



Committee and date

South Planning Committee

14 July 2015

Development Management Report

Responsible Officer: Tim Rogers

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Summary of Application

Application Number: 14/03594/VAR	Parish: Broseley
Proposal: Application under Section 73a of the Town and Country Planning Act 1990 for the Variation of Condition Nos. 2 and 4 and removal of Condition Nos. 3, 5 and 7 attached to Planning Permission 09/03161/FUL dated 4th February 2010 for the rebuilding of fish and chip shop (Retrospective)	
Site Address: The Fish Shop High Street Broseley Shropshire TF12 5ET	
Applicant: Mr Parminda Sandhu	
Case Officer: Lynn Parker	email: planningdmse@shropshire.gov.uk

Grid Ref: 367510 - 301724



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Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

1.1 This application is submitted under Section 73a of the Town and Country Planning Act 1990 in order to resolve outstanding amendments to and details required by conditions on Planning Permission Ref: 09/03161/FUL for 'Rebuilding of fish and chip shop', granted on 5th February 2010. Officers have been through a long process with the applicants and their agent in order to overcome the unauthorised planning matters which have arisen. An application to vary and remove a number of conditions on the original Planning Permission is considered to be the most effective way of resolving the issues.

Therefore this application is for the variation of condition nos. 2 and 4, and removal of condition nos. 3, 5 and 7 applied to Planning Permission Ref: 09/03161/FUL, details as follows:

1.2 Condition No. 2:

The development shall be carried out strictly in accordance with the deposited plans and drawings as amended by the revised plan numbers B171/SK1 Revision F received on 25th January 2009.

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

The original drawings indicated the land as flat whereas it slopes from front to rear, resulting in more brickwork to the rear as built to accommodate the slope. Other existing alterations in the design, and as are proposed to conclude the build are:

- o Removal of the 2 ground floor windows in the north east facing rear elevation.
- o Installation of 2 rooflights in the mono pitch roof over the single story rear element of the building.
- o Increase in the rear element to make it the full width of the building rather than stepped in from the south east facing side.
- o Addition of a flue to the north west facing side elevation adjacent to the chimney
- o Replacement of installed aluminium shop front with feature timber design.
- o More detailed eaves and chimney.
- o Alterations to internal room divisions
- o Addition of steps to side door and ramp to front.

The variation of this condition involves substituting the amended and additional drawings and documents submitted with this application which demonstrate the above amendments.

1.3 Condition no. 3

No built development shall commence until details of all external materials, including hard surfacing, have been first submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approval details.

Reason: To ensure that the external appearance of the development is satisfactory.

As there has been a change in specification to some of the materials used, the removal of this condition will demonstrate agreement with details of the materials submitted in support of this application.

1.4 Condition No. 4

Before any development commences, details of the following shall be submitted to and approved in writing by the Local Planning Authority; joinery design, materials and finish of windows, external doors and shopfront; design, materials and finish of rooflights; treatment of eaves and gable verges; location of waste storage; kitchen odour extraction system.

Reason: In the interests of visual amenity and public health.

Amended joinery details have been submitted relating to the doors and windows and to the timber shop front to replace the aluminium one installed. Slightly more ornate than approved eaves and verge details of the roof have also been submitted, rooflight colour specified and flue included on the elevation drawings. The location of the waste storage was agreed to be acceptable as part of the information submitted to discharge the conditions under Planning Permission Ref: 09/03161/FUL.

Rather than being varied, it is suggested that if all the details submitted are found to be acceptable, then this condition should also be removed as there would no requirement to vary it.

1.5 Condition No. 5

The rear elevation windows shown on the approved drawing shall be replaced with rooflights in the rear roof slope, unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of safeguarding the privacy of adjacent property.

This condition is proposed to be removed as the work described to remove the windows and install rooflights has now been carried out.

1.6 Condition No. 7

The building shall not be occupied until the remedial measures recommended in the report by Spilman Associates have been fully complied with in particular by stabilisation of the working by drilling and grouting.

Reason: In the interests of public safety.

This condition is proposed to be removed as design calculations and sketches for the raft foundation works undertaken have been submitted for consideration as part of this application.

2.0 **SITE LOCATION/DESCRIPTION**

2.1 The site falls within the Market Town of Broseley and is included in Broseley Conservation Area and the Shopping Centre designations. It is accessed directly from the High Street to the south west via a small car parking area which also provides vehicular and pedestrian access on the northern side of the site to residential properties beyond. The building is located towards the south eastern end of the High Street inbetween, but set over 10m back from, the line of shops and other commercial premises along the street frontage. The properties adjacent to the north west are 3 storey Georgian brick buildings, and those on the other side to the south east are rendered and brick properties of cottage character and scale. Opposite the site and beyond another parking forecourt are more modern, single storey, flat roofed commercial units.

2.2 The erection of a new chip shop building as approved under Planning Permission Ref: 09/03161/FUL is virtually completed, however work has ceased pending the decision of this application. For this reason, the visual appearance of the building is unfinished within the street scene and not truly represented.

3.0 **REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

3.1 Applications requested to be referred, by the Local Member to the relevant Planning Committee within 21 days of electronic notification of the application and agreed by the Service Manager with responsibility for Development Management in consultation with the Committee Chairman or Vice Chairman to be based on material planning reasons.

4.0 **Community Representations**

4.1 - Consultee Comments

4.1.1 Broseley Town Council (03-10-14) – The variation does not address the unsuitability of the finish (brick) nor the error in heights. In his email to the Town Council dated 23rd May 2014, Ian Kilby states that ‘brick used would have benefitted from having more variation of colour and have been less “burnt orange”. He further comments, ‘The mortar is a cement mortar as opposed to a lime, cement, sand mortar as approved in the finishes schedule’. In order to address the brickwork problem Town Councillors would suggest rendering the building and painting it white. An extraction pipe has been fitted onto the side of the building. This was not on the original application

Broseley Town Council (19-12-14) - Councillors considered your email and the comments from SC Public Protection regarding the above at their meeting last night. They asked me to let you know that they are keen to have odours minimised but are not qualified to comment on odour extraction systems.

- 4.1.2 SC Public Protection (22-09-14) - The high level discharge which will reduce odour in the area from the chip shop cooking activities is noted however please could the applicant submit details of the extraction system including how grease is removed and any odour abatement that is found in the ducting.

SC Public Protection (17-12-14) - The location and discharge height of the flue in relation to the extraction equipment are satisfactory. However, the details provided of what odour abatement will be installed have not been provided. On the original application it suggested an ON 100 purified air system and mesh filters. Please could the applicant provide this information in order comment to be provided on this aspect. Details provided state the benefits of mesh and baffles and the importance of regular maintenance and cleaning however the applicant has not stated which will be used, mesh, baffles or a combination of both. Also there is no reference to the ON 100 purified air unit.

Without the above details in relation to odour extraction systems, condition 4 should not be discharged. As this condition requires discharge prior to development commencing, the operator should be stopped from trading until this issue is resolved.

SC Public Protection (23-01-15) - Having considered the application and the height of discharge SC Public Protection are reasonably satisfied that no nuisance will be caused by odour emitted from the flue. However, it is recommended that no chainman's hat is fitted to the top of the flue in order to stop grounding of air emitted. It is also recommended that an accelerator cowl is used on the top of the flue to ensure air is accelerated upwards to aid with dispersion.

- 4.1.3 SC Conservation - It is considered that the timber joinery and shop front proposed will be acceptable within the Conservation Area.

- 4.1.4 SC Archaeology - No comments to make on this application with respect to archaeological matters.

4.2 - Public Comments

- 4.2.1 Seven letter of public representation expressing objection to this application have been received from Broseley residents which can be viewed in full online, however their concerns are summarised as follows:

- o It is very clear that the conditions stated in the original planning permission have been blatantly disregarded.
- o The new chip shop is a monumental eyesore and completely out of keeping with neighbouring dwellings.
- o This building appears not to fulfil the usual strictures that have been applied to other developments within the Conservation Area.
- o It is evident that Ibstock Oldcott Rustic brick has not been used. During the

building process, a sample was taken from the site to the building merchants who delivered the brick and they advised that it was Hanson Caernarfon Berkshire Red.

- o The side elevation shows that two different types of brick have been used.
- o The building should be rendered and painted in keeping with others adjacent.
- o There is no evidence of blue brick or lime mortar being used.
- o The roof tiles should surely have been reclaimed tiles, not the black monotone which are out of character in the Conservation Area.
- o The developer knew what joinery was to be used and blatantly ignored this by fitting metal frames.
- o If the new chimney is not to be used for the extraction system, what is its purpose?
- o To run the flue up the outside will be another eyesore which will surely encroach onto the adjacent right of way not owned by the chip shop.
- o When approval was granted, the Conservation Officer made it clear that 'an external extraction steel flue system was no longer acceptable in such a prominent position in the Conservation Area'.
- o The building is over dominant in relation to neighbouring properties, and gives a cramped appearance when viewed from Dark Lane.
- o This application, if granted, runs the risk of other residents and businesses building what they like and applying for a variation retrospectively.

4.2.2 Additionally Cllr Jean Jones has submitted a letter expressing her own personal views, in addition to the deep concerns felt by many in the community at the nature of this development and the process that has accompanied the build. This is also available to view online, but is reproduced below:

This development, sited in our town's main thoroughfare and within our conservation area, has been allowed to progress despite being in flagrant breach of the terms of the original planning permission. When local concerns were raised during the construction process about the height of the build and the type of brick used, they were dismissed as minor variations. The physical result is an ugly, ill proportioned and out of character building that jars unpleasantly with its surroundings. The wider implications relate to loss of public confidence in the system and implications for community cohesion. There is a general perception that, as far as Council is concerned, 'anything will do for Broseley' and that cannot be a healthy state of affairs.

Broseley Town Council which, many years ago, played a leading role in paving and marking the land that fronts this building, has been treated very badly, as have the businesses and local people who use this car park. It now appears that the developer is able to construct, on land that does not belong to him, a ramp to the front of the property and a step to the side in order to mitigate access problems caused by his own poor construction methods. What of the rights of the Town Council that has maintained this land, or the right of the community to expect even a reasonable standard of development on this most prominent site?

Following a potentially catastrophic explosion and long period of dereliction, people were genuinely delighted when work began to rebuild the local fish and chip shop. Since then, we have endured a long period of disruptive intermittent building work,

culminating with this appalling construction.

This community is working hard to promote tourism to our town. Volunteers give freely of their time, money and energies to enhance and improve our local environment. We currently have an application pending to include much of Broseley in the Ironbridge Gorge World Heritage Site. We do not accept that, for whatever reasons, Shropshire Council is unable to meet its responsibilities to ensure a good standard of development of our built environment.

I am therefore unable to support all the variations to conditions requested with regard to this application. Most importantly, there is, first, a fundamental error in construction levels resulting in an elevated roofline and raised floor levels and secondly, use of bricks not of the type specified, i.e. not in conformity with existing local materials. I also have concerns regarding the extraction method, which appears to vary from that recommended.

It has been emphasised by officers that any response to a development that does not conform to planning permission has to be 'proportionate'. We might ask, 'proportionate to what?' To the extent of deviation from the original plans? To the impact on and nature of the surrounding environment? To the level of public concern?

5.0 THE MAIN ISSUES

- o Principle of development
- o Scale/height
- o Materials/finish
- o Odour extraction system
- o Land stabilisation
- o Access

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Matters considered under Planning Permission Ref: 09/03161/FUL relating to the erection of this building are not being re-considered here. The consideration here is whether the various unauthorised amendments which have taken place and the further details required in fulfilment of conditions applied to Planning Permission Ref: 09/03161/FUL, are acceptable.

6.1.2 Policy CS6 of the Shropshire Council LDF Core Strategy states that development should conserve and enhance the built and historic environment and be appropriate in its scale and design taking account of local character and context. . It further states that development should safeguard residential and local amenity. LDF Core Strategy Policy CS17 is also concerned with design in relation to its environment, but places the context of the site at the forefront of consideration i.e. that any development should protect and enhance the diversity, high quality and local character of Shropshire's historic environment and does not adversely affect the heritage values and function of these assets.

6.1.3 The proposed development is not considered to have an adverse impact on the character or context of the existing building, the amenities of adjacent buildings or surrounding Conservation Area. It is of an appropriate scale within its setting, has a traditional timber shop front design, can be finished in suitable materials, and includes features which will protect and enhance the Conservation Area. The positioning and design of the odour extraction system and the raft foundation works are considered suitable and level access into the building encouraged. The principle of development is therefore acceptable.

6.2 Scale/height

6.2.1 The proportions of the building were considered and approved under Planning Permission Ref: 09/03161/FUL and have not been significantly digressed from. It is understood that additional brickwork has been included in order to compensate for the slope of the land, however, any impact from this is considered to be minimal. As the building is set back over 10m from the High Street with 3 storey properties grouped together in a mass adjacent to the north west, it is not dominant. Additionally, the building's height is considered to be a natural visual step between the higher properties to the north west and the adjacent cottage style buildings to the south and east.

6.3 Materials/finish

6.3.1 It is clearly indicated on the submitted plans that the shop front will be reconstructed in a white painted timber frame of traditional appearance also using the submitted joinery details that have been found acceptable by SC Conservation. It is considered that the amended shop front will protect and enhance the surrounding Conservation Area and contribute more positively to it than some of the existing shop fronts adjacent along the High Street and which are in more prominent positions within the Conservation Area. It is the front elevation of The Fish Shop which is the main aspect within the Conservation Area.

6.3.2 Other elevations of the building are far less prominent than the frontage, however issues have been raised over the choice of brickwork employed. There is a notable variety of brickwork present within the High Street, ranging from decorative Victorian work further to the south, the facings on the Georgian buildings adjacent to the north west which differ from each other, and the more utilitarian brickwork of their rears. Many of the cottages and modern buildings present in the Conservation Area are additionally rendered in a range of muted colours. Therefore the brickwork used to build The Fish Shop is not considered to be wholly out of keeping within the Conservation Area where a wide variety of facings are already present. However, it is felt that rendering over the brickwork would also be appropriate to this part of Broseley should the applicant consider this an option.

6.3.3 It has been noted within the public representations that if there is an external flue system, then there is no requirement for a chimney. However, Broseley is an area which contains many older properties of which chimneys are a prominent and widely present feature. The majority of the adjacent properties have single or multiple chimneys. Design Principle DS.6 of the Broseley Town Plan specifically relates to chimneys, stating that:

'Existing chimneys must be preserved. The inclusion of functioning, brick built chimneys in design proposals will be supported'.

The chimney at The Fish Shop is therefore a feature which is in accordance with the design ethos of the Broseley Town Plan, whether used as the extraction system or not.

6.4 Odour extraction system

6.4.1 In respect of condition no. 4, details of the flue were submitted as part of its discharge under Planning Permission Ref: 09/03161/FUL. The matter remained unresolved in relation to the use of masking agents discharging to the atmosphere via a high velocity terminal which raised concerns from SC Public Protection (Environmental Health) that this could cause a problem if the flue did not extend at least 1m from the highest part of the roof. Correspondence submitted through the process of this application has resolved this matter, as it has been demonstrated that the height of discharge from the flue will not cause a nuisance from odour emission. SC Public Protection are satisfied that this will be the case, however recommend that an accelerator cowl is used to support acceleration of the odour emitted upwards and aid its dispersion

6.4.2 It is considered that the positioning of the odour extraction system adjacent to the chimney on the north west facing side elevation is not inappropriate, as its projection is minimal and it is located above head height, starting at 2.1m above ground level. It is additionally set back 2.5m from the front elevation and will not be read in context with it or impact adversely on the positive contribution of the frontage within the Conservation Area. The projection of the flue above the roof is suitably minimised by its location against the chimney stack.

6.5 Land stabilisation

6.5.1 Design calculations and sketches for the raft foundation works undertaken have been submitted for consideration as part of this application. These details demonstrate that construction has taken place in accordance with the stabilisation of the workings by drilling and grouting recommended as Option 1 in the report by Spilman Associates.

6.6 Access

6.6.1 It is noted that the drawings include steps adjacent to the side entrance and raising of levels to create a small ramp to the front entrance. These works are considered 'de minimus' and as such do not require Planning Permission. The provision of level access into the public area of The Fish Shop is to be encouraged.

7.0 CONCLUSION

7.1 For the reasons given above, this application is not considered contrary to adopted policy. Condition nos. 3, 4, 5 and 7 attached to Planning Permission Ref 09/03161/FUL can be removed as the information required by these has been submitted and found acceptable. Condition no. 2 can be varied to refer to the amended plans submitted with this application.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- ☐ As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- ☐ The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than three months after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the

scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

Central Government Guidance:
National Planning Policy Framework

Core Strategy and Saved Policies:
CS6 Sustainable Design And Development Principles
CS17 Environmental Networks

Broseley Town Plan 2013-2026.

RELEVANT PLANNING HISTORY:

13/04809/AMP - Non-material amendment relating to planning permission
09/03161/FUL. Granted 8th January 2014.
10/01259/DIS - Discharge of conditions 3, 4 and 5 attached to planning permission
09/03161/FUL. Discharge of Conditions Part Approved dated 11th May 2010.
09/03161/FUL - Rebuilding of fish and chip shop. Granted 5th February 2010.

11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

<p>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) Design calculations and sketches for the raft foundation, received 9th September 2014.</p>
<p>Cabinet Member (Portfolio Holder) Cllr M. Price</p>
<p>Local Member Cllr Dr Jean Jones</p>
<p>Appendices APPENDIX 1 - Conditions</p>

APPENDIX 1

Conditions

STANDARD CONDITIONS

2. The development shall be carried out strictly in accordance with the deposited documents, plans and drawing nos. B171 AS 9 (as built plans and elevations) received on 7th August 2014; SFD12 (joinery details), 0 175/7 (eaves and verge details), SFD11 Rev A (shop front details) received on 8th August 2014; Raft Foundation Details received on 9th September 2014; and the Revised Finishes Schedule received on 26th May 2015.

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

CONDITION THAT IS RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

8. Other than conditions no. 3, 4, 5 and 7 which are hereby removed, all other planning conditions attached to Planning Permission Ref: 09/03161/FUL dated 5th February 2010 remain in force.

Reason: To define the permission.

Informatives

1. If your application has been submitted electronically to the Council you can view the relevant plans online at www.shropshire.gov.uk. Paper copies can be provided, subject to copying charges, from Planning Services on 01743 252621.
2. The advice of Shropshire Council Public Protection is attached for your information
3. In determining the application the Local Planning Authority gave consideration to the following policies:

Central Government Guidance:
National Planning Policy Framework

LDF Core Strategy Policies:
CS6 Sustainable Design And Development Principles
CS17 Environmental Networks

Broseley Town Plan 2013-2026

4. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.