

---

Case Number	20/01702/FUL (Formerly PP-08736595)
Application Type	Full Planning Application
Proposal	Application under Section 73 to vary Condition 10. (hours of use restriction on outside seating) imposed by 19/01727/FUL (Change of use of retail shop (use class A1) to a micro pub (use class A4) including a retractable awning to shopfront and provision of a seating area) to allow the outside seating area to be used between 1130 and 2100 hours on any day for 12 months (amended description)
Location	D H Bowyer And Sons 4 Brooklands Avenue Sheffield S10 4GA
Date Received	29/05/2020
Team	West and North
Applicant/Agent	Mr James Eardley
Recommendation	Grant Conditionally

### **Time limit for Commencement of Development**

1. The development must be begun not later than the expiration of three years from 28 August 2019.

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:

Red / Blue line site location plan  
Proposed Layout  
Proposed Front Elevation (Amended received 18.8.19)  
Proposed Side Elevation (Amended received 15.8.19)

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. Before the use is commenced, full details of suitable inclusive access and facilities for disabled people to enter the building's main entrance shall have been submitted to and approved in writing by the Local Planning Authority. This shall include details of the portable ramp and means to summon assistance from the kerbside. The approved inclusive access and facilities shall have been provided in accordance with the approved details before the building is brought into use. Thereafter such inclusive access and facilities shall be retained. (Reference should also be made to the Code of Practice BS8300).

Reason: To ensure ease of access and facilities for disabled persons at all times.

4. 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 the locality and occupiers of adjoining property.

**Other Compliance Conditions**

5. No customer shall be permitted to be on the premises outside the following times: 1130-2300 on any day with the exception of New Years Eve when no customer shall be permitted to be on the premise outside 1130 and 0100 the following day.

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

6. Commercial deliveries to and collections from the building shall be carried out only between the hours of 0700 to 2000 on Mondays to Saturdays and between the hours of 0900 to 2000 on Sundays and Public Holidays.

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

7. Movement, sorting or removal of waste materials, recyclables or their containers in the open air shall be carried out only between the hours of 0700 to 2000 Mondays to Saturdays and between the hours of 0900 to 2000 on Sundays and Public Holidays.

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

8. No amplified sound or live music shall be played within the commercial use hereby permitted, nor shall loudspeakers be fixed internally or externally nor directed to broadcast sound outside the building at any time.

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

10. The external area associated with the approved A4 unit shall not be utilised for seating, drinking and/or eating between:

Until the 15th of September 2021 - 2100 hours and 1130 hours the following day, on any day.

After the 15th of September 2021 - between 1900 hours and 1130 hours the following day, on any day as per the original consent (19/01727/FUL)

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.
2. For the avoidance of doubt conditions that have already been discharged or complied with have not been repeated on this notice.

## Site Location



© Crown copyright and database rights 2016 Ordnance Survey 10018816

## Location and Proposal

The application site is a recently opened micro pub known as the Fulwood Ale Club that is located within the shopping area on Brookhouse Avenue. The site is small and has forecourt seating to the frontage. When planning permission was granted, an hours of use restriction was placed on the external area requiring the use of this to cease after 1900 hours (condition 10). Whilst the site is in a commercial parade there are houses immediately opposite the site and the wider area is predominantly residential.

This application originally sought to vary condition 10 to allow use of the external seating area between 1130 hours and 2300 hours. During the course of the application this has been amended to the earlier time of 2100 hours.

The submission details how the extension is required as a result of the Coronavirus and social distancing rules. The application states that the indoor space is too small on its own, with the whole internal seating area measuring just 3 x 3 metres. To make the business financially viable with social distancing in place, greater use of the outdoor seating is required.

## Relevant History

19/01727/FUL      Granted the change of use of retail shop (use class A1) to a micro pub (use class A4) including a retractable awning to shopfront and provision of a seating area. This was approved by committee in August 2019.

## Representations

38 letters of representation have been received following publicity on this application. 31 of these are in support of the scheme including a letter from the Sheffield District Campaign for Real Ale Group CAMRA. 6 letters of objection have been received, 2 of which are from Councillor Woodcraft. 1 letter of comment has been received. The comments made are summarised below:

- Strong support for the scheme to ensure financial viability and allow economic recovery.
- Support as the use provides jobs in the area and needs to be helped at this time.
- The business is successful and responsibly run.
- The community support this small business which is of benefit to the area.
- The pub is considered a valuable safe community facility / meeting place.
- The use creates increased footfall for other businesses.
- No noise issues have been reported since it opened in December.
- The Council should be doing all it can to support businesses at this time.
- The noise of laughter and conversation would not be any greater than the level of noise generated through BBQs and get togethers in a garden.
- The clientele do not generate a lot of noise.
- If the pub were to close it would be an eyesore.
- There should be a maximum capacity on the outside to prevent overspill.
- Support for a 2300 close rather than 2330.

- A compromise of 2100 / 2130 is suggested. Or 2100 Sun-Thurs with 2200 on Friday and Saturday.
- Micro pubs on Ecclesall Rd have these restrictions.
- Concern is raised that 2330h is too late in a primarily residential area. The area is quiet in the evenings and noise travels a long way. Families live in very close proximity to the pub and sleep would be disturbed particularly on warm evenings when windows are left open.
- The 3 tables at the front are not 2 m apart. Few people would be able to be seated meaning the use would spill out onto the highway.
- Covid is being used to secure a permanent change.
- Concern is raised that the outdoor tables would be used for people to congregate when the premises are closed which was the case during the past few months
- The previous approval limited use of the outdoor space due to proximity of homes with noise from outside drinking of concern.
- Concern is raised that people moving in and out the building more regularly would mean the door will be open and indoor noise would be audible.
- The business has not operated for sufficient time to establish noise levels so it is premature to extend these.
- An extension to the hours should be temporary rather than permanent.
- The selection of people consulted is highlighted.
- 

Two letters of objections have been received from Councillor Woodcraft raising the following concerns:

- Whilst the pub is a welcome asset, residential properties are opposite and families would wish to sleep during the hours requested.
- Viability issues should have been addressed before the business was established.
- Due to COVID and as the business is new it is not possible to establish what noise levels would be like. It is suggested that noise levels are experienced with the current timings before any decision is made.
- The second letter of objection documented 2 occasions where early evening use has been witnessed. No issue is documented on one occasion, however on the other customers were talking loudly. Alcohol results in lack of inhibition and a reduced ability to social distance. Strong concern is raised that this would cause unacceptable problems for adjacent residents in the late evening.

### Assessment

The principle of the development has been previously established and the main issue for consideration is the impact on the amenity of adjacent residents as a result of the proposed additional 2 hours use of the outdoor seating area.

UDP Policy S10 (b) states that new development or uses should not cause residents to suffer from unacceptable living conditions.

Similarly, at the national level, the NPPF (2019) recognises the need to create places that are safe, inclusive and accessible and which promote health and

wellbeing, with a high standard of amenity for existing and future residents (paragraph 127). As these aspects of local and national policy align then weight is given to local policy S10 (b).

In addition, and of particular relevance to this application at the current time, is the emphasis that the NPPF places on seeking to ensure planning decisions help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (paragraph 80).

The site lies within the Local Shopping Area however immediately across the road are houses. There is a 19m separation distance between the two. To the west, the end of the closest residential garden on Brookhouse Crescent is approximately 14.5m away.

Within the shopping parade there are other later evening uses. The next door hot food take away operates until 2300 hours and the Co-op foodstore operates until 2200 hours.

The applicant has amended the proposal during the course of the application to seek consent to use the outdoor area until 2100 hours.

Operating the external area until 2100 hours was explored extensively at the time of the original application however there was concern about the degree of noise and disturbance that would arise to the family housing in the area given the relatively low level of back ground noise later in the evening and a condition was attached to restrict the operation of the outdoor area to 1900 hours.

Objections have been received from 5 different parties. One of these objectors would accept an extension to 2100 hours and another would be less concerned if a temporary consent was issued during the period of current Covid social distancing rules. In addition a neutral letter of comment raised concerns about noise and disturbance and suggested reduced hours which align more with those now proposed.

There is very strong support for the business within the local community, however it is acknowledged that a good proportion of this comes from people who live slightly further away from the site. Appropriate weight must be given to the objections based on their proximity to the site.

There would be a degree of noise and disturbance later into the evening arising from the use of the external area, and potentially a small degree of noise passing from the internal area, which would potentially affect immediate households. This however is limited by the size of the venue and the nature of the business. Whilst the site is close to residential properties, there are intervening uses and/or land between the site and those properties, and the site is within the well established Local Shopping Area where one would expect to find a degree of additional activity and increased background noise.

The applicant has demonstrated a willingness to compromise and suggested an earlier hour for the outdoor seating use to cease. Officers are of the view that this and the use of a temporary consent is considered to be an acceptable and reasonable compromise that balances the amenity of residents with business needs, including the economic, community and visual benefits it has brought to the area.

Comment has been made that the use has not operated long enough to enable noise issues to be fully judged, particularly through the summer. Allowing a temporary consent would enable this to be experienced for a period of time with the potential for this to be reviewed in the future.

The Council's Environmental Protection Service is supportive of a temporary 12 month consent until 2100 hours.

Given the above, and on balance, it is considered that the variation of condition 10 to allow use of the outdoor seating area for an additional 2 hours in the evening for 12 months would not cause surrounding residents to suffer from unacceptable living conditions owing to the existing degree of activity in the area, the small nature and scale of the premises and the temporary nature of the permission.

#### Response to representations

Concerns raised about people spilling onto the highway – The change in hours of operation would not impact on this.

Concerns raised that outdoor tables would be used by people to congregate when the premises are closed – Again, the change in hours of operation would not impact on this. Any antisocial behaviour issues that may arise in the area would be an issue for law enforcement.

Concerns about the people consulted – As required, immediate neighbours were notified, as have parties who made representation on the previous application. Concerns that viability issues should have been addressed before the business was established – The application states that the variation is sought to allow for social distancing. This situation has arisen since the original application was determined. Concerns about the lack of social distancing – This is not a planning issue.

#### Summary

The applicant seeks to use the external seating area for an extra 2 hours in the evening, extending its use to 2100 hours daily. There is concern that this would result in some noise and disturbance to residents in the evening. Regard is also had to the fact that this site is within a Local Shopping Area, where some noise is expected; the evening activity associated with other businesses in the area; the small scale of the site; and the benefits to the economy, local community and vitality of the area that the business brings. It is therefore considered that the proposed change in the hours of use of the outdoor seating area for a temporary period of 12 months (to enable the impacts on neighbouring residents to be assessed prior to a more permanent change) is acceptable and condition 10 should be varied accordingly.



The proposal is compliant with the aims of UDP Policy S10 (b), and the aligning paragraph 127 of the NPPF, the most important policy in the consideration of this application. Furthermore the scheme expands the trading opportunity for this new business which would be of benefit to the local economy and local, which is compliant with the wider aims of the NPPF.

Recommendation: For Members to grant planning permission subject to amended condition 10.

This page is intentionally left blank