

DARLINGTON BOROUGH COUNCIL
PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 28th October 2020

APPLICATION REF. NO:	20/00768/FUL
STATUTORY DECISION DATE:	4 th November 2020
WARD/PARISH:	MOWDEN
LOCATION:	The Mowden Staindrop Road DARLINGTON
DESCRIPTION:	Erection of canopy over existing external seating area to front elevation
APPLICANT:	MR SIMON LEADBETTER

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

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=QFQB45FPM4D00>

APPLICATION AND SITE DESCRIPTION

1. The application site is the Mowden Public House and associated land consisting of a car park and external seating area, situated on the south side of Staindrop Road on the edge of the Mowden estate. To the west are residential properties on Boundary view and to the east is Barnes Road.
2. Planning permission is sought for the erection of a canopy over an existing external seating area to the front of the public house. The canopy would be constructed of timber, stained grey to match the existing colour scheme, with a central dual pitch section, approximately 5.3 metres in height, to match the existing pitch and height of the pitched roof over the main entrance doors. Symmetrical shallow mono-pitched areas, approximately 3.7 metres in height and reducing to 3.1 metres in height, would adjoin the central section to both sides. To the roof would be lightweight synthetic slate effect roof tiles. The overall covered area would project some 16.1m from the front elevation with a

width of some 13m, sitting in a central position to the northern façade of the building. Outdoor grade string lighting would be applied to the underside of the canopy with heat lamps fixed to the underside of the rafters.

MAIN PLANNING ISSUES

3. The main issues for consideration are:
 - a) Impact on visual amenity;
 - b) Impact on residential amenity;
 - c) Highway safety;
 - d) Other matters

PLANNING POLICIES

4. Appropriate alterations to this existing business are acceptable in principle subject to other development management considerations set out in the development plan.
5. 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

6. No objections in principle have been raised by the Council's Highway's Engineer and Environmental Health Officer.

RESULTS OF PUBLICITY AND NOTIFICATION

7. Three letters of objection have been received, raising the following concerns.
 - Noise impacts;
 - Negative impact on quality of life;
 - Increased traffic;
 - Reduction of light to home and restriction of outlook;
 - Existing problem with odours from drains;
 - May block view of oncoming traffic when leaving driveway;
 - Not in keeping with local area;
 - Air pollution;
 - Would be better placed on alternative side of the building;

- Increased rubbish accumulation;

8. Ten letters of support have been received raising the following points:

- Business has always been considerate to neighbours;
- Takes all appropriate steps to minimise noise; functions that take place always end at the correct time;
- Covered area will provide welcome social space for patrons at a difficult time;
- Essential to the continued existence of the pub;
- Important part of the local community;
- COVID has had a major impact on the business and this investment will help to keep it going and obey social distancing rules to prevent spread of COVID;
- Attractive design;
- Will provide a tidier, cleaner look to the current outdoor area and enhance the area;

PLANNING ISSUES/ANALYSIS

(a) Impact on visual amenity

9. The proposed canopy structure would be situated in a central position to the front of this spacious site. It would be seen in the context of the existing building and would be appropriate in terms of its scale, design and appearance. At a wider level, due to the spacious nature of this part of Staindrop Road with Barnes Road to the eastern side and the forward sitting buildings of Boundary View to the west, together with its position and scale within the enclosed site itself, it would not appear as a discordant feature within the street scene. Accordingly, the proposal is acceptable in respect of its impact on the visual amenities of the locality both at site level and at the wider street level such that it does not conflict with Policy CS14 or CS2 in this respect.

(b) Impact on residential amenity

10. The applicant runs a food-focussed destination 'early-doors' business which also serves alcohol to those not dining, with the split around 60/40 in favour of food. The outdoor seating area has in the past been used for outdoor drinking, however more recent times have necessitated its use for outdoor dining due to the on-going pandemic and the current restrictions in place. A temporary marquee was recently erected to allow for the business to provide a covid-safe and weather-proof environment to its customers, whilst awaiting the outcome of the current planning application. The new canopy would cover 6-8 tables to allow customers to dine outdoors whilst adhering to the current rules regarding social distancing.

11. Objections have been raised regarding the noise and disturbance that the development would cause, particularly during evening hours. It should be noted that this is an existing long-standing commercial premises and there is currently an area of external seating for patrons, albeit limited in use to a degree by the more inclement weather conditions at particular times of the year.

12. The presence of the proposed canopy, which does not cover the entire existing outdoor seating area, provides an opportunity for improved management, safety for customers and the more consistent use of the outdoor area for dining. Whilst the objections are noted, there is no evidence of a pattern of incidents that would suggest that the area cannot continue to be controlled in a sensitive manner by the management of the premises and co-exist alongside residential properties. It is however recommended that a planning condition be included to secure the removal of the temporary marquee within one month of the erection of the new canopy to ensure that activity is not increased in this area by the use of both the temporary marquee and the new canopy.
13. 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 beneath the canopy until 22:00 hours, which was recommended by the Environmental Health Officer, and restricting any use of amplified music / sound outside of the premises. Such conditions would not however meet the necessary tests set out in the National Planning Policy Framework in that they would be difficult to enforce and can be dealt with by other powers, in this case the licensing regime and statutory nuisance legislation.
14. It should also be noted that the proposed canopy, which is the subject of this application, covers only part of the existing outdoor area to the front of the premises. The remainder of the external area is outside of the scope of this planning application and therefore the restrictions borne by such conditions would only apply to the area beneath the canopy, the remainder of the outdoor areas being controlled under the Premises Licence. A breach of such a planning condition could result, for example, in a patron having to move a matter of metres to comply with the condition, which would be unreasonable and difficult to enforce and would not achieve the aims of any such condition.
15. Under the terms of the current Premises Licence, the outdoor seating area cannot be used after midnight and this would continue to be the case with the addition of the canopy, so would not alter the current situation. It is also noted that the business is clearly limited to much stricter hours during the on-going pandemic and the current Tier 2 lockdown within the Tees Valley. The Environmental Health team have to date received no noise complaints regarding this premises and the use of this existing external seating area. It is however noted that the proposal is for a permanent canopy which will be in place after the current restrictions are lifted and therefore the area would continue to be used in line with the current Premises Licence after this time.
16. It is considered that the use of a large canopy such as that proposed, could assist in some reduction of noise coming from the existing outdoor seating area, especially to the nearest residential dwelling at 3 Boundary View, which has its day-to-day living accommodation at first floor level. However, the Environmental Health Officer has also recommended a planning condition to secure the submission and agreement of details of an acoustic fence of no less than 2

metres in height, along the western boundary of the site, adjacent to Boundary View. This is considered to be appropriate both in terms of noise reduction and in terms of its visual impacts.

17. The application makes reference to security floodlighting, and the Environmental Health Officer has also recommended a planning condition to require this to be directed, and if necessary screened, so that no light falls within the curtilage of neighbouring properties or onto the public highway in order to protect residents from any light spillage from the security lighting. However, this relates to existing security floodlighting on the site, not related to the proposed canopy, and therefore in this case, such a condition would not be directly related to the development so as to meet the tests set out in the National Planning Policy Framework.
18. Objections also refer to the impacts on amenity caused by the physical presence of the structure in terms of its height, restriction of outlook and loss of light. Due to the distance between the proposal and existing residential properties, the canopy will be approximately 18 metres away from the common boundary with 3 Boundary View to the west at its nearest point. The nearest part of the canopy would be one of the monopitched additions either side of the central dual-pitched section, which would be approximately 3.1 metres in height at this nearest point. It is not considered therefore that the physical presence of the structure would impact significantly on the residential amenities of nearby occupiers in terms of loss of light or outlook and the proposal is therefore considered to be acceptable in this respect.
19. Due to the recent pandemic, the business 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 of social distancing, the capacity for the internal areas has decreased. The outdoor areas, which are deemed to be safer, are therefore critical to the ongoing viability of the business, a matter echoed more generally by the recent Business and Planning Bill. The concerns of residents are acknowledged however the proposed canopy does not give rise to any unacceptable impact on light or outlook to these properties and any issues regarding the continued use of the external seating area can be adequately controlled by the Premises Licence and statutory nuisance legislation. The Environmental Health Officer has raised no objections to the principle of the proposal.
20. Subject to conditions to control the details and implementation of the acoustic fence, the proposal would not have an unacceptable impact on the living conditions of neighbouring occupiers and would comply with policy CS2 and CS16 in this regard.

(c) Highway Safety

21. The proposal does not impact on the current parking arrangements for the premises, which retains a substantial amount of in-curtilage parking provision. 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.

(d) Other matters

22. One issue raised by objection relates to anti-social behaviour from patrons of the premises gathering outside, suggesting that as a result of the canopy, this will be more likely. Whilst there is no specific evidence of this, this is a matter which cannot be controlled by the planning permission and could occur at any time in a public place, and not as a direct result of the proposed weather canopy.
23. It is the responsibility of the management of the premises to ensure that any disturbance to 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, for a canopy to cover an existing external seating area, will exacerbate this to such an extent that planning permission should be refused. The Environmental Health Officer has provided some general advice, contained in the Informative at the end of the report, in terms of how such impacts can be managed.
24. Several objections have referred to a legal covenant on the properties of Boundary View, relating to a right of access across an area of land within the boundary of the site, specifically to its easternmost extent. This area is outside of the area that the proposed canopy relates, but within the area that the current external area occupies. This is a civil matter between parties that cannot be dealt with as part of this planning application. As advised in the National Planning Practice Guidance (NPPG) Land ownership, including any restrictions that may be associated with land, is not a planning matter. An appropriate legal professional will be able to provide further advice to interested parties regarding this matter if necessary.
25. Several objections also refer to increased litter as a result of this proposal. Whilst increased litter is capable of being a material planning consideration, there is no evidence of a current litter problem at the site and it is not considered that there is sufficient correlation between the introduction of the canopy in relation to an existing use, and the increased likelihood of litter such that this could be considered a reason for refusal. Bins are provided within the site for the use of customers.

PUBLIC SECTOR EQUALITY DUTY

26. 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.

CONCLUSION AND RECOMMENDATION

27. 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 residential amenity. The proposal is acceptable in terms of its impact on the visual amenities of the locality and does not impact on highway safety. It is therefore recommended that:

PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. A3 Implementation Limit (3 years)
2. The development hereby permitted shall be carried out in accordance with the approved plan(s) as detailed below:

1920-011-001(A1) Rev A Existing and Proposed layout, elevations and site plan

REASON – To define the consent

3. An acoustic barrier/fence with a minimum height of two metres shall be installed along the side boundary between the Mowden and 3 Boundary View. Specifications of this barrier/fence shall be submitted to and agreed in writing by the Local Planning Authority prior to the use of the canopy hereby approved. The erection of the barrier / fence shall thereafter be undertaken prior to the use of the canopy in accordance with the agreed scheme and shall be retained and maintained thereafter.

REASON – To minimise any adverse effect upon the neighbouring residents from noise pollution.

4. Within one month of the erection of the canopy, the existing temporary marquee shall be removed from the site.

REASON – In the interests of residential amenity.

INFORMATIVES

Advice for the applicant from the Environmental Health Officer

To further minimise noise disturbances to residential properties the applicant may want to consider the following:

- Attach rubber feet to chairs and tables,

- Signs should be put up at exits and in beer gardens asking users to be considerate of local residents,
- Also consider restricting or supervising the number of people using these areas, or discourage their use after dark by providing minimal lighting and removing seating and heating,
- Discourage loitering or even offer to phone for taxis,
- Place signs at exits asking customers to leave quietly or even relay a similar message through the public address system.