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**Report of the Head of Planning and Development****HUDDERSFIELD PLANNING SUB-COMMITTEE****Date: 30-Jan-2020****Subject: Planning Application 2019/92240 Change of use of land to pub garden and play area The Sun, 137, Highgate Lane, Lepton, Huddersfield, HD8 0HJ****APPLICANT**

D Brayshaw

**DATE VALID**

04-Jul-2019

**TARGET DATE**

29-Aug-2019

**EXTENSION EXPIRY DATE**

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Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

**LOCATION PLAN**

**Map not to scale – for identification purposes only**

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**Electoral Wards Affected: Almondbury**

No

Ward Members consulted

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**RECOMMENDATION: Refuse planning permission and authorise the Head of Planning and Development to take enforcement action to cease the use of the land ancillary to the drinking establishment and remove associated garden furniture, tables, golf and play equipment.**

**Reason for Refusal:**

1. The proposed pub garden and play area, by reason of its proximity to surrounding residential dwellings and the nature of the operation of the development, would lead to occupiers of these dwellings being subjected to unacceptably high levels of noise and disturbance for extended period of times throughout the day, to the detriment of residential amenity. To approve such an application would be contrary to Policies LP24 and LP52 of the Kirklees Local Plan and guidance contained within Chapters 12 and 15 of the National Planning Policy Framework.

**1.0 INTRODUCTION:**

1.1 This application is brought to Sub-committee following its deferral from the meeting on 7<sup>th</sup> November 2019. Members deferred consideration of the application “to allow an opportunity for officers to work with the applicant to explore further mitigation measures, including hours of use, to reduce noise within the proposed play area and pub garden”.

1.2 The application was originally brought before sub-committee for determination for the following reason:

*The previous permission 2018/92785 was determined by the Huddersfield Planning Sub Committee on 13 December 2018 where a temporary permission was granted for 6 months to assess the impact of the development on residential amenity. It was requested at the time that the application was brought back to sub-committee after the 6 months permission had expired to consider the impact.*

*The temporary permission expired on 17 May 2019 and the current application was submitted on 4<sup>th</sup> July 2019.*

1.3 The Chair of Sub-committee confirmed that for the above reason for making the request was valid having regard to the Councillors’ Protocol for Planning Committees.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application relates to The Sun in Lepton, which is a public house. It forms a traditional two storey stone-built property, with a number of alterations and extensions having taken place. The site as existing has a landscaped and equipped play and seating area to the north to which the current application relates. The Sun also currently hosts two council computer terminals under 'the pub is the hub' initiative and provides a community library.
- 2.2 The site is surrounded by primarily low-density residential development, of mixed design and character. The site is semi-rural in character with large swathes of Green Belt in close but not immediate proximity to the site. The building itself is adjacent to a convenience store and first floor flat at 135/135a Highgate Lane, and is surrounded on all other sides by residential properties along Rowley Lane, Sycamore Close and Highgate Avenue.

## **3.0 PROPOSAL:**

- 3.1 The application seeks to retain a seating area and equipped play area associated with The Sun.
- 3.2 Works to the land subject of this application were completed last year and have been in use since. The land now presents landscaped and sectioned floor areas consisting of wood chip, Astroturf and soft surfacing associated with a children's play area. The area is well provisioned with a timber climbing frame, swings and a mini-golf course. Boundary treatment consisting of a 2m high close boarded timber fence encloses the site while access is offered via a timber swing gate complete with locking mechanism.
- 3.3 Since the original application was brought to sub-committee the applicant has put forward details for the installation of an additional 2 metre high close boarded acoustic fence along the north eastern boundary of the site with noise buffer to adjacent existing fence line. The proposal has also been amended to retain the hours of use previous granted as part of the temporary planning permission. These for a period between 9am - 8pm on any day of the week.

## **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

### Planning Application History

- 4.1 89/01687 – Dormer kitchen extension to public house (Granted Conditionally)
- 89/05573 – Variation of Condition 2 of planning permission no. 89/01687 (Granted Conditionally)
- 86/03984 – First floor extension to dining/kitchen (Granted Conditionally)
- 2017/91862 – Erection of two storey side extension with balcony and formation of new car park (Conditional Full Permission and extant until March 2021)
- 2018/92785 - Change of use of land to pub garden and play area (Decision by Sub Committee Full Conditional Permission for temporary trial period of 6 Months [contrary to Planning Officers Recommendation])

Relevant Committee Minute:

Reason for Decision Contrary to Recommendation: The committee considered that the benefit to the community of the development, subject to conditions, outweighed the harm to the residential amenity of occupiers of surrounding dwellings. Therefore in accordance with the resolution of committee, the application is to be give 6 months temporary permission in accordance with the submitted specification and subject to the following conditions:

1. Temporary planning permission for a 6 month period
2. Restriction on hours of use between 9am - 8pm
3. Submission of a management strategy detailing methods of supervision, monitoring, dealing with complaints and mitigation of noise and disturbance from uses of the beer garden and play area
4. Erection of signs reminding customers to be considerate of neighbouring residential properties.

2019/90679 – Details submitted to discharge condition regarding noise management strategy (condition 4) on previous permission 2018/92785 for change of use of land to pub garden and play are - details approved – the following controls were approved

- The applicant will monitor noise level in the garden every hour within the agreed opening times and noise levels will be monitored by a decibel metre.
- Any breaches in noise levels will be addressed by informing patrons to reduce noise levels. Should a breach occur 3 times in an hour then patrons will be asked to leave the area.
- Each noise instance and any times that there are 3 instances within 1 hour will recorded on a log sheet. The log sheets will be available on request by Environmental Health.
- Should patrons continue to breach noise levels the management will close the garden area for a period of time.
- Signage will request patrons to respect neighbours at all times.
- The management will liaised directly with any complaints and devise a course of action to ensure that noise levels are reduce.
- If a complaint is escalated to the Local Authority the monitoring sheets will be made available will details of the actions taken to reduce noise levels.

#### Enforcement History

- 4.2 COMP/18/0183 – Complaint received 23 July 2018 for the alleged unauthorised change of use and formation of beer garden/play area. The 2018/92785 planning application was submitted to regularise this matter and was granted a temporary planning permission with additional conditions to assess the impact. The current application seeks to retain the change of use on a permanent basis.

#### **5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):**

- 5.1 The applicant has provided the following information in seeking to address the matters raised by Members at the November planning sub-committee meeting:
- an amended plan detailing the provision of a 2 metre high close boarded acoustic fence along the north eastern boundary, to create a noise buffer between the new and existing fence.

- an agreement to restrict the hours of use of the garden/play area from 9am 8pm any day of the week,
- an agreement not to implement the extensions approved under application 2017/91862 through completion of a Unilateral Undertaking
- submission of noise logs, completed by the applicant, which set out noise levels in the garden and the number of users at any given point, monitored on an hourly basis.
- a petition has been submitted via 'change.org' with 237 signatures in support of the application.

## **6.0 PLANNING POLICY:**

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

### Kirklees Local Plan (KLP):

- 6.2 The site is unallocated on the Kirklees Local Plan Proposals Map.

- 6.3 Kirklees Local Plan Policies:

- **LP1** – Achieving Sustainable Development
- **LP24** – Design
- **LP48** – Community facilities and services
- **LP52** – Protection and improvement of environmental quality

- 6.4 National Planning Policy Framework:

- **Chapter 1** – Achieving Sustainable Development
- **Chapter 4** – Decision-making
- **Chapter 8** – Promoting healthy and Safe Communities
- **Chapter 12** – Achieving well-design places
- **Chapter 15** – Conserving and Enhancing the Natural Environment

## **7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 The application was advertised by site notice and letter to the occupants of neighbouring dwellings. The initial public consultation period expired on 27<sup>th</sup> August 2019. However the further information detailed in paragraph 5.1 was re-advertised, this period of publicity expired on 20 January 2020.
- 7.2 A total of 23 public representations were received to the initial period of publicity, 6 object to the proposal and 17 support the proposal. Comments has also been received from ward member Cllr Munro.
- 7.3 In summary the Objections raise the following concerns:
- The development creates noise which at times of good weather is increased when local residents wish to enjoy their own gardens. The disturbance caused has an adverse impact on the amenity of adjacent residential properties. Additional noise has also been created by the playing of music.

- The site is large and can generate large numbers of visitors to the area. It is used by children who can create additional noise which can be difficult to adequately control in an area which is residential and where residential properties back on to the application site.
- The works were carried out without planning permission and no acoustic barriers have been provided to limit the impact on adjacent properties. The existing fencing has been used which further adds to the concerns in terms of noise pollution.
- The application seeks a later use of the site until 9.30pm from the trial period of 8pm, an increase in use would further adversely impact on residential amenity.
- Limited weight should be attached to letters of support as they do not live adjacent to the site nor have to experience the disturbance caused by the development. A consideration of the number of comments in support should also not be afforded additional weight as only so many people live next to the site.
- The pub is a commercial venture and not a community one, and it is not fair to state that the whole community support it, as not all of the community use the facility or have to live next to it.
- The control pressures approved in the trial period have not provided sufficient mitigation to prevent harm to residential amenity and it is considered no adequate control measures could be provided which sufficiently protect local amenity.
- It is noted that the pub has been in place for a long period of time, it has been stated for 300 years, however the site of the pub garden was never part of the original pub and provided a buffer to most houses for a long time. There is no objection to the pub and its operation. It is the use of the land for a pub garden which has caused the harmful impact to the residential amenity.
- Environmental Health have assessed the merits of the scheme and advised in their professional opinion that the proposal should not be supported. What evidence is there that such an opinion should be discounted?
- The pub garden has been formed on an area which has approval as a car park, parking in the local area is in short supply and the pub garden has increased the need for parking which can no longer be provided. The proposal would therefore be detrimental to highway safety.
- The proposal prevents access to the maintenance of fencing which surrounds the pub garden. Furthermore the fencing which surrounds the site has not been installed by the applicant and should not be used to attach signs or additional paraphernalia too.
- It is not correct to state that there is no other park or recreational facility in Lepton as there is an equipped play area the north west of the site which also provide a skate park.

#### 7.4 In summary the support comments raise the following points:

- There has been a great improvement in community spirit in and around the pub with the addition of the beer garden.
- Children often visit and enjoy the facilities and it is a safe and clean place to visit.
- Staff from the pub enter the pub garden regularly to monitor noise levels and excessive noise has not been witnessed.
- The site of the pub garden was previously waste land and was an eyesore and the development has improved the character of the area.

- The pub garden is well sheltered from adjacent properties by existing boundary treatments.
- Any music played is generally children's music played at a low level.
- The 8pm finishing time is strictly enforced and any extension to this time would be rigorously adhered to. Signage around the area also advises customers to be considerate.
- The pub supports a variety of community activities and includes a library and computer station in the pub. It is therefore considered that the pub represents a community facility which should be supported.

7.5 Cllr Munro has stated:

- I have now read the report from environmental services and wondered if a condition be made that the applicant files a report from an acoustician as recommended by environmental services and the matter be deferred to be dealt with at a later date.

7.6 At the time of writing 20 further representations had been received to the application; 17 in support and 3 in objection. The further representations are summarised below:

7.7 In objection:

- How can an application for a pub garden be considered when there are residents on 4 sides. The people for this application do not live next door to the garden.
- The proposal has led to local residents having to deal with additional noise, extra parking issues in the local area.
- How can the noise monitoring and the submitted noise logs of the garden be given much weight in the decision as these are not independent readings and it would not be in the applicant's interest to report instances of excessive noise.
- How were the applicant's even allowed to construct the garden without planning permission?
- How is an additional fence in front of a fence going to stop any noise from the garden when the existing fence does not? At 2 metres high it would also not stop overlooking from the raised play equipment.
- How will access be maintained to the existing fence for maintenance if a new fence is going to be erected?
- There are concerns that the hourly monitoring is not accurate as the pub can often be busy and how can noise levels be accurately recorded when running a busy pub?
- Children are often left unsupervised in the play area which can lead to noise levels increasing significantly.

7.8 In support

- The land before the application was an eyesore, the improvement needs to be seen and the applicant can only be praised for the improvements. The pub is a local hub for the village and it would be a disgrace to see it lost.
- Noise is a fact of life and there are a number of other noise sources that people experience such as local schools, buses, cars and other local pubs which generate noise. As a pub there is always going to be noise in and around the pub.

- If the application is refused there will still be tables and chairs and people will still want to sit outside, will this be banned?
- The garden is there for all to use and the play equipment is fabulous for children to use as is the mini golf course.
- The pub is a community hub that allows people to access books and the internet, the applicants should be supported in works and activities which they undertake.
- Locals are respectful of surrounding residents and noise levels are kept to an acceptable level.
- The pub is always kept locked when not in use and is always kept clean and tidy. The fence around the site protects residential amenity.
- The public park in Lepton can be subject to anti-social behaviour and the proposal has provided a clean and safe place to play, especially for younger children.

7.9 The applicant has also submitted an online petition in support of their application with 237 signatures seeking support for the retention of the garden.

7.10 Kirkburton Parish Council – no comment

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Non-statutory:**

KC Environmental Health – Maintain objection to the proposal (formal consultation)

## **9.0 MAIN ISSUES**

- Principle of development
- Urban design issues
- Residential amenity
- Representations
- Other matters

## **10.0 APPRAISAL**

### Principle of development

10.1 The application site is unallocated on the Local Plan and therefore Policies LP1 and 2 are relevant which support sustainable development. The proposed development seeks retrospective permission for the formation of a pub garden and play area, following on from a 6-month trial permission (2018/92785) to assess the impact of the development on residential amenity. The temporary permission application was approved subject to the following conditions:

1. *Temporary 6 month permission, expired on 17 May 2019.*
2. *Restriction on hours for its use between 9am to 8pm any day of the week.*
3. *Provision of additional signage within the site instructing customers to be considerate to neighbours.*
4. *Submission of a noise management plan, (details submitted on 4<sup>th</sup> March 2019 under 2019/90679 approved 8<sup>th</sup> April 2019)*



- 10.2 The key consideration now is whether the continuation of the use would retain a good standard of amenity for nearby residents, taking into account the potential for noise and disturbance. Other matters to consider in the balance of planning issues include any community benefits brought about by the development, the design of the works, the impact on highway safety, ecology along with all other material planning considerations and representations received.
- 10.3 As detailed above the application was deferred from the November sub-committee meeting in order to allow the applicant time to provide further information and address the points raised by members. This further information will be considered in the report below.

#### *Community Benefit*

- 10.3 The Sun is a longstanding Public House in Lepton. As well as this principal function it also hosts two Kirklees Council computer terminals under 'the pub is the hub' initiative and provides a community library. All these facilities are provided in an accessible location in Lepton which minimise the need to travel. The outdoor garden and play area provide further facilities in a sustainable location. The wider community benefit from the development needs to be considered against Policy LP48 of the Local Plan and Chapter 8 of the NPPF. The applicant has also submitted a petition in support of the application which has 237 signatures in total and which the applicant considers highlights the wider community support for the proposal.
- 10.4 Chapter 8 of the National Planning Policy Framework (NPPF) advises that planning decisions should aim to achieve healthy, inclusive and safe places which:

*'a) Promote social interaction, including opportunities for meetings between people who might not otherwise come into contact'.*

It goes on that to provide the social, recreational and cultural facilities and services the community needs, planning...decisions should:

*a) plan positively for the provision and use of shared spaces, community facilities (such as...public houses...) and other local services to enhance the sustainability of communities and residential environments;*

*d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community;*

- 10.5 This is also reflected in Policy LP48 of the Local Plan which advises that proposals which protect, retain or enhance existing community facilities will be supported.
- 10.6 It is noted that previous planning permission 2017/91862 for the erection of a two storey side extension with balcony and formation of a new parking area was identified as promoting The Sun as a community facility. This application served to increase the capacity of the pub in a sustainable way and offering additional parking, making the pub more accessible. This permission, while not implemented, remains extant until March 2021. However the applicant has advised that they do not intend to implement the extension and are willing to sign a Unilateral Undertaking to that effect setting out that the permission will not be implemented.

- 10.7 With regard to the play area and pub garden subject to this application, no information has been submitted to detail any specific need or benefit that the facilities would provide to the public house or wider community. It is acknowledged that the applicant has provided a petition with a significant number of signatures in support of the proposal. The weight of support, or opposition, to a proposal is not in itself a material consideration. The impact of the development on all material planning considerations still needs to be assessed. The matters contained within representations, where raising material planning issues regarding the development proposed, are taken into account below.
- 10.8 Furthermore the play area is not freely accessible to the wider public and can only be used by patrons to the pub. Notwithstanding this it is acknowledged that it would develop and enhance the offer provided by the Public House and improve its longer term viability. In principle a Public House is a community facility and the development would enhance the facility. The principle of the use is therefore acceptable in accordance with LP48 of the Local Plan and policies in Chapter 8 of the NPPF.
- 10.9 Although the principle of development is accepted, there are specific concerns regarding the impact of the use of the garden/play area on the amenities of nearby residents; hence the 6-month trial period previously granted. The potential impact of this use on highway safety and all other material planning considerations including visual amenity are assessed below.

#### Urban Design issues

- 10.10 The application proposes the change of use of land described as being derelict to a seating and equipped play area associated with The Sun. As development has already been completed a full consideration and assessment can be made.
- 10.11 The change of use of the land would not introduce additional built form associated with The Sun but would rather create a landscaped area hosting equipment associated with a beer garden: child's climbing frame, seating area and an area for crazy golf. Landscaping materials, although vibrant in colour (green and blue) are not considered to create an overly prominent feature and in any case much of the floor area is covered in wood chippings creating an overall neutral colour scheme. As such the proposed is believed to offer a refreshed look, creating an attractive play and outdoor recreational area.
- 10.12 Furthermore, it is noted that the play area is well delineated from residential properties by a close boarded timber fence. The new 2 metre high close boarded timber fence along the north eastern elevation would be of an appropriate design and scale for the site and the proposed use. In terms of wider impact the gardens position to the rear (north) of The Sun, would limit direct views of the area. As such, the scheme is not considered to create an intrusive development that would harm the visual amenity enjoyed by the residents of surrounding dwellings. In this respect the application is considered to comply with Policy LP24 of the Local Plan and guidance contained within Chapter 12 of the National Planning Policy Framework (NPPF).

## Residential Amenity

- 10.13 Consideration needs to be given to the impact of the proposed development on the residential amenity enjoyed by neighbouring dwellings. It is noted that the previous temporary permission was granted to allow time to assess the impact of the development on adjacent residents and added further control in the form of a noise management plan and a restriction on the hours of use from 9am to 8pm. The noise management plan has again been submitted in support of this application, and the applicant has now agreed to restrict opening times 9am to 8pm the same as the temporary permission. The noise management plan states:
- The applicant will monitor noise level in the garden every hour within the agreed opening times and noise levels will be monitored by a decibel metre.
  - Any breaches in noise levels will be addressed by informing patrons to reduce noise levels. Should a breach occur 3 times in an hour then patrons will be asked to leave the area.
  - Each noise instance and any times that there are 3 instances within 1 hour will be recorded on a log sheet. The log sheets will be available on request by Environmental Health.
  - Should patrons continue to breach noise levels the management will close the garden area for a period of time.
  - Signage will request patrons to respect neighbours at all times.
  - The management will liaise directly with any complaints and devise a course of action to ensure that noise levels are reduced.
  - If a complaint is escalated to the Local Authority the monitoring sheets will be made available with details of the actions taken to reduce noise levels.
- 10.14 The applicant has also provided noise logs over a 20 week period which set out the noise level and the number of people in the garden at that particular time. A 2 metre high close boarded acoustic timber fence is also proposed on the north eastern boundary to provide a further sound mitigation measure. This would be set slightly away from the existing fence with a small 'noise buffer' in between.
- 10.15 Environmental Services previously confirmed that complaints have been received to the development, one in July 2019 and then again on 25<sup>th</sup> August 2019 and 20<sup>th</sup> September 2019, although Environmental Services Officers have advised that they did not witness the noise disturbances themselves. Notwithstanding this, given that noise complaints are still being received this highlights that there remains a conflict between the use of the pub garden and amenities of the neighbouring residential property.
- 10.16 The proposed use of land is a considerable intensification of the original low key parking area of a garage court, or indeed the car park approved within the 2017/91862 permission. It has greater potential to create noise nuisance over a sustained period of time. This is particularly pertinent given that the application site is bounded on all sides by residential properties.
- 10.17 Environmental Services have again assessed the application and the further information provided by the applicant but maintain their concerns with the proposal.

- 10.18 Environmental Services consider that the proposed additional 2m fence and small buffer zone are unlikely to provide any significant additional noise mitigation compared to the existing fence. A taller acoustic barrier and a larger buffer zone would be required to provide any significant improvement to the acoustic protection to neighbouring properties. The applicant has advised that they would be willing to provide a taller fence but could not increase the buffer zone. They have advised that a wider buffer zone is impossible as the children's play equipment is concreted in to the ground and the equipment needs to be a safe distance from boundary fences for the safety of the children using it and for it to conform to British Safety standards for children's play equipment in public areas. With respect to increasing the height, whilst the applicant is willing to increase the height, a higher fence would add limited additional mitigation and would not protect first floor bedrooms from noise from the garden. Furthermore a balance has to be struck between noise mitigation and a potential overbearing or overshadowing impact from occurring to neighbouring properties. Therefore Planning Officers have advised that a 2 metre height would be more appropriate if positioned on the shared boundary, the applicant has therefore proposed the 2 metre high boundary fence.
- 10.19 Environmental Services consider that it is not possible to place significant weight to the submitted noise logs. The applicant has confirmed that noise levels were recorded by a specific noise metre reader a "Cadrim digital decibel noise meter reader." Whilst this is noted, the reports just provide a single sound pressure level at hourly intervals; in reality the sound level will vary continuously and to assess the noise levels more accurately the  $L_{Aeq}$ ,  $L_{Amax}$ ,  $L_{Amin}$  and  $L_{A90}$  measurement parameters would be ideally required. The measurement location is not recorded; there is therefore potential for noise levels to be higher at some parts of the area than were actually measured.
- 10.20 The measurements do however provide some information. In particular there is a general trend for the sound levels to be higher as numbers increase which would be expected. Also the measurements show that there is a wide variation in levels on different occasions when there the same number of people present, again not unexpected; some people are noisier than others. Whilst the accuracy of the levels cannot be guaranteed there are many occasions when the measured levels exceed 60dB and a few over 70dB which, if these are accurate, are a measurement of noise levels would be likely to be intrusive at neighbouring properties.
- 10.21 There is no proposal to remove the climbing frames which allow children to be elevated higher above ground level. This results in there still being a direct line for any noise from children in these areas to pass straight over the top of the fencing (or any proposed acoustic barriers) directly into neighbouring gardens.
- 10.22 In light of the above, Environmental Services have concluded that from the assessment the applicant's information and noise mitigation proposals, that they do not provide a convincing argument that the potential noise from the development will be, or can be, effectively controlled and that it will not cause a loss of amenity to neighbouring properties. Therefore they consider that the application should be refused.

- 10.23 In conclusion, on balance, whilst noting that the Sun does provide a community benefit when this is weighed against the harm that accrues to neighbouring residents the proposal is considered to be inappropriate development resulting in unacceptable harm to the residential amenity. As such the application fails to improve the existing environment in respect of residential amenity, thereby falling short of the guidance offered in Policy LP52 of the Local Plan and guidance contained within Chapters 12 and 15 of the National Planning Policy Framework (NPPF).

#### Highway issues

- 10.24 A previously approved planning application (2017/91862) granted permission for the conversion of the site to a car parking area offering a total of 12 spaces inclusive of one disabled parking bay. This was part of a wider application to extend the building.
- 10.25 Within the 2017 officers report it was noted that the increase in available floor space, approximately 121 sq m, would be to a certain extent be offset by the net gain of 7 parking spaces. However, this current permission conflicts with the 2017 permission in that the play area is located on land previously approved for the car park. This permission remains extant until March 2021. As part of this application the applicant has offered to sign a Unilateral Undertaking to revoke the 2017 permission removing a potential conflict with the proposed use and would address concerns raised by Highways.
- 10.26 In light of the above the application is considered to accord with Policy LP21 of the Local Plan and guidance contained within the National Planning Policy Framework (NPPF).

#### Other Matters

##### Biodiversity and Ecology

- 10.27 Although the application site is located within a bat alert area, it is not identified on the maps as having a bat roost. Equally neither the pub or equipped play area is identified as having any significant bat roost potential and indeed all works have been completed. The proposal is therefore considered to have a neutral impact on biodiversity and local ecology.

##### Enforcement

- 10.28 As detailed above there is an ongoing enforcement complaint (COMP/18/0183) in relation to the unauthorised works which have taken place at the site and which are subject to this application. Given that the proposal is not considered acceptable it is considered appropriate and necessary to take enforcement action to cease the use of the land ancillary to the drinking establishment and remove associated garden furniture, tables, golf and play equipment. This is therefore included in the recommendation to Members.

##### Representations

- 10.29 In total 23 representations were received to the initial period of publicity 6 in objection and 17 in support. A comment from ward member Cllr Munro has also been received.

10.30 In summary the objections raise the following concerns, with a response to the points raised.

- The development creates noise which at times of good weather is increased when local residents wish to enjoy their own gardens. The disturbance caused has an adverse impact on the amenity of adjacent residential properties. Additional noise has also been created by the playing of music.
- The site is large and can generate large numbers of visitors to the area. It is used by children who can create additional noise which can be difficult to adequately control in an area which is residential and where residential properties back on to the application site.

**Response:** This is noted and has been assessed in the residential amenity section above.

- The works were carried out without planning permission and no acoustic barriers have been provided to limit the impact on adjacent properties. The existing fencing has been used which further adds to the concerns in terms of noise pollution.

**Response:** This is noted and no further mitigation measures have been proposed through boundary treatments.

- The application seeks a later use of the site until 9.30pm from the trial period of 8pm, an increase in use would further adversely impact on residential amenity.

**Response:** This is noted and has been assessed above.

- Limited weight should be attached to letters of support as they do not live adjacent to the site nor have to experience the disturbance caused by the development. A consideration of the number of comments in support should also not be afforded additional weight as only so many people live next to the site.

**Response:** The number or location of comments does not discount from the fact that all material planning considerations need to be considered as part of the planning application. The weight attributed to the comments made in representation submitted as part of this application is for the decision maker.

- The pub is a commercial venture and not a community one, and it is not fair to state that the whole community support it, as not all of the community use the facility or have to live next to it.

**Response:** As set out above the Sun is considered to provide a community asset and whilst it may not support all of the community it is considered that weight can be attached to the wider community benefits which the pub provides.

- The control pressures approved in the trial period have not provided sufficient mitigation to prevent harm to residential amenity and it is considered no adequate control measures could be provided which sufficiently protect local amenity.

**Response:** Noted and these have been assessed in detail in the residential amenity section of the report.

- It is noted that the pub has been in place for a long period of time, it has been stated for 300 years, however the site of the pub garden was never part of the original pub and provided a buffer to most houses for a long time. There is no objection to the pub and its operation. It is the use of the land for a pub garden which has caused the harmful impact to the residential amenity.

**Response:** Noted, it is acknowledged that the application site did not form part of the public house until the development proposed by this application was formed.

- Environmental Health have assessed the merits of the scheme and advised in their professional opinion that the proposal should not be supported. What evidence is there that such an opinion should be discounted?

**Response:** The comments of Environmental Health have been considered above.

- The pub garden has been formed on an area which has approval as a car park, parking in the local area is in short supply and the pub garden has increased the need for parking which can no longer be provided. The proposal would therefore be detrimental to highway safety.

**Response:** The highway impact of the proposal has been assessed above. The provision of the car park would have been in conjunction with an extension to the pub, which whilst extant has not been implemented.

- The proposal prevents access to the maintenance of fencing which surrounds the pub garden. Furthermore the fencing which surrounds the site has not been installed by the applicant and should not be used to attach signs or additional paraphernalia too.

**Response:** The use/maintenance of the fence is a private legal matter between those interested parties

- It is not correct to state that there is no other park or recreational facility in Lepton as there is an equipped play area the north west of the site which also provide a skate park.

**Response:** It is noted that Lepton Recreation Ground is located to the north west of the site which provides recreational facilities for local residents.

10.31 In summary the support comments raise the following points, with a response to the points raised:

- There has been a great improvement in community spirit in and around the pub with the addition of the beer garden.
- Children often visit and enjoy the facilities and it is a safe and clean place to visit.

**Response:** Noted

- Staff from the pub enter the pub garden regularly to monitor noise levels and excessive noise has not been witnessed.

**Response:** Noted, but as set out above complaints have still been received.

- The site of the pub garden was previously waste land and was an eyesore and the development has improved the character of the area.

**Response:** No weight is afforded to the appearance of the land before the works were carried out. From a review of aerial photographs and available historic imagery the site has not appeared to be overly unkempt over an extended period.

- The pub garden is well sheltered from adjacent properties by existing boundary treatments.

**Response:** Noted, however the boundary treatments are not considered to provide robust noise mitigation measures to all properties.

- Any music played is generally children's music played at a low level.

**Response:** Noted, however the playing of music could cause a disturbance to local residents.

- The 8pm finishing time is strictly enforced and any extension to this time would be rigorously adhered too. Signage around the area also advises customers to be considerate.

**Response:** Noted

- The pub supports a variety of community activities and includes a library and computer station in the pub. It is therefore considered that the pub represents a community facility which should be supported.

**Response:** Noted, it is acknowledged that the pub provided a wider community benefit.

10.32 Cllr Munro has stated the following which Officers have considered and provided the response below:

- I have now read the report from environmental services and wondered if a condition be made that the applicant files a report from an acoustician as recommended by environmental services and the matter be deferred to be dealt with at a later date.

**Response:** It is not considered that a report from acoustician would adequately address the issues raised above in the main body of the report. The temporary permission included controls in terms of hours of use and a management plan but these have not sufficiently prevented complaints from occurring and the proposal is still considered to cause a detrimental impact to residential amenity.

10.33 20 further representations have been received to the application; 17 in support and 3 in objection. The further representations are summarised below along with a response to the points raised:

10.34 In objection:

- How can an application for a pub garden be considered when there are residents on 4 sides. The people for this application do not live next door to the garden.
- The proposal has led to local residents having to deal with additional noise, extra parking issues in the local area.

**Response:** This is noted and has been considered in the main body of the report.

- How can the noise monitoring and the submitted noise logs of the garden be given much weight in the decision as these are not independent readings and it would not be in the applicant's interest to report instances of excessive noise.

**Response:** The contents of the noise logs have been considered above and whilst they provide some information it is considered that they do not demonstrate that the impact would be acceptable.



- How were the applicants even allowed to construct the garden without planning permission?

**Response:** Work was carried out without planning permission an enforcement complaint was received. This subsequently led to an application for retrospective planning permission for the development undertaken.

- How is an additional fence in front of a fence going to stop any noise from the garden when the existing fence does not? At 2 metres high it would also not stop overlooking from the raised play equipment.

**Response:** Comments noted and as detailed above it is not considered that the additional fence would provide adequate mitigation.

- How will access be maintained to the existing fence for maintenance if a new fence is going to be erected?

**Response:** This would be a private legal matter between the interested parties.

- There are concerns that the hourly monitoring is not accurate as the pub can often be busy and how can noise levels be accurately recorded when running a busy pub?

**Response:** these comments are noted and consideration of the submitted noise information has been assessed above.

- Children are often left unsupervised in the play area which can lead to noise levels increasing significantly.

**Response:** This is noted.

#### 10.35 In support

- The land before the application was an eyesore, the improvement needs to be seen and the applicant can only be praised for the improvements. The pub is a local hub for the village and it would be a disgrace to see it lost.

**Response:** The comments are noted, however it is not considered that they outweigh the harm to the amenity of local residents

- Noise is a fact of life and there are a number of other noise sources that people experience such as local schools, buses, cars and other local pubs which generate noise. As a pub there is always going to be noise in and around the pub.

**Response:** the application seeks specific permission for an equipped play area close to unconnected residential property. The application has not demonstrated that this can be undertaken without undue detriment to occupiers of residential property.

- If the application is refused there will still be tables and chairs and people will still want to sit outside, will this be banned?

**Response:** If the application were to be refused it would subject to appropriate enforcement action, where expedient, to rectify the breach of planning control.

- The garden is there for all to use and the play equipment is fabulous for children to use as is the mini golf course.

**Response:** Noted

- The pub is a community hub that allows people to access books and the internet, the applicants should be supported in works and activities which they undertake.

**Response:** Noted.

- Locals are respectful of surrounding residents and noise levels are kept to an acceptable level.

**Response:** Noted, however it is also noted that other representations object to noise levels from the garden.

- The pub is always kept locked when not in use and is always kept clean and tidy. The fence around the site protects residential amenity.

**Response:** Noted.

- The public park in Lepton can be subject to anti-social behaviour and the proposal has provided a clean and safe place to play, especially for younger children.

**Response:** Noted

10.36 The applicant has also submitted an online petition in support of their application with 237 signatures seeking support for the retention of the garden.

**Response:** Whilst a petition has been provided only limited weight can be given to the number of signatures as there is no information regarding where those in support live or what information has been provided to those who have signed. Furthermore the number of signatures does not outweigh the concerns raised above.

## 11.0 CONCLUSION

- 11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as whole constitute the Government's view of what sustainable development means in practice.
- 11.2 While the proposed change of use to a pub garden and play area provides guests the opportunity to enjoy what is considered to be a well finished area and would support the viability of this community facility, the intensification of use would be harmful to residential amenity. Given the proximity of surrounding residential dwellings, on balance, officers are unable to support the proposed use.
- 11.3 Members are requested to accept the officer recommendation and authorise the Compliance Team to take action to cease the use of the land ancillary to the drinking establishment and remove associated garden furniture, tables, golf and play equipment.

## Background Papers:

Website link to be inserted here: <https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f92240>

Certificate of Ownership –Certificate A signed.