

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 11 April 2012

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APPLICATION REF. NO:	12/00042/CU
STATUTORY DECISION DATE:	30 March 2012
WARD/PARISH:	CENTRAL
LOCATION:	Drum Art Furniture, 22 Grange Road, Darlington
DESCRIPTION:	Change of use of first floor and entrance stairs from shop (Use Class A1) to bar (A4)
APPLICANT:	Mr Mark Aroll

APPLICATION AND SITE DESCRIPTION

The property is a retail shop at first floor level above Nos 16 to 20 Grange Road. The building is accessed by a staircase within a three storey building on the end of the row of properties. The surrounding area is predominately commercial interspersed with a number of non retail uses such bars and restaurants. There are some residential properties above some of the commercial outlets on the opposite side of the road to the application site. The building is within the Town Centre Conservation Area.

The proposal involves the change of use of the first floor building from a retail shop (Class A1) to a bar (Class A4). The application has been submitted with limited information but the applicant has confirmed that there would be no external alterations to the building and the bar would operate between 1800 to 0100 Monday to Friday; 1200 to 0100 Saturdays and 1800 to 1200 Sundays.

PLANNING HISTORY

99/00695/CU In November 1999 planning permission was granted for a change of use of the premises to retail

PLANNING POLICY BACKGROUND

Borough of Darlington Local Plan 1997

S5: Town Centre Food and Drink Uses

Darlington Core Strategy Development Plan Document 2011

CS7: The Town Centre

CS9: District and Local Centres and Local Shops and Services

Other Documents

Supplementary Planning Guidance Note – Guidelines for the Introduction of A2 and A3 Uses and Amusements Centres into the Secondary Shopping Frontages of Darlington Town Centre

RESULTS OF CONSULTATION AND PUBLICITY

Five letters of objection have been received raising the following concerns

- *We have a few concerns over this change of use. Aside from the obvious one about the number of bars already in Grange Road, we have experienced an increase in the amount of littering with chewing gum and cigarette ends since Prego opened next door and would wish to see sufficient suitable receptacles made available. Additionally, we are situated directly below 22 and are concerned that the structure of the building is capable of supporting the weight of a moving population of customers; a static dead weight of furniture is one thing but a large number of people moving around upon a wooden floor may present some structural difficulties. In that light, I would also ask if there is an intention to provide an environment suitable for dancing? As we feel this too may present some structural difficulties. Finally, what provision is being made for emergency exits?*
- *I am concerned about safe access, the locality of parking vehicles in relation to the entrance and poorly lit areas to the side and rear of the property.*
- *Not wanting to stand in the way of progress (having recently invested in the new Bathstore showroom immediately adjacent to the building in question) but I do not feel that the above change of use proposal would compliment or enhance the current business mix on Grange Road. As a retailer my objective is to provide and maintain a comfortable environment (both within my own place of business and its surrounding locality) for customers wishing to do business with ourselves (and as a consequence with our neighbouring businesses). In my opinion a bar would not be conducive to the above*
- *Specifically, what provision will be given to the needs of smokers? Where will customers stand and have a cigarette? Are my customers to walk a gauntlet of smokers/drinkers before entering my showroom? Before I open my doors in the morning what reminders of the night before will greet me? What mess or damage might I have to clean before I commence a days trading? I walk through town most mornings passing the already numerous drinking establishments to be disappointed by the level of mess left by drinkers ranging from discarded cigarette butts, empty bottles to vomit etc Unless the new owner of 22 Grange Road can guarantee to attract a more considerate clientele I can only assume that this disrespect for the local surroundings will be repeated here*
- *I am writing to object to the planning application on the grounds that it will impact on the operations of the businesses operating underneath the premises including Prego Cafe & Wine Bar. The businesses directly under the premises will suffer from an increase in noise created by many more people walking around on the floor above. Noise is transmitted through a poorly insulated building to the units beneath by people browsing the furniture shop. The change in occupation and nature of customer will increase this noise many times over.*
- *Night-time venues are largely accompanied by loud music, this will impact on the units beneath by completely changing the atmosphere. Currently only background music is played at Prego and music from above will fill the cafe below especially low frequency sound (bass sounds).*

- *The structural strength of the building. I am concerned that the building was never specified or constructed with regard to this application and would like to see assurances that the building is adaptable to such an application and that such work will be carried out.*
- *I wish to object to this planning application on the grounds of the amount of drinking establishments already operating in this area. I also have great concern from a safety point of view as to the suitability of these first floor premises with a single access. There are residents in Grange Road who also might like to be spared even more late night activities which inevitably bring noise, antisocial behaviour, urinating, vomiting, etc. Do we really want to end up with a town centre with nothing more to offer than bars, takeaways and charity shops*

Consultee Responses

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

The **Council's Environmental Health Officer** has raised no objections to the proposal subject to the imposition of planning conditions relating to sound insulation, ventilation equipment and refuse storage

Darlington Association on Disability accepts that it would be difficult to install an accessible lift to the premises.

The **Durham Constabulary Architectural Liaison** has no objections in principle to the proposal and has offered advice on the design of licensed premises

PLANNING ISSUES

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

- Planning Policy
- Impact upon the Visual Appearance and Character of the Conservation Area
- Amenity
- Highway Safety
- Disabled Access Matters

Planning Policy

The application site is within a secondary shopping frontage as defined by the Borough of Darlington Local Plan. Saved policy S5 of the Local Plan states that a change of use of a ground floor retail shop to uses such as an A4 use will not be permitted in secondary shopping frontages if they undermine the character and vitality of the relevant length of shopping frontage. The Supplementary Planning Guidance Note – Guidelines for the Introduction of A2 and A3 Uses and Amusements Centres into the Secondary Shopping Frontages of Darlington Town Centre (SPG) expands upon the policy and explains the calculations that are used to assess such applications.

However, as this retail unit is at first floor level the guidance within the SPG is not relevant and the principle of the proposed change of use is considered acceptable in planning policy terms and it will contribute to the diversity of the locality

Impact upon the Visual Appearance and Character of the Conservation Area

The building consists of a three storey stone building which contains the staircase leading to the main retail area above the ground floor commercial units. It is an attractive building within the Town Centre Conservation Area. The proposal does not involve any external alterations to the building and therefore it would not have an adverse impact upon the visual appearance of the locality or the Town Centre Conservation Area.

It is likely that any new signage on the building would require advertisement consent but no proposal has been submitted to the Local Planning Authority to consider as yet.

Amenity

The property is within a predominately commercial area of mixed uses. A restaurant, a retail shop and a bar are directly underneath the application site. There are other non retail uses such as restaurants and bars in the locality but the main use of the other properties is retail. It is understood that there are some residential properties on the upper floors of some of the existing outlets on the opposite side of Grange Road.

The applicant has confirmed that:

- The bar would operate from 1800 to 0100 Monday to Friday; 1200 to 0100 Saturdays and 1800 to 1200 Sundays.
- There are no plans to install a dance floor
- There will possibly be background music associated with the bar but there is no live music anticipated
- A policy would be put in place to control security, unruly behaviour, smoking areas etc

The Council's Environmental Health Officer has considered the application and raises no objections to the proposal subject to the imposition of planning conditions relating to sound insulation of the building, the installation of ventilation equipment and provision of refuse storage

The issue relating to the suitability of the premises for the proposed use in terms of structural soundness and fire safety would be covered by any Building Regulations application.

A number of the objectors have raised concerns over the proposal from an amenity perspective and that it could lead to anti social behaviour and public disorder issues such as litter dropping. It is often the case that new uses proposed, particularly in town centre locales, may be argued to give rise to possible criminality or illegal activities. Planning decision-makers therefore have to reason whether there is a real likelihood of such eventualities actually transpiring and, although local authorities are now statutorily bound to *consider* effects on crime, they also need to rationalise how much weight should be accorded to the issue. In decision making, much may depend on,

- the capability of the illegality to create a problem of major public concern having serious amenity or environmental implications,
- The strength of other means of control to deal effectively with the difficulty. Case law supports the view that some form of justification of public concern must be identified by the decision makers.

Fear of crime is a land use consideration but the weighing of this matter must be left to the decision maker. This requires an assessment of the concern actually experienced and not a subjective and paternalistic view. For fear of crime and public disorder to be material, there will need to be some reasonable evidential basis for that fear. Unjustified fear motivated by prejudice would not be a material consideration.

Aside from planning controls, the Council is also the Licensing Authority and the applicant would have to apply for a license in accordance with the Licensing Act 2003. The operating schedule associated with this license should make reference to the control of anti-social behaviour. The Act sets out four licensing objectives which must be taken into account when a local authority carries out its functions. They are:

- the prevention of crime and disorder,
- public safety,
- prevention of public nuisance, and
- the protection of children from harm

Licensing Laws provide the main administrative control affecting public houses and to some extent their requirements have overlapped with town planning powers. It may be expected that there will continue to be pressure on the planning system to refuse applications for new pub premises, or to impose restrictive planning conditions. This will then bring into play the general principle of administrative law that the power contained in one code of regulation should not be used for a purpose which properly concerns another regulatory code. This dictum is clearly set out in Circular 11/95 – The Use of Conditions in Planning Permissions.

The various amenity issues have been taken into account when determining the application and advice has been sought from the Council's Environmental Health Section and the Architectural Liaison Officer from Durham Constabulary. Neither of these has raised any objections to the principle of the proposal.

In these circumstances, it is considered that on balance, the planning application should be recommended for approval subject to appropriate planning conditions. It is also worth mentioning that the local authority as Licensing Authority still has the opportunity to assess the anti social behaviour implications of the proposal, even if planning permission is granted.

Highway Safety

There are parking bays on the highway to the front of the building which would be used to service the proposed bar along with the car park to the rear. The proposed change of use is unlikely to have a significant traffic impact and the Council's Highways Engineer has raised no objections to the proposal.

Disabled Access Matters

The building which contains the entrance and staircase does not have space to allow for the provision of an accessible lift for wheelchair users and the applicant has been unable to obtain land or crossover rights to allow additional external access. Although they are concerned that another property is not fully accessible for wheel chair users, Darlington Association on Disability (DAD) accepts that such measures are not achievable here.

The applicant has discussed accessibility matters directly with DAD and they intend incorporate features such as handrails and contrasting step nosings on the staircase to aid those with mobility difficulties.

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 for the change of use of the first floor retail outlet to a bar located within the Town Centre Conservation Area. The proposal is considered acceptable in general planning policy terms. The proposal does not include any external alterations to the building and it is considered that there would be no harm to the Town Centre Conservation Area. The proposal would not have an adverse impact in highway safety or residential amenity issues. Officers have taken crime and fear of public disorder as material planning considerations and advice has been sought with the Council's Environmental Health Section and Architectural Liaison Officer from Durham Constabulary. On balance, it is considered that, with appropriate planning conditions put in place the proposal is acceptable in this location. The following policies have been taken into account:

Borough of Darlington Local Plan 1997

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RECOMMENDATION

PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. A3 – Implementation Limit (Three Years)
2. The use hereby permitted for Class A4 (Drinking Establishments) purposes shall not commence until full particulars and details of a scheme to insulate the premises against the transmission or airborne and impact sound has been submitted to, and approved by, the Local Planning Authority and the development shall not be carried out otherwise than in accordance with any approval given.
REASON - To prevent noise disturbance to nearby properties.
3. D19 – Ventilation Equipment (Details Required)
4. The use hereby permitted shall not commence until details of the arrangements for storing of refuse or waste have been submitted to, and approved by, the Local Planning Authority. The details shall include the types of waste and the proposed hours and method of collection. The development shall not be carried out otherwise than in

accordance with any approval given and shall be completed prior to any part of the accommodation hereby permitted being occupied.

REASON - To safeguard the amenities of the area.

5. Notwithstanding the details shown on the approved plans, precise details for improving accessibility to the building for disabled people shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise in complete accordance with the approved details

REASON: In order to make the building accessible to disabled people in accordance with Policy CS2 of the Darlington Core Strategy Development Plan Document 2011

6. B5 – Detailed Drawings (Accordance with Plan)

SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION

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