

REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	5 April 2023
Application Number	PL/2022/07367
Site Address	Broadtown Brewery, 29 Broad Town Road, Broad Town, Swindon, SN4 7RB
Proposal	Retrospective change of use from agricultural and extension of commercial curtilage (Class E(b)) with retention of car parking, toilet facilities, covered canopy and decking area + associated works
Applicant	Broadtown Brewery Ltd
Town/Parish Council	Broad Town Parish Council
Division	Royal Wootton Bassett South & West – Cllr. David Bowler
Grid Ref	Easting 408692, Northing 178852
Type of application	Full Planning Permission
Case Officer	Perry Lawson

Reason for the application being considered by Committee:

On 17 March 2023, the applicant lodged an appeal against the local planning authority's failure to determine this application within the statutory period (a 'non determination' appeal). Consequently, the decision will now be made by a Planning Inspector and not the local planning authority.

The local planning authority will remain a relevant party in the appeal process, and accordingly must still make a 'decision' in relation to the planning application. The decision cannot be the final grant or refusal of planning permission but what the local planning authority would have made had it been able to do so within the statutory timescale.

The application has been called-in for committee determination by Councillor David Bowler for the following reasons:

- Visual impact upon the surrounding area;
- Relationship to adjoining properties; and
- Environmental/highway impact,

and because

"This application has been requested by Broad Town Parish Council to be discussed at Committee due to their concerns re the Highways and Landscaping submissions. They are supportive of this application in the application 2021/08484 they were neutral but raised Highway concerns."

1. Purpose of Report

The purpose of this report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation which is:

To delegate authority to the Head of Development Management to inform The Planning Inspectorate that had Wiltshire Council still been the decision-making authority then it would have **REFUSED** planning permission for the reasons set out at the end of this report.

2. Report Summary

The key issues in considering the application are as follows:

- Principle of Development
- Design & Landscape Impact
- Impact on Residential Amenities
- Highways Safety & Impact on the Road Network
- Other Matters

3. Site Description

The site is located outside any defined settlement boundary. Accordingly, for planning purposes, the site is considered to be within the open countryside.

The site constitutes a parcel of agricultural land, associated with 29 Broad Town Road. The site has been subject to development involving a change of use of the land to commercial use (Use Class E(b)) in relation to a beverage/bar establishment, the Broadtown Brewery. Associated works include the construction of a decking area with tent, bar and seating area atop; erection of a toilet block; siting of benches and outdoor seating areas; establishment of a car parking area; and the stationing of vehicles and associated paraphernalia.

The existing residential garage that fronts the Broad Town Road on the site has been repurposed for use as a microbrewery; with the ground floor used for sales/tasting area, fermentation room and brewing room and the first floor used for an office. The hours of operation detailed in the previous approved application (20/00419/FUL) are between 09:00 to 17:00 (appointments only), with brewing taking place between 17:00 and 22:00. The establishment is operated by two part time members of staff. It is not anticipated that the hours of operation for the microbrewery would be altered to match that of this current application given that it is not included within the site edged red on the location plan and no such alterations are specifically proposed.

The site is largely surrounded by open agricultural fields on all sides.

In terms of physical constraints, it is noted that a public right of way (Footpath BTOW12) has been diverted without consent to run through the site; specifically through the car parking area.

The site itself is not within any designated area, but it is visible from the North Wessex Downs Area of Outstanding Natural Beauty (AONB) located to the south.

4. Planning History

The following is not an exhaustive list and only includes those applications deemed to be of relevance to the current proposal.

PL/2023/00830

Retrospective use of Hop Chapel (Sales and tasting area (Class A1) + Micro Brewery (Class B2) and change of use to be used as Class E(b). Under consultation.

PL/2021/08484

Retrospective application for a change of use from agricultural and extension of commercial curtilage (Class A1) with retention of car parking, toilet facilities, covered canopy and decking area and associated works. Refused 26th April 2022.

20/00419/FUL

Part retrospective change of use from domestic garage (C3) to sales and tasting area (A1) and micro-brewery (B2) and change of use of 1st floor to staff office (B1) and change of use of outbuilding to be used as micro-brewery (B2). Approved with conditions 12th March 2020.

It is noted that pre-application advice has previously been issued in respect of this site under reference 19/04367/PREAPP – Proposed Microbrewery. Although the Case Officer's pre-application advice was positive given the fairly low key nature and intensity of the microbrewery, it did conclude that if in the future the venture intensified in use, with significant traffic or frequent noise that detracted from its village location, it may be the case that this commercial use would need to be relocated to an existing, allocated commercial area.

5. The Proposal

Planning permission is sought retrospectively for the change of use of agricultural land to commercial Use Class E(b). Permission is also sought retrospectively for retention of car park, toilet facilities together with treatment plant, covered canopy and decking area.

In addition to the works already carried out, planning permission is sought for the construction of a 3m high timber acoustic fence together with a 3m high grassed bund with planting.

6. Planning Policy

Though the development plan is considered as a whole, those parts deemed to be particularly relevant to this application are listed below:

Wiltshire Core Strategy (Adopted January 2015)

Core Policy 1: Settlement Strategy

Core Policy 2: Delivery Strategy

Core Policy 19: Spatial Strategy for the Royal Wootton Bassett and Cricklade Community Area

Core Policy 34: Additional Employment Land

Core Policy 48: Supporting Rural Life

Core Policy 50: Biodiversity and Geodiversity

Core Policy 51: Landscape

Core Policy 57: Ensuring High Quality Design and Place Shaping

Core Policy 60: Sustainable Transport

Core Policy 61: Transport and New Development

Core Policy 62: Development Impacts on the Transport Network

Core Policy 63: Transport Strategies

Core Policy 64: Demand Management

Core Policy 67: Flood Risk

North Wiltshire Local Plan 2011 (Adopted June 2006)

Saved Policy NE18 – Noise and Pollution

Wiltshire Housing Site Allocations Plan (Adopted February 2020)

Settlement Boundary Review and Site Allocations

National Planning Policy Framework (2021)

Paragraphs 2, 7, 8, 11, 12, 38, 47, 84, 85, 93, 104, 105, 110, 111, 112, 130, 134, 174 and 185

Section 2 Achieving Sustainable Development

Section 4 Decision-Making

Section 6 Building a Strong, Competitive Economy

Section 8 Promoting Healthy and Safe Communities

Section 9 Promoting Sustainable Transport

Section 12 Achieving Well Designed Places

Section 15 Conserving and Enhancing the Natural Environment

Wiltshire Local Transport Plan 2011-2026 – Car Parking Strategy March 2015

Policy PS4 – Private non-residential parking standards

7. Summary of Consultation Responses

Broad Town Parish Council – Support

Proposal will provide social benefits, is local and walkable. With respect to the Planning Department, all comments should be uploaded in full and in a timely manner; constructive discussion should be held with the applicant and opportunities should be given to the applicant to address concerns; and anything which is unclear should be clarified with the applicant as opposed to the application being refused on this basis.

Additional response received 9th December 2022:

Support. Questioned procedure of the application, with specific reference to the difference in consultation responses from Wiltshire Council Highways and Wiltshire Council Landscape when compared to the previous application. Specific issues have been raised with respect to consultee responses, which are available to view online, and are addressed within this report and recommendation.

Wiltshire Council Highways – Object

Will lead to increase in vehicle movements when compared to the approved microbrewery (20/00419/FUL) application. Additionally, no information provided on capacity of venue for users and car park. Requested additional information regarding parking provision and visitor numbers.

Additional response received 9th November 2022 following submission of additional information:

Object. Submitted information is unclear as to the method of accessing the site. Concerns raised over the number of pedestrians accessing the site due to the nature of the adjoining road and light levels when customers are accessing the site. Concern is also raised over the potential for overspill from the parking area and subsequent impact upon highway safety. Recommended refusal on three grounds, viewable online.

Wiltshire Council Landscape – Object

Features such as the acoustic fencing and planted bund would be against the character of the local landscape which is level and open (Swindon-Calne Rolling Clay Lowlands).

Furthermore, the inclusion of circa 333m² of decking is out of proportion to small scale decks associated with countryside dwellings. These features, together with the supporting facilities (i.e. car parking and toilets) would create inappropriate urbanising development.

The site is within the setting of the North Wessex Downs AONB and the addition of lighting will contribute to rural light pollution of detriment to the North Wessex Downs AONB Dark Skies initiative.

Wiltshire Council Public Protection – Comment

With the inclusion of the acoustic fencing, Public Protection would have no objection subject to the inclusion of conditions to manage noise and restrict hours. However, without said fencing, satisfactory levels of amenity would not be achievable and Public Protection would not be able to support the application, which in turn would lead to an objection on the basis of impact to neighbouring amenity by way of unacceptable noise impact.

Wiltshire Council Rights of Way - Object

Footpath BTOW12 has been obstructed and the alternative path, which leads through the site, has not been legally diverted. It is noted that the applicant has provided no details of how they plan to accommodate this path. The diverted route must not be obstructed at any time and in any way, including by parked vehicles.

8. Publicity

A total of 29 comments were received from members of the public, and three from the applicant. Of the 29 comments received, 28 were made in support of the application and one was neutral. The material planning considerations raised within the comments are summarised below:

Sustainable development

- Provides social and economic benefits and respects the rural landscape;
- Supports other local businesses;
- Provides local employment;
- Provides public benefits;

Amenity

- Closes at a reasonable hour;

Other matters

- Consistency of consultee advice (i.e. previous application had no landscape advice whereas the current one does; change in approach for the Highways Department).

It is noted that the applicant has commented on the application three times, drawing attention to a petition which, at the time of writing, exceeds 1,200 signatures. Reference is given by the applicant to what they consider to be a similar application at The Jovial Sailor, Portsmouth Road, Ripley, Woking, GU23 6EZ which was allowed at appeal (APP/Y3615/C/20/3259273), with the implication being that similar principles used to determine the application at The Jovial Sailor should be used at the current site.

9. Planning Considerations

Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, and the provisions of the NPPF i.e. paragraph 2, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. At

the current time, the statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015); the Wiltshire Housing Site Allocations Plan (Adopted February 2020); and the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (Adopted June 2006).

Principle of Development

The application site is located within the open countryside outside of any defined settlement. In this instance, Core Policies 1 & 2 of the WCS state that within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development. It advises that outside the defined limits of development that development will not be permitted other than in circumstances as permitted by other policies in the plan. Core Policy 19 states development in the Royal Wootton Bassett and Cricklade Community Area should be in accordance with the Settlement Strategy set out in Core Policy 1.

Those other policies referred to include Core Policy 34 of the WCS which seeks to support the retention or expansion of existing businesses within or adjacent to Principal Settlements, Market Towns, Local Service Centres and Large and Small Villages. This reflects Paragraph 84a of the NPPF which requires planning policies and decisions to enable the sustainable growth and expansion of all types of businesses in rural areas, both through conversion of existing buildings and well-designed new buildings. In addition, Core Policy 48 of the WCS provides limited exceptions to the generally restrictive strategy of the plan with respect to new development in the open countryside.

The retrospective proposal encompasses 'The Hop Gardens' – an open air drinking and entertainment establishment, falling under use Class E(b). The proposal also includes the change of use of agricultural land to commercial. Prior to the current application, it is noted that there was already limited existing commercial use in this location, with the garage fronting Broad Town Road having been in use as a Microbrewery (used for sales/tasting area, fermentation room and brewing room) and its use allowed limited visitors to that part of the site.

As noted above, Core Policies 34 and 48 of the WCS are supportive of business expansion in rural locations. In addition, the NPPF contains paragraphs which provide support to rural businesses, specifically Paragraphs 84 and 85, with the retrospective proposal broadly meeting the provisions of these policies. It is noted that the proposal would also generate some local economic benefit.

In accordance with the Council's previous assessment of PL/2021/08484, the proposals are considered to be acceptable in principle and no conflict arises with the development strategy of the plan in this instance such that permission ought to be refused on this basis. However, whilst the principle of this proposal may be viewed as acceptable, it is also necessary to undertake a site specific assessment and related compliance with other policies of the plan and the provisions of the NPPF.

Design & Landscape Impact

Section iii of Core Policy 57 of the WCS states new development must respond positively to existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials, streetscape and rooflines. Moreover, Paragraph 130 of the NPPF states developments should be visually attractive as a result of good architecture and be sympathetic to local character.

Core Policy 51 of the WCS states that development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character, whilst any negative impacts must be mitigated as far as possible through sensitive

design and landscape measures. Paragraph 174 of the NPPF requires decisions to contribute to and enhance the natural and local environment.

Proposals for development within or affecting the Areas of Outstanding Natural Beauty (AONBs), New Forest National Park (NFNP) or Stonehenge and Avebury World Heritage Site (WHS) are required to demonstrate that they have taken account of the objectives, policies and actions set out in the relevant Management Plans for these areas. Proposals for development outside of an AONB that is sufficiently prominent to have an impact on the area's special qualities must also demonstrate that it would not adversely affect its setting.

The Council's Landscape Officer was consulted as part of the application process. It is noted that concern has been raised by third parties over the fact that Wiltshire Council Landscape have commented on the current application but not the previous one. Irrespective of whether the Landscape Officer was consulted on the previous application or not, the impact of the proposal on the character of the surrounding landscape is considered to be a material issue in this instance. It is therefore reasonable to seek advice from the Landscape Officer.

The Landscape Officer has objected to the proposal on the basis that the proposal would create inappropriate urbanising development within the countryside. Specific urbanising features include the tent/canopy together with its extensive decking, parking area, acoustic fencing and supporting facilities. Moreover, it is noted that the site is visible from the North Wessex Downs AONB. The Landscape Officer has noted that the addition of lighting will contribute to rural light pollution also, to the detriment of the North Wessex Downs AONB Dark Skies initiative.

The applicant has responded to the Landscape Officer's comments with the submission of a photographic survey of the site when viewed from the AONB, seeking to establish that the site is not visible from the AONB. Additionally, the applicant has argued that 3m high planted bunds are a regular feature of the area, contrary to the views of the Landscape Officer, and gone on to describe the details of The Hop Gardens' decking structure and parking area materials. With respect to lighting, the applicant has highlighted what they consider to be several precedents within the area.

In assessing the landscape harm, it is noted that the proposal has done little to address the concerns raised by the Case Officer of the previous application, PL/2021/08484. Accordingly, taking into account the comments of the Landscape Officer and the applicant, Officers remain of the view that the erection of a decking area with associated benches, covered canopy, a gravel driveway, multiple large parked vehicles, car parking and a shed for the toilet facilities is visually intrusive and results in substantial change to the character, appearance and visual amenity of the locality through urbanisation of the open countryside and loss of the openness of the site. Furthermore, it is asserted that the arrangement has been worsened by the inclusion of a substantial 3m high acoustic fence along the northern site boundary.

Additionally, use of the proposed external lighting (including that within the tent structure given the open nature of the tent) would result in significant light intrusion within the open countryside during evenings, which is contrary to Core Policy 51 (vii) of the WCS which requires development to protect against light pollution, noise and motion. In this respect it is noted that lighting is a conditional requirement of the venue license.

Whilst the applicant has highlighted examples within the area of the use of external lighting, each application must be decided upon its own merits. The use of external lighting which may be harmful to landscape character on another site, does not justify harm in this instance.

Additionally, the activity on the land involving the substantial movement of people to, from and within the site, together with the interaction of patrons whilst on site, would have a substantive harmful impact on the tranquillity of this rural location contrary to the provisions of Core Policy 51 of the WCS.

The works are clearly visible from numerous rights of way within the locality, particularly footpath BTOW12. Thus, the urbanising effects of the development are acutely felt by users of the local public rights of way network.

In summary, it continues to be the case that the development, by virtue of its scale, form and positioning is visually prominent and intrusive and out of character with its open rural agricultural setting.

The provisions of Core Policies 51 and 57 of the WCS and Paragraphs 130 and 174 of the NPPF require that development should not cause harm to the locally distinctive character of settlements and their landscape setting. The development the subject of this application fails to meet such requirements and as such conflicts with these policies, i.e. WCS Core Policy 51 (ii, iii, vi) and 57 (i, ii, iii) and Paragraph 130 (b, c) and 174 (b) of the NPPF.

Impact on Residential Amenities

Section vii of Core Policy 57 of the WCS refers to the need to protect the amenities of existing occupants and to make sure that appropriate levels of amenity are achievable within the development itself. Additionally, Paragraph 130 (f) of the NPPF states planning decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. The provisions of Core Policy 57 (vii) and NPPF Paragraph 130 (f) are also required under Core Policy 34 iv (b) of the WCS.

Concern was raised in the previous application about the noise impacts of the development upon neighbouring properties. The applicant has sought to address this issue through the inclusion of the noise attenuation fence, following discussion with Wiltshire Council Public Protection.

To this end, Wiltshire Council Public Protection have raised no objection to the application, subject to conditions to manage noise and restrict hours. It is noted that the Public Protection Officer has confirmed that acceptable levels of amenity would not be achievable without the inclusion of the noise attenuation fencing. Accordingly, it is considered that the noise concerns of the previous application have been adequately addressed.

However, whilst noise concerns have been adequately addressed, the applicant has failed to address concerns related to lighting and the movement of patrons to and from and within the site which would result in intrusion and disturbance to neighbouring residents such that harm to existing residential amenity arises, contrary to the policies of the development plan. The proposed development represents a significant intensification of the site over the microbrewery.

The applicant was informed in earlier pre-application advice that any future intensification of the use of the microbrewery, which resulted in noise disturbance or detracted from its location, would need to be relocated to an existing or allocated commercial area. As with the previous proposal, it is evident that this advice has not been taken into consideration and the proposal results in harm upon neighbouring amenities. The proposal is therefore not in accordance with Core Policy 51 (vii) and Core Policy 57 (vii) of the WCS, Saved Policy NE18 of the NWLP or Paragraphs 130 (f) and 185 of the NPPF.

Highways Safety & Impact on the Road Network

Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Additionally, Core Policy 62 of the WCS states that developments should provide appropriate mitigating measures to offset any adverse impacts on the transport network at both the construction and operational stages.

Wiltshire Council Highways were consulted on the proposal and raised objections on the basis that the proposal would lead to increased vehicle movements when compared to the approved microbrewery application. Additionally, the Highways Officer noted that no information had been provided on the capacity of the venue for users and the car park.

The objections with regard to the increased vehicle movements are tied to the intensification of the site and movement of patrons previously discussed in relation to impacts upon amenity.

In response to the initial comments of the Highways Officer, the applicant provided information with respect to anticipated trip numbers (on 9th November 2022).

Having reviewed this information, the Highways Officer raised a further objection on the basis of the information being unclear and concern being raised over the number of pedestrians accessing the site due to the nature of the adjoining road and light levels when customers are accessing the site. Additional concern is raised over the potential for overspill from the parking area and subsequent impact upon highway safety.

In a further response (on 25th November 2022), the applicant provided a statement rebutting the highway officer's concerns.

Whilst the concerns of the Highways Officer have been taken into consideration, it is noted that the highways arrangement is unchanged from the previous application, where the Highways Officer raised no objection. Moreover, the decision notice on the previous application contained no reason for refusal related to highway safety. On this basis, and in the interest of consistency, it is not considered reasonable to introduce a highways reason for refusal in this instance.

Accordingly, the proposal is considered to be acceptable in highways terms in accordance with the provisions of Core Policy 62 of the WCS and Paragraph 111 of the NPPF.

Other Matters

The applicant referred to a petition, which had gathered in excess of 1,200 signatures. However, whilst this is noted, the collection of signatures raises no material planning concerns in and of itself to be taken into consideration when determining this application.

The applicant also referenced an appeal decision (APP/Y3615/C/20/3259273), related to a site in another part of the country. This is also noted, but the circumstances of that appeal proposal are not fully known. The appeal site would have been subject to different constraints and different development plan policies, and the decision letter does not set a precedent for determination of the current application.

10. Conclusion

The proposal seeks to expand an existing business located close to a Small Village. In principle, this is considered to be acceptable.

However, by virtue of its siting, scale, form, use of lighting and the movement of patrons, the proposal would be visually intrusive and out of keeping with the character and appearance of the locality resulting in a loss of tranquillity. Additionally, the proposal would harm the amenities of the occupiers of neighbouring residential properties through disturbance from lighting and the movement of patrons to, from and within the site.

The proposed development is in conflict with the development plan and with relevant paragraphs of the NPPF.

RECOMMENDATION:

To delegate authority to the Head of Development Management to inform The Planning Inspectorate that had Wiltshire Council still been the decision-making authority then it would have **REFUSED** planning permission for the following reasons:

1. The proposed development, by reason of siting, scale, form, use of lighting and location would result in urbanisation of the open countryside and would be visually intrusive and out of keeping with the character, appearance and visual amenity of the locality resulting in a loss of tranquillity. The proposal therefore conflicts with Core Policies 34 (iii b), 51 (ii, iii, vi & vii) and 57 (i, ii, iii & vii) of the Wiltshire Core Strategy (2015) and Paragraphs 130 (b, c), 134 and 174 (b) of the National Planning Policy Framework (2021).
2. The siting, location and position of 'The Hop Gardens' and associated works, by virtue of its close proximity to neighbouring properties, would result in harm to the amenities of the occupiers of neighbouring residential properties, particularly through disturbance from lighting and the movement of patrons to, from and within the site, especially during evenings. The proposal is therefore contrary to the requirements of Core Policies 34 (iii b) and 57 (vii) of the Wiltshire Core Strategy (2015), Saved Policy NE18 of the North Wiltshire Local Plan (2011) and Paragraphs 130 (f) and 185 of the National Planning Policy Framework (2021).