

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL
PLANNING APPLICATIONS COMMITTEE**

25th January 2024

Application No:	SMD/2023/0571	
Location	Unit B, High Street, Biddulph, ST8 6AR	
Proposal	Change of use from retail unit (Class E) to a hot food take away (sui generis) external plant and ventilation and extraction equipment and minor external works.	
Applicant	DPSK Ltd	
Agent	Mr Joe Davis Pegasus Group	
Parish/ward	Biddulph	Date registered: 22 nd Nov 2023
If you have a question about this report please contact: Benjamin Hurst tel: 07738506367 benjamin.hurst@staffs Moorlands.gov.uk		

REFERRAL

The application is before committee because it has become locally contentious

1. SUMMARY OF RECOMMENDATION

APPROVAL

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

2.1 The Sainsbury's supermarket building in Biddulph town centre has a dedicated car park and entrance to the east, and provides a row of six shop units that front the High Street to the west. The shop unit at the far southern end, adjacent to the Sainsbury's High Street entrance, is occupied by Argos and the remaining five units have been unoccupied for many years. More recently, the second unit along from Argos, to the north, has been occupied by a charity shop supporting the Green Tree House food club. The application concerns the shop unit that is one from the northern end of the row. The unit's customer entrance is taken from High Street, with a further servicing entrance taken to the side lane to the north of the property. The unit provides 106sqm of floor area.

2.2 The unit is on a part of the High Street that is defined within the Staffordshire Moorlands Local Plan as a primary shopping area. The surrounding uses are predominantly commercial in nature. To the north of the units lies the Royal Oak Public House. Opposite the units there is a building society, an opticians, a jewellery and gift shop, two salons, a Chinese takeaway, and an Indian restaurant. The closest residential properties lie more than 60m to the east of the units on John Street that runs roughly parallel to the High Street.

3. THE APPLICATION AND DESCRIPTION OF THE PROPOSAL

3.1 The proposal is to change the use of the vacant shop unit from retail to a hot food takeaway to be occupied and operated by Domino's Pizza. The hot food would be consumed off the premises. The change of use from retail to a takeaway requires planning permission because it involves a change in use from class E to sui generis, but also, in this case, it was a condition of the planning permission granted for the supermarket building in 2010 that the units shall only be used for shop and retail purposes.

3.2 The proposed floor plans confirm that only a takeaway service counter would be provided and that there would not be an area of seating to consume food on the premises. The takeaway would operate between 1100 and 2300 hours daily. The food preparation area would be located behind the customer area, and the cold storage, back of house, staff and office facilities would be located to the rear of the unit. Servicing would take place from the side of the retail unit adjacent to the neighbouring public house. Refuse would be stored externally in commercial bins stored to the side of the building, adjacent to the public house from a servicing alleyway connecting to High Street. Bins would be collected from the unit at a frequency to suit the needs of the occupier.

3.2 It is part of the proposal to install extraction and ventilation equipment. An extract duct would be installed above the oven, running vertically internally, before turning laterally and continuing behind the neighbouring unit before penetrating the northern elevation externally to terminate to the side of the unit. Fine filtration and carbon filters would be installed as set out in submitted odour mitigation details. An air handling system would also be installed to include a fresh air intake on the side elevation and an internal air handling unit within the 'Cold Room', with silencers as required. The existing entrance door and shopfront would be retained and painted to match RAL7043 (existing dark grey).

3.3 Details of the application scheme can be viewed at:

<http://publicaccess.staffs Moorlands.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=175744>

4. RELEVANT PLANNING HISTORY

08/01547/FUL_MJ Retail food store, associated access, car parking, service yard, recycling centre, 7 retail units; 10 dwellings; offices; and associated highway, footpath and landscaping works'. APPROVED April 2009.

(Condition 25 of the permission restricted the retail units to shop and retail uses).

SMD/2012/0048 - Variation of Condition 27 of Planning Permission 08/01547/FUL_MJ to extend (permanently) delivery hours. APPROVED March 2012.

5. PLANNING POLICIES RELEVANT TO THE DECISION

5.1 The Development Plan comprises of:

- The Local Plan Development Document (adopted Sep 2020)

Adopted Staffordshire Moorlands Local Plan - Sep 2020

5.2 The following Local Plan policies are relevant to the application:-

- SS1 Development Principles
- SS6 Biddulph Town Area Strategy
- TCR1 Development in the Town Centres
- TCR2 Primary Shopping Frontage
- DC1 Design Considerations/protection of amenity
- SD4 Pollution
- T1 Development and sustainable transport

Biddulph Neighbourhood Development Plan

5.3 The Biddulph Neighbourhood Plan and Neighbourhood Development Order Referendum was held on 7th December 2023. A majority of those who voted agreed that Staffordshire Moorlands District Council should use the Neighbourhood Plan for Biddulph to help them decide planning applications in the neighbourhood area. Therefore, a delegated decision will be taken by the Executive Director (Place) and Deputy Leader and Portfolio Holder for Regeneration and Planning to 'make' both the plans during the week beginning 22nd January 2024.

The following Neighbourhood Plan policy is relevant to the application:-

- LE 1 Biddulph Town Centre

Supplementary Planning Document (SPD)

5.4 Staffordshire Moorlands Design Guide 2018

National Planning Policy Framework (NPPF) revised.

5.5 7. Ensuring the vitality and viability of towns centres; 9. Promoting sustainable transport.

6. CONSULTATIONS

Public response to consultation

6.1 Neighbours received notification letters on the 28th November 2023. A site notice was posted on the 18th December 2023, the period of consultation expired on the 8th January 2024.

6.2 Objections have been received from 41 local contributors in response to the public consultation. The following comments and concerns are raised:

- Existing restaurant or takeaway businesses within the town centre would face competition and dilution of trade.
- There already many hot food takeaways in the town centre and there is no need for another.
- Would attract litter and anti-social behaviour
- Increased traffic with roadside parking from customers and delivery staff
- Would encourage unhealthy eating habits
- Other types of uses would be of more benefit to the town centre and Biddulph community

Biddulph Town Council

6.3 Object, the application should be refused. Whilst the Town Council acknowledge a number of positive points (e.g. it would bring an un-used unit into use, introduce a national firm on the High Street, and potentially create jobs) they object on the following grounds:

- Highway concerns – it is not known whether the SCC Highway Officer made a desk-top recommendation or whether they visited the site at key times. Local experience of the area highlights a number of safety concerns in relation to parking. There is no parking directly outside the shop. Whilst the application notes that Sainsbury's car park is accessible, the gate from the car park to Station Road will soon be sealed off, following advice from Staffordshire Police and the Town Council as a result of continuous and problematic anti-social behaviour in this area. This means that car parking will be a five-minute walk for those using Sainsbury's. There is insufficient on-street parking to accommodate another takeaway requiring deliveries/ collections. This already has a negative impact on the loading bay and taxi rank outside the Town Hall, and would have a potential impact on taxi provision within the town if the rank is unusable. The shop is close to zig-zags and a pedestrian crossing; the Town Council has concerns for those walking or sitting in this area as a result of inappropriate parking, particularly as a result of current plans to turn this area into a 'town square' following approval of plans for the Town Hall frontage.
- No demonstrable need - The application makes no attempt to demonstrate why it would have a positive effect on the local economy. The Town Council believes that the introduction of another takeaway facility with no eat-in option would have a negative impact on the vitality and viability of shopping areas and a detrimental impact on the High Street.

County Highway Authority

6.4 Site Visit Carried Out on 08/12/2023

Personal Injury Collisions;

Current records show there were no Personal Injury Collisions on High Street within 50 metres of the property from 31st December 2015 to 31st December 2020.

Background;

The property is located on High Street (Road No. C0005) between Station Road and Wharf Road. High Street is a main route through Biddulph Town Centre, it is a C classified road, is subject to a 30mph speed limit and benefits from streetlights and footways. It is noted there is a pedestrian crossing directly fronting the building. The area is mostly commercial properties. There are bus stops and public car parks within walking distance of the property.

Description of Proposal;

Change of use of a vacant retail unit (Use Class E) to hot food takeaway (sui generis) external plant and ventilation and extraction equipment and minor external works.

Comment;

The proposal is for a change of use of a vacant retail unit (Use Class E) to a hot food takeaway. commercial use. The unit forms part of a row of commercial units fronting onto the High Street. Times of operation are between 1100 and 2300 hours daily and will generate a number of full-time and part-time employment opportunities. It is noted that no car parking spaces are to be provided for the property and there is no sufficient land within the site to provide any. The property however is in a prime location within Biddulph Town Centre. There is a large carpark area within walking distance and on-street limited waiting allows parking to take place (short stay 30 minutes maximum Monday to Saturday) is also within walking distance on High Street and Station Road. Given the property's central location, within Biddulph Town Centre, I do not believe the lack of car parking provision will have a detrimental impact on the adopted highway I therefore have no objection (application number SMD/2023/0571).

Waste Collection

6.5 No issues regarding waste collection

Environmental Health

6.6 No objection subject to conditions that seek to control the potential for noise and disturbance from plant and equipment, cooking smells, opening hours, and deliveries. The installation and maintenance of kit should be conducted in compliance with advice set out in document: Annex B: refC5366 to prevent cooking smells from causing nuisance. Noise Amenity: The information provided does not indicate any specific noise impacts but does state this can only be assessed once installed, as per annex B. The primary noise source will be in the area of the air intake and extract outlets. This is relatively isolated from NSRs and is located in an alleyway between the pub and retail units. The prevailing background noise levels are expected to be relatively high given the location on the High Street in an intensive commercial area. The only minor concern is the Royal Oak manager's office window which is approx. 6m from the outlet area but given considerations above this would not be a reason for objection. A condition is advised below which we would recommend is imposed on any permission granted to require the installation and operation of plant and machinery takes account of prevailing sound levels.

7. OFFICER COMMENT AND PLANNING BALANCE

Principle of Development

7.1 The application site is a small unoccupied retail shop located within a row of six largely vacant retail units provided on the High Street as part of the Sainsbury's supermarket development. The units are located between Sainsbury's High Street

entrance to the south and the Royal Oak PH to the north. Two of the units are now occupied by Argos and a charity shop. This part of Biddulph High Street, is defined within the Staffordshire Moorlands Local Plan as a primary shopping area. The proposal is for a change of use from retail to a pizza takeaway outlet opening 11:00-23:00, selling hot food to be consumed off the premises. The change of use from retail to a takeaway involves a change in use from class E to sui generis and therefore requires planning permission.

7.2 The Local Plan strategy for Biddulph and its town centre (SS6 and TCR1) is to enhance its role as a significant service centre and a market town and support its regeneration. Specifically, the policies require the vitality and viability of the town centres to be protected and enhanced by positive management. The safeguarding of the retail function at the heart of the town centres is considered to be a crucial factor in maintaining their vitality and viability. As part of this strategy approach the Local Plan designates 'primary shopping areas' in town centres and within these areas Local Plan Policy TCR2 applies. The National Planning Policy Framework (NPPF) requires planning policies promote the long term vitality and viability of town centres by allowing them to grow and diversify in a way that can respond to rapid changes and in these regards Local Plan Policies TCR1 and TCR2 are consistent with national policy.

7.3 Policy TCR2 of the Local Plan supports retail use within primary shopping frontages. Development falling within other use classes is only permitted where it would not create a concentration of non-shopping uses and result in an unacceptable change in the retail character of the immediate area or have an adverse effect on the vitality or viability of the town centre. The supporting text provides examples of what is meant by concentration which includes 3 or more adjacent units in a non-retail use.

7.4 The proposal would introduce one non retail use between two currently vacant and available retail units. Within the row of six there would be two occupied retail units and three units that would remain vacant and available for a retail occupant. The row of three that includes the application site, would sit between an existing charity shop and the Rose and Crown PH. For the purposes of the Local Plan policy therefore, and the definition in the supporting text, the development would not result in a row of three or more adjacent units in a non-retail use or a 'concentration of non-shopping uses'. In those regards the development would not be contrary to the 'primary shopping front' policy stated above.

7.5 With consideration, more generally, for the effect of the development on the vitality or viability of the town centre, within the immediate locality there is a relatively healthy mix of town centre business including a considerable retail offering, hairdressers, restaurant, public house, and financial and professional services. The use would attract visits at certain times of the day reflecting the fact that it would largely be serving an evening and night time economy, and in these regards the benefit to the functioning of the town centre would be limited by the nature of the proposed use. However, the proposal would not in itself lessen the reason and desire for people to visit this part of the town centre during certain times of the day or weaken the retail function of the street particularly because it is located in a relatively healthy and commercially diverse part of the High Street where there is an existing

retail offer and available opportunity for new retail occupants. The proposal therefore would not reduce footfall to an extent that would have an adverse impact on the vitality and viability of that part of the town centre.

7.6 Moreover, in this case it is evident that the retail unit and its adjacent neighbours have been vacant and unoccupied since they were provided with the supermarket development in 2010 - a period of more than 10 years. The applicant has submitted evidence to show that the unit has been marketed since 2021 and to that extent there have been efforts to secure a retail occupant. Whilst the benefit to vitality and viability might be limited, overall there would be contribution to local economy and community in terms of job creation, competition, and diversity of consumer choice that would not be delivered while the unit remains vacant. This is a matter that should be given some weight in favour of the proposed development.

7.7 The Council should be mindful of the recent case that involved the premises at 95 High Street, Biddulph. In that case the Council refused planning permission for a hot food takeaway, and successfully defended the decision at appeal. The Council relied on identified and evidential conflict with policy TCR 2 of the Local Plan. However, in those regards it is clear that the circumstances relevant to the current development proposal at Unit B are materially different to that recent case. Particularly, in the case of no. 95, the development would have resulted in a concentration of more than three adjacent non-retail uses and the applicant was unable to demonstrate that they had made efforts to market the premises or secure a new retail occupant. As discussed above, that is not the case with the current application and the Council would not be able to rely on the same arguments in defence of an appeal.

7.8 The referendum version of the neighbourhood plan includes town centre policy LE 1. The policy is drafted to enable diversification and growth of the town centre and recognises the importance of complementary uses. Within the defined town centre the policy supports uses other than retail where they support and enhance the town centre's vitality and viability. It has been concluded above that the proposed use would be of only limited benefit to the vitality and viability of the High Street but would be compliant with Local Plan policy because, overall, it would not be overtly harmful in those regards. Whilst the development would not be in conflict with the positively worded policy of the Neighbourhood plan, the policy, in these circumstances, does not offer any additional support against the constraint and caveat of the Local Plan policy outlined above.

7.9 The development would not harm the vitality and viability of Biddulph town centre and as such there would not be conflict with the parts of Policies SS6, TCR1 and TCR2 of the Local Plan and Policy LE1 of the Neighbourhood plan which seek to enhance the role of Biddulph town centre as a significant service centre and market town and support its regeneration.

Impact on the amenity of the area

7.10 The rear of the terraced dwellings along John Street are some 60m to the east of the premises, the other side of the high street properties on the opposite side of the road and the cobbled alleyway. These properties are far enough away from

the development so as not to be affected by cooking odour or associated noises from air intake and extraction outlets. The Council's Environmental Health Officer points to the air intake and extract outlets as the primary noise source. However, they are considered to be relatively isolated from noise sensitive receptors - located in an alleyway between the pub and retail units. The officer acknowledges a 'minor concern' with the Royal Oak manager's office window which is approximately 6m from the outlet area. However, the prevailing background noise levels are expected to be relatively high given the location on the High Street in an intensive commercial area and, because of this, proximity to the office window should not be a reason for objection. A condition could be imposed on a permission to limit and control the volume of plant and machinery against prevailing sound levels. As such, the development would not adversely affect the amenity of residents or users of the commercial High Street. In these regards the development would not be contrary to policies DC1 and SD4 of the adopted SMDC Local Plan 2020.

Highway Safety

7.11 The highway authority do not raise any objection on grounds of highway safety, they consider it to be a town centre location within proximity of public parking. It is acknowledged that there are parking restrictions to the front of the unit, but that is the situation with most of the High Street businesses, including those that provide hot food takeaway. The Sainsbury's car park on the other side of the premises provides plentiful parking within easy walking distance of the unit, and, indeed, that is where the planning officer parked when he visited to inspect the site. Within the town centre the unit is centrally located for many of the towns residents and there is scope for customers to visit the premises on foot or by bicycle. We should be reminded that the NPPF makes it clear that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. In the absence of evidence from the Highway Authority to support an assertion that the development would have an unacceptable impact on highway safety or have a severe impact on the road network, a refusal on these grounds is unlikely to be successful at appeal.

Other Considerations

7.12 The Town Council and some of the objectors think that other types of uses would be of more benefit to the town centre and Biddulph community. They are concerned that there are too many takeaways on the high street and that the application does not demonstrate why the use would have a positive effect on the local economy or is needed on the High Street. The Town Council believes that the introduction of another takeaway facility with no eat-in option would have a negative impact on the vitality and viability of the shopping area and a detrimental impact on the High Street. However, as stated and explained above, the Local Plan policy requires such assertions to be made on an evidential base that requires an analysis of the high street within defined terms. The policy can be relied on to prevent a 'concentration of non-retail uses', recent cases provide evidence of that, but that only occurs, for the purposes of the Local Plan, where development would result in three or more adjacent non retail uses. The policies of the Local Plan and the Neighbourhood plan do not require an applicant to demonstrate why the proposed use is needed or how it would benefit local economy, it just must be clear that the

development would not have an adverse effect on the vitality or viability of the town centre. For the reasons explained above it is not considered that the development would adversely affect vitality and viability.

7.13 Competition and market forces among different existing and new restaurant or takeaway businesses within the town centre is not a matter that planning policy seeks to control or restrain. Businesses are free to make their own commercial decision. Competition does not necessarily effect business and consumer choice negatively.

7.14 The Town Council say that there is already an issue with anti-social behaviour in this area to the side of the supermarket premises. The development is unlikely to increase problems in these regards. Rather, it would introduce a presence of staff and customers to a vacant premises that may increase natural surveillance and could improve matters in these regards.

7.15 The unit is not within close proximity of, or on an obvious route to and from, any of the town's schools. There is a range of fast food and takeaway options already available to the residents of Biddulph and the development would not in itself encourage unhealthy eating habits. There is no local or national policy that would, in these circumstances, support an objection on these grounds.

CONCLUSION / PLANNING BALANCE

7.16 The development would not result in a concentration of non-retail uses on a Local Plan designated 'primary shopping frontage'. The proposed use would not be harmful to the character, vitality and viability of Biddulph's town centre in this high street locality. As such there would be no conflict with policies SS6, TRC 1, and TRC 2 of the adopted SMDC Local Plan 2020 and the terms of the NPPF; or policy LE1 of the referendum version of the Biddulph Neighbourhood Plan.

7.17 The rear of the premises is some distance from the closest residential properties where there would be sensitivities to strong cooking smells and the noise generated by any means of extraction. The application has been provided with a site specific cooking smell abatement scheme demonstrating that adequate ventilation plant could be provided in a way that would not increase noise levels over background. The development should not harm the living conditions and amenity of residents or have an unacceptable impact on highway safety. There would be no conflict with policies SD4, DC1 and T1 of the adopted SMDC Local Plan 2020 and the terms of the NPPF.

8. RECOMMENDATION

A. That planning permission be APPROVED for the change of use, subject to the following condition(s):

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason:- To comply with Section 91(1) of the Town and Country Planning Act

1990 (As Amended)

2. The development hereby permitted and described above shall only be carried out and completed in accordance with the plans that were submitted with the application numbered C5366-LP08 Location Plan, C5366-BP09A Block Site Plan, C5366-A5-06 Proposed Elevation, and C5366-A5-05 Proposed Plan.

Reason:- For the avoidance of doubt and in the interests of proper planning, in accordance with the National Planning Policy Framework.

3. The development shall not be brought into use until the ventilation system detailed in ANNEX B DOCUMENT C5366 has been installed in accordance with that document and is in use and operational in accordance with its terms.

Reason:- To safeguard the amenity of neighbouring residential occupiers.

4. There shall be no deliveries to the premises except between the hours of 08.00 hours and 20.00 hours Monday to Saturday inclusive, and only between the hours of 10.00 hours and 18.00 hours on Sundays and Public or Bank Holidays.

Reason:- To safeguard the amenity of neighbouring residential occupiers.

5. The rating level of sound emitted from any plant or machinery including air conditioning and extraction systems associated with the development shall not exceed background sound levels by more than 5 dB(A) between the hours of 07.00–23.00 (taken as a 15 minute LA90 at the nearest sound-sensitive premises) and shall not exceed the background sound level between 23.00–07.00 (taken as a 15 minute LA90 at the nearest/any sound-sensitive premises). All measurements shall be made in accordance with the methodology of BS4142 (2014 + A1:2019) (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments.

Where access to the nearest sound-sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound-sensitive property. Any deviations from the LA90 time interval stipulated above shall be agreed upon in writing with the local planning authority.

Reason:- To safeguard the amenity of neighbouring residential occupiers.

6. The premises shall only be open to the public between the hours of 11:00 and 23:00 hours.

Reason:- To safeguard the amenity of neighbouring residential occupiers.

7. The artificial lighting incorporated into this site in connection to this application shall not increase the pre-existing illuminance or cause glare at the adjoining light sensitive locations when the light (s) is (are) in operation. Details

of all artificial lighting to be installed under this permission should be submitted to and approved by the Local Planning Authority prior to development commencing.

Reason: To protect the local amenities of the local residents by reason of excess of illuminance

INFORMATIVE

Please be aware that the responsibility for safe development and secure occupancy of the site rests with the developer.

- **Food Registration:** Under Regulation (EC) No 852/2004 Article 6 Paras 1 and 2 every food business operator shall cooperate with and notify the appropriate competent authority by completion of a food establishment registration form for each establishment under its control that carries out any of the stages of production, processing and distribution of food, with a view to the registration of each establishment. Food business operators shall also ensure that the competent authority always has up-to-date information on establishments, including by notifying any significant change in activities and any closure of an existing establishment.

The applicant is advised to contact the Environmental Health Department, Staffordshire Moorlands District Council, Moorlands House, Stockwell Street, Leek, Staffordshire Moorlands Tel: 01538 395400 Fax: 01538 388393
Email: environmental.health@staffsmoorlands.gov.uk

- A Demolition or refurbishment asbestos survey and risk assessment should be carried out prior to the demolition of the existing buildings. The enforcing authority for this type of work is the Health and Safety Executive (HSE) and it is recommended that you contact them directly to discuss their requirements: <http://www.hse.gov.uk/>
- During any demolition and construction activities (including landscaping) the contractor shall take all reasonable steps to prevent dust formation and prevent any dust formed from leaving the site boundary.
 - The control of dust and emissions from construction and demolition Best Practice Guidance, produced by the greater London councils <http://www.london.gov.uk/sites/default/files/BPGcontrolofdustandemissions.pdf>
 - Building Research Establishment Guidance Document 'Control of Dust from Construction and Demolition Activities' (BR456)
- Any approved noise scheme and measurements should pay due regard to the Professional Guidance on Planning and Noise (ProPG), British Standard BS8233: Sound insulation and noise reduction for buildings (Code of Practice), BS4142:2014+A1:2019 Methods for rating and assessing industrial or commercial sound and/or the Building Regulations 2010 Document E or other appropriate guidance
- The lighting scheme should comply with the Institution of Lighting Professionals Guidance Note for the reduction of obtrusive light 2011(or later)

versions). It should be designed so that it is the minimum needed for security and operational processes and be installed to minimise potential pollution caused by glare and spillage.

B. In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Head of Development Services has delegated authority to do so in consultation with the Chairman of the Planning Applications Committee, provided that the changes do not exceed the substantive nature of the

APPLICATION SITE

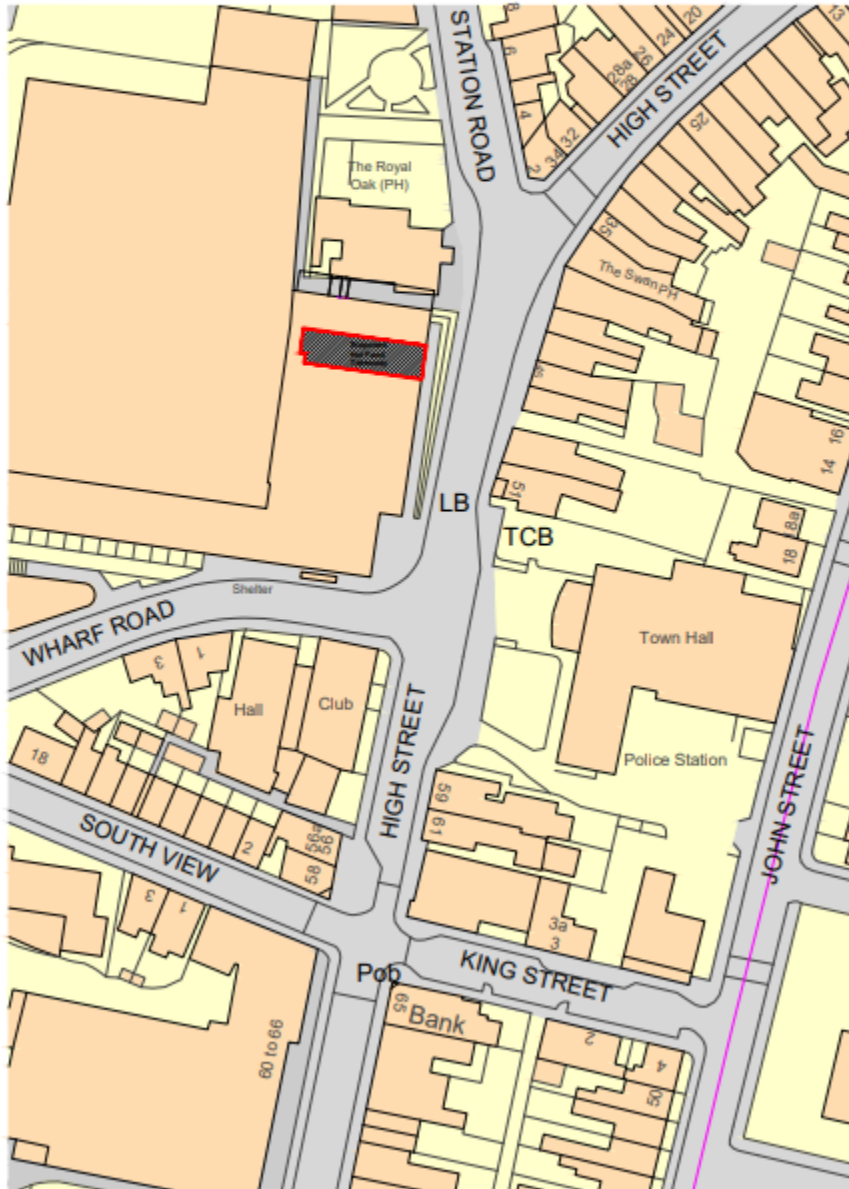
Unit B

High Street,

Biddulph

ST8 6AR

Site Area 114m² (0.011Ha)



Ordnance Survey, (c) Crown Copyright 2023. All rights reserved. Licence number 100022432