

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 30 July 2008**

**Page**

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<b>APPLICATION REF. NO:</b>	<b>08/00541/FUL</b>
<b>STATUTORY DECISION DATE:</b>	<b>19th August 2008</b>
<b>WARD/PARISH:</b>	<b>HAUGHTON EAST</b>
<b>LOCATION:</b>	<b>Highland Laddie Hotel, 88 Haughton Green, Darlington</b>
<b>DESCRIPTION:</b>	<b>Erection of outdoor smoking shelter comprising timber decking and fencing area with jumbrella (Retrospective)</b>
<b>APPLICANT:</b>	<b>UNION PUB COMPANY</b>

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**APPLICATION AND SITE DESCRIPTION**

The application site is an existing public house situated on the south side of Haughton Road and within the Haughton Village Conservation Area. Mill Lane runs north south to the east of the site. The area is predominantly residential with some interspersed commercial properties.

A shelter has been erected to the rear of the premises to provide shelter for customers wishing to smoke. This consists of timber decking and a jumbrella. This application has been submitted as a result of complaints from local residents and seeks to regularise the development, with some minor alterations to the current structure.

A Design and Access Statement has been submitted as required by the Regulations.

**PLANNING HISTORY**

The site has a lengthy planning history however none are relevant to the determination of this application.

**PLANNING POLICY BACKGROUND**

The following policies are relevant in the determination of this application:

**Borough of Darlington Local Plan (1997)**

E38 – Alterations To Business Premises

H15 – The Amenity Of Residential Areas

## **National Policy Guidance**

PPG15: Planning and The Historic Environment (1994)

## **RESULTS OF CONSULTATION AND PUBLICITY**

Two letters of objection have been from local residents raising the following concerns:

- *I have had problems with unacceptable noise levels and offensive swearing from people sitting outside the public house – this noise is intrusive and has continued until well after 11pm. There have been times in the summer when I have been unable to leave my bedroom windows open because of the noise; With the pub door open the noise from the juke box, loud talking, foul language and shouting from customers both inside and outside the pub, grows as the night progresses; The noise on a weekday, particularly Thursday, is a major problem because the bedroom closest to the pub is occupied by my daughter who is studying at college and has difficulty sleeping due to the noise level; During the weekend the pub does not close until midnight and is extremely noisy especially as the night progresses;*
- *Since the smoking shelter has been there, I have seen from my back bedroom window people dropping cigarette ends over the fence and into Mill Lane – this is a regular occurrence and also an offence; Customers also spit into the lane and on one occasion I saw a customer projectile vomiting onto the lane;*
- *The jumbrella which was erected a year ago is already littered with bird droppings and I would imagine after a few years will become an eyesore;*
- *Underneath the jumbrella are halogen lights that illuminate the area – they are excessively bright and cast light onto our property;*
- *The smoking shelter overlooks our property;*
- *The customers tend to stand rather than sit when using the shelter – because the existing fence is chest height, the customers often lean against it whilst drinking / having a cigarette. I have two daughters aged 17 and 19 and we feel, as a family, uncomfortable when leaving and entering the house as the customers constantly look over the fence onto our property;*
- *Depending on which way the wind blows, the cigarette smoke from the Highland Laddie customers drifts through the window of the bedroom window closest to the pub;*

The Council's Environmental Health Officer has been consulted and has raised no objections to the proposed development.

## **PLANNING ISSUES**

The main planning issues to be considered in the determination of this application are:

- Planning Policy
- Residential Amenity
- Visual Amenity and impact on the character or appearance of the Haughton Village Conservation Area
- Section 17 of the Crime and Disorder Act 1998

### **Planning Policy**

Policy H15 (The Amenity Of Residential Areas) of the Borough of Darlington Local Plan seeks to control the effect of non-residential uses, which are situated within or close to residential areas, and can have a harmful effect, for example by reason of noise, smell, traffic and parking.

Policy E38 (Alterations to Business Premises) encourages alterations to business premises that do not have a material adverse effect on the character and appearance of the building, or the street scene in which it is located. It goes on to outline a number of criteria against which this can be assessed, mainly relating to shop fronts, signage and security measures.

These issues will be addressed in the following sections of this report.

### **Residential Amenity**

The nearest residential properties are to the east and south of the site, the easterly properties being separated by Mill Lane. It is acknowledged that the property most likely to be affected at No. 3 Mill Lane is set back from the public house and therefore the current situation is that they are in clear view of the shelter. This application has included the erection of a higher timber double skin fence with the relocation of the jumbrella away from the boundary of the property. The new proposals also includes for the removal of a timber gate and its relocation to the southern extent of the boundary to ensure that customers enter the smoking area from the public house only, and do not enter from the side gate, which could cause disturbance beyond the boundary of the public house.

Other matters raised by objection relate to reports of, and the future potential for, anti-social behaviour. While it is not possible to predict the behaviour of customers, it is also not appropriate to make assumptions, the principal issue being whether the use of the land for this purpose is acceptable, and not the nature of the customer. It is therefore not considered that this issue can be a determining factor in this case.

The Council's Environmental Health Officer has been consulted and has raised no objections to the development subject to a planning condition preventing any music being operated in the shelter at any time and controlling the use of the rear doors to ensure that they are open for access and egress only and closed at all other times. In addition, it is advised that the applicant discusses the smoking regulations with the Public Protection Division to ensure that the proposal complies fully with the legislation in respect of the prevention of smoke infiltrating into the building. A suitable informative is recommended to request that the applicant contacts the Public Protection Division in respect of this matter.

Overall it is considered that the proposal is unlikely to have a significant harmful impact on the amenities of surrounding residences. This assessment has been made taking into account the local complaints on the matter and the fact that the rear area can be legitimately utilised in conjunction with the public house, as a beer garden, without requiring planning permission. This controlled means of use of the area is considered to be a satisfactory means of securing a space for customers wishing to smoke.

### **Visual Amenity and impact on the character or appearance of the Haughton Village Conservation Area**

The development is situated to the rear of the premises and contained within the existing site and it is considered unlikely that it would harm the visual amenities of the locality. The proposal would be considered to have a neutral impact on the character or appearance of the Haughton Village Conservation Area, which would meet the necessary tests established by case law.

## **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 proposed development is considered acceptable in this location and will not give rise to conditions prejudicial to local amenity or highway safety. The application does not raise any issues in relation to highway safety or crime prevention. The proposal is considered to comply with the relevant policies of the development plan together with national guidance, as listed below:

## **RECOMMENDATION**

THAT PLANNING PERMISSION IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. B5 Detailed Drawings (Accordance with Plan).
2. Notwithstanding the details contained within this permission no external amplification equipment or live music shall be used or take place at any time within the outside smoking area.

REASON: In the interests of residential amenity.

3. The main rear access doors to the southern elevation of the building shall be opened only for access and egress purposes and shall be closed at all other times.

REASON: In the interests of residential amenity.

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

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**INFORMATIVE TO BE INCLUDED SHOULD PLANNING PERMISSION BE GRANTED**

The applicant is advised to contact the Public Protection Division (Healthy Workplace Officer) (Contact Richard Selkirk 01325 388563) to discuss the requirements under the smoking legislation.