



**COMMITTEE DATE**    25/11/2020                      **WARD**            Selston

**APP REF**                      V/2020/0541

**APPLICANT**                      K Quickfall

**PROPOSAL**                      Application to Remove Conditions 6 & 7 of Planning Permission V/2018/0110 to allow for an Outdoor Seating Area

**LOCATION**                      60, Portland Road, Selston, Nottingham, NG16 6AT

**WEB LINK**                      <https://www.google.co.uk/maps/place/60+Portland+Rd,+Selston,+Nottingham+NG16+6AT/@53.0756812,-1.2973957,17z/data=!3m1!4b1!4m5!3m4!1s0x48799485efc82965:0x9411d913649fbf51!8m2!3d53.075678!4d-1.295207>

**BACKGROUND PAPERS**    A, C, D, E

App Registered 18/09/2020                      Expiry Date 12/11/2020

*Consideration has been given to the Equalities Act 2010 in processing this application.*

*This application has been referred to Planning Committee to discuss a condition previously attached by the Committee.*

### **The Application**

This is an application which seeks consent to Remove Conditions 6 & 7 of Planning Permission V/2018/0110 to allow for an Outdoor Seating Area at a micro pub located at 60 Portland Road, Selston.

### **Consultations**

Site Notices have been posted together with individual notification of surrounding residents.

The following responses have been received:

### **Resident Comments:**

One petition was received in support of the application with 154 signatures.

4 Letters of support have been received from residents in respect of the following:

- There is a very low level of noise/disturbances and they have not witnessed any anti-social behaviour.
- Limited number of tables and chairs used to the rear of the property during good weather.
- Very professional and friendly establishment.
- Micro pub is asset to local community and great place for socializing.
- Customers adhere to rules and respect the neighbours.
- No customers leave vehicles outside on double yellow lines.
- Objection comments are not accurate.

2 petitions were received in objection to the application one with 8 signatures and one with 6 signatures

13 Letters of Objection/concern have been received from residents in respect of the following:

#### Residential Amenity

- Adverse impact on residential amenity from noise and disturbances. This includes not being able to open windows, or let Children play outside.
- Invasion of privacy – including a neighbouring property with a window on the side elevation.
- It is difficult to control the noise and disturbances due to the amount of people. The increase in size is unacceptable.
- Building was soundproofed to protect residents, outdoor use wouldn't allow same protection.
- Anti-social behaviour from patrons including drunkenness, swearing and urinating. People also smoking outside.
- The outside area is used late into the evening and concerns over breaching opening hours.
- A café would mean the outdoor seating is used more.
- Conditions were attached to the permission to protect the residents.

#### Other Concerns

- The current signage has not been adhered to.
- Highways safety concerns - parking outside makes pulling out of School Road risky and there is no parking.
- No opportunity to object to the original application in 2018, planning enforcement has allowed them to continue and that work has commenced on an outbuilding.
- The tables appear unsightly.
- No objection to a Micro-pub but outdoor seating is different. Micro-pubs are supposed to hold less people.

2 sound clips were submitted as part of a comment.

### **ADC Environmental Protection –**

The Environmental Protection Team would recommend refusal for the removal of condition 7 and 8 to allow an outdoor seating area. The premises is located within a residential area, the use of the outside seating area would likely be detrimental to the amenity of the nearby residential properties by reason of increased noise and general disturbance.

### **Highways**

Based on the latest information, no concerns are raised.

### **Officer Comment**

It has been raised that residents weren't given the opportunity to comment on the previously approved change of use in 2018. For this application a site notice was erected at the application site and individual notifications were sent out to surrounding residents.

On a site visit to the property an enforcement officer investigated the alleged works being carried out to the outbuilding however no evidence of works being carried out to the outbuilding was found.

### **Policy**

Having regard to Section 38 of the Planning and Compulsory Purchase Act 2004 the main policy considerations are as follows:

#### **National Planning Policy Framework (NPPF) (2019)**

Part 6 – Building a strong, competitive economy

Part 8 – Promoting healthy and safe communities

Part 12 – Achieving well designed places

#### **Ashfield Local Plan Review (ALPR) (2002)**

ST1 – Development

ST3 – Named Settlements

### **Relevant Planning History**

**V/2017/0160** – Change of use from sub post office and shop to sub post office, shop and micro pub – Refusal – 18/05/2017

**V/2017/0461** – Change of use from Post Office and Shop to Post Office, Shop to Post Office, Shop and Micro pub – Refusal – 12/09/2017

**V/2018/0110** – Change of use from Post Office, Shop and Off License to Post Office, Shop and Café/Micro pub – Conditional – 26/04/2018

**V/2018/0574** – Application for approval of details reserved by conditions 4 and 9 of planning permission V/2018/0110 – conditional discharge determined – 05/10/2018

**Comment :**

**The Site and Application**

The application site comprises of a detached property located within a residential area on Portland Road, Selston. Permission was granted in 2018 to allow a change of use from post office, shop and off licence to post office, shop and café/micro pub. The application site is located within a predominantly residential area with a school close by.

The applicant seeks consent to remove condition 6 to allow tables and seating to be sited externally to the front, side or rear of the premises and also to remove condition 7 to allow the patio door to the rear of the premises to be used by customers to access and egress the premises at any time and the removal of the sign.

**Residential Amenity**

A key consideration as part of this application is the impact upon the amenity and living conditions of neighbouring properties. The area is predominantly residential with the site being bound by residential properties on all sides.

Policy ST1 of the ALPR 2002 sets out that development will be permitted where it does not adversely affect the character, quality, amenity or safety of the environment. This is also reflected in paragraph 127 of the NPPF 2019, which seeks 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 users.

A number of objections have been received from local residents in respect of the proposed removal of conditions, particularly around the adverse impacts on residential amenity through increased noise and disturbances. The Council's Environmental Health team have also raised objections to the proposal on the grounds that the proposal has the potential to be detrimental to the amenity of nearby residents because of increased noise and general disturbance.

The area proposed to be used for the seating is to the front of the property on an existing pedestrianized area adjacent to the highway. The area proposed for seating to the rear of the property is in an area which could be described as the rear garden. Whilst it is acknowledged that a level of noise would be given by traffic on Portland Road, as it becomes later in the day these noise levels will begin to reduce. It is

during this period of time that the residents will reasonably expect a lower level of noise in their properties. The use of outdoor seating to the front and rear would result in noise which is likely to cause a disturbance to neighbouring residents, particularly as the seating area is likely to be used during periods of fine weather, when the windows of neighbouring properties are likely to be open.

In addition, the outdoor seating is proposed to be placed on hard surfacing and no indication has been made that it will be fixed in the details submitted. The seating may require removing and being put out at the start and end of each day which would also increase the likelihood of further noise and disturbance to neighbouring residents.

It is also considered that by allowing outdoor seating, this may increase the amount of people coming and going to the property. No indication has been made as to how much seating would be provided to the rear of the property. If the capacity is increased, this would also result in the potential to generate more noise and disturbance. Concerns have also been raised in regards to anti-social behavior in terms of swearing, urinating, shouting and general noise disturbance. The proposed seating could also exacerbate these problems and lead to more complaints.

It has been reported that the outdoor seating has been available to customers since the end of the Covid lockdown and has been available a few months. Residents have already experienced the proposal. During this time they have experienced an increase in disturbance and noise to their lives. As such it is considered that the removal of these conditions would prolong this disturbance and have a detrimental impact on resident's quality of lives.

Another issue to consider was the invasion of privacy and the fact that the rear garden overlooks neighbouring properties. It is considered that to some extent there will be an invasion of privacy, however the applicant has suggested the use of screening to mitigate against it.

The applicant has submitted additional information to address the comments made, this includes:

- After receiving complaints from ADC Licensing these were investigated using the CCTV system.
- Following being shut due to Covid, the government waived some licensing restrictions and the applicant thought this included their premises. To control external noise, signage was produced and a 10pm curfew introduced.
- The resident complaints include exaggerated noise levels and disturbance with no evidence.
- Soundproofing has been mentioned, however it is the applicants belief that this was to protect the living quarters upstairs.
- Number of deliveries has been received and only 22 chairs are provided.

- Offering to provide screening to alleviate any privacy issues.
- The window of No.62 Portland Road was once a pantry and obscure glazed. It faces an area where applicant's car was parked and is now storage.
- Neighbours have often had altercations with people in taxis parking on the double yellow lines,

The additional information has been taken into account and it is acknowledged that the applicant is proposing some mitigating measures to reduce any impact. However, it is considered that the impact on the residential amenity and living conditions of residents would still be too great in terms of noise levels and disturbance.

### **Other Matters**

The Highways Authority have confirmed that they have no concerns once they had viewed submitted supporting letter and plan to show the layout of the seating to the front of the property. This includes ensuring there is sufficient room for access and egress around the seating area. Signage is also proposed to direct customers to remain the area and leave the premises promptly and quietly.

It was also proposed that the rear patio would have tables and chairs, a fence to restrict public, replacement of the tarmac ground cover, installation of a permanent step down, a high gate/screen to restrict access towards No.58, a screen to conceal No.62 and additional signage.

Although a layout plan was received for the seating, no further details of appearance were received. It is acknowledged that it is unlikely that allowing the seating would have an impact on visual amenity and appearance of the street scene, however it cannot be adequately assessed.

### **Conclusion and Planning Balance :**

The NPPF states that proposals should be considered in the context of the presumption of sustainable development, which is defined by economic, social and environmental dimensions and the interrelated roles they perform.

The proposal would provide some economic benefits - especially to the business owners - which in light of the current economic conditions carries weight in favour of granting permission. There would also be social benefits arising from the proposals through increased community interaction and it is clear from the petition and letters of support, the Micro-pub is valued by some members of the community.

However, the removal of the conditions to allow outdoor seating and the use of the patio doors to the rear, would create an unacceptable impact on neighbouring residents through increased noise and disturbances. Such that, the reasonable enjoyment of their homes would be affected.

These conditions were originally applied to help protect residents from any adverse impact arising from the development and it is clear already that the residents are being adversely affected through the use of the outside seating areas. Accordingly, it is considered that the harm to these residents significantly and demonstrably outweighs the schemes benefits.

It is therefore considered that the application does not accord with the relevant saved policies contained within the ALPR 2002, and also those outline within the NPPF 2019, it is therefore recommended that this application is refused.

**Recommendation: - REFUSE removal of conditions**

## **REASONS**

- 1. The removal of condition 6 to allow tables and seating externally and to remove condition 7 to allow the patio door to be used and the signage removed, will have a significant impact upon the living conditions of nearby residents by virtue of additional noise and disturbance from the premises. This would be in the form of the placement, movement and collection of outdoor furniture, patrons sitting and congregating outside, and increased comings and goings to the premises generated by the additional seating capacity. The proposal is as such considered to be contrary to policy ST1 of the Ashfield Local Plan Review (2002), which seeks to ensure that developments will not adversely affect the character, quality or amenity of the environment and will not conflict with an adjoining or nearby land use. Furthermore, the proposal would also be contrary to the requirements of Part 12 – Achieving well designed places of the National Planning Policy Framework (2019), which seeks to create places that, amongst other things, promotes health and well-being, with a high standard of amenity for existing and future users.**