

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 30 May 2012

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APPLICATION REF. NO:	11/00679/FUL
STATUTORY DECISION DATE:	3 January 2012
WARD/PARISH:	CENTRAL
LOCATION:	Retro, 82 Skinnergate, Darlington
DESCRIPTION:	Internal alterations to facilitate the change of use of the building from public house to public house with night club above, Erection of rear yard infill to create an extension to ground, first and second floors, new entrance onto Mechanics Yard, and alterations to Skinnergate facade including new steps, raised patio, wrought iron railings and disabled lift (amended plans and additional information received 25 April 2012)
APPLICANT:	Mr Alistair Powell

APPLICATION AND SITE DESCRIPTION

No 82 Skinnergate is a listed building located within the Town Centre Conservation Area. The building has had a number of uses including a bank before its current use as a Public House. The proposal involves the comprehensive refurbishment of the building to create a public house on the ground floor and a night club on the first floor. The works include

- Infilling the service yard area with a three storey extension to link the main sections of the building together to create the entrance to the first floor club off Mechanics Yard;
- The removal of the existing steps and ramps on the front elevation and the reinstatement of the railings and central steps;
- The introduction of a disabled persons lift to the right hand side of the main entrance;
- The enlargement of the existing front windows to create glazed doorways;
- Internal alterations such as the removal of the first floor balcony and the erection of a new floor to create the first floor club;
- The creation of a first floor drinking terrace at the rear of the building above an existing kitchen area, also to be extended

The site is within a predominately commercial area, although there are residential properties in the locality. Mechanics Yard which runs between Skinnergate and High Row forms the northern boundary of the site.

A separate planning application for listed building consent (ref no: 11/00680/LBC) forms part of this Agenda

PLANNING HISTORY

The property has a long Planning History but the most relevant entries are:

91/00554/MISC In September 1991 planning permission was GRANTED for the change of use and alterations to create public house and restaurant, caretakers flat incorporating snooker/social rooms

91/006545/MISC In November 1991 planning permission was GRANTED for a ramp access for the disabled and alterations to front wall and railing

94/00587/MISC In December 1994 planning permission was GRANTED for the part removal of front wall and railings and formation of new stepped entry

94/00588/MISC In December 1994 listed building consent was GRANTED for the part removal of front wall and railings and formation of new stepped entry

96/00505/LBC In October 1996 listed building consent was GRANTED for internal alterations and external renovation and decoration

PLANNING POLICY BACKGROUND

The relevant policies are:

National Planning Policy Framework

Borough of Darlington Local Plan 1997

E38 Alterations to Business Premises
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, Sustainable Design
CS7 The Town Centre
CS14 Promoting Local Character and Distinctiveness
CS16 Protecting Environmental Resources, Human Health and Safety

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

Four letters of objection to the original scheme have been received and the concerns can be summarised as follows:

- *I would like to object as every morning I open my shop only to be met by empty bottles, glasses and other disgusting objects all of which comes from drunken people with no respect for anything or anyone's property. Earlier this year I had my shop window put out by these same people and it makes you think what it would be like when this becomes a night club*
- *My only concern regarding the plans is that Mechanics Yard is a through way for all the goods being delivered to the House of Fraser store as well as an access route for the staff car park. Therefore the buildings works would not be able to interfere with the access through Mechanics Yard*
- *The Head Chef of 81 Skinnergate uses Mechanics Yard for deliveries as well as access for the car park. Any increase in traffic and people on that road would increase the existing problem that they already have for using this narrow access to their building*
- *Servicing and waste disposal for the existing use is via the building's existing service yard which his accessed from the existing side lane off Skinnergate (Mechanics Yard). This existing service yard is the location of the proposed three storey extension to the premises. It would appear that a front and side pedestrian access is being proposed, both of which would be inappropriate to serve the normal servicing/waste disposal requirements expected of a public house and a separate upper night club. The proposed side access is also identified as the only disabled access into the building. Given that the Mechanics Yard also service the car parking area for several existing uses including the Marco Polo restaurant (81 Skinnergate), the House of Frasers, the Quaker Café Coffee House and the existing car park such pedestrian access into the proposal is considered totally inappropriate and could only lead to an unacceptable pedestrian/vehicular conflict and create a serious highway safety*
- *Existing pedestrian access into the existing is from Skinnergate. The proposed pedestrian access is from a redesigned front access from Skinnergate and the new access from Mechanics Yard which is also the proposals only disabled access. Such a pedestrian access arrangement can only lead to pedestrian and vehicular conflict in Mechanics Yard from mid morning and into the early hours. Such additional pedestrian activity in and on the corner of Skinnergate and the Mechanics Yard could only further aggravate an already sensitive relationship currently existing between the clientele of the Marco Polo restaurant and the new patrons to the applications proposed uses.*
- *Given the floor area of the proposals, it must be assumed that the proposed uses would attract several hundred patrons. It is also reasonable to assume that at least 50% of these patrons would utilise the side access together with all disabled patrons. Given the location of nearby residential property, such pedestrian activity occurring in the early hours of the morning would clearly raise the ambient noise levels of the area to levels which may be considered inappropriate*

Six letters of support have been received and the comments can be summarised as follows:

- *This application should receive the strongest support. The building will be sympathetically refurbished and the venue will be something for the people of Darlington to be proud of. The Keys in Yarm has set the bar and Retro could be even better. It will provide a good boost to the local economy and will I am sure be well managed.*
- *I understand this application is currently being considered. The proposals appear to me to have positive benefits for this area of Darlington which is in desperate need of improvement. It will provide for the sympathetic restoration of a land mark building with good quality food being offered downstairs and high quality night club upstairs. The fact that this establishment will be run by operators who have a proven track record from*

their Yarm operation of providing quality in a safe environment should be seen as huge benefit for Darlington's currently ailing town centre. All steps possible should be taken to ensure that this application is successful.

- *How can this be recommend to be refused by a council officer because of vehicle access? It is a pedestrian area. The alleyway is hardly ever used by vehicles. Please give this some thought and reconsider.*
- *The application is to revive a failing building pending large amounts of money and generating employment. This should be applauded and encouraged.*
- *I would strongly recommend that this permission be granted. I believe that the operator would run this properly with a good quality food offering downstairs and a safe environment in the night club with zero tolerance on the trouble front in the night club, a mirror image of there Yarm and Middlesbrough outlets. It is great to see people been prepared to invest in the town centre generating employment and new facilities.*
- *As a resident of Darlington for over 10 years I can honestly say that the regeneration of the institute building could be the best thing that's happened to Darlington in years. After experiencing the well run and modern venues that the Keys operate in Yarm and Middlesbrough I can only believe that this refurbishment of a landmark building would breath welcome life into Skinnergate and give the more discerning resident of Darlington a fantastic alternative for late night entertainment. In these times of austerity I think this is exactly what Skinnergate, Darlington and the people want. A breath of fresh air*

Consultee Responses

The **Durham Constabulary Architectural Liaison Officer** has objected to the creation of the entrance off Mechanics Yard

The **Durham Constabulary Traffic Management Officer from Durham Police** has objected to the creation of the entrance off Mechanics Yard

Darlington Association on Disability has objected to the use of the disabled lift and the creation of the entrance off Mechanics Yard

The **Council's Highways Engineer** has objected to the creation of the entrance off Mechanics Yard

The **Council's Environmental Health Officer (Commercial)** has not objected to the application

PLANNING ISSUES

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

Planning Policy

Residential Amenity

Impact upon the Town Centre Conservation Area

Highway and Pedestrian Safety

Disabled Access

Planning Policy

The authorised use of the existing building is a public house (Class A4). The introduction of a night club (Sui Generis) within the building would require planning permission. The application site is within a secondary shopping frontage as defined by the Borough of Darlington Local Plan but Saved policy S5 (Town Centre Food Drink Uses) of the Local Plan relates to a change of use of a ground floor retail shop to uses such as a Club. 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 but also relates to the loss of retail shops.

Policy CS7 of the Core Strategy states that the vitality and viability of the town centre will be safeguarded and enhanced by promoting its role as a sub-regional centre. It will be the locational focus for the development of, amongst other uses, entertainment uses including for the evening and night time economy.

In general planning policy terms the use of the building as a public house and night club is acceptable.

Residential Amenity

The property is within a predominately commercial area but there are residential properties in the locality such as British School Yard; Friends School Yard and Howards House, Clarks Yard.

The current licensed opening hours are as below with additional time given for patrons to vacate the premises and exemptions for seasonal occasions:

- 10:00 – 02:00 Monday to Thursday
- 10:00 – 3:00 Friday and Saturday
- 11:00 - 01:00 Sunday

The application forms that accompany the planning application state the proposed hours of operation as being:

- 10:00 – 02:00 Monday to Friday
- 10:00 – 03:00 Saturday
- 11:00 – 01:00 Sundays

It is often argued that the type of uses proposed, particularly in town centre locations may give rise to possible criminality, illegal activities and other amenity issues. Planning decision-makers therefore have to consider 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 and unjustified fear motivated by prejudice cannot 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 in relation to the redevelopment of these premises. 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 principle is clearly set out in Circular 11/95 – The Use of Conditions in Planning Permissions.

The Council's Environmental Health Officer (Commercial) has no objections to the principle of the development. He has raised no objections to the rear smoking terrace being in operation whilst the club is open but he would restrict the use of the front terrace for food and drink purposes to the time constraints imposed upon pavement cafes. He would expect to give further advice on the management of these areas and the overall use through any Licensing application procedures.

Impact upon the Town Centre Conservation Area

The external alterations to the building, in design terms, are considered acceptable and would improve its visual appearance and its impact upon the street scene and the wider Town Centre Conservation Area. The proposal would comply with the National Planning Policy Framework in terms of impact upon the Conservation Area. Also, having the public house use operating during daytime hours is welcomed.

Highway and Pedestrian Safety

There are steps and a ramp leading to the main entrance to the building from Skinnergate. Once inside patrons can enter the main ground floor bar area or use a staircase to the first floor bar and balcony areas.

The proposal involves the removal of the steps and ramp at the front of the premises and replaces them with a central set of steps leading to the ground floor public house. The proposed first floor club would be mainly accessed by a new entrance off Mechanics Yard via the proposed three storey infill service yard extension. The entrance would be slightly recessed with double doors.

Mechanics Yard leads from Skinnergate to a pedestrian access onto High Row. It is an adopted public highway which is approximately 3 metres wide between the application site and No 81 Skinnergate (Marco Polo Restaurant) before it broadens as a result of a car parking area and then it narrows again as it leads towards High Row. The Yard is used for deliveries for the House of Fraser warehouse/storage areas and for the Quaker Coffee House and the car park within the Yard is used by the staff of Binns and Marco Polo restaurant. Vehicles can access Skinnergate

and Mechanics Yard between 17:00 and 10:00 (10:30 on Sundays) and there are parking restrictions between the hours of 08:00 and 18:00.

The Council's Highways Engineer has a major concern that as Mechanics Yard is very narrow at the entrance point, there will be a conflict between vehicles and patrons and wheelchair users using and queuing to enter the club entrance. The inter visibility at the entrance will be poor and it is a concern that patrons and door supervisors will congregate on the Yard consequently causing obstruction for vehicles that have authorised access for the public highway.

The Durham Constabulary Architectural Liaison Officer has objected to the proposal and stated *"The access from Mechanics Yard raises some concerns. There is an obvious conflict between vehicles using the car park and people queuing to get into the club. There is also the question of where the door staff will be deployed, ideally they should have a safe and sheltered area from where they can monitor the queue. There should be no recessed areas along the entire length of the alleyway as recesses near to licensed premises generate problems. I also believe there will be issues further along Mechanics Yard after the car park where it narrows into an alleyway. This will increase usage during the late night hours"*

The Durham Constabulary Traffic Management Officer objected to the original proposal stating that *"the entrance to Mechanics Yard, which gives access to businesses and a car park as well as pedestrian access to these areas, is not wide enough to accommodate a pedestrian access of this nature from what could potentially be a well frequented business. Any such access would by its very nature give rise to serious road safety concerns"*

Following the submission of the amended plans, the Durham Constabulary Traffic Management Officer reiterated his concerns and stated *"Having considered the matter further we note pub / club access on the vehicular / pedestrian access into the Yard to the rear of the premises. This is not only the access but is also the emergency services access should there be an incident requiring their attention in this area. As I recall the access is somewhere in the region of 3 metres wide and is totally unsuitable for an access where queuing may be a feature of the patrons to the proposed development.*

Of more consequence should there be the requirement to evacuate under an emergency situation then to expect patrons to leave the premises into a confined area is not only unacceptable but potentially dangerous given the panic which may be ensuing. We also have to be conversant with the fact that some patrons although not drunk will be under the influence of alcohol to some degree and their ability impaired as a consequence.

From our own particular point of view we would wish all accesses to be out onto Skinnergate where our resources can be targeted to dealing with any issues requiring our attention and the patrons are out in the street with good clear sight lines by which to leave the area quickly and safely. Also should the access be to the side there may well be instances of public disorder which may not be immediately apparent given the extremely narrow field of vision of this area.

In view of our concerns in relation to public safety we cannot support this application and in view of the serious nature of our concerns wish to register our formal objection."

The applicant has submitted a Traffic Survey over a two week period which indicates that the busiest time for vehicle usage is between 15:00 and 21:00 and that between 21:00 and 02:00 (when the club would be operating) vehicle usage is limited. Officers have considered the information contained within the Survey but the highway and pedestrian safety concern remain

as it will take just one vehicle using the Yard to cause disruption and obstruction to people congregating at the entrance and along the Yard.

Disabled Access

The NPPF indicates that the planning system can play an important role in creating healthy, inclusive communities. The government has previously stated (Planning and Access for Disabled People: a Good Practice Guide) that it wants a commitment to breaking down unnecessary physical barriers and exclusions imposed on disabled people by the poor design of buildings and places, and the needs of disabled persons should be properly considered as an integral part of the development process.

Policy CS2 of the Core Strategy seeks high quality, safe, sustainable and inclusive design that includes safe, convenient and attractive access for disabled people. The objective of securing development that is accessible to and can be used by disabled people is part of established national planning policy and the local development plan (the Core Strategy).

There is an existing disabled ramp on the Skinnergate frontage leading directly to the main entrance of the building. The proposal originally involved the removal of the ramp and use of the entrance off Mechanics Yard as the sole disabled access to the building and Darlington Association on Disability (DAD) objected to that scheme. The proposal has been amended so that it would still result in the removal of the existing ramp but it now introduces a disabled persons lift on the Skinnergate frontage to the right hand side of the main entrance. The entrance off Mechanics Yard would provide access for disabled persons to the night club.

Darlington Association on Disability has objected to the application and has stated *“This Building has had a wheelchair accessible ramp at the main entrance in Skinnergate for many years and there are no exceptional circumstances why that should be removed. The proposed alternative is the removal of a perfectly good ramp and replace it with an external lift. I object because the proposed lift access is unreasonable. To be able to use this lift the area that is proposed for outside seating would not be able to have any seating because it is not wide enough to give a clear unobstructed landing and walkway which defeats the object of removing the ramp. External lifts are prone to constant breakdowns and vandalism so they are never available when needed. Others are so heavily secured with keys and bells that people’s independence is lost and so is the access. The lift would also need a guaranteed clear unobstructed landing at the bottom and the applicant can’t give that because it is the public highway.”*

With regard to the entrance off Mechanics Yard, D.A.D. have objected on the following grounds *“Mechanics Yard is a very busy service yard with large deliveries going to Binns and it would be irresponsible to deliberately put disabled people into an area that at times can be dangerous for any pedestrian. At night vehicles still have a right to use the yard and do. Young disabled people like to go to clubs and they should not be put in danger because their senses are not as others.”*

It is considered that the removal of the existing ramp and the use of a lift downgrades the existing disabled access arrangements to the main entrance of the building and the use of the entrance off Mechanics Yard as a disabled access is not considered acceptable and is potentially dangerous. The proposal would be contrary to the Core Strategy.

CONCLUSION

The principle of the redevelopment of the building is welcomed but the creation of an entrance off Mechanics Yard and the replacement of the existing disabled ramp with a lift are not

considered acceptable and therefore the application should be refused. It is considered that the entrance off Mechanics Yard will lead to unacceptable conflicts between vehicles and patrons of the building and the use of a lift is considered to be an inappropriate method of disabled access when the existing access arrangements are adequate and could be retained. It is also considered that the use of the side access could give rise to public disorder issues.

RECOMMENDATION

PLANNING PERMISSION BE REFUSED FOR THE FOLLOWING REASONS:

1. The proposed entrance into the building off Mechanics Yard will lead to conflict between vehicles (including emergency vehicles) and pedestrians and disabled persons which would be prejudicial to highway safety. The proposal does not provide safe and convenient access for pedestrians and disabled people and it would be contrary to Policy CS2 (Achieving High Quality, Sustainable Design) of the Darlington Core Strategy Development Plan Document 2011.
2. The removal of the existing disabled access ramp and the use of a lift instead is not considered to be a convenient method of disabled access to the building and would be contrary to Policy CS2 (Achieving High Quality, Sustainable Design) of the Darlington Core Strategy Development Plan Document 2011.
3. It is considered that the use of the proposed entrance / exit to the building from Mechanics Yard by virtue of its location will lead to surveillance problems that will make it more difficult to control any instances of public disorder should they arise in this area contrary to Policy CS2 (Achieving High Quality, Sustainable Design) of the Darlington Core Strategy Development Plan Document 2011.