

## PLANNING COMMITTEE - 4 JUNE 2019

<b>Application No:</b>	<b>18/01414/FUL</b>		
<b>Proposal:</b>	<b>Retrospective change of use of vacant land to pub garden and permission for the placement of timber modular play equipment in pub garden and alterations to the existing access points to the public house</b>		
<b>Location:</b>	<b>Fox Inn Public House, Main Road, Kelham, NG23 5QP</b>		
<b>Applicant:</b>	<b>Mr Jonathan Pass</b>		
<b>Registered:</b>	<b>25 July 2018</b>	<b>Target Date:</b>	<b>19 September 2018</b>
<i><b>Extension of time agreed to: 07.06.2019</b></i>			

This application is being presented to Planning Committee at the request of the Local Ward Member, Councillor Roger Blaney, on behalf of Kelham Parish Council on the grounds of impact on neighbouring amenity, highway safety and the impact on the Conservation Area.

### Update

This application was deferred from the 2<sup>nd</sup> April 2019 Planning Committee to allow officers the opportunity of seeking amendments to reduce the scale of the proposed play equipment, its proximity to the parking on site and potential for fencing around to increase security. The applicant has agreed to remove the timber modular play equipment from the application and therefore amended plans have been received, the description of development has been changed and a 14 day public re-consultation has been undertaken, comments from which will be reported to Members on the late items schedule where necessary.

As this report was published on previous agenda's, the report that follows has been updated with all new matters relating to the latest amendments updated in bold and superseded matters having been ~~stuck-out~~ where necessary. The recommendation remains for approval.

### The Site

The Fox Inn is an attractive, historic public house within Kelham Conservation Area and in close proximity to the listed assets at Kelham Hall (in this case the most relevant being the Grade II listed gate, lodge and railing piers) to the south, as well as listed buildings on Blacksmith Lane to the east and 6 Main Street (building and railing/gate) across the highway to the west. The site also lies partially within Flood Zone 2 as defined by the EA Flood Zone Mapping, which means it is at medium risk of fluvial flood risk.

The Fox Inn is positioned in a prominent corner plot at the junction of the A617 with Ollerton Road. The A617 lies directly to the south of the pub and Ollerton Road to the west. There are a number of residential properties on Blacksmith Lane which lie directly to the north and east of the pub, many of which have rear gardens that back on to the pub site.

Boundaries to the north comprise a close boarded timber fence approx. 1.8 m in height and steel fencing and chain link fencing around the utility stations to the NE. Trees and screening vegetation are also present along the north and eastern boundaries with the residential properties.

The site accommodates the main pub building which is positioned to the SW corner of the site; there is an open sided cart shed building to the north of the main pub building that has been refurbished to provide an outdoor sheltered sitting/bar area. To the west of this cart shed the front garden area has been cleared of overgrown vegetation and resurfaced with new turf. The land to the east of the pub is the current beer garden, within this land some plastic children's play equipment has been positioned in the form of a spooky tree, old shoe and camel.

### Relevant Planning History

**04/02011/FUL & 04/02012/CAC** - Demolition of timber outbuilding, marking out of pub car park, erection of five dwellings and the laying out of a communal children's play area – Withdrawn 08.12.2004

**03/01290/FUL** - Dining area and kitchen extension, extension to front entrance lobby to improve access for disabled persons – Permitted 12.08.2003

**01/00615/ADV** – Proposed wall board – Permitted 17.07.2001

### The Proposal

For the avoidance of doubt the applicant has removed all reference to the erection of lighting poles and CCTV cameras from the application given ongoing discussions with NSDC Environmental Health and NCC Highways – the Council will be progressing matters relating to the unauthorised replacement of the lighting poles independently from the application at hand. Consultee comments that refer to the initially proposed lighting scheme have been included within this report but will not be discussed further within the appraisal as this will be subject to a separate planning application.

The documents deposited with the application are:

- Supporting Covering Letter – Revision B (30.7.18)
- Site location Plan – Job no. 517.1096.6 - PL02 Rev A (25.7.18)
- Block Plan – Job no. 517.1096.6 - ~~PL01 Rev F (15.03.19)~~ **PL01 Rev H (10.05.19)**
- ~~Proposed Play Equipment – 517.1096.6.PE01 (21.2.19)~~
- Flood Risk Assessment (24.7.18)

Retrospective planning permission is sought for the change of use of the land to the north east of the main pub building from vacant overgrown land to pub garden. ~~Planning permission is then sought for the installation of timber modular play equipment in the land above subject to the change of use to the NE of the pub building.~~

**Change of Use** – the chain link fence has been removed from the southern boundary between the land and the car park and the area has been cleared of overgrown vegetation and resurfaced with new lawn turf. Picnic tables were installed in the summer months but are not currently in situ.

**Alterations to access points to the car park** –The application seeks to formalise entrance and exit arrangements on site with entrance taken off Main Road adjacent to the pub building (proposed

to be widened by approx. 4.8m, to be retained as the main entrance at all times) and off Ollerton Road to the E, the existing Blacksmith Lane access point is proposed to be marked “exit only”. 60 no. parking spaces have been demarcated in the car park with 1 no. delivery space. A plan explicitly showing the extent of the widened accessed from Main Road has been requested by Officers and this will be including with Late Items and presented to Members at Planning Committee.

~~**Timber Modular Play Equipment** – proposed to be erected in the northern grassed area of the site adjacent to the electricity substation to the NW. The modular play equipment is c.9.8m total width, and a maximum depth of 6.7m (including slides). The maximum height of the ridge of the equipment is 4.5m however the highest portion above ground that can be stood on is 2.3m above ground. The play equipment is proposed to be positioned on a woodchip groundcover which would extend c.1m around the base of the equipment. The equipment is proposed to be positioned with the yellow slide facing northwards.~~



**Other annotations on the plan that do not require planning permission** – refurbishment of the existing cart shed to provide a sheltered outdoor sitting area; clearance of overgrown vegetation and re-turfing to the garden area to the SW of the pub building adjacent to the highway.

All existing site boundaries are proposed to be retained – to the north this comprises a close boarded timber fence approx. 1.8 m in height and steel fencing and chain link fencing around the utility stations to the NE. Trees and screening vegetation are also present along the north and eastern boundaries with the residential properties.

The description of development originally included the re-surfacing of the car park, however as detailed below in the appraisal of the application, Officers are of the view that the re-surfacing (which has already been carried out) does not require planning permission. The drainage of the car park remains as previously installed.

#### Public Advertisement Procedure

Occupiers of 17 properties have been individually notified by letter. A site notice has also been displayed near to the site and an advert has been placed in the local newspaper.

Earliest Decision Date: ~~08.03.2019~~ **28.05.2019**

#### Planning Policy Framework

#### The Development Plan

## **Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)**

Spatial Policy 3: Rural Areas

Spatial Policy 7: Sustainable Transport

Spatial Policy 8: Protecting and Promoting Leisure and Community Facilities

Core Policy 6: Shaping our Employment Profile

Core Policy 9: Sustainable Design

Core Policy 14: Historic Environment

## **Allocations & Development Management DPD (adopted July 2013)**

Policy DM5: Design

Policy DM9: Protecting and Enhancing the Historic Environment

Policy DM12: Sustainable Development

## **Other Material Planning Considerations**

- National Planning Policy Framework 2019
- Planning Practice Guidance (on-line resource)
- Section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

## **Consultations**

### **Averham, Kelham, Staythorpe Parish Council –**

#### *Additional Comments on Revised Proposal 1th March 2019*

“In respect to the above application, the Averham, Kelham and Staythorpe Parish Council object to the development and raise the following points:

The AKS PC has concerns regarding the changes made to the car park from a road safety perspective.

The dropped kerbs and dropped level in the car park have been removed allowing vehicles to cut across the entrances causing a traffic hazard. The former entrance off Main Road has been reduced and the current one shunted closer to the building. It is not sufficient to facilitate two way traffic and forces users to use the entrance off Blacksmith Lane which is far more hazardous. There have been accidents recorded at this stretch road since the changes have been made. The current access is more restricted as a sandwich type advertising board is placed there and is also marked out for disabled parking. The current proposals show nothing to rectify this situation or returning it to the previous layout.

There are concerns regarding the scale at which the play equipment is shown on the drawing by comparison to the visuals. Given the height of the play equipment there are concerns that it provides a vantage point to see into the adjacent gardens and properties. Perhaps a less impactful location could be found e.g. the existing play area at the front with smaller scale play equipment being re-located to the rear to reduce the overall impact?

The application states changes to the Cart Shed will be on a like for like basis and that the existing doors to the front elevation will be refurbished but not replaced. The works undertaken on the Cart Shed have not been on a like for like basis as stated. The doors and structure to the front elevation have been totally removed along with the rest of the structure, replacing it with several

columns leaving it totally open.”

*Comments 16<sup>th</sup> August 2018*

“The AKS Parish Council object to the above application, and make the following comments:

Kelham Fox Planning Application comments:

The application makes no reference to the alterations to the existing car park entrance/exit arrangements. The main entrance off Main Road that facilitated safe access and egress to The Fox car park has been blocked off and the area marked out for car parking. Traffic has now been forced to use the entrance that joins with Blacksmith Lane which has created a serious traffic hazard.

The application states changes to the Cart Shed will be on a like for like basis and that the existing doors to the front elevation will be refurbished but not replaced. The works undertaken on the Cart Shed have not been on a like for like basis. The doors and structure to the front elevation have been totally removed leaving it totally open.

The accompanying documentation makes the statement that “engagement with local residents is being undertaken to guide development at the Fox and to ensure that the pub can be a place which adds value to the community”. Having spoken to the various residents groups and societies within the area no consultation has taken place with local residents.

Whilst there is no issue regarding the incorporation of a beer garden there are concerns regarding the proposed play equipment. The application states that it is 15m x 15m x 4 m high and is located in the new beer garden just at the rear of the existing pumping station. Given its size it negates the large majority of the area for use as a beer garden. There are also concerns that given the height as it would allow children etc. to see over the existing fences into the rear of the properties in Blacksmith Lane/Ollerton Road whose gardens back onto the beer garden.

Given the overall size of the site could an alternate location for the play equipment be found that would have less impact on the surrounding properties?

There is no mention in the application of any specialist floor surfacing that may be required for H&S purposes given the scale of the proposed play equipment. We would also query if the play area would need to be supervised?”

**NSDC Environmental Health –**

*Comments 4<sup>th</sup> September 2018*

“In respect of the planning application, the cart shed outside bar area would appear to need a revision of the premise licence were sales to take place there.

In respect of the play area/ beer garden, a finishing time of 22:00hours would seem appropriate given the proximity of residential premises.”

*Comments 14<sup>th</sup> August 2018*

“There are currently complaints about alleged intrusive lighting, noise from construction work on site and also a complaint about burning - in respect of the lighting scheme can I ask that full details are provided to ensure that light intrusion and glare does not occur.”

#### **NCC Highways –**

*Comments 18<sup>th</sup> March 2019*

“Further to comments dated 5 March 2019, a revised drawing 01/F has been received that addresses earlier concerns.

As a result no objections are raised subject to the following conditions:

1. Permission is granted subject to the implementation of the approved drawing 01/F

Reason: For the sake of clarification

2. Within a month of this permission being granted, the car parking layout shown on drawing 01/F shall be fully implemented and thereafter retained for the life of the development.

Reason: In the interests of highway safety and convenience.

3. Within 3 months of this permission, the access on to Blacksmith Lane (shown as an exit only on drawing 01/F) shall be controlled by a signage/markings scheme in accordance with details to be first submitted to, and approved in writing by, the Local Planning Authority

Reason: In the interests of highway safety

4. No obstruction to restrict the width of the Main Road access shall be put in place without the prior written consent of the Local Planning Authority

Reason: In the interests of highway safety”

*Comments 5<sup>th</sup> March 2019*

“Further to comments dated 14 December 2018, I now refer to drawing 01/D.

Whilst this appears to show access available from Main Road, (assuming it is not blocked off by planters) its attractiveness is still diminished by the close proximity of car spaces to the main building and the access from Blacksmith Lane remaining open and largely unaltered from that which raised previous concerns.

As a result, it is recommended that, if possible, the Planning Authority use its powers in this case to seek a resolution to this safety issue i.e.

- A re-opening of the Main Road access, with car spaces reduced by 2 or 3 spaces at this point.
- The closure of the Blacksmith Lane access.”

*Comments 14<sup>th</sup> December 2018*

“I have become aware of a highway safety issue that has arisen as a consequence of the works to the car park.

The plan submitted with the application shows 3 accesses; one off Ollerton Road, one off Main Road, and one off Blacksmith Lane. Until recently the one off Blacksmith Lane was blocked off by kerbing within the site. However this kerbing has been removed and the access re-opened whilst the access off Main Road is now blocked by car parking spaces and planters. So the Blacksmith lane access now appears to have become the main entrance particularly when approaching from Newark. Because this access is so close to the junction of Blacksmith Lane and Main Road, and Blacksmith Lane is so narrow, there have been concerns raised and witnessed about cars cutting the corner when entering and leaving the site and coming into conflict with other vehicle movements.

As a result, it is recommended that, if possible, the Planning Authority use its powers in this case to seek a resolution to this safety issue. Options may include one or more of the following:

- A re-opening of the Main Road access
- The closure of the Blacksmith Lane access.
- Perhaps a condition could be applied requiring LPA approval of a car park layout, which would need to include the removal of the planters and car spaces at the Main Road access and the spaces being relocated at the Blacksmith Lane access with appropriate re-establishing of a kerb restraint.”

*Comments 4<sup>th</sup> September 2018*

“This proposal is for the change of use of vacant land to a pub garden, and includes the resurfacing of the existing car park. Additional lighting within the car park is also included within the application.

From the information submitted relating to the lighting, a lux level drawing is required demonstrating the amount of light falling onto the public highway to assess for spillage conformity levels. Could this be clarified?”

Following discussions regarding the demarcation of parking bays and access into the site NCC Highways have agreed the condition: *Within three months of the date of this permission, a scheme including a plan illustrating all surrounding uses, service access/areas, car parking, site circulation and safe access to and from the public highway for pedestrians and vehicles shall be submitted to and approved in writing by the Local Planning Authority (LPA). The approved scheme should be provided on site within three months of approval by the Local Planning Authority and retained for the lifetime of the development in accordance with the approved details.*

*Reason: For the avoidance of doubt and in the interests of pedestrian and highway safety.*

*Comments 16<sup>th</sup> August 2018*

“I notice from your website that your Environmental Health Officer has recommended that full details of the lighting scheme for this application be provided to ensure that light intrusion/glare does not occur.

As part of this, could these details also include whether there is any overspill lighting on the public

highway please.”

**NSDC Conservation Officer –**

**Comments received 21.05.2019 - Further to the revised site plan which shows the removal of the children’s play equipment within the beer garden of the Kelham Fox Public House, I can confirm that I have no objection to this revision. This will make for a more naturalistic and low impact appearance, which, while Conservation did not object to the last revisions to the proposed play equipment, is preferable to this previous scheme.**

*Comments on Revised Play Area 28<sup>th</sup> February 2019*

“Further to the submission of revised play equipment plans submitted by the Agent 21st Feb I am now happy with these revised plans.

Given the relatively significant height of the play equipment, I am content that this could only be accommodated in the context of this domestic scale at this greatly reduced footprint, and the amount of ‘breathing space’ around the equipment now balances its height. It also allows the equipment to be located away from residential properties in terms of minimising that impact. The equipment has also been carefully oriented to place the visually imposing yellow slide to the rear, reducing its visual impact from the public realm, leaving a broadly naturalistic brown colour to view. I also understand the material around the equipment is to be wood chippings so will not be imposing.

I now think this element of the proposal is acceptable, looking in scale with the status of the host building, the size of the open area and the village context. I therefore think it will preserve the character and appearance of the Conservation Area.”

*Comments 9<sup>th</sup> January 2019*

“For clarity these are my conservation comments on the second play area at the Kelham Fox PH, being the proposed larger timber structure to the north of the site.

Firstly, I must apologise that having read that the application was marked at ‘retrospective’ I had not fully appreciated that there were elements yet proposed but not installed. However, this proposed play equipment is clear within the submitted site plan so I must apologise for overlooking this item and the delay caused in only submitting my comments on this element.

In summary I am concerned by:

- The use of approximate measurements
- The excessive floor plan size
- The excessive height (depending on form)
- The use of bright yellow items over this scale
- The potential large hardstanding area required

I note the equipment sizes are given as approximate. This in itself is concerning as this is not enforceable and while if approved the play equipment could be smaller, it could also be larger. It also prevents a proper assessment of the end impact if the overall proportions are not certain. I think we need to get definite sizes submitted.



If the play equipment was actually installed at 15m by 15m this is a huge floor plan. For comparison the equipment would be the same length as the house to the north (Number 5) but squared, and is also comparable to the length of the Kelham Fox, but again squared. In footprint alone this is actually more imposing than a substantial detached house, and would fail in scale to seem to be domestic sized play equipment. Essentially the Kelham Fox is a former residence (presumably farm house) and so needs the ancillary items in its curtilage to respond to but not compete in scale with this.

I appreciate the proposed footprint fits within the rear beer garden, but will fill about a third of this open space. The open and natural nature of this beer garden at present suits the low density and semirural feeling of Kelham as a village. In assessing the scale of this proposal I do appreciate the form of the play equipment will be broken up and that this is not a solid structure, but at 15m square this will be over such a large area that the equipment will still present a large sense of bulk, failing to be ancillary in scale and failing to respond to the middle village location.

To be clear, this is not the site for a large commercial play area, like at Rufford Abbey or similar, which is set in parkland with plenty of intervening space between buildings to soften the impact. This is in the heart of the village and a residential area and needs to be scaled accordingly. In terms of a height it would be helpful to see how much of this equipment will be actually be at 4m.

However, bearing in mind 4m is just shy of the eaves height of a regular two storey house, or over twice as tall as the c1.8m close boarded fences here, this is a substantial height which cannot be 'hidden' by boundary treatment and, in combination with the proposed footprint, will add to the inappropriate and incongruous scale of this equipment in this setting.

I am also concerned by the use of the bright yellow slides, which in combination with the huge size, will give flashes of bright and incongruous colour at up to 4m high, drawing further attention to this equipment.

There seems to be a reasonable amount of hard standing proposed with this equipment, although the images are not very clear, which will presumably actually exceed 15m by 15m. In an area which is currently green this large area of hard standing will itself take away from one of the positive elements of the land at present.

I do think there is scope for play equipment in this area, but this would need to be drastically reduced (at least halved?) in size, with special attention given to its visual impact and landscaping. I think this proposed play equipment will harm the setting of the Kelham Fox, which is a positive building in the Conservation Area, by failing to respond to the domestic scale and character of this building.

Similarly, the proposed equipment is out scale for this village location, and look incongruous within the Conservation Area. The equipment will also cover a large area of green open land which contributes positively to the Conservation Area. The harm will be less than substantial to the heritage asset of Kelham Conservation Area but with no apparent public benefits.

Please do re-consult me when we have proper dimensions but I would strongly recommend the Agent looks to a significant reduction in size of this play equipment."

*Following a query from a local resident regarding the reference to the 'existing play equipment' the conservation officer has commented the following (received 31.8.18) –*

"I though this area was always a small play area. Please do an addendum to my comments which acknowledges a mistake in my comments here. However, I still have no objection to the play equipment which is located in an area which reads a pub beer garden, as such while the 'tree' is not as subtle as some play equipment it still reads as domestic scaled play equipment associated with the public house, limiting its impact. By 'domestic', in this context I am referring to it being linked to this one modest public house, and not at a scale seen in public parks or theme parks etc. Its scale seems to be visually commensurate to its use as a small beer garden associated with a long standing use. My references to scale do not take into account any neighbour concerns about overlooking from the top of it, but purely its visual impact in this context."

*Comments 24<sup>th</sup> August 2018*

"Kelham Fox is an attractive, historic public house within Kelham Conservation Area and in close proximity to the listed assets at Kelham Hall (in this case the most relevant being the Grade II listed gate, lodge and fencing), as well as listed buildings on Blacksmith Lane and surrounding roads.

I have had a look at this proposal on site and have no objection. The new play equipment is discernibly different but still located within the same enclosure and still of a domestic scale so the impact in heritage terms is little altered. The use of the land as a pub garden has kept it open and little changed in appearance. The resurfacing, again, seems to have had little visual impact. I was not aware of any adverse impact from the lighting poles but would want to make sure these are of a village scale in height and level of illumination. The former cartshed is now open fronted but I have no objection to this as it actually allows the former openings, now set back behind a historic extension, to be visible. I have no objection to the street side planters which at least provide a degree of enclosure to an area which would otherwise benefit from some roadside enclosure.

So long as the scale and level of illumination for the car parking lighting poles is suitable for this village location then I have no objection and believe it will preserve the significance of the setting of nearby listed buildings and preserve the character and appearance of the Conservation Area.

Please do not hesitate to contact me should you require any further advice."

**Trent Valley Internal Drainage Board** – "The site is within the TVIDB district. There are no Board maintained watercourses in close proximity to the site. Surface water run-off rates to receiving watercourses must not be increased as a result of the development. The design, operation and future maintenance of site drainage systems must be agreed with the LLFRA and the LPA."

**The Environment Agency** - "Thank you for consulting us on the application above.

We have no objection to the proposal as submitted. Whilst part of the site is indeed located within Flood Zone 2, defined as having a medium probability of flooding, all development is to take place in Flood Zone 1 only."

**Comments from 17 Interested Parties have been received in objection to the application on the following grounds/raising the following concerns:**

- **Highways Safety:**
  - Kerb stones have been altered which may cause people to pull out too quickly and cause accidents.

- Rainwater is pooling on the junction to Blacksmith Lane because of highways alterations.
  - Wheelchair and pedestrian access has been compromised adjacent to the A617 as the planters and signage has narrowed the entrance.
  - Access point has been blocked up forcing people to use the narrow lanes which is dangerous for pedestrians.
  - Vehicle parking has been changed on site and not included as part of the proposal.
- **Health and Safety:**
- Hedging has been cut back exposing gaps which could be hazardous to children playing near the highway.
  - No protection from recreational activities on site such as archery and axe throwing.
  - Plastic play equipment on the site is old, broken and insecure.
  - Obstruction of the public footpath.
  - People are walking under Kelham Bridge across Blacksmiths Lane to access The Fox and this is dangerous.
  - Resurfacing of the carpark is resulting in water pooling on the A617.
- **Impact on Amenity:**
- Proposed timber play equipment is excessively large/tall and will be on a 1.5 m platform above the ground meaning children and adults will be able to look over into neighbouring gardens.
  - Security floodlighting and cameras are excessive in height and shine into bedrooms of neighbouring properties. Lights on the building itself are also directed at neighbouring properties.
  - Waste collection has altered so it is now directly opposite neighbouring properties meaning they disturb residents when being filled/emptied and they smell and are unsightly.
  - Creation of the second beer garden has an impact on neighbouring amenity through noise and puts pressure on parking facilities.
- **Other Comments:**
- The pub manager's residential area has changed into a snug but this isn't part of the proposal and has increased the pub's floorspace.
  - The former chart shed (non-residential use) has been altered considerably and has been subjected to a change of use increasing the floorspace further and has not been included within the proposal.
  - All of the proposals detrimentally impact the historic character of Kelham and the conservation area.
  - The currently play equipment is harmful to the conservation area.
  - There has been removal of trees and hedges on site and no wildlife survey.
  - Safety issue with children being unsupervised on play equipment.
- One comment noted that whilst not agreeing with some elements of the proposal they were glad to see the pub reopened.

## Comments of the Business Manager

### Principle of Development

The National Planning Policy Framework promotes the principle of a presumption in favour of sustainable development and recognises that it is a duty under the Planning Acts for planning applications to be determined in accordance with the development plan. Where proposals accord with the Development Plan they will be approved without delay unless material considerations indicate otherwise. The NPPF also refers to the presumption in favour of sustainable development being at the heart of the NPPF through both plan making and decision taking. This is confirmed at the development plan level under Policy DM12 of the Allocations and Development Management DPD.

Firstly it is important to note that the establishment of beer gardens at pubs requires careful consideration of the potential for amenity problems for neighbours. To establish whether planning permission is required for the creation of a beer garden the main issues to consider are a) whether the land is within the curtilage of the pub planning unit, b) whether any structures to be created to facilitate a beer garden (such as terraces, barbecues, marquees, umbrellas and children's play equipment) are development requiring permission. Provided that the land falls within the planning unit occupied by the pub, the creation of a beer garden from an area operating as a car park, bottle storage area or importantly for this application, garden area, does not require planning permission (as demonstrated in Haringay 19/7/2011 DCS No 100-073-584 where the Inspector concluded that the use of half of a pub car park as a beer garden did not constitute a change of use). However the erection of associated structures or carrying out of any works that constitute operational development does trigger the requirement for planning permission.

In this case it is contested whether this parcel of land, subject to the application for a change of use, falls to be within the curtilage of the pub planning unit. I consider that given the applicant has stated in the D&A statement and in annotations to the plans that the parcel of land has previously operated as allotments historically, and that the land has been physically separated from the pub by a fence line (since removed) and can be seen from aerial photography to have been vacant and unused for a period of c.15 years, that this land does not form part of the curtilage of the pub planning unit and as such requires planning permission for the change of use.

The site is located within the village of Kelham, approx. 5km from the sub-regional centre of Newark. The settlement hierarchy for the district is set out in Spatial Policy 1 whilst Spatial Policy 2 deals with the distribution of growth for the district. This identifies that the focus of growth will be in the Sub Regional Centre, followed by the Service Centres and Principal Villages. At the bottom of the hierarchy are 'other villages' which do not have defined built up areas in terms of village boundaries. Consequently given its location in a rural area, the site falls to be assessed against Spatial Policy 3 (Rural Areas) of the Core Strategy.

Spatial Policy 3 states that proposals for local services and facilities in the rural communities of Newark & Sherwood will be promoted and supported. The rural economy will be supported by encouraging tourism and diversification. Given the site is within the built-up core of Kelham I am satisfied that this proposal does not fall to be assessed under Policy DM8 of the Allocations and Development Management DPD (Open Countryside) which regulates development in the open countryside. I am mindful that the proposal relates to an existing public house and therefore the principle of this type of development within the site has already been established, the expansion of which is supported by Spatial Policy 3.

On this basis I consider that most relevant criterion of Spatial Policy 3 would be the impact on the character of the area. This states that development proposals should not have a detrimental impact on the character of the location or its landscape setting. This in turn is mirrored by the intentions of Policy DM5 of the DPD which confirms that the rich local distinctiveness of the District's landscape and character should be reflected in the scale, form, mass, layout, design, materials and detailing of proposals. Due to the site's location within a Conservation Area Policies Core Policy 14 and Policy DM9 of the Council's LDF DPDs are also relevant, which amongst other things, seek to protect the historic environment and ensure that heritage assets are managed in a way that best sustains their significance.

Core Policy 6 explains that the economy of the district will be strengthened to provide a diverse range of employment opportunities by supporting the economies of our rural communities. In addition, Spatial Policy 8 states that the enhancement of community facilities such as public houses will be encouraged.

Section 6 of the NPPF focuses on building a strong and competitive economy, para 83 states that planning decisions should enable the sustainable growth and expansion of all types of businesses in rural areas (a) and the retention and development of accessible local services and community facilities such as public houses (d). Given the above, I am satisfied that the effective expansion of this employment and community facility is supported in principle by the LDF as well as national planning policy subject to the assessment of the proposal in terms of impact upon the character and appearance of the conservation area, impact on the amenity of any neighbouring properties, impact upon highways safety and flooding which will be explored in further detail below.

In addition to the above, given part of the scheme seeks to resurface the car parking provision on site and formally demarcate the parking spaces, Spatial Policy 7 of the Core Strategy aims to provide appropriate and effective parking provision, both on and off-site and aims to avoid highway improvements which harm the environment and character of the area. Subject to a detailed assessment of site specific considerations, I consider the principle of this development to be acceptable.

#### *Elements of the Scheme which do not require planning permission*

Given the number of complaints from local residents, I feel it important to explain the parts of the renovation of this premises that have been undertaken which have been concluded not to require planning permission. Firstly I note that, in the land to the east of the pub that comprises the current beer garden, the applicant has installed three plastic children's play structures (a spooky tree, old boot and camel).



Play structures within the curtilage of pubs, ranging from climbing frames to ready-made plastic play structures are often a source of dispute as to whether they are operational development. I have applied the three tests of operational development (size, permanence and physical attachment) to the children's play structures and conclude that these structures do not meet the three tests meaning that they do not represent operational development: the size of the equipment means that they could be transported easily and can be moved around the site, they are ready assembled and they are not fastened to the ground on concrete pads (by any considerable means) which lead me to consider that they are non-permanent structures. Given the weight, height and degree of permanence of these structures, and the scale of the equipment I do not consider these require planning permission. Notwithstanding this, the Council's Conservation Officer has commented on the equipment advising that they have no objection to the small scale play equipment which is located in an area which reads a pub beer garden. As such while the 'tree' is not particularly subtle play equipment it still reads as an appropriately scaled structure associated with the public house, limiting its impact. The scale of this equipment appears visually commensurate to its use as a small beer garden associated with a long standing use.

In addition the painting/repainting of the pub and timber window frames has been assessed as to not require planning permission as the pub is not a listed building. Similarly, the like-for-like repair works that have been carried out to the cart shed such as the refurbishment of the doors and timber have been concluded to not require planning permission as this also is not a listed building and has been renovated to be of a similar visual appearance which does not constitute development.

As such, for the reasons listed, the above works do not form part of this application.

In addition, Schedule 2, Part 7, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 states that development consisting of— (a) the provision of a hard surface within the curtilage of a shop or catering, financial or professional services establishment (for the purposes of Class E, "shop or catering, financial or professional services establishment" means a building used for any purpose within Classes A1 to A5 of the Schedule to the Use Classes Order); or (b) the replacement in whole or in part of such a surface is permitted development. Development is not permitted by Class E if— (a) the cumulative area of ground covered by a hard surface within the curtilage of the premises (other than hard surfaces already existing on 6th April 2010) would exceed 50 square metres; or (b) the development would be within the curtilage of a listed building.

The application site is an A4 use class and as such satisfies the first criteria, although the area proposed to be re-surfaced with tarmac is approx. 1,700m<sup>2</sup>. However, aerial photography evidences that the land proposed to be re-surfaced has been hard surfaced since before April 2010 and as such, whilst exceeding the area restriction, the replacement in whole is permitted development provided the hard surface is made of porous materials or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the undertaking. The re-surfacing of the car park does not result in a change to the quantity of parking provision on site given the area has not increased, but the site has now been demarcated with white lining for 60 no. cars and 1 delivery space.

The car park is a tarmacked area around the main pub building, providing parking for the pub – currently surface water is directed into the existing drains on the site. The applicant has advised that the previous surface required repair and as such a like-for-like resurfacing in tarmac has been carried out. The drainage scheme has not been altered and the surface material has been replaced like for like with surface water directed into the existing drains on site.

For clarity, the proposal seeks permission for the change of use of the land to the north to a beer garden. ~~erection of the timber modular play equipment on this land and the resurfacing of the car park.~~ Taking the above into consideration the only parts of this application that strictly require planning permission ~~are~~ is the change of use to a beer garden ~~and the erection of the timber modular play equipment~~, however the application includes the formalisation of access to and egress from the site as well as formal car parking layouts and these matters will be discussed further below.

### Impact on the Character of the Area

Spatial Policy 3 advises that development proposals should not have a detrimental impact upon the character of the location or its landscape setting. This in turn is mirrored by the intentions of Policy DM5 which confirms that the rich local distinctiveness of the District's landscape and character should be reflected in the scale, form, mass, layout, design, materials and detailing of proposals. Due to the site's location within a Conservation Area Core Policy 9 advises that any development proposal must demonstrate a high standard of sustainable design that *"both protects and enhances the natural environment and contributes to and sustains the rich local distinctiveness of the District"* and that complements the existing built environment.

In addition, policies CP14 and DM9 of the Council's LDF DPDs, amongst other things, seek to protect the historic environment and ensure that heritage assets are managed in a way that best sustains their significance. The importance of considering the impact of new development on the significance of designated heritage assets, furthermore, is expressed in section 16 of the National Planning Policy Framework (NPPF).

Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 requires the Local Planning Authority (LPA) to pay special regard to the desirability of preserving listed buildings, their setting and any architectural features that they possess. Section 72 of the Planning (Listed Building and Conservation Areas Act) 1990 states, in relation to the general duty as respects conservation areas in exercise of planning functions that, *'special attention shall be paid to the desirability of preserving or enhancing the character and appearance of that area'*. In this context, the objective of preservation is to cause no harm, and is a matter of paramount concern in the planning process. The courts have said that this statutory requirement operate as 'the first consideration for a decision maker'.

Paragraph 194 of the NPPF, for example, advises that the significance of designated heritage assets can be harmed or lost through alterations or development within their setting. Such harm or loss to significance requires clear and convincing justification. The NPPF also makes it clear that protecting and enhancing the historic environment is sustainable development (paragraph 8.c).

The principle of changing the parcel of land to the NE of the pub to a beer garden has been discussed in the previous section in which it has been concluded that the principle is acceptable given the location. With regards, to its impact upon on the character of the area I consider that the land in question reads as part of pub site given there is no boundary between the two. Furthermore, the Conservation Officer has advised that they have no objection to this part of the proposal, stating that use of the land as a pub garden has retained a sense of openness and there is little change in appearance from the previous arrangement.

I note that to facilitate this change of use, the chain link fence has been removed from the southern boundary between the land and the car park and the area has been cleared of overgrown vegetation and resurfaced with new lawn turf. Picnic tables were also installed at the time of my first site visit (06.08.2018) but have since been removed over the winter months **(although I note from correspondence from surrounding residents that these tables may have been reinstated following periods of warm weather recently)**. The principle of using this land as a beer garden with picnic tables positioned on the land in summer months is considered to be acceptable, the land with or without the tables will read as a part of the pub unit and retains the sense of openness surrounding the building, respecting the setting of the surrounding listed assets and the character and appearance of the Conservation Area.

~~Turning now to the proposed erection of the timber modular play equipment on the land, I would highlight for clarity that in the first two sets of comments from the Conservation Officer the officer misinterpreted the plans submitted and failed to appraise the large modular play equipment that was proposed as part of this scheme. Since this the Conservation Officer has submitted additional comments covering the modular play equipment specifically which have resulted in significant revisions from what was originally proposed. The equipment has been repositioned so that it is sited to the north of the existing cart shed, adjacent to the edge of the tarmac car park area and the existing electricity substation building (rather than adjacent to the rear boundary with the neighbouring properties).~~

~~Revisions to the size and positioning of the equipment have come from discussions with the applicant in which it was originally expressed that the modular play equipment was excessive for this portion of land and scale of the business on site. The Conservation Officer raised concerns with the amount of yellow detailing that was initially proposed and requested the size/scale to be significantly reduced. The revised scheme reflects the comments of the Conservation Officer; the size has been reduced to the proportions referred to earlier in this report.~~

~~The Conservation Officer has advised that the significant height of the play equipment (following reductions in footprint) is balanced out by the amount of 'breathing space' around the equipment. The revised siting also allows the equipment to be located away from residential properties in terms of minimising impact upon these properties. The equipment has also been carefully oriented to place the visually imposing yellow slide to the rear, reducing its visual impact from the public realm, leaving a broadly naturalistic brown colour to view. The Conservation Officer has also advised that given the material around the equipment is to be wood chippings it will not be imposing. The Conservation Officer concludes that the play equipment as revised is considered to~~



~~be acceptable, looking in scale with the status of the host building, the size of the open area and the village context.~~

In summary I consider that the works in this application will not result in any detrimental impact on the setting of nearby Listed Buildings or their significance generally (in accordance with Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990. The proposal also preserves the character and appearance of the Conservation Area, in accordance with Section 72 of this Act.

Given the above, it is considered that the proposed development would not result in harm to the character and appearance of the conservation area or the setting of the adjacent listed building. As such the proposal is considered to be consistent with S66 and 72 of the Act, as well as policy and advice contained within Section 16 of the NPPF, and Core Policy 14 and Policy DM9 of the Council's LDF DPD.

### Impact on Amenity

Policy DM5 of the DPD states that development proposals should ensure no unacceptable reduction in amenity including overbearing impacts and loss of privacy upon neighbouring development. The NPPF seeks to secure high quality design and a high standard of amenity for all existing and future occupants of land and buildings.

Firstly, I consider the main issue with this proposal to be whether the change of use would cause unacceptable harm to nearby residents (noting that surrounding residential properties have commented in objection to this proposal as they live in close proximity to this portion of the site) ~~and whether the erection of the play equipment will result in an unacceptable amenity impact.~~

In locations surrounding businesses such as public houses, it may be concluded that some degree of noise and activity both during the day and in the evening is inevitable. It may also be considered that people who live near such a location must expect a certain level of activity close to their homes. In this instance, I note that there are residential properties to the north, north-east, east and across the highway to the west. The properties that are most likely to be affected as a result of this proposal are No. 5 Blacksmith Lane (directly north of the proposed beer garden land), No. 3 Blacksmith Lane (north east) and The Laurels to the east – I note that The Fox Inn premises have historically operated as a public house, however, recently has come under new management and has been renovated in an attempt to improve business.

I would note that the occupiers of surrounding properties have chosen to live next to a public house, but have enjoyed a low level of noise disturbance due to the smaller scale business operation. Given the pub use is established on the site, the principle of this use class is considered to be acceptable, the existence of this use means that the residents are likely to be already affected by a certain level of commotion or general disturbance and overall I consider that the extension of the beer garden into the portion of land to the NE of the pub would not unduly impact the amenity of surrounding neighbours to a degree that would not be expected by living in such close proximity to a pub or indeed to warrant the refusal of this application. The garden area is likely only to be used in fair weather and the separation distance between the two closest properties are 5-10m, the closest to the garden area no.5 Blacksmith Lane which is a large private amenity area that extends to the north as well as close to the common boundary. The use of the land as a beer garden is therefore not considered to result in an unreasonable impact on neighbouring amenity.

~~Turning now to the erection of the timber play equipment, I note that a number of residents and the Parish Council have raised concerns over the scale of the equipment and the impact that this will have on the amenity of neighbouring occupiers. Since the submission of this application the scale of the equipment has been reduced significantly and the equipment has been repositioned in response to concerns regarding overlooking from the top of the equipment. There are two electrical sub-station buildings close to the proposed play equipment, one directly to the north-east of the equipment and one to the east. The equipment has been repositioned so that it is sited to the north of the existing cart shed, adjacent to the edge of the tarmac car park area and the existing electricity substation building (rather than adjacent to the rear boundary with the neighbouring properties) to increase the separation distances.~~

~~No. 5 Blacksmith Lane is the property most likely to be affected as a result of the equipment; however I note that the common boundary would be c. 18 m from the edge of the play equipment. Whilst I acknowledge that the modular unit would be tall in overall height, the highest platform on which children could stand is 2.3 m in height. Given this, and the aforementioned separation distance, I do not consider the play equipment would result in unreasonable overlooking into neighbouring gardens. Similarly, to the east is the electricity substation which separates the play equipment and neighbouring properties, as such no overlooking would occur to the south east. By virtue of positioning the equipment would not result in any overbearing or overshadowing impact and whilst a tall structure, has been sited so as to minimise any impact of overlooking.~~

Overall I must consider whether the level of disturbance from the extension of the beer garden to the north-east would be so significant that it would result in an unreasonable impact on neighbouring amenity. Whilst I sympathise with the neighbouring residents, I am of the view that occupants of residential properties close to an existing public house cannot expect to enjoy the same degree of residential amenity as would be achievable in wholly residential areas. It can be concluded that the anticipated noise associated with the extension of this garden area is not likely to create an unacceptable level of disturbance to the existing local residents in excess to what is already experienced by virtue of this existing business. ~~In addition to this, the proposed play equipment has been repositioned so that the distance between residential properties has increased to a degree in which I consider to be acceptable from an overlooking perspective.~~ Overall the proposal is considered to be in accordance with policy DM5.

### Highway Safety

Spatial Policy 7 of the Core Strategy seeks to ensure that vehicular traffic generated does not create parking or traffic problems. Policy DM5 of the DPD requires the provision of safe access to new development and appropriate parking provision.

As part of the application the existing tarmacked parking areas (north-east and east) have been resurfaced with new tarmac, the drainage remains as existing. 60 no. parking spaces have been demarcated with 1 no. delivery space. Following discussions with the applicant over highway safety concerns from local residents, the application now seeks to formalise entrance and exit arrangements on site with entrances taken off Main Road adjacent to the pub building (which is proposed to be widened by approx. 4.8m and be retained as the main entrance at all times) and off Ollerton Road to the east with the existing Blacksmith Lane access point proposed to be marked "exit only". The Highway Authority has commented on this amendment and has advised that subject to conditions they raise no objection to the proposal. For clarity and the avoidance of doubt, a revised plan showing the extent of the widened access has been ~~requested by Officers so~~

**submitted so** that the LPA can ensure that the access is widened in accordance with the proposal. ~~This plan, and any revised/new recommended conditions, will be included in Late Items for Members and presented at the Committee Meeting.~~

Amendments were sought by the Highway Authority to formalise access/egress from the site in an attempt to prevent the car park area being used as a 'rat run' between Ollerton Rd and Main Road. Conditions require the proposed car parking layout to be implemented and retained in perpetuity and for a marking/signage scheme to be submitted to the LPA to control the Blacksmith Lane access as an 'exit only' route.

I acknowledge that there are concerns from residents regarding highway safety. The comments from residents refer to the kerb stones having been altered and access points having been blocked up directing people to use the Blacksmith Lane access which is dangerous – I would note that there are three existing accesses into this site, one along the western side of the site off Ollerton Road, one along the southern side off Main Road and one along the eastern side of the site off Blacksmith Lane. Whilst historically the pub has not utilised the Blacksmith Lane as an access point for customers I note that this is an existing access route into the site and as such permission is not required for the re-use of this access which was previously blocked by a triangular section of raised kerb stone (highlighted below). The removal of these kerb stones, on private land, would not require planning permission, the use of this existing access does not need additional planning permission given it is an existing access and thus the LPA has limited control over its use.



However, following discussions with the agent and the Highway Authority the applicant has amended the site plan to formalise entrance and exit points on the site such that the Blacksmith Lane access would be exit only.

Residents' comment about planters obstructing the access on to Main Road which have since been removed; all three access points are now accessible for vehicles but as discussed above the plan sets out a formal entrance and exit route which will be enforceable through the approved plans condition.

I also note that residents raise many concerns regarding highway safety which are not reflected in the Highways Officer's comments. I must give the Highway Authority's comments significant weight as the LPA's technical experts. As such, given the technical guidance from NCC Highways, the proposed site plan demarking the entry and exit point and the scope of works that have been carried out, the proposal is considered to accord with Policies SP7 and DM5.

## Flooding

I acknowledge the concerns of local residents which refer to increased flood risk and surface water from the works that have been undertaken at this site. However, I must respectfully advise that it is a matter of fact that the resurfacing of the car park would not result in an increase of surface water; undeniably this operation will not increase the amount of rainfall experienced at the site.

I do accept that in some cases the presence of hard surfacing can increase the amount of surface water run-off if surface water does not fall on to a permeable surface but in this case the amount of hard surfacing on the site is not being increased. It has instead been re-surfaced with a like-for-like material with no increase in the area surfaced and no alteration to the current drainage system in place at this site. These works will not result in an increase in risk of pluvial flooding above that which is currently experienced on this site.

## Other Matters

Comments from local residents refer to a number of other matters such as health and safety for children using the site, customers walking across Blacksmiths Lane to access the pub and alterations to the pub itself requiring planning permission.

Firstly I would highlight that any internal alterations to the fabric of this non-listed building do not require planning permission, and whilst the residents consider there to have been a change of use to parts of the pub building I would highlight that the entire building has A4 use class to be used as a public house and as such I do not consider that there has been an unlawful change of use that has taken place.

~~Secondly, with regards to the safety of people using the play equipment and of children using the play areas, to this I would highlight that given the land is privately owned, it is the responsibility of the owner or indeed the user (or their parents in the case of children) to use the equipment responsibly and the behaviour of the public is not something that can be controlled by the planning process.~~

## Conclusion

The principle of this application is considered to be acceptable given Core Policy 6 encourages the support of rural community economies and Spatial Policy 8 the enhancement of community facilities such as public houses. The NPPF focusses on the development of a strong and competitive economy and for decisions to support sustainable growth and expansion of all types of businesses in rural areas, and the retention and development of accessible local services and community facilities such as public houses. The assessment of the application has concluded that the character and appearance of the Conservation Area would be preserved, that there would be no harmful impact on the setting of adjacent listed buildings identified as a result of this scheme. The change of use of the land to a beer garden ~~and the erection of the modular play equipment~~ has been assessed as not resulting in an unacceptable impact on the amenity of surrounding properties, nor has there been a highway safety impact identified.

Given the above I am satisfied that the proposal would comply with the relevant guidance of the NPPF and the PPG as well as Core Policies 6, 9 and 14 and Spatial Policies 3, 7 and 8 of the Newark and Sherwood Amended Core Strategy DPD and Policies DM5 and DM9 of the Allocations & Development Management DPD. Sections 66 and 72 of the Planning (Listed Buildings and

Conservations Areas) Act have been appropriately applied. Accordingly, I recommend to Members that planning permission be granted.

## **RECOMMENDATION**

**That full planning permission is approved subject to the following conditions:**

01

The development hereby permitted shall not be carried out except in complete accordance with the following approved plans:

- Site location Plan – Job no. 517.1096.6 - PL02 Rev A (25.7.18)
- **Block Plans – 517.1096.6.01.H (10.5.19)**
- ~~– Proposed Play Equipment – 517.1096.6.PE01 (21.2.19)~~

unless otherwise agreed in writing by the local planning authority through the approval of a non-material amendment to the permission.

Reason: So as to define this permission.

~~02~~

~~The development hereby permitted shall be constructed entirely of the material details submitted as part of the planning application unless otherwise agreed in writing by the local planning authority through an application seeking a non-material amendment.~~

~~Reason: In the interests of visual amenity.~~

02

Within 1 month of date of this planning permission, the car parking layout and widening of the access from Main Road shown on drawing '**Block Plans**' – **517.1096.6.01.H** shall be fully implemented and thereafter retained for the life of the development.

Reason: In the interests of highway safety and convenience.

03

Within 1 month of the date of this planning permission, a signage/marketing scheme for the exit on to Blacksmith Lane (shown as an exit only on drawing '**Block Plans**' – **517.1096.6.01.H**) shall be submitted to, and approved in writing by, the Local Planning Authority. The approved scheme shall be implemented in full within 1 month of it being agreed by the local planning authority and thereafter retained for the life of the development.

Reason: In the interests of highway safety.

## **Notes to Applicant**

01

The applicant is advised that all planning permissions granted on or after the 1<sup>st</sup> December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

The proposed development has been assessed and it is the Council's view that CIL is not payable on the development given that there is no net additional increase of floorspace as a result of the development.

02

This application has been the subject of discussions during the application process to ensure that the proposal is acceptable. The District Planning Authority has accordingly worked positively and pro-actively, seeking solutions to problems arising in coming to its decision. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

## **BACKGROUND PAPERS**

### **Application case file.**

For further information, please contact Honor Whitfield on ext 5827.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**

**Director Growth and Regeneration**

