

**DARLINGTON BOROUGH COUNCIL**  
**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 22<sup>nd</sup> July 2020**

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**APPLICATION REF. NO:** 20/00258/FUL

**STATUTORY DECISION DATE:** 26<sup>th</sup> May 2020

**WARD/PARISH:** SADBERGE AND MIDDLETON ST GEORGE

**LOCATION:** DEVONPORT HOTEL 16-18 THE FRONT  
MIDDLETON ONE ROW DL2 1AS

**DESCRIPTION:** Change of use to form outdoor paved seating area to front and installation of ventilation/extraction equipment to side elevation (Part retrospective Application - outdoor paving area) (Additional Information received 24th June 2020)

**APPLICANT:** MR JONANTHAN HALL

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**RECOMMENDATION: GRANT PLANNING PERMISSON SUBJECT TO CONDITIONS** (see details below)

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Application documents including application forms, submitted plans, supporting technical information, consultations responses and representations received, and other background papers are available on the Darlington Borough Council website via the following link: <https://publicaccess.darlington.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=Q82CFLFPLCD00>

**APPLICATION AND SITE DESCRIPTION**

1. The application site is The Devonport an existing pub and restaurant situated on The Front in Middleton One Row and within the Middleton One Row Conservation Area, within a predominantly residential area. Grade II listed Buildings are situated to the east and west (12-15, 19, 19A, 22 and 23 The Front). The facility in various guises has existed for many years.
2. Planning permission is sought for the change of use of an area to the front of the building to an outdoor seating area (retrospective) and for the installation of

ventilation and extraction equipment to the side elevation to replace the existing system. This consists of the following:

- Paved area within part of the informal parking area to the front of the premises to provide a more formalised and safer designated area for patrons to dine;
- Fully demountable wooden benches, planters and tables;
- Extraction / ventilation system to replace that currently in situ, to the side (eastern) boundary of the premises behind the existing timber fence.

## **MAIN PLANNING ISSUES**

3. Planning permission was granted in 2018 for the refurbishment of the premises which included a reduction in the number of bedrooms and the conversion of part of the Hotel (Oxford House) into a residential dwelling (18/00413/FUL). The refurbishment work has been completed however conditions relating to extraction / ventilation equipment details before installation have not yet been discharged and it is planned that the proposals contained within this application will be a significant improvement to the current system and vastly improve the amenity of surrounding residents. A separate application is currently pending consideration, for the conversion of Oxford House into apartments (19/01165/FUL). This application relates only to the outdoor seating area (retrospective) and the installation of new extraction / ventilation equipment, which would replace that currently in situ.
4. The main issues for consideration are:
  - a) Impact on heritage assets;
  - b) Scale, design and appearance and impact on visual amenity;
  - c) Impact on residential amenity;
  - d) Highway safety;
  - e) Anti-social behaviour
  - f) Other matters

## **PLANNING POLICIES**

5. Appropriate alterations to this existing business are acceptable in principle subject to other development management considerations set out in the development plan.
6. Relevant Local Plan policies include those seeking to ensure that new development:
  - makes efficient use of land, buildings and resources, reflects the character of the local area, creates a safe and secure environment, and provides vehicular access and parking suitable for its use and location (CS2);
  - Protects, and where appropriate enhances the distinctive character of the borough's built, historic, natural and environmental townscapes (CS14);

- protects and, where possible improves environmental resources whilst ensuring that there is no detrimental impact on the environment, general amenity, and the health and safety of the community (CS16);

## **RESULTS OF TECHNICAL CONSULTATION**

8. No objections in principle have been raised by the Council's Highway's Engineer and Environmental Health Officer. Some concerns have been raised by the Council's Conservation Officer regarding the impact of the proposal on the character and appearance of the Middleton One Row Conservation Area and on the setting of a Grade II Listed Building.

## **RESULTS OF PUBLICITY AND NOTIFICATION**

9. Six letters of objection have been received, raising the following concerns:

- Seating area generates another 50 covers and contributes to parking and highway safety issues on the Front;
- Impact on residential amenity (noise and odours) from both the seating area and the extraction system;
- There is currently a limit on deliveries beyond 8pm, so the use of the seating area should also be restricted to earlier than the licence which is 11pm (suggestion no later than 9pm);
- Lack of adequate parking;
- Increased parking has impacted on the visual amenities of the Conservation Area and the views of the Green have been significantly impacted;
- Adverse impact on the setting of nearby listed buildings;
- Not enough management systems in place to control the use of the outdoor seating area;
- Traffic assessments should be required before any decision is made;
- Outside seating area hinders access to public footpath;
- Reduced seating area would overcome concerns;
- Delivery vehicles block a private road / access impacting on neighbouring residents; Delivery vehicles could have been included within the Devonport curtilage if the outdoor seating area had not been constructed;
- Not enough information on the extraction / ventilation system;
- Equipment specified cannot cope with the airflow proposed;
- Not reliable information on background noise levels and report does not prove that the proposals will address noise issues; noise survey referred to is not provided;
- Timber fence does not shield the ducting from view;
- Report is not to British Standards;
- Report has not fully considered impact on the adjacent property;
- Report does not address concerns regarding control of odours;
- Should application be granted objector requests noise monitoring and serving of a stop notice should the noise levels be recorded above existing true background noise until such time as this can be achieved.

10. Middleton St George Parish Council has raised no objections to the proposed development but has made the following material planning considerations:

- Design is sensitive to the area
- Reports and incidents of disturbance from residents have been rare;
- Consideration could be given to restriction of hours of seating area;

## **PLANNING ISSUES/ANALYSIS**

### **(a) Impact on heritage assets**

12. The site is situated within the Middleton One Row Conservation Area with several Grade II listed buildings close to the site, the most directly related being No 15 The Front to the west and Deanery Cottage 19A The Front to the east.

13. The formalised area of hardstanding to create the outdoor seating provides an attractive area, improving on the former tarmac which was falling into disrepair and utilising high quality materials reflective of the area, enhancing the character and appearance of the Middleton One Row Conservation Area and sustaining the setting of nearby listed buildings.

14. The external ventilation / extraction system, whilst not attractive in appearance, would not be highly visible from public vantage points and would also be partially obscured by an existing timber fence and would not be considered to harm the overall significance of the Conservation Area. Whilst it could be readily viewed from 19A The Front to the west, it would not be considered to significantly harm the setting of this Grade II listed building or any other nearby heritage assets. Given the nature of the equipment and its appearance, the overall impact is minor adverse, however given its position, the overall benefits of providing adequate noise and odour mitigation for this existing premises, is considered to outweigh any harm identified.

15. The Conservation Officer has raised some concerns regarding the impact of the proposals on the character and appearance of the Middleton One Row Conservation Area and on the setting of the nearest listed building, however, for the reasons set out above, the proposal is not considered to conflict with Policy CS14 in this regard.

### **(b) Scale, design and appearance and impact on visual amenity**

14. Noting the consideration in terms of impact on designated heritage assets above, it is also considered that the impact of the proposals is acceptable in terms of its scale, design and appearance and impact on visual amenities. The outdoor seating area already constructed is an attractive addition to the premises, limited in scale and retaining some of the existing parking to the front of the building, improving on the previous broken tarmac surface and utilising high quality materials reflective of the area.

15. The extraction / ventilation equipment, whilst not attractive but rather an essential element of such a business, is in a discreet location to the side of the premises, partially obscured by existing timber fencing and not highly visible from public vantage points. Overall, the proposals are acceptable in respect of their scale, design and appearance and impact on the visual amenities of the locality such that they do not conflict with Policy CS14 or CS2 in this respect.

### **(c) Impact on residential amenity**

22. Objections have been raised regarding the noise and disturbance that the outdoor seating area causes, particularly during evening hours. It should be noted that this is an existing long-standing commercial premise and there has always been an element of outdoor accommodation for patrons, albeit on an informal basis. The introduction of a designated seating area is an attractive addition to any catering premises and the while business is food-focussed, there is not a high turnover of patrons attending only to consume alcohol. The presence of the more formalised area does provide the opportunity for improved management, safety for customers and less likelihood of customers standing outside of the area and disturbing residents and provides a clear demarcation of the areas of the site controlled under the Premises Licence. Whilst the objections are noted, there is no evidence of a pattern of incidents that would suggest that the area, the use of which is generally limited to the warmer and drier months of the year, cannot be controlled in a sensitive manner by the management of the premises, and co-exist alongside residential properties.

23. It is considered reasonable that the premises retain an outdoor seating area albeit in this more formalised manner. In light of the objections raised consideration has been given to recommending to members the imposition of a planning condition restricting the times that patrons can use the outdoor seating area, however such a condition would not meet the necessary tests set out in the National Planning Policy Framework in that such a condition would be difficult to enforce and can be dealt with by other powers, in this case the licensing regime and statutory nuisance legislation and would also not be considered reasonable. Under the terms of the current Premises licence, the outdoor seating area cannot be used after 11pm.

24. The applicant has confirmed that the premises are an 'early-doors' pub and restaurant with most customers arriving between 6pm and 8pm and the kitchen closing at 9pm, with the outdoor areas most likely to be used during these times. The management of the premises has systems in place including signs asking customers to leave quietly and respect the neighbours. It should also be noted that the smaller area to the front of the premises and the rear beer garden are areas outside of this planning application and therefore imposing a condition to restrict the time that the outdoor area can be used will only apply to the application site, the remainder of the outdoor areas being controlled under the Premises Licence, and therefore a breach of any condition could result in a patron having to move a matter of metres to comply with the condition, which would be unreasonable and very difficult to manage and would not achieve the aims of any such condition.

25. Consideration has also been given to recommending to members the imposition of a planning condition to restrict the numbers of patrons using the outdoor area at any one time, however again such a condition would not meet the necessary tests in the National Planning Policy Framework in that such a condition would be difficult to enforce and any effects of the use of the outdoor area, which is included in the premises license, can be dealt with under the licensing regime and statutory nuisance legislation at the appropriate time.

26. Due to the recent pandemic, the hotel has only recently re-opened for trade and like many businesses, it remains very difficult for it to operate in a profitable way. Taking account social distancing, the capacity for the internal areas has decreased significantly, which the applicant has confirmed has greatly impacted on viability. The outdoor areas, which are deemed to be safer are therefore critical to the ongoing viability of the hotel, a matter echoed more generally by the recent Business and Planning Bill. Overall, it is considered that on balance, taking into account the concerns of residents, that the proposal is acceptable in terms of its impact on amenity and can be adequately controlled by the Premises Licence. The Environmental Health Officer has raised no objections to this element of the proposal.

27. Information has been submitted in respect of the proposed ventilation / extraction system, which is intended to significantly improve on the current system in place to protect the amenity of residents. The Environmental Health Officer is satisfied that the information submitted demonstrates that a suitable system is achievable at the outlet point, subject to some minor amendments, which can be dealt with by a planning condition requiring submission and agreement of final details prior to installation. To ensure that this is put in place as quickly as possible, it is recommended that a planning condition be attached to require the system to be installed fully in accordance with those agreed details, within three months of the date of the permission.

27. Subject to these conditions, the proposal would have an acceptable impact on the living conditions of neighbouring occupiers and would comply with policy CS2 and CS16 in this regard.

#### **(d) Highway Safety**

23. The outdoor seating area extends forward into the tarmac surfaced area. This area is not part of the adopted highway network. The footpath running across the frontage of the Devonport and extending along the front is not adopted highway and therefore does not fall under the usual criteria the Local Authority would use to assess an areas suitability for a pavement café or seating area.

24. An objection has stated that there are 47 additional seats available, which includes the benches. The applicant has indicated that the previous area along the front of the hotel could seat 30 people, however this has been significantly reduced as it often led to an overflow across the footpath that runs in front of the

hotel, and which is why the current owners of the hotel introduced the new patio area, which provides additional space for customers and helps make the premises viable. The applicant also states that the beer garden to the rear of the hotel, has been reduced by about 50% owing to plans to convert the Oxford House side of the hotel into residential use. Overall there has been a net reduction in the number of available covers both internally and externally.

25. Demonstrating and defining additional traffic generation or parking requirements for the external seating area is not straightforward as the use of it will be seasonal and very weather dependent. However, it is considered that this is largely an additional facility for existing customers who may wish to make the most of good weather, and enjoy drinks outside pre/post dining.

26. Historically the business has operated with 280 covers, this was reduced by 40% in 2018 as part of the refurbishment undertaken by the current owner which resulted in a net reduction to 168 covers. Looking at a worst-case scenario and assuming an additional 47 seats this would increase the total to 215 covers which is still some 65 covers or 23% below how the business has operated in the past. However, it is reiterated that this does not necessarily demonstrate that additional numbers will be generated given the limitations of seasons and weather. Having considered the possibility of recommending a planning condition imposing a maximum number of seating to the external area, as discussed in the previous section of this report, in order to address parking demand, this may prove difficult if a demand for highway parking cannot be clearly demonstrated or evidenced.

27. Whilst traffic generation, road safety and parking concerns are raised in some objections it needs to be considered that these are largely existing problems associated with the bar and restaurant element of the Devonport which has become busier in recent times. Issues such as illegal parking within the bus stop have been reported and will be addressed by the Highways Authority as part of statutory duty of network management and maintenance, including addressing the bus stop marking which had become considerably deteriorated in recent times. This makes it more visible to drivers to discourage parking within it and enables enforcement by wardens.

28. The Highways team has recently undertaken a survey of traffic generation and parking along the front and will be reviewing current road markings and restrictions with a view to providing increased passing places. The Front does however benefit from not having many properties directly fronting the highway and is therefore generally available for visitor parking. Even considering the bus stop and inclusion of passing places it would be likely to yield space for approximately 60 cars. On-street parking is to be expected for pub/restaurants within historic villages and is strictly on a first come first served basis, no one has a right to park on the highway and the Highways Authority has powers to impose parking restrictions where problematic parking is demonstrated to pose road safety concerns or obstruction.

29. The peak trading hours of the Devonport will be outside of the peak hours of the highway network with restaurants typically being busiest on Friday/Saturday

evenings and Sunday lunchtime trade. This is well outside of the typical commuter/school run am/pm peaks Monday to Friday. Owing to the sociable nature of the business car sharing will be common between visitors who are largely family and friends. Use of taxis is also a significant factor in reducing parking demand particularly during busy weekend periods.

30. Police accident statistics show no recorded road traffic incidents associated with the near vicinity of the Devonport over the past 5-year period, indeed only one minor incident is recorded over the length of the Front and is due to a driver attempting to overtake cyclists when unsafe to do so. As such there is no pattern of accident or reason to suggest that highway safety concerns are evidenced.

31. Parking is still available next to the seating area and is unlikely to have reduced the yield of parking available as the area does not have defined parking bays. To use all the available area cars would be double parked or blocked in, and the Highways Engineer concludes that this does not have a significant impact on the amount of parking available. Visitors would be advised to reverse into a parking space and not onto the highway as recommended under the Highway Code. An issue with access to the private road is a civil matter and not one that the Highways Authority would have any jurisdiction over. Given that this is a retrospective application the Highways Engineer is not aware of any complaints arising which are directly related to the external seating area which has been in operation for some time.

32. Owing to space constraints within the site owned by the Devonport it is not possible to offer mitigation by creating additional in curtilage parking. Whilst it would always be desirable to request mitigation for any additional seating/traffic generation, the Devonport is historic and has traded as a pub/restaurant for a long period of time. It is not usually reasonable or practicable to apply current design guide standards which are largely aimed at new developments, to long established businesses especially those within historic locations. Instead the residual impact must be considered. In this instance the Highways Engineer does not consider that there is sufficient evidence to demonstrate a severe impact and thus warrant refusal under NPPF guidance, especially when considering that the business has operated with an additional 65 covers over the current number suggested by objectors, a number which the applicant indicates is much lower in practice. Any parking or neighbour disputes within the private road along The Front are not within the control of the Highway Authority.

33. Overall, and taking the above into account, the Highways Engineer has raised no objection to the development on highway safety grounds. The proposal is therefore considered acceptable and does not conflict with Policy CS2 in this regard.

#### **(e) Anti-social behaviour**

34. A number of concerns raised by objection relate to anti-social behaviour from patrons of the premises gathering outside, and that this takes place both inside and outside of the paved seating area, suggesting that as a result of the



seating area, the effect has been for smokers in particular, to move to an area outside of the boundary of the premises, closer to residential properties. Whilst there is no specific evidence of this aside from recent anecdotal evidence, this is a matter which cannot be controlled by the planning permission and could occur at any time in a public place.

35. Whilst it is noted that this is due to living close to a commercial premises, it is the responsibility of the management of the premises to ensure that any disturbance to local residents is controlled and kept to a minimum and if this does not happen, the licence can be reviewed at any time, and potentially revoked. It is therefore always in the best interests of the management to ensure that patrons have consideration for residents. It should be noted that this is an existing business and regardless of the seating area, there is always the possibility of patrons standing outside and it is not considered that the permission under consideration will exacerbate this to such an extent that planning permission should be refused. Discussions have taken place with the management of the premises who have agreed as a result of concerns raised, to move the smoking area to a different location on the site, to avoid the likelihood of people gathering close to residential properties.

#### **(f) Other matters**

36. The Parish Council has highlighted that part of the land to the front of the premises is under the ownership of the Parish Council who has granted permission to the applicant for the use of the land, which is reflected in the ownership certificates issued with the submitted planning application. This is noted however is not a material planning consideration in the decision-making process, and instead is a civil matter between parties.

### **CONCLUSION AND RECOMMENDATION**

37. The proposed development complies with the relevant policies in the development plan. Subject to the proposed conditions the development would be acceptable in respect of highway safety residential and visual amenity. It is not considered the development would harm the setting of heritage assets. The proposal will provide improvements to amenity by way of improved ventilation and extraction, which has been the subject of complaint. Furthermore the control of the outdoor seating area, which is currently subject to a 23:00 hours restriction, can be adequately dealt with by way of the current premises licence. It is therefore recommended that planning permission be granted subject to conditions.

### **PUBLIC SECTOR EQUALITY DUTY**

38. In considering this application the Local Planning Authority has complied with Section 149 of the Equality Act 2010 which places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

**THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The development hereby permitted shall be carried out in accordance with the approved plan(s) as detailed below:

L019012 – 113 Rev A Site Location and Block Plan

L019012 – 114 External Seating Area

L019012 – 112 Elevation

REASON – To define the consent

2. Prior to the installation of the ventilation / extraction equipment, full details of the final specifications and layout of the system, shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall not be carried out otherwise than in complete accordance with the approved details.

REASON – In the interests of residential amenity.

3. The external ventilation / extraction equipment as agreed pursuant to condition 2 (above) shall be installed in full accordance with the manufacturer's instructions and fully operational within three months of the date of this planning permission and shall be maintained as such thereafter.

REASON – In the interests of residential amenity.