

## LOCAL MEMBER OBJECTION

COMMITTEE DATE: 19/12/2018

APPLICATION No. **18/01758/MNR** APPLICATION DATE: 07/08/2018

ED: **RHIWBINA**

APP: TYPE: Removal of condition(s)

APPLICANT: Snails Deli Ltd

LOCATION: SNAILS DELICATESSEN, 6-8 BEULAH ROAD, RHIWBINA, CARDIFF, CF14 6LX

PROPOSAL: VARIATION OF CONDITIONS 4 (OPENING HOURS), AND 16 (EXTERNAL DINING AREA DOORS) AND REMOVAL OF CONDITIONS 14 (EXTERNAL DINING AREA), 17 (MEANS OF ENCLOSURE) AND 18 (NUMBER OF DINERS) OF 09/00363/W

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RECOMMENDATION: That the variation of conditions 4 and 16 and removal of conditions 14, 17 and 18 of planning permission reference 09/00363/W, as amended by planning permission 10/01583/DCO, be **REFUSED** for the following reasons:

1. The removal of conditions 14, 17 and 18 would enable an increase in the number of customers using the external seating area and an increase in the size of that area, bringing it closer to the rear boundary of the site, which would result in increased noise and disturbance to residents of properties close to the site on Heol-Y-Bont and Beulah Road, to the detriment of residential amenity and contrary to policies KP5 and R8 of the Cardiff Local Development Plan.
2. The variation of condition 4 to allow the external dining area to the rear of the premises to be open to the public between 8:00am and 9pm and the variation of condition 16 to allow the doors to the external dining area to the rear of the premises to be open until 9pm would result in noise and disturbance affecting residents of properties close to the site on Heol-Y-Bont and Beulah Road over a longer period of time, to the detriment of residential amenity and contrary to policies KP5 and R8 of the Cardiff Local Development Plan.

### 1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 This application is for the removal of three conditions and the variation of two conditions attached to an existing planning permission (reference 09/00363/W). Application 09/00363/W was also an application to remove and vary planning conditions and related to the original permission for this development (07/02357/W), which is for "change of use of ground floor to mixed use shop/restaurant/gallery use (sui generis)".

1.2 The conditions that the applicant now seeks to remove are:

Condition 14:

*This consent relates to the application as supplemented by the information contained in the email from the agent dated 12 May 2009. For the avoidance of doubt, this confirms that the area of the external dining area shown on drawing no A-P-S-001, is for the exclusive use of customers. Reason: The information provided forms part of the application.*

Condition 17:

*The means of enclosure to the external dining area, as shown on drawing A-P-S-001, shall be retained on site for the duration of this permission. Reason : To ensure that the use of the premises does not prejudice the amenities of the neighbouring occupiers.*

Condition 18:

*The external dining area shown on drawing A-P-S-001 shall provide seating for no more than twelve diners. Reason: To ensure that the use of the premises does not prejudice the amenities of the neighbouring occupiers.*

1.3 The applicant also seeks to vary the following conditions:

Condition 4:

*The external dining area to the rear of the premises, shown on drawing A-P-S-001, shall not be open to the public between 7:30pm - 9:00am Monday to Saturday or at any time on Sundays. The rest of the external area of the application site shown on the site plan numbered A-P-S-001 shall not be open to any member of the public at any time, other than to enjoy any access rights through the site. Reason: To ensure that the use of the premises does not prejudice the amenities of the neighbouring occupiers.*

To be varied to:

"The external dining area to the rear of the premises shall not be open to the public between 9:00pm and 8:00am.

Condition 16:

*The doors to the external dining area to the rear of the premises, shown on drawing A-P-S-001, shall remain closed between the hours of 7:30pm – 9:00am on Monday to Saturday and at any time on Sundays. Reason: To ensure that the use of the premises does not prejudice the amenities of the neighbouring occupiers.*

To be varied to:

"The doors to the external dining area to the rear of the premises shall remain closed between the hours of 9:00pm and 8:00am."

1.4 The effect of permitting the removal and variation of these conditions as

applied for would be to allow a larger outdoor dining area seating more than 12 people (adding an area of 4.6m x 4.7m to the existing 5.7m x 4.7m to the rear of the premises), and to allow the external dining area to be used from 8am to 9pm on any day (including Sundays) rather than being limited to 9am - 7.30pm Monday to Saturday. The external doors to the dining area would also be permitted to be kept open until 9pm whereas at present they must remain closed between 7.30pm and 9am.

- 1.5 The applicant wishes these conditions to be amended / removed to allow extra seating to be provided for customers in the rear garden from 8am for breakfast, and if there is an occasion or event (such as the regular Wednesday night suppers) they would be able to use the garden until 9pm. They also wish to be able to use the garden for Sunday events such as christenings. The reason given for requiring the external doors to be kept open for a longer period is to help with air flow.

## 2. **DESCRIPTION OF SITE**

- 2.1 The application site is a mixed-use delicatessen/restaurant/gallery which lies within the Rhiwbina local centre, as defined in the Cardiff Local Development Plan, and is around 35m from the junction of Pant Bach Road and Beulah Road. All the properties in the host frontage, and those in the opposite frontage, are established commercial uses. There are residential properties immediately to the rear of the site (nos. 1 and 3 Heol Y Bont) and around 20m to the east on Beulah Road. Nos. 6 and 8 Beulah Road form a single unit at ground floor level and there are two residential flats above. There is also a flat at 10 Beulah Road. An outside dining area was previously formed to the rear of no. 8 Beulah Road (approved under planning permission 09/00363/W). This area, around 1m lower than the surrounding garden and measuring approximately 5.7m long x 4.7m wide, is accessed from the main dining area via French doors. The external dining area was screened to the south by a 2.4m high timber fence and to either side by 1.8m high fencing. However, the garden has recently been extended to the rear by removing earth to make a 4.6m x 4.7m courtyard on the same level, which has left a steep bank at the rear held by a 440cm deep retaining wall. A wooden fence has also been constructed 1m from the rear neighbour's boundary wall. The rear of the garden is now 3.6m below the top of the rear garden fence and the new courtyard is around 5.4m from the rear boundary of the gardens of 1 and 3 Heol Y Bont.

## 3. **SITE HISTORY**

- 3.1 10/01583/DCO - Removal of condition 20 of planning permission 09/00363/W (permission restricted to one year only).
- 3.2 09/00363/W - Removal of condition 2 of 07/2357/W to allow the mixed shop/restaurant/gallery use (sui generis) to extend throughout the ground floor of 6 - 8 Beulah road. Variation of conditions 3 and 4 of 07/2357W: condition 3 – to extend the opening hours from 7:30 am to 11pm Monday to Saturday (to be closed on Sundays); condition 4 – to allow outside dining within the area to the rear of 8 Beulah Road shown on drawing no A-P-S-001

3.3 07/02357/W - Change of use of ground floor to mixed shop / restaurant / gallery use (sui generis).

#### 4. **POLICY FRAMEWORK**

4.1 *Cardiff Local Development Plan 2006-2021:*

KP5 (Good Quality and Sustainable Design);  
T5 (Managing Transport Impacts);  
R5 (Local Centres) (12) Rhiwbina Village;  
R8 (Food and Drink Uses);  
C3 (Community Safety/Creating Safe Environments).

4.2 *Supplementary Planning Guidance:*

Food, Drink and Leisure Uses (November 2017);  
Managing Transportation Impacts (Incorporating Parking Standards) (2018).

4.3 *Planning Policy Wales (Edition 10 – Dec. 2018):*

1.20 The planning system should not be used to secure objectives which are more appropriately achieved under other legislation. The aim should be to maintain the principle of non-duplication, wherever possible, even where powers and duties resulting from other legislation may also be the concern of local authorities. This does not mean failing to address issues which the planning system should be properly concerned with. In practice issues will often overlap and in such circumstances the planning system will have a preventative and early role to play and is capable of both avoiding the creation of problems and securing multiple benefits through positive and proactive planning approaches.

2.8 Planning policies, proposals and decisions must seek to promote sustainable development and support the well-being of people and communities across Wales. This can be done through maximising their contribution to the achievement of the seven well-being goals and by using the five Ways of Working, as required by the Well-being of Future Generations Act. This will include seeking to maximise the social, economic, environmental and cultural benefits, while considering potential impacts when assessing proposals and policies in line with the Act's Sustainable Development Principle.

2.21 Planning authorities should ensure that social, economic, environmental and cultural benefits are considered in the decision-making process and assessed in accordance with the five ways of working to ensure a balanced assessment is carried out to implement the Well-being of Future Generations Act and the Sustainable Development Principle.

3.6 Development proposals must address the issues of inclusivity and accessibility for all.

3.11 Local authorities are under a legal obligation to consider the need to prevent and reduce crime and disorder in all decisions that they take.

3.21 The planning system must consider the impacts of new development on existing communities and maximise health protection and well-being and safeguard amenity.

4.1.8 The Welsh Government is committed to reducing reliance on the private car and supporting a modal shift to walking, cycling and public transport.

4.3.3 The Welsh Government identifies a number of overarching objectives for retail and commercial centres, which planning authorities should aim to deliver through their development plan and development management decisions ensuring their maximum contribution to the well-being goals. The planning system must:

- promote viable urban and rural retail and commercial centres as the most sustainable locations to live, work, shop, socialise and conduct business;
- sustain and enhance retail and commercial centres' vibrancy, viability and attractiveness; and
- improve access to, and within, retail and commercial centres by all modes of transport, prioritising walking, cycling and public transport.

4.3.30 Although retailing (A1) uses should underpin retail and commercial centres, it is only one of the factors which contribute towards their vibrancy.

4.3.34 Leisure and entertainment, and food and drink uses can benefit retail and commercial centres, and with adequate attention to safeguarding amenities can contribute to a successful evening economy.

4.3.44 Where new uses incorporating evening and night time activities are established in retail and commercial centres, and are located near to existing residential accommodation, planning applicants should include appropriate mitigation measures to counter potential impacts to amenity.

5.4.4 Wherever possible, planning authorities should encourage and support developments which generate economic prosperity and regeneration.

6.7.3. Noise levels used to identify priority areas contained in noise action plans are usually set quite high in order to focus resources on the most polluted areas and noise must meet a number of tests before it qualifies as a statutory nuisance. Lower levels of noise, however, can still be annoying or disruptive and impact on amenity and as such should be protected through the planning process wherever necessary. The planning system must protect amenity and it is not acceptable to rely on statutory nuisance under the Environmental Protection Act 1990 to do so.

6.7.4 The planning system should consider the long-term effects of current and predicted levels of air and noise pollution on individuals, society and the environment and identify and pursue any opportunities to reduce, or at least, minimise population exposure to air and noise pollution, and improve soundscapes, where it is practical and feasible to do so.

#### 4.4 *Technical Advice Note 11 – Noise (1997):*

8. Local planning authorities must ensure that noise generating development does not cause an unacceptable degree of disturbance. They should also bear in mind that if subsequent intensification or change of use results in greater intrusion, consideration should be given to the use of appropriate conditions.

9. Noise characteristics and levels can vary substantially according to their source and the type of activity involved. The impact of noise from sport, recreation and entertainment will depend to a large extent on frequency of use and the design of facilities.

11. Measures introduced to control noise should be proportionate and reasonable, and may include reduction of noise at point of generation, containment of noise (e.g. insulating buildings), protection of surrounding

noise-sensitive buildings (e.g. improving sound insulation and/or screening), adequate distance between noise source and noise-sensitive building, screening by natural barriers, other buildings, or non-critical rooms in a building, limiting operating time of noise source; restricting activities allowed on the site; specifying an acceptable noise limit.

4.5 *Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management (October 2014).*

2.4 Section 73 of the Act provides for applications to be made for planning permission to develop land without complying with conditions previously imposed on a planning permission i.e. to vary or remove a condition. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73.

5. **INTERNAL CONSULTEE RESPONSES**

5.1 *Pollution Control (Noise & Air):* Pollution Control officers recommend –

- Restricting the opening hours of the external dining area to 08:00 to 19:30 Sunday to Thursday, 08:00 to 21:00 Friday to Saturday with the rest of the external area of the application site not to be open to any member of the public at any time, other than to enjoy any access rights through the site;
- Allowing the doors to the external dining area to the rear of number 8 to be open only between the hours of 08:00 to 19:30 Sunday to Thursday and 08:00 to 21:00 Friday to Saturday;
- Retaining the means of enclosure to the external dining area for the duration of the permission.
- Permitting seating for no more than 20 diners in the external dining area.

Without these conditions, Pollution Control would object to the proposals.

6. **EXTERNAL CONSULTEES RESPONSES**

None.

7. **REPRESENTATIONS**

7.1 The application has been advertised by site notice and neighbour notification. 12 individual representations have been made objecting to the application. The grounds for objection are summarised as –

- 1) The many complaints over 10 years made about this property by local residents is evidence that the proprietor is unable to comply with the conditions already set by the Planning Authority.
- 2) This site backs onto residential gardens and extending the outdoor dining area opening hours to 19:30 has already caused nuisance to neighbours. Extending the hours further will exacerbate the nuisance: there will be less background noise later in the evenings and in the summer months children's bedroom windows are left open therefore their sleep will be disturbed.

3) Sunday opening should not be allowed as the background noise is lower on Sundays and there would not be a day of the week when disturbance (from patrons as well as from staff when clearing up after-hours, e.g. disposing of glass bottles etc.) was not an issue.

4) The doors into the garden area should not be permitted to remain open for a longer period as it has proven that the noise emanating from the applicant's property when the doors are open can be as loud as having people in the rear garden due to the echoing effect. The applicant hosts live music and amplifies recorded music. Allowing the doors to be open beyond 19:30 would increase the nuisance caused. The applicant's reasons for keeping the doors open beyond 19:30 to help with airflow is not valid as mechanical means to cool the property can be used.

5) Extra garden seating and an increase in the garden area should not be permitted as the current configuration of seating for twelve diners already causes a noise nuisance. Increasing the numbers of diners and size of the garden area will not only increase the noise generated but bring the noise closer to neighbouring residential properties. The additional garden area was excavated last summer, resulting in increased use and capacity, and bringing Snails' boundary closer to the neighbouring property. This has led to increased noise and volume of people even without any extra tables. With even more seating, there will be more people in the garden area, causing more noise, compounded by the effect of alcohol, particularly as the night progresses.

6) There is no precedent for an A3 use being permitted in recent years where the use of an external garden is granted which is surrounded by private residential gardens, let alone having this use allowed until late evening.

7) Parking and traffic on Heol y Bont and Heol Cae Rhys are already an issue. During activities in the Scouts Hall the increased parking that this demands always causes single lane flow, traffic queues, danger to children crossing the road and problems for local residents exiting/leaving their driveways. Extended use of the outside areas at Snails would make this an even greater problem. There are also plans to build flats and a coffee shop on the corner of Heol y Bont and Pantbach Road. With limited parking facilities within this area, increasing demand for parking can only make the traffic flow issues worse.

8) Snails have failed to address food waste/rubbish and recycling issues (neighbours have had to put bins away after refuse collection as the bins are not returned to their required location), and with further expansion would create more waste. Food waste attracts vermin. Additional activity around the bin store will disturb neighbours.

9) Staff have recently moved their smoking area to behind the neighbour's garden wall. The smell of smoke comes into their property as well as the noise of the staff whilst smoking. Longer hours and Sunday opening would compound this.

10) What Snails are applying for is a larger Business Model to that applied for by Aeon Wines 14/00459/DCO. The decision on that application was for it to be refused and at Appeal was dismissed.

7.2 Councillors Jayne Cowan, Oliver Owen and Adrian Robson object to the application as follows:

a) *Condition 4 - The external dining area to the rear of the premises, shown on*

*drawing A-P-S-001, shall not be open to the public between 7:30pm - 9:00am Monday to Saturday or at any time on Sundays. The rest of the external area of the application site shown on the site plan numbered A-P-S-001 shall not be open to any member of the public at any time, other than to enjoy any access rights through the site.*

*Reason: To ensure that the use of the premises does not prejudice the amenities of the neighbouring occupiers.*

We object to the variation of this condition. The current 7.30pm cut-off time for the use of the external dining area to protect the amenity of adjacent residents in Heol y Bont. The proximity of their properties and gardens means that they are noticeably affected by noise from the external dining area. Whilst the current 7.30pm is an adequate cut off, any extension into the evening will cause detriment to them, especially if there is a drinking up time - it is unlikely that come 9pm, diners would be shepherded out of the garden by the staff.

We also notice that the application seeks to allow the garden to open at 8am to cater for breakfast which further adds loss of amenity to the neighbouring residents.

The application is unclear whether the new arrangements for the external dining area now apply on a Sunday. If they do, then this is a new additional source of noise and disturbance for those residents on a Sunday.

In addition, we would highlight that the residential unit at 6 Beulah Road (accessed via the lane between Beulah Road and Heol y Bont) will be adversely affected by this proposal as the level of noise and disturbance increases.

*b) Condition 14. This consent relates to the application as supplemented by the information contained in the email from the agent dated 12 May 2009. For the avoidance of doubt, this confirms that the area of the external dining area shown on drawing no A-P-S-001, is for the exclusive use of customers.*

*Reason: The information provided forms part of the application.*

This is a consequential condition following on from condition 4. We hope that condition 4 is retained, but we would urge that if condition 4 is abolished, then a condition that the external dining area remains for the exclusive use of customers is included.

*c) Condition 16. The doors to the external dining area to the rear of the premises, shown on drawing A-P-S-001, shall remain closed between the hours of 7:30pm – 9:00am on Monday to Saturday and at any time on Sundays.*

*Reason: To ensure that the use of the premises does not prejudice the amenities of the neighbouring occupiers.*

Condition 16 refers to the doors to the external dining area and currently by shutting these doors at 7.30pm Mon-Sat and all day on Sunday, ensures that the level of noise and disruption caused to neighbouring properties on Heol y Bont and any nearby residential units on Beulah Road is reduced.

This condition is critical to ensuring that the current protection for neighbouring properties is maintained. As with our comments for condition 4, we object to the variation of this condition.

*d) Condition 17. The means of enclosure to the external dining area, as shown on drawing A-P-S-001, shall be retained on site for the duration of this permission.*

*Reason : To ensure that the use of the premises does not prejudice the amenities of the neighbouring occupiers.*

Whilst the application is to remove this condition, we believe that a replacement condition should be introduced to ensure that further alterations to the 'steep bank to the rear' are not undertaken without planning permission.

*e) Condition 18. The external dining area shown on drawing A-P-S-001 shall provide seating for no more than twelve diners.*

*Reason: To ensure that the use of the premises does not prejudice the amenities of the neighbouring occupiers.*

Our objection to this condition being removed follows on from our opposition to the variation of conditions 4 and 14.

The removal of this condition means that the external dining area will not just be open for longer, but cater for more people thereby increasing the noise and disruption to nearby residents.

e) We would also highlight the appeal decision notice for a change of use application (from A1 to A1 and A3) at 4 Beulah Road – Appeal ref: APP/Z6815/A/14/2229891 The inspector, in dismissing the appeal stated:

*“6. The properties across the road from the appeal site are in close proximity to its entrance. There is accommodation above the appeal premises and there also appears to be residential accommodation above the next door property and commercial properties across the road. The living conditions of the residents of these properties are likely to be harmed by the additional noise and disturbance from the comings and goings and clients lingering outside the premises as a result of this proximity” ; and*

*“7. There is already some development within this area that could contribute to noise during the evening and night time. However, any noise and disturbance from the appeal premises during the proposed hours would be over and above those existing and would be likely to cause additional harm. Moreover, it is likely that the appeal property would become a focal point for additional activity during the evening hours, thus prolonging any existing harm.”*

Whilst acknowledging that this was the neighbouring property, the inspector's comments refer to an increase over and above the existing in activity that would cause additional noise and disturbance by an increase in people coming and going – i.e. additional harm to nearby residents.

In view of the complex planning history on this development (including a one-year temporary permission on some conditions), we hope this variation will be heard by the full planning committee and would invite the committee members to undertake a site visit so that they can see first-hand the proximity of the properties to the rear external dining area.

7.3 5 representations in support of the application have been received. The supporters state that:

- Snails has created a social hub in the centre of Rhiwbina, adding to a sense of community and this would be enhanced if people were able to meet for coffee/lunch after the chapel service on a Sunday,
- there is no evidence that the general public have been disadvantaged by the activities at the premises,
- due weight should be given to the benefit to the community of enabling Snails Deli to thrive,
- its music nights are excellent and the food is of superb quality,
- the additional items applied for seem to be very minimal,
- the garden was a particular asset last Summer when the weather was so warm and there was minimal noise which couldn't possibly have been a nuisance to anyone,
- to open until 9pm would be a welcome asset to Snails and their customers,
- one other shop opens in Rhiwbina on a Sunday,
- the intention is not to open on a Sunday on a very regular basis,
- local residents have not experienced any anti-social behaviour connected to Snails and what they are proposing will not in any way encourage such behaviour.

## 8. **ANALYSIS**

8.1 The only issue to consider with regard to this application is the impact on the amenities of neighbouring residents of the amendments to the approved use, i.e. the proposed increase in the size of the outdoor dining area and the removal of the limit on the number of seats permitted in the external dining area, and the extension of the opening hours of the external dining area to 8am – 9pm along with the associated extension of the hours that the external door is permitted to be used.

8.2 The site is within a designated Local Centre, and Policy R8 of the Cardiff Local Development Plan states that Food and Drink Uses are most appropriately located in such areas (along with the City Centre, the inner harbour/waterfront area of Cardiff Bay and District Centres). However, this is still subject to amenity considerations, and food and drink uses are unlikely to be acceptable within or adjacent to residential areas where they would cause nuisance and loss of amenity.

8.3 Pollution Control officers have considered the noise issues in relation to this application and conclude that the opening hours could be increased to a certain extent but that the applicant's proposals, which include the removal of the limit on the number of diners permitted in the garden area and extension of

the opening hours of the external area to 9pm on any day, are unacceptable. They suggest conditions that represent a compromise situation, i.e. permitting no more than 20 seats for diners in the garden area at any one time and allowing the external area to be used from 8am to 7.30 pm on any day (including Sundays), extended to 9pm on Fridays and Saturdays. Whilst this may be sufficient to ensure that statutory noise nuisance is unlikely to occur from an Environmental Protection perspective, the Planning system has to consider the impact on amenity more widely. The Supplementary Planning Guidance "Food, Drink and Leisure Uses" (November 2017) gives the following advice:

*Food, drink and leisure uses are unlikely to be acceptable within or adjacent residential areas, if they would cause nuisance and loss of amenity to residents. (para. 3.2)*

*Local Centres and smaller neighbourhood centres are generally more residential in nature, and do not have the scale or variety of retail and non-retail uses of larger centres. Therefore, A3 and commercial leisure (D2) proposals may be more difficult to accommodate, and are less likely to be acceptable on amenity grounds (e.g. potential noise and disturbance, anti-social behaviour and litter associated with this type of development proposal). As a consequence more emphasis will be placed on protecting residential amenity within these centres through restricting closing times and the type of A3 premises. (para. 4.23)*

*Unacceptable harm can result from the incompatible nature of a proposed use, or an intensification of an existing operation, and/or the volume of vehicles and pedestrians generated as a result of the use. (para. 5.8)*

*It is often necessary to use planning conditions to limit opening hours to minimise disturbance to the surrounding communities. However, one set of time limits would not be appropriate throughout the county because areas vary considerably. An application must be determined on its merits. (para. 5.25)*

*In some circumstances, planning permission may be granted for daytime use only, generally taken to be between 8.00am and 6.00pm....Hours of openings in district centres are normally restricted to 11.30 pm. However, where there are residents nearby an earlier closing restriction may be imposed. Within Local Centres which are more residential in nature an earlier time will normally be applied. Each case will be assessed on its merits, taking into consideration the nature and individual characteristics of the centre. Any external seating area should also be restricted to no later than 9.00pm in the interests of residential amenity. (para. 5.26)*

- 8.4 It is clear that a number of local residents have already suffered disturbance and loss of amenity due to activities at the application premises, and their objections to the current application are set out at paragraph 7.1 above. In response to these objections (and to the corresponding objections raised by the Local Members set out in paragraph 7.2):

- 1) It would be unreasonable to refuse permission to vary/remove conditions on the grounds that a current proprietor has not adhered to conditions in the past or might not comply with any remaining or varied conditions of the planning permission. Planning permission is linked to the premises and not to any particular proprietor.
- 2) Neighbours, particularly on Heol-Y-Bont, have clearly experienced noise and disturbance from the existing use of the outdoor dining area, which increased when the opening hours of the external dining area were extended to 19:30. The houses back onto a Local Centre and as such a certain amount of noise and disturbance from non-residential uses has to be expected. However, what must be determined is whether the proposed amendments to the conditions of the planning permission would result in an unreasonable increase in the amount of noise and disturbance in this context. Policy R8 of the Cardiff Local Development Plan cites Local Centres as being appropriate locations for food and drink uses; however, this is subject to amenity considerations and the policy goes on to state that “food and drink uses are unlikely to be acceptable within or adjacent to residential areas, where they would cause nuisance and loss of amenity, or result in the loss of a residential property.” Extending the opening hours further into the evening would extend the time during which neighbouring residents could be disturbed by noise at a time when background noise levels are lower, and is therefore unacceptable.
- 3) Since the removal of Sunday trading controls for retail premises in 1994 it is now normal for commercial establishments to open on Sundays. In retail centres, therefore, it is very difficult to sustain restrictions on Sunday opening. However, in this case the nature of the use (food and drink) and its location at the edge of the Local Centre in close proximity to residential properties means that it is considered inappropriate to allow the amendments requested by the applicant, which would permit the external garden area to be used by customers on Sundays not only for dining and drinking but also for events (such as christenings mentioned by the applicant) where large groups of people would congregate, alcohol would be consumed and music would be played. It is not unreasonable to expect that residents of properties that are located adjacent to food and drink uses should have one day of respite from disturbance, particularly on Sundays when background noise levels are normally lower and any noise emanating from the application site would be more noticeable and more disturbing.
- 4) As access to the rear dining area is via the external door only, the hours that the door is permitted to be opened have to match the hours of use of the outdoor area. Conditions, for example requiring the door to remain closed unless being used for access/egress or restricting the sound levels of music being played at the premises whilst the doors were open, would be unenforceable. With regard to the applicant’s wish to use the open door for ventilation, it is accepted that there are other means of ventilation/cooling available and that it is not necessary to use the door for this purpose.
- 5) The increase in the size of the garden area brings it within 5.5m of the gardens of the houses to the rear, and within 15m of the houses

themselves. Residents have already noticed an increase in the volume of noise from customers of the premises due to the garden area being brought closer to their boundaries. Permitting seating in this area and allowing longer opening hours would exacerbate the detrimental impact on residential amenity. It should also be noted that the applicant has applied for changes to the premises licence which would allow alcohol to be purchased by persons who were not taking table meals. Such a change would result in an unlimited number of people being permitted to gather in the garden whilst drinking alcohol, as drinking would not be limited to those seated at tables.

- 6) Each planning application is determined on its own merits and even if there were another case where an A3 use had been permitted adjacent to residential gardens, it would not set a precedent for the approval of this application.
- 7) The adopted Supplementary Planning Guidance “Managing Transportation Impacts (Incorporating Parking Standards)” (2018) requires no parking facilities to be provided for a use such as this. Any increase in the number of customers that may arise as a result of permitting these conditions to be amended would have no impact on the parking requirements for the development. The site is well served by public transport and there is no reason to assume that there would be such a large increase in the number of customers arriving at the premises by car that traffic levels would become unacceptable
- 8) There is ample space within the existing site to accommodate the bin storage requirements for this development. It would be unreasonable to refuse to amend the planning conditions on the grounds that bins have not been put away after collection in the past. If food waste is not being stored correctly and vermin is being attracted to the site, this is a matter to be dealt with under Environmental Health legislation. Also, any increase in bin usage resulting from the amendments would be insignificant.
- 9) It would not be possible to enforce a planning condition specifying which areas of the garden the staff were allowed to use for smoking. Whilst longer opening hours would mean more opportunities for smoking in the garden, this would not in itself form grounds for refusing the application.
- 10) The appeal decision relating to the proposal to introduce a “food and drink” (class A3) use at the wine shop at 4, Beulah Road in 2014 is of note. The Inspector dismissed the appeal, concluding that the proposed use would be detrimental to the residents of properties across the street on Beulah Road and of flats above the commercial premises due to noise and disturbance caused by the comings and goings of customers. He also noted that *“there is already some development within this area that could contribute to noise during the evening and night time. However, any noise and disturbance from the appeal premises during the proposed hours would be over and above those existing and would be likely to cause additional harm. Moreover, it is likely that the appeal property would become a focal point for additional activity during the evening hours, thus prolonging any existing harm. Despite the modest size of the proposed operations, and the mixed nature of the proposed*

*use, I conclude that because of the residential character of the neighbourhood, and the proximity to neighbouring properties, the proposed A3 use would be likely to significantly harm the living conditions of nearby residents because of noise and disturbance from customers and their vehicles.”* This indicates that the area was considered by the Planning Inspector to be largely residential in character and that any disturbance beyond that which already occurs would be unacceptable. The inspector also concluded that the houses to the rear of the site were sufficiently distant that they would not be directly affected by additional noise and disturbance; however, this was based on the use of the rear garden of the appeal premises being restricted. It was also noted that the imposition of conditions would not fully protect the amenity of the area. The Inspector’s conclusions relating to the adjacent premises support the contention that any additional noise and disturbance in this area caused by a food and drink use would be unacceptable.

- 8.5 The expressions of support are also noted, and the benefits to the community described by the supporters of the application must be weighed against the adverse impacts identified above. In this case, although there is some local support for the changes that have been applied for, there is no evidence that the business would fail if the changes were not allowed, and the current benefits to the section of the community that uses the premises would remain whether or not this application were approved. Snails is not a community facility but is a commercial enterprise that is used by the community; furthermore, even if it were a non-commercial community facility, any proposals for expansion would be unacceptable if they prejudiced the amenities of neighbouring and nearby residential occupiers (Local Development Plan policy C1).
- 8.6 In conclusion, although the application premises are located within a Local Centre where food and drink uses are normally considered acceptable, this is subject to there being no undue detrimental impact on amenity. Each planning application has to be determined on its own merits and in this case, given the close proximity of residential properties to the application site and the fact that residents already experience a certain amount of disturbance caused by the current use, it is not considered appropriate to permit any changes that would result in an intensification of the use of the garden area by customers or its use further into the evening. The original application (07/02357/W) restricted the size of the internal dining area, restricted opening hours to 9am - 6pm Monday to Thursday, 9am - 11pm Friday and Saturday, with no Sunday opening, and did not allow any use of the external garden area by customers at any time. The current conditions, which included removing the restriction on the size of the internal dining area, allowing opening hours of 7.30am to 11pm Monday to Saturday, with no Sunday opening, and permitting a small external dining area (9am to 7.30pm Monday to Saturday only with the doors to that area remaining closed outside of those times), were considered appropriate as a compromise when the previous application (09/00363/W) was determined, given that neighbouring residents were experiencing disturbance from the use of the premises, and circumstances have not changed since that previous decision was made. A number of customers have expressed support for the proposals

but this does not outweigh the harm that would be caused to the residents of nearby properties.

- 8.7 In the interests of protecting the amenities of residents it is recommended that the application be refused and that the original conditions of planning permission 09/00363/W remain unchanged.

9. **OTHER CONSIDERATIONS**

9.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

9.2 *Equality Act 2010*

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council's duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.

9.3 *Well-being of Future Generations (Wales) Act 2015*

The Well-being of Future Generations (Wales) Act 2015 places a duty on the Welsh Ministers (and other public bodies) to produce well-being objectives and take reasonable steps to meet those objectives in the context of the principle of sustainable development. The duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act), has been considered and account has been taken of the ways of working set out at section 5 of the WBFG Act in the determination of this application, and it is considered that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the well-being objectives referred to in section 9 of the WBFG Act.



CHIEF EXECUTIVE  
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**Cardiff Council**



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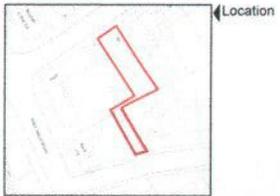


Photo 1  
Rear Screen to Courtyard



Photo 2  
Side Screen to Courtyard (between No. 8 & 10)

