

7 DCSE2009/0533/F - A TIMBER FRAMED SMOKING SHELTER, THE KING CHARLES II, 13 BROAD STREET, ROSS-ON-WYE, HEREFORDSHIRE, HR9 7EA.

For: Mr A Gooding per Ms M Oates, The King Charles II, 13 Broad Street, Ross-on-Wye, Herefordshire, HR9 7EA.

Date Received: 17 March 2009 Ward: Ross-on-Wye West Grid Ref: 59971, 24243
Expiry Date: 12 May 2009

Local Members: Councillors CM Bartrum and G Lucas

1. Site Description and Proposal

- 1.1 The application is made partially retrospectively and seeks the retention of the existing smoking shelter, with modifications, to the rear of the King Charles II Public House, 13 Broad Street, Ross-on-Wye. The building is Grade II listed and within the Ross-on-Wye Conservation Area.
- 1.2 The shelter is located at the bottom of the beer garden towards the north-west boundary with the detached dwellings in Berkeley Mews. At present it is an open sided timber framed structure measuring 4.8 metres x 6.5 metres under a shallow pitched, felt covered roof. In its location the shelter is more closely related to the residential development to the rear than the public house itself.
- 1.3 Planning permission for the retention of the shelter was refused under delegated powers under reference DCSE2008/2198/F for the following reason:

‘The proposed smoking shelter is a comparatively substantial structure located in close proximity to neighbouring residential development. The local planning authority is of the opinion that the intensified use of the beer garden facilitated by the shelter would, as a result of noise and smoke pollution, be prejudicial to the residential amenity of the occupants of the adjoining dwellings in a manner contrary to Policies S2, DR2 and DR4 of the Herefordshire Unitary Development Plan.’
- 1.4 The modified proposal now involves providing soundproof cladding to the rear and one side of the shelter in order to attempt to minimise the dispersal of noise and smoke arising from its use. Further cladding would not be permitted under legislation that precludes complete enclosure of smoking shelters.
- 1.5 The application is accompanied by a Design and Access Statement, which explains the reasons behind the provision of a smoking shelter and its location. It is understood that Police have objected to patrons congregating to the front of the pub in Broad Street, whereas moving the shelter closer to the rear of the pub building would be likely to offend other nearby residents. Under the license, patrons are not permitted to enter the beer garden with alcohol after midnight.

2. Policies

2.1 Herefordshire Unitary Development Plan 2007

Policy S2	-	Development Requirements
Policy DR2	-	Land Use and Activity
Policy DR4	-	Environment
Policy HBA4	-	Setting of Listed Buildings
Policy HBA6	-	New Development within Conservation Areas

3. Planning History

- 3.1 DCSE2008/2198/F Timber frame smoking shelter - Refused under
(retrospective) delegated powers (see
1.3 above) 20.10.08

4. Consultation Summary

Statutory Consultations

- 4.1 No statutory or non-statutory consultations required.

Internal Council Advice

- 4.2 Conservation Manager (Building Conservation): No objection.
- 4.3 Head of Environmental Health and Trading Standards comments summarised as follows:

Environmental Health Protection has received a number of complaints regarding noise emanating from the beer garden. Replacing the shelter with an umbrella type shelter located closer to the rear of the pub might discourage smokers from staying out in the beer garden so late at night.

5. Representations

- 5.1 Ross Town Council: No objection.
- 5.2 Two letters of objection have been received from Mrs Rowena Clark, 2 Willow Mews, 16a Broad Street, Ross-on-Wye and Mr P Horabin, 4 Berkeley Mews, Ross-on-Wye. The content of the objections is summarised as follows:
- The intended soundproofing is not specified and is unlikely to have any impact in reducing the noise that emanates from the beer garden into the early hours of the morning.
 - During the winter months up to 40 young people congregate in the open part of the garden and under the shelter and in the summer months there is capacity for 70 people. This causes significant noise disturbance to local residents to the extent that windows have to be kept closed. Noise even permeates double-glazing.
 - The licensing requirement that alcohol is not allowed in the beer garden after midnight has made no difference to the noise pollution arising from the garden.
 - The applicant states that the structure cannot be moved owing to its construction, but if planning permission had been obtained prior to construction then no removal or replacement would be required.

- The smoke pollution is a health hazard as is sleep deprivation caused by disturbance.
 - There is already a shelter directly outside the back door, which is used by smokers, so, why is another required?
- 5.3 One letter of support has been received from D Coverdale, Flat 1, 14 Broad Street, Ross-on-Wye. The content is summarised as follows:
- The flat is partly over the King Charles Pub (flying freehold) and as a consequence patrons smoking in groups on the pavement in Broad Street, which is directly below the bedroom window, cause severe disturbance. The provision of a smoking shelter at the rear of the pub is thus welcome.
 - It is acknowledged that there are residents to the rear of the pub who would be affected, although it is considered that a balance should be struck, as there are many residents in Broad Street who suffer disturbance at closing time when customers fail to disperse quietly.

The full text of these letters can be inspected at Southern Planning Services, Garrick House, Widemarsh Street, Hereford and prior to the Sub-Committee meeting.

6. Officer's Appraisal

- 6.1 The Conservation Manger advises that the structure is acceptable in relation to the setting of the listed building and conservation area. The structure is not visible from public vantage points and only the apex of the roof can be seen from Berkeley Mews at the rear. As such, the main issue raised by the application is considered to be the impact of the use of the shelter upon the amenity of local residents.
- 6.2 The public house was subject to a Review of Premise License in December 2008. This review imposed the condition that no alcohol can be consumed within the beer garden after midnight, although smoking is permitted within the beer garden until 1.30am. The inference is that the consumption of alcohol is the principal contributory factor to the unsociable behaviour, whereas smoking is not a licensable activity. As such the Regulatory Committee did not feel it reasonable to impose the same controls to smoking in the beer garden as it did to the consumption of alcohol.
- 6.3 The neighbour responses give an indication of the difficulties experienced in reaching a solution that resolves all of the issues to everybody's satisfaction. Residents to the north-west and north-east are clearly affected by the use of the beer garden (and shelter) at present, although locating a shelter closer to the rear of the pub building is likely to result in increased objection from residents living in upper floor flats above properties in Broad Street.
- 6.4 Although the licensee is not statutorily obliged to provide a smoking shelter, it is questionable as to whether its removal or non-provision of such a shelter would remedy the unsociable behaviour. Smoking legislation forces the activity outside, and it is a fact that people will be outside, in greater numbers, later at night than they would have been before the introduction of the smoking legislation. Although the recent refusal states that the provision of a shelter will facilitate greater use of the beer garden, it is difficult to quantify this with any degree of accuracy. Moreover, the licensee has suggested that should this application be refused they would have to resort to the use of giant parasols or 'jumbrellas', which would fulfil the same requirement, be less appropriate visually and not require planning permission.

6.5 Given the applicant's attempts to mitigate the impacts caused by the use of the shelter itself, and the fact that it is a self-effacing structure that does not harm the character or appearance of the conservation area or the setting of the listed building, the case officer considers that the refusal of planning permission would not be warranted in this instance. At face value this approach appears contrary to the earlier refusal but having regard to this revised application, the noise and smoke attenuation measures would have a limited beneficial effect. Conversely there is no guarantee that the removal of the shelter will mitigate the anti-social behaviour referred to in the letters of representation. In short, the shouting, bad language and drifting smoke experienced by residents to the rear of the pub would, in all probability, continue irrespective of the provision of a timber shelter and particularly given that alternatives can be provided without the requirement for planning permission. The remedy to alleged anti-social behaviour would appear to lie with the Regulatory Committee and cannot, in the case officer's view, be addressed through the determination of this application.

RECOMMENDATION

That retrospective planning permission be granted subject to the following condition:

- 1. **I15 (Scheme of noise insulation)**

Reason: To safeguard the amenity of the area and to comply with Policy DR13 of Herefordshire Unitary Development Plan.

Informatives:

- 1. **N19 - Avoidance of doubt - Approved Plans**
- 2. **N15 - Reason(s) for the Grant of Planning Permission**

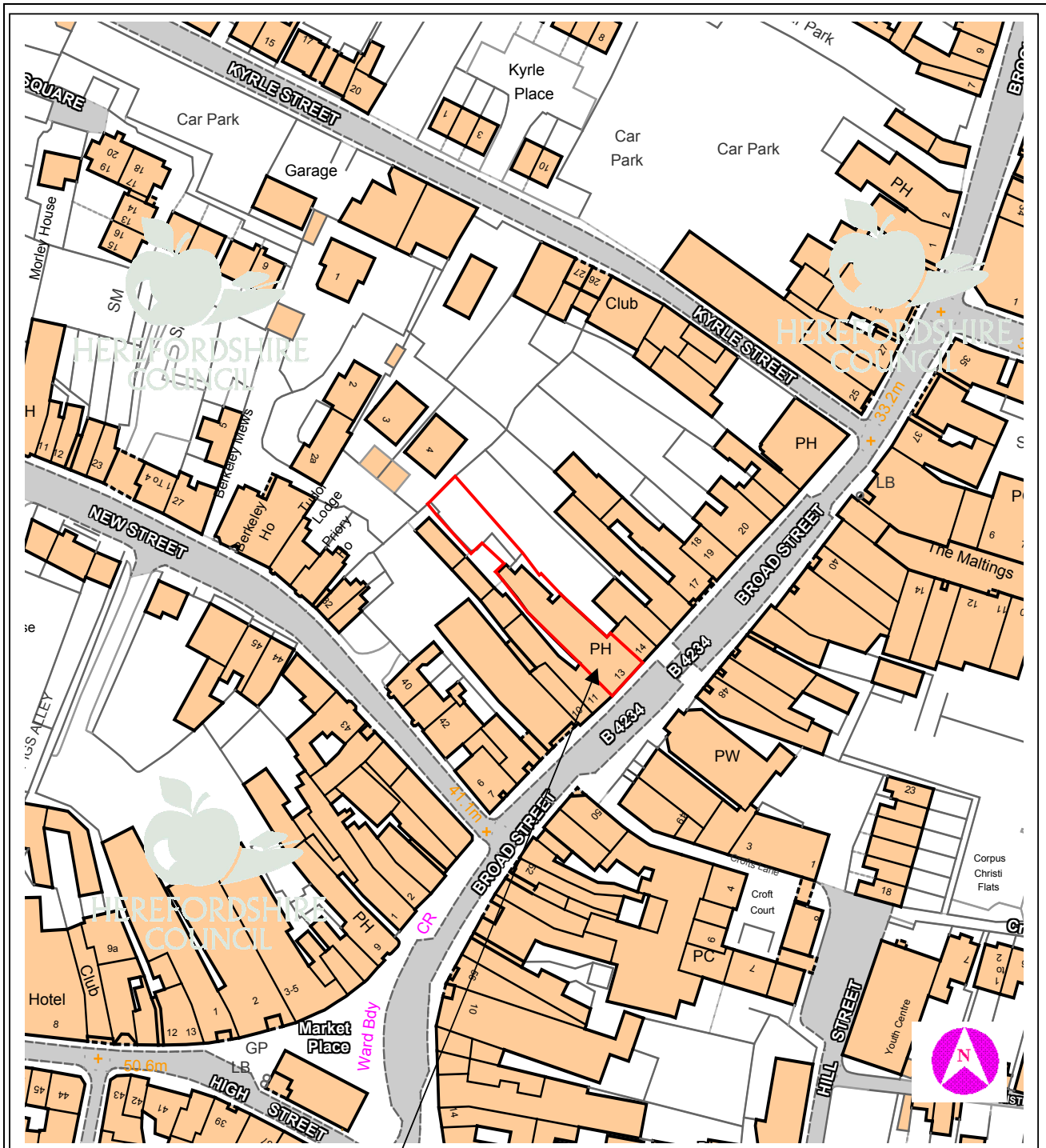
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DCSE2009/0533/F

SCALE : 1 : 1268

SITE ADDRESS : The King Charles II, 13 Broad Street, Ross-on-Wye, Herefordshire, HR9 7EA

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