HPK/2013/0210
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Removal of Condition 6 of Planning Permission Ref HPK/2011/0704

Tesco Express, Former Masons Arms, Station Road, Hadfield

This application seeks the removal of condition 6 attached to permission reference HPK/2011/0704. The permission which approves external alterations a rear extension to the building and the installation of plant and equipment. Condition 6 states:

> *"The area shown as allocated for the parking of two cars on drawing P 113 F shall be provided prior to the commencement of the use and retained available for that use for the life of the development."*

The reason given for this condition being attached to the permission is:

> *"In the interests of highway safety as required by High Peak saved Local Plan policy TR5."*

Policy TR5 from the High Peak Local Plan (2005) states that development should have regard to parking, access, manoeurvring, servicing and highway guidelines where appropriate. The supporting paragraph 10.22 details *'parking standards will be applied in a common sense manner'* and that a flexible approach in regards to parking provision may be required.

The site is located within the main commercial area of Hadfield where there are existing good transport links including a public bus route along Kiln Lane at the side of the site which provides good access from the surrounding residential catchment area.

74 Station Road - Legal Right of Way

It has come to right that separate to the above application, the developer needed to enter into a legal agreement concerning a legal right of way xxx the neighbouring property, 74 Station Road, the ability to access *'with or without vehicles over the New Route'* this being the area along the rear of the site where the condition requires the parking spaces for two vehicles to be provided in line with plan 113 rev F which was submitted as part of the previously approved application, and remain available for use for the life of the development.

At Appendix 1 of this statement is a plan identifying the area subject to the legal right of access for the neighbour. This area must remain clear such that this access is available at all times therefore, in keeping this area clear to comply with the legal agreement there is no ability for this area to be *'available'* for the parking of two vehicles in line with condition 6. This application seeks to remove this condition and the requirement for parking to be provided on site due to the constrained nature and the neighbouring right of access preventing any parking at this location.

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Policy review

National Planning Policy Framework (NPPF)
NPPF Paragraph 32 states that "*developments should only be prevented, or refused, on transport grounds where the residual cumulative impacts are severe.*"

Paragraph 39 states that in setting local parking standards for non-residential development, the following should be taken into account:

- Accessibility of the development;
- The type, mix and use of development;
- The availability of and opportunities for public transport;
- Local car ownership levels; and
- An overall need to reduce the use of high-emisision vehicels.

It is the position that loss of this condition would not cause residual 'severe' cumulative impacts as a result of the removal of the spaces and therefore the development should not be refused where this condition removed.

Circular 11/95
Circular 11/95 deals with the use of conditions in planning permission with paragraph 14 outlining the six tests for the validity of planning conditions. Furthermore, Paragraph 14 is clear that conditions should only be imposed where they satisfy all of the tests, namely that conditions should be:

1. Necessary;
2. Relevant to planning;
3. Relevant to the development to be permitted;
4. Enforceable;
5. Precise; and
6. Reasonable in all other aspects.

High Peak Local Plan (2005) saved policies
The saved Policy TR5 from the High Peak Local Plan (2005) states

> *"Planning Permission will be granted for development, provided that:*
> - *it will make safe and appropriate provision for access and egress by pedestrians, cyclists, public transport users and the private car.*
> - *it includes a high standard of design and layout having regard to the parking, access,*
> - *manoeuvring, servicing and highway guidelines set out in Appendix 1 (Parking Standards), and relevant Government Guidance and Good Practice, where appropriate*
> - *Where the development is expected to generate a higher level of car use than can be accommodated by the maximum parking standards or will significantly exacerbate existing traffic problems, the applicant should submit a Travel Plan to reduce car dependency.*
> - *Where appropriate, conditions will be imposed, and/or planning obligations sought, to ensure that adequate parking, manoeuvring and servicing space will be available at all times."*

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Assessment

Location of site within a commercial centre
The site is located within the main commercial area of Hadfield where there are good transport links and other commercial units. The site, now identified as being operated as a Tesco Express convenience retail unit will positively contribute towards the vitality and viability of this centre and encourage linked shopping for the centre.

The identified parking area would have been available for the private / staff use and not for customers or visitors to the site as mentioned in the supporting design and access statement. Tesco have a policy of employing people who live within the immediate area of the site such that it is likely that staff employed within the retail unit will mostly walk or use public transport to access the site rather than private vehicle.

It is acknowledged that there is limited public, centrally located car park available within the immediate area however Station Road does have layby parking along both sides in the centre of the commercial area. There is also a range of available on street parking areas available within the immediate vicinity of the site which are currently utilised by both residents and customers of the Hadfield commercial area.

The loss of these spaces is therefore not considered to have a 'severe' cumulative impact as identified within paragraph 32 of the NPPF and therefore this condition is not necessary.

Highways Safety
The justification of condition 6 reads '*in the interest of highway safety*' in line with policy TR5. It is not considered that in removing this condition, the provision to provide 2 parking spaces, there would be a detrimental impact to highway safety for the site or the wider area in which the site is located.

TR5 continues that:

> *"Where appropriate, conditions will be imposed, and/or planning obligations sought, to ensure that adequate parking, manoeuvring and servicing space will be available at all times."*

In providing comments back to the approved application at the site, the Highways Officer, Ian Turkington (Appendix 2), states:

> *"It is however unlikely the Highways Authority would be in a position to successfully defend a refusal on grounds of reduced parking for a public house in a central location."*

Additional clarification was sought from the Council in regards to the removal of this condition and an email was received from Highways Officer Nick Knowles which confirmed that taking into consideration the location of the site, a highways objection to loss of the Conditioned off-street parking spaces would be sustainable.

Therefore, it is acknowledge by the Highways Officers at Derbyshire County Council that whilst the proposed loss of two spaces is not 'ideal', there would be no objection to the removal of this condition on highway safety grounds which was the stated reason for attaching the condition, due to the site's location within the sustainable position of the Hadfield commercial area.

Circulate 11/95 issues

Necessary

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Any condition must also be justified by the nature of the development permitted or its effect on the surroundings. The example cited in Circular 11/95 identifies that councils should ask themselves whether planning permission would have been refused would the condition not be added. As has been seen from the Highways Officer comments submitted as part of the original permission consultation response there is a stated view from the Highways Officer that the position that a refusal on parking provision could not be defended. Given this, it would seem that this particular condition is not necessary to make the development acceptable.

The guidance continues that where an application for the removal of condition '*a condition should not be retained unless there are sound and clear-cut reasons for doing so.*' It is our position that there is no sound reason for this condition to be retained given the site's location within a sustainable commercial area with associated levels of access including public transport.

Reasonable

The original application proposed an extension to an existing public house. The example given for conditions to meet the reasonable test is directly related to this scheme where the alteration of a factory building was proposed it would be wrong to impose conditions requiring additional parking facilities to be provided for an existing factory simply to meet a need that already exists.

This principle clearly applies to this situation which, despite the desirability of a condition requiring two parking spaces to be provided on site and available for the duration of the use in planning terms, the need for the control would not be created by the development namely alterations and extensions to an existing premises. This is even more pertinent in this case given the legal access issue that has come to light.

As can be seen from Appendix 1, the neighbours right of access does not leave any land within the development site to provide parking for staff of the site. Therefore it is considered that in attaching a condition requiring parking to be provided for two vehicles is unreasonable given the legal access requirement for the neighbour and that these spaces could not be available to comply with the condition in light of the legal requirement.

Therefore the retention of this condition is not considered reasonable and therefore should be removed.

Summary

In summary, our view is that Condition 6 should be removed from the planning permission HPK/2011/0704 as it does not meet policy requirements either in NPPF terms where the removal of the condition would result in sever harm or in highways safety and local policy TR5 terms due to the sites sustainable location.

The condition is not necessary to make the development acceptable as the test is whether the application would have been refused were the condition not added. The Highways Officer comments that as part of the approved application consultation response that a refusal on highways ground could not be defended therefore there is no sound reason for this condition to be retained.

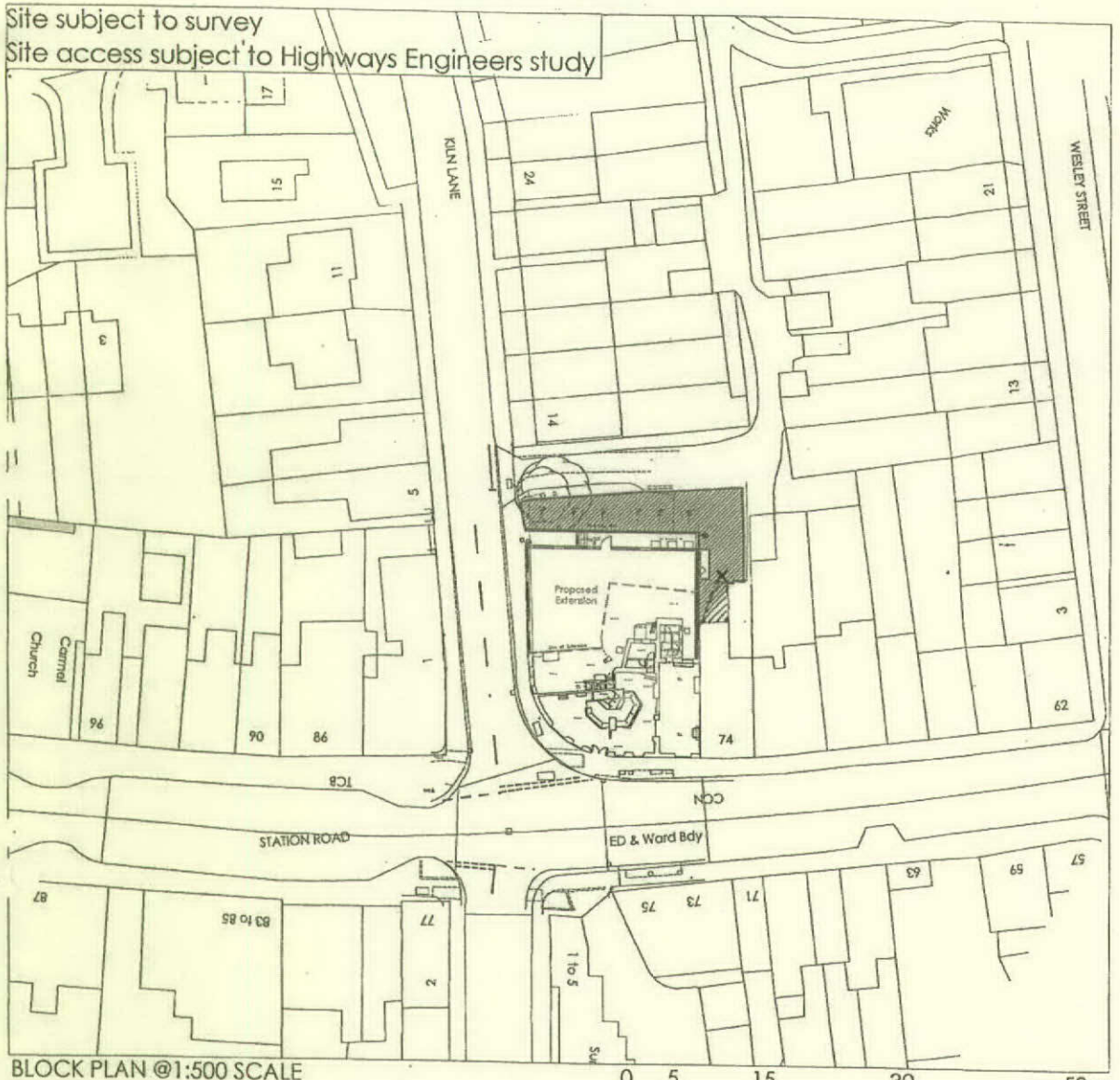
The retention of the condition is not reasonable given the legal right of access the neighbour has which has now been brought to light. Even without this, it is considered that the attached condition does not directly relate to the proposed development which approves alterations and extension to the existing pub building. Therefore, the addition of this condition is not reasonable for the development that was proposed. The condition should therefore be removed.

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APPENDIX 1 – 74 Station Road Access Right

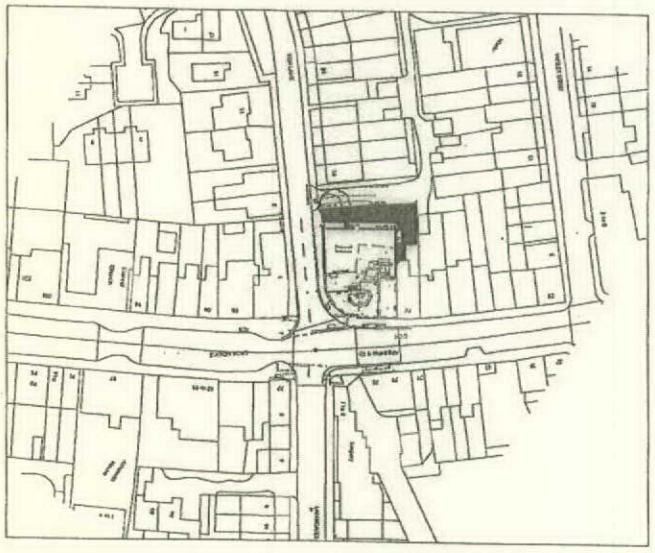
APPENDIX 2 – Ian Turkington Comments 13th February 2012

Site subject to survey
Site access subject to Highways Engineers study



BLOCK PLAN @1:500 SCALE

0 5 15 30 50m



LOCATION PLAN @1:1250 SCALE 0 20 50 80

For PLANNING Purposes Only

Client:
ASHBOURNE ESTATES

Project:
MASONS ARMS
GLOSSOP, DERBYSHIRE

Drawing Title:
LEGAL TITLE PLAN

Scale:	Date:	Drawn:	Checked:
1:500-1250@A3	27.11.10	JBA	

Project No:	Drawing No:	Revision:
4186	(L)100	

Revision: By Appr

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Your ref: HPK/2011/0704
Date: 13 February 2012

Mr M Green
Planning Applications Manager
High Peak Borough Council
Town Hall, Market Place,
BUXTON
DERBYSHIRE
SK17 6EL

HIGH PEAK BOROUGH COUNCIL POST ROOM 14 FEB 2012

LOGGED

Dear Mr Green,

Application : **HPK/2011/0704**

Applicant : **Ashbourne Estates**

Development : **External Alterations and Rear Extension to Existing Building together with the installation of Plant and Equipment Re-Submission of HPK/2011/0224)**

Location : **Masons Arms, 78 Station Road, Hadfield**

I refer to the above application, details of which were received at this office on the 11 January 2012, for highway comment.

Your Authority will be aware of the Highway Authority comments made in connection with the previous applications for this site, under application references HPK/2010/0632 and HPK/2011/0224, my letters dated 29 December 2010 and 15 June 2011 refer.

The latest submission appears to develop the proposals further in order to address the concerns previously raised in connection with planning and highways issues. Since the previous applications additional on street parking restrictions have been put in place by the County Council, restricting parking further around the junction area.

The proposals now include 2 No car parking spaces off Kiln Lane, which are to be used by residents / staff etc - visitors would however have to rely on limited on street parking provision, nearby public parking facilities or more sustainable modes such as public transport, walking or cycling. It is however unlikely the Highway Authority would be in a position to successfully defend a refusal on grounds of reduced parking for a public house in a central location.

However, what does not appear to have been given any further consideration is servicing the site – it is not outlined how the site is (or was) serviced previously and if this is likely to change by re-development of the site. It would have perhaps been useful for this information to be available.

The Highway Authority would also look to the applicant operating a travel plan and given works will require excavation adjacent the existing public highway construction details will need to be submitted to and approved by the Highway Authority, to ensure the structural integrity of the public highway is maintained, prior to any works commencing on site. In addition no works should be permitted to commence without consulting Derbyshire County Council regarding any traffic management measures to ensure public safety is maintained during and after the works take place. The Highway Authority would also require the existing access, where it becomes redundant by the presence of the extension, to be reinstated with full height kerbs and new footway construction to suit. All gates would need to open into the site only and not out over the public highway.

Subject to the proposals being acceptable from a planning perspective I would recommend the following conditions be appended to any consent in the interests of highway safety:-

1. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

    i. the parking of vehicles of site operatives and visitors

    ii. loading and unloading of plant and materials

    iii. storage of plant and materials used in constructing the development

    iv. the erection and maintenance of security hoarding including facilities for public viewing, where appropriate

    v. wheel washing facilities to prevent the deposition of extraneous material on the adjoining public highways

    vi. measures to control the emission of dust and dirt during construction

2. Before any other operations are commenced details of the following matters shall be submitted to the Local Planning Authority for approval:

    a) Proposals for servicing arrangements for the public house
    b) Cycle parking facilities.
    c) Any excavations within 5m of the public highway, including details of any temporary support to ensure the integrity of the public highway is maintained during and after the works take place.

The approved details shall be fully implemented in a timescale to be agreed with the Local Planning Authority in advance of works commencing on site.

3. Before any other operations are commenced, excluding demolition and site clearance, the modified vehicular and pedestrian accesses shall be laid out to Kiln Lane in accordance with the application drawings. The accesses to be laid out, constructed as may be agreed in writing with the Local Planning Authority and provided with 2.4m x maximum achievable visibility sightlines across the entire, available controlled site frontage to Kiln Lane, area in advance of the sightline being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

2. Prior to any occupation of the extended building, the subject of the application, any existing redundant vehicular (and pedestrian) accesses to Kiln Lane shall be permanently closed and the existing vehicle crossover reinstated as footway in a manner to be agreed in writing with the Local Planning Authority in consultation with the County Highway Authority.

3. Prior to any occupation of the extended building, the subject of the application, space shall be provided within the site curtilage for the parking of residents and / or staff vehicles (including secure cycle parking) in accordance with the application drawings, laid out, constructed as may be agreed in writing with the Local Planning Authority and maintained throughout the life of the development free from any impediment to its designated use.

4. No gates or any part of their opening arc shall be permitted to open out over the public highway.

5. No ground floor windows or doors, or any part of their opening arc, shall be permitted to open out over the public highway.

6. The premises, the subject of the application, shall not be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out proposals (including a timetable) to promote travel by sustainable modes which are acceptable to the Local Planning Authority, and shall be implemented in accordance with the timetable set out therein, unless otherwise agreed in writing by the Local Planning Authority. Reports demonstrating progress shall be submitted annually, on each anniversary of the date of first occupation, to the Local Planning Authority for approval for a period of five years from first occupation of

the development, all as may be agreed with the Local Planning Authority.

7. The development, the subject of the application, shall not be commenced until precise details of the intensity, direction, spread of luminance and shielding of external light sources (so as to minimise the risk of drivers on the highway being dazzled), has been submitted to and approved in writing by the Local Planning Authority and thereafter maintained in accordance with the approved scheme.

In addition to the above conditions the following notes should also be appended to any consent issued to assist the developer:-

- The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.

- Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway [new estate street] measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

- Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from Mr C Allwood in the Environmental Services Department at County Hall, Matlock (tel: 01629 538582). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.

- Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

- Pursuant to Section 50 (Schedule 3) of the New Roads and Streetworks Act 1991, before any excavation works are commenced within the limits of the public highway, at least 6 weeks prior notification should be given to the Director of Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the New Roads and Streetworks Section).

- Where development has been approved subject to the preparation and implementation of a Travel Plan, the applicant is obliged to submit the appropriate documentation to the Local Planning Authority well in advance of the development being taken into use. Advice regarding the content of Travel Plans may be obtained from the Director of Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the Transportation Section).

- Construction works are likely to require Traffic Management and advice regarding procedures should be sought from Mr D Nicholson, Traffic Management (tel : 01629 580000).

- Before any excavation works commence which may affect the integrity of the public highway, the written consent of the County Council as Highway Authority must be obtained (tel : 01629 580000 and ask for the County Council's Structures Section and District Manager).

Yours Sincerely

[redacted]