



Planning Committee 8th November 2022

APPLICATION NUMBER		22/00558/FUL	
SITE ADDRESS:		Mad Hatter, 34 Crown Square, Matlock, Derbyshire, DE4 3AT	
DESCRIPTION OF DEVELOPMENT		Retention of single storey building to rear used in association with existing business	
CASE OFFICER	Mr. G. A. Griffiths	APPLICANT	Wendy Spencer
PARISH	Matlock All Saints	AGENT	N/A
WARD MEMBERS	Cllr. M. Burfoot Cllr. S. Burfoot Cllr. S. Wain	DETERMINATION TARGET	30 th August 2022
REASON FOR DETERMINATION BY COMMITTEE	Considered sensitive by the Development Manager	REASON FOR SITE VISIT (IF APPLICABLE)	To assess the timber structure contextually with the flood wall and its potential for impact on the amenity of neighbouring residents and the character and appearance of the Matlock Bridge Conservation Area

MATERIAL PLANNING ISSUES

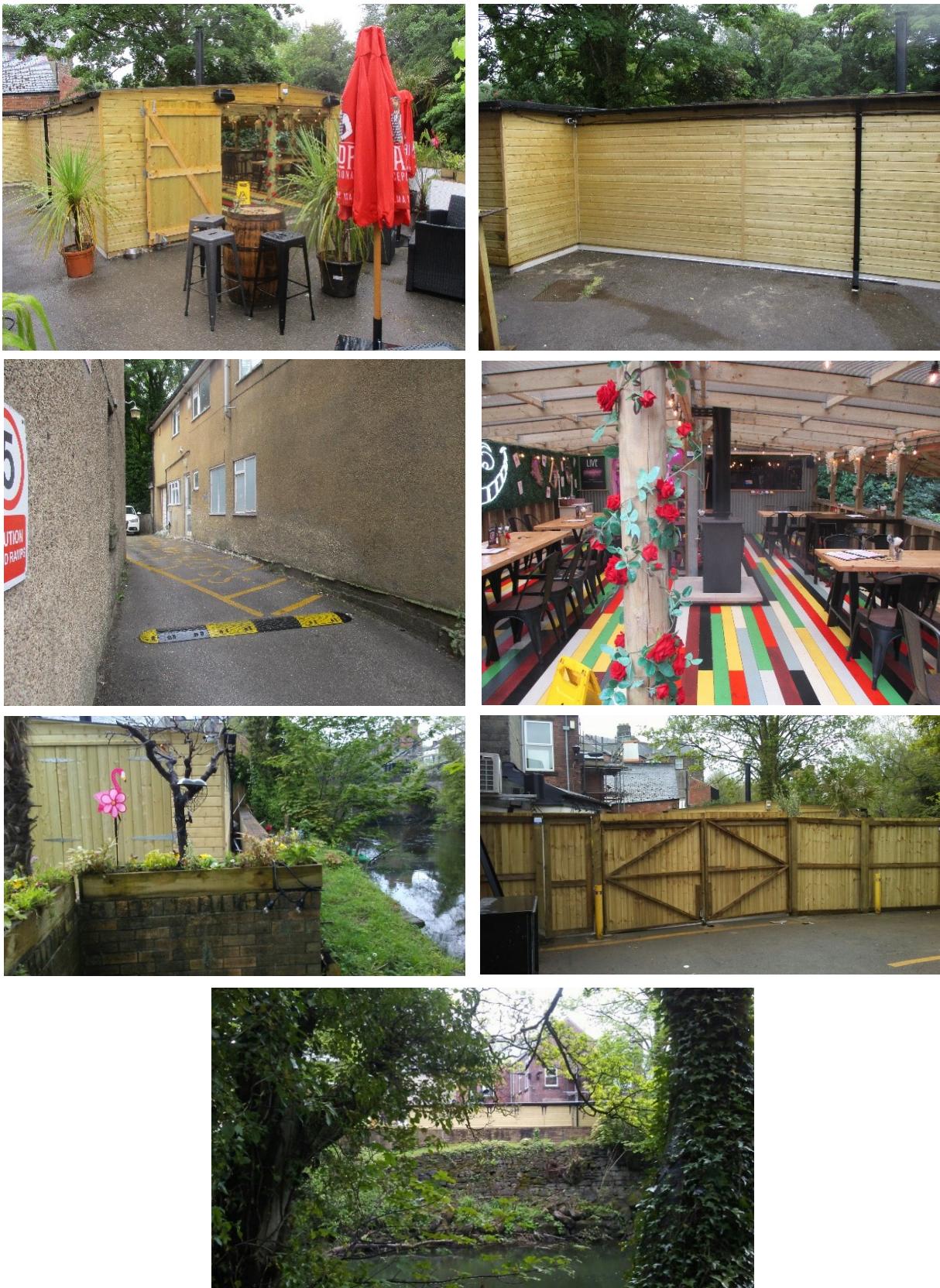
- Principle of the development
- Impact on the character and appearance of Conservation Area
- Impact on residential amenity
- Flooding and drainage
- Highway matters

RECOMMENDATION

That the application be refused

1. THE SITE AND SURROUNDINGS

1.1 The property is a commercial business located within the town centre of Matlock and it is also within the Matlock Bridge Conservation Area. It fronts onto the Crown Square area and the embankment to the River Derwent is to the rear of the property. This is a commercial area of what are predominantly retail or café/takeaway uses with residential or commercial use on the upper floors.





2. DETAILS OF THE APPLICATION

- 2.1 Full planning permission is sought for the retention of a single-storey, detached, timber building with dual pitched roof to the rear of the premises which is in association with the existing business. The structure has been designed to be constructed in 3 metre panel sections which are secured together using heavy duty bolts. These are fixed to a floor frame which is sat on concrete pads on the existing solid carpark floor so the whole structure is removable. It is advised that the structure has been designed in such a way that, when it is in use, all the river facing side is open to the fresh air, along with the full front elevation by way of large wooden bi-fold doors and large opening hatches.
- 2.2 Access to the structure is gained through the rear door of Madhatter, with additional gated access via the alley to the side of Esta Moda hairdressers, where the applicant has large, vehicle access gates for deliveries and waste collections and a separate foot gate. The applicant advises that the access also enables them to provide a full service to disabled customers which was previously constrained due to the steps at the entrance to Madhatter. The remaining area of the carpark has been used for outdoor seating and filled with plants to make it a haven for local birds & insects.
- 2.3 The applicant advises that the structure creates an outside/inside feel for customers and is used for eating and drinking and the playing of music. It was erected during the period of the Covid-19 pandemic where, to assist with social distancing as a reflection on Government advice at the time, certain structures could be erected, for a temporary period, to assist public houses/restaurants, etc. with their footfall.
- 2.4 The applicant advises that customers are now less happy to be inside the enclosed internal eating area and, as this was seriously affecting the business and the long term livelihood of employees, it was decided to create an outdoor eating area to make the most of the area which was previously a horrible tarmac carpark. The applicant is of the view that the structure allows customers to sit in a peaceful, calm outdoor space where they can enjoy overlooking the river and benefit from the fresh air.
- 2.5 The structure is made solely out of timber and the applicant believes it blends in perfectly with the surrounding area and greatly improves upon what was previously there and that it is not overlooked by any other properties. Whilst it can be seen from the footpath on the opposite river bank, the applicant considers '*as it looks so good and in keeping with Matlock*', that this attracts walkers to the business. The applicant advises that the creation of this structure has provided employment for more local people and provides somewhere for customers that no other business in Matlock can provide. The applicant hopes that the structure will help the business survive after the horrendous time suffered throughout the pandemic, which the hospitality industry is still suffering.
- 2.6 The applicant has submitted statements with regard to the structure given an objection to

the development by the Environment Agency and concerns raised by the District Council's Environmental Health Section.

3. PLANNING POLICY AND LEGISLATIVE FRAMEWORK

3.1 Adopted Derbyshire Dales Local Plan (2017)

S1	Sustainable Development Principles
S3	Development within Defined Settlement Boundaries
S7	Matlock/Wirksworth/Darley Dale Development Area Strategy
PD1	Design and Place Making
PD2	Protecting the Historic Environment
PD7	Climate Change
PD8	Flood Risk Management and Water Quality
PD9	Pollution Control and Unstable Land
HC19	Accessibility and Transport
HC21	Car Parking Standards
EC1	New Employment Development
EC6	Town and Local Centres
EC7	Primary Shopping Frontages

3.2 Derbyshire Dales District Council Climate Change Supplementary Planning Document (2021)

3.3 Matlock Bridge Conservation Area Appraisal

3.4 National Planning Policy Framework

3.5 National Planning Practice Guidance

4. RELEVANT PLANNING HISTORY

4.1 16/00272/FUL - Change of use from retail (Use Class A1) to café/bar (Use Class A3/A4) and single storey rear extension - Granted

5. CONSULTATION RESPONSES

5.1 Town Council

- no objection.

5.2 Environment Agency

- object given the proximity of the structure to the flood wall.

5.3 Local Highway Authority (Derbyshire County Council)

- no objections to loss of parking in view of town centre locations, but applicant to demonstrate that delivery vehicle access and turning is not affected by the proposals.

5.4 Design and Conservation Officer (Derbyshire Dales District Council)

- in terms of its location and overall height the structure is relatively well concealed from public vantage points
- glimpses/views can be had from the adjacent bridge (listed & scheduled) and from the walkway on the opposite side of the river
- whilst its presence and impact on the Conservation Area (and setting of the bridge) is fairly neutral, it is considered that it would benefit from being stained/painted an opaque, recessive, colour (to approval).

5.5 Environmental Health (Derbyshire Dales District Council)

- applicant is fully aware of current noise complaints about Mad Hatter and The Loft and aware of at least two local residents who have made noise complaints about both premises
- have had noise complaints about previous events held in that rear outside area, when a live female singer was performing and would not be happy with that area being used to house any form of musical performance, other than perhaps background music via a small speaker, but this should be managed to ensure no noise nuisance exists.

5.6 Councillor S. Wain

- note the comments regarding this application from consultees and residents in the close proximity this property
- as Lead Flood Warden for Matlock, when this structure was originally erected it was attached to the actual flood wall
- have received a complaint from the Environment Agency that no structures will be attached to the flood prevention infrastructure and certainly not, as in this case, retaining brackets drilled into the wall
- visited the site and saw that the structure was attached and brackets had been drilled in to the top of the wall and advised the owners accordingly and then updated the EA
- plainly obvious, in light of recent collapse of the flood wall a little further downstream, why it is essential to maintain the integrity of all flood prevention infrastructure
- any structure built close to the flood wall, must not be attached to the wall in any way
- whilst supporting the development of all local businesses, note the comments of residents regarding unacceptable noise impacting upon their lives
- seek assurance that, if approved, noise nuisance will be conditioned to minimise impact and licensing advised regarding implementing acceptable hours of business, to ensure residents sleep is not interrupted

6. REPRESENTATIONS RECEIVED

6.1 Two representations have been received raising concerns with the development. A summary of the representations is outlined below:

- it is for Councillors and Officers to judge if the structure complies with risk management assessments, building regulation and highway considerations
- applicant is recognised as an energetic and successful business woman and has significant competition in both day and night-time economies.
- fair competition and cooperation has to be the realistic business model but there has to be a firm framework of law and guidelines and a means of ensuring compliance
- alcohol and music guidelines have to be followed and enforced by all businesses in the sector
- Crown Square has over 20 residential flats all near (within 100 metres of) the Mad Hatter as well as other hospitality businesses
- music and noise generated also creates comment in Snitterton and Imperial Roads
- one core requirement is to be able to sleep between the hours of midnight and 7am at weekends

- Daytime; the Mad Hatter is an original, creative and apparently successful business that has significant social media presence and an active local and tourist customer base - everything within guidelines should be done to encourage the Applicant and approved use of the rear area must be important to the business
- Night-time; together with some competitors, the applicant has a challenge with a small but significant percentage of her customers - the effects of alcohol/drugs mean:
 - excessive noise, both music or shouting, between 12 and 4am most Saturdays and Sundays;
 - vandalism of road signs and furniture;
 - broken glass on pavements and roads;
 - litter;
 - vomit and urination in streets and doorways;
 - broken shop windows; and
 - violence.

Efforts to address these matters need leading, coordinating and enforcing, with new, novel solutions.

- planning permission cannot be given for the present structure for its present uses (relevant from environmental health perspective)
- suggest DDDC, or a local millionaire, purchase the structure from the applicant and situate it in Hall Leys Park, to be used as a base for a Friends of Matlock type organisation that majors on people using energy, presently wasted on anti-social behaviour, for positive creative uses
- suggest the applicant, with consultation and community help, redevelops the back of Mad Hatter within guidelines
- this town should appreciate her positive qualities.

One representation, from the tenant of shops at 10, 14 and 20 Crown Square, supporting the development and which is summarised as follows:

- this enhancement to crown square adds character and drives a higher footfall to the area which is needed after such problems we have had with the floods and covid
- not only is it aesthetically pleasing on the eye, it takes advantage of a true gem, the River Derwent, which Matlock should be proud off
- need more entrepreneurs like this in the town.

7. OFFICER APPRAISAL

Policy Principle

- 7.1 Further to initial guidance during the main period of the Covid-19 pandemic which allowed the erection of temporary structures to provide for further space for public houses, restaurants, etc., the Government has now set parameters by which such structures can be erected going forward in Schedule 2, Part 2, Class G of the Town and Country Planning (General Permitted Development) Order (2015) as amended which advises the following:

Permitted development

G. The provision of one moveable structure within the curtilage, and for the purposes, of a building used for a purpose within—

- (a) article 3(6)(p) or (q) (drinking establishments etc.) of the Use Classes Order; or
- (b) Class E(b) (sale of food and drink etc.) of Schedule 2 to that Order.

Development not permitted

G.1. Development is not permitted by Class G—

- (a) *on land which is or forms part of—*
 - (i) *a scheduled monument or land within its curtilage;*
 - (ii) *a listed building or land within its curtilage;*
- (b) *if any part of the moveable structure would be within 2 metres of the curtilage of any adjacent land that is used for a purpose within Part C (residential uses) of Schedule 1 to the Use Classes Order;*
- (c) *if the height of the moveable structure would exceed 3 metres;*
- (d) *if the footprint of the moveable structure would exceed the lesser of—*
 - (i) *50% of the footprint of the building, or*
 - (ii) *50 square metres;*
- (e) *if the moveable structure is used for the display of an advertisement.*

- 7.2 However, on the basis of the above, the structure erected is not deemed to be of a temporary nature and is, nevertheless, of a size greater than 50% of the public floor area of the premises and, hence, retrospective planning permission is now required and sought. The development therefore has to be considered having regard to policies contained in the Adopted Derbyshire Dales Local Plan (2017).
- 7.3 The premises is within an area designated as a primary shopping frontage under policy EC7 of the Adopted Local Plan (2017). However, the proposals will not impact on this designation given that there is no change proposed to the use of the main building. The proposals are also essentially an expansion of the business premises and this meets with the aims of policy EC1 in creating employment opportunities.
- 7.4 Given the above policies would generally support the principle of development, it is considered that the other matters for consideration are as follows::
- the impact on the character and appearance of Conservation Area (Policy PD2)
 - the impact on residential amenity (Policies S1, S3, PD1 and PD9) and
 - flooding and drainage matters (Policy PD8); and
 - highway matters (Policies S1, S3, HC19 and HC21).

Impact on the Character and Appearance of the Conservation Area

- 7.5 In terms of its location, and overall height, the structure is relatively well concealed from public vantage points. However, glimpses/views can be had from the adjacent bridge (listed and scheduled) and from the walkway on the opposite side of the river. In this regard, whilst the presence and impact of the structure on the Conservation Area, and on the setting of the bridge, is fairly neutral, it is considered that it would benefit from being stained/painted an opaque, recessive, colour subject to approval. This could be attached as a condition to any grant of planning permission. On this basis, the development would accord with Policies S1, S3, PD1 and PD2 of the Adopted Local Plan (2017)

Amenity

- 7.6 Concerns have been raised with regard to the impact of noise emanating from the premises. The applicant advises that the music is not on every week and is not amplified, only ever having acoustic singers. They also ensure any music is almost at the level of background music only so shouldn't be heard by anyone that lives nearby. It is also advised that this is more background music for visitors sitting by the river enjoying what Matlock has to offer. The applicant advises music starts at 8pm and is finished by 10pm whereas The Loft plays loud music till 3am every weekend and this doesn't cause any problems with the locality.
- 7.7 The District Council's Environmental Health (EH) Section has nevertheless raised concerns with the development. EH advise that the applicant is fully aware of current noise complaints

about Mad Hatter and The Loft and aware of at least two local residents who have made noise complaints about both premises. EH advise that they have had noise complaints about previous events held in that rear outside area, when a live female singer was performing, and would not be happy with that area being used to house any form of musical performance, other than perhaps background music via a small speaker, but this should be managed to ensure no noise nuisance exists. To this end, a condition on any planning permission is requested that covers the following:

- no amplified live or recorded music shall be permitted;
- non-amplified music shall not exceed background levels including any acoustic act; and
- a noise management plan should be submitted to the Local Planning Authority that details how noise will be controlled, due to the structure of the building not being sound proof.

On this basis, the development would accord with Policies S1, S3, PD1 and PD9 of the Adopted Local Plan (2017)

Flooding and Drainage Matters

- 7.8 The Environment Agency (EA) has objected to the development which has been undertaken given its proximity to the flood wall. The EA advise that, whilst the applicant has stated that access to the flood wall is available at all times, they require a 2 metre easement to be provided between the flood wall and the structure. It was recommended that the revised plan be submitted to this effect and to include reference to the access to steps, maintenance of vegetation and nothing to be attached to the wall. It is advised that this level of detail would have typically been provided as part of a flood risk activity permit application under The Environmental Permitting (England and Wales) Regulations 2016. However, the development has been undertaken without applying for a permit.
- 7.9 The applicant has considered the objection and submitted further information. This advises that there is nothing in the way of the access steps to the river bank and they remain exactly as they were prior to any construction, with access available at all times if anyone from the EA needs to inspect the wall. The applicant advises that, if any work is required at any time, access can be gained as the construction is designed to be removable.
- 7.10 The construction of the 'freestanding,' outdoor building is of timber sectional panels, bolted together, and the applicant advises that it can be removed at any point to allow any works to be carried out along the full length of the flood defence. This was a major consideration as they didn't want any potential breaches of the wall as this would affect their and the neighbouring businesses severely if this occurred.
- 7.11 The applicant advises that the area over the wall wasn't being looked after prior to the construction and was in a very overgrown state but, as part of the build, the applicant has made it so that customers can sit and overlook the river. As such, the applicant has taken over the full maintenance and care of the berm area and regularly attends to it to prevent any damage by overgrown shrubs and foliage, and keep it as tidy and nice looking as possible.
- 7.12 The applicant advises that the plan for next year is to plant wildflower seeds, so that there is an area that benefits the many insects and birds, and they intend to carry on with the upkeep work on a strict schedule for the duration the outside structure is in place. The applicant has also stated that they would be more than happy to meet with any representatives from the EA at the property to answer any questions and show them the access provisions built into the structure and work with them to put to rest any concerns about the structure and the flood defences.

- 7.13 The applicant advises that, as a small independent business, they cannot compete with the new larger companies/eateries that have opened in Matlock this last year without the outbuilding. In addition, as things are set to get tougher with the cost of living crisis in the coming months, the area outside allows seating for an extra 30 customers and that they employ a total of 32 local people aged 16-50. The applicant states that the outside area therefore gives a fighting chance of the premises staying open.
- 7.14 The EA have been made aware of the applicant's comments and concerns. The EA advise that the floodwall section was constructed in 1981 as part of the Matlock Flood Protection Scheme. The extent of this part of the scheme included the floodwall arrangements between Twiggs Factory Yard and Matlock Bridge. Within the 1981 scheme extents, there are limited access points from the landward side of the flood defence line, which increases the importance of safeguarding any existing access locations. For this particular floodwall section, the archive highlights the working area at the time and indicates that, where the outbuilding is currently situated, a distance of 4m behind the wall was utilised.
- 7.15 The EA recognise that the outbuilding can be demounted in sections but advise that the practicalities around this would not be straightforward when required to do so in the future. With this in mind, maintaining some reasonable back of wall clearance at this location is an important stipulation from a long-term asset maintenance perspective. The EA request is to match the width constraint associated with the existing vehicle access into the car park area, i.e. 2m which would establish and guarantee at least some workable clearance. The principle of retaining clear space would avoid introducing obstructions and the potential for future difficulties with negotiating arrangements to enable the dismantling of the proposed demountable structure when required to do so. The applicant has advised that relocating the structure is impracticable.
- 7.16 The EA advise that, as part of the long-term asset management considerations, they must factor in the potential for future deterioration of the current 2m berm width on the riverside of the floodwall. The River Derwent has suffered from repeated flood events over the last few years, with some of the most significant in its history recently occurring in this area, as seen with the works immediately downstream towards Matlock Bridge, where a section of private riverside wall, with an EA floodwall on top, has collapsed. The EA advises that if loss of the riverside wall supporting the berm area were to occur, then any associated repairs could be substantial and technically challenging, especially if the work had to be approached from within the channel extents. Again, this increases the importance of establishing clearance for access and potential working area extents from the landward side of the floodwall.
- 7.17 The existing arrangement and position of the outbuilding currently prevents access to clearly inspect the full area of the landward face of the floodwall. The floodwall assets within Matlock Flood Risk management system, constructed as part of the 1981 scheme, are routinely programmed for visual asset condition inspections twice a year. If defects are identified, then more frequent inspection and monitoring interventions may be required to understand the asset performance/need for further intrusive investigation/more significant repair intervention. The condition of the landward face is advised to be one of the most critical indications of the overall asset performance.
- 7.18 The EA recognise that, if the structure was not in situ, the area could be reverted back to car parking. However, any parked vehicles in the immediate area would not have hidden the full length of floodwall in the same way, i.e. previous visual inspections could work around these obstructions, localised defects could be identified and, if more detailed observations were required, then this could be easily arranged by moving the vehicles back away from the wall while inspections took place.

7.19 The EA raise concern that defects are already found to be occurring on the other floodwall assets within the scheme extents. Given these issues are evident on assets situated in the same locality, of same age and of the same construction material, the EA advise that it is important that simple and easy access is maintained for regular condition inspections to identify the development of similar defects as soon as possible. In this regard, the current position of the outbuilding would prevent access to monitor and assess issues such as brickwork and mortar damage, and vegetation/moss growth on vertical faces, should they develop on the car park side of the wall. On this basis, the EA objects to the development.

Highway Matters

7.20 The Local Highway Authority initially raised concerns that the development would hinder delivery access. The applicant has advised that access to the rear of the property, and that of their neighbours, as well as any deliveries are not affected by the proposal as they work closely with neighbouring businesses so that delivery days run smoothly for all and that the highway isn't affected or blocked at any time. The applicant considers that the erection of the outbuilding, instead of just tables and chairs outside, will not change access or deliveries wise. To this end, the Local Highway Authority has no advised of no further comments.

Conclusion

7.21 The business clearly contributes to the vitality of the Town Centre and provides employment opportunities. It is also appreciated that the structure has become important during the Covid-19 pandemic in providing social distancing facilities and ultimately additional covered floorspace for the business.

7.22 There are concerns with regard to how the structure is utilised, particularly with noise from amplified music. However, it is considered that this can be addressed with an appropriate condition. In addition, the structure is considered acceptable in this location within the Matlock Bridge Conservation Area, albeit subject to it being stained in a more appropriate colour, for which a condition can again be attached to any grant of planning permission.

7.23 However, the EA have raised clear concerns with regard to the proximity of the structure to the flood wall and, despite being advised by the applicant of how the proximity could be offset by this being a demountable structure, in full or in part, the EA still maintains its objection and advises that a permit under The Environmental Permitting (England and Wales) Regulations 2016 has not been sought. To this end, whilst efforts have been undertaken to seek a resolution to the objection raised by this statutory consultee, it is the recommendation that planning permission be refused given the current position of the outbuilding would restrict access to monitor and assess issues with respect to the flood wall and for its maintenance and repair.

8. RECOMMENDATION

That planning permission be refused for the following reason:

1. The location of the outbuilding restricts access to monitor and assess issues with respect to the flood wall and for its maintenance and repair. As such, the development constitutes a potential risk to flood alleviation and therefore fails to comply with Policy PD8 of the Adopted Derbyshire Dales Local Plan (2017).

NOTES TO APPLICANT:

1. The Local Planning Authority have during the consideration of this application engaged in a positive and proactive dialogue with the applicant, Derbyshire Dales District

Council's Environment Health Section and the Environment Agency. Notwithstanding this, the Environment Agency has maintained its holding objection to the development. Therefore, the Local Planning Authority considered the merits of the submitted application and judged that there was no prospect of resolving the fundamental planning problems with it through negotiation. On this basis the requirement to engage in a positive and proactive manner was considered to be best served by the Local Planning Authority issuing a decision on the application at the earliest opportunity and thereby allowing the applicant to exercise their right to appeal

2. This decision notice relates to the following documents:

Site Location Plan 1:1250 received on 5th July 2022

Block Plan 1:500 received on 5th July 2022

Floor Plan 1:50 received on 5th July 2022

Elevation Plan 1:50 received on 5th July 2022

Design and Access Statement received on 5th July 2022

Additional Information received on 22nd and 26th July 2022, 14th September 2022 and 14th October 2022.