



## Report of the Chief Planning Officer

### NORTH & EAST PLANS PANEL

Date: 17<sup>th</sup> August 2017

**Subject: APPLICATION 16/05185/FU – Change of use of ground floor from doctors surgery/pharmacy to Public Bar (A4), two storey rear extension; rear beer garden area, external alterations including new doors and windows, condenser and extraction equipment to roofspace; new fencing and parking to rear, 39 Aushorpe Road, Leeds LS15 8BA**

| APPLICANT           | DATE VALID | TARGET DATE |
|---------------------|------------|-------------|
| J D Wetherspoon PLC | 26.08.16   | 18.08.17    |

#### Electoral Wards Affected:

Crossgates & Whinmoor

Yes

Ward Members consulted

#### Specific Implications For:

Equality and Diversity

Community Cohesion

#### RECOMMENDATION:

**DEFER and DELEGATE approval to the Chief Planning officer subject to the conditions specified (and any others which he might consider appropriate) and the completion of a legal agreement to include the following obligations;**

- **Contribution of £15,000 to allow the highway authority to review the impact of the use when established and implement measures where necessary.**

**In the circumstances where the Sec.106 has not been completed within 3 months of the resolution to grant planning permission the final determination of the application shall be delegated to the Chief Planning Officer.**

1. Time limit condition
2. Plans to be approved;
3. Materials details and samples of all external walling, roofing and surfacing
4. Hard and soft landscape scheme to be approved in writing and implemented.
5. Preservation of retained trees/hedges/bushes
6. Details of cycle and motorcycle parking

7. Details of access, storage, parking, loading/unloading of contractors plant, equipment materials, vehicles
8. Precise details of bin stores
9. Specified operating hours (construction) of 08.00-18.00 weekdays, 09.00-14.00 Saturdays; no Sunday / Bank Holiday operations;
10. Submission of statement of construction method  
Hours of opening of the Public House shall be restricted to Sunday - Thursday 07:00 - 23:30 hours Friday - Saturday 07:00 – 00:30 hours. Last orders shall be 30 minutes before closing time specified in this condition.
11. The outside area to the front of the building shall not be used for the consumption of food or drink before 9am or after 10pm any night. Notwithstanding the information shown on the approved plans there shall be no tables and chairs sited located outside of the defined front beer garden area.
12. There shall be no food or drinks consumed outside of the building except in the defined areas.
13. The rear glass doors shall be closed no later than 10pm each night.
14. Bottles shall not be placed in any outside receptacles after 9pm or before 9am.
15. There shall be no amplified music or televisions audible outside of the premises at any time.
16. There shall be no deliveries to the site before 8am or after 6pm Monday to Saturday and not before 9am or after 1pm on Sundays and public holidays.
17. Deliveries shall be carried out in accordance with the approved delivery management plan which describes the routes for delivery pre and post NGT (if constructed)
18. The use hereby permitted shall not commence until a scheme for noise control for plant and mechanical equipment has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and any necessary noise control and attenuation shall thereafter be retained at all times.
19. Full details of the proposed 3m high acoustic boundary treatment shall be approved prior to the commencement of building works and installed prior to first use of the Public House.
20. Noise levels within the adjoining commercial premises located on the 1st floor of the building must not exceed a noise level equivalent to that indicated by Noise Rating Curve 35 (NR35) due to noise sources associated with the internal operations of Pubic House use within the same building
21. Implementation of agreed Management Plan (contents to follow general issues raised in para 10.66 of the report).
22. Grampian condition to deliver footway widening along North Road frontage and associated access and vehicular crossing modifications and visibility.
23. Grampian condition to deliver Build-outs at the junction of Church Lane and Austhorpe Road (including loading bay markings)
24. Car parking spaces to remain free from obstructions and parking charges
25. Austhorpe road forecourt to be kept free of obstructions for pedestrian use.

## **1.0 INTRODUCTION:**

- 1.1 This application is brought to Panel as it relates to a proposal that has attracted significant representations both for and against. With this context in mind it is considered appropriate for the application to be reported to the Panel for determination. Members are asked to consider this application on its own merits and having appropriate regard to the policies of the Development Plan and relevant material considerations.
- 1.2 The application was deferred from consideration at the 15<sup>th</sup> June Plans Panel meeting on the advice of the Council's Legal Officer due to the late submission of

highway revisions from the applicant which has not been fully considered and also because of late comments from the Council's Environmental Health Officers. A deferral was recommended by the Legal Officer on order to review the full factual position and appraise the development, in the interests of sound decision-making.

- 1.3 A short up-date report was presented to Plans Panel on 13<sup>th</sup> July 2017 where it was confirmed the officer assessment was not yet complete.
- 1.4 This report further up-dates Plans panel on the latest submissions from the applicant, the latest comments from Highways Officers and Environmental Health officers and representations from Ward members, Cross Gates Residents Watch group and also other local residents/third parties.
- 1.5 Members will note that the revised plans are now acceptable to Highways officers and the previously recommended reasons for refusal are thereby no longer applicable. Environmental Health officers have now considered the revised/additional noise assessment, and have raise no objections, subject to the imposition of appropriate conditions.

## **2.0 PROPOSAL:**

- 2.1 The application proposes the change of use of the existing doctors' surgery and pharmacy at ground and first floor level to a public house (A4 use) at a commercial property on Austhorpe Road. The existing dental surgery at first floor level is to remain.
- 2.2 In addition to this, a two storey extension is proposed to the rear as well as a beer garden. These would occupy part of the original rear parking area although three parking spaces are retained for use by the dental surgery. Alterations to the front/side elevations of the building are also proposed. The works are described in the following paragraphs.
- 2.3 At ground floor level it is proposed to create the main customer trading area in the space that was formerly occupied by the doctors' surgery and pharmacy. This will involve the removal of existing partitions which formed individual consulting rooms, to form a large open plan space. To the rear of the site, a new two storey extension is proposed which at ground floor, will provide a new purpose built kitchen to serve the public house. Above this customer toilets are now proposed.
- 2.4 Externally, a beer garden will be provided to the rear of the main building (with a floor area of circa 117sqm) along with three car parking spaces which are available to the dentist surgery at first floor level. Revised plans have been submitted which shows an enlargement of the parking spaces, so they are more easily accessible,. These spaces continue to be accessed from North Road. A refuse store is to be provided to the rear, adjacent to beer garden and is to serve the public house and dental surgery
- 2.5 The footway on North Road is shown to be partially widened and brought up to adoptable standards.
- 2.6 The existing ground floor entrance lobby to the first floor dentist will be retained as will the full extent of the dental surgery. Those parts of the first floor, including the rear extension which will not be occupied by the dental surgery, will provide a cold store (accessed via a goods lift fronting Austhorpe Road) for the proposed public

house as well as staff welfare facilities. The dental surgery will be entirely self-contained from the public house.

- 2.7 All plant was originally proposed to be located externally at roof level, including kitchen flue, condensers and vents/flues. However, the equipment is now shown to be contained within the roofspace of the rear proposed extension following the introduction of a pitched roof. The plant is also identified to be attenuated so that it operates within acceptable noise limits. The proposed kitchen extract flue is also proposed to contain carbon filtration systems to mitigate odour issues.
- 2.8 The front elevation of the building is to be provided with a new shop front and doors, with some minor reconfiguration of the fenestration at ground floor level. On the rear elevation, much of the existing pipework and plant will be removed and the first floor area will be clad in timber. At ground floor level on this elevation, opening doors are proposed. A new canopy/awning will be installed along the length of the existing rear elevation.
- 2.9 On the side elevation of the existing building, new window openings will be installed and on the side elevation of the projecting outbuildings, timber cladding will be installed to the first floor. The proposed extension which will contain the kitchen and cold store will be rendered at ground floor level and timber clad at first floor, with plant within the pitched roof at second floor level. The proposed extension has been revised so it is set away from the boundary with No. 43, which is in residential use.
- 2.10 The applicant set out preferred hours of opening in the Appendix to their Planning Statement, as follows:
- Sunday to Thursday – 07.00am – 00.30am;  
Fridays and Saturdays – 07.00am – 00.30am.
- 2.11 These hours include: Maundy Thursday; Christmas Eve; Boxing Day; New Year's Eve; Sundays before Bank Holidays.
- 2.12 The revised plans submitted before the June Panel meeting which responded to the highway reasons for refusal revised the proposed servicing so it will take place to the front of the building, through doors on the front or up the goods lift to the cold store, rather than taking deliveries down North Road (which was shown on the earlier plans). Access to the three parking bays was also improved. Delivery times and arrangements are proposed to be managed.

### **3.0 SITE AND SURROUNDINGS:**

- 3.1 The application site is located to the north side of Austhorpe Road which is the main shopping street within Cross Gates centre, running in an east-west direction. The site comprises a 2 storey building located on the junction of Austhorpe Road (to the south) and North Road (to the west). With the exception of part of the first floor which is occupied by a dental surgery, the remainder of the building is now vacant, having previously been occupied by a pharmacy and doctors' surgery.
- 3.2 The building is part two storey and part single storey, constructed in brick and roof tiles. The frontage at ground floor comprises a shop front and also includes the entrance up to the dental surgery at first floor. The existing ground floor has been boarded up recently. The first floor of the frontage has been painted white and comprises traditionally proportioned sash windows.

- 3.3 The front part of the building has a pitched roof and behind this, is a two storey element which has a flat roof. A small series of adjoining buildings which are two storey and single storey in height are located to the rear of this, adjacent to the eastern boundary of the site. On the eastern part of the site's frontage, is a small single storey element which has a pitched roof. This elevation contains a boarded up opening and air conditioning equipment.
- 3.4 The western boundary of the site is defined by the western elevation of the building which comprises a brick facade punctuated by two windows at first floor level.
- 3.5 Beyond this, an open car park area is provided, with access being gained from North Street to the rear part of the western boundary. The rear elevation of the building faces onto this car park area and is of red brick construction and contains various wall mounted installations including air conditioning units, soil stacks and aerials.
- 3.6 Immediately to the rear of the site (to the north) is a narrow unmade ginnel and beyond this, terraced properties, which front onto North Road. To the west, on the opposite side of the junction between North Road and Austhorpe Road are commercial properties including estate agents and solicitors. The area to the north of the application site is predominantly residential in character.
- 3.7 To the east of the application site, set back from Austhorpe Road is a row of terraces which have their north elevations facing onto East View and their southern elevations onto a car park area located on Austhorpe Road. This terrace comprises a mix of commercial and residential uses, with the closest residential property (No.43) being built onto the eastern elevation of the outbuildings which form part of the application site and project from the rear of the main two storey building.
- 3.8 On the opposite side of Austhorpe Road are commercial properties and approximately 25 metres to the south, is the Cross Gates Shopping Centre, which includes a large car park. Cross Gates railway station is located approximately 350 metres to the south west of the site and provides direct access to Leeds City Centre. This section of Austhorpe Road and the land to the south of Austhorpe Road is predominantly commercial in character.
- 3.9 The application site is shown on Leeds City Council's adopted policies maps as being located within the defined Cross Gates Town Centre.

#### **4.0 RELEVANT PLANNING HISTORY:**

##### On-site

- 4.1 15/05889/FU - Change of use on ground floor from Doctors surgery/Pharmacy to Public Bar, two storey rear extension; pavement seating area; external alterations including new doors and windows, condenser and extraction equipment to roof; new fencing and parking to rear. Withdrawn 07.12.15.
- 4.2 32/1/00/FU - Change of use of gymnasium to dental surgery. Approved 06.03.2000.

##### Off-site

- 4.3 15/02489/FU - The change of use of the Elinor Lupton Centre from educational facility (D1 use) to A4 public house together with minor external alterations. Listed

building application for internal and external alterations to the Elinor Lupton Centre. Appeal against a refusal to grant planning permission. The appeal was allowed.

- 4.4 15/02492/FU - Change of use of social club to public house (A4); internal and external alterations; creation of external beer garden and associated works at 37 Main Street, Garforth – Approved 05.08.16
- 4.5 32/101/05/FU - Change of use of car showroom to A5 hot food take away. Refused on 1.07.05 on residential amenity and highway safety grounds. Appeal dismissed on residential amenity grounds.

## **5.0 HISTORY OF NEGOTIATIONS:**

5.1 Since the original submission, negotiations have taken place as follows:

- Removal of the front sitting out area adjacent to the bus shelter.
- Submission of Noise Impact Assessment, Sound Insulation Tests and Transport Statements
- Slight reduction in size of extension adjoining residential to rear of the site.
- Contribution of £15,000 to allow the highway authority to review the impact of the use when established and implement measures where necessary.
- Restrictions on hours of opening of the PH, hours of use of the beer garden and hours of delivery
- Restriction on noise levels of plant and machinery
- A revised building specification has now been proposed, which removes the externally sited plant from the flat roof area to the rear of the building and places it in an internal plant room contained within the revised structure of the building.
- Acoustic fencing.
- Improvements to design (negotiated prior to submission)
- Widening of the North Road Footway into the site
- Modifications to the rear parking are including the three parking spaces increased in size to improve their accessibility and more manoeuvring space
- Deliveries to take place through the building to prevent deliveries on North Road
- Revised floorplans to provide the goods lift at the front of the building to facilitate deliveries from Austhorpe Road
- Build-outs and associated road markings at the junction of Church Lane and Austhorpe Road subjects to detailed design.

## **6.0 PUBLIC/LOCAL RESPONSE:**

6.1 The application has been advertised by means of site notices and a notice published in the Yorkshire Evening Post. Site notices have been posted to advertise four sets of amended plans and additional/revised reports and allow further comments to be made.

### Ward members

6.2 Councillors P Gruen and P Grahame have been following the application closely and have been formally briefed by officers a number of times. Their general position is that whilst supportive of investment into Cross Gates town centre, any proposals need to fully consider and respond to the local highway conditions and should not adversely impact on residents living conditions.

6.3 Councillor J Walker supports the proposal in principle, subject to caveats, and has made the following comments:

The building in question is run down and currently adds no value to the thriving commercial hub that operates in and around the Arndale Centre and regeneration, especially a conversion to a popular entertainment venue, should generate further commercial foot fall.

Experiences in nearby Garforth demonstrate that, with sensible ward member involvement, issues of concern to local residents can be overcome.

I accept that residents in nearby streets are concerned but these could be addressed through a revised Traffic Regulation Order.

Noise concerns could be overcome through enhanced sound proofing working with colleagues on Environmental Health.

Licensing will be pivotal to ensure parity of hours with other establishments but this is not beyond the will of licensing panel members.

The Garforth application took time to resolve and that may be the case again but the evidence is there that, through careful planning and negotiation, these matters can be overcome.

If the above caveats are addressed I'm happy to support. If not I would ask the application is rejected as I'm confident they would win on appeal but I'd be happier if the decision stays with the authority so the legitimate concerns can be addressed in the body of any planning consent.

#### **Objections:**

6.4 356 letters of objection were submitted in respect of the application, when originally advertised. Objections have been received from mainly local residents and local business, but also the Dental Surgery at first floor within the building, and their patients. The objections to the application in its original form are summarised as follows:

- Deliveries on Austhorpe Road will result in accidents and inconvenience on a busy stretch of road, where a bus lay-by is situated outside the premises.
- Austhorpe Road has a bad accident record, with recent fatalities, and introducing a large establishment selling alcohol would not be in the best interests of highway safety.
- The proposed parking is well below Council guidelines, and will result in massive on-street parking. Local TRO's are already breached, and not policed in the evening.
- The Cross Gates centre car park is not available after 6.00pm.
- North Road is too narrow for cars or service vehicles.
- Noise and disturbance from the building and in particular from the beer garden, which is in very close proximity to nearby houses. Acoustic fencing will not stop noise and smoke.
- The late licence would result in an increase in antisocial behaviour.
- The surrounding streets are very quiet in the evening, therefore, the change will be significant, and detrimental to living conditions.
- The vast majority of commercial premises close at 6.00pm, and do not cause harm to residents into the evening.
- People waiting for the buses, including many children will be adversely impacted upon by having people who have consumed alcohol being in very close proximity.
- The Neighbourhood Policing Team is ill-equipped to deal with possible disturbances at and off the premises.

- A finish of 1.00a.m. or later would be extremely harmful to residents.
- CCTV would only be effective on-site and doesn't deal with problems in surrounding footpaths, ginnels and streets.
- The best use would be enlarged dental surgery, and the dental surgery was 'gazumped' by Wetherspoons.
- The premises would adversely impact on the upstairs dental surgery through noise and disturbance, smoking and alcohol being consumed close to a dental practice.
- Noise and cooking smells from air conditioning/extractor fans
- It would be more appropriate to buy an existing PH, rather than creating an extra PH.
- The area is already well served by Public Houses and places to eat.
- The cheap food and drink will adversely impact other establishments, likely to lead to job losses elsewhere in the centre.
- Many of the support letters are not from those directly impacted upon by the proposals.
- The Public Consultation exercise carried out by the applicant was biased in favour of the proposal and should be disregarded.
- The existing poor state of the building has been created by Wetherspoons, who have made the building worse than it should be.

6.5 The application was readvertised by site notices on 28<sup>th</sup> October 2016, 6<sup>th</sup> January 2017, 27<sup>th</sup> January 2017, 28<sup>th</sup> April 2017 and 5<sup>th</sup> July 2017. An additional 173 letters of objection were submitted, mainly from previous objectors, reaffirming their objection, but the following points were also made:

- The proposal would result in the loss of a substantial retail frontage opportunity within the town centre.
- The opening of the link road will greatly increase congestion on Austhorpe Road.
- The recent revised transport plan for this development proposes the parking of urban artic vehicles on Austhorpe Road between the bus stop and the busy Church Lane junction, with provision that the unloading will not take place during peak travel time.
- There is an extremely busy road junction at all times of the day, with buses turning at least every 15 minutes in both directions. Church Lane is old and narrow with a large bus turning space required, additionally it is an important route for many schools in the area and is very busy from 3pm onwards.
- Objection on the grounds that there is not sufficient space for deliveries and the proposal will be hazardous to road safety for both pedestrians and vehicles.
- The Noise Impact Assessment focuses solely on the noise impact from fixed plant and the external terrace - it does not address the significant noise impact which will arise from customer flow to and from the premises. An early decision to reject the application should allow for other more suitable options for the property to be explored and instigated.
- The officer report has failed to assess the alternative noise impact models.
- The officer has relied entirely on the noise prediction data presented by the applicant. This is a failure of process in relation to the alternative data sets provided by myself and others.
- I refer to the judicial review judgement in the case R (Shasha and another) v Westminster City Council [2016] In this decision, the judge established that officers have a duty to consider each objection on its merits.



- The judge made clear that it is not sufficient for officers to simply list objections in the report. They must determine whether or not the arguments presented could constitute a reason for an alternative decision.
- The lack of consideration of the alternative noise prediction models may lead the committee to a decision that does not accord with the law.
- Officers have not considered alternative conditions presented by a number of objectors. All parties must respect the fact that officers may conclude that certain evidence is flawed, or that the arguments being made should be accorded no weight.
- However what cannot happen is that evidence is simply passed over without assessment. The officer report promises that further comments will be provided by the EHO at the committee meeting. This is an unusual situation. I suggest it would be far better for such comments to be provided in written form in advance of the meeting such that all representatives - both applicant and objectors - have time to consider them before making their final arguments. Any comments made by the EHO at the meeting should be recorded in full. This will ensure that the decision making process complies with the requirements of the Openness of Local Government Bodies Regulations 2014.
- Objection from adjoining occupier (No. 43)
- Reiterate previous objections. The plans still include a 2 story extension which will totally block all light to my property and overshadow the whole of the rear of my property. The constant smell and noise from a kitchen that is working more or less 24 / 7. Detrimental to highway safety and living conditions.

6.6 An objection from the upstairs dental practice on the following grounds:

- The dental practice are noise sensitive premises, and the proposal therefore contrary to the NPPF, which advises that there should be no unacceptable noise impacts.
- Noise will be from the ground floor premises, through the party walls and from plant and equipment above, which will be intolerable.
- The proposal will not comply with the Health Technical Memorandum 08-81 in respect of noise levels.
- The practice will be unable to meet required standards of care.
- Concerns at anti-social behaviour and odour, due to close proximity of the premises.
- Parking is inadequate and poorly laid out.
- Servicing arrangements are inadequate and will lead to accidents.
- The extended hours of operation will impact on local residents, many of whom are patients.

**Support:**

6.7 125 letters in support were submitted in respect of the application, when originally advertised. The support is on the following grounds:

- Will provide local employment opportunities.
- Will bring a better atmosphere to the shopping centre during the day and evening.
- Will be a positive addition to the area.

- Wetherspoons premises are well run and always well maintained and attract families. There is no loud music.
- Wetherspoons always do a good job in refurbishing old buildings.
- Too many empty shops in the Cross Gates centre and Wetherspoons could help to bring new enterprises into the area.
- The building is boarded up and is rapidly becoming an eyesore.
- Sustainable central location where people can walk to. It is on a local bus stop route and near local taxi offices.
- Crossgates has in recent years deteriorated with many businesses and services leaving the area. Indeed, the vacant premises in question are as a result the Church View surgery being relocated some distance away. The Manston Surgery (across the road) has also been relocated which in turn will have led to reduced parking and footfall in the immediate vicinity. As such concerns over and increase in this regard should be discounted.
- Crossgates needs regenerating due to the number of shops which have left the Crossgates area in recently: Tesco, Bodycare, Fultons, Game and Superdrug to name but a few.
- There are a few nice restaurants in Crossgates now but few places nearby to enjoy a drink either before or after a meal. Indeed the proposed Wetherspoons itself will provide food (including breakfast) and should help encourage people to use Crossgates for shopping and hopefully lead to new businesses opening in the area. Indeed the proposed Wetherspoons itself will create a number of job opportunities (around 60). Crossgates should be a bustling centre of activity as it is the hub of the community.
- A pub situated in this location will be different than the same pub situated in the city centre. It is envisaged that many people local to the area use this place to socialise and will more reasonably priced offerings will offer value for money for residents and perhaps encourage people in nearby areas to visit and support local businesses.
- At the open evening we were assured deliveries would take place outside peak hours to avoid congestion. The recent improvements to the road layout on Austhorpe Road - the relocation of the pedestrian crossings and making Tranquility one way should also serve to reduce congestion in the area.
- The assumption that a Wetherspoons pub will encourage 'noise nuisance and criminal damage' is ridiculous and unfounded.
- A public house is appropriate in a mixed residential and commercial area.
- Wetherspoons have developed in Morley, Chapel Allerton and other town centres, similar to Cross Gates.
- Parking is not an issue as people do not drive to pubs.
- Austhorpe Road is already full of takeaways and restaurants, buses etc and is a busy area on a night.
- Licencing agreements will ensure the pub is not a nuisance to the nearby local residents.

6.8 The application was readvertised by site notices on 28<sup>th</sup> October 2016, 6<sup>th</sup> January 2017 and 27<sup>th</sup> January 2017. An additional 51 letters in support were submitted, prior to the Plans Panel meeting on 15<sup>th</sup> June 2017, mainly from previous supporters, reaffirming their support.

- There are already shops and outlets on Austhorpe Road. A pub with daily deliveries really isn't going to make that much of a difference.
- The newly opened Garforth Wetherspoons doesn't seem to have that many problems and you could argue that that's in an even busier location on Garforth Main Street.

- 'The Briggate' in Garforth has created 60 jobs for the local community - something Crossgates is crying out for.
- The current state of the building is a disgrace and it either needs razing to the ground or renovating.
- There is bound to be redevelopment and economic development in a town centre. Reiterated earlier support. Cross Gates Watch have made a claim that the Dental practice want the building. As the practice is 'private', and does not accept NHS patients, will not be of much good to the local residents overall. The premises is on a main thoroughfare, there are other premises selling food, drink and both food and drink. The disruption caused is minimal, all claims of rowdy behaviour are hypothetical at present. Just because a different public house in the locale had problems in the past, and is now operating again, without issue, does not mean all public houses will suffer the same problems. Should this form of reasoning be adopted, the City of Leeds would be a desert, as it has in the past had a major problem with drink related problems. I would also refer to the possible problems caused by traffic in the vicinity, should CGWRA be fully concerned with traffic related problems, they would by now have started a campaign related to the amount of parking on footpaths, closer to a certain persons house than the premises in question. I also have heard nothing from the group relating to the recent spate of anti social behaviour from a group of youths in the local area. It appears the group have a selected area of interest, and the whole of Crossgates does not appear to be it's area of concern. I hope the planning committee judges wisely, as the result of this decision may have long lasting effect on the long term survival of the area as a whole. Many of the people objecting may not be here in 5 years time, what they leave behind as a legacy may not be what they wanted.

One letter of general comment:

6.9 Can see the pros and cons of the scheme, and would use the facility if approved.

**6.10 Representations submitted after Plans Panel meeting on 15<sup>th</sup> June 2017**

64 letters of support from 59 households, including local households and those further afield. New issues are:

Cross Gates watch not representative of local opinion  
Pub will provide greater footfall in area, which will deter local gangs of youths  
Existing noise levels on Austhorpe Road are high, therefore noise from development will be discernible.  
Changes to servicing arrangements are supported.  
The issues raised by the objectors can all be addressed by suitable conditions.

14 letters of objection

Reiterate previous objections. One letter queries whether the covered smoking area would be legal, as it is covered on three sides, and isn't open.  
Rowdy behaviour at the Garforth Wetherspoons has resulted in police presence.  
The employment is overstated.

10 letters of objection from CGWRA.

Reiterate previous objections, which have not been dealt with.

**Geographical distribution of respondents and total representations**

- 6.11 In respect of the representations, approximately 75% of the representations object to the application. Those living close to the application site are more likely to object to the proposal, and although a few living close to the site have supported the scheme, the supporters generally tend to live a greater distance from the application site.
- 6.12 Overall, 765 letters of representation have been submitted, with 539 against (approximately 70%), and 226 in support (approximately 30%).

Cross Gates Watch Residents Association (CGWRA):

- 6.13 CGWRA have submitted multiple and substantial objections to the application, which are summarised as follows:
- The Pub's location, size and capacity introduce a development that would radically and detrimentally change the character of the area. It would result in a significant reduction in the quality of life of local residents, and prevent the Dental Practice from providing a quality service (it might be forced to close).
  - The area's unique nature of the old village and adjacent dwellings includes private unmade roads, dead ends, ginnels, nooks and crannies, and hidden areas, as well as poorly lit areas. But these unique characteristics make it highly vulnerable to a rapid decline in environmental amenity.
  - The current interaction between Cross Gates Town Centre and local residents works because the hustle and bustle of the centre between 8am and 6pm (Monday to Saturday) is replaced then by a much quieter and peaceful environment in the evenings and night. This allows the residential area to maintain its character and provides a good living environment. Traffic and footfall surveys have confirmed this.
  - The Applicant's Noise Assessments indicates that noise levels in the beer garden would be virtually non-existent. This went against common sense. It was found that the applicant had made a reduction of 5Db on the basis that all the people would be sat down. The Noise report also used insufficient numbers and in our view was far from robust.
  - Regarding the Noise Assessment for the very large industrial kitchen vents on the new kitchen roof, these are very close to the attached residential building. They accept that it will cause a problem after 11pm, but then say that it will be OK because the kitchen vents will be turned off at 11pm (based upon last serving of food). This is impractical because the staff will have to clean up. The noise assessment is far from robust and will result in serious noise invasion for the next door and other local residents.
  - The footpath at the rear of East View which abuts on to North Road is next to the houses, and only circa 1.5m from head height to bedroom windows. And other houses are generally between 4m and 6m from foot paths.
  - Noise levels of patrons leaving the premises and in the vicinity would be at such a level (given the closeness to windows) that noise levels would exceed acceptable levels by a considerable margin, and would cause substantial annoyance to residents, and lead to a significant reduction in quality of life. We demonstrate that the area at the back of the proposed pub is highly susceptible to a rapid reduction in the quality of life of its residents because of the placing of this development in this location contrary to the Crime and Disorder Act 1998, and good design practice. It will increase crime and disorder and antisocial behaviour.
  - The location of the pub would cause customers to be passing through unsafe, ill lit areas, contrary to the Chief Medical Officer's advice.

- The area behind the pub would be a haven for drug dealing.
- There will be a conflict between residents and customers.
- The Applicant is providing no on-site parking for the pub (three for the dentist due to his lease) despite the previous usage having nine spaces available (not including the three for the dentist). This does not meet the requirements of LCC 2016 Supplementary Parking Policy.
- In order to meet the requirements of the LCC parking Policy at full internal capacity, excluding the beer garden, but including staff, 176 car parking spaces would be required; at 40% of capacity it would still require 85 spaces. The foregoing will have a significant negative impact on parking in the streets around the development, the very thing that the parking policy is meant to prevent. Each street around the development needs to be considered to determine the likely impact in terms of safety, and ensuring that parking does not cause local amenity problems for residents in compliance with the parking policy.
- The applicant's Transport Document for servicing the development details off-loading at the front of the building (14 HGV's per week, plus light vans) but fails to recognise that there was a bus stop with 244 buses stopping each day, and 242 on the other side of the road. They also failed to recognise that it was a bus clearway and no unloading is allowed. The current usage had no such problems: they offloaded in the rear car park.
- A previous planning appeal at 55 Austhorpe Road (Domino's pizza) had relevance to this application, and it had been refused on the basis of loss of amenity for local residents.
- The applicant's proposals to wrap the pub around a Dental Practice (a Dental Health Care Facility) is in direct conflict with the Department of Health Technical Memorandum 08-01: Acoustics, which says clearly that High Noise generating rooms should not be close to medium sensitive/sensitive rooms. A dental practice has both medium sensitive rooms and sensitive rooms. No specialist designer of healthcare facilities would approve of a pub being wrapped around a Dental Practice. It would be impossible for the Dentist to continue operating during the construction period, (due to noise and dust).
- We note that no noise analysis has been undertaken on the effect of the large mechanical plant compound placed on top of the Dentist's roof. We conclude that this will have a significant detrimental effect.
- There has been no consideration of the effect of vibration on sensitive equipment in the Dental Surgery, particularly from the plant compound on the roof of the Dental Surgery.
- The design is not inclusive (no parking for disabled, inadequate number of disabled Toilets).
- The transport assessment of the impact of the development is inadequate, and does not meet the requirements for a transport assessment of a development of this scale. Important issues are not considered, such as road safety.
- The applicant carried out a public consultation exercise, but did not consult this Association, the largest residents' association in East Leeds. Despite the Planning statement saying that this exercise demonstrated overwhelming support for the pub, this fatally flawed exercise showed nothing of the sort, and, if anything, the complete opposite.
- There is a severe lack of convenience (food) shopping facilities in the Cross Gates Town Centre, and this impacts on the vitality and viability of the Town Centre as locals go elsewhere. The building at 37-41 Austhorpe Road is in a good location and presents a golden opportunity to provide a significant

sized food shop (bigger than the previous Co-op) and also retain the Dental Practice. This opportunity of a viable and compatible mixed use of the building would be highly beneficial to local people, cause far less amenity problems and would accord well with the aims of the Core Strategy.

- The alternative use as a proposed pub will on the other hand will result in a significant loss of amenity for many and be of little or no benefit to the local community.
- The Bin Enclosure is too close to the Smoking Shelter and the beer garden and is therefore poorly designed and located. It is too small and therefore not fit for purpose and will result in poor unplanned storage practices. The foregoing presents an unacceptable risk to the health and amenity of local residents and customers.
- The site is very constrained and everything is crammed in so as to avoid loss of customer space. The reality is that it is the wrong building in the wrong location for a proposed pub. It is not just a matter of increasing the size of the storage space, because that would impinge on another aspect of the development.
- None of the revised plans are considered an improvement over the original scheme, and a strong objection remains.
- The existing TRO's and location of the bus shelter and local pedestrian crossings have been only carried out recently, and in full consultation with residents, and there is no justification for the recently carried out works to be changed again

CGWRA Response to Environmental Health consultation response and the applicant's revised Noise assessment:

- It is clear from the foregoing discussion that this EH Consultation Report, while making many valid points, clearly fails to address several critical issues. A major one is that the Report nowhere recognises that the activity on the first floor is not offices, but a Health Care Facility, and that, as a consequence, completely erroneous procedures have been used by Dragon Fly to assess the impact on it of wrapping a Pub round it.
- The impact of the noise of patrons arriving, leaving and in the vicinity of the pub will have a considerable environmental health impact on surrounding residents, and this is not considered at all in this EH Consultation Report.
- The noise impact of the Beer Garden has not been properly assessed in this EH Consultation Report.
- The impact of mechanical plant on the roof has not been properly assessed. Thus the EH report does not cover all the significant areas required to properly evaluate noise and vibration issues in relation to this application. This means that the conclusion made that EH has no objection in principle is premature, and very likely to lead to significant noise and vibration problems if accepted in its current form.
- The Wetherspoons Noise Impact Assessment is fundamentally flawed and should carry no weight in either the Environmental Protection Team's (EPT) assessment or within the planning process.

CGWRA Response to the applicant's service management plan and the Highways Officer's response:

- 6.14 CGWRA object to the proposed servicing arrangements due to existing congestion, narrow footpaths, size of vehicles and close proximity of general public. The LCC "A to Z of Parking" indicates that the applicant has the right to offload on

double yellows provided it is safe to do so. They do not have the right to park for more than 20 minutes and not be engaged in the offloading process. The safety of the general public is being compromised at the expense of the rights of Wetherspoons to offload in a dangerous position. This has the usual echoes of residents being ignored and profit being put before safety.

CGWRA has already provided significant detailed factual commentary and objection that clearly shows that accidents directly related to the build out and delivery footpath are highly likely to occur.

These are entirely foreseeable and if and when they occur, members, and officers would face severe criticism, and, in addition, LCC could well face substantial financial claims.

We would request that you carefully consider our previous written representations on this matter and provide a detailed commentary to members so they can properly assess this very serious matter.

We made verbal representations after the Panel Meeting about pedestrian, cycling and traffic safety that we considered had to be addressed prior to any acceptance that a build out would be a practical solution. We mentioned that there was a need to consider:

- that a feasibility study should be undertaken, identifying an initial design
- a safety audit should be undertaken, for example (but not limited to) in relation to bicycle safety, as bicycles will effectively be pushed further out into the road to get around the obstruction created by a build out
- the effect of narrowing the carriageway – two HGV's will not be able to pass each other in opposite directions, and Austhorpe Road will be blocked for long periods (given the number of deliveries)
- whether buses will be able to enter and leave Church Lane without further compromising road traffic movement and highway safety on Austhorpe Road and Church Lane.

- pedestrian Safety – build out encourages people to cross Austhorpe Road at a very inappropriate point with permit parking bays opposite.

We also noted generally that an equality and diversity, cohesion and integration screening document should be prepared for the whole of the servicing scheme including the proposed build out.

This screening document noted above should identify the following:

- whether the scheme will produce a less safe environment for members of the public when visiting the locality, especially shoppers using Cross Gates , children travelling to and from schools in the area, and what the situation will be for residents in areas adjacent to Austhorpe Road.
- what will be the negative effects on members of the public who, through infirmity, may have difficulty in keeping out of the way of motor traffic, typically older people, school children and parents.
- what will be the negative impact on maintaining access to the locality, especially the commercial area of Cross Gates, for those members of the public who may have mobility issues.
- whether it can be ensured that the routes for public transport in the locality are accessible, and that those with mobility issues can access public transport to enable them to travel to local amenities.

It is entirely inappropriate to attach a condition in relation to the build out on Church Lane to this application without the certain knowledge that it will work, without compromising safety, traffic flow, and the ability of buses to safely negotiate the corner into Church Lane without the need to be on the wrong side of the road both on Austhorpe Road and Church Lane. Moreover the effect of forming a *de facto* offloading bay should be properly considered. We have highlighted the problems this would cause in previous objections.

We would respectfully refer you to *Shasha v Westminster Council 2016*, and, in particular, ground 3. This concerns the quality of information on which the decision is made. The test being what a reasonable Authority would require. CGWRA consider it is incumbent in law and to provide Council members with good quality information that TDS and Planning properly consider all the foregoing as a minimum requirement and report back on any pros and cons.

- 6.15 Ten separate letters of objection have been submitted since the June Plans Panel meeting. These letters are mainly objections to revised documents submitted by the applicant and also letters of concern and objection in response to the comments made by consultants, namely Highways and Environmental Health officers responses which are set out in the report.

CGWRA Comments in respect of the latest Highways consultation response:

- Re Accessibility - the proposed buildout will disadvantage cyclists.
- Re Parking, the SPD actually suggests 297 parking spaces are required, not 122, while TDS manages to whittle this to zero. Overspill parking in excess of the unexplained estimate of 30 spaces will swamp the area.
- Officers misinterpret the NPPF advice about “severe”, which is not referring to parking at all (this misinterpretation could be widespread across the city).
- Parking problems will be most severe in the streets which Highways Officers fail to mention. Severe problems will be created for the residents of these streets who will be unable to park near their homes after return from work, contrary to the priorities set out in the SPD.
- The arguments about few parking places being required because of the existence of linked trips is made without any empirical evidence. Knowledge of the structure and working of the town centre in relation to the location of the proposed pub suggests that the number of linked trips will be very few. Empirical research gives little support to the notion.
- Cycle parking at the front is still not defined, and therefore it is not known if it is feasible in relation to the other use of the pavement. Planning by condition is not appropriate if it is unknown if the condition is operationally feasible. This is contrary to the government’s six tests on the use of planning conditions.
- The inconsistency of the application of the SPD between different applications is not justified.
- There are still no disabled spaces: Wetherspoons is not legally entitled to take one of the dentist’s spaces for this purpose.
- The bin enclosure is still too small, and risks aggravating the rats/vermin problem in the area.
- Highways officers accept that the pavement adjacent to the proposed unloading bay and the bus stop area is “very well used”, but offer no reaction to this conclusion.
- There is no comment on the safety implications of the excessive distance roller cages and trolleys will still have to be moved.
- There is no comment on the fact that the Highways officer’s conclusion that the pavement at the unloading point is adequate contrary to the advice of the industry associations and other sources.
- There is no comment on the fact that industry association advice is the average unloading times are 30-60 minutes, well in excess of a 30 minute waiting time.
- Highways Officer inappropriately compares the proposed buildout, which is very large in scale at the junction of two very busy main roads, with the other buildouts in Cross Gates which all involve minor side roads.
- Buildouts will increase fumes and pollution levels.



- Highway officers do not consider the dangers which will be generated by the buildout for pedestrians and cyclists, nor the fact that Austhorpe Road will become a one way street during unloading periods.
- A taxi pick up point has still not been defined after two years, and the most likely places this will occur is on double yellows including the proposed unloading bay.
- No empirical evidence is offered by Highways officers for its conclusion that the absence of parking on site nor for unloading leads to unacceptable road safety risks (there is no definition of what an acceptable road safety risk is: could we be advised please?).
- Highways officers make no comment on the increase in road safety risk which is likely to occur as a result of the development.
- Contrary to the view of Highways officer, the revised proposal is inherently unsafe, and thus does not comply with the Core Strategy, or the requirements of Policy T2.

6.16 CGWRA note that Highways officers comments but consider that any reasonable person would interpret the 'on balance' statement implies that the proposal was surrounded by considerable doubt: it could easily have gone one way or the other. Given the points made by us above, one would have to conclude that Highways officers have very, very little by way of empirical evidence to support its conclusion, and in a case of such uncertainty, grave potential consequences for the surrounding population, it would have been more prudent not to make such a leap in the dark. On balance, in such a situation, any reasonable person would conclude that, on balance, the application was still not acceptable.

6.17 CGWRA comments in relation to the noise report  
Existing Noise Readings

The location of the noise recording station in the June 2016 assessment for 15 Beulah Terrace was not as shown on the location drawing, and was inappropriately placed on the other side of North Road in the car park at the back of the proposed pub.

No existing noise readings were taken at 15 Beulah Terrace or at other locations such as 13 Beulah Terrace, which although slightly further away is well protected from Austhorpe Road but open to the beer garden.

The existing noise readings taken in the car park at the back of the proposed pub on the 25 June 2017 were corrupted by trail motor bike noise not normal to the location.

The noise associated with the motor bikes was not removed from the analysis.

No existing noise readings were taken in relation to the Dental Practice.

Assessment of Likely Noise from Beer Garden

Voice levels used to calculate likely noise are unrealistically low for a pub beer garden.

The sound attenuation from a 3m fence is assessed using a 4m high window, when the window on the gable of 15 Beulah Terrace is well in excess of this and will have a clear sight line into the beer garden.

IEMA Guidelines

The Guidelines accept that a simple change in noise levels using a single noise indicator may fail to adequately reveal the actual noise impact of the proposal. The character of the noise must be taken into account and the Guidelines suggest

comparing several noise indicators such as the LAeq, LAmax and LA90 as a more rigorous approach.

The applicant uses a single noise indicator and fails to take into account the character of beer garden noise.

#### The Assessment Fails to Take into Account the Following Properties

A complete blind eye is taken concerning the Dental Practice (which is above and totally surrounded by the proposed pub ), Emsley's Offices (11 metres away and so defined as a sensitive receptor in LCC Noise Guidance), 13 Beulah Terrace (slightly further away than 15 Beulah Terrace, but more secluded), 43 Austhorpe Road (very secluded, about 6 metres from Beer Garden, but behind the structure), 3 East View (slightly further away than 13 Beulah Terrace, but very secluded from the inner courtyard area), and countless other properties (next to footpaths to the rear of proposed pub) which will be affected by hordes of people making their way home after closing time.

#### Applicant's Assessments

The applicant makes no allowance for any exaggerated existing noise readings caused by noise not commonly associated with the area and compare this with a depressed estimate of the beer garden noise to come up with an expected revised LAeq (ambient) noise level, without any consideration or allowance for the very different nature of the beer garden noise in comparison to normal traffic and environmental noise. The applicant fails to take readings at the correct location, and use incorrect window heights to calculate acoustic fence attenuation.

These are by no means the only problems with the reports. They contain other inaccuracies, some of which we have mentioned previously.

CGWRA in the remainder of the document have tried to show how other consultants deal with uncertainty, and are much more robust than Dragonfly by including more realistic voice levels (68dB) to calculate the likely beer garden noise, and making allowances for the Character of the Noise associated with speech (5dB). We have undertaken a noise survey at 15 Beulah Terrace and made due allowance for the motor bike noise that occurred and made our own assessment of the impact on this property and its occupants. We should not have to do this, but you have to ask what alternative did we have, faced with what we consider to be the potential for local residents to be let down badly. We believe we have removed some of the uncertainty.

Our estimates show there would be significant harm to those living close by and to the Dental Practice, its workers and its patients. This would extend to those living in houses where pavements abut when a considerable number of patrons make their way home.

#### 6.18 CGWRA has further commented on the following matters:

- The 3m acoustic barrier is a serious fire risk, leaving up to 700 people struggling impossibly to exit by the rear.
- Concerned about the proposed servicing arrangements being sub-standard, the unsuitability of built outs and the overall conclusion reached being Highway officers re-stated
- Bin enclosure considered to be far too small representing over-development of the site.

## 7.0 CONSULTATIONS RESPONSES:

Statutory:

- 7.1 Coal Authority: No objections, subject to condition in respect of coal risk.

Non-statutory:

- 7.2 Transport Development Services: On balance, no objections raised to the revised submission, which improves the manoeuvrability for the parking spaces, and the revised servicing arrangements which now take place through the front of the building and avoid the use of the North Road footway to the rear of the site. See Appraisal section for details.
- 7.3 Flood Risk Management: No objections. No record of any flooding.
- 7.4 LCC Licensing: The Entertainment Licensing Section has no comments in relation to the planning application. The applicants will be required to apply for a premises licence under the Licensing Act 2003 to allow the sale of alcohol and regulated entertainment which will undergo a 28 day consultation period where responsible authorities and interested parties will be able to make comments on the application.
- 7.5 West Yorkshire Police: The Police do not tend to have problems with Wetherspoons establishment - they do however have problems with some of its customers (depending on the site location). Generally the door staff work well with the Police and the CCTV inside most sites is of good quality. Measures that Wetherspoons should look to include to reduce the likelihood of crime and disorder at this site – i.e. external CCTV, exterior lighting, security staff, parking security.
- 7.6 In respect of the Garforth Wetherspoons, West Yorkshire Police have confirmed that they have had no reported crimes from this location. They comment that Wetherspoons have a great deal of experience creating safe environments, they tend to be places the younger end visit first they then move onto places that play music.
- 7.7 Environmental Health: Originally raised concerns about the lateness of the proposed opening hours. These have since been reduced to their satisfaction. Conditions on delivery hours, hours of use of the outdoor amenity area, restrictions on plant noise and noise limits to upper floor use all required. Subject to conditions, no objections. See Appraisal section for details.

**8.0 PLANNING POLICIES:**

- 8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for Leeds currently comprises the Core Strategy, saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013) and any Neighbourhood Development Plans.

Local Planning Policy:

- 8.2 The following Core Strategy policies are considered to be relevant:

- SP1: Delivery of spatial development strategy.
- SP2: Support for a centre first approach supported by sequential and impact assessments.
- P1: Identifies town and local centre designations.
- P2: Acceptable uses in and on the edge of town centres.
- P5: New Food Store provision encouraged in Cross Gates town centre
- P10: Seeks to ensure that new development is well designed and respect its context.
- EN5: Seeks to manage and mitigate flood risk.
- T2: Seeks to ensure that new development does not harm highway safety.

8.3 The application site lies within Cross Gates town centre as defined by the UDP Review (2006). The following saved policies are considered to be relevant:

- GP5: Seeks to ensure that development proposals resolve detailed planning considerations, including amenity.
- N25: Seeks boundaries of sites to be designed in a positive manner using walls, hedged or railings where appropriate to the character of the area.
- BD5: Seeks to ensure new development protects amenity.
- BD6: Alterations and extensions should not harm neighbouring amenity
- SF1A : Non Retail Uses within Shopping Frontages
- SF9: Residual Shopping Frontages in Town Centres

Supplementary Planning Guidance:

8.4 The following documents are of relevance:

- Sustainable Urban Drainage (SPG22, adopted)
- Street Design Guide (SPD, adopted)
- Sustainable Design and Construction (SPD, adopted)
- Leeds Parking Guidelines

National Planning Policy:

8.5 The National Planning Policy Framework (2012) (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The NPPF must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.

8.6 The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. It is considered that the local planning policies mentioned above are consistent with the wider aims of the NPPF.

8.7 The NPPF gives a presumption in favour of sustainable development and has a strong emphasis on achieving high quality design and a good standard of amenity for all existing and future occupants.

- 8.8 Paragraph 17 confirms that, within the overarching roles the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These principles include:  
...Proactively drive and support sustainable economic development to deliver ... business ... and thriving local places the country needs.
- 8.9 Paragraph 18 states that the Government is committed to securing economic growth in order to create jobs and prosperity....
- 8.10 Paragraph 19 states that the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore, significant weight should be placed on the need to support economic growth through the planning system.
- 8.11 Paragraph 197 - Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.
- 8.12 Paragraph 123- Planning policies and decisions should aim to:
- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
  - mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;
  - recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; ...
- 8.13 The Noise Policy Statement for England (March 2010) sets out the long term vision of government noise policy, to promote good health and a good quality of life through the management of noise.
- 8.14 National Planning Practice Guidance – Noise (March 2014) - Advises on how planning can manage potential noise impacts in new development. The NPPG states that neither the Noise policy statement for England nor the National Planning Policy Framework (which reflects the Noise policy statement) expects noise to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development.

## **9.0 MAIN ISSUES:**

- 9.1 The following main issues have been identified:
- Principle of the change of use
  - Highways and parking
  - Residential amenity
  - Visual amenity
  - Other matters
  - Conclusions

## 10.0 APPRAISAL:

### Principle of the change of use

- 10.1 In assessing the principle of the development, the starting point is that decisions should be made in accordance with the Development Plan unless other material considerations indicate otherwise.
- 10.2 The site is within Cross Gates, which is designated as a Town centre in the Development Plan under Core Strategy policy P1. As such, Policy P2 is applicable, which states:
- “Town centres offer shopping and services intended to meet weekly and day-to-day requirements. The uses set out below are acceptable in principle in and will be directed towards the centres listed in Policy P1 [*which includes Cross Gates*].
- Shops, supermarkets and superstores,
  - Non-retail services,
  - Restaurants and cafes, **drinking establishments** and hot food takeaways,
  - Intensive leisure and cultural uses including theatres, museums, concert halls, cinemas, leisure centres, gyms and hotels,
  - Health care services,
  - Civic functions and community facilities,
  - Offices,
  - Housing is encouraged in centres above ground floor in the primary and secondary shopping frontages, or outside the shopping frontages, providing it would not compromise the function of the town centre.”
- 10.3 A drinking establishment is an appropriate town centre use, under Policy P2. Under saved UDP policy SF9, the site is within the residual area of the centre, where such premises may provide an opportunity to accommodate a wide range of uses which could contribute to the overall attractiveness of a shopping centre without prejudicing the retail character of that centre. The drinking establishment use, therefore, complies with development plan policy, to increase the attractiveness of the centre, without impacting on its vitality and viability.
- 10.4 Under Policy S5, Cross Gates town centre is identified as a town centre where food store provision would be encouraged in order to expand the centre’s retail offer or expand their function. On this issue, the proposal will not lead to the loss of food retailing (the site is medical), and there are other opportunities, such as M&S site, which can accommodate food store retailing. There is a vacant building off Church Lane, within 70m of the site, to the north-west, which is currently being marketed for retail, which has a similar footprint to the application site, and is an opportunity for food retailing. Finally, as previously stated, the site is within the Residual Shopping Frontage of the centre, where a variety of town centre uses are encouraged under policy SF9. Accordingly, it is considered that the proposed food establishment use is acceptable in principle subject to other more detailed considerations which are appraised below.
- (i) Economic Use
- 10.5 The proposals are estimated by the applicant to generate in the order to 50 FTE jobs, and according to the applicant, the majority will be recruited from the local area. In addition to the effect of increased employment, an increase in household

expenditure among the people who have gained employment through both the direct and indirect employment effects could be expected.

- 10.6 Further direct, indirect and induced jobs may also be generated throughout the construction phase, even if only for a temporary period.
- 10.7 Representations against the proposal state that the use would not create that many jobs, and may impact on other businesses in the locality with a similar offer, and drinkers would deter shoppers and reduce footfall. However, the proposal would certainly generate some local employment opportunities and as an acceptable town centre use the issue of competition between other uses offering the same/similar services is not considered to be an argument that carries any real weight from a planning perspective. Evidencing a specific link between this Public House proposal and the concerns about deterring other shoppers and footfall generally is also very difficult and no substantive information on this matter has been provided.
- 10.8 Appropriate weight can however be given to the fact that there would clearly be some job creation, and that the proposal represents economic investment in the town centre.
- (ii) Re-use of building
- 10.9 Part of the building is currently sat empty and is not positively contributing to the appearance of the area or indeed the vitality and viability of Cross Gates town centre.
- 10.10 The proposal would enhance this part of the Town Centre and would boost the vitality and viability, attracting customers throughout the day and into the evening. The enhancement to the Town Centre may encourage other investment as the proposals have the potential to increase footfall which will benefit existing businesses as well as attracting new ones into the vacant units that exist. The application proposals represent opportunity to secure the long term occupation of the buildings and generate significant economic benefits for Cross Gates.
- 10.11 In terms of the re-use, the applicant states that the building has been marketed without success, and that the only realistic proposal to secure the use of the building is as a Public House. However, it is understood the first floor dental practice was initially interested in taking the entire building, before it was subsequently sold to Wetherspoons. It cannot therefore be said with certainty that the Public House proposal is the only realistic use for the building. From a policy standpoint, as outlined above, the premises would be suitable for a large store or many other town centre uses, including medical.
- 10.12 The only certainty is that any proposal which seeks to bring about the re-use of the vacant elements of this town centre property should be afforded appropriate weight subject to it representing sustainable development and not raising other concerns.  
Highways and parking
- (i) Accessibility:
- 10.13 The site is within the town centre boundary as defined by the Core Strategy. The site is accessible via alternative transport modes.
- 10.14 The Core Strategy Accessibility Standards recommend that social Infrastructure uses be within a 5 min walk of a bus stop offering a 15 min service frequency to a

major public transport interchange or a 10 min walk to a rail station offering a 30 min frequency service.

- 10.15 Numerous bus services are accessible within a 5 minute walk of the site including the frequent services 40 and 56. These services also extend into the evenings and weekend periods. In addition Cross Gates railway station is within a 10 minute walk of the site. The Core Strategy Accessibility Indicator is the population within a 30 min journey time of the site. The population within this journey time is considerable.
- 10.16 Given the above services and compliance with Accessibility Standards it apparent the site is clearly very accessible by walking and public transport.
- 10.17 The site is also within reasonable distance of advisory cycle routes and cycle lanes on the highway network. These routes also give access to the strategic City Connect cycle scheme.
- 10.18 Notwithstanding the above, the immediate pedestrian infrastructure on North Road is substandard due to its limited width. As requested by Highways Officers, the latest plans show the footway/dropped crossing widened to 2m north of the existing building. This would also improve the access visibility as detailed in the following section. The widening to adoptable standards would need to be secured by condition.
- 10.19 For the reasons set out above the accessibility of the site is considered to comply with the Council's adopted Accessibility Standards and can be fully accepted in this regard.

(ii) Vehicular Access

- 10.20 The latest plan has removed the restriction to visibility that was created by the previous layout. The long dropped crossing should be removed and reinstated as footway with full height kerbs and the access entrance properly defined. These matters can be readily secured by condition.
- 10.21 The latest plans show the removal of the high brick wall at the northern boundary of the site being replaced by a 1m high boundary fence. This will improve visibility to the north. Final details including restricting the height to no more than 1m will be controlled by condition. Although these amendments are relatively small, they would deliver genuine safety improvements regarding the use of the limited parking that is available as users would for the first time be able to see pedestrians in advance of any potential conflicts occurring.

(iii) Parking

- 10.22 Highways officers have considered the amount of parking against the requirements in the Council's Parking SPD. It should be noted that there is a significant shortfall against the normal starting point for parking provision. Outside of the city centre and its fringe the SPD starting point is 1 space per 3sqm of GFA. The practice is that this is applied to the customer of restaurant and pub uses. Based on the latest plans which indicate a customer area of 365sqm the calculation would be 122 spaces in order to fully comply with the SPD
- 10.23 Although the suggested requirements of the SPG are noted,, this is considered the starting point for all areas of the district (outside the city centre and its fringe) where



there can be significantly different locational, operational and other characteristics. This is recognised in the SPD (para 9.4.1) which states:

*“Outside the Core and Fringe, the standards define the expected levels of parking, allowing for flexibility for reduced or increased parking dependant on the individual location, expected levels of car ownership, public transport accessibility, walking catchment, and specific end user. It should be noted that significant departures from the expected levels of parking may be accepted where clear and justifiable reasons can be demonstrated and that there will be no detrimental impact on surrounding streets”*

- 10.24 It is considered that paragraph 9.4.1 is relevant in this instance and such a parking requirement of 122 spaces is not appropriate at this sustainable town centre location, where the walking catchment could be very high, accessibility is very good and with the possibility of linked trips at certain times. However, given the total lack of car parking provided on site there would be some reliance on an element of off-site parking which the SPG does generally seek to avoid. With this in mind, it is calculated that the actual numbers of cars arriving at peak times would be around 30, but that some of these will be linked with other trips in the town centre or be taxis/drop offs. In this context regard has been had to the potential for on-street parking and where it is likely to place. Parking restrictions are already in place on most surrounding streets so any daytime on-street parking will be short term and occur alongside existing parking associated with visits to the town centre. These arrangements are therefore the same for most existing visitors to the town centre (unless the Crossgates shopping centre car park is used) and accordingly it is concluded there is no objection to the lack of on-site parking proposed as this level of impact is not considered to be significant. It should be noted that the Cross Gates Shopping Centre car park is not officially available in the evenings and therefore cannot count towards parking supply at such times.
- 10.25 During the weekday and weekend daytime periods it is considered that a significant number of vehicular trips at the Cross Gates site would be combined / linked with other trips that already take place in the town centre. It is considered that the number of people making specific trips by car, only to the proposal, will be relatively limited.
- 10.26 During the evenings it is considered that a number of customers arriving by car would be dropped off or arrive by taxi, and the actual parking demand should be safely accommodated on-street in surrounding roads. This parking could take place safely from a highway perspective and therefore is not in conflict with policies relating to road safety. Again, these are the same arrangements available to most other night time uses operating within the town centre as relatively few have any off-street parking provision to call upon.
- 10.27 Notwithstanding the above assessment which concludes any impact will be limited and certainly way no where near the ‘severe’ test as referenced in the NPPF, officers have adopted a precautionary approach to the issue of on-street parking and consider a review mechanism to be appropriate. The applicant has therefore agreed to a Section 106 traffic management contribution of £15,000 to allow the highway authority to review the impact of the use when established and implement measures should these be considered necessary and linked to the development. Accordingly the S106 will include a claw-back clause should the use of the money not prove necessary.

- 10.28 Regarding the issue of parking provision at the site, as with most development proposals it is usually desirable from a highways perspective to provide and/or retain some parking facilities where they exist. Nonetheless, this isn't always a strict requirement and whilst the possibility of retaining some provision at the site has been discussed with the applicant, the beer garden and extension are considered (by the applicant) more important to the scheme and only provision for the first floor dentist is identified. The applicant's position on parking provision is therefore noted and does not change the overall officer conclusion that because of the site's positioning within a very assessable town centre location and taking into account the development plan policies and the NPPF the absence of off-street parking does not, on this occasion translate into a highway reason for refusal.
- 10.29 Details of cycle parking to the front of the property could be agreed through condition which can also be positioned so as not to cause any access difficulties which has been raised as a concern in the representations received.
- 10.30 CGWRA have commented on the lack of parking for the proposed use, on the application of the Parking SPD, and inconsistency of its application and parking associated with other pubs such as at the Barnbow Pub.
- 10.31 In responding to these comments, it is important to remember that each applications together with its use and location has to be considered on its own merits. The approach to the application of the SPD for this site is described above in detail. The CGWRA surveys at the Barnbow Pub have been considered and highway officers have also carried out multiple site visits to the Barnbow pub and the Travellers Rest in the early weekday evenings to ensure the method of assessment and advice provided is robust. Both these existing sites have large car parks of around 60/70 spaces. Officers have noted that on the occasions of visits around 20 cars have been parked in these car parks, although in the case of the Travellers Rest a significant proportion of the parking tends to be a local taxi firm using the car park as a waiting area. The locations of the Barnbow and Travellers Rest are also not directly comparable to proposed site which is towards the heart of the town centre. It is noted that The Barnbow is well beyond the town centre boundary. CGWRA have also highlighted that a different approach to parking has been taken at 55 Austhorpe Road and 88 Church Lane. These uses are different to the A4 use proposed, being C3/A2 and C4 respectively, A more direct recent comparison is the recent planning approval 15/02492/FU for change of use of social club to A4 (also a Wetherspoons) with external alterations and creation of external beer garden at 37 Main Street, Garforth. This location is within the Garforth town centre. The application has now been implemented and has no onsite car parking, the proposals involved the removal of c20 car parking spaces associated with the former use.

(iv) Servicing

- 10.32 The surrounding highway network to the site is challenging in terms of how the site can be serviced. North Road to the west, and the routes that it leads to, are narrow and unsuitable for larger vehicles and therefore do not provide a suitable means to service the proposal. The proposed extensions at the rear of the building have inevitably led to reduction in the parking/turning area. The extensions have therefore reduced and restricted space at the rear of the building for smaller delivery vehicles. The eastern boundary does not have a frontage with the highway, and the northern frontage is a private street/track called East View which does not appear to offer an alternative servicing arrangement. Austhorpe Road is the most obvious location for larger vehicles to service the use, but a bus stop and its associated clearway extends across the frontage of the site. Servicing would therefore have to

take place to the east of the bus stop clearway where there are double yellow lines but loading is currently permitted for a period of up to 30 minutes.

- 10.33 The applicant's earlier Transport Delivery Management Plan (dated 22 March 2017) proposed that servicing will be focused in this area. However, servicing from this location was far from ideal for a number of reasons, and planning permission was originally to be recommended for refusal on this basis. Firstly, servicing from here would have some impact on the use of the bus stop (which has a very high frequency of bus service and use), and buses would have to pull out from the stop to pass a service vehicle on what is a busy stretch of road with other parking and general activity associated with the town centre. Servicing would therefore add a further level of disruption at this location which has in the past had an accident history. Secondly, servicing would be in close proximity of Church Lane. The closer a vehicle gets to Church Lane, the greater the impact on visibility of the junction, visibility when emerging from the junction, and the ability of vehicles to turn left safely into Austhorpe Road. Thirdly, the route from a service vehicle past the site frontage is generally busy with pedestrians and people at the bus stop.
- 10.34 The Transport Delivery Management Plan confirmed that servicing would involve vehicles parking to the immediate east of the eastbound bus stop on Austhorpe Road, then deliveries being transported to the rear of the building via North Road rather than through the Austhorpe Road entrance. That would inevitably lead to service vehicles being parked on Austhorpe Road for longer than would be the case than if servicing were taken through the front of the building, with the resultant disruption and issues referred to above exacerbated.
- 10.35 The developer had proposed that a banks person is used to ensure that the narrow North Road footway is clear of pedestrians before goods are moved along it. However, the use of North Road has previously been highlighted as an area of concern due to the width of the footway, and the need to wheel cages and trolleys along this route. The applicant confirmed that cages would have a width of up to 730mm. The width of the footway narrows down to as little as 810mm on North Road (adjacent to street furniture) leaving a tolerance of only 40mm either side, this was not considered suitable as it gives rise to the possibility of cage wheels falling from the kerb. In addition, blue badge holders are known to regularly park on this stretch of North Road where wing mirrors inevitably overhang the footway to the extent that cages could not pass. Highways Officers were concerned that that the proposal relies on the use of a banks person, with the risk remaining that a pedestrian would still step into the road, and/or that as a result of the narrowness of the footway, cages and trolleys will be taken along the carriageway. The use of North Road also increased the travel distance of cages which in turn is likely to add to the overall loading/unloading time on what is a very busy section of the highway, particularly from a pedestrian perspective due to the positioning of the bus stop.
- 10.36 Servicing through the front of the building was considered unacceptable to the applicant, so a condition to secure this was not advanced as this would have effectively tied them to a form of development that had not been applied for and it was not prepared to accept. The reason stated was because it would lead to conflict with customers and damage the interior of the building. In summary, although the build-out towards the Church Lane junction with Austhorpe Road could have been provided to improve visibility, the proposal to service the use via North Road was not only likely to extend the time period during which loading and unloading could take place, it would have introduced pedestrian and vehicle conflict along North Road in what is already a very sensitive part of the highway network. For these

reasons, the proposed servicing arrangements for the use could not be supported in the form originally applied for.

- 10.37 Subsequent to the above, and following the publication of the June Panel Report the applicant has submitted a revised Transport Delivery Management Plan, and amended the position of the main store to the front, whereby the deliveries are now taken through the front of the building or straight up the goods lift to the first floor cold store, avoiding the need to take deliveries down North Road via its narrow footway and to the far corner of the site.
- 10.38 Traffic Officers have also been consulted on the proposals and the proposed servicing arrangements, and advise that relocating the bus stop is not supported since a stop is required in this area and other constraints in the locality mean it is considered to be in the optimum location within the town centre. Further dialogue with Traffic Officers has considered the implications of deliveries taking place to the east of the bus stop and the associated potential for conflict with buses at the bus stop and the proximity to Church Lane. The distance between where buses actually dock at the shelter and the end of the clearway is approximately 8m. This would still allow a bus to pull out if a service vehicle is parked in front of the bus. However, it is beneficial that the positioning of a service vehicle is controlled so not to conflict with Church Lane. Although the number of service vehicles is not particularly high, it would take place in a sensitive location and the characteristics of servicing a pub (A4) are different to the former use as a doctor's surgery (D1) and a pharmacist (A1). The change of use brings with it more challenging servicing requirements on Austhorpe Road, although it is accepted that the existing A1 use could also involve larger service vehicles such as HGVs. A build-out at the Church Lane junction would therefore be helpful to control the positioning of a delivery vehicle and improve visibility of and from the junction.
- 10.39 The exact dimensions of the build-out, whether it is kerbed or in lining only, and any associated alterations to road markings would be subject to detailed design to achieve the optimum layout of enhancing visibility and allowing the left turn into Church Lane. The potential to introduce a loading bay between the bus stop and Church Lane has also been discussed with Traffic Officers, which would protect the area east of the bus stop for unloading activities. Such a bay is acceptable to Traffic Officers and can be considered as part of the detailed design of the build-out should the application be approved.
- 10.40 CGWRA has made a number of comments on the servicing/delivery implications of the proposal. These comments include waiting and offloading is limited to 20 minutes, the width of the Austhorpe Road footway is inadequate at 1.9m for deliveries of larger kegs, conflict with pedestrian using the footways, and conflict with users of the nearby bus stop. Officers accept that both the footway and bus stop are very well used. Regarding permitted unloading times, Traffic Officers confirm the traffic regulation order covering this part of Austhorpe Road allows 30 minutes and is not limited to 20 minutes. Regarding potential conflicts and the width of the footway, while a wider width would be preferred, officers do not consider it to be so narrow that it would prevent safe deliveries. In coming to this view officers have observed unloading practices in the city centre and the Wetherspoons site in Garforth. If approved it is expected that deliveries will be made in a similar manner as they are at Garforth. At Garforth observed HGV deliveries are made to deliver food products, bottled drinks, and alcoholic drinks and kegs. A combination of side loading and rear loading is used. For the alcoholic drinks and kegs both side loading and rear loading is used. Duration of delivery has been observed to be as little as 5 minutes for food deliveries (with 2 delivery persons) to 30 minutes for drinks deliveries (with one

person). Observations show that on occasion there is a need for informal cooperation between the delivery team and users of the footway, but that no problems were observed and that kegs can be unloaded in a restricted space.

10.41 CGWRA also comment on the use of build-outs stating that feasibility work is needed, safety audits undertaken due to impacts on cyclists, narrowing of carriageway causing problems, impact on vehicles turning to/from Church Lane, encouraging pedestrians to cross at an inappropriate location, and the need for a equality and diversity, cohesion and integration screening document for the whole of the servicing arrangement and the use of build-outs. Whilst these concerns and comments are noted, officers are content that the suggested build-out can be the subject of a suitably worded condition. Feasibility on the precise dimensions and nature of the build-out, including associated changes to road markings and introduction of a loading bay, can be carried out as part of the design process should the application be approved. Safety audits will also be carried out as part of this process. However, the effect of the build-outs on road users has been considered in the assessment of the planning application, and Officers note that there several examples of build-outs within the town centre already – many of which are also relatively new additions.

10.42 On Balance, and while the constraints in this busy town centre location are acknowledged, it is concluded that servicing the proposed use can be carried out and managed in such a way that is acceptable and does not warrant refusal of the application.

(v) Internal Layout - Rear Yard

10.43 As part of revisions to the scheme, one of the three car parking spaces for the first floor dentist has been converted to a disabled parking space which is supported. Improvements to achieve greater manoeuvrability for the parking spaces as well as access to the communal bin store directly from this area (for use by the dentist), is such that the proposal is now considered acceptable in this respect

(vi) Fall-back position in relation to highway matters:

10.44 The applicant states the application site has historically been used as a doctors' surgery (D1 use) and pharmacy (A1 use) although these have now relocated elsewhere within Cross Gates. These uses, in themselves will have generated traffic, deliveries and general activity although the availability of both parking and space at the rear is such that these areas were used more frequently. It is inevitable that any future occupier, including the current applicant will need to service the building and will attract customers, some of which travelling by car. This existing baseline situation is therefore an important material consideration as although the building is currently vacant, it has consent for commercial uses. The applicant states that many of the issues raised by Highway Officers during the course of assessing the application would therefore exist - however the building is occupied.

10.45 Officers acknowledge the fall-back position but have is assessing the current application given it little weight, as the servicing requirements for a Public House are very different to the previous doctors surgery and must be considered on their own merits. In addition to the proposed change of use, the applicant is proposing a relatively large extension to the rear and beer garden which impacts significantly on the parking and servicing arrangements that have historically been available at the site. The revised serving arrangements now proposed for the use are nevertheless considered to be acceptable for the reasons given above.

(vii) Off-site highways works:

10.46 Footway widening/kerb reinstatement/access works to the North Road frontage are necessary, as detailed above and are to be secured by planning condition. Similarly, the requirement for build-outs/footway widening and associated changes to road markings at the junction of Church Lane and Austhorpe Road will also be secured by planning condition. It will also be necessary for the applicant to secure separate approval for these works direct with the Highway Authority and Traffic Officers have been consulted to ensure these separate requirements are deliverable due to their relationship with recommended planning conditions.

10.47 The applicant has agreed to a S106 contribution towards traffic management measures / TRO's and should the officer recommendation to defer and delegate approval be accepted the formal permission would not be issued until the legal agreement was completed.

(viii) Road safety

10.48 As detailed above it is considered that the lack of dedicated parking for the proposal and servicing arrangements do not lead to unacceptable road safety risks.

10.49 CGWRA has highlighted the accident record in the locality, highlighting fatalities and that Austhorpe Road has appeared on the councils Lengths for Concern listing. The listing highlights roads with more than 10 accidents over a five year period. The Road Safety team of the council has been contacted and note that this location does not feature in the 2016 edition of the Leeds Lengths for Concern report and will not feature in the 2017 version. In both cases its omission is due to having fewer than 10 accidents in the five year periods 2011-2015 and 2012-2016, between A6120 and Pendas Way. The majority of accidents on the length have occurred in the vicinity of the Tranquillity junction and the adjacent Zebra crossing (now removed) and prior to 2015. A traffic scheme featuring appropriate measures to maintain low speed, and the removal of Zebra crossings and replacement with signal controlled crossings and a speed table was completed in early 2016. Early results appear promising due to the lack of accidents post completion of these works. Looking more locally at the site frontage and the nearby junctions with North Road and Church Lane, the accident statistics show that there have been no recorded accidents in these locations over the last 5 years.

10.50 As detailed above, the revised car park turning area and proposed servicing arrangements have addressed the main highway concerns previously raised regarding this proposal and are now considered acceptable. The revised proposal is therefore considered to comply with Core Strategy Policy T2 and associated guidance and advice in the NPPF.

#### Residential amenity

10.51 There are a number of elements associated with the use of a Public House that may impact upon the amenities of residents. Each is examined in turn in the following paragraphs.

(i) Disturbance associated with customer parking:

10.52 Careful consideration has been given to the impact the development will have on the residential amenity of nearby residents. During the daytime the proposal is not envisaged to cause any serious harm to local residents by reason of noise and

disturbance but there is some potential for noise and disturbance to occur during the evening, particularly on Friday and Saturdays. Noise would result from the to-ing and fro-ing of vehicles, their drivers and passengers to the premises, including the delivery and pick-up of patrons by taxis. Most of these activities are expected to take place along the Austhorpe Road frontage although it is also possible that, because of the absence of dedicated parking, some on-street parking may take place within the nearby residential streets. Parking is unrestricted here after 18.00 hours and most other uses within the town centre boundary that operate during evenings also do not have dedicated off-street parking. With this context in mind and having considered the information provided by the applicant relating to the parking position of similar proposals and also the Highway Officer assessment, the anticipated volume and incidence of such parking taking place is not expected to be significant. Any on street parking is also likely to be distributed across a number of streets so will not necessarily be focused. For these reasons the potential for disturbance is not considered to be significant and an amenity objection to the proposal due to parking concerns is not advanced.

(ii) Disturbance associated with deliveries, loading/unloading:

- 10.53 The deliveries of foods and drinks will be unloaded from the delivery vehicle onto Austhorpe Road and from this point onwards the metal cages containing the goods will be rolled either through the front entrance of the building or directly into the goods lift. Whilst rolling the cages, there will be some unavoidable rattling noises, (metal on metal contact). However, these movements will now be confined to the Austhorpe Road frontage only which by its very nature is commercial and experiences similar events already from other traders. Noise from these activities is not therefore considered to be problematic for residents who live on or access off North Road.
- 10.54 Notwithstanding the above and in recognition that the bin store would remain to the rear of the building, the Environmental Health Officer recommends a planning condition (No. 16) should be imposed on any permission, such that the hours of delivery to and from the premises and including refuse collection shall be restricted to between 08.00-18.00 hours (Monday to Saturday) and 09.00-13.00 hours on Sundays and Bank Holidays. On that basis this element of the scheme is considered to be acceptable.

(iii) Use of external drinking area/beer garden:

- 10.55 The noise report estimates for peak periods circa 32 people are likely to be in the beer garden and of these it is reasonable to assume 1/3 could be using raised voices. Although no figures are given for the combined noise in the beer garden, it is stated that 1 male talking loudly will give a noise of 65dBA at a distance of 1m. The applicant proposes a 2m high acoustic fence around the beer garden to mitigate any noise from this area. In terms of numbers using the beer garden, 'capacity' is the maximum number of people that can fit in a space and meet fire regulation standards – this is about 1 person per sqm. 'Occupancy' is the more realistic situation and is based upon the numbers of covers provided within the area and what is used for the purposes of assessing noise as it is a more accurate reflection of how the area will operate. In this instance, the max occupancy is 67 people.
- 10.56 Given the close proximity of the proposed beer garden to the residential properties, Environmental Health Officers are not convinced that the patrons using the external areas (either sitting or standing) will not give rise to noise levels likely to impact on residential amenity particularly in the evenings and nights and summer time when

the residents may have their windows open for ventilation or are more likely to use their own garden. Further assessment was therefore requested which the applicant has undertaken. As part of this additional assessment, different acoustic barrier heights have also been assessed albeit the applicant maintains the original 2m high proposal would be adequate.

- 10.57 In response responding to the above and accepting that any noise assessment has to make a number of assumptions, Environmental Health Officers have adopted a more conservative approach to potential noise and consider it is better to adopt a more robust solution which helps eliminate the element uncertainly associated with any noise assessment. A higher acoustic barrier is therefore recommended to offer greater protection to local residents. The applicant has agreed to this and a 3m barrier is now proposed. This feature, combined with conditions which effectively close the beer garden proper at 10pm is considered to offer local residents adequate protection from noise associated with the beer garden. In reaching this conclusion, consideration of the comments made by CGWRA has been given.

(iv) Plant and equipment noise

- 10.58 An earlier but still revised noise assessment with supporting documentation has been submitted by the applicant. The noise assessment describes predicted noise levels following changes to the structure of the plant room, to reduce noise disturbance from operating plant at the nearest noise sensitive receptors.
- 10.59 A previous consultation response by the Environmental Health Officer had highlighted concerns regarding noise disturbance from plant and equipment proposed to be located on the flat roof structure to the rear of the premises.
- 10.60 An assessment of the original noise report relating to plant and equipment on the roof identified potential noise disturbance, in that the BS4142 assessment had not included rating penalties for the proposed plant, to take account of factors such as tonality, impulsivity, intermittency or specific noise readily distinct from the residual environment.
- 10.61 A revised building specification has now been proposed, which removes the externally sited plant from the flat roof area to the rear of the building and places it in an internal plant room contained within the revised structure of the building. The building now includes a pitched roof over the flat roofed area. The revisions proposed to the design of the building to include an internal plant room, have improved the barrier effect in regard to operating plant and equipment.
- 10.62 Based on the revised noise assessment data, Environmental Health Officers consider the introduction of an internal plant room in the building design will reduce noise disturbance from plant and equipment at the nearest noise sensitive receptor (including the dental surgery) to below the Lowest Observed Adverse Effect Level (LOAEL).
- 10.63 Provided the final building design as approved includes the revision of an internal plant room as proposed, Environmental Health Officers do not consider operation of the plant and equipment will cause an adverse impact to the nearest noise sensitive receptor.
- 10.64 On this basis, the previously made objections by Environmental Health Officers to the scheme are withdrawn and subject to a condition (No. 18) as outlined above, the noise impact associated with the plant and equipment is considered acceptable.



(v) Management of the premises:

10.65 The applicant has provided additional details of the proposed management plan for the site. The applicant also clearly has a good track record of managing establishments in the City and this has been endorsed by the Police however this cannot be taken into account in the determination of this application. The management plan has been developed to protect all persons who will live, work or engage in other activities in the immediate vicinity of the site including noise disturbance from the outside areas ancillary to the operation of the premises. In formulation of this plan, regard has been had in a particular to the proximity of nearby residential properties in close proximity to the premises, with a view to ensuring the public house is compatible with them. Ensuring implementation of this plan will be the responsibility of the Premises Manager and their team. All staff at the premises will be expected to be familiar with its contents.

10.66 For information, the key points of the management plan is set out below:

- The premises will operate as a traditional JD Wetherspoon without music of any type so there will be no music noise escape when customers exit or enter the premises before or after using the external area.
- The arrangements for smokers will be reviewed with the LPA three months after opening, to confirm that it is operating satisfactorily.
- There shall be no use of the beer garden after 22.00 in order to minimise noise disturbance. Signage advising of this restriction will be placed adjacent to the entrance of the beer garden. Smokers will be allowed to use the canopy area after 2200 up until the close of the premises. The area will be checked and monitored regularly by the Duty Manager and the area will have CCTV coverage which can be monitored from behind the bar. JDW will operate a zero tolerance policy for this area and will review the management plan on a regular basis to ensure the plan is being enforced.
- Members of staff will conduct regular checks of the terrace (beer garden in this case) areas at all times the premises are open to the public. The site will also be subject to CCTV coverage. Coverage will operate for 24 hours with images retained for 30 days.
- Signage will be erected within the outside terrace (beer garden) areas and by all exits to the premises to remind customers of the need to respect the rights of our neighbours to the quiet enjoyment of their homes, businesses and other activities.
- If on occasion customers are found to be making excessive noise a member of staff will take immediate action to rectify the situation, e.g. ask the customer to talk more quietly or if problems persist, ask them to return inside the premises or leave the premises entirely. Information as to local private hire/taxi operators will be displayed at the premises and customers who have ordered a vehicle will be allowed to wait inside the premises until that vehicle arrives.
- The premises will liaise with local private hire/taxi operators to establish a “pick – up protocol” which will require drivers not to sound horns, leave engines running for prolonged periods of time or play music at levels likely to cause disturbance whilst waiting for customers. A recommended location for ‘pick-ups’ will be provided.
- A telephone number will be circulated to residents to allow any complaints as to noise from the premises or as to any other elements of its operation to be communicated easily.

- If any complaints of noise disturbance are received by a member of staff, the complaint will be brought to the attention of the manager on duty and immediate steps will be taken to prevent a recurrence of the situation.
- Deliveries, collections and outside disposal of waste and bottles from the premises will be at times which will not disturb our neighbours. Glass bins will not be emptied between 2100 and 0900 the following day.
- The premises management will ensure that staff are made aware of the need to respect the rights of our neighbours to the quiet enjoyment of their homes, businesses and other activities and staff will be advised to keep their noise levels to a minimum when they are using the external areas and arriving and leaving the premises at the beginning and end of trading hours.
- Regular residents meetings will be convened unless it is apparent through poor attendance that such meetings are no longer necessary. The meetings will allow for issues which arise from the operational issues of the premises to be discussed.

10.67 This plan will be reviewed by the Premises Manager on a regular basis and where it is identified upon review that amendments are necessary, it will be updated. Should Plans Panel be minded to support the proposal, the implementation and review of an agreed Management Plan (likely to include the above measures) would form a planning condition. The requirement to agree management details can also be reviewed, of for example the pub was to change hands or even not open up as a Wetherspoons.

10.68 It is acknowledged that introducing a Public House in the area will add to general levels of existing noise and disturbance and more people generally in the area. The impact of car based travel and people waiting for taxis at the end of the night is considered likely to generate the biggest impacts on residential amenity, and potentially the parking of cars in nearby streets. The overall numbers of people will undoubtedly add some noise and potential disturbance in the area, although the extent of this is not envisaged to be so significant as to warrant a refusal of the application. Overall it is considered that the development will not result in any significant harm which cannot be controlled through planning conditions and good management practice to the nearby residents and other nearby properties. As such, the proposal accords with saved Policy GP5 of the UDP.

(vi) Impact on residents from the extension:

10.69 Revised plans have been submitted which set the first floor of the proposed rear extension away from the boundary with the adjoining residential property at No. 43. In addition, although the proposed extension is in relative close proximity to 3 North Road, that property presents a blank elevation towards the application site, with its main windows facing in an easterly direction, and would not be overlooked or be detracted from by loss of light. No openings are proposed in the elevation which would overlook adjoining residential properties. As such, it is considered that the two storey extension would not dominate, overshadow or overlook adjoining residential properties. As such, the proposal accords with saved Policy GP5 of the UDP.

(vii) Patron Distribution

10.70 A number of representations including those from CGWRA raise concerns about the inability to control patrons behaviour as soon as they leave the site and that the use and siting of the development is such that local residents will suffer serious noise and disturbance problems. Whilst officers note these concerns, they could to some

extent also be applied to any town centre use and particularly those which operate during the evenings and which attract customers e.g. restaurants. An in principle objection due to these concerns is not therefore one which officers consider is reasonable when considering the site's town centre location. In terms of the wider point made, the main entrance leads onto Austhorpe Road and it is expected that patrons will leave via this exit and disperse from there. This is the sort of detail that can be secured through the management plan condition. From thereafter it is true the responsibility for behaviour then falls to individuals and ultimately further action can be taken via the police for example if problems arise.

### Visual amenity

- 10.71 The application property is currently vacant and boarded-up and therefore its re-use is considered to have a positive visual impact on this part of Austhorpe Road. The site is prominent in the street scene, and abuts a bus shelter which is very busy. Although objectors state that it is the applicant who has blighted the building, the building is boarded up and is likely to be so until an economic reuse of the building is implemented.
- 10.72 The proposed building's overall usage and aesthetics are going to be altered. Aesthetically, the building will be improved by repairs and repainting to the front of the building to complement the character of the wider streetscape. The rear of the building will be renovated in a more contemporary way, to conceal existing unsightly services, visible from North Road, and merge the existing and new buildings. The use of hardwood timber windows is supported.
- 10.73 The extension would be constructed in vertical timber boarding at first floor, with render at ground floor. The ground floor of the building is to be predominantly designed to house the customer area of the Public House. The customer area will have fully glazed summer opening doors onto the rear beer garden as well as the street frontage - giving a greater connection between inside and out. The beer garden will be enclosed by a 3m high boundary acoustic fence, and the brick boundary wall onto the adjoining footpath link to the north will remain..
- 10.74 In addition, the plant equipment is to be sited to the roof top, within a pitched roof at second floor level, and hidden from ground level view. The proposed external works will also comprise the laying out of tables and chairs, low fencing to the perimeter, block paving, smoking shelter and the acoustic fencing. Overall, the proposed external works are considered to be respectful to the appearance of the application property and will not be harmful and can improve the current visual amenity of Austhorpe Road, North Road or the wider area.

### Other matters

#### (i) Health

- 10.75 The proposal is not envisaged to have any serious impacts on health and wellbeing or to add significantly to issues associated with alcohol. In relation to Public Health, there are Public Health alcohol licensing guidelines in place to use for inner South and inner East Leeds applications, however nothing specifically to be used for Outer East Leeds where Crossgates is located. Crossgates is not in an area where there is a dense collection of pubs / outlets selling alcohol compared to other areas either. In policy terms, public houses are deemed an acceptable town centre use and there are no exemptions on 'impact on health' grounds in local or national policy. Wetherspoons do not promote excessive drinking and have a 'Don't do

Drunk' policy which provides staff with training to ensure that people are not served alcohol if they appear to have had too much. Wetherspoons also do not do drink promotions (2 for 1 etc) which encourages excessive drinking. It is considered that there would be no reasonable grounds to refuse the application on grounds of impact on health.

(ii) Crime and disorder

- 10.76 The management plans coupled with the planning conditions are designed to ensure this premises can operate effectively without causing harm to the neighbours. The Police have been contacted about the proposal and recognise the applicant's ability to operate effectively and to help reduce crime and disorder and antisocial behavior. However, it would be for an applicant for a licence to demonstrate that its operation would not impact on the prevention of crime and disorder, the prevention of public nuisance, public safety or the protection of children from harm. In the event of planning permission being granted, the appellant would need to satisfy the four licensable objectives referred to above under the Licensing Act 2003. This operates as a separate regime to that of planning and which should provide concerned residents with a degree of extra assurance as to the management of the proposal. For example, planning permission was granted to Wetherspoons at premises in Headingley, however an application for a licence was declined.

(iii) Flood Risk

- 10.77 There are no records of flooding incidents at the site, and Flood Risk Management raise no objections.

(iv) Coal Risk

- 10.78 The applicant's Preliminary Geoenvironmental Investigation Report has been informed by an appropriate range of sources of information; including a Coal Mining Report, BGS geological mapping, and borehole records. Based on this review of existing sources of geological and mining information the Report concludes that shallow mining poses a risk to the proposed development that cannot be entirely discounted. Accordingly, appropriate recommendations are included for intrusive site investigation works in order to establish the exact situation regarding ground conditions and to enable appropriate remedial measures to be identified, if necessary. The Coal Authority also welcomes the fact that due consideration has been afforded to the potential risk posed by mine gas to the proposed development, which would need to be considered further should shallow coal mine workings be encountered. The Coal Authority therefore raises no objections, subject to the imposition of a suitable condition.

(v) Loss of retail opportunities

- 10.79 It has been stated in representations that the proposal is contrary to UDP Policy S2, which states:  
*'Non-retail development within the above centres will not normally be permitted where it would reduce significantly the shopping function of a centre, or lead to the loss of development or redevelopment opportunities capable of accommodating major retailing.'*

However, this policy is not a 'saved' policy was superseded by Core Strategy policies SP2, P1, P2 and P9.

## **11.0 CONCLUSION**

- 11.1 In reaching a recommendation for the proposed development it is important to acknowledge that the recommendation is finely balanced. In assessing and determining development proposals, Local Planning Authorities should apply the presumption in favour of sustainable development and proposals should be determined in accordance with the development plan unless material considerations indicate otherwise.
- 11.2 The economic benefits associated with the proposed development in terms of local employment opportunities and spend are acknowledged and are material planning considerations in favour of the development. As is the bringing back into full active use a partially vacant building which has a poor external appearance and currently makes no positive contribution to the centre or the local economy (in terms of the vacant elements of the building).
- 11.3 Although reuse of the building is clearly desirable, the detailed proposals seek a change of use and extension/alterations to accommodate a Public House use. In terms of principle, the development is considered to be acceptable as the building falls within the identified town centre boundary for Cross Gates and a Public House is an appropriate town centre use. The acceptability of the development therefore stands and falls on the detailed considerations relating primarily to highway safety and amenity considerations.
- 11.4 In assessing the acceptability of all these changes, the site is noted to abut a congested section of road in close proximity to a well used bus shelter. The revised servicing arrangements remove the need to travel down North Road and now take the most direct route into the building. These changes will help minimise delivery times and on further assessment are not considered by officers to be harmful to users of the highway. Furthermore, revised plans improve the parking layout and bin store arrangements for the first floor dentist. Whilst it is accepted no dedicated off-street parking is proposed and this is a concern raised in many of the objections to the application, in this instance the site's town centre location and the availability of other transport options means no serious impact is anticipated and in accordance with the NPPF a refusal relating to this is not advanced.
- 11.5 In terms of amenity considerations, alterations have been provided to ensure plant and machinery is contained within the envelope of the proposed extension and this will improve their overall acoustic performance. Other measures are also proposed in the form of direct management (hours restrictions) and physical measures (e.g. a 3m high acoustic fence around the beer garden) to help mitigate any noise and disturbance concerns. Whilst officers understand many residents remain concerned about the impact the development will have, Environmental Health officers have undertaken a detailed assessment of the proposal and are now content with the proposal, subject to the various measures as outlined above and in the recommended conditions.
- 11.5 In conclusion, the proposal is considered to accord with the relevant provisions of the development plan and the NPPF, and on balance, planning permission is recommended, upon completion of the section 106 Agreement and subject to the conditions as specified.

**Background Papers:**

Application file.

Certificate of Ownership: Signed by the applicant







# NORTH AND EAST PLANS PANEL

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