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Application by: Mr Suraj Shah
Land at: Gherkin Sandwich & Coffee Shop, 90 Low Leighton Road,
New Mills, High Peak, SK22 4JG

PLANNING STATEMENT

EPP reference: PS1-9152-RG-bp

October 2013

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1. INTRODUCTION

1.1 This Planning Statement is submitted in support of a planning application for the continued use of the Gherkin Sandwich & Coffee Shop, 90 Low Leighton Road, New Mills, SK22 5JG as a wine bar in the evening.

1.2 This statement should be read alongside the following plans:

- Site Location Plan; and
- Existing and Proposed Ground Floor Plans.

2. THE APPLICATION

2.1 Planning permission was granted for the use of the premises as a wine bar in the evenings on 29th October 2012 (LPA ref: HPK/2012/0514). However, the permission was granted subject to four conditions. Condition 1 stated that the authorised use shall be discounted on the expiration of a period of 12 months from the date of the permission (i.e. by 29th October 2013). The reason given was:

> *"To allow the impact of the development on residential amenity to be assessed in accordance with Policy GD5 of the High Peak Saved Local Plan Policies 2008".*

2.2 A copy of the planning permission is appended at EPP1. A copy of the committee report is appended at EPP2.

2.3 This current planning application therefore seeks to remove condition 1 of permission HPK/2012/0514 so that the above premises can continue to be used as a wine bar in the evenings. The daytime use of the premises as a café and sandwich bar will remain unchanged.

3. CONTEXT

Site location and description

3.1 The site is approximately 0.013 ha in size. It is located at the junction of Low Leighton Road and Laneside Road to the east of New Mills. The building is detached. To the north are residential properties fronting Low Leighton Road, to the east and south are commercial premises, including a tool hire business. The site is bound to the west by Low Leighton Road (the A6015). Opposite the site to the west is the Hare and Hounds Public House and car park. A convenience store is located opposite the site to the south.

3.2 In summary, whilst there are residential properties in close proximity, the site forms part of a number of commercial premises around the junction of Low Leighton Road and Laneside Road.

Relevant planning history

3.3 The relevant planning history of the site is as follows:

- HPK/2005/0451 – Change of use of building to café / takeaway at ground floor with self contained flat above – Refused 2nd August 2005;
- HPK/2005/0934 – Change of use of building to café / takeaway at ground floor with self contained flat above – Refused 8th February 2006;
- HPK/2008/0412 – Change of use of vacant hairdressing salon at ground floor to café and sandwich bar, including alterations to front elevation to form new entrance doorway – Approved 23rd July 2008.
- HPK/2012/0514 – Proposed Change of Use – Premises to be used as a Wine Bar in the evening (daytime use as a café and sandwich bar will remain unchanged) – Approved 29th October 2012.

3.4 Following the grant of permission, the applicant lodged an appeal to remove the temporary condition (condition 1) described above (PINS ref: APP/H1033/A/12/2189410). The appeal was lodged on 17th December 2012. It was dismissed on 17th June 2013. The main reason given for dismissing the appeal was because of the increase in demand for on-street car parking space in the surrounding area, which would cause congestion, irritation and nuisance for neighbouring residents.

3.5 This issue has been addressed as part of this current planning application. A copy of the appeal decision is appended at EPP3.

Consultation and background

3.6 Since the original permission was granted on 29th October 2012, the applicant has been in contact with both the Environmental Health Officer of High Peak Council (Peter Hollingsworth) regarding any complaints made by neighbours in relation to noise and the Highways Officer of Derbyshire County Council (Nick Knowles) regarding car parking.

3.7 Aside from the planning issues involved, the Applicant has also been in contact with the Licensing Officer (Paul Jackson).

4. POLICY CONTEXT

4.1 Section 38 of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material consideration in planning decisions.

Development plan

4.2 The development plan for the site comprises the saved policies of the High Peak Local Plan (adopted March 2005). On the proposals map, the site is located within the built up area boundary of New Mills. The following policies are considered to be relevant and are discussed in the following sections of this statement:

- Policy EMP6 – Industry and Business within the Built-up Area Boundaries and Homeworking;
- Policy GD2 – Built up Area Boundaries;
- Policy GD5 – Amenity; and
- Policy TR5 – Access, Parking and Design.

5. PLANNING CONSIDERATIONS

Principle of development

5.1 As set out above, planning permission was granted for the use of the premises as a wine bar in the evenings on 29th October 2012 subject to four conditions. Condition 1 stated that the authorised use shall be discounted on the expiration of a period of 12 months from the date of the permission (i.e. by 29th October 2013).

5.2 Under the title "Trial Runs", paragraph 111 of Circular 11/95 states that where a planning permission for a use which may be "potentially detrimental" to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run.

5.3 This is clearly the case with the current planning permission. The reason given for condition 1 of the permission is:

> *"To allow the impact of the development on residential amenity to be assessed in accordance with Policy GD5 of the High Peak Saved Local Plan Policies 2008".*

5.4 The temporary period (of 12 months) has now almost passed and therefore the impact of the development on residential amenity over the trial period can be fully assessed against the relevant policies of the local plan. It is of note that this was not the case with the dismissed appeal referred to above, as the appeal was lodged less than 2 months after planning permission was granted and therefore the Inspector was not in a position to consider the impact of the development over the whole of the trial period, particularly as all final comments were required by 18th February 2013 (i.e. 5 months into the trial period).

5.5 Policy GD5 of the local plan (Amenity) states that planning permission will be granted for development provided that:

- it will not create unacceptable loss of, nor suffer from unacceptable levels of, privacy or general amenity, particularly as a result of:
    - overlooking;
    - loss of daylight and sunlight;
    - overbearing effects of development;
    - air, water, noise, light and other pollution;
    - risk from hazardous substances and processes;
    - traffic safety and generation
- where appropriate, conditions will be imposed and / or planning obligations sought, to ensure amelioration measures are taken to adequately address the impacts on amenity.

5.6 Within the context of policy GD5 of the local plan, it is common ground between the applicant and the Council that the key considerations in relation to the trial run are noise impact and parking. These issues are discussed below.

Noise and disturbance

5.7 In relation to noise, the appeal Inspector concluded at paragraph 15 (EPP3) that although objections show that nuisance from the wine bar and outdoor seating has occurred previously, concerns relate primarily to operations outside of the hours as set out in condition 2 of the planning permission (EPP1).

5.8 Paragraph 16 of the Inspector's appeal decision states that:

> *"Given the size of the wine bar and its seating area, combined with its location on a busy main road opposite a large pub, I am not persuaded that operating within these restrictions would lead to any significant harm to the living conditions of neighbouring residents".*

5.9 Taking into account that the Inspector's decision was issued in June 2013 and as stated above, final comments were due in February 2013, the applicant has spoken to the Council's EHO (Peter Hollingsworth) to ascertain whether there had been complaints made in relation to noise disturbance. Mr Hollingsworth confirmed that he had not received any complaints from neighbours regarding noise.

5.10 It is therefore reasonable to conclude that the Inspector's comments regarding noise remain valid now that the trial period has almost concluded.

5.11 It is also worthy of note that the Inspector notes that there is a large pub (the Hare and Hounds) located in close proximity to the application site, which "operates late into the evening" (paragraph 12). Any perceived noise impact of the outside seating area must therefore be considered within the context of the surrounding area, including the pub and the busy road. It should also be noted that the pub operates to hours well beyond those permitted to the applicant and consequently, any noise disturbance beyond our client's permitted hours could reasonably be attributed to other sources.

Parking

5.12 Paragraphs 18 and 19 of the Inspector's decision state that there is no dedicated off-street provision for customers of the wine bar, there are parking restrictions around the junction of Laneside Road and the A6015 and opportunities for on-street parking are limited. Paragraph 21 of the Inspector's decision states that the wine bar has resulted in an increased demand for the limited number of on-street parking spaces in the locality, greater competition for spaces and subsequent irritation and inconvenience for local residents.

5.13 This application seeks to address this issue by proposing an off-street car parking space, which would be dedicated to the Gherkin. This would be located to the front of the property. There is also the possibility of a further space to the rear of the property on land which is half owned by the applicant's father. The applicant's solicitor is investigating who owns the half of land where this proposed space would be to see if an agreement could be met.

5.14 Both parking spaces are shown on the plan appended at EPP4.

5.15 The local plan does not include parking standards for drinking establishments (use class A4). However, the proposed off-street parking space is considered to be appropriate, particularly as both the committee report for the application (EPP2) and the Inspector's decision (EPP3, paragraph 20) recognise that many customers choose to walk to and from the wine bar or travel by taxi.

5.16 The applicant has surveyed customers of the wine bar to find out how they travelled to the premises. The results are appended at EPP5. This shows that the majority of people walk to the wine bar. When customers drove and parked, this was only 1 or 2 per night, which suggests that the proposed parking provision would be adequate.

5.17 In addition to the above, the applicant is aware that Derbyshire County Council has been investigating the possibility of amending the current parking restrictions in the vicinity of the site. This would include removing some of the double yellow lines on Low Leighton Road and Laneside Road (including a section in front of the application site) and introducing a parking bay in front of the application site. We have spoken to Derbyshire County Council's highways officer (Steve Alcock) who has confirmed that the County Council is indeed investigating this, but in order for these proposals to be approved, they would need to be consulted on and would also be subject to a Traffic Regulation Order.

5.18 Notwithstanding the situation in relation to the County Council's proposals, there is a material change in circumstances in relation to the proposed off-street parking space to be provided by the applicant, which were not included previously or considered by the Inspector.

6. SUMMARY AND CONCLUSIONS

6.1 This Planning Statement is submitted in support of a planning application for the continued use of the Gherkin Sandwich & Coffee Shop, 90 Low Leighton Road, New Mills, SK22 5JG as a wine bar in the evening.

6.2 Planning permission was granted for the use of the premises as a wine bar in the evenings on 29th October 2012 (LPA ref: HPK/2012/0514) subject to a 12 month trial period. This was so the impact of the proposal on neighbouring residents could be considered regarding noise and parking.

6.3 The applicant appealed against the condition relating to the trial run in December 2012 and the appeal was dismissed in June 2013. Whilst the Inspector did not find there was harm in relation to noise, he dismissed the appeal on the basis that the evening use of the premises as a wine bar would increase the demand for on-street car parking spaces and therefore cause congestion and irritation and nuisance to neighbouring residents.

6.4 Now that the full 12 month trial period has almost ended, there is no evidence to contradict the Inspector's findings regarding noise. Regarding the parking situation, this application seeks to address the Inspector's concerns by providing a dedicated off-road parking space for customers of the wine bar. There is the possibility that an additional space could be provided to the rear of the property, once the ownership of part of this land has been confirmed.

6.5 In conclusion, it is considered that the one outstanding issue has now been addressed and therefore the proposed permanent use of the premises as a wine bar in the evening would be compliant with policy GD5 of the local plan. It is respectfully requested that planning permission be granted on this basis.

7. APPENDICES

EPP1. Decision notice – HPK/2012/0514
EPP2. Committee report for HPK/2012/0514 (29th October 2013)
EPP3. Appeal decision notice – APP/H1033/A/12/2189410
EPP4. Plan to show proposed parking
EPP5. Survey of customers

EPP 1

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High Peak Borough Council

working for our community

TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPENSATION ACT 1991
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010

FULL PLANNING APPLICATION

PERMISSION

Applicant Mr Suraj Shah
The Gherkin Sandwich & Coffee Shop Ltd
The Gherkin 90 Low Leighton Road
New Mills
SK22 4JG

Agent John F Lomas M.R.I.C.S M.B.Eng
Rothbury Chapel Road
Hayfield
SK22 2JF

Application no. HPK/2012/0514

Registered on 17/09/2012

Determined on 29/10/2012

High Peak Borough Council hereby **PERMIT** this application for **FULL PLANNING PERMISSION** for

Proposed Change of Use - Premises to be used as a Wine Bar in the evening. (Daytime use as a Cafe & Sandwich Bar will remain unchanged). at 90 Low Leighton Road New Mills

in accordance with the submitted application, details and accompanying plans listed below subject to the following conditions and reasons:-

Conditions

1. The use authorised by this permission shall be discontinued on the expiration of a period of 12 months from the date of this permission.

2. The use hereby permitted shall not be open for business and there shall be no customers on the premises outside the hours of 08.00hours to 24.00hours Monday to Saturday and 8.00hours to 23.00hours on Sundays or Bank Holidays.

……
Michael Green
Planning Applications Manager

3. Notwithstanding the opening hours specified in Condition 2 above. The external seating area shall not be used for the consumption of drinks at anytime outside of the hours of 0800hours to 2200hours on any given day.

4. Within 28days of the date of this consent a waste management plan for the disposal of waste from the site, including the disposal of glass/bottles shall be submitted to and agreed in writing with the Local Planning Authority. The agreed plan shall be implemented with immediate effect and operated thereafter in accordance with the approved details.

Reasons

1. To allow the impact of the development on residential amenity to be assessed in accordance with Policy GD5 of the High Peak Saved Local Plan Policies 2008.

2. In the interests of amenity, in accordance with Policy GD5 of the High Peak Saved Local Plan Policies 2008.

3. In order that the amenities enjoyed by the occupants of the adjacent dwellings shall not be injured, in accordance with Policy GD5 of the High Peak Saved Local Plan Policies 2008.

4. In order that the amenities enjoyed by the occupants of the adjacent dwellings shall not be injured, in accordance with Policy GD5 of the High Peak Saved Local Plan Policies 2008.

Summary of reasons for granting permission

The decision to grant planning permission has been taken because the Council considers that the application has put forward a proposal which is an appropriate use in this locations subject to conditions to limit any undue impact on residential occupiers.

The decision to grant planning permission has also been taken having regard to all other relevant material planning considerations and to the following relevant policies and proposals in the Development Plan.

POLICIES RELEVANT TO THIS DECISION

High Peak Local Plan Saved Policies

EMP 6 - Industry and business within the built-up area boundaries and homeworking
GD2 - Built up area boundaries
GD5 - Amenity
TR5 - Access, parking and design

National Planning Policy Framework

……
Michael Green
Planning Applications Manager

Notes to Applicant

None

Plans

The plans to which this Notice refers are listed below:

Location Plan
12.9/1
12.9/2

Please Note: This decision notice does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Approval under the Building Regulations may also be required. Advice in this respect can be obtained by contacting the Councils Building Control Section on 0845 129 7777.

Any other statutory consent necessary must be obtained from the appropriate authority.

Where a vehicle is often driven across a grass verge or kerbed footway to and from premises adjoining a highway, the occupier of the premises may, be required to pay the cost of construction of a crossing, and/or may be required to comply with conditions, imposed by the Authority. You should contact the Highway Authority, Derbyshire, County Council at County Hall, Matlock, Derbyshire, tel. 01629 580000.

This consent is granted subject to conditions and it is the owner(s) and the person(s) responsible for the implementation of the development who will be fully responsible for their compliance throughout the development and beyond. **A fee is payable to us for the discharge of condition. Please refer to our web site : www.highpeak.gov.uk for details.** If there is a condition that requires work to be carried out or details to be approved prior to the commencement of the development this is called a "condition precedent". The following should be noted with regards to conditions precedent:
(a) If a condition precedent is not complied with, the whole of the development will be unauthorised and you may be liable to enforcement action.
(b) Where a condition precedent is breached and the development is unauthorised, the only way to rectify the development is the submission of a new application.

Other conditions on this permission must also be complied with. Failure to comply with any condition may render the owner(s) and the person(s) responsible for the implementation of the development liable to enforcement action.

The permission is granted in strict accordance with the approved plans. It should be noted however that:
(a) Any variation from the approved plans following commencement of the development irrespective of the degree of variation will constitute unauthorised development and may be liable to enforcement action.
(b) Variation to the approved plans will require the submission of a new planning application.

……
Michael Green
Planning Applications Manager

EPP 2

HPK/2012/0514	**THE GHERKIN 90 LOW LEIGHTON ROAD**	**PROPOSED CHANGE OF USE - PREMISES TO BE USED AS A WINE BAR IN THE EVENING. (DAYTIME USE AS A CAFE & SANDWICH BAR WILL REMAIN UNCHANGED). (FULL - MINOR)**
17/09/2012	**NEW MILLS**	
	MR SURAJ SHAH THE GHERKIN SANDWICH & COFFEE SHOP LTD	

Application called to Committee by Cllr Huddlestone due to level of public interest.

HPBC INTEREST: none known

SITE LAYOUT / DESCRIPTION:
90 Low Leighton Road is a two storey detached interwar building which sits at the Junction of Low Leighton Road and Laneside Road in New Mills. The property is currently in use as a café by day and a wine bar at night, consent having been granted in 2008 for use on the ground floor as a café/sandwich bar subject to the following condition:

The use hereby permitted shall not be open between the hours of 17.00 on one day and 07.30 on the following day.

The current operation is therefore in breach of the approved use on site.

THE APPLICATION:
Following the grant of a premises license for use as a wine bar this application seeks retrospective planning consent to regularise the use by allowing operation of the premises in the evening. The applicant has requested opening hours of 5pm to 1am Monday to Saturday and 5pm to 12.00 midnight on Sundays and Bank Holidays.

PLANNING HISTORY:
HPK/2005/0451 – Change of Use to a café/takeaway and associated flat – refused on the grounds of highway safety

HPK/2005/0934 – Change of Use to a café/takeaway and associated flat – refused on the grounds of highway safety and housing oversupply

HPK/2008/0418 - Change of use of vacant hairdressing salon at ground floor to cafe and sandwich bar, including alterations to front elevation to form new entrance doorway – approved subject to restrictions limiting the use to close at 5.00pm in the interests of highway safety.

PUBLICITY EXPIRY DATES:

Site Notice – 19th October 2012

Neighbours – 15th October 2012

Newspaper – N/A

Members should note that at the time of writing the consultation period for the application was still open. Any further comments will be provided in a supplementary report.

REPRESENTATIONS / NEIGHBOURS:
To date 44 email responses in support of the application, mostly from the local area.

To date 3 written objections from adjoining occupiers relating to parking and highway safety, noise nuisance and alleged ant-social behaviour.

CONSULTATIONS:
Environmental Health – No objections subject to a restriction on the opening hours of the premises from 08.00 am to 12.00 Midnight Monday to Saturday and 8.00am to 11.00pm on any Sunday or Bank Holiday. A further restriction on the use of the exterior terrace to not be used for the consumption of drinks at any time after 10.00pm on any given day is also recommended to protect the residential amenity of adjoining occupiers.

Highways – No comments available at the time of writing. Any comments received shall be provided in a supplementary report.

RELEVANT POLICIES:

High Peak Local Plan Saved Policies
EMP 6 - Industry and business within the built-up area boundaries and homeworking
GD2 - Built up area boundaries
GD5 - Amenity
TR5 - Access, parking and design
TC9 – The Evening Economy – Pubs, Clubs and Takeaways

National Planning Policy Framework

MAIN ISSUES AND COMMENT:
1. The business known as The Gherkin currently operates as a café during the day and a wine bar at night, having been granted a premises licence to sell alcohol and have music until 1.00am. This application seeks to regularise the operation in planning terms.

2. The premises sits within a mixed use area, with the adjacent pub, and adjoining convenience store forming a small local cluster of businesses in an otherwise residential

area. The current sandwich bar appears to be well used and adds to the range of facilities in the local area. Under the terms of policy TC9 operation of a business at night would not be unacceptable in principle subject to the use not causing undue disturbance to adjoining residential occupiers. The application has generated a number of emails in support from patrons already using the premises.

3. Environmental Health initially objected to the proposal on the grounds that use of the exterior area has been the subject of noise complaints from adjoining residential occupiers. Three letters objecting to the use on the grounds of disturbance and anti-social behaviour have been received at the time of writing. Following a review of the operation the Environmental Health Officer has further commented that he would withdraw his objection if the use could be restricted to no later than 12.00 Midnight Monday to Saturday and 11.00 on Saturday. Furthermore the use of the exterior terrace to the front of the building should be limited to no later than 10.00pm for drinking, although use as an exterior area for smoking could be retained to 11.00 in line with the interior premises. It was also advised that the applicant would be requested to seek a variation of his premises licence to bring it in line with any planning approval.

4. Environmental Health are therefore satisfied that subject to the required hours of operation the business could operate without undue disturbance to residential occupiers. This takes account of the current activities at the adjacent pub and their unregulated planning consent. Should members seek to approve the application it would also be reasonable to grant consent for an initial temporary period, in order to monitor the impact of the activity and the effectiveness of the proposed conditions.

5. Derbyshire Highways had not commented on the application at the time of writing. Notwithstanding this, the nature of the use and its hours of operation would be unlikely to give rise to a material impact on highway safety, given that a reasonable proportion of the patrons will walk or take a taxi to the premises. For this reason a highways objection is not anticipated, however, any comments received will be reported in a supplementary report.

RECOMMENDATION: that planning permission be granted subject to the following conditions:

CONDITIONS

1. The use authorised by this permission shall be discontinued on the expiration of a period of 12 months from the date of this permission.

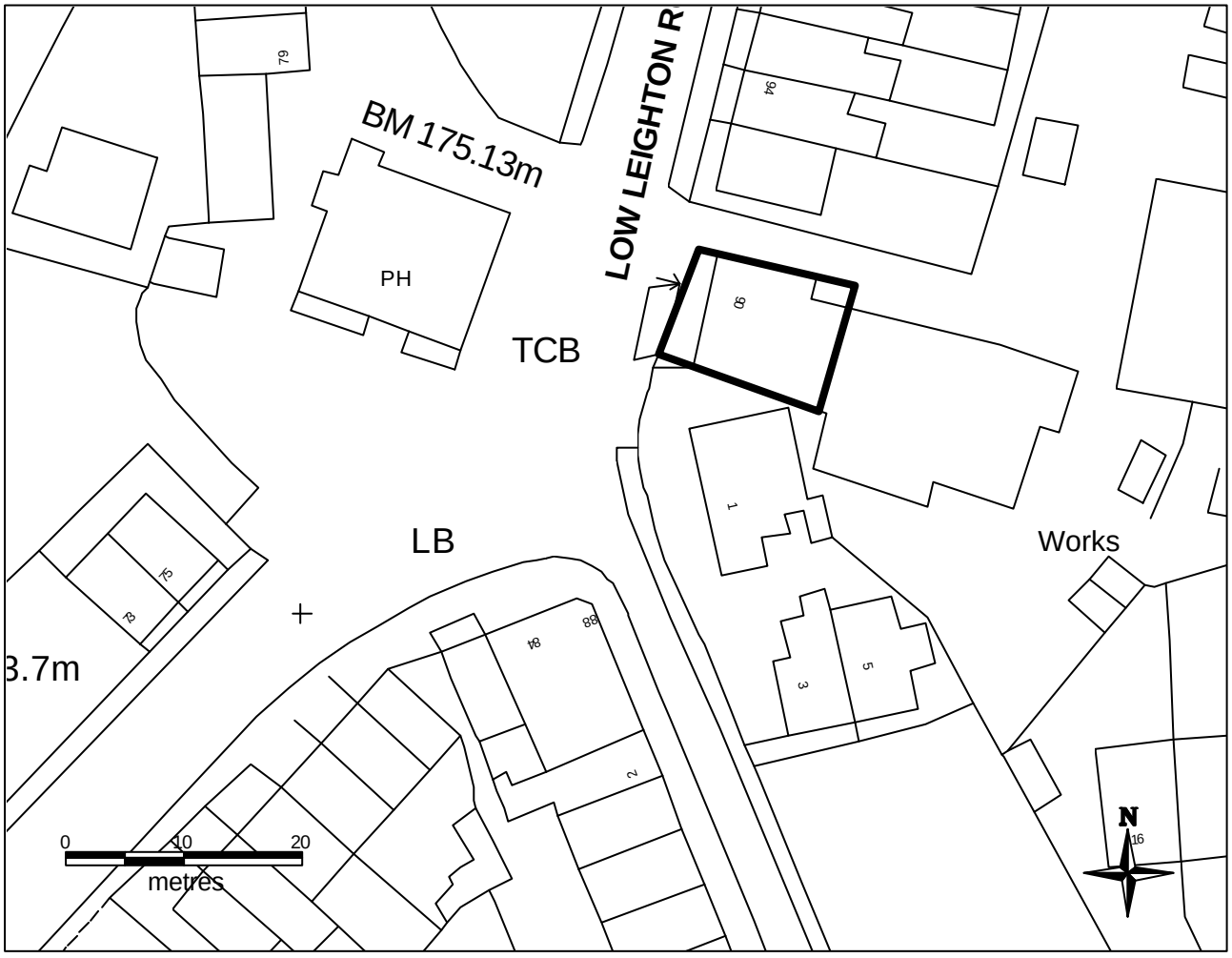
2. The indoor premises shall not be open for business outside the hours 08.00 am to 12.00 Midnight Monday to Saturday and 8.00am to 11.00pm on any sunday or Bank Holiday . The external seating shall not be used for the consumption of drinks at any time after 10.00pm on any given day.
   For the avoidance of doubt there shall …

3. The approved use shall operate from the ground floor of the premises only.

REASONS FOR APPROVAL:

The proposed development is considered an acceptable use in the locality subject to conditions to limit any undue impact on adjoining residential occupiers.

SITE PLAN



DEVELOPMENT CONTROL COMMITTEE 29th OCTOBER 2012

UPDATES SHEET

HPK/2012/0514 The Gherkin, 90 Low Leighton Road, New Mills

Highways have commented that prior to approval a parking survey should be undertaken at suitable times throughout the week to assess the capacity for on street parking. Should spare capacity be available then a temporary consent should be considered so impact can be further considered.

A further 5 objections have been received relating to potential disturbance from noise, smell and general disturbance from the use and the potential impact of the use on on-street parking.

The concerns of the Highways Authority are noted. It is therefore considered that should members be mindful to approve it is appropriate to restrict the period of consent to one year so the impact on parking and residential amenity can be assessed.

Condition 3 should read:

The indoor premises shall not be open for business outside the hours:
08.00 am to 12.00, Midnight Monday to Saturday and 8.00am to 11.00pm on any Sunday or Bank Holiday. For the avoidance of doubt, patrons should be off the premises at the closing time and the external seating shall not be used for the consumption of drinks at any time after 10.00pm on any given day.

HPK/2012/0516 Land South of 37 Beresford Road, Chapel en le Frith

Further to the initial comments provide by the Highway Authority, the applicant has provided additional details concerning the proposed diversion of the culvert into the adjacent footway. The Highway Authority comment that this aspect is now acceptable. They also recommend conditions relating to the storage of materials and site operatives vehicles during construction works, the provision of visibility splays, details of the proposed boundary treatment to the adjacent footway, the provision of parking spaces prior to occupation, no gates within 5m of the highway, provision of bin storage, and no caravans or other domestic paraphernalia on the approved parking spaces and a number of informatives.

EPP 3

The Planning Inspectorate

Appeal Decision

Site visit made on 23 April 2013

by Matthew Birkinshaw BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 June 2013

Appeal Ref: APP/H1033/A/12/2189410
The Gherkin, 90 Low Leighton Road, New Mills, High Peak, Derbyshire, SK22 4JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Suraj Shah (The Gherkin Sandwich and Coffee Shop Ltd) against the decision of High Peak Borough Council.
- The application Ref HPK/2012/0514, dated 5 September 2012, was approved on 29 October 2012 and planning permission was granted subject to conditions.
- The development permitted is described as 'Premises to be used as a Wine Bar in the evening (Daytime use as a Café & Sandwich Bar will remain unchanged)'.
- The condition in dispute is No.1 which states that: *"The use authorised by this permission shall be discontinued on the expiration of a period of 12 months from the date of this permission."*
- The reason given for the condition is: *"To allow the impact of the development on residential amenity to be assessed in accordance with Policy GD5 of the High Peak Saved Local Plan Policies 2008."*

Decision

1. The appeal is dismissed.

Planning policy

2. The Council has drawn attention to its document entitled 'High Peak Saved Local Plan Policies' (2008), which is taken from the High Peak Local Plan (adopted March 2005). The relevant policy, as cited by the Council, is GD5 (Amenity). Its general thrust is that development proposals should not create unacceptable levels of noise or traffic generation, such as to harm the living conditions of occupiers of nearby properties.

3. The objective of this policy is consistent with one of the Core Principles of the National Planning Policy Framework (2012), at paragraph 17, that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. However, the Framework also encourages the delivery of facilities and services that meet local needs and sustain economic growth.

Main Issues

4. There are two main issues in this appeal. These are:

   1) whether it was reasonable to impose a temporary condition in the first place, in order to assess the effects of the evening use of the premises as a wine bar; and

2) whether permitting this evening use on a permanent basis would (a) significantly harm the living conditions of neighbouring residents, in terms of noise and disturbance; and (b) give rise to a significant increase in demand for on-street car parking space in the surrounding area, such as to be a cause of congestion, and irritation and nuisance for the neighbouring residents.

Reasons

Issue 1 – was it reasonable to impose the temporary condition?

5. Planning permission for use of 'The Gherkin' as a wine bar during the evening was granted subject to a condition restricting this use to a temporary period of 12 months. The consequence of dismissing this appeal is that the evening use of the premises as a wine bar would cease on 29 October 2013.

6. Circular 11/95, paragraph 111, states that where an application is made for permanent permission for a use which may be "potentially detrimental" to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run. The proviso is that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development.

7. Although it is possible to grant permission for a further temporary period, paragraph 112 of the Circular advises that to do so is often poor practice. In many cases the development should either be refused or allowed in perpetuity.

8. In this case, the trial run was considered necessary for two reasons. Firstly, to assess the effect of the wine bar on the living conditions of neighbouring residents. Secondly, on the recommendation of Derbyshire Highways, the highway authority, to establish the demand for car parking, and whether there would be sufficient on-street capacity in the area for car-borne customers of the wine bar.

9. The appellant asserts that the condition is unreasonable as the appeal premises are surrounded by other commercial operators, and matters of noise and disturbance can be dealt with under separate legislation. He has not sought to extend the temporary permission for a longer period; his application sought the removal of the condition in order to make the use permanent. In his opinion, it is not possible to run a successful business with the temporary restriction.

10. I can understand the appellant's business concerns, but the evidence suggests to me that this was precisely the type of case envisaged by paragraph 111 of the Circular. Given the circumstances of this case, I conclude on the first main issue that the imposition of a condition limiting the permission to a temporary period of 12 months was reasonable.

Issue 2 – would permitting the evening use on a permanent basis give rise to significant harm?

11. 'The Gherkin' is a relatively small café, sandwich shop and wine bar which forms part of a cluster of commercial businesses focused around the junction of Laneside Road and the busy A6015.

12. Although there are residential properties within the immediate vicinity, the appeal premises are bounded on one side by a hair and beauty salon and on

the other by a tool hire business. Whilst these operators are unlikely to be open at the same time as a wine bar, they still provide some degree of separation between 'The Gherkin' and residential properties. There is also a large public house directly opposite, which, based on the evidence submitted, currently operates late into the evening.

13. Dealing first with noise and disturbance, local residents claim that the consumption of alcohol outside the appeal premises generates noise and disturbance which harms their living conditions.

14. The premises have a small outdoor seating area, which faces the main road and pub opposite. A condition of the planning permission for the wine bar use states that the use of this area for the consumption of drinks must cease by 22:00 hours. Additional conditions require the wine bar to close by midnight during the week and 23:00 hours on Sundays and Bank Holidays.

15. Although the representations show that nuisance from the wine bar and outdoor seating has occurred previously, concerns relate primarily to operations outside these hours, which – if they are in breach of the planning conditions - could be adequately controlled and enforced by the local planning authority.

16. Given the size of the wine bar and its seating area, combined with its location on a busy main road opposite a large pub, I am not persuaded that operating within these restrictions would lead to any significant harm to the living conditions of neighbouring residents.

17. Turning next to the demand for on-street parking space, I visited the appeal site and surrounding area on a weekday morning, so I have not observed the wine bar in use in the evening. I must therefore rely on the representations of the highway authority and local residents to gauge the effect of the traffic that is generated by this use.

18. There is no dedicated off-street provision for prospective customers of the wine bar. On-street parking restrictions prevent customers from parking directly outside the premises around the junction of Laneside Road and the A6015. Combined with the proximity of terraced housing, the opportunities for on-street parking in the immediate surrounding area appear to be limited.

19. Concerns regarding parking provision were identified by the highway authority at both the planning application and appeal stage. Moreover, representations from third parties also identify that the limited space and capacity for on-street parking has already given rise to competing demands for space between residents and customers of the wine bar.

20. I recognise that many of its customers might choose to walk to and from the wine bar or travel by taxi, rather than drive. However, the petition provided by the appellant shows that several customers do choose to drive.

21. The evidence suggests to me that the wine bar has resulted in an increased demand for the limited number of on-street parking spaces in the locality. This has given rise to added congestion on the local highway network as would-be customers drive around looking for an available parking space. It has created greater competition for on-street space, which has been a cause of irritation and inconvenience to the local residents in an area where demand for the limited amount of on-street space is already high.

22. I note the appellant's comments relating to the potential removal of parking restrictions in the vicinity of the appeal site. However, no information has been provided to demonstrate that a formal review of this Traffic Regulation Order has commenced, or that the review is likely to result in the removal of these restrictions. This is not a factor that carries much weight as a material consideration in this appeal.

23. I conclude on the second main issue that the evening use of the appeal premises as a wine bar gives rise to a significant increase in demand for on-street car parking space in the surrounding area, such as to be a cause of congestion, and irritation and nuisance for the neighbouring residents.

Other Matters

24. Other factors are cited by the appellant as relevant material considerations that support the permanent use of the appeal premises as an evening wine bar. These include the level of support that this use has attracted and the benefits it offers to the local area. The appellant also contends that other wine bars have opened in the area without being restricted by a temporary permission in the first place.

25. On the first point, I have no doubt that the use has proved popular with its customers, but those benefits do not outweigh the harm that it has caused to local residents.

26. On the second point, it is an established planning principle that each case is determined on its merits, having regard to the particular circumstances that apply. I am unaware of the factors that might have led to the approval of those uses and consequently, I have not given this matter significant weight in reaching my decision.

Conclusion

27. I have taken account of all the other matters raised. For the reasons given, the trial run has shown that the use of the appeal premises as an evening wine bar has given rise to significant harm and in so doing it conflicts with the objectives of the development plan and one of the Core Principles of the Framework. I therefore conclude that the appeal should be dismissed.

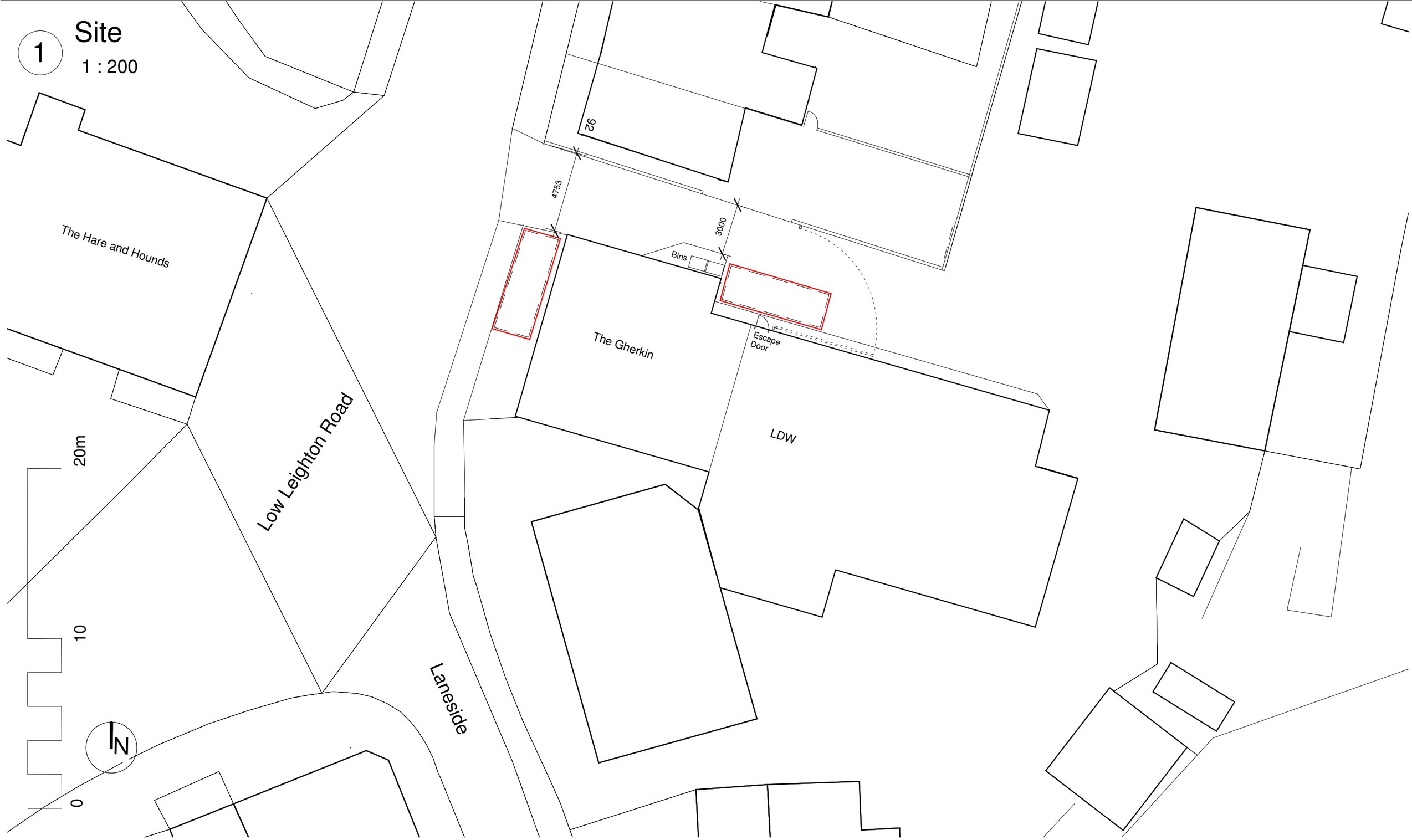
Matthew Birkinshaw

INSPECTOR

EPP 4

1 Site

1 : 200



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Date	Rev	Revision / author/ checker

NOTES
The contractor is responsible for checking dimensions, tolerances and references. Verify any discrepancies with the architect before proceeding with the work.
Where an item is covered by drawings of different scales the larger scale drawing is to be worked to.
Do not scale from drawing. Figured dimensions to be worked to in all cases.

Purpose of Issue	Project Status	**Drwg. no**	083/004	**Rev**	
Project	The Gherkin, Low Leighton Road	**Drawn**	JNBP	**Checked**	
Drawing	Site Plan showing proposed car parking	**Scale**	1 : 200@A3	**Date**	10/23/13

23/10/2013 11:15:47

EPP 5

Survey to show how customers make their way to the gherkin. Survey taken between 5pm & 11.30pm (only open late nights Thursday - Saturday)

Date	walked	dropped off	drove & parked	used public transport
02/05/2013	4		1	
03/05/2013	13	14		
04/05/2013	15	10	1	
09/05/2013	3	7		
10/05/2013	25			2
11/05/2013	20	15		3
16/05/2013	3			
17/05/2013	14		1	1
18/05/2013	10	25		
23/05/2013	2			
24/05/2013		5		
25/05/2013	15	5		1
30/05/2013	6			
31/05/2013	15			
01/06/2013	20	4		3
06/06/2013	2			
07/06/2013	7			2
08/06/2013	18	6		
13/06/2013	2		1	
14/06/2013	18	12		
15/06/2013	24			6
20/06/2013	2			
21/06/2013	7			2
22/06/2013	20			7
27/06/2013	5		1	
28/06/2013	12	4		
29/06/2013	20	10	1	
04/07/2013	5			
05/07/2013	15	15		
06/07/2013	20	10		
11/07/2013	3	2		
12/07/2013	25			3
13/07/2013	30	15		4
18/07/2013	3			
19/07/2013	14		1	2
20/07/2013	10	25	1	
25/07/2013	2			
26/07/2013		10	2	
27/07/2013				
01/08/2013	3	2		
02/08/2013	25			
03/08/2013	30	9	2	
08/08/2013	2			
09/08/2013	7			2
10/08/2013	20	4		
15/08/2013	5			
16/08/2013	15	15		
17/08/2013	20	10	1	
22/08/2013	5			
23/08/2013	30	7		
24/08/2013	20			
29/08/2013	10			
30/08/2013	5	4		6
31/08/2013	20	7		6
05/09/2013	1			
06/09/2013	9		1	4
07/09/2013	15			
12/09/2013	14			
13/09/2013	12	12		
14/09/2013	25	35	2	10
20/09/2013	closed			
21/09/2013	closed			
22/09/2013	closed			
26/09/2013	closed			
27/09/2013	closed			
28/09/2013	closed			
03/10/2013	closed			

04/10/2013	closed			
05/10/2013	closed			
10/10/2013	closed			
11/10/2013	2	6	1	
12/10/2013	12	12		
13/10/2013	30	30		30
Total	**766**	**347**	**17**	**94**