

Item No. 3

Application Reference Number P/21/0581/2

Application Type:	Full	Date Valid:	15.03.2021
Applicant:	Stuart Slessor		
Proposal:	Change of use of first floor from storage/office space to pop up pub (Sui Generis) - Variation of Condition 5 of P/18/1287/2 to allow the use of the external garden area up to 2100 hours on any day.		
Location:	46A-46C Albion Street, Anstey, Leicestershire LE7 7DE.		
Parish:	Anstey	Ward:	Anstey
Case Officer:	Nigel Wright	Tel No.	07872415089

Background

This application has been brought to plans committee as it has been called in by Cllr Taylor for the following reasons:

- the extension to opening hours to 9pm would be detrimental to neighbours' enjoyment of their homes
- there was a strong case for the original restrictive Condition and no evidence to suggest it is should now be changed.

Description of the Application Site

The application site comprises an existing brewery/public house located in a predominantly residential area within the settlement limits to Anstey. The property itself is a 2-storey building with a large rear garden, which includes a smoking area. The brewery operations are located on the ground floor, with the first floor used for a public house.

To the west of the site are the dwellings at 48 and 50 Albion Street and 29a Edward Street. To the east of the site is a convenience retail unit at 46 Albion Street and the dwelling at 44 Albion Street. To the south of the site is the dwelling at 39 Highfield Street and the flats at 23-29 Edward Street.

Description of the Proposal

Planning permission for the use of the first floor as a 'pop up' public house was granted under delegated powers in 2018 (ref.no. P/18/1287/2). The permission was subject to a number of conditions. One of these, Condition 5, states that:

'The use of the building and smoking area hereby permitted shall not take place other than between 1100 hours and 2200 hours on any day and no use of the

external garden area identified on the approved 'Ground Floor Plan' shall occur other than between 1100 hours and 1930 hours on any day.

REASON: The premises are close to residential property and a limit on the use is needed to prevent a nuisance or annoyance to nearby residents.'

This current proposal is to vary this condition 5 of the original planning permission to allow the use of the external garden area up to **2100** hours on any day

The originally submitted proposal sought consent for the removal of condition 5 entirely, and therefore for the use of the garden area to effectively fall under the same hours of use as the brewery itself; that being 1100 hours to 2200 hours. However, following officer advice, the proposal has been revised to seek consent for the condition to be worded as follows:

'The use of the building and smoking area hereby permitted shall not take place other than between 1100 hours and 2200 hours on any day and no use of the external garden area identified on the approved 'Ground Floor Plan' shall occur other than between 1100 hours and 2100 hours on any day.

REASON: The premises are close to residential property and a limit on the use is needed to prevent a nuisance or annoyance to nearby residents.'

Development Plan Policies

Charnwood Local Plan Core Strategy (adopted 9 November 2015)

Policy CS2 – High Quality Design – requires developments to make a positive contribution to Charnwood, reinforcing a sense of place. Development should respect and enhance the character of the area, having regard to scale, massing, height, landscape, layout, materials and access, and protect the amenity of people who live or work nearby.

Policy CS9 – Town Centres and Shops – seeks to support development which contributes to the continued vitality and viability of town centres.

Borough of Charnwood Local Plan (adopted 12 January 2004) (saved policies)

Where they have not been superseded by Core Strategy policies previous Local Plan policies remain part of the development plan. In relation to this proposal the relevant ones are:

Policy EV/1 Design - This seeks to ensure a high standard of design and developments which respect the character of the area, nearby occupiers, and which are compatible in mass, scale, layout, whilst using landforms and other natural features. Developments should meet the needs of all groups and create safe places for people.

Policy TR/18 Parking in New Development - This seeks to set the maximum standards by which development should provide for off street car parking.

Other material considerations

The National Planning Policy Framework (NPPF 2021)

The NPPF sets out the Government's view of what sustainable development means. It is a material consideration in planning decisions and contains a presumption in favour of sustainable development. For planning decisions this means approving proposals that comply with an up to date development plan without delay. If the Development Plan is silent or policies most relevant to determining the application are out of date permission should be granted unless protective policies within the NPPF give a clear reason for refusal or any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole.

The NPPF policy guidance of particular relevance to this proposal includes:

Section 8: Promoting healthy and safe communities

Planning decisions should promote a sense of community and deliver the social, recreational and cultural facilities and services that such a community needs.

Section 12: Requiring well-designed places.

The NPPF recognises that good design is a key aspect of sustainable development and that high quality, beautiful, sustainable and inclusive design should be planned for positively (paragraph 126).

Planning Practice Guidance

This national document provides additional guidance to ensure the effective implementation of the planning policy set out in the National Planning Policy Framework. The guidance sets out relevant guidance on aspects of flooding, air quality, noise, design, the setting and significance of heritage assets, landscape, contaminated land, Community Infrastructure Levy, transport assessments and travels plans, supporting the policy framework as set out in the NPPF.

Design Supplementary Planning Document (January 2020)

This document sets out the Borough Council's expectations in terms of securing high quality design in all new development. Schemes should respond well to local character, have positive impacts on the environment and be adaptable to meet future needs and provide spaces and buildings that help improve people's quality of life.

Leicestershire Highways Design Guide

This is a guide for use by developers and published by Leicestershire County Council, the local highway authority, and provides information to developers and local planning authorities to assist in the design of road layouts in new development. The purpose of the guidance is to help achieve development that provides for the safe and free movement of all road users, including cars, lorries, pedestrians, cyclists and public transport. Design elements are encouraged which provide road

layouts which meet the needs of all users and restrain vehicle dominance, create an environment that is safe for all road users and in which people are encouraged to walk, cycle and use public transport and feel safe doing so; as well as to help create quality developments in which to live, work and play. The document also sets out the quantum of off-street car parking required to be provided in new housing development.

Equality Act 2010

Section 149 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality.

The Draft Charnwood Local Plan 2021-37

The Draft Charnwood Local Plan is at an early stage in its preparation and underwent a six-week pre-submission consultation period that ran from Monday July 12 until Monday August 23, 2021.

Consultation Responses

Anstey Parish Council – noted (no objections)

Environmental Health - no objection to the application on the basis that previous restrictions appear to have been effective and 9pm is within generally accepted sociable hours. The proposal represents a fair and proportionate compromise.

3 neighbour objections were received to the original proposal (to extend to 2200 hours)

4 neighbour objections were received to the amended proposal (to extend to 2100 hours), with 18 representations in support.

The objections are on the following grounds:

- There will be an increase in noise and on-street parking;
- It appears to be part of a gradual change of use to a full-time public house;
- Noise is present, but tolerable, within the current hours, but there are concerns that this will inevitably increase at later times, particularly at a time when neighbours will be expecting more peace and quiet
- To expect neighbours to have no peace at all on any day until after 9pm is not acceptable. Even up to 7.30pm windows sometimes need to be closed, so this should not be extended further.

Those in support make the following comments:

- The brewery is well-managed and a social asset to the area and local community
- The extension of time will help the business economically
- Noise levels have been low and neighbours amenity always respected
- Most customers walk and therefore no impact on parking

Please note that full copies of the correspondence received can be read in full on the Council's website www.charnwood.gov.uk

Relevant Planning History

P/18/1287/2– Change of use to first floor from storage/office space to pop up pub (Use Class A4) – Granted under delegated powers on 22.11.2018

Consideration of the Planning Issues

The starting point for decision making on all planning applications is that they must be made in accordance with the adopted Development Plan unless material considerations indicate otherwise. The most relevant policies for the determination of this application are listed above and are contained within the Development Plan for Charnwood which comprises the Charnwood Local Plan 2011-2028 Core Strategy (2015), those “saved” policies within the Borough of Charnwood Local Plan 1991-2026 (2004) which have not been superseded by the Core Strategy. It is acknowledged that several of these plans are over 5 years old; therefore, it is important to take account of changing circumstances affecting the area, or any relevant changes in national policy. With the exception of those policies which relate to the supply of housing, the relevant policies listed above are up to date and compliant with national advice. Accordingly, there is no reason to reduce the weight given to them.

As this application is made under section 73 it is a new permission in its own right that sits alongside P/18/1287/2. As either permission can be implemented the earlier consent represents a “fall back” situation. In this respect there are no new material considerations other than those raised by the variation of the conditions itself. The main issues are considered to be:

- The Principle of Development
- Impact on residential amenity
- Impact on Visual Amenity
- Highway Safety

The Principle of the Development

The application site is located within the Development Limits of Anstey, as established under “saved” Policy ST/2 of the Charnwood Local Plan. Policy ST/2 states that development will be confined to allocated sites and other land within the Limits to Development identified on the Proposals Map, subject to the specific exceptions set out in this Plan.

With regards to the principle of the use of the first floor and garden area of the building as a public house, the Development Plan sets out provision for this type of use that are in accordance with the relevant amenity and highway safety policies. The building also benefits from a lawful use as a brewery and public house following the grant of planning permission P/18/1827/2 which is a significant material consideration in this matter. For these reasons it is considered that the principle of the proposal is acceptable and accords with the relevant policies of the Development

Plan. Matters regarding the impact on visual amenity, highway safety and neighbouring amenity are considered below.

Impact on Residential Amenity

Policy CS2 of the Core strategy and EV/1 of the Local Plan seeks to protect the amenity of existing and future residents. The Charnwood Design SPD (2020) also provides guidance to ensure an adequate level of amenity.

As set out above, the current planning permission for the brewery/pub restricts the use of the garden area up to 7.30pm only.

The current application as originally submitted would have effectively allowed the use of the garden area to 10pm, the same hours as the building itself. However, there were officer concern regarding the use of the garden up to 10pm and the potential impact on neighbours, at a time close to when they may be going to bed. Following discussions between officers, the Council's Environmental Protection Manager and the applicant, the current proposal has been amended to allow the garden to be used until 9pm instead.

Whilst it is acknowledged that the use of the garden area until 9pm will inevitably lead to voices and other background noises being heard at a later time, it is considered that a use until 9pm (an additional 1.5 hours beyond the current permitted hours), would be an acceptable and reasonable compromise, given that it is a time generally accepted as within sociable hours. In addition, if this application is subsequently approved, the same conditions as the existing planning permission could also be re-imposed. This includes a smoking area management plan to reduce the amount of noise emanating from this part of the proposal. The applicant also intends to provide additional signage reminding customers to respect neighbours' amenity. It is also noted that, in light of the Covid Pandemic, the government is encouraging the utilisation of outdoor space.

The proposal would not result in any loss of light, outlook or privacy concerns to nearby residents. No alterations to the footprint or external elevations of the building are proposed. The use of the use of the existing staircase to the side of the building it for emergency use only and would not result in a sustained loss of privacy. The existing first floor windows would remain obscurely glazed.

With regard to the representations received, it is noted that the objections are from the closest residents, whilst those in support are, in the main, from customers, although some do also live nearby. Notwithstanding this, subject to the re-imposition of the conditions attached to the original planning permission, it is considered that the proposal is, on balance, acceptable in compliance with the relevant policies of the Development Plan. The recommended conditions can be imposed to ensure that ny impacts on residential amenity in terms of noise would not be so significantly detrimental to neighbours as to warrant a refusal of planning permission. Accordingly, it is considered the proposal would accord with policies CS2 and EV1 of the Development Plan.

The Impact on Visual Amenity

Policies CS2 and EV/1 seek to require high quality design where people would wish to live through design that respond positively to its context.

The proposal would not necessitate any external alterations to the building. Accordingly, there are no design issues for consideration with the proposal. Given this context it is considered that the proposal complied with the relevant Development Plan policies and associated guidance in design terms.

Highway Safety

Saved Policy TR/18 of the Local Plan seeks to ensure that development provides an appropriate level of parking.

It is acknowledged that there is a shortfall of parking provision at the site in line with policy TR/18 and the Highway Authority Design Guidance. However, the site is relatively central to Anstey centre, a sustainable location for development, and is within easy walking distance for local residents. The Nook Car Park is approximately 400m away via a direct alley link with the site. The nearest bus stop is 300m away. Furthermore, given the nature of the use, most patrons would not rely on the use of a car to visit the building.

Overall, taking these considerations into account it is considered that whilst there is a shortfall in parking at the site, on balance, the proposal would be acceptable and in accordance with Saved Policy TR/18 of the Local Plan.

To refuse a planning application on highway safety grounds it must be demonstrated that there is either unacceptable severe, or the residual cumulative impacts of the development cause severe harm to highway safety. For the reasons set out above, it is not considered that such harm would arise. The proposal remains compliant with paragraph 111 of the National Planning Policy Framework and policy TR/18.

Planning Balance and Conclusion

Overall, the proposal has been carefully assessed against the comments and consultation responses received and the policies of the Development Plan and the National Planning Policy Framework.

The proposal is considered not to cause unacceptable harm to residential amenity, or to visual amenity or Highway safety and thus does not conflict with national and development plan policies and guidance. Accordingly, it is recommended that planning permission is granted conditionally.

The original planning permission (ref P/18/1287/2) has been implemented and remains as a fall-back position. As this consent under section 73 represents a new consent for the site it should contain all those conditions already listed unless they no longer meet the tests that should be applied to planning conditions. In this case

conditions originally attached may no longer be necessary as they have either been discharged or because the development is now operational.

RECOMMENDATION:

That planning permission is granted subject to the following conditions and notes

1.	<p>The development, hereby permitted, shall be begun not later than 3 years from the date of this permission. REASON: To comply with the requirements of Section 91 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.</p>
2.	<p>The external fire escape door and staircase to the western elevation of the building shall not be used at any time, other than for evacuation purposes in an emergency. REASON: To minimise the effect of the development on the privacy and amenities of nearby residents.</p>
3.	<p>The external first floor windows to the building shall be glazed with obscure glass, which shall thereafter be retained at all times. No changes shall be made to these windows nor shall any additional windows be inserted thereafter. REASON: To minimise the effect of the development on the privacy and amenities of nearby residents.</p>
4.	<p>The use of the smoking area shown on the approved plans under planning permission ref.no. P/18/1287/2, shall only take place in accordance with the "smoking area management plan" as submitted on 02 November 2018 which shall be implemented in full, operated and maintained at all times when the premises hereby permitted are open to customers. REASON: The premises are close to residential property and the implementation of this management plan is required to prevent a nuisance or annoyance to nearby residents.</p>
5.	<p>The use of the building and smoking area hereby permitted shall not take place other than between 1100 hours and 2200 hours on any day and no use of the external garden area identified on the approved 'Ground Floor Plan' shall occur other than between 1100 hours and 2100 hours on any day. REASON: The premises are close to residential property and a limit on the use is needed to prevent a nuisance or annoyance to nearby residents.</p>
6.	<p>The external Haier air conditioning unit; details of which were received on 16/07/2018 under planning permission ref.no. P/18/1287/2, shall match the specification submitted as part of the application and shall not operated other than between 1100 hours and 1930 hours on any day. REASON: The premises are close to residential property and a limit on the use is needed to prevent a nuisance or annoyance to nearby</p>

	residents.
7.	No external lighting shall be provided, other than in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The submitted details shall thereafter be implemented and retained in perpetuity. REASON: The premises are close to residential property and a limit on the use is needed to prevent a nuisance or annoyance to nearby residents.

Informative Note(s):

1.Planning Permission has been granted for this development because the Council has determined that it is generally in accordance with the terms of Development Plan policies CS2 and CS9, EV/1 and TR/18. There are no other issues arising that would indicate that planning permission should be refused.

2.The Local Planning Authority has acted pro-actively through early engagement with the Applicant at the pre-application stage and throughout the consideration of this planning application. This has led to improvements with regards the development scheme in order to secure a sustainable form of development in line with the requirements of Paragraph 38 of the National Planning Policy Framework (2021), in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

3.This approval only provides permission for an air conditioning unit. The provision of any additional external plant equipment would require separate consideration.

