

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 17 December 2014

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APPLICATION REF. NO:	14/00374/ CU
STATUTORY DECISION DATE:	12 June 2014
WARD/PARISH:	CENTRAL
LOCATION:	15 Queen Street
DESCRIPTION:	Change of use from retail shop (Use Class A1) to fish and chip restaurant (A3) with ancillary takeaway service (A5) and associated external alterations (Additional and amended information received 28 May 2014 and 27 November 2014)
APPLICANT:	Mr Kevin Turton

APPLICATION AND SITE DESCRIPTION

The site is a vacant unit within the Queen Street Shopping Centre last used as a bakery (Class A1) with a seating area but it has been vacant for at least six years. The proposal involves a change of use of the premises to a fish and chip restaurant (Class A3) with ancillary takeaway service (A5). The unit currently has two entrances (one with three steps and one with a slight step) and the associated external alterations to the shop front involve the removal of the entrance with the slight step and replacing it with a shop window to continue the existing shop front.

An external seating area comprising approximately 8 seats within the mall would be located to the left hand side of the retained entrance. The café use would operate between the hours of 0900 – 1800 Monday to Saturday and 1100 – 1600 on a Sunday and the takeaway element would operate 1100 – 1800 Monday to Saturday and 1100 – 1600 on a Sunday which is in accordance with the opening times of the Shopping Centre.

Queen Street Shopping Centre is located within the Town Centre Conservation Area.

PLANNING HISTORY

07/00837/CU In September 2007 planning permission was REFUSED for a change of use from retail shop (Class A1) to a coffee shop/restaurant (Class A3) on grounds that it was contrary to policy.

PLANNING POLICY BACKGROUND

National Planning Policy Framework 2012

Borough of Darlington Local Plan 1997

S5 Town Centre Food and Drink Uses

Darlington Core Strategy Development Plan Document 2011

CS1 Darlington's Sub-Regional Role and Locational Strategy

CS2 Achieving High Quality Sustainable Design

CS7 The Town Centre

RESULTS OF CONSULTATION AND PUBLICITY

No letters of objection were received following the Council's general publicity exercises

Consultee Responses

The Council's Principal Environmental Health Officer has raised no objections to the proposal subject to the imposition of conditions relating to the storage of refuse and details of extraction and methods of controlling smells and odours.

The Council's Highways Engineer has raised no objections to the proposal

Darlington Association on Disability Comments

Darlington Association on Disability objected to the planning application when it was originally submitted and they made the following comments:

The letter from Brassington Rowan clearly states there are two entrances to the unit. The applicant states they don't propose to make any material changes to the unit. However the plans show windows replacing one of the entrances and this is the one that is wheelchair accessible. The applicant then states the unit can't be made accessible for disabled people. The proposal to put tables and chairs in the mall as an alternative to accessing the unit is in this case segregation because there is access available if the applicant alters the lay out in the unit. The Application is not just for a café but a takeaway as well so tables and chairs in the mall will not give disabled people access to the takeaway. Queen Street mall is not a pleasant area for anyone to sit and have a meal in and people should have an option to or not. This application doesn't comply with Policy CS2 and the Design SPD which is also about dignity. If there was no option at all to make this unit accessible for disabled people DAD would not be objecting but as a wheelchair user myself I clearly remember going into that unit via the top right-hand corner. This is not just about wheelchairs it's about anyone who for whatever reason can't use step

Following discussions and site meetings with the applicant and the submission of the additional and amended information, Darlington Association on Disability continue to object to the proposal and have commented as follows:

The applicant states that it would take a ramp running the full length of the unit to provide disabled access. This is incorrect as there is already wheelchair access to the unit but the applicant has his mind set on doing away with this doorway and preventing wheelchair users having access. He has constantly been negative at any suggestions that would provide an alternative access like a ramp to the stepped doorway. The exaggeration of the ramp having to run the full length of the unit is an example of looking for excuses not to have access for disabled people instead of looking for reasons to include them. I am extremely concerned that the applicant states that the owner of the Queen Street Shopping Mall (the landlord) agrees with him. The proposed ramp would only need to be a few metres long because the mall slopes

upwards from the doorway. The applicant was told this and that the width could be kept to a minimum and any decent architect could design something short and neat. As a wheelchair user myself I find it totally unacceptable to be able to meet the applicant on site inside the unit by accessing it through a wheelchair accessible doorway to find that only because he doesn't want to alter his planned layout that the wheelchair accessible doorway must be forfeited. I also find it offensive that the applicant and landlord (according to the applicant) think a wheelchair accessible ramp to the unit is in his words the negative impact such a structure would have on the visuals of the mall itself, and "look fortress like and have people wondering how to access the shop, the very last thing a café needs to be". This kind of language explains why disabled people would not be welcome inside and only good enough to be classed as second class citizens who can sit in a not very pleasant shopping mall and ring a bell. This is totally against Policy CS2 and the Design SPD. This was not supposed to be the legacy from London hosting the Paralympics.

Letters of Support

Fairacre Management Limited is the asset manager for the Queens Street Shopping Centre acting on behalf of Receivers. Their comments can be summarised as follows:

Our remit is to put the scheme on a sound financial footing, together with the Centre Manager and our appointed consultants, we are doing everything we can to make the scheme an attractive centre for everyone, to keep our existing tenants trading and to secure new occupiers for vacant units. In order to help revitalise the Centre, we authorised a massive reduction on quoting rents and we were responsible for procuring the £500,000 scheme refurbishment which included attractive external signage and significant upgrades to the internal finishes, lighting schemes and decoration. The Council's support of this initiative was much appreciated.

Notwithstanding this we still have far too many long term voids and as Warren James Jewellers and Garage Shoes have also closed down this year, we have less rental and service charge revenue to re-invest into the Centre.

We have taken very deliberate measures over the last few years to improve the look of the centre and to increase the flow of footfall through the scheme by removing and relocating kiosks from the centre of the mall. I appreciate there have been detailed discussions about the possible provision of a ramp outside Unit 15 but this is not a proposal we would endorse in any shape or form.

We have worked hard to achieve a strong visual impact here and hope the Mr Turton's application for a change of use will be given unconditional support

Unit 15 is the most prominent unit inside the arcade and achieving a letting to a café/restaurant with accessible mall seating would be a significant step in stabilising the tenant line up and building the scheme's reputation to the clear benefit of the whole community. The unit has been vacant now for a considerable period and given its awkward configuration, it is our opinion that if this letting does not proceed, it will remain vacant for the foreseeable future and I cannot see how this will benefit anyone

Brassington Rowan is the Letting Agency for the Queen Street Shopping Centre and their comments can be summarised as follows:

You will recall Queen Street Shopping Centre was to be incorporated in a much larger scheme called The Oval which was due to bring a new Debenhams and several other large stores to the site plus a cinema and multi storey car parking. This got scrapped in the “crash” of 2008/2009 and the scheme has been something of a challenge ever since. The Feethams leisure scheme is now under construction at the opposite end of the town centre so in my view it is important that we redress the balance by securing new tenants in Queen Street and Northgate as quickly as possible.

Unit 15 has been empty for at least 6 years and indeed longer than any other property on our books. This is despite almost halving the quoting rent and advertising it both nationally and locally, circulating information via hard copy and electronic particulars and featuring the unit on Brassington Rowen, Jackson Criss and the national platform shop property websites

We have targeted occupiers with a known requirement to be represented in Darlington and approached other occupiers who have shops across the region and who might just be persuaded to expand here. Additionally, particulars are regularly circulated to approximately 550 retailers orientated surveying firms across the UK. The problem is not just the economy as a whole or even Queen Street itself.

I can genuinely state that we have not had any serious interest from Class A1 retailers for Unit 15 and whilst we have pursued numerous food and drink retailers over the years, none have come forward with a firm proposal.

Unit 15 has a huge glazed frontage which very few retailers really want or need. The principal problem however is the triangular shape which makes it extremely difficult to shop fit compared to a standard rectangular unit in which stock can be easily and efficiently displayed. The idea of placing a ramp and guard rail in front of the main elevation just compounds the problems and makes the unit even less attractive than it is already. Neither the landlord, the shopping centre manager nor the letting agents would support such a physical obstruction.

The joy of the proposal is that the applicant is not using racking, shelving and display cabinets so can use the space for preparation and seating but the sheer scale of his catering equipment means it must be sited at the left hand side of the unit just to fit in. I know it is still a struggle to fit in sufficient tables and chairs to make the unit work financially but my landlord clients are doing everything they can in terms of rent and rent free to assist and get the unit into beneficial occupation.

From a personal point of view, a restaurant use here fills our longest standing void and will definitely help to generate footfall, increase “dwell time” and then help in our marketing of the other six empty units. A letting of Unit 15 to Mariners would be a vital step in regenerating the scheme and cannot advocate too strongly for a positive outcome to the application”.

The **Queen Street Manager** has submitted a letter of support which can be summarised as follows:

I have been the Centre Manager at Queen Street for 3 years where my responsibilities include liaising with our current tenants, maintaining and improving a safe and attractive physical environment within the scheme, organising retail events and promoting the shopping centre throughout the region. Our tenants were patient and put up with quite a lot of disturbance during the scheme’s refurbishment in 2012/2013 but hope everyone agrees it was worthwhile as

the total appearance of the shopping centre is so much better today. It also shows great trust from the Landlords who invested this considerable sum whilst the Centre is in administration. To improve the appearance of the vacant units I have arranged for attractive vinyls to be installed but our tenants regularly emphasise that this is literally “window dressing” and no substitute for real occupiers bringing in new customers and creating a genuine “buzz” that one sees in other centres across the region. Cornmill Centre has Café M on the upper level and Coffee Bamber on the lower level and a new Mariners Fish & Chip Restaurant in Unit 15 would give us something colourful, lively and different to offer to our shoppers who are otherwise restricted to a single Starbucks coffee shop. I promote Queen Street on radio, in the press, on Facebook and through other social media but it is tenants and customers who really make a scheme and a vibrant new food offer in Unit 15 is exactly what we need when shoppers are increasingly looking for somewhere to eat and drink when out and about in the town centre. I have had many discussions with the Fire Officer about keeping the malls free from obstruction and whilst I am very supportive of a small amount of mall seating outside this property towards the wider central mall area, I would not encourage either tables, chairs or a ramp towards the top end of the unit where it would create a pinch-point close to the rear entrance off Commercial Street. Indeed during a recent Fire Safety visit I was advised that this location (after the steps towards the corner) should not be used for seating or any structure due to the narrowing of the mall. The whole team at Queen Street try very hard to assist less able customers in the centre and the landlords created a large ramp inside Unit 14 (Poundworld) at quite some considerable expense to overcome a problem with the incline there. From numerous discussions with Mr Turton I know he has looked at several different ways to afford maximum accessibility but is constrained by the much smaller unit size, the difficult shape of the unit and the sheer bulk of the necessary cooking equipment. I fully endorse however his idea of having priority mall seating for disabled customers and an adjacent press-button bell for waiter/waitress service “on demand” which would work in a similar fashion to the town’s pavement cafes. I am 100% certain our customers would love to see a new Mariners Restaurant open in the centre and look forward to hearing Mr Turton is successful in his application.

PLANNING ISSUES

The main issues to be considered here are whether or not the proposal is acceptable in the following terms:

Planning Policy

Accessibility

Environmental Health Matters

Highway Matters

Impact upon the Town Centre Conservation Area

Planning Policy

The National Planning Policy Framework 2012 (NPPF) states that local planning authorities should define the extent of town centres and primary shopping areas based on a clear definition of primary and secondary frontages in designated centres and set policies that make clear which uses will be permitted in such locations. Local planning authorities are also required to promote a diverse retail offer in town centres and to pursue policies which support a town centre’s vitality and viability.

Policy CS7 of the Darlington Core Strategy Development Plan Document 2011 states that the town centre will be the locational focus for the development of retail, office, leisure,

entertainment, sport and recreation, arts, culture, tourism and other main town centre uses needed within the Borough and such uses will be encouraged and directed there as a first preference.

The unit is within the primary shopping frontage designated by the Proposals Map of the Borough of Darlington Local Plan 1997. Saved Policy S5 of the Local Plan states:

“The loss, by change of use or redevelopment, of ground floor class A1 shops in the primary shopping frontages of the town centre to restaurants, cafes ... and other A3 uses will not be permitted”.

The proposal is therefore contrary to Policy S5 of the Local Plan as it would involve the loss of a shop unit in a primary shopping frontage within the town centre and the default position for the principle of this proposal is that it should be refused.

Section 38 (6) of the Town and Country Planning Compulsory Purchase Act 2004 states that if regard is to be had to the development for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

Officers consider that there are a number of material planning considerations that must be taken into account when considering the principle of the change of use of the unit:

- The unit has been vacant for in excess of six years and the Asset Manager, Letting Agent and Manager for Queens Street Shopping Centre have confirmed that despite extensive marketing there has been no interest in the unit from Class A1 retailers during this period;
- The Council’s records indicate that there have been no temporary or intermediate uses within the unit since it became vacant;
- Whilst the unit is in a prominent location within the Centre its configuration is a deterrent to retailers
- The remainder of the Shopping Centre would remain in Class A1 usage
- The proposal would not create a continuous row of non A1 uses within the primary shopping frontage
- There is a strong possibility that if the unit is not occupied by a non retail use, it will continue to remain vacant for the foreseeable future

Having taken into account all other material planning considerations in accordance with planning guidance, officers consider that the proposed change of use would not be harmful to the vitality and viability of the Queen Street Shopping Centre or the wider town centre and there is sufficient justification to depart from the normal policy position in this case.

Accessibility

The unit currently has two entrances and due to the slope of the internal mall, neither of them provides a level access into the premises. One of the entrances has three steps and a central handrail and the second entrance has a slight step on the left hand side due to the aforementioned change in levels.

The applicant wishes to remove the second entrance and replace it with a window to continue the existing shop frontage resulting in the remaining access having three steps. The applicant would provide priority seating in the external mall seating area for disabled persons and a mechanism

would be put in place (for example a bell adjacent to the retained entrance) to summon service for takeaways.

Policy CS2 of the Core Strategy states the new development (which includes change of use proposals) should provide safe, convenient and attractive access for disabled people.

During the determination period of this application, officers and DAD have worked with the applicant to suggest a number of options to make the unit accessible for disabled persons:

Retention of both Entrances

The proposal would provide 32 covers. The applicant has advised that this proposed layout makes the scheme “border line” viable and the loss of any seating in order to provide a safe corridor through the seating area to the servery via a retained second doorway would make the scheme unviable such that he could not continue and lease the unit on that basis. Reconfiguring the layout and the location of the servery and associated appliances would not be possible due to their size, the possible resultant loss of covers and also the servery for the bakery was located to the left hand side of the unit making it easier for the applicant to use any existing flues, extractors etc.

The use of a lift at the Retained Entrance

There were concerns from the Council and DAD as to whether or not sufficient space would be available to install a lift within the existing stepped entrance and DAD whilst potentially accepting the principle of a lift were concerned that such installations can be liable to breakdown.

Crucially, it was also confirmed at a site meeting attended by the Fire Safety Officer of County Durham and Darlington Fire and Rescue Service that this section of the mall is already considered to be very narrow and any permanent structures and features within this part of the mall, like a lift, would not be supported by the Fire Safety Officer as they could cause obstructions in the event of a fire evacuation.

The use of a disabled ramp at the Retained Entrance

This option was supported by DAD and the Fire Safety Officer but the applicant is unable to obtain the consent from the relevant owners of the Shopping Centre to introduce such a feature into the mall and this has been confirmed in their comments.

Officers have considered the comments made by the applicant, to the various options and why they cannot be implemented, the objections made by DAD and the comments made by other interested parties along with other material planning considerations (for example the length of time the unit has been vacant and will possibly remain so in the foreseeable future). It is considered that, on balance, whilst it is very unfortunate that the unit will not be fully accessible for wheelchair users, the applicant will make some provision to enable wheelchair users to benefit from the services being provided by the unit and therefore the planning application should be recommended for approval on that basis.

Environmental Health Matters

There are no objections to the principle of the proposed change of use subject to any grant of planning permission being subject to appropriate conditions relating to refuse storage, extractors and methods for controlling fumes.

Highway Matters

The existing premises have previously operated as a food retail unit with takeaway and therefore the relevant infrastructure for deliveries, waste disposal will already be in place. There would be no highway objections to the proposal.

Impact upon the Town Centre Conservation Area

The alterations to the frontage of the unit are classed as internal alterations to the overall Shopping Centre and therefore the local planning authority does not need to assess their impact upon the conservation area that the Centre sits within.

SECTION 17 OF THE CRIME AND DISORDER ACT 1998

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

CONCLUSION

The proposal is contrary to Saved Plan Policy S5 of the Borough of Darlington Local Plan 1997, however officers believe that there are other material planning considerations which, in accordance with planning regulations, allow a positive recommendation for the proposed change of use of this unit to a non retail use (Class A3).

The applicant has fully explored various options of making the unit accessible for disabled persons but unfortunately there are reasons accepted by officers, which mean this is not possible. However, provision will be made to ensure disabled persons can use the services that the proposed use will offer.

The proposed change of use does not raise any highway concerns and appropriate planning conditions can be imposed to secure appropriate refuse storage and machinery to facilitate the use.

RECOMMENDATION

PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. A3 – Implementation Limit (Three Years)
2. Prior to the commencement of the development, precise details of the priority seating for wheelchair users in the mall and associated mechanisms for providing the takeaway service including maintaining these elements of the service going forward shall be submitted to and approved in writing by the Local Planning Authority and the agreed details shall be implemented prior to the use being brought into operation and shall be maintained in perpetuity unless otherwise agreed by the Local Planning Authority
REASON: To ensure that persons with disabilities are able to use the services being provided by the proposed use.

3. D4 – Refuse Storage (Implementation)
4. D18 – Control of Fumes
5. D19 – Ventilation Equipment (Details Required)
6. B5 – Detailed Drawings (Accordance with Plan)

THE FOLLOWING POLICIES AND DOCUMENTS WERE TAKEN INTO ACCOUNT WHEN ARRIVING AT THIS DECISION:

National Planning Policy Framework 2012

Borough of Darlington Local Plan 1997

S5 Town Centre Food and Drink Uses

Darlington Core Strategy Development Plan Document 2011

CS1 Darlington's Sub-Regional Role and Locational Strategy

CS2 Achieving High Quality Sustainable Design

CS7 The Town Centre