

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 8 June 2011

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APPLICATION REF. NO:	11/00107/FUL
STATUTORY DECISION DATE:	14 April 2011
WARD/PARISH:	CENTRAL
LOCATION:	14 and 16 Coniscliffe Road, Darlington
DESCRIPTION:	Erection of roof terrace incorporating front and rear balustrading over existing bar area and internal alterations to create new access points to the first floor and roof at 14 Coniscliffe Road and creation of first floor w.c facilities above 16 Coniscliffe Road (Additional plans received 31 March 2011 and 6 April 2011; Revised Design and Access Statement received 19 April 2011 and amended plans received 3 May 2011)
APPLICANT:	Mr Phillip Robson

APPLICATION AND SITE DESCRIPTION

No 14 Coniscliffe Road is a single storey building currently occupied by Hash Bar and Grill. There is a secondary access in the frontage of the property which leads to a staircase to No 16 Coniscliffe Road which is above Nos 18 and 22 Coniscliffe Road, which are occupied by Reema Restaurant and Number Twenty2 respectively. The rooms in No 16 Coniscliffe Road are currently vacant.

The proposed layout of the development has been amended so that the proposal involves the creation of a roof terrace with balustrade above Hash Bar and Grill and the creation of first floor w.c facilities above No 16 Coniscliffe Road. The roof terrace would be accessed via the existing staircase off Coniscliffe Road and a new staircase with the existing bar area. A first floor landing window would be replaced with a door, which would lead onto the roof terrace area.

A roof light, which currently allows natural light into Hash Bar and Grill would be removed to facilitate the formation of the roof terrace and a balustrade, measuring 1.3 metres in height would be positioned approximately 800mm from the edge of the roof.

This part of Coniscliffe Road is a mixture of commercial properties but there are currently residential properties (Hogarth Court and Westpoint) approximately 45 metres and 50 metres respectively to the west of the application site.

The property is also within the West End Conservation Area.

PLANNING HISTORY

03/00758/CU In September 2009 planning permission was GRANTED for a change of use from a shop to a Class A3 use (Food and Drink)

PLANNING POLICY BACKGROUND

National Planning Policy

Planning Policy Statement 5 – Planning for the Historic Environment

Borough of Darlington Local Plan 1997

R1 – Designing For All

R2 – Access for People with Disabilities

S5 – Town Centre Food and Drink Uses

E29 – The Setting for New Development

E46 – Safety and Crime

E48 – Noise Generating/Polluting Development

E49 – Noise Sensitive Development

The following policy of the recently adopted Core Strategy has been taken into account

CS2 (Sustainable Design)

Other Documents

Town Centre Conservation Area Appraisal 2010

RESULTS OF CONSULTATION AND PUBLICITY

Ten letters of objection were received. The concerns over the original proposal can be summarised as follows:

- *The obvious problems would be aesthetic, affecting the appearance of the buildings which are in a conservation area and environmental, allowing an increase in noise and nuisance from the patrons who would be heard from the street below*
- *There are sufficient pubs and clubs in the area and these rows of buildings concerned remain one of the few areas of the town which retain much of their original elegance, which should be preserved*
- *Any balustrading would go against the visual aspect of the street scene*
- *Persons revelling with drinks could throw bottles at those below as well as intimidate those waiting to enter adjacent restaurants and bars*
- *Hash bar has only a temporary agreement for use of the yard to the rear and has no right of access for refuse storage/collection let alone deliveries. Any access for builders would be denied forcing all vehicles to park on Coniscliffe Road*
- *No 16 is accessed by a very steep staircase which does not make for safe entry by large numbers of people, indeed there have been several accidents in recent years. No external fire escape is possible and there is a lack of accessibility for less able bodied people*
- *I would doubt that the structural integrity of the building would be sufficient to withstand the weight and movement of large numbers of people created in such an environment*

- *Adequate supervision must be made at all times and the layout of the building does not allow this. Extra security staff would be required*
- *The proposal would cause drainage problems*
- *The impact upon Number Twenty2 would be devastating. Hash Bar attracts a younger crowd and people using Number Twenty2 might feel intimidated by so many young people in the street and above on a terrace. Noise from above will be a problem and very off putting to clientele of Number Twenty2*
- *A roof terrace would be out of character in the conservation area*
- *This would lead to a nuisance to people walking up and down the road and those living in nearby residential development*
- *Drinks, cigarettes or even glasses could be thrown onto unsuspecting members of the public. Someone may fall or be pushed over the balustrade*
- *It would have an impact on the character, fabric and appearance of the buildings and the conservation area*
- *Noise would be created not just from the general bustle of such a business but also from people on the terrace talking/shouting to people on the street*
- *Objects will be dropped from the above*
- *The development is contrary to conservation area planning policies and the Town Centre Character Appraisal*
- *It will introduce an unnatural feature into the street scene.*
- *Even with increased supervision, the potential for serious danger and inconvenience to pedestrians passing below, together with the prejudice to highway safety makes this a high risk development as far as public safety is concerned*
- *The proposal will create high levels of noise*
- *The area is already well served by bars and restaurants and an additional one is not needed this area*
- *If planning permission were granted this could create a poor precedent in the conservation area*
- *I am not against an increased number of pubs or bars in Darlington Town Centre. However, I am of the view that a “pub on top of a pub” is not an appropriate use of the properties in question. It is an over intensification of the area.*
- *A planning condition should be imposed requiring that no music be played on the terrace.*
- *A terrace set back from the street may be a more suitable solution in terms and safety*
- *We have concerns over the potential level of litter, bottles and cigarettes thrown from the terrace and the risk to pedestrians*
- *The proposal would affect the appearance of the shop frontages of this and other businesses which form a pleasing row. It would also obstruct the view of the first floor of the house set back from the street which is visible from the road and has a symmetrical façade*
- *Even with stringent monitoring and control, the inevitable boisterous nature of patrons will lead to a deterioration of the street scene and have a negative effect on the area*

A letter from a representative of Darlington County Court, the property adjoining 14 Coniscliffe Road has been submitted and their concerns can be summarised as follows:

- *Noise disruption during the proposed conversion works. The Court has daily sittings, generally between 1000 and 1600 Monday to Friday and one of the judicial chambers is adjacent to the roof terrace*

- *The subject nature of the hearings at the court is often extremely upsetting for litigants and wholly incompatible with disturbance of the kind generally associated with proposed use of the roof area*
- *Increased risk of vandalism to court property*
- *Falls from heights*
- *The balustrade appears to be fixed to the County Court wall, which is a listed building*
- *General impact on conservation area*

Following the submission of the amended plans, a further letter has been submitted from a previous objector and the contents can be summarised as follows:

- *I have no objection in principle although I do have some concerns. Substantial structural work would need to be carried out to strengthen the roof before the public can be allowed to use it as a terrace. Any balustrading would need to be well away from the front edge of the roof and be such a height to deter persons using the terrace from throwing objects at the public at pavement level and indeed shouting at those persons*
- *Any toilet facility created would need to be built to be absolutely certain of having water tight flooring. The Indian restaurant is immediately below the proposed toilets and any spillage or overflow would have a devastating effect*
- *The staircase leading to the roof terrace is very steep and rises some 5 metres, this is extreme for public use especially when alcohol is involved*
- *Assurances will be required as to security and supervision of the terrace area, plastic glasses will be needed and a "No Bottle Policy" will need to be imposed*
- *The staircase should not compromise the access to No 16 Coniscliffe Road for future use as this is a separate property and may not always be used in conjunction with No 14.*

Consultee Responses

Darlington Association on Disability has submitted a Holding Objection.

The **Durham Constabulary Architectural Liaison Officer** has no objections in principle to the scheme

The **Council's Principal Environmental Health Officer (Commercial)** has requested the imposition of planning conditions relating to the playing of recorded or amplified music; the hours of use for the roof terrace and that no smoking shelters should be provided.

The **Council's Highways Engineer** has raised no objections subject to measures being put in place to ensure that debris cannot be thrown from the roof terrace onto the public highway.

Following the submission of the amended plans, he considered that it may be appropriate to carry out a risk assessment.

The **Council's Anti Social Behaviour Officer** has confirmed that there have been no anti social behaviour cases on the property or the immediate area but should such issues arise as a result of the development then the Anti Social Behaviour Team would deal with them.

The **Licensing Sergeant from Durham Constabulary** has confirmed that a Licensing Application would need to be submitted but he has provided some general advice on the proposal

PLANNING ISSUES

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

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

Planning Policy

Whilst this is an application for an extension to an existing Bar, Policy S5 (Town Centre Food and Drink Uses) of the Borough of Darlington Local Plan seeks to prevent or control the introduction of non retail uses in the primary and secondary shopping frontages within the town centre. Elsewhere within the town centre, non retail users, such as bars are permitted provided that there will be no material adverse effects on residential amenities. This property is not within a primary or secondary shopping frontage and therefore the principle of enlarging the existing premises accords with Policy S5 subject to the amenity issue being satisfied.

Policy E46 (Safety and Security) of the Plan states that proposals for development, including the refurbishment of existing buildings will normally be required to be designed to create a safe and secure environment.

Policies E48 (Noise Generating/Polluting Development) and E49 (Noise Sensitive Development) are concerned over noise emissions from developments and to secure appropriate mitigation measures wherever possible

Visual Appearance

The application site falls within the Town Centre Conservation Area which was designated in 1976. Coniscliffe Road is described in the March 2010 Character Appraisal as one of the gateways to the Town Centre Conservation Area, at Larchfield House, buildings having comparable height, scale and massing. All buildings on this part of Coniscliffe Road that lies within the Town Centre Conservation Area are two storeys or more, with the exception of No. 14, which is single storey. This part of the street is a mixture of commercial and residential development, but the vitality of the salons, restaurants and bars in this location, with well-designed shopfronts and advertisements, make a positive contribution to the vitality of the Conservation Area.

Policy HE7.5 of Planning Policy Statement 5 – Planning for the Historic Environment (PPS 5) covers new development within area-based heritage assets such as Conservation Areas. The Policy states “Local planning authorities should take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, height, massing, alignment, materials and use.”

This application proposes the creation of a roof terrace to enable use of a second storey to No. 14 Coniscliffe Road, increasing the use of the building as a bar. The balustrade to the front of the terrace will be stainless steel uprights and hand rail with toughened glass. The design of the balustrade has been negotiated with the applicant as a high quality, contemporary solution at a height of 1.3 metres, the lowest height considered necessary for safety purposes. A contemporary solution was encouraged to evidence the balustrade and roof terrace are a recent introduction, as the existing shopfronts to Nos. 14-22 evidence they are an Edwardian addition to an older building. The location of the balustrade is set back 0.3 metres from the edge of the

roof not only for safety but to lessen the visual impact of the balustrade, which is primarily open in nature due to the predominance of glass; this has taken into consideration that the first floor of No. 16, the neighbour to the west is set back from the frontage of the County Court, the neighbour to the east, again aiming to lessen the visual impact on the Conservation Area.

It is considered that this development will make a positive contribution to the character and the local distinctiveness of the historic environment in this part of the Town Centre Conservation Area, with no negative visual impact, in compliance with Policy HE7.5 of PPS5.

Officers can confirm that the County Court on Coniscliffe Road is not a listed building so whilst the fixing of the balustrade onto this building may raise ownership issues, it would not raise any listed building matters.

Residential Amenity

The site is within a predominately commercial area, although there are residential properties on Coniscliffe Road to the west and to the rear of Skinnergate (Friends School Yard and Arcadia Court) to the north

The applicant has confirmed that the hours of opening for the terrace would be restricted to 2300 with no live or recorded music to be played. An extra member of security will be employed on a Friday and Saturday night from 8.00pm to police the terrace area and CCTV will be installed along with a quality fire alarm system. No draught lagers would be sold from the bar area and the Challenge 21 scheme will be employed for the roof terrace and the existing property. The industry standard for an external balustrade is 1.10 metres but the proposed balustrade will be 1.3 metres to ensure extra safety.

A number of the objectors have raised concerns over the proposal from an amenity perspective and that it could lead to crime and anti social behaviour. 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 such as public disorder to litter dropping. 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 to be material, there will need to be some reasonable evidential basis for that fear and that unjustified fear motivated by prejudice cannot be a material consideration.

The Council's Anti Social Behaviour Officer has confirmed that the Team has not got an on going anti social behaviour case for the existing property. If planning permission were to be granted, any complaints to the Team would be handled by the Officer for that area.

The Licensing Sergeant from the Police has been approached by the applicant for advice. In general terms, the Licensing Sergeant would expect to see a number of issues introduced in order to address the Crime and Disorder objective within a Premises License application. These relate to the installing CCTV cameras to comply with Durham Constabulary guidance for CCTV in Licensed premises; the provision of an SIA registered doorman on the first floor; a restriction on hours for the roof terrace to be less than the rest of the premises; the formal introduction of a Challenge 21 proof of age scheme and the applicant has confirmed that these measures will be put in place.

The Architectural Liaison Officer for Durham Constabulary has raised some potential areas of concern but he has no objections, in principle, to the roof terrace subject to the management controls indicated by the Licensing Sergeant being put in place.

The Council's Principal Environmental Health Officer (Commercial) has raised no objections to the principle of the development but he has requested the imposition of planning conditions relating to preventing the playing of recorded or amplified music and restricting the hours of use for the roof terrace to 1200 to 2300

Aside from planning controls, the Council is also the Licensing Authority. The re-development of the premises will require that the Premises Licence will need to be varied in accordance with the Licensing Act 2003. The operating schedule associated with this variation should make reference to the control of anti-social behaviour on the terrace. 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.

Officers have taken crime into consideration when determining this application and sought advice from the Council's Environmental Health Section and Anti Social Behaviour Team and the Licensing Sergeant and Architectural Liaison Officer from Durham Constabulary. Neither of these have raised any objections to the proposal but they have provided advice as to what measures should be put in place to deal with the issues of anti social behaviour. 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.

In these circumstances, it is considered that on balance, the planning application should be recommended for approval subject to planning conditions relating to outdoor music and amplified music; the hours of use and no smoking shelters being provided. Whilst other matters such as CCTV and extra security are required, these would form part of a Premises License application and they should not be secured by planning conditions

Highway Safety

The Council's Highways Engineer has raised no objections to the proposed development subject to the undertaking of a risk assessment to prevent debris from being thrown from the roof terrace.

Disabled Access

Policy R1 (Designing for All) states that the design and layout of new development will be required, where applicable and having regard to the scale, location and proposed use, to make provision to meet the needs of all members of the community, including people with disabilities

Policy R2 (Access for People With Disabilities) states that proposals for alterations to existing buildings to which the general public and employees have access will be required, where practicable and reasonable, to provide suitable access and facilities for people with impaired mobility

Darlington Association on Disability have submitted a Holding Objection and discussions between the applicant and DAD are ongoing. Members will be informed verbally at the Planning Committee upon the outcome of the discussions

Other Matters

All building work would be carried out in accordance with Building Regulations as regards the structural integrity of the proposal and the applicant would resolve any issues with regard to leaks, waste etc from the new first floor wcs. Sound proofing underlay will be installed to reduce noise into the neighbouring properties.

It does appear that the proposed balustrade would be attached to the adjacent County Court building, and it is considered appropriate to impose a planning condition to identify the exact position and method of attachment for the balustrade.

Officers have spoken to the Fire Officer and they would not comment upon the proposal until a Building Regulations application has been submitted to the local authority.

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 creation of a roof terrace with associated internal and external works above an existing bar in the town centre. The premises are within the Town Centre Conservation Area and it is considered that the proposal will make a positive contribution to the Area in accordance with Planning Policy Statement 5 – Planning for the Historic Environment. Officers have taken crime and fear of crime as material planning considerations and advice has been sought with the Council's Environmental Health Section and Anti Social Behaviour Team and the Licensing Sergeant 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 within the Borough of Darlington Local Plan 1997 were taken into account:

R1 – Designing For All
R2 – Access for People with Disabilities
S5 – Town Centre Food and Drink Uses
E29 – The Setting for New Development
E46 – Safety and Crime
E48 – Noise Generating/Polluting Development
E49 – Noise Sensitive Development

RECOMMENDATION

PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. Implementation Limit (Three Years)
2. Notwithstanding the details shown on the approved plan, precise details of the balustrade shall be submitted to and approved by the Local Planning Authority prior to the commencement of the development. The details shall include the precise design and siting of the balustrade and the methods of attachment to the floor and adjacent buildings and the development shall not be carried out otherwise than in complete accordance with the approved details
REASON: In the interests of the visual amenity of the development
3. Notwithstanding the requirements of condition 2), a Risk Assessment to prevent debris from being thrown onto the public highway below shall be submitted to an approved in writing by the Local Planning Authority. The Assessment shall taken account of the design and location of the balustrade and the security measures to be put in place to monitor the roof terrace. The development shall not be carried out otherwise than in complete accordance with the approved details
REASON: In the interests of the amenity of the area
4. The roof terrace hereby approved shall not be used outside the hours of 1200 and 2300 Monday to Sunday
REASON: In the interests of the amenity of the area
5. No recorded or amplified music shall be played on the roof terrace hereby approved.
REASON: In the interest of the amenity of the area
6. B5 – Detailed Drawings (Accordance with the Plan)

SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION

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