

Bath & North East Somerset Council

MEETING: **Planning Committee**

MEETING DATE: **14th December 2022**

AGENDA
ITEM
NUMBER

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RESPONSIBLE OFFICER: Simon de Beer – Head of Planning

TITLE: **APPLICATIONS FOR PLANNING PERMISSION**

WARDS: ALL

BACKGROUND PAPERS:

AN OPEN PUBLIC ITEM

BACKGROUND PAPERS

List of background papers relating to this report of the Head of Planning about applications/proposals for Planning Permission etc. The papers are available for inspection online at <http://planning.bathnes.gov.uk/PublicAccess/>.

- [1] Application forms, letters or other consultation documents, certificates, notices, correspondence and all drawings submitted by and/or on behalf of applicants, Government Departments, agencies or Bath and North East Somerset Council in connection with each application/proposal referred to in this Report.
- [2] Department work sheets relating to each application/proposal as above.
- [3] Responses on the application/proposals as above and any subsequent relevant correspondence from:
 - (i) Sections and officers of the Council, including:
 - Building Control
 - Environmental Services
 - Transport Development
 - Planning Policy, Environment and Projects, Urban Design (Sustainability)
 - (ii) The Environment Agency
 - (iii) Wessex Water
 - (iv) Bristol Water
 - (v) Health and Safety Executive
 - (vi) British Gas
 - (vii) Historic Buildings and Monuments Commission for England (English Heritage)
 - (viii) The Garden History Society
 - (ix) Royal Fine Arts Commission
 - (x) Department of Environment, Food and Rural Affairs
 - (xi) Nature Conservancy Council
 - (xii) Natural England
 - (xiii) National and local amenity societies
 - (xiv) Other interested organisations
 - (xv) Neighbours, residents and other interested persons
 - (xvi) Any other document or correspondence specifically identified with an application/proposal
- [4] The relevant provisions of Acts of Parliament, Statutory Instruments or Government Circulars, or documents produced by the Council or another statutory body such as the Bath and North East Somerset Local Plan (including waste and minerals policies) adopted October 2007

The following notes are for information only:-

- [1] "Background Papers" are defined in the Local Government (Access to Information) Act 1985 do not include those disclosing "Exempt" or "Confidential Information" within the meaning of that Act. There may be, therefore, other papers relevant to an application which will be relied on in preparing the report to the Committee or a related report, but which legally are not required to be open to public inspection.

- [2] The papers identified or referred to in this List of Background Papers will only include letters, plans and other documents relating to applications/proposals referred to in the report if they have been relied on to a material extent in producing the report.
- [3] Although not necessary for meeting the requirements of the above Act, other letters and documents of the above kinds received after the preparation of this report and reported to and taken into account by the Committee will also be available for inspection.
- [4] Copies of documents/plans etc. can be supplied for a reasonable fee if the copyright on the particular item is not thereby infringed or if the copyright is owned by Bath and North East Somerset Council or any other local authority.

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ITEM NO.	APPLICATION NO. & TARGET DATE:	APPLICANTS NAME/SITE ADDRESS and PROPOSAL	WARD:	OFFICER:	REC:
01	22/03269/FUL 16 December 2022	The Bath Pub Company Ltd Hare & Hounds , Lansdown Road, Lansdown, Bath, Bath And North East Somerset Erection of outside bar and decked seating area (Retrospective).	Lansdown	Sam Grant	REFUSE
02	22/04513/TCA 20 December 2022	Mrs Lucy Hodge Audley House , Park Gardens, Lower Weston, Bath, Bath And North East Somerset Weeping Ash Extensive die back-Dismantle and Fell.	Weston	Jane Brewer	NO OBJECTION

REPORT OF THE HEAD OF PLANNING ON APPLICATIONS FOR DEVELOPMENT

Item No: 01
Application No: 22/03269/FUL
Site Location: Hare & Hounds Lansdown Road Lansdown Bath Bath And North East Somerset



Ward: Lansdown **Parish:** N/A **LB Grade:** II
Ward Members: Councillor Mark Elliott Councillor Lucy Hodge
Application Type: Full Application
Proposal: Erection of outside bar and decked seating area (Retrospective).
Constraints: Article 4 Bath Demolition Wall, Article 4 Reg 7: Estate Agent, Article 4 HMO, Agric Land Class 1,2,3a, Policy B4 WHS - Indicative Extent, Policy B4 WHS - Boundary, Conservation Area, Policy CP9 Affordable Housing Zones, Listed Building, MOD Safeguarded Areas, Policy NE2A Landscapes and the green set, Policy NE5 Ecological Networks, SSSI - Impact Risk Zones,
Applicant: The Bath Pub Company Ltd
Expiry Date: 16th December 2022
Case Officer: Sam Grant
To view the case click on the link [here](#).

REPORT

This application seeks permission for erection of an outside bar and installation of a decking area within the garden curtilage of the public house premises known as the Hare and Hounds.

The Hare and Hounds is a Grade II listed building located within the Bath Conservation Area and World Heritage Site. The site is situated outside of the Green Belt.

The development has already been implemented and has previously been given a temporary consent for a period of 1 year; that permission expired on 1st August 2022. The current application is for the permanent retention of the outside bar and decking area, with no changes proposed.

The proposal mimics (in both terms of location and scale) the development the applicant gained retrospective temporary consent for in 2021 and a proposal put forward by the applicant as part of a request for pre-application advice (Pre-app) in 2018. In response to the 2018 pre-app, the applicant was advised by the Council the proposal was unacceptable in principle and that officer support for the scheme was unlikely to be granted.

This request for advice from the Council was made prior to the COVID-19 pandemic. Notwithstanding the advice given by the Council in 2018, and in the knowledge that permission was required for the works, the outside bar and decking area were erected without the benefit planning permission in November / December 2020; at which point an enforcement complaint was submitted to the Council for investigation. Pre-application advice was provided to the applicant in March 2021 following the submission of an enforcement complaint in relation to the works.

The pre-application advice determined that the proposal for the outside bar and installation of decking was unacceptable in principle owing to the identified harm to the listed building and its setting and resultant impact on the character of the wider conservation area. The 2021 pre-app advice was consistent with the advice given in 2018.

Relevant Planning History

17/05976/FUL - PERMIT - 6 February 2018 - Relocation of car park vehicular access (Retrospective)

21/01844/FUL - PERMIT - 15 July 2021 - Erection of outside bar and associated decked seating area (Retrospective). - Temporary Permission (expired 1st August 2022)

21/01845/LBA - CON - 26 July 2021 - External alterations for the erection of outside bar and associated decked seating area (Regularisation). - Temporary Consent (expired 1st August 2022)

22/03270/LBA - Withdrawn - 25 November 2022 - Erection of outside bar and decked seating area (Retrospective).

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

Conservation

The Hare & Hound is a public house dating c.1690 with substantial alterations including the subdivision of the adjoining cottage in the early 20th century. It's in a semi-rural location with its frontage onto Lansdown Road and its rear overlooking the valley beyond.

The size, scale and material of the decked area is considerable, covering nearly the entire area of lower terrace, which was previously laid to grass. The decking is considered visually prominent, incongruous feature and by expanding development to create a more

formalised setting area it is detrimental to the semi-rural and green setting, which contributes to the setting of the listed building. I do not support the argument raised in the Heritage Statement that the 'decking is an entirely consistent characteristic of the site's use as a pub'. Picnic bench seating could be provided on the grass without the need for decking as is seen with seating towards the northern boundary.

As with our previous comments the outside bar is considered out of keeping with the listed building and its setting. It is not considered the outside bar is acceptable due to its design, material, and location. It is in a prominent position in views from the public house overlooking the valley beyond. Its detrimental impact is compounded by the large decking area.

The proposed development would cumulatively cause less than substantial harm to the setting of the listed building and the character and appearance of the conservation area. It is not considered that there are sufficient public benefits demonstrated which outweigh the level of harm caused and therefore the proposal is contrary to paragraph 202 of the NPPF and Policy HE1 of the Placemaking Plan.

Highways Development Control

The applicant seeks retrospective permission for the erection of an outside bar and associated decked seating area at the Hare and Hounds public house, Lansdown Road, Lansdown. The site was subject to a similar retrospective application (app no. 21/01844/FUL) for which previous comments were provided by HDM which requested a financial contribution of £4,351.00 to cover the cost of a Traffic Regulation Order (TRO) if the outside bar was to remain permanent.

The bar and decking were granted temporary permission via application reference 21/01844/FUL, which has an expiry date of 1st August 2022.

Concerns were raised within HDM's response to the previous application that the additional outdoor floorspace, will increase the number of customers which will result in an increase in the number of on-street, parking activities in the vicinity of the application site which would affect highway safety and/or residential amenity, especially during the public houses' busier periods. Officers considered previously that this will exacerbate the current on-street parking issue observed during the visit to the application site. These concerns remain for this application for the retention of the outdoor bar and decking area.

The HDM response to application reference 21/01844/FUL, was that on the assumption that the works are proposed to be a permanent feature, officers seek a financial contribution of £4,351.00 to cover the cost of a Traffic Regulation Order (TRO) the aim of which will be to prohibit inappropriate on-street, car parking activities.

HDM advised previously that a Section 106 Agreement would be required to secure the financial contribution which remains the case for this application.

Environmental Protection

No Objection

Consultation response from Ward Cllr Mark Elliot - 27th October 2022

"I refer to the above planning application. Given the large public interest in the application, and the considerable economic pressure that the hospitality trade is under at the present time, I believe it would be preferable to get the perspective of the planning committee on any perceived harm measured against the claimed benefits. If you're minded to refuse, please could it be referred to the chair for "call in"."

3rd Party Representations

133 Comments in Support - Summarised below:

- o Decking area provides outside seating area
- o Decking can not be seen from road
- o Does not affect the appearance of the Pub
- o Decking provides a save environment for customers to each and drink outside
- o Excellent facility for the local community
- o Hidden from the Valley
- o Appear to be well constructed and maintained
- o Natural evaluation of the Pub
- o Challenging time for the hospitality industry
- o Not an eyesore or obstruction to anyone
- o Development would make the pub more accessible
- o Far too few outdoor spaces in bath
- o Very littles disruption from the Pub
- o Refusal of application would be anti-social
- o Decking is significant distance from the Listed Building
- o Not as prominent as other development in the valley
- o Great for families
- o Secures local employment
- o Local area has no other facilities
- o Does not overlook neighbouring houses
- o Very beneficial for mental health
- o Development is walkable distance for people in a large surrounding area
- o Lack of local services
- o Real asset for the local area
- o Good use of space
- o Benefit those who are high risk of Covid
- o No valid reason why the council should turn it down
- o If decking wasn't there, the same amount of people would be sitting on picnic table or on the grass as before
- o Reduces car use
- o Development Not overlooked
- o Safer to use the garden
- o Attracts tourists
- o Good views of Bath
- o No additional traffic issues

3 Comments in Objection Summarised below:

- o Eyesore in a beautiful area

- o How can you live above a night club
- o Dangerous parking, especially near bus stops
- o More outside seating means more cars

POLICIES/LEGISLATION

The National Planning Policy Framework (NPPF) is national policy which must be considered by the Council together with the related guidance given in the Planning Practice Guidance (PPG). The following sections of the NPPF are of most relevance;

Section 5: Delivering a sufficient supply of homes

Section 9: Promoting sustainable transport

Section 12: Achieving well-designed places

Section 15. Conserving and enhancing the natural environment

Section 16. Conserving and enhancing the historic environment

The statutory Development Plan for B&NES comprises:

- Core Strategy (July 2014)
- Placemaking Plan (July 2017)
- B&NES Local Plan (2007) - only saved Policy GDS.1 relating to 4 part implemented sites
- Joint Waste Core Strategy
- Made Neighbourhood Plans

Core Strategy:

The Core Strategy for Bath and North East Somerset was formally adopted by the Council on 10th July 2014. The following policies of the Core Strategy are relevant to the determination of this application:

B4: The World Heritage Site and its Setting

DW1: District Wide Spatial Strategy

CP5: Flood Risk Management

CP6: Environmental quality

Placemaking Plan:

The Placemaking Plan for Bath and North East Somerset was formally adopted by the Council on 13th July 2017. The following policies of the Placemaking Plan are relevant to the determination of this application:

D1: General urban design principles

D2: Local character and distinctiveness

D3: Urban fabric

D5: Building design

D6: Amenity

D8: Lighting

HE1: Historic Environment

NE1: Development and Green Infrastructure

NE2: Conserving and Enhancing the Landscape and Landscape Character

NE2A: Landscape Setting of Settlements
NE3: Sites, Species and Habitats
NE5: Ecological Networks
NE6: Trees and Woodland Conservation
ST.7: Transport requirements for managing development
SU1: Sustainable drainage

There is a duty placed on the Council under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 'In considering whether to grant planning permission for development which affects a listed building or its setting' to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

There is a duty placed on the Council under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act to pay special attention to the desirability of preserving or enhancing the character or appearance of the surrounding conservation area when determining an application for planning permission.

LOW CARBON AND SUSTAINABLE CREDENTIALS

The policies contained within the development plan are aimed at ensuring development is sustainable and that the impacts on climate change are minimised and, where necessary, mitigated. A number of policies specifically relate to measures aimed at minimising carbon emissions and impacts on climate change. The application has been assessed against the policies as identified and these have been fully taken into account in the recommendation made.

OFFICER ASSESSMENT

Scheme of Delegation

A Ward Councillor (Cllr Mark Elliott) requested that should the officer be minded to refuse the application, then it should be considered by the Planning Committee. Planning policy reasons were given stating objections to the application. In accordance with the Councils Scheme of Delegation, this application was referred to the Chair and Vice Chair of the Planning Committee whose comments are as follows:

Vice Chair:

I have looked at this application carefully noting the comments from both third party & statutory consultees. The issues raised have been addressed as the application has been assessed against relevant planning policies & the impact on the listed building & conservation area i.e. is the harm outweighed by public benefit is clearly a debatable point.

This would benefit from debate in the public arena, therefore I recommend the application be determined by the planning committee.

Chair:

I have reviewed this application and note the comments, both for and against, by statutory consultees and other third parties. Harm to a heritage asset - the listed public house - has been raised as an objection by the conservation officer and graded as "less than substantial". I believe that it would be beneficial for the planning committee to review, and debate in public, whether the public benefits listed within the proposal outweigh that harm.

The main planning considerations are:

- o Character and Appearance
- o Impact on the Listed Building and its setting
- o Impact on the Character of the Conservation area
- o Residential Amenity
- o Highway Safety

Character and appearance, impact on the Listed Building and its setting and impact on the Conservation Area

With respect to any buildings or other land in a conservation area the Council has a statutory requirement under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that conservation area.

The Council has a statutory requirement under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in considering whether to grant listed building consent for any works to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

In this case, the proposals are considered to represent inappropriate and incongruous development, having a detrimental impact on the setting of the listed building and on the character and appearance of this part of the Bath Conservation Area, contrary to the requirements and objectives of the Planning (Listed Buildings and Conservation Areas) Act 1990, section 16 of the National Planning Policy Framework (NPPF), and policy HE1 of the Bath and North East Somerset Placemaking Plan.

The outside bar, by virtue of its location, scale and the materials used, is considered visually prominent and incongruous. The bar is considered to detract from the listed building and presents overdevelopment of the site, it has also been noted there have been many extensions on the application site which have had a cumulative detrimental impact on the listed building. The various extensions are considered to have an awkward relationship with each other and the principal building. The permanent retention of the outside bar would exacerbate this issue and would result in further detrimental impact on the protected building.

The size, scale and material of the decked area is considerable, covering nearly the entire area of the lower terrace, which was previously laid with grass. The decking is considered visually prominent, incongruous feature and by expanding built-form to create a more formalised setting area it is detrimental to the semi-rural and green setting, which contributes to the setting of the listed building. Owing to its scale and the use of a uniform material, the decking appears visually jarring and overly dominant on the site. When added to the extent of timber decking already installed on the upper terrace of the garden

area, the visual impact of the development is compounded and is considered to represent and further contribute towards overdevelopment of the application site.

In accordance with paragraph 199 of the NPPF, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 202 of the NPPF also provides that 'Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'

With regards to the less than substantial harm caused to the setting of the Listed Building and the Conservation Area, this must be weighed against any public benefit. The applicant has requested that due consideration be given to the perceived public benefits of the proposal, these are addressed below:

Heritage Benefits of improved viability/retention of the Pub and Community Benefits

It is noted that the decked seating area provides an additional usable seating area for customers, therefore increasing the potential for income to the business. However, the provision of a seating area atop of the decking is considered to be a public benefit of limited weight given that an outdoor seating area on the grassed area could reasonably be provided to the same effect, and the overall function of the pub is not contingent on the provision of a decked seating area and bar. Whilst it is understood that an outdoor seating area and bar may provide some uplift to the existing business, which in turn contributes to the local economy, the contribution is limited given the relative scale of the business. Additionally, as aforementioned, outdoor seating could reasonably be provided on the existing grassed area without the requirement for a deck.

The applicant has referred to an appeal decision (APP/Y3615/C/20/3259273) in the justification of this perceived public benefit. Whilst it is noted that the appeal scheme and the one proposed under this application share similarities, the development subject to the appeal was not within the setting of a Listed Building, as such the inspector did not (and was not required to) undertake the public benefit assessment outlined in Paragraph 202 of the NPPF required in this application.

Support for Local Business and Provision of Additional Employment

The applicant has stated that the bar and decking area subject to this application supports 7.5 Full Time Equivalent employees, and the removal of the decking and bar would result in these staff no longer being required.

With regards to the decking, as outlined above, prior to the development taking place, the area occupied by the decking was used as an outside seating area, and should the decking be removed, there is nothing preventing the applicant using the area for outdoor seating. Therefore, it is considered the removal of the decking should not have an impact on the staffing requirements of the pub to serve this area.

Moving on to the bar, it is acknowledged that the potential removal of the bar could have an impact on the employment numbers of the pub. There is also an acknowledgement that the provision of an outdoor bar area is likely to provide some uplift in customer footfall. However, if the garden continues to be used as outdoor seating as it was prior to the installation of the decking, the numbers of customers at the pub should not be severely impacted. The customers using the seating area as before would still require to be served, therefore staff would still be required to serve those customers in the bar located within the main pub building. Taking this into account, in this case, it is considered that limited weight should be given to the potential limited loss of employment should the decking and bar be removed.

Improved ability for the ability for the public to access important views

The applicant has argued that a perceived public benefit of the proposed retention of the decking and bar is it results in improved ability for the public to access important views.

Whilst it is appreciated the view can be enjoyed while customers use the decking, the decking is not necessary to facilitate the enjoyment of the views by customers and has not created a view/vista that did not already exist.

Improved supervision of Children in the Play area

The applicant has argued that as the decking would result in customers and staff being outside for a greater part of the year, then there would be a greater level of supervision of the children using the playground and, on this basis, this should be considered material public benefit.

The officer is not aware of a children's playground within the boundaries of the Pub. Notwithstanding this, the potential supervision of children would be considered a private benefit for the use of the pub.

Improved Safety and Improved Access

Finally, the applicant has argued that the decking and bar has improved the accessibility of the garden for customers who have mobility issues, and this should be considered a material public benefit. However, the applicant acknowledges that the decking is currently only accessible via two staircases. This would result in many customers with mobility issues not using the decking or outside bar as they would have no means to access it. It is appreciated that the level surface of the decking would be easier to navigate for people with mobility issues, however given the garden area it replaced was relatively flat and the limited amount of people with mobility issues that would be able to access it, it can only be attributed limited weight.

Heritage Conclusion

The Council has a statutory requirement under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in considering whether to grant listed building consent for any works to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Taking account of the above and in this instance the proposed works would fail to

preserve the special interest of the listed building and as such this proposal would not meet this requirement.

With respect to any buildings or other land in a conservation area the Council has a statutory requirement under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that conservation area. Taking account of the above and in this instance the proposed works will not preserve nor enhance this part of the Bath Conservation Area and as such this proposal fails to meet this requirement.

Officers accept and acknowledge that there are some public benefits to the proposed scheme. These include:

- o the limited uplift in custom to the pub, thus providing a boost to the local economy
- o limited additional employment in relation to the provision of an outdoor bar only
- o limited improved accessibility in the outdoor area

Paragraph 199 of the National Planning Policy Framework details that where a proposal is considered to harm a designated heritage asset, great weight must be given to the asset's conservation. When balancing the public benefits above, officers have had regard to paragraph 199 within the context of paragraph 202 of the NPPF and the starting point must be that the balance is tipped in favour of conserving the designated heritage asset.

In respect to the less than substantial harm to the Listed Building (which must be given great weight), the public benefits identified are considered to be limited and would not individually or cumulatively outweigh the less than substantial harm identified.

In respect to the less than substantial to the less than substantial harm to the Conservation area (which must be given great weight) the public benefits identified are considered to be limited and would not individually or cumulatively outweigh the less than substantial harm identified.

As such, the proposal is contrary to policy HE1 of the Bath and North East Somerset Placemaking Plan and part 16 of the NPPF.

Residential Amenity

With regards to the impact of the proposals on residential amenity, there is concern that the development proposals could lead to increased noise, traffic, and on-street parking issues. Several objection comments have been received which focus on residents' concerns regarding impact on residential amenity and these comments have been given due consideration. The application site lies within a residential area of Lansdown. Several residential properties are located close-by on Lansdown Road and Lansdown Park; the closest of these being 'Northlew', 'Wyvern House', 'Bredon', 'Granville', 'Gables', 'Whispers' and 'Goodwin House'. It is expected that any increased noise as a result of the development proposals would particularly affect residents of these houses, as well as (potentially) residents of houses located a little further away depending on the nature of the noise and amount of noise that is generated.

The council accept that that proposal would result in a degree of intensification of the use of the rear garden of the Pub, but given the fact the garden was previously used as outside seating and the hours of use of the bar could reasonably be controlled by condition, it is considered given the design, scale, massing and siting of the proposed development the proposal would not cause significant harm to the amenities of any occupiers or adjacent occupiers through loss of light, overshadowing, overbearing impact, loss of privacy, noise, smell, traffic or other disturbance. The proposal accords with policy D6 of the Placemaking Plan for Bath and North East Somerset (2017) and part 12 of the NPPF.

Highways

With regards to the impact of the proposals on the surround highways there is concern that the development proposals could lead to increased noise, traffic and on-street parking issues; these issues were raised in 3rd party objections to the application.

Concerns were raised within HDMs response to the previous application that the additional outdoor floorspace, will increase the number of customers which will result in an increase in the number of on-street, parking activities in the vicinity of the application site which would affect highway safety and/or residential amenity, especially during the public houses' busier periods. Officers considered previously that this will exacerbate the current on-street parking issue observed during the visit to the application site. These concerns remain for this application for the retention of the outdoor bar and decking area.

The HDM response to application reference 21/01844/FUL, was that on the assumption that the works are proposed to be a permanent feature, officers seek a financial contribution of £4,351.00 to cover the cost of a Traffic Regulation Order (TRO) the aim of which will be to prohibit inappropriate on-street, car parking activities.

HDM advised previously that a Section 106 Agreement would be required to secure the financial contribution which remains the case for this application. The applicant has agreed to enter into a S106 agreement in the event that the application is approved.

Low Carbon and Sustainable Credentials

The policies contained within the development plan are aimed at ensuring development is sustainable and that the impacts on climate change are minimised and, where necessary, mitigated. A number of policies specifically relate to measures aimed at minimising carbon emissions and impacts on climate change. This application involves a listed building and has been assessed against the relevant policies and guidance as identified, and these have been fully taken into account in the recommendation made. An informative will be added to advise the applicants to consider sustainable construction when undertaking the development and consider using measures aimed at minimising carbon emissions and impacts on climate change.

Public Sector Equality Duty

The Public Sector Equality Duty requires public authorities to have regard to section 149 of the Equality Act 2010. Officers have had due consideration to section 149 of the Equality Act 2010 and have concluded that, the refusal of this application is not

considered to adversely impact upon any protected groups, or neighbouring residents. Particular regard has been given to the perceived improvement of the access to the Pub's outside seating area to persons with impaired mobility which has been put forwards by the applicant as a public benefit. It is appreciated that the level surface of the decking would be easier to navigate for people with mobility issues, however given the garden area it replaced was relatively flat and the limited amount of people with mobility issues that would be able to access it. As such, the Council has complied with its Public Sector Equality Duty during the assessment of this planning application.

Other Matters

As this is retrospective application, should the application be refused, the Councils Planning Enforcement team would have to assess the expediency of pursuing formal Enforcement Action.

Conclusion

The proposal by reason of its design, siting, scale, massing, layout and materials is considered to result in harm to both the designated heritage asset and to the wider Conservation Area. This harm is not outweighed by public benefit as concluded above and is therefore contrary to policy HE1 of the Bath and North East Somerset Placemaking Plan (2017) and part 16 of the NPPF, therefore the Officer recommendation is REFUSE.

RECOMMENDATION

REFUSE

REASON(S) FOR REFUSAL

1 The proposal by reason of its design, siting, scale, massing, layout and materials is considered to result in less than substantial harm to the setting of the listed building and the character and appearance of the wider Conservation Area. This harm is not outweighed by public benefit and the application is therefore contrary to Policy HE1 of the Bath and North East Somerset Placemaking Plan (2017) and part 16 of the NPPF.

PLANS LIST:

1 This Decision relates to the following plans:

Drawing	15 Aug 2022	SMH 41 17 16-01	TOPOGRAPHICAL SURVEY
Drawing	15 Aug 2022	SMH 41 17 16-30	PROPOSED PLAN
Drawing	15 Aug 2022	SMH 41 17 16-31	PROPOSED BAR PLAN AND DECKING
OS Extract	15 Aug 2022	SMH 471 17 16-32	SITE LOCATION PLAN

2 In determining this application the Local Planning Authority considers it has complied with the aims of paragraph 38 of the National Planning Policy Framework. Notwithstanding informal advice offered by the Local Planning Authority the submitted application was unacceptable for the stated reasons and the applicant was advised that the application was to be recommended for refusal. Despite this the applicant chose not to withdraw the application and having regard to the need to avoid unnecessary delay the Local Planning

Authority moved forward and issued its decision. In considering whether to prepare a further application the applicant's attention is drawn to the original discussion/negotiation.

3 In determining this application the Local Planning Authority considers it has complied with the aims of paragraph 38 of the National Planning Policy Framework. Notwithstanding informal advice offered by the Local Planning Authority the submitted application was unacceptable for the reasons outlined above and the applicant was advised that the application was to be recommended for refusal unless amendments to the scheme were supplied. The applicant was unable to submit revisions in a timely manner, and did not choose to withdraw the application. Having regard to the need to avoid unnecessary delay the Local Planning Authority moved forward and issued its decision.

4 Community Infrastructure Levy

You are advised that as of 6 April 2015, the Bath & North East Somerset Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority please note that CIL applies to all relevant planning permissions granted on or after this date. Thus any successful appeal against this decision may become subject to CIL. Full details are available on the Council's website www.bathnes.gov.uk/cil

Item No: 02
Application No: 22/04513/TCA
Site Location: Audley House Park Gardens Lower Weston Bath Bath And North East Somerset



Ward: Weston **Parish:** N/A **LB Grade:** II
Ward Members: Councillor Shelley Bromley Councillor Ruth Malloy
Application Type: Tree Works Notification in Con Area
Proposal: Weeping Ash Extensive die back- Dismantle and Fell.
Constraints: Conservation Area,
Applicant: Mrs Lucy Hodge
Expiry Date: 20th December 2022
Case Officer: Jane Brewer
To view the case click on the link [here](#).

REPORT

REASON FOR REPORTING NOTIFICATION TO COMMITTEE:

The notification relates to a Councillor's trees.

DESCRIPTION:

This notification relates to trees located within the Bath Conservation Area.

The proposal is to fell a weeping ash which is located within the front garden and overhanging Park Gardens.

Six weeks notice must be submitted to the Council for tree works or tree felling within a conservation area if the tree has a trunk diameter of 7.5cm or over (when measured 1.5m above ground level) and where exceptions do not apply.

The purpose of a tree notification is to give the Council the opportunity to consider whether a Tree Preservation Order should be made to protect the tree.

The following criteria are used to assess whether trees are worthy of a Tree Preservation Order:

1. visibility to the general public
2. overall health, vigour and appearance
3. suitability of their location and anticipated future management
4. special factors such as contribution to the character of a conservation area, World Heritage Site setting or overall green infrastructure; their rarity; their ecological contribution and whether they have historical significance such as in the case of veteran trees.

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

No public comments have been received.

POLICIES/LEGISLATION

Town and Country Planning Act 1990 (in particular sections 197-214 as amended)
Town and Country Planning (Tree Preservation)(England) Regulations 2012

LOW CARBON AND SUSTAINABLE CREDENTIALS

The policies contained within the development plan are aimed at ensuring development is sustainable and that the impacts on climate change are minimised and, where necessary, mitigated. A number of policies specifically relate to measures aimed at minimising carbon emissions and impacts on climate change. The application has been assessed against the policies as identified and these have been fully taken into account in the recommendation made.

OFFICER ASSESSMENT

The proposed felling of the Ash is because it has Ash Dieback which is a fungal disease which is now widespread through the district.

The Tree Council developed an Action Plan Toolkit and adopted the following categorisation for Ash Dieback:

- Ash Health Class 1 - 100%-76% remaining canopy
- Ash Health Class 2 - 75%-51% remaining canopy
- Ash Health Class 3 - 50%-26% remaining canopy
- Ash Health Class 4 - 25%-0% remaining canopy

The Weeping Ash which is the subject of this notice is considered to be within health class 3 category and is unlikely to recover due to the severity of the symptoms. The branches overhang Park Gardens which is a private road but with public pedestrian access.

The branch structure and potentially the trunk becomes mechanically weaker over time with an increased risk of uncharacteristic breakages. The removal of the tree is therefore considered a proportionate approach.

CONCLUSION:

The removal of the tree is considered a proportionate approach in light of the location of the tree and severity of the infection.

RECOMMENDATION

NO OBJECTION