

---

**APPLICATION DETAILS**

---

**Application No:** 21/0233/VAR

**Location:** 2A Oxford Road Middlesbrough  
TS5 5DT

**Proposal:** Variation of condition 3 of planning approval 19/0532/COU

---

**SUMMARY**

---

The application site is 2A Oxford Road, a first floor kitchen/store and roof terrace which is associated with a ground floor bar at 55 to 59 Roman Road. The property is located within the Roman Road Local Centre and is within the Linthorpe Conservation Area and Article 4 designated area.

The site is located at the junction of Oxford Road and Roman Road with commercial units located to the north and west along Oxford Road. Directly opposite the application site to the east across Roman Road is the Linthorpe Hotel. Immediately to the south is the adjoining Dental clinic at 61 Roman Road with residential properties in the continuing terrace. To the west of the application site on the first floor is a residential flat, located at 2B Oxford Road and the upper floor of a hair salon at 2 Oxford Road. An alleyway is located to the rear of the property with residential properties located to the south-west along Linden Grove.

Planning permission was previously granted under application 19/0532/COU for:

*Part change of use of first floor from residential (C3) to create a roof terrace/kitchen/store room associated to ground floor bar (A4) at No.55-59 Roman Road with internal and external alterations*

In order to limit potential impacts to the neighbouring residential properties from the use of the roof terrace a condition (Condition 3) was imposed to limit the use of the open terrace to be between the hours of 10am and 7 pm as well as for the provision of acoustic fencing to the rear of the terrace to limit noise transference.

This application seeks to vary condition 3 of the approved scheme to allow the roof terrace to be used beyond the controlled hours, upto 10pm on all days.

The application is supported by a Design and Access Statement, Noise Assessment and Noise Management Plan.

Two objections have been received in relation to the proposed extension of opening hours mainly based around additional comings and goings / traffic and additional noise disturbance, indicating there is already noise disturbance from the late night establishments within the area.

The submitted noise assessment indicates that the average noise levels would not increase as a result of the proposed extended hours relative to the nearest residential property to the

rear of the site and the vehicle noise is the greatest impact of noise within the area. Notwithstanding this, it is considered that the proposal would introduce a type of noise into a mixed commercial / residential area, at a point close and adjacent to residential properties which would be particularly difficult to predict and control and would be doing so at a time of the day when surrounding residents should be able to expect a greater level of amenity. The proposal would be likely to result in intermittent additional disturbance to residential amenity on a basis sufficiently regular to be considered as being notably harmful to the existing levels of residential amenity contrary to the NPPF and Local Plan Policy DC1.

The officer recommendation is to refuse permission.

---

## PLANNING HISTORY

---

Previous Planning permissions for the site include:-

19/0512/COU- Retrospective change of use of first floor from residential flat (C3) to Beauty Salon (Sui Generis), approved February 2020

19/0532/COU- Part change of use of first floor to from residential (C3) to create a roof terrace/kitchen/store room associated to ground floor bar (A4) at No 55-59 Roman Road with internal and external alterations, approved November 2019.

---

## PLANNING POLICY

---

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, Local Planning Authorities must determine applications for planning permission in accordance with the Development Plan for the area, unless material considerations indicate otherwise. Section 143 of the Localism Act requires the Local Planning Authority to take local finance considerations into account. Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires Local Planning Authorities, in dealing with an application for planning permission, to have regard to:

- The provisions of the Development Plan, so far as material to the application
- Any local finance considerations, so far as material to the application, and
- Any other material considerations.

### Middlesbrough Local Plan

The following documents comprise the *Middlesbrough Local Plan*, which is the Development Plan for Middlesbrough:

- Housing Local Plan (2014)
- Core Strategy DPD (2008, policies which have not been superseded/deleted only)
- Regeneration DPD (2009, policies which have not been superseded/deleted only)
- Tees Valley Joint Minerals and Waste Core Strategy DPD (2011)
- Tees Valley Joint Minerals and Waste Policies & Sites DPD (2011)
- Middlesbrough Local Plan (1999, Saved Policies only) and
- Marton West Neighbourhood Plan (2016, applicable in Marton West Ward only).

### National Planning Policy Framework

National planning guidance, which is a material planning consideration, is largely detailed within the *National Planning Policy Framework* (NPPF). At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11). The NPPF defines the role of planning in achieving economically, socially and environmentally sustainable development although recognises that they are not criteria against which every application can or should

be judged and highlights the need for local circumstances to be taken into account to reflect the character, needs and opportunities of each area.

For decision making, the NPPF advises that local planning authorities should approach decisions on proposed development in a positive and creative way, working pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and that at every level should seek to approve applications for sustainable development (paragraph 38). The NPPF gives further overarching guidance in relation to:

- The delivery of housing,
- Supporting economic growth,
- Ensuring the vitality of town centres,
- Promoting healthy and safe communities,
- Promoting sustainable transport,
- Supporting the expansion of electronic communications networks,
- Making effective use of land,
- Achieving well designed buildings and places,
- Protecting the essential characteristics of Green Belt land
- Dealing with climate change and flooding, and supporting the transition to a low carbon future,
- Conserving and enhancing the natural and historic environment, and
- Facilitating the sustainable use of minerals.

The planning policies and key areas of guidance that are relevant to the consideration of the application are:

DC1- General Development  
CS4 – Sustainable Development  
CS5 - Design

The detailed policy context and guidance for each policy is viewable within the relevant Local Plan documents, which can be accessed at the following web address.  
<https://www.middlesbrough.gov.uk/planning-and-housing/planning/planning-policy>

---

## **CONSULTATION AND PUBLICITY RESPONSES**

---

There have been 2 letters of objection received following the neighbour consultation/press and site notice.

The following comments have been received from the statutory consultees:-

### MBC Environmental Protection

Initially raised no comments to the application and provided the following response to request for further detailed clarifications.

Having considered the noise assessment that was submitted with the planning application (9103.1), we were happy with the findings of the report which concluded that an extension of the opening hours from 7pm to 10pm would not have a significant impact on the background noise levels in the area, particularly the nearest residential premises (Flat 2 A Roman Road). The report advises that the main source of noise in the area is road traffic noise and fixed plant noise.

It should be noted that the noise measurements were taken when covid restrictions were in place, so the number of people on the terrace may not be a true representation of the

potential number of people and therefore number of voices that will be heard post covid restrictions. The applicant is not intending to play music in the outdoor space, therefore the concerns in terms of noise will be raised voices. It is very difficult to determine the noise impact that raised voices will have, as there is not a noise level that can be accurately predicted. The noise levels from customers will vary from day to day, and customer to customer. The noise management plan should assist in controlling this, however, I understand concerns with regard to the proposed later hours potentially impacting on the residential amenity of the area.

I can confirm that we have not received any noise complaints regarding noise from the terrace area, however I understand that the terrace has never been used after 7pm. The applicant has attempted to control the noise by erecting a fenced area as a barrier to the residential flat, that said, should we receive noise complaints from the terrace area, then outdoor drinking areas are notoriously difficult to deal with, Licensing Regulations are difficult to relate to patron noise, and statutory nuisances can be difficult to determine.

## **Public Responses**

Number of original neighbour consultations	69
Total numbers of comments received	2
Total number of objections	2
Total number of support	0
Total number of representations	0
Site Notice Posted 21 <sup>st</sup> May 2021	

### Objection from 83 Roman Road

Increase in vehicles parking on Roman Road and the surrounding areas, causing more difficulty for residents to get parked, particularly the elderly and disabled. There have also been issues with customers parking on double yellow lines and pedestrian crossing, causing safety issues and concerns.

There are numerous issues already with parking where customers of the Artizan have been seen parking on the pedestrian area, which causes issues for local residents walking safely in and around the area.

Secondly, it has caused an increase in noise pollution and anti-social behaviour for local residents. This can be regularly heard up until midnight and beyond. The increase in noise pollution and anti social behaviour has led to residents being unable to sleep, therefore causing disturbed sleep and anxiety, resulting in them being absent or late from school and their places of work. Extending the opening hours of the Artizan will only make the problems worse.

There are 5 other drinking establishments within the proximity of 2a Oxford Road and in our opinion, this is more than enough to meet the needs of the community.

To our knowledge, Roman Road is part of the conservation area and our understanding is that the owners have already been asked to remove the current outside drinking areas, which has not been adhered to.

We feel there is enough seating inside and outside to meet the needs of the customers.

Linthorpe is a residential area that is a sought after and desirable area in which to live. However, increasing table coverage for drinking in our opinion will only serve to have a negative effect on both house prices and the close-knit community.

We hope that you will take our concerns and worries in regards to not extending the longer opening hours.

### Objection from 79 Roman Road

I wish to raise an objection to this due to the following.

Increase of vehicles parking in the area particularly Roman Road where parking for residents is at a premium and also issues with patrons parking on double yellow lines and crossing area.

There are already issues with parking near the artizan where car owners have been seen parking on the pedestrian area, causing issues for local residents walking safely in this area.

Secondly increased noise pollution for residents and possible increase in anti-social behaviour and noise levels.

There are in fact other drinking establishments with 100 yards of 2a oxford road and in my opinion there is enough hostilaries to meet the needs of the community.

Also i would like to raise the point that this area is part of the conservation area and my understanding is that the owners have already been asked to remove current outside drinking areas and this has not been complied with.

I would suggest that there is enough seating onside and out currently to meet current and ongoing trade.

Linthorpe is a residential area which is a sought after and desirable area in which to live. However increase of table coverage for drinking in my opinion will only serve to have a negative effect on both house prices and a close knit community.

I would hope that you will consider my objection in regard to not extending the longer operating hours.

---

## **PLANNING CONSIDERATION AND ASSESSMENT**

---

1. The main considerations with this proposal are the impacts of noise and disturbance from the proposed extension of hours to the use of the terrace and any associated impacts. These are considered as follows;

### Principle of the development

2. The principle of the development has been established under the previous planning approval granted in 2019 and that allowed for the roof terrace to be utilised as an outdoor seating area to be used in association with the licensed premises. This application is therefore only considering the proposed changes to the opening hours of the roof terrace on the first floor of the premises.

## **Character and Appearance**

3. The proposal will not alter the existing appearance of the existing roof terrace. The acoustic fencing that was a condition under the previous approval for the granting of the roof terrace has been installed and is already visible / part of the terraces existing character/appearance. The applicant has suggested within the design and access statement that a temporary canopy may be installed within the roof terrace area although that is not part of this application and may not in itself require planning permission. As such, the proposal will not change the appearance of the area.
4. The use of the terrace arguably increases the capacity of the premises and this becomes visible externally and audible externally and so has the ability to change the character of the area in the later hours (Impacts on residential amenity are considered separately). The site is part of the local centre where such uses are directed towards and which already has a character of comings and goings of people to the collection of commercial premises. The character of the centre is likely to change throughout the day as the use / patronage of the types of premises within the centre changes from the shops / day time premises to the more evening based offer.
5. Whilst these matters are noted, in view of the scale of the terrace and its existing presence, it is considered that its use into the later hours, would not unduly change the overall character of the centre or this part of the centre.

## **Impact on the Privacy and Amenity**

### *Noise – Policy Background*

6. Paragraph 127 of the National Planning Policy Framework (NPPF) sets out that to achieve well designed places, planning policies and decisions should consider creating places that are '*safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.*'
7. Government's guidance document on noise advises (para.03) that '*decision making needs to take account of the acoustic environment and in doing so consider: whether or not a good standard of amenity can be achieved.*
8. It further advises at Para 06:  
*some commercial developments including restaurants, hot food takeaways, night clubs and public houses can have particular impacts, not least because activities are often at their peak in the evening and late at night. Local planning authorities will wish to bear in mind not only the noise that is generated within the premises but also the noise that may be made by customers in the vicinity.*
9. The NPPF guidance is reflected in the Council's Core Strategy Policy DC1 which sets out that all new development should consider '*the effects upon the surrounding environment and amenities of the occupiers of nearby properties will be a minimum both during and after completion*'.

### *Noise – Existing scenario*

10. The applicant currently operates an outdoor seating area to the front of the premises that operates until 10pm and has installed an acoustic fence along the rear boundary of the roof terrace which operates until 7pm to assist in reducing the noise impacts of the roof terrace to the neighbouring residential flat at 2a Roman Road and the residential properties along Linden Grove. The building is located within the Roman

Road Local Centre that has an existing level of ambient noise associated with the commercial uses with several businesses such as Tesco operating until 11pm.

11. Objections have been raised in relation to existing problems with night time drinking and noise within the residential area and the knock on affects of noise, sleep disturbance etc. These are considered within the following paragraphs.

#### *Noise - Supporting documents*

12. A design and Access Statement, Noise Assessment and Noise Management Plan have been submitted to support the application. The Noise Assessment details the existing noise levels from the roof terrace relative to the nearest noise sensitive receptor (flat) at 2a Roman Road. The Noise Assessment identified that the most significant noise source was the road traffic noise and plant / machinery associated with the commercial uses within the Roman Road Local Centre and indicated that there was no significant difference in the background sound level between the current and proposed new operating times of the roof terrace. It further noted that when the roof terrace was open, that the greatest noise primarily related to single noise events associated with loud vehicles passing by, advising that the measured noise level associated with patrons on the roof terrace was not significantly different to the measured levels during periods when the roof terrace is closed. The Noise Assessment further advised that the existing acoustic fence at the terrace is sufficient to reduce noise levels to the nearest noise sensitive receptor (2a Roman Road) although did advise that, intermittently, the noise of people talking could be heard on the recordings between the hours of 7pm to 10pm.
13. The Noise Assessment sets out that during the day when the roof terrace is open during the permitted hours, the level of noise is 46dB. During the extended opening hours between 7pm and 10pm the measured background levels were also 46dB with the highest recording from the roof terrace being 50dB which is advised as being from an isolated, single traffic incident.
14. Alongside the Noise Assessment report the applicant has submitted a Noise Management Plan which confirms there will be no live music played on the roof terrace, doors to the roof terrace will be closed when not in operation, waste disposal will be disposed of prior to 7pm and the opening hours of the roof terrace will not be beyond 10pm.

#### *Noise – Material Considerations*

15. The Council's Environmental Protection Officers have assessed the application, associated documents, and have no objections to the proposal. They recognise the findings of the noise assessment and accept these although also note that noise from patrons is particularly difficult to predict and difficult to deal with through licensing regimes and through the statutory noise process. Whilst the response from the councils Environmental Health Team are noted, it is recognised that their comments reflect on the difficulty of accurately predicting patron noise and also respond considering the likely impacts more relative to statutory noise nuisances. Planning however has to consider the impacts on reasonable levels of amenity and it is considered that there is a difference between retaining reasonable residential amenity and not being detrimental to a point of not causing a statutory nuisance.
16. It is considered necessary in this instance to consider the type of noise likely to be generated by the proposed extension of hours, the impacts of this and the ability to control it, recognising that raised voices at short distance often don't blend with the background noise or vehicle noise and are perceived by individuals differently which affects whether they are likely to be harmful to amenity.

17. With respect to noise from patrons, this is noise of individual people and noise they generate will be affected depending on the venue type, individual patron mannerisms, time of the day, number of patrons within a single area, whether or not alcohol and 'high spirits' is in play, nature of management and other similar matters. It is considered to not be unreasonable to take the view that as drinking continues into the later hours, that patrons are likely to be in higher spirits than at earlier times and that there would be a propensity for patron noise to therefore increase as the night goes on, albeit not necessarily on a daily basis or in all instances. This is recognised within the government's noise guidance document.

18. The submitted noise assessment refers to the Draft Institute of Acousticians (IOA) Good Practice Guide on the Control of noise from Places of Entertainment and highlighted reference in respect to patron noise as detailed below;

*"The working group drafting this good practice guide did not feel that, there as currently sufficient consensus or a robust enough evidence base upon which to make noise level based recommendations for the assessment and control of patron noise. Instead the working group recommend that a qualitative but objective, case-by-case approach to patron noise should be undertaken and supported by appropriate acoustic information, where relevant."*

19. This is considered to corroborate a view that patron noise is particularly difficult to control and that, an outdoor seating terrace where patron noise will occur would be similarly be particularly difficult to control and that a noise assessment will not necessarily give the complete indication of the likely impacts of such noise, needing a qualitative and objective approach to be taken.

20. It is considered that whilst there may not be a long and high average noise from patrons for the additional hours, as detailed within the noise assessment, it is highly likely that short spikes in patron noise, will occur throughout the evening. For people living in the nearest properties, they rely on having reasonable amenity at varying times, each day, month, year and so on and in considering this proposal, should extending the hours result in only a small number of audible disturbances each night or each week, the impact becomes cumulative for the surrounding residents and this is an important consideration.

21. The roof terrace is also likely to be most used during the summer months, when, it is also most likely that people will have windows open into the late evening and possibly through the night, bringing likelihood of further conflict.

22. The outdoor area already has the ability to operate into the early evening (until 7pm) and in determining the application for the change of use of the premises, this was seen as a reasonable balance between recognising the premises is within a commercial 'local centre' and recognising residential properties lie immediately adjacent.

23. Whilst each residential property may operate differently, it's reasonable to consider some of the properties within the local area could be used as family properties with children residing there and where noise later into the evening would be likely to have even more of an impact. The proposed hours are until 10pm 7 days a week and so this would limit the respite from the potential noise and in view of the above, it is considered this will have the ability to adversely affect the amenity of these properties into the later evening, when residents should be able to expect a higher level of amenity than throughout the day.



24. In addition, allowing a greater number of people at the premises later into the evening is likely to result in a greater movement of people later into the evening to and from the premises, which will include noises outside the premises from patrons voices, car / taxi doors opening and closing, all within the later evening, when surrounding residents should be able to expect a reasonable level of amenity. Whilst this will already occur, this will be added to were the proposal to be approved and operated, which would be in addition to the noise generated on the terrace and the movement of people outside of the premises obviously has no ability to be reasonably controlled.
25. As well as the above consideration, and whilst the findings of the noise assessment are noted, there are a few matters which are considered to potentially result in the findings not necessarily reflecting a rigorous / robust assessment of the most likely scenario in relation to noise impacts, these being;
- The day when the noise assessment was done appears to be a wet day, when outdoor drinking / eating may have been limited.
  - It is understood the assessment / monitoring was undertaken on a day when there were covid restrictions in place requiring patrons to be seated, 6 to a table etc. This would be likely to result in a reduced number of patrons able to be seated on the roof terrace and therefore skew the results towards the lowest likely noise levels being generated and certainly not representative of a very busy roof terrace on a hot summer's day.
  - dB readings appear to be La90, and La60 and so not at all representative of how a higher noise for a short space of time relative to a patron shouting or similar would have an effect.
  - Noise from people drinking tends to get louder the longer they drink, and measuring until 7 pm doesn't necessarily indicate that noise from drinking for a further 3 hours will be at the same level. This is an inappropriate assumption.
26. In view of all the above matters it is considered that the Noise Assessment is not sufficiently convincing to demonstrate that the proposed extension of hours would not result in regular harm to the amenities of residents in the area in the later evening, being detrimental to the guidance within the NPPF and Local Plan Policy DC1.

### **Other Matters**

27. The extended hours will allow a greater capacity of patrons into the later hours and although objection has been raised to this by a resident in respect to the traffic / parking, it is not envisaged that this would amount to any notable additional impacts given some other commercial premises within the centre will have closed earlier in the day which would have reduced pressures. Objection detailing existing ad-hoc or inappropriate parking is noted, however the proposal relates to an existing premises within the established commercial centre and it is considered that this proposal would not have a direct influence / impact on this matter.

### **Conclusion**

28. It is considered that the proposal would introduce a type of noise into a mixed commercial / residential area, at a point close and adjacent to residential properties which would be particularly difficult to predict and control and would be doing so at a time of the day when surrounding residents should be able to expect a greater level of amenity. The proposal would be likely to result in intermittent additional disturbance to residential amenity on a basis sufficiently regular to be considered as being notably harmful to the existing levels of residential amenity contrary to the NPPF and Local Plan Policy DC1.

---

## **RECOMMENDATIONS AND CONDITIONS**

---

Refuse for the following reason;

### **Adverse impact on residential amenity**

**In the opinion of the Local Planning Authority, the operation / use of the proposed terrace, between the hours of 7pm to 10pm would result in noise disturbance in the immediately surrounding area and would have a detrimental impact on the amenity of nearby residents at a time when they should reasonably expect a reasonable level of peace and quiet, being in conflict with Policy DC1(c) of the Local Plan and the National Planning Policy Framework.**

---

## **INFORMATIVES**

---

None

Appendix 1: Site Location Plan

