

**Planning Committee 20 August 2019  
Report of the Planning Manager**

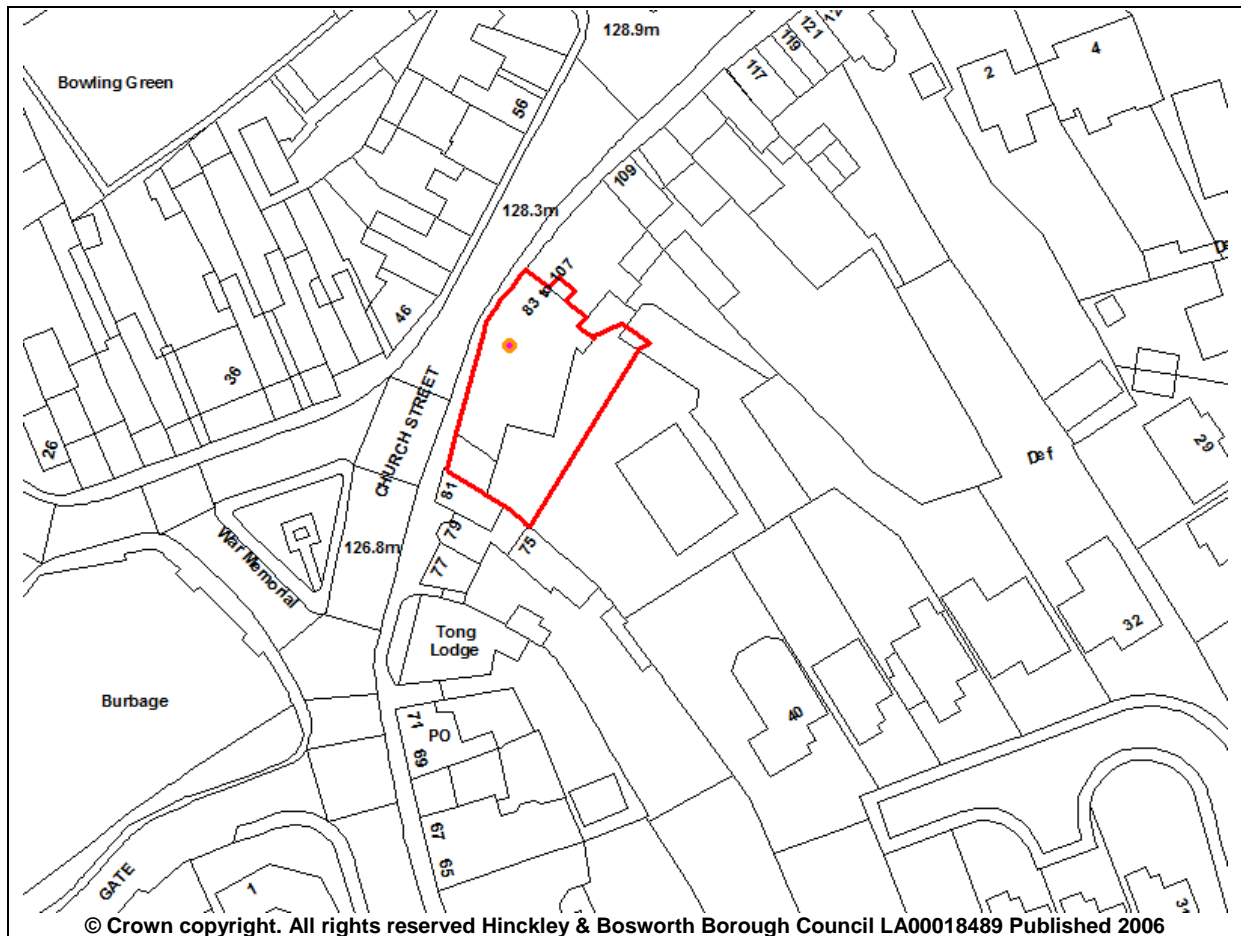


Hinckley & Bosworth  
Borough Council

**Planning Ref:** 19/00452/FUL  
**Applicant:** Mr Timothy Arnold  
**Ward:** Burbage St Catherines & Lash Hill

**Site:** 83 - 103 Church Street Burbage Hinckley

**Proposal:** Change of use of part of existing retail unit to drinking establishment  
(Use Class A4)



1. This application was taken to the previous Planning Committee on the 23 July 2019. The previous report is attached to this report as Appendix A.
2. Concerns were raised regarding pedestrian safety given the width of the existing footpath, outside of the application premises and potential for indiscriminate parking. Therefore, notwithstanding the officer's recommendation that permission be granted, members deferred the application for further comment from LCC (Highways).
3. Since the Planning Committee meeting on 23 July 2019, the Council has received additional comment from the Highway Authority. LCC (Highways) have confirmed that as the site is surrounded by a number of Traffic Regulation Orders (TROs), the likelihood of inappropriate parking is reduced.

Further to this LCC (Highways) agree that the A4 use is likely to generate less potential for indiscriminate parking than the permitted take-away (A5) use.

4. The response received from LCC (Highways) confirms that the situation is existing and it is not possible to increase the footway width without reducing carriageway widths. Widening the footway in this area may impede free flowing traffic and it is also likely to impede larger vehicles which could lead to kerb mounting. Therefore, there is no scope for widening the footway. The Highway Authority checked Personal Injury Collision data and found no record of incidents in the last 5 years.
5. The application proposal has not been altered, given the comments above, the recommendations to Planning Committee do not alter from those identified in the previous report and the proposal is considered acceptable in planning terms and recommended for approval subject to the conditions contained in the previous report attached at appendix A.

# **APPENDIX A**

Planning Committee 23 July 2019  
Report of the Planning Manager

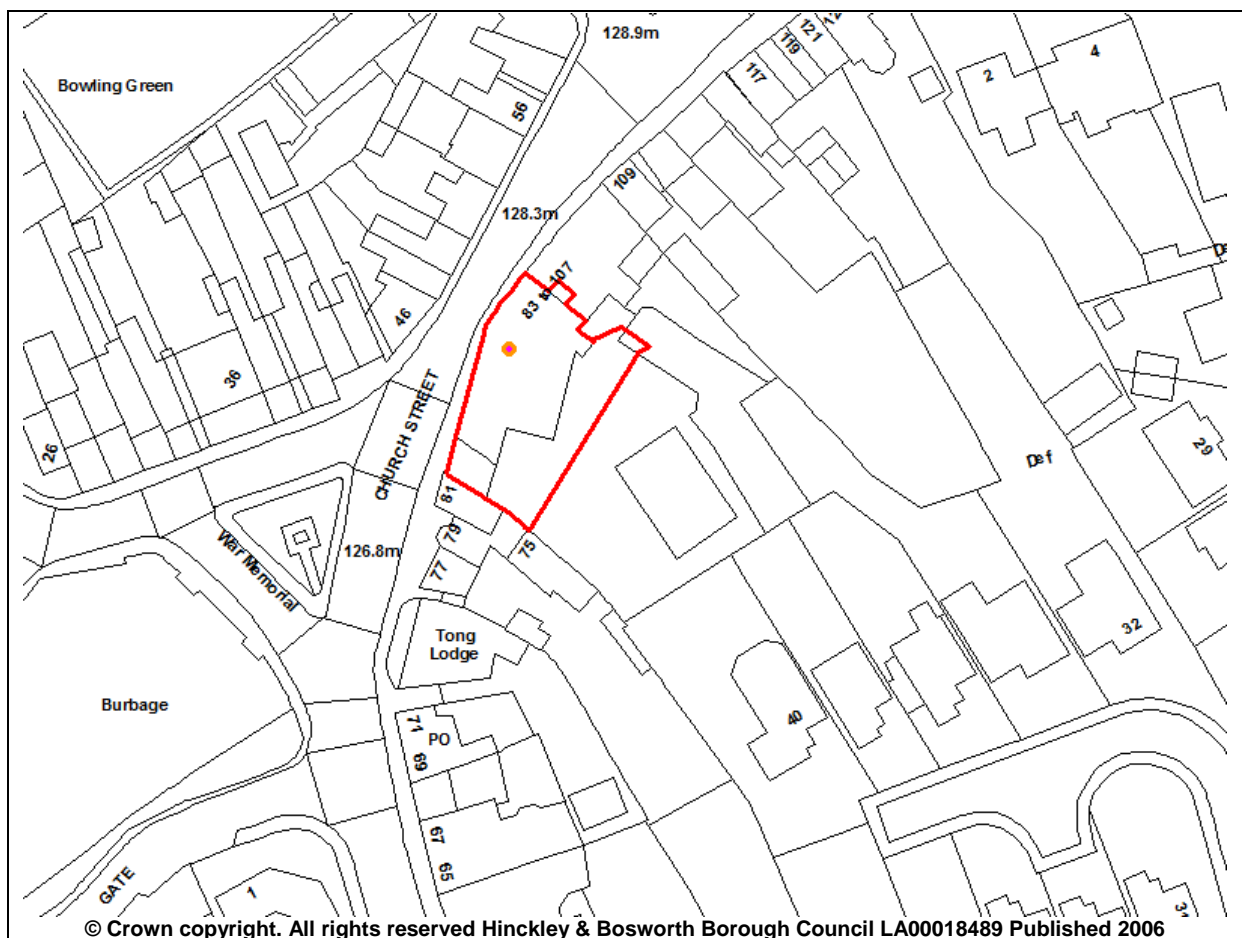
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## **1. Recommendations**

### **1.1. Grant planning permission subject to**

- Planning conditions outlined at the end of this report.

## **2. Planning Application Description**

- 2.1. This application seeks the change of use of part of the existing ground floor retail use to use as a drinking establishment under use class A4 which includes public houses, wine bars or other drinking establishments (but not night clubs) including drinking establishments with expanded food provision under use class A4. Planning permission ref: 16/00885/FUL included the application unit and this permission has

been lawfully commenced. That permission approved the change of use of part of the retail unit to either a retail unit (class A1) or use as a hot food takeaway (class A5). As such there is an extant planning permission in place on this part of the ground floor retail unit for its change of use to a hot food takeaway (A5) and this permission can be implemented at any time.

- 2.2. Minimal alterations are proposed to the elevations of the application unit. The existing powder coated aluminium glazed shopfront and door would continue to form the main entrance into the building with the door remaining inward opening. The blocked up window on the front elevation would be replaced with a new powder coated aluminium window which would have a top opening window pane. The rear elevation would remain unaltered with the exception of a need for extract ducts if hot food is to be served on the premises. Access to the parking, situated at the rear of the site, would remain through an existing archway from Church Street. One car parking space is shown to be allocated for the application unit. An enclosed bin/empty cask store would be located to the rear of the site.
- 2.3. Internally, the application unit comprises some 70m<sup>2</sup> of floor space and is intended to have a capacity of circa 60 people. There would be a serving bar along with a small kitchen created to the rear of the premises. An existing cold room, immediately behind the bar serving area would be used as a Beer Cellar. There would be two toilets along with an existing cellar located underneath the toilets to be used as a storage area.

### **3. Description of the Site and Surrounding Area**

- 3.1. The application unit is located within the settlement boundary and Conservation Area of Burbage. Forming the centre unit of the former Co-Op Store between the Dental Practice and the Funeral Directors, it is understood that the whole site is still owned by the Co-op and the application unit would be let as a commercial premises.
- 3.2. The built form in the surrounding area is predominantly two storeys, with the existing building itself being two storey. The building curves round reflecting the curved nature of Church Street. Above the application unit are residential apartments at first floor level along with two storey terraced residential properties opposite the site. Indeed, the application unit lies within a neighbourhood centre as defined in the SADMP where there is a mixture of commercial and residential uses.

### **4. Relevant Planning History**

16/00885/FUL	Change of use of part of existing retail unit to either a retail unit (A1) or hot food takeaway (A5). Change of use of office (B1) and dance studio (D2) to residential (C3) to form 5 flats. Demolition of part of outbuilding to rear and erection of a two storey side extension	Planning Permission	04.01.2017
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17/00451/CONDIT	Variation of condition 2 of planning permission 16/00885/FUL to amend front and rear facade of main building, remove extension to outbuilding and rearrange layout of rear parking area	Planning Permission	04.07.2017
09/00473/COU	Change of use to Office (B1)	Planning Permission	18.08.2009
18/00747/FUL	Conversion of existing office building to 2 flats and associated alterations to car parking and landscaping	Planning Permission	26.10.2018

## 5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site and a notice was published in the local press.
- 5.2. During the consultation period, 12 letters of objection have been received from individual addresses. These letters raise the following issues:
- 1) Noise disturbance from customers and live music
  - 2) Live music next to the funeral directors would be disrespectful
  - 3) People would stand outside on the pavement to smoke causing the obstruction of an already narrow pavement
  - 4) There are no toilet facilities in the building
  - 5) There would be pedestrian safety issues from customers leaving the bar as the footpath is very narrow (between 0.8m – 1m wide)
  - 6) Limited parking for cars and motorbikes in the area for 60+ customers
  - 7) Amenity issues from the proposed smoking area at rear of building next to residential flats and a fire escape
  - 8) There are 7 licensed premises within 650 metres of the site which generate noise complaints from live music and this proposal has already applied for a live music licence. This is a small village and not a town centre
  - 9) Anti-social behaviour would be experienced from customers and the police should be consulted on this application
  - 10) Illegal parking on double yellow lines in the area and so a car parking survey is required
  - 11) Installing opening windows at the front and having a fire door open for smokers at the rear would allow noise from live music to impact on residential properties
  - 12) Smokers would block fire exit for flats above

5.3. 52 letters of support have been received from individual addresses raising the following areas of support:

- 1) This proposal would re-use a building which is an eyesore and has been vacant for a while and does nothing to improve the appearance of the area
- 2) Burbage has already lost 2 public houses so more needed
- 3) The building will be a good place for people to enjoy craft beers and ciders
- 4) Owner already runs a public house which does not attract any anti-social behaviour and this public house has added footfall into Hinckley
- 5) This use would be a valuable part of the community
- 6) Family run award winning micro pubs should be encouraged and they attract the mature type of drinker
- 7) A relaxed and friendly environment is proposed which does not encourage heavy drinkers
- 8) The proposal would create jobs and income and would be a great addition to Burbage
- 9) Micro breweries gain support from CAMRA and small ventures should be supported in a time when public houses are in rapid decline

## **6. Consultation**

6.1. No objection some subject to conditions from the following:

Environmental Health (Pollution) - conditions  
HBBC Waste Services - condition  
HBBC Conservation Officer  
Leicestershire Police  
Environmental Health (Drainage)

6.2. Burbage Parish Council objects to the application on the grounds of public safety. The Parish Council maintains that the pavement to the front of the premises is extremely narrow and does not allow for easy passing of pedestrians. An increase in pedestrian traffic arriving and leaving the application premises would compound this already hazardous stretch of pavement. There are also examples of indiscriminate parking in the area and evidence will be provided.

6.3. The Highway Authority refers the local planning authority to current standing advice. Although they note that the proposal could increase demand for parking in the area, they state that it is unlikely to constitute reasonable grounds to resist the proposal as there is on-street parking within the vicinity of the site which can be used by customers/visitors and restrictions to prevent indiscriminate parking within the area.

## **7. Policy**

7.1. Core Strategy (2009)

- Policy 4: Development in Burbage

7.2. Site Allocations and Development Management Policies DPD (2016) (SADMP)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM10: Development and Design
- Policy DM11: Protecting and Enhancing the Historic Environment
- Policy DM12: Heritage Assets
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards
- Policy DM22: Vitalising District, Local and Neighbourhood Centres
- Policy DM23: High Quality Shop Fronts and Advertisements
- Policy DM25: Community Facilities

### 7.3. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2019)
- Planning Practice Guidance (PPG)

### 7.4. Other Considerations

- Burbage Conservation Area Appraisal (2011)
- Emerging Burbage Neighbourhood Plan (BNP)

## 8. Appraisal

### 8.1. Key Issues

- Assessment against strategic planning policies
- Impact upon the character of the area and the Burbage Conservation Area
- Impact upon neighbouring residential amenity
- Impact upon highway safety
- Other Considerations

#### Assessment against strategic planning policies

8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) identifies that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 2 of the NPPF also identifies that the NPPF is a material planning consideration in planning decisions. Paragraph 12 of the NPPF states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where planning applications conflict with an up-to-date plan, development permission should not usually be granted unless other material considerations indicate otherwise.

8.3. The development plan consists of the Core Strategy (2009) and the Site Allocations and Development Management Policies (SADMP). The emerging Burbage Neighbourhood Plan (BNP) is still in development. The BNP has yet to be submitted to the LPA for Submission Consultation prior to Examination by an Inspector and subsequent referendum. Therefore, very limited weight can be afforded to it at this time.

8.4. The application site is located within the settlement boundary and conservation area of Burbage. Policy 4 of the Core Strategy identifies Burbage as a key centre which supports Hinckley's role as a sub regional centre. Policy 4 also aims to support the Burbage local centre and ensure that the village's infrastructure can accommodate new development. The development is sustainably located with regards to access to services, facilities and modes of public transport and would therefore be in accordance with Policy 4 of the Core Strategy and DM22 of the SADMP.

8.5. The site is designated as a Neighbourhood Centre within Policy DM22 of the SADMP. Policy DM22 states that 'the change of use or loss of A1 or A2 uses within the neighbourhood centres will only be permitted where it would not reduce the community's ability to meet its day to day needs.' There is an extant planning permission on the application unit for the change of use to an A5 use (hot food takeaway) and so there would be no conflict with Policy DM22 with respect to the loss of an A1 or an A2 use within the area.

#### Impact upon the character of the area and the Burbage Conservation Area

8.6. The application unit is located within the settlement boundary and Conservation Area of Burbage. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states in determining the application special attention shall be paid

to the desirability of preserving or enhancing the character or appearance of a conservation area.

- 8.7. Section 16 of the National Planning Policy Framework (NPPF) provides the national policy on conserving and enhancing the historic environment. Paragraph 193 of the NPPF states 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 and this applies irrespective of whether any potential harm amounts to substantial harm total loss or less than substantial harm to the significance.
- 8.8. Policies DM11 and DM12 of the SADMP seek to protect and enhance the historic environment. Development proposals should ensure the significance of a conservation area is preserved and enhanced. Policy DM10 of the SADMP seeks to ensure that development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features with the intention of preventing development that is out of keeping with the surrounding area. Policy DM23 of the SADMP seeks to maintain high levels of design and ensure local distinctiveness for proposals for new and refurbished shop fronts.
- 8.9. The application unit is part of an important and prominent building within the Burbage Conservation Area with the curve in the building reflecting the curved nature of Church Street. Despite the modern interventions on the ground floor, the building does contribute to the character and appearance, and thus significance of the conservation area.
- 8.10. The Council's Conservation Officer raises no objection to the application proposal. Due to the limited amount of alterations required to its external elevations, the Conservation Officer considers that the character and appearance of the building would be retained and the significance of the Burbage Conservation Area would be preserved.
- 8.11. In addition to the above, the proposal would also bring this empty unit back into a beneficial use and the replacement of the boarded up window with a window to match the existing shopfront would enhance the appearance of the building to the benefit of the significance of the Conservation Area.
- 8.12. Due to the nature of the site and the proposed location of the bin store, a scheme which makes adequate provision for waste and recycling and collection from the unit would need to be submitted to ensure that there is no impact from waste on the street scene or the conservation area. It is recommended that this be secured by condition.
- 8.13. The proposed works would retain the character and appearance of the building and the significance of the Burbage Conservation Area. The proposal would enhance the significance of the conservation area and it therefore complies with Policies DM10, DM11, DM12 and DM23 of the SADMP, section 16 of the NPPF and the statutory duty of section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

#### Impact upon neighbouring residential amenity

- 8.14. Policy DM10 of the SADMP states that proposals should not adversely affect the occupiers of the neighbouring properties. Policy DM22 of the SADMP supports the use of upper floors of retail premises within local and neighbourhood centres for residential use.



- 8.15. There are residential properties above the application unit. Details have been submitted with the planning application of the Fire and Acoustic Ceiling Specification which has been installed between the unit and the residential apartment in preparation for its use as a takeaway. Based on these details the Council's Environmental Health Officer has no objections to the A4 use now being proposed to be operated from the unit.
- 8.16. With regards to the noise levels for external plant from the air conditioning units/cooling units and ventilation, full details of the noise levels were contained in a Noise Mitigation Report submitted with the 2016 planning consent. The Environmental Health Officer has assessed the noise report submitted and considers there would be no harm caused to residential amenity from these air conditioning units. It is recommended that a planning condition is imposed which ensures that the noise from any external plant and equipment is in accordance with this Noise Mitigation Report. With regards to the proposed preparation of hot food within the building, the Environmental Health Officer has assessed the application and considers that a flue could be installed to the rear of the building which would not have a detrimental impact upon the residents on the first floor and the residents adjacent to the site. A planning condition is recommended which ensures that no hot food is prepared on site until full details of the ventilation scheme have been submitted to and approved in writing by the local planning authority in order to protect the amenity of neighbouring residents.
- 8.17. In addition to the above, the first floor residential apartments are situated on the front of the building, with a communal corridor separating the residential accommodation from the rear elevation of the building. As such, there is an intervening area between the first floor apartments and the proposed air conditioning units/cooling units and the possible indicative location of the flue.
- 8.18. The majority of the objections received relate to the noise which could be generated by the proposed drinking establishment particularly from live music. The use proposed does have the potential to generate footfall late into the evening. The proposal also includes a small opening window on the front elevation. Opening hours can be restricted by a planning condition to ensure the protection of residential amenity. Indeed, the A5 use has an opening hours restriction from 8am to 11 pm each day and these hours were considered not to be detrimental to residential amenity. The opening hours of the drinking establishment proposed would be restricted by a planning condition and the Premises Licence. It is recommended that opening hours are restricted to 12:00 to 23:00 Sundays to Thursdays and 12:00 to 23:30 on Fridays and Saturdays in order to reduce the impact of noise on nearby residents which are the same hours as specified on the Premises Licence.
- 8.19. Concerns are also raised about customers drinking and smoking outside of the application unit and the potential for this noise to be late at night. Burbage Parish Council has stated that conditions should be imposed to prohibit smoking and drinking in front of the premises. Such a planning condition would not meet the requirements laid out in the Framework but would be conditions imposed on the Premises Licence.
- 8.20. A number of objections raised relate to the potential for anti-social behaviour from the proposed drinking establishment and other drinking establishments in the area. Leicestershire Police's Designing Out Crime Officer has visited the application unit and confirms that he has no objection to the proposed A4 use. A number of recommendations are made on the need to install CCTV cameras, an internal alarm system and secure bin storage areas. These are requirements contained within a Premises Licence and an A4 use cannot operate without first obtaining a Premises

Licence. As laid out in paragraph 183 of the Framework, the focus of planning decisions should be on whether proposed development is an acceptable use of land rather than the control of processes which are the subject of separate control regimes. In this case, the conditions on a Premises Licence would address the anti-social behaviour raised by the objectors and so there would be a greater level of control over this proposed A4 use compared to the permitted A5 hot food takeaway use which would not need such a Licence to operate.

- 8.21. Based on the restrictive conditions proposed and the fallback position in that the application unit could trade as a hot food takeaway until 23:00 each evening and the comments received from Environmental Health it is not considered that the proposal would have a significant adverse effect on the amenity of nearby residents. As such the proposal is considered to comply with Policy DM10 of the SADMP

Impact upon highway safety

- 8.22. Policy DM17 and DM18 of the SADMP states that proposals should ensure that there is adequate provision for on and off street parking for residents and visitors and there is no impact upon highway safety.
- 8.23. The proposed access to the site is from Church Street, using an existing access through an archway under the residential flats. One parking space has been allocated for this unit and this is for use by an employee. There is no parking provision for users of the public house.
- 8.24. LCC Highways has assessed and considered the application and submitted details and have referred the local planning authority to current standing advice. Although they note that no parking has been proposed, they advise that it is unlikely to be reasonable to resist the proposal on the grounds of a lack of parking provision. Indeed, they note that there is on-street parking within the vicinity of the site that can be used by customers and visitors and that parking restrictions are in place to prevent indiscriminate parking within the area.
- 8.25. Concerns have been raised by local residents and the Parish Council about the lack of availability of parking in the area. Photographic evidence has also been provided of indiscriminate parking. During a site visit no indiscriminate parking was observed and it was noted that parking restrictions are in place outside of the application unit. It is accepted that demand for parking would be different during the day and night. However, there is limited evidence available which would indicate that there is no residual parking capacity for vehicles in the area and that there are high instances of indiscriminate parking as a result of this. In addition to this, the Highway Authority and Police have no objections to the proposal and it would be the Police who would enforce indiscriminate parking.
- 8.26. Being located within a Neighbourhood Centre the application unit is located in a sustainable location with public transport available nearby. The extant consent for a hot food takeaway use could generate more traffic than the proposal for a drinking establishment as customers would want to park closer to the takeaway to collect their hot food. As such it is unlikely that the proposal for a small A4 use would result in a demonstrable increase in traffic over the fall-back use of the site. This is a key factor when considering the impact on highway safety for development.
- 8.27. Concerns have also been raised about pedestrian safety as the footpath outside of the unit is narrow. The footpath outside the entrance doorway is 1.2 metres in width. The entrance doorway is inward opening and there is sufficient width to allow two pedestrians to pass each other. Concerns have also been raised about customers leaving the premises and falling into the road. Church Street has a 20 mph speed

limit outside of the application unit and being located on the inside of a sharp bend the average speed of vehicles is likely to be far lower than this. It is considered that the width of the pavement outside of the application unit is sufficient to accommodate the customers generated from the proposed use and that the low speed levels of oncoming vehicles should ensure adequate stopping distances.

- 8.28. Based on the above the proposal would not have a severe adverse impact upon highway or pedestrian safety and would therefore be in accordance with Policies DM17 and DM18 of the SADMP.

#### Other Considerations

- 8.29. Concerns have been raised that smokers standing at the rear of the building would block the fire escape for the apartments above. The site plan and proposed rear elevation plan submitted with the application demonstrates that there is sufficient space to the rear of the application unit so that the escape route to the apartments is not impeded.

### **9. Equality Implications**

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.

- 9.3. There are no known equality implications arising directly from this development.

- 9.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

### **10. Conclusion**

- 10.1. The proposed unit lies within a Neighbourhood Centre and there would be no conflict with Policy DM22 of the SADMP. Due to the limited amount of alterations required to its external elevations, the character and appearance of the building would be retained and the significance of the Burbage Conservation Area would be preserved.

- 10.2. In view of the restrictive conditions proposed and the fallback position in that the application unit could trade as a hot food takeaway until 23:00 each evening, it is not considered that the proposal would have a significant adverse effect on the amenity of nearby residents and it is assessed that there would be no intensification

of the use of the site and the proposal would not have a severe adverse impact upon highway or pedestrian safety. The proposal is considered to be in accordance with Policies DM1, DM10, DM11, DM12, DM17, DM18, DM22 and DM23 of the SADMP and is therefore recommended for approval subject to conditions.

## 11. Recommendation

### 11.1. Grant planning permission subject to

- Planning conditions outlined at the end of this report.

### 11.2. Conditions and Reasons

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

**Reason:** To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall not be carried out otherwise than in accordance with the submitted application details, as follows: Site Location Plan, Drw No: 3138/A/010 Rev L, Proposed Front Elevation, Proposed Rear Elevation and Block Plan received by the local planning authority on 25 April 2019 and the Environmental Noise Assessment Report received by the local planning authority on 22 September 2016.

**Reason:** To ensure a satisfactory impact of the development to accord with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies DPD.

3. The proposed public house drinking establishment shall not be open to the public outside the following hours:

12.00 – 2300 Sunday – Thursday

12:00 – 2330 Friday – Saturday

**Reason:** To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document.

4. The window fitted to the existing boarded up section on the front elevation shall be of the same specification as the adjoining shopfront and the opening shall be inward opening.

**Reason:** To ensure a satisfactory impact of the development to accord with Policies DM10, DM11 and DM12 of the adopted Site Allocations and Development Management Policies DPD.

5. Hot food shall not be prepared or served at the premises until a scheme for ventilation of the premises, which shall include the installation method, maintenance and management has been submitted to and approved in writing by the local planning authority. The approved details shall then be fully implemented prior to the preparation and serving of any hot food and thereafter maintained as such at all times.

**Reason:** To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document.

6. The level of noise emitted from the external plant/equipment from the unit hereby approved shall be in accordance with the noise levels as outlined in Section 7 – Noise Mitigation of the submitted Environmental Noise Assessment Report received by the local planning authority on 22 September 2016 for outline permission ref: 16/00885/FUL.

**Reason:** To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document.

7. Before first use of the unit as an A4 use, a scheme shall be submitted to the local planning authority for their approval in writing to ensure adequate provision for waste and recycling storage of containers and collection from the site. The details should address accessibility to storage facilities and confirm adequate space is provided to facilitate collection of waste via a registered waste carrier.

**Reason:** To ensure a satisfactory impact of the development to accord with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies DPD.

### 11.3. **Notes to Applicant**

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at [buildingcontrol@hinckley-bosworth.gov.uk](mailto:buildingcontrol@hinckley-bosworth.gov.uk) or call 01455 238141.
2. A separate planning application may be required if the details submitted under condition 5 require planning permission.