

**HIGH PEAK BOROUGH COUNCIL  
DEVELOPMENT CONTROL COMMITTEE**

**Date 16 September 2024**

<b>Application No:</b>	HPK/2024/0280	
<b>Location</b>	Tea on The Green, 3 Green Lane, Chinley	
<b>Proposal</b>	Variation of condition 3 in relation to HPK/2014/0381	
<b>Applicant</b>	Mr Dale Carroll	
<b>Agent</b>		
<b>Parish/ward</b>	Blackbrook	<b>Date registered</b> 05.07.24
<b>If you have a question about this report please contact:</b> Rosie Dinnen <a href="mailto:rosie.dinnen@highpeak.gov.uk">rosie.dinnen@highpeak.gov.uk</a>		

**1. SUMMARY OF RECOMMENDATION**

<b>Approve with Conditions</b>
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**1. REASON FOR COMMITTEE DETERMINATION**

- 1.1 The application is referred to Development Control Committee as it has generated significant local interest.

**2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS**

- 2.1 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.
- 2.2 The site is located centrally within Chinley and is within the Chinley Conservation Area.

**3. DESCRIPTION OF THE PROPOSAL**

- 3.1 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
- 3.2 The application seeks to vary condition 3 to the following hours:  
Monday to Thursday – 09.00-23.00  
Friday & Saturday – 09.00-23.30  
Sunday - 10.00-23.00

3.3 The premises have been recently purchased and is currently being renovated. The new owners intend to run the premises as a bistro hence planning permission is required to vary the hours of operation to allow late night use.

3.4 The application, plans, comments made by residents and the responses of the consultees can be found on the Council's website at <http://planning.highpeak.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=267519>

#### **4. RELEVANT PLANNING HISTORY**

4.1 The site has been subject to the following planning applications:

HPK/2014/0381 – Proposed Change of use from residential dwelling to café (A3) – Approved 07.10.24

HPK/2005/0722 – Change of use to residential – Approved 01.11.05

#### **5. PLANNING POLICIES RELEVANT TO THE DECISION**

##### **High Peak Local Plan 2016**

S 1 Sustainable Development Principles  
S 1a Presumption in Favour of Sustainable Development  
S6 Central Sub-area Strategy  
EQ 6 Design and Place Making  
CF1 Retail and Town Centres  
CF6 Accessibility and Transport

##### **National Planning Policy Framework**

Chapter 2: Achieving sustainable development  
Chapter 7: Ensuring the vitality of town centres

#### **6. CONSULTATIONS CARRIED OUT**

<b>Site notice</b>	Expiry date for comments: 08.08.24
<b>Neighbour letters</b>	Expiry date for comments: 08.08.24
<b>Press Notice</b>	Expiry date for comments: 08.08.24

##### **Chinley, Buxworth and Brownside Parish Council**

6.1 The parish council supports the principle of the village having another food outlet for food and drink and understands the need for the applicant to have the scope to make this business viable. Taking into consideration the concerns of nearby residents, they would have no objections to this application subject to the outlet operating on the basis

of closing 30 minutes earlier than has been requested i.e. until 10:30pm Monday to Thursday, until 11pm on a Friday and Saturday and until 10:30pm on a Sunday. Since the applicant has not applied for consent to change the use class, then it is understood the majority of customers will be diners and so shorter opening hours should not affect the trading potential too much.

### **Public Comments**

- 6.2 Comments have been submitted indicating support and objection to the proposals which are summarised.
- 6.3 8 letters/emails have indicated their support for the proposals for the following reasons:
- Premises is currently empty and new business will bring trade and local employment;
  - The use will benefit the community and will be a different place for locals and visitors to frequent in the evening;
  - Parking should not be an issue as premises is centrally located within a walkable distance.
- 6.4 12 letters/emails have been received indicating their objection to the proposals on the following grounds:
- Late night use which is not appropriate in a residential area.
  - Noise: concern about people leaving the premises causing disturbance and also the playing of amplified music would be disturbing.
  - Lack of parking: only three spaces outside the premises and parking in the area is already difficult.
  - Concerns about the use of the premises and whether it would be a bar rather than a bistro and whether a change of use planning application is required.
  - Any proposal should be sensitive to the conservation area setting, the proposal would have a detrimental impact on the character of the village.

### **Consultation Responses**

- 6.5 County Highways were consulted and raised no objection.
- 6.6 The Conservation Officer raises no objection to the proposal.
- 6.7 The licensing team has been consulted on the application and they have confirmed that the applicant has made a licensing application which is currently pending.
- 6.8 Environmental Health has confirmed no objection and recommend the following conditions:

1. All windows and external doors shall be kept closed after 21:00 hours, except for the immediate access and egress of persons.
2. Patrons permitted to temporarily leave and then re-enter the premises after 21:00 (e.g. to smoke), shall not be permitted to take open drinks or open glass containers with them.
3. Outside areas shall not be utilised after 21:00 hours on any day. Any tables or chairs (in any beer garden, or pavement area subject to license) shall be rendered unusable by 21:00 hours each day.
4. No bottles, glasses or similar items may be disposed of in outside receptacles after 21:00 hours.
5. Speakers shall not be attached to any party wall or to the ceiling of the premises. Any other wall mounted speakers shall be for incidental background music only.
6. Scheme of acoustic insulation: Prior to the development hereby approved being brought into use full details of a sound insulation scheme shall be submitted to and approved, in writing by the LPA. The scheme shall adequately demonstrate a system of sound insulation between commercial and residential uses, that is designed to achieve an airborne sound insulation value of no less than:
  - Airborne Sound Insulation 53 DnT,w+Ctr dB
 The approved scheme shall then be implemented prior to the permission being brought into use, to the written satisfaction of the LPA and maintained in use for the life of the development.
7. Recorded or live music - hours  
Recorded or live music or singing shall not be permitted on the premises after 10pm on any day.

## **7. POLICY AND PLANNING BALANCE**

### **Planning Policies**

- 7.1 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.
- 7.2 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.
- 7.3 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.

- 7.4 Local Plan policy S1a establishes a presumption in favour of sustainable development as contained at paragraph 11 of the NPPF.

### **Principle of Development**

- 7.5 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.
- 7.6 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 proposed use is a bistro which would be considered to fall with use class E b) *Food and drink which is mostly consumed on the premises*. As such no permission is required to change the use of the premises, which some local residents have queried in their submissions.
- 7.7 The application is seeking to vary the hours of operation which are currently restricted by planning permission HPK/2014/0381 which does not permit opening beyond 5pm on weekdays and 4pm on Saturdays and 3pm on Sundays. The variation of the hours would enable the premises to be open in the evening.

### **Amenity**

- 7.8 A key consideration in assessing an application seeking to vary hours of opening is the impact the proposal would have on residential amenity especially as the premises would be open in the evening.
- 7.9 The NPPF and local plan policy CF1 recognise that town and local centres need to diversify to ensure their vitality and viability. An evening economy is means of ensuring that town and local centres can remain active places in the evening which sustains their long term vitality and viability.
- 7.10 Chinley is a large village and currently has a limited number of places open in the evening in the village centre as some of the letters of support have indicated. The main public houses for the area are

located outside of Chinley at Whitehough and both the Paper Mill and Old Hall Inn have licenses for late night opening (Paper Mill until 01:00 every day and the Old Hall Inn until 00:30 on Sunday to Thursday and until 01:30 Friday & Saturday). The Lamb Inn at Chinley Head also has late night opening until midnight Monday to Saturday and on Sunday until 23:30.

- 7.11 Some local residents have raised concerns that the late night opening will be disturbing in terms of customers leaving the premises or the playing of amplified music which are valid concerns. However, the application is seeking permission to stay open until 23.30 on Fridays and Saturdays and 23.00 on other days which is not considered excessively late for a bistro/restaurant use, especially considered in the context of licensed hours for the public houses cited above which are open considerably later.
- 7.12 Whilst the premises has a licence to sell alcohol it is only permitted in planning terms to be a class E use. A public house is classified as sui generis use (use in its own right) that would need planning permission. The applicant has indicated that it is intended to be run as a bistro which would serve food as well as alcohol.
- 7.13 Environmental Health raises no objection and have recommended conditions that will help ensure any potential disturbance to residential properties is minimised. However, these are matters most appropriately controlled via the Environmental Protection Act rather than the planning system. These conditions have also been recommended by Environmental Health to the licensing application which is currently pending and are considered more appropriate to that procedure. The NPPG advises that conditions requiring compliance with other regulatory regimes will not meet the test of necessity.
- 7.14 The proposal is considered to satisfy the policy requirements of policy EQ6 with regards to residential amenity considerations.

### **Highways/Transportation**

- 7.15 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.
- 7.16 The site does not benefit from off-street parking and visitors to the premises and neighbouring shops have to make use of on-street parking in the vicinity of the site. There is a 40 minute parking restriction in front of the shopping parade on Monday to Friday (9am to 6pm) this is to stop people parking all day and encourages short term parking for people visiting the shops. Accordingly, restaurant

customers would be able to park in front of the shops on Green Lane after 6pm and at the weekends if they choose to drive.

- 7.17 The site is located centrally within Chinley and is therefore within walking distance for most residents and just a few minutes from Chinley railway station. It is also on a bus route 190 which provide linkages through to Buxton and Whaley Bridge during the day. Therefore, the site is considered sustainable and accessible by alternative means of transport.
- 7.18 The Highway Authority raises no objections. Therefore, the proposals are considered acceptable in terms of policy CF6 and the transport considerations.

## **8. PLANNING BALANCE & CONCLUSION**

- 8.1 For the reasons set out in this report, it is considered that the proposal to vary the hours of opening to allow evening trading is acceptable. The proposal complies with the NPPF and local plan policies and accordingly the application is recommended for approval.

## **9. RECOMMENDATIONS**

### **A. APPROVE subject to the following conditions:**

- 1. In accordance with plans (approved under HPK/2014/0381)**
- 2. The premises shall only be open for business between the hours of 09.00 to 23.00 Monday- Thursday, 09.00 to 23.30 on Fridays and Saturdays and 10.00 to 23.00 on Sundays.**

**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 Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.**

This recommendation is made following careful consideration of all the issues raised through the application process and thorough discussion with the applicants. In accordance with Paragraph 38 of the NPPF the Case Officer has sought solutions where possible to secure a development that improves the economic, social and environmental conditions of the area.

### **Site Plan**

