

Appellant's Full Statement of Case

Appeal Application Reference:
13392/APP/2018/4174

The Wheatsheaf Public House, 286 High Street,
Harlington, Hayes, UB3 5DU



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Report Reference:
19/4688

Executive Summary

This Appeal Statement has been prepared on behalf of the appellant, E.I. Group (formerly Enterprise Inns), the owner and occupier of the Wheatsheaf Public House, against the refusal of an application for a canopy to the rear to cover the beer garden.

The land to the rear of the public house has been used by customers both historically and more recently since improvements have been made to the area. It is considered that the insertion of a canopy structure in the improved beer garden would not lead to a material change in use of land, or intensification of use of the beer garden which would amount to development.

There were no planning reasons to refuse of the canopy structure at this location. The application should have been assessed on the basis of operational development rather than intensification of the use. Indeed, matters such as design and potential visual amenity impacts were considered acceptable to the Council, and so the proposal should have been approved. All other relevant matters were considered to be entirely acceptable to the Council.

The above notwithstanding, the pergola structure will have no impact on noise levels. The beer garden can be used with or without the structure in place, and given it is only partially covered, it would not allow a substantial amount of protection from weather.

The proposals have been shown to comply with both local and national policy and it is respectfully requested that the appeal is allowed. Overall, the proposals will support the continued viable use of the Public House for the local community and should not be overburdened by policy requirements.

The future viability of this pub is under threat, in an era where public houses and community facilities ought to be enhanced and protected.

Introduction

- 1.1. This Appeal Statement has been prepared on behalf of the appellant, E.I. Group (formerly Enterprise Inns), the owner and occupier of the Wheatsheaf Public House, against the refusal of application reference 13392/APP/2018/4174 by Hillingdon Council for the following:

“Canopy to rear to cover beer garden and associated fencing”.

- 1.2. The application was refused under delegated powers by the London Borough of Hillingdon on 21st January 2019 for the following reason:

“The proposed/existing canopy/extension, by virtue of its size, scale and proximity, would result in increased activity at all times of the day/evening to the detriment of adjoining residential occupiers, by reason of increased noise and disturbance. Therefore the proposal would be contrary to Policies OE1, OE3 and BE21 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012)”.

- 1.3. The Council do not raise any issue with the fencing, and so this appeal focuses solely on the proposed canopy structure.
- 1.4. This statement demonstrates why the appeal should be allowed and planning permission granted.
- 1.5. The Statement is set out as follows:
- Section 2 provides a description of the appeal site, planning history and background
 - Section 3 provides a summary of the appeal proposals
 - Section 4 outlines the relevant planning policy
 - Section 5 identifies the main considerations and sets out the Appellants case
 - Section 6 concludes

This Appeal Statement has been prepared on behalf of the appellant, E.I. Group (formerly Enterprise Inns), the owner and occupier of the Wheatsheaf Public House, against the refusal of application reference 13392/APP/2018/4174 by Hillingdon Council

The Council do not raise any issue with the fencing, and so this appeal focuses solely on the proposed canopy structure

2. Appeal Site, Planning History and Background

Appeal Site

- 2.1. The appeal site relates to the Wheatsheaf Public House, located on the Southern side of the High Street which is the busy A437 approach road to Heathrow, with the property's front elevation facing East. The pub is located on a corner plot at the junction of Providence Lane and High Street. The pub benefits from a rear garden where the canopy in question is sited.
- 2.2. There is a motor vehicle service garage to the rear and 6 residential terraced dwellings located opposite the site to the north of Providence Lane. The parade of shops including the Wheatsheaf from 286 – 304 High Street have a several private garages to the rear of which four back onto the boundary of the site to the south.
- 2.3. The existing beer garden to the rear of the public house is surrounded by high walls and garages which enclose the area as follows:
- East – The public house building;
 - South – 4no single garage backing onto to the site forming the boundary around 2.5m high;
 - West – 2.5m high painted brick wall backing onto the vehicle service garage; and
 - North – Part garage to the public house and 2.0m high timber panelled fencing.
- 2.4. The site is located around half a mile north from Heathrow airport where the main runway runs parallel with Bath road and landings take place from the east onto the runway every few minutes.
- 2.5. The site location plan can be found at **Appendix 1**.

Planning History

- 2.6. Three advertisement applications have been submitted previously, of which two were approved, proposing changes to the facade of the public house. This included new signs and colour changes to the external paint work.
- 2.7. Of importance, an application was submitted for the canopy structure to the rear garden in August 2018 under reference: 13392/APP/2018/2709. However, the application was refused on the 15th October 2018 on the following grounds:
- "The proposed canopy/extension, by virtue of its size, scale and proximity, would result in increased activity at all times of the day/evening to the detriment of adjoining residential occupiers, by reason of increased noise and disturbance."*
- 2.8. Following the refusal of this application, a later application was submitted (which is now the subject of this appeal). The Decision Notices for both canopy applications can be found at **Appendix 2**.

The pub benefits from a rear garden where the canopy in question is sited

Within the later application, a Design and Access Statement accompanied the application which set out justification for the canopy and provides operational management details for the use of the area

Background – Application Reference 13392/APP/2018/4174

- 2.9. It should be noted that within the later application, a Design and Access Statement accompanied the application which set out justification for the canopy and provides operational management details for the use of the area. The Design and Access Statement can be found at **Appendix 3**.
- 2.10. Specifically, the statement that accompanied the application explained that the existing beer garden is enclosed by garages and high walls which surround the area, but that the canopy structure was required to protect patrons from inclement weather when using the beer garden. Importantly, the statement made it clear that the beer garden could be used at all times of year, with or without the canopy structure in place.
- 2.11. No noise complaints had been made by local residents to operators of the public house in respect of the use of the rear area prior to the submission of the applications. In addition, the Officer's Report does not include any objections raised by the Council's EHO.
- 2.12. The Design and Access Statement submitted offered to put helpful measures in place for use of the beer garden in the form of a Management Plan. As part of the suggested measures, the appellant offered to close the external beer garden area from 9pm daily to reduce any possibility of noise transference to neighbouring properties. However, the application was refused on the same grounds as the first refusal - on the basis that the canopy structure would result in increased activity at all times of the day/evening to the detriment of adjoining residential occupiers, by reason of increased noise and disturbance.
- 2.13. Objections were only received once the canopy structure was erected during the determination of the first application. At this stage, only 2 letters were received (of 32 neighbours notified). Whilst the letters are not available to view online, we are aware from the Officer's report that concern was raised mainly over the construction and assertions made regarding noise pollution.

Use of the Beer Garden

- 2.14. Although not directly relevant to this appeal, it is noted that within the Officer's Report (please see **Appendix 4**) for the above application, the Council state that there is no history relating to the rear garden being used 'as a beer garden initially'.
- 2.15. Whilst it is recognised that the canopy structure itself requires planning permission as it constitutes physical operational works associated with the seating area; it is important to highlight that the external seating area forms part of the public house and falls under A4 use and is therefore lawful. There is a plethora of case law relating to this very matter, and we touch on this matter later within our statement. The Council's assertion within the Officer's report is therefore incorrect and irrelevant.
- 2.16. The application submitted was for the operational works (notably the canopy structure and fencing) associated with the seating area which already forms part of the public house. However, the Council has assessed the application on the basis of intensification of use, which is again, incorrect.

No noise complaints had been made by local residents to operators of the public house in respect of the use of the rear area prior to the submission of the applications. In addition, the Officer's Report does not include any objections raised by the Council's EHO

The only matter to be considered within this appeal case, is whether the canopy structure is acceptable from a design perspective.

- 2.17. The only matter to be considered within this appeal case, is whether the canopy structure is acceptable from a design perspective.

3. Appeal Proposals

- 3.1. An Application (Reference 13392/APP/2018/4174) for Planning Permission was submitted to and refused by the London Borough of Hillingdon for the following works:

"Canopy to rear to cover beer garden and associated fencing".

- 3.2. The appeal site is a public house with a rear beer garden.
- 3.3. The appeal proposal includes for the erection of a single-storey freestanding timber canopy with a timber open roof. To the very rear, the structure has completely covered roofing. The canopy structure itself was erected on the 6 September 2018 and has provided some coverage from inclement weather for those using the beer garden.
- 3.4. A new 1.5 m tall timber fence has also been erected around the proposed canopy structure. It has a total area of 35.66 square metres and is approximately 2.76 metres high.
- 3.5. Both structures are existing on site. A photo can be seen below.

Image of Canopy Structure



Source: Planning Potential Research

- 3.6. The beer garden has always been available for patrons to use historically. However, since the smoking ban was introduced by the government in 2007, the necessity to provide suitable external facilities, (in particular cover from inclement weather) has increased. The current publican made improvements to the beer garden including the insertion of the fence and the canopy structure under this basis.
- 3.7. The aim of the canopy structure is to create a better and more pleasant environment for customers to use giving them a defined area for sitting or standing when using the beer garden.
- 3.8. However, it should be recognised the Perspex cover is limited in scale, it is not going to allow patrons to use the entire area during adverse weather, and is no bigger than a smoking shelter.

The appeal proposal includes for the erection of a single-storey freestanding timber canopy with a timber open roof. To the very rear, the structure has completely covered roofing

The aim of the canopy structure is to create a better and more pleasant environment for customers to use giving them a defined area for sitting or standing when using the beer garden

4. Planning Policy Context

- 4.1. The planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

Development Plan

- 4.2. The development plan for the London Borough of Hillingdon comprises the following:

- The Hillingdon Local Plan: Part 1- Strategic Policies (2012)
- The extant 2007 Saved Unitary Development Plan policies
- The London Plan consolidated with alterations since 2011 (2016)

- 4.3. The Council is currently preparing the Hillingdon Local Plan Part 2. It is an emerging document that is set to be adopted September 2019. The emerging plan is currently going through a further round of consultation for modifications, which is set to expire on the 8th May 2019.

- 4.4. In line with Paragraph 48 of the NPPF (2019) local planning authorities may give weight to relevant planning policies within emerging plans when determining an application; therefore, consideration has been given to these policies in the justification of this proposal.

- 4.5. Once the Local Plan part 2 is adopted the existing 'saved' UPD policies will be deleted from the Council's Development Plan.

Hillingdon Local Plan (2012)

- 4.6. Policy BE1 'Built Environment' states that the Council will require all new development to improve and maintain the quality of the built environment in order to create successful and sustainable neighbourhoods, where people enjoy living and working and that serve the long-term needs of all residents. Part 1 states that high quality design is important.

UDP Saved Policies (2007)

- 4.7. Although we do not consider that all of the below policies are applicable to the proposals, we have included them within our assessment, given the planning authority have referenced them within their Officers Report.
- 4.8. Policy AM14 states that new development will only be permitted where it is in accordance with the Council's car parking standards.
- 4.9. Policy OE1 states that planning permission will not normally be granted for uses and associated structures which are, or are likely to become, detrimental to the character or amenities of surrounding properties or the area generally, because of (i) siting or appearance; (ii) the storage or display of vehicles, goods, equipment or other merchandise; (iii) traffic generation and congestion; (iv) noise unless sufficient measures are taken to mitigate the environmental impact of the development and ensure that it remains acceptable.

The Council is currently preparing the Hillingdon Local Plan Part 2. It is an emerging document that is set to be adopted September 2019. The emerging plan is currently going through a further round of consultation for modifications, which is set to expire on the 8th May 2019

Although we do not consider that all of the below policies are applicable to the proposals, we have included them within our assessment, given the planning authority have referenced them within their Officers Report

- 4.10. Policy OE3 states that buildings which have the potential to cause noise annoyance will only be permitted if the impact is mitigated within acceptable levels.
- 4.11. Policy AM7 states that the local planning authority will consider whether the traffic generated by proposed developments is acceptable.
- 4.12. Policy BE13 states that development will not be permitted if the layout and appearance fail to harmonise with the existing street scene or other features of the area that are considered desirable.
- 4.13. Policy BE15 states that proposals for the alterations and extensions to existing buildings will be permitted where they harmonise with the scale, form, architectural compositions and proportions of the original building.
- 4.14. Policy BE19 states that that new development within residential areas should complement or improve the amenity and character of the area.
- 4.15. Policy BE20 states that building should be laid out so that adequate daylight and sunlight can penetrate into and between them and the amenities of existing houses are safeguarded.
- 4.16. Policy BE21 states planning permission will not be granted for new buildings or extensions which by reason of their siting, bulk and proximity, would result in a significant loss of residential amenity.
- 4.17. Policy BE24 states that the design of new buildings should protect the privacy of the occupiers and their neighbours.

Policy BE24 states that the design of new buildings should protect the privacy of the occupiers and their neighbours

Emerging Policy – Hillingdon Local Plan Part 2

- 4.18. Policy DMCI 1 (Retention of Existing Community, Sport and Education Facilities) outlines the importance of community facilities such as public houses and states that the Council is seeking to protect them. The loss of a community facility will be allowed if evidence is shown such as the use is no longer required, there will be no shortfall or the redevelopment of the site would secure an over-riding public benefit. This policy shows the Council's support in protecting community facilities, such as pubs.
- 4.19. Paragraph 7.4 (Retaining Existing Community facilities) – The NPPF states that planning policies should plan positively for local communities, including public houses. Proposals involving the loss of a pub will be required to take account of the particular planning guidance for pubs produced by the Campaign for Real Ale
- 4.20. Policy DMBH 11 (Design of New Development) – All developments, including extensions, alterations and new builds will be required to be designed to the highest standards and incorporate principles of good design including scale, bulk, mass and architectural composition.

Policy DMCI 1 (Retention of Existing Community, Sport and Education Facilities) outlines the importance of community facilities such as public houses and states that the Council is seeking to protect them

London Plan (2016)

- 4.21. Policy 7.4 'Local Character' states that development should have regard to the form, function and structure of an areas.

4.22. Policy 7.6 'Architecture' states that architecture should make a positive contribution.

4.23. Policy 7.15 'Noise and Acoustic Environment' states that reduction and management of noise should be considered to improve health and quality of life.

Material Considerations

4.24. The material considerations relevant to this appeal comprise:

- The National Planning Policy Framework (NPPF) (2019), supported by the National Planning Practice Guidance (NPPG)

National Planning Policy Framework (2019)

4.25. Paragraph 80 states that planning policies and decisions should help to create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

4.26. Paragraph 92 states that to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- plan positively for the provision and use of shared space, community facilities (including public houses) and other local services to enhance the sustainability of communities and residential environments
- guard against the unnecessary loss of valued facilities and services
- ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable and retained for the benefit of the community.

4.27. Paragraph 124 states that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve.

4.28. Paragraph 127 states that planning policies and decisions should ensure that developments (f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

4.29. Paragraph 180 states that policies and decisions should aim to mitigate and reduce potential adverse impacts resulting from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life.

4.30. Paragraph 182 states that planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities. Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.

Paragraph 80 states that planning policies and decisions should help to create the conditions in which businesses can invest, expand and adapt

Paragraph 182 states that planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities. Existing businesses and facilities should not have unreasonable restrictions placed on them

5. The Appellant's Case

Protection of an Important Community Facility and Local Business

- 5.1. The importance of public houses to local communities is recognised nationally and is currently high up on the Government's agenda. Indeed, the Government has recently removed permitted development rights to change the use of a public house without the need for planning permission. The NPPF makes clear that Councils should plan positively for community facilities including public houses (paragraph 92) and it follows that public house owners and operators should be supported in their proposals to improve and reinvigorate public houses to ensure their future viability.
- 5.2. Customers now expect public houses to provide good food and dining areas, as well as beer gardens so that food and drink can be enjoyed outside, particularly during summer months. Beer gardens have been particularly important to public houses since the smoking ban came into force in 2007.
- 5.3. Whilst the Wheatsheaf has remained a popular pub for many local people, it required an update externally to allow it to move with the times and improve its popularity and customer base, and ultimately secure its long-term viability. The recent external alterations to the property have improved the existing beer garden at the rear (which is the only external space within the curtilage of the pub) and is part of the appellant's business plan to improve the attractiveness and viability of the pub.
- 5.4. Beer gardens are vital to the success of public houses today and are now very common, including within residential areas. Indeed, the nearby White Hart Pub on the High Street and Pheasant Inn on West End Lane, also have beer gardens and are located in residential areas. It is considered that the Wheatsheaf needs to have an external area for its customers to keep up with competition or it simply will not attract the necessary trade during the summer months to ensure it remains competitive and viable.
- 5.5. It is clear that none of the above was taken into account by the Officers when considering the previous applications. Whilst the amenities of local residents is clearly important (which is considered in more detail below), the requirements of the business and the need to protect the future viability of the public house as an important community facility has not been weighed in the planning balance.
- 5.6. The NPPF makes clear that Councils should plan positively for the provision of community facilities and services including public houses and to guard against their unnecessary loss and ensure they are able to modernise in a way that is sustainable. This sentiment is echoed within the emerging Local Plan Part 2 which seeks to retain and protect Public Houses through emerging policies DMCI1 and 7.4. It is considered that the NPPF and the Local Plan Part 2 has been wholly ignored by Officers in this regard.

Intensification of Use and Material Changes of Use

- 5.7. As noted in Section 2.0 of this Statement the Officer's Report for the second canopy submission, states that there is no history relating to the rear garden being used 'as a beer garden initially'. It is important to highlight that the external beer

The NPPF makes clear that Councils should plan positively for community facilities including public houses (paragraph 92) and it follows that public house owners and operators should be supported in their proposals to improve and reinvigorate public houses to ensure their future viability

Beer gardens have been particularly important to public houses since the smoking ban came into force in 2007

The NPPF makes clear that Councils should plan positively for the provision of community facilities and services including public houses and to guard against their unnecessary loss and ensure they are able to modernise in a way that is sustainable

garden forms part of the public house and falls under A4 use and is therefore lawful.

- 5.8. It is also important to note that although the appellant has sought planning permission for the operational works on site – notably the fence and the canopy structure, the Council seem to have assessed and refused the application based on ‘increased activity’ or the intensification of the use by virtue of the structure being introduced.
- 5.9. Fundamentally, with or without the canopy structure in place, patrons can still use the beer garden, as it forms part of the curtilage of the public house.
- 5.10. The canopy structure is only partially covered – if it rains or if it is cold outside, people are unlikely to sit out in the garden even with the structure in place. The application should have been assessed purely on the basis of the structure proposed and its acceptability.
- 5.11. In regards to the use, an external area of a pub used by customers for drinking, eating, smoking etc, cannot be considered to fall outside of the A4 use class simply because changes have been made (such as providing a partially covered canopy structure) to encourage more customers to use that area on a more regular basis. The resulting use is still A4 use.
- 5.12. The appellant considers that the Council is seeking to control something that does not constitute development.
- 5.13. A public house should not be penalised through planning simply because a new tenant or manager has taken over the pub and has provided a more useable beer garden within its curtilage.
- 5.14. It is fully appreciated that the proposals involve the introduction of a new canopy structure within the beer garden. However, this falls under operational development. Again, the use of this area as a beer garden for customers does not constitute development. Operational development would indeed be development requiring planning permission, but the actual use of this area for such purposes would not. Again, it is felt that Officers are unreasonably seeking to control something that does not amount to development requiring planning permission and have assessed the application incorrectly.
- 5.15. An appeal decision in Sunderland which addresses both the point of material changes of use and planning units, and the matter of intensification in relation to a beer garden is attached at **Appendix 5**. It makes reference to the Brooks and Burton Limited v Secretary of State for the Environment [1977] case which is still relevant today where the matter concerns a use falling within a defined use class in the Order. A subsequent case has determined that Sui Generis uses can be considered in a different way, but the appeal proposals do not involve a SG use. Also attached at **Appendix 6** is an appeal decision in Haringey which also addresses the point about uses and planning units in respect of a beer garden.

Impact on Amenities of Neighbouring Residents

- 5.16. As noted, there are residential neighbours that surround the site. However, it is considered that the canopy is low level and visually subordinate to the public house. Indeed, this was noted by the Council within their Officer’s Report. The

Fundamentally, with or without the canopy structure in place, patrons can still use the beer garden, as it forms part of the curtilage of the public house

The canopy structure is only partially covered – if it rains or if it is cold outside, people are unlikely to sit out in the garden even with the structure in place

It is fully appreciated that the proposals involve the introduction of a new canopy structure within the beer garden. However, this falls under operational development. Again, the use of this area as a beer garden for customers does not constitute development

Officer noted that the structure is only of a single storey height with a maximum of 2.76 metres, and it is considered therefore that the canopy would not create an overbearing outlook.

- 5.17. The Council note concern however, that the main impact of the development will be likely noise and disturbance from people using the canopy area for eating, smoking and drinking through a greater level of use.
- 5.18. Impact on neighbours through noise and disturbance is an important consideration, but it must be considered in light of the above and the site's previous use and context.
- 5.19. As explained, the rear area has been used by customers as a beer garden for some time. It is acknowledged that in recent times the pub was not operating at capacity owing to the upgrade to the rear area. Further, the number of customers using these areas and the way it is laid out will depend on the operator of the public house at the time. Different tenants and landlords will choose to operate a business differently – some would have seized on the opportunity to have an external drinking area, others might not have. Further the popularity of sites like this will change over time as a result of the publican and as a result of competition with other sites in the area.
- 5.20. Although it is our opinion that patron noise from the use of the pub garden is unlikely to be inaudible at all times at the nearest noise-sensitive receptors, we believe it will not lead to noise levels that are unreasonable within the context of the existing noise environment. The site is located in a noisy area due to traffic on the A437, Heathrow airport nearby and the motor vehicle garage neighbouring the site. The Council even recognise this within their Officer's report.
- 5.21. The above notwithstanding, the actual pergola structure will not reduce or increase the noise levels. As explained, people can use the beer garden with or without the structure in place, and given it is only partially covered, it would not allow a substantial amount of protection from weather.
- 5.22. The Officer's report notes that the points raised within the Design and Access Statement relating to management of the premises are insufficient. They state a condition relating to just this part of the premises would be 'difficult to enforce'. The appellant does not agree or understand why a condition relating to management of the premises or beer garden hours of use would be difficult to enforce. We have worked on dozens of sites where this approach has been accepted by Councils and have worked well for both parties.
- 5.23. It is important to note that the Council's Environmental Health Officer has not objected to the previous applications, which demonstrates that noise was not considered an issue.
- 5.24. The proposals are therefore compliant with policies OE1, BE19 and BE21 from the Council's UDP and policy 7.15 from the London Plan.

The Officer noted that the structure is only of a single storey height with a maximum of 2.76 metres, and it is considered therefore that the canopy would not create an overbearing outlook

The site is located in a noisy area due to Heathrow airport nearby and the motor vehicle garage neighbouring the site. The Council even recognise this within their Officer's report

The appellant does not agree or understand why a condition relating to management of the premises or beer garden hours of use would be difficult to enforce

Within their Officers Report, the Council recognised that the canopy is located next to the existing garage and whilst it is visible from the street scene, it is not such that a refusal could be justified on this basis

Impact on the Streetscene / Design

- 5.25. The canopy is a modest structure that does not look out of place in the overall character of the pub site or harm the appearance of the area. Within their Officers Report, the Council recognise that the canopy is located next to the existing garage and whilst it is visible from the street scene, it is not such that a refusal could be justified on this basis.
- 5.26. The proposals are therefore compliant with policies BE1 of the Local Plan Part 1 and policies OE3, BE13, BE15 and BE21 of the UDP and policies 7.4 and 7.6 of the London Plan.

Other Matters

Neighbour Objections

- 5.27. We believe that the concerns raised by neighbours during the application process in respect of noise have been addressed above.

Traffic Impact / Pedestrian Safety

- 5.28. The Council's highways officer recognised that there were no highway, traffic or transport concerns with the application.

Car parking and Layout

- 5.29. The Council note that the proposals would result in the loss of a car parking space. This car parking space is not needed by the current publican and so this matter is irrelevant.
- 5.30. The proposals are compliant therefore with policies AM14 and AM7 of the UDP.

The Council's highways officer recognised that there were no highway, traffic or transport concerns with the application

Summary

- 5.31. In view of the above, there were no planning reasons to refuse the erection of a canopy structure (or fence) at this location.
- 5.32. It is considered that the application should have been assessed on the basis of operational development rather than intensification of the use. Indeed, matters such as design were considered acceptable to the Council, and so the proposal should be allowed. All other relevant matters were considered to be entirely acceptable to the Council.

- 5.33. The above notwithstanding, the actual pergola structure will not reduce or increase the noise levels. As explained, people can use the beer garden with or without the structure in place, and given it is only partially covered, it would not allow a substantial amount of protection from weather.
- 5.34. The proposals will support the continued use of the public house and are therefore supported by the Government's agenda for sustainable economic growth, the Mayor's policies on preventing the loss of valued local community assets, and the council's policies in relation to supporting the local economy.
- 5.35. Overall the applicant is firmly of the view that the proposals are entirely in accordance with the relevant national, regional and local planning policy in this regard.
- 5.36. At a time when Public Houses are seen as Assets of Community Value and are afforded significant protection, it is important that proposals which support the continued viable use of Public Houses are considered positively.

The above notwithstanding, the actual pergola structure will not reduce or increase the noise levels. As explained, people can use the beer garden with or without the structure in place, and given it is only partially covered, it would not allow a substantial amount of protection from weather

6. Conclusions

- 6.1. It is considered that there were no planning reasons to refuse the erection of the canopy structure at this location.
- 6.2. It is considered that the application should have been assessed on the basis of operational development rather than intensification of the use. Indeed, matters such as design and potential visual amenity impacts were considered acceptable to the Council, and so the proposal should be allowed. All other relevant matters were considered to be entirely acceptable to the Council.
- 6.3. The above notwithstanding, the actual pergola structure will not reduce or increase the noise levels. As explained, people can use the beer garden with or without the structure in place, and given it is only partially covered, it would not allow a substantial amount of protection from weather.
- 6.4. Overall, the proposals will support the continued viable use of the Public House for the local community and should not be over burdened by Policy requirements. Therefore, it is respectfully requested that this appeal should be approved.

Overall, the proposals will support the continued viable use of the Public House for the local community and should not be over burdened by Policy requirements. Therefore, it is respectfully requested that this appeal should be approved

APPENDIX 1

Site Location Plan

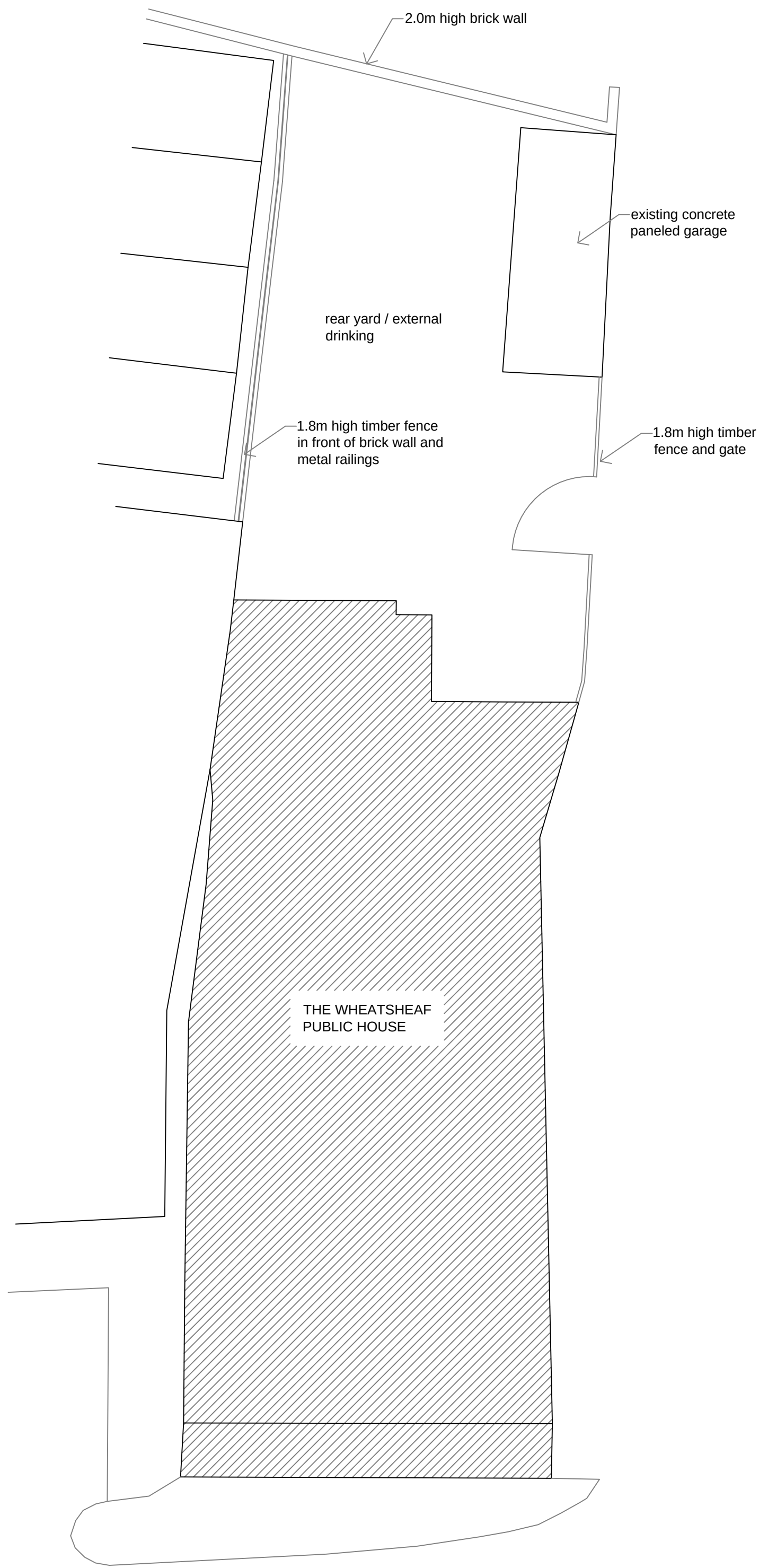
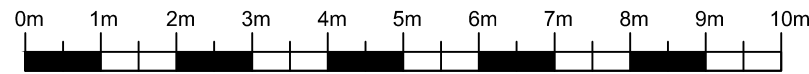
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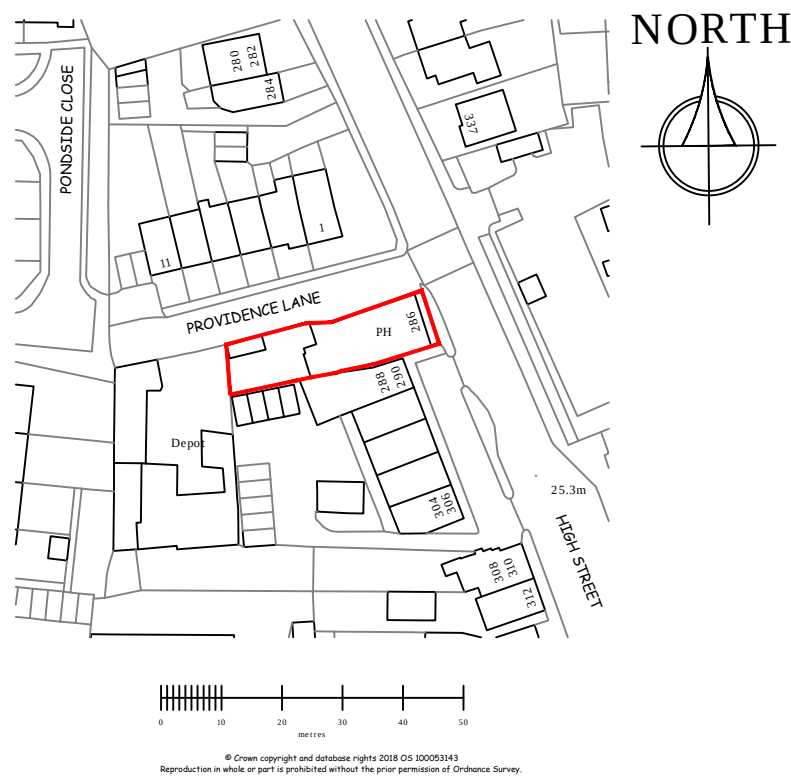
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Report Reference:

19/4688



Existing Ground Floor / Site Layout Plan
Scale 1/100



Site Location Plan
Scale 1/1250



Existing Site Block Plan
Scale 1/200

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No dimensions to be scaled from this drawing. All Contractors
must visit site and be responsible for taking and checking all
dimensions relative to this work. The Designer must be advised
of any discrepancies in writing.

Job title: The Wheatsheaf 286 High Street, Hayes, UB3 5DU	Scale: 1:100, 200, 1250	Revision:
Drawing title: Existing Planning Drawing	Date: July '18	
Drawing Number: 654-(P)-01	Drawn by: PJB	

The Studio Clarion Street Wakefield WF1 5EX
01924 372654 info@nanusoda.co.uk

**NANU
SODA**

APPENDIX 2

Decision Notices:

- 13392/APP/2018/4174;
- 13392/APP/2018/2709.

Planning Potential Ltd**London**

Magdalen House
148 Tooley Street
London SE1 2TU
T: 020 7357 8000

Report Reference:

19/4688



Mr Peter Bell
The Studio
Mission Hall
Clarion Street
Wakefield WF1 5EX

Application Ref:
13392/APP/2018/4174

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
REFUSAL OF PLANNING PERMISSION

The Council of the London Borough of Hillingdon as the Local Planning Authority within the meaning of the above Act and associated Orders **REFUSES** permission for the following:-

Description of development:

Canopy to rear to cover beer garden and associated fencing

Location of development: The Wheatsheaf Ph High Street Harlington

Date of application: 27 November 2018

Plan Numbers: See attached Schedule of plans

Permission is refused for the reason(s) listed on the attached schedule:-

Head of Planning, Transportation and Regeneration

Date: 21 January 2019

- NOTES: (i) Please also see the informatives included in the Schedule of Reasons.
- (ii) Should you wish to appeal against this decision please read the attached sheet which explains the procedure.

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

REFUSAL OF PLANNING PERMISSION

Application Ref: 13392/APP/2018/4174

SCHEDULE OF REASONS

- 1 . The proposed/existing canopy/extension, by virtue of its size, scale and proximity, would result in increased activity at all times of the day/evening to the detriment of adjoining residential occupiers, by reason of increased noise and disturbance. Therefore the proposal would be contrary to Policies OE1, OE3 and BE21 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

INFORMATIVES:

- 1 . The decision to REFUSE planning permission has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).
- 2 . The decision to REFUSE planning permission has been taken having regard to the policies and proposals in the Hillingdon Unitary Development Plan Saved Policies (September 2007) as incorporated into the Hillingdon Local Plan (2012) set out below, including Supplementary Planning Guidance, and to all relevant material considerations, including The London Plan - The Spatial Development Strategy for London consolidated with alterations since 2011 (2016) and national guidance.

Part 1 Policies:

PT1.BE1 (2012) Built Environment

Part 2 Policies

AM7	Consideration of traffic generated by proposed developments.
AM14	New development and car parking standards.
BE13	New development must harmonise with the existing street scene.
BE15	Alterations and extensions to existing buildings
BE19	New development must improve or complement the character of the area.
BE20	Daylight and sunlight considerations.
BE21	Siting, bulk and proximity of new buildings/extensions.
BE24	Requires new development to ensure adequate levels of privacy to neighbours.
OE1	Protection of the character and amenities of surrounding properties and the local area
OE3	Buildings or uses likely to cause noise annoyance - mitigation measures

- 3 . On this decision notice policies from the Councils Local Plan: Part 1 - Strategic Policies appear first, then relevant saved policies (referred to as policies from the Hillingdon Unitary Development Plan - Saved Policies September 2007), then London Plan Policies (2016). On the 8th November 2012 Hillingdon's Full Council agreed the

SCHEDULE OF REASONS

adoption of the Councils Local Plan: Part 1 - Strategic Policies. Appendix 5 of this explains which saved policies from the old Unitary Development (which was subject to a direction from Secretary of State in September 2007 agreeing that the policies were 'saved') still apply for development control decisions.

- 4 . In dealing with the application the Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies from the 'Saved' UDP 2007, Local Plan Part 1, Supplementary Planning Documents, Planning Briefs and other informal written guidance, as well as offering a full pre-application advice service.

The Council has however been unable to seek solutions to problems arising from the application as the principal of the proposal is clearly contrary to its statutory policies and negotiation could not overcome the reason for refusal.

END OF SCHEDULE

Address:

Residents Services
London Borough of Hillingdon
3 North Civic Centre, High Street, Uxbridge UB8 1UW
Tel: 01895 250230
www.hillingdon.gov.uk

REFUSAL OF PLANNING PERMISSION

Application Ref.No.: 13392/APP/2018/4174

SCHEDULE OF PLANS

654-(P)-01 - received 27 Nov 2018

654-(P)-02B - received 27 Nov 2018

654-(P)-03A - received 27 Nov 2018

Design and Access Statement - received 27 Nov 2018

RIGHTS OF APPLICANTS AGGRIEVED BY DECISION OF LOCAL PLANNING AUTHORITY

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the office of the First Secretary of State under Section 78 of the Town and Country Planning Act 1990.

If you want to appeal, then you must do so within six months of the date of this notice, using a form which you can get from the Planning Inspectorate at Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel 0117 372 8424). Appeal forms can be downloaded from the Planning Inspectorate's website at <http://.Planning-inspectorate.gov.uk>

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances, which excuse the delay in giving notice of an appeal.

The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

Purchase Notices.

If either the local planning authority or the officer of the First Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use by carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.



Mr Peter Bell
Nanusoda
Clarion Street
Wakefield
WF1 5EX

Application Ref:
13392/APP/2018/2709

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

REFUSAL OF PLANNING PERMISSION

The Council of the London Borough of Hillingdon as the Local Planning Authority within the meaning of the above Act and associated Orders **REFUSES** permission for the following:-

Description of development:

Canopy to rear to cover beer garden

Location of development: The Wheatsheaf Ph High Street Harlington

Date of application: 21 August 2018

Plan Numbers: See attached Schedule of plans

Permission is refused for the reason(s) listed on the attached schedule:-

Head of Planning, Transportation and Regeneration

Date: 15 October 2018

NOTES: (i) Please also see the informatives included in the Schedule of Reasons.

(ii) Should you wish to appeal against this decision please read the attached sheet which explains the procedure.

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

REFUSAL OF PLANNING PERMISSION

Application Ref: 13392/APP/2018/2709

SCHEDULE OF REASONS

- 1 . The proposed canopy/extension, by virtue of its size, scale and proximity, would result in increased activity at all times of the day/evening to the detriment of adjoining residential occupiers, by reason of increased noise and disturbance. Therefore the proposal would be contrary to Policies OE1, OE3 and BE21 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

INFORMATIVES:

- 1 . The decision to REFUSE planning permission has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).
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Part 1 Policies:

PT1.BE1 (2012) Built Environment

Part 2 Policies

AM14	New development and car parking standards.
OE1	Protection of the character and amenities of surrounding properties and the local area
OE3	Buildings or uses likely to cause noise annoyance - mitigation measures
AM7	Consideration of traffic generated by proposed developments.
BE13	New development must harmonise with the existing street scene.
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SCHEDULE OF REASONS

adoption of the Councils Local Plan: Part 1 - Strategic Policies. Appendix 5 of this explains which saved policies from the old Unitary Development (which was subject to a direction from Secretary of State in September 2007 agreeing that the policies were 'saved') still apply for development control decisions.

END OF SCHEDULE

Address:

Residents Services
London Borough of Hillingdon
3 North Civic Centre, High Street, Uxbridge UB8 1UW
Tel: 01895 250230
www.hillingdon.gov.uk

REFUSAL OF PLANNING PERMISSION

Application Ref.No.: 13392/APP/2018/2709

SCHEDULE OF PLANS

654-(P)-03A - received 21 Aug 2018

654-(P)-02B - received 21 Aug 2018

654-(P)-01 - received 23 Jul 2018

RIGHTS OF APPLICANTS AGGRIEVED BY DECISION OF LOCAL PLANNING AUTHORITY

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the office of the First Secretary of State under Section 78 of the Town and Country Planning Act 1990.

If you want to appeal, then you must do so within six months of the date of this notice, using a form which you can get from the Planning Inspectorate at Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel 0117 372 8424). Appeal forms can be downloaded from the Planning Inspectorate's website at <http://.Planning-inspectorate.gov.uk>

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In these circumstances, the owner may serve a purchase notice on the Council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

APPENDIX 3

Design and Access Statement – 13392/APP/2018/4174

Planning Potential Ltd

London

Magdalen House
148 Tooley Street
London SE1 2TU
T: 020 7357 8000

Report Reference:

19/4688

DESIGN STATEMENT

FOR

**PLANNING CONSENT FOR NEW PERGOLA STRUCTURE TO
COVER EXISTING BEER GARDEN**

AT

**THE WHEATSHEAF PUBLIC HOUSE, HIGH STREET,
HARLINGTON, UB3 5DU**

INTRODUCTION

This application is a second planning application following refusal of application number 13392/APP/2018/2708 which was refused on 15th October 2018.

This document has been prepared to accompany the application with drawing numbers 654-(P)-01, 02B and 03A.

THE SITE

The site that forms the subject of this application is a public house called The Wheatsheaf on High Street, Harlington.

The Wheatsheaf is prominently positioned on High Street which is the main road running through Harlington North from Bath Road towards Hayes and is sandwiched between Bath Road and the M4.

The site is at the end of a parade of shops with a bookmakers next door and is on the corner of High Street and Providence Lane.

There is a motor vehicle service garage to the rear and 6no terrace dwellings located opposite the site to the north of Providence Lane.

The parade of shops including the Wheatsheaf from 286 – 304 High Street have a several private garages to the rear of which four back onto the boundary of the site to the south.

The existing beer garden to the rear of the public house is surround by small building, garages and walls as follows;

East – The public house building

South – 4no single garage backing onto to the site forming the boundary around 2.5m high.

West – 2.5m high painted brick wall backing onto the vehicle service garage.

North – Part garage to the public house and 2.0m high timber panelled fencing.

The site is also located around half a mile north from Heathrow airport where the main runway runs parallel with Bath road and landings take place from the east onto the runway every few minutes.

PLANNING STATEMENT

The reasons for refusal for the first application ref: 13392/APP/2018/2709 was as follows;

The proposed canopy/extension, by virtue of its size, scale and proximity, would result in increased activity at all times of the day/evening to the detriment of adjoining residential occupiers, by reason of increased noise and disturbance.

There were no reasons for refusal given for the construction of the canopy only for the use of the rear area.

PROPOSED WORKS

The proposed works are to construct a pergola type structure with cover to the external beer garden and details are provided on the following application drawings;

654-(P)-01 Existing Plans
654-(P)-02B Proposed Plans
654-(P)-03A Proposed Details

OWNERSHIP

All site boundaries will be clearly defined. The building itself is set back from the main road with a betting shop attached to the south and Providence Road to the North.

The rear has a moderately sized external drinking area surrounded by garages and high walls enclosing the area.

The developments open areas will be consistently maintained by the operator`s maintenance teams to ensure that external spaces are always kept tidy; this in itself is fundamental to maintain the appeal of the site; but will also deter the feeling that crime will be tolerated by neglectful external space.

LAYOUT

The general layout of the existing exterior remains unaltered. The use of the external beer garden will remain with a new covered area.

ACCESS

Access to and from the site is via the main ingress / egress from High Street.

The building itself is set back from the main highway and provides level access.

The only access to the rear beer garden is from the rear door of the public house building.

JUSTIFICATION

The reasons for refusal of the first application is Noise and disturbance.

The application site is a public house with a rear beer garden where use of beer gardens is common place in public houses.

The smoking ban introduced by the government in 2007 has increased external use due to smokers having to stand outside even during winter months. The ban has increased the necessity over the last 10 years for public houses to provide suitable external facilities, in particular cover from inclement weather.

At present the external area is used by the public without control by the landlord and staff. There is no defined area and customers can use / stand around all areas of the back area.

No matter what time of year or what the weather the area is currently in use and noise and disturbance can occur without the application being approved.

We and the applicants are not aware of any noise complaints made by any local residents due to use of the rear area and there was no reference to complaints made in the officer's report when writing up the reasons for refusal on the first application.

As previously mentioned, the east, south and west of the site is bounded by high walls, garages and the main public house building and there is protection from the north of the site where the dwellings are located from a high fence and a single garage within the site running along the north boundary.

The aim of the application is to create a better more pleasant environment for customers to use giving them a defined area for sitting or standing when using the beer garden and gives the operators better control reducing any issues of noise and disturbance.

And we Heathrow airport being less than half a mile from the site the noise of aero planes landing every few minutes would contribute to more noise and disturbance to local residents.

NOISE POLLUTION

Measure will be implemented by the operators for use of the external beer garden as follows;

No external speakers will be installed to the existing building or externally.
Reason: To reduce the possibility of noise transference to neighbouring properties.

All doors and windows other than the main entrance doors will held in the closed position when music and entertainment is being held.
Reason: To reduce the possibility of noise transference to neighbouring properties.

Signs will be installed adjacent final exit doors requesting customers to 'Please leave the premises quietly and respect our neighbours'.
Reason: To reduce the possibility of noise transference to neighbouring properties.

Signs will be located around the external drinking area requesting that customers abide by the policy of keeping noise to a minimum and respecting the neighbors.
Reason: To reduce the possibility of noise transference to neighbouring properties.

Business to adopt a policy of the external beer garden to be closed from 9pm daily.
Reason: To reduce the possibility of noise transference to neighbouring properties.

A management plan will be held on site outlining the importance of adhering to the above and also to control any patrons using the rear external drinking area.

The management plan will include a strategy to deal with customers who don't adhere to the required behavior and noise levels required. Staff training will be provided to deal with such cases.

CONCLUSION

Although refusal was given recently for the covered area the use of the external drinking area would continue if this second application was refused and there would

be no control over customers using the area which would increase potential noise and disturbance to local residents.

The proposal would create a better environment for customer use and create an area defined for use meaning better management and control of customers.

The measures indicated in the `Noise Pollution` section would be implemented immediately.

We hereby apply for planning consent as detailed on accompanying drawing numbers 654-(P)-01, 02B and 03A.

APPENDIX 4

Officers Report – 13392/APP/2018/4174

Planning Potential Ltd

London

Magdalen House
148 Tooley Street
London SE1 2TU
T: 020 7357 8000

Report Reference:

19/4688

DELEGATED DECISION

- Please select each of the categories that enables this application to be determined under delegated powers
 - Criteria 1 to 5 or criteria 7 to 9 must be addressed for all categories of application, except for applications for Certificates of Lawfulness, etc.

APPROVAL RECOMMENDED: GENERAL

Select Option

1. No valid planning application objection in the form of a petition of 20 or more signatures, has been received ☐
2. Application complies with all relevant planning policies and is acceptable on planning grounds ☐
3. There is no Committee resolution for the enforcement action ☐
4. There is no effect on listed buildings or their settings ☐
5. The site is not in the Green Belt (but see 11 below) ☐

REFUSAL RECOMMENDED: GENERAL

6. Application is contrary to relevant planning policies/standards ☐
7. No petition of 20 or more signatures has been received ☐
8. Application has not been supported independently by a person/s ☐
9. The site is not in Green Belt (but see 11 below) ☐

RESIDENTIAL DEVELOPMENT

10. Single dwelling or less than 10 dwelling units and/or a site of less than 0.5 ha ☐
11. Householder application in the Green Belt ☐

COMMERCIAL, INDUSTRIAL AND RETAIL DEVELOPMENT

12. Change of use of retail units on site less than 1 ha or with less than 1000 sq m other than a change involving a loss of A1 uses ☐
13. Refusal of change of use from retail class A1 to any other use ☐
14. Change of use of industrial units on site less than 1 ha or with less than 1000sq.m. of floor space other than to a retail use. ☐

CERTIFICATE OF LAWFULNESS

15. Certificate of Lawfulness (for proposed use or Development) ☐
16. Certificate of Lawfulness (for existing use or Development) ☐
17. Certificate of Appropriate Alternative Development ☐

CERTIFICATE OF LAWFULNESS

18. ADVERTISEMENT CONSENT (excluding Hoardings) ☐
19. PRIOR APPROVAL APPLICATION ☐
20. OUT-OF-BOROUGH OBSERVATIONS ☐
21. CIRCULAR 18/84 APPLICATION ☐
22. CORPSEWOOD COVENANT APPLICATION ☐
23. APPROVAL OF DETAILS ☐
24. ANCILLARY PLANNING AGREEMENT (S.106 or S.278) where Heads of Terms have already received Committee approval ☐
25. WORKS TO TREES ☐
26. OTHER (please specify) ☐

The delegation powers schedule has been checked. Director of Residents Services can determine this application.

Case Officer

Signature:

Date:

A delegated decision is appropriate and the recommendation, conditions/reasons for refusal and informatics are satisfactory.

Team Manager:

Signature:

Date:

The decision notice for this application can be issued.

Director / Member of Senior Management Team:

Signature:

Date:

NONE OF THE ABOVE DATES SHOULD BE USED IN THE PS2 RETURNS TO THE ODPM

Item No. **Report of the Head of Planning, Transportation and Regeneration**

Address THE WHEATSHEAF PH HIGH STREET HARLINGTON

Development: Canopy to rear to cover beer garden and associated fencing

LBH Ref Nos: 13392/APP/2018/4174

Drawing Nos: 654-(P)-01
654-(P)-02B
654-(P)-03A
Design and Access Statement

Date Plans received : 27/11/2018

Date(s) of Amendment(s):

Date Application Valid: 27/11/2018

1. SUMMARY

The application is for a single storey freestanding timber canopy structure for purposes ancillary to the use of the property as a public house. Parts of the structure will be fully covered with roofing, whilst mainly it will be semi open roof structure. The area is intended to be used as a beer garden/seating area, although the site has not been granted permission for this change of use. The applicant has already developed the site.

It is considered that the proposed development does not result in a harmful visual impact in street scene terms. No noise impact assessments have been provided with the application and it is considered that the resultant noise disturbance will be to the detriment of the adjoining neighbours. The adjoining dwellings, including those above the adjoining commercial units, would suffer potential harm as a result of the development. It is considered that in proposals such as this, the issue is not just measurable noise but the possibility of general disturbance.

Previously this application has been refused for the same reasons.

It is recommended that the application be refused.

2. RECOMMENDATION

REFUSAL for the following reasons:

1 NON2 Non Standard reason for refusal

The proposed/existing canopy/extension, by virtue of its size, scale and proximity, would result in increased activity at all times of the day/evening to the detriment of adjoining residential occupiers, by reason of increased noise and disturbance. Therefore the proposal would be contrary to Policies OE1, OE3 and BE21 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

INFORMATIVES

1 I52 Compulsory Informative (1)

The decision to REFUSE planning permission has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair

hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

2 153 Compulsory Informative (2)

The decision to REFUSE planning permission has been taken having regard to the policies and proposals in the Hillingdon Unitary Development Plan Saved Policies (September 2007) as incorporated into the Hillingdon Local Plan (2012) set out below, including Supplementary Planning Guidance, and to all relevant material considerations, including The London Plan - The Spatial Development Strategy for London consolidated with alterations since 2011 (2016) and national guidance.

AM7	Consideration of traffic generated by proposed developments.
AM14	New development and car parking standards.
BE13	New development must harmonise with the existing street scene.
BE15	Alterations and extensions to existing buildings
BE19	New development must improve or complement the character of the area.
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BE21	Siting, bulk and proximity of new buildings/extensions.
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OE1	Protection of the character and amenities of surrounding properties and the local area
OE3	Buildings or uses likely to cause noise annoyance - mitigation measures

3 159 Councils Local Plan : Part 1 - Strategic Policies

On this decision notice policies from the Councils Local Plan: Part 1 - Strategic Policies appear first, then relevant saved policies (referred to as policies from the Hillingdon Unitary Development Plan - Saved Policies September 2007), then London Plan Policies (2016). On the 8th November 2012 Hillingdon's Full Council agreed the adoption of the Councils Local Plan: Part 1 - Strategic Policies. Appendix 5 of this explains which saved policies from the old Unitary Development (which was subject to a direction from Secretary of State in September 2007 agreeing that the policies were 'saved') still apply for development control decisions.

4 171 LBH worked applicant in a positive & proactive (Refusing)

In dealing with the application the Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies from the 'Saved' UDP 2007, Local Plan Part 1, Supplementary Planning Documents, Planning Briefs and other informal written guidance, as well as offering a full pre-application advice service.

The Council has however been unable to seek solutions to problems arising from the application as the principal of the proposal is clearly contrary to its statutory policies and negotiation could not overcome the reason for refusal.

3. CONSIDERATIONS

3.1 Site and Locality

The application site is located on the Southern side of High Street, with the property's front elevation facing East. The site comprises of a Public House, namely The Wheatsheaf, which benefits from a rear garden. The pub is located on a corner plot, at the junction of Providence Lane and High Street.

The site adjoins two storey flats to the South, and a MOT service centre to the immediate East. To the North the proposed canopy is separated by a small driveway with a set of terraced properties. There are residential properties above the adjoining commercial properties. The boundary is defined by timber fences and ancillary structures associated with the dwelling. There are habitable rooms facing the site on Providence Lane.

To the immediate South of the location consist of retail units, all other surrounding buildings are predominantly residential.

3.2 Proposed Scheme

The application proposes a canopy to the rear to cover a beer garden. There is no history relating to the rear garden being used as a beer garden initially.

The proposal involves erection of a single-storey freestanding timber canopy with a timber open roof, located to the Western side of the public house. To the very rear the structure will have a completely covered roofing, to be used as a smoking area. A new 1.5 m tall timber fence will also be erected around the proposed canopy structure. It would have a total area of 35.66 square metres and would be approximately 2.76 metres high. The structure is existing.

3.3 Relevant Planning History

13392/APP/2018/2709 The Wheatsheaf Ph High Street Harlington

Canopy to rear to cover beer garden

Decision: 15-10-2018 Refused

Comment on Planning History

Three advertisement applications have been submitted previously, of which two were approved, proposing changes to the facade of the public house. This included new signs and colour changes to the external paint work.

4. Advertisement and Site Notice

4.1 Advertisement Expiry Date:- Not applicable

4.2 Site Notice Expiry Date:- Not applicable

5. Comments on Public Consult

A site notice was displayed which expired on 05.01.19. 42 neighbouring properties were also consulted via letter dated 03.12.18. 2 comments were received with concerns regarding the following:

1. Construction for a beer garden has not been granted, however a new build is taking place without authorisation from the council.
2. Construction on the new canopy has already begun.
3. Noise pollution.
4. Too much lighting.
5. Emergency services access loss to the site.

6. Smell from foods taken to the beer garden.

Heathrow Aerodrome Safeguarding has raised no objections.

Planning officer comment: The above concerns will be addressed in the relevant sections of the report.

Access officer:

I have considered the detail of this planning application and have no comments to make.

Trees/Landscape officer:

This site is occupied by a two-storey pub and beer garden on the west side of the High Street, at the junction with Providence Lane. There are no TPO's or Conservation Area designations affecting the site.

COMMENT: No trees or landscape features of merit will be affected by the proposal. The proposal comprises a semi-covered pergola structure at the far end of the garden, extending almost back to the rear elevation of the pub.

RECOMMENDATION: No objection and no need for landscape conditions.

6. UDP / LDF Designation and London Plan

The following UDP Policies are considered relevant to the application:-

Part 1 Policies:

PT1.BE1 (2012) Built Environment

Part 2 Policies:

AM7	Consideration of traffic generated by proposed developments.
AM14	New development and car parking standards.
BE13	New development must harmonise with the existing street scene.
BE15	Alterations and extensions to existing buildings
BE19	New development must improve or complement the character of the area.
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BE21	Siting, bulk and proximity of new buildings/extensions.
BE24	Requires new development to ensure adequate levels of privacy to neighbours.
OE1	Protection of the character and amenities of surrounding properties and the local area
OE3	Buildings or uses likely to cause noise annoyance - mitigation measures

In addition:

7. MAIN PLANNING ISSUES

7.1 Impact on the amenities of the occupiers of neighbouring residential properties

There are residential neighbours surrounding the application site. The canopy is low level and visually subordinate to the public house. There are habitable rooms directly facing the proposed development on Providence Lane, separated by 15 m from the front building line of these properties and the proposed canopy. However, given that the proposed development is of single storey height, with a maximum height of 2.76 m, it is not

considered that the development would result in an overbearing outlook.

The main impact of the development is likely to be potential noise and disturbance from people using the canopy area for eating, smoking or drinking. The provision of a covered and possibly heated and lighted area would clearly encourage a greater level of use. The application has not submitted a noise report showing how noise management plans would be adopted to ensure that a robust approach is taken with regards to protecting the amenities of nearby residents. A Design and Access statement has been provided with this application to give clarification to some of the points relating to the previous reason for refusal. The statement refers to the area already being a noisy area due to the Heathrow airport nearby. Further comments have been added as measures to reduce and control noise. Some of these are measures such as signs installed to the entrance and exit of the garden asking customers to not disturb the neighbourhood. These measures are not considered sufficient to control noise disturbances for neighbours.

Furthermore, the Design and access statement has stated that a management plan will be adopted to ensure that the garden is closed at 9 pm. A condition relating to just this part of the premises would be difficult to enforce and a greater use of this area in such close proximity to adjoining residential occupiers will clearly result in noise and disturbance at all times of the day and evenings to the detriment of the amenities of these occupiers.

Although it is acknowledged that the site shares boundary with a motoring service company which creates loud noises, this is during day time hours and do not extend to late night.

As such, the development would not accord with Policies OE1, OE3 and BE21 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

7.2 Impact on Street Scene

Policy BE1 of the Hillingdon Local Plan: Part One - Strategic Policies (November 2012) requires all new development to maintain the quality of the built environment including providing high quality urban design. Policies BE13 and BE15 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012) resist any development which would fail to harmonise with the existing street scene or would fail to safeguard the design of existing and adjoining sites.

The proposed canopy structure is 2.76 metres high at its highest point. The canopy is located next to the existing garage and whilst it will still be visible from the street scene it is not such that a refusal could be justified in street scene terms.

Therefore, the development would comply with Policies BE13 and BE15 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

7.3 Traffic Impact/Pedestrian Safety

Highways officer: There are no highway, traffic or transport concerns with this application.

The number of cars accessing the site is not considered likely to materially increase.

7.4 Carparking & Layout

The proposed area is currently being used for staff car parking, and hence would result in a loss of parking space. The existing garage space is also currently inaccessible due to the developed area.

7.5 Urban Design, Access and Security Considerations

The proposed development would not be harmful to the urban design of the area.

7.6 Other Issues

Principle of Development:

The Council has adopted the Hillingdon Local Plan: Part 1 - Strategic Policies (November 2012). Policy BE1 advises that new development, in addition to achieving a high quality of design, should enhance the local distinctiveness of the area, contribute to community cohesion and sense of place and make a positive contribution to the local area in terms of layout, form, scale and materials and seek to protect the amenity of surrounding land and buildings, particularly residential properties.

The proposal would be compatible with the current use of the site and the surrounding area, and therefore is acceptable in principle. It is the detail which is at issues.

Since the end of August 2015 applications which are for development which was not authorised need to be assessed as to whether the unauthorised development was intentional. If so, then this is a material planning consideration. In this case officers have no indication that this was an intentional breach of planning control.

Conclusion :

For the reason set out above the proposed development is recommended for refusal

8. Reference Documents

Hillingdon Local Plan: Part One - Strategic Policies (November 2012)
Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012)
The London Plan (2016)
National Planning Policy Framework (2018)

Contact Officer: Nurgul Kinli

Telephone No: 01895 250230

APPENDIX 5

Appeal Decision – Sunderland – ref. T/APP/J4525/C/98/651577

Planning Potential Ltd

London

Magdalen House
148 Tooley Street
London SE1 2TU
T: 020 7357 8000

Report Reference:

19/4688



The Planning Inspectorate

Room 1404
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Direct Line 0117 - 987 8927
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Mr J Living BSc ARICS
GL Hearn Planning
45 Frederick Street
SUNDERLAND
SR1 1NF

Your Reference:
JBL/55069
Council Reference:
JC/54011
Our Reference:
T/APP/J4525/C/98/651577
Date: - 3 FEB 1999

CASE COPIED BY
COMPASS
UNDER LICENCE FROM HM
Tel: 01452-310566

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY VAUX GROUP PLC
LAND AT THE MILL INN PUBLIC HOUSE, DURHAM ROAD, RAINTON BRIDGE,
HOUGHTON LE SPRING

1. I have been appointed by the Secretary of State for the Environment, Transport and the Regions to determine your clients' appeal against an enforcement notice issued by the Sunderland City Council concerning the above mentioned land and buildings. I conducted a hearing into the appeal on 12 January 1999. At the hearing, an application was made, on behalf of your clients, for an award of costs against the Council. This is the subject of a separate letter.

The Notice

2. a. The notice was issued on 15 May 1998.
- b. The breach of planning control as alleged in the notice is, without planning permission, the change of use of the area hatched blue on the plan attached to the notice to use as a beer garden and barbecue area, involving the erection of a brick built barbecue, dwarf walls and canopy to the south west side of the garage shown edged green on the plan.
- c. The requirements of the notice are to:
 - i. cease using the land for the purposes of a beer garden and remove from the land all seating, tables and litter bins brought on to the land for the purpose of that use;
 - ii. cease using the area to the side of the garage as a barbecue area. Dismantle the brick built barbecue, dwarf walls and canopy, and break out the concrete base. Remove all resultant debris from the land;

iii. make good any damage to the garage wall caused by the fixing of the canopy, flashings and the tying in of the brickwork and clean off any mortar staining; and,

iv. reinstate the land by top soiling, lightly compacting and levelling with the surrounding lawn, and grass seeding over the site of the broken out base.

d. The period for compliance with these requirements is one month.

Grounds of Appeal

3. Your clients' appeal is proceeding on grounds (a), (c) and (f) as set out in Section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991. The deemed application for planning permission under Section 177(5) also falls to be considered.

The appeal on ground (c)

4. The appeal on this ground concerns only the alleged change of use as you accept that planning permission is needed for the construction of the barbecue on the south-west side of the manager's garage. However, you do not accept that the use of land as a beer garden, and barbecue area, requires planning permission as it is clearly a part of the same planning unit as the public house. Applying the tests set in *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207, it is in the same ownership and occupation, and it is not a physically distinct area used for a different purpose; indeed separation by a strip of tarmac, as suggested by the Council, does not detach it in any physical sense, such a situation being common at many public houses. Moreover, the Council themselves have accepted in the past, in their handling of a planning application in 1994, that the area concerned was part of the "pub garden", and the enforcement notice plan outlines, in red, the whole planning unit, as is common practice. Even if it was not originally part of the curtilage of the public house, the subsequent pattern of land use has resulted in it becoming incorporated within it, following purchase of the relevant area in 1966 from the builders who developed the surrounding housing estate to the west. In addition, any alleged use as a vegetable garden concerned only a small area as, in 1993, the garden was laid out as two quoits pitches, for use by pub teams. Previous appeal decisions also support the contention that the use of the curtilage of a public house for the consumption of food and drink purchased on the premises (a Class A3 use) can be carried out in any part of the planning unit, and intensification of use within the same use class does not constitute development, following the judgement in *Brooks and Burton Limited v Secretary of State for the Environment* [1977] JPL 720. In all these circumstances, whilst it is accepted that the construction of the barbecue requires planning permission, the use of the land concerned as a beer garden, and barbecue area, does not.

5. The Council, however, consider that the landscaped grounds identified by hatching on the notice are not part of the main planning unit, as they are physically separated from the main building by an access road and car park. Therefore the land affected is not within the curtilage of the public house. The grounds are also considerably larger in extent than the floorspace of the public house, thus the use substantially increases the number of potential customers for the premises, and cannot therefore be considered as ancillary. In addition, it would appear, from the 1946 Ordnance Survey, that the beer garden was originally part of surrounding farmland, and up until 1994 it was used as a vegetable garden by the manager of the public house. As it was not

part of the original land holding and still does not form part of the same planning unit, permission is needed for the material change of use that has occurred. Alternatively, if it is found that the beer garden is not a separate planning unit, the Council would contend that there has been a significant increase in the intensity of the use of the area, thus causing a material change of use. It should be noted in this respect that the appellants applied for permission for this change of use in 1997, and made no appeal against refusal of that application, nor did they submit an application for a Certificate of Lawful Use or Development.

6. In consideration of these matters, the starting point is clearly the definition of the planning unit, and there is no dispute that the tests set in the *Burdle* case are appropriate in this instance. The area outlined in red on the plan attached to the enforcement notice shows the area owned and occupied by your clients, save that a small piece of land to the south-west, between Durham Road and the rear boundaries of Nos 13 and 15 Burn Crook, is also in their ownership, having been purchased in 1966 at the same time as the land which is now being used as a beer garden. It was agreed that the plan should be altered so as to include this area, and I am satisfied that this can be done without prejudice to any party. The area outlined in red includes the public house itself and three attached two-storey cottages, Nos 1-3 Mill Cottages. No 1 is now included within the public house, but Nos 2 and 3, whilst owned by your clients, are let to other persons for residential purposes not associated with the public house. Each has a small back yard enclosed by fencing or walls. I consider that these two properties form separate planning units within an overall unit, as they are used for clearly separate purposes from the remainder of your clients' land. However, the remainder of the area outlined in red is being used for purposes associated with the public house, including car parking, a manager's flat, on the first floor of the main building, a garage used by the manager, a childrens' play area, attached to the public house, and gardens or landscaped areas. Moreover, all of these ancillary uses are substantially associated with that primary use, that is the consumption of food and drink purchased on the premises, a use which falls within Class A3 of The Town and Country Planning (Use Classes) Order 1987. Therefore it must follow that the use of a garden area for the consumption of food and drink is an activity which is part and parcel of that primary use, and which falls squarely within the first test set by *Burdle*.

7. It also follows from this conclusion that I do not agree with the Councils' contention that the beer garden area, hatched blue on the enforcement notice plan, is a separate planning unit. The strip of tarmac which acts as a secondary access is not, in my view, a physical barrier between the garden and the main building, and I am satisfied that the blue hatched area has been part of the grounds of the public house since 1966, when it was purchased. It may have been partly used as a vegetable garden by the manager of the premises at some time, and part of this area may also have been used for recreational purposes associated with the public house, as quoits pitches, but both uses are likely to have been ancillary to the primary use. In any event, the plan approved in 1994, for various extensions to the public house, and for the garage, showed the present beer garden as being overgrown, hence it was the subject of landscaping proposals. At the hearing, the Councils' representative conceded that that area was part of the overall planning unit at that time. If that was the case in 1994, and I consider that it was part of the planning unit then, there has been no event since that date which would have created a separate planning unit.

8. Finally, dealing the question of intensification, which is not actually alleged in the notice, it is apparent that the use of the beer garden for the consumption of food and drink would clearly increase the potential "floorspace" of the public house and the number of customers that could be

accommodated in periods of favourable weather. However, the judgement in *Brooks and Burton Limited* established that intensification cannot be material if the pre- and post-intensification uses are within the same Use Class. In this case both uses fall within Class A3, thus no material intensification can have taken place. My conclusion on this ground of appeal is that the use of the blue hatched area as a beer garden and barbecue area does not constitute a material change of use as this area is within the overall planning unit that surrounds and contains the Mill Inn public house, and the use of the area is for substantially the same purpose as that of the primary use. The appeal on ground (c) succeeds to that extent and I shall correct the notice accordingly. It also follows that, as the appeal on ground (f) relates solely to the steps required in associated with the cessation of the alleged change of use, the appeal on that ground does not need to be considered.

The appeal on ground (a)

9. In the light of my above findings this ground of appeal relates solely to the construction of a barbecue, and associated dwarf walls and canopy, on the south-western side of the manager's garage, which is sited close that part of the north-western boundary of the site where it adjoins the front garden area of No 21 Mill Hill.

10. The Development Plan for this area is the Sunderland Unitary Development Plan (SUDP), which was adopted in September 1998. The appeal site is not allocated for any specific purpose in the Plan, but Policy EN10 states that proposals for new development should be compatible with the principle use of the neighbourhood which, in this case, is residential.

11. Having regard to the above policy, therefore, and from the discussion at the hearing, the written representations, and my inspection of the site and its surroundings, I consider that the main issue in this case is the effect of the retention of the development on the living conditions of nearby residents in Mill Hill and Burn Crook, in terms of smell, fumes and general disturbance.

12. It is not disputed that disturbance for neighbouring residents has been created, on occasions, since the beer garden use began in the summer of 1994. Letters from those residents, to the Council, and in response to the notice of this appeal, detail various forms of disturbance including noise, loss of privacy, throwing of litter, verbal abuse, and smell and fumes from the barbecue. Many of these matters can be attributed to the use of the beer garden for drinking purposes, but as I have found that this is a lawful use it must be concluded that the use of other legislative powers would have to be pursued, as far as possible, to curtail such problems. It is also the case that the beer garden may lawfully be used for the consumption of food purchased on the premises, including hot bar meals. Aromas, detectable in neighbouring gardens, may arise from the eating of such meals in the beer garden. However, I consider that the use of an outside barbecue is likely to give rise to the emission of a different type of smell, as food would actually be cooked outside, rather than in the inside kitchen of the public house, thus cooking smells and fumes from the barbecue fuel would be transmitted.

13. Cooking smells, and fumes, from barbecues are not unusual in residential areas on fine summer evenings, or on weekend lunchtimes, but a permanent barbecue at commercial premises such as a public house is likely to be used for considerably longer and more frequent periods of time. In my opinion, the associated smells are likely to be prolonged and thus would create a far

greater propensity for disturbance. Moreover, in this case, the barbecue has been sited close to the boundary of the site, rather than in proximity to the main building, thus it is even more likely that disturbance would be caused from smell for nearby residents, particularly those at No 21 Mill Hill. I do not consider it reasonable for such disturbance, which has clearly been created in the past, to be allowed to continue. I note that you consider that the same effects could occur if a portable barbecue, which would not require planning permission, were to be used, but it does not seem to me that such a piece of apparatus would necessarily be placed as close to the site boundary as the existing permanent structure and, in any event, there is no evidence that your clients have any intention to use such equipment. My conclusion on this issue is that the retention of the brick built barbecue, dwarf walls and canopy is likely to lead to further disturbance for neighbouring residents through smell and fumes, thus materially harming their living conditions, contrary to the aims of Policy EN10 of the SUDP. The appeal on ground (a) therefore fails and planning permission will not be granted.

Other matters

14. In reaching my conclusions on the grounds of appeal I have taken into account all other matters discussed at the hearing, and raised in the written representations, but they do not outweigh the considerations that have lead to my decision.

FORMAL DECISION

15. For the above reasons, and in exercise of the powers transferred to me, I direct that the enforcement notice be corrected by:

- a. the deletion of paragraph 3 in its entirety and the substitution therefor of the following allegation:

"Without planning permission, the erection of a brick built barbecue, dwarf walls and canopy to the south west side of the garage that is cross-hatched on the attached plan";

- b. the deletion of paragraph 5 in its entirety and the substitution therefor of the following requirements:

"(i) Dismantle the brick built barbecue, dwarf walls and canopy; break out the concrete base; and remove all resultant debris from the land.

(ii) Make good any damage to the garage wall caused by the fixing of the canopy, flashings and the tying in of the brickwork, and clean off any mortar staining.

(iii) Reinstall the land by top soiling, lightly compacting and levelling with the surrounding lawn, and grass seeding over the site of the broken out base.";

- c. The deletion of the words "edged red" in paragraph 2 and the substitution therefor of the words "edged black"; and,

- d. the substitution of the plan attached to this letter for the plan attached to the notice.

Subject thereto I dismiss your clients' appeal, uphold the notice as corrected, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the amended Act.

RIGHTS OF APPEAL AGAINST DECISION

16. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.

Yours faithfully

Martin Joyce

MARTIN JOYCE DipTP MRTPI
Inspector

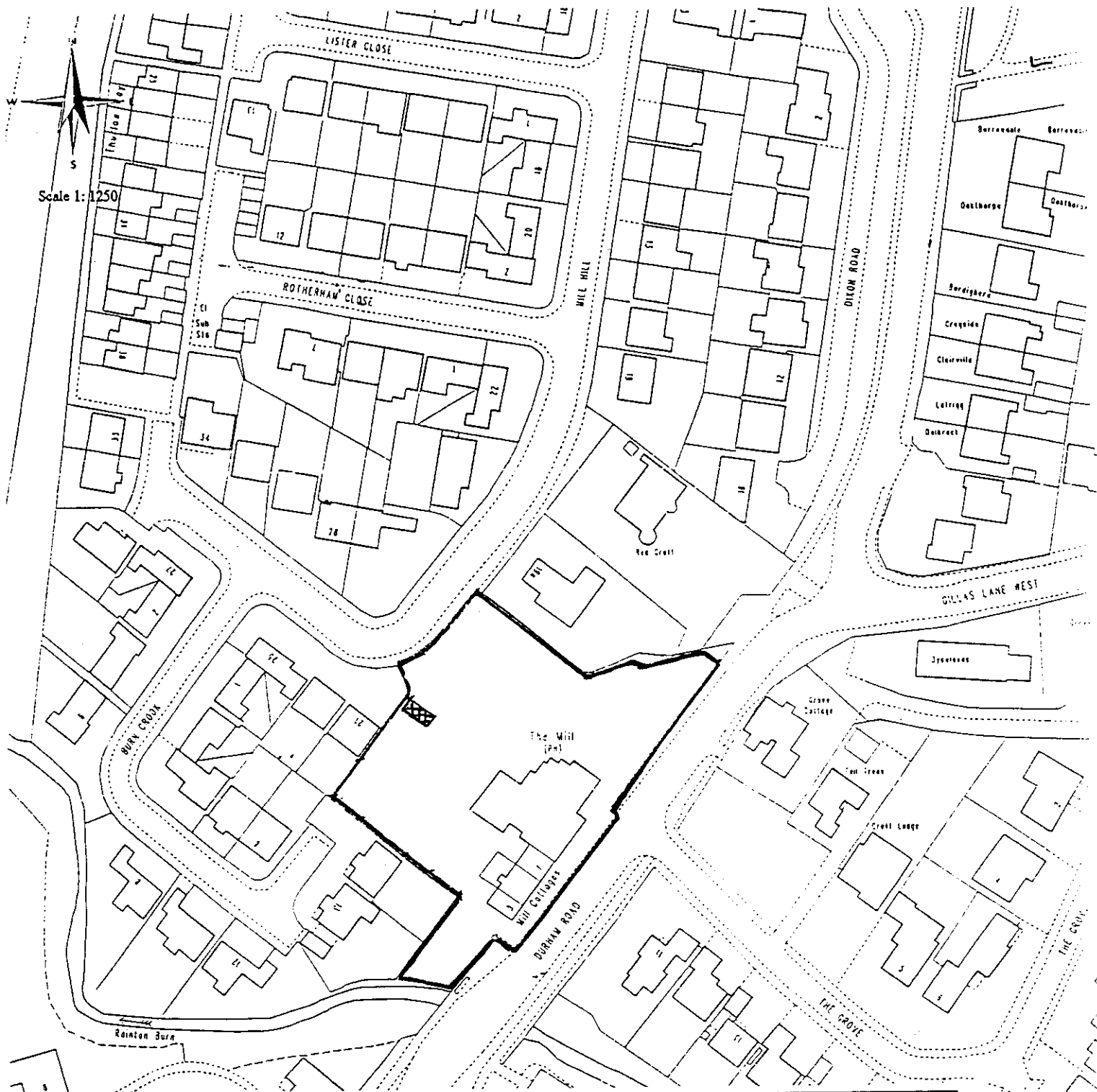
APPEARANCES

Mr J Living BSc ARICS, of GL Hearn Planning, represented the appellants.

Mr S France BA DipTP MRTPI, Senior Planner, represented the Local Planning Authority.

ADDITIONAL DOCUMENTS AND PLANS PRESENTED AT THE HEARING

- Document 1 - List of those present at the hearing.
- Document 2 - Copy of Policy EN10, Sunderland Unitary Development Plan 1998.
- Document 3 - Copy of report, and supplemental report, to Development Control (Hetton-Houghton) Sub-Committee meeting on 26 October 1998.
- Document 4 - Letter of objection from Mr & Mrs F Bowden, 11 Burn Crook, Houghton le Spring.
- Document 5 - Letter of objection from R S & J P Carr, 24 Mill Hill, Houghton le Spring.
- Plan A - Conveyance Plan showing area of land purchased by the appellants in 1966.
- Plan B - Extract from 1946 Ordnance Survey showing the boundaries of the appeal property at that date.
- Plan C - Copy of Drawing No 301/10/94, approved on 8 August 1994 under application No 94/0021.
- Plan D - Copy of Drawing No 986-148-010 showing proposed site layout approved on 30 October 1998 under application No 98/01162/FUL.



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

Land and buildings at The Mill Inn Public House, Durham Road, Rainton Bridge, Houghton le Spring

This is the plan referred to in my decision letter

(Ref: T/APP/J4525/C/98/651577) dated: 3 FEB 1999

Martin Joyce

MARTIN JOYCE DipTP MRTPI
Inspector

APPENDIX 6

Appeal Decision - Haringey – ref. APP/Y5420/C/11/2152454

Planning Potential Ltd

London

Magdalen House
148 Tooley Street
London SE1 2TU
T: 020 7357 8000

Report Reference:

19/4688



Appeal Decision

Site visit made on 19 July 2011

by **David Murray BA (Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 August 2011

Appeal Ref: APP/Y5420/C/11/2152454

The Clissold Arms Public House, 105 Fortis Green, London, N2 9HR.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Unique Pub Properties Limited against an enforcement notice issued by the Council of the London Borough of Haringey.
- The Council's reference is EXT/2010/00826.
- The notice was issued on 21 March 2011.
- The breach of planning control as alleged in the notice is the "Creation of garden area within part of the former car park without planning permission."
- The requirements of the notice are (1) remove from the unauthorised garden area all fixtures and fittings including tables and chairs that facilitate its use as a garden; (2) Remove from the unauthorised garden the dividing trellis/fence structure, the planters, the entry door leading into the garden from the car park and also remove the fixed canopy and deck/patio area.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Decision.

Procedural matter

1. A representative of the Council did not attend the programmed accompanied site visit, however, I was able to complete the site visit on an unaccompanied basis.

The notice

2. Under the ground (e) appeal below the appellant submits that the red line of the appeal site has been drawn incorrectly as it includes the footprint of two garages that have access off Annington Road and are not part of the public house site as confirmed by the appellant. This position is not challenged by the Council. I can correct the plan attached to the notice and omit this land under s176 (1) (a) of the Act without causing injustice to any party.
3. The notice refers to the breach as the 'creation of a garden area', however this description does not relate to the definition of development as set out in s55 of the Act, i.e. the making of a material change in the use of land or any building, or the carrying out of building or other operations, and the appellant is not properly informed on what he has done wrong in planning terms. The notice is therefore not clear and precise and requires correction.

4. The Council accept that the site of the 'garden' is within the single planning unit of the public house and that the use of this part of the unit for outside eating and drinking does not constitute a material change of use of the land. The Council submit that it is operational development that has occurred and has resulted in the existence of the pub garden area and that it is the noise that arises from this activity that causes disturbance and therefore harm to neighbours. The Council do not specify the operational development involved in the alleged breach, but the requirements of the notice refer to "fixtures and fittings including tables and chairs"; the "dividing trellis/fence structure"; the "planters"; the "entry door"; the "fixed canopy" and the "deck/patio area". For the consideration of the appeal, I will therefore correct the notice to specify these aspects of operational development as forming the alleged breach. Such correction will not cause the main parties injustice as the appellant also queries the nature and clarity of the alleged breach and makes representations on the operational development as specified above.

Appeal on ground (e)

5. The appeal on this ground is that the copies of the notice were not served as required by the Act and in this respect the appellant refers to the inclusion of the footprint of two garages which lie to the rear of the site and in separate ownership. However, my correction of the plan attached to the notice as described above in paragraph 2, would overcome this problem. Subsequently, there is now no issue of the lack of service of notice on the appropriate owners. This ground of appeal therefore fails in respect of the notice as corrected.

Appeal on ground (c)

6. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. Further, given that the formal breach as defined in the notice is not clear and precise, I will consider this ground in respect of the notice as corrected as specified in paragraph 4 above.
7. The various elements of operational development have to be considered in respect of the context of the site. The main public house extends in a linear form from the road frontage. The hard surface car park lies to the side of the pub. It is apparent that the alleged works carried out to form the pub garden extend to about half of what was previously the car park. This gives rise to a mainly open area of tables and chairs for eating and drinking, separated from the car park by a trellis fence and planters with shrubs. A wooden canopy on posts has been formed along one side of the space to provide shelter.
8. I looked at the various aspects of the operational development at my site visit and, apart from the wooden canopy, it appears to me that these are all moveable items that are not materially fixed to the ground. This clearly applies to the tables and chairs. The many parasols are kept in place by the weight of the base. Similarly the many wooden planters, urns, pot plants and similar adornments are also not fixed to the ground and are moveable. The trellis fence and entrance gates also appear to be mainly fixed to the planters separating the open 'garden' from the car park. Finally, the surfacing of the garden itself appears to be formed by a course of paviors laid on the existing hard surface interspersed by occasional areas of timber decking. As a matter of fact and degree, I find that these features do not constitute operational development and therefore a breach of control has not arisen with these items being placed on this part of the overall public house site. The appeal therefore

succeeds on this ground in part. The part where it does not succeed is in relation to the timber canopy which I find to be operational development because its size, means of construction, degree of permanence and fixture to the ground. I will therefore correct the notice other than in relation to the erection of the timber canopy.

9. The Council also say in the appeal statement that there has been a material change in the external appearance of the site where the 'garden' is located, which constitutes development as defined in s55 of the Act, as amended. However, s55 refers to work not needing permission as being those alterations "which do not materially affect the external appearance of the building". The area described as garden by the Council is an open area and not a building and therefore there is no test in law about whether the alterations are material to the external appearance of the open area.

Appeal on ground (a) and the deemed planning application

10. Given my conclusion on the appeal under ground (c), the appeal under ground (a) is confined to consideration of the wooden canopy. Further, although the canopy covers part of the seating area, and may facilitate use over longer periods of inclement weather, the use of this part of the pub 'garden' for drinking and dining does not constitute a material change of use from the overall planning unit. I must therefore assess the wooden canopy principally on its visual impact.
11. The canopy is a modest structure that lies close to the boundary of the site and alongside a much larger and taller building of commercial form. The canopy does not look out of place in the overall character of the pub site or harm the appearance of the area. It has a neutral effect on its surroundings and therefore conserves the character or appearance of the Fortis Green Conservation Area. Overall, the wooden canopy is consistent with the general principles of development as set out in policy UD3 of the Council's Unitary Development Plan.
12. I have noted the various objections expressed by the local community particularly regarding the issue of noise and disturbance that is alleged to arise from the use of the outside dining and drinking area. However, I have found that there is no change of use involved with the 'garden' area, and the matters involved in the deemed planning application concern mainly the visual effects of the wooden canopy structure. Further concerns about noise and disturbance from the public house must therefore be addressed under other legislation and these are not matters before me.
13. The Draft National Planning Policy Framework was published on the 25 July 2011. I have had regard to the draft guidance in reaching my decision, but I am unable to give it much weight at this stage as it is published for consultation purposes and may change. In any event, the guidance does not materially affect the conclusion I have reached on the planning merits of the case and particularly the effect of the unauthorised operational development on the character and appearance of the area.
14. The Council does not recommend any conditions on a planning permission for the wooden canopy and I do not consider that any are necessary.
15. Given this decision I do not need to consider the appeal under ground (f).

Decision

16. The enforcement notice is corrected by:

- (i) In section 3 (the breach of planning control) the deletion of the words "Creation of garden area within part of the former car park without planning permission" and the substitution of the words "the carrying out of operational development comprising: the erection of fixtures and fittings including tables and chairs; the erection of a dividing trellis/fence structure; the construction of wooden planters; the erection of an entry door; the construction of a fixed canopy, and the construction of a deck/paved patio area";
- (ii) The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

17. Subject to these corrections the appeal is allowed in respect of the alleged operational development, other than the erection of the wooden canopy, and the notice is corrected by the deletion of the following words from the allegation in section 3 "the carrying out of operational development comprising: the erection of fixtures and fittings including tables and chairs; the erection of a dividing trellis/fence structure; the construction of wooden planters; the erection of an entry door; and the construction of a deck/paved patio area".

18. In respect of the wooden canopy, the appeal is allowed under ground (a) and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of the wooden canopy on the land.

David Murray
INSPECTOR

This is the plan referred to in my decision dated: 1 August 2011

Land at: The Clissold Arms Public House, 105 Fortis Green, London, N2 9HR.

Scale: Not to scale

