

# PLANNING APPLICATION REPORT



**ITEM: 03**

**Application Number:** 13/01663/FUL

**Applicant:** Urban Splash

**Description of Application:** Retrospective change of use of parts of former public realm quay areas to continue use as outdoor seating areas for existing restaurants (use class A3) in Brewhouse and Mills Bakery buildings'.

**Type of Application:** Full Application

**Site Address:** PUBLIC REALM OUTSIDE BREWHOUSE AND MILLS BAKERY BUILDINGS ROYAL WILLIAM YARD PLYMOUTH

**Ward:** St Peter & The Waterfront

**Valid Date of Application:** 08/10/2013

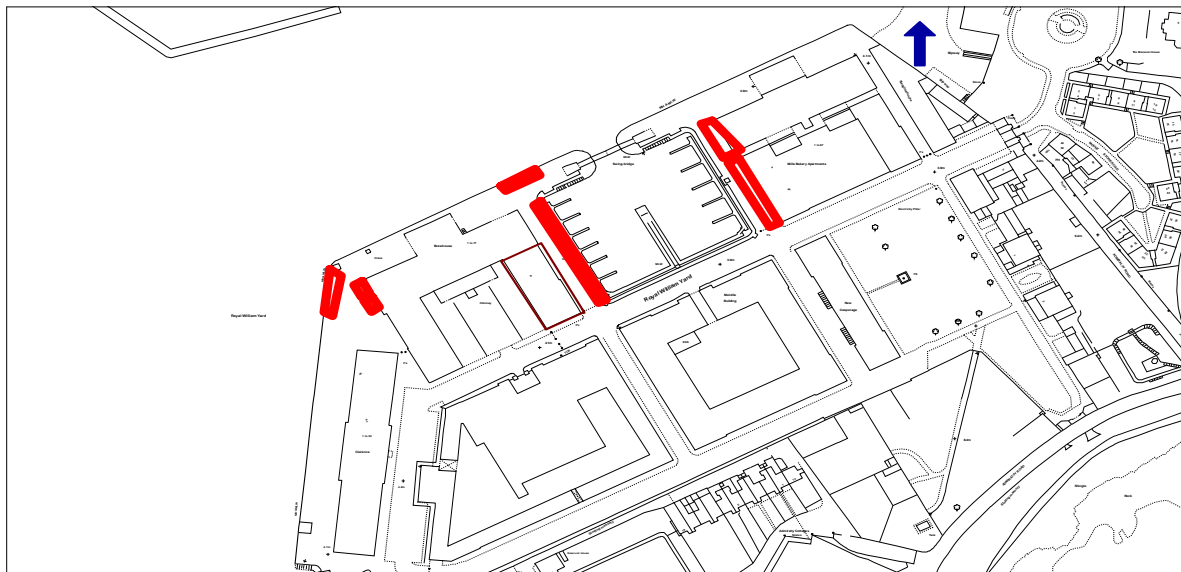
**8/13 Week Date:** 07/01/2014

**Decision Category:** Major - more than 5 Letters of Representation received

**Case Officer :** Louis Dulling

**Recommendation:** Grant Conditionally

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### **Site Description**

The Royal William Yard is situated within the Stonehouse Peninsula Conservation Area and consists of a number of listed buildings of which those immediately adjacent to the application site are Grade I (Mills Bakery, Brewhouse and Melville) with the Swing Bridge to the basin Grade II\*.

### **Proposal Description**

The application seeks retrospective consent for the change of use of land to form outdoor seating areas associated with A3 uses in Mills Bakery and Brewhouse.

### **Pre-Application Enquiry**

None

### **Relevant Planning History**

(3-5 Brewhouse) 12/02014/FUL Change of use from exhibition/arts area to restaurant and café use (Use class A3) – Granted Conditionally by Planning Committee 12/04/2013

(New Cooperage) 12/01449/FUL Change of use to a mixed use for a range of uses comprising: B1 business, A1 shops, A2 financial and professional services, A3 restaurants and cafes, A4 drinking establishments, A5 hot food takeaway, D1 non-residential institutions, D2 gymnasium use and D2 spa use, internal alterations and removal of external escape staircases with variation to Condition 12 of planning permission notice no. 10//01384/FUL to now require no more than 550 square metres of floorspace to be used for a combined total of A1 shop purposes, A2 financial and professional services, A3 restaurants and cafes, and A4 drinking establishments, without prior written approval of the local planning authority – Granted Conditionally (04/02/2013)

(Mills Bakery) 05/00416/FUL Conversion of the existing Mills Bakery building to create 79 residential apartments and offices. Change of use of parts of the ground floor to A1/A3 use, professional office services and B1 use in the east wing – Granted Conditionally (15/06/2006)

(Brewhouse) 02/01683/FUL Change of use, conversion and alterations to buildings to form 130 residential units, change of use of parts of the ground floor of the Brewhouse to an exhibition/arts facility and to retail/hot food units (Classes A1/A3) – Granted Conditionally (29/05/2003)

### **Consultation Responses**

Environment Agency: no concerns

Police Architectural Liaison Officer: no concerns

Public Protection Service: recommends conditions and informatives should the application be approved

Local Highways Authority: recommends that the Transport Strategy for the Royal William Yard be submitted within 3 months of the consent should the application be recommended for approval.

Devon and Somerset Fire and Rescue Service: require a minimum of 3.1 metre width between kerbs

English Heritage: Whilst supportive of a mixed-use area the proposal does not appear as a co-ordinated, consistent and coherent approach (30/10/2013). 'The current proposals are harmful to the setting of the highly graded listed buildings and the character and appearance of the conservation area. As such they are contrary to advice in the NPPF and harmful to the coherence of the Yard' (08/11/2013).

Re-consulted (14/11/2013) following reduction in number of seating area

### **Representations**

2 letters of representation in support of the proposal has been received. The main points are as follows;

- Need for local employment
- Support prosperity of Royal William Yard
- Amendments an improvement

16 letters of representation have been received in objection to the proposal. The main points are as follows;

- Noise
- Content of conversations
- Lack of information regarding noise
- Cigarette smoke ingress
- Proximity to residential properties
- Hours of use
- Emergency access
- A3 use more towards A4
- Anti-social behaviour
- Taxi pick-up area

### **1.0 Analysis**

1.1 The application turns upon policies CS02 (Design), CS03 (Historic Environment), CS12 (Cultural/Leisure Development Considerations), CS13 (Evening/Night-time Economy Uses), CS22 (Pollution), CS28 (Local Transport Considerations) and CS34 (Planning application considerations) of the Adopted Core Strategy of Plymouth's Local Development Framework 2006-2021, Millbay and Stonehouse Area Action Plan 2006-2021 and the aims of the Council's Development Guidelines Supplementary Planning Document First Review, and the National Planning Policy Framework.

1.2 The National Planning Policy Framework seeks to actively encourage and promote sustainable forms of development. It replaces all previous Planning Policy guidance issued at National Government Level.

1.3 This application has been considered in the context of the Council's adopted planning policy in the form of the Local Development Framework-Core Strategy 2007 and is considered to be compliant with National Planning Policy Framework guidance.

1.4 The primary planning considerations in this case are the impact on residential amenity, the impact on the setting of listed buildings Stonehouse Peninsula Conservation Area, the overall character and appearance of the area, transport, the impact upon the existing businesses and the economy.

## **2.0 Amendments to Proposal as Originally Submitted**

2.1 Following the amended plans received on 11/11/2013, which removed the areas of seating that are not currently in situ, the description of the application was amended as appropriate. Site notices were then placed on site to re-advertise the proposal for 14 days in order to highlight the changes to the proposal.

2.2 The amendments removed approximately; 64 covers to the north elevation of Mills Bakery, 58 covers to the immediate east of Brewhouse and 24 covers to the north west corner of Brewhouse (fronting the water). As such the proposal has reduced the overall number of seating by 146. The application now seeks consent for 401 seats.

2.3 The application now for consideration seeks consent for; 2 areas of seating to the immediate west of the Mills Bakery Building providing 132 covers in total; 2 areas of seating to the east of Brewhouse providing 131 covers in total; an area of seating to the north east corner of Brewhouse providing 32 covers; 2 areas of seating to the immediate west of Brewhouse providing 58 covers; and an area (fronting the water) providing 48 covers.

## **3.0 Previous examples of External Seating in the City**

3.1 An application was made in 2006 (06/00392/FUL) for the 'change of use from private Quay Road to enclosed external seating area (A3 restaurant/café) and erection of glazed screens and ancillary structures' which provided approximately 400 covers on plan. No noise, hours of operation or management conditions were attached to the granting of planning consent. Although the density of residential development in the immediate area is less than that of the Royal William Yard the material planning considerations are similar.

3.2 Furthermore an application in 2004 at the property now known as The Berkeley Bar and Grill (04/01561/FUL) to 'reinstall 2 windows and provide external seating, balustrading, pavilions, lighting, umbrellas and external furniture, with retention of trees and lead planters', was granted planning consent without any noise, hours of operation or management conditions. The application provided 112 covers to the ground floor with 15 residential units at upper floor levels.

## **4.0 Residential Amenity**

4.1 The Royal William Yard is a mixed use area with residential units above the A3 restaurant uses in Mills Bakery and Brewhouse. The letters of representation raise the issue of noise associated with the use of the outdoor seating areas.

4.2 After seeking the advice of the Public Protection Service regarding the validation requirements for the application officers validated the application without a noise assessment. A resident of the Yard subsequently queried this and has sought the advice of an acoustician, regarding the submission of a noise assessment, which suggested that an assessment was necessary.

4.3 However, officers considered that there were a number of limiting factors in producing a meaningful assessment. The seating being distributed across different areas within the yard, varying nature of the clientele and seasonal variances in the level of usage would likely lead to an assessment that would be of limited use to officers' assessment. The Noise Policy Statement for England (NPSE) (2010) states that 'there are currently no European or national noise limits which have to be met' and as such the absence of suitable standards to measure against (there are no set standards for acceptable noise levels for such a use) would not provide an opportunity to measure against an established level.

4.4 The Public Protection Service have received complaints of noise from the outside area, however on investigation no evidence was obtained that resulted in any formal action.

4.5 It is recognised that the use of the outdoor seating areas is weather dependent and as such peak periods of use would be during the Spring and Summer months. There is a significant reduction in the use of the outdoor seating during Autumn and Winter months. During a number of recent site visits in connection with this application and others in the Yard some areas of seating have been stacked and stored outside of the restaurants.

4.6 A condition shall be attached to the granting of consent to ensure that the outdoor seating is stacked and secured after the designated hours of use. This will enable the operators of the restaurants to enforce the hours of operation and remove the potential for the outdoor seating areas to be used beyond the opening hours of the restaurants.

4.7 Section 11 of the NPPF states that 'Planning policies and decisions should aim to: mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions'. As such officers recognise that the development has the potential to give rise to noise related complaints and as such recommend a robust Management Plan is agreed and adopted for the duration of the development. The Management Plan which includes details of how the operators intend to control and monitor any such activity that may affect residential properties and hourly security checks to identify any such activities is considered to mitigate and reduce the impact upon residential amenity. The Management Plan has been agreed upfront and following further consultation with the Public Protection Service officers are satisfied that it is suitably robust.

4.8 Furthermore it is proposed that the Management Plan is to be reviewed annually and on any occasion when significant changes to the business take place or any substantiated complaints are received from local residents. This allows the LPA to retain the ability to ensure that the Management Plan is appropriate for the lifetime of the development.

4.9 Additionally a condition is suggested to the granting of consent to ensure that hours of use are controlled. Officers recommend that the outdoor seating areas must not be used outside of 1000 – 2230 hours Monday to Saturday and 1100 – 22.30 Hours on Sundays and Bank Holidays. Furthermore it is proposed that the condition shall remove the ability for customers to be allocated external seats after 2100 hours, with all areas of outdoor seating to be vacated by 2230 hours. The seating to be used (specific types to be secured by way of condition) shall have rubber feet so as to minimise noise disruption during setting up and removal of the seating.

4.10 In anticipation of the continued use of the outdoor seating areas a condition is recommended to the granting of consent to ensure that there is no music permitted in the outdoor seating areas unless otherwise agreed in writing by the LPA.

4.11 The NPPF also states that Planning decisions should ‘recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established’.

4.12 In this instance the majority of the ground floor units use as A3 were granted consent at the same time as the residential properties above. The application which provided a further A3 unit to the ground floor of Brewhouse (12/02014/FUL ) was approved by Planning Committee earlier this year (12/04/2013). As such although the outdoor seating areas are additional to that originally consented these facilities are considered to encourage use of the Yard by non-residents which support the vitality of the businesses operating there. The outdoor seating is considered to be a sustainable way for the existing businesses to develop.

4.13 The Noise Planning Statement for England states that ‘there is a need to integrate consideration of the economic and social benefit of the activity or policy under examination with proper consideration of the adverse environmental effects, including the impact of noise on health and quality of life. This should avoid noise being treated in isolation in any particular situation, i.e. not focussing solely on the noise impact without taking into account other related factors’. It is officers’ opinion that the provision of outdoor seating supports wider economic and social aspirations. On balance given that the Management Plan will allow a level of control, in planning terms (as well as statutory nuisance and licensing regimes and other related legislation), over the use of the outdoor seating it is considered that noise can be mitigated so as not to have a significant adverse impact upon the quality of life of the residents at the Yard.

4.14 The Core Strategy (2007) identifies the Royal William Yard as a 'mixed use regeneration' area. Furthermore the Millbay and Stonehouse Area Action Plan (AAP) (2007) states 'the First Deposit of the Local Plan [2001] sought a mixed-use scheme for the yard and that aspiration has been consistently applied since. Much of the initial development within the yard has been focussed on private residential use. It is therefore necessary for the remaining buildings to have a greater focus on the other uses such as employment, cultural and community uses'. The Royal William Yard has therefore long been identified within adopted planning policies as a mixed-use area. The outdoor seating areas are considered to support the use of the Yard as a mixed-use area.

4.15 There has been some concern regarding the use of the consented A3 restaurant uses. The outdoor seating has been assessed as being used in conjunction with the A3 use. An informative is proposed to the granting of consent to ensure that the A3 uses remain used for restaurant purposes and not for an A4 (drinking establishment) use. Any change of use would require planning consent.

4.16 In order to ensure that the use of the outdoor seating areas remains as A3 restaurant use a condition shall be attached to the consent to have alcoholic drinks served to the outdoor seating areas by waiter/waitress service only with associated signage to make customers aware of this service. This provides the operator and staff the opportunity to control sources of potential adverse noise.

4.17 In addition to the mitigation of noise the Management Plan also seeks to mitigate the ingress of cigarette smoke into the residential properties above the outdoor seating areas. The Management Plan requires designated smoking areas to be at least 2 metres away from the façade of any building with residential properties (details of which to be secured by condition) above which should allow for the smoke to disperse away from the buildings' façade and reduce the potential ingress into residential properties. This element of the Management Plan has been informed by previous complaints relating to smoke ingress. It is however important to note that given the areas are currently defined as 'public realm' the Planning Authority would have no control over members of the public choosing to smoke in close proximity to the building facades should the areas remain as public realm.

## **5.0 Historic Environment**

5.1 Given the importance of the Royal William Yard in terms of the number and quality of listed buildings the impact of the seating upon the historic environment is a material planning consideration central to the assessment of the application.

5.2 The type of seating that is currently in situ is not considered to be acceptable. Whilst certain areas of seating are considered to be sympathetic to the setting of the Grade I listed buildings others are considered to have a detrimental impact. It is also considered that the use of large umbrellas are not acceptable in terms of the impact upon the character and appearance of the Conservation Area and listed buildings. It is considered that the type of seating to be used should be as lightweight and transparent as possible to ensure that the impact upon the setting of the listed buildings is acceptable.

5.3 Officers as well as English Heritage consider that there should be a coherent and consistent approach to the type of seating within the Yard. The 2007 Management Plan, by RPS, notes (Paragraph 4.10) "The Public Realm- The coherence of the Yard, so important to its overall quality, can easily be compromised if a consistent and coordinated strategy is not adopted to signage, lighting, street furniture, paving materials, and carriageway design, or if not enough attention is paid to the spaces between the buildings."

5.4 As such officers have agreed a suitable condition with the applicant which requires further details regarding the type of seating to ensure an acceptable level of quality and a more consistent approach across all areas applied for under this application.

## **6.0 Transport and Parking**

6.1 Given the areas of outdoor seating are currently in situ it is officers' opinion that the development will not increase the current day-to-day trip generation and associated car parking demands at the Yard. In accordance with Circular 11/95 it is not considered reasonable and necessary to condition for the provision of the Transport Strategy in order to allow the development to be considered to be acceptable.

6.2 It is officers' opinion that the use of the outdoor seating during the warmer spring and summer months would not necessarily result in an increase in the number of people visiting the restaurants, with the majority opting to sit outside rather than inside and as such would not lead to an increase in demand for car parking.

6.3 It is also noted that the proposed plan does not appear to make allowances for the siting of the crane to the west of Mills Bakery in terms of emergency access. After consultation with the Devon and Somerset Fire and Rescue Service a minimum of 3.1 metres width should be provided in order to allow access for the emergency services. As such a condition shall be attached to the granting of consent to ensure that this remains clear and unobstructed in perpetuity.

## **7.0 Other Considerations**

7.1 Concerns have been raised regarding the taxi pick-up/drop-off areas. However, the application for consideration is for the use of areas as outdoor seating. It is not considered that the use of these areas has a direct impact upon the areas which taxis operate. As such it is not considered to be appropriate to condition for a taxi pick-up/drop-off area within the scope of this application.

## **8.0 Human Rights**

8.1 Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.



## **9.0 Local Finance Considerations**

New Homes Bonus

None

Community Infrastructure Levy

The proposal does not attract a fee under the current charging schedule.

Section 106 Agreements

None

## **10.0 Equalities and Diversities**

None

## **11.0 Conclusions**

11.1 Overall, following amendments and appropriate conditions the proposal is considered to be in accordance with the NPPF which states 'planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings'. For the reasons as discussed above the proposal is considered to be acceptable and as such is recommended for approval.

## **Recommendation**

In respect of the application dated **08/10/2013** and the submitted drawings GA-900 Rev: PL2, GA-910 Rev: PL1, GA-911 Rev: PL1, GA-901 Rev: PL7, it is recommended to: **Grant Conditionally**

## **Conditions**

### **APPROVED PLANS**

(1) The development hereby permitted shall be carried out in accordance with the following approved plans: GA-900 Rev: PL2, GA-910 Rev: PL1, GA-911 Rev: PL1, GA-901 Rev: PL7

Reason:

For the avoidance of doubt and in the interests of good planning, in accordance with policy CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007, and paragraphs 61-66 of the National Planning Policy Framework 2012 and the National Planning Policy Framework.

### **MANAGEMENT PLAN**

(2) The outdoor seating hereby approved shall be managed in accordance with the Royal William Yard Outside Seating Area Management Plan and Procedures document (Management Plan) in perpetuity unless otherwise agreed in writing by the Local Planning Authority. Notwithstanding the approved Management Plan the document shall be reviewed annually and on any occasion when significant changes to the businesses take place or any substantiated complaints are received from local residents.

Reason: To protect the residential and general amenity of the area from noise emanating from the external seating areas and avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and the National Planning Policy Framework and in particular Section 11, paragraph 123.

#### HOURS OF OPERATION

(3) The outdoor seating areas must not be used outside of the following times:

Monday to Saturday 10.00 - 22.30 hrs

Sunday 11.00 - 22.30 hrs,

After 21:00 no external seating is to be allocated to customers.

The external seating must be cleared of customers by 22:30.

External furniture must only be set up or removed between the hours of 10:00 am and 22:40pm Monday - Saturday and 11:00am and 22:40pm on Sundays. The external furniture shall be stacked and made secure outside of the designated hours of use.

Reason: To protect the residential and general amenity of the area from noise emanating from the external seating areas and avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and the National Planning Policy Framework and in particular Section 11, paragraph 123.

#### OPERATIONAL RESTRICTIONS TO ENSURE USE REFLECTS USE CLASS

(4) The supply of alcoholic drinks to the external seating area must be by waiter/waitress service only.

In prominent positions in the outside seating areas signage must be present stating the opening times of the outside area and that it is served by waiter/waitress service only.

Reason: To protect the residential and general amenity of the area from noise emanating from the external seating areas and avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and the National Planning Policy Framework.

#### OUTDOOR TABLES AND FURNITURE

(5) Furniture used in the outside area must fitted with rubber feet.

Reason: To protect the residential and general amenity of the area from noise emanating from the external seating areas and avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and the National Planning Policy Framework and in particular Section 11, paragraph 123..

#### OUTDOOR SEATING

(6) Music is not permitted in the outdoor seating areas, unless otherwise agreed in writing from the Local Planning Authority.

Reason: To protect the residential and general amenity of the area from noise emanating from the external seating areas and avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and the National Planning Policy Framework and in particular Section 11, paragraph 123.

### SMOKING AREAS

(7) Smoking shall only take place in designated smoking areas which must be at least 2 metres away from the façade of any building with residential properties adjacent or above. Prior to use any smoking area must be approved by the Local Planning Authority. After 22:30 hours the designated area must be used for smoking only.

Reason: To protect the residential and general amenity of the area from noise and odour emanating from the external seating areas and avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and the National Planning Policy Framework.

### EMERGENCY ACCESS

(8) Notwithstanding the plans hereby approved an access measuring a minimum of 3.1 metres width should be provided in order to allow access for the emergency services between the west elevation of Mills Bakery and the crane and shall remain clear and unobstructed in perpetuity.

Reason: In order to ensure a sufficient access width for emergency vehicles in accordance with Policy CS28 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and the National Planning Policy Framework.

### DETAILS OF EXTERNAL FURNITURE

(9) Notwithstanding the existing external furniture the type of furniture shall be submitted to and approved in writing by the Local Planning Authority within 1 month of the date of this consent and shall remain as such in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the setting of the listed buildings, Conservation Area and overall character and appearance of the area and avoid conflict with Policies CS02, CS03 of the Plymouth Local Development Framework Core Strategy (2006-2021) and the National Planning Policy Framework.

### INFORMATIVE: LICENCING ACT 2003

(1) All businesses operating within the Royal William Yard must have regard to the requirements placed on them by their premises licence. These may be more stringent than the planning conditions and may place restrictions on the number of outdoor covers that they are permitted to operate which conflicts with the number for which planning permission has been granted.

### INFORMATIVE: SMOKING AREAS

(2) You should consider the effect that patrons of the Royal William Yard smoking may have on residential properties. In particular it is advisable to designate areas close to any building as non-smoking to minimise and any odour or noise having an adverse effect on residential properties. Public Protection would recommend that any designated smoking area is at least 2 metres away from the façade of any building with residential properties adjacent or above. Prior to use any smoking area must be approved by the Local Planning Authority as identified in the noise management plan. After 22:30 hours the designated area must be used for smoking only.

**INFORMATIVE; PROVISION OF SANITARY ACCOMMODATION**

(3) When allocating outdoor seating to a particular business the applicant should take into account the number of WC's, urinals and associated sanitary accommodation is suitable to comply with BS6465 - 1:2006 +A1:2009 British Standard Sanitary Installations.

**INFORMATIVE: (NOT CIL LIABLE) DEVELOPMENT IS NOT LIABLE FOR A COMMUNITY INFRASTRUCTURE LEVY CONTRIBUTION**

(4) The Local Planning Authority has assessed that this development, due to its size or nature, is exempt from any liability under the Community Infrastructure Levy Regulations 2010 (as amended).

**INFORMATIVE: CONDITIONAL APPROVAL (WITH NEGOTIATION)**

(5) In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has negotiated amendments to the application to enable the grant of planning permission.

**INFORMATIVE: CONFIRMATION OF USE CLASS**

(6) The outdoor seating areas benefit from A3 use. Any change of use from this use class will require planning consent.