

**North Yorkshire Council**

**Community Development Services**

**Thirsk and Malton Constituency Area Planning Committee**

**18 APRIL 2024**

**ZE23/06955/73 - Application for the variation of condition 02 of planning approval 23/00077/73 dated 18.04.2023 to remove the restriction on the number of evening events per month and to allow an increase in the total number of evening events from 10 to 50 occasions per calendar year on land at Dogh, Main Street, Welburn, Malton on behalf of Mrs Georgia Dowkes-White (Dogh Limited)**

**Report of the Assistant Director Planning – Community Development Services**

**1.0 Purpose of the Report**

- 1.1 To determine a planning application for the variation of Condition 02 of planning approval 23/00077/73 dated 18.04.2023 to remove the restriction on the number of evening events per month and to allow an increase in the total number of evening events from 10 to 50 occasions per calendar year on land at Dogh, Main Street, Welburn, Malton.

**2.0 Background**

- 2.1 The application is reported to the Area Planning Committee for determination because it is considered that significant planning issues have been raised.
- 2.2 The application was reported to the Area Planning Committee meeting held on 21 March 2024 where the item was deferred at the request of Members to allow further consideration of Condition 10 regarding deliveries to the premises and further investigation into the proposed Traffic Regulation Order relating to Main Street, Welburn.
- 2.3 The substantive report published for the Area Planning Committee meeting held on 21 March 2024 is appended to this update report (Appendix A).

**3.0 Reasons for deferral**

- 3.1 In deferring the application Members requested that consideration is given to the following:-
- A re-consideration of the delivery time restriction which currently allows for deliveries to the premises from 04:00 hours.
  - The status and impact of the Traffic Regulation Order relating to Main Street, Welburn.

#### 4.0 Further considerations and discussion

##### Delivery time restriction

4.1 Condition 10 of planning permission ref. 23/00077/73 states:-

*'There shall be no deliveries to the café/shop/takeaway premises prior to 04:00 hours each day.'*

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

4.2 The delivery time restriction condition was first imposed at the request of Ryedale District Council's Planning Committee when application ref. 21/01590/73A was approved in March 2022. The condition was subsequently carried forward when permission ref. 23/00077/73 was granted in April 2023.

4.3 Officers are aware that the 4am start time for deliveries is a matter of local concern and is an issue that the Members of the Area Planning Committee which to be re-visited.

4.4 At the request of the Local Planning Authority (LPA) the applicant has provided a further supporting statement which contains details of all deliveries to the premises. A copy of the statement is included at Appendix B.

4.5 The delivery schedule illustrates that, at present, the majority of deliveries to the premises generally occur during normal business hours of 08:00 to 17:00 hours. However, there are suppliers who deliver earlier in the day with the earliest being 05:45 hours.

4.6 Deliveries to the premises are carried out by various local and nationwide suppliers and are not under the control of the applicant. The applicant has identified that the delivery which on occasion occurs at or around 05:45 hours is by a single supplier. The applicant has been able to obtain written confirmation from that particular supplier that no deliveries shall take place before 06:00 hours. In addition a local supplier has made the same commitment in writing.

4.7 In light of the above the applicant has stated that it would be appropriate to amend the existing delivery time condition to read as follows:-

*'There shall be no deliveries to the café/shop/takeaway premises prior to 06:00 hours each day.'*

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

##### Traffic Regulation Order relating to Main Street, Welburn

4.8 The Local Highway Authority (LHA) has confirmed that a Traffic Regulation Order (TRO) 'Proposed Prohibition of Waiting at all Times' (double yellow lines) for Main Street, Welburn is under preparation following the completion of the public consultation and statutory advertisement stages.

4.9 The TRO is made under a separate regulatory regime pursuant to highway legislation and separate to the planning process. The report of the Assistant Director – Highways & Transportation (dated 22 February 2024) for the TRO concludes *"It is considered that the proposals are proportionate and still leave adequate on street parking throughout*

*the village for visitors to facilities and the wider surroundings*". Once the TRO is made (sealed) it would introduce double yellow lines on the southern side of the main road, to the front of Dogh. It should be noted that it is allowable to park on double yellow lines for a limited period of time for the purposes of loading/unloading. It is anticipated that the road markings will be installed in Summer 2024.

- 4.10 The applicant has also made further comments on the parking and traffic situation which are set out in the supporting statement attached to this report at Appendix B. The applicant proposes to take additional steps to alleviate potential parking issues during evening events. The applicant states that they will arrange for evening event staff to park in the car park to the rear of the Crown and Cushion public house. In addition the applicant will make it clear in communications with those attending evening events that parking on the private service road should be avoided. In view of the impending TRO and the restriction on parking on the public highway alternative parking arrangements can only be for local businesses, community uses and residents to manage and address on an individual basis.

#### Further comments from the Local Highway Authority

- 4.11 It has not been necessary to undertake a formal re-consultation exercise, however, the LPA has sought further comments from the LHA in relation to the above matters and potential highways impacts.
- 4.12 The Highways Officer has no concerns in relation to the proposed amendment to the delivery time condition to restrict deliveries to not before 06:00 hours.
- 4.13 The Highways Officer has considered the applicant's further supporting statement and, in terms of parking pertaining to evening events, states "*whilst the arrangements with the Crown and Cushion may be regarded as informal, it does illustrate a pragmatic approach, and together with the other measures mentioned does present a reasonable way to manage the issue of visitor car parking to the venue*".
- 4.14 With regard to the TRO the Highways Officer has observed that "*The introduction of the 'no waiting' TRO restriction could potentially displace a limited amount of on-street parking, but is also aimed to keep visibility clear at side road junctions and afford a reasonable opportunity to ensure a flow of through traffic can be maintained*".
- 4.15 The Highways Officer concludes that even with the introduction of the TRO, visitor parking allied to the increase in evening events at the site would not give rise to a significant impact on local highway capacity and safety.

## **5.0 Summary and conclusions**

- 5.1 The matters raised by Members have been investigated and further information has been obtained from the applicant and the Local Highway Authority as set out above.
- 5.2 In determining a Section 73 application, the LPA has to consider which conditions the permission should be granted subject to and whether they should differ from those imposed on the previous permission. This has enabled Officers to look again at all the existing conditions and whether they should be carried over, varied or removed. After considering the delivery information provided by the applicant and liaising with the Council's Planning Solicitor, it is considered that the continued imposition of a condition which allows deliveries to the premises as early as 04:00 hours would not be necessary or justifiable. In the interests of ensuring no unreasonable impacts on residential amenity it is recommended that the condition should be varied (as suggested by the applicant) to restrict deliveries to not before 06:00 hours, should permission be granted.

- 5.3 The TRO is noted and it remains the case that there are no objections to the application from the Local Highway Authority and the further steps to be taken by the applicant to manage parking demand for evening events is welcomed albeit being informal and involving third parties.
- 5.4 In conclusion it is considered that the increase in the number of occasional evening events would not give rise to any unacceptable intensification of use or conditions, either individually or cumulatively, that would be detrimental to road safety or capacity in compliance with Policy SP20 and the NPPF.
- 5.5 In light of this the Officer recommendation as set out in the earlier report from the 21 March 2024 meeting is unchanged and the only additional alteration to conditions is to amend the wording of Condition 10 to only allow deliveries to the premises from 06:00 hours onwards.

## 6.0 RECOMMENDATION

- 6.1 That planning permission be **GRANTED** subject to the conditions listed below.

### Recommended conditions:

- 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) with the exception of on no more than 50 occasions per calendar year where it is permitted for opening hours to be extended until 22:30 hours for the café and retail use (no hot food takeaway) of the premises for evening events. The owners/operators shall maintain an up-to-date register of evening event bookings that will be maintained at all times and shall be made available for inspection to an officer of the Local Planning Authority on request. The register shall include, but not be limited to, details of the date of the event, nature of the event and the number of attendees.

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

- 3 The evening events hereby permitted shall only be operated with a pre-book ticketing system (no walk-ins) that ensures that there is a maximum of 25 persons at any event.

Reason: To ensure that the amenities of nearby residents are not unreasonably affected in compliance with Policy SP20.

- 4 During the evening events hereby permitted there shall be no live music or vocals at the premises after 21:00 hours.

Reason: To ensure that the amenities of nearby residents are not unreasonably affected in compliance with Policy SP20.

- 5 The evening events hereby permitted shall only be held within the area outlined in red on the existing floor plan layout drawing ('licensed area'). There shall be no use of the external seating (2no. benches positioned at the front of the building) during the evening events hereby permitted.

Reason: To ensure that the amenities of nearby residents are not unreasonably affected in compliance with Policy SP20.

- 6 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.

- 7 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.

- 8 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.

- 9 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.

- 10 There shall be no deliveries to the café/shop/takeaway premises prior to 06:00 hours each day.

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

- 11 The development hereby approved shall be operated in full accordance with the Evening Event Management Plan(v.2.0) dated 26.02.2024, unless a variation is first agreed in writing by the Local Planning Authority under the terms of Condition 12 below.

Reason: In the interests of protecting the existing amenities of neighbouring occupiers and to satisfy the requirements of Policies SP16 and SP20.

- 12 The approved Evening Event Management Plan shall be reviewed in the event that the Local Authority receive a justified neighbour complaint that the terms of the EEMP have been breached.

Reason: In the interests of protecting the existing amenities of neighbouring occupiers and to satisfy the requirements of Policies SP16 and SP20.

- 13 No additional external lighting is permitted within the application the site, including lighting for site security purposes without prior written approval by the Local Planning Authority.

Reason: In the interests of the reduction of light pollution in compliance with Policy SP20.

### **INFORMATIVE**

'Evening events' are the primarily food and drink based events which are permitted to take place between the hours of 18:00-22:30 Monday- Saturday and 17:00-22:30 on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day) as per the requirements of Condition 2. Such events comprise bistro evenings, private hire for dining events and seasonal events (no hot food takeaway).

**Target Determination Date:** 16.02.2024

**Case Officer:** Alan Goforth, [alan.goforth@northyorks.gov.uk](mailto:alan.goforth@northyorks.gov.uk)