

Application Recommended for Approval

APP/2017/0142

Hapton with Park Ward

Full Planning Application

Proposed change of use to mixed use of A1 shop and hot food take-away (A5)
46 CHURCH STREET, PADIHAM

Background:

The property has been vacant for a number of months; the applicant states that the property has an existing A1 use, and has previously operated as a take-away following planning consent in 1982. The proposal is to use the property as delicatessen (mainly A1) during the day providing hot and cold food and a take-away service (A5 use) in the evenings. The applicants originally wanted to have a take-away delivery service in the evenings; however this has now been deleted from the application following discussions with the applicant and Highways.

Objections have been received.

Relevant Policies:

Burnley Local Plan Second Review

CF13 - Restaurants, cafes, public houses and hot food take-aways

GP1 - Development within the Urban Boundary

GP3 - Design and Quality

PTC6 - Gateways and Throughroutes

TM8 - Quality bus routes

GP7 – New development and the control of pollution

Site History:

81/0534 – change of use from vacant shop/ dwelling to take-away with eating in facilities - 11.30am-2pm and 4.30pm-11.30pm – refused

82/0008 – retention of use as a take-away 11.30am-10.30pm – approved for a temporary period of 1 year

82/0550 – retention of use as take-away 11.30am-10.30pm – c/c

82/0551 – shop sign – c/c

86/0678 – change of use take-away from to restaurant – refused

97/0356 – variation of condition 2 attached to 82/0550 to allow the hot-food take-away to open until 11.30pm - refused

Consultation Responses:

Highway Authority – There is obviously an issue relating to the business encouraging / attracting parking close to the site in contravention of the existing waiting restrictions and the effect that this stopping etc. will have on the amenity of the local residents, however during the daytime the proposal is to open a delicatessen which I would consider to have no significant impact over and above that which existed for the former business. The business model however is to extend the opening into the evening with a pizza takeaway/ delivery service, again, whilst this would raise no concerns from a highways perspective the applicant also proposes to operate a delivery service. There are no off street parking facilities in this area and any on-street

parking whilst it is available it is limited. This would encourage operational parking on the existing waiting restrictions which cannot be condoned.

On the basis of the application submitted I would raise no objection to the proposal but would recommend that for highway safety reasons, the delivery service option be removed from any permission that may be granted.

The proposed delivery service has now been deleted from the application following discussions with the applicant.

Environmental Health – We wish to raise the following points,

1. I refer to legislation 'Clean Air Act 1993' - the premises are located in an area covered by a smoke control order (smokeless zone), this means that only authorised fuel (smokeless fuel) can be burned on appliances connected to a chimney. Defra provide a list of authorised fuel; wood is not included on the list and therefore cannot be used at 46 Church Street. There are exemptions to this rule if the appliance has been given exemption status by Defra to burn an alternative fuel to the listed authorised fuel.

The information provided for the intended pizza oven is not listed on the Defra website as an exempted appliance and therefore must only burn authorised fuel.

On this basis I suggest to include a condition stating:

Compliance with the Clean Air Act 1993 must be adhered to at all times.

To be added as a note as it doesn't meet the standard conditions tests.

2. There are no details provided to enable consideration of odour and noise control from the extraction system, therefore the following comment is relevant and should be considered for inclusion as a condition:

No development shall take place until a scheme of odour suppression has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a plan of the proposed ventilation system detailing noise suppression and odour abatement measures, the information should include the location and details of the filters and fans and the manufacturer's recommendations concerning frequency and type of maintenance.

Reason: In order to avoid odour nuisance to the occupiers of adjacent properties

Ensure that extraction system and ventilation is designed to meet requirements of relevant legislation including the Gas Safety (Installation and Use) Regulations 1998. More information can be found in the HSE's document Catering Information Sheet No 10, or the applicant can contact a member of the Food/Health & Safety team if required.

To be added as a note.

Neighbouring residents – Four objections received on the following grounds;

- It will make it impossible for the residents in surrounding properties to park. The parking situation is already at breaking point due to other hot-food take-aways a club and other shops in the vicinity.
- It will create more of a hazard for pedestrians and other road users. It was only a couple of months ago that a pedestrian was knocked down by a car trying to cross over the busy road.
- When it was a sandwich shop lorries used to park on the double yellow lines whilst the drivers nipped in to the shop this will happen even more which will be a hazard.
- Concerns about unsociable behaviour, with youths gathering around and noise and mess. Will keep the children awake in the evening and create a problem with their sleeping patterns.
- People will go to the take-away after going to the pub and cause a disturbance.
- Object to the business having any illuminated signage (but doesn't object to the proposed use) as it could cause a distraction (dentists on opposite side of road).
- Smells and fumes will be a problem.

Planning and Environmental Considerations:

The property is within a mixed residential / commercial area of Padiham being located on the corner of Church Street and Alma Street; it is a corner terraced property which is locally listed and within Padiham Conservation Area. The property is located just outside the Church Street area of 'Padiham Town Centre' (as designated by the Burnley Local Plan Second Review).

The applicant states that the property has an existing A1 use and has previously been used as a take-away. There is an existing flat above the shop, which is accessed through the shop, providing living accommodation in conjunction with the ground floor use; information provided by the applicant states that the flat will be occupied by the business manager. Permission was granted for a hot food take-away for a temporary period of 1 year in 1982 (82/0008) and then on a permanent basis (82/0550) with opening hours 8am to 10.30pm.

The proposal is to change the use of the property to a hot food take-away, the application originally included home delivery (this has now been deleted from the application following discussions with the applicant, as the Highway Authority had concerns with regard to this element of the proposals); the property will continue to operate as a delicatessen, providing hot and cold food throughout the day with a take-away operating in the evenings. The proposed opening hours are 8am until 10.30pm every day including Bank Holidays.

The main considerations are whether a change of use to a hot food take-away in this location is acceptable in particular in terms of residential amenity and highway issues.



Alma Street

46 Church Street



Alma Street

46 Church Street

Residential Amenity

Permission was granted in 1982 for a hot food take-away at the property, initially this was for a temporary period of one year and then a further application was granted on a permanent basis (8am until 10.30pm). The applicant states that in the 1980's and 1990's the shop was used as a hot-food take-away and that prior to this application the premises have been used for the sale of cold sandwiches, hot pies, breakfasts and other hot food for consumption on site (2 tables within the property) or take-away.

The proposed operation of the site is for a delicatessen which will open from 8.30am providing hot and cold foods, sandwiches, breakfasts, pizzas etc. through until early evening, with pizza take-away operating through until 10.30pm. Whilst it is clear that the proposed use has been considered acceptable in the past, we must still consider the scheme against the most up to date policies.

The main Local Plan policy relevant to this application is CF13 – Restaurants, cafes, public houses and hot-food take-aways.

LOCAL PLAN POLICY CF13 – RESTAURANTS, CAFES, PUBLIC HOUSES AND HOT FOOD TAKEAWAYS states that proposals for restaurants, cafes, hot food shops (Use Class A3) and public houses will be permitted when the proposal:

(a) is, wherever possible, located in, or adjacent to, a defined town, district or local centre, or within one of the named settlements listed in General Policy GP2: “Development in Rural Areas”. *(The property is located adjacent to the defined Padiham Town Centre area);*

(b) is accessible by walking, cycling and public transport *(The property is located on a main route through Padiham town centre which is a bus route and there is a bus stop close by. The property is also accessible by walking and cycling ([the property is adjacent to a residential area])).*

(c) includes an adequate and effective fume and odour control system *(The existing extraction system is vented through the chimney located above the existing cooking ranges. It is proposed to install a new extraction system utilising this system – further details would be required if the application is approved);*

(d) can be accommodated without detriment to the free flow of traffic or residential amenity *(The proposed opening hours are the same as was previously approved for a hot-food take-away at the premises. There are double yellow lines outside the property, however parking is available on the opposite side of Church Street. Parking appears to be limited for residents in the area; the Highway Authority have no objections however to the proposals on highway grounds. With regard to noise and disturbance, it is likely that there will be some noise and disturbance from people coming and going to the hot food take-away especially in the evenings; the application that was previously approved was granted initially for a one year period in 1982 and was then granted on a permanent basis. It would therefore be difficult to refuse the application on this basis as permission has previously been granted for the same opening hours, and especially as the existing A1 is unrestricted in terms of opening times.*

(e) includes measures to reduce the impact of noise and litter *(the applicant proposes to locate a litter bin outside the premises during opening hours for litter. The extraction system is to be designed to minimise possible noise);*

(f) will not create an unacceptable concentration of non-retail uses in Burnley and Padiham Town Centres in accordance with policies BTC1, BTC2, PTC1 or PTC3, or more than 30% in any other centre or frontage *(The property is located on the periphery of the Padiham Town Centre boundary and has been used for the sale of hot food for many years, there is a mixture of uses in this block which fronts Church*

Street (no.44 dwelling, 42 butchers, 40 osteopaths, 38 dwelling and 34/36 working men's club), which constitutes more than 30% non-retail uses in the block; the precedent has already been set however when permission was granted in 1982 for the hot-food take-away and that this has an existing A1 use); and

(g) complies with Local Plan Environment Policy E25 - "Shop Fronts" (*There are no changes proposed to the external appearance of the property*).

Highway issues

There are double-yellow lines on the road (Church Street) outside the premises. The Highway Authority have stated that from a highway safety point of view, there have been no accidents in the vicinity of the premises and the former use would suggest that parking/ waiting on the double yellow lines did occur. The Highway Authority state that during the daytime the proposal is to open as a delicatessen which would have no significant impact over and above that which existed for the former business. The proposal is to have a pizza take-away in the evenings which the Highway Authority say would raise no concerns from a highway perspective; they did have concerns in respect of the proposed delivery service, however this has now been removed from the application.

Residents in the area state that there is already an issue with parking in the area and there are double yellow lines on some of the streets in the area. There is parking available outside the shops on the other side of the road, however it is likely that some people going to the take-away will park on the double yellow lines outside the premises on Church Street.

Conclusion

Although inevitably there would be some effect on residential amenity due to people and cars coming and going, the impact is unlikely to be sufficiently harmful so as to warrant refusal of the proposal (the NPPF test is "severe harm"). We must also consider that permission has previously been given for use of the property as a hot food take-away (opening until 10.30pm) which would also make it difficult to sustain a reason for refusal of this application. On this basis, the application is recommended accordingly.

Recommendation:

Grant subject to the following conditions:

Conditions:

1. The development must be begun within three years of the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan received 20 Mar 17.
3. No development shall take place until a scheme of odour suppression has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a plan of the proposed ventilation system detailing noise suppression and odour abatement measures, the information should include

the location and details of the filters and fans and the manufacturer's recommendations concerning frequency and type of maintenance.

4. The main use of the premises shall remain as a daytime delicatessen /sale of hot food operating on any day. Any late evening opening of the premises after 1800 hrs shall remain ancillary to the main daytime use as a delicatessen / sale of hot food and not operate independently.
5. No delivery service shall operate from the premises.
6. The application premises shall not operate between 10.30pm and 8.00am on any day.

Reasons:

1. Required to be imposed by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. To ensure the development is implemented in accordance with the approved plans and to avoid ambiguity.
3. In order to avoid odour nuisance to the occupiers of adjacent properties and in accordance with policies CF13 and GP7 of the Burnley Local Plan Second Review.
4. To retain the daytime use of the premises in the interests of the vitality and viability of Padiham town centre.
5. In the interests of highway safety and residential amenity and in accordance with policy CF13 of the Burnley Local Plan Second Review.
6. In the interests of residential amenity and in accordance with policy CF13 of the Burnley Local Plan Second Review.

LAB