
Report of the Head of Strategic Investment

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 25-Apr-2019

Subject: Planning Application 2019/90061 Change of use of part A1 (Shops) to A3 (Restaurants and Cafe) Lala's Restaurant, 351A, Bradford Road, Batley, WF17 5PQ

APPLICANT

Lala's Batley Limited

DATE VALID

11-Jan-2019

TARGET DATE

08-Mar-2019

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Batley East

No

Ward Members consulted
(referred to in report)

1. RECOMMENDATION: Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report.

1.0 INTRODUCTION:

- 1.1 This application is reported to the Heavy Woollen Planning Sub-Committee due to the number of representations that have been received.
- 1.2 The Chair of the Heavy Woollen Planning Sub Committee has confirmed that this item can be referred to Heavy Woollen Sub Committee and is in line with the Councillors' Protocol for Planning Sub Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 No. 351A Bradford Road in Batley is currently run as a restaurant in a two storey building which fronts onto Bradford Road. The building has associated car parking (car park 1) to the south and to the north (car park 2) with residential properties to the southeast and northwest (dwellings on Frederick Walker Gardens).
- 2.2 The site is unallocated on the Kirklees Local Plan.

3.0 PROPOSAL:

- 3.1 Planning permission is sought for the change of use of part A1 (shops) to A3 (Restaurants and Café). This includes a wash/preparation area, cold room and Staff/WC.
- 3.2 The extent of the change of use can be seen on the submitted floor plans and will be used in conjunction with the existing restaurant premises as illustrated on the plans.
- 3.3 The internal works have been carried out and the proposed development is therefore retrospective. The works were carried out in October 2017.
- 3.4 The use operates from 17:00 - 00:00 Monday to Thursday, 17:00 – 01:00 on Fridays and Saturdays and 17:00 – 00:00 on Sundays and Bank Holidays.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 2019/90005 – Prior approval from change of use of first floor for office (B1) to residential dwelling PENDING CONSIDERATION
- 4.2 2016/93118 – Change of use from carpet showroom/warehouse (A1) to restaurant (A3) REFUSED
- 4.3 2016/90782 – Change of use from carpet showroom/warehouse (A1) to restaurant (A3) and erection of extension REFUSED
- 4.4 2012/92328 – Change of use of part of retail outlet (A1) to drinking establishment (A4), erection of smoking shelter and internal alterations REFUSED
- 4.5 97/92973 - Change of use from retail to restaurant and hot food takeaway APPROVED

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 The case officer has not been in negotiations with the agent as the proposed change of use is acceptable in its current form. No amendments were required during the course of the application.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is unallocated on the Kirklees Local Plan.

6.3 Kirklees Local Plan (KLP)

PLP1 (as modified) – Achieving sustainable development
PLP2 (as modified) – Place Shaping
PLP3 (as modified) – Location of new development
PLP13 (as modified) – Town Centre Uses
PLP21 (as modified) – Highway Safety and Access
PLP22 (as modified) - Parking
PLP24 (as modified) – Design
PLP33 (as modified) – Biodiversity and geodiversity
PLP51 (as modified) – Protection and improvement of local air quality
PLP52 (as modified) – Protection and improvement of environmental quality
PLP53 (as modified) – Contaminated and unstable land

6.4 National Planning Policy Framework (NPPF):

Chapter 7 – Ensuring the vitality of town centres
Chapter 8 – Promoting healthy and safe communities
Chapter 9 – Promoting sustainable transport
Chapter 12 – Achieving well designed places
Chapter 15 – Conserving and enhancing the natural environment

7.0 PUBLIC/LOCAL RESPONSE:

7.1 33 letters of objection have been received. The concerns raised are summarised as follows:-

- Litter from customers causing infestation of rats
- Already experience high levels of noise and anti-social behaviour on the estate behind the site
- Planning application will exacerbate these issues and cause issues within the community
- Parking issues – customers block entrances to the estate
- Only way of getting around is on a mobility scooter – this is difficult due to parking of current bedding business
- High wall abutting existing building does not look safe – looks to create access to basement
- Wall looks like an eyesore

7.2 Officer comments will be made in Section 10.0 of this report in response to the above concerns.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

None

8.2 Non-statutory:

K.C Highways Development Management – no objection.

K.C Environmental Health – no objection subject to conditions.

9.0 MAIN ISSUES

- Principle of development
- Visual amenity/local character
- Residential amenity
- Highway issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

10.1 The site is without notation on the Kirklees Local Plan (KLP). Policy PLP1 (as modified) of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. Policy PLP24 (as modified) of the KLP is relevant and states that “good design should be at the core of all proposals in the district”.

- 10.2 The proposal relates to the change of use of part of the building to serve facilities associated with the established A3 restaurant. It is acknowledged that the restaurant use constitutes a main town centre use, on a site which is located outside of Batley Town Centre. In this instance, as the development will not create additional restaurant space and it relates to an existing A3 use rather than the creation of a new A3 use, the principle of the development is considered to be acceptable.
- 10.3 Considering the above, as well as the planning history where the principle of development was considered to be acceptable under 2016/93118, an assessment of the relevant material planning considerations will be undertaken below.

Visual Amenity

- 10.4 The change of use has been facilitated by internal changes only and therefore there will not be any visual changes to the appearance of the building. Therefore there will be no impact on the streetscene or the character of the area as a result of the change of use.

Summary

- 10.5 The proposal is acceptable from a visual amenity perspective and complies with Policy PLP24 (as modified) of the KLP and Chapter 12 of the National Planning Policy Framework.

Residential Amenity:

- 10.6 The impact on residential amenity is considered to be acceptable. In terms of overbearing and overlooking, there are no concerns. The change of use does not involve any extensions to the building and will not result in any openings or habitable spaces being created. Considering this, there will be no harm to residential amenity in this regard.
- 10.7 In terms of noise, representations have been raised in regard to this change of use exacerbating the current noise levels from the use of the building. K.C Environmental Health have reviewed the proposal and do not raise any objections.
- 10.8 Consideration has been given to the prior approval that is currently pending consideration at the first floor of the building from change of use from office to residential dwelling. Given that this planning application for change of use is retrospective and no complaints have been received to date, as well as the fact that it will not increase the table covers at the site, the regularisation of this change of use will not prejudice the use of the first floor of the building if prior approval was to be granted.
- 10.9 There have been no complaints made to K.C Environmental Services about noise or odour and it is considered that this change of use will not exacerbate the situation over and above the existing, in which the building is also in use as a restaurant (see 1997 planning approval). Noise can be controlled under Environmental Health legislation if complaints are received – K.C Environmental Health advise that problems are unlikely to arise as a result of this non noise-generating use (especially when considering the use of the building is currently a restaurant and will operate as approved).

- 10.10 The hours stated in the application form are considered acceptable to ensure that the quality of life and well-being of nearby residents is protected.

Summary:

- 10.11 To conclude, there would be no undue harm to residential amenity and the occupiers of surrounding properties would not be detrimentally affected as a result of the proposal, thus complying with Policies PLP24 (as modified) and PLP52 (as modified) of the KLP and the aims of Chapter 15 of the National Planning Policy Framework.

Highway issues:

- 10.12 The impact on highway safety is acceptable. The change of use does not increase the useable area for the retail use or the restaurant and therefore is unlikely to lead to more customers coming to and from the site. As well as this, the application form states that there will not be a change to the number of employees. This is because the change of use creates operational floor space rather than more tables in the restaurant.
- 10.13 As part of the assessment in relation to highway safety and efficiency, consideration has been given to the previous applications on the site (2016/93118 and 2016/90782) which were both refused on highway safety grounds, specifically relating to the significant shortfall of required parking provision within the site. In the case of the previous applications, proposals were to increase the restaurant floor space which would lead to a significant number of additional trips to the site by customers, as well as a likely increase in staff numbers.
- 10.14 Highways Development Management have reviewed this application and the planning history discussed above and have concluded that, for the reasons set out in paragraph 10.12, there is no objection to the change of use. The existing parking provision is acceptable. Furthermore, the access to the site will not be altered, thus not creating highway safety issues since it is not anticipated that the proposal would result in a material increase in vehicular movements to and from the site.
- 10.15 The proposal will not lead to highway safety issues and complies with Policies PLP21 (as modified) and PLP22 (as modified) of the KLP.

Other matters

- 10.16 *Electric Charging Points* – K.C Environmental Health have recommended that electric charging points are installed at the site (in 10% of the parking spaces) in order to bring the site in line with the West Yorkshire Emissions Strategy.
- 10.17 Paragraph 105 (e) of the National Planning Policy Framework states that “the need to ensure an adequate provision of spaces for charging plug in and other ultra-low emission vehicles” should be taken into account during decision-making. Whilst it is acknowledged that national policy has since changed, in this case, the use of the building has been permitted for a restaurant without a condition for electric charging points (under app ref 97/92973).

- 10.18 Given that the change of use will not increase the restaurant floor space and the parking provision will not be altered, it is not considered reasonable to include this condition should planning permission be granted.
- 10.19 *Ecology* – The site is in the bat alert layer and therefore consideration has to be given to the impact of the change of use on biodiversity. Given that the changes are internal, there is no potential for harm to bats and/or bat roosts. The proposal complies with the aims of Chapter 15 of the National Planning Policy Framework.
- 10.20 *Contaminated Land* - The site is located in an area which has been identified as being contaminated. Given that the application is solely for the change of use of part of the building (internal changes only and no increase in the footprint of the building), there is no concern in this regard. The proposal therefore complies with Policy PLP53 (as modified) of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

Representations:

- 10.21 33 letters of objection have been received raising the following concerns which are addressed by officers as follows:
- Litter from customers causing infestation of rats
Officer comment: *this is not a material planning consideration. Any issues relating to rats infestation is covered by separate legislation.*
 - Already experience high levels of noise and anti-social behaviour on the estate behind the site.
Officer comment: *See residential amenity section of this report. K.C Environmental Health do not raise an objection to the change of use subject to a condition restricting the hours of opening. The Police should be contacted for issues relating to physical violence and/or anti-social behaviour.*
 - Planning application will exacerbate these issues and cause issues within the community.
Officer comment: *See officer report above. Considering the small scale of the change of use that is currently operating in conjunction with the permitted change of use, it is not considered that this would exacerbate the situation.*
 - Parking issues – customers block entrances to the estate.
Officer comment: *See Highways section of this report. There is no objection raised from Highways DM.*
 - Only way of getting around is on a mobility scooter – this is difficult due to parking of current bedding business.
Officer comment: *Highways DM do have an objection to the proposed development in relation to parking provision given that the change of use does not increase table space. If the owners of the bedding business are parking illegally, this can be dealt with under separate legislation and is not a material planning consideration.*

- High wall abutting existing building does not look safe – looks to create access to basement (does this have planning permission).

Officer comment: *This is not being considered in this planning application. Safety of the structure is not a material planning consideration. The NPPF sets out, under paragraph 179, that "... responsibility for securing a safe development rests with the developer and/or landowner".*

- Wall looks like an eyesore.

Officer comment: *The wall is not being applied for as part of this permission and it appears, could be erected under permitted development rights which are set out in the Town & Country Planning (General Permitted Development) Order.*

11.0 CONCLUSION

11.1 Considering the planning history of the site, which established the principle of the restaurant / retail unit in an out of centre location, it is considered that the additional restaurant floor space (which does not add to the number of covers within the restaurant) will not be harmful to the vitality of the town centre and the use will also remain compatible with surrounding uses. Furthermore, since the proposal is not anticipated to result in additional vehicular movements to and from the site, the proposal would not result in undue highway safety implications either.

11.2 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

11.3 This application has been assessed against relevant policies in the development plan and other material considerations and it is considered that the development proposals accord with the development plan and the National Planning Policy Framework for the reasons set out in the above report.

Suggested Conditions:

1. Development to be in accordance with approved plans
2. Hours of use as stated in the application form

Background Papers:

Link to the application details:-

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f90061>

Certificate of Ownership – Certificate A signed and dated 10/01/2019.