

DELEGATED DECISION REPORT

HPK/2023/0395
Valid 18/09/2023

6 CAVENDISH CIRCUS
BUXTON

**CHANGE OF USE TO (SUI
GENERIS) FOR THE SALE OF
HOT & COLD OVEN BAKED
FOODS (UNDER THE FORMER
A3 AND A5 USE CLASS) WITH
INSTALLATION OF LOUVRE
GRILLE EXTRACTION FLUE
TO REAR ELEVATION**

(FULL - MINOR)

MAIN ISSUES

- Principle of Development
- Impact on Heritage Assets
- Amenity
- Parking Provision and Highway Safety

DESCRIPTION OF SITE

The application relates a plot which lies within a row of attractive retail units known as Cavendish Circus, which lies in a prominent and sensitive location at a 'gateway' junction where the A53 and Station Road meets the A515 (The Quadrant).

The site lies within the Town Centre as defined by the Local Plan Proposals Map, within the Buxton Central Conservation Area, and within a short distance of a number of Listed Buildings which includes a near neighbour, the Grade II Listed No.4 Cavendish Circus, and Nos.1-9 The Quadrant which lies opposite.

A first floor residential unit sits above the ground floor retail unit.

Planning history associated with the site shows that the unit has historically been in use as an Antique Shop, Estate Agents, and a Hair and Beauty Salon. Planning permission was granted under HPK/2021/0205 for the change of use to a Bar (with enhanced food provision (Sui Generis), however in the absence of pre-commencement conditions being discharged, this use has not been implemented.

In recent times, understood to be from early 2023, the unit has been operated (without the require planning permission) as a takeaway named 'Caprinos Pizza' which is stated as selling a range of hot and cold foods and oven baked pizzas. Unauthorised branded signage has also been introduced with trough light above.

PROPOSAL

Further to an enforcement complaint and subsequent investigation, the applicant is seeking retrospective for the change of use from a retail unit (Class E) to the current Takeaway (Sui Generis).

The Proposed Floor Plans show that the unit comprises a seating area towards the frontage, with a serving hatch and kitchen beyond, with associated food storage. Further storage is located in the basement below.

The associated unauthorised signage which amounts to branded lettering, hanging signs, and a trough light, is subject to a separate retrospective Advertisement Consent currently being considered under HPK/2023/0397.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Section 38(6) of the Planning and Compulsory Act 2004 requires proposals to be determined in accordance with the Development Plan taking into consideration any material considerations relevant to the determination of the application.

The Local Development Plan for this site comprises the High Peak Local Plan (2016). Adopted Supplementary Planning Guidance documents and the National Planning Policy Framework (NPPF) are also material considerations in determining applications.

High Peak Local Plan 2016

- S1 Sustainable Development Principles
- S1a Presumption in Favour of Sustainable Development
- S2 Settlement Hierarchy
- EQ6 Design and Place Making
- EQ7 Built and Historic Environment
- EQ10 Pollution Control and Unstable Land
- CF1 Retail and Town Centre Uses
- CF6 Accessibility and Transport

National Planning Policy Framework

Achieving Sustainable Development	Chapter 2
Building a Strong Competitive Economy	Chapter 6
Ensuring the Vitality of Town Centres	Chapter 7
Promoting Sustainable Transport	Chapter 9
Achieving Well Designed Places	Chapter 12
Conserving and Enhancing the Natural Environment	Chapter 15
Conserving and Enhancing the Historic Environment	Chapter 16

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

HPK/0002/0266	Proposed Change of Use of Basement Storage to Wine Bar (Approved)
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HPK/0002/8157	Change of Use from Existing Antique Shop to Estate Agents Office (Approved 17/07/1989)
HPK/0003/3164	Projecting Shop Sign (Withdrawn)
HPK/2021/0205	Change of Use from Hair & Beauty Salon (with enhanced food provision) or Restaurant – new shopfront to facilitate inclusive access and replacement fire escape to rear, with minor external alterations, to improve access and escape provision (Approved 28/10/2021)
HPK/2023/0397	Advertisement Consent for illuminated fascia sign (Pending)

CONSULTATIONS

Publicity

Site Notice expiry date: 9th November 2023
 Neighbour consultation period ends: 10th October 2023
 Press Advert: 19th October 2023

Public Comments

None

Town / Parish Comments

N/A

Environmental Health

There is a small back yard at the back of the premises with flats above and to the side at a similar level to the flue exhaust. Therefore, to protect amenity, it is critical that a robust scheme of odour control is utilised.

No objection subject to conditions

Derbyshire County Council Highways

No objections

OFFICER COMMENTS

Principle of Development

The proposals seeks a retrospective change of use from an existing retail unit (Class E) to a takeaway serving a range of hot and cold food options. The site lies within the built up area boundary and Town Centre of Buxton, and within the Conservation Area.

The application is therefore subject to Local Plan (LP) Policies CF1 (Retail and Town Centres) and EQ7 (Built and Historic Environment).

LP Policy CF1 seeks to maintain and enhance the vitality and viability of town centres, which would be achieved in a number of ways which includes providing a good range of shopping, food and drink uses. The policy goes on to say that proposals that would create a concentration of evening economy uses that would give rise to social and environmental issues will not be supported.

LP Policy EQ7 echoes national planning policies relating to heritage conservation contained under Chapter 16 of the NPPF and requires all development proposals to preserve or enhance the character and appearance of heritage assets including their setting.

Chapter 6 of the NPPF contains national policies aimed at creating a strong competitive economy. Paragraph 81 states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

Chapter 7 of the NPPF contains national policies aimed at ensuring the vitality of town centres. Paragraph 86 states that decision should support the role that town centres play at the heart of local communities by taking a positive approach to their growth.

The site lies in an area of Buxton that is home to a variety of town centre uses (restaurants, bars, retail, financial services) none of which are specifically geared towards takeaway food, and therefore it is considered that there is currently not a 'concentration' of similar uses that would give rise to any social or environmental issues.

It is therefore considered that this use is appropriate for a Town Centre in close proximity to drinking and night time establishments, and is acceptable in principle with regards to its strategic location, subject to compliance with LP Policy EQ7 and all other relevant local and national planning policy considerations.

Impact on Heritage Assets

Section 72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 states that with respect to any buildings or land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character and appearance of that area.

LP Policy EQ7 has regard to the Built and Historic Environment. It states that the Council will conserve heritage assets in a manner appropriate to their significance. This will take into account the desirability of sustaining and enhancing their significance and will ensure that development proposals contribute positively to the character of the built and historic environment.

Chapter 16 of the NPPF contains the restrictive national policies relating to heritage conservation with paragraphs 199-202 setting out how a local authority should

assess the significance of a heritage asset and how to assess the potential impact of a development proposal upon that asset. Where a proposal will lead to substantial harm or total loss of a designated heritage asset, local planning authorities should refuse consent unless there are substantial public benefits that outweigh that harm. Where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits.

The change of use of the building in its own right would not result in any material impact to the character and appearance of the building or indeed the Buxton Central Conservation Area. Given that the unauthorised signage is subject to a separate Advertisement Consent under HPK/2023/0397 the sole aspect that has the potential to adversely affect heritage assets is the flue to the rear of the building.

Given the modest scale of the proposed flue and its positioning to the rear of the building which offer no public views, it is considered that (in a similar conclusions to that relating to the previous application which contained a similar flue under HPK/2021/0205) the introduction of this flue would not give rise to any adverse harm to the character and appearance of the building or the setting of either the Buxton Conservation Area or nearby heritage assets.

Amenity

LP Policy EQ6 requires all new development to have a satisfactory relationship with existing land and buildings and protects the amenity of the area, which includes residential amenity of neighbouring properties. Aspects of residential amenity include impacts such as a loss of sunlight, overshadowing and overbearing impacts, loss of outlook, and loss of privacy.

LP Policy EQ10 seeks to ensure that people and the environment are protected from adverse impacts relating to issues including air pollution, noise, light pollution or any other nuisance or harm to amenity, by securing appropriate mitigation by way of planning conditions and obligations.

Paragraph 130 of the NPPF states that planning should create places with a high standard of amenity for existing and future users.

Paragraph 185 of the NPPF states that policies and decisions should ensure that development is appropriate for its location taking into account the likely effects of pollution on health, living conditions, and the natural environment, and in doing so, they should mitigate and reduce adverse impacts resulting from noise, light pollution and other impacts including odour.

The premises contains a residential flat at first floor level above the proposed takeaway and thus appropriate mitigation is required to ensure that the residential amenity of this premises is preserved.

Environmental Health have carried out a site visit and confirmed that there are no objections to the proposed use and its relationship with the first floor residential flat subject to conditions, which include the needs for a comprehensive scheme of odour and extraction control and a report detailing the noise emissions from the ventilation

system. Given the fact that the proposed use is retrospective, it is recommended that these conditions are applied in a manner that requires details to be submitted within a specific timeframe from the date of the decision notice, and approved accordingly.

The application form confirms that the premises is proposed to be open between the hours of 11:00 and 23:00 every day including Sundays and Bank Holidays. The Env Health Officer is satisfied that these opening times are acceptable having regard to public and residential amenity.

Subject to the conditions recommended by Env Health being applied in a way that can be enforced, it is considered that the amenity of the general public and residential neighbouring properties will be preserved, in accordance with LP Policies EQ6 and EQ10, and relevant paragraphs contained under Chapter 15 of the NPPF.

Parking Provision and Highway Safety

LP Policy CF1 requires that proposals within town centres are served by adequate parking facilities in suitable locations and that they are accessible by public transport, walking and cycling.

LP Policy CF6 seeks to ensure that development can be safely accessed in a sustainable manner and that all new development is located where it can be satisfactorily accommodated within the existing highway network and provides suitable off-street parking provision in accordance with guidelines set out under Appendix 1 of the Local Plan.

Paragraph 110 of the NPPF states that in assessing applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users.

Paragraph 111 goes on to state that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The proposed use is situated within a highly sustainable location within the Town Centre of Buxton within very close proximity to public transport links and public car parks. It is reasonable to anticipate that the vast majority of patrons visiting this takeaway would approach the site on foot, and if in a private vehicle would take advantage of local short stay parking on the Quadrant or in other surrounding streets.

As such, and given the lack of objection from the Highways Authority, it is considered that whilst the proposed use does not provide any of-street parking, it is not necessary on this occasion.

The application is therefore not considered to conflict with LP Policies CF1 and CF6 and relevant paragraphs under Chapter 9 of the NPPF.

CONCLUSION / PLANNING BALANCE

LP Policy S1a reflects the presumption in favour of sustainable development contained within the National Planning Policy Framework.

Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development. For decision taking, this means approving development proposals that accord with an up-to-date development plan without delay; or, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission, unless:

- the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Following an enforcement complaint and subsequent investigation, the application seeks retrospective permission for a change of use from an existing retail unit (Class E) to a takeaway serving hot and cold food (Suit Generis) operating primarily as a Pizza Takeaway.

The proposed use has been found to be acceptable with regards to the nature of the use in this location within the defined Town Centre of a Market Town, in an area which is easily accessible and does not currently have any concentration of such uses.

It has been concluded that the proposed use and associated flue on the rear elevation would not give rise to any material impacts on the character and appearance of the building or the setting of the Conservation Area. A separate application for retrospective Advertisement Consent has been submitted and is currently under consideration under HPK/2023/0397).

Subject to appropriate conditions requiring details relating to odour, ventilation and noise to be submitted within a specific timeframe for approval, it is considered that matters of public and residential amenity can be satisfactorily addressed. Due to its location it is considered that off-street parking provision is not justified.

In conclusion, the application is considered to comply with all relevant local and national planning policies, and subject to appropriate conditions, constitutes a sustainable form of development. In line with LP Policy S1a and paragraph 11 of the NPPF, the application is recommended for approval.

OFFICER RECOMMENDATION : Approve with Conditions

Case Officer: James Stannard

Recommendation Date: 23rd November 2023

X *B.S. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council