

DELEGATED DECISION REPORT

HPK/2024/0493
Valid 13/01/2025

3 CAFE , GREEN LANE ,
CHINLEY , DERBYSHIRE ,
SK23 6AA

VARIATION TO CONDITION 3
IN RELATION TO
HPK/2014/0381 - CLOSING
TIME TO ALTER TO 01:00 AM

(FULL - MINOR)

MAIN ISSUES

- Impact on amenity

DESCRIPTION OF SITE

The site comprises a shop unit in a row of shops on Green Lane in Chinley. The ground floor premises has most recently been used as a café. Externally the property is a red brick end of terrace dating from the Victorian era with a traditional shop front. There are residential properties above the row of shops.

The site is located centrally within Chinley and is within the Chinley Conservation Area.

PROPOSAL

The application seeks to vary condition 3 of planning permission HPK/2014/0381 which permitted the use of the premises as a café.

Condition 3 of the 2014 permission limited the hours of use to:

Monday to Friday – 10.00-17.00

Saturdays – 11. 00-16.00

Sunday and Bank Holidays - 11.00-15.00

A previously approved application (HPK/2024/0280) to vary the original opening hours was permitted at Committee on 16th September 2024, the hours approved and current opening hours are:

Monday to Thursday – 09.00-23.00

Friday & Saturday – 09.00-23.30

Sunday - 10.00-23.00

The application seeks to vary condition 3 again, to alter the opening hours to 0900am-0100am, to allow for later opening times.

Events with later opening times would only be in line with an approved TENs License (Temporary Event Notice, is a short-term legal permission to carry out licensable

activities, such as selling alcohol, providing regulated entertainment, or serving late-night refreshments, at a venue that does not have a permanent licence.)

The applicant will not be requesting amendment to the existing premises license, however a TENs would be filed / requested as and when they are likely to open past the current licensed hours.

The premises is run as a bistro and is seeking to extend the opening hours of operation to allow late night/early hours use.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

High Peak Local Plan (Adopted 2016)

S1 – Sustainable Development Principles

S1a – Presumption in Favour of Sustainable Development

S6 – Central Area Sub Strategy

EQ6 – Design and Place Making

CF1 Retail and Town Centres

CF6 – Accessibility and Transport

National Planning Policy Framework

Including sections -

2: Achieving sustainable development

7. Ensuring the vitality of town centres

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

HPK/2024/0280	Variation of condition 3 in relation to HPK/2014/0381	Approved
HPK/2014/0381	Proposed Change of use from residential dwelling to café (A3)	Approved
HPK/2005/0722	Change of use to residential	Approved

CONSULTATIONS

Publicity

Site Notice expiry date: 21/03/2025

Neighbour consultation period ends: 21/03/2025

Public Comments

23 letters of representation stating that:

- New potential noise source from late night/early hours activities in the premises and from customers entering and leaving, e.g. congregating outside the premises/in the street, and noise from going to and from parked vehicles in Princes Road and surrounds.
- This potential noise source may affect the current peace and quiet, potentially for 7 days a week, causing disturbance to the quiet residential area in Princes

Road and surrounds. This may have a stronger impact particularly in summer when windows are open.

- Increased pressure on parking for residents, particularly in Princes Road. We already experience increased parking pressure from visitors to the local establishments, and holiday lets.
- Recommend a scheme for the installation of equipment to control the emission of fumes and odour from the premises should be submitted to and approved in writing by the Local Planning Authority. The scheme should demonstrate compliance with, and be consistent with EMAQ Industry Guidance "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (2018)". The approved scheme should be implemented in full prior to the equipment being brought into use. All equipment installed as part of the odour control scheme should thereafter be operated and maintained to ensure compliance with EMAQ (2018) and in accordance with the manufacturer's instructions.
- There is a constant vibration and humming inside our house. The cause of noise is installation of some commercial kitchen plant, which has been attached to the main structural beam. The beam connects 3 properties in a row, and we have not found any environmental/ building control/planning consent which would approve the installation and the use.
- Parking is another consideration as there is already trouble with parking even on the private part on Princes Rd which needs sign posting by the council as residence only.
- No notices displayed throughout the premises stating that CCTV is in operation. CCTV cameras have been installed all over the external areas constantly recording residents living on Princes Road, which is purely a residential cul-de-sac.
- No notices displayed at area use for smoking requesting patrons to respect the needs of local residents and use the area quietly. People are congregating on the corner of Princes Road and Lower Lane for the purposes of smoking. We experienced loud shouting later in the night, we must pass through the smokers every time for the access and egress.
- 11pm close is more than adequate for its location within a small rural village.
- Don't take into account the rights of the local residents to have peace and quiet at a reasonable hour
- Closely surrounded by many residential properties housing families, young and old. These residential properties pre-date the business by many years.
- If all of this application was for one night, I would suggest either (as previously mentioned) the council draw up a one night only permit, or the owner has his new year till 1130, then from that point in the night, a private party is organised.
- Although the current owner of the Cracken seems keen to state that it is only intended to be used for one night (NYE), the opening hours, if granted, would be passed to any future owners with differing intentions and desire to utilise more frequently.
- Due to the added impact to amenity (noise disturbance) from changing the closing time to 1am I object to the application being made here. I would however support a condition to change the closing time to 1am for the purpose of New Years Eve only.

- Extending the opening hours to 1am would place additional strain on council resources, as it is likely to lead to an increase in both noise and anti-social behaviour complaints, which would require further council intervention.
- The front bay window of the premises has inadequate sound proofing. The owner currently runs these sessions till 11.30 and residents are unable to sleep on those live act nights nor hear our TV in some case in the living room.

Conservation Officer

No heritage objection to change in opening hours

Town / Parish Comments

Objection: Chinley, Buxworth & Brownside Parish Council has no objection to the property being open until 1.00am on New Years Eve. However, to grant opening hours to 1.00am with no restrictions seems to present a risk that the current or future occupier might use this more frequently with serious noise and disturbance implications for the immediate residents. Therefore, we object to the application as submitted.

Highways Authority

No objection as there appears to be no material impact on the public highway and therefore the Local Highway Authority (LHA) has no further comments to make.

Environmental Health

Refusal of the application is recommended on the following grounds:

Noise nuisance – loss of amenity

The site is adjacent to and attached to residential premises and operates as a bar. Nuisance complaints due to loud music, mechanical noise (cooking extract and cooling/ac fans) and people noise have been received and strongly indicate that the site is not suitable for the proposed use. This noise (particularly entertainment noise) can be clearly heard in adjacent and nearby properties. Being in a conservation area double glazing is not permitted or is prohibitively expensive for both the development site and adjacent residential. Conditions recommended within consultation ref: HPK/2024/0280 were not applied by the LPA, but regardless refusal is recommended and I advise that this cannot reasonably be mitigated by condition.

Additionally – rightly or wrongly the site currently operates under planning class E (restaurant/café) and the cooking extract system is not suitable for night time use (due to noise and vibration). Provision of food after 23:00 is subject to licensing (Licensing Act 2003) and it's doubtful approval would be given (see note below, this is not a duplication of legislation with regard to "6 planning tests"). This would tend to preclude food production or sale at these times. This suggests a further change in the balance for the planning use class, perhaps to Sui Generis (pub/bar).

NOTE: Environmental Health deal with Statutory Nuisance, whilst material planning considerations include the wider amenity of the area that includes public and private nuisance, of which Stat Nuisance is a small sub-category. Licensing (Licensing Act 2003) can only be applied to licensable activities, and the nuisance consideration is limited to public nuisance.

OFFICER COMMENTS

Planning Policies

The determination of a planning application is to be made pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004, which is to be read in conjunction with section 70(2) of the Town and Country Planning Act 1990.

Section 38(6) requires the local planning authority to determine planning applications in accordance with the development plan, unless there are material circumstances which 'indicate otherwise'. Section 70(2) provides that in determining applications the local planning authority "shall have regard to the provisions of the Development Plan, so far as material to the application and to any other material considerations." The Development Plan consists of the High Peak Local Plan Policies Adopted April 2016.

Other material considerations include the National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG). Paragraph 11 of the NPPF explains that at the heart of the Framework is the presumption in favour of sustainable development. For decision makers this means that when considering development proposals which accord with the development plan, they should be approved without delay, but where the development plan is absent, silent, or relevant policies are out of date, grant planning permission unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

Local Plan policy S1a establishes a presumption in favour of sustainable development as contained within the NPPF.

Principle of Development

The site lies within the built up area boundary of Chinley as defined by Policy S2 of the adopted Local Plan. It is situated in a row of commercial/retail premises. Policy CF1 seeks to protect the vitality and viability of the small town centres and larger villages such as Chinley. The premises is currently empty and the proposals to vary the opening hours would enable a new business to occupy the unit and provide a service to the local community which is supported by policy CF1.

The existing use of the premises approved by HPK/2014/0381 is a café which at the time it was granted was an A3 use. A café use now falls within a Class E use which covers more wide ranging uses from shops, cafes, creches and financial and professional services. The use as a bistro which would be considered to fall with use class E b) Food and drink which is mostly consumed on the premises.

The proposed change in hours and intensity of use would result in a material shift from a café/bistro towards a bar or pub, which would constitute a different use class. Such a change is more likely to generate late-night activity, noise, and other disturbances inconsistent with the surrounding residential and village environment. Given the proximity of residential properties and the character of the village centre, this represents a use that is not compatible with its locality and is likely to be unacceptable.

The application is seeking to vary the hours of operation which are currently restricted by planning permission HPK/2024/0280 which does not permit opening beyond 11pm Monday-Thursdays and Sundays and 11.30pm on Fridays and Saturdays. The variation of the hours would enable the premises to be open into the early hours every day of the week.

Use of Temporary Event Notices (TENs) vs Planning Permission

The applicant has submitted this planning application to vary the opening hours to allow the premises to remain open until 01:00. In their supporting information, the applicant also indicates that they may choose to rely on Temporary Event Notices (TENs) to cover occasional late openings beyond the current licensed hours of 23:00/23:30.

While TENs provide a mechanism for short-term, occasional events, they cannot be relied upon to authorise regular late-night trading. TENs are strictly limited to a maximum of 168 hours per calendar year per premises for events involving licensable activities and are intended for infrequent, temporary occasions, such as New Year's Eve or special celebrations. They are not a substitute for a permanent change to planning or licensing hours.

The applicant indicates that Temporary Event Notices (TENs) may be used to allow occasional late-night openings. While TENs are limited to infrequent events (maximum 168 hours per calendar year) and are not a substitute for permanent planning permission, the proposed permanent extension to 01:00 would effectively establish a nightly bar/pub-style use. Reliance on the applicant's voluntary restraint cannot provide certainty for protecting residential amenity.

Granting planning permission for a permanent change would formalise a shift in use towards a late-night drinking establishment, which is more intensive than the previous café/bistro operation and would be difficult to regulate or mitigate through planning conditions.

Amenity

A key consideration in assessing an application seeking to extend the hours of operation is the impact the proposal would have on the residential amenity of nearby occupiers, particularly where activity would continue late into the evening and early morning. While the National Planning Policy Framework (NPPF) recognises the role that an evening economy can play in supporting the vitality and viability of centres, this must be balanced against the need to safeguard the living conditions of existing residents.

The application site is located within the centre of Chinley, which functions primarily as a village and contains a significant number of residential properties in close proximity to the premises. The building is directly attached to neighbouring residential accommodation, and the surrounding area has a strong residential character. In such circumstances, residents would reasonably expect a high level of amenity, particularly during late evening and night-time hours.

A substantial number of representations have been received from local residents objecting to the proposal. The concerns raised include noise from amplified music, mechanical plant and equipment (including extraction and cooling systems), customer noise, late night comings and goings, odour, vibration, anti-social behaviour and impacts on privacy associated with the operation of CCTV. Collectively, these representations indicate that the existing operation of the premises is already causing disturbance to nearby residents.

These concerns are reinforced by the consultation response from High Peak Borough Council Environmental Health, who have raised a formal objection to the proposal. Environmental Health note that nuisance complaints have already been received in relation to loud music, mechanical noise associated with plant and extraction systems, and noise generated by customers. It is advised that such noise can be clearly heard within adjacent and nearby residential properties, indicating that the premises and its location are not well suited to late-night operation. Environmental Health also advise that the existing cooking extract system is not suitable for night-time use due to noise and vibration and conclude that the impacts arising from the proposed operation cannot reasonably be mitigated through planning conditions.

Environmental Health further note that the premises currently operates under a Class E planning use (restaurant/café). However, the nature of the operation and the proposed late-night activity raises questions as to whether the use is functioning more akin to a drinking establishment, which would fall within a sui generis pub/bar use requiring separate planning permission. It is also highlighted that the preparation and sale of hot food after 23:00 is subject to licensing requirements and may not be appropriate in this location.

Importantly, the intensity and timing of the proposed activity, in combination with the nature of service (extended late-night food and drink), would move the premises from a café/bistro function towards a bar/pub type operation. This change of use is inconsistent with the surrounding area and is likely to exacerbate existing amenity impacts.

The site also lies within a conservation area, where alterations such as the installation of double glazing to mitigate noise impacts may not be permissible or may be prohibitively expensive for nearby residents. This further limits the ability of neighbouring occupiers to mitigate noise intrusion from the premises.

Objection has also been received from Chinley, Buxworth & Brownside Parish Council. Whilst the Parish Council advise that they have no objection to the premises operating until 01:00 on a limited basis such as New Year's Eve, they raise concern that granting permission for opening until 01:00 without restriction could allow the current or future operator to make regular use of these extended hours. In their view this would present a significant risk of increased noise and disturbance for residents living in the immediate vicinity of the site.

The proposal seeks to extend opening hours until 01:00. This would allow activity associated with the premises, including amplified music, operation of plant, customer arrival and dispersal, and general disturbance, to continue into the early hours of the morning. Given the direct relationship between the premises and neighbouring dwellings, it is considered highly likely that such activity would result in significant

disturbance to nearby residents at times when expectations for quiet and residential amenity are greatest.

Having regard to the village context of the site, the close proximity of residential properties, the volume of objections received from local residents, and the formal objection from Environmental Health advising that the impacts cannot reasonably be mitigated by condition, it is considered that the proposed extension of opening hours would give rise to unacceptable harm to the amenity of neighbouring occupiers.

The proposed change of use, combined with extended opening hours, would have unacceptable impacts on residential amenity. The primary concern is the late-night activity associated with a bar/pub type operation rather than a café/bistro.

Accordingly, the proposal is considered to conflict with the amenity objectives of Local Plan Policy EQ6 and the aims of the National Planning Policy Framework in securing a high standard of amenity for existing and future occupants.

Highways

The site does not benefit from off-street parking. Visitors to the premises and neighbouring shops rely on on-street parking in the vicinity, including Green Lane, where a 40-minute restriction operates Monday–Friday 09:00–18:00 to encourage short-term visitor parking. Outside these hours, on-street parking is available, including evenings and weekends.

Residents have raised concerns regarding parking pressures on surrounding streets, particularly Princes Road, citing existing difficulties due to visitors to local businesses and holiday lets. Concerns have also been expressed regarding overspill parking within the private section of Princes Road and the need for clearer signage to identify resident parking.

The premises lacks off-street parking, and extended evening trading could increase on-street parking pressures. While the Local Highway Authority has raised no objection on safety grounds, increased late-night traffic may exacerbate disturbance to residents, reinforcing the unsuitability of a late-night bar/pub operation in this location.

CONCLUSION / PLANNING BALANCE

While the site occupies a sustainable location within the village centre, the proposed extension of opening hours and the intensification of use would result in a material shift from a café/bistro towards a bar/pub. This change of use is inconsistent with the character of the locality and presents a significant risk of disturbance to residents.

Objections from local residents, the formal advice of Environmental Health, and concerns from the Parish Council indicate that the impacts of the proposal on residential amenity would be significant and cannot reasonably be mitigated. TENs are not a suitable mechanism for regular late-night operation, and permanent planning permission would effectively authorise nightly late-night trading akin to a pub/bar.

While an evening economy can support local vitality, in this village context the adverse impacts of such a use outweigh any benefits. The proposal is therefore contrary to Local Plan Policies EQ6 and CF1, and the NPPF, and is not acceptable.

Accordingly, the application is recommended for refusal.

OFFICER RECOMMENDATION: REFUSE

Case Officer: P. Twigg

Recommendation Date: 16.3.2026

X 

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council