

PLANNING STATEMENT

February 2014

CONTENTS:

1. INTRODUCTION 1
2. THE APPLICATION 1
3. CONTEXT 1
4. POLICY CONTEXT 3
5. PLANNING CONSIDERATIONS 3
6. SUMMARY AND CONCLUSIONS 6
7. APPENDICES 7

1. INTRODUCTION

1.1 This Planning Statement is submitted in support of a planning application for the change of use of the Gherkin Sandwich & Coffee Shop, 90 Low Leighton Road, New Mills, SK22 4JG to 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 AP1. A copy of the committee report is appended at AP2.

2.3 Planning permission was refused for the use of the premises as a wine bar in the evenings on 19th December 2013 (LPA ref: HPK/2013/0596).

The reason given was:

1. *"The removal of the condition and the continued use of the premises as a wine bar in the evening would result in an unacceptable loss of residential amenity to adjacent residential occupiers and the wider local area by reason of noise, disturbances, anti-social activity and insufficient parking provision contrary to policies GD5, TR5 and TC9 of the High Peak Local Plan and Paragraph 17, 32 and 70 of the National Planning Policy Framework."*

2. "The continued use of the premises as a wine bar in the evening would be to the detriment of creating a safe and secure environment and minimising the opportunities for crime. Therefore the removal of the condition would be contrary to policy GD9 of the High Peak Saved Local Plan and Paragraph 69 of the National Planning Policy Framework which promotes safe and accessible environments where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion."

2.4 A copy of the planning permission is appended at AP3. A copy of the committee report is appended at AP4.

2.5 This current planning application therefore outlines the actions taken to address the refusal issues raised in HPK/2013/0596 so that the above premises can 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 Head Of Planning (Mike Green), Chief Inspector Derbyshire Police (Barry Doyle), Police Licensing Officer (Sandra Barlow), Environmental Health Officer (Peter Hollingsworth), Highways (Steve Allcock) & 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;
- Policy GD7 – Crime Prevention 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 has 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 (AP6) 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 (AP1).

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.

5.12 National Planning Framework 123

Planning policies and decisions should aim to:

- *avoid noise from giving rise to significant adverse impacts²⁷ on health and quality of life as a result of new development;*
- *mitigate and reduce to a minimum other adverse impacts²⁷ on health and quality of life arising from noise from new development, including through the use of conditions;*
- *recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established;*
- *identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.*

5.13 Referring to Nppf 123, the frequency of the complaints identified must be questioned and also the pub opposite and the busy main road creates noise. However there is no evidence to support that the noise in the area from all businesses and the main road are unacceptable, as no investigation by environmental health has been conducted during the the time the gherkin was open as wine bar. This is supported by previous communications with Peter Hollingworth and Sandra Barlow, who have not proposed any objections to the planned change of use.

Parking

5.14 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.

5.15 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.

5.16 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 (AP2) and the Inspector’s decision (AP5, paragraph 20) recognises that many customers choose to walk to and from the wine bar or travel by taxi or bus.

5.17 The applicant has surveyed customers of the wine bar to find out how they traveled to

the premises. The results are appended at AP6. 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.

5.18 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.

5.19 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.

5.20 Also referring to HPK/2013/0596 identifies that the highway authority have not received significant complaints in relation to highway problems and that they do not offer any objection to the proposed change of use.

Crime

5.21 The planning system has an important role to play in creating safer and more secure environments, and reducing the risks of crime against people and property. High Peak Saved Local Plan policy GD7 states that permission should be granted if ; *"its design, layout and landscaping will help create a safe and secure environment and minimise the opportunities for crime to be committed"*.

"Derbyshire Constabulary have provided a detailed and substantial objection to the proposal. It clearly identifies the number of police incidents. The precise nature of these incidents range from minor to serious concerns which conflicts with the provisions set out in the Framework to achieve a safe environment, minimising the risks of crime through the planning process. Therefore the removal of this condition would be contrary to the Framework and local plan saved policy GD7 in that its continued use would not provide a safe and secure environment to the locality".

After meetings with Derbyshire Constabulary officers, they have submitted a personal approval of the proposed planning application but with conditions as identified by AP8.

After a review of the police incidences reported, none of them held any weight to support that any crime against people and property had occurred and that a small level or if any level of ASB was present during the 16months that the gherkin was open as a wine bar.

5.22 Promoting healthy communities, paragraph 69, of the National Planning Policy Framework states that planning policies and decisions should aim to achieve places which promote *"safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion"*.

After consultation with local residents and number of letters sent to the police and various authorities, it has been identified that not all of the adjacent neighbours views were considered or the wider community. The gherkin has now 1200 members from the local community in full support of the change of use and additional opening hours proposed. Please refer to <https://www.facebook.com/groups/1397524810494590/>. Also a meeting with

Andrew Bingham, local residents and local community members in December 2013 was arranged. Over 50 people attended to express their concerns against the refusal of planning application HPK/2013/0596.

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 After a full review of the 12month trial period by licensing and environmental health officers was conducted, 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 eight space could be provided in relation to the TRO proposed by Derbyshire Highways.

6.5 In conclusion, it is considered that the one outstanding issues have 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, GD7 of the local plan. It is respectfully requested that planning permission be granted on this basis.

7. APPENDICES

*To forwarded