

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 6 July 2011**

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<b>APPLICATION REF. NO:</b>	11/00268/CU
<b>STATUTORY DECISION DATE:</b>	23 June 2011
<b>WARD/PARISH:</b>	CENTRAL
<b>LOCATION:</b>	97 Bondgate
<b>DESCRIPTION:</b>	Change of use from shop (A1) to restaurant/bar (A3) as extension to existing Tapas Bar/Restaurant and installation of a new shop front (Amended plan and letter received 8 June 2011)
<b>APPLICANT:</b>	Mr Peter Turnbull

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**APPLICATION AND SITE DESCRIPTION**

The property is a three storey building located within the Town Centre Conservation Area. It was last used as a retail shop and the proposal involves a change of use to a restaurant/bar as an extension to the adjoining Tapas Bar (No 98 Bondgate). The proposal involves internal alterations and the installation of a new shop front. The applicant also wishes to enlarge the existing outdoor seating area at the front of the buildings but this element of the proposal does not require planning permission.

**PLANNING HISTORY**

07/00877/CU – In October 2007 planning permission was GRANTED for the change of use from a retail shop to a restaurant

**PLANNING POLICY BACKGROUND**

**National Policy**

Planning Statement 5 – Planning for the Historic Environment

**Borough of Darlington Local Plan**

S5 – Town Centre Food and Drink Uses

E38 – Alterations to Business Premises

**Darlington Core Strategy Development Plan Document**

CS2 – Achieving High Quality, Sustainable Design

**Other Documents**

Supplementary Guidance Note - Guidelines for the Introduction of A2 and A3 uses and Amusement Centres into the Secondary Shopping Frontages of Darlington Town Centre

**RESULTS OF CONSULTATION AND PUBLICITY**

No objections have been received following the Council's consultation exercise

**Consultee Responses**

**Darlington Association on Disability** has objected to the application on the grounds that the proposal does not incorporate the provision of an accessible toilet on the ground floor

The **Council's Environmental Health Officer (Commercial)** has no objections to the proposal subject to the imposition of a condition to secure the submission of a scheme to insulate the premises against the transmission of airborne and impact sound

**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 Character and Visual Appearance of the Town Centre Conservation Area

Residential Amenity

Disabled Accessibility Issues

**Planning Policy**

The property is located within the Secondary Shopping Frontage, as defined in the Borough of Darlington Local Plan 1997. Policy S5 (Town Centre Food and Drink Uses) states that:

*“Additional A3 uses will be permitted in the secondary shopping frontages provided that the overall concentration of non-shop uses in a particular length of frontage would not be such as to undermine its character or vitality as a shopping frontage”.*

Supplementary Planning Guidance- Guidelines for the Introduction of A2 and A3 uses and Amusement Centres into the Secondary Shopping Frontages of Darlington Town Centre (SPG) states that:

*“Where a proposal would result in the proportion of class A1 shop uses in the relevant length of frontage falling or remaining below 60%, then the overall concentration of non-shop uses will be considered to be such as to undermine its character or vitality as a shopping frontage. The proposal will thus conflict with Policies S4, S5 or S19 of the Local Plan and, in the absence of other material considerations, will not be permitted”.*

The relevant length of frontage in this particular case is the north side of Bondgate between St Augustine's Way and Commercial Street. This comprises seven units in a frontage totalling 51.5m. Four of the units are in retail use (the former Oxfam, currently vacant, the Singer Sewing Machine Shop, the application property and 92 Bondgate, currently a Hairdressers). The other uses consist of the Job Centre Plus office, the Old Yard Tapas bar / restaurant and the Tap

& Spile Public House. The retail units presently account for 49.5% of the length of the frontage. A change of use would reduce this to just 37.9%, well below the lowest acceptable threshold of 60% referred to in the SPG.

Moreover, as the application property is located next to the Old Yard, with the Tap & Spile next to that, the proposal would result in the siting next to one another of three non retail uses, with a continuous non-A1 frontage of 22m. This would constitute a significant break in the Class A1 shopping frontage, which would in itself be contrary to the guidance of the SPG.

However, in this instance, it can be argued with some justification that this part of Bondgate no longer functions as a true shopping frontage. With only 49.5% of the frontage length in retail use the level of shopping activity is already well below that necessary to support a viable and lively shopping frontage, and it would be difficult to sustain a case that a further reduction would 'undermine its shopping character or vitality'.

The application unit is of fairly modest size (about 100sqm gross floor space), not one of those known to be in short supply in the town centre and this part of Bondgate is also on the periphery of the defined centre, cut off from other main shopping frontages by Commercial Street and by the broad footway and carriageway of Bondgate.

There has also been a previous approval for a change of use of the premises to a restaurant use (see Planning History)

Having taken these other material considerations into account, it is considered that this section of Bondgate can no longer reasonably be regarded as a secondary shopping frontage and therefore the loss of the retail shop in this location is acceptable in general planning policy terms.

### **Impact upon the Character and Visual Appearance of the Town Centre Conservation Area**

The existing building has a timber shop front with two entrances on either side of a central display window. The proposal involves the insertion of a new shop front consisting of a central entrance with a full length window on either side, wrought iron work railings at a low level and two new canopies. The shop front would match the existing shop front belonging to the Tapas Bar.

The proposed shop front would improve the visual appearance of the building and it would not have an adverse impact upon the street scene or the Town Centre Conservation Area.

### **Residential Amenity**

There are residential properties above No 96 Bondgate and the Council's Environmental Health Officer has requested the imposition of a planning condition to secure the submission of a scheme to insulate the premises against the transmission of airborne and impact sound to minimise the impact of the proposal upon the upper floor of the neighbouring dwelling. The applicant has agreed to the imposition of an appropriate condition.

There would be no additional catering facilities as part of the proposal and therefore the occupiers of the neighbouring building will not be adversely affected by any noise emissions or smells from any additional chiller units, condensers or flue systems.

### **Disability Issues**

Policy CS2 of the Core Strategy seeks to promote high quality, safe, sustainable and inclusive design in new developments including convenient and attractive access for disabled people.

The proposed shop front includes a central doorway which does not incorporate a ramped access. This new doorway would be for staff use only when storing the pavement café furniture on an evening and all public access to the building, as extended, would be via the existing entrance into the Tapas Bar, which does have a ramped access. Following comments made by Darlington Association on Disability (DAD) the applicant has agreed to the imposition of a planning condition to ensure that there is no public access via this doorway.

The applicant has also submitted amended floor plans which show the internal passageway link between the two buildings being widened in order to improve circulation within the bar and restaurant areas following concerns raised by DAD

Whilst the applicant has made these revisions to the original proposal, DAD have objected to the application on the grounds that an accessible toilet has not been provided on the ground floor and that such a toilet should be provided as the size of both the existing restaurant/bar and outdoor seating area are being increased. DAD considers the proposal to be contrary to Policy R2 of the Local Plan, and Policy CS2 – Achieving High Quality, Sustainable Design.

The applicant has given consideration to the possibility of installing a ground floor toilet but, in his view, there is insufficient space within the building to incorporate such facilities. The existing yard is not within the ownership of the applicant and he would be unable to extend into this area. The applicant has stated that it is his intention to open the extended area on Fridays and Saturdays only, with the exception of some private functions but officers are aware that this timetable may change in the future if the venture is successful.

Officers have sought advice from the Building Control Section and they have confirmed that under the provisions of the Building Regulations the proposal does not constitute a change of use; therefore they could not insist that a ground floor toilet is provided.

Officers consider that based on the proposed use of the enlarged premises [restaurant] it is reasonable to require the applicant not only to provide satisfactory access for disabled people, but to ensure that they are able to avail themselves of all of the essential facilities, whilst within the premises. A condition requiring disabled toilet facilities is therefore included within the recommendation.

## **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**

Whilst the proposed change of use would be contrary to the development plan and the supporting Supplementary Guidance Note, there are other material planning considerations to take into account. Officers are satisfied that the loss of this retail unit would not have an adverse

impact on the viability and vitality of the town centre and there are mitigating circumstances for recommending approval for a non retail use in this section of the secondary shopping frontage. The external alterations would improve the visual appearance of the host building and they match the adjoining Tapas Bar. The proposal would not have an adverse impact on the Town Centre Conservation Area and it would accord with Planning Policy Statement 5 – Planning for the Historic Environment

Following negotiations the applicant has agreed to the imposition of a planning condition to restrict public access to the extended building via the existing access from the Tapas Bar and internal revisions have been made to improve circulation space within the property.

In addition, to enable a favourable recommendation to be arrived at, it is considered necessary to ensure that a disabled toilet is provided within the enlarged premises to comply with Policy CS2 – Achieving High Quality, Sustainable Design - The Darlington Core Strategy

### **National Policy**

Planning Statement 5 – Planning for the Historic Environment

### **Borough of Darlington Local Plan**

S5 – Town Centre Food and Drink Uses

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## **RECOMMENDATION**

PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. A3 – Implementation Limit (Three Years)
2. Notwithstanding the details shown on the approved plans, the entrance door within the approved shop front shall not be used by members of the public at any time unless other agreed in writing by the Local Planning Authority  
REASON: This entrance would need to incorporate improvements in order to be acceptable for members of the public and people with impaired mobility to use
3. D16 – Sound Insulation (Non-residential)
4. B5 – Detailed Drawings (Accordance with Plan)
5. Prior to the extended premises coming into use, details of toilet facilities at ground floor level suitable for use by disabled persons shall be submitted to and approved by the LPA. The approved details shall be fully implemented prior to the extended premises being brought into use and shall thereafter be retained.  
REASON: To ensure that adequate provision is made for disabled users of the premises.

**SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION**

Whilst the proposed change of use would be contrary to the development plan and the supporting Supplementary Guidance Note, there are other material planning considerations to take into account. Officers are satisfied that the loss of this retail unit would not have an adverse impact on the viability and vitality of the town centre and there are mitigating circumstances for recommending approval for a non retail use in this section of the secondary shopping frontage. The external alterations would improve the visual appearance of the host building and they match the adjoining Tapas Bar. The proposal would not have an adverse impact on the Town Centre Conservation Area and it would accord with Planning Policy Statement 5 – Planning for the Historic Environment

Following negotiations the applicant has agreed to the imposition of a planning condition to restrict public access to the extended building via the existing access from the Tapas Bar and internal revisions have been made to improve circulation space within the property.

In addition, to enable a favourable recommendation to be arrived at, it is considered necessary to ensure that a disabled toilet is provided within the enlarged premises to comply with Policy R2 Access for People with Disabilities of the Local Plan, and Policy CS2 – Achieving High Quality, Sustainable Design - The Darlington Core Strategy

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