

Hyndburn Borough Council – Committee Report

Application Ref: 11/22/0213

Application Address: Former Bay House, 543 Manchester Road, Accrington, Lancashire, BB5 2QJ

Date Registered: 29th June 2022

Date of Site Visit: 1st July 2022

Date for Decision:

Date Report Written: 21st October 2022

Description of Development: Conversion and extension of former public house to form local convenience store.

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights:-

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

Site and Proposal

The site is located in Baxenden village immediately opposite the Grade II listed Church of St. John the Baptist and Baxenden War Memorial to the west. It comprises a long rectangular site adjacent with the major thoroughfare of Manchester Road, A680, with the Bay Horse Public House at the southern end, and the car park for the pub at the northern end which adjoins a hairdressers/dwelling and a terrace of houses beyond.

The site is bounded by Manchester Road which runs north-west to south-east and the houses of Montgomery Close on raised land at the rear to the east. Baxenden Clinic (Physio and Psychotherapy) is located in a former Victorian semi-detached stone house immediately to the south-east and Baxenden Dental and Baxenden Pharmacy on the opposite side of Manchester Road located in a Victorian terrace of stone houses south of the site. To the immediate north of the site is an open area of

land with trees and a former public play area adjacent to Back Lane. A public footpath runs from this area through the site at an angle, so that the pub car park is almost triangular in shape. The footpath, a historic route, then crosses Manchester Road and proceeds southwards as Hurstead Street.

Baxenden is a village outside Accrington, with a linear form surrounded by open countryside. There are limited community facilities and services within the village.

The proposal is for the conversion, extension and change of use of the former Bay Horse public house to form a local convenience store, with the provision of associated parking and ancillary facilities. This application follows a previous application (reference; 11/20/0443) for the demolition of the existing public house and the provision of a new boundary containing a convenience store and a separate retail unit, which was refused in October 2021.

Consultations

Public consultation: Following the consultation and the site notice, there is 1 letter of objection received. The comments can be summarised as follows:

1. The new entrance/exist position of the car park. The residents of [an address] on Manchester Road currently have to pull up on the double yellow lines outside where the proposed entrance/exist point will be, and then wait for a safe gap in the traffic (with no pedestrian footfall on the pavement) before reversing across the pavement and onto their driveway. The vehicle moving pattern of the residents of [an address] on Manchester Road could potentially block cars from entering or leaving the proposed car park, and create a traffic blockage on Manchester Road.
2. If the existing footpath is re-directed along the boundary of the driveway, alongside the proposed new parking layout, the proposed development will create another danger point for the access [the address] on Manchester Road and the pedestrians coming out onto the pavement of Manchester Road.

LCC Highways: The comments from the LCC Highways can be summarised as follows:

Lancashire County Council are constructing a new toucan signal-controlled crossing on Manchester Road along the frontage of the development site. This has been included on the proposed site plan.

The proposed access provides visibility splays of 2.4mx 43m. The relocation of the site access has been considered to maximise the sightline however the location of the site access is considered acceptable due to the proximity of the proposed toucan crossing on Manchester Road.

The vegetation and trees which lie within the visibility splay will need to be removed. The new site access will be subject to a detailed design as part of a S278 agreement with Lancashire County Council. The off-site highway works (including the existing access to the car park and the existing access on the south side of the building permanently closed and reinstated to footway) will be undertaken with the site access under a S278 agreement with Lancashire County Council.

In terms of servicing and delivery, all the delivery will be undertaken via the new site access and car park, no delivery vehicles should be parked on Manchester Road whilst goods are unloaded/loaded. A delivery management plan is requested to be submitted, by condition prior to first trading, to clearly set out the delivery vehicle operational requirements.

With regard to parking, based on an A1 food retail ratio of 1:14sq.m, the maximum parking standard for 400 sq.m would require 28 spaces. The layout proposes 17 parking spaces including 1 disabled space and 2 Sheffield cycle stands for customers.

In light of the above, the LCC Highways raises no objection to the proposal subject to the following conditions:

1. No development shall take place, including any works of demolition, until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. It shall provide for:
 - i. The parking of vehicles of site operatives and visitors;
 - ii. The loading and unloading of plant and materials;
 - iii. The storage of plant and materials used in constructing the development;
 - iv. The erection and maintenance of security hoarding;
 - v. Wheel washing facilities;
 - vi. Measures to control the emission of dust and dirt during construction;
 - vii. A scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii. Details of working hours;
 - ix. Routing of delivery vehicles to/from the site

2. Within 3 months of commencement a scheme for the site access and off-site highway works shall be submitted to and approved by the Local Planning Authority. The works shall include the following and be implemented prior to the first trading of the site.
 - a. New site access with fully radius kerb arrangement and tactile paving.
 - b. Removal of vegetation and trees which lie within the visibility splays (X2.4m by Y43m in both directions)

- c. Existing vehicle accesses on Manchester Road reinstating to footway.
3. Prior to first trading a Delivery vehicle management plan shall be submitted to include the operational requirements to include vehicle size, timing and management of car park during deliveries. The plan shall be implemented thereafter for as long as the store is trading.
4. Delivery vehicles shall not be longer than 8.4m rigid and no goods shall be accepted by the store from the public highway Manchester Road.
5. Prior to first trading the car parking and manoeuvring areas and cycle storage shall be provided in accordance with the approved plans.

Informative Notes

The grant of planning permission will require the applicant to enter into a S278 Agreement, with the County Council as Highway Authority. The Highway Authority hereby reserves the right to provide the highway works within the highway associated with this proposal. Provision of the highway works includes design, procurement of the work by contract and supervision of the works. The applicant should be advised to contact Lancashire County Council for further information by emailing the Highway Development Control Section at developeras@lancashire.gov.uk . Road.

The granting of planning permission does not entitle the applicant/developer to obstruct a public right of way.

LCC Policy ALO: In order to keep people safe and feeling safe, and to reduce the opportunity for crime, the scheme should be developed to Secured by Design security standards. The 'Commercial Developments 2015' design guide demonstrates good design features in developments and can be found on the Secured by Design website. There is an SBD interactive Commercial toolkit to aid safe and secure design and application forms available at www.securedbydesign.com

Independent academic research shows that SBD certified schemes experience less burglary, criminal damage, and vehicle crime. The Lancashire Constabulary Designing Out Crime Team can support the applicant with Secured by Design from the initial application stage through to certification – ALO@lancashire.police.uk

A detailed guidance on the security measures to be incorporated into the design has been provided within the letter from the Designing out of Crime Officer dated 12th July 2022.

Environmental Health: No objection subject the following conditions:

1. Prior to the commencement of development, the following information shall be submitted to the Local Planning Authority (LPA) for approval in writing:

- (a) Having read the Solmek desk study March 2022 reference S220212 which detailed potential contamination therefore, a detailed site investigation shall be carried out to address the nature, degree and distribution of contamination and ground gases and shall include an identification and assessment of the risk to receptors as defined under the Environmental Protection Act 1990, Part 2A, focusing primarily on risks to human health and controlled waters. The investigation shall also address the implications of the health and safety of site workers, of nearby occupied buildings, on services and landscaping schemes, and on wider environmental receptors including ecological systems and property.

The sampling and analytical strategy shall be submitted to and be approved in writing by the LPA prior to the start of the site investigation survey.

- (b) A remediation statement, detailing the recommendations and remedial measures to be implemented within the site.
- (c) On completion of the development/remedial works, the developer shall submit written confirmation, in the form of a verification report, to the LPA, that all works were completed in accordance with the agreed Remediation Statement.

Any works identified in these reports shall be undertaken when required with all remedial works implemented by the developer prior to occupation of the first and subsequent dwellings.

Reason: To ensure that:

- the site investigation and remediation strategy will not cause pollution of ground and surface waters both on and off site, and
- the site cannot be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990,
in accordance with:
- the National Planning Policy Framework.

2. Measures should be in place to prevent nuisance being caused to residents from, the manner of keeping animals on site, any accumulation, any odour and any smoke from the premises. There should be no burning off on site of construction waste.

Reason- to protect the amenities of existing occupiers at nearby premises from nuisance sources associated with the site.

Informative - The applicant should be advised that the provisions of The food Safety Act 1990, The Food Safety and Hygiene (England) Regulations 2013 and Regulation (EC) 852/2004 will apply. Accordingly, the applicant is recommended to make early contact with Environmental Health Services.

HBC Ecology: The preliminary bat roost survey (trees) has NOT been submitted as part of this application 11/22/0213. This preliminary bat roost survey (trees) MUST be submitted for the purpose of this application and approved for the purpose of Condition 2.

Please ensure that the following conditions are used.

- Prior to the commencement of development an Arboricultural Method Statement and Tree Protection Plan to BS5837:2012 'Trees In Relation To Construction' shall be submitted and approved in writing by the Local Planning Authority. All trees to be retained shall be protected by a Construction Exclusion Zone with fencing in accordance with BS5837:2012 'Trees In Relation To Construction'. Within the protected area(s) there shall not be carried out or permitted, during the construction period, any building or other operations, parking or passage of vehicles, or storage of building or other materials or any other object. The protection measures shall be retained for the duration of the works, and only removed once the development is complete and all machinery and work material removed from the site.
- Prior to occupation a satisfactory programmed landscaping scheme, which shall include soft and hard landscaping, means of enclosure, planting of the development, shall be submitted to and approved in writing by the Local Planning Authority. The content of the scheme shall include 9 heavy standard native trees planted at locations to be prior agreed with the Local Planning Authority, further details of the landscape scheme shall include the number of plants, species, planting size, planting methodology, British Standards, location of the planting, and annual maintenance schedule. The work described in the scheme shall be carried out strictly in accordance with the approved details and shall be retained in this manner thereafter. The approved scheme shall be implemented during the first planting season following the completion of development and any tree or shrub planted which dies or is felled, uprooted, wilfully damaged or destroyed in the first five year period commencing with the date of planting shall be replaced by the applicants or their successors in title.
- Prior to construction hereby approved, details for the phased installation of 3No. Schwegler 1FR building integrated Bat boxes (or similar) shall be submitted and approved in writing by the Local Planning Authority. The submitted details shall include the box type, manufacturer's name, and plans marking the location of installation. The building integrated boxes must be installed during the construction phase, and installed in accordance with manufacturer's specification. The work described shall be retained in this manner thereafter.

- Immediately following completion of the construction phase a Statement of Good Practice shall be signed by the competent Ecological Clerk of Works, and shall be submitted to and approved in writing by the Local Planning Authority. The Statement of Good Practice shall confirm that the Reasonable Avoidance and Mitigation Measures, Pollution Prevention Measures, and biodiversity enhancement measures have been implemented in accordance with good practice, drawings and scheme design upon which the planning consent was granted. The Statement of Good Practice shall extend to include the following ecological avoidance, mitigation and enhancement measures:
 1. Tree protection measures have been completed in accordance with the approved Arboricultural Method Statement and Tree Protection Plan.
 2. Bat boxes have been installed in accordance with the approved scheme and plans.
 3. That all nesting bird protection measures have been adequately completed.

- Immediately following completion of the landscape scheme (which by planning condition must itself be completed during the first planting season following the completion of development) a Statement of Good Practice shall be signed by the competent Ecological Clerk of Works and/or Landscape Architect/Architect, and shall be submitted to and approved in writing by the Local Planning Authority. The Statement of Good Practice shall confirm that the approved landscape scheme has been implemented in accordance with good practice upon which the planning consent was granted. The Statement of Good Practice shall extend to include the following enhancement measures:
 1. That the landscape scheme has been completed in accordance with the approved landscape scheme and drawings.

- No removal of hedgerows, trees, shrubs or undergrowth shall take place between 1 March and 31 August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active bird nests immediately before the vegetation is cleared, and provided written confirmation that no birds will be harmed and/or appropriate measures in place to protect nesting birds on site. Any such written confirmation must be submitted to the Local Planning Authority. All British birds, their nests and eggs are protected by Section 1 of the Wildlife and Countryside Act 1981, as amended. It is an offense to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent does not provide a defence against prosecution under this act.

Relevant Planning History

Having reviewed the HBC's planning records, it is considered that the following planning decision are the most relevant:

- 11/20/0443: Erection of 2 no retail units (Class E) associated car parking serving and landscaping following the demolition of the Bay Horse Public House. Refused 29/10/2021
- 11/18/0019: Erection of wooden deck area to be used as beer garden. A/C 21/02/2018
- 11/07/0371: Erection of covered lean to and flagged patio and side (re-submission 11/07/0132). A/C 17/07/2007
- 11/07/0132: Erection of extension to front porch to form partially covered smokers/paved area. Refused 17/04/2007
- 11/96/0567: Erection of entrance porch and formation of emergency exit. A/C 0901/1997

Relevant Policies

Development Management DPD:

- Policy GC1: Presumption in favour of sustainable development
- Policy DM3: Development of main town centre uses
- Policy DM8: Public Houses
- Policy DM19: Protected Species
- Policy DM22: Heritage Assets
- Policy DM26: Design Quality and Materials
- Policy DM29: Environmental Amenity
- Guidance Note GN8: Car parking, access standards and transport assessment/travel plan threshold

Hyndburn Core Strategy:

- Policy BD1: The Balanced Development Strategy
- Policy Env4: Sustainable Development and Climate
- Policy Env6: High Quality Design
- Policy Env7: Environmental Amenity

National Planning Policy Framework

Observations

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Hyndburn comprises of Core Strategy (2012), Development Management DPD (2018), the Accrington Area Action Plan.

Given the location of the application site and the nature of the proposed development, the key issues associated with this proposal are:

- Principle of the development
- Justification for the loss of public house
- Impact on the character and setting of the heritage assets
- Impact on the street scene and local character
- Landscaping and protected species
- Traffic and highway safety
- Planning balance

Assessment

Principle of the Development

The NPPF states that, where a planning application conflicts with an up-to-date development plan, permission should not usually be granted (para 12). In determining planning applications, due weight should be given to local planning policies in accordance with their consistency with the revised Framework, with greater weight given to those policies which are closer to those in the Framework (para 213). As a starting point, the proposal should be assessed against policies set out in the Development Plan.

- Location of the Development

Policy BD1 of the Hyndburn Core Strategy sets out 9 key principles which underpin the Local Development Framework for Hyndburn and other elements of the LDF. Criterion (i) of this policy states that the LDF will promote balanced communities where everyone has easy access to a range of services and facilities.

Policy DM3 of the Development Management DPD sets out the main policy requirements in respect of retail development and Part 4 of the policy places a requirement for applicants to demonstrate that there are no sequentially preferable sites subject to the detail of that policy, if the proposal is for main town centre uses outside the defined Town Centre and Local Centres. The National Planning Policy Framework represents an important consideration and paragraphs 86 to 90 appear to be applicable to this case. This expects local authorities to apply a sequential test and this requirement is reinforced by para 91 of NPPF that states that where an application fails the sequential test.... it should be refused.

This planning application is for the conversion, extension and change of use of the former Bay Horse Public House to form a local convenience store with associated parking, accesses and landscaping provision. The application site is situated within the village of Baxenden, but clearly situated outside the town centre of Accrington or the defined local centre. As such, given the application is not accompanied by a site

sequential assessment, it is considered that the proposed development fails to comply with Policy DM3 of the Hyndburn Development Management DPD and the paragraph 91 of the NPPF.

However, the previous planning decision 11/20/0443 is a material planning consideration which should be afforded some weight in the decision making process. In that instance, the HBC Planning Policy Officer comments on the application in the absence of a site sequential assessment, which reads as:

“The proposal falls into a category in DMDPD policy DM3 (criteria 4) that would normally need a sequential test but I also understand the applicant's argument that a sequential test cannot be meaningfully undertaken because the proposal is for a specific need arising in Baxenden and it would be inappropriate to assess sites in Accrington town centre, which happens to be the nearest town centre. ... Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations. Robust justification will need to be provided where this is the case, and land ownership does not provide such a justification. The Retail Study (2016) does indicate that, whilst there is very little need overall for additional convenience retail in Hyndburn, “there is some qualitative need for additional provision in Baxenden (which currently lacks a foodstore of any notable size) to cater for top-up food shopping” (para 6.8, pg 50). I understand that the Premier Convenience Store was open at the time of the Retail Study so this analysis should still stand. However, it is unclear whether the applicants have provided “robust evidence” that a sequential test is not required on the basis of a specific locational requirement, for example there is no retail assessment stating the actual deficiency of retail floorspace in the area. Notwithstanding this, given the distance of Baxenden from any significant retail centre, it does seem reasonable that a new store could be justified in the proposed location.”

In policy terms, the current policy context remains the same as the time when the planning decision on the previous application 11/20/0443 was made. It is acknowledged that there is a requirement for a sequential assessment for the proposed development, however the Policy Officer has addressed factors that suggest that one may not be required in this instance including PPG and the Council's own evidence base (see Policy Officer comments above). The fact that the Council's own evidence suggests that there may be a need for additional provision in Baxenden is persuasive and a sequential test is therefore not considered necessary in this particular and unusual instance.

In light of the above, it is considered that the proposed development fails to comply with the Policy DM3 of the Hyndburn Development Management DPD and Paragraph 91 of the NPPF. However, the prevailing evidence from the Council's Retail Study (2016) has suggested that convenience store is one of the much

needed community facilities for Baxenden village, and the proposed would meet the demand for such a facility in the village. As such it is considered that the principle of the proposed development outside the town centre or the defined local centre is acceptable despite it is departed from the Policy DM3 of the Hyndburn Development Management DPD and paragraph 90 & 91 of the NPPF.

- Loss of an Existing Public House

Policy DM8 (Public House) of the Hyndburn Development Management DPD reads as:

1. Proposals for the loss of public house through demolition, or change of use to any other use class, will only be supported if an applicant can demonstrate that:
 - a. The public house has been marketed as a public house, at market rate, for a consistent period of 12 months; **and**
 - b. The loss of the pub will not result in a shortfall of local pub provision in the area; **or**
 - c. The public house is no longer economically viable;
2. In all circumstances the proposed development should not have a detrimental effect on the design, character and heritage of the existing public house and/or the wider streetscape (and is in line with Policy DM22: Heritage Assets).

The explanatory note of this policy provides further guidance in paragraph 4.23 and 4.24. Paragraph 4.23 states that any evidence provided on the marketing of the public house over a 12-month period should demonstrate that this was undertaken free of tie, and for alternative local commercial or community facility use. Marketing should have been undertaken at a fair market price following independent professional valuation. Paragraph 4.24 notes that In a manner similar to that advocated in the latest CAMRA Public House Viability Test, evidence provided by applicants demonstrating that a Public House is no longer economically viable will be expected to take into account the following kinds of factors: local trade and customer potential; competition; flexibility of the site; parking; public transport and potential use of the site for multiple uses.

In light of the wording of Policy DM8 and the associated explanatory notes, officers have been consistently of the view that the 12 months marketing exercise of the existing public house as a public house is a central element of Policy DM8. The view was reflected in the 2021 decision on the previous application 11/20/0443, and the second reason for refusal reads as:

'The application has not demonstrated that the public house has been marketed as a public house, at market rate, for a consistent period of 12 months, and that it is no longer economically viable, contrary to Policy DM8 Public Houses of the

Development Management DPD. The proposals would have a detrimental effect on the design, character and heritage of the Bay Horse public house and the wider streetscape contrary to Policy DM8 paragraph 2.'

The supporting information submitted with this revised application still indicates that no marketing exercise has been undertaken following the refusal of the previous application 11/20/0443. In the planning statement accompanying this application, the applicant argues that the wording of Policy DM8 is ambiguous, and interpreted the Criterion 1 of this policy as this policy would require:

- a) 12 months marketing exercise **and** b) that there would be no shortfall of local public provision in the area;
- or**
- b) That the public house is no longer viable.

The key difference in the understanding of Criterion 1 of Policy DM8 between the applicant and the LPA focuses on whether the 12 months marketing of the property as a public house (point a) would be essential to the compliance of this policy.

Given the policy context remains the same as that of the previous application 11/20/0443, there is no reason for the officer to take a different interpretation on the Criterion 1 of the Policy DM8 from the previous decision. As such, in the absence of an evidence to demonstrate that a 12 months marketing exercise has been undertaken, it is considered that the current proposal still fails to comply with Criterion 1 (a) of the Policy DM8 of the Hyndburn Development Management DPD.

It is acknowledged that the current application is supported by a Viability Report prepared by independent market specialists Savills. Savills report states that having undertaken a hypothetical profit and loss based on the historic trade performance and benchmarked against industry standards, the property is not financially viable. This report also suggested that there are three other similar pubs, as well as the Baxenden Village Club, in the immediate area to the property which are similar in trading style and offer similar facilities to the Bay Horse. From recent evidence it is clear that the local population is not sufficient to support the current venues, as noted by the tenants of the neighbouring pub. The viability report therefore concluded that if Bay Horse is reopened as a public house, it would not survive as a business and in turn its operation may have a detrimental impact on the existing venues, particularly given there are limited local amenities and there are no destination food led businesses to attract trade from nearby Accrington which is already well served.

The Savills report then notes that a potential operation would perceive the opportunity of making a worthwhile profit too risky against the capital investment required for an acquisition of the freehold as well as the capital investment required to bring the property into a good standard of repair, as such a lender would also consider this is risky business to lend a commercial mortgage against. In light of the

competition from other similar type of venues nearby and the fact that fewer people go to pubs regularly due to considerable lifestyle changes over the past few years, the Savills's Viability Report concludes that the Bay House is considered unlikely to be commercially viable now and in the longer term (being at least the next 15 years).

Without any other material planning evidence to suggest otherwise, officers accept that the building subject to this application is unlikely to sustain a viable operation as a public house, therefore, the proposal complies with the Criterion 1 (b) and (c) of the Policy DM8.

Officers notes that the Bay Horse public house has ceased trading since July 2020, prior to the submission of the previous planning application 11/20/0443. With regard to the loss of the public house, the consultation responses received from the third parties in relation to the application 11/20/0443 mainly focused on the objection to the loss of this some 200 years old historic building as result of the previous proposal, rather than the loss of the public house as a community facility. At the time when this committee report is written, only one third party representation has received, with comments focusing on access, parking and highway safety. It is therefore reasonable to consider that the loss of the public house has not been perceived as being detrimental to the local community.

In light of the above, it is considered that despite the applications failure to demonstrate evidence for a 12 months marketing exercise as required by Criterion 1(a) of the Policy DM8, the applicant has demonstrated the operation of the application site as a public house is no longer viable, and the availability of other facilities of similar nature would provide meaningful alternatives to the local residents. The lacking of objections on the loss of the public house as result of this application clearly support this conclusion. As such, officers are of the view that the loss of the public house as result of the proposed development would only partially comply with Policy DM8 Criterion 1, and this would be weighed in overall planning balance in the later section this report.

Character, Appearance and Impact on the Heritage Assets

Hyndburn Core Strategy Policy Env6 and Policy DM26 of the Hyndburn Development Management DPD seek to ensure that the character and quality of Hyndburn's urban and rural environments will be conserved and enhanced through high quality design. Policy DM22 of the Development Management DPD is clear that development affecting the setting of conservation area should preserve or enhance their special character, appearance and setting. Paragraph 195 of the Framework requires that local planning authority should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence of any necessary expertise. They should take this into account when

considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.

The former Bay Horse public house is seen as a historical asset of importance. Designated as the Bay Horse Inn on early maps, it appears to be a late eighteenth or early nineteenth century coaching inn, with a stables and coach house building attached to the south. It is located on the former turnpike from Clitheroe to Manchester which was a coaching route from around 1800 to the 1840s. It was not a principal stop where horses were changed (these are known) but was most likely a picking up and dropping off point for Baxenden. The age of the building, some 200 years old or more, puts it among the oldest buildings of Baxenden village. The front facade comprises a central doorway flanked by a pair of windows and a set of three on the first floor arranged symmetrically. An additional bay on the right hand side breaks the absolute symmetry and may represent the innkeeper's residence. It has a separate number of 547 on some historical maps. The facade of the Bay Horse is similar to the nearby Dog and Partridge public house on Back Lane which was most likely its precursor prior to Back Lane, formerly the principal route, being bypassed by the turnpike. The main visual differences are that the Bay Horse is rendered at the front and side, hiding the detail of the stonework, while the stables and coach house of the Dog and Partridge line flush with the main building while those of the Bay Horse are set back. The Bay Horse also has a relatively modern porch. The observed oak king post truss and purlins of the Bay Horse are features of historical, architectural and archaeological interest which suggest a building of around 1800 or earlier. Consequently, the Bay Horse public house is a historic building of interest.

As illustrated in the plans accompanying this application, the proposal comprises of two elements single storey extension attached to the side and rear of the existing building following the demolition of the exiting two-storey offshoot attached to the northeast elevation of the host building. The proposal also involves the making good of the two-storey element attached to the southeast elevation of the main building. By replacing the existing uncharacteristic modern additions attached to the host building, the host building front Manchester Road would be retained in full to maintain its contribution towards the street scene, and the setting of the neighbouring listed building. The proposed single-storey extensions would appear to be a subservient addition maintaining the dominant character of the existing building. They have been designed to provide a main access into the proposed shop and enable the retention of the key existing feature of the existing building.

The proposed scheme, by virtue of its design, scale, appearance, would be in keeping with character of the former Bay Horse public house building. More importantly, it would help bring this non-designated heritage asset back into a viable beneficial use, which should be afforded substantial weight in the overall planning balance.

Furthermore, the retention and reintroduction of a beneficial use of the former Bay Horse public house would preserve and potentially enhance the setting of the neighbouring Grade II listed St. John's Church and war memorial.

The proposal therefore complies with Policy ENV6 and ENV7 of the Hyndburn Core Strategy, Policy DM22 and DM26 of Development Management DPD, and paragraph 126 & 130 of the NPPF.

Impact on the Neighbouring Amenity

Policy DM29 (Environmental Amenity) of the Hyndburn Development Management DPD states that development will be required to protect, and where possible to improve, the amenity of surrounding areas for existing and future residents. The Council will require that new development: a. does not result in the loss of privacy or unacceptable increase in the sense of enclosure; b. does not result in the unacceptable loss of outlook; c. benefits from adequate level of daylight and sunlight; and d. does not create an unacceptable level of noise, vibration, artificial light, odour, fumes of dust pollution during construction and over the life of the development. Policy Env7 of the Hyndburn Core Strategy requires that proposal for new development will be permitted only if it is demonstrated that the material impact arising by reason of traffic, visual impact, noise, dust, emissions, pollution, odour, over-looking or loss of light, or other nuisance will not give risk to unacceptable adverse impacts or loss of local amenity and can be properly controlled in accordance with best practice and recognised standards.

The proposed development involves the replacement of the 2-storey rear offshoot with two elements of single-storey extensions. Given the topographic character of the application site and its neighbouring residential dwellings, it is considered that the proposed development would not result in any potential risk of overlooking or overshadowing. Compared with its previous use as a public house, the proposed retail use is expected to have less impact on the amenity of the neighbouring residents, by virtue of its operational nature and opening hours.

It is therefore considered that the proposed development is acceptable in terms of residential amenity in accordance with Policy Env7 of the Hyndburn Core Strategy and Policy DM14 and Policy DM29 of the Hyndburn Development Management DPD and the advice contained within the NPPF.

Parking and Highway Safety

Policies in relation to highway safety are Policy DM32 of the Hyndburn Development Management DPD and Paragraph 110 of the Framework.

The location of the proposed development on a busy arterial route into Accrington. The proposed development introduces a series of material changes to the access and parking layout, which include:

- Relocation of the vehicular access off Manchester Road circa 20 metres north.
- The approved toucan cross and shared footway have been incorporated into the scheme layout;
- Provision for 17 parking spaces, including one disabled space;
- Partial diversion of the PRow FP180 at the site

Objection comments have been raised by the residents of [a near-by property] regarding the vehicle manoeuvring and highway safety issues arising from the proposed new site access and the partial diversion of the PRow FP180.

In the consultation response, the LCC Highway Officers have assessed the proposal and commented the proposed access provides visibility splays of 2.4mx 43m. The relocation of the site access has been considered to maximise the sightline however the location of the site access is considered acceptable due to the proximity of the proposed toucan crossing on Manchester Road. The vegetation and trees which lie within the visibility splay will need to be removed. The new site access will be subject to a detailed design as part of a S278 agreement with Lancashire County Council. The off-site highway works (including the existing access to the car park and the existing access on the south side of the building permanently closed and reinstated to footway) will be undertaken with the site access under a S278 agreement with Lancashire County Council.

In terms of servicing and delivery, the LCC Highways require that all the delivery will be undertaken via the new site access and car park, no delivery vehicles should be parked on Manchester Road whilst goods are unloaded/loaded. A delivery management plan is requested to be submitted, by condition prior to first trading, to clearly set out the delivery vehicle operational requirements. With regard to parking, based on an A1 food retail ratio of 1:14sq.m, the maximum parking standard for 400 sq.m would require 28 spaces. The layout proposes 17 parking spaces including 1 disabled space and 2 Sheffield cycle stands for customers.

In light of the above, subject to relevant highway conditions, LCC Highways raised no objection to this application. Paragraph 111 of the NPPF notes that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. In this instance, there is no clear evidence to demonstrate severe and unacceptable impact of the proposed development on highway safety. In light of the above, it is considered that subject to the relevant

conditions recommended by the LCC Highways, the proposed development would not result in undue impact on the parking and highway safety at Manchester Road to warrant a refusal.

Other issues

The consultation response provided by the HBC Regeneration Projects Manager notes that there are a number of trees due to be felled as part of the proposed development. The applicant has previously submitted a preliminary bat roost survey (trees) RE 11/20/0443.

The preliminary bat roost survey (trees) has NOT been submitted as part of this application 11/22/0213. This preliminary bat roost survey (trees) MUST be submitted for the purpose of this application and approved for the purpose of Condition 2. Subject to a number of pre-commence and pre-occupation conditions recommended, HBC Regeneration Projects Manager has raised no objections to this.

Planning Balance and Conclusion

The proposal has been considered against national and local policy. The merits of this application are finely balanced. It is apparent that benefits would accrue from the retention of the former Bay Horse public house building as a 'non-designated heritage asset' and bringing it back into a viable beneficial use through the proposed development. Also, the proposed scheme would preserve and potentially enhance the character and setting of the Grade II listed Church of St. John the Baptist and Baxenden War Memorial.

As noted earlier however, the proposed development fails to comply with the Policy DM3 of the Hyndburn Development Management DPD and Paragraph 91 of the NPPF. However, the prevailing evidence from the Council's Retail Study (2016) has suggested that a convenience store is one of the much needed community facilities for Baxenden village, and the proposed would meet the demand for such a facility in the village. As such it is considered that the principle of the proposed development outside the town centre or the defined local centre is acceptable despite it is departed from the Policy DM3 of the Hyndburn Development Management DPD and paragraph 90 & 91 of the NPPF.

It is also noted that the application fails to comply with Criterion 1(a) of Policy DM8 of the Hyndburn Development Management DPD, as the application is not supported by sufficient evidence to demonstrate that the premises subject to this application has been marketed as a public house at market rate for a consistent period of 12 months. That said, the viability report accompanying this application has demonstrated that it is very unlikely for the building subject to this application to be

operated viably as a public house, and the presence of other similar type of facilities means the loss of this site as a public house would not be detrimental to the local community.

Weighing all the above in balance, it is considered that the benefits of the proposed development are unique to its context and location, which officers consider would outweigh the identified harms. Should the planning permission be granted, it would not create an unwanted precedent to other applications of similar nature if they fail to comply with Policy DM3 and Criterion 1(a) of Policy DM8.

As such, a recommendation of approval of the application is therefore made on this basis.

Recommendation

Approve with conditions.

Conditions

- 1) The development hereby approved shall be commenced before the expiration of three years from the date of this permission.

Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions and to comply with Section 91 (as amended) of the Town & Country Planning Act 1990.

- 2) The development shall be carried out in accordance with the following documents unless otherwise required by the conditions below:

- (a) The planning application form and additional information dated 29th June 2022

- (b) Plans and supporting documents received on 29th June 2022

0345(P)102A – Existing Site Plan

0345(P)103C – Proposed Site Plan

0345(P)112 – Existing Building Plans

0345(P)113 – Proposed Demolition Plan

0345(P)114A – Proposed Building Plans

0345(P)122 – Existing Building Elevations

0345(P)123A – Proposed Building Elevations

0345(P)132 – Materials Schedule

9999-ATR-001 – Vehicle Tracking

0345(P)100B – Site Location Plan

Bat Survey
Built Heritage Statement
Contamination Statement
Planning Statement
Tree Survey
Transport Statement
Viability Report
Bat Survey

Reason: For the avoidance of doubt and to enable Hyndburn Borough Council to adequately control the development and to minimise its impact on the amenities of the local area and to conform with Policies Env6 of the Hyndburn Core Strategy, Policy DM22 and DM26 of Development Management DPD.

- 3) No development shall take place, including any works of demolition, until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. It shall provide for:
- i. The parking of vehicles of site operatives and visitors;
 - ii. The loading and unloading of plant and materials;
 - iii. The storage of plant and materials used in constructing the development;
 - iv. The erection and maintenance of security hoarding;
 - v. Wheel washing facilities;
 - vi. Measures to control the emission of dust and dirt during construction;
 - vii. A scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii. Details of working hours;
 - ix. Routing of delivery vehicles to/from the site

Reason: In the interest of residential amenity in accordance with the provision of Core Strategy Policy ENV7 and Development Management DPD Policy DM29 and DM32.

- 4) Within 3 months of commencement a scheme for the site access and off-site highway works shall be submitted to and approved by the Local Planning Authority. The works shall include the following and be implemented prior to the first trading of the site.
- a. New site access with fully radius kerb arrangement and tactile paving.
 - b. Removal of vegetation and trees which lie within the visibility splays (X2.4m by Y43m in both directions)
 - c. Existing vehicle accesses on Manchester Road reinstating to footway.

Reason: To ensure a satisfactory means of access to the site from the public highway in the interests of vehicle and pedestrian safety and convenience in accordance with the provision of Core Strategy Policy ENV7 and Development Management DPD Policy DM29 and DM32.

- 5) Prior to first trading a Delivery vehicle management plan shall be submitted to include the operational requirements to include vehicle size, timing and management of car park during deliveries. The plan shall be implemented thereafter for as long as the store is trading.

Reason: In the interests of vehicle and pedestrian safety and convenience in accordance with the provision of Core Strategy Policy ENV7 and Development Management DPD Policy DM29 and DM32.

- 6) Delivery vehicles shall not be longer than 8.4m rigid and no goods shall be accepted by the store from the public highway Manchester Road.

Reason: In the interests of vehicle and pedestrian safety and convenience in accordance with the provision of Core Strategy Policy ENV7 and Development Management DPD Policy DM29 and DM32.

- 7) Prior to first trading the car parking and manoeuvring areas and cycle storage shall be provided in accordance with the approved plans.

Reason: In the interests of vehicle and pedestrian safety and convenience in accordance with the provision of Core Strategy Policy ENV7 and Development Management DPD Policy DM29 and DM32.

- 8) Prior to the commencement of development, the following information shall be submitted to the Local Planning Authority (LPA) for approval in writing:
 - a) Having read the Solmek desk study March 2022 reference S220212 which detailed potential contamination therefore, a detailed site investigation shall be carried out to address the nature, degree and distribution of contamination and ground gases and shall include an identification and assessment of the risk to receptors as defined under the Environmental Protection Act 1990, Part 2A, focusing primarily on risks to human health and controlled waters. The investigation shall also address the implications of the health and safety of site workers, of nearby occupied buildings, on services and landscaping schemes, and on wider environmental receptors including ecological systems and property.
The sampling and analytical strategy shall be submitted to and be approved in writing by the LPA prior to the start of the site investigation survey.

- b) A remediation statement, detailing the recommendations and remedial measures to be implemented within the site.
- c) On completion of the development/remedial works, the developer shall submit written confirmation, in the form of a verification report, to the LPA, that all works were completed in accordance with the agreed Remediation Statement.

Any works identified in these reports shall be undertaken when required with all remedial works implemented by the developer prior to occupation of the first and subsequent dwellings.

Reason: To ensure that:

- the site investigation and remediation strategy will not cause pollution of ground and surface waters both on and off site, and
- the site cannot be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990,
- in accordance with:
the National Planning Policy Framework.

- 9) Measures should be in place to prevent nuisance being caused to residents from, the manner of keeping animals on site, any accumulation, any odour and any smoke from the premises. There should be no burning off on site of construction waste.

Reason: to protect the amenities of existing occupiers at nearby premises from nuisance sources associated with the site in accordance with the provision of Core Strategy Policy ENV7 and Development Management DPD Policy DM29.

- 10) Prior to the commencement of development an Arboricultural Method Statement and Tree Protection Plan to BS5837:2012 'Trees In Relation To Construction' shall be submitted and approved in writing by the Local Planning Authority. All trees to be retained shall be protected by a Construction Exclusion Zone with fencing in accordance with BS5837:2012 'Trees In Relation To Construction'. Within the protected area(s) there shall not be carried out or permitted, during the construction period, any building or other operations, parking or passage of vehicles, or storage of building or other materials or any other object. The protection measures shall be retained for the duration of the works, and only removed once the development is complete and all machinery and work material removed from the site.

Reason: To protect the amenities of the locality in accordance with Policy DM17 of the Hyndburn Development Management DPD.

11) Prior to occupation a satisfactory programmed landscaping scheme, which shall include soft and hard landscaping, means of enclosure, planting of the development, shall be submitted to and approved in writing by the Local Planning Authority. The content of the scheme shall include 9 heavy standard native trees planted at locations to be prior agreed with the Local Planning Authority, further details of the landscape scheme shall include the number of plants, species, planting size, planting methodology, British Standards, location of the planting, and annual maintenance schedule. The work described in the scheme shall be carried out strictly in accordance with the approved details and shall be retained in this manner thereafter. The approved scheme shall be implemented during the first planting season following the completion of development and any tree or shrub planted which dies or is felled, uprooted, wilfully damaged or destroyed in the first five year period commencing with the date of planting shall be replaced by the applicants or their successors in title.

Reason: To protect the amenities of the locality in accordance with Policy DM17 of the Hyndburn Development Management DPD

12) Prior to construction hereby approved, details for the phased installation of 3 No. Schwegler 1FR building integrated Bat boxes (or similar) shall be submitted and approved in writing by the Local Planning Authority. The submitted details shall include the box type, manufacturer's name, and plans marking the location of installation. The building integrated boxes must be installed during the construction phase, and installed in accordance with manufacturer's specification. The work described shall be retained in this manner thereafter.

Reason: To protect the protected species and their habitats in accordance with Policy DM19 of the Hyndburn Development Management DPD.

13) Immediately following completion of the construction phase a Statement of Good Practice shall be signed by the competent Ecological Clerk of Works, and shall be submitted to and approved in writing by the Local Planning Authority. The Statement of Good Practice shall confirm that the Reasonable Avoidance and Mitigation Measures, Pollution Prevention Measures, and biodiversity enhancement measures have been implemented in accordance with good practice, drawings and scheme design upon which the planning consent was granted. The Statement of Good Practice shall extend to include the following ecological avoidance, mitigation and enhancement measures:

1. Tree protection measures have been completed in accordance with the approved Arboricultural Method Statement and Tree Protection Plan.

2. Bat boxes have been installed in accordance with the approved scheme and plans.
3. That all nesting bird protection measures have been adequately completed.

Reason: To protect the protected species and their habitats in accordance with Policy DM19 of the Hyndburn Development Management DPD.

- 14) Immediately following completion of the landscape scheme (which by planning condition must itself be completed during the first planting season following the completion of development) a Statement of Good Practice shall be signed by the competent Ecological Clerk of Works and/or Landscape Architect/Architect, and shall be submitted to and approved in writing by the Local Planning Authority. The Statement of Good Practice shall confirm that the approved landscape scheme has been implemented in accordance with good practice upon which the planning consent was granted. The Statement of Good Practice shall extend to include the following enhancement measures:

That the landscape scheme has been completed in accordance with the approved landscape scheme and drawings.

Reason: To protect the amenities of the locality in accordance with Policy DM17 of the Hyndburn Development Management DPD.

- 15) No removal of hedgerows, trees, shrubs or undergrowth shall take place between 1 March and 31 August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active bird nests immediately before the vegetation is cleared, and provided written confirmation that no birds will be harmed and/or appropriate measures in place to protect nesting birds on site. Any such written confirmation must be submitted to the Local Planning Authority. All British birds, their nests and eggs are protected by Section 1 of the Wildlife and Countryside Act 1981, as amended. It is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent does not provide a defence against prosecution under this act.

Reason: To protect the amenities of the locality in accordance with Policy DM17 of the Hyndburn Development Management DPD.

Informative

- 1) 13a
- 2) 14
- 3) 15
- 4) 16

- 5) 17
- 6) 18
- 7) The applicant should be advised that the provisions of The food Safety Act 1990, The Food Safety and Hygiene (England) Regulations 2013 and Regulation (EC) 852/2004 will apply. Accordingly, the applicant is recommended to make early contact with Environmental Health Services.
- 8)
- 9) The grant of planning permission will require the applicant to enter into a S278 Agreement, with the County Council as Highway Authority. The Highway Authority hereby reserves the right to provide the highway works within the highway associated with this proposal. Provision of the highway works includes design, procurement of the work by contract and supervision of the works. The applicant should be advised to contact Lancashire County Council for further information by emailing the Highway Development Control Section at developeras@lancashire.gov.uk. Road.

The granting of planning permission does not entitle the applicant/developer to obstruct a public right of way.