

Change of use to restaurant (A3) with hot food takeaway sales (A5) and retention of flue to rear elevation

Report Item No  
A6

2 Borough Street Castle Donington Derby DE74 2LA

Application Reference  
16/00902/FUL

Applicant:  
Mr Sahaq Mohammad Nasser

Date Registered:  
15 July 2016

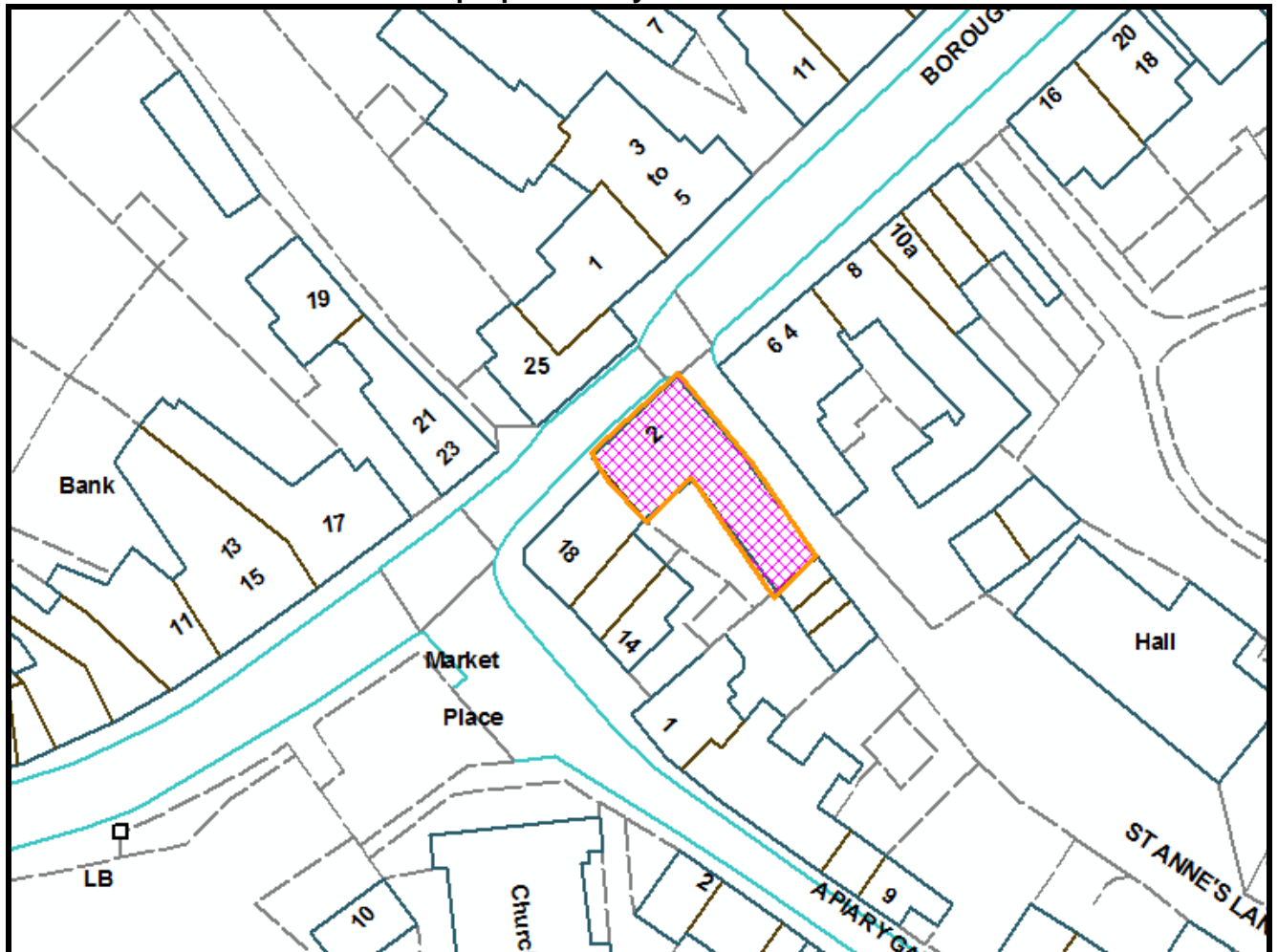
Case Officer:  
Hannah Exley

Consultation Expiry:  
13 July 2017

Recommendation:  
PERMIT

8 Week Date:  
9 September 2016  
Extension of Time:  
None Agreed

Site Location - Plan for indicative purposes only



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## **EXECUTIVE SUMMARY OF PROPOSALS**

### **Call In**

The application is brought before the Planning Committee as the application has been called in by Councillor Saffell for the following reasons:

- the use of the corner doorway at the junction of Borough Street and St. Anne's Lane is dangerous;
- there is already very little evening parking capacity on this part of Borough Street due to an existing nearby restaurant;
- the proposed flue would be harmful to the character and appearance of the Conservation Area and the re-use of the building for a business use is not an overriding public benefit.

### **Proposal**

Planning permission is sought for a change of use of the premises at 2 Borough Street, Castle Donington to a restaurant (A3 use) with hot food takeaway sales (A5) and the retention of a flue installed on the rear elevation of the building.

### **Consultations**

Six letters of representation have been received raising objection to the proposals. Castle Donington Parish Council raise objection to the application. All other statutory consultees have raised no objections subject to the imposition of conditions on any permission granted.

### **Planning Policy**

The site lies within Limits to Development as defined by the Policy Maps to the adopted and submitted Local Plans and is within the Local Centre of Castle Donington. The application has been assessed against the relevant policies in the NPPF, the adopted and submitted Local Plans and other relevant guidance.

### **Conclusion**

The site lies within Limits to Development within the Local Centre of Castle Donington where the proposed use is considered to be acceptable in principle. The scheme does not give rise to any significant impacts regarding residential amenity, design or highway safety and would not undermine the attractiveness, vitality or viability of the existing local shopping centre. The development would not adversely impact on the setting of the nearby listed building and it is considered that the test of "less than substantial harm to the setting of the Conservation Area" detailed at paragraph 134 of the NPPF would be outweighed by the public benefits of the proposal in this instance. The proposal, therefore, is considered to comply with paragraph 134 of the NPPF and would accord with sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. There are no other relevant material planning considerations that indicate planning permission should not be granted. Accordingly the application is recommended for planning permission, subject to the imposition of planning conditions.

### **RECOMMENDATION - PERMIT, subject to conditions.**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

### 1. Proposals and Background

Planning permission is sought for a change of use of the premises at 2 Borough Street, Castle Donington to a restaurant (A3 use) with hot food takeaway sales (A5) and the retention of a flue installed on the rear elevation of the building. Internal alterations that have been undertaken include a serving counter, giving the interior of the building the appearance of a takeaway but the applicant has confirmed that the premises will be operated as a restaurant with hot food takeaway sales.

With the exception of the flue, no other external alterations to the building are required. Repair works have recently been undertaken to the shop front but these were repair works and therefore, did not require planning permission.

The subject property has two storeys and was last occupied by a restaurant (A3 use), which appears to have ceased trading in 2016. It is situated on the western side of Borough Street at the junction with St. Anne's Lane, with No.18 Market Street (to the south) which is occupied by a café (A3 use) and No. 4 Borough Street to the north which is occupied as a barbers shop (A1 use).

The subject property is located within Limits to Development and is located within a 'Local Centre' in the adopted and submitted Local Plans.

The site also lies within the Castle Donington Conservation Area and the application property is identified within the Conservation Area Appraisal and Study Document as a building of interest which makes a positive contribution to the character and appearance of the Conservation Area.

#### Relevant Planning History:

17/00345/ADC - Display of non-illuminated fascia signage (Permitted)

### 2. Publicity

30 no neighbours notified (19 January 2017).

Site Notice displayed 3 August 2016.

Press Notice published Derby Evening Telegraph 15 March 2017.

### 3. Summary of Consultations and Representations Received

The following summary is provided.

**Castle Donington Parish Council** raised objection on the following grounds:

- the development is going to be predominantly takeaway;
- concern that the works being undertaken do not reflect the submitted drawings;
- the extraction equipment blocks the window to a residential unit impeding emergency escape;
- impact of fumes on neighbouring properties;
- light pollution - style and type of lighting will be visually intrusive to residential properties;
- concern about increased litter being created and the adverse impact this will have on the village centre and Conservation Area;
- the days/hours of use will be longer than the previous restaurant use;
- concern about people congregating and associated noise and disturbance;

**Leicester County Council - Highways** refers the Council to Standing Advice but following the request of officers the County Highways Authority has provided bespoke advice for this proposal.

**Environmental Protection** has no environmental observations.

### **Third Party Representations**

6 Letters of neighbour representation have been received, raising objection on the following grounds:

#### *Use*

- the internal layout and alterations made to the property suggest that the takeaway element is the primary source of revenue and not ancillary;
- there were no takeaways or deliveries associated with the last use of the premises as a restaurant;
- no problem with the use as a restaurant but find the use as a takeaway unacceptable and will adversely affect the local community;
- the opening hours for the business would not be the same as the former restaurant despite claims by the applicant;

#### *Amenities*

- there are residential properties close to the proposed development that will be adversely affected;
- noise and disturbance from the proposed use takeaway use on top of the existing noise associated with traffic and congestion;
- concern about anti-social incidents associated with nearby takeaways occurring around the application site with groups congregating and leaving litter behind;
- smells from the use would affect neighbouring properties despite the use of extraction equipment;
- concern about the lack of waste storage at the property leading to vermin problems, particularly given the nature of the proposed takeaway use and that the former owner took waste away from the site;
- strip lighting shines in neighbouring properties and results in light pollution;
- the existing resident above the business has suffered during the renovation works and cannot open his window;

#### *Character of the Area*

- the business will have a negative impact on the character of existing buildings and the historic environment;
- poor workmanship on the external elevations will be detrimental the appearance of the area;

#### *Highway Safety*

- the layout suggests the use of the entrance on the corner of the property at the junction of St. Anne's Lane which would be hazardous due to the narrow width of the roads and the speed/volume of traffic, along with the absence of footways;
- insufficient parking for the proposal and the existing businesses, residents and patrons of the local centre;
- increased traffic on a busy street where there is already limited parking available;
- illegal parking whilst works have been undertaken to the property has already caused congestion and obstructions to other businesses;

#### *Other*

- the business intends to sell fast food which has consequences for social health and for the health of local school children who could purchase food from the premises;
- signage has been installed that is out of keeping with appearance of the surrounding area.

#### **4. Relevant Planning Policy**

##### **National Policies**

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

The NPPF (Paragraph 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

The following sections of the NPPF are considered relevant to the determination of this application:

Section 1 - Building a strong, competitive economy

Section 2 - Ensuring the vitality of town centres

Section 3 - Supporting a prosperous rural economy

Section 4 - Promoting sustainable transport

Section 10 - Meeting the challenge of climate change, flooding and coastal change

Section 12 - Conserving and enhancing the historic environment

Save where stated otherwise, the policies of the adopted North West Leicestershire Local Plan as listed in the section below are consistent with the policies in the NPPF and, save where indicated otherwise within the assessment below, should be afforded weight in the determination of this application.

##### **Adopted North West Leicestershire Local Plan (2002)**

The application site is within the Limits to Development as defined in the adopted North West Leicestershire Local Plan. The following Local Plan policies are relevant to this application:

Policy S2 - Limits to development

Policy R19- Acceptable Uses in Local Centres

Policy E3 - Residential Amenities

Policy E4 - Design

Policy T8 - Parking

##### **Submitted North West Leicestershire Local Plan**

The publication version of the Local Plan was agreed by Council on 28 June 2016 and submitted for examination on 4 October 2016. Examination hearing sessions were held in January and March 2017 and the Council commenced consultation on its Main Modifications on 12 June 2017. The weight to be attached by the decision maker to this submitted version (as proposed to be modified) should be in accordance with the approach set out in Paragraph 216 of the NPPF, having regard to the stage now reached towards adoption, the extent to which there are unresolved objections to the policies relevant to the determination of this application, and the degree to which the emerging policies are consistent with the NPPF.

Policy S1 - Future Housing and Economic Development Needs

Policy S2 - Settlement Hierarchy

Policy D2 - Amenity

Policy EC8 - Town and Local Centres: Hierarchy and Management of Development

Policy EC10 - Town and Local Centres; Primary Shopping Area - Non-shopping uses

Policy IF7 - Parking Provision and New Development

Policy HE1 - Conservation and Enhancement of North West Leicestershire's Historic Environment

## **Planning (Listed Buildings and Conservation Areas) Act 1990**

Sections 66 and 72

### **Other Guidance**

National Planning Practice Guidance - March 2014.

## **Castle Donington Conservation Area Appraisal and Study Document**

### **Retail SPD**

### **6Cs Design Guide (Leicestershire County Council)**

The 6Cs Design Guide sets out the County Highway Authority's requirements in respect of the design and layout of new development.

## **5. Assessment**

### **Principle of Development**

The site is located within the Limits to Development as set out on the Proposals Map to the adopted and submitted Local Plans where the principle of development (which includes change of use) is considered acceptable subject to impacts upon design, amenity, highway safety and any other material considerations.

Policy R19 sets out acceptable uses for Local Centres which includes food and drink (A3) uses subject to sufficient shops remaining to serve daily needs in the locality, a shop window being retained where appropriate, the development not prejudicing the viability and attractiveness of the Local Centre and non-retail uses not occupying more than two adjacent shop window units. Whilst it is noted that Policy R19 does not make specific provision for A5 uses, the Policy was written prior to the separation of takeaways from an A3 use into an A5 use, and therefore, the restaurant and takeaway elements would be compliant in principle subject to the considerations outlined above.

Castle Donington is identified within the Retail SPD as a local centre that provides a good range of shops and services that cater for people's day to day needs. The SPD provides that no particular use dominates the centre and that there are no unacceptable groupings of uses. It is not considered that the expansion of the existing A3 use to include takeaway sales would adversely affect the shops and services available within the local centre to meet day to day needs and the existing shop front would be retained. The proposed use would be situated between A1 and A3 uses and it is considered that the proposal would allow for the attractiveness and vitality of the Local Centre to be retained in accordance with Policy R19.

Policies Ec8 and Ec10 of the submitted Local Plan provide guidance on assessing main town centre uses to ensure that the vitality and viability of the Primary Shopping Area is not undermined by the erosion of the retail element within town and local centres. The proposed A3/A5 use falls within the definition of a main town centre uses which these policies seek to support. The use would be of a scale that is appropriate to the role, function and character of the settlement and would not undermine the character of the local centre. The use would not result in an over-concentration of this use or undermine the shopping element within the local centre but would contribute to the diversity of uses within the centre and would not adversely affect the vitality and viability of the retail centre. It is considered that the proposal would accord with the spirit of the provisions of Policies Ec8 and Ec10 of the submitted Local Plan and therefore, the proposed use is considered acceptable in principle.

The Retail Supplementary Planning Document (Adopted January 2011) is also relevant to the

determination of the application and it is considered that Key Principles 1, 3 and 4 would be applicable to the proposal. Key Principle 1 'Balance of Uses' requires that A1 uses should represent no less than 50% of all commercial uses. The application proposal would not remove an A1 use from the local centre and therefore, would not conflict with this key principle.

Key Principles 3 and 4 'Takeaway Balance' requires that no more than 10 percent of total commercial uses within the Castle Donington Local Centre be occupied by hot food takeaways uses and that no more than two A5 units should be located adjacent to each other. The premises are not located adjacent to a takeaway use, would not result in a cluster of this use and the proposal would not result in more than 10% of the commercial units within Castle Donington local centre being occupied by hot food takeaways. With regard to the further considerations, Castle Donington provides a good range of shops and services that cater for people's day to day needs, the proposal would affect an existing A3 use and would not remove a shop use from Castle Donington. It is considered that the proposal would maintain the existing vitality and viability of the local centre and would not be harmful to the attractiveness of the local centre. Matters relating to highways safety and amenities are given further consideration in the relevant section below. With regard to the provision of a litter bin, the application proposal is a restaurant with takeaway sales and the building abuts the highway boundary such that there would be no scope for the provision of a bin outside the premises. A restaurant with takeaway sales should not result in a level of littering that could be attributed to a pure takeaway use, and in these circumstances, particularly having regard to the presence of litter bins within the vicinity (outside the adjoining commercial premises to the south west and outside No.8 Borough Street to the north east), it is not considered that a requirement for a contribution towards an off-site litter bin could be justified in this case. Accordingly, it is considered that the proposals would comply with the provisions of Key Principles 1, 3 and 4 of the Retail SPD.

The proposed use of the property as a restaurant/hot food takeaway (Use Class A3/A5) would, therefore, be in accordance with the relevant local plan policies in principle. It is therefore necessary to consider impacts upon heritage and design, amenity, highway safety and any other material considerations.

### **Impact on Heritage Assets and Design**

The need for good design in new development is outlined in adopted Local Plan Policy E4 as well as Policy D1 of the submitted Local Plan Paragraphs 57, 60 and 61 of the NPPF.

The proposed development must be considered against sections 66(1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that when considering a planning application for development that affects a listed building or its setting the decision maker, "shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possess" and that "special regard shall be had to the desirability of preserving or enhancing the character or appearance of a Conservation Area", respectively.

Paragraph 131 of the NPPF states that planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. It further indicates (at paragraph 132) that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It is a statutory requirement that any new development should at least preserve the character of the Conservation Area and significant weight has been given to preserving the setting of the Listed Buildings.

The site is located within the Castle Donington Conservation Area and application building, along with those to the north, south and west of the site are noted within the Castle Donington Conservation Area Appraisal and Study Document as unlisted buildings of interest that make a positive contribution to the Conservation Area. The nearest listed building would be to the east of the site (No.1 Apiary Gate) which is a grade II listed building. There are also other listed buildings in the vicinity of the site to the south and west of the site.

With the exception of the proposed flue, the application includes no alterations to the external elevations of the building. The flue has been installed and therefore, retrospective approval is sought. The flue is located to the rear elevation and extends upwards from a roof canopy at ground floor level, against the rear wall of the building and projects upwards beyond the eaves of the property.

The Council's Conservation Officer has been consulted on the proposals and does not consider that the proposed change of use would have an impact on the heritage assets in the locality. With regard to the proposed flue, this element of the proposal is currently in situ and is not an attractive structure. However, any clear views of the flue beyond the site are prevented by its location to the rear of the building and as a result of the presence of surrounding buildings. The visual impact of the proposed flue is limited to within the site itself and could be removed from the premises if no longer required. Whilst it is considered that this would result in some less than substantial harm to the character and appearance of the Conservation Area, it is not considered that the setting of the nearby listed buildings would be adversely affected. The Conservation Officer has been consulted on the application and does not consider that there are any grounds to resist the proposal on heritage impact grounds and raises no objection.

It is considered that the flue would result in some harm, less than substantial, to the character and appearance of the Conservation Area. However, there is some public benefit from the proposal as it would allow the re-use of the building, benefiting the local economy and providing a service to the local community. Overall, it is considered that the less than substantial harm would be outweighed by the public benefits of the proposal in this instance and the proposal is considered to comply with paragraph 134 of the NPPF.

Taking the above into account, it considered that the scheme is appropriate and would comply with Policy E4 of the adopted Local Plan and Policies D1 and He1 of the submitted Local Plan.

**Residential Amenities:**

The application property is located in a predominantly commercial area although it is noted that there are some residential units opposite the site and located at first floor level above commercial units in the vicinity (including above the application property). Nonetheless, given the location of the site within the local centre, there would already be comings and goings, along with noise and disturbance associated with the use of other commercial uses within the vicinity of the site, and it is within this context that the application must be assessed.

The application specifies the opening hours as between 12pm to 11pm Monday to Saturday and 5pm to 11pm on Sundays and Bank Holidays. The site is located within a mixed use area and the proposed hours of operation are not considered unreasonable in this context. No objections have been raised to the proposed opening times by the Environmental Health Officer, and it is, therefore, recommended that these opening times should be attached to the grant of any planning permission.

Takeaway uses have the potential to bring about odour issues and the application proposals retrospective approval for an extraction/ventilation flue. With ventilation and extraction



apparatus as proposed, together with restricted hours of use, it is not considered that the development would have a significant impact on the amenities of local residents in terms of noise or disturbance or as a result of smells. The Council's Environmental Protection Officers have considered the merits of the application, along with the details of the proposed flue and have raised no environmental objections.

The property that would be most immediately affected by the proposed flue would be the flat above the application property, as the flue is sited adjacent to a window to this residential unit and would partially block that window. Whilst the outlook of one of the window lights would be partly affected, this is a two-light window and it is not considered that the proposed flue would give rise to any significant loss of light to the room served by that window or appear unduly oppressive to an extent that would warrant a refusal of permission on this ground. Whilst concern has been raised about the flue blocking the window opening which would inhibit escape, provisions for escape in fires is subject to separate legislation in the form of Building Regulations and therefore, is not a matter for consideration in the determination of this application.

With regard to concerns raised about general bin storage at the site, when having regard to the former A3 use of the site and the similar nature of the current proposal, it is not considered that requirements for additional/alternative bin storage arrangements could be sought as the former A3 use could operate from the site in an uncontrolled manner.

It is not considered that the proposal would result in any overlooking issues to surrounding occupiers and as such it is deemed that the proposal would not be harmful to neighbouring residential amenities and would comply with Policy E3 of the adopted Local Plan and Policy D2 of the submitted Local Plan, and the provisions of Key Principle 4 of the Retail SPD.

**Highway Safety:**

The premises were last used as an A3 restaurant use and this use had no dedicated parking provision. The proposed use is for an A3 restaurant use with hot food takeaway sales (A5 use) and the applicant has confirmed that there would not be a delivery service available for customers. Had a delivery service been proposed, then car parking provisions for drivers' vehicles would have been required. On the basis that there would be only takeaway sales (and no delivery service), the County Highways Authority have advised that the proposed use would appear to be consistent with other uses within the vicinity, with customers parking on-street or within local car parks. Furthermore, on the basis that no additional floor space is being proposed, the County Highways Authority consider that a requirement for the provision of additional car parking could not be justified. With regard to the use of the corner door at the road junction, when having regard to the fact that an A3 use could operate and use this door in an uncontrolled manner, it is not considered that a highway safety objection could be sustained. As for concerns about increased traffic, when having regard to the existing A3 use, and the context of the site within a local centre, it is not considered that the proposal would give rise to vehicular movements that would be inconsistent with the locality.

Accordingly, it is considered that the proposal would be acceptable for the purposes of Policy T8 of the adopted Local Plan and Policy IF7 of the submitted Local Plan and the provisions of Key Principle 4 of the Retail SPD.

**Other Matters**

With regard to concerns about inappropriate signage, a separate application for signage has been submitted and considered by the District Council. As for concerns about the proposal adversely affecting the health of residents due to the nature of fast food being sold, the

responsibility for decisions about food consumption rests upon the individual (or their guardians) and is not a material planning consideration. With regard to concerns about strip lighting, the application does not include any proposals for lighting. With regards to concerns about anti-social behaviour, this would need to be addressed through the mechanism of the appropriate legislation, should an issue arise, and is therefore, not a planning matter.

**Conclusions**

In conclusion, the site lies within Limits to Development within the Local Centre of Castle Donington where the proposed use is considered to be acceptable in principle. The scheme does not give rise to any significant impacts regarding residential amenity, design or highway safety and would not undermine the attractiveness, vitality or viability of the existing local shopping centre. The development would not adversely impact on the setting of the nearby listed building and it is considered that the less than substantial harm to the setting of the Conservation Area would be outweighed by the public benefits of the proposal in this instance and the proposal is considered to comply with paragraph 134 of the NPPF and would accord with sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. There are no other relevant material planning considerations that indicate planning permission should not be granted. Accordingly the application is recommended for planning permission, subject to the imposition of planning conditions.

**RECOMMENDATION - PERMIT, subject to the following condition(s):**

- 1 Time Limit
- 2 Approved Plans
- 3 Hours of operations [1200 - 2300] Monday to Saturdays / [1700 - 2300] Sundays and Bank Holidays
- 4 No deliveries of take away food
- 5 Extraction/ventilation measures
- 6 Specified use only
- 7 Permission relates to the ground floor only