CASE OFFICER'S REPORT

Application Reference:	PL/2023/04622
Application Type:	Removal/variation of conditions
Site Inspection:	
Consultation ends:	27 July 2023
Case officer:	Jane Sanger

Site Address:	28A St Johns Street, Devizes, SN10 1BN
Proposal:	Variation of Condition 2 (opening hours) of 13/01343/FUL (Change of use of ground floor area from A1 (retail) to A4 (drinking establishment) with the basement currently in use as retail space remaining in A1 use. Internal alterations to include the removal of a stud partition wall and the creation of a WC.)
Recommendation:	Approve with Conditions

POLICIES

The National Planning Policy Framework (NPPF) 2021:
Chapter 4 – Decision Making
Chapter 9 – Promoting Sustainable Transport
Chapter 11 – Making Effective Use of Land
Chapter 12 – Achieving Well Designed Places

The Wiltshire Core Strategy, Adopted January 2015:
Core Policy 1 – Settlement Strategy
Core Policy 2 – Delivery Strategy
Core Policy 12 – Spatial Strategy for the Devizes Community Area
Core Policy 34 – Additional Employment Land
Core Policy 57 – Ensuring High Quality Design & Place Shaping

Kennet Local Plan 2011 Adopted April 2004:
ED17 – Town Centre Development
ED18 – Prime Shopping Areas

Planning Practice Guidance (PPG) 2014.

Sections 16 and 66 of the Planning (Listed Building and Conservation Areas) Act 1990.

Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990.

The Wiltshire Local Transport Plan 2011 – 2026: Car Parking Strategy (March 2015).

Devizes Area Neighbourhood Plan Referendum Version Adopted July 2015 (Referendum Version).

CONSULTATION RESPONSES

Devizes Town Council – no objections.

Public Protection – I have no objection to the proposed change to the start time from 08:00 to 11:00 Monday to Saturday.

Highways – I do not consider that the change to the times of operation will have a negative impact on the highway interests.

Trust for Devizes – no objection.

REPRESENTATIONS

None received.

KEY ISSUES:

• Relevant planning history.
• The principle of the development.
• Impact upon neighbour amenity.
• Impact upon highway safety.
• Impact upon the character and appearance of the conservation area and the listed building and their setting.

ASSESSMENT

The application site relates to unit 28A St John's Street, Devizes. It is a ground floor unit in use as a drinking establishment which is sui generis in planning use (as permitted under planning reference 13/01343/FUL) and is part of a three storey, stone built building, located in the town centre.

The building is Grade II listed and in the setting of listed buildings. The building is also situated within the Devizes Conservation Area.

<u>The proposals:</u>

The application proposes to vary condition 2 of Permission 13/01343/FUL to change the opening times of the unit. The new tenant took over the lease on the premises on 24 May 2023.

The applicant proposes the following changes to the opening times only:

"My intention is to open 8am daily – Monday to Saturday. Ideally, I would operate mostly as a café Monday to Wednesday with an earlier close time (8am – 4pm – but would not like a restriction to apply) and 8am to 9.30pm Thursdays to Saturday. The premises licence restricts the sale of alcohol to 11am to 9pm Mondays to Saturday and 12pm to 9pm on Sundays, therefore I am content with a 9.30pm closure. The opening times however do not work with my new café addition to the venue and will significantly affect my business model and reduce my ability to trade competitively. I would like to therefore to vary the opening times to 8am Mondays to Saturday and (and maintain 12pm on Sundays - although I do not intend to trade on that day but would like the option in the future)".

"I would like the new opening times to be 8am Mondays to Saturday to enable the venue to operate as a café as well. A full planning application for the inclusion of the other cafe provision will follow imminently.".

The existing condition 2 states:

The premises shall be open to the public only between the hours of 11:00 and 21:30 from Mondays to Saturdays and between 12:00 in the morning and 21:30 in the evening on Sundays, with the sole exception of any extended hours approved under the Licensing Act for Christmas Eve and New Years Eve.

REASON: To ensure the creation/retention of an environment free from intrusive level of noise and activity in the interests of the amenity of the area.

The revised application form makes it clearer than the original submission, that the proposal under this application is to vary condition 2 of Permission 13/01343/FUL to change the opening hours to the earlier time of 8am.

Relevant planning history:

13/01343/FUL - Change of use of ground floor area from A1 (retail) to A4 (drinking establishment) with the basement currently in use as retail space remaining in A1 use. Internal alterations to include the removal of a stud partition wall and the creation of a WC – Approved with conditions – 06.09.2013.

13/01598/LBC - Internal alterations to include the removal of a stud partition wall and the creation of a WC - Approved with conditions - 06.09.2023

K/58594/LBC – Existing WC/Shower at 28A St Johns Street to become part of the 28C St Johns Street and form WC/Utility. New window to hall and alteration/replacement of existing windows to 28C. Formation of new WC and wash up to 28A. Repair of lean to roof to 28A – Approved with conditions – 02.07.2008.

K/11735/L – Doorway and surround to Rear of Archway – Approve with conditions - 08/06/1988

K/11737 – Use of Covered Way as Shop – Approve with conditions – 12.05.1988.

K/11736 - Smoked Glass Shop Front to Rear of Archway – Approve with conditions – 19.04.1988.

The principle of the development:

- Section 73 application

This application is made under Section 73 of the Town and Country Planning Act 1990 to vary conditions imposed upon a decision already granted planning permission by the Local Planning Authority. Section 73 of the Act instructs the Local Planning Authority to consider the variation to, or relief of conditions that are applied for, stating that "if they [the LPA] decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted….they shall grant permission accordingly" (s.73(1)(a)). As such, the Local Planning Authority can grant permission unconditionally or subject to different conditions, or alternatively refuse the application if it is deemed that the original condition(s) should remain in place.

The variation to the planning permission would not revoke the development, however, the grant of a planning permission under Section 73 essentially provides a new planning permission. Due to the application only relating to the hours of opening the focus of this report will be on this amendment.

- Principle

The site is located within the prime shopping area of Devizes, where retail development is predominantly concentrated and falls under the new Class E of the Use Classes Order 1987 (as amended) 1 Sept 2020, which now includes shops (the former A1) with a mix of financial and professional (formerly A2) and restaurants and cafes (formerly A3).

The unit is a narrow layout located near the town hall where there are predominantly shops, with a few cafes and restaurants and financial and professional uses present, together with a sui generis use, including the Lamb Inn, a drinking establishment (formerly A4) which is behind the Town Hall. The permitted use for the unit is a drinking establishment a sui generis use. Insufficient information has been submitted for the Local Planning Authority to clearly understand if the cafe use being referenced within the supporting documents is ancillary to the existing sui generis drinking establishment use, or it requires planning permission for a change of use to a mixed use. The revised application form makes its clear that the unauthorised cafe use will be dealt with under a separate full planning application. The applicant's attention will be drawn to this via an informative. The changes to its opening hours to open earlier Mondays to Saturdays, from 08:00 is therefore only being assessed in relation to the permitted sui generis drinking establishment use whereby it is considered that the change of hours of use would not cause any adverse harm to the vitality of the area, being a town centre use.

Impact upon neighbour amenity:

It is noted that a few businesses open between 8am and 8.30am nearby, including The Silk Mercer – JD Weatherspoons, further along the same street, opens at 8am daily and 'At Table 31', approximately 4 units away on the same street, which opens daily from 8.30am, except Sundays when it is closed. Whilst there are some residential units sharing walls with the unit, the site occupies a town centre location where some degree of noise is characteristic of the area. Therefore, changing the opening hours from 11am to 8am (Mondays to Saturdays) is not considered to cause an unacceptable impact upon residential amenity. Public Protection further supports the proposed opening hours from 8am.

Other noise nuisance, which is not incidental to the existing use and is outside of the planning remit, can be dealt with under other legislation under Public Protection.

Impact upon highway safety:

The proposals will have no impact whatsoever upon highway safety due to the use already existing and occupying a sustainable location in the town centre. The highways officer concurs that the opening times will not have a negative impact upon highway safety interests.

Impact upon character and appearance of area of the conservation area and the listed building and its setting:

Sections 16 and 66 of the Planning (Listed Building and Conservation Areas) Act 1990.

Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990.

The changes to the opening hours will have no impact upon the heritage assets and their settings.

Conclusion and recommendation:

In consideration of the above it is concluded that the development would be in accordance with the development plan. With no circumstances warranting otherwise the application is recommended for approval subject to the conditions outlined below.

RECOMMENDATION: Approve with conditions.

Conditions: (4)

2 The premises shall be open to the public only between the hours of 08:00 and 21:30 from Mondays to Saturdays and between 12:00 in the morning and 21:30 in the evening on Sundays, with the sole exception of any extended hours approved under the Licensing Act for Christmas Eve and New Years Eve.

REASON: To ensure the creation/retention of an environment free from intrusive level of noise and activity in the interests of the amenity of the area.

3 No live music shall be played on the premises.

REASON: To protect the amenity of the nearby properties.

4 The delivery and despatch of goods to and from the site shall be limited to the hours of 07:30 and 21:00 on Mondays to Saturdays, and at no time on Sundays and Bank or Public Holidays.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of amenity of the area.

5 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Copy of Extant Approval Decision Notice – 13/01343/FUL
Received on 8 June 2023.

Drawing No. GTB – 726 – 2 - Site & Location Plan
Received on 11 June 2023.

Application Form
Received 23.08.2023.

Internal Sound Insulation Test Report received on 21 August 2013 submitted to planning reference 13/01343/FUL
Plan: GTB-726-2 received on 26 June 2013 Plan: GTB-726-1 received on 26 June 2013 submitted to planning reference 13/01343/FUL
Plan: GTB-726-1A received on 26 June 2013 submitted to planning reference 13/01343/FUL

REASON: For the avoidance of doubt and in the interests of proper planning.

Informatives: (1)

6 The applicant's attention is drawn to the potential unauthorised use of operating as a cafe, alongside the approved use as a drinking establishment (on the basis of insufficient information being submitted to consider this cafe use as ancillary to the sui generis use). This may need to be dealt with under a separate planning application for a mixed use at the premises to regularise the cafe use.