

ITEM 1

Retrospective consent for canopy and decking to side of premises for outside dining, installation of wooden posts on front boundary and retractable canopy to frontage at The Birdcage, 35 Derby Road, Chesterfield for The Birdcage

Local Plan: Unallocated

Ward: Rother

Committee Date: 03/07/2023

1.0 CONSULTATION RESPONSES

Ward Members: No comments received.

Highways Authority: No objection

Environmental Services: No objection.

Representations: 5 comments received. All of the comments are objections, on the grounds of the design of the external works, increased parking issues from customers and staff of the two businesses, increased noise from customers to residents, loss of privacy to persons living across from the café on Derby Road, a distraction to drivers of Derby Road and due to the application being retrospective.

2.0 THE SITE

2.1 The application site is on the corner of Derby Road and Lord Roberts Road, and it is related to the area surrounding no's 33 and 35 Derby Road. No.33 is used as the offices for Tim Vice Plumbing and Property Maintenance Ltd, with no.35 used as a café/bar. The frontage and side of both units is utilised by the café business for seating.

Google image:



- 2.2 The area is predominantly residential in character, with dwellings surrounding the site on all sides. The site is two no. terraced units in red brick. The character of the area is for two storey terraced dwellings, with limited off-street parking availability.
- 2.3 Derby Road is a busy main road and Lord Roberts Road is a quiet residential side road, with access restricted to prevent through traffic utilising the street.

3.0 SITE HISTORY

- 3.1 CHE/20/00243/PNCOU - Change of use of former off licence to coffee shop (A3) – Prior Notification Not Required – 18/06/20
- 3.2 This application was a notification for prior approval for the change of use of a retail unit to a café (no.35), which included opening hours of 7am to 11pm. As part of this application the principle, residential impact and highways impact were considered.

4.0 THE PROPOSAL

- 4.1 Retrospective planning permission is sought to retain the side canopy and decking to the premises for outside dining, installation of wooden posts on front boundary and the retractable canopy to the frontage elevation.
- 4.2 The wooden posts to the frontage include advertisement boards in-between, consisting of 10 sub-1m black wooden posts, with black-backed boards adjoining them along the south and west of the frontage. The retractable canopy is attached to and projects several metres out from the front elevation of both units. The side decking area and canopy include a red brick sub-1.2m high brick wall to enclose the street with a grey metal framed

canopy attached to this with a glazed roof. There is also a glazed side and timber-cladded ends; it has a lean-to roof and is no more than 2.5m in height.

Images:



5.0 PLANNING POLICY

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that, 'applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise'. The relevant Development Plan for the area comprises of the Chesterfield Borough Local Plan 2018 – 2035.

5.2 Chesterfield Borough Local Plan 2018 – 2035

CLP1 Spatial strategy

CLP2 Principles for Location of Development (Strategic Policy)

| | |
|-------|-------------------------------------------------------|
| CLP6 | Economic Growth |
| CLP14 | A Healthy Environment |
| CLP16 | Biodiversity, Geodiversity and the Ecological Network |
| CLP20 | Design |
| CLP22 | Influencing the demand for travel |

5.3 National Planning Policy Framework

- Chapter 2 Achieving sustainable development
- Chapter 6 Building a strong, competitive economy
- Chapter 8 Promoting healthy and safe communities
- Chapter 12 Achieving well-designed places
- Chapter 15 Conserving and enhancing the natural environment

6.0 CONSIDERATION

6.1 Principle of Development

6.1.1 The application is to retain the above described elements which have been added to an existing site to aid the expansion of the operation to improve external seating areas. The expansion of an existing business is acceptable in principle in relation to policies CLP1 and CLP6. The use of the café, and any impacts associated with this are not being considered as the use is authorised. The change of use of the office space is permitted development within Use Class E.

6.2 Design and Appearance of the Proposal

6.2.1 Local Plan policy CLP20 states in part; all development should identify and respond positively to the character of the site and surroundings and respect the local distinctiveness of its context respect the character, form and setting of the site and surrounding area by virtue of its function, appearance and architectural style, landscaping, scale, massing, detailing, height and materials.

6.2.2 The front posts and advertisements have been built at a comparable size to the dwarf brick walls which is a common feature of dwellings on the street. This is considered to appropriate enclose the site from the street scene in visual terms. The front canopy whilst a substantial feature is considered to be of an acceptable design in keeping with the character of the area and is an enhancement of the site from earlier appearances. The side canopy and

decking are considered to be a sympathetic design for the location, utilising matching brick and planting. It is a temporary, subservient structure to the original building which is considered to be acceptable in design terms.

6.2.3 In this regard, the proposal is not considered to be detrimental to the character or appearance of the area. Accordingly, this application is considered to comply with the design objectives of policy CLP20 of the Chesterfield Borough Local Plan and Chapter 12 of the revised NPPF.

6.3 Residential Amenity

6.3.1 Local Plan policy CLP14 states that development will be expected to have an acceptable impact on the amenity of users and neighbours. The Council's SPD 'Successful Places' provides further guidance in respect of privacy, day light and sunlight, overshadowing and external amenity space.

6.3.2 Whilst planning permission for the outdoor seating is not required, due to the approved Class E use of the site, nevertheless the introduction of structures makes the outdoor area more likely to be used more frequently throughout the year and therefore the issues to be considered in terms of the structures are linked to a degree to the seating provision. These outdoor areas have the potential to lead to increased noise levels from customers in a residential area, this is potentially exacerbated as the business has an alcohol licence. Due to the close vicinity of the unit to the residential properties surrounding the site, it is considered that the outside seating area should be restricted to opening hours no later than 9pm, this is considered to be a reasonable response to the needs of the business but also considering the amenity of local residents in that they are not significantly impacted later in the evenings.

6.3.3 A screen has been erected to the northern end of the frontage area, on the boundary with no.31 Derby Road. The combination of the screen and the canopy leads to a potential impact to the frontage of no.31 in terms of overshadowing/massing, leading to potential overshadowing to the front lounge window of this dwelling. As seen in the image below:



No comment has been received from the resident of this dwelling. Whilst the canopy is retractable, it appears that during the majority of the café's opening hours this feature is left fully open, which means that during most daylight hours the canopy is ever present. However, it is considered that the angle of the canopy ensures that residents of this dwelling retain a reasonable level of sunlight/daylight to a primary window, in addition this also provides a level of privacy and screening from the café which is of benefit to the residents of that property. On this basis a refusal of the proposal is not considered to be warranted.

6.3.4 In this regard the proposal will result in acceptable amenity impacts in line with policy CLP14, and the revised NPPF.

6.4 Highway Safety

6.4.1 Local Plan policies CLP20 and CLP22 require consideration of parking provision and highway safety.

6.4.2 The Highway Authority has not objected to the scheme. However, there are several objections from local residents regarding the highway impacts of the development, but these refer to the previous change of use of the buildings from a newsagents and retail unit to a café and office, which is an authorised use. It is understood that the change of the use and success of the business may have had an impact to Lord Roberts Road in terms of parking from customers and staff from both businesses, but this application cannot reconsider the authorised use of the premises.

6.4.3 A further issue raised is that the development proposed would be a distraction to drivers on Derby Road. As the Highway Authority have raised

no concerns regarding this it is not considered to be a matter for which a refusal of planning permission could be justified.

6.4.4 It is considered that the scheme does not lead to a negative impact in terms of highway safety and is acceptable in regards policies CLP20 and CLP22 of the Local Plan.

6.5 Biodiversity

6.5.1 Local Plan policy CLP16 states that all development will “protect, enhance, and contribute to the management of the borough’s ecological network of habitats, protected and priority species ... and avoid or minimise adverse impacts on biodiversity and geodiversity and provide a net measurable gain in biodiversity.” The NPPF in paragraph 170 requires decisions to protect and enhance sites of biodiversity and paragraph 174 also requires plans to “pursue opportunities for securing measurable net gains for biodiversity”.

6.5.2 The proposal is considered to be a minor development and does not result in the loss of an existing species rich habitat area. Some level of biodiversity net gain is considered to be necessary to accord with policy CLP16 of the Local Plan and the NPPF. However, the planting that has taken place on site is considered to have adequately provided a gain in biodiversity and therefore there is no need for a condition to agree further details, although a condition to secure this gain is required.

6.5.3. On this basis the proposal is considered to accord with the provisions of policy CLP16 of the Local Plan.

7.0 REPRESENTATIONS

7.1 5 comments received. All of the comments are objections, on the grounds of the design of the external works, increased parking issues from customers and staff of the two businesses, increased noise from customers to residents, loss of privacy to persons living across from the café on Derby Road, a distraction to drivers of Derby Road and due to the application being retrospective.

7.2 Officer comment – The above comments are mostly considered in the above report. In regard the comment about the application being retrospective; whilst applicants are encouraged to submit planning applications prior to commencing works, there is no legal requirement to do so. All applications for planning permission need to be considered against the relevant planning policies whether or not the submission is retrospective.

8.0 HUMAN RIGHTS ACT 1998

- 8.1 Under the Human Rights Act 1998, which came into force on 2nd October 2000, an Authority must be in a position to show:
- Its action is in accordance with clearly established law
 - The objective is sufficiently important to justify the action taken
 - The decisions taken are objective and not irrational or arbitrary
 - The methods used are no more than are necessary to accomplish the legitimate objective
 - The interference impairs as little as possible the right or freedom
- 8.2 The action in considering the application is in accordance with clearly established Planning law and the Council's Delegation scheme. It is considered that the recommendation accords with the above requirements in all respects.

9.0 STATEMENT OF POSITIVE AND PROACTIVE WORKING WITH APPLICANT

- 9.1 In accordance with the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2015 and paragraph 38 of 2021 National Planning Policy Framework (NPPF) as the proposed development does not conflict with the NPPF and with 'up-to-date' policies of the Local Plan, it is considered to be 'sustainable development' to which the presumption in favour of the development applies.

10.0 CONCLUSION

- 10.1 The proposed development is considered to sufficiently reflect the architectural characteristics and form of the existing site and surrounding area. Furthermore, it is not considered that the development would result in significant injury to the amenity of nearby residents, subject to condition restricting external hours of operation. It is not considered to lead to a negative impact upon highway safety of the local area. As such, this application is considered to comply with the requirements of policies CLP2, CLP14, CLP20 and CLP22 of the Chesterfield Borough Local Plan 2018-2035 and Chapter 12 of the revised National Planning Policy Framework.

11.0 RECOMMENDATION

11.1 It is therefore recommended that the application be **GRANTED** subject to the following conditions:

11.2 Conditions

1. The development hereby approved shall only be carried out in full accordance with the approved plans: Site Location Plan, Site Plan, Elevation Plans; with the exception of any approved non-material amendment.

Reason: In order to clarify the extent of the planning permission.

2. The outdoor area of the premises shall not be used for external seating in connection with the operation of the café before 8.00am and after 9.00pm daily.

Reason - To safeguard the privacy and amenities of the occupiers of adjoining properties in accordance with policy CLP14 of the Adopted Local Plan.

3. The planting provided on site for biodiversity benefits shall be retained and maintained throughout the life of the development.

Reason: To secure a biodiversity net gain in accordance with policy CLP16 of the Adopted Local Plan.