

**Case Officer:** Gemma Magnuson

**Recommendation:** Approve

**Applicant:** WH Brakspear and Sons Ltd

**Proposal:** Variation of Condition 1 (fully installed and operational kitchen extract system and intake grille within 6 months) and Condition 4 (removal of existing kitchen extract unit within 6 months) of 20/02815/F – To extend time limit for completion to mid-November 2021

**Expiry Date:** 10 September 2021

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## **1. APPLICATION SITE AND LOCALITY**

1.1. The Lion is a Grade II listed Public House situated central to the village of Wendlebury. Other Grade II listed buildings are in close proximity to the site to the south-west and north-west. The site is partially within Flood Zones 2 and 3 and in close proximity to a watercourse (site of development over 20 metres from the watercourse) although the development would take place outside of the Flood Zones. The site is of archaeological interest. The Wendlebury Meads and Mansmoor Closes SSSI is within 2km of the site. Protected and notable species the swift has been identified in the vicinity.

## **2. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 2.1. Planning permission and listed building consent were granted on 25 February 2021 for the replacement of an existing kitchen extract system, including a new intake grille (see planning history). The permission was subject to conditions requiring the new kitchen extract and intake grille to be installed and operations within 6 months, and for the existing kitchen extract to be removed within 6 months. The 6 month deadline would have been 25 August 2021, although the work has not been undertaken.
- 2.2. The current application seeks to vary the relevant conditions to allow additional time in which to remove the existing system and replace it with the new system. The 15 November 2021 has been put forward as a revised date for completion.
- 2.3. The justification for the extension of time is due to the impact from the COVID-19 pandemic and severely reduced cashflow. The applicant has 150 properties and spending has had to be prioritised.

## **3. RELEVANT PLANNING HISTORY**

3.1. The following planning history is considered relevant to the current proposal:

**Application: 20/02815/F** Permitted 25 February 2021

Replacement kitchen extraction system including new intake grille

**Application: 20/02816/LB** Permitted 25 February 2021

Replacement kitchen extraction system including new intake grille

**Application: 21/01307/DISC** Permitted 8 June 2021

Discharge of condition 3 (colour & finish of intake grille & extract flue) of 20/02815/F

**Application: 21/01308/DISC** Permitted 8 June 2021

Discharge of condition 3 (colour & finish of intake grille & extract flue) of 20/02816/LB

**Application: 21/02584/LB** Undetermined at  
time of writing

Variation of Condition 4 (removal of existing kitchen extract unit within 6 months) of 20/02816/LB – To extend the time limit for completion to mid-November 2021

#### **4. PRE-APPLICATION DISCUSSIONS**

4.1. No pre-application discussions have taken place with regard to this proposal.

#### **5. RESPONSE TO PUBLICITY**

5.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **7 September 2021**, although comments received after this date and before finalising this report have also been taken into account. Two comments were received. The comments raised by third parties are summarised as follows:

- Current extract causing odour/smoke nuisance – need to keep windows closed again, particularly bad in the mornings and weekends
- Will CDC take action for us taxpayers if the work is not completed by the proposed variation date?
- Missed off neighbour consultation – some of neighbours who got a letter are not fully exposed
- Feel let down as matter drags on for far too many years, it should have been addressed long before COVID
- Noise and smell causes great distress and affects daily life, unable to make full use of our property for far too long, garden is unusable, even noise and smell impact with windows and doors closed
- Concern extension will lead to another, with best time of year to complete the works ending
- Request Planning Officer ensures matter is addressed and delivered upon by mid-November 2021
- Still concerned works will not fully resolve the matter, option clearly most cost effective and less impactful for discharge and ventilation

5.2. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## **6. RESPONSE TO CONSULTATION**

6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

6.2. Wendlebury Parish Council - Wendlebury Parish Council has no objection to this application but would comment that the application requires timescale of maximum of 3 months to be completed from the date the application has been permitted.

### STATUTORY CONSULTEES

6.3. None.

### NON-STATUTORY CONSULTEES

6.4. CDC Environmental Health - I have no objections to this extension of time, but would be minded to object to any further extension request in the future as this problem needs resolving.

## **7. RELEVANT PLANNING POLICY AND GUIDANCE**

7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- ESD 10 - Protection and Enhancement of Biodiversity and the Natural Environment
- BSC12 – Indoor sport, recreation and community facilities
- ESD 15 - The Character of the Built and Historic Environment

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- ENV1 – Pollution control
- S29 – Loss of existing village services

7.3. Other Material Planning Considerations

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

## 8. APPRAISAL

8.1. The principle of the development has already been accepted by the previous permissions, including the impact upon protected species. The current application seeks only to extend the time limit for the works to be completed. The key issues for consideration in this case are therefore:

- Design, and impact on the character of the area
- Residential amenity and environmental pollution

### Design, and impact on the character of the area

8.2. Government guidance contained within the NPPF requires development to function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development. Development should be visually attractive, sympathetic to local character and history, and establish or maintain a strong sense of place. Permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions.

8.3. Policy ESD 15 of The Cherwell Local Plan 2011-2031 Part 1 requires development to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development will be required to meet high design standards.

8.4. Further, development proposals will be required to conserve, sustain and enhance designated and non-designated heritage assets including buildings, features, archaeology, conservation areas and their settings. Where less than substantial harm would be caused, this should be weighed against the public benefits arising from the development.

8.5. Saved Policy C28 of the Cherwell Local Plan 1996 seeks a standard of layout, design and external appearance, including the choice of external finish materials, that are sympathetic to the character of the context of the development.

8.6. It is disappointing that the works have not been completed within the required timescale and that the existing unsympathetic extract system remains in place. However, this application is being assessed in the context of the COVID-19 global pandemic where public houses have been forced to cease trading for considerable periods of time over the last 18 months. I therefore accept the justification put forward by the applicant with regard to reduced cashflow. Bearing in mind the requirement of Policy BSC 12 of the Cherwell Local Plan 2011-2031 Part 1 to protect and enhance community facilities such as Public Houses, and given that the applicant has given a set date for the work to be completed at just over two months from the date of writing this report, I consider that I can support the proposed extension of time.

8.7. I have also borne in mind that taking enforcement action against the applicant could lead to longer delays for the completion of work than that now proposed.

### Residential amenity and environmental pollution

8.8. Government guidance contained within the NPPF requires development to create places that are safe, inclusive and accessible, promoting health and well-being, and with a high standard of amenity for existing and future users. Policy ESD 15 of the Cherwell Local Plan 2011-2031 requires all development to consider the amenity of both existing and future development. Saved Policy C30 of the Cherwell Local Plan

1996 seeks standards of amenity and privacy acceptable to the Local Planning Authority.

- 8.9. Saved Policy ENV1 of the Cherwell Local Plan 1996 seeks to ensure that the amenities of the environment, and in particular the amenities of residential properties, are not unduly affected by development proposals which may cause environmental pollution, including that caused by traffic generation.
- 8.10. The existing extract system is causing harm to the living amenities of nearby residents, as evidenced by the response to the public consultation. Again, it is disappointing that the work has not been completed within the specified timescale, further impacting upon neighbours in terms of noise, odour and smoke.
- 8.11. The Environmental Health Officer has raised no objection to the proposed extension of time, although indicated that any further extensions are unlikely to be supported. I am in agreement with this comment. The fact that the applicant has suggested a specific date of 15 November 2021 for completion would, in my opinion, strengthen the Council's position if enforcement action were to be required following this date.
- 8.12. Again, the requirement to support community facilities such as public houses has been borne in mind and the potential for enforcement action to lead to longer delays than that proposed. Whilst it is with reluctance, I consider the proposed extension of time to accord with the above Policies.

## **9. PLANNING BALANCE AND CONCLUSION**

- 9.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.
- 9.2. The proposed extension of time for the completion of works would support this community facility, whilst securing the prompt replacement of the existing insufficient and unsympathetic kitchen extract facility. Whilst it is acknowledged that a further two months of harm to neighbouring properties in terms of environmental pollution and impact upon this designated heritage asset and its setting would continue to be experienced, the long-term public benefits of the approval of the extension of time are considered to outweigh these. The application is therefore recommended for approval.

## **10. RECOMMENDATION**

That permission is granted, subject to the following conditions:

1. The kitchen extract system and intake grille hereby approved shall be fully installed and operational by 15 November 2021.

Reason - In order to safeguard the amenities of the area and to minimise the risk of a nuisance arising from noise or odour in accordance with saved Policy ENV1 of the Cherwell Local Plan 1996, Policy ESD 15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application forms and the following plans and documents: Site location plan, Block plan, Drg. No. AAN:19.706. 3 Rev. D, AAN.19.706. 5, LIONW-OOC, RT External Noise

Assessment ref: MDR/J4417a, 5 Stage Carbon Filtration details received 16 December 2020, LONGAR pleated panel filter details, JANSUN ENVIROCARE LTD Discarb Unit details and Caterquip email dated 17 December 2020

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

3. That the external elements of the intake grille shall be of colour 65YY 79/118 and the extract flue shall be of matt black colour and finish, in accordance with application form, Dulux colour chart and Agent email dated 02 June 2021 approved as part of 21/01307/DISC, and maintained as such thereafter.

Reason – To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

4. The existing kitchen extraction units shall be removed from the roofslope, and the roofslope made good with materials to match those existing by 15 November 2021.

Reason – To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

5. The extraction system hereby approved shall be maintained and cleaned in accordance with manufacturer's instructions, with a log of such cleaning and maintenance to be recorded and made available for inspection by Council Officers at all times.

Reason - In order to safeguard the amenities of the area and to minimise the risk of a nuisance arising from noise or odour in accordance with saved Policy ENV1 of the Cherwell Local Plan 1996, Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

Case Officer: Gemma Magnuson

DATE: 10 September 2021

Checked By: Paul Ihringer

DATE: 10/9/21

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