

Item 2**PROPOSAL: CHANGE OF USE OF SERVICE YARD AREA LOCATED TO THE REAR OF 5 BRECKLAND ROAD, TO A FENCED OUTDOOR SEATING AREA WITH COVERED PERGOLA – REVISED DESCRIPTION AGREED ON 24/05/2021 TO COVER CHANGE OF USE OF SERVICE AREA****LOCATION: THE WALTON DAM NATION, 5 BRECKLAND ROAD, WALTON, CHESTERFIELD, S40 3LJ**Committee Date: 21st June 2021

Ward: Walton

1.0 CONSULTATION RESPONSES

Ward Members	No representations received
Strategic Planning	Comments received – see <u>Section 6.1</u> of this report
Environmental Services	Comments received – refusal recommended
Estates	No representations received
Design Services	No objection
Local Highway Authority	No objections
Steve Perry- Tree Officer	No objections – see report
Licencing Department	Comments received – see <u>Section 6.1</u> of this report
Yorkshire Water Services	No representations received
Urban Design Officer	No representations received
Representations	9 x representations received – see <u>Section 7</u> of this report

2.0 THE SITE

- 2.1 The premises, the subject of the application is one unit in a collection of 5 that are located within a defined Local Centre, as identified on the Local Plan Policies Map. The unit is finished in a red brick with a tiled roof. The south facing elevation (front) is predominantly glazed with a pedestrian access door. This is currently the only way in and out of the premises. The immediate surrounding area to the application site is commercial with the premises being in a local shopping centre. The unit measures approximately 9 metres x 6 metres and therefore provides approximately 54 square metres of floor space.
- 2.2 There is car parking to the south and east of the units as well as perimeter soft landscaping to the east and south edges of the shopping area. To the north (rear) of the

premises, there is a service yard for deliveries to the 5 units at the shopping centre. There are approximately 38 car parking spaces for use by customers of the local centre. Other retail units include One Stop convenience store and a post office.

- 2.3 Being located in a defined Local Centre, there are residential properties surrounding the shopping area. To the north of the application site, the premises shares a boundary with no. 4 The Way. This property is located approximately 27 metres from the boundary of the application site. Located to the east of the application site, the premises shares a boundary with Walton Post Office which is located within the Local Centre. To the south of the application site and raised above the application site due to changes in land levels, are numbers 8 and 10 Breckland Road. These properties are located on the opposite side of the public highway and approximately 45 metres from the application site. To the south west, the unit shares a boundary with numbers 7, 9 and 11 Breckland Road. Finally, to the west and north west of the application site, the premises shares a boundary with numbers 5, 7, and 9 Foxbrook Court. The closest of these properties being located approximately 18 metres from the application site.

3.0 SITE HISTORY

- 3.1 CHE/0487/0220 - Display of illuminated shop sign
Conditional permission granted 05/06/1987
- 3.2 CHE/16/00837/FUL - Change of use from hot food takeaway to public house (Licensing Act 2003) - A5 to A4
Conditional permission granted 23/02/2017

4.0 THE PROPOSAL

- 4.1 The application seeks to change the use of part of the existing service yard area (as defined by the red line boundary) to form a fenced outdoor seating area with a covered pergola to provide outdoor seating at the application site.
- 4.2 The proposed outdoor seating area will have measurements of 9 metres projection from the premises and have a total width of 6 metres.
- 4.3 The proposed pergola will have a maximum height of 2.2 metres from the ground level. The fencing around the perimeter of the outdoor seating area is detailed to be a timber hit and miss fence.
- 4.4 The proposed outdoor seating area is shown on the submitted drawings to only be accessible from the existing premises. A timber gate is proposed in the east facing elevation of the proposal however this is labelled to be for emergency use only.

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 (Strategic Policy)
CLP2 Principles for Location of Development (Strategic Policy)
CLP6 Economic Growth (Strategic Policy)
CLP8 Vitality and Viability of Centres (Strategic Policy)
CLP9 Retail
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

Part 2. Achieving sustainable development
Part 4. Decision-making
Part 6. Building a strong, competitive economy
Part 7. Ensuring the vitality of town centres
Part 8. Promoting healthy and safe communities
Part 12. Achieving well-designed places
Part 14. Meeting the challenge of climate change, flooding and coastal change
Part 15. Conserving and enhancing the natural environment

6.0 CONSIDERATION

6.1 Principle of Development

- 6.1.1 The application site is within a defined Local Centre and as such, Local Plan policy CLP8 applies. CLP8 states that the “Council will support the role of the town, district, local service centres and local centres in providing shops and local services in safe, accessible and sustainable locations.”
- 6.1.2 The **Strategic Planning** department were consulted with in respect of this application to gain understanding of the appropriateness of this application. The comments returned are detailed that owing to the identified Local Centre location of the application site, “Main town centre uses (as defined by the NPPF) would be considered appropriate in principle and would accord with policies CLP1, CLP2, CLP8 and CLP9.” The Strategic Planning comments did however note that the application site “is in close proximity to residential gardens on Foxbrook Drive and this will need to be considered”. This consideration will be addressed in Section 6.3 (Residential Amenity) of this report.
- 6.1.3 Finally, the **Strategic Planning** officer noted the restrictions that are already in place on the licence for this premises. Such restrictions would need to be considered in this application and inform the appropriateness of planning conditions if the application were to be approved. Whilst not of material consideration to a planning application, it is considered appropriate to recognised that a recent application to amend the premises licence at this application site has been approved. The application for a Minor Variation Application ([reference number 051175](#)) was approved on 05/05/2021. In summary,

comments received from the **Licencing department** indicated that this variation removed the condition of the licence that prohibited patrons from accessing the rear yard of the premises for consumption due to public safety reasons, save in the event of an emergency.

- 6.1.4 The amended licence application now includes the following condition:
“Amendment to the restriction for the use of the service yard and exclude the new area for outdoor consumption. The area is to be entirely enclosed with no access to or from the service yard apart from emergency access. As an additional safeguard, boulders or similar barriers will be located around the external perimeter of the fence to ensure a physical barrier between the service yard and outdoor consumption area.” This means that the outdoor area is now included in the premises licence and therefore outdoor consumption is allowed under the licence. The retail hours of the premises are licenced as follows;
- 11:00 – 21:00 Monday to Saturday
 - 11:00 – 19:00 Sunday
 - 11:00 – 23:00 Christmas Eve
 - 11:00 New Years Eve – 00:30 New Years Day
- 6.1.5 It is therefore understood, that subject to compliance with the conditions attached to the licence detailed above, consumption of alcohol in the rear service yard is now permitted within the defined area at the application site.
- 6.1.6 The application form submitted with this application indicates that the current business hours of this premises are as follows;
- 09:00 – 21:00 Monday to Saturday
 - 09:00 – 19:00 Sunday and Bank holidays

On this basis, it is therefore understood licenced sales cannot be made until 11:00 in accordance with the premises licence. It is clear however that the business closes at 21:00 Monday – Saturday (and 19:00 on Sundays) with the exception of the above noted days. It is therefore considered the business is not seeking to amend the operating hours to those already operating and this application is to determine the appropriateness of the proposed outdoor seating area.

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 Owing to the current appearance of the service yard area which is very minimal and enclosed in design and appearance, the addition of the outdoor seating area that is enclosed by timber fencing is considered to be appropriate in design and appearance.

The below photographs show the existing service yard area which has walls around the perimeter.



6.2.3 It is therefore considered that the proposal is appropriate to the existing building and its surroundings and would not cause significant adverse impacts on the visual amenity and character of the area. The proposal therefore accords with the provisions of policy Local Plan policy CLP20.

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.

6.3.2 As noted in the site description, there are residential properties surrounding the application site – and those located to the west of the application site are noted to be closest to the site. Due to the location of the proposed outdoor seating area being lower in height than the neighbouring properties, it is not considered the proposal would have visual impacts on the neighbouring properties. This is shown in the photographs below.



Above: The photos highlight the land level differences between the service yard area and the footpath to the west of the application site. The walls acts to screen the proposed pergola from vision of the neighbouring properties, as does the hedging shown on the right of the photograph on the right.

- 6.3.3 On this basis the proposal is considered to accord with the provisions of policy CLP14 of the Local Plan.

6.4 **Noise and nuisance**

- 6.4.1 Local Plan policy CLP14 states that development will be expected to have an acceptable impact on the amenity of users and neighbours.
- 6.4.2 To understand the impact of the proposed development on the neighbouring properties, the **Environmental Health Officer** (EHO) was consulted. Initial comments received from the EHO made comments in respect of food safety and the consideration of the space being considered as enclosed, or substantially enclosed. These comments related to the Smoke-free premises Regulations 2006. The case officer considered that this response was not applicable to this application given the application does not detail food provision. The full comments are available to view on the public access system however and these may be of use to the applicant when considering how the proposed pergola will be viewed under the above-mentioned regulations.
- 6.4.3 In response to the above mentioned comments, the case officer returned an email to the EHO to query noise and disturbance issues that may / may not arise as a result of this proposal – particularly given the comments received from the public during the consultation process. Comments returned from the EHO read as follow;
“The area is overlooked by adjacent houses and I am concerned that this has great potential to give rise to disturbance from patrons in the area. I further note that the current licence for the premises limits the use to no later than 21:00 (with exceptions for specified dates such as Christmas Eve etc), which would limit disruption. I am concerned that if planning permission is granted, the applicant would also request a change in the licenced hours.

Given this, I advise that the application should be refused. If the application is to be granted I strongly advise that the use of the area be limited to no later than 21:00 on any day.”

- 6.4.4 Given the comments and recommendation from the EHO, it is a surprise that such concerns were not raised in the original comments received. Notwithstanding the comments from the EHO, it is not considered appropriate to recommend a refusal in this instance for numerous reasons. Firstly, whilst the application site is surrounded by residential properties, the layout and siting of the proposed pergola area means that it will have minimum visibility from the properties. This is highlighted in the photos above in this report which were taken from the service area. Furthermore, there is a high wall and landscaping between the application site and residential gardens which assists to mitigate sound and visual impacts from the application site. It is therefore considered the proposed pergola is not overlooked as suggested in the comments received from the EHO. It is acknowledged however that the walls of the service yard could create an

amphitheatre effect with noise from customers of the business however, owing to the size and location of the service yard it is considered much of the noise will be contained within it, rather than amplified. It was noted during the case officer's visit that the service yard already has extractor units operating within the service yard area in association with the nearby convenience store. The noise of these was considered to be contained within the service yard and had limited impact on the adjacent public footpath located to the west of the application site.

- 6.4.5 The EHO goes on to note the licencing hours and raises concerns for the future amendment to these hours. Whilst this may happen, the application is being considered with licence hours that prevent the business operating after 21:00 (with exceptions on specified dates). Furthermore, the business has recently had a licence approved for the outdoor area to enable customers to drink in the defined service yard. No amendment to the licenced hours was sought in this application, only an extension of the licenced area; it is therefore considered unlikely that the applicant would wish to extend the business hours. It is however accepted that licensing and planning operate under different legislation and it is considered prudent to impose a planning condition that restricts access to the service yard beyond 21:00, on any day of the year. The imposition of such a planning condition will ensure that any potential changes to the licence approved would not extend the period of time for which customers could utilise the outdoor drinking area without first a planning application being submitted and approved. It is hoped such approach would ensure the proposed development would have a limited impact on the neighbouring dwellings. Furthermore, the limiting of access on any day (even the specified dates acknowledged) to 21:00 is considered appropriate to mitigate any potential noise impacts on neighbouring properties on the specified days in the year.
- 6.4.6 On this basis, subject to the imposition of and compliance with an appropriate planning condition, the proposed development is considered to accord with the provisions of policy CLP14 of the adopted Local Plan.

6.5 Highway Safety

- 6.5.1 Local Plan policy CLP20 and CLP22 require consideration of parking provision and highway safety.
- 6.5.2 The Local Highways Authority were consulted with in respect of this application to determine if the proposal raised highway safety concerns. No comments in respect of highway safety were raised. On this basis, it is considered the proposal is acceptable with regards to highway safety and is therefore considered to accord with the provisions of policies CLP20 and CLP22 of the Local Plan.
- 6.5.3 Furthermore, the remaining service yard area is understood to measure 760 square metres. The longest width of which will measure 29 metres whilst the longest length will measure 31 metres. This space is therefore considered to be sufficient to permit deliveries at the service yard area – the proposed outdoor seating area only removes 54 square metres from this yard (9 metres x 6 metres) and therefore is considered to be minimal in its size. Also of note is the location of the seating area; the seating area is

located in the south west corner of the service yard and it is not thought this corner of the service yard would be used for the turning of delivery vehicles.

6.6 Biodiversity including trees and landscaping

- 6.6.1 Local Plan policy CLP16 states that all development will “protect, enhance, and contribute to the management of the boroughs 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”.
- 6.6.2 The application site has limited biodiversity value owing to the predominantly hard surfaced areas that form the application site and the surrounding area. It is therefore accepted that the application site would be able to demonstrate a biodiversity enhancement through the inclusion of appropriate measures, if the application is to be approved. It is considered in this instance that the planting of pollinator friendly species of plants would be appropriate over the proposed pergola. Species such as Campsis radicans, Clematis vitalba and Jasminum officinale are climbing species that would enhance biodiversity at the application site as well as enhancing the appearance of the application site.
- 6.6.3 There is a protected tree located in a neighbouring residential property’s garden however due to the location and proximity from the development proposed, the **Tree Officer** indicated he had no concerns as the tree would not be impacted on by the proposed pergola. The Tree Officer did indicate that planting within the pergola area (in pots and tubs) would be a welcome addition to the area.
- 6.6.4 On this basis the proposal is considered to accord with the provisions of policy CLP16 of the Local Plan.

7.0 REPRESENTATIONS

- 7.1 The standard period of consultation has been carried out for this application and a total of no.9 representations have been received as a result. Seven of the representations object to the proposal whilst two support the application.

The seven representations which raise concerns for the proposal relate to:

- noise and the amplification of noise from the walls of the service yard,
- the restrictions imposed by the original premises licence,
- health and safety implications of using the service yard area as outdoor seating area,
- reduced provision for good vehicles to turn in the yard,
- the impact of reduced turning provision on the public highway and damage to service yard walls,
- safety concerns regarding the storage of LPG bottles at the rear of the application site and a timber structure combined with smoking,

- disturbance as a result of expanding the useable space,
- waste which may attract pests, litter and smells,
- visual harm as a result of the proposal,
- the impact the expansion will have on car parking,
- the need for increased toilet facilities,
- children who play at the front of the site may be running around the back,
- the premises has already expanded at the front of the site on to the forecourt area and is therefore getting too big.

7.2 It is considered the concerns raised during the consultation period have been addressed in the report.

7.3 The letters of support for the application indicate the existing business is a “great community asset, well managed and providing jobs for local residents, a welcomed expansion.” Whilst the second indicates the “current public comments are negative, citing the possibility of extra noise, food smells and vermin attracted by waste food. Many of these objections can easily be overcome by the due care and attention of the owners.” The letter (available to view on the public access system) continues that outdoor leisure capacity should be encouraged, and considers the business a positive asset to the community.

7.4 It should also be acknowledged at the time of writing this report, the consultation period does not close until 15th June 2021. Any comments received between now and the committee date will be included and referred to at Planning Committee.

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 2012 and paragraph 38 of 2019 National Planning Policy Framework (NPPF) as the proposed development does not conflict with the NPPF or 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.

9.2 The Local Planning Authority have considered this application in a positive and proactive way in order to achieve a positive outcome for the application.

10.0 CONCLUSION

10.1 Overall the proposal is considered to be acceptable in accordance with policies CLP8, CLP14 and CLP20 of the Local Plan.

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 permitted shall be begun before the expiration of three years from the date of this permission.

Reason - The condition is imposed in accordance with section 51 of the Planning and Compulsory Purchase Act 2004

2. The development hereby approved shall only be carried out in full accordance with the approved plans (listed below) with the exception of any approved non-material amendment. All external dimensions and elevational treatments shall be as shown on the approved plan/s (listed below).

- Existing and proposed plans and elevations – Drawing no. PL_01 Rev A – Proposed ground floor plan – 1:50 @ A1
- Existing and proposed plans and elevations – Drawing no. PL_01 Rev A – Proposed sectional elevation A – 1:100 @ A1
- Existing and proposed plans and elevations – Drawing no. PL_01 Rev A – Proposed sectional elevation B – 1:100 @ A1

Reason - In order to clarify the extent of the planning permission in the light of guidance set out in "Greater Flexibility for planning permissions" by CLG November 2009.

3. Within 2 months of the commencement of the development hereby approved, a scheme for biodiversity and ecological enhancement measures shall be installed/integrated into the development/planted on site. The ecological enhancement measures shall thereafter be retained and maintained throughout the life of the development.

Reason - In the interests of achieving a net measurable gain in biodiversity in accordance with policy CLP16 of the adopted Chesterfield Borough Local Plan and to accord with paragraph 175 of the National Planning Policy Framework.

4. The outdoor seating area located to the north of the premises shall not be used after the hours of 21:00 Monday to Saturday and 19:00 on Sunday. These time restrictions shall also apply to the special dates in which the business is allowed extended hours.

Reason - This condition is imposed to ensure minimised noise disturbance to the neighbouring residential properties and in accordance with policy CLP14.

11.3 Informative Notes

1. The Local Planning Authority have considered this application in a positive and proactive way in order to achieve a positive outcome for the application.
2. If work is carried out other than in complete accordance with the approved plans, the whole development may be rendered unauthorised, as it will not have the benefit of the original planning permission. Any proposed amendments to that which is approved will require the submission of a further application.
3. When you carry out the work, you must avoid taking, damaging or destroying the nest of any wild bird while it is being built or used, and avoid taking or destroying the egg of any wild bird. These would be offences (with certain exceptions) under the Wildlife and Countryside Act 1981, the Habitats Regulations 1994 and the Countryside and Rights of Way Act 2000.
4. When you carry out the work, you must not intentionally kill, injure or take a bat, or intentionally or recklessly damage, destroy or block access to any structure or place that a bat uses for shelter. These would be offences under the Wildlife and Countryside Act 1981, the Habitats Regulations 1994 and the Countryside and Rights of Way Act 2000.