

**4/02514/16/FUL - CHANGE OF USE FROM SHOP (A1) TO MIXED SHOP/DRINKING ESTABLISHMENT(A1/A4) USE.
104 HIGH STREET, BERKHAMSTED, HP4 2BL.
APPLICANT: Mr P Wright.**

[Case Officer - Jason Seed]

Summary

The application is recommended for approval as it is considered that the proposal complies with the National Planning Policy Framework (NPPF), Policies CS4, CS11, CS12, CS16 and CS27 of the Core Strategy and Saved Policies 63 and 120 of the Dacorum Borough Local Plan. It is considered that all 'A-class' uses (shops, financial and professional services, restaurants, pubs, take-aways, etc) are appropriate within town centres and contribute towards the vitality of the area which is positively encouraged by planning policy at all levels.

It is noted that no objection to the nature of the use was raised by Members in respect of the previous refusal.

Site Description

The application site comprises a two storey commercial unit which is situated on the northern side of Berkhamsted High Street. The surrounding area is largely commercial with residential accommodation present above a number of the commercial units.

The site is subject to the following relevant planning designations: Berkhamsted Conservation Area, Area of Archaeological Importance, Town Centre / Local Centre. The building is also designated a Locally Listed Building.

It is noted that the use has already commenced and as such, this application is retrospective.

Proposal

The proposal is described as a change of use from A1 (Shop) to a mixed A1 / A4 (Drinking Establishment) use.

Referral to Committee

The application is referred to the Development Control Committee (DCC) as it is a re-submission of a proposal which has already been refused by DCC.

Relevant Planning History

4/03329/15/FUL CHANGE OF USE FROM A1 TO A1/A4
Refused
21/01/2016

Policies

National Policy Guidance

National Planning Policy Framework (NPPF)
National Planning Policy Guidance (NPPG)

Adopted Core Strategy

NP1 - Supporting Development

CS4 - The Towns and Large Villages
CS8 - Sustainable Transport
CS11 - Quality of Neighbourhood Design
CS12 - Quality of Site Design
CS16 - Shops and Commerce
CS27 - Quality of the Historic Environment

Saved Policies of the Dacorum Borough Local Plan (DBLP)

Policy 42 - Shopping Areas in Town Centres
Policy 51 - Development and Transport Impact
Policy 63 - Access for Disabled People
Policy 120 - Development in Conservation Areas

Advice Notes and Appraisals

Conservation Area Character Appraisal for Berkhamsted

Summary of Representations

(Please note that the responses below are summaries only. The original responses received from the community are provided in their entirety in Appendix A of this report).

Berkhamsted Town Council

It was unanimously resolved that licensing hours in the premises' external and outdoor spaces should finish at 6pm each day. A vote was then taken on the change of use from A1 to A1/A4 to incorporate the above condition. This resulted in a majority of 4 councillors to 2 having no objection.

Conservation Officer

The proposed change of use would not harm the character of the locally listed building or the conservation area and as such would be acceptable.

County Fire Safety Inspector

Has been consulted on the application and has stated that the access for fire appliances and provision of water supplies is adequate to serve the development.

Historic Environment Unit

In this instance, my advice is unchanged from that provided by this office concerning the previous planning application submitted for change of use (ref: 4/03329/15/FUL) - i.e. although it would be useful to have more information about the age of the building concerned, the proposed works appear to be minor and do not involve any changes to the fabric of the building.

I therefore have no comment on the application.

The Rex, Berkhamsted

I have no objection to the Brewery shop having A4 permission to enable the sale of their craft ales for consumption on the premises.

Orchard Cottage, Bellingdon

The brewery shop is extremely popular and meets the growing demand for quality beers and wines in a contemporary setting, attracting all age groups and social mixes. I am a frequent customer.

40 Durrants Road, Hemel

Quite possible the best thing that has come into Berkhamsted, never any trouble here as opposed to "regular public houses".

173 Lawn Lane, Hemel

The Brewery Shop is a great asset to the area and should be fully supported by the council.

3 Gravel Path, Berkhamsted

The Brew Shop is a wonderful presence on the High Street. Their local brewery makes excellent quality beers and their shop offers an incredibly warm and inviting place to taste different ales and learn about craft brew - as well as meet friends in a polite and quiet atmosphere. I wholly support their application.

3 Highfield road, Berkhamsted

The best thing to happen in Berko for ages.

Homefield, Potten End

One of my favourite place in the world.

55 Durrants Lane, Hemel

Since the shop opened I have seen a revitalisation of this part of the town centre.

Andrea Tropea Dental Laboratory, Dover Mews, Berkhamsted

I've been working at Buckland House for the past two years and the Red Squirrel brewery shop is not causing any problem whatsoever. I am very often working late and I haven't noticed any problem from 104 high street shop.

Felden house, Dower Mews, 104 High Street, Berkhamsted

We have worked alongside the brewery shop now for over a year and a half and in that time both noise levels and general atmosphere has been very good. Some of our staff are patrons on Thursday or Friday nights and is a preferred venue to a lot of the pubs due to its great selection of beers and its friendly atmosphere. I think it would be a real shame if the shop was to lose its licence. It has slowly built a reputation around the town for a place to go for good unusual beer, something which is unique to the town currently.

Berkhamsted Citizens Association

At the meeting of its Townscape Committee on 18 October 2016 the Berkhamsted Citizens Association (BCA) expressed its deep concern at the implications of granting permission for a 'drinking establishment' at this location under current circumstances. However, if Dacorum Borough Council were minded to grant permission for the change of use, the BCA would wish to see greater restriction of its opening hours, better facilities for disabled access, and adequate toilet facilities.

The BCA recognises that regulation of the use of these premises, and indeed its designation, is a matter for the Licensing Authority.

102 High Street, Berkhamsted

I'm very surprised that as immediate neighbours and probably most effected by the brewery that we have not been contacted by the council. I object as I do not want my family living next to a pub, I don't want my young son hearing foul language, breathing in smoke or seeing strangers urinate in our back yard. Also the noise is still a problem.

1st Floor Office, Buckland House, Dower Mews, 108 High Street, Berkhamsted

Objects on the grounds of excessive noise, harm and disturbance to the neighbours

74 High Street, Berkhamsted

Objects on the grounds of cumulative impacts of A4 uses, disturbance, unsuitable toilet facilities and lack of disabled access, out of character with the area, parking problems.

35 Broadwater, Berkhamsted

Objects on the grounds that the application is not valid as it is not an accurate representation of how the business actually trades, lack of disabled access and inadequate facilities, insufficient plans provided, impact on business rates.

4, Church Street, Berkhamsted

Not a shop, is a pub, noise issues.

74 Ellesmere Road, Berkhamsted

Objects on the grounds of the business being a pub and not a shop, no appropriate access and provision for disabled people, the way the toilets on the ground floor are for male use only. No female could use them as they include urinals and it would be completely unacceptable for a woman to have to go past urinals to access a cubicle. This means that as a disabled woman I would have to climb a steep and narrow staircase to access the only other toilet on the premises. As presumably half the people using the premises are female and considering that there are three urinals and a sit down for men.

No1 Canal Side, George Street, Berkhamsted

Objects on the grounds of the proposal should be considered as an A4 use and not A1 / A4 mixed use. Considers that the proposal conflicts with a number of national and local planning policies as discussed in detail within the full representation which is provided within Appendix A of this report.

Kingsley Smith Solicitors

No means of controlling the courtyard / hop garden area, proposal no different from a pub, in terms of functional use of this land, proposal is a ruse to secure A4 consent, nothing proposed which is materially different from the previous application, outdoor drinking resulting in undesirable impacts on neighbours, no public benefit of the proposal.

The Gatsby, 97 High Street, Berkhamsted

The application is not significantly different from the previous version aside from a small area

of A4 being added to the "shop" to create an A1/A4 area where the bar is located. The last application was supported as it complied with policies found in the NPPF, the NPPG and CS4, CS11, CS12, CS16, and CS27 from the Core Strategy and saved policies 42, 51, 120 of the Dacorum Borough Local Plan. It would seem sensible to suggest that this application will be supported using the same policies. Certainly there are specific policies within the NPPF and Core Strategy which provide proof that this application should be rejected and there are certainly adverse impacts which outweigh the benefits. The obvious one being that the effect of the planning department suggesting the creation of a specific type of planning that permitted the business to trade in an identical manner to a public house while paying a fraction of the costs involved and avoiding the restrictions placed on public houses.

The evidence would suggest that the application is not supported by the policies that were previously used to support it.

Comments also provided in respect of inadequate toilet facilities and residential disturbance.

6 Manor Court, Berkhamsted

The unit is being used as a pub and not a shop, causes noise and upset, noise from live bands, were not asked if we wanted the development, why were we not consulted?

Flat C, 142 High street, Berkhamsted

This application will not provide the appropriate planning consent for the business to trade. This site is a drinking establishment and as such requires the entire premises to be authorised for A4 usage. The large outdoor space with seating everywhere is subdivided between the 'courtyard' with A4 planning and the rest of the decking and the 'hop garden' which have A1 planning. This is clearly a drinking establishment or public house, we were all duped and misled, everyone can see this so why can't you? The shelving is largely decorative and results in maybe 10% of the trading and I'm being extremely generous here. The point is that the A1 is irrelevant anyway as it could easily be conducted under A4s umbrella rights. The amount of A1 covered by A4 has never been quantified and here is minimal anyway.

Thornehill, Sugar Lane, Bourne End

Please consider this my formal complaint objecting to the application 4/02514/16/FUL for the granting of separate areas of A1/A4 planning permission to cover the premises trading as The Berkhamsted Brewery Shop which operates at 104, High Street, Berkhamsted, Hertfordshire. HP4 2BL. To be perfectly clear this business has always operated as a drinking establishment from the start. Whenever you go in there are people drinking throughout the premises and especially in the outside spaces. There are several areas of shelving and fridges but you hardly ever see anyone buying beer to take it away.

It should also be considered that if a fire broke out down stairs there is no possibility of anyone escaping from the upstairs rooms disabled or not. Especially when alcohol is being consumed. I would seriously question whether this is safe to use with only one existing exit.

The Berkeley Gallery's planning application to allow people viewing and buying the art to sample glasses of wine whilst perusing and was documented as a mixed use site. However in this case the applicant was never given any option other than A4.

Also raised matters in respect of disabled access.

Considerations

Previous Application

As detailed within the Planning History section of this report, a previously determined application for the proposal has already been refused for the following reason:

The Council considers the building will have inadequate access for all users (particularly disabled access) for the proposed use and will therefore be contrary to Policy CS12 (a) of the Core Strategy. In addition it is considered the proposed use is likely to result in noise disturbance and a loss of residential amenity to neighbouring properties contrary to Policy CS12(c).

Since this application was determined, the applicant has submitted additional information to accompany the current submission which is considered sufficient to address the previous reasons for refusal. Assessment of this information is provided within this report and it is considered that these matters should be the focus of the determination.

Policy and Principle

Policy CS4 of the Core Strategy states that in town centres, a mix of uses is sought including social and community uses. Mixed-use development will be supported where it supports the principles of sustainable development and does not conflict with other policies. Policy CS16 of the Core Strategy states that development proposals that promote a diverse evening economy in the town centres will be supported provided that their social and environmental impacts are controlled.

Furthermore, paragraph 13.6 of the Core Strategy (contained within the pre-amble to Policy CS16) states that a lively and diverse evening and night time economy is an important part of the vitality and vibrancy of a town centre. However, there can be negative impacts in areas such as community safety, litter and noise. These impacts must be controlled for the evening and night time economy to have a positive effect in town centres.

Paragraph 70 of the NPPF states that to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of other local services to enhance the sustainability of communities and residential environments;
- guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs, and;
- ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community.

The proposal would provide a mixed retail / social use in an area of the town where such uses already exist and are encouraged. It is therefore considered that the principle of the proposal is acceptable, subject to the consideration of other planning matters.

Impact on Host Property, Locally Listed Status and Berkhamsted Conservation Area

96 to 104 (even) High Street is a 1930s purpose-built, architect-designed parade of 5 shops with accommodation over. Designed in Tudorbethan style, the building is two storeys with prominent attic storey, clay tile roof with large dormers and substantial brick stacks. The walls are false timber framing with white painted infill render. Shops at ground floor level feature timber shopfronts. This relatively unaltered parade of interwar shops / flats makes a positive contribution to the Berkhamsted Conservation Area and is included upon the list of locally important buildings.

Concerns have been raised in respect of the proposal's impact upon the Berkhamsted

Conservation Area and the Locally Listed status of the building. The Council's conservation Officer has been consulted on the application and has no objection, noting that the change of use does not require any significant alteration to the building internally or externally. It is therefore considered that the proposal will not adversely impact upon the heritage assets and designations of the site and as such, complies with Policy CS27 of the Core Strategy and Saved Policy 120 of the DBLP.

Impact on Neighbours

The applicant has stated that the opening hours of the facility are proposed as follows:

- Mon - Thurs: 12:00 - 21:00
- Fri: 12:00 - 21:30
- Sat: 10:00 - 21:30
- Sun and Bank Holidays: 11:00 - 18:00

It is noted that Berkhamsted Town Council stated in their consultation response that they had no objection to the proposal, subject to a condition requiring the premises' external and outdoor spaces should finish at 6pm each day. However, it is considered that given the site's location, such a condition is unnecessary and unreasonable and therefore fails two of the 'tests' as defined within Paragraph 206 of the NPPF which states that:

'Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects'.

It is considered that such opening hours, in a high street location (where examples of similar, more intensive operators such as The Gatsby), are acceptable and are securable by condition to ensure that the potential disturbance to occupiers of surrounding units is minimised. It should be noted that an 'A4 only' use would be equally acceptable in planning terms at this location which would have the potential to create a greater degree of local disturbance than the proposed A1/A4 use of lesser operating hours than that which might be expected of an A4-only use.

Representations have been received stating that live music has been played outside of the premises. The applicant has stated within their submission that this is not the case and should such matters arise in the future, it is considered that they would be policed by the appropriate Licensing and / or Environmental Health department(s).

Since the previous application was refused, the applicant has installed a layered acoustic wall to that which is situated immediately adjacent to No 102a High Street.

The submitted Design and Access Statement states that prior to submission, the agent for the application liaised with the local community and found that only one objection on noise grounds was raised, with the occupier of an office unit in Dover Mews stating that they were concerned about noise coming through an open window from the courtyard one summer's day. Whilst such a disturbance would not be sufficient grounds to justify a refusal of planning permission, the agent has confirmed that the staff at the shop have received enhanced training to ensure that such incidences are minimised and are instructed to monitor such matters and have been instructed to ask people to leave the premises, should this ultimately be required.

It is further considered that, given the nature of the use, the use of the courtyard area is likely to be limited during regular weekday office hours and as such, the impact of this part of the site on the occupants of the offices to the rear of 108 High Street will be minimal.

It is therefore considered that taking the above into consideration, the previous reason for refusal, in respect of noise disturbance and loss of residential amenity have been sufficiently addressed and any minor disturbance which may arise would be no greater than that which one would expect of a vibrant high street and is arguably lesser than that which could result from an equally acceptable A4-only use at the site.

Impact on Parking and Highway Safety

The applicant has stated that there are 4 existing parking spaces with 4 proposed. As such, there will be no difference in parking spaces as a result of the proposal which is considered acceptable within the context of the proposal sited within the Town Centre.

Disabled Access and Fire Safety

Representations have been received which state that the application does not make provision for disabled access to the toilet facilities. Additionally, the previous application was refused for the following reasons:

'The Council considers the building will have inadequate access for all users (particularly disabled access) for the proposed use and will therefore be contrary to Policy CS12 (a) of the Core Strategy.'

Whilst it is noted that such matters are a consideration in relation to Building Control, it is acknowledged that Policy CS12 as an adopted policy also refers to this matter and is therefore an important consideration.

However, it is noted from the applicant's submission and the Council's Building Control records that a letter confirming Building Control approval (ref: B/15/02082) for the creation of ground floor toilets to the rear of the building was issued on 24/08/2016 which confirmed that as far as the Council are able to ascertain, the requirements of the Building Regulations in respect of the application have been satisfied.

Since the previous refusal, a representative from the Council's Building Control department has visited the site with the Case Officer and the following conclusions were reached by the Building Control Officer:

- Access from the front of shop/bar to WC is restricted by raised threshold, therefore a removal ramp could be used to facilitate access.
- Ground floor WC can be improved, the door could be changed to open outwards, handrails added for ambulant disabled people. It would be possible for a unisex toilet arrangement to be created within the downstairs toilet in the event that a customer was unable to access the upstairs ladies toilets. Staff training would be improved in this respect.
- Staircase should have additional handrails, anti -slip protection and contrasting nosing's (to sufficient reflectance values).
- It was advised that a full assessment carried out by a registered access officer would be beneficial so that an access statement can be produced in compliance with approved Document M volume 2 and in conjunction with the Equality Act 2010. It is the view of the Building Control Officer that such compliance can be achieved and the access statement can be secured by condition.

It is therefore considered that the applicant will be able to provide appropriate measures to ensure compliance with Policy CS12 to an industry-recognised standard which will provide a level of disabled access which far exceeds the provisions which can be found within a number of public buildings within the local area. The applicant has confirmed that they would welcome a condition which ensures delivery of the improved disabled access provision to the site.

In respect of fire safety, the County Fire Safety Inspector has been consulted on the application and has stated that the access for fire appliances and provision of water supplies is adequate to serve the development.

Appropriateness of Mixed Use Development

Representations have been raised which have questioned the legitimacy of the proposed mixed A1/A4 use, stating that the operation should be classified as strictly A4. However, it should be noted that, in respect of the previous reasons for refusal, no objection was raised in respect of the principle of the change of use, only the particulars of the proposal in respect of residential amenity and disabled access.

This fact notwithstanding, it is the view of this Officer that the proposed mixed A1/A4 use is a legitimate and acceptable use due to several reasons which distinguish the operation as mixed use (rather than purely A4) as detail below:

- Revenue - The applicant has confirmed that the current revenue split average of 65/35 which falls in favour of off sales has been maintained since opening in May 2015. Periods of high trade such as Christmas, Easter and early summer can see off sales rise to as high as 73% of total revenue. It is further stated that the company continues to strive towards a higher percentage of off sales. Recent actions to increase off sales include dropping takeaway prices & introducing corkage fees on packaged products to drink in, the removal of ground floor seating in favour of an additional retail fridge, and take out only promotions. These are circumstances and characteristics which are akin to those which would be present within the operation of a shop (A1) rather use than a traditional A4 drinking establishment.
- Hours of Operation - The house of operation as detailed above are more closely aligned to those one would expect to see operating within a retail premises rather than a drinking establishment, where it is not uncommon for such premises to be open until 11pm and beyond.
- Operational Lay-Out - It is quite clear from the way in which the interior is laid out that the sales focus is on off sales with a clearly defined retail offering occupying a large proportion of the ground floor area which is readily evident when viewed from the street, providing the overall appearance of a shop.
- Additional Offerings - The applicant offers beer tutelage at the site as an ancillary offering which would not typically be found in a traditional pub.
- Lack of Live Music and Entertainment - The premises do not play live or any other type of music, and has none of the paraphernalia which one may witness in public houses and other drinking establishments such as television sets, pool tables, fruit machines, etc.
- Limited Choice of Beverage - Whilst it is acknowledged that not all licensed premises sell a large variety of beverages, the subject site does not sell a generic range of spirits, etc., focusing largely on the sale of its own produce for predominantly off site consumption.

The Courts have held that the first thing to consider in determining whether a material change of use has occurred (or will occur) is the existing primary use of the land. Each case will always be a matter for individual determination by fact and degree. In particular, local planning authorities will need to take into consideration more than just the amount of floor space occupied by the different uses. For example, in the case of a premises which incorporates restaurant use as well as pub or bar use, the local planning authority will need to determine whether the existing primary use of the premises is as a restaurant (A3), or as a drinking establishment (A4), or a mixed use. This will depend on such matters as whether customers come primarily to eat, or drink, or both. It is the main purpose of that use that is to be considered.

Taking all of the above into consideration, it is considered the proposed use is best described as a mixed A1/A4 use.

Other Matters

A number of representations have been received which refer to potential / perceived economic advantage of the proposed business due to matters in respect of the Licensing regime and business rates. It should be noted that these are not matters for consideration by the Planning Department.

It should however be noted that a competitive business environment and business growth / diversity is actively and positively encouraged via the NPPF and it is considered that the proposal accords with these objectives.

It is noted that there is an unauthorised awning which is attached to the subject property which does not form part of this application. The consideration of this awning is a matter for the Planning Enforcement Team and has not been considered as part of this application. Any future application to retain this awning will be considered upon its own merits.

Concerns have been raised in respect of the potential for an increase in crime / disorder as a result of the proposal. It is considered that the hours of operation combined with the nature of the business will limit the potential for such occurrences.

Conclusions

The application seeks permission for a change of use from retail (A1) to mixed-use (A1 and A4) in an acceptable town centre location. The planning matters associated with the proposal have been assessed and it is considered that with appropriate conditions in respect of hours of operation and disabled access, the proposal will result in an acceptable use which does not create an adverse impact upon surrounding units, their occupiers and other residential properties within the area.

Furthermore, the proposal will not adversely impact upon the Berkhamsted Conservation Area or the site's Locally Listed Building status and as such, is considered to comply with policies CS4, CS11, CS12, CS16 and CS27 of the Core Strategy and Saved Policies 63 and 120 of the Dacorum Borough Local Plan. The application is therefore recommended for approval.

RECOMMENDATION - That planning permission be **GRANTED** for the reasons referred to above and subject to the following conditions:

- 1 **The development hereby permitted shall be carried out in accordance with the following approved plans/documents:**

Location Plan
Application Form
Ground Floor
First Floor

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2 **Within three months of the date of this decision, a Disabled Access Statement (DAS), prepared by a registered access officer, will be submitted to the Local Planning Authority. Once approved, the recommendations contained within the DAS will be implemented within three months of approval and provided for the lifetime of the development.**

Reason: To ensure that disabled access arrangements are provided in accordance with Policy CS12 of the Core Strategy and Saved Policy 63 of the Dacorum Borough Local Plan.

- 3 **The premises shall only be open to customers and / or other patrons between the following hours:**

Mon - Thurs: 12:00 - 21:00

Fri: 12:00 - 21:30

Sat: 10:00 - 21:30

Sun, Bank and Public Holidays: 11:00 - 18:00

Reason: To protect the residential amenity of neighbouring occupants in accordance with Policy CS12 of the Core Strategy.

ARTICLE 35 STATEMENT

Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant at the pre-application stage and during the determination process which lead to improvements to the scheme. The Council has therefore acted pro-actively in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

INFORMATIVE

The applicant is advised that the awning which is affixed to the side of the proposal site does not benefit from planning permission and as such, you are advised to address this matter urgently, either by removing the awning and all associated fixtures and fittings and making good any resultant damage, or by submitting an application to the Planning Authority for its retention.