



**Ashfield**  
DISTRICT COUNCIL

**MAP SCALE 1:** 1250  
**CREATED DATE:** 01/06/2023

**COMMITTEE DATE**    14/06/2023                      **WARD**            Hucknall West

**APP REF**                      V/2023/0237

**APPLICANT**                Mr Brian Willows

**PROPOSAL**                Application to Remove Condition 2 (Temporary 12-Month Time Period for Front Outdoor Seating, and Full Opening of the Folding Shop Doors) of Planning Permission V/2021/0140.

**LOCATION**                    57 Nabbs Lane, Hucknall, Nottinghamshire, NG15 6NT.

**WEB-LINK**                <https://www.google.com/maps/place/57+Nabbs+Ln,+Hucknall,+Nottingham+NG15+6NT/@53.0324693,-1.2288144,19.04z/data=!4m6!3m5!1s0x4879eab626ab4705:0x6c2b74fc17afefcb!8m2!3d53.0324978!4d-1.2284748!16s%2Fq%2F11c4vj9d7t>

**BACKGROUND PAPERS**    A, B, C, D, E & K.

App Registered: 21/04/2023

Expiry Date: 15/06/2023

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

*This application has been referred to Planning Committee by Cllr Rostance to discuss disparity between other establishments, and new government guidelines relating to licensing.*

### **The Application**

Planning permission is being sought to create a permanent seating/drinking area to the front of the premises and to allow the full opening of the glazed folding doors.

A separate planning application has been submitted under planning application reference V/2023/026 to remove measures currently in place to prevent patrons accessing and using the rear yard area for an additional seating / drinking space. If both of these latest applications are granted planning permission this would result in permanent areas of outdoor seating/drinking spaces to the front and rear of the premises.

Please see below a detailed explanation as to the sites planning history.

## **Consultations**

A site notice has been posted together with individual notifications to nearby properties.

The following responses have been received:

### **Ashfield District Council Environmental Health:**

- Outdoor seating was originally to help food and drink establishments survive during Covid when distancing restrictions were in place, yet now post lock down, we are viewing the use of the outside space of a micropub wholly on its own without context of the impact of Covid on the business in the previous years but on the impact on the local residents now and in the future.
- Since the last comment submitted by Environmental Health Officers on application V/2023/0001 on 31/03/2023, an additional noise complaint was lodged with the Council's Environmental Health Team on 26/05/2023 in relation to the use of the outside seating at Door 57.
- While the previous complaints (excluding the currently open investigation) has not demonstrated a legal noise nuisance, the amount of complaints related to a small scale micro pub indicates that the current noise levels are impacting nearby residents and the community, and raises concern in relation to the establishment of permanent seating to the front of the pub.
- Reservations are held on permitting the permanent use of the front for seating for the micropub.
- Due to deregulation provisions under the Licensing Act there are little enforceable conditions to manage outdoor areas in the interest of amenity outside of the planning process. It is possible that an approval at this stage, may indirectly regularise the creation of a statutory noise nuisance.

### **Ashfield District Council Licensing:**

- Licensing can still issue Temporary Pavement Licences for siting on highways for the sole purpose of eating and drinking (Business & Planning Act 2020 – to alleviate business issues during Covid) until 30.09.2023.
- However it is understood that this area is private land, therefore the Temporary Pavement Licence scheme cannot be used for such a purpose.

### **Nottinghamshire County Council Highways:**

#### **Comments dated 27/04/2023:**

- No objections. The application does not have a detrimental effect on highway safety and capacity.

**1 representation has been received from a resident in support of the proposal, raising the following comments:**

- Caters for a different clientele.
- Any noise likely caused by other nearby premises.
- Loss of outdoor seating will impact businesses financial viability.

### **Policy**

Under the Planning and Compulsory Purchase Act 2004, section 38(6) applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Therefore, the starting point for decision-making are the policies set out in the Ashfield Local Plan Review 2002 (saved policies). The National Planning Policy Framework (NPPF) is a material consideration.

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

### **Ashfield Local Plan Review (ALPR) (2002) as amended by 'saved policies' 2007:**

ST1 – Development.

ST2 – Main Urban Area.

SH8 – Commercial / Retail Development.

### **National Planning Policy Framework (NPPF) (2021):**

Part 6 – Building a strong, competitive economy.

Part 8 – Promoting healthy and safe communities.

Part 12 – Achieving well designed places.

### **Relevant Planning History**

**V/1977/0006** - Erection of 6 shop units with living accommodation above and block of 6 garages - Conditional.

**V/2012/0455** - Change of Use from Residential Flat (C3) to Office (B1) - FUL CC.

**V/2019/0401** - Change of Use from Retail (A1) to Micropub (A4) - FUL CC.

**V/2019/0687** - Application for Approval of Details Reserved by Condition 4 of Planning Permission V/2019/0401 (Sound Test) - CD Determined.

**V/2020/0148** - Application to Remove Condition 3 and 5 of Planning Permission V/2019/0401 to Allow Back Ground Music To Be Played and to Allow External Seating Area to the Front - FUL Refusal.

**V/2021/0140** - Alterations to Shop Front, Installation of Retractable Awning and Decking, Outdoor Seating Area to Front and Alterations to Existing Opening Hours - FUL CC.

**V/2023/0001** - Application to Remove Condition 2 (Temporary 12-month Time Period), Condition 8 (Rear Access Door Restrictions) and Condition 9 (Rear Service Yard Restrictions), and to Vary Condition 4 (Use of The Outdoor Spaces to the Front and Rear for the Siting of Tables and Chairs) of Planning Permission V/2021/0140 - RVC Refusal.

**V/2023/0236** - Application to Remove Condition 8 (Rear Access Door Restrictions) and Condition 9 (Rear Service Yard Restrictions) of Planning Permission V/2021/0140 - PENDING.

Other application of relevance (No.57a Nabbs Lane):

**X/2019/0042** - Prior Approval for A Proposed Change of use From Office (B1) to Dwelling (C3) at First Floor Only - Prior Approval - Conditional Consent.

**Material Considerations:**

- Site History and Context.
- Residential Amenity.
- Other.

Section 70(2) of the Town and Country Planning Act 1990 provides that, in dealing with proposals for planning permission, regard must be had to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that, if regard is to be had to the development plan for any determination, then that determination must be made in accordance with the plan, unless material considerations indicate otherwise. Therefore, the starting point for decision-making are the policies set out in the Ashfield Local Plan Review 2002 (saved policies).

The National Planning Policy Framework (NPPF) is a material consideration. The policies in the development plan have to be considered in relation to their degree of consistency with the provisions of the NPPF (NPPF paragraph 219). This will depend on the specific terms of the policies and of the corresponding parts of the NPPF when both are read in their full context. An overall judgement must be formed as to whether or not development plan policies, taken as a whole, are to be regarded as out of date for the purpose of the decision.

## **Site History and Context:**

The site is located amongst a block of 6 properties, which present commercial uses at ground floor level and residential flats at first floor level (albeit the presence of 'Straw and Bramley Ltd' Accountants at first floor level at No.55a Nabbs Lane). At the time of the Council's site visit the application site (Door 57 micro-pub) was one of the central units within the block of 6, with the other ground floor uses comprising:

- 'Nabbs Food & Wine' convenience store.
- 'No.1 Barber shop'.
- 'Cutting Edge Hair and Beauty'.
- 'Deli Corner' café.
- 'Imaan Pharmacy'.

Within the general vicinity of the application site there are residential dwellings (in addition to the first floor flats) to the north, east, south and west of the premises, with the Nabbs Inn Public House also located to the south.

## Planning / Site History:

Planning permission was granted in 2019 to change the use of No.57 Nabbs Lane from a retail unit to a micro-pub (drinking establishment) under planning application reference V/2019/0401. Although 8 objections were received as part of that 2019 application, it was considered that a condition requiring sound tests to be undertaken relating to internal noise levels was reasonable to help safeguard the amenities of residents living within the vicinity of the site.

The applicant subsequently undertook a Sound Insulation Test for the use of the internal area and submitted this report to the Council. As part of this the Council's Environmental Health team considered that the existing insulation within the building was sufficient to adequately reduce the transmission of noise to neighbouring residential properties to an appropriate level.

A further application was then forthcoming, requesting planning permission to allow background music to be played and to allow an external seating/drinking area to the front of the premises, under planning application V/2020/0148. 12 objections were forthcoming from residents in relation to this application, with the Council's Environmental Health team also objecting due to the potential noise nuisance and impact on neighbours. Planning permission for this 2020 application was subsequently refused.

Despite the refusal of planning permission the applicant proceeded to create an outdoor seating/drinking area to the front of the premises, and also undertake

alterations to the frontage of the property by installing folding doors comprising four glazed panels with retractable awning, all without planning permission.

In an attempt to regularise these a retrospective planning application was submitted in 2021 (under planning reference V/2021/0140), which received 10 objections from residents. Correspondence received from the Council's Environmental Health team as part of the 2021 application confirmed that two complaints had been received, one in relation to noise and one relating to overcrowding.

An additional consideration at the time as part of this 2021 application was the Covid-19 Pandemic, whereby the Government placed a far greater emphasis on trying to support local businesses who were trying to adapt during this time. As such additional weight was given to supporting the local businesses throughout this period, with the proposal ensuring customer numbers could remain at pre-covid levels whilst also adhering to additional guidelines such as social distancing etc. When all these factors were considered on balance, alongside other considerations such as the impact on residential amenity etc, it was determined a temporary 12-month permission for the use of the outdoor seating area to the front of the premises would allow the business to continue operating safely throughout the pandemic but also allow the Council to monitor how the premises is managed and any impacts arising from its operation.

The use of the outdoor seating/drinking area to the front of the premises is understood to have continued beyond the 12-month temporary period without planning permission.

An application was submitted in early 2023 (V/2023/0001) to make the use of the front outdoor seating/drinking area permanent, to allow the opening of the front glazed doors, and to create an additional seating/drinking area in the rear yard area. During the consideration of this early 2023 application 4 objections were received from residents, and confirmation was forthcoming from Environmental Health that an additional complaint had been received in relation to noise (shouting, singing, loud music). This application was subsequently refused planning permission due to the detrimental impact the proposal would have upon the amenity of nearby residents.

This new 2023 application (V/2023/0237) is again seeking planning permission for the permanent use of the front outdoor seating/drinking area and to allow the opening of the front glazed doors.

An additional separate planning application (V/2023/0236) has been submitted seeking planning permission to allow patrons to use the rear access door of the premises and an outdoor seating/drinking area to be created within the rear yard for use by patrons.

### **Residential Amenity:**

A key consideration as part of this application is the impact upon the amenity and living conditions of neighbouring properties. Aside from the small parade of shops,

which the application site falls within, the area is considered to be predominantly residential in nature.

Policy ST1 of the ALPR 2002 sets out that development will be permitted where it does not adversely affect the character, quality, amenity or safety of the environment. This is also reflected in Paragraph 130 of the NPPF, which seeks to create places that are safe, inclusive and accessible and which promote health and wellbeing with a high standard of amenity for existing and future occupiers. Furthermore Paragraph 174 (e) of the NPPF also seeks to prevent new and existing development from contributing to, or being put at unacceptable levels of risk from/or being adversely affected by, unacceptable levels of noise pollution. Paragraph 185 also seeks to ensure that new development is appropriate for its location taking into account likely effects (including the cumulative effects) of pollution on health, living conditions and the wider environment, to avoid noise giving rise to significant adverse impacts on health and the quality of life of the wider area.

The permanent use of the outdoor seating area to the front would effectively double (approx.) the amount of customers which could be accommodated at the premises, with the proposed use of the rear of the premises (under application V/2023/0236) seeking to increase customer numbers even further.

As previously mentioned the first floor of these block of 6 units are predominantly residential flats, who have a small balcony/terrace area to the rear at first floor level as their only form of outdoor amenity space. The flats are also accessed from the rear via individual staircases. Directly opposite and to the rear of the application site there are also residential properties.

It is acknowledged that the area around the flats would be subject to varying amount of activity throughout the day due to the nature of the shops below, in addition to a level of noise being generated by traffic flows along Nabbs Lane. However as it becomes later in the day and activity/noise levels within the vicinity reduce as a result of the shops below shutting etc, it is during this period when residents will reasonably expect a lower level of noise in their properties.

The noise generated by customers would have a specific character. It would be irregular enough to attract attention, and due to the nature of the noise generally being voices and laughter etc, this would be particularly distracting to nearby residents.

Therefore the use of the outdoor seating to the front is considered to cause a disturbance to neighbouring residents, particularly as the seating area is likely to be used during period of fine weather when windows etc of neighbouring properties are likely to be open. The removal of the tables and chairs twice daily, being dragged etc along the hard surfacing, is also considered to generate additional noise and disturbance to nearby residents. In addition to the outdoor seating areas this application to remove Condition 2 would allow the full opening of the folding shop doors on a permanent basis. This would allow the unobstructed transmission of



noise from inside the premises, and when viewed cumulatively with the outdoor seating areas, is further considered to contribute to detrimental harm to the amenity of nearby residents.

When these impacts of the seating are then mirrored to the rear of the premises, albeit on a smaller scale than the front seating area (which is now subject to planning application V/2023/0236), this would generate noise and disturbance on both sides of the flats, creating an environment where there can be no 'escape' from the noise of patrons visiting the application site. It is considered that by subjecting existing/future occupiers of the flats to this type and scale of activity that they would be unable to achieve any respite from the noise and therefore the use of the premises as applied for under this application would cause significant harm to their living conditions and quality of life.

To the south of the application site is the Nabbs Inn Public house, which is understood (following a review of the Greene King website) to operate during the following hours:

- 11am - 11pm Monday – Thursday.
- 11am – Midnight Friday – Saturday.
- 11am - 10:30pm Sunday.

The Nabbs Inn is not restricted by virtue of any planning conditions and therefore could operate outside of these hours from a planning perspective. The Nabbs Inn has two areas of outdoor seating, one to the east fronting on to Nabbs Lane, and one to the rear of the Inn to the west. The Inn's western area of outdoor seating borders on to the car park/service yard which is to the rear (south-west) of the application site. These outdoor areas have been the subject of complaints in the past, their existence does not therefore provide justification for the application site to also have outdoor seating which would add to the noise and disturbance to local residents.

The Council does recognise the economic and social benefits associated with the expansion of the drinking establishment, however these matters are considered not to outweigh the significant weight which is attributed to protecting the living conditions of nearby residents.

Overall due to the proximity between the application site and nearby dwellings, neighbouring residents would be aware of and subject to the noise generated by customers using the outdoor areas and when the doors are open at the application site, with the level of noise and disturbance which would be generated being greater than what nearby residents could reasonably expect. This would not only affect the external amenity areas of nearby dwellings but also habitable rooms, which is considered to significantly affect residential amenity and the quality of life of residents. This is reflected in the consultation comments received from the Council's Environmental Health Officer.

The 'lack' of objections does not mean that a proposal is acceptable in planning terms, nor is it sufficient justification to allow a proposal which is considered to be harmful to the amenity and living conditions of neighbouring residents.

The Council's Environmental Health Officer has significant reservations as to the impact the proposal will have on the amenity of nearby residents, as reflected in their consultation comments. They also raise that deregulation under the Licensing Act has resulted in there being little enforceable conditions to manage outdoor areas in the interest of amenity outside of the planning process. Additionally raising that as a result of the above, that the removal/variation of conditions as applied for could indirectly create a statutory noise nuisance, with the Authority then having no legal remedy available to address any impacts.

Officer discussion with the Council's Licensing Team has also highlighted that as the land proposed for outdoor seating under this application is privately owned, then the provisions within the Temporary Pavement Licence (contained within the Business & Planning Act 2020) would not be applicable in this instance, which further reduces the mechanisms available to the Council to manage the use of these outdoor areas in the interests of nearby residents.

**Other:**

Highways:

The land upon which the seating is located is private land, and there should be no obstructions to the public footway within the adopted highway.

**Conclusion:**

The economic and social benefits of the proposal for the business owner and local patrons are acknowledged, and whilst officers are keen to support businesses where possible, within the planning balance, the impact upon the amenity of nearby residential properties is considered to outweigh the benefits of the proposal in this instance. This has always been a significant concern with the granting of permission for the initial application where noise assessments were required. The applicant was aware of these concerns and has on numerous occasions sought to gain permission which impacts on the amenities of the neighbours. The Council sought to assist the applicant during the pandemic with granting a temporary planning permission and not requiring the frontage of the premises to return to the previous shop frontage. The bi fold doors and outdoor seating undermine the establishment that the property is adequately sound proofed as required by members in the original planning decision and will only add to the issues already experienced by residents from the nearby public house.

Therefore based on the above, it is recommended that this application is refused planning permission.

**Recommendation: Refuse planning permission, for the following reason:**

**Reason for Refusal:**

The removal of Condition 2 (temporary 12-month time limit for front outdoor seating, and full opening of the folding shop doors), is considered to have a detrimental impact upon the amenity and living conditions of nearby residents by virtue of additional noise and general disturbance generated from the premises. This would be in the form of the placement, movement and collection of outdoor furniture, patrons sitting and congregating outside, and increased comings and goings to the premises generated by the additional seating capacity. As such the proposal is considered to be contrary to Policy ST1 (b) of the of the Ashfield Local Plan Review (2002), which seeks to ensure that development will not adversely affect the character, quality or amenity of the environment or will not conflict with an adjoining or nearby land use. Furthermore the proposal would be contrary to Part 12 (achieving well-designed places) of the National Planning Policy Framework (2021) which seeks to create places that, amongst other things, promote health and well-being, securing a high standard of amenity for existing and future occupiers.