

# Change Of Use Of Open Space/Car Park To Form Beer Garden With Ancillary Works And Extension To Rear

## KEY INFORMATION

**Ward** The Ferry

**Address**

314-316 Brook Street

**Applicant**

Amaretto Stu Ltd  
11 Dudhope Terrace  
Dundee

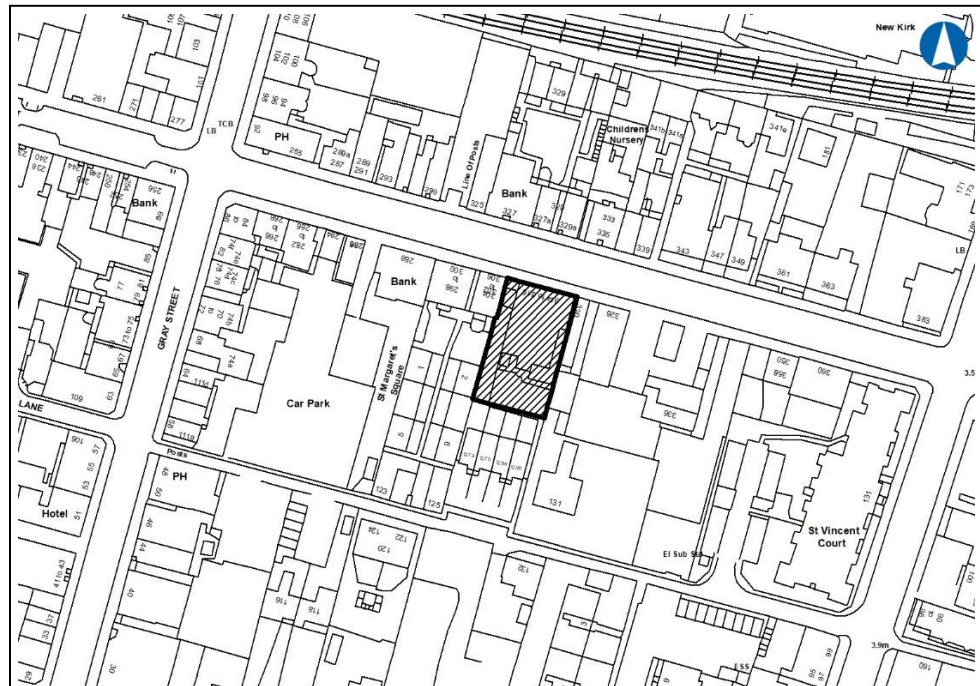
**Agent**

Jon Frullani Architect

**Registered** 25 Feb 2021

**Report by Head of Planning  
& Economic Development**

**Contact:** Sharon Dorward



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## SUMMARY OF REPORT

- Planning permission is sought for a change of use of open space/car park to form a beer garden with ancillary works and a small extension to the rear at Papa Jacque's bar/restaurant on Brook Street.
- The existing public house/restaurant is located within the District Centre although the curtilage associated with it is not. The proposed beer garden is therefore proposed outwith the District Centre.
- The application is therefore not fully in accordance with the Development Plan. The principle of a beer garden adjacent to an existing bar/restaurant is, however, considered to be acceptable subject to planning conditions to granting temporary planning permission and controlling the hours of operation.
- The statutory neighbour notification process was undertaken and the application advertised in the local press. In total 25 letters of objection were received to the proposal including a letter from Broughty Ferry Community Council.
- In accordance with Dundee City Council's scheme of delegation, this application is to be determined by the Planning Committee as 6 or more valid written objections, and an objection from a statutory consultee, have been received and the recommendation is for approval.
- More details can be found at: <http://idoxwam.dundee.gov.uk/idoxpa-web/simpleSearchResults.do?action=firstPage>

## RECOMMENDATION

The proposal is not fully in accordance with the Development Plan. However, there are material considerations of sufficient weight to justify approval of planning permission. It is therefore recommended that planning permission be APPROVED subject to conditions.

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## 1 DESCRIPTION OF PROPOSAL

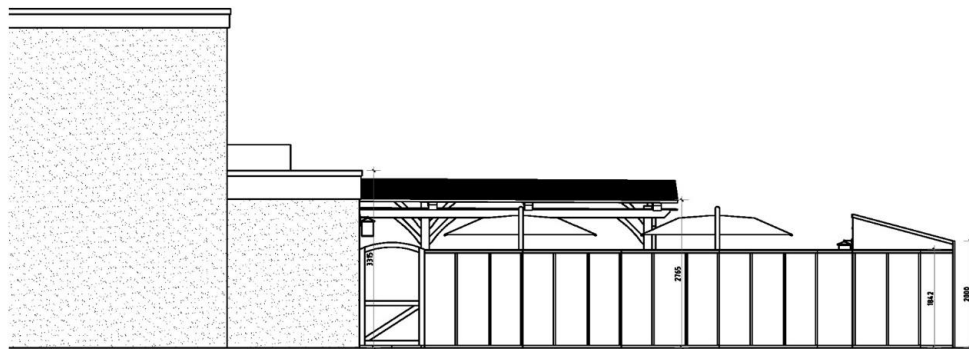
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- 1.1 Full planning permission is sought for a change of use from open space and car parking relating to an existing bar/restaurant to form a beer garden. Physical works are also proposed and these include the formation of a landscaped seating area covering an area of 107m<sup>2</sup> in the south east of the site, and fixed and removable canopies including a pergola style roof covering. A permeable surfaced parking area measuring 44m<sup>2</sup> in area would remain to the south west of the site.
- 1.2 An extension is also proposed on the rear south elevation of the public house to replace an existing fenced storage area. The proposed extension would have a footprint of 14m<sup>2</sup> and a height of 3.3 metres. A small opening would be created in the existing wall to function as a serving hatch adjacent to this. It is proposed to erect timber storage sheds measuring 11 x 2.5 metres, with mono-pitch roofing to a maximum height of 2.5 metres at the south boundary of the site. The application also proposes lighting on the perimeter fence, which the applicant states would be directed downwards into the site. Finishes would include timber fencing, timber storage sheds and a timber canopy, with feature floor tiles to the seating areas and planting to the perimeter of the site.
- 1.3 The applicant wishes to provide an enhanced outdoor space given the effects of the Covid-19 restrictions on the hospitality sector as well as the ongoing restrictions and requirements, which have resulted in a need to provide outdoor facilities for businesses to generate income. The applicant wishes to provide a high standard of facility which has resulted in this planning application.
- 1.4 The applicant has submitted a site location plan, site and elevational drawings and a planning statement in support of the application.

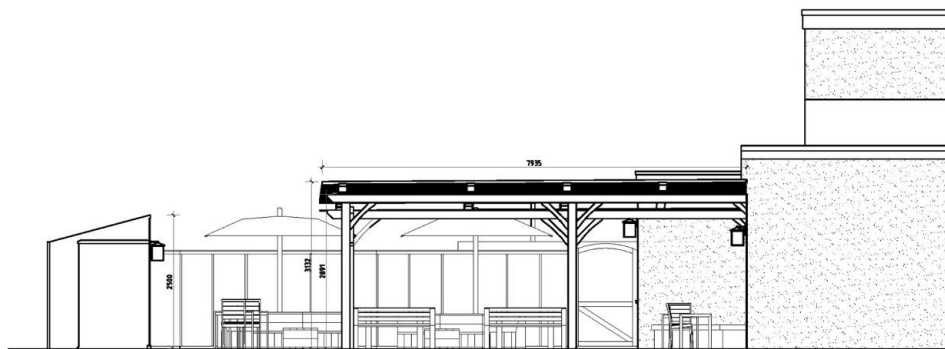




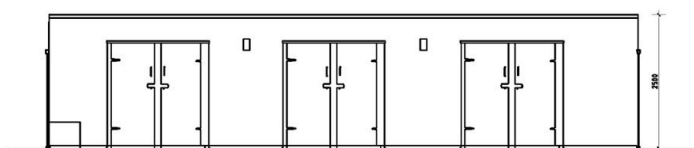
West Elevation



West Elevation



East Elevation



Storage Sheds Front Elevation

Figure 2 – Proposed Elevations

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## 2 SITE DESCRIPTION

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- 2.1 The application site relates to an area of land measuring 210 square metres to the rear of Papa Jacques bar/restaurant to the south of Brook Street in Broughty Ferry. The site is located within the Broughty Ferry Conservation Area and the main building is within Broughty Ferry District Centre boundary. The land to rear of the building, whilst within the curtilage of the application site, lies just outside the District Centre boundary.
- 2.2 The site is level and gravelled with some paving to the immediate rear of the building. It is largely unkempt and is currently used for car parking and storage. There is currently a small beer garden in place adjacent to the building, covering approximately 15m<sup>2</sup> to the east of the site. The existing boundary is a 1.8-metre-high timber hit and miss fence. Surrounding land uses are commercial and residential.



Figure 3 – View Within Site to South



Figure 4 – View Within Site to North

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### 3 POLICY BACKGROUND

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3.1 The following plans and policies are considered to be of direct relevance:

**DUNDEE LOCAL DEVELOPMENT PLAN 2019**

Policy 1: High Quality Design and Placemaking

Policy 27: Public Houses, Restaurants and Hot Food Takeaways

Policy 39: Environmental Protection

Policy 51: Development in Conservation Areas

**STATUTORY PLANNING POLICY**

The following statutory policies are relevant to this application:

Scottish Planning Policy (2014)

Historic Environment Policy for Scotland (2019)

Broughty Ferry Conservation Area Appraisal

3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

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### 4 SITE HISTORY

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- 4.1 Planning application 98/23303/D was approved in May 1998 for elevational alterations to the public house.
- 4.2 Planning application 98/23470/D was approved in August 1998 for an extension to the rear of the property.
- 4.3 Planning application 08/00062/COU was approved in June 2008 for a change of use from office space to a piano bar and restaurant to the first floor of the building.

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### 5 PUBLIC PARTICIPATION

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- 5.1 The statutory neighbour notification procedure has been undertaken and the application advertised in the local press.
- 5.2 In total 25 letters were received objecting to the proposal, including a letter from Broughty Ferry Community Council.
- 5.3 The letters of objection raised the following concerns:
- Noise and general disturbance, contrary to Policy 39;
  - Privacy and overlooking;
  - Increased traffic, insufficient parking; and
  - Unsuitable for Conservation Area, lack of screening.

- 5.4 The matters raised in the representations are taken into account in the material considerations section of this report.

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## 6 CONSULTATIONS

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- 6.1 **The Head of Community Safety and Protection** - has no objection to the application but recommends that hours of use are restricted, and that no amplified music or vocals shall be allowed within the beer garden.

## 7 DETERMINING ISSUES

- 7.1 **Section 25 of the Town and Country Planning Act 1997 as amended provides that an application for planning permission (other than for a national development) shall be determined in accordance with the Development Plan unless material considerations indicate otherwise.**

### THE DEVELOPMENT PLAN

The provisions of the Development Plan relevant to the determination of this application are specified in the Policy Background section above.

#### TAYPLAN 2016 – 2036

- 7.2 **The application raises no issues of relevance.**

#### DUNDEE LOCAL DEVELOPMENT PLAN 2019

- 7.3 **Policy 1: High Quality Design and Placemaking** - requires all development proposals to follow a design-led approach to sustainable and high quality placemaking. Development should contribute positively to the quality of the surrounding built and natural environment and should be planned with reference to climate change mitigation and adaptation. The design and siting of development should respect the character and amenity of the place, creating a sense of community and identity, and enhancing connectivity, with creative approaches to urban design, landscaping and green infrastructure. New development is required to meet the six qualities of successful place, in accordance with Appendix 1, creating development which would be distinctive, safe and pleasant, easy to move around and beyond, welcoming, adaptable, and resource efficient.
- 7.4 The planning application is for the change of use of an existing area of land in use as a car park to a beer garden. The application also seeks permission to install a pergola structure, tiled flooring and timber fencing and storage to the areas. A small extension is proposed to the rear of the existing bar/restaurant.
- 7.5 The application site is located within the Broughty Ferry Conservation Area. The area for development is located to the rear of an existing bar/restaurant and is not visible as part of the street scene. The proposed finishes include timber fencing, pergola and storage sheds and tiled flooring, which would be appropriate and the landscaping would soften the appearance of the beer garden. Further details are required for the canopies and any fixed chairs and tables and it is proposed to secure these by condition should Committee be minded to approve the application. The site is not within a public view and the development would not have a detrimental impact on the appearance of the surrounding area.



- 7.6 The proposed change of use would result in the loss of some existing informal off-street parking spaces, covering an area of approximately 120 m<sup>2</sup>, however, approximately 40m<sup>2</sup> would remain and the loss of this off-street parking would not have a significant detrimental impact on the availability of parking provision within the area. The site is located within central Broughty Ferry and is therefore well served by existing public transport networks.
- 7.7 The design and siting of the proposal would respect the character and amenity of the place. The scale, nature and location of the proposed development would not have a detrimental impact on the quality of the surrounding built environment, and would improve an unkempt area. Planning conditions are recommended to agree further details in relation to the external finishes and the proposed landscaping.
- 7.8 **The proposal is in accordance with Policy 1, subject to conditions.**
- 7.9 **Policy 27: Public Houses, Restaurants and Hot Food Takeaways** – supports proposals for hot food takeaways and restaurants, including external seating areas within District Centres, where the hours of operation are limited to between 7.00am and 11.00pm and therefore would be no significant detrimental impacts in terms of noise or odour. It is recognised that public houses, restaurants and hot food takeaways can raise amenity issues for residents in the surrounding area, and also that their impact on amenity will be relatively less significant within the City Centre and District Centres, given the existing level of activity. Proposals for hot food takeaways and restaurants outside District Centres are supported where the premises has a gross floor area of up to 150m<sup>2</sup> and is more than 30 metres from existing or proposed housing, and where the floor area proposed would be over 150m<sup>2</sup>, a 45 metre separation would be required from the curtilage of the proposal to the facade of any existing or proposed houses. Proposals which do not meet these requirements may be permitted subject to a restriction on opening times and cooking methods.
- 7.10 In this case, the existing bar/restaurant is located within Broughty Ferry District Centre, but the land to the rear lies immediately outside the District Centre boundary. This is because the boundary illustrated in the Local Development Plan runs through the application site. As a result of this, the proposed beer garden would be located outwith (but adjacent to) the District Centre boundary, whereas the public house/restaurant is located within it. The proposed beer garden would be less than 30 metres away from residential property and would therefore not meet the requirements of Policy 27. However, given that the area of land is within the curtilage of the existing bar/restaurant which itself is within the District Centre, it is considered reasonable to give consideration to the acceptability of the proposal on amenity grounds, including restricting the proposal in the interests of residential amenity. This is considered in more detail below.
- 7.11 **The proposal not fully in accordance with Policy 27.**
- 7.12 **Policy 39: Environmental Protection** - requires that all new development that would generate noise, vibration or light pollution is required to demonstrate that it can be accommodated without an unsatisfactory level of disturbance to the surrounding area. New development in close proximity to existing sources of noise, vibration or light pollution will need to demonstrate that it can achieve a satisfactory level of amenity without impacting on the viability of existing businesses or uses.
- 7.13 There are residential properties on Long Lane and St Margaret's Square which are on the boundary of the application site, as well as flats on upper floors on Brook Street which could be affected by noise from a beer garden.
- 7.14 The Head of Community Safety and Protection has no objection to the application but has recommended that planning conditions are attached to any planning permission to restrict

the hours of operation and prevent any amplified music or vocals. This would see the hours of operation of the beer garden restricted to only be between 11.00am (12.30pm on a Sunday) to 9.00pm from September to June, and from 11.00am (13.30pm on a Sunday) to 10.00pm during July and August. Given the location of the site immediately adjacent to and within the curtilage of the existing bar/restaurant, which itself is within Broughty Ferry District Centre, it is considered that restricting of hours of operation would minimise impact on the amenity of surrounding residential properties. Additionally, a condition is also recommended to ensure that at no time would amplified music or vocals be allowed within the beer garden.

- 7.15 The external area would be lit by outdoor lights on the perimeter fence which the applicant states would be directed downwards and into the site to help ensure against light pollution. There is potential that any lighting which is provided may present a light nuisance to residents. As such, a planning condition is recommended to secure further details to ensure that the lighting measures and timing would be acceptable.
- 7.16 It is recognised that the proposal may give rise to some noise and that this may have an impact on neighbouring properties. However, it is also recognised that the Council needs to support businesses within the hospitality sector, particularly at the current time during the Covid-19 pandemic. As a result, the decision on this application requires to carefully balance the two. The proposed conditions to restrict the hours of operation and amplified music/vocals in the beer garden will help minimise the impact. However, it is also considered necessary, on balance, to grant a temporary planning permission in this case in order to monitor the impact of the proposal on the surrounding properties over a period of two years. Doing so would balance the needs of the business with the concerns of residents, and ultimately provide an opportunity to review the situation in two years time following the anticipated reduction in physical distancing restrictions. As a result of the proposed restrictions, it is considered, on balance, that the development would not have any significant adverse impact on the amenity of the surrounding area.
- 7.17 **The proposal is in accordance with Policy 39, subject to conditions.**
- 7.18 **Policy 51: Development in Conservation Areas** - requires that all development proposals preserve or enhance the character of the surrounding area and retain all features that contribute to the character and appearance of the conservation area.
- 7.19 The application site is located within the Broughty Ferry Conservation Area and to the rear of an existing bar / restaurant where it is not visible within the street scene. The traditional finishes proposed include timber fencing, storage sheds and a pergola structure, with tiled surfacing, which would be acceptable for the conservation area. A planning condition is proposed to seek further details for the seating area and canopy finishes where they have not been specified to ensure that these would be appropriate. The proposal would also help improve the appearance of an unkempt backland area. The proposal would therefore not have a detrimental impact on the appearance of the existing property and would preserve the character and setting of the surrounding Broughty Ferry Conservation Area.
- 7.20 **The proposal is in accordance with Policy 51, subject to conditions.**
- 7.21 **It is concluded that the proposal is not in accordance with the Development Plan.**

## **STATUTORY DUTIES**

- 7.22 Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

7.23 For the reasons set out above it is considered that the proposed works would preserve the character and appearance of the Conservation Area.

7.24 **The statutory duty set out in Section 64 of the Act would therefore be discharged through the approval of planning permission.**

## **MATERIAL CONSIDERATIONS**

7.25 The material considerations to be taken into account are as follows:

### **A - NATIONAL POLICY AND GUIDANCE**

7.26 Scottish Planning Policy (2014) and Historic Environment Policy for Scotland (2019) should be taken into account when determining applications for development which may affect the historic environment. Scottish Planning Policy (Valuing the Historic Environment) advises that the planning system should promote the care and protection of the historic environment and its contribution to sense of place, including settings and the wider cultural landscape; development which will affect a listed building or its setting should be appropriate to the character and appearance of the building and its setting. The Historic Environment Policy for Scotland sets out principles and policies for the recognition, care and sustainable management of the historic environment. It seeks to influence decision making that will be sufficiently flexible and adaptable to deal with wide-ranging and ongoing changes to society and the environment, and to achieve the best possible outcome for the historic environment, maximising its benefits.

7.27 It is concluded for the reasons set out above that the proposed works would comply with national planning guidance concerned with the historic environment, including the policies of the Historic Environment Policy Scotland.

### **B – LOCATION OF PROPOSED DEVELOPMENT**

7.28 It is recognised that the boundary of the District Centre, as defined by the Dundee Local Development Plan, runs through the middle of the application site, leaving the building within it, and the land to the rear that is subject to the proposed beer garden, outwith it. As such, the proposed beer garden element of the proposal does not fully meet the requirements of Policy 27. However, account requires to be taken of the fact that the beer garden is proposed to support the existing public house/restaurant which itself is a District Centre location. In line with the Scottish Government's Chief Planner's advice, the Council is balancing the needs of businesses such as this which require more external seating areas to enable them to operate, with the impact on amenity that could arise from the proposed change of use. In this case, the proposed beer garden is relatively close to existing residential properties and there would be some noise from patrons using the external area. However, conditions are proposed to grant only a two year planning permission, to restrict the hours of operation and to control amplified music and vocals. These restrictions would help minimise the impact on amenity, and allow the business to operate. On balance, these are considered to be material considerations of sufficient weight to justify approval of planning permission.

### **C – REPRESENTATIONS**

7.29 In total 25 letters were received objecting to the proposal, including one from Broughty Ferry Community Council.

7.30 The objections raised the following valid material grounds:

- 7.31 **Objection** – noise and general disturbance from patrons, including anti-social behaviour and litter, contrary to Policy 39.
- 7.32 **Response** – as discussed earlier in this report under policies 27 and 39, The Head of Community Safety and Protection has no objection to the application. Planning conditions have been recommended to grant a temporary planning permission, restrict the hours of operation of the beer garden and to prevent any amplified music or vocals. With the addition of planning conditions to protect residential amenity the proposal would accord with Policy 39.
- 7.33 **Objection** – privacy and overlooking.
- 7.34 **Response** – the ground level of the beer garden would remain relatively unchanged. Fencing and the storage sheds with a height of 2.5 metres would prevent any overlooking to neighbouring garden ground by patrons.
- 7.35 **Objection** – increased traffic, insufficient parking.
- 7.36 **Response** – the existing use of a bar/restaurant and any limited increased clientele is not expected to create any significant increase in traffic. An area for staff parking remains within the curtilage of the bar/restaurant. The premises is within Broughty Ferry District Centre and accessible by alternative forms of transport.
- 7.37 **Objection** – unsuitable for Conservation Area, lack of screening.
- 7.38 **Response** – the proposed beer garden would not be visible as part of the street scene, however the materials and finishes proposed, with landscaping areas are considered to be acceptable and appropriate for the conservation area, and an improvement on the current open space/car park area. The beer garden would be well screened by timber fencing and storage sheds.
- 7.39 The issues raised in the representations have been considered and addressed in the report and the grounds raised are not of sufficient weight to justify refusal of planning permission.
- 7.40 **It is concluded that there are material considerations of sufficient weight in this case to justify approval of planning permission.**

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## 8 CONCLUSION

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- 8.1 The application for a change of use to beer garden, with ancillary works, is not fully in accordance with the Development Plan. There are material considerations of sufficient weight that would justify approval of planning permission. It is therefore recommended that planning permission be granted subject to conditions.

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## 9 RECOMMENDATION

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- 9.1 It is recommended that planning permission be GRANTED subject to the following conditions:
- 1 **Condition** – use of the beer garden hereby approved shall cease on or before 30 April 2023. For the avoidance of doubt, it shall not be used after that date unless further planning permission has been granted.

**Reason** – in the interests of residential amenity.

- 2 **Condition** - prior to the commencement of any works on site, details of the proposed external finishes and details shall be submitted to the Planning Authority for approval. These shall include details of fixed canopies and chairs. Thereafter the development shall be carried out in accordance with the approved details.

**Reason** – in the interests of visual amenity, to ensure that the development will respect the surrounding area.

- 3 **Condition** - the external serving hatch, beer garden, table/seating areas and storage sheds hereby approved shall be restricted (for the avoidance of doubt, not used/accessed) in the following ways:

September to June - open 1100 hours Monday to Saturday and 1230 hours on Sundays: closing at 2100 hours

July and August - open 1100 hours Monday to Saturday and 1230 on Sundays: closing at 2200 hours.

**Reason** – in the interests of residential amenity.

- 4 **Condition** - at no time shall amplified music or vocals be provided/performed within the beer garden.

**Reason** - In the interests of residential amenity.

- 5 **Condition** - prior to the commencement of any works on site, further details and proposed times for the proposed external lighting shall be submitted to the Planning Authority for approval. Thereafter the development shall be carried out in accordance with the approved details.

**Reason** - in the interests of residential amenity.

- 6 **Condition** – prior to the commencement of the development hereby approved, full details of the proposed landscaping shall be submitted to and approved in writing by the planning authority. Thereafter the proposed scheme of landscaping shall be fully implemented prior to the approved change of use coming into effect, and be maintained as such thereafter.

**Reason** – in the interests of visual amenity.