

WARD: Cotham CONTACT OFFICER: Kevin Morley

SITE ADDRESS: Land Adjacent To 30 Cotham Hill Bristol BS6 6LA

APPLICATION NO: 15/02329/F Full Planning

EXPIRY DATE: 7 July 2015

*Retention of material change of use from car park (Sui Generis) to a pub garden (Sui Generis).*

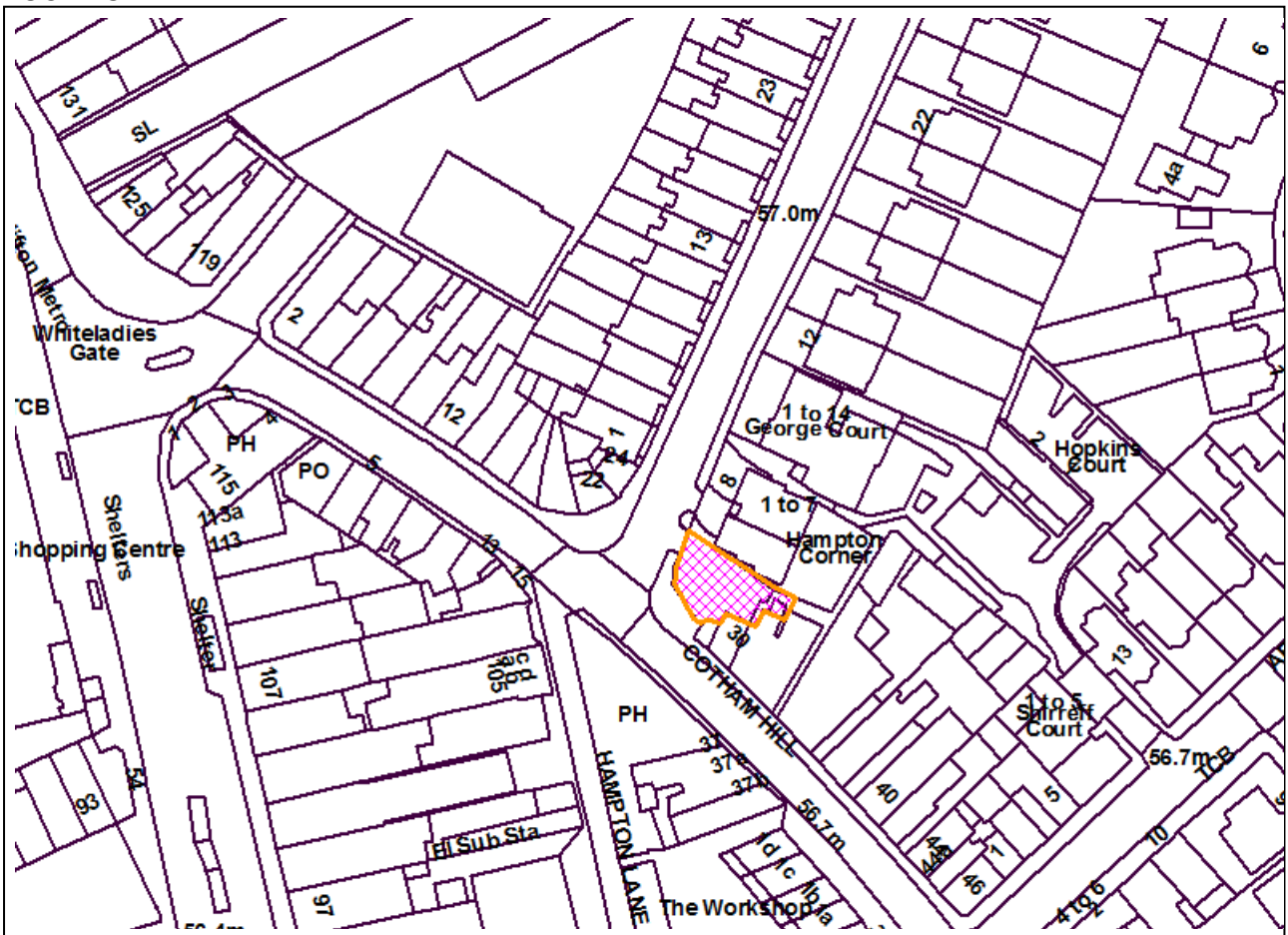
RECOMMENDATION: Grant subject to Condition(s)

AGENT: Aspect360  
45 Oakfield Road  
Bristol  
BS8 2AX

APPLICANT: Above The Pub  
30 Cotham Hill  
Bristol  
BS6 6LA

*The following plan is for illustrative purposes only, and cannot be guaranteed to be up to date.*

LOCATION PLAN:



**Development Control Committee B – 16 September 2015**  
**Application No. 15/02329/F: Land Adjacent To 30 Cotham Hill Bristol BS6 6LA**

### COUNCILLOR REFERRAL

The application has been referred to the committee by Councillor Anthony Negus with the following points raised:

"This application is the first of its kind within Bristol; there is no precedent upon which a development management officer might base a recommendation. Some principles need to be established without a clear guide from the Local Plan documents and these should be considered by the members of the planning committee.

The application touches upon issues that cross over between Planning and Licensing though the latter appears to have stepped away. Reports have been requested that will not produce finite answers but instead require discussion and consideration. The site is separated from the premises that have the extant permission that does not cover the contentious aspects of this 'satellite' site."

### SUMMARY

The application is made following an enforcement investigation and seeks to retain the unauthorised change of use of the site from a car park to a pub garden associated with the public house on the opposite side of Cotham Hill, currently the Brewhouse and Kitchen. The site has been in use for approximately six months and has been enclosed, landscaped and bedecked with tables, chairs and parasols. The application is supported with a commitment to replace a tree that was unlawfully removed from the site and a pub garden management plan to ensure its safe and acceptable use. Subject to the provision of the tree, the adherence to a garden management plan and making the consent personal to the Brewhouse and Kitchen; the proposal is considered to be acceptable and is recommended for approval.

### SITE DESCRIPTION

The application site is an area of hard standing located on the southeast corner of the junction of Cotham Hill and Hampton Park. The site was formally used as a car park but is currently in use as a pub garden, separated from the public house itself by Cotham Hill. The surrounding area is mixed in character with housing abutting the site to the north and commercial premises (some with residential above) surrounding the site on all other sides. The site is located within the Whiteladies Road town centre and conservation area as defined in the development plan.

### RELEVANT HISTORY

Planning enforcement investigation ref.15/30063/COU for the unauthorised change of use of the land (for use as a pub garden) and the felling of a tree was received on 02.02.2015 and is currently pending consideration and the outcome of this application.

### APPLICATION

The application seeks the retrospective change of use of the land from car park (sui generis) to pub garden associated with the use opposite at Nos.31-33 Cotham Hill - The Brewhouse and Kitchen. The site has now been enclosed and landscaped with planters. A replacement tree is proposed in place of the unlawfully felled silver birch. The garden would be in operation daily from 11:00 with all customers vacating the site by 22:00 and the furniture put away and garden access points locked.

**Development Control Committee B – 16 September 2015****Application No. 15/02329/F: Land Adjacent To 30 Cotham Hill Bristol BS6 6LA**

## RESPONSE TO PUBLICITY AND CONSULTATION

The application was advertised via press and site notices. Consultation letters were also sent to 108no. nearby occupiers. As a result 30no. representations were made. 24no. of these were in support of the use of the land as a pub garden. The Agent has also provided a petition of support containing 247no. signatures under the statement noting that the Applicant has "...transform[ed] the ugly plot of land on the corner of Hampton Park and Cotham Hill into a peaceful and attractive addition to the area."

Other representations received included 2no. respondents who made general comments and 4no. objections to the proposal. The main issues raised for consideration are summarised as follows:

- Highway safety - including carrying food and drink across the road,
- Impact on residential amenity - noise,
- Currently well managed - but this may change,
- Hours of use are excessive - too late,
- Plastic cups should be used,
- Conditions should be applied to the operation of the garden, and
- Acknowledgement of the visual improvements to the site.

The above points will be covered within the Key Issues of the report. The following points were also made and are addressed in turn:

License issues (see comments below),

A breach of planning control has occurred - the planning system allows for retrospective applications although unlawful development is carried out at the Applicant's own risk,

A-board/advertising obstructing the footway - these types of issues associated with business uses are normally dealt with under Highways Enforcement,

Restrict installation of lighting and heaters - portable (small scale heaters) would not necessarily require planning permission but external lighting would and none is proposed at this time, and

Increased patronage of pub (up to possibly 70no. people within the garden) - the pub's capacity is not currently limited, by planning restrictions, although the general use of the pub garden is taken into consideration for the purposes of this application.

**Ward Members**

**Councillor Anthony Negus** commented as follows: "This is an unusual application involving a site remote from a public house whose existing Planning and Licensing consent does not extend to cover it. The application has eventually been made, retrospectively, following representations to the BCC Enforcement Team.

The site used to be a car park over a major Water Company access cover. Improvement works have been carried out and it is now neater. Rules have been set for operation of this external drinking area which is surrounded by established residential accommodation, which is far from being occupied solely by transient young people. Nevertheless it is a source of nuisance to residents who have contacted me and is most likely to exceed the 'increase in noise over ambient' criteria. The type of noise is also intrusive as it is variable and of different pitch, with raised voices. I have observed this, and use will be greater in the warmer months when residents' windows are open.

In addition, there is reasonable concern about drinkers taking glasses to and fro across the busy Cotham Hill. Though this is now a 20mph street, the pavements are narrow, and parking means that visibility of vehicles of all sorts, commonly speeding, is poor. I have been around this road and this pub far longer than someone writing a report and am genuinely concerned about safety, exacerbated when glass and alcohol are part of the mix.

**Development Control Committee B – 16 September 2015****Application No. 15/02329/F: Land Adjacent To 30 Cotham Hill Bristol BS6 6LA**

I therefore request that there is careful consideration of all the factors associated with this application. This pub is within the Cumulative Impact Area which recognises the need to consider further erosion of the normal expectations of long-standing residents, and their children, to a reasonable quality of life. At least, I ask that conditions are required to mitigate these two major concerns."

## OTHER COMMENTS

**Redland and Cotham Amenity Society** commented as follows: "Redland & Cotham Amenity Society welcome the visual improvement to the Conservation Area made by the creation of a pub garden from an untidy car park area, while regretting that the owners did not seek consent for change of planning use prior to the work.

We note the 'operating regime' described in the Planning statement under Happy Garden Policy. This requires customers to buy their food and drink in the pub and carry this to the pub garden themselves. Pub staff will not take orders from or deliver these to customers who are in the garden. This is presumably to enable the pub to operate within the existing Licence for Alcohol and Hot Food, by treating such trade as 'off-sales'. We presume it could not be enforced by a planning condition.

This arrangement will clearly create a new highway safety issue, with multiple trips to and from the pub by customers carrying alcohol and food across Cotham Hill, including after dark and when the street is busy with traffic, cyclists and pedestrians. There is also a risk of broken glass on the highway. This could be reduced if glass containers were banned, but again this is not a planning issue.

We note that the hours of opening are 1200 - 2200 on all days. The operating regime also requires the garden to be empty of customers by 2200 hours. This needs to be enforced by a Planning Condition, presumably D16 Hours Open to Customers.

With regard to clearing of the pub garden by staff we ask that a planning Condition requires this to be completed and the area secured by 2015 hrs. (we do not think 2200 is realistic for this work). Presumably D17 Hours of Operation.

Both the above conditions are needed to protect the amenity of local residents who already endure substantial public nuisance in the form of noise. We are concerned that important aspects of this change of use can only be controlled under the Licensing Act, and ask that Planning coordinates response with the Licensing team."

**Licensing Enforcement BCC** provided comments to Councillor Negus regarding the site (on 01.06.2015) as follows:

I have visited the premises in question The Brewhouse and Kitchen and I have spoken at length with the premises DPS, Mr Peter Edmunds. The land in question I understand is on the same title deed as the licensed premises. The premises is licenced for the sale and supply of alcohol both on and off the premises. The beer garden is being used for the consumption of alcohol and food up until 22:00 hours daily. Customers purchase all alcohol and food from the licensed premises opposite. They then convey their purchases off the premises to the garden opposite.

As the consumption of alcohol and food are not licensable activities, no offences contrary to the Licensing Act are taking place. Consequently no licensing application is required for the activities currently occurring on this land. I have engaged the Council's Health and Safety Team, with regard to the fact that customers are crossing Cotham Hill conveying drinks and food from the premises to the garden may be deemed dangerous. Their view is that the area is governed by a 20 mph speed limit and there is no health and safety issue with the situation.

**Development Control Committee B – 16 September 2015****Application No. 15/02329/F: Land Adjacent To 30 Cotham Hill Bristol BS6 6LA**

If the management of the premises wished to carry out licensable activity i.e. the sale and supply of alcohol or regulated entertainment i.e. music, on the land in question then a temporary event notice would be required. Mr Edmunds has been advised of this process. Twelve such notices could be applied for in any twelve month period.

There have been no complaints to my knowledge to date, regarding the conduct of customers in the garden area. The land in question is not included in any previous licence issued for the premises. To sum up the current situation; it is the opinion of the Licensing Enforcement Team that no licensing application is required for the use this land.

**Transport Development Management** has commented as follows:-

Although the red line of the application only incorporates the former car park, it seems that the use is wholly and exclusively for the pub opposite, and that the development is to provide a beer garden for use by patrons, which involves crossing Cotham Hill to go to and from the licenced area.

I note that the Health and Safety Team have not raised a concern, as Cotham Hill has a 20 mph speed limit. I have been to visit the site and observed the traffic flows. This road carries a significant but not high amount of traffic, while narrowness and parking further up and down the hill reduce car speeds, which prevents them from breaking the 20 mph limit. There are double yellow lines on both sides outside the pub, which aid visibility.

We do not object to the use of the land as a beer garden, and I recognise that this use taken in isolation may not be suitable for planning conditions, but if we were to assess it on the basis of a development of the public house we would expect the following conditions to be applied:

1. Beer glasses and crockery should be of an unbreakable type and bottles not taken out of the premises, to avoid damage to tyres in the inevitable instances when items are dropped on the road.
2. A dropped kerb should be provided on both sides of the road, to reduce trip hazard. (This would require a Minor Works agreement, so B1 and IO25 would apply).

**Crime Reduction Unit** has commented as follows:-

[The Architectural Liaison Officer] recently viewed details of the above application with regards to the beer garden - after speaking with the Neighbourhood Policing Team who patrols this area, they informed me this is already up and running and so far there have not been any major reported incidents. However he shares my concerns and recommends plastic cups to be used in this area and for there to be a CCTV system covering this area with good recognition quality in order for the police to prosecute.

**Pollution Control** has commented as follows:-

[Pollution Control] haven't received any complaints about noise from the garden and they now have provided all we have asked for.

The only extra thing I feel is required is something in the [Pub Garden] Management Policy to say that if a noise nuisance is established from the use of the garden then further control measures including an earlier closing time for the garden will be considered and something about revision of the plan such as 'In the event that any part of this Plan requires review or revision such revisions will be undertaken in consultation with residents and officers of the Council at the appropriate time'

The garden shall only be used in accordance with the Management Plan submitted with the application. Any proposed amendments or revisions to the Management Plan shall be submitted to and approved in writing by the Local Planning Authority.

**Development Control Committee B – 16 September 2015**  
**Application No. 15/02329/F: Land Adjacent To 30 Cotham Hill Bristol BS6 6LA**

I would also like the hours of the garden restricted by condition as follows: The garden shall not be used by customers between 22.00 and 11.00.

**RELEVANT POLICIES**

**National Planning Policy Framework – March 2012**

**Bristol Core Strategy (Adopted June 2011)**

BCS7	Centres and Retailing
BCS9	Green Infrastructure
BCS21	Quality Urban Design
BCS22	Conservation and the Historic Environment
BCS23	Pollution

**Bristol Site Allocations and Development Management Policies (Adopted July 2014)**

DM7	Town centre uses
DM8	Shopping areas and frontages
DM10	Food and drink uses and the evening economy
DM17	Development involving existing green infrastructure
DM23	Transport development management
DM26	Local character and distinctiveness
DM31	Heritage assets
DM35	Noise mitigation

**Supplementary Planning Guidance**

PAN 17	Diversity in Shopping Centres (early 1999)
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**KEY ISSUES**

**(A) IS THE PROPOSED CHANGE OF USE ACCEPTABLE IN PRINCIPLE?**

The previous established use of the site as a car park does not benefit from specific planning policy protection. The on-going use of the site, to be regularised, as a pub garden area albeit separated from the public house by a road is considered to have characteristics akin to the forecourt of restaurant or terrace of a drinking establishment and as such is of a town centre nature. The site is located within the primary shopping area of this section of the Whiteladies Road town centre, which is a suitable location for such commercial leisure uses. As there is no objection to the loss of the previous use and the retention of the ongoing use in this centre location; it is considered that the proposal is acceptable in principle subject to other assessments set out below.

**(B) DOES THE PROPOSAL RAISE ANY RESIDENTIAL AMENITY ISSUES?**

This issue relates primarily to the potential for noise and disturbance to nearby residents. The use of the site as a pub garden has been ongoing since approximately March this year and has been managed by the Brewhouse and Kitchen premises on the opposite side of the road. At the time of writing this report; the council's Pollution Control Team have not received any formal noise complaints regarding the pub garden, six months on from first using the site. That said, the Pollution Control Team requested that an acoustic report be commissioned by the Applicant to further demonstrate any potential impacts of the use of the pub garden in terms of noise and disturbance. This was carried out in August and submitted for scrutiny. The Pollution Control Team are satisfied with the noise assessment and have requested the pub garden be operated in accordance with the submitted pub

**Development Control Committee B – 16 September 2015**  
**Application No. 15/02329/F: Land Adjacent To 30 Cotham Hill Bristol BS6 6LA**

garden management policy and close to customers at 22:00, both of which can be imposed as planning conditions.

The Team has also requested that a review clause be added to either the management policy or the condition itself. Although this could be included within the condition, any such wording is likely to fall short of the test set out in the NPPF for planning conditions, which need to be precise. In any event, the environmental health legislation for the protection from noise nuisance would still be available to officers should noise complaints be made to the council.

The lack of reported complaints is considered to be a result of the Applicant's management of the site to date and their application of an in-house pub garden management policy, which has been reviewed and submitted with the application to demonstrate how the pub garden is overseen when in operation. Along with the Pollution Control Team; there have been calls from third parties to ensure that this management policy is conditioned as part of any permission on the site, to ensure ongoing management and to safeguard against the site changing hands and being poorly run in the future. Officers also recommend this approach to create an enforceable regime that takes into account (i) the issuing of plastic cups to patrons of the garden, (ii) the noise management of customers, (iii) the process of dealing with and acting upon complaints about the garden's misuse, (iv) the hours of operation, specifically the procedures involved in announcing to patrons that the garden is closing, and (v) the security and surveillance measures as advocated by the Police in their comments above.

It is also noted that given the level of support shown for the current operator of the site; to further secure the current good management of the pub garden; it is possible to make the consent personal to the Brewhouse and Kitchen. This has been agreed in principle with the Applicant, should members feel this is necessary, and this would then give the council additional controls should the premises change hands.

Subject to the conditions mentioned above, and in light of the Licensing stance on the garden (also detailed above); it is considered that within this town centre location the proposal would not raise any unacceptable residential amenity issues.

**(C) DOES THE PROPOSAL RAISE ANY TRANSPORT AND MOVEMENT ISSUES?**

The proposal raises a number of highway safety issues given the necessity to cross Cotham Hill to reach the pub garden from the pub and/or vice versa. Although this is a relationship that can be found at some pubs located in rural areas, officers are not aware of this type of relationship occurring within the authority's limits that required a planning assessment.

The council's Transport Development Management Team have looked at the proposal and raised no objection in principle; having measured the application against the NPPF and current development plan policy. They have requested that plastic cups be used to prevent glass breakages on the public highway. This has been endorsed within the Applicant's pub garden management policy, which states that "...every effort will be made to provide customers using the pub garden with plastic drink containers." This acknowledges the Applicant's responsibility in this respect but also accepts that some patrons may exit the pub at any time to smoke or travel to the pub garden without pub staff noticing. Again, given the current good management of premises and the reasonableness in making consent personal to the current operator; this wording on plastic cup issuing is considered acceptable.

The Transport Team has also requested that a dropped kerb be installed on both sides of the road to lessen the possibility of trips. This needs to be considered as to what is proportionate and reasonable against what is proposed in the application. It is considered in this instance that, on-balance, the drop kerbs are not a necessity in granting permission especially in the absence of any reported incidents/accidents related to the pub garden and the current level of pedestrian traffic that cross this section of the road throughout the day and into the evening hours.

**Development Control Committee B – 16 September 2015****Application No. 15/02329/F: Land Adjacent To 30 Cotham Hill Bristol BS6 6LA**

Therefore, given the 20mph speed limit of this road, the presence of parking restrictions (to aid visibility) and with the ongoing governance of the pub garden through a conditioned management policy; it is considered that the proposal does not raise any unacceptable transport and movement issues that justify refusal.

**(D) IS THE PROPOSAL VISUALLY ACCEPTABLE AND WOULD IT PRESERVE AND/OR ENHANCE THIS SECTION OF THE WHITELADIES ROAD CONSERVATION AREA?**

The pub garden has been enclosed with a low wooden boundary and gates. The site has also seen the introduction of planters and soft landscaping, which are considered to be an improvement on the site's previous appearance as a car park. The unlawful felling of the silver birch on the site was unfortunate, but the Applicant has committed to replacing the tree, which can be secured through a suitably worded condition. Subject to this it is considered that the proposal is visually acceptable and would enhance this section of the conservation area not just through the physical improvements but also the street-side activity that the garden provides in this town centre location.

### CONCLUSION

It is concluded that subject to the aforementioned planning conditions; the proposal does not raise any unacceptable issues and is therefore recommended to the committee for approval.

### COMMUNITY INFRASTRUCTURE LEVY

How much Community Infrastructure Levy (CIL) will this development be required to pay?

Development of less than 100 square metres of new build that does not result in the creation of a new dwelling; development of buildings that people do not normally go into, and conversions of buildings in lawful use, are exempt from CIL. This application falls into one of these categories and therefore no CIL is payable.

### **RECOMMENDED GRANT subject to condition(s)**

#### **Pre occupation condition(s)**

1. Replacement tree

A replacement regular standard silver birch tree; shall be planted within the first available planting season following the granting of planning permission, or in accordance with the programme agreed in writing with the council and shall be planted in the position shown on Plan ref.00822 2; unless any alterations to the species, size and location are agreed in writing by the council. The replacement tree shall be maintained for five years and if removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced with another tree of similar size and species to that originally required to be planted.

Reason: In the interest of the amenity of the area and as replacement for the felled silver birch previously on the site.

2. Pub Garden Management Plan

The garden shall only be used in accordance with the Pub Garden Management Plan submitted with the application, unless otherwise agreed in writing by the Local Planning Authority. In the event that any part of the Pub Garden Management Plan requires amending,



**Development Control Committee B – 16 September 2015**

**Application No. 15/02329/F: Land Adjacent To 30 Cotham Hill Bristol BS6 6LA**

then such revisions will be undertaken in consultation with residents and officers of the council and approved in writing by the Local Planning Authority.

Reason: To protect the residential amenity of nearby occupiers from noise and disturbance.

3. Hours open to customers Monday - Sunday

No customers shall remain within the pub garden outside the hours of 10:00 to 22:00 Monday to Sundays, unless otherwise agreed in writing and in advance by the Local Planning Authority.

Reason: To safeguard the residential amenity of nearby occupiers.

**Post occupation management**

4. Personal permission

The use hereby permitted shall endure for the benefit only of and shall be carried on only by Brewhouse and Kitchen.

Reason: The development proposed is only acceptable because of the pro-active management of the pub garden by Brewhouse and Kitchen and the Local Planning Authority wishes to have the opportunity of exercising control over any subsequent use in the event of the applicant ceasing the use hereby permitted.

**List of approved plans**

5. List of approved plans and drawings

The development shall conform in all aspects with the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision.

008221SLP Site location plan, received 12 May 2015  
00822 2 Block plan, received 12 May 2015  
108-3059-1 Topographical survey, received 12 May 2015  
Pub Garden Management Policy, received 27 August 2015  
Acoustic Report, received 27 August 2015

Reason: For the avoidance of doubt.

**BACKGROUND PAPERS**

Transport Development Management  
Crime Reduction Unit  
Pollution Control

3 July 2015

10 July 2015

1 September 2015



## Pub Garden Management Plan

### **1. Highway Safety**

- a. Every effort will be made to provide customers using the pub garden with plastic drink containers, whenever possible, during busy periods.
- b. Customers are to be offered trays, whenever available, and advised that no drinks are to be consumed outside the pub garden.
- c. Staff will remove empty glasses promptly and frequently, and will use 'safe collection' baskets.

### **2. Noise Management of Customers**

- a. The pub garden will be monitored by staff on a regular basis during the permitted times of use.
- b. Any 'rowdy/loud' customers will be asked to keep noise to a minimum, in the interest of local residents, and should staff consider the noise levels to be harmful, the customer(s) will be given a verbal warning, and subsequently asked to leave the garden should this be ignored.
- c. All incidents (i.e. staff requests for customers to keep noise levels down; verbal warnings, etc) will be recorded in a log-book by staff, and ejections from the garden will be reported to the Duty Manager.

### **3. Processes for Dealing with Complaints from Local Residents**

- a. Any complaint from a local resident in connection with the operation of the pub garden will be recorded in the log-book (detailing the date of the complaint, the reason for the complaint,

and the name and address of the complainant); reported to the Duty Manager; and dealt with in an appropriate manner.

- b. The Duty Manager will subsequently notify the complainant of the course of action that has been taken.

#### **4. Hours of Use and Closure of the Garden**

- a. The garden will open between 11am and 10pm, Monday to Sunday, including Bank Holidays.
- b. Customers in the garden will be informed of this at 9:30pm each night.
- c. Under no circumstance must there be any one remaining in the garden after 10pm.
- d. The garden will be cleared at 10pm and the gate locked, and the furniture will be secured and rendered unusable after 11pm when staff are available, at pub closing time.
- e. Anybody seen in the garden after 10pm, by pub staff, must be asked to leave the area immediately.

#### **5. Security and Surveillance**

- a. The pub garden will be monitored at all times by CCTV (sound and visual).