

Recommendation: Permit, 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 seek 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.

1.2 A recent application (14/03594/VAR) was considered by the Committee, however that application was refused consent. The current application is submitted in an attempt to address the issues raised by the Committee in their consideration of the previous application. 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:

1.3 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:

As per the previous application which was refused:

- 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 More detailed eaves and chimney.
- o Alterations to internal room divisions

Alterations new to this application:

- o Installation of internal steps at side entrance door, and change in floor levels internally for the shop area to remove need for access ramp and external steps which were shown on previous application.
- o Relocation of external flue into the chimney.
- o Staining of bricks in order to alter the colour.

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

1.4 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. This condition can be replaced with an amended version instead of total removal if necessary.

1.5 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.

1.6 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.

1.7 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.

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 in between, 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 – Comment:

- I. It was not clear how the front entrance was to be accessed as the doorway was higher than the forecourt.
- II. The statement that the bricks were to be treated did not specify what was intended by this.
- III. Councillors welcomed the introduction of a chimney to enclose the flue and the arrangements for bringing the side steps inside the building.

4.1.2 SC Public Protection – Having considered the extraction systems [public protection] consider that this would be beneficial and as a result noise and odour are not likely to have a detrimental impact on the amenity of the area.

4.1.3 SC Conservation – No objections to the variation of conditions.

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

SC Highways – No comments to make on this application.

4.2 - Public Comments

4.2.1 Comments objecting to application: 4

- ☐ Building out of character with conservation area.
- ☐ Building higher than originally proposed.
- ☐ Changes to ground floor require provision of new access ramp. No steps should be allowed outside the building to encroach of right of way.
- ☐ External materials make building visually prominent.
- ☐ Chimney of insufficient size to accommodate flue.
- ☐ Shop front window differs from approved scheme.
- ☐ Roof tiles not in accordance with standards for conservation area.
- ☐ Shed erected on land not shown on original permission.
- ☐ Is brick treatment permanent or will it require upkeep? Shortcuts in application should not be permitted.
- ☐ Colour treatment an improvement, but variations in bricks should be highlighted. Mortar never included lime. Darker treatment should highlight cills, heads, plinths and corbling.
- ☐ Roof tiles still in appropriate, should be reclaimed tiles.
- ☐ Wooden joinery is an improvement over aluminium as is chimney in flue, but rainwater goods hang over neighbouring property.
- ☐ Block pavements should be reinstated.

Comments in support of application: 1

- ☐ Building should be allowed to open and contribute a business to the high street, creating jobs and contributing to local economy.
- ☐ Building in keeping with surrounding properties.
- ☐ Appearance of building will weather over time.
- ☐ Area in front of building not used by any lorries, but people using nearby shops.

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, and if the proposed alterations submitted as part of this application address the Committee's reasons for refusing the previous application: These reasons were:

The building as constructed and as proposed to be completed would detract from the character and appearance of the Broseley Conservation Area due to the combined effect of the following changes in design relative to the permitted scheme:

- i. Changes to the ground floor level of the building necessitate the provision of an access ramp and steps at the entrances.*
- ii. The external facing materials used are more visually prominent and discordant in the street scene compared to those previously approved.*
- iii. The external flue would be visually prominent, detracting from the appearance of the building and streetscene.*
- iv. A step in the floor plan to the south elevation of the permitted scheme has been omitted, with a consequent adverse impact upon the proportions of the side elevation and rear component of the building.*
- v. The proportions of the proposed shop front window differ from the approved scheme, providing the single pane with a row of more heavily framed top hung lights above door head height.*

The proposed variation of conditions 2 and 4, and removal of conditions 3, 5 and 7 on planning permission 09/03161/FUL would therefore be contrary to Shropshire Core Strategy policies CS6 and CS17; policies DS1, DS2, DS5 and DS8 of the Broseley Town Plan 2013-2026 and paragraphs 56-58, 60, 64 and 137 of the National Planning Policy Framework.

- 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.

6.2 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.

- 6.2.2 The plans submitted as part of this application show the removal of the access ramp to the front and the external steps at the side which were shown on the previous application documents and considered inappropriate by the committee. The current application proposed no built development outside the footprint of the building, with any alterations necessary to accommodate changes in ground levels being accommodated within the footprint of the building, it is understood that the front door was installed 3 brick courses higher than intended, and this will be corrected with the new shop front, removing the large step up from the external ground level to the doorway. Therefore point i. of the Committee's refusal reason of the previous submission is considered to be addressed.
- 6.2.3 The plans show the retention of the footprint of building as per the previous scheme, with the stagger in the southern elevation not being reinstated. Point iv. of the refusal of the previous consent therefore still remains, however a previous non-material amendment application (13/04809/AMP) has granted consent for this aspect independantly, although this is contingent on the consent it amends having been carried out in accordance with the approved details.

6.3 Materials/finish

- 6.3.1 It is 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.

The plans submitted as part of this application show the shop front having the same general design as that of the previous application, with the top lights being replaced by louvered tilting glazed lights rather than the plain glazing shown on the previous scheme. Whilst this does not re-instate the design of the original shopfront shown on the original permission, the changes to the building during construction have resulted in a space between the top of the door and the lower edge of the fascia sign which was not present on the original drawings. It is considered that the proposed shopfront would address this issue, whilst still being in keeping with the character of the conservation area. The Committee will have to give consideration to whether this proposed design is acceptable, with regards to point v. of the refusal of the previous consent. A previous discharge of condition application (10/01259/DIS) granted approval for a shop front design which is similar to that proposed as part of this application, which had the same general design but with a slightly shallower louvre area above the shop door and windows.

- 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 and in considering the previous application the Committee considered the bricks used to be inappropriate in the conservation area. The application therefore proposed staining the bricks a darker shade in order to mitigate the impact of the bricks used in the construction of the building and if this is considered acceptable a condition could be worded to ensure that this is maintained. 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. Whilst the brickwork used to build The Fish Shop was not considered to be in keeping with the Conservation Area setting of the property, the proposed stain would address this and alter the appearance of the property to one which would not stand out and draw undue attention in the street scene.

- 6.3.3 The proposed plans submitted with this variation show the external flue being removed and re-located inside the chimney of the property. Design Principle DS.6 of the Broseley Town Plan 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 and the removal of the external flue would remove this unsightly and inappropriate feature from the street scene in line with point iii. of the Committee’s refusal of the previous application.

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 the previous 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 also be the case with regards to the functional chimney now proposed and that , the extraction systems would be beneficial and as a result noise and odour are not likely to have a detrimental impact on the amenity of the area.

6.5 Land stabilisation

- 6.5.1 Design calculations and sketches for the raft foundation works undertaken have been submitted for consideration. 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 to the side elevation entrance, accommodated within the footprint of the property, and the plans show the removal of the access ramp shown on the previous plans at the front of the site. Any alterations necessary to accommodate differences in floor levels will be accommodated within the building, with no encroachment onto the access at the side of the building, nor onto the area of pavements in front of the building. The agent has stated that the doorway has been built 3 brick courses higher than intended,

and this will be corrected as part of the works to implement this proposal is consent if granted, removing the need for a step up from the pavement area.

7.0 CONCLUSION

7.1 In considering this proposal the Committee should have regards to their decision on the previous application, and the extent to which the current application addresses the reasons for refusal. As set out above it is considered that points i. ii. and iii. of the Committee's refusal have been addressed, point v. has been partially addressed and point iv. has not as the stagger in the southern elevation has not been reinstated. It is considered, however, that the south side elevation of the building is not unduly prominent in the Conservation Area street scene, and it should be noted that an application for a non-material amendment (13/04809/AMP) has been granted previously for this aspect of the development, which removed the step (stagger) in the floor plan.

7.2 The Committee should consider if whether the alterations made as part of this application would change the balance of considerations from their previous refusal to one of permitting the application. Regard should be had to the practicalities of altering the building as constructed in order to bring the development to a standard considered acceptable. Whilst it is regrettable that the building as constructed does not comply with the original consent, a reasonable and proportional approach must be taken in seeking to achieve an acceptable solution. (The National Planning Policy Framework, at paragraph 207, advises that local planning authorities should act proportionately in responding to breaches of planning control).

7.3 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:

- ⑦ 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.
- ⑦ 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

National Planning Practice Guidance

LDF Core Strategy Policies:

CS6 Sustainable Design and Development Principles

CS17 Environmental Networks

Broseley Town Plan 2013-2026

RELEVANT PLANNING HISTORY:

09/01496/FUL Erection of a two storey building for use as A5 hot food takeaway and associated works; following demolition of existing fish and chip shop (as hot food takeaway) WDN 21st September 2009

09/03161/FUL Rebuilding of fish and chip shop GRANT 5th February 2010

10/01259/DIS Discharge of conditions 3, 4 and 5 attached to planning permission

09/03161/FUL DISPAR 11th May 2010

13/04809/AMP Non-material amendment relating to planning permission 09/03161/FUL - Rebuilding of fish and chip shop GRANT 8th January 2014

14/03594/VAR 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) REFUSE 17th July 2015

11. Additional Information

View details online:

<https://pa.shropshire.gov.uk/online-applications/> using reference 15/03822/VAR

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder) Cllr M. Price
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Local Member

Cllr Dr Jean Jones

Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. The development shall be carried out strictly in accordance with the deposited documents, plans and drawing nos. AS9 REV D (as built plans and elevations), SFD12 (joinery details), D175/7 (eaves and verge details), SFD11 Rev b (shop front details), and the Finishes Schedule received on 22nd September 2015.

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

2. The building operations hereby permitted shall be removed and all equipment and materials resulting from the demolition shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-

i. within 1 month of the date of this decision a scheme for works to be undertaken to stain the building the approved colour (Brown Darkening Stain by Brick Doctor Ltd, as per sample panel on site) and implement the works approved by this permission shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii. if within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.

The development shall be maintained in accordance with the approved details, including the continued maintenance of the brick stain, for the lifetime of the development.

Reason: To ensure the external appearance of the development is in keeping with the character and appearance of the conservation area, and so that the building harmonises with the street scene.

3. The premises shall be used for the preparation and sale of hot food to take away and for no other purpose (including any other use within the same use class as defined in the Town and Country Planning (Use Classes) Order 1987).

Reason: To define the permission in the interests of safeguarding the amenity of the area.

Informatives

1. 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.