



Report Reference Number: 2020/0442/S73

To: Planning Committee
Date: 23rd September 2020
Author: Rebecca Leggott (Senior Planning Officer)
Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2020/0442/S73	PARISH:	Cawood Parish Council
APPLICANT:	Mrs Amy Weeks	VALID DATE:	3rd June 2020
		EXPIRY DATE:	29th July 2020
PROPOSAL:	Section 73 to vary conditions 02 (opening hours), 03 (extraction) & 04 (plans) of approval 2015/1230/RTR Prior approval for the change of use from use class A1 (Retail) to both A1 (Retail) and A3 (Cafe) uses		
LOCATION:	Post Office Store 2 High Street Cawood Selby North Yorkshire YO8 3TH		
RECOMMENDATION:	APPROVE		

This application has been brought before the Planning Committee as the application is a minor application where 10 or more letters of representation have been received which raise material planning considerations and where Officers would otherwise determine the application contrary to these representations.

1. INTRODUCTION AND BACKGROUND

Site and Context

- 1.1. The application site lies to the centre of Cawood adjacent the crossroads where Thorpe Lane, Sherburn Street, Rythergate and the High Street meet. The application site is therefore located within the defined development limits of Cawood, which is a Designated Service Village as defined within the Core Strategy. The application site is also located within the Cawood Conservation Area and Flood Zone 3.
- 1.2. It should be noted that the proposals relate to an existing Café (known as The Pickled Postie) given permission via planning reference, 2015/1230/RTR for prior approval for the change of use from use class A1 (Retail) to both A1 (Retail) and A3 (Cafe) uses.

The Proposal

1.1. The proposals are to vary conditions 02 (opening hours), 03 (extraction) & 04 (plans) of approval 2015/1230/RTR, which was a 'prior approval' for the change of use from use class A1 (Retail) to both A1 (Retail) and A3 (Cafe) uses.

1.2. These changes would allow for the opening hours (condition 2) to be amended from:

- 7:30 – 19:00 Monday to Friday;
- 7:30 – 15:00 Saturday; and
- 10:00 – 15:00 Sunday.

To:

- 7:30 – 19:00 Monday to Friday; and
- 08:00 to 15:00 Saturday and Sunday.
- For no more than 26 nights per annum in total (on either Friday or Saturday's only) opening hours to be extended to 23:00.

1.3. Other changes include the introduction of an internal air extraction unit (condition 3) and changes to the internal layout (condition 4-plans), specifically the moving of the kitchen away from neighbouring properties. Furthermore, an external extraction unit is proposed to be added.

Relevant Planning History

1.4. The following historical application is considered to be relevant to the determination of this application.

- 2016/0394/CAR, Application for inclusion on the Community Asset Register, Decision: PER, Decision Date: 14-DEC-16
- 2015/1230/RTR, Prior approval for the change of use from use class A1 (Retail) to both A1 (Retail) and A3 (Cafe) uses, Decision: A1PER, Decision Date: 19-JAN-16
- 1982/0001/FUL, Proposed alterations and repairs at, Decision: PER, Decision Date: 14-JUL-82

2. CONSULTATION AND PUBLICITY

2.1. **Parish Council** – It is noted that two letters have been received from Cawood Parish Council.

The first letter received on the 27th June 2020 raises objections to the proposed development. In summary concerns are raised regarding the following:

- Plans: The existing plans show the 2015 layout rather than the current layout.
- Noise: Concerns for noise and suggestions that a silencer should be installed, though it is acknowledged that the report submitted states that a silencer cannot be fitted.
- Odour: concerns for smells especially in relation to evening tapas.
- Waste: concerns that increased dining events will produce more waste which may not be able to be dealt with by the current fortnightly waste collection service.

- Vehicular access: Concerns regarding the poor vehicular access to the site particularly given restricted access to the rear.
- Consultations: Concerns that the public consultations were only posted on June the 23rd with a closing date of June 30th. Furthermore, most residents to the rear of the property were not consulted.

Officer Note: The site notice was erected on the 23rd June with a period of 21 days for comments to be received. Whilst, SDC had consulted all neighbouring properties adjoining the red line boundary. Given the issues raised SDC added a further 11 properties to the consultation list.

The second letter from Cawood Parish Council received on the 17th July offers support the proposals. In summary, this states that the Pickled Postie plays a key role in the life of the village and trust that the planning issues can be resolved satisfactory whilst having regard to the immediate neighbours.

- 2.2. **NYCC Highways** – NYCC Highways have raised no objections to the proposed development.
- 2.3. **Environmental Health** – The Environmental Health Officer has raised no objections to the proposed development subject to a condition relating to noise levels.
- 2.4. **Historic Environment Officer** – NYCC’s Principle Archaeologist has raised no objection to the proposed development.
- 2.5. **Conservation Officer** – The Conservation Officer has raised no objections to the proposals in principle. However, has stated that should the proposed flue be visible from Thorpe Lane, this would introduce a detracting feature into the Conservation Area. However, if it is hidden from view there will be limited impact on the Conservation Area, though there would still be an impact on the building itself.
- 2.6. **Neighbour Summary** - All immediate neighbours were informed by letter and a site notice was erected. Resulting in 45 letters of support and 17 letters of objection being received.

In summary the letters of objection raise concerns for:

- Residential Amenity: noise, odour, hours and waste.
- Highway Safety: restricted access to the rear, concerns for toddlers’ cats and dogs running out of gardens to the rear and concerns for intoxicated customers on the road causing accidents.
- Impact on the mental health of neighbouring properties.
- The rear door of the application site opening onto the backs of neighbouring properties gardens.
- Do not consider the café to be essential to the village of Cawood.
- Lack of a flood plan.
- Lack of comments from the conservation officer and impacts on listed buildings.
- Concerns for fire safety.
- Light pollution.
- Concerns that the plans are in correct re proposed and existing.

In summary the letters of support state:

- The Pickled Postie is an asset to the village of Cawood.
- Provides essential services for the village for including keeping the elderly and vulnerable fed throughout the pandemic and providing services for those who do not drive.
- The Pickled Postie boosts morale for residents.
- Support for the extended hours for people to have a wider window to access facilities such as when people finish work.
- Neighbouring properties are not impacted by intolerable noise or smells and have not been disturbed by the supper events held in the café.
- The provision of an extraction system would have a positive impact on neighbouring properties.
- Deliveries to the rear of the properties via the shared access do not impact on neighbours.
- The proposed amendments to the original application are vital to support the existing business.

2.6 It should be noted that a number of objections have been received from places beyond the village of Cawood such as York, Barlow, Chapel Haddlesey. Given these objectors live outside of the locality, limited weight has been applied to the comments provided from these specific letters of representation.

3. SITE CONSTRAINTS

Constraints

3.1. The site is located within the defined development limits of Cawood and is also located within the Cawood Conservation Area and Flood Zone 3.

4. POLICY CONSIDERATIONS

4.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making.

4.2. The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.

4.3. On 17 September 2019 the Council agreed to prepare a new Local Plan. The timetable set out in the updated Local Development Scheme envisages adoption of a new Local Plan in 2023. Consultation on issues and options would take place early in 2020. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies.

4.4. The National Planning Policy Framework (February 2019) (NPPF) replaced the July 2018 NPPF, first published in March 2012. The NPPF does not change the status of an up to date development plan and where a planning application conflicts with such a plan, permission should not usually be granted unless material considerations indicate

otherwise (paragraph 12). This application has been considered against the 2019 NPPF.

4.5. Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

“213.existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

Selby District Core Strategy Local Plan

4.6. The relevant Core Strategy Policies are:

- SP1 – Presumption in Favour of Sustainable Development
- SP2 – Spatial Development Strategy
- SP4 – Management of Residential Development in Settlements
- SP5 – The Scale and Distribution of Housing
- SP9 – Affordable Housing
- SP15 – Sustainable Development and Climate Change
- SP18 – Protecting and Enhancing the Environment
- SP19 – Design Quality

Selby District Local Plan

4.7. The relevant Selby District Local Plan Policies are:

- ENV1 - Control of Development
- ENV2 - Environmental Pollution and Contaminated Land
- ENV25 - Development in Conservation Areas
- T1 - Development in Relation to Highway
- T2 - Access to Roads

5. APPRAISAL

5.1. The main issues to be taken into account when assessing this application are:

- Principle of Development
- Design and Impact on the Character and Appearance of the Conservation Area
- Impact on Residential Amenity
- Highway Safety
- Provision of Services

Principle of Development

5.2. The proposals are for a Section 73 to vary conditions 02 (opening hours), 03 (extraction) & 04 (plans) of approval 2015/1230/RTR - Prior approval for the change of use from use class A1 (Retail) to both A1 (Retail) and A3 (Cafe) uses.

5.3. Schedule 2, Part 3 (Changes of Use) Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 is relevant as this relates to

development consisting of a change of use of a building from a use falling within Class A1 (shops) to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order, and building or other operations for the provision of facilities for ventilation and extraction (including the provision of an external flue), and the storage of rubbish reasonably necessary to use the building for a use falling within Class A3 (restaurants and cafes) of that Schedule.

- 5.4. Whilst it is considered that the principle of development is established by 2015/1230/RTR approval, consideration of the criteria set out within Class C is still necessary to ensure the changes proposed still fall within the allowances of Class C and for it to be considered under Section 73.
- 5.5. In respect of paragraph C.1, the overall floor space of the Café use would not exceed 150 meters squared, the application site is not located within a SSSI, safety hazard area or military explosives storage area, the site does not contain a scheduled monument and is not a listed building. Therefore, the proposals would still comply with the initial criteria and are therefore acceptable in principle. However, proposals that are acceptable in principle are still required to be assessed against the criteria set out within paragraph C2. These criteria are considered in the below sections of the report.

Design and Impact on the Character and Appearance of the Conservation Area

- 5.6. The key considerations in respect of the design and impact on the character and appearance of the area having regard to the criteria set out within Schedule 2, Part 3 (Changes of Use) Class C of the GDPO are, siting, design and appearance.
- 5.7. Relevant policies in respect to the impact of development on the Cawood Conservation Area and the character and form of the area include Policy ENV1 (1), (4) and (5) and ENV25 of the Selby District Local Plan, and Policies SP18 and SP19 of the Core Strategy.
- 5.8. Significant weight should be attached to the Local Plan Policy ENV1 as it is broadly consistent with the aims of the NPPF. Relevant policies within the NPPF, which relate to general design principles, include paragraphs 53, 124, 127, 128, 130 and 131.
- 5.9. In respect of the proposed variation to condition 02 (opening hours) it is not considered that this would impact on either siting, design or appearance of the area.
- 5.10. In respect of the proposed variation to condition 03 (extraction), a new extraction unit is proposed. It is noted that the extraction unit would mostly be contained within the existing building, with 1 metre of the duct protruding from the rear roof slope. It is noted that this would not exceed the highest part of the roof and therefore would not be seen from public vantage points such as Thorpe Lane, Sherburn Street, Rythergate and the High Street.
- 5.11. However, it is noted that the part of the duct protruding from the rear roof slope would be viewable from the rear gardens of the 4-20 High Street, however this is not regarded as significant enough in scale as to warrant a refusal based on harm to the character of the area.
- 5.12. In respect of the proposed changes to the layout of the café. The majority of these changes are internal, with the exception of the change of the roller doors for the garage, to a door and a window opening to the rear east elevation. In considering these changes given these would replace an existing opening and would be located to

the rear of the property. It is not considered that these would have any impacts in respect of siting, design and appearance.

- 5.13. The Conservation Officer commented on the application and has raised no objections to the proposals in principle. However, has stated that should the proposed flue be visible from Thorpe Lane, this would introduce a detracting feature into the conservation area. However, if it is hidden from view it would seem to me that there will be limited impact on the conservation area, though there would still be an impact on the building itself.
- 5.14. From a site visit and having received amended plans the flue would protrude approximately 4cm higher than the ridge of the roof. Therefore, it is noted that there would be some limited views of the flue from the highway, Thorpe Lane. However, in considering the limited harm that the view of the flue may cause and weighing this up against the public benefits associated with diversifying the existing business and the services provided to the residents of Cawood, this is considered to outweigh any such harm.
- 5.15. Overall, in considering the proposed amendments to permission reference, 2015/1230/RTR, the proposals are not considered to be unduly intrusive or dominant in the street scheme and would not have any adverse effects in respect of the siting, design and appearance of the proposals. Therefore, the proposals are acceptable in respect of criterion C2. (g) of Schedule 2, Part 3 (Changes of Use) Class C of the GDPO

Impact on Residential Amenity

- 5.16. The key considerations in respect of impacts on residential amenity having regard to the criteria set out within Schedule 2, Part 3 (Changes of Use) Class C of the GDPO are, noise, odour, waste and hours.
- 5.17. The comments received from the Parish Council and public representations relating to residential amenity are perhaps the most significant aspects of the application members should consider, in particular the late evening opening and associated noise, odour and waste.
- 5.18. In respect of noise impact or the extraction system, it is noted that a noise assessment has been submitted and the plans and drawing show a silencer would be installed on the extraction unit. Comments have been sought from Environmental Health (EHO), who have raised no objections to the proposed development subject to a noise condition requiring compliance with British Standard 4142: 2014: Methods for rating and assessing industrial and commercial sound, and/ or its subsequent amendments.
- 5.19. In respect of odour impacts, it is noted that an odour assessment has been submitted. Furthermore, comment have been sought from Environmental Health who have raised no objections to the proposed development, in respect of odour impacts. Given the proposals would introduce an extraction unit, which would protrude from the roof and no objections have been raised by the EHO the proposals are considered to be acceptable in respect of odour impacts.
- 5.20. In respect of waste, it is not considered that the proposals would have any additional significant adverse impacts in respect of waste collection. Therefore, the proposals are considered acceptable in this respect.

5.21. In respect of the proposed change to opening hours, which include late evening opening for event nights, this will inevitably increase the potential for more noise and disturbance for specific periods within the calendar year. This generally stems from occupants entering and leaving the premises late in an evening. However, it should be noted that the majority of the comings and goings would be via the main entrance of the property fronting the busy crossroads and other commercial properties. Environmental Health have been consulted on the proposed development and have raised no objections to the change in hours. This includes the extended opening hours on Friday and Saturday nights to no more than 26 nights per year in total for until 23:00. Overall, it is considered that the change in hours is acceptable and can be secured by way of a suitably worded condition.

5.22. Subject to aforementioned conditions, it is considered that the proposals are acceptable in respect of noise, odour, waste of hours. Therefore, the proposals are acceptable in respect of criterion C2. (a), (b), (c) and (d) of Schedule 2, Part 3 (Changes of Use) Class C of the GDPO

Highway Safety

5.23. The key considerations in respect of highway safety having regard to the criteria set out within Schedule 2, Part 3 (Changes of Use) Class C of the GDPO are, transport and highways impacts of the development.

5.24. It is noted that the existing site has no available parking shown and the proposed changes will have no further impact on any parking provision for the premises.

5.25. NYCC Highways have been consulted on the proposed development and have raised no objections to the proposed development.

5.26. Overall, it is considered that the proposals are acceptable in respect of highway safety. Therefore, the proposals are acceptable in respect of criterion C2. (e) of Schedule 2, Part 3 (Changes of Use) Class C of the GDPO.

Provision of Services

5.27. The key considerations in respect of the provision of services regard to the criteria set out within Schedule 2, Part 3 (Changes of Use) Class C of the GDPO are the impacts on the loss of existing floor space as A1 or the sustainability of the shopping area.

5.28. The proposals include varying conditions 04 (plans) of approval 2015/1230/RTR which previously controlled the layout of the premises. These changes include a general reconfiguration of the ground floor to the plans originally approved. The key change proposed would be the conversion of the garage to the south of the site to a kitchen area and store. This would not have any significant impacts on the floor space used as A1 retail.

5.29. In considering the additional floor space to be changed to A3 (café) it is not considered that this would impact on the existing A1 (retail) use as a post office. Furthermore, given the proposals are for amendments to the existing A3 (café) permission it is not considered that there would be any additional impacts in respect of the provision of services in Cawood on a whole.

5.30. Overall, it is considered that the proposals are acceptable in respect to any impacts on the provision of services within Cawood. Therefore, the proposals are acceptable in respect of criterion C2. (f) of Schedule 2, Part 3 (Changes of Use) Class C of the GDPO

6. CONCLUSION

6.1. The application is for a section 73 to vary conditions 02 (opening hours), 03 (extraction) & 04 (plans) of approval 2015/1230/RTR Prior approval for the change of use from use class A1 (Retail) to both A1 (Retail) and A3 (Cafe) uses.

6.2. It is considered that the proposed amendments to the opening hours, introduction of a ventilation system and changes to the internal layout are considered to be permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 3 (Changes of Use), Class C. Therefore, the proposal is considered acceptable and there is no justification to request a full planning application for the development subject to appropriate planning conditions.

7. RECOMMENDATION

7.1. This application is recommended to be GRANTED subject to the following conditions:

01. The use hereby approved shall only be open for customers between the following hours:

- 7:30 – 19:00 Monday to Friday;
- 08:00 to 15:00 Saturday and Sunday; and
- For no more than 26 nights per annum in total on Friday's or Saturday's, opening hours to be extended to 23:00.

The site shall not be open to customers at any other time and a logbook should be kept of the dates which the café is open until 23:00 and made available to Selby District Council upon request.

Reasons:

In the interests of residential amenity, having had regard to Policy ENV1 of the Selby District Local Plan.

02. Should the cooking of food become an integral business activity, a revised scheme containing full details of arrangements for internal air extraction, odour control, and discharge to atmosphere from cooking operations, including any external ducting and flues, shall be submitted to and approved in writing by the local planning authority. The works detailed in the approved scheme shall be installed in their entirety before the use hereby permitted is commenced. The equipment shall thereafter be maintained in accordance with the manufacturer's instructions and operated at all times when cooking is being carried out unless otherwise agreed beforehand in writing with the local planning authority.

Reason:

In order to protect the amenity of the neighbouring properties.

03. The development hereby permitted shall be carried out in accordance with the plans/drawings listed below:

- 2531-01-02 - Location Plan
- 2531-01-03 - Planning Layout
- 2531-01-01 - Existing Ground Floor Plan
- Lay 01 – Proposed Ground Floor Plan
- Rev 2020-08-08 Layout1 (Proposed elevation and cross section of the ventilation system)

- 08-08-2020 – Pickled Postie Specification

Reason:

For the avoidance of doubt.

04. The cumulative level of sound from all plant and equipment associated with the proposed development, when determined externally under free-field conditions, shall not exceed the representative background sound level at nearby sensitive receptors. All noise measurement/predictions and assessments made to determine compliance shall be made in accordance with British Standard 4142: 2014: Methods for rating and assessing industrial and commercial sound, and/or its subsequent amendments.

Reason:

In order to protect the amenity of the neighbouring properties.

8 Legal Issues

8.1 Planning Acts

This application has been determined in accordance with the relevant planning acts.

8.2 Human Rights Act 1998

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

8.3 Equality Act 2010

This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However, it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

9 Financial Issues

Financial issues are not material to the determination of this application.

10 Background Documents

Planning Application file reference 2020/0442/S73 and associated documents.

Contact Officer: Rebecca Leggott (Senior Planning Officer)

Appendices:

Appendix 1 – 2020/0442/S73 Site Photo's