

PLANNING COMMITTEE – 5th December 2023

Reference Number: 23/00373/FL

Application expiry: 7th December 2023

Application Type: FULL

Proposal Description: Revised proposal for Change of Use from Retail Shop to Micro Pub, including two storey side extension (Resubmission of previously refused application 22/00055/FL)

At: 44 Cherry Tree Drive Killamarsh

For: Mr T Rai

Third Party Reqs: 6 objections & 2 supporting

Parish: Killamash

Report Author: Kerry Hallam

Date of Report: 14 September 2023

MAIN RECOMMENDATION: Grant permission, subject to conditions

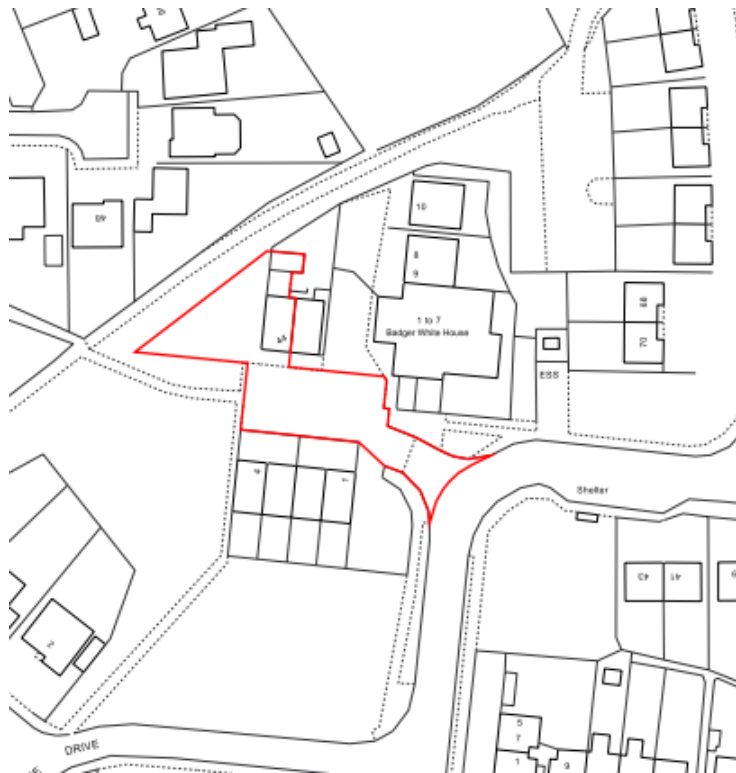


Figure 1: Location plan, with site edged in red

1.0 Reason for Report

1.1 Cllr Clough requested that the application be considered at committee for the following reasons:

- For the committee to objectively review all new information/evidence providing since the earlier rejection
- There are concerns raised with me that some elements have not been taken into account or covered in full around:
 - Noise from external area
 - Upper seating area – concerns there is no restriction on this from being converted in the future
 - Parking
 - Land Ownership for the extension – grass still cut by NEDDC

2.0 Proposal and Background

Site Description

2.1 The application site is a two-storey semi-detached building. The last use of the building was as a shop at ground floor. There is a first floor flat above the retail unit. The adjoining property is a Chinese takeaway at ground floor with a flat above.



Figure 2: Photo of the application site

2.2 The site is located in a residential area within the Settlement Development Limits for Killamarsh. Killamarsh defined as a Level 1 Settlement.

- 2.3 To the east of the site is Badger House, formerly a public house, now converted to flats. To the west of the building is an area of green space which forms part of the application site. Beyond the application site, the land level drops sharply east to west from this area towards the footpath, where the rear gardens of residential properties to the west lie beyond the boundary with the footpath. To the south of the site there is a row of four terraced houses.



Figure 3 – Application site and surrounding dwellings

- 2.4 There is a car park area immediately to the south of the building which is included in the application site area and accessed from the bend of Cherry Tree Drive / Westfield Road to the southeast. This access is shared with the four terraced houses to the south which each have two parking spaces.

Proposal

- 2.5 Planning permission is sought for the change of use of an existing retail unit to a micro pub and the addition of a two-storey side extension. The extension projects 6.5m from the side elevation with a depth of 10m and a ridge and eaves height to match the existing.

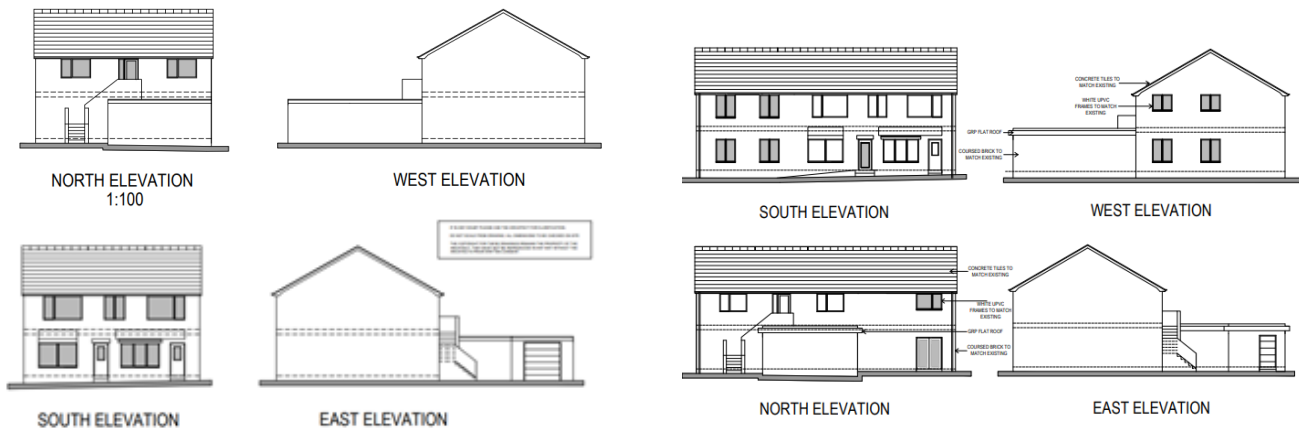


Figure 4 - Existing and proposed elevations

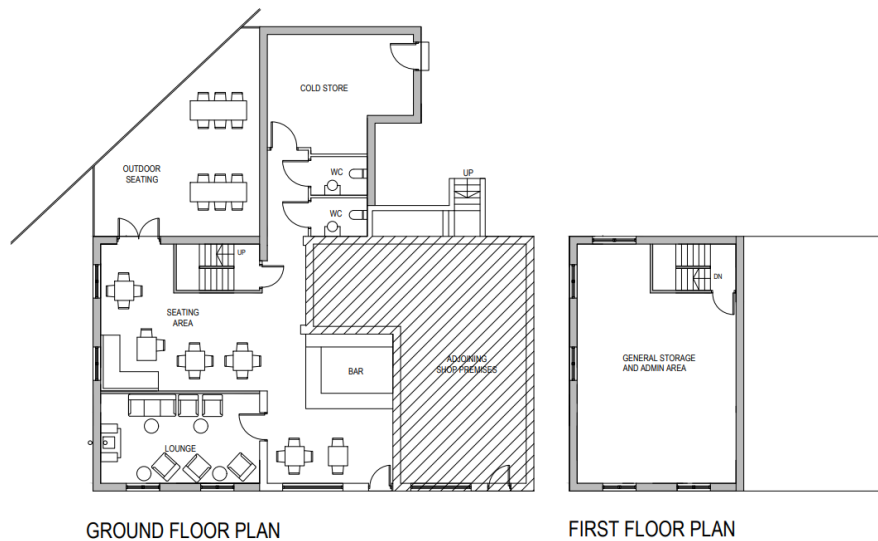


Figure 5 – Proposed floor plans

3.0 Relevant Planning History

- 3.1 05/00408/FL - Construction of a two storey side extension and single storey rear extension to existing shop including two bedroom first floor apartment – Conditionally Approved
- 3.2 22/00055/FL - Application for change of Use from Retail Shop to Micro Pub, including two storey side extension – Refused

4.0 Consultation Responses

4.1 **Ward member** – Cllr Clough – Call in to committee

4.2 **Parish Council** – No comments received

4.3 **DCC Highways(HA)** –

The proposal is for the change of use from retail shop to micro pub having a total gross floor area (GFA) of 180 sqm. It is understood the total public floor area will be 90 sqm.

Access to the site itself is gained via a cul-de-sac off the Cherry Tree Drive which forms a simple priority junction, a Non-Classified Road in the form of shared access which also provides access to other residential units.

The applicant has undertaken a comparison of existing traffic generation and proposed traffic generation based on trip rates associated with a general public house and convenience store, obtained via the TRICS database.

Between the hours of 12:00 and 24.00 hrs the micro-pub and the convenience store would have the potential to generate the following trips over this time period:

- Micro-pub (Public House) – 47.42
- Convenience Store – 68.711

It is acknowledged, over a twelve-hour period the convenience store would have the potential to generate more trips than the proposed micro-pub. The HA previously advised they were satisfied with trip generation details and in light of the above they do not consider the change of use would lead to an intensification of trips.

The applicant has utilised the TRICS database to determine the parking demand of the Micro Pub, which has also been compared to the parking demand of the previous use as a convenience store. Based upon the arrival and departure figures both the convenience store and the micro pub will have had the potential to have a maximum accumulation of 2no. spaces.

The HA initially commented that it is understood as part of the proposals off-street parking will be provided within the site providing two spaces within the rear yard area and the proposed micro pub will have the use of the parking spaces to the front of the property (as the convenience store had previously throughout the time of its business operation).

The HA have further commented that it is understood that the two parking spaces at the rear are not within the applicants ownership, and an informal arrangement exists that they can be used but the applicant has no control over them. As such for the purposes of the planning application, the HA cannot consider these as usable spaces.

Furthermore, the ownership of the two parking spaces at the front has not been confirmed, however it is understood that they are assigned for visitor parking for the flats adjacent to the site but have also been previously used for parking as the convenience shop. As such the LHA must consider the development proposals with no designated off-street parking available solely for the use of the micro-pub.

It is acknowledged, over a twelve-hour period the convenience store would have the potential to generate more trips than the currently proposed micro-pub. Furthermore the HA understand the two spaces to the rear were also not utilised by the convenience store previously.

Given the LHA do not consider the change of use would lead to an intensification of trips compared to the existing use, and the location of the Micro-Pub which is at the end of a cul-de-sac, in the site-specific circumstances it is not considered that this development proposal would lead to a severe or unacceptable highway impact in the context of the NPPF and as such the HA would not seek to resist this application.

- 4.4 **Yorkshire Water** – No comments received
- 4.5 **DCC Rights of Way** – No comments received
- 4.6 **Peak and Northern Footpath Society** – No comments received
- 4.7 **The Ramblers Association** - Having considered the revised proposal our comments remain as for the original proposal, 22/00055/FL. We would reiterate our comment regarding the definitive line of the path and add that the existing car parking area appears to be set over the definitive line; reference DCC mapping portal.
- 4.8 **Chesterfield Cycle Campaign** – No comments received
- 4.9 **Cadent Gas** - No objection – informative note - Cadent Gas Ltd own and operate the gas infrastructure within the area of your development. There may be a legal interest (easements and other rights) in the land that restrict activity in proximity to Cadent assets in private land. The applicant must ensure that the proposed works do not infringe on legal rights of access and or restrictive covenants that exist. If buildings or structures are proposed directly above the apparatus the development may only take place following diversion of the apparatus. The applicant should apply online to have apparatus diverted in advance of any works, by visiting cadentgas.com/diversions Prior to carrying out works, including the construction of access points, please register on www.linesearchbeforeudig.co.uk to submit details of the planned works for review, ensuring requirements are adhered to.
- 4.10 **The Coal Authority (CA)** initially objected as the Coal Mining Risk Assessment does not adequately address the impact of coal mining legacy on the proposed development.

Following the submission of further information, the Coal Authority concurs with the conclusions and recommendations of the supporting Planning Statement and Coal Mining Risk Assessment report; that coal mining legacy potentially poses a risk to the proposed development and that investigations are required, along with possible remedial measures, in order to ensure the safety and stability of the proposed development. The CA withdraws their objection subject to the imposition of the above conditions.

4.11 **Environmental Health Officer** – Initially requested further information regarding the modelled data, clarification of the distances between the beer garden and neighbouring properties, clarifications on the noise levels and uncertainty to be quoted in the report. On receipt of this information, no objection subject to the inclusion of conditions:

- A 1.8m acoustic barrier as detailed in plan reference XX, the precise design and location of which to be agreed with the LPA, should be installed long the entire boundary of the outdoor seating area
- Upgrades to the party wall and floor construction as per 5.2 and 5.3 of the noise assessment should be completed to the satisfaction of the LPA prior to the development being brought into first use.
- There shall be no provision of external heating.
- External drinking areas shall not be used by customers after 9pm each day, and use not recommence before 11am the following day.
- No external music shall be provided.

4.12 **Derbyshire Police**– Provided the following comments:

- Hours differ in the application form and design & access statement
- The operating floorspace and hours of trading proposed are approaching what might be seen as acceptable in context, nevertheless there is still the potential for neighbour amenity to be affected by a poorly managed licensed premises at this location, considering its elevated position and proximity of neighbours, particularly in respect of noise from the external beer garden.
- The outstanding information requested by your E.H.O would be key to reaching an acceptable level of attenuation
- I would suggest that use of the external grounds should cease at 9pm, which I believe was suggested during consideration of the previous application.
- Other than this hours of operation should be as set out within the design and access statement.
- These comments are without prejudice to any requirements made by our licensing department during any tandem premises license application, and with that in mind, and the issue of enabling a well managed business, I've attached a set of model licensing conditions, which are likely to form the basis of their recommendations.

Provided the further comments:

- Correlation between proposed hours of business within the planning statement and application form are noted

- The planning statement now sets out a proposal to use the external space until 9.30pm rather than the previously suggested time of 9pm. Our advise would be to keep to the earlier time for resident amenity.

5.0 Representations

5.1 The application was publicised by way of neighbour letters and the display of a site notice. A Site notice was placed adjacent to the application site in the window of the building which expired on 24/05/2023.

5.2 6 residents have made representations objecting to the proposed development raising the following comments. All comments have been addressed below or within the assessment section:

- Application not referred to Derbyshire Constabulary
(Officer comment: Derbyshire Constabulary have been consulted and have commented on the application)
- Previous historic issues with the Bull & Badger which has now been converted – cannot argue this development would be a social asset
(Officer comment: Environmental Health and Derbyshire Constabulary have been consulted and have commented on the application. Each application is judges on its own merits)
- No demand for a pub in this area
(Officer Comment: This is address in the other matters section of the report)
- Overlooking concerns from the extension
- Inconsistency on application form regarding parking
- Insufficient parking will adversely affect surrounding properties through on street parking
- Reference to 05/00408/FL is irrelevant
(Officer comment: This application is noted in the planning history section)
- Noise from outdoor area – Even if it is restricted it could still be used for smoking
- Increased noise and smell from takeaway extractor fan if moved
(Officer comment: The extractor fan is on the adjacent unit and planning permission would be required for them to re-site this)
- Application denies us the right to enjoy our home peaceful – Human Rights Act
- No need for storage area – could this be used as a function room/over-flow seating at a later date?
- Outdoor area and size of pub raises anti-social behaviour concerns
- A number of unlit paths surround the site which presents security concerns and potential use of these areas after the pub is closed
- Report states applicant has discussed the proposals – not the case
(Officer comment: There is no requirement for the applicant to carry out consultations. The Council have carried out consultation in line with the statement of community engagement)

- Proposed use will not significantly increase employment
- Parking comparison has been done against the stop and shop – customers will be at the pub longer

(Officer comments: A comparison of existing traffic generation and proposed traffic generation based on trip rates associated with a general public house and convenience store, obtained via the TRICS database)

- Noise and anti-social behaviour concerns
- Doesn't comply with Local Plan Policies WC5, WC4, SP4 and SDC12
- No detail of what a 'micropub' is and other 'micropubs' in the area are no overrun with customers
- Many people who have signed the petition are not local
- Layout has changed internally – is this indicative or binding? No toilets shown upstairs

(Officer comment: If approved, the development should be carried out in accordance with the approved plans. Once completed, internal alterations would not require planning permission unless restricted by a planning condition)

- Parking issues – ownership/allocation is unclear & limited parking. Two parking spaces at the rear are not really accessible.
- No details regarding management of waste, waste segregation and store provision, management of litter, vermin control, noise waste collections, access for waste vehicles, litter on adjacent green space
- Is the extension built up on sloping ground?

(Officer comment: The land where the extension is proposed appears to be flat and the plans indicate the site is flat.

- Use of grassed area by customers

(Officer comment: The grassed area outside of the application site is not controlled by the applicant and therefore this area can be used by the public)

- Unsuitable location in a residential area and proposal would alter the character of the area
- Concerns regarding noise extractors/air condition units
- Concerns over suitability of licensee following police concerns
- Parking issues have not been adequately addressed and cant guarantee staff will live within walking distance
- Comparison pubs for TRICs data are not a comparable to the proposal

(Officer comment: The comparison pubs and convenience stores are of a similar size to the existing and proposed use)

- EHO is from South Derbyshire District Council

(Officer comment: The EHO works in partnership with North East Derbyshire District Council)

- No details of the 1.8m high fence
- Use of heaters outdoor would increase the use and it would be difficult to police the use of the outdoor area

- Requests for further information and clarification on methodology of measure noise levels by the EHO has not been addressed
- Use of beer garden for 12 people seated and 4 standing is understated. Increased number of people could be accommodated & increased frequency of patio doors being open would increase noise levels over the limit
- Unrealistic for the outdoor area to close at 9pm
(Officer comment: Opening times can be controlled via planning condition. If planning conditions are not adhered to, this would be a matter for the councils enforcement team).
- Inaccuracy and inconsistencies of noise impact assessment - Measurement distances being significantly understated and taken from the wrong location for Foxcroft Drive at least, modelling customer noise based upon numbers of persons significantly below the beer garden capacity, making no consideration of sound emanating from inside the proposed pub from open doors and windows, insufficient consideration of plant noise, no consideration of noise amplification when these multiple sources are combined, and, that the mitigations proposed are almost worthless, we believe that no further analysis is necessary, as due account taken of the above-cited factors would be sufficient to tip the noise intrusion well in excess of the threshold barely met.
(Officer comment: The EHO requested clarification on aspects of the noise assessment. This additional information and modelling were provided by the agent and the EHO is satisfied with the data, modelling and findings of the report)

5.3 2 residents have made representations have been received which is summarised below:

- I support the application because the building nearby used to be a pub.
- The micro pub has great potential as a meeting place for local residents who are unable to walk far to socialise.
- Following the success of other micro pubs in the area I think it's a very good idea. A popular way forward is as a coffee bar/ micro pub which suits all tastes. I think it will be of benefit to all age groups in the area
- Very few other places to make communal social contact
- Micropubs differ from traditional public houses with respect to the amount of customers and demographic of people they attract
- The site is sheltered by other buildings and large hedges so should not disturb residents that reside nearby and no more than the previous use
- Great idea for a community meeting place, close to housing and accessible to all

6.0 Relevant Policy and Strategic Context

North East Derbyshire Local Plan 2014-2034 (LP)

6.1 The following policies of the LP are material to the determination of this application:

SS1 Sustainable Development
SS2 Spatial Strategy and the Distribution of Development
SS7 Development on Unallocated Land within Settlement with defined Settlement
Development Limits
SP4 Killamarsh
SDC12 High Quality Design and Place Making
SDC14 Land potentially affected by Contamination or Instability
ID3 Sustainable Travel

National Planning Policy Framework (NPPF)

- 6.3 The overarching aims of the National Planning Policy Framework (NPPF) have been considered in the assessment of this application.

Other Material Planning Considerations

- 6.4 Successful Places Interim Planning Guidance, adopted December 2013

7.0 Planning Issues

Principle of Development

- 7.1 Local Plan Policy SS1 seeks to meet development needs within defined settlements or other allocated areas having regard to the defined settlement hierarchy and the need to enhance their role as a focus for new services and facilities and locate development where there is access to a broad range of jobs, services and facilities which are accessible by foot, cycle or public transport with reduced reliance on the private car.
- 7.2 Local Plan Policy SS2 seeks to support and enhance the role of the four Level 1 towns of Clay Cross, Dronfield, Eckington, and Killamarsh and support and facilitate the regeneration of the Level 1 towns and Level 2 settlements; and maintain the role of settlements by supporting their ability to sustain services and facilities through new development that is appropriate in scale and reflects their position in the Settlement Hierarchy.
- 7.3 The application site is located within the settlement development limits for Killamarsh, here local plan policy SS7 supports development provided that it is appropriate in scale, design and location to the character and function of the settlement, does not result in the loss of a valued facility or service, is compatible with, and does not prejudice any intended use of adjacent sites and land uses; and accords with other policies of the Plan.
- 7.4 Local Plan Policy ID4 and ID5 relate to social infrastructure. A shop and a public house both fall within the definition of social infrastructure. Given the siting of the unit,

it is accessible by public transport, walking and cycling. Whilst the proposal would result in the loss of a shop, it is understood that retail use has been closed for a period of time and the proposed use would provide a different form of social infrastructure.

- 7.5 In view of the above, the principle of development is considered acceptable in this case subject to an assessment against the various strands of planning policy as outlined above.

Privacy and Amenity Considerations

- 7.6 Policy SDC12 of the Local Plan seeks to adopt general design principles which relate to scale, massing, height, layout and materials which respect the character and appearance of the application site and surrounding street scene. SDC12 is also concerned with provision of adequate storage and recycling facilities, and vehicle and cycle parking, and requires proposals to incorporate measures to minimise opportunities for crime and anti-social behavior.
- 7.7 The proposed extension would encroach onto an area of green space which currently contributes to the character and appearance of the area. However, the extension is designed to be in keeping with the existing and surrounding buildings and the loss of this green space is not considered to be detrimental to the amenity of the area. The extension is to be constructed out of materials to match that of the existing building and is of a scale and design that is in keeping with the host building and surrounding properties. The proposed boundary treatment would be visible from public viewpoints, however it is proposed at 1.8m high and its design can be controlled via condition. As such, it is considered that the extension complies with SS7 and SDC12.
- 7.8 There are residential properties to the north and west of the site and the attached property to the east share a boundary with the building subject to the proposed change of use. To the south of the site there is a row of four residential properties with the parking area as the only form of separation from the proposal site. To the east of the site are the flats within Badger House which also share the parking area.
- 7.9 In terms of the extension, concerns have been raised by nearby residential properties regarding overlooking from the extension. The extension is sited approximately 9m away at the closest point to the neighbouring properties on Foxcroft Drive with a window to window separation distance of approximately 19m. It is noted that the application site is set at a higher land level than the properties on Foxcroft Drive and therefore in this instance, it would be considered reasonable for the windows in the western elevation of the proposed extension to be obscure glazed to reduce overlooking or loss of privacy concerns. This can be secured by condition. Given the siting of the extension along with the separation distance, Officers are of the view that no significant overbearing impact or loss of light would arise as a result to the neighbouring properties.

- 7.10 In terms of the use, the introduction of a drinking establishment in this location, does have potential for noise and disturbance to have a negative impact on the amenity of neighbouring residential amenity. The applicant has submitted a noise impact assessment to support the application. The report concludes that the predicted noise levels are at or below the noise criterion outlined in section 2.3 of the report for neighbouring properties and the adjoining flat. The Environmental Health Officer (EHO) initially requested further information regarding the modelled data, clarification of the distances between the beer garden and neighbouring properties, clarifications on the noise levels and uncertainty to be quoted in the report. On receipt of this further information and clarification, the EHO confirmed that he was satisfied with the conclusions of the noise impact assessment and concluded that the use of the external areas should not cause significant adverse impacts, however in the event that the facility is not properly managed, the local authority could impose further restrictions on the use of these areas via a licensing regime. The EHO has recommended a number of conditions relating to details of the acoustic barrier, internal party wall and floor construction, external heating and music and restrictions on use of external areas. Officers are of the view that whilst there is potential for noise and disturbance to neighbouring residential properties, through in imposition of planning conditions, the impact can be minimised to an acceptable level. The use would also be subject to a license and any relevant matters can also be addressed through the licensing regime.
- 7.11 The assessment of the impact of the use has been made on the basis that the first floor is used for storage and admin, as per the submitted plans. It is therefore considered necessary to restrict the first floor to be used for storage and admin ancillary to the pub use.
- 7.12 Comments have been raised regarding the lack of details around the management of waste and litter. A note to applicant can be attached to the decision requiring the applicant to provide adequate waste management in accordance with Environmental Health Legislation.
- 7.13 Concerns have been raised regarding anti-social behavior, drugs and littering. These are matters that can be controlled via the licensing provision and the police.

Highway Safety Considerations

- 7.14 Policy ID3 states that planning permission will be refused on transport grounds if there would be an unacceptable impact on highway safety, or where the residual cumulative impacts on the road network would be severe.
- 7.15 One of the reasons for refusal on the previous application was 'Sufficient details of proposed parking provision have not been submitted and therefore it is not possible to fully assess the impacts of the scheme in highway safety terms. It is considered that the submission has not satisfactorily evidenced that the proposed development

would not result in any unacceptable impacts from a highway safety perspective. Therefore, to grant permission would be contrary to the Policies SDC12 and ID3 of the North East Derbyshire Local Plan and the aims of the NPPF.'

- 7.16 The applicant has submitted a revised addendum to the technical note submitted with the previous application which assesses the potential parking demand, accumulations and overall trips and servicing. The technical note concludes that, based on data found within the TRICs information, the parking demand/accumulation and vehicle trips for the proposed use, would be significantly less than the previous use as a convenience shop. The TRICs data demonstrates that the micro pub would result in approximately 34 two way trips within an 11 hour period whereas the convenience store would generate approximately 148 two way trips over a 12 hour period.
- 7.17 During the course of the application, it has become apparent that the two parking spaces at rear of the site (Shown on site plan 2142-036-A) are not within the application site, nor are they within the ownership of the applicant, therefore they cannot be considered as part of this application. Furthermore, the site plan indicates that there are six parking spaces at the front of the units. However, these spaces are conditioned as visitor spaces for the flats at Badger House (13/00663/FL). Whilst it is understood that these parking spaces have been used previously for customers of the convenience store, Officers cannot be certain that the applicant has full control over these spaces and would be able to designate two parking spaces solely for the use of the micro-pub. As such, Officers are required to assess the application on the basis that no parking provision, solely for the use of the micro-pub, is provided.
- 7.18 Derbyshire County Council Highways have reviewed the additional information submitted and considered the absence of any designated parking in their assessment. Given the TRICs data and noting the siting of the unit at the end of the cul-de-sac, DCC Highways have concluded that the change of use is not expected to lead to an increase in parking demand or lead to an intensification compared to the existing use and although there is no designated parking, in the site-specific circumstances, it is considered that the change of use would not lead to a severe or unacceptable highway impact.
- 7.19 Based on the detailed information submitted and noting DCC Highways have raised no objection to the proposals, Officers are of the view that the proposed development would not lead to an unacceptable impact on highway safety and the residual cumulative impact on the wider road network would not be severe.

Drainage Considerations

- 7.20 The site falls in Flood Zone 1 with the lowest probability of flooding.

- 7.21 The site is located within Flood Zone 1 with the lowest probability of flooding. It is therefore considered to be at low risk of flooding and the proposals is considered to be complaint with Local Plan Policy SDC11.

Land Contamination/Land Stability Considerations

- 7.22 Policy SDC14 is concerned with ensuring that appropriate mitigation measures are in place for development of land potentially affected by instability of contamination.
- 7.23 The site is an in area defined as a High Risk area for coal Mining. The absence of a Coal Mining Risk Assessment (CMRA), and the failure to demonstrate that the site is safe and stable for development was a reason for refusal on the previous application.
- 7.24 The current application is supported by a CMRA and the Coal Authority (CA) initially objected to the application as they considered that the report did not adequately address the impact of coal mining legacy on the proposed development. Upon receipt of further information submitted by the applicant, the CA consider that in this instance, the recommended investigations may be reasonably secured by means of a pre-commencement planning conditions. The CA concurs with the conclusions and recommendations of the supporting Planning Statement and Coal Mining Risk Assessment report and states that coal mining legacy potentially poses a risk to the proposed development and that investigations are required, however, with possible remedial measures, the development can be made acceptable in order to ensure the safety and stability of the proposed development.
- 7.25 The Council's Environmental Health Officer has raised no comments regarding land contamination and therefore it is considered no further consideration of this is needed.
- 7.26 Officers conclude that with the inclusion of the two conditions recommended by the Coal Authority, which are necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures, the development is acceptable in terms of Coal Risk and is therefore complaint with Local Plan Policy SDC14 and paragraphs 183 and 184 of the NPPF.

Other matters

- 7.24 Comments have been raised regarding the demand for a pub in this location. It is not a requirement for the applicant to demonstrate a need in this location and each application is judged on its own merits.
- 7.25 Questions have been raised regarding the definition of a 'micropub'. A micropub, for the purposes of the planning process, is a drinking establishment which does not fall within a specified use class so is therefore Sui Generis. The use would require a licence from the relevant department, concerns raised relating to the suitability of the licensee is not a material planning consideration.

- 7.26 Reference has been made in an objection to the application to the proposals being an infringement on a neighbouring properties privacy and section 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life. This includes planning decisions especially affecting the home. In response to this, matters relating to overlooking and loss of privacy are material planning considerations which have been considered in the neighbouring amenity section of the report. Officers are of the view that the proposed development would not result in a significant loss of privacy and amenity for the residents of neighbouring properties and therefore the proposal is considered to be compliant with the relevant planning policies and guidance.
- 7.27 Comments have been made regarding inconsistencies in the application regarding parking and opening times. These inconsistencies have been reviewed as part of the application and opening times can be secured by condition.
- 7.28 Comments have been raised regarding the proposals not complying with Local Plan Policies WC5, WC4, SP4 and SDC12. Officers are of the view that the given the size of the proposals and the proposed use and through the imposition of planning conditions, the proposal would be compliant with above stated policies.

8.0 Summary and Conclusion

- 8.1 The proposal is considered to be an acceptable form of development within the Settlement Development Limits of Killamarsh. Whilst there is potential for noise and disturbance from the use, this can be controlled through the imposition of planning conditions and the licensing application separate to the planning process. The proposal is considered acceptable in terms of coal risk and highway safety.

9.0 Recommendation

- 9.1 That planning permission is **CONDITIONALLY APPROVED subject to the following conditions**, with the final wording delegated to the Planning Manager (Development Management):-

Conditions

1. The development hereby permitted shall be started within three years from the date of this permission.

Reason - To comply with the provision of Section 91 (as amended) of the Town and Country Planning Act 1990.

2. The development hereby approved shall be carried out in accordance with the submitted site location plan (2142), proposed floor plans (02 Rev A) and proposed

elevations (03 Rev A) unless otherwise specifically agreed in writing by the Local Planning Authority or otherwise required by any other condition in this decision notice.

Reason- For clarity and the avoidance of doubt.

3. The proposed materials shall match those of the existing building as closely as possible.

Reason - In the interests of the appearance of the area and in accordance with Policies SDC12 of the North East Derbyshire Local Plan

4. The first floor windows proposed in the northern and western elevation of the extension shall be fitted with obscure glazing and any part of the window(s) that is less than 1.7m above the floor of the room in which it is installed shall be non-opening, prior to the extension/dwelling hereby approved being brought into use. The obscure glazing shall be installed in order to provide of level of obscurity at least equivalent to level 3 on the Pilkington Glass scale and the glazing shall be retained as such thereafter.

Reason - To protect the amenity of adjacent residential occupiers and in accordance with Policies SDC12 of the North East Derbyshire Local Plan.

5. Before the development starts, details of the precise design and location of a 1.8m high acoustic barrier shall be submitted to and approved in writing by the Local Planning Authority. Prior to the first use of the premises hereby approved, the acoustic fencing shall be installed in accordance with the approved details and shall be retained as such thereafter.

Reason - To protect the amenity of adjacent residential occupiers and in accordance with Policies SDC12 of the North East Derbyshire Local Plan.

6. Prior to the premises being bought into use, a validation report shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the upgrades to the party wall and floor construction as per 5.2 and 5.3 of the noise assessment, have been implemented. The upgrades shall be retained as such for the lifetime of the development.

Reason - To protect the amenity of adjacent residential occupiers and in accordance with Policies SDC12 of the North East Derbyshire Local Plan.

7. There shall be no provision of external heating or external music.

Reason - To protect the amenity of adjacent residential occupiers and in accordance with Policies SDC12 of the North East Derbyshire Local Plan.

8. The premises, hereby approved, shall only be open to the public between the hours of 16:00-22:00 Monday to Friday, 13:00-22:00 Saturdays and 13:00-21:30 Sundays.

Reason - To protect the amenity of adjacent residential occupiers and in accordance with Policies SDC12 of the North East Derbyshire Local Plan.

9. The outdoor space associated with the premises, hereby approved, shall only be used in association with it, between the hours of 13:00 and 21:00.

Reason - To protect the amenity of adjacent residential occupiers and in accordance with Policies SDC12 of the North East Derbyshire Local Plan.

10. The first floor of the extension, hereby approved, shall be used solely for the purposes of general storage and admin ancillary to the approved and shall be used for no other purpose for the lifetime of the development.

Reason: To protect the amenity of adjacent residential occupiers and in accordance with Policies SDC12 of the North East Derbyshire Local Plan.

11. No development shall commence until;

- a) a scheme of intrusive investigations has been carried out on site to establish the risks posed to the proposed development by past shallow and surface (opencast) mining activity; and

- b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

Reason - The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with paragraphs 183 and 184 of the National Planning Policy Framework.

12. Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations

and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason - This is in order to ensure the safety and stability of the development, in accordance with paragraphs 183 and 184 of the National Planning Policy Framework.

Informatives:

- a) DISCON
- b) NMA
- c) Coal
- d) Cadent
- e) Bins
- f) Licensing