

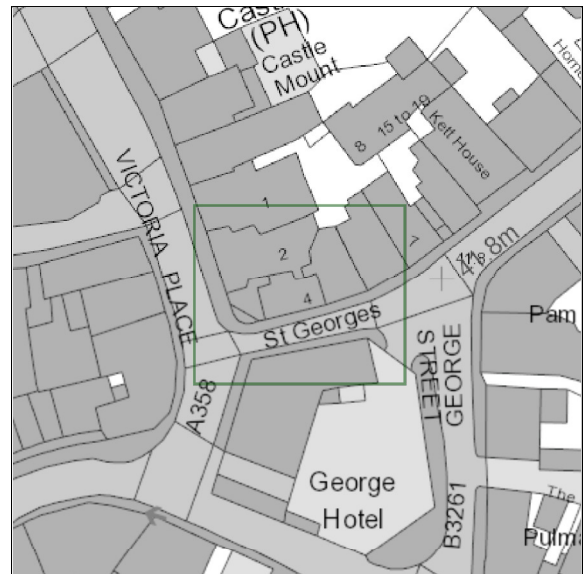
**Ward** Axminster

**Reference** 19/2762/COU

**Applicant** Andrew Swann

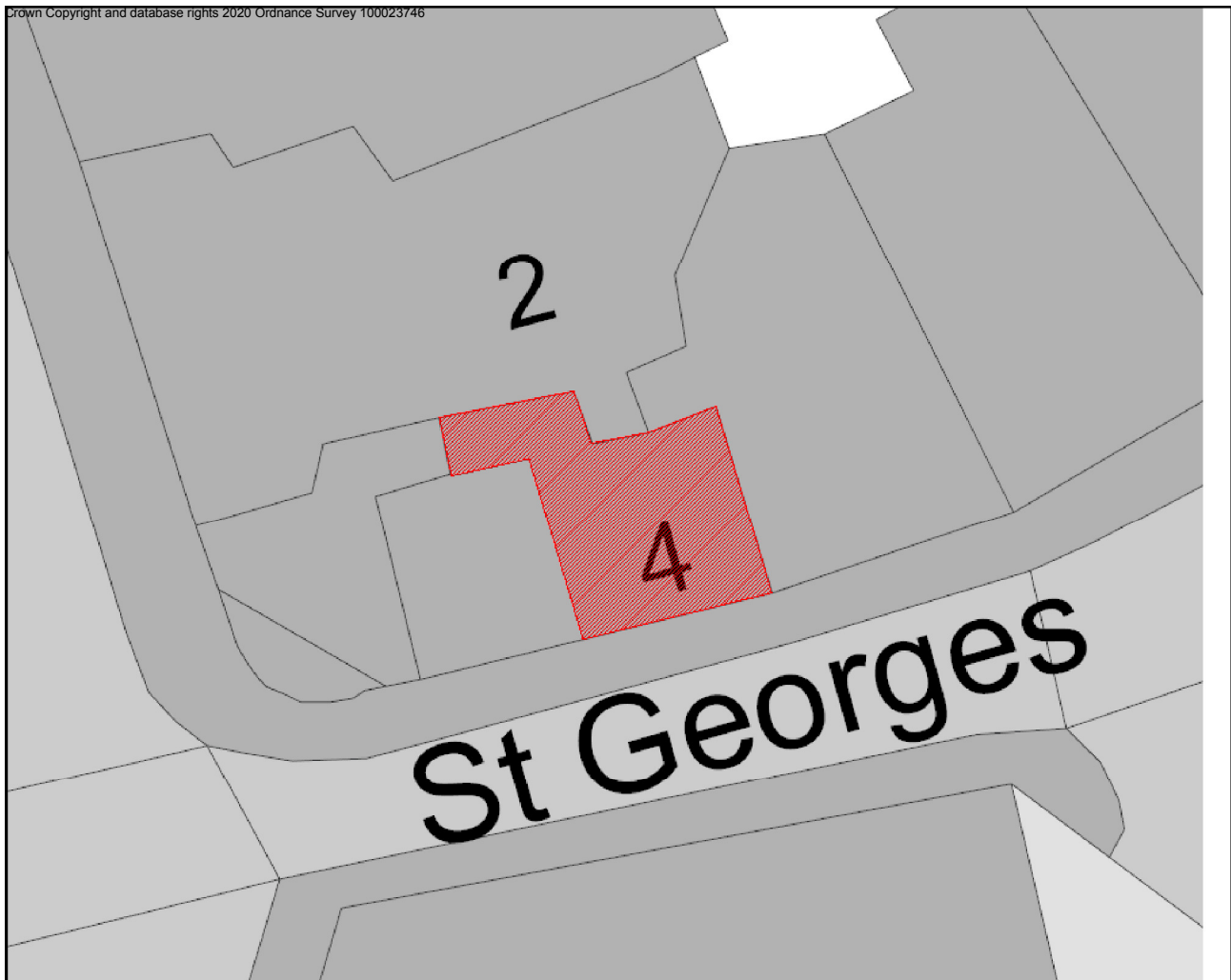
**Location** Unit 4 St Georges Chard Street Axminster  
EX13 5DL

**Proposal** Change of use of ground floor of building from  
shop (A1) to micropub (A4)



**RECOMMENDATION: Approval with conditions**

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		<b>Committee Date: 15<sup>th</sup> July 2020</b>
<b>Axminster (Axminster)</b>	<b>19/2762/COU</b>	<b>Target Date: 04.03.2020</b>
<b>Applicant:</b>	<b>Andrew Swann</b>	
<b>Location:</b>	<b>Unit 4 St Georges</b>	
<b>Proposal:</b>	<b>Change of use of ground floor of building from shop (A1) to micropub (A4)</b>	

**RECOMMENDATION: Approval with conditions**

#### **EXECUTIVE SUMMARY**

**This application is before committee as it represents a departure from the Local Plan and is recommended for approval.**

**More specifically the proposal is for the change of use of a vacant A1 (retail) unit to a non-retail use within the designated Primary Shopping Frontage of Axminster. Policy E10 (Primary Shopping Frontages) of the Local Plan requires such proposals for change of use to be accompanied by evidence of marketing of the premises for a minimum period of 12 months to demonstrate there is no ongoing demand for retail use. The application is not accompanied by such evidence and as such the proposal does not meet the requirements of policy E10. However, given the nature of the proposed use which has the potential to add to the vitality and viability of the town centre and, the existing market conditions (including evidence of a number of other vacant units within the town centre) the principle of the change of use is, in this instance, is considered to be acceptable without the 12 months marketing.**

**In other regards concerns have been raised in relation to the size and constrained layout of the unit and its ability to function as a micro-pub without adverse effect on amenity and the safety of both customers and members of the public. These concerns are acknowledged and have been fully considered however in relation to noise and odour concerns these could be addressed by means of appropriate planning conditions. In relation to the other issues raised these are covered by separate legislative regimes and as such should not be sought to be controlled by the planning system.**

**Taking into account all the relevant considerations the proposal is considered to be acceptable and is recommended for approval subject to the conditions set out at the end of the report.**

## **CONSULTATIONS**

### **Local Consultations**

#### Town Council

Axminster Town Council supports this application.

#### Axminster - Cllr Andrew Moulding

I recommend that this application is approved

#### Axminster – Cllr Sarah Jackson

As I sit on the Licencing and Enforcement Committee at EDDC I feel unable to comment on this occasions. However, I have received representations for and against this application, both of which raise very valid points. Might I ask therefore that this application be considered by DMC .

#### Axminster – Cllr Ian Hall

Agree with the officers recommendations.

### **Environmental Health**

Latest Comments 27.02.20 –

I have now had an opportunity to discuss this with my colleagues from the Environmental Health commercial team. It appears that the applicant had not previously been in contact with them for advice at the pre-application stage as some new food premises do. My colleagues had the following observations which we do feel need consideration as they are relevant to the potential for this use to impact on the existing community, particularly with regards to safety.

1. The applicant mentions warming sausage rolls, pasties and the like, and even suggests pop up food nights. There are no indications on the plans of any kind of kitchen, temperature controlled food storage or food preparation area. There appears to be a rear store room which has no natural or artificial ventilation and therefore this will be unsuitable as it is. There is no potential for a system to extract to the external air so as it stands this premises appears to be unsuitable for any food other than pre-packaged snacks. From a planning perspective the already suggested condition should be sufficient to cover this, but the applicant may find that further restrictions are required when he registers the food business. He is advised to take advice from the team at an early stage.
2. Pubs and other indoor places where people gather will need at least two exit doors for evacuation safety reasons. In this premises there is only one exit door and if this becomes compromised people will be trapped inside. The fire officer can advise further on this but this is a serious concern to the EHOs. We are not aware of any other pub or licensed premises that does not have a secondary means of escape.
3. The premises is very small and does not appear to have an air-conditioning system. Therefore it is likely that the door would be kept open, particularly on busy warm evenings. This will cause people and noise to spill outside, possibly

with drinks. The pavement is very narrow at this point and on a tight bend. Any pedestrians would therefore be forced to walk in the road, even if only 2 or 3 people were outside. Smokers and people vaping will in any case tend to gather outside the door and this could cause problems for people living above. This pub would have no potential for alternative outside spaces within its curtilage. The agent mentioned The Castle which was the cause of many of these problems, however they do have a secure outside courtyard within their ownership where smokers now go, and installed a double door lobby to discourage customers spilling onto the street. This premises does not have these options available.

4. Due to the small size of the premises, particularly once tables and chairs are in place, and the single entry point we are concerned that the premises might not be fully accessible to people with disabilities.

Whilst considering these concerns we have referred back to the NPPF and feel that the following section at least might apply to this situation because of our concerns about public safety, impact on the existing community and inclusivity:

127. Planning policies and decisions should ensure that developments:

(f) create 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 and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Previous comments 19.02.20 -

In Axminster, particularly in this area of it, there have been many problems over the years caused by pubs in very close proximity to residential premises, particularly those with little or no outside space and especially those attached to residences. Were the premises to be detached from residential premises and have its own outside space then some of these issues would not be of such concern. However it is our responsibility to protect the existing amenity of local residents as far as we can. Having been out in Axminster late at night many times on out of hours visits over the years I can confirm that it is very quiet and not at all a town where there is a general hub-hub of a night time economy, although of course it would be a good thing if the town was a bit more active in the evenings. Other towns in East Devon are somewhat different, including Seaton, and we are considering here the residential amenity of residents next to and above this particular premises.

1. The applicant should provide details of how the infrastructure of the building will protect people living above from people noise (this, incidentally, became a serious issue in a similar type of change of use in Budleigh some while ago so the request for this information is justified). The buzz of people gathering perhaps in quite large numbers at night in a building is quite different to the noise of occasional customers to a shop during the day. If works are required these should be specified and conditioned; an alternative perhaps would be a condition requiring this assessment and any identified works to be carried out prior to first use of the premises.

2. The lack of outside space is a concern so the applicant should provide details of how they are going to manage the behaviour of people attending the pub,

specifically in controlling drinking outside and smokers gathering in groups (they might need a double door/air lock system for example). This would be a concern at licensing stage but the potential need for the double door should be established by the applicant because it would need to be shown on the plans. I am not sure if the building is air-conditioned but without the double door I can see that there is potential for the single door to be left open which could of course lead to noise issues outside.

3. The proposed opening hours are fine in our view.

4. The applicant has advised that they do not intend to play music therefore a condition to this effect will be necessary. A suitable condition is: No amplified or other music shall be played or any game sounds generated in the premises in such a way that they are audible at any location outside the premises or within any nearby premises. Reason: To protect the amenity of local residents from noise.

5. The applicant has also advised that this pub model does not include food other than bought in snacks. As this is a proposed change of use to A4 and in the future a different A4 occupier could establish, I recommend that a condition prohibiting the sale of hot food is justified, particularly because there is no obvious location for an extraction system and flue. A suitable condition is: The premises shall not be used for the preparation or cooking of hot food. Reason: to protect the amenity of local residents from cooking smells.

If the matters in points 1 and 2 could be addressed by the applicant we would have no outstanding concerns.

Incidentally hopefully the applicant has already taken advice from my colleagues in the Licensing team, the Environmental Health commercial team and the Fire Officer, but I am very concerned that there appears to be no means of escape from this premises. If the only external door becomes compromised it appears that there would be no way for people in the premises to leave. This is an issue of concern for a pub more so than a small shop with only a handful of customers at a time during the day. The applicant would be best advised to address this concern before proceeding in my view.

Original comments 13.02.20 –

I have considered the application and have the following comments to make:

The applicant has briefly mentioned noise in their documents but mentions only traffic noise which is not an issue of concern in this location or for this type of use. The issues of concern would be noise associated with this use impacting on local residents. There are residential premises above and close by this site and we are concerned that these residences will be impacted upon by people noise when the micropub is busy. More information would need to be provided about the ability of the infrastructure to contain this noise, as the necessary works to protect these residences might be substantial, the applicant needs to know this at an early stage and we would need to be satisfied before the application is determined if approval is likely. We can also see that there is no outside space and, even if there were, there is potential for noise from people congregating outside to affect residents living close by. This has been a problem before in several pubs in Axminster and the applicant must indicate how this would be avoided and controlled. Smokers would also tend to congregate outside and this might cause smoke to drift into nearby residences which would be considered to

be unreasonable, possibly even an impact on health. Hours of use would need to be restricted, for the pub to close no later than 11pm on any night. Finally there would be definite potential for any music noise to affect residents and we would recommend that amplified music is not allowed. We recommend that in the absence of a report which satisfies us as to how these matters would be addressed, the lack of information regarding how the various noise impacts would be addressed would contribute to reasons for refusal. Should the applicant submit a noise report which incorporates a noise management plan then we will be pleased to consider it.

### Conservation

#### CONSULTATION REPLY TO PLANNING EAST TEAM PLANNING APPLICATION AFFECTING LISTED BUILDING AND CONSERVATION AREA

ADDRESS: Unit 4 St Georges, Chard Street Axminster

GRADE: Local List APPLICATION NO: 19/2762/COU

CONSERVATION AREA: Axminster

PROPOSAL: Change of use of ground floor of building from shop (A1) to micropub (A4)

#### BRIEF DESCRIPTION OF HISTORIC CHARACTER/ ARCHITECTURAL MERIT:

The property is located within the Axminster Conservation Area and is identified within the Axminster Conservation Area as being of local interest on the Local List of buildings of architectural or historic interest. The building is three storey, painted stone with multi-paned sash windows at first and second floor. Those to Unit 4 are upvc. The ground floor is divided into two separate retail units, both with modern shopfronts. The building, in conjunction with the adjacent buildings contributes to the streetscene and the wider Axminster Conservation Area.

The George Hotel, listed Grade II is located opposite St Georges.

#### HOW WILL PROPOSED ALTERATIONS AFFECT HISTORIC CHARACTER OF BUILDING AND ITS SETTING:

This application relates to the change of use of the ground floor of the building from retail use to a micropub. No changes are envisaged for the shopfront or any alterations to the existing layout. However, it is noted in the Planning Statement that some signage is likely to be required to be fixed to the interior of the existing windows.

It is therefore considered that the proposals will not harm the character and appearance of the Local List building itself nor the setting of The George Hotel, listed Grade II, or the wider Axminster Conservation Area.

PROVISIONAL RECOMMENDATION - PROPOSAL  
ACCEPTABLE in terms of heritage issues

### Other Representations

One letter of support and one letter of objection have been received.

The letter in support wants the premises open as soon as possible, points to an identical proposal approved in Seaton and that Environmental Health powers can be used to ensure no nuisance.

The letter of objection raises concerns regarding the impact on nearby neighbours, danger of people congregating on this busy road corner forcing pedestrians into the road and lack of servicing facilities.

### **POLICIES**

#### Adopted East Devon Local Plan 2013-2031 Policies

Strategy 6 (Development within Built-up Area Boundaries)

Strategy 20 (Development at Axminster)

D1 (Design and Local Distinctiveness)

Strategy 32 (Resisting Loss of Employment, Retail and Community Sites and Buildings)

EN10 (Conservation Areas)

EN14 (Control of Pollution)

E9 (Town Centre Vitality and Shopping Areas)

E10 (Primary Shopping Frontages)

#### Government Planning Documents

National Planning Practice Guidance

NPPF (National Planning Policy Framework 2019)

### **Site Location and Description**

Unit 4 St. Georges relates to a small ground floor unit forming one side of the ground floor of a three storey building. The unit is set to the right hand (east) side of the building and has a glazed shop frontage.

The site lies within the designated Built-up area boundary of the town, the defined Town Centre Area and Area of Primary Shopping Frontage and is within the town's conservation area.

### **Proposal**

The application seeks planning permission for a change of use from an A1 retail unit to a micro-pub. There are no external alterations proposed to the building.

## **ANALYSIS**

The principle issues in the determination of the application are considered to be

- The principle of the change of use, having regard to the loss of the retail use
- Amenity/Environmental Health Impacts
- Economic benefits

### **Principle**

The application site lies within the built-up area boundary of the town where the principle of development is acceptable under Strategy 6 of the East Devon Local Plan (EDLP) and subject to a number of listed criteria being met. In addition, Strategy 20 seeks to give priority to the enhancement and promotion of business opportunities within the town centre

The proposal lies within the town centre area and area defined as primary shopping frontage. Whilst policy E9 of the EDLP permits proposals for both retail and non-retail uses *'which would add variety and increase activity'* within such areas, policy E10 relating to Primary Shopping Frontages is more restrictive. That policy seeks to retain retail uses but does allow alternative uses where these would not undermine the retail function, character, vitality and viability of the area. In addition, it states that permission for change of use will not be permitted unless it has been demonstrated that there is no longer a need for such uses *and* that the building has been marketed for at least 12 months (and up to two years) at a realistic price without interest. Where this can be demonstrated it will also be necessary for the development to be acceptable in terms of amenity impacts.

At present the unit is one of several vacant units within the town centre where Axminster, no different to many other small market towns and indeed larger town centres, that was facing challenges to its traditional retail function even before the Covid19 lock-down. It is evident that such centres need to be able to adapt and change in order to remain relevant and to be able to compete with both larger retail centres and online platforms. Alternative uses that bring footfall to the town centre and add to their vitality and viability can play an important role in this respect. The proposed use is of a type that could, if successful, add to the vitality of the town centre by bringing an active use designed to attract customers and increase footfall in the vicinity, although potentially more so in the evening than during the day. The ability to bring the unit back into an active use therefore weighs strongly in its favour, particularly given the relatively high number of vacant retail uses that currently exist within the town centre shopping area and primary shopping frontage.

However, such support needs to be balanced against the policy requirements which seek to retain the retail function of the defined primary shopping frontages whilst allowing for a wider variety of uses within the wider town centre area. The preamble to policy E10 advises that grouping of non-retail uses within prime town centre locations can result in such areas becoming less attractive and convenient to shoppers, this could then lead to a spiral of further decline. In this instance, the proposed use could increase interest, particularly in the evening (although it is noted that the applicant intends to open all day), but its ability to increase or maintain footfall



during the day and to support the retail function of the town centre is considered to be more limited. Nevertheless, finding an active use for the site would bring more benefits than leaving the unit vacant and where evidence suggests there is limited demand.

Marketing details, submitted with the application consist solely of a copy of the marketing particulars, which indicate an asking rent which is broadly comparable with other vacant units in the town. The planning agent has confirmed that marketing has only taken place since September 2019 with the marketing methods including online advertising on the estate agents website, as well as details displayed in the estate agent's window. They further advise that other than in relation to the application scheme there has been no interest/offers for the use of the building.

The Council has produced Marketing Strategy Statement Guidance which seeks to provide further advice on the level of information expected in relation to proposals which would result in the loss of commercial (including employment and retail uses) or community facilities. It has been produced in an attempt to ensure that the process of marketing is appropriate and rigorous enough to ensure any potential for continued commercial/community use has been fully explored. The information submitted with the application fails to demonstrate that the site has been appropriately marketed, in line with this guidance for the minimum 12 month period specified by policy E10.

In terms of principle, there are arguments that can be made for and against the proposal. However, on balance, and despite the limited period of marketing that has taken place the re-use of this small unit within the primary shopping frontage for a town centre use, in this instance it is considered to be preferable to bring the building back into use than to refuse planning permission and to potentially allow the building to remain vacant for a longer period. A similar decision was made in relation to a micro-brewery in Seaton which has since been operational and added to footfall within the town centre.

#### Amenity/Environmental Health Impacts

The proposed use has the potential to give rise to amenity impacts primarily from noise and activity associated, as well as odours related to the preparation or cooking of hot food. Policy EN14 of the EDLP seeks to control pollution including noise impacts and similarly policies E9 and E10 require consideration to be given to amenity impacts of development. In this instance the Environmental Health Team of the Council have also raised specific concerns relating to the size and layout of the unit and the ability for it to safely operate.

Micro-pub uses differ from traditional pubs and do not generally feature amplified music on site or other forms of electronic entertainment which can give rise to harmful noise impacts. Similarly the size of the venue would not be capable of accommodating large numbers and this would therefore act to limit noise associated with the use. In this instance the width of the pavement and proximity to the road would also negate the ability to have outdoor seating forward of the unit and there is no other outdoor space associated with it.

The concerns of the Environmental Health team in relation to the potential for customers to spill out onto the pavement is noted but this lies outside of the application

site and areas for consumption of alcohol would be controlled by the licencing application process. Despite the relatively low key nature of the use and lack of amplified music there is the potential for conversation and background noise to cause disturbance to any residents above or adjacent to the site. The agent has advised that there is a solid concrete ceiling so it is unlikely that general conversation will be heard above proposed micropub. However, In order to protect against such impact a condition could be imposed requiring noise testing to be carried out after the use has commenced with any mitigation measures found to be necessary to be agreed and carried out. Noise associated with customers leaving the premises at night is not considered likely to be a significant issue and it is in the management's best interests to seek to minimise this. Furthermore, it is noted that there is a much larger hotel/public house immediately opposite the site and as such there is likely to be a level of noise associated with its use.

In relation to odour impacts the agent has advised that no cooking on the premises is proposed but that warming up of pre-prepared/pre-packaged food is intended, the likes of pasties and sausage rolls which might be warmed up or kept warm on a warmer but that no food preparation or cooking is intended. The Environmental Health team has concerns that despite the 'low level' food use proposed that the nature of the unit with no food preparation or extraction systems indicated and little ability to provide a system to extract to external air there is the potential for harm to arise through food odours. As a result they have suggested that a condition is imposed preventing the preparation or cooking of hot food. The applicant has indicated they consider such a condition to be onerous and unnecessary given what they intend to provide and have cited a number of other micro-pubs which they suggest are not so restricted, including The Hat in Seaton. In relation to this premises it formerly operated as a butchers shop and has a rear access and therefore the ability to provide any necessary extraction. The circumstances of the other sites referred to are unclear but the unit in question has only one entrance/exit and this restricts ventilation options. In addition, any permission granted would relate to an A4 use and where a different operator may intend to offer a different or wider food offering, it is therefore necessary to ensure potential for future impacts are appropriately controlled and a condition is therefore considered to be necessary to prevent the preparation or cooking of hot food. Should the applicant be able to find a solution to the preparation and cooking of hot food that complied with Environmental Health requirements, the applicant could apply to remove the condition.

In relation to the other concerns raised by the Environmental Health team, the issue of access is addressed under the Building Regulations and in this regard it is advised that there is no reason why the relevant requirements could not be met. Indeed for the purposes of the Building Regulations the proposal would not constitute a change of use. The potential for customers to block the pavement by congregating outside the unit are noted but this lies outside the site area and is public highway over which no control can be exerted through the application and over which permission would be required from others (Licensing and Devon County as the Highway Authority) to allow its use for drinking. The applicant will be required to obtain a licence for the sale of alcohol and this can place restrictions on areas of use for example restricting consumption of alcohol to within the premises.

### Economic benefits

The proposal would bring a vacant commercial unit back into use and some economic benefits would derive from this, there is also the potential that the use could provide knock-on benefits to other businesses in the town centre. On the other hand, the proposal would also result in the loss of a retail use from the defined primary shopping frontage and where the marketing evidence falls short of that expected to ensure that a reasonable attempt at securing an ongoing retail use has been undertaken. In this instance given that an active town centre use would be retained and there are a number of other vacant units in the town centre /primary shopping frontage the benefits are considered to outweigh any potential harm.

## **CONCLUSION**

The proposal would bring a vacant commercial unit within the town centre back into active use. Whilst the proposed use is not a retail use it is of a nature that has the potential to add to the vitality and viability of the town centre.

Against the background of wider changes in the retail market and its declining role in the town centre it is considered that alternative uses likely to retain activity in the town centre will have benefit in supporting its overall function. As such, whilst the required 12 months of marketing has not taken place to justify that there is no A1 retail interest in the unit, the benefits of the proposal and presence of other vacant retail units in the town centre as considered to outweigh the need for marketing in this instance.

The size and nature of the proposed use is considered unlikely to result in any significant amenity impacts, however there is some potential for noise/odour impacts to affect residential amenity and conditions are proposed to manage these impacts.

Subject to the imposition of the suggested conditions the proposal is considered to be acceptable and is recommended for approval.

## **RECOMMENDATION**

APPROVE subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.  
(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.  
(Reason - For the avoidance of doubt.)
3. The premises shall not be open to the public other than between the hours of: 11.00 hours and 23.30 hours, Mondays - Sundays  
(Reason - In the interests of residential amenity in accordance with Policies D1 - Design and Local Distinctiveness and EN14 - Control of Pollution of the East Devon Local Plan 2013 - 2031.)

4. No amplified or other music shall be played or any game sounds generated in the premises in such a way that they are audible at any location outside the premises or within any nearby premises.  
(Reason - To protect the amenity of local residents from noise in accordance with policies E9 (Town Centre Vitality and Shopping Areas), E10 Primary Shopping Frontages) and EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031.)
5. Within one month of the initial use of the premises, for the purpose hereby permitted, noise testing shall be carried out within the first floor unit above the site to determine whether noise related to the permitted use is within acceptable tolerances and as a minimum meets the requirements of Approved Document E of the Building Regulations.

Where testing indicates mitigation measures are required to meet the stated requirements a scheme to provide for the reduction in the transmission of noise between the commercial premises and the first floor of the building shall be submitted to the Local Planning Authority for agreement within a further month of the date of the testing.

Any mitigation scheme agreed shall be fully implemented within two months of the date of written agreement by the Local Planning Authority and maintained thereafter.

(Reason -To protect the amenity of existing adjoining occupiers of the site in accordance with policies E9 (Town Centre Vitality and Shopping Areas), E10 Primary Shopping Frontages) and EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031.)

6. The premises shall not be used for the preparation or cooking of hot food.  
(Reason - To protect the amenity of local residents from cooking smells in accordance with policies E9 (Town Centre Vitality and Shopping Areas), E10 Primary Shopping Frontages) and EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031.)

#### NOTE FOR APPLICANT

##### Informative:

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in determining this application, East Devon District Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved.

##### Plans relating to this application:

R1.0: Ground floor	Combined Plans	16.12.19
	Location Plan	16.12.19

List of Background Papers

Application file, consultations and policy documents referred to in the report.