
Case Number	19/00638/FUL (Formerly PP-07619105)
Application Type	Full Planning Application
Proposal	Use of restaurant (use Class A3) as a drinking establishment (use Class A4) including relocation of entrance canopy, replacement doors and windows, provision of external seating areas and alterations to parking arrangements
Location	Damons Restaurant 2 Sevenairs Road Sheffield S20 1NZ
Date Received	20/02/2019
Team	City Centre and East
Applicant/Agent	Heronswood Design Ltd
Recommendation	Grant Conditionally

Time limit for Commencement of Development

1. The development shall be begun not later than the expiration of three years from the date of this decision.

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

Approved/Refused Plan(s)

2. The development must be carried out in complete accordance with the following approved documents:

1489D/18 /14 - Existing Site Plan and Location Plan
1489D/18/15b - Proposed Site Plan
1489D/18/ 16a - Proposed Floor Plan
1489D/18/17 - Proposed Elevations

Reason: In order to define the permission.

Pre Commencement Condition(s) – ('true conditions precedent' – see notes for definition)

Other Pre-Commencement, Pre-Occupancy and other Stage of Development Condition(s)

3. The surfacing details for the external seating area shall have a smooth finish suitable for wheelchair access.

Reason: In the interests of enabling inclusive access to the external space.

4. Prior to the use commencing a management plan will be submitted describing the actions that will be taken to ensure that the use of the outdoor seating and drinking area ceases at the times required by Planning Condition 15. Thereafter the approved management plan shall be implemented.

Reason: In the interests of the amenities of adjoining residential occupiers.

5. The use shall not commence until details of staff and visitor cycle parking has been submitted to and approved by the Local Planning Authority. The use shall not commence until approved cycle parking has been provided and thereafter such cycle parking accommodation shall be retained.

Reason: In the interests of encouraging sustainable travel to the site in accordance with the National Planning Policy Framework.

Other Compliance Conditions

6. No externally mounted plant or equipment for heating, cooling or ventilation purposes, nor grilles, ducts, vents for similar internal equipment, shall be fitted to the building unless full details thereof, including acoustic emissions data, have first been submitted to and approved in writing by the Local Planning Authority. Once installed such plant or equipment shall not be altered.

Reason: In the interests of the amenities of adjoining residential occupiers

7. The building shall not be used unless the car parking accommodation as shown on the approved plans including the floating car parking has been provided in accordance with those plans and thereafter such car parking accommodation shall be retained for the use of customers and staff of the building.

Reason: To ensure satisfactory parking provision in the interests of traffic safety and the amenities of the locality it is essential for these works to have been carried out before the use commences.

8. Notwithstanding the details shown on the approved plans the ramp to Eckington Way shall be designed in accordance with the standards for a

new ramp as set out in the Part M of the latest version of the Building Regulations.

Reason: In the interests of facilitating inclusive access.

9. The materials and colours of the new doors and glazed screen frames shall match the existing windows and the design, materials and colours of the new windows shall match the existing windows.

Reason: In the interests of the visual amenities of the locality.

10. Commercial deliveries to and collections from the building shall be carried out only between the hours of 0700 to 2300 on Mondays to Saturdays and between the hours of 0900 to 2300 on Sundays and Public Holidays.

Reason: In the interests of the amenities of adjoining residential occupiers

11. No amplified sound shall be played in the premises except through an in-house amplified sound system fitted with a sound limiter and operated in accordance with settings which have been approved in writing by the Local Planning Authority before the use of the sound system commences.

Reason: In the interests of the amenities of the adjoining residential occupiers

12. No loudspeakers shall be fixed externally nor directed to broadcast sound outside the building at any time.

Reason: In the interests of the amenities of adjoining residential occupiers.

13. Live music or amplified sound played within the building shall not exceed background levels by more than 3dB at the site boundary when measured;
- (i) as a 15 minute LAeq, and;
 - (ii) at any one third octave band centre frequency as an 15 minute LZeq.

Reason: In the interests of the amenities of adjoining residential occupiers.

14. Movement, sorting or removal of waste materials, recyclables or their containers in the open air shall be carried out only between the hours of 07:00 to 23:00 Mondays to Saturdays and between the hours of 09:00 to 23:00 on Sundays and Public Holidays

Reason: In the interests of the amenities of occupiers of adjoining residential properties.

15. The building and outside seating and drinking area shall be used for the above-mentioned purpose only between the following times:

Sunday to Thursday (& Public Holidays unless stated below)

07:00 hours to 23:30 hours
(Use of outside drinking and seating area to cease at 22:30 hours)
(Use of outside smoking area to cease at 23:30 hours)

Friday and Saturday
07:00 hours to 00:30 hours (the following day)
(Use of outside drinking and seating area to cease at 22:30 hours)
(Use of outside smoking area to cease at 00:30 hours)

Maundy Thursday
07:00 hours to 01:30 hours (the following day)
(Use of outside drinking and seating area to cease at 22:30 hours)
(Use of outside smoking area to cease at 01:30 hours)

Sundays before Public Holiday Mondays
07:00 hours to 00:30 hours (the following day)
(Use of outside drinking and seating area to cease at 22:30 hours)
(Use of outside smoking area to cease at 00:30 hours)

Christmas Eve
07:00 hours to 01:30 hours (the following day)
(Use of outside drinking and seating area to cease at 22:30 hours)
(Use of outside smoking area to cease at 01:30 hours)

Boxing Day
07:00 hours to 00:30 hours (the following day)
(Use of outside drinking and seating area to cease at 22:30 hours)
(Use of outside smoking area to cease at 00:30 hours)

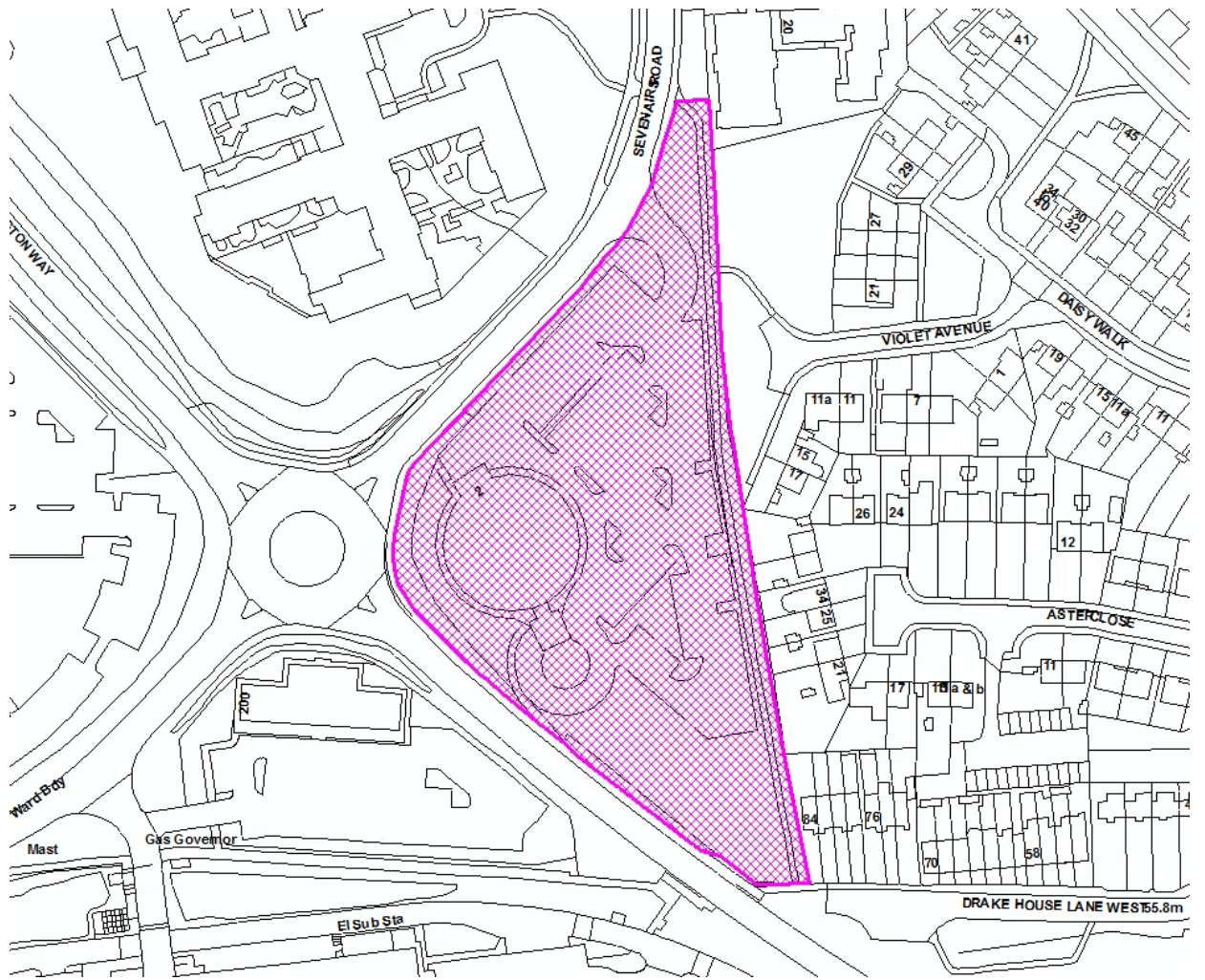
New Years Eve
07:00 hours to 01:30 hours (the following day)
(Use of outside drinking and seating area to cease at 22:30 hours)
(Use of outside smoking area to cease at 01:30 hours)

Reason: In the interests of the amenities of the locality and occupiers of adjoining property.

Attention is Drawn to the Following Directives:

1. The Local Planning Authority has dealt with the planning application in a positive and proactive manner and sought solutions to problems where necessary in accordance with the requirements of the National Planning Policy Framework.

Site Location



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LOCATION AND PROPOSAL

The application site is located on the north side of Crystal Peaks Shopping Centre with a community hospital to the north; Crystal Peaks Retail Park to the west; a restaurant and Crystal Peaks shopping centre to the south; and housing to the east.

The site is roughly triangular shaped and is currently occupied by Damon's restaurant which is a circular building located on the eastern part of the site adjacent to the Waterthorpe Greenway/Eckington Way roundabout. It slopes from north-east to south-west, with the western side adjoining the restaurant and roundabout being below the level of Eckington Way. The site contains a large surface car park to the north-east and south-east of the building. There is a hedge boundary to Eckington Way and a mown grass area on the southern part of the site. The vehicular access is off Sevenairs Road in the northern corner of the site which in turn is accessed from the Waterthorpe Greenway and Eckington Way roundabout. A public footpath runs along the eastern boundary of the site which connects to the housing areas to the east and north and also to a signalised crossing of Eckington Way and then into the Crystal Peaks shopping centre site.

The restaurant is a single storey brick faced building with a pitched red tiled roof.

The application is seeking permission to change the use of the building from a restaurant (class A3) to a drinking establishment (class A4). The applicant initially applied for opening hours from 7am to 1.30am (the following day) with an extra hour on the Thursday before Good Friday, Christmas Eve, Boxing Day, New Year's Eve, Sundays before Public Holidays and the morning British Summertime commences. The design and access statement says the primary business will be a drinking establishment, circa 55% with ancillary food use circa 45%. The application site only relates to part of the current Damon's site. Part of the site adjacent to Sevenairs Road and site entrance and the southern part of the site are identified as two separate future development sites. The car parking is being reduced from approximately 135 spaces to 73 spaces and 7 disabled spaces. A further 7 spaces are described as floating. The application is seeking permission for an external seating and drinking area to the west side of the building adjacent to Eckington Road and relocating and reducing the height of the entrance canopy to the west side of the building to create a covered seating area. Minor alternations are proposed to the building elevations.

The applicant intends to employ between 50 and 70 full and part time staff that are expected to be recruited from the local area. The applicant says that many of their hourly staff do not have cars and are likely to walk or use public transport to access the site.

RELEVANT PLANNING HISTORY

10/02076/FUL – Permission refused for erection of a food store. Permission was refused on the basis that the traffic generated would exacerbate congestion, that there was inadequate parking to serve the restaurant and food store, and that the

site was not sufficiently well connected to Crystal Peaks to be considered edge of centre and there were other more suitable sites available.

09/02493/FUL – Permission refused for erection of a food store. Permission was refused on the basis that there were other sequentially preferable sites available and because it would put at risk the planned investment in the Waterthrope Greenway scheme, needed to safeguard the vitality and viability of Crystal Peaks district shopping centre.

95/00949/FUL - Permission refused for erection of restaurant with variation to opening hours condition. It was refused on the basis that it would be detrimental to the amenities of occupiers of adjoining property due to noise and disturbance caused by the activities of people leaving the site late at night. Under this application the opening hours would have been varied to 07.00 to 23.00 Monday to Saturday and 07.00 to 22.30 on Sundays and Bank Holidays with no further customers admitted after these hours. However customers would not have been required to vacate the building until one and half hours after these times ie 00.30 Monday to Saturday and Midnight on Sundays and Bank Holidays.

94/01837/FUL – Planning permission granted for the erection of a restaurant and provision of car parking. The restaurant was permitted to open between 09.00 and 23.30 Monday to Saturday and 09.00 to 23.00 on Sundays and Bank Holidays.

SUMMARY OF REPRESENTATIONS

13 letters objecting to the application have been received. The comments are summarised below.

- Noise and disturbance from the increased operating hours and the external seating area and early deliveries. Bedrooms overlook the site and residents will have disturbed sleep which will be detrimental to physical and mental health and to childrens' education. The hours of other pubs are shorter, 11pm throughout the week and 12pm on Friday and Saturday for the Gypsy Queen, 11pm and 12pm for the Milestone, 12pm for The Fox, 10.30pm, 11pm, and 12pm for Drakehouse Mill and The Belfry. Noise disturbance will be increased as customers walk to this pub after the others have closed. Drake House Lane West is a main walk through for Beighton and Sothall and therefore there will be disturbance from passing patrons. Differing opening hours are specified in the application form and design and access statement. Will impact on human rights to live a peaceful life /Protocol 1 Article 1.
- The proposal will result in increased fear of crime and increased anti-social behaviour, violence and drug abuse as evidenced by incidents at other pubs in the local area. This will put increased pressure on the police.
- Houses will become less saleable.
- There is no need for additional public houses as there 5 within a 10 min walk of the site. The demand for pubs is declining rather than increasing.
- There is no public transport within easy reach of the site and traffic in the area will be worsened. The Aldi application was refused due to its negative impact on the road network. The car parking is inadequate.
- Not objecting to the change of use, just the longer opening hours

- The other two parcels of land bring the prospect of further increases in noise, disturbance and nuisance.
- The relocation of the canopy destroys the aesthetic quality of the building which is of a unique design.
- The safety of the outdoor seating area is a concern with the potential for vehicles running off the road.
- The car park will be lit for longer hours affecting the ability of residents to sleep.

PLANNING ASSESSMENT

Policy Issues

In the Unitary Development Plan the site lies within a Housing Policy Area. Within housing areas, housing is the preferred use with food and drink uses being acceptable subject to the application of other policies (Policy H10). The commentary on the policy says that food and drink outlets can cause problems for people living nearby and they need to be sited carefully where they would not cause disturbance. It also says that local facilities may be appropriate so that people can reach them on foot. Policy H14 says that new development or change of use will be permitted provided it would occupy only a small area and not lead to a concentration of non-housing uses which would threaten the residential character of the Housing Area.

The policy position is that the use is acceptable in principle subject to the impact on amenity and traffic safety being acceptable, which are considered below. As the existing use of the site is a non-residential use and the proposal will be utilising the existing building it is considered that it would not lead to a concentration of non-housing uses which would threaten the residential character of the area.

Restaurants and public houses are main town centre uses. The National Planning Policy Framework advises that Local Planning Authorities should apply a sequential test for main town centre uses not located in town centres. It is considered that a change of use from one main town centre use to another does not need to pass the sequential test and even if it did there are no sites within Crystal Peaks that would have similar characteristics to the proposal such as being on a prominent junction with a large amount of seating and therefore it would pass the sequential test in any case.

Access Issues

Policy H14 says new development or change of use in housing areas will be permitted provided that it would not lead to excessive traffic levels.

Sevenairs Road is double parked during the day but there are double yellow lines close to the roundabout and the Damon's site entrance to keep these areas clear of parking.

As the parking is being reduced and there is no additional floorspace proposed it could not be reasonably argued that the development will lead to excessive traffic levels. The use has similar access requirements to the existing use and the

existing site access is designed to satisfactorily accommodate the type and amount of traffic expected to serve the proposed use.

The Council's current parking guidelines do not cover food and drink uses. The previous Unitary Development Plan parking guidelines which are out of date say that for public houses the parking should be 1 space per 2.3 to 4m² of net public area and 1 space per 3 non-resident staff. The net public area is approximately 540m² which means these superseded parking guidelines suggest 135 to 235 spaces. The superseded Unitary Development Plan parking guidelines for an unlicensed restaurant are 1 space per 4 seats. This would equate to 77 spaces for the approximately 308 covers proposed.

The applicant undertook a survey of customer visits to the existing restaurant on Fri 26th /27th April 2019 between 3pm and 10pm. The maximum number of customers on site at any one time was 109. Based on an average of 2.5 persons per car this gives a maximum parking demand associated with the existing restaurant of 44 for customers and 15 for staff giving a total of 59 spaces. However there are approximately 308 covers identified in the proposed public house. Assuming 80% occupancy of the public house and if the average car occupancy were increased to 3 this would suggest up to 82 parking spaces for customers and 15 for staff giving a total of 97 spaces.

The Gypsy Queen which is the nearest comparable public house has approximately 110 parking spaces. A rough calculation of the floorspace suggests that the parking ratio per square metres of floorspace is slightly higher at the Gypsy Queen than that proposed for the application, but not significantly different.

The applicant has pointed to a similar sized pub by the same potential operator with a similar residential catchment which also lies close to shopping facilities which has a similar number of parking spaces. However they have not provided any parking accumulation counts which show that the parking provision is adequate to serve the alternative site. They argue that visitors would use the pub in association with the adjoining shops and changing the use to a public house means that it will draw from the local community rather than the existing car-led restaurant. They also say that given the drink driving laws and the walk in catchment it is likely many customers will walk, cycle and use public transport to get to the site.

In the absence of up to date parking guidelines, given the large potential walk in catchment and the parking ratio being similar to that at the nearby Gypsy Queen there is considered to be no strong case for resisting the application on the grounds of insufficient parking.

The applicant has tracked the movements of a service vehicle and the highway officer is satisfied that adequate provision for servicing is being retained.

The building is changing use from one public use to a very similar public use. The existing entrance is level but there is a raised floor with internal ramps to accommodate the level changes within the building. The applicant is altering the main entrance doors but keeping the internal ramps as existing and creating a new

entrance to the external seating area. The ramp between the site and Eckington Way is being altered to facilitate the changes to the car park.

Seven disabled parking spaces are proposed adjacent to the entrance which is considered to be sufficient to serve the proposed use. The ramp between the site and Eckington Way has been designed with appropriate gradients but its width and landings appear to be substandard. Therefore a condition is proposed requiring it to meet the appropriate standards for a new ramp under the building regulations as the building regulations may only be able to insist on it being no worse than existing. The design of the new entrance doors including the width will be controlled by building regulations and they will be required to be no worse than existing. The proposed development should provide inclusive access similar to the existing building. Conditions are proposed requiring the provision of the disabled parking and for the surface of the external seating area to be suitable for wheelchair access.

Amenity Issues

Policy H14 says that new development or change of use will be permitted in housing areas provided it would not lead to air pollution, noise, smell, or other nuisance or risk to health and safety for people living nearby

Damon's advertised opening hours are 8am until 10.30pm Monday to Thursday, 8am to 11pm Friday and Saturday and 8am to 9pm on Sunday, although they are allowed to open until 11.30 pm Monday to Saturday and 11pm on Sundays and Bank Holidays.

The nearest houses are approximately 55m to the east of the building and 16m from the nearest parking spaces and this remains unchanged from the existing arrangements. The external seating area is a new facility and is approximately 80m from the nearest housing although much of it will be screened from the housing by the existing building.

Public houses tend to have a greater potential for causing noise disturbance than restaurants. In this case noise is likely to be generated by customers leaving by car or walking home, noise from use of the external seating area and amplified noise escaping from the building. The applicant is also seeking longer opening hours which has the potential to extend any noise disturbance more into the sensitive night time period. In this case the parking spaces and footpath along the eastern boundary of the site are close to the rear of the existing houses.

Following negotiations the applicant has agreed to reduce the opening hours from those originally submitted to the following:

Sunday – Thursday 7.00am – 11.30pm
(& Bank Holidays unless stated below)
(Use of outside drinking and seating area to cease at 10:30pm)
(Use of outside smoking area to cease at 11:30pm)

Friday – Saturday 7.00am – 12.30am
(Use of outside drinking and seating area to cease at 10:30pm)

(Use of outside smoking area to cease at 12:30am)

Maundy Thursday 7.00am – 1.30am

(Use of outside drinking and seating area to cease at 10:30pm)

(Use of outside smoking area to cease at 1:30am)

Sundays before Bank Holiday Mondays 7.00am – 12.30am

(Use of outside drinking and seating area to cease at 10:30pm)

(Use of outside smoking area to cease at 12:30am)

Christmas Eve 7.00am – 1.30am

(Use of outside drinking and seating area to cease at 10:30pm)

(Use of outside smoking area to cease at 1:30am)

Boxing Day 7.00am – 12.30am

(Use of outside drinking and seating area to cease at 10:30pm)

(Use of outside smoking area to cease at 12:30am)

New Year's Eve 7.00am – 1.30am

(Use of outside drinking and seating area to cease at 10:30pm)

(Use of outside smoking area to cease at 1:30am)

The applicant has also agreed to conditions limiting amplified sound, time restrictions on deliveries and the sorting of materials and for details of external plant to be submitted for approval.

As proposed an extra hour of opening would be allowed on Friday and Saturday and an extra half an hour on Sunday with extended opening on public holidays.

The increase in opening hours at weekends and public holidays and the addition of an external drinking area is likely to generate some additional noise for local residents. The building does not directly adjoin residential properties as many pubs in the city do. The separation from residential properties means that the noise from customers leaving the site is likely to reduce as customers dissipate as they move away from the building. The use of the external area for drinking and seating is limited to 10.30pm and the building will provide some noise screening between this area and the nearby housing. The Council's Environmental Services Section have been consulted and are satisfied that the proposed controls over opening hours are reasonable given the context. It is therefore concluded on balance that the proposed operating hours maintain a reasonable balance between protecting residential amenity and allowing for a use that will serve local residents and secure employment opportunities.

Design Issues

Unitary Development Plan Policy H14 says that in housing areas new development or change of use will be permitted provided that new buildings and extensions are well designed and would be in scale and character with neighbouring buildings.

In this case the alternations to the existing building consist of new windows and enlarged glazed entrance screens to existing door openings. The design of the proposed new windows and brick detailing is to match existing and the new entrances and glazed screens are in keeping with the design of the existing building.

The application is also seeking to relocate and reduce the height of the existing canopy which consists of brick piers and a pitched tiled roof to the front of the building on the Eckington Road frontage and use it as an external seating area.

Whilst the canopy will stand forward of the main building, given that the road frontages around this site are somewhat fragmented and the design of the canopy is in keeping with the existing building it is considered that it will not have a significant harmful impact on the visual amenity of the locality.

The external garden area is likely to enliven the Eckington Road frontage of the site and create visual interest in what is currently an inward facing development.

RESPONSE TO REPRESENTATIONS

It is well established that it is not the role of the planning system to interfere in competition between commercial uses; it is for the market to determine whether the business succeeds or not.

Fear of crime and the potential for anti-social behaviour are planning considerations but for this to be material there must be some reasonable evidential basis for the fear. Many public houses operate without generating significant antisocial behaviour or crime; it will depend on the type of operation and how it is managed. The Local Planning Authority has no evidence to assume this public house will be operated/managed in such a way that these type of problems will be created. Therefore we would be unable to produce evidence that this would be an issue if an application were to be resisted on this basis.

The Human Rights Act, Article 1 (First Protocol) states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law. In this case the amenity impact of the proposal has been fully assessed above and the interference of the proposal with private rights has been balanced against the public interest as set out above.

The safety of customers from vehicles losing control on the roundabout and crashing into the external seating area is primarily a matter for the applicant to consider. Officers are not aware of any evidence to suggest that this is a significant risk that would justify requiring the applicant to provide a crash barrier to prevent such a possibility.

SUMMARY AND RECOMMENDATION

The proposed use is considered to be acceptable in policy terms subject to the impact on residential amenity and the access/parking considerations. It will

provide local residents with improved choice in terms of access to services and deliver employment opportunities. There is likely to be an impact on residential amenity due to increased noise and disturbance but this is considered to be within acceptable bounds given the controls proposed and relationship of the site with the nearest housing. The access and parking arrangements are considered to be acceptable and there are not significant design concerns. It is therefore recommended that planning permission be granted subject to the listed conditions.

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