

## PLANNING REGULATORY BOARD

**Date:- Thursday, 27 October 2016**      **Venue:- Town Hall, Moorgate Street, Rotherham. S60 2TH**  
**Time:- 9.00 a.m.**

### AGENDA

1. To consider whether the press and public should be excluded from the meeting during consideration of any part of the agenda.
2. To determine any items which the Chairman is of the opinion should be considered as a matter of urgency.
3. Apologies for absence (substitution)
4. Declarations of Interest (Page 1)  
*(A form is attached and spares will be available at the meeting)*
5. Minutes of the previous meeting held on 6th October 2016 (Pages 2 - 4)
6. Deferments/Site Visits (information attached) (Pages 5 - 6)
7. Report of the Director of Planning Regeneration and Culture (herewith) (Pages 7 - 19)
8. Development Proposals (Pages 20 - 42)
9. Updates
10. Date of next meeting - Thursday 17 November 2016

**Following completion of the agenda there will be a presentation on the recent Completed Developments Tour**

### **Membership of the Planning Board 2016/17**

Chairman – Councillor Atkin  
Vice-Chairman – Councillor Tweed  
Councillors Andrews, Bird, D. Cutts, M. S. Elliott, Ireland, Khan,  
Price, Roddison, Sansome, R.A.J. Turner, Walsh and Whysall.



**SHARON KEMP,**  
**Chief Executive.**

## ROTHERHAM METROPOLITAN BOROUGH COUNCIL

### PLANNING BOARD

#### MEMBERS' DECLARATION OF INTEREST

Your Name (Please PRINT):-

Meeting at which declaration made:-

Item/Application in which you have an interest:-

Date of Meeting:-

Time Meeting Started:-

*Please tick ( ✓ ) which type of interest you have in the appropriate box below:-*

**1. Disclosable Pecuniary**

☐

**2. Personal**

☐

Please give your reason(s) for you Declaring an Interest:-

*(Please continue overleaf if necessary)*

N.B. It is up to a Member to determine whether to make a Declaration. However, if you should require any assistance, please consult the Legal Adviser or Democratic Services Officer prior to the meeting.

Signed:- .....

*(When you have completed this form, please hand it to the Democratic Services Officer.)*

**PLANNING BOARD**  
**Thursday, 6th October, 2016**

Present:- Councillor Atkin (in the Chair); Councillors Andrews, D. Cutts, Sansome, R.A.J. Turner, Tweed, Walsh and Whysall; together with Councillors Fenwick-Green, Jarvis and Short (as substitutes for Councillors Khan, Ireland and M.S. Elliott respectively); Councillor Sheppard also attended as an observer.

Apologies for absence were received from Councillors Bird, M. S. Elliott, Ireland and Khan.

**30.       DECLARATIONS OF INTEREST**

There were no Declarations of Interest made at this meeting.

**31.       MINUTES OF THE PREVIOUS MEETING HELD ON 15TH SEPTEMBER, 2016**

Resolved:- That the minutes of the previous meeting of the Planning Regulatory Board held on Thursday, 15th September, 2016, be approved as a correct record for signature by the Chairman.

**32.       DEFERMENTS/SITE VISITS**

There were no site visits nor deferments recommended.

**33.       DEVELOPMENT PROPOSALS**

Resolved:- (1) That, on the development proposals now considered, the requisite notices be issued and be made available on the Council's website and that the time limits specified in Sections 91 and 92 of the Town and Country Planning Act 1990 apply.

In accordance with the right to speak procedure, the following people attended the meeting and spoke about the application shown below:-

- Demolition of existing buildings and erection of a Renewable Energy Centre (gasification plant) and a Mechanical Treatment Facility with associated access, parking, buildings (including a weighbridge office and education facility), plant and equipment, external works and services and landscaping at land at former Templeborough Steel Works, Sheffield Road, Templeborough for Rolton Kilbride (Rotherham) Ltd. (RB2016/0891)

Mr. A. Needham (on behalf of the applicant Company)

Mr. A. Ballard (objector, on behalf of the Magna Centre)

Mr. J. Silker (objector, on behalf of the Magna Centre)

Mr. S. Mohammed (objector)

Mr. G. Whitfield (objector, on behalf of the Tinsley Community Forum)

- Three storey side extension with associated alterations to car parking and landscaping at the Brecks Beefeater and Premier Inn, East Bawtry Road, Whiston for Premier Inn Hotels Ltd. (RB2016/0901)

Mr. J. McLeod (agent for the applicant)

Mr. D. Mitchell (objector)

Mrs. F. Broadhead (objector)

(2) That applications RB2016/0676 and RB2016/0901 be granted for the reasons adopted by Members at the meeting and subject to the relevant conditions listed in the submitted report.

(3) That application RB2016/0891 be granted for the reasons adopted by Members at the meeting and subject to the relevant conditions listed in the submitted report and to the following amended and new conditions:-

Condition 02 to include

Street scene 4138-A403 Rev P1(received 09 September 2016)

Reworded condition 06

Before the development is brought into use, a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed before the first operation of the development and thereafter retained.

New condition number 28

The applicant shall submit information of a Community Liaison Group which will include details on the formation of the group, how the group will operate, who the group will consist of including a main contact number, an indication of how complaints will be actioned along with details of a regular report back to the Local Planning Authority. This information must be submitted to and approved by the Local Planning Authority and then implemented prior to the approved use becoming operational.

Reason

In order to minimise disruption and disturbance to the surrounding community in accordance with the NPPF.

(4)(a) That, with regard to application RB2016/0745, the Council shall enter into a Legal Agreement with the developer under Section 106 of the Town and Country Planning Act 1990 for the purposes of securing:-

- The delivery of 16% affordable housing across the application site, comprising of 6 No. two bed apartments and 3 No. three bed dwellings to be offered for rent, based on 52% open market value;
- The offer to provide the First Occupier with a Travel Card with the effect

that each Dwelling is offered one Travel Card irrespective of the number of occupiers living in the relevant Dwelling; and

(b) That, subject to the signing of the Section 106 Legal Agreement, planning permission be granted for the proposed development subject to the conditions set out in the submitted report.

**34. CONTINUATION OF TREE PRESERVATION ORDER NO. 7 1990, HOOTON CLIFF WOOD, DONCASTER ROAD, HOOTON ROBERTS**

Consideration of this matter was deferred until the meeting of the Planning Board to be held on Thursday, 27th October, 2016 (Minute No. 1506 of the meeting of the Planning and Development Committee held on 18th October 1990, refers).

**35. UPDATES**

It was reported that, in advance of the submission to this Local Planning Authority of any such application for planning permission, a specific training session about determining applications for planning permission for hydraulic fracturing (commonly known as “fracking”) will be arranged for Members of the Planning Board and is scheduled to take place on Tuesday morning, 18th October, 2016.

**ROTHERHAM METROPOLITAN BOROUGH COUNCIL****PLANNING BOARD****DEFERMENTS**

- Planning applications which have been reported on the Planning Board Agenda should not be deferred on request without justification.
- Justification for deferring a decision can arise from a number of matters:-
  - (a) Members may require further information which has not previously been obtained.
  - (b) Members may require further discussions between the applicant and officers over a specific issue.
  - (c) Members may require a visit to the site.
  - (d) Members may delegate to the Director of Service the detailed wording of a reason for refusal or a planning condition.
  - (e) Members may wish to ensure that an applicant or objector is not denied the opportunity to exercise the “Right to Speak”.
- Any requests for deferments from Members must be justified in Planning terms and approved by the Board. The reason for deferring must be clearly set out by the Proposing Member and be recorded in the minutes.
- The Director of Planning Regeneration and Culture or the applicant may also request the deferment of an application, which must be justified in planning terms and approved by the Board.

## **SITE VISITS**

- Requests for the Planning Board to visit a site come from a variety of sources:- the applicant, objectors, the Parish Council, local Ward Councillors, Board Members or sometimes from the Director of Planning Regeneration and Culture.
- Site visits should only be considered necessary if the impact of the proposed development is difficult to assess from the application plans and supporting information provided with the officer's written report; if the application is particularly contentious or the application has an element that cannot be adequately expressed in writing by the applicant or objector. Site visits can cause delay and additional cost to a project or development and should only be used where fully justified.
- The reasons why a site visit is called should be specified by the Board and recorded.
- Normally the visit will be programmed by Democratic Services to precede the next Board meeting (i.e. within three weeks) to minimise any delay.
- The visit will normally comprise of the Members of the Planning Board and appropriate officers. Ward Members are notified of visits within their Ward.
- All applicants and representees are notified of the date and approximate time of the visit. As far as possible Members should keep to the schedule of visits set out by Committee Services on the Board meeting agenda.
- Normally the visit will be accessed by coach. Members and officers are required to observe the site directly when making the visit, although the item will be occasioned by a short presentation by officers as an introduction on the coach before alighting. Ward Members present will be invited on the coach for this introduction.
- On site the Chairman and Vice-Chairman will be made known to the applicant and representees and will lead the visit allowing questions, views and discussions. The applicant and representees are free to make points on the nature and impact of the development proposal as well as factual matters in relation to the site, however, the purpose of the visit is not to promote a full debate of all the issues involved with the application. Members must conduct the visit as a group in a manner which is open, impartial and equitable and should endeavour to ensure that they hear all points made by the applicant and representees.
- At the conclusion of the visit the Chairman should explain the next steps. The applicant and representees should be informed that the decision on the application will normally be made later that day at the Board meeting subject to the normal procedure and that they will be welcome to attend and exercise their "Right to Speak" as appropriate.

To the Chairman and Members of the  
PLANNING REGULATORY BOARD

Date 27 October 2016

Report of the Director of Planning and Regeneration Service

<u>ITEM NO.</u>	<u>SUBJECT</u>
-----------------	----------------

- |   |   |
|---|---|
| 1 | Continuation of Tree Preservation Order No 7 1990 Hooton Cliff Wood<br>– Doncaster Road, Hooton Roberts, Rotherham, S65 4PF |
|---|---|



**DRAFT REPORT TO PLANNING BOARD 27 October 2016**

Author: Anthony Lowe Ext: Date:.....

APPROVED ..... Date: .....  
(Team Leader)

APPROVED ..... Date: .....  
(Management)

<b>RIGHT TO SPEAK (form complete)</b>	<b>Yes</b>
Plan to go	

**ITEM NO: NO. OF APPENDICES:**

**Continuation of Tree Preservation Order No 7 1990 Hooton Cliff Wood  
– Doncaster Road, Hooton Roberts, Rotherham, S65 4PF**

**RECOMMENDATION:**

**That Members confirm the continuation of the existing Tree Preservation Order No. 7 (1990) situated at Hooton Cliff, south of Doncaster Road, Rotherham, S60 4PF under Section 198 of the Town and Country Planning Act 1990.**

**Background**

A Tree Preservation Order (Order) was made in regard to this land in September 1990 (TPO No. 7 1990).

The Order was recommended to be imposed by Members without modification on 18 October 1990. The Order was confirmed and sent to various interested parties on 14 May 1991.

The Order was not challenged at the time, but in correspondence, the landowner, Mr Richard Winstanley has recently stated that he feels the Order is invalid and that the validity and continuation of the Order should be reviewed. The Order has therefore been assessed by the Council's Tree Service Manager who has considered that the Woodland continues to provide valuable and important amenity and associated benefits being clearly visible to the public from the nearby highway as well as the designated public right of way.

It is recommended that Members retain the Order without modification as confirmed in 1991.

**Objections**

The main reasons stated by Mr Richard Winstanley as to why the Order is invalid and should not continue are:

1. That Mr Richard Winstanley was not served with a copy of the Order when it was made in 1990,

2. that the land subject to the Order is not ancient woodland, therefore making the Order invalid, and
3. that when Mr Richard Winstanley acquired the land, he also acquired timber rights and thus an Order cannot overrule this – the key words being '*and together also with the standing timber thereon*' See Appendix 1, extract Conveyance dated 30 November 1981.

These issues are addressed in the paragraphs below.

#### 1. Serving of the Order

The Council's file for Tree Preservation Order No 7 1990 contains a memorandum from the Tree Officer dated 24 September 1990 suggesting a Tree Preservation Order be made on the northern section of the Hooton Cliff Wood (Appendix 2). The minutes of the Planning Board Meeting of 18 October 1990 recommended a Tree Preservation Order be imposed (Appendix 3). The Order, dated 5 December 1990 (Appendix 4) was then served by hand via a Rotherham Council Solicitor (certified at 1815 hours on 29<sup>th</sup> January 1991) on Mr Richard Winstanley together with a covering letter dated 2 January 1991 (Appendices 5, 6). This letter also makes reference to a recent telephone conversation with Mr Richard Winstanley and is specifically addressed to him. It is of note that no further correspondence or challenge was subsequently received by the Council or through Court proceedings and accordingly, a final confirmed Order was then sent to various interested parties via recorded delivery, including Mr Richard Winstanley, dated 14 May 1991 (Appendix 7).

Furthermore, enquires have revealed that the Order was and is registered as a Local Land Charge, which under s.198(1) Law of Property Act 1925 is deemed to be actual notice to all persons connected, during the continuation of the registration.

Accordingly, it is considered that the Order was served in accordance with the relevant regulations of the time and that there has been actual notice given to the owner of the Order by reason of it being a Local Land Charge..

Ownership of the land transferred to Geraldine Winstanley in 1998. At the time of the transfer the Order was registered as a Local Land Charge, and would have been revealed on any searches carried out at the time.

As such the Council does not consider the first aspect of the request to have any significant planning weight.

#### 2. The land subject to the Order is not ancient woodland

The Order only covers the northern section of the Hooton Cliff wood and was made due to the evidence available at the time that the woodland was identified as being important of its type. In addition it was reported as 'occupying a prominent position and forming a very significant landscape feature contributing to wider amenity'. The Order was not made due the land being ancient woodland.

The northern part of the site is in private ownership (As stated above, Mr Winstanley was the owner at the time the Order was imposed however the land has subsequently been transferred to Mr Winstanley's wife. Mr Winstanley has the authority and consent to

represent his wife in this matter) The other part of the land is subject to a Forestry Commission dedication covenant (figure 1) – which covers the rest of the site.

The trees subject to the Order continue to provide valuable and important amenity and associated benefits being clearly visible to the public from the nearby highway (Doncaster Road, A630) as well as the designated public right of way, Hooton Roberts footpath No 3, that passes through the woodland and from a distance in the surrounding landscape. The removal of the Order could result in a significant loss of the trees within the area which would have a significant adverse impact on local amenity. The trees include species of mixed hardwoods consisting of Sycamore, Ash, Beech, Elm and Hawthorn. They vary in age, form and condition as would be expected within a woodland.

In relation to the land being Ancient Woodland, although this is not relevant to the imposition or continuation of the Order, the Natural England Ancient Woodland Casework Officer notes that Hooton Cliff was included in the original South Yorkshire Ancient Woodland Inventory (AWI) published in 1986. The original survey was largely a desk based exercise collating map evidence and utilising existing biological records from sources such as the South Yorkshire County Council.

The land is not within a Site of Special Scientific Interest which is where Natural England normally concentrates its efforts. However because they are responsible for the maintenance and revision of the ancient woodland inventory, they have been asked for their opinion on the historical status of these woods. The general definition adopted for 'ancient Woodland' in England is a 'site that has been continuously wooded since the 1600's'.

In summary, map evidence and historical documentation from the 1770's presented to Natural England indicates that a historical limestone quarry and kilns existed on the Hooton Cliff site at the location N & E of Doncaster Road entrance from at least the 1770's until 1841. In addition recently published maps include the addition of buildings constructed in the woodlands during the 1950's. Due to this industrial activity this section of the Hooton Cliff site is unlikely to have been under continuous woodland cover since the 1600's.

However, the evidence suggests that the majority of Hooton Cliff is ancient woodland with the exception of the region to the N & E of Doncaster Road entrance where the historical limestone quarry, kilns and military buildings were located. Natural England will amend the ancient woodland inventory map data to reflect this new evidence and omit the region of Hooton Cliff northeast of Doncaster Road entrance (boundary shaded in green to boundary shaded in red within figure 1).

Overall therefore, whilst not all of the woodland lies within the ancient woodland designation, the northern section of the site is the most publically visible area of the wider site and its inclusion within the Order continues to safeguard its future and avoid further loss of woodland cover in the borough. The fact that the north-eastern part of the woodland is no longer classed as ancient woodland does not affect the conclusion that the woodland meets all the criteria for its inclusion in a Tree Preservation Order as a woodland due to the valuable and important amenity it provides to the area.

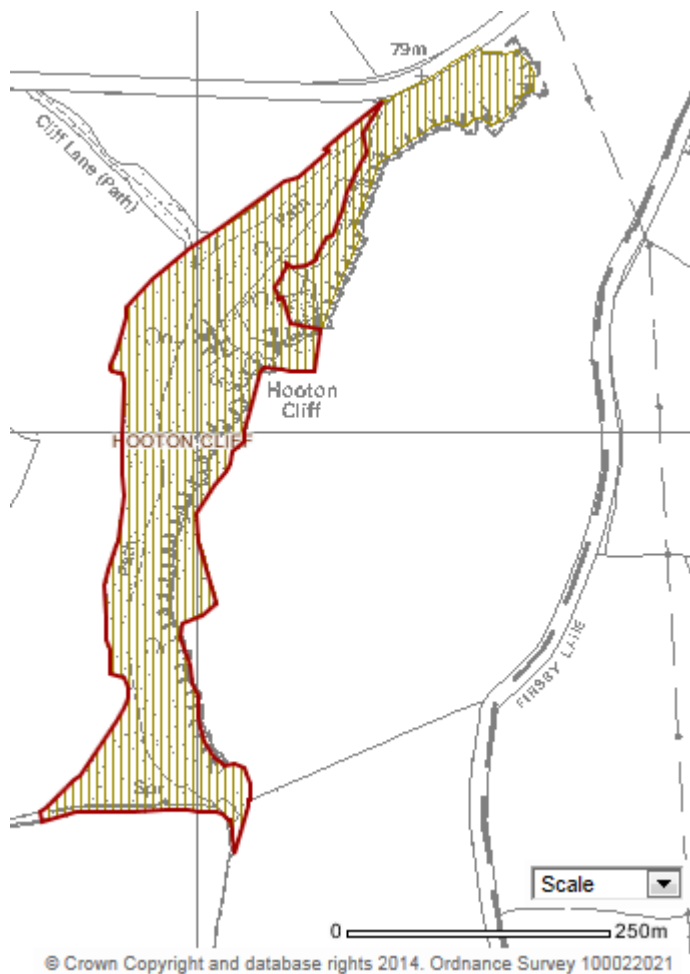


Figure 1 Forestry Commission's Dedication Covenant enclosed within the red line

### 3. The Order and any previously acquired timber rights

The southern section of the overall land remains protected under separate legislation. The Forestry Commission confirmed in 1991 that the remaining area of the woodland is within the ownership of Wentworth Woodhouse Estate and is subject to a Forestry Dedication Covenant which exempts it from the Tree Preservation Order Regulations.

A Felling licence can be obtained from the Forestry Commission. This would normally include conditions that the felled area must be restocked and the trees maintained for a period not exceeding ten years.

Felling licences are required when more than five cubic metres of timber are felled in any calendar quarter, or more than two cubic metres are sold. Felling licences are administered by the Forestry Commission and overrule Tree Preservation Order and Conservation Area restrictions. However, the Local Planning Authority is consulted before any licence is granted.

Whilst no documentation has been submitted by Mr Richard Winstanley showing any part of the site being subject to a valid felling licence, written confirmation has been received from the Forestry Commission (dated 11 July 2016) to confirm that there is no felling licence in place on any of the Hooton Cliff Wood. Any felling order that might have been historically associated with the land is therefore no longer considered valid.

Therefore, the fact that Mr. Winstanley previously acquired the timber rights to this piece of land, does not mean that the Order is invalid, was improperly imposed or should be revoked. Mr Winstanley could apply to the Forestry Commission for a Felling Licence, which would be operative despite the Order being in force. According to the Forestry Commission no such application has been made.

### **Conclusions**

Collectively, the trees are a significant landscape feature and provide valuable and important amenity and associated benefits being clearly visible to the public from the nearby highway (Doncaster Road, A630) as well as the designated public right of way (Hooton Roberts footpath No 3). The woodland continues to provide valuable and important amenity with associated benefits and remains worthy of protection, particularly if its future prospects appear to be at risk.

As stated above, whether the land was Ancient Woodland or not, was not relevant to the imposition of the Order.

It is considered that the Order was served correctly in 1991 in accordance with the relevant regulations at the time. The request to review the Order has been carefully considered and it is recommended the Order should be retained as originally approved in 1991 as there are no good grounds for revocation.

Mr Winstanley can still make an application to the Local Planning Authority to carry out any work to the trees in the future including any pruning, felling or excavations that may disturb any tree roots or seedlings. In addition a new felling license will also be required from the Forestry Commission if it is intended to fell more than 5m<sup>3</sup> in any calendar quarter.

## Appendix 1 extract Conveyance dated 30 November 1981

INLAND REVENUE  
Stamp  
- 6 JAN 1982  
FINANCE ACT 1931  
H

*This*

CONVEYANCE is made the 30th day of November One thousand Nine Hundred and Eighty One BETWEEN THE SECRETARY OF STATE FOR THE ENVIRONMENT (hereinafter called "the Vendor") of the one part and RICHARD DAVID WINSTANLEY of Quarry Bungalow 58 Sandygate Lane Wath Upon Dearne Rotherham in the County of South Yorkshire (hereinafter called "the Purchaser") of the other part

W H E R E A S

The Vendor is the estate owner in respect of the fee simple absolute in possession of the property hereby conveyed subject as hereinafter mentioned but otherwise free from incumbrances and has in exercise of his statutory and other powers agreed with the Purchaser for the sale to him of the said property except and subject as hereinafter mentioned for the sum of Eighteen Thousand Five Hundred and Fifty Pounds

NOW in pursuance of the said agreement and in consideration of the sum of Eighteen Thousand Five Hundred and Fifty Pounds paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) T H I S   C O N V E Y A N C E   W I T N E S S E T H as follows :-

1. THE Vendor as trustee in exercise of all powers him hereunto enabling hereby conveys unto the Purchaser ALL THAT irregular shaped plot of land situate partly adjoining the Doncaster Road at Hooton Roberts near Rotherham in the said County of South Yorkshire which said plot of land contains by admeasurements 7.26 acres or thereabouts and is more particularly delineated on the plan annexed hereto and thereon edged red TOGETHER WITH a concrete bunker erected thereon or on some part thereof and TOGETHER ALSO WITH the standing timber thereon TO HOLD unto the Purchaser in fee simple SUBJECT TO the exceptions and reservations stipulations and restrictions contained mentioned or referred to in a Conveyance (hereinafter called "the

## Appendix 2– 1990 Memo from Tree Officer

**ROTHERHAM BOROUGH COUNCIL**

FROM DEPARTMENT OF:-

## AMENITIES AND RECREATION

**MEMORANDUM**

<b>My Reference:</b>	<b>Your Reference:</b>	<b>Telephone:</b>	<b>Extension:</b>	<b>Please ask for:</b>
RG/MLH 13/12/00			2006	R. Gaynor

**TO:-**

**DIRECTOR OF PLANNING**

Proposed Tree Preservation Order  
Hooton Cliff Wood, Hooton Roberts, Rotherham  
(Grid Reference SK490 970)

DEPARTMENT OF PLANNING	
RECEIVED	26 SEP 1990
REFERENCE	DATE:
B.P.O.	24th September, 1990.
ATTENTION	MJO PC seems like good idea
Order	Prepare R&D report
Roberts, Rotherham	

The Inventory Survey of Ancient Woodlands in the Rotherham Borough (Progress Report 2) has identified the above woodland as being important of its type. In addition, it occupies a prominent position and forms a very significant landscape feature contributing to the wider amenity.

To help safeguard its future and to avoid any further loss of woodland cover in the Borough, I suggest that the area shown and marked W1 on the attached plan is included in a Tree Preservation Order. A schedule to assist in this purpose is attached.

The Forestry Commission have confirmed that the remaining area is in the ownership of Wentworth Woodhouse Estate and is subject to a Forestry Dedication covenant exempting it from the Tree Preservation Order Regulations.

I should be pleased to advise further if required.

reported to Committee  
12-10-90  
pce



Appendix 3 – minutes of Planning Board Meeting 18.10.90

PLANNING AND DEVELOPMENT COMMITTEE

737

**1506 HOOTON CLIFF WOOD, HOOTON ROBERTS, ROTHERHAM.**

The Director of Planning reported that the inventory survey of ancient woodlands within the Borough had identified the above woodland as being important of its type. In addition it occupied a prominent position and formed a significant landscape feature. It was accordingly suggested that it would be appropriate to help ensure and safeguard the future of the woodland. As a part of the site was subject to a Forestry Dedication covenant a Tree Preservation Order could apply only to part of the site.

Resolved:- (1) That the Director of Legal and Administrative Services take the necessary steps to make the following Tree Preservation Order under Section 198 of the Town and Country Planning Act 1990, and to affix the Common Seal thereto.

The Borough of Rotherham Tree Preservation Order No. 7 (1990) for the preservation of trees at Hooton Roberts, Rotherham shown on Plan No. 3300/1.

(2) That the Director of Planning report to a future meeting on Forestry Dedication Agreements.

**1507 CHANGE OF USE TO MANUFACTURE AND STORAGE OF INDUSTRIAL PROCESS FILTERS AND ACCESS IMPROVEMENT AT PREMISES AT JUNCTION OF ROTHERHAM ROAD AND ORGREAVE LANE, UNIT 3C, NUNNERY DRIVE, PARKWAY INDUSTRIAL ESTATE, SHEFFIELD FOR SCHUMACHER FILTERS LTD. (R90/959P).**

Resolved:- (1) That planning permission be granted subject to compliance with the following conditions:-

1. The access improvements shown on drawing No. 3078/8(A) shall be constructed prior to the change of use commencing.
2. Concurrently with the carrying out of the development the sight lines indicated on the approved plan shall be rendered effective by removing or reducing the height of anything existing between the sight line and the highway which obstructs visibility at any height greater than one metre above the surfaces of the adjoining carriageway and entrance and the visibility thus provided shall be maintained.
3. No goods or materials of any description shall be stored or displayed wholly or partly outside the building.
4. This permission shall enure solely for the benefit of Schumacher Filters Ltd.

Reasons:-

1. and 2. In the interests of road safety.
3. In the interests of visual amenity.
4. Owing to the special circumstances of the applicant.

(2) That Sheffield City Council be informed that having considered the particular circumstances of the applicants' operations and the former use of the site, it is not now considered appropriate to require the improvement of the Orgreave Lane/Rotherham Road junction and the widening of Orgreave Lane and provision of a second footpath, in advance of the occupation of the proposed offices.



Appendix 4 – signed copy of Order

from the expiration of the period referred to in paragraph (a) above) at the expiration of which if no such notice is given to the Secretary of State such Order may take effect by virtue of this section and without being confirmed by the Secretary of State

(3) The authority shall also serve notices to the same effect on the persons mentioned in subsection (1) above

(6) The authority shall send a copy of any advertisement published under subsection (2) above to the Secretary of State not more than three days after the publication

(7) If within the period referred to in subsection (2)(a) above no person claiming to be affected by such Order has given notice to the Secretary of State as aforesaid and the Secretary of State has not directed that such Order be submitted to him for confirmation such Order shall at the expiration of the period referred to in subsection (2)(b) of this section take effect by virtue of this section and without being confirmed by the Secretary of State as required by sections 97 and 98 of the Act

(8) This section does not apply to such Order revoking or modifying a consent granted or deemed to have been granted by the Secretary of State under Part III or Part VII of the Act

GIVEN under the Common Seal of the  
Rotherham Borough Council

the 5<sup>th</sup> day of December 1990

.....  
.....  
.....

Director of Legal and  
Administrative Services




Appendix 5 – serving certificate

HAWD

**CERTIFICATE OF SERVICE BY POST**  
(M.C. Rules 1981 rr. 67,99(6))

I DAVID. ARMSTRONG, SOLICITOR of Civic Building, Walker Place,  
Rotherham, hereby certify that I served RICHARD. WINSTANLEY with  
the LETTER. DATED. 24 JANUARY. 09 of which this is a true copy, by ~~sending~~ <sup>delivering</sup>  
the said Letter. by hand. by the ~~recorded~~ delivery service to him/her/the  
company in a prepaid letter posted by me at the Post Office situate at Frederiek  
Street, Rotherham at ... 6.15 ... o'clock in the ... a.m. ... noon on the  
day of 29th. JANUARY 1991 and addressed to ...  
at MARSH. FACT. MOVS. DONCASTER. SOUTH. YORKSHIRE being his/her last  
known (usual) place of abode (the registered office of the aforementioned  
company).

Date the ... 31.01 ... day of January ... 1991

Signed ...  ...

Appendix 6 – covering letter Jan 1991

JT/LDR

3594

2nd January, 1991

**RECORDED DELIVERY**

Mr. Richard Winstanley,  
Manor Farm,  
Moss,  
DONCASTER.

Dear Sir,

**Town and Country Planning Act 1990 - Section 200**  
**Borough of Rotherham, Tree Preservation Order No. 7, 1990**

The above order was made on the 5th December, 1990. I enclose a copy for your information. I also enclose a Notice of the Order which contains the grounds for the making of the order. It also outlines the time period for objections to be made against the order.

Following our recent telephone conversation on this matter I have made contact with the Forestry Commission who have confirmed that the land in question ~~is~~ is not the subject of a Forestry Commission dedication covenant and that, therefore, the enclosed order is in fact valid. I enclose a copy of a letter from the Forestry Commission for your information.

Yours faithfully,



for the Director of Legal and Administrative Services.

Appendix 7– final confirmation letter May 1991

JRT/HDW/MO  
10.72.90

3594

14th May, 1991.

RECORDED DELIVERY

Mr. R. Winstanley,  
Manor Farm,  
Moss,  
DONCASTER.

Dear Sir,

Town and Country Planning Act, 1990, Section 200  
Borough of Rotherham Tree Preservation Order No. 7 1990

Further to my letter of the 21st January, 1991, I write to inform you that the Planning and Development Committee of the Rotherham Borough Council approved the above Order without modification on the 9th May, 1991. No objections having been received from yourself or any other person.

Yours faithfully,



for the Director of Legal and Administrative Services.

**REPORT TO THE PLANNING REGULATORY BOARD  
TO BE HELD ON THE 27 OCTOBER 2016**

The following applications are submitted for your consideration. It is recommended that decisions under the Town and Country Planning Act 1990 be recorded as indicated.

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<b>RB2016/0543</b> <b>Erection of a single storey building for retail use (use class A1) at Kirk House Browning Road Herringthorpe for Horizon</b>	<b>Page 21</b>
<b>RB2016/1058</b> <b>Siting of portable building to provide outside bar and installation of external timber seating and tables to front patio at 169 Bawtry Road Wickersley for The Olive Lounge</b>	<b>Page 34</b>



## REPORT TO THE PLANNING REGULATORY BOARD TO BE HELD ON THE 27 OCTOBER 2016

The following applications are submitted for your consideration. It is recommended that decisions under the Town and Country Planning Act 1990 be recorded as indicated.

<b>Application Number</b>	<b>RB2016/0543</b>
<b>Proposal and Location</b>	Erection of a single storey building for retail use (use class A1), former Kirk House, Browning Road, Herringthorpe, S65 2LG.
<b>Recommendation</b>	Grant subject to conditions

This application is being presented to Planning Board as more than 6 objections have been received.



### Site Description & Location

This site refers to part of the land previously occupied by the Council owned sheltered residential accommodation Kirk House and runs along the western side of Browning Road in Herringthorpe. It lies to the south of the local shopping parade and is approximately 0.13 hectares in area and about a third of the developable area left following the demolition of the former building. The surrounding area is predominantly residential in nature.

There is a separate planning application for residential development on the remainder of the land which is still under consideration.

The previous building was demolished in 2013 and all evidence of this has been removed. The site was subsequently seeded and grassed, is broadly level with a number of conifer hedges along the western boundary. Two semi-mature trees lie on the southern boundary though these lie outside of the application site.

### **Background**

There are no previous applications relevant to this proposal.

### **Proposal**

This application is for the erection of a single storey retail unit, positioned in the northern area adjacent to the junction of Browning Road and Chaucer Road. The unit has a floor area of 288sqm with vehicular access taken from Chaucer Road to a car park and a delivery area to the rear of the unit. There are 14 parking spaces, including 1 disabled space and the external appearance has been modified to increase the amount of glazing along the front and side elevations.

An indicative housing layout plan has also been shown, but this on the other piece of land to the south of the site, outside of the application boundary and is not being considered in this application.

As this site is outside of a defined town centre, a sequential assessment of alternative sites has also been submitted in support of the application and this can be summarised as follows:

- A Catchment area has been defined as being within the local area, approximately 1km away from the site. This excludes Rotherham Town Centre.
- Assessment of Alternative Sites:

89 Browning Road – a small convenience store. With a floor area of only 43 sqm this is too small, unknown availability

Unit 1, 156 Wickersley Road – sufficient size and is available but has no dedicated servicing area and is deemed unsuitable

Unit 2, 154 Wickersley Road – available but insufficient size and unsatisfactory servicing arrangements.

Unit 3, 475 Herringthorpe Valley Road – available but insufficient size and unsatisfactory servicing arrangements.

477 Herringthorpe Valley Road – available but insufficient size and unsatisfactory servicing arrangements.

Eastwood Hotel, Doncaster Road, Rotherham – unclear whether it is available, is outside of the catchment area and too small.

- The proposed development falls well below the locally adopted threshold of 500 sqm for which an assessment of retail impact is required
- The site lies in a sustainable location immediately adjacent to the local centre with excellent pedestrian links to other service/retail provision.

Following comments from Rotherham's Planning Policy section, as well as objections received, a further addendum was submitted as follows:

- The unit 156 Wickersley Road comprises a total of 932.04 sqm gross spread over ground and basement level, significantly in excess of what was previously assumed. This unit is, therefore, considerably larger than the upper floorspace threshold of 350 sqm adopted in the sequential assessment (Paragraph 2.9). In addition to the above, the accommodation is spread across two floors and does not meet the operational requirements of the applicant. Furthermore, the unit does not benefit from any dedicated parking. As previously set out, sufficient customer parking adjacent to the unit is a key operational requirement and a fundamental element of the proposed business model. On this basis, the unit is considered unsuitable.

### **Development Plan Allocation and Policy**

The Core Strategy was adopted by the Council on the 10th September 2014 and forms part of Rotherham's Local Plan together with 'saved' policies from the Unitary Development Plan (UDP).

The application site is allocated for residential purposes in the UDP. For the purposes of determining this application the following policies are considered to be of relevance:

Core Strategy policy(s):  
CS28 'Sustainable Design'

Unitary Development Plan 'saved' policy(s):  
HG1 – Existing Housing Areas  
ENV3.7 'Control of Pollution'



## **Other Material Considerations**

National Planning Practice Guidance (NPPG) - On 6 March 2014 the Department for Communities and Local Government (DCLG) launched this planning practice guidance web-based resource. This was accompanied by a Written Ministerial Statement which includes a list of the previous planning practice guidance documents cancelled when this site was launched.

National Planning Policy Framework: The NPPF came into effect on March 27<sup>th</sup> 2012 and replaced all previous Government Planning Policy Guidance (PPGs) and most of the Planning Policy Statements (PPSs) that existed. It states that “Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision.

The NPPF states that “due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

The Core Strategy/Unitary Development Plan/Rotherham Local Plan ‘Publication Sites and Policies - September 2015’ policies referred to above are consistent with the NPPF and have been given due weight in the determination of this application. The emerging policies within the Sites and Policies document (September 2015) have been drafted in accord with both the NPPF and the Core Strategy but await testing during Examination in Public. As such the weight given to these policies is limited in scope depending on the number and nature of objections that have been received.

## **Publicity**

The application has been advertised by way of a site notice (05 May 2016) along with individual neighbour notification letters to adjacent properties (28 April 2016). Seven individual letters of representation have been received and these can be summarised as follows:

- There are other retail sites available in nearby locations within recognised local centres – identified in the submission and consequently the proposal does not meet the criteria for the sequential test.
- The Council has been inconsistent in its approach to defining the scope of the catchment area.
- We do not consider that the sequential test has not been satisfied and the applicant should therefore be refused. There are more sequentially preferable sites available including the Eastwood Hotel.
- The applicant has not demonstrated sufficient flexibility in the consideration of alternative sites and has sought to impose a rigid business model that only reflects the specific requirements that the applicant intends to use.

- Increase in anti-social behaviour which has been a big problem in the past
- Negative impact on existing local shops in the surrounding area
- Housing development preferred.

In addition, a petition of over 200 signatures has been received and this raises similar objections, namely:

- Housing would be preferred on this site.

Further to the objections an additional letter has been received on the 26<sup>th</sup> September from a planning solicitor, acting on behalf of their client. The letter indicates that they consider that the sequential test has failed to be properly applied as there is no justification for the scope of the catchment area. The letter indicates that the sequential test has omitted some sites and discounted others without applying sufficient flexibility. The letter goes on to state that should the Council accept the findings of the sequential test they would consider that their client would have strong grounds in an application for Judicial Review of the decision.

In response to this, the applicant's agent has further clarified the scope and methodology of the sequential test. This states that they are of the opinion that they have done an appropriate sequential assessment, that the Council has correctly identified the extent of the catchment area and that there are no more sequentially preferable sites available.

There are 4 rights to speak registered against this application including the agent for the applicant.

### **Consultations**

Planning Policy – initial concerns were raised with the scope of the sequential test but following additional information submitted by the applicant this is now deemed to be acceptable.

Streetpride (Transportation and Highways Unit) – no objections subject to conditions

Neighbourhoods (Environmental Health Services) – no objections subject to conditions

### **Appraisal**

Where an application is made to a local planning authority for planning permission.....In dealing with such an application the authority shall have regard to -

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and

(c) any other material considerations. - S. 70 (2) TCPA '90.

If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise - S.38 (6) PCPA 2004.

The main considerations of the application are as follows:

- Principle
- Design and impact on the street scene
- Impact on residential amenity
- Highway issues
- Other issues

#### Principle

The site is allocated for residential purposes in the UDP and was previously occupied by a Council owned sheltered residential accommodation, known as Kirk House prior to its demolition. In retail terms the site is considered to be edge of centre and requires full justification to be supported through a sequential test. A future residential development is therefore considered to be the most preferable in planning terms. Nevertheless, the quality of the sequential test and the supporting details as well as the objections is considered below.

Paragraph 24 of the NPPF states that: "Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale."

In this instance the supporting sequential test states that the proposal has a catchment area of 1.5km. This is considered to be a local use and is considered reasonable in relation to the floorspace of the unit proposed.

In terms of the objections received on this aspect, the majority of the sites listed as being available are within Rotherham Town Centre, which is considered to be outside of the defined catchment area and consequently have not been included within the assessment.

It is accepted that the methodology of the Sequential Test is appropriate and that the adopted catchment is also proportionate for a scheme of a limited size that is considered to have a local catchment area of approximately 1.5km. With regard to the sequential test, both smaller and larger floorspace properties have been appropriately discounted and the Eastwood Hotel falls outside of the adopted catchment and, therefore, can be discounted.

Further evidence has also been submitted to demonstrate that 156 Wickersley Road is not sequentially preferable as set out below:

*“Unit 156 Wickersley Road is no longer being marketed by Lambert Smith Hampton...and is listed with Stuart Graham and Co. The marketing details...indicate that the accommodation comprises a total of 932.04 sqm gross spread over ground and basement level.....significantly in excess of what was previously assumed as part of the sequential assessment. This unit is, therefore, considerably larger than the upper floorspace threshold of 350 sqm adopted in the sequential assessment (Paragraph 2.9).In addition to the above, the accommodation is spread across two floors and does not, therefore meet the operational requirements of the applicant.”*

Having particular regard to the latest objection received from the Stoneleigh partnership on the 26<sup>th</sup> September, this letter refers to the sequential test failing to consider a number of alternative sites and raised concerns about how the catchment area had been defined.

However, the revised sequential assessment dated June 2016 (and the additional addendum of September 2016) assessed and appropriately discounted three additional units which Townsend Planning Consultants, in their objection to the application, considered to be sequentially preferable to the application site. The Council is not aware of any other alternative sequentially preferable sites within the catchment area which should also have been assessed.

Also, in terms of an appropriate catchment area for carrying out the sequential test, the NPPF defines a Town Centre as:

*“Area defined on the local authority’s proposal map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in Local Plans, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.”*

Neither the NPPF nor the accompanying Planning Practice Guidance defines a specific catchment area for applying the sequential test; this will vary according to the specific details of each proposal. The Planning Practice Guidance states that the application of the test should be proportionate and appropriate for the given proposal (paragraph: 010 Reference ID: 2b-010-20140306).

The catchment area adopted in this instance takes account of the small scale nature of the proposal which is seeking to meet local needs and therefore is far different from a larger scale / larger format proposal which might be seeking to draw trade from a wider catchment. The 1km distance was considered appropriate taking account of the draft Local Plan Policy SP66 Access to Community Facilities. For the purposes of this policy reasonable

walking distance is defined as 800 metres. In this specific circumstance extending this to 1km ensured that the catchment area included the three nearest local centres in addition to the one closest to the proposal site.

The catchment area defined for this proposed local shop is therefore deemed to be acceptable and the sequential test has identified all of the 'town centres' within it which need to be assessed to determine whether there are any more suitable and available sites or not. The Council is therefore satisfied that the sequential test undertaken has been proportionate to the scale of the development proposed and that alternative sequentially preferable sites have been appropriately considered and discounted.

The additional response received from the applicant's agent indicates that the applicant has demonstrated flexibility in the assessment of the individual sites. However they indicate that the applicant should not be compelled to alter or reduce the proposal to fit alternative sites. The letter concludes that the objections received around the sequential test submission appear to have been submitted on the grounds of competition based on his operation of a convenience store in close proximity to the site.

Overall, taking the above issues into account, it is considered that the sequential test has been appropriately carried out with a suitably defined catchment area, scope and sites listed. Consequently, it is considered that the proposal passes the criteria outlined within the guidance of paragraph 24 of the NPPF and it is therefore considered that the principle of an A1 retail development is acceptable in this location.

#### Design and impact on the street scene

In terms of design, the NPPF notes at paragraph 56 that: "The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people." Paragraph 64 adds that: "Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions."

Following discussions with the applicant revisions to the scheme have been submitted, including additional glazing to the front and side elevation of the building, it is considered that the design and appearance has been improved and now has a better visual impact on the street scene than was originally proposed. The proposal is a high single storey building with its main entrance along the north-western elevation which faces onto Chaucer Road. This is considered to be convenient for both pedestrians and users of the car park. The shop also has a secondary elevation facing Chaucer Road/Browning Road along the north-east. It is considered that the additional glazing along both these principal elevations gives sufficient animation and interest at street level.

An element of landscaping has been proposed along both sides of the proposed building along both side elevations in order to soften the appearance on the street scene.

Overall it is considered that the design of the proposed retail unit is now satisfactory and does sufficiently uplift the surrounding area as indicated in paragraph 56 and 64 of the NPPF along with the guidance within Core Strategy CS28 'Sustainable Design'.

#### Impact on residential amenity

Moving onto the impact on the surrounding residential properties, no. 90 Chaucer Road shares a significant amount of the western boundary of the site and is considered to be the property that would be most affected by the development. In terms of the building itself, the proposed property is a high single storey, though is considered to be located a sufficient distance from the nearest residential properties to minimise any future dominant impact. The main impact is likely to be in the form of noise and disturbance from the shop and of the car park.

RMBCs Environmental Health department have requested a noise assessment to be undertaken for any proposed extraction units and also that deliveries should also be limited to the hours of 08.00 to 18.00 Mondays to Saturdays and 10.00 to 17.00 on Sundays and Bank Holidays in order to reduce the impact of noise.

In addition, the layout has been amended to re-locate the proposed substation away from the boundary with the residential property at Chaucer Road in order to reduce future impact in terms of noise.

As indicated in the paragraphs below, the applicant has also suggested that the erection of a barrier across the car parking entrance would help secure the site during out of hours and would reduce the impact of noise and disturbance during unsociable hours.

#### Highway issues

The site layout intends to utilise the existing western access into the site with a single point of access and a total of 12 car parking spaces (one of which would be for disabled visitors). The proposals also show a dedicated space for service vehicles and a revised turning area for commercial deliveries is also shown. The Transportation Unit have indicated that a sufficient number of spaces have been included and the revised parking layout is acceptable, subject to conditions.

#### Other issues

A number of the objections refer to the possibility of the increase in anti-social behaviour raised by the location of the shop in this location. It is understood that the majority of the anti-social behaviour complaints related to a time when the former Kirk House site was vacant and had windows boarded up.

In the current proposal, it is now proposed that the parking area of the site be secured via a barrier to prevent vehicular access to car park when the unit is closed in order to try and reduce any future anti-social behaviour. It is noted that the currently vacant site is unsecured and has unrestricted pedestrian access across it.

In terms of sales of alcohol which has also been raised by objectors, these are not planning issues that can be controlled via condition. This would be something that would be controlled by the licencing department.

## **Conclusion**

Overall the proposal meets the requirements of the sequential test in terms of catchment area, scope and sites listed as being unsuitable and subsequently discounted. Whilst this site is in an edge of centre location, the principle of the development is considered acceptable in this location.

The design of the proposal, with additional glazing on the front and side elevations is considered to be suitable for this location and the application is therefore considered acceptable and is recommended for approval, subject to conditions.

## **Conditions**

The Development Management Procedure Order 2015 requires that planning authorities provide written reasons in the decision notice for imposing planning conditions that require particular matters to be approved before development can start. Conditions numbered **05** of this permission require matters to be approved before development works begin; however, in this instance the conditions are justified because:

- i. In the interests of the expedient determination of the application it was considered to be appropriate to reserve certain matters of detail for approval by planning condition rather than unnecessarily extending the application determination process to allow these matters of detail to be addressed pre-determination.
- ii. The details required under condition numbers **05** are fundamental to the acceptability of the development and the nature of the further information required to satisfy these conditions is such that it would be inappropriate to allow the development to proceed until the necessary approvals have been secured.'

01

The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason

In order to comply with the requirements of the Town and Country Planning Act 1990.

02

The permission hereby granted shall relate to the area shown outlined in red on the approved site plan and the development shall only take place in accordance with the submitted details and specifications as shown on the approved plans (as set out below)

(Drawing numbers amended layout plan 28.07.16 at 1:200 scale, amended elevations 21.07.16, street scene 21.09.16)(received 21.07.16, 28.07.16 and 21.09.2016).

Reason

To define the permission and for the avoidance of doubt.

03

The use hereby permitted shall only be open to customers between the hours of 07.00 to 22.00 throughout the week.

Deliveries to the site shall be limited to the hours of 08.00 to 18.00 Mondays to Saturdays and 10.00 to 17.00 on Sundays and Bank Holidays.

Reason

In the interests of nearby residential amenity

04

No development shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted or samples of the materials have been left on site, and the details/samples have been approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details/samples.

Reason

To ensure that appropriate materials are used in the construction of the development in the interests of visual amenity and in accordance with Core Strategy Policy CS28 Sustainable Design.

05

The turning area indicated on the submitted 1:200 scale layout shall be made available at all times when the premises are open for vehicular turning purposes.

Reason

In the interests of highway safety.



06

Before the development is brought into use, that part of the site to be used by vehicles shall be constructed with either;

a/ a permeable surface and associated water retention/collection drainage, or;

b/ an impermeable surface with water collected and taken to a separately constructed water retention/discharge system within the site.

The area shall thereafter be maintained in a working condition.

Reason

To ensure that surface water can adequately be drained and to encourage drivers to make use of the parking spaces and to ensure that the use of the land for this purpose will not give rise to the deposit of mud and other extraneous material on the public highway in the interests of the adequate drainage of the site and road safety.

07

Before the development is brought into use the car parking area shown on the submitted plan shall be provided, marked out and thereafter maintained for car parking.

Reason

To ensure the provision of satisfactory garage/parking space and avoid the necessity for the parking of vehicles on the highway in the interests of road safety.

08

Details of secure cycle parking facilities in the vicinity of the entrance to the shop shall be provided before the development is brought into use in accordance with details which shall have been submitted to and approved by the Local Planning Authority.

Reason

In order to provide sustainable transport choices.

09

Prior to the first occupation of the unit, final details of any extraction units, including the exact locations of the units, along with any noise details associated with them shall be submitted to the Local Planning Authority and agreed in writing. The site shall then be operated in accordance with these approved details.

Reason

In order to protect the amenities of the surroundings and in accordance with UDP Policy ENV3.7 'Control of Pollution'

10

The development shall not be brought into use until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the first operation of the development.

Reason

In the interests of the visual amenity of the area and in accordance with Core Strategy Policy CS28 Sustainable Design.

11

Before the development is brought into use, a Landscape scheme, showing location and types of landscape treatment, shall be submitted for approval by the Local Planning Authority. The Landscape scheme should be prepared in accordance with RMBC Landscape Design Guide (April 2014) and shall be implemented in the next available planting season and maintained to ensure healthy establishment. Any plants dying, removed or destroyed within five years of planting shall be replaced the following planting season.

Reason

To ensure that there is a well laid out scheme of healthy trees and shrubs in the interests of amenity and in accordance with UDP Policies ENV3 'Borough Landscape', ENV3.2 'Minimising the Impact of Development' and ENV3.4 'Trees, Woodlands and Hedgerows'.

12

Prior to the first occupation of the unit, final details of the car parking barrier shall be submitted to the Local Planning Authority and agreed in writing. The site shall then be operated in accordance with these approved details.

Reason

In order to protect the amenity of the neighbouring properties.

### **Informatives**

- a) The applicant is reminded to obtain any licences required which are outside of the planning process.

### **POSITIVE AND PROACTIVE STATEMENT**

During the determination of the application, the Local Planning Authority worked with the applicant to consider what amendments were necessary to make the scheme acceptable. The applicant agreed to amend the scheme so that it was in accordance with the principles of the National Planning Policy Framework.

<b>Application Number</b>	<b>RB2016/1058</b>
<b>Proposal and Location</b>	Siting of portable building to provide outside bar and installation of external timber seating and tables to front patio at The Olive Lounge Bawtry Road Wickersley Rotherham S66 2BW
<b>Recommendation</b>	Grant subject to conditions

This application is being presented to Planning Board as more than 5 objections have been received.



### Site Description & Location

This application relates to an existing restaurant and wine bar (formerly known as Vascos) which was granted permission for a change of use from offices in 2006. The property is situated close to the busy classified A631 Bawtry Road in close proximity to Wickersley roundabout.

Occupying the site is a two storey building with a frontage set back from the highway with an outdoor patio area to the front.

The building is located on the Prime Shopping Street and is surrounded by commercial properties, including the telephone exchange building immediately to the east with the Masons Arms public house beyond that. To the west is a parade of shops with The Courtyard development beyond which contains a bar with outside seating, in addition to various shops.

The closest residential properties are located on Willow Court at the rear, approximately 50m from the location of the external bar.

## **Background**

The following applications relate to this site:

RB2006/1314          Change of use from offices (use class A2) to wine bar (use class A4) – granted conditionally.  
Condition 05 of the above permission restricted the opening hours as follows;

05

The use hereby permitted shall only be open to customers or for deliveries between the hours of 11:00 hours to 01:00 hours Mondays to Saturdays and 11:00 hours and 23.30 on Sundays.

RB2007/0553          Display of 3 retractable awnings – Granted conditionally

RB2008/1842          Two storey side extension and installation of retractable canopy – Granted conditionally (not implemented)

RB2013/0529          Erection of smoking shelter – Granted conditionally (not implemented)

RB2015/0981          Single storey side extension – granted conditionally, and since constructed.

## **Proposal**

The application seeks full planning permission for the retention of the already erected portable building which forms an outside bar and the fixed timber seating and tables to the front of the premises.

The bar is a wooden structure located to the side of the building projecting forward of the front elevation, with dimensions of approximately 4.5m in length x 2.5m in width x 2.7m in height. The bar has an access door at the end nearest to the building and an opening hatch facing the seating area, with a canopy over and is clad in cedar boarding.

The front area of the premises has been enclosed by low timber fencing and planters and timber seating and tables have been fixed in position behind the fencing within the enclosed patio area.

No proposed hours of operation have been included in the application, however it has been indicated that a liquor licence has been issued for the external bar allowing alcohol to be served every day until midnight.

## **Development Plan Allocation and Policy**

The Core Strategy was adopted by the Council on the 10th September 2014 and forms part of Rotherham's Local Plan together with 'saved' policies from the Unitary Development Plan (UDP) (noted in Appendix B of the Core Strategy). The Rotherham Local Plan 'Publication Sites and Policies' was published in September 2015.

The application site is allocated for 'Retail Use – Town Centre' in the UDP and is also within the Prime Shopping Street in Wickersley. In addition, the Rotherham Local Plan 'Publication Sites and Policies' document allocates the site for 'Retail Use – District Centre' on the Policies Map. For the purposes of determining this application the following policies are considered to be of relevance:

Core Strategy policy(s):

CS27 'Community health and safety'

CS28 'Sustainable Design'

CS29 'Community and Social Facilities'

Unitary Development Plan 'saved' policy(s):

ENV3.7 'Control of Pollution'

RET1.2 'Prime Shopping Streets'

## **Other Material Considerations**

National Planning Practice Guidance (NPPG) - On 6 March 2014 the Department for Communities and Local Government (DCLG) launched this planning practice guidance web-based resource. This was accompanied by a Written Ministerial Statement which includes a list of the previous planning practice guidance documents cancelled when this site was launched.

National Planning Policy Framework: The NPPF came into effect on March 27th 2012 and replaced all previous Government Planning Policy Guidance (PPGs) and most of the Planning Policy Statements (PPSs) that existed. It states that "Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision.

The NPPF states that "due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

The Core Strategy/Unitary Development Plan policies referred to above are consistent with the NPPF and have been given due weight in the determination of this application.

## **Publicity**

The application has been advertised by way of individual letters to adjacent occupiers and by a site notice displayed close to the site.

One letter of objection has been received from Wickersley Parish Council with a petition containing 11 names and addresses of parish councillors who wish to object individually to the proposals.

The objections raised by the Parish Council can be summarised as follows;

- An external bar is out of keeping with the area.
- It encourages external activity which is not in line with any licence issued.
- Outside serving is an additional facility which was not intended and therefore becomes a separate entity.
- The proposal pushes noise and disputes to the outside of the premises.
- Noise complaints are received for premises in Wickersley and an outside bar increases noise in the area.
- Where will security staff stand?
- The premises do not have considerable grounds therefore an outdoor bar is not justified.
- Will set an unwelcome precedent for other establishments to follow.
- Are the security staff there in anticipation of the need to control outdoor drinking patrons?
- Business development and culture in Wickersley should not be at the expense of making it an undesirable village for residents or turning it into a town centre alternative for a night life ambience.

Two of the named parish councillors have put their names forward to speak at the Board meeting on behalf of the Parish Council.

The applicant has also requested the Right to Speak at the meeting.

## **Consultations**

Streetpride (Transportation and Highways) Unit: Raise no objections in terms of highway safety.

Neighbourhoods (Environmental Health): Note that Wickersley has a thriving night time economy with all the bars in the vicinity being extremely busy. They consider that there is potential from noise nuisance with more patrons being encouraged to drink at the outside bar. In consideration of this they recommend that the use of the external bar closes at midnight at the latest.

## Appraisal

Where an application is made to a local planning authority for planning permission.....In dealing with such an application the authority shall have regard to -

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations. - S. 70 (2) TCPA '90.

If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise - S.38 (6) PCPA 2004.

The main issues to take into consideration in the determination of the application are –

- The principle of the development
- The visual appearance
- General amenity issues

The principle of the development:

The application relates to an existing bar which is located within an area allocated for Retail use in the adopted Unitary Development Plan and is situated adjacent to retail premises and other drinking establishments.

Policy RET1.2 'Prime Shopping Streets' requires proposed developments to contribute to the vitality and viability of the centre and not to undermine its retail character and function.

The NPPF at paragraph 19 states: "The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system."

The NPPF at paragraph 23 states that "Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should: (amongst other things)

- recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;"

Furthermore the NPPF at paragraph 70 states that "To deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural

buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;

- ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community;”

The area to the front of the premises has been used as far back as 2008 as an outside drinking area, initially with removable tables and chairs within an area enclosed by movable barriers. The principle of the installation of a portable bar and fixed seating and tables to serve the existing use as a wine bar is therefore considered to be acceptable in this location.

The visual appearance:

In assessing the design of the proposals in relation to the existing building and the locality Core Strategy Policy CS28 ‘Sustainable Design,’ requires that development proposals should be responsive to their context and be visually attractive as a result of good architecture and appropriate landscaping.

The NPPF notes at paragraph 56 that: “The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.” Paragraph 64 adds that: “Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”

The National Planning Policy Guidance (March 2014), further notes that “Development proposals should reflect the requirement for good design set out in national and local policy. Local Planning Authorities will assess the design quality of planning proposals against their Local Plan policies, national policies and other material considerations. The NPPG further goes on to advise that: “Local Planning Authorities are required to take design into consideration and should refuse permission for development of poor design.”

The outside bar, seating and tables are all constructed in quality timber to a good standard and with the inclusion of planters to the front are considered to enhance the visual amenity of the area.

As such the proposals are considered to be acceptable and to comply with the requirements of the above policies and guidance.

General amenity issues:

With regard to residential amenity issues, ‘saved’ UDP Policy ENV3.7 ‘Control of Pollution,’ states that “The Council in consultation with other appropriate agencies will seek to minimise the adverse effects of nuisance, disturbance and pollution associated with development and transport.”



Core Strategy policy CS27 'Community Health and safety' notes that "Noise and vibration can be a serious cause of nuisance and can affect quality of life. Planning can make sure that potential noise creating uses, including industrial processes or some recreational activities, are not in places where they would be likely to cause nuisance."

The NPPF further notes at paragraph 123 that: "Planning ... decisions should aim (amongst others) to:

- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development."

The NPPG states that "Some commercial developments including fast food restaurants, night clubs and public houses can have particular impacts, not least because activities are often at their peak in the evening and late at night. Local planning authorities will wish to bear in mind not only the noise that is generated within the premises but also the noise that may be made by customers in the vicinity."

Objections have been raised from members of Wickersley Parish Council with regard to the potential increase in noise arising from the use of the outside bar area.

The closest residential properties are located to the rear of the property approximately 50 metres away from the position of the bar and seating area. Whilst it is acknowledged that the proposed use of the outside bar may result in an increase in noise levels due to more people using the outside area, it should be noted that this area is already in use as an outdoor drinking area and is located to the front of the premises adjacent to the busy classified highway.

Additionally there are several other drinking establishments in close proximity to the site including The Masons, The Courtyard and The Three Horseshoes, (all of which have outdoor seating/drinking areas), in addition to several restaurants and take-aways.

The Masons and The Three Horseshoes, having a long established use, have no restrictions on opening hours, from a planning point of view. Current planning permissions restrict the opening hours of The Courtyard to 0900-0030 Monday to Saturday, 1000-0000 on Sundays and The Olive Lounge 1100-0100 Monday to Saturday, 11.00-2330 on Sundays.

The Licencing Authority has confirmed that the premises have a licence to open the outside bar every evening until Midnight.

The NPPG advises that the adverse effect of noise can be mitigated by using planning conditions/obligations to restrict activities allowed on the site at certain times. Whilst a premises licence has been issued under the Licencing Act allowing the bar to be used every night until Midnight this is subject to compliance with any planning restrictions.

In consideration of potential late night noise disturbance to the occupiers of dwellings on nearby streets it is therefore recommended that conditions be imposed on any planning approval granted restricting the use of the outside bar to Monday – Saturday until midnight and Sundays until 2300 ensuring that it would close half an hour earlier than the internal bar. Additionally a condition preventing any music being played outside the premises is also recommended.

Taking all of the above into account, and having regard to the fact that Neighbourhoods (Environmental Health) have no objections to the proposals, other than restricting the time of operation, it is considered that, subject to the recommended conditions, the proposal would not generate a significant increase in the noise levels over and above those which currently exist at the premises.

## **Conclusion**

In conclusion, taking into account the location of the bar and seating area in a busy retail area where there is currently a vibrant night time economy it is considered that the retention of these facilities would not be detrimental to either the visual appearance of the locality or, subject to the recommended conditions, result in any significant increase in the current level of noise and activity in the area.

The application is therefore recommend for approval subject to the following recommended conditions.

## **Conditions**

01

The permission hereby granted shall relate to the area shown outlined in red on the approved site plan and the development shall only take place in accordance with the submitted details and specifications as shown on the approved plans (as set out below)

(Drawing numbers BR07-2)(received 12 August 2016)

Reason

To define the permission and for the avoidance of doubt.

02

The external bar hereby permitted shall only be open to customers or for deliveries between the hours of 1100 – Midnight on Mondays to Saturdays and 1100 – 2300 on Sundays.

Reason

In the interests of the amenities of the occupiers of nearby dwellings and in accordance with UDP Policy ENV3.7 'Control of Pollution'.

03

No external music shall be played outside the premises.

Reason

In the interests of the amenities of the occupiers of nearby dwellings and in accordance with UDP Policy ENV3.7 'Control of Pollution'.

POSITIVE AND PROACTIVE STATEMENT

The applicant and the Local Planning Authority engaged in pre application discussions to consider the development before the submission of the planning application. The application was submitted on the basis of these discussions, or was amended to accord with them. It was considered to be in accordance with the principles of the National Planning Policy Framework.