
Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 13-Dec-2018

Subject: Planning Application 2018/92785 Change of use of land to pub garden and play area The Sun, 137, Highgate Lane, Lepton, Huddersfield, HD8 0HJ

APPLICANT

Donna Brayshaw

DATE VALID

24-Aug-2018

TARGET DATE

19-Oct-2018

EXTENSION EXPIRY DATE

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

Electoral Wards Affected: Almondbury

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Ward Members consulted

RECOMMENDATION: Refuse

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 subject 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 D2 (Criterion v) and EP4 of the Kirklees Unitary Development Plan, Policy PLP52 of the publication draft Local Plan and guidance contained within Chapter 12 of the National Planning Policy Framework.

2. The proposed development would conflict with extant planning permission 2017/91862 which granted permission for extensions to the host public house and formation of a car park. To permit such a development would significantly reduce the amount of available parking for the potentially enlarged public house leading to indiscriminate on-street parking to the detriment of highway safety. In light of the above the application is not considered to adhere with Policies T10 or Policy T19 of the Unitary Development Plan, Policies PLP21 and 22 of the publication draft Local Plan and guidance contained within the National Planning Policy Framework.

1.0 INTRODUCTION:

1.1 This application is brought to Sub-committee at the request of officers for the following reason:

'The Sun Inn is a community facility which hosts the community library and 2 computers under 'the pub is the hub' initiative. However, it is also noted that the application site and considered equipped play area is located close to a number of residential properties. As such it would be beneficial for members to consider the conflicting material considerations in the assessment of the current application.'

1.2 The Chair of Sub-committee has confirmed that for the above reasons for making the request are valid having regard to the Councillors' Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application relates to the Sun Inn (known as 'The Sun') in Lepton. 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 Inn 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 proposes the change of use of previously derelict land, which as noted in a 2017 planning application hosted various detached sheds and garages, to a seating area and equipped play area associated with The Sun.
- 3.2 Works to the land have already been completed and as such the site now presents with 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.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 89/01687 – Dormer kitchen extension to public house (Granted Conditionally)
89/05573 – Variation of Condition 2 (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)

Enforcement History

- 4.2 COMP/18/0183 – alleged unauthorised change of use and formation of beer garden/play area. The planning application before Members was submitted to regularise this matter.

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

- 5.1 No negotiations were undertaken regarding this 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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 48 of the National Planning Policy Framework (2018). In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2018), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 The site is unallocated on the UDP Proposals Map.

6.3 Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

- D2 – Unallocated Land
- BE1 – Design Principles
- BE2 – Quality of Design
- EP4 – Noise sensitive development

6.4 Kirklees Publication Draft Local Plan (PDLP): Submitted for examination April 2017

The site is without allocation or designation in the publication draft Local Plan

6.5 Kirklees Publication Draft Local Plan Policies:

- PLP1 – Achieving Sustainable Development
- PLP24 – Design
- PLP48 – Community facilities and services
- PLP52 – Protection and improvement of environmental quality

6.6 National Planning Guidance:

- 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 public consultation period expired on 03rd October 2018.

7.2 A total of 9 public representations were received objecting to the scheme while a total of 22 public representations have been received in support of the application.

8.0 CONSULTATION RESPONSES:

8.1 Non-statutory:

KC Environmental Health – Object to the proposal (formal consultation)

Kirkburton Parish Council – Object to the proposed on grounds of residential amenity

9.0 MAIN ISSUES

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

10.0 APPRAISAL

Principle of development

10.1 The site is without notation in the UDP Proposals Map and Policy D2 (development of land without notation) of the UDP states:

‘Planning permission for the development... of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]’. All these considerations are addressed later in this assessment.

10.2 The general principle of making design alterations to a property or land are assessed against Policies BE1 and BE2 of the Unitary Development Plan (UDP) and advice contained within Chapter 12 of the National Planning Policy Framework (NPPF). These require, in general, balanced considerations of visual and residential amenity, highway safety and other relevant material considerations.

10.3 The Sun Inn currently hosts two council computer terminals under ‘the pub is the hub’ initiative and provides a community library. It is therefore considered that the pub provides a wider community benefit to the local area than just the provision of a public house and the wider community benefit from the development needs to be considered.

- 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'*
- 10.5 This is also reflected in Policy PLP48 of the Publication draft 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 Inn as a community facility. This application served to increasing the capacity of the pun in a sustainable way and offering additional parking, making the pub more accessible. This permission, while not implemented remains extant and could still be developed should the application wish to do so.
- 10.7 However, in the instance of this retrospective application it is identified that the considered play area itself does not represent a community facility in its own right. Indeed the applicant has not submitted any information to suggest that the equipped play area is for the development of a community facility. Rather officers believe that the proposed is more concerned with the future viability of the pub business. Equally, it is noted that this application conflicts with the 2017/91862 permission being located on land previously approved for a car park. As such, the proposed arguably serves to reduce the accessibility of The Sun. In respect of the surrounding area it is noted that a number of other businesses including Fenay Bridge Pub & Grill and Harvey's Bar and Kitchen have a similar offering and are located within a mile of The Sun.
- 10.8 In light of the above officers advise that little weight is afforded to the development of a community facility. The application will therefore be assessed as having regard for other material planning considerations including visual amenity, residential amenity, highway safety and any other material planning considerations.

Urban Design issues

- 10.9 The application proposes the change of use of land described as being derelict to a seating and equipped play area associated with The Sun Inn. As development has already been completed a full consideration and assessment can be made.
- 10.10 The change of use of the land would not introduce additional built form associated with The Sun Inn 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.

- 10.11 Furthermore, it is noted that the play area is well delineated from residential properties by a close boarded timber fence and its position to the rear (north) of The Sun Inn, limiting 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. Rather the proposed is anticipated to enhance the visual amenity of this previously un-kept area. In this respect the application is considered to comply with Policies BE1 and BE2 of the Unitary Development Plan and Policy PLP24 of the Publication draft Local Plan and guidance contained within Chapter 12 of the National Planning Policy Framework (NPPF).

Residential Amenity

- 10.12 Consideration also needs to be given to the impact of the proposed development on the residential amenity enjoyed by neighbouring dwellings. The proposed change in use of land from derelict area or indeed a car park, as granted under permission 2017/91862 is a considerable intensification in used with greater potential to create noise nuisance. This is particularly pertinent given that the application site is bounded to all sides by residential properties.
- 10.13 On the basis of the above a consultation request was made to KC Environmental Health who returned the following concerns:
- '... I have serious concerns that there will be a detrimental effect on the amenity of the neighbouring residential due to noise. The use is likely to bring about an increase use of outdoor areas of the pub, particularly in the summer months when the weather is warmest....'*
- 10.14 Officers would agree with the above assessment, especially given that the garden spaces of neighbouring dwellings bound immediately onto the play area. Furthermore, given the equipped nature of the play area and relative size it is anticipated that it may result in use by large groups of people engaging in high intensity activities. This is believed to offer a greater potential of harmful noise generation over and above that which might be generated by a seating area or car park. Environmental Health have advised that they have received complaints in relation to noise nuisance from the Sun Inn.
- 10.15 During the assessment of the application consideration has been given to restricting times of use. However, given the direct relationship to neighbouring residential dwellings and the nature of a Pub whereby later opening hours are preferred it is not believed that a reasonable compromise could be reached between all parties. Furthermore, it is acknowledged that there is not clear surveillance of the car park from the pub and so enforcing hours of use is considered to be particularly difficult and onerous.
- 10.16 In this regard it is offered that the play area would be illuminated with up and down lights located to the top of each fence panel and spaced at regular intervals. However, such illumination is itself considered to present unacceptable harm to residential amenity. While it is noted that the previously approved car park would have been illuminated it is advised that a condition was attached to this permission requiring that any illumination was low level and attached only to the north east boundary so as to preserve residential amenity to an acceptable degree.

10.17 On balance, weighing the community benefit against the harm to neighbouring residents the above the application is considered to be inappropriate development presenting significant 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 Policies D2 and EP4 of the Unitary Development Plan, Policy PLP52 of the publication draft Local Plan and guidance contained within Chapter 12 of the National Planning Policy Framework (NPPF).

Highway issues

10.18 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.

10.19 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. The applicant has not offered to enter into a s106, whereby they would forego the previous 2017 permission nor has this been explored.

10.20 Consequently, should planning permission be granted for the play area the applicant could effectively 'cherry pick' the parts of the permission which are to their benefit. Potentially increasing the size of the business premises and providing a pub garden while omitting parking provisions. Such arrangements could result in indiscriminate on-street, informal parking in this area of the highway network. This is particularly concerning given the location of The Sun, adjacent to a mini-roundabout and on a busy road through the village. The above concerns are echoed by KC highway service officers who object to the development on this basis.

10.21 In light of the above the application is considered to be contrary to policies T10 and T19 of the Unitary Development Plan, Policy PLP21 of the publication draft Local Plan and guidance contained within the National Planning Policy Framework (NPPF).

Representations

10.22 A total of 9 public representations were received objecting to the proposed development and 22 in support of the application. The representations received are individually considered below:

Representations Objecting:

- It has been advised that officers have considered conditioning hours of use should planning permission be granted. In such an instance occupiers of neighbouring dwellings would want to know how such restrictions on hours of use would be enforced

Comment: Consideration was initially given to limiting hours of operation via planning condition however, given the nature of the proposed business is not believed that a realistic compromise could be achieved. As such the application is being put forward with a recommendation for refusal.

- The area surrounding the application site is residential. Users of the garden would not need to shout to be disruptive. Socialising is noisy and when combined with play facilities and alcohol would create a lot of disturbance

Comments: Objection noted. The application will be recommended for refusal at committee.

- What about parking? The Sun Inn believed they need additional parking on the 2017 application and nothing has changed since then.

Comment: The loss of parking is noted as part of this application.

- Noise produced by the play / beer garden has greatly affected my family. We are not able to enjoy our garden on war days / weekends and the children have been kept awake at bedtime.

Comment: Objection noted.

- The loss of a car parking area and limited parking is already an issue for local residents. The lower part of Highgate Avenue is already used by people visiting the pub, local shop and post office. Car are often parked close to the junction with Highgate Lane creating highway safety issues.

Comment: Objection noted. The application is being put forward with a recommendation for refusal.

- Should a time restrictions be placed on hours of operation who would be responsible for policing the use of the pub garden.

Comment: Objection noted. The application is being put forward with a recommendation for refusal.

- A restriction on operational use of the pub garden until 09:00pm is unacceptable as young children are in bed long before this hour. It is also advised that the pub does not benefit from dedicated parking and results in cars being parked (on the pavement) along Rowley Lane.

Comment: Objection noted. A condition to restrict hours of use was not put forward as part of negotiations. Rather following the objection from Environmental Health a decision was made to make a recommendation for refusal.

- An objection to the proposal on the basis of noise pollution and paraphernalia associated with the beer garden coming over garden fences (golf balls and bottle corks). Should planning permission be granted this may set a precedent for future, more disruptive functions e.g. wedding venue and live music.

Comment: Objection noted. The application is being put forward with a recommendation for refusal.

- How has this been allowed to happen in a residential area? Why did it take till now for local residents to be informed by the council? How long will the restricted hours be in place?

Comment: Development may be undertaken without prior planning permission, although this is at the risk of the owners, who in the case of the Sun Inn may be required to apply for planning permission retrospectively. The application was publically advertised as soon as the application was received. This was in the form of both a site notice and neighbour letter. No restrictions on hours of operation have been proposed. The application is recommended for refusal.

- Concern with local councillor connections with the pub. Councillor meetings have been held in the pub and the offer of the Sun Inn keeping the flower beds in Lepton Square there may be bias in favour of the application.

Comment: Objection noted. The application is being put forward with a recommendation for refusal.

Representations in support

- The new play area is a great addition to the local pub which also includes the community library. Not a local, both myself and family members travel to use the facilities available. This is a great improvement for the local community and would not result in additional traffic as next to busy co-op and fish and chip shop.

Comment: Comments noted.

- We should be praising the hard work and commitment of Donna and Carl who have invested in creating something fantastic like a play area for our community.

Comment: Noted

- I can see absolutely no reason why anyone should object to this. Perhaps more people should have the same sense of community as the applicant.

Comment: Noted.

- I have noticed no difference in noise to before. In fact it is nice to look out and see families enjoying themselves. It looks a lot better than the waste ground before.

Comment: Comments Noted.

- The beer garden and play area is a welcome addition to this very nice little public house and allows families to enjoy the outside facilities of the pub away from the busy road. Would it not be possible to mitigate the issue (noise pollution) by way of acoustic measures (acoustic fencing) and planting of conifer type trees? This is a great improvement to the visual amenity of the site.

Comment: Environmental health were consulted regarding this application and due to the proximity of neighbouring residential properties mitigating measures were not considered sufficient.

- Superb use of the land making the pub have a family feel about it. Children can play safely as there are tables outside and it has a large path as well as being set back from the road. It has been quiet whenever I have visited so cannot see any noise as being disruptive to anyone.

Comment: Comments noted.

- This is a wonderful place to go and have a family day out in the playing garden well friendly safe and quiet.

Comment: Noted

- Donna and Carl have made it the best place to go in Lepton from the warm greeting you get the library and now the fantastic park facilities for our children.... We should be very grateful for everything they do.

Comment: Noted

- This is an absolutely fabulous use of previously unused land. A real community facility, well managed and providing a safe place for local children to play.

Comment: Noted

- Friendly atmosphere, well thought out safety for kids! Lepton has not had something so great since the Sun Inn made it happen. The Sun Inn has always been great with supporting the Lepton community by adding new features and giving the community (what it) really wanted, including a community library.

Comment: Noted.

- This is a great and much needed addition to Lepton Village. Very safe and secure for the kids and a good way to bring the community together.

Comment: Noted.

- The pub (has) to make this area into a useful and nice looking area for families to use. As before the area was an over grown mess and wasn't used for anything.

Comment: Noted.

- The pub garden is amazing and is good for families, We always have an amazing time here and it is amazing to have in Lepton as there is nowhere else lie this.

Comment: Noted.

- Donna has made a good facility here for those with children wishing to call in the pub for drinks or coffee and cake. It's tidy and safe for families,

Comment: Noted.

- Lepton village is home to two different schools, the Sun Inn, with the new outdoor children's area could be very useful for children to meet each other and make friends before going to junior/high school.

Comment: Noted.

- The outside play area at the Sun is a bright and colourful addition that only adds to the community. Lepton village is home to so many families with children who can enjoy the area time and time again.

Comment: Noted.

- This change of land benefits families, couples and may individuals in the surrounding area. It provides a place for young children to play as well as adding aesthetic advantages to the land that was previously unused,

Comment: Noted.

- A beer garden and play area is what Lepton needs. I hope you will see that the community will benefit from this lovely family area.

Comment: Noted.

- This is a very good idea that's good for the local community and for the local children.

Comment: Noted.

- The new pub garden has been beautifully done and is a real asset to a village that has few amenities. The Brayshaws have a real heart for the community and I fully support this venture.

Comment: Noted.

Kirkburton Parish Council – The Parish Council has concerns that this application was made retrospectively and is already causing problems for local residents. The Parish Council objects to the development on the grounds that it is detrimental to the residential amenity, as it causes noise nuisance and there has been evidence of items (some of a substantial nature) being thrown from the beer garden into resident's gardens. This is an obvious safety hazard. Should officers be minded to approve the application, the Parish Council requests that suitable time restrictions are imposed on the permission.

Other Matters

10.23 Biodiversity and Ecology

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. Notwithstanding this, a note recommending that the advice of licensed bat work should be sought if any bats are found during the development. If this application is approved this note would be relayed on the applicant via the decision notice, for the proposal to comply with the guidance contained within the NPPF.

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 is believed to represent an intensification over and above the current use. This is considered to be particularly harmful given the proximity of surrounding residential dwellings.

Background Papers:

Website link to be inserted here: <http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f92785>

Certificate of Ownership –Certificate A signed.