicants also wished to reiterate that "we are respected business people who have invested a lot of money in Selby and made the properties we have bought to a superb state, which we believe has improved the Town. We take a lot of pride in our properties and we respect our neighbours domestically and commercially."
- 5.22 Therefore whilst the representations do raise valid concerns and the matter is finely balanced, a combination of 10pm closing and limiting any potential nuisance to a 12 events per year on a temporary one year basis is a reasonable compromise and would not warrant refusal of the planning application. The proposal would accord with Policies ENV1 of Selby District Local Plan and Policies SP14 of Selby Core Strategy.

Heritage impacts

- 5.23 The site lies partly within the Selby Town Centre Conservation Area. When considering proposals which affect Conservation Areas regard should be made to S72 (1) of the Planning (Listed Building and Conservation Area Act) 1990 which states that with respect to any buildings or other land in a Conservation Area, of any powers, under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Relevant policies in respect to the impact of development on the Selby Town Conservation Area and the character and form of

the area include Policy ENV1 (1), (4) and (5) and ENV25 of the Selby District Local Plan, and Policies SP18 and SP19 of the Core Strategy. Relevant policies within the NPPF, which relate to development within a Conservation Area and the significance of the setting of the adjoining listed building, include paragraphs 189, 190, 191, 192 193 and 194.

- 5.24 The proposal is solely to change the opening hours and no external alterations to the building are proposed. The increase in hours will naturally increase the intensity of the use which would be more apparent within the late evening when the premises would otherwise have been closed. This may be regarded as creating vibrancy within the commercial fringe and in officers view will have a neutral impact on the Conservation Area, particularly given the limited events that are proposed. The proposal is therefore in compliance with the abovementioned policies.

6 CONCLUSION

- 6.1 The proposed change to the opening hours of an established café use undoubtedly has the potential to cause harm to the living conditions of neighbouring occupiers, particularly given their proximity. The objections received raise valid concerns and these have to be balanced against the location of the premises on the edge of the commercial core of the town centre, despite it being essentially residential in nature. The premises will continue to operate largely as per the previously permitted day time hours, but will allow for Sunday opening from late morning until late afternoon. This is considered acceptable given its use and location on the fringe of the town centre and is not considered to cause significant harm.
- 6.2 The proposed late evening opening does have the potential to create more nuisance and therefore as a compromise the premises should close at 22:00 hours and the number of events (opening beyond 5pm) be limited to 12 per year. This will restrict the potential for nuisance to a limited period and the matter can then be reassessed after the first 12 events have occurred. The proposal would therefore accord with Policy ENV1 of Selby District Local Plan and Policies SP14 of Selby Core Strategy subject to condition.

7 RECOMMENDATION

This application is recommended to be Granted subject to the following conditions:

01. The Class E café shall only be open for customers between the following hours:

Ground Floor

- Monday - Saturday 09:00 - 17:00
- Sunday 11:00 - 16:00

First Floor

- Monday - Saturday 11:00 - 15:00
- Sunday 11:00 - 16:00

Reason:

In the interests of residential amenity, having had regard to Policy ENV1 of the Selby District Local Plan.

02. Notwithstanding Condition 1 above, late night opening and use of the ground floor only on Fridays or Saturdays from 17:00 until 22:00 hours is hereby permitted for a temporary 12-month period, starting from the first time the premises are open beyond 17:00 hours. Late night opening shall not occur for more than 12 nights per annum and shall not occur on more than 1 occasion per calendar month.

The applicant shall keep a logbook of the dates on which the café is open until 22:00 and this shall be made available to Selby District Council upon request.

Upon expiry of the 12 month period the opening hours shall revert to those in Condition 1 above.

Reasons:

To enable the Local Planning Authority to assess the impact of the late night opening on the living conditions of nearby and adjacent occupiers, having had regard to Policy ENV1 of the Selby District Local Plan.

03. Prior to commencement of the late night opening hours described in condition No.2, all noise and other emissions resulting from processes or installations at the buildings, the subject of this application, shall be treated to the satisfaction of the Local Planning Authority. Details of noise attenuation and/or extract systems shall be submitted to and agreed in writing before the use of the buildings commence. The agreed scheme shall be maintained throughout the life of the development.

Reason:

To protect residential amenity and in order to comply with the NPPF and Selby District Council's Policy's SP19 and ENV2

Informative

The environmental Protection Act 1990 allows for the abatement of statutory nuisance in relation to noise. It is advised that Section 79 of the Environmental Protection Act 1990 prohibits noise from premises considered to be prejudicial to health or a nuisance.

8 Legal Issues

8.1 Planning Acts

This application has been determined in accordance with the relevant planning acts.

8.2 Human Rights Act 1998

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

8.3 Equality Act 2010

This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

9 Financial Issues

Financial issues are not material to the determination of this application.

10 Background Documents

Planning Application file reference 2020/1263/FUL and associated documents.

Contact Officer: Gareth Stent (Principal Planning Officer)

Appendices: None