OFFICER REPORT

Case No: 24/02078/S73 **Removal/Variation of Conditions**

Proposal: **Variation of conditions 2 (plans listed in table) and 6 (vehicle parking) of 21/02807/FUL**

Location: **152 Main Street Yaxley Peterborough**

Applicant: **Mr Ricciardi**

Grid Ref: **518110 291882**

DESCRIPTION OF SITE AND APPLICATION

The application relates to a two-storey building and former Public House. The building has been converted to a Wine Bar and 4 No. Apartments (3 x 1 Bedroom first floor, 1 x two bedroom second floor including a rear extension and various other alterations). The building has a mansard roof design with rendered and brick facing external walls. The site is in a mixed-use area with several residential properties as well as a number of nearby commercial properties.

The site is located within the Yaxley Conservation Area and is within close proximity to 2no. Grade II Listed Buildings:
- No. 183 Main Street, Yaxley
- No. 179 Main Street, Yaxley

This Section 73 application relates to application 21/02807/FUL which granted planning permission for the change of use of the Public House to Wine Bar and 4 No. Apartments (3 x 1 Bedroom first floor, 1 x two bedroom second floor), rear extension, replacement roof to former cellar, widening of staircase, creation of external walkway with balustrading to first floor, 4 No. dormer windows to front and replacement doors and windows (Anthracite Grey).

This retrospective application seeks to amend the wording of Conditions 2 (Approved Plans) and 6 (Vehicle Parking) of 21/02807/FUL. The application seeks to amend the approved:

- Block plan- to reconfigure vehicle parking spaces, increase the gravelled area to the rear, relocation of the bin store and cycle parking, increase the depth of the external seating area and increase the size of the covered seating area.
- Ground Floor plan- to increase the size of the covering between the two wings of the building, replace the permitted pitched roof with a flat roof with rooflights, addition of an outside bar area with flat roof, raising of the former cellar (proposed kitchen) eves, insertion of sliding doors and four rooflights on the courtyard (south elevation), relocation of air conditioning units and intake air vent to serve the new kitchen to the side elevation (south), material alterations, installation of 1.7m to 2.8m heigh fencing around the new outdoor seating area, replacement of existing metal staircase with a new wider staircase and inclusion of an outdoor bar.
- Existing Plans - increased topographical data to include the area at the rear and the courtyard on the north elevation included.
- Covered Gazebo- to be omitted from the scheme as the covered seating area is sought to be increased in size.
- Protected Trees- removal of the tree to the rear of the building afforded with protection (not protected by a Tree Preservation Order) by virtue of its location within the Yaxley Conservation Area.

Furthermore, this application also seeks to vary condition 6 of 21/02807/FUL as the parking arrangement has been altered from the approved plan listed in the compliance condition.

For the avoidance of doubt the retrospective application shall be referred to as 'the proposal' through the remainder of this report.

Officers have scrutinised the plans and have familiarised themselves with the site and surrounding area.

NATIONAL GUIDANCE

The National Planning Policy Framework (12th December 2024) (NPPF 2024) sets out the three objectives - economic, social and environmental - of the planning system to contribute to the achievement of sustainable development. The NPPF 2024 at paragraph 10 provides as follows: 'So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11).'

The NPPF 2024 sets out the Government's planning policies for (amongst other things):

* delivering a sufficient supply of homes;
* building a strong, competitive economy;
* achieving well-designed, beautiful and safe places;
* conserving and enhancing the natural, built and historic environment.

Planning Practice Guidance and the National Design Guide are also relevant and material considerations.

For full details visit the government website: https://www.gov.uk

PLANNING POLICIES

Huntingdonshire's Local Plan to 2036 (Adopted 15th May 2019)

LP 1 - Amount of development
LP 2 - Strategy for Development
LP 5 - Flood Risk
LP 6 - Waste Water Management
LP 8 - Key Service Centres
LP 11 - Design Context
LP 12 - Design Implementation
LP 13 - Placemaking
LP 14 - Amenity
LP 15 - Surface Water
LP 16 - Sustainable Travel
LP 17 - Parking Provision and Vehicle Movement
LP 22 - Local Services and Community Facilities
LP 29 - Health Impact Assessment
LP 30 - Biodiversity and Geodiversity
LP 31 - Trees, Woodland, Hedges and Hedgerows
LP 34 - Heritage Assets and their Settings

Huntingdonshire Design Guide Supplementary Planning Document (2017):

* Place Making Principles - Part 3.1 Place Making Principles and 3.7 Building Form

Local policies are viewable at https://www.huntingdonshire.gov.uk

RELEVANT PLANNING HISTORY

21/02807/FUL-Change of use of Public House to Wine Bar and 4 No. Apartments (3 x 1 Bedroom first floor, 1 x two bedroom second floor), rear extension, replacement roof to former cellar, widening of staircase, creation of external walkway with balustrading to first floor, 4 No. dormer windows to front and replacement doors and windows (Anthracite Grey)- Permitted 09.12.2022

24/01027/TRCA-Horse Chestnut - Prune by 1.2 meters and crown by 1.8 meters.- Consent 25.07.2024

CONSULTATIONS

Conservation Officer- No comment.

Environmental Health Officer- No objection.

CCC Highways- No objection. No significant adverse effect upon the public highway should result from this proposal should it gain benefit of planning permission.

Parish Council- No objection. The Parish Council supports the proposal.

Arboricultural Officer-No objection. Due to the condition of the tree situated to the rear of the building it is recommended that it is removed. It is not worth considering protecting the tree with a tree preservation order due to its poor condition.

REPRESENTATIONS

One third party representation has been raised in objection to the proposed amendments to the scheme raising the following concerns:

- Concerns the boundary fence with No.150 Main Street has not been maintained and as such is allowing wildlife through. Broken boundary fencing.
- Unruly behaviour by users of the wine bar. Rude and offensive language from users of the wine bar in the outdoor seating area.
- The proposal would increase capacity at the wine bar and would exasperate the issues with anti-social behaviour and parking.
- Not enough parking capacity at present. Overspill parking flows out onto Main Street causing difficulties for residents to park.
- Parking on Main Street posing a safety risk from a highways and fire safety perspective given No.152 is located in proximity to the fire station.
- Vehicle owners often ignore double yellow lines when parking.
- Inadequately constructed carpark and vehicle parking spaces have not been marked out.
- The expansion of the outdoor seating area is putting pressure on the tree to the rear of the building which is afforded with protection by virtue of its location within the Conservation Area.
- Smoking and drinking on the street front outside No.152.
- Loud music and the installation of a loud bird scarer
- Smells emanating from the building can be unpleasant.
- The extension/buildings are not in keeping with the character of the conservation area.

Matters raised by third parties in respect of design, increasing capacity, onsite vehicle parking, anti-social behaviour, impacts to trees protected in the conservation area and residential amenity (e.g noise and smells) are material planning considerations and this report shall address these matters.

SUMMARY OF ISSUES

Planning Practice Guidance (PPG) recognises that new issues may arise with granted planning permission, which may require the modification to approved proposals. The guidance advises that a new planning application will be required if modifications are fundamental or substantial. Where fewer substantial changes are proposed a non-material amendment application can be submitted. Alternatively, a Section 73 application, where there is a relevant condition that can be varied, can be submitted to address modifications to granted permission.

The PPG advises that "where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended. A decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity, decision notices for the grant of planning permission

under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged".

The main issues to be considered in the determination of this application are as follows: -
*Principle of development
*Design, Visual Amenity, Impacts to the Conservation Area and nearby Listed Buildings.
*Trees
*Highways and Parking
*Residential Amenity
*Other Matters

*Principle of Development
The proposed amendments are set out above and all other parts of the development remain unchanged and therefore the previous planning permissions remain relevant and unamended.

Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. In this instance, the application seeks to vary condition 2 of 21/02807/FUL through the submission of amended and additional drawings. Furthermore, this application also seeks to vary condition 6 of 21/02807/FUL as the parking arrangement has been altered from the approved plan listed in the compliance condition.

It is acknowledged third parties raised concerns in respect of the proposal increasing the capacity of the venue and the associated effects, it should be noted that the principle of development has been established alongside the use of the ground floor as a wine bar and will not be considered as part of this application. In determining an application under this section, Officers have regard to the development plan and all other material considerations. Third order effects of the proposal to increase the capacity for example noise and traffic generation are for consideration as part of this application.

*Design and Visual Amenity, Impacts to the Conservation Area and nearby Listed Buildings
In respect of any buildings or other land in a conservation area, the Local Planning Authority (LPA) are required to pay special attention to the desirability of preserving or enhancing the character or appearance of that area, through the Planning (Listed Buildings and Conservation Areas) Act 1990 at Section 72. Additionally, the LPA is required to pay special regard to the preservation of the listed buildings and their settings, as per Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

This statutory duty is reflected in Policies LP11, LP12 and LP34 of the Huntingdonshire Local Plan to 2036 whereby, developments should respond positively to their context, draw inspiration from the key characteristics of its surroundings and contribute positively to the area's character and identity.

This application seeks to increase the size of the covered seating area permitted and enclose it using a steel framed, flat roof structure with sliding doors and rooflights. The proposed outdoor seating area is to be enclosed with timber horizontal fencing. A new external access to the first-floor flats is also proposed as part of the submitted amendments to replace the existing metal staircase. Mechanical ventilation (vents and air conditioning units) would be relocated to the southern elevation of the building as part of the proposal.

It is noted third parties raised concerns that the proposed amendments are not in keeping with the character of the Conservation Area. Notwithstanding this, the steel-framed flat-roof structure and replacement access stairs would be to the rear of the building and would be largely out of sight from the public realm and screened by the horizontal fencing. Additionally, given the external metal staircase would be removed and replaced, albeit with slightly wider proportions, the proposed staircase considered to have a limited impact on the character of the area.

It is acknowledged that the proposed relocation of mechanical plant to the ground floor southern elevation would cause some visual impact when approaching the site from the south along the public highway. However, its impact could be mitigated through the imposition of a condition securing the details of screening such as a louvered screening.

The amended parking area is to be finished with a gravel surface. The use of gravel as a hard surface for parking was considered acceptable under application ref 21/02807/FUL and therefore is an acceptable material under this application.

The bin and cycle store locations have been altered as part of this application. The combined customer and apartment cycle parking would be located along the northwest boundary of the site, to the rear of the building. Nevertheless, the bin store would be located on the southwestern boundary of the site whereby the bins would be visible from the public highway. In the interests of visual amenity, it is recommended a condition is imposed to secure the details of the means of enclosure, appearance and materials of the bin store.

Officers raise no concerns for the proposed alterations. Furthermore, the Conservation Officer was also consulted as part of the application and raises no comment on the proposed amendments.

Overall, the amended block, elevations and floor plans are considered to respond positively to the context within the surrounding built form and contributes positively to the areas character and identity. The proposed alterations would preserve the character and appearance of the existing building, the streetscene of Main Street, the setting of nearby Listed Buildings and the Yaxley Conservation Area. The proposal is therefore considered to accord with Policies LP11, LP12 and LP34 of the Huntingdonshire Local Plan to 2036, the Huntingdonshire Design Guide (2017), the National Design Guide and section 16 of the NPPF (2024).

*Trees
Policy LP31 of the Huntingdonshire Local Plan to 2036 requires proposals to demonstrate that the potential for adverse impacts on trees, woodland, hedges and hedgerows has been investigated and that a proposal will only be supported where it seeks to conserve and enhance any existing tree, woodland, hedge or hedgerow of value that would be affected by the proposed development. As the application site is located within Yaxley Conservation Area, the trees within the designated area are afforded with protection.

To the rear of No.152 Main Street and within the applicant's control is a tree afforded with protection by virtue of its siting within the Conservation Area but is not subject to a Tree Preservation Order (TPO). The proposed external seating area would be in proximity to the root protection area of the tree and as such the proposed development is accompanied with an Arboricultural Impact Assessment.

It is noted that third parties raised concerns in regard to the proposed external seating area and the impacts to the tree associated with the installation of artificial grass and fencing near the Root Protection Area (RPA) of the tree.

The Arboricultural Officer was consulted as part of this application. The Officer acknowledges much of the trees' rooting environment has been excavated, compacted, turned into a driveway, dug up and laid with astroturf and that the fence installation and the use of concrete bases within the Root Protection area will also have exacerbated issues associated with the condition of the tree. Whilst regrettably the works within the RPA of the tree have already been undertaken, prior to the submission of this application the Councils former Agricultural Officer inspected the tree in September 2024 and considered the condition of the tree to make its removal a necessity over the coming years and due to its condition would not warrant a Tree Preservation Order.

It is recommended by the Arboricultural Officer the tree is removed as presently foot traffic, parking, seating etc nearby and underneath poses a safety risk.

In light of the above and during the course of the application the block and floor plans have been amended to reflect the tree removal. The proposed tree removal to the rear of No.152 is therefore considered acceptable, subject to conditions seeking the planting of replacement trees.

*Highways and parking
Policy LP17 of the Local Plan to 2036 seeks to ensure that new development incorporates appropriate space for vehicle movements, facilitates access for emergency vehicles and service vehicles and incorporates adequate parking for vehicles and cycles.

Under application ref 21/02807/FUL 16no. off street vehicle parking spaces and two disabled bays was permitted.

This application seeks to extend the patron outdoor seating area into the permitted car park. The reconfiguration of the car park would provide an arrangement of 19 off streetcar parking spaces including two disabled bays. The proposal includes an additional 3 parking spaces. Given HDC does not have a parking policy stipulating the number of vehicle parking spaces to the use of the building and 16 vehicle parking spaces was previously considered appropriate, Officers are satisfied an additional 3 parking spaces would accommodate an increase to the capacity of the wine bar.

It is acknowledged third parties raised concerns that on-street parking along Main Street and associated with users of the wine bar poses a highway's safety risk. On street parking is unrestricted along Main Street and Main Street comprises of mixed-use development (e.g public houses, shops, estate agents and restaurants). It is therefore reasonable to assume vehicles may utilise the public highway for parking regardless of the proposed development.

Whilst events held at the wine bar may result in additional cars parked in the local area, the Local Planning Authority has no evidence that this would result in severe impacts on the road network and would not result in an unacceptable impact on highway safety or amenity. Refusal against Local Plan Policy LP17 is therefore not considered justified in this instance and has not been recommended by the Local Highway Authority.

Furthermore, the Local Highways Authority have been consulted as part of this application and raise no concerns regarding the proposed increase to the wine bars capacity in regard to highways safety impacts.

As such, the proposed development is therefore considered to be acceptable in terms of highway safety and would therefore be in accordance with Policies LP 16 and LP 17 of the Huntingdonshire Local Plan (2019) and Section 9 of the National Planning Policy Framework (2024).

*Residential Amenity
Policy LP14 of the Local Plan to 2036 states a proposal will be supported where a high standard of amenity is provided for all users and occupiers of the proposed development and maintained for users and occupiers of neighbouring land and buildings.

Noise
It is acknowledged that third parties raised concerns that the proposed alterations would increase capacity and cause further residential amenity harm through noise impacts. The permitted external seating area was situated in the courtyard of the 'U' shaped building and included a covered pergola structure. Whilst the 'U' shape of the building may have sheltered external noise from patrons, the proposal to fully enclose the courtyard with a steel framed single-storey covering with sliding doors would reduce the noise impacts associated with the development already permitted.

Notwithstanding the above, it is however noted the external seating area has been relocated to the northwest of the courtyard. The proposed external seating area is enclosed with timber fencing and covered using artificial grass. The northwest boundary of the seating area would be enclosed with

concrete/timber posts with horizontal timber panels both sides, with PIR installation between them and erected at a height of 2.8-2.5m. The proposed installation to a degree would help to mitigate noise impacts associated with the outdoor seating area.

The external seating area is separated from the common boundary with No.150 Main Street by 6.8 metres. Whilst noise associated with patrons using the new external seating area is less likely to be buffered by the existing building, the proposal for a covered seating area would pose an equal noise impact to the permitted scheme. Furthermore, the Environmental Health Officer was consulted as part of the application and raised no objection to the proposed alterations in regard to noise impacts.

During the Officers site visit, it was noted that marquees have been erected in the external seating area and the use of the marquee would allow customers to sit outside during all weather conditions. Notwithstanding this, conditions imposed on the original permission 21/02807/FUL ensure that the wine bar is permitted with the following opening hours Monday - Sunday 10:00 - 23:30 and the external patron area should not be used after 23:00 hours on any day. Furthermore, condition 8 of 21/02807/FUL also restricts the use of amplified music outside the premises. Should the development be permitted, the same conditions restricting opening hours, outdoor amplified music and use of the outdoor seating area would be imposed.

It is also noted that 152 Main Street is located in a mixed-use area whereby, another Public House (known as the Three Horseshoes) is located opposite, to the south is the Fire and Rescue Station, a carpet store and estate agents are proximal to the building subject to this application. The Three Horseshoes licence is also restricted whereby the consumption of alcohol in the beer garden or marquee must cease by 23:00, live and recorded music indoors is limited to the hours of 11:00 to 23:00. It is therefore reasonable to assume noise may arise in the area regardless of the proposed development.

In light of the above, it is considered that any additional noise impacts would not be significantly more detrimental than the current situation already experienced by these adjoining neighbours. As such the conditions imposed on the original consent (ref 21/02807/FUL) is considered sufficient in mitigating noise impacts associated with the development and should the development be permitted will be reimposed on any consent.

Smells

It is also acknowledged that third parties raised concerns regarding unpleasant smells emanating from the building. As part of the proposed amendments an intake vent is located on the southern elevation of the building. The proposed vents are located approximately 17metres from the common boundary with the closest adjacent neighbour (No.150 Main Street).

No.152 is located in a mixed-use area of Yaxley whereby the public house opposite the application site offers a food service provision and two restaurants are located approximately 200 metres from the site. It is therefore reasonable to assume smells may emanate in the area regardless of the proposed development.

Furthermore, the Environmental Health Officer was consulted as part of the application and raised no objection in regard to odour associated with the proposed development.

Anti-Social Behaviour

Premises that want to provide activities that are licensable under the Licensing Act 2003, such as the retail sale of alcohol, or providing hot food after 23:00 hours, are controlled by both the planning and licensing regimes. Planning legislation controls the long-term use of land and will often aim to preserve residential amenity, and the Licensing Act focuses on the control of activities on a shorter-term basis and aims to prevent public nuisance.

In this instance, the use of the wine bar as existing has controlled opening hours, the restricted use of the outdoor space after 23:00 and controlled use of amplified music outside under planning permission 21/02807/FUL.

It is acknowledged that one third party raised concerns regarding the Anti-Social Behaviour of users of the wine bar and the proposed expansion to its capacity may increase the extent of Anti-Social Behaviour in the area. Concerns also related to the offering at the wine bar of 'bottomless brunches' whereby users of the facility would be offered unlimited drinks for a specific duration and cost, and as such is exasperating anti-social behaviour issues. Notwithstanding this, the Parish representing the wider community raised no concerns with the proposal to increase the bars capacity.

4no. public order Crimes and 3no. anti-social behaviour crimes which took place in the area surrounding Main Street, have been recorded by Cambridgeshire Constabulary crimes in the last year (Jan 24 to Jan 25). Given the site is located in a mixed-use area with other drinking establishments, it would be unreasonable to assume anti-social behaviour in the area is directly associated with the use of the existing wine bar.

It appears to Officers that the neighbours' concerns regarding anti-social behaviour relate to the operations of the wine bar. As detailed in preceding sections of this report, the use of the land/building as a wine bar has already been considered acceptable by the Council and conditions were imposed on the consent to protect residential amenity. This application seeks to physically extend the operational area of the wine bar by relocating the outdoor seating area. If permitted, Officers would not be able to control activities on the site beyond the existing conditions imposed on the original planning application. It is therefore reasonable to consider that matters raised by an adjacent occupier would be more appropriately investigated and dealt with through the licencing process.

Therefore, on balance, subject to conditions, the proposal is considered to accord with Policy LP14 of the Huntingdonshire Local Plan to 2036 in this regard.

*Other matters
If approved, an application under Section 73 of the Town and Country Planning Act 1990, in effect issues a new, separate, planning permission. Subsequently, the conditions applied to the previous permission to which this application relates must be reviewed against the conditions test set out in paragraph 57 of the NPPF 2024. Should the conditions pass the test they shall be included on any approval of this application.

The wording of condition 1 (Time Limit) imposed on 21/02807/FUL will be amended so to not extend the time within which the works must be started in accordance with Section 91 of the Town and Country Planning Act 1990. The list of approved drawings will be varied to include the amended drawings. The wording of condition 2 (approved plans) will remain to ensure the development is carried out in accordance with the approved plans list. Condition 6 (Car Parking Layout) will also be varied to include the amended site layout drawing.

The compliance conditions imposed on 21/02807/FUL in regard to materials (Condition 3), the use permitted as a wine bar (Condition 4), operating hours and use of external seating area (Condition 5), noise mitigation (Condition 7), no amplified outdoor music (Condition 8) shall be replicated on this application under section 73 of the Town and Country Planning Act 1990.

A new condition shall be imposed as part of this application to ensure a replacement tree is planted as the Horse Chestnut tree to the rear of the building shall be felled as part of this permission. Additionally, a condition seeking the details of a covered bin store shall be imposed in the interests of visual amenity.

*Conclusion

Having regard to national and local planning policies, and having taken all relevant material considerations into account, it is recommended the application should be approved for the proposed amendments. It is recommended that the wording of all conditions on the original application (21/02807/FUL) be replicated on this application under section 73 of the Town and Country Planning Act 1990, excluding conditions 2 and 6 which shall be amended as outlined above.

If you would like a translation of this document, a large text version or an audio version, please contact us on 01480 388388 and we will try to accommodate your needs.

CONTACT OFFICER:
Enquiries about this report to **Charlotte Dew**