
Report of the Head of Planning and Development

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 07-Oct-2020

Subject: Planning Application 2019/92810 Change of use from A1 (retail) to mixed use A1 (retail) and A4 (drinking establishment). Hip Hops Beer Shop, 77, Lidget Street, Lindley, Huddersfield, HD3 3JP

APPLICANT

Hip Hops Beer Shop

DATE VALID

23-Aug-2019

TARGET DATE

18-Oct-2019

EXTENSION EXPIRY DATE

28-Feb-2020

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: Lindley

Ward Councillors consulted: No

Public or private: PUBLIC

RECOMMENDATION: CONDITIONAL FULL PERMISSION

DELEGATE Approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report.

1.0 INTRODUCTION:

- 1.1 This application is brought before the Huddersfield Sub-Planning Committee for determination in accordance with the Council's Scheme of Delegation on account of there having been significant local objection to the proposal and officers being minded to approve.

2.0 SITE AND SURROUNDINGS:

- 2.1 77 Lidget Street, occupied as Hip Hops Beer Shop, is a two-storey mid-terrace property on the western side of the highway. It is built in traditional materials (stone and stone slate). It is in retail use. There is an enclosed courtyard and outbuildings at the rear which do not form part of the application site.
- 2.2 Retail activities take place on the ground floor. The upper floor is used mainly for storage, with a staff washroom near the front of the building.
- 2.3 It is sited within a commercial frontage, the immediate adjoining uses being a restaurant to the left, no. 75 (as viewed from the front) and another A1 retail unit to the right, no. 79. Behind the Lidget Street frontage, to the west of the site, residential uses are predominate. There is a residential flat above no. 79.

3.0 PROPOSAL:

- 3.1 The proposal is for the change of use of the unit from retail to a mixed use which is to be part retail, part sale of alcoholic drinks for consumption on the premises. The present use is for the sale of mainly rare or speciality beers; it is intended that the change of use would allow customers to be able to sit and sample beers at the premises.
- 3.2 The proposed floorplan shows customer seating installed within the ground floor of the premises – 6 stools and a bench with up to 7 seats. The application form estimates that the A4 use would comprise 12sqm out of a total of 27sqm ground floor space.

- 3.3 The first floor would continue to be used for storage and as a WC / washroom, which would be partitioned off from the storage space, and available for use by customers.
- 3.4 Hours of use would be from 10am to 11pm Monday to Sunday. No external physical alterations are proposed.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 2011/91827 – Change of use of shop to create reception area for restaurant. Approved, not implemented.

2018/92843 – Change of use from retail to extend adjacent restaurant. Withdrawn. Noise transmission to the adjoining residential property was identified by officers as a concern. A noise report was requested, but instead the applicant chose to withdraw the application.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

- 5.1 23-Oct-2019 – A meeting took place at the application site involving the applicant, agent, Planning case officer and Environmental Health Officer to discuss the issues involved.

19-Dec-2019 – Acoustic report submitted. This was subject to new publicity by neighbour notification letter only.

07-Apr-2020 – Further supporting information submitted giving additional recommendations on noise attenuation. This was not re-publicised since it was aimed at addressing shortcomings in the earlier report and was not therefore considered to raise substantial new planning issues.

24-Sep-2020 – Agent asked to comment on proposed pre-commencement condition.

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).

Kirklees Local Plan (2019):

- 6.2 The site is within Lindley District Centre on the Kirklees Local Plan.

- LP13 – Town Centre Uses
- LP14 – Shopping frontages
- LP16 – Food and drink uses and the evening economy
- LP21 – Highway safety and access
- LP22 – Parking
- LP52 – Protection and improvement of environmental quality.

6.3 Supplementary Planning Guidance / Documents:

6.4 National Planning Guidance:

Chapter 7 – Ensuring the vitality of town centres

Chapter 8 – Promoting healthy and safe communities

Chapter 12 – Achieving well-designed places

Chapter 14 – Meeting the challenge of climate change, flood risk and coastal change

Chapter 15 – Conserving and enhancing the natural environment.

7.0 PUBLIC/LOCAL RESPONSE:

7.1 Final publicity date expires: 12-May-2020. Original publicity was by site notice and neighbour notification letter, in accordance with standard Kirklees practice at that time. Further publicity (in connection with acoustic report) was by neighbour letter only.

Petition of 40 signatures, and one individual letter, objecting to the proposal.

A summary of the comments received is set out below:

- Noise issues including impact on adjacent flat;
- It is undesirable to have another drinking establishment at the expense of shops as it would be bad for the commercial viability of Lindley. Declining foot traffic during the daytime;
- Existing eating and drinking establishments already give rise to an unacceptable level of congestion and parking problems, as well as noise and antisocial behaviour;
- Acoustic report is inadequate.

Ward Councillor Cahal Burke has made the following comments in support, and Cllr Eastwood has also made comments indirectly in support of one of Cllr Burke's emails – Supportive of the application and the positive benefits will provide for Lindley. Cllr Burke also requested a Sub-Committee decision in the event of officers being minded to refuse, but as conditional approval is now being recommended this factor does not apply.

8.0 CONSULTATION RESPONSES:

8.1 **Statutory:**

KC Environmental Health – Acceptable in principle subject to further details, and conditions.

KC Highways Development Management – No objections.

8.2 **Non-statutory:**

KC Licensing – No observations.

KC Planning Policy – No objections.

KC Police Architectural Liaison Officer – No objections.

9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Highway issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

- 10.1 Policy LP1 of the Local Plan 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. LP1 goes on further to stating that:

“The council will always work pro-actively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.”

- 10.2 The proposal will be assessed having regard to the following Local Plan policies.

- LP1 – Presumption in favour of sustainable development: Take into account whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
- LP13 – Centres to provide a mix of uses whilst retaining a strong retail core
- LP14 – Uses within Primary Shopping Areas will be expected to maintain or provide active ground floor frontages.
- LP16 – Concentration of food and drink uses should not lead to harm to character function, vitality or viability of centre and will be assessed according to several criteria.
- LP21 – that proposals must ensure the safe and efficient flow of traffic and safe access.
- LP22 – appropriate parking to be provided given the type of development and the accessibility of the site.
- LP24 – Proposals should provide a high standard of amenity for future and neighbouring occupiers.
- LP52 – Development that has the potential to cause pollution from noise, dust, odour, etc, should not be allowed unless the effects can be mitigated and reduced to an acceptable level.

- 10.3 The assessment will furthermore have regard to the aims of the NPPF Policies set out above.

Retail and town centre issues:

- 10.4 Main town centre uses shall be located within defined centres as shown on the Policies and Town Centre Maps. Centres shall provide a mix of uses to serve the local community, businesses and visitors to the district. The uses shall complement each another whilst retaining a strong retail core. Centres in Kirklees shall aim to provide a range of uses to support the daytime and evening economy. The scale and types of services expected within each centre are set out in the Delivery of Services Table. For District Centres, such as Lindley, the area will provide a range of shopping for everyday needs and serving specialist markets. They will also be the local focus for basic financial services, food and drink entertainment, leisure and tourist facilities and health services.
- 10.5 The proposed change of use would ensure that an active frontage is maintained in accordance with Policy LP14 of the KLP. Based on both the case officer's observations while walking around Lindley, and those of the Planning Policy team, Lindley District Centre currently has a strong and varied retail sector. There are a number of A3, A4 and A5 uses operational. It is considered that the concentration of such uses does not, either in the centre as a whole or in any part of the centre, reach a level that threatens to undermine the retail function of the centre or its attractiveness as a destination for day-time visitors.
- 10.6 It is considered that the change of use of this unit to a mixed A1-A4 use would complement the retail function of the centre rather than undermine it. It would therefore, in principle, accord with the aims of LP13 and LP16 of the KLP, and would support the aims of NPPF Chapter 7 in taking a positive approach to the management and adaptation of the centre.
- 10.7 Environmental, transport and other criteria listed in Policy LP16(b-f) will be examined later in this report.

Urban Design issues

- 10.8 The proposal involves no physical alterations to the exterior of the building and is therefore considered to have no implications for urban design.

Residential Amenity

- 10.9 The proposed use has an increased potential to generate noise when considered against the existing use. Sources of noise arising from an A4 use may include, but are not restricted to, amplified music, customers talking and using the washrooms, footfall on stairs, and refrigerators and plant being operated.
- 10.10 No.79 Lidget Street, adjoining the application site, contains a residential flat at first floor, known as 79a. It is imperative that the amenities of this property are safeguarded and are not jeopardised by noise transmission through the party wall. The applicant was asked to provide a full acoustic report, which was duly submitted.

10.11 Noise levels from an artificial sound source were measured in three separate locations in the neighbouring flat. The report concluded that the party wall provided a good level of sound insulation, but that the rear door to the shop (situated close to the flat's front door) offered poor sound insulation, and that this might need to be upgraded. The report recommends also that the speaker used to play music could be moved to a different location and isolated by being placed on a cork or rubber mat, and that the specific concern of noise from the toilet flushing could be resolved by re-routing of pipework or sealing of holes in the separating wall. It made the further observation that the shop owner has recently installed carpeting on the stairs which, it was expected, would attenuate noise arising from footfall.

10.12 Having had time to study the acoustic report, the Environmental Health Officer on 28th February 2020 made the following observations:

1. The report does not specify the desired noise level to be achieved in the dwelling, including those areas along the whole length of the party wall.
2. Noise from footfall on the staircase has not been properly considered, and in particular, it has not been demonstrated that the use of carpeting and underlay would be sufficient to address the likely intensification of the use of the stairs.

10.13 The applicant has since submitted further supporting information (8th April). This was a report of a meeting that took place on site involving the applicants, the acoustic consultant and an Environmental Health Officer, at which further acoustic tests were undertaken and possible mitigation measures discussed. The speaker had already been moved to its new location on the southern wall, away from the northern wall which adjoins the noise-sensitive property 79a. This found that music played over the speaker at 45% of maximum volume was not audible in the stairwell, bathroom, or living room of 79a. The tests also found that footfall noise, conversations taking place on the upper floor, and the flushing of the toilet, were only just audible.

10.14 The applicant has also agreed to voluntarily limit the volume of the speaker to 40% volume and improve the isolation of the mounting of the speaker so as to limit noise transmission further. The report also recommends further works to the staircase, comprising the replacement of the foam carpet underlay with a high-performing alternative (two possible products were specified).

10.15 The applicants have also indicated that they are willing to consider a condition making the permission personal to themselves as the operating tenant, the use reverting back to A1 if they leave the premises.

10.16 The latest comments from Environmental Health are, in brief:

The measures recommended in the latest report, including repair of the toilet flush mechanism, stair strengthening and carpet insulation must be undertaken in accordance with an agreed timescale.

Details of further sound insulation to the walls proposed by the applicant should also be submitted.

Recommend the installation of a noise limiter within the audio equipment so that it is not played at a volume liable to cause nuisance.

If possible, the change of use should be limited to the applicant only.

- 10.17 Taking into account the additional information submitted and comments from the Environmental Health Officer, it is considered that the application can be supported subject to certain outstanding matters being conditioned. It is recommended that conditions are imposed specifying the installation of speaker isolation. The agent informs the case officer that the settings on the audio device have been changed so as not to go above 45% volume and it is considered that further technological means of limiting volume are unnecessary.
- 10.18 The applicant has provided details of possible products to use as carpet underlay, but unless one has been specified and approved with the agreement of Environmental Health it cannot be imposed as a prescriptive condition. A condition will need to be imposed instead requiring further details of this, as well as any structural works to the stairs to prevent creaking, and any additional sound insulation to the walls (although this was not explicitly referred to as a necessary remedial measures) as well as a timetable for implementation.
- 10.19 The suggestion that the permission be limited to the applicant only might be difficult to enforce, since the applicant specified on the application form is "Hip Hops Beer Shop", not a named individual. Provided the condition on additional soundproofing and remedial works is imposed, it will be enforceable, and it is considered that a personal permission would not serve a legitimate planning purpose in terms of limiting noise transmission.
- 10.20 A further condition can be imposed to ensure that the A4 element does not intensify materially, so as to prevent the possibility of additional sources of noise arising. It is recommended that this should specify that there be no customer service or seating areas on the upper floor, and that no counters or benches for the use of customers, other than shown on the proposed ground floor layout, be placed or installed within the ground floor area.
- 10.21 Subject to these measures it is considered that the use will not give rise to a material increase in noise disturbance to residential properties and would thereby accord with the aims of Policies LP24(b) and LP52 of the Local Plan and Chapter 16 of the NPPF.

Highway issues

- 10.22 Policy LP21 of the KLP states that proposals must avoid a detrimental impact on highway safety and ensure the safe and efficient flow of traffic within the development and the surrounding highway network. Policy LP22 of the KLP states that plans should demonstrate how the design and amount of parking proposed (if any) is the most efficient use of land as part of encouraging sustainable travel.
- 10.23 The introduction of an element of A4 use is likely to result in customers remaining on the premises longer than if it were purely A1. People visiting a drinking establishment will, on the whole, not choose to drive there if other practical options are available. Alternatively, two or more people may car-share with a single "designated driver". Lindley District Centre is highly accessible by public transport, with a frequent service from Huddersfield Town Centre. There is also a public car park within the District Centre and there are various places along Lidget Street where it is possible to park safely and legally.

10.24 Taking into account the location in Lindley district centre, it is considered unlikely that the change of use would lead to unsafe parking or any other adverse impact on the safe and free use of the highway. It is therefore considered to accord with the aims of LP21-22.

Representations

10.25 Concerns and comments raised by third parties, including Ward Councillors, are summarised below with officer responses.

Noise issues including impact on adjacent flat;

Response: As stated earlier in the report, the original acoustic report did not demonstrate that noise disturbance concerns could be overcome. The Environmental Health Officer's final comments are that the problems of noise transmission can be overcome.

Acoustic report is inadequate.

Response: This particular comment relates to the original acoustic report submitted 13th January. Limited additional publicity was undertaken regarding the amended acoustic report (expires 12th May 2020) but no further comments were made as a result.

It is undesirable to have another drinking establishment at the expense of shops as it would be bad for the commercial viability of Lindley. Declining foot traffic during the daytime;

Response: If the application were to be approved, retail would remain a significant part of the use. For the reasons set out in paragraphs 10.4 to 10.5 of the report, the proposed mixed use is considered to complement the existing businesses in the Local Centre and would not undermine its function or attractiveness.

Existing eating and drinking establishments already give rise to an unacceptable level of congestion and parking problems, as well as noise and antisocial behaviour;

Response: Traffic and parking issues have been assessed in depth in paragraphs 10.20-10.22 of this report and the potential for anti-social behaviour in paragraph 10.25 below. It is considered that in this instance these concerns would not amount to a reason to refuse the application.

10.26 *Ward Councillor comments:*

- Ward Councillor Cahal Burke – Supportive of the application and the positive benefits will provide for Lindley.

Response: The development may indeed have the potential to bring economic benefits to Lindley, but as it would only represent the partial change of use of a small unit that already has an A1 occupier, these would be modest. The development as conditioned would however be compatible with the aims of supporting the vitality and viability of the District Centre, and other planning objectives.

Other Matters

Crime and disorder:

- 10.27 Taking into account the scale of the proposed A4 use and the overall concentration of evening economy uses in Lindley, it is considered unlikely that the proposed change of use has a significant potential to give rise to increased crime and disorder in the local area. It would therefore be in accordance with the aims of policy LP16(c) of the KLP and NPPF Chapter 8.

Waste disposal:

- 10.28 The consumption of beers on the premises would give rise to wastes in the form of empty bottles and cans which would not occur under the existing use. Given the scale of the unit and that the existing retail use would appear to remain the predominant element, it is unlikely that the quantities of waste generated would be such as could not be handled by the existing arrangements. The agent has been asked to provide further information on this for the sake of clarity, but it is not considered to be a serious concern.

Climate Change:

- 10.29 On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target; however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.
- 10.30 In this instance the applicant has not submitted any supplementary statement or other information to explain how the proposed development would help to address or combat climate change effects. Given that no new build or physical alterations are proposed, and that the site is in an accessible location, it is considered that any implications for climate change, and achieving the target on carbon emissions, would be negligible.

Access issues:

- 10.31 77 Lidget Street is already a premise to which the public have access. Given the constraints of the existing layout it is likely to be extremely difficult to make the upper floor of the premises fully accessible. It is therefore considered that the proposal does not conflict with the Equality Act.

Future changes of use:

- 10.32 Under the new Use Classes Order which came into effect on 1st September this year, establishments for the sale and consumption of alcohol on the premises are a sui generis use, which means that no further changes of use can be implemented unless planning permission is sought and obtained.

11.0 CONCLUSION

- 11.1 It is considered that the change of use of this unit to a mixed A1-A4 use would complement the retail function of the centre rather than undermine it. It would therefore, in principle, accord with the aims of policies LP13 and LP16 of the KLP, and would support the aims of NPPF Chapter 7 in taking a positive approach to the management and adaptation of the centre.
- 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 The proposed development has been assessed against relevant policies in the development plan and other material considerations. It is considered that the proposed development would constitute sustainable development (with reference to paragraph 14 of the NPPF) and is therefore recommended for approval.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

1. Standard three year timeframe for implementation.
2. Development to be completed in accordance with approved plans and specifications.
3. The following works specified on page 4 of the MZA Acoustics report dated March 2020 be implemented before the use commences and thereafter be retained: installation of a speaker isolator, and replacement of toilet flush mechanism.
4. Submission of details before development commences of any further sound insulation and strengthening works to be carried out on the stairs, and of any additional soundproofing to be installed on the northern wall of the premises, and a timetable for its implementation.
5. No customer service or seating areas on the upper floor of the premises, and no counters or tables for the use of customers, other than those shown on the proposed ground floor layout.
6. The A4 (drinking establishment) element of the use shall not operate outside the hours of 1000 to 2300 on any day, and the last customer shall leave no later than 2300 hours on any day.

Background Papers:

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f92810>

Certificate of Ownership – Notice served on 23 August 2019, Certificate B completed.