
Case Number	21/02633/FUL (Formerly PP-09916653)
Application Type	Full Planning Application
Proposal	Retention of lean-to timber framed covered seating area at side of building (retrospective application)
Location	322 Abbeydale Road Sheffield S7 1FN
Date Received	07/06/2021
Team	South
Applicant/Agent	Ms Nicola Jewitt
Recommendation	Grant Conditionally

Time limit for Commencement of Development

1. The structure shall be removed on or before 30 September 2023.

Reason: The design of the structure is not of an acceptable quality and its permanent retention would be harmful to visual amenity.

Approved/Refused Plan(s)

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

Ground Floor Site Plan (published 7 June 2021)
Location Plan (published 28 February 2022)
Photograph dated 21 December 2021 (published 17.02.2022).

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)

Other Compliance Conditions

3. The extension shall not be used by customers, patrons or visitors of the business between the following times:

21:00 hours and 09:00 hours (the following day)

Reason: In the interests of protecting the amenities of nearby local residents.

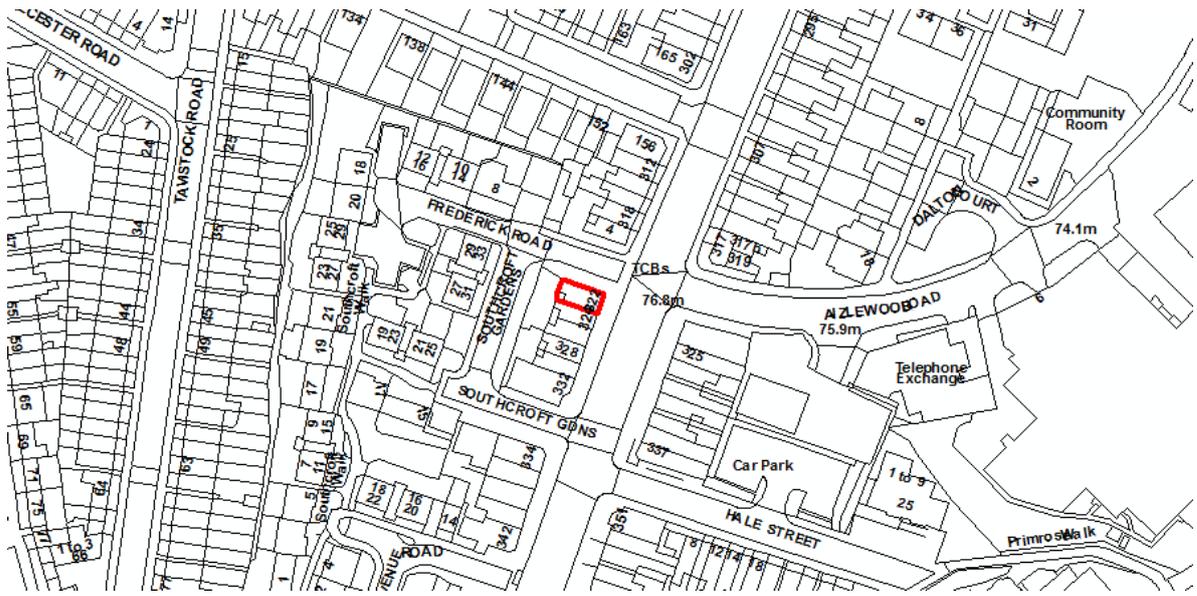
4. No loudspeakers shall be fixed within or externally to the extension nor directed to broadcast sound inside the extension at any time.

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 would welcome pre-application discussions to determine the most appropriate form and design for a permanent structure in this location. You are advised to enter into such discussions as soon as possible given that the existing structure must be removed within 18 months. Rather than refusing the application, which it is recognised might cause a significant impact on the business, the Local Planning Authority wish to engage with the applicant to secure an alternative proposal that is more sympathetically designed and built of more appropriate materials.
2. The applicant is advised that the assessment of this planning application has been made on the basis that the bar element of the business is ancillary to the main business which is a cafe/restaurant and retail sales shop (Use Class E). If there is an intensification of the bar aspect of the business such that it becomes a primary activity of the business, then the use of the premises would be classed as sui-generis and would therefore, subsequently require a planning application for change of use.
3. 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



© Crown copyright and database rights 2016 Ordnance Survey 10018816

INTRODUCTION

Members will recall that this proposal was presented to the Committee on 1st March 2022 but was deferred to enable further consideration to be given by officers to the implications of enabling the applicant to play music through loudspeakers within the external shelter. Condition 6 as previously recommended within the main agenda report for the 1st March Committee had prohibited fixed loudspeakers for the playing of music. Members requested that officers consider whether it was feasible to allow the playing of music with appropriate controls.

This updated report therefore presents the findings of that consideration and a subsequent recommendation.

PROPOSAL

This application relates to an existing commercial property located on Abbeydale Road at its junction with Frederick Street. The application is seeking retrospective consent for a single-storey side extension to an existing café/retail shop business (Use Class E). The applicant is applying to keep the extension permanently.

The property (known as “Coles Corner”) is an end terrace shop unit located within a short shopping parade of 6 units fronting Abbeydale Road. The shop/café/ business operates the ground floor accommodation and there is a separate unconnected residential flat above. The immediate area is best characterised as having mainly commercial premises fronting Abbeydale Road with housing areas behind. Many of the shops in this parade of 6 units have residential accommodation above.

When originally submitted, the application was for a change of use to a sui-generis use on the basis that a significant bar element operated alongside the retail shop/café use of the business. However, the applicant has now clarified to officers that the use does not include a bar as such and any alcohol consumption is ancillary to the café/shop use. On this basis, the bar element was removed from the application description and permission for a change of use was no longer necessary. If the bar element of the business were to expand and become a significant element of the business, then an application for change of use would be required and the applicant has been made aware of this. This is because a ‘drinking establishment’ falls outside Use Class E (and is sui generis).

The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 3) Order 2021 relates to temporary structures for food and drink businesses, and their potential to be Permitted Development (i.e. not requiring planning permission). This legislation was originally implemented in the early stages of the covid pandemic to allow businesses to operate in a ventilated environment and provide flexibility. Initially a temporary arrangement, with a sunset clause, this has now been made permanent. However, it has limitations, most notably that the structure must be a moveable structure (e.g. gazebo), but also in relation to height and footprint.

For clarity, the structure as erected does not constitute Permitted Development

under this provision and does require a full planning permission.

The extension as built sits on the Frederick Road frontage and is approximately 12.2 metres long by approximately 2.0 metres wide. It has an eaves height of approximately 2.1 metres and an overall height of approximately 2.75 metres. The main structure is timber framed and the roof is a clear/translucent polycarbonate profiled sheeting.

Although not shown on the submitted application photographs and plans, the extension has been altered since originally constructed and now incorporates filled-in panels between the supporting posts. The filled-in panels are made of a mixture of materials and these include:- tarpaulin, vertical and horizontal timber slats, clear plastic sheeting capable of being rolled-up, as well as several doors that allow access into the extension. In addition to the more permanent elements of the extension there are also several moveable landscaped planter boxes. The whole side extension structure is fixed on to a new slightly raised concrete base which was introduced to create a level platform (due to the sloping gradient of the side forecourt area). The structure also incorporates some external decorative lights.

There is no direct access for customers to walk from the side extension into the main shop premises. The only access from the main premises into the extension is via the existing kitchen area (for staff only).

It is noted that some of the planters (which are moveable) are positioned on part of the public footpath.

One of the side infill panels and the front facing panel of the extension incorporates some of the menu details. The business has a premises licence to sell alcohol.

The submitted plan shows that the external space is used mainly for dining purposes with the internal area used predominantly for retail purposes. The plans show that the side extension is capable of accommodating 4 tables with seating for approximately 16 covers.

Although the materials are relatively lightweight in nature, the extension is intended to be a permanent feature of the building.

RELEVANT PLANNING HISTORY

There is planning history dating back to the 1980s but only the following applications are considered to be relevant to the current proposal:

85/02327/FUL – Application for use of rear ground floor of building for the sale of hot food for consumption off the premises. This application was refused in January 1986.

87/01271/FUL – Application for use of premises for the sale of takeaway hot food. This application was refused in July 1987.

19/04316/A3PN – Use of retail unit (Use Class A1) as gift shop/café (Use Class

A3). This application was refused as it was retrospective (so did not qualify for a prior approval)

21/00175/ENCHU – Enforcement Matter – It was alleged that the shop was operating as a sui-generis use (bar), with tables and chairs outside. This led to this current application being submitted.

SUMMARY OF REPRESENTATIONS

This application has resulted in 41 representations being received from 38 different properties (this includes a letter of support from Cllr Alison Teal). All the representations received were in response to the original proposal which included the change of use element.

Of the 41 representations received 26 are in support of the proposal and 13 have raised objections. There are also 2 neutral representations in respect of the proposal. The comments have been summarised and are listed below:

Comments made by Cllr Alison Teal:

- Cllr Teal is saddened to see conflict between neighbours.
- As part of a summer event relating to music trails in which Coles Corner participated, there was some loud music performed at this venue and it did generate some loud noise for local residents and, as a consequence, local residents are worried that this could be repeated again in the future and more regularly.
- The business owners are extremely conscientious about being good neighbours and have no wish to inconvenience or disregard the rights of residents in the area.
- There are lots of supportive comments here with the application to illustrate what a highly valued business “Coles Corner” is to the community.
- The outdoor framed seating area has created an important addition to the amenity space.
- Cllr Teal would like to see the proposed extension approved.

Other Comments in Support

- The site was previously an eyesore (graffiti and litter etc.), the applicant has worked hard to improve and tidy up the appearance of the property.
- The works done have created a wonderful outdoor café space.
- The extension enhances this part of Abbeydale Road. It's a major asset to the streetscape and is to be applauded for its pleasing appearance.
- The outdoor seating area is small and enclosed.
- It's a trendy place for clientele to go for a quiet drink rather than go to other bigger bars in the area.
- This is not a big rowdy drinking establishment.
- Lots of events take place here such as world food eating days.
- Abbeydale Road has been run down for many years, but its now going through a popular transformation with nice independent food and drink establishments.

- Coles Corner sources locally produced products and provides employment for local people.
- The works undertaken at Coles Corner are commendable, those works brighten up this part of the road and makes it more attractive to visitors. It's become a vibrant hub for locals.
- Coles Corner showcases the very best in small, independent businesses.
- The external lean-to extension enables a modest number of people to safely enjoy each other's company.
- Supporting local independent businesses will be beneficial to the economy in general.
- The construction of the temporary outdoor seating area is an improvement to the street-scene.
- The outdoor seating area is essential in reducing the effects of Covid.
- The development is entirely within the applicant's own land and will not have an impact on footpaths or roads in the area.
- There's a brick wall at the rear of the site and this wall partially creates a physical screen from nearby properties on Southcroft Gardens.
- The plants that have been used in the planting beds are beautiful and help to make Abbeydale Road a nicer place to live.
- Drug dealers and youth gangs used to hang out here, they no longer do.
- The business provides an inclusive environment with something for people of all ages and communities which you can't get elsewhere on Abbeydale Road.
- The themed days at the café provide the opportunity to experience the music and food of other cultures.
- Coles Corner creates a positive atmosphere and attracts visitors that also go on to use some of the other shops and businesses in the locality.
- It was lovely to see Coles Corner as part of the 'Music Trail' in the city, where live music was enjoyed by many local people.

Comments in Objection to the Proposal

- The premises generate a lot of traffic which often leads to local residents and visitors being unable to park their cars near to their homes.
- There is loud amplified music regularly played at the café which has a direct impact for local residents.
- There are quite often large crowds of people standing outside which leads to noise issues and people staring at local residents (making them feel uncomfortable).
- When they are busy, the café often set-up tables and chairs on the public road. Do the owners of the business have a licence to serve food and drink outdoors and do they have a licence to set up tables on the public road??
- There are lots of people supporting this local business but, most of them are not local residents.
- The views of local residents should be considered.
- There are already too many bars in the area.
- The area already has problems with traffic congestion, and this will just add to the problem.
- Having music blaring away and people pouring out onto the street at 11pm is unfair to local residents. The music is often very loud.

- Music being played outside on the street is an issue, other bars don't have loud music playing outside.
- Why can't the building just remain as a café with normal operating times?
- The owner of the business won't allow people to park on her side of Frederick Road and she regularly asks people to move their cars if they are parked near the side extension.
- There is still too much noise after customers leave the building, some customers have been seen urinating on nearby walls.
- The submitted photographs and images of the extension are not accurate, they don't accurately show what's there now.
- Over time (from when it first opened) the premises is being used more as an outdoor bar venue with live and very loud music. This is also now attracting large groups of people on to Abbeydale Road and Frederick Road.
- Local residents are mainly working families with school-aged children and vulnerable elderly people, the proposed late night opening hours will lead to further problems.
- The activities at the premises should be limited to the indoor area only.

Neutral comments:

- There's no objection to the indoor activity being used between 09:00 hours to 23:00 hours but the outdoor seating area should have restrictions that control the operating times that it is used. The outdoor seating area should not be used by customers after 9pm and all the tables and chairs should be cleared away by 9:15 pm.
- The filling of the bins and arrangements for the disposal and collection of bottles and other waste should also be limited to social hours, again, to prevent disturbance for local residents. Other recent decisions for food and drink establishments have had these similar conditions imposed.

PLANNING ASSESSMENT

Policy Context

The Council's development plan comprises the Core Strategy (CS) which was adopted in 2009 and the saved policies of the Unitary Development Plan (UDP) which was adopted in 1998. The National Planning Policy Framework revised in 2021 (NPPF) is also a material consideration.

The Council's Development Plan (UDP and Core Strategy) predates the NPPF; the development plan does however remain the starting point for decision making and its policies should not simply be considered out-of-date if adopted or made prior to the publication of the Framework, as is the case in Sheffield.

The key principle of the NPPF is the pursuit of sustainable development, which involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life.

Paragraph 81 of the NPPF also seeks to ensure that the right conditions are

created for businesses to invest, expand and adapt which ultimately could lead to jobs being created and economic growth. This assessment will have due regard to these overarching principles.

Key Issues

The main issues to be considered in this application are:

- Acceptability of the development in land use policy terms.
- Impact on the Character and Appearance of the Area.
- Impact of the proposal on the living conditions/residential amenities.
- Highway Issues.

The site is identified on the Sheffield Unitary Development Plan (UDP) as being within a Local Shopping Policy Area and as such UDP Policies S7 and S10 are applicable. It is also considered in this instance that UDP Policy BE5 'Building Design & Siting' and Core Strategy Policy CS74 'Design Principles' are also relevant.

Use

UDP Policy S7 states that the preferred use in District and Local Shopping Centres is retail (A1), however A3 uses (food and drink outlets) are also acceptable. At the time the UDP was published, Use Class A3 would have included cafes/restaurants. However, recent changes to the Use Classes Order have resulted in Use Class A being revoked. A cafe/restaurant along with retail use would formerly have been Class A3 and Class A1 respectively but the uses both now fall under Use Class E. In respect of the bar element, it is understood from the applicant that this is an ancillary rather than primary aspect of the business, and it is not the case that customers visit the premises purely for the purposes of drinking in any significant quantity. With this being the case, the use would not be classed as a sui-generis drinking establishment. The applicant has been made aware that if the bar function is a primary activity and accounts for a significant proportion of the sales, then the use would trip into the sui-generis category and planning permission for a change of use would be required.

On this basis therefore, the use of the main premises is not being considered under this application as the operation as now defined would fall under Use Class E, which is already the authorised use of the premises. This application therefore solely relates to the construction of the single-storey side extension which has already been undertaken and is therefore retrospective.

Impact on the Character and Appearance of the Area

The premises are located within a Local Shopping Policy Area and is also adjacent to a Housing Policy Area as defined by the UDP. Abbeydale Road is also a major

arterial road into and out of the city. Because the property is also located on a corner plot, any alterations on the side are visually prominent, particularly when travelling south, away from the City Centre.

The extension is already constructed and is located on the side elevation of the premises fronting onto Frederick Road, where it is seen in conjunction with both the busy commercial environment of Abbeydale Road, and the residential nature of Frederick Road. The applicant has applied for the extension to remain permanently.

The extension itself is built using lightweight materials (polycarbonate sheeting, tarpaulin and timber frame and slats). The extension also has two entrance doors on the Frederick Road elevation. One allows access for staff and the other is intended for customers. The two entrance doors are different in colour and type and generally add to the uncoordinated array of materials that have been used to infill the side panels between the supporting timber posts, creating a somewhat cluttered appearance.

It is noted that none of the objections received relate to the design and form of the structure, and that some representations support its retention, feeling that it enhances the appearance of the area. However, for the reasons given below, officers do not share this view.

Given the very prominent corner position of the structure; ad hoc nature of the differing facing materials and the overall general design of the extension, it is considered that the extension displays a very temporary appearance and results in an adverse visual impact on the character of both the street-scene and host property. It is considered that the structure lacks any coordination, longevity or integrity in terms of facing materials.

Despite its poor overall appearance, the extension does provide additional space for the business and it is recognised that the extension enabled the business to operate through key stages of the covid pandemic where separation space between customers and good ventilation was needed. There are many such structures along Abbeydale Road all of which are under review in respect of their status (authorised or otherwise) and officers are in dialogue with the business owners to advise of appropriate steps to either secure permission retrospectively for the structure where acceptable, or seek improvement or removal/replacement where not.

It is also acknowledged that the extension is on the side/gable elevation of the building and therefore, it does not in this instance cut across any significant architectural features.

However, it is considered that the overall design and choice of somewhat random facing materials of temporary appearance has in this instance, resulted in a structure that detrimentally affects the character of the building and the street-scene, further exacerbated by the property's location on a prominent corner junction in close proximity to residential property of a domestic scale.

As such it is considered that the extension fails to satisfy UDP policy S10(d) which requires new developments in shopping areas to be well-designed and of a scale and nature appropriate to the site. For the same reasons outlined above, the proposal would also be contrary to Policy CS74 of the Sheffield Core Strategy and UDP Policy BE5, which both require new developments to be well-designed (including the use of good quality materials) and to respect townscape character, views and vistas, building styles and materials. Policy CS74 also states that new developments should contribute to place-making, be of a high quality and should help to transform the character of physical environments that have become run down and are lacking in distinctiveness. These policies can be afforded substantial weight as they broadly align with paragraph 130 of the NPPF which states that decisions should ensure that developments add to the overall quality of the area, not just for the short term but over the lifetime of the development; and developments should be visually attractive as a result of good architecture.

Impact on Residential Amenity

UDP policy S10(b) requires development not to cause residents to suffer from unacceptable living conditions, including air pollution, noise, or other nuisance or risk to health or safety. This aligns with Paragraph 130 of the NPPF which states that developments should result in a high standard of amenity; and Paragraph 185 which states that developments should avoid noise giving rise to significant adverse impacts on health and quality of life.

Whilst the principle of the café/shop use is established, there is still a potential issue of noise nuisance being generated within the extension impacting upon residents living on Frederick Road, Southcroft Gardens or in the flat above the shop particularly given the flimsy construction. This would potentially be a more significant problem in the summer months when windows tend to be open and customers might prefer to sit or stand outside the café/shop.

It is considered that the lightweight structure and the partially open frontage design of the extension is less-likely to insulate neighbours from noise than a brick or block-built structure. This presents issues in terms of hours of use and activity undertaken within the structure.

In terms of hours of use of the structure, in areas such as Ecclesall Road and Abbeydale Road where external seating is a common feature, conditions imposed upon planning permissions relating to those areas have required customers to cease using the external area after 9pm. Although the structure has elements of cover this is not considered sufficient to eradicate noise and a 9pm limit on the use of the area is considered appropriate here.

In addition, as part of the recommendation to the Committee meeting on 1st March 2022 officers had recommended a condition be imposed to prevent loudspeakers being fixed within this area. Following deferral of the decision at that meeting officers have re-considered this matter as requested.

To have unrestricted playing of music through loudspeakers in the structure would not be acceptable owing to the significant harm, loss of amenity and nuisance this

would generate for nearby residents and potentially businesses too. Officers therefore considered whether it was possible to construct a planning condition that would enable the playing of some music at low levels in a manner that would not cause nuisance to neighbours.

Given the nature of the location, there is at busy times traffic noise generated on Abbeydale Road, including larger vehicles (buses, HGV's). This presents complexities in establishing ambient noise levels as they are likely to vary significantly throughout the day. In turn this makes establishing an appropriate noise level for any amplified music difficult and likely to require different noise levels being set at different times of the day in order to a) avoid disturbance and b) be audible to customers.

Whilst this may be technically possible to achieve, it would require noise surveys to be undertaken and would likely require items such as sound limiters to be incorporated. There would be a substantial additional cost to the applicant in this and it would present significant difficulties in effective monitoring and enforcement.

It is worth noting here that a nearby premises 335-337 Abbeydale Road (approx. 50m away at the junction of Hale Street) recently received planning permission for use as a bar, and in resolving planning conditions related to noise, the applicant's approved sound attenuation scheme, based on a recent noise survey, requires folding doors which lead to an external terrace to be closed when music is played internally within the building, as appropriate noise levels could not be achieved. This has the effect of prohibiting external music. The environment and relationship to noise sensitive properties for that property are almost identical to the situation at this application property.

It is therefore likely that if a condition were imposed that allowed music to be played externally following a noise survey, it would lead to a situation where noise levels could not be demonstrated to be acceptable externally once the necessary noise surveys had been undertaken. This would not therefore be a reasonable condition.

In addition, to allow external amplification of sound would directly conflict with consistently applied planning (and Licensing) conditions preventing such to venues with external areas in similar locations and would also conflict with the Premises Licence for this site.

The applicant has referred to The Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) (Amendment) Regulations 2020 and a noise limit of 85dB(A) which is stated within the Regulations as a maximum noise level for the playing of music within a public house, restaurant, café or bar, and feels that this represents justification for acceptance of a similar noise level to be allowed within the external structure.

In response, these Regulations were brought in as a response to the covid pandemic and were the same Regulations that required the wearing of face coverings, limited group sizes to six, prevented singing in groups of more than six, and prevented dancing. Officers understand the purpose of the of 85dB(A) limit

was to minimise the need for raised voices owing to the generation of airborne virus particles when doing so to avoid the spread of the virus. It does not represent a blanket assessment of the impact of that particular noise level on amenity or nuisance.

For these reasons, it is officers view that it is correct to prevent music being played externally through loudspeakers within the external shelter in order to protect neighbouring residents and businesses.

This does not prevent music being played internally, as happens at present.

Therefore after giving consideration to Members request made in deferral of the item at the 1st March meeting, it is officers view that the previously recommended condition remains appropriate.

Highway Issues

There are no significant highway safety issues associated with the application to retain the shelter that would prevent it being supported.

The planters which are situated on the highway can easily be removed if required and this is a matter for the Council as Highway Authority rather than being central to the determination of this application.

RECOMMENDATION

Taking all of the matters raised into account, it is considered that the side extension as built owing to its use of uncoordinated materials of a temporary nature has a detrimental impact upon the character and appearance of the host property and the surrounding area.

As such it is considered that the development in its current form is contrary to Policies S10 and BE5 of the Sheffield Unitary Development Plan; Policy CS74 of the Sheffield Core Strategy and Paragraph 130 of the NPPF (which all relate to design).

It is however recognised that the covid pandemic resulted in many shops and particularly food and drink premises erecting both temporary and permanent structures on their forecourts to enable businesses to continue to function. This is particularly evident in Sheffield along the Abbeydale Road corridor, where there are many unauthorised structures, and where officers are currently in the process of establishing their status and engaging with the business owners in order to secure acceptable outcomes.

As such, a sensitive approach to the determination of this case is considered appropriate with any decision acknowledging the potential impact on the business at what is a difficult time.

For this reason, rather than recommending refusal of the application, officers

consider that a temporary consent of 18 months can be supported. The structure is not considered to be of an acceptable design quality to be in place for longer than 18 months in such a prominent location, but that time period could be utilised by the applicant to consider the business needs, come forward with a revised proposal which addresses the design concerns highlighted above and gives sufficient time to obtain consent for a replacement structure which meets the aims of the design policies in the development plan and the NPPF. This is considered to be a proportionate approach which allows the business to keep trading in their current manner, whilst seeking a more permanent and well-designed replacement side extension / enclosure.

It is on this basis that officers recommend that the application be approved for a temporary time period of 18 months subject to the listed conditions.