



Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 7th June 2018

Subject: 16/05185/FU - Appeal by JD Wetherspoon Plc against Leeds City Council's failure to determine a planning application for change of use of ground floor from Doctors surgery/Pharmacy to Public Bar, two storey rear extension; beer garden area; external alterations including new doors and windows, condenser and extraction equipment to roof; new fencing and parking to rear, 39 Austhorpe Road, Leeds, LS15 8BA.

The appeal was allowed and an application for full costs against the Council was also successful.

Electoral Wards Affected:

Cross Gates and Whinmoor

Yes

Ward Members advised

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

Members are asked to note the following appeal and costs decisions.

1.0 BACKGROUND

- 1.1 The application was formally considered by Plans Panel on 17th August 2017 and was recommended for approval by officers. However, during consideration of the application at the August meeting, Panel Members were not content that the highway and noise considerations had been fully explored and deferred the application for officers to undertake further negotiations.
- 1.2 In view of the nature of the concerns Members expressed during the meeting which the applicant considered had been fully resolved after detailed decisions with officers, the applicant decided to appeal against non-determination.
- 1.3 Members were advised verbally of the non-determination appeal at the September meeting and a number stated their disappointment that such action had been taken, considering it to be somewhat premature. Notwithstanding this, Members did confirm

that officers were to contest the appeal on the grounds of highway safety relating to the access arrangements and also due to noise disturbance concerns.

- 1.4 As the appeal timetable allowed for more formal consideration of the grounds to contest the appeal, a further report was considered at the October meeting, where it was recommended that the following detailed reasons for contesting the appeal would be advanced:
1. The proposed development would by reason of its size and close proximity to residential and commercial properties result in a serious loss of amenity to nearby residents and the existing dental practice. The harm would arise from the operation of internal and external areas (the beer garden) and the resulting patron noise associated with its use. This harm to residential amenity and impacts on the existing dental practice outweighs the considerable weight afforded to the re-use and restoration of the building and the economic benefits of the proposed use. As such the proposal is contrary to Saved Unitary Development Plan (Review 2006) policy GP5 and guidance in the National Planning Policy Framework paragraph 17 detailing Core Principles which includes always seeking a good standard of amenity for all existing and future occupants of land and buildings.
 2. The Local Planning Authority considers the proposed loading and unloading arrangements for the site which seek to route movements from Austhorpe Road would cause pedestrian and vehicle conflict. Austhorpe Road is a busy and congested stretch of the highway network and the unloading point is in close proximity to a well-used bus shelter and junction of Church Lane. As a result of a combination of these factors the proposed development would be detrimental to highway safety and is contrary to Policy T2 of the Core Strategy, saved UDP Review policy GP5 and the general highway guidance as contained within the National Planning Policy Framework.
- 1.5 Panel resolved to note the report and agreed the suggested reasons to contest the appeal. It is these reasons upon which officers based its case.

2.0 ISSUES IDENTIFIED BY THE INSPECTOR

- 2.1 The main issues are the effect of the proposed development on: highway safety; and the living conditions of the occupiers of neighbouring residential properties with particular regard to noise and disturbance and upon the operation of the dental practice within the same building as the appeal site.

3.0 SUMMARY OF COMMENTS

Highway safety

- 3.1 The appeal site was previously in use partly as a doctors' surgery and partly as a pharmacy. The Council points out that the servicing requirements for a public house are different to the previous use as a doctors' surgery. However, the pharmacy would have required deliveries to take place, as would any other retail use to which the premises might alternatively be put. The former doctors' surgery and pharmacy have relocated elsewhere in Cross Gates and the Inspector considered therefore that the appropriate measure to assess the impact of deliveries is the alternative retail use to which the site could be put.

- 3.2 Any alternative retail use would require deliveries and the Inspector attached significant weight to the likely impact of alternative uses on deliveries to the premises and consider that the impact of proposed change of use would likely be neutral. The alternative would be for the premises to remain vacant unless another use that would not require significant deliveries could be identified. The Inspector did not have sufficient evidence to consider whether a dental practice use in the whole building would be viable. The Inspector concluded that an alternative use without requiring significant deliveries to be unlikely to materialise and attached limited weight.
- 3.3 Vehicles are already permitted to stop for unloading but the type of truck likely to be used for deliveries to the appeal site if used as proposed would be large and there is a potential to interfere with the use of the bus stop. However, the Council's Highways Department has identified road improvements that could be secured by condition that would make the impact on traffic conditions acceptable and would improve visibility at the junction between Austhorpe Road and Church Lane. Consequently, subject to the road improvements the Inspector considered the proposed development would be acceptable.

Living Conditions

- 3.4 The appeal site is in close proximity to the nearby residential areas and use of the site as a public bar will inevitably involve an element of noise and disturbance. Noise is likely to arise from customers' use of the beer garden, which the scheme proposes to address by the construction of a 3m high acoustic fence. The appellant has estimated that the beer garden would be used by 30 or so customers at peak times, of whom roughly one third might be talking at any one time. The Council has suggested that the beer garden could accommodate up to 67 customers and has questioned the estimate that only one third would be talking at any given moment. Clearly, not everyone would be talking together as conversation requires listening as well as speaking and as some customers would likely be part of groups rather than couples, an estimate that one-third of customers might be talking did not seem unreasonable to the Inspector.
- 3.5 Occupancy of the beer garden by 67 customers would be maximum capacity and is likely to occur infrequently, and be more common in warm, dry weather and at weekends and public holidays. While the figures given are clearly only estimates, an assessment based on an average number in the region of 30 or so customers is a reasonable representative figure from which to gauge likely noise at any given moment. However, even if the number of customers using the beer garden was at the maximum capacity level suggested by the Council it would not alter the Inspector's conclusions. Comments from interested parties about the noise assessment provided by the appellant were considered by the Inspector but there was no evidence that undermined the assessment's conclusions and the Inspector noted that the Council's Environmental Health Officer found the noise mitigation measures suggested acceptable.
- 3.6 The nearest dwellings to the appeal site are No 3 East View to the north and No 15 Beulah Terrace to the north-west and the nearest elevation of each property is 20 metres or so from the beer garden. No 3 would be separated from the beer garden by an existing unmade track, the proposed rear extension comprising the kitchen, a refuse store and the parking area for the dental practice. No 15 would be separated from the external drinking area by its own rear fence, the width of North Road and the parking area for the dental practice. The addition of the 3 high acoustic fence would also provide a visual barrier between No 15 and the beer garden that would be likely to limit any view to a relatively small area. There are no windows at No 3 that would overlook the site.

- 3.7 An acoustic fence would not eliminate all noise and late at night even limited noise can become intrusive. However, the appellant has suggested a 10.00pm cut off time after which the area would be closed save for customers using a smoking shelter and this can be controlled by a condition. The Inspector considered that these measures taken together would likely be sufficient to prevent any unacceptable harm to the living conditions of the occupiers of neighbouring dwellings from noise and disturbance caused by customers at the site.
- 3.8 Although other cases of dismissed appeals on similar amenity grounds were put forward for consideration, the Inspector stated that each appeal had to be considered on its merits.
- 3.9 Whilst the Inspector had regard to the interested party comments in regards to noise and disturbance in the surrounding streets and anti-social behaviour, these matters do not lead to a different conclusion in this regard.
- 3.10 The dental practice on the first floor of the building is a sensitive noise receptor due to the need for patient consultation and surgical dentistry procedures that might occur on the premises. Noise from customers using the external drinking area during the daytime would be in the context of the busy commercial area to the front of the premises. At peak times for a public bar when the rear drinking area could be expected to be most used, namely evenings and weekends, there is no evidence that the dental practice would be operating and therefore the impact of any disturbance would be minimal.
- 3.11 The condenser and extraction equipment to be placed in the roof space of the extension would be muted and would be positioned at the furthest point on the site from the dentist's consulting rooms, and further away than the traffic on Austhorpe Road. Noise from the operation of the business as a public house is likely to be intrusive but could be mitigated by sound insulation in the ceiling as recommended in the appellant's sound insulation tests which could be secured by a condition. Therefore, while the dental practice is a sensitive noise receptor the use of the premises would not have an unacceptable detrimental effect.
- 3.12 The Inspector concluded that the appeal scheme would not have an unacceptable detrimental effect on the living conditions of the occupiers of neighbouring properties or the operation of the dental practice.

Section 106 Planning Obligation

- 3.13 Notionally, the SPD would require premises with the capacity of the proposed development to have 122 parking spaces but that is not appropriate for a town centre location with good public transport and pedestrian access. It is also likely that many users of the site would be in the town centre for other purposes, particularly during the daytime when shops and other premises are also open. While there would be some reliance on offsite parking, this would apply to those visiting other premises, and these premises if put to an alternative use.
- 3.14 However, there is an existing pressure on parking in the vicinity of the site and the parking available for other commercial uses at the Cross Gates Shopping Centre would not be available in the evenings. This would be the peak time for the use of the appeal site and those relying on motor vehicles to travel to the site would likely have to seek parking in the nearby residential streets. At the Council's request, the appellant submitted a Unilateral Undertaking (UU) for a management contribution of £15,000 to allow the highway authority to review the parking impact of the use when established and implement measures should these be considered necessary.

- 3.15 The UU is clearly directly related to the development and I consider the sum to be fairly and reasonably related in scale and kind to the development. Because of the potential impact on parking and the resultant effect on the living conditions of the occupiers of neighbouring premises the Inspector considered that the obligation is necessary to make the development acceptable in planning terms.
- 3.16 For the reasons set out above, the Inspector considered the appeal should be allowed, subject to conditions and the Unilateral Undertaking.

4.0 APPLICATION FOR FULL COSTS AGAINST THE COUNCIL

- 4.1 The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably by failing to determine an application when there were no substantive reasons to justify the delay and where better communication with the applicant would have enabled the appeal to be avoided altogether.
- 4.2 The applicant submits that the Council acted unreasonably by failing to determine the application and that while there was significant consultation and negotiation during the application process, delay occurred as a result of the Environmental Health Officer revising opinions that required deferment when agreement with the applicant on proposals and suitable conditions had been achieved. Further delay was caused when Members sought views on potential amendments to the scheme and the revisiting of issues which has already been considered and ruled out, namely the use of North Road for deliveries.
- 4.3 The application was first received in August 2016 but not referred to members until June 2017, which the Inspector considered should have provided ample time to resolve any issues between the parties. However, the matter was not considered at the June meeting and only referred back to the August meeting where it was subsequently deferred by Members. The Inspector acknowledges Members disappointment with the applicant's chosen course of action, including the suggestion that matters were not far from being resolved but didn't think this was actually the case as Members resolved to defend the appeal at both the September and November meetings.
- 4.4 In considering the actual reasons for refusal, the Inspector is also critical of the Council and concludes that Members preferred the opinion of interested persons over the professional opinion of the applicant's noise consultant and its own Environmental Health Officer in relation to noise and disturbance when there was no alternative technical evidence upon which to base such a conclusion. The Inspector goes on to conclude the Council maintained positions on matters that could have been dealt with by condition, such as the highway safety issues and the noise and disturbance issues. In this respect the applicant was entitled to appeal to obtain a decision.
- 4.5 In summary, the Inspector considered the Council's inconsistency in changing positions on matters where there was no material change of circumstances demonstrates a want of substantive reasons to justify the delay and has caused the applicant to incur the unnecessary costs of lodging and pursuing an appeal. The Inspector therefore found that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a full award of costs is justified.

4.6 In response to the Inspector's decision to award a full award of costs against the Council, a claim for £8,550 plus VAT has been submitted and is currently under consideration.

5.0 IMPLICATIONS

5.1 The appeal decision and award of costs raises some implications which require further consideration going forward.

5.2 Firstly, although the NPPF places a clear duty on local planning authorities to engage and work positively with applicants, care still needs to be taken to ensure the timeframes within which these discussions/negotiations take place to ensure they are not unduly protracted. This also applies to the entire decision making process including consideration at Panel.

5.3 With regards to issues that are of a technical nature which in these case was most notably noise, great care needs to be taken if coming to a view that is contrary to the relevant technical experts. In particular there is a clear need to substantiate any concerns with appropriate evidence as failure to do so places the Council at risk of an award of costs.

5.4 Linking into the above, there is also a need to be very careful about not changing positions on matters where there is no material change in circumstances, as this results in delays which can be deemed to be unreasonable leading to additional costs for applicants which in turn they make seek to recover.

Background papers:

Application file: 16/01585/FU

Appeal and Costs decisions appended



Appeal Decision

Site visit made on 4 January 2018

by **D Guiver LLB(Hons) Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 13 February 2018

Appeal Ref: APP/N4720/W/17/3183420

39 Austhorpe Road, Cross Gates, Leeds LS15 8BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by J D Wetherspoon plc against Leeds City Council.
 - The application Ref 16/05185/FU, is dated 16 August 2016.
 - The development proposed was originally described as '*full application for change of use on ground floor from doctor's surgery/pharmacy to public bar, two-storey rear extension, external alterations including new doors and windows, condenser and extraction equipment to roof, new fencing and parking to rear (resubmission of application 15/05889/FU)*'.
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Decision

1. The appeal is allowed and planning permission is granted for change of use on ground floor from doctor's surgery/pharmacy to public bar, two-storey rear extension, external alterations including new doors and windows, condenser and extraction equipment to roof, new fencing and parking to rear at 39 Austhorpe Road, Cross Gates, Leeds LS15 8BA in accordance with the terms of the application, Ref 16/05185/FU, dated 16 August 2016, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by J D Wetherspoon plc against Leeds City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In my decision above I have removed words from the description of development which are not acts of development. The appellant has submitted an executed unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990, which would secure a contribution towards the highway authority's review of the impact of the proposed change of use on off-site parking and to implement any appropriate measures identified. I will address this issue below.

Main Issues

4. The main issues are the effect of the proposed development on:
 - highway safety; and

- the living conditions of the occupiers of neighbouring residential properties with particular regard to noise and disturbance and upon the operation of the dental practice within the same building as the appeal site.

Reasons

5. The appeal site is located to the north side of Austhorpe Road which is the main shopping street within Cross Gates town centre. In the vicinity of the appeal site Austhorpe Road is predominantly commercial in character but north of the site the area is mainly residential. The site comprises a two-storey building located at the junction of Austhorpe Road with North Road to the west. With the exception of part of the first floor which is occupied by a dental surgery, the building is vacant and boarded up.
6. The proposal is to change the use of the ground floor at the appeal site from a doctors' surgery/pharmacy to a public bar, to construct a two-storey rear extension and to install condenser and extraction equipment in the roof-space of the extension. The scheme also envisages the creation of an external drinking area (the beer garden) and external alterations including new doors and windows, and new fencing. The existing dental surgery at first floor level is to remain as a self-contained unit, though its waste storage and parking provision would be altered as part of the scheme.

Highway Safety

7. The proposal will require deliveries of food and drink in significant quantities. Loading and unloading would take place in front of the property and deliveries would enter the premises through the doors in the front elevation, or into a goods lift, also in the front elevation. To facilitate these deliveries, large vehicles would be required to stop on Austhorpe Road close to the appeal site and near a bus shelter, and goods would be carried across the footpath to the premises. The bus shelter sits towards the eastern end of the bus stop bay, which is approximately 30 metres long and the northern side of the carriageway is otherwise subject to parking restrictions with some allowance for loading.
8. Austhorpe Road is a busy street serving Cross Gates town centre and a number of commercial and retail properties, and also provides a main access route for the residential areas north and south of the road. Interested parties have referred to road traffic collisions on this busy stretch of the highway. However, the Council has confirmed that there have been no recorded accidents in the immediate vicinity of the site and the nearby junctions with North Road and Church Lane over the last 5 years.
9. The appeal site was previously in use partly as a doctors' surgery and partly as a pharmacy. The Council points out that the servicing requirements for a public house are different to the previous use as a doctors' surgery. However, the pharmacy would have required deliveries to take place, as would any other retail use to which the premises might alternatively be put and for which the building already has consent. The former doctors' surgery and pharmacy have relocated elsewhere in Cross Gates and there is no evidence before me that a return to such a use is likely. I consider therefore that the appropriate measure to assess the impact of deliveries is the alternative retail use to which the site could be put.
10. Any alternative retail use would require deliveries, which I take into account. I attach significant weight to the likely impact of alternative uses on deliveries to the premises and consider that the impact of proposed change of use would likely be

neutral. The alternative would be for the premises to remain vacant unless another use that would not require significant deliveries could be identified. There is a suggestion in the papers before me that the dental practice occupying the first floor expressed an interest in the premises but I do not have evidence to show whether such a use is a reasonable prospect, would be viable or the extent to which the dental practice would occupy the building. There is also an indication that the dental practice has identified alternative premises. Therefore, I consider an alternative use without requiring significant deliveries to be unlikely to materialise and I attach limited weight to the suggestion.

11. Vehicles are already permitted to stop for unloading but the type of truck likely to be used for deliveries to the appeal site if used as proposed would be large and there is a potential to interfere with the use of the bus stop. However, the Council's Highways Department has identified road improvements that could be secured by condition that would make the impact on traffic conditions acceptable and would improve visibility at the junction between Austhorpe Road and Church Lane. Consequently, subject to the road improvements the proposed development would be in accordance with Policy T2 of the Leeds Local Development Framework Core Strategy 2014 (the Core Strategy) and saved Policy GP5 of the Leeds Unitary Development Plan Review 2006 (the UDP) which together seek to ensure that developments provide safe and secure access and maximise highway safety.

Living Conditions

12. The appeal site is in close proximity to the nearby residential areas and use of the site as a public bar will inevitably involve an element of noise and disturbance. Noise is likely to arise from customers' use of the beer garden, which the scheme proposes to address by the construction of a three-metre high acoustic fence. The appellant has estimated that the beer garden would be used by 30 or so customers at peak times, of whom roughly one third might be talking at any one time. The Council has suggested that the beer garden could accommodate up to 67 customers and has questioned the estimate that only one third would be talking at any given moment. Clearly, not everyone would be talking together as conversation requires listening as well as speaking and as some customers would likely be part of groups rather than couples, an estimate that one-third of customers might be talking does not seem unreasonable.
13. Occupancy of the beer garden by 67 customers would be maximum capacity and is likely to occur infrequently, and be more common in warm, dry weather and at weekends and public holidays. Beer gardens are often used by customers as a smoking area and therefore their presence might be for a very short period before returning inside and it is reasonable to conclude that numbers and noise generated will vary from time to time. While the figures given are clearly only estimates, an assessment based on an average number in the region of 30 or so customers is a reasonable representative figure from which to gauge likely noise at any given moment. However, even if the number of customers using the beer garden was at the maximum capacity level suggested by the Council it would not alter my conclusions. I have considered comments from interested parties about the noise assessment provided by the appellant but I do not have before me any evidence that undermines the assessment's conclusions and note that the Council's Environmental Health Officer found the noise mitigation measures suggested acceptable.
14. The nearest dwellings to the appeal site are No 3 East View to the north and No 15 Beulah Terrace to the north-west and the nearest elevation of each property is 20

metres or so from the beer garden. No 3 would be separated from the beer garden by an existing unmade track, the proposed rear extension comprising the kitchen, a refuse store and the parking area for the dental practice. No 15 would be separated from the external drinking area by its own rear fence, the width of North Road and the parking area for the dental practice. The addition of the three-metre high acoustic fence would also provide a visual barrier between No 15 and the beer garden that would be likely to limit any view to a relatively small area. There are no windows at No 3 that would overlook the site.

15. An acoustic fence would not eliminate all noise and late at night even limited noise can become intrusive. However, the appellant has suggested a 10.00pm cut off time after which the area would be closed save for customers using a smoking shelter and this can be controlled by a condition. These measures taken together would likely be sufficient to prevent any unacceptable harm to the living conditions of the occupiers of neighbouring dwellings from noise and disturbance caused by customers at the site.
16. I have been referred to a recent appeal decision¹ in which permission to use an area of land as a beer garden for a public house was refused. While the Inspector's decision is a material consideration to which I have had regard, I note that pivotal to his decision was an opinion by the Council's Environmental Health Officer that the noise associated with the use would probably amount to a statutory nuisance. In the application subject to this appeal the Environmental Health Officer has accepted the noise mitigation measures, subject to the imposition of conditions and therefore the circumstances are not directly comparable. In any event I must consider this appeal on its individual merits.
17. Whilst I have had regard to the interested party comments in regards to noise and disturbance in the surrounding streets and anti-social behaviour, these matters do not lead me to a different conclusion in this regard.
18. The dental practice on the first floor of the building is a sensitive noise receptor due to the need for patient consultation and surgical dentistry procedures that might occur on the premises. Noise from customers using the external drinking area during the daytime would be in the context of the busy commercial area to the front of the premises. At peak times for a public bar when the rear drinking area could be expected to be most used, namely evenings and weekends, there is no evidence that the dental practice would be operating and therefore the impact of any disturbance would be minimal.
19. The condenser and extraction equipment to be placed in the roof space of the extension would be muted and would be positioned at the furthest point on the site from the dentist's consulting rooms, and further away than the traffic on Austhorpe Road. Noise from the operation of the business as a public house is likely to be intrusive but could be mitigated by sound insulation in the ceiling as recommended in the appellant's sound insulation tests report dated June 2016 which could be secured by a condition. Therefore, while the dental practice is a sensitive noise receptor the use of the premises would not have an unacceptable detrimental effect.
20. The appeal scheme would not have an unacceptable detrimental effect on the living conditions of the occupiers of neighbouring properties or the operation of the dental practice and therefore would be in accordance with Policy GP5 of the UDP which

¹ APP/X1165/W/17/3168794 dated 13 June 2017

seeks to protect the occupiers of neighbouring properties from environmental intrusion.

Section 106 Planning Obligation

21. Paragraph 204 of the National Planning Policy Framework states that planning obligations should only be sought where they meet the following three tests:
 - they are necessary to make the development acceptable in planning terms;
 - they are directly related to the development; and
 - they are fairly and reasonably related in scale and kind to the development.
22. Interested parties raised the issue of parking associated with the use of the site and the Council also considered this issue with regard to the Leeds City Council Parking Supplementary Planning Document 2016 (the SPD). Notionally, the SPD would require premises with the capacity of the proposed development to have 122 parking spaces but that is not appropriate for a town centre location with good public transport and pedestrian access. It is also likely that many users of the site would be in the town centre for other purposes, particularly during the daytime when shops and other premises are also open. While there would be some reliance on offsite parking, this would apply to those visiting other premises, and these premises if put to an alternative use. I note that the Council reached the same conclusion.
23. However, there is an existing pressure on parking in the vicinity of the site and the parking available for other commercial uses at the Cross Gates Shopping Centre would not be available in the evenings. This would be the peak time for the use of the appeal site and those relying on motor vehicles to travel to the site would likely have to seek parking in the nearby residential streets. At the Council's request, the appellant submitted a Unilateral Undertaking for a management contribution of £15,000 to allow the highway authority to review the parking impact of the use when established and implement measures should these be considered necessary.
24. The UU is clearly directly related to the development and I consider the sum to be fairly and reasonably related in scale and kind to the development. Because of the potential impact on parking and the resultant effect on the living conditions of the occupiers of neighbouring premises I consider that the obligation is necessary to make the development acceptable in planning terms. The Council has commented on the UU and confirms its view that it is necessary. The scheme would be in accordance with Policy T2 of the Core Strategy, which seeks to secure contributions to off-site highway improvements.

Conditions

25. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with the advice in the Planning Practice Guidance.
26. In the interests of proper planning I have imposed the standard condition in respect of time limits. For certainty I have imposed a condition requiring compliance with the plans. In the interests of enhancement of the character and appearance of the area I have imposed conditions relating to facing materials and landscaping but as there are no trees or hedges on the site I have not imposed any condition in relation to retention or replacement.

27. In the interests of highway safety, to ensure that visibility is not restricted and to facilitate deliveries, I have imposed a condition relating to improvements of the junction of Austhorpe Road with Church Lane. To ensure that parking and turning for the dental practice will be provided I imposed a condition requiring the siting and maintenance of the rear parking area. As no other parking would be provided I have not imposed a condition requiring the submission of details of parking for cycles and motorcycles. Because deliveries are to be taken through the front of the premises, I have not imposed a condition requiring improvements to the footpath in North Road, which are not relevant to the proposed development. Given the size of the proposed development and restriction on hours of construction and demolition work, a condition requiring submission of details of access, storage, parking, loading and unloading of all contractors' plant, equipment, materials and vehicles is not necessary.
28. To ensure the amenity of neighbours is not unnecessarily disrupted I have imposed conditions to mitigate the effects of noise and limiting the hours of construction work on the site, the operation of the business, deliveries and the disposal of waste. I have not imposed a condition requiring the submission and approval of a delivery management plan as the restriction on delivery hours makes such a condition unnecessary. As the approved plans show the location of the refuse store it is not necessary to impose a condition requiring submission of details for this element of the development. The cumulative effect of the conditions imposed means that a condition requiring compliance with a management plan is unnecessary.
29. The appellant's Geo-environmental Investigation Report identified shallow mining as a potential risk and recommended further site investigation works to establish ground conditions and identify any necessary remedial measures. I have therefore imposed a condition requiring the investigation to be undertaken prior to the development proceeding.

Conclusion

30. For the reasons given above, and taking into account all other matters, I conclude that the appeal should succeed.

D Guiver

INSPECTOR

Schedule

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 7409-13-Rev C; 7409-100-Rev C; 7409-101-Rev A; 7409-12.
- 3) No development shall take place until samples of all external facing and roofing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) a statement setting out the design objectives and how these will be delivered;
 - ii) earthworks showing proposed finished levels or contours;
 - iii) boundary treatments;
 - iv) hard surfacing materials;
 - v) planting;
 - vi) an implementation programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

- 5) No development shall take place until details of the standards to which the works comprising build-outs at the junction of Church Lane and Austhorpe Road (including loading bay markings) are to be constructed shall have been submitted to and approved in writing by the local planning authority. No part of the development shall be brought into use until the works have been completed in accordance with the approved details.
- 6) No part of the development shall be brought into use until space has been laid out within the site in accordance with drawing no. 7409-100-Rev C for three cars to be parked for use by visitors to the dental practice and that space shall thereafter be kept available at all times for those purposes.
- 7) Construction work shall not take place until a scheme for the proposed acoustic fencing shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before the development shall be brought into use and retained thereafter.
- 8) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme for noise control to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.

- 9) Demolition or construction works shall take place only between 0800 and 1800 on Monday to Friday and 0900 and 1400 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 10) The premises shall only be open for customers between the following hours: 0700 – 2330 Sunday to Thursday; and 0700 – 0030 the following day on Fridays and Saturdays.
- 11) No food or drink sold or supplied to customers shall be consumed other than in the areas identified as the customer area and the beer garden on drawing no. 7409-100-Rev C.
- 12) The beer garden shall only be open for customers for the consumption of food and drink between 0900 and 2200 on any day and the doors between the beer garden and the customer area shall remain closed between 2200 and 0900 the following day except for transit between the beer garden and the customer area for customers using the smoking shelter and staff employed at the premises.
- 13) Deliveries shall be taken at the site only between 0800 and 1800 on Monday to Saturday, between 0900 and 1300 on Sundays or on Bank or Public Holidays.
- 14) No bottles, glass or other waste shall be taken to or, disposed of in, any area open to the air before 0900 and after 2100 on any day.
- 15) No amplified music or television broadcast shown at the premises shall be audible outside the premises.
- 16) No development shall take place until a site investigation of the nature and extent of any shallow mine workings has been carried out in accordance with a methodology which shall have previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development takes place. If any land instability or safety issues are found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development takes place.
- 17) The building shall be adapted so as to provide sound insulation against internally generated noise within the adjoining commercial premises located on the 1st floor of the building of not less than that indicated by Noise Rating Curve 35. The sound insulation works shall be completed before the use of the building begins and retained thereafter.



Costs Decision

Site visit made on 4 January 2018

by D Guiver LLB(Hons) Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13 February 2018

Costs application in relation to Appeal Ref: APP/N4720/W/17/3183420 39 Austhorpe Road, Cross Gates, Leeds LS15 8BA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by J D Wetherspoon plc for a full award of costs against Leeds City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission originally described as 'full application for change of use on ground floor from doctor's surgery/pharmacy to public bar, two-storey rear extension, external alterations including new doors and windows, condenser and extraction equipment to roof, new fencing and parking to rear (resubmission of application 15/05889/FU)'.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably by failing to determine an application when there were no substantive reasons to justify the delay and where better communication with the applicant would have enabled the appeal to be avoided altogether.
3. The applicant submits that the Council acted unreasonably by failing to determine the application and that while there was significant consultation and negotiation during the application process, delay occurred as a result of the environmental health officer revising opinions that required deferment when agreement with the applicant on proposals and suitable conditions had been achieved. Further delay was caused when members sought views on a potential amendment to the scheme that had already been considered and rejected on officer advice, namely the use of the side entrance on North Road for deliveries.
4. The application was first received in August 2016 but not referred to members until June 2017, which should have provided ample time to resolve any issues between the parties. However, the matter was deferred to a second committee meeting in August 2017 at which point the matter was again deferred to a third meeting in September 2017. By the time of the third committee meeting the

applicant had already issued its appeal. However, it is clear from the Council's evidence in reporting members' disappointment with the applicant's decision to appeal when they felt matters were close to resolution, that the Council was not in a position to determine the application even at this late stage.

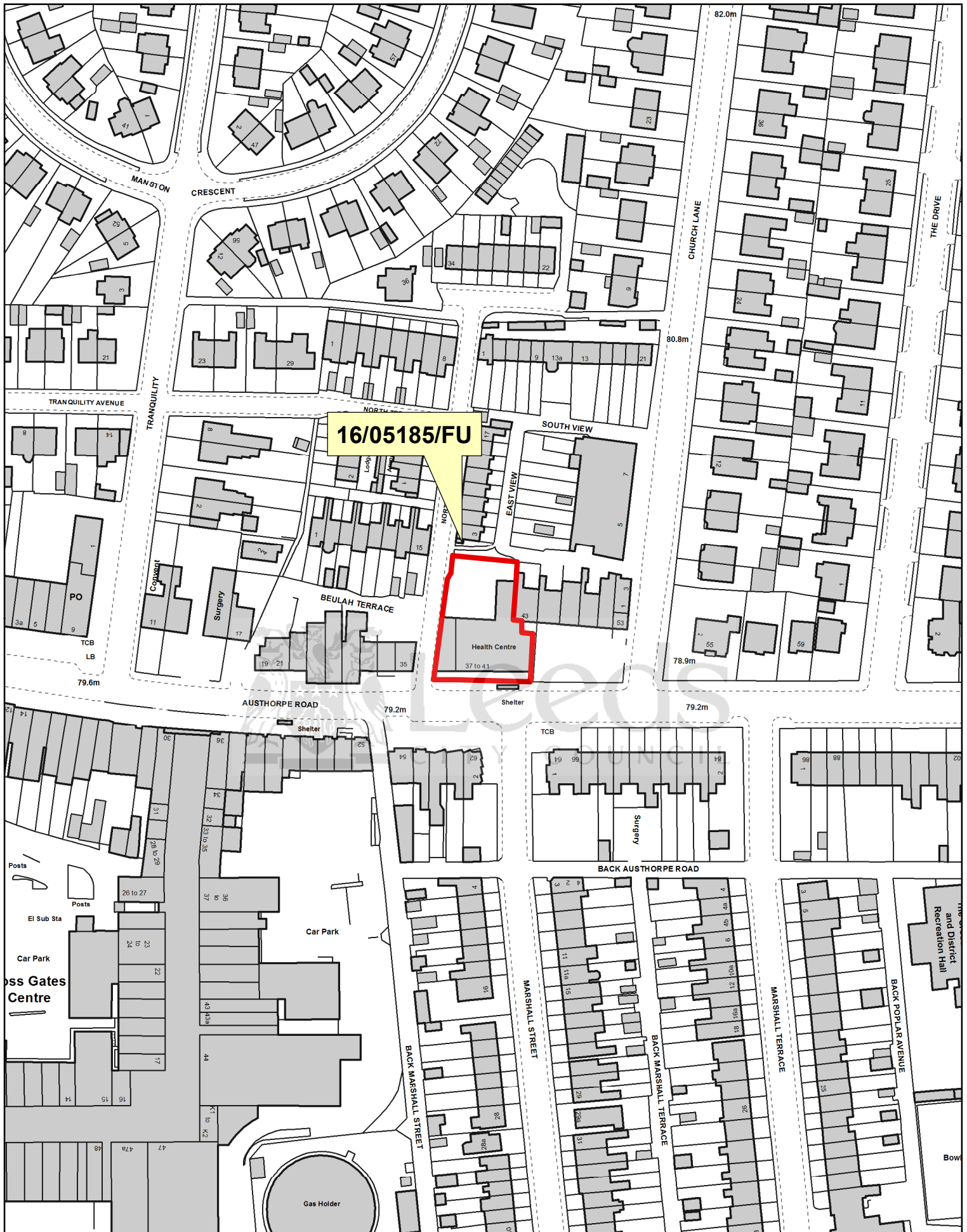
5. Members were asked to provide reasons for a refusal and referred to highway concerns and the living conditions of the occupiers of neighbouring dwellings. Members preferred the opinion of interested persons over the professional opinion of the applicant's noise consultant and its own environmental health officer in relation to noise and disturbance when there was no alternative technical evidence upon which to base such a conclusion. This suggests that agreement on the noise and disturbance issues was not close despite members statement to the contrary.
6. As a result of delays a period of just over one year elapsed between the Council validating the application and the applicant submitting its appeal. In its appeal response the Council maintained positions on matters that could have been dealt with by condition, such as the highway safety issues and the noise and disturbance issues, where appropriate mitigation measures were identified for both matters. The Council states that outstanding matters could have been addressed and the matter put back before members for a decision but the significant delay and concern over officers changing advice after seeming agreement lead to the conclusion that the applicant was entitled to appeal to obtain a decision.
7. I consider the Council's inconsistency in changing positions on matters where there was no material change of circumstances demonstrates a want of substantive reasons to justify the delay and has caused the applicant to incur the unnecessary costs of lodging and pursuing an appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Leeds City Council shall pay to J D Wetherspoon plc, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Leeds City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Guiver

INSPECTOR



NORTH AND EAST PLANS PANEL

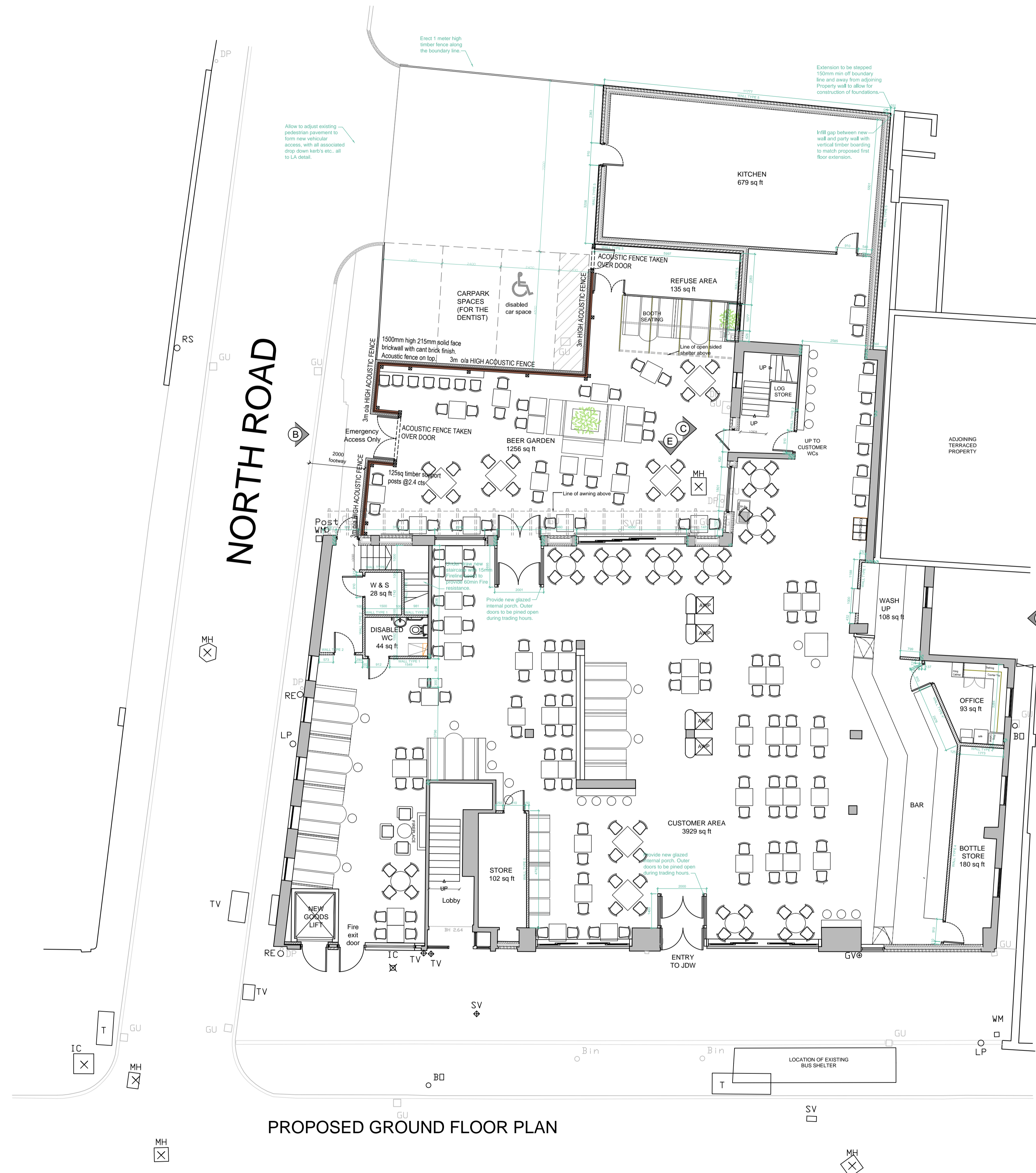
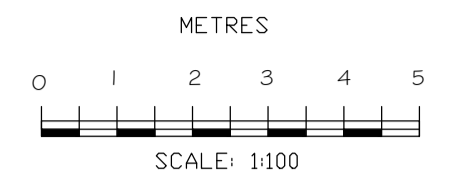
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SCALE : 1/1500



NOTE - Responsibility is not accepted for errors made by others in scaling from this drawing. All construction information should be taken from figured dimensions only



PROPOSED GROUND FLOOR PLAN

REVISIONS

REV A: CARPARK DRIVE WIDTH INCREASED FROM 6m TO 7m AP/KP 09.06.17
 REV B: BEER GARDEN AREA AMENDED AKS 29.06.17
 REV C: PLANNING REQUIREMENTS; 3METRE HIGH OVERALL ACOUSTIC FENCE, 1500mm lower wall with cant finish and 1500mm Acoustic fence on top. Doors to be Acoustic ACP 19.07.17

kdp design
 kdp project management
 kdp architecture

Adur Business Centre
 Little High Street
 Shoreham by Sea
 West Sussex BN43 5EG

T: 01273 467518
 E: info@kdpaine.co.uk
 W: www.kdpaine.co.uk

CLIENT	JD WETHERSPOON PLC		
PROJECT	PUB NO: 7402 CHURCH VIEW SURGERY CROSSGATE, LEEDS		
DRAWING	PROPOSED GROUND FLOOR OPTION 2		
SCALE	DATE	DRAWN	
A1/1:100	JUN 2017	AKS	
PROJECT No	DRAWING No	REVISION	
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