

Recommendation: Application Recommended for APPROVAL
Daneshouse with Stoneyholme Ward

COU/2020/0280

Proposed change of use of ground floor from Vacant A1 (shop) to a flexible A1 (shop), A2 (financial and professional services), A3 (café/restaurant) and A4 (drinking establishment) use pursuant to Schedule 2, Part 3, Class V of The Town and Country Planning General Permitted Development (England) Order 2015.

66 ST JAMES'S STREET BURNLEY

Site and Surrounding Area:

The application site comprises the ground floor and associated yard area of a vacant retail unit positioned within a parade of commercial units on the south side of the St James's Street within Burnley town centre. The site falls within the primary shopping area and is defined as primary retail frontage with Nos 46-70 St James's Street. This frontage consists of a mix of uses, including use classes A1, A2 and A3.

The unit has been vacant since August 2018, having been previously occupied by a menswear shop. Internally the accommodation includes a front sales area with staff facilities and storage areas to the rear. The current lawful use of the unit is A1 (retail) however the application property benefits from an unimplemented deemed prior approval for A3 use (café/restaurant) under application PAA3/2020/0163 effective from June 2020.

The property lies within the Burnley Town Centre Conservation Area.



St James Street Elevation

Location within the primary frontage (highlighted in green)

The Proposal

This planning application seeks permission for the change of use of the ground floor unit from Class A1 to a range of flexible uses including A1, A2, A3 and A4. The application is pursuant to Schedule 2, Part 3, Class V of The Town and Country Planning General Permitted Development (England) Order 2015 which allows planning permission for separate uses that can be used flexibly and interchanged over a 10 year period following the grant of permission. Whichever use is in operation at the end of the period becomes the established lawful use of the property.

There is presently no operator identified for the proposed use. The application states that the unit has been marketed for A1 use since August 2018 and all attempts to market the premises to a retailer over this period have been unsuccessful. The marketing agents are of the opinion that the proposed mix of uses will allow the premises to be marketed to a wider pool of potential occupiers in what are very challenging market conditions, thereby reducing the likelihood of the unit remaining vacant.

No external alterations are indicated. This application is speculative with no end user identified and as such the proposal does not make any provision for external extraction system. The building is serviced from the rear, via St James's Lane, for refuse storage and collection and this will remain unchanged. There is no provision for off-street parking. The proposed opening hours are 07:00hrs to 23:00hrs Monday to Sunday including bank holidays.

Relevant Policies:

Burnley's Local Plan (July 2018)

SP1: Achieving Sustainable Development

SP5: Development Quality and Sustainability

TC2: Development within Burnley and Padiham Town Centres

TC3: Burnley Town Centre – Primary and Secondary Frontages

HE2: Designated Heritage Assets

IC1: Sustainable Travel

IC3: Car Parking Standards

NE5: Environmental Protection

National Planning Policy Framework (2019)

Planning Practice Guidance: Town Centres and Retail (September 2020 update)

Planning (Listed Buildings and Conservation Areas) Act 1990

Recent Relevant Planning History:

PAA3/2020/0163: Proposed change of use from A1 to A3 – Deemed Prior Approval

FUL/2019/0476: External alterations and new shopfronts to form three retail units and one apartment - Pending determination

APP/2011/0363: Display of internally illuminated fascia and projecting signage - Granted

APP/2011/0182: Change of Use from Class A1 to Class A2 (financial services) – Refused

APP/2010/0643: Proposed change of use from Class A1 to Class A2 – Refused

Consultation:

LCC Highways: No objection subject to a condition requiring the provision of external lighting to the rear of the premises on St James's Lane for the reasons of highway safety.

Environmental Health: No response

Publicity: Three letters of objection have been received in relation to the proposed A3 and A4 use with the main points summarised as follows:

Only 20% of the frontage should be for coffee shops (*officer comment: meaning none-A1 uses*)

Similar outlets have been refused in the past

Approval would not be in accordance with policy

Loss of high street to endless food and drink establishments would put investors off

Comments regarding competition with other similar food/drink outlets are not considered to be material planning considerations and therefore do not form part of the assessment of this application.

Planning and Environmental Considerations:

Principle of Development

The application site falls within the town centre boundary and is identified as primary retail frontage within the primary shopping area. The fundamental purpose of the town centre and primary shopping area is to meet the needs of their catchment communities. In order to do this, they must

be 'vital' (full of reasons for people to visit) and 'viable' (attractive to both visitors and investors in the longer term).

NPPF 85 advises the long term vitality and viability of town centres should be promoted by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries. Moreover, the Local Plan acknowledges the importance of recognising that the traditional role of the town centre is changing, particularly in relation to retailing. In relation to the protection of primary frontages it also recognises that changes to permitted development rights will reduce the ability to exercise control over some changes of use that will result in the loss of retail.

The application proposes a range of town centre uses that fulfil an important and complementary function to the shopping experience and would be acceptable in principle under Policy TC2. The main issue being the effect of the proposal on the vitality and viability of the primary shopping area and town centre, having regard to the Local Plan and any other material planning considerations. Other considerations include the impact on the character and appearance of the conservation area; neighbouring amenity; and highway safety; and the adequacies of the refuse and recycling provision.

Impact of Vitality and Viability of the Primary Shopping Area and Town Centre:

Local Plan Policy TC2 highlights the importance of Burnley town centre as the sub regional centre and describes the town centre as providing a broad retail offer with a good range of public services and established theatre and music venues. It advises that the vitality and viability of the town centre would be enhanced by broadening the relatively narrow night-time economy offer to include entertainment and café/restaurant uses. Moreover it is recognised that the role and function of the town centre is continuing to evolve, particularly in light of COVID-19, and we will continue to see an increase of town centres being used for an all-encompassing retail, leisure, business and social experience.

The application site falls within the primary shopping area of the town centre and is designated as primary frontage, under Policy TC3, with Nos 46-70 St James's Street. Policy TC3 seeks to ensure that retail (Class A1) remains the principal and dominant land use within primary frontage in order to underpin the vitality and viability of the town centre. The policy allows the introduction of non-A1 town centre uses within the primary frontage where they would not cumulatively amount to more than 20% of the total length of the frontage.

Currently non-A1 uses already make up 36% of the total length of the frontage 46-70 St James's Street and include a credit union office, opticians, amusement arcade and two coffee shops and a café. The proposed A2, A3 and A4 uses would lead to a further increase in the over-concentration of non-A1 uses (43%) where the current proportion already exceeds the maximum 20% allowed. The proposal therefore conflicts with Policies TC2 and TC3 which is a significant consideration in the assessment of the proposal's impact on the vitality and viability of the town centre.

In this case however, the principle of the loss of the A1 use has been established by the deemed prior approval for A3 use (café/restaurant). The main issue is therefore whether there are any other material considerations that would indicate a different decision should be reached. With the main issue being the effect of the proposal on the vitality and viability of Burnley town centre and primary shopping frontage.

Other Material Considerations:

Section 38(6) of the Town and Country Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the relevant local plan policies regarding the principle of change of use have been considered above. The following are considered significant material planning considerations that should be regarded in the overall planning balance.

NPPF (2019) and Associated Planning Guidance and New Permitted Development Rights

The need to revive our town centres and high streets has become one of the Government's most pressing planning issues and there is now significant recognition for the need to view town centres and high streets in a different way if they are to survive in the future. The Government's commitment to this is evident through the updated NPPF and changes to the Use Classes Order which provides an increasingly important planning context in the consideration of this application as set out below.

NPPF (2019) and Associated Planning Guidance

The NPPF (2019) recognises that town centres are becoming more diverse in their uses and flexibility is needed in decision making to enable a response to rapid changes taking place in the sector. The revised NPPF post-dates the adoption of the Local Plan, in respect of town centres it has a greater emphasis on responding to the changes in retail and leisure industries and in doing so no longer directs LPAs to identify primary and secondary retail frontages. This is in recognition that the main footfall drivers are often dispersed in primary shopping areas and are not necessarily now only A1 retail.

NPPF (para 85) states that planning decisions should take a positive approach to their growth, management and adaptation. The supporting, planning practice guidance advises that evening and night-time activities have the potential to increase economic activity within town centres and provide additional employment opportunities. They can allow town centres to diversify and help develop their unique brand and offer services beyond retail

New permitted rights under the new Use Class E (Commercial, Business and Service)

This application was submitted in advance of the changes to the Use Class Order that came into effect on the 1st September 2020. The changes are intended to allow a greater flexibility for changes of use from retail to other town centre uses under the policy objective of supporting and rejuvenating the vitality and viability of town centres. Under these changes the former use classes of A1, A2 and A3 (amongst others) now fall under one new use class referred to as Class E (Commercial, Business and Service). Therefore the proposed change of use from A1 to A1, A2 and A3 is no longer classed as development and does not require planning permission.

Whilst this change would not directly affect this proposal in respect of the proposed A4 use, it provides an increasingly important planning context in the consideration of this application, signalling a clear statement of intent from the Government that there is a need to treat town centres in a more flexible way if they are to remain viable. Accordingly it is treated as a material consideration in respect of how it would affect local plan policies for the town centre and in particular the aims of retaining primary retail frontages (Policy TC3).

Property Vacancy, Duration and Marketing Efforts

The supporting information sets out that since August 2018 the property has been the subject of proactive marketing at a competitive asking rent including widespread advertising and subsequent rent reductions and marketing incentives, including rent free periods and flexible lease terms. Despite these efforts, the agent confirms that there has been no interest from retail A1 users with the only tentative interest being from A3/A4 users suggesting that a change of use would increase the marketability of the unit.

The application evidence has shown that despite over 24 months of active marketing there is no reasonable prospect of viable demand for the continued A1 use. In situations where there is a demonstrable lack of demand for continued A1 use leading to prolonged periods of vacancy, significant favourable weight has been given to similar applications and appeals across the country. It is seen to be preferable to have a unit occupied, trading and providing employment than to keep it vacant in the seemingly unlikely chance that it may be occupied by a retail user in the future.

Other Considerations:

Impact on the character and appearance of the Conservation Area

No external alterations are proposed and as such the proposal would preserve the character and appearance of the conservation area. Moreover, the re-use of vacant floorspace within the building is likely to have a positive impact on the conservation area. The proposal is therefore in accordance with Local Plan Policy HE2 and the relevant statutory duty.

Impact on Neighbouring Amenity

Policy SP5 seeks to ensure there is no unacceptable adverse impact on the amenity of neighbouring occupants or adjacent land users. The nature of the proposed range of uses are such that the impact on neighbouring amenity has been assessed by reason of noise, disturbance and odour as set out below.

Opening Hours: The proposed opening hours are 07:00hrs to 23:00hrs Monday to Sunday including bank holidays which are intended to meet the operational needs of A3 and A4 uses to appeal to the largest number of potential operators. The proposed opening hours are not considered to be unreasonable given the mixed-use nature of the area, its town centre location and established late night economy.

Noise and Disturbance: An A4 use (drinking establishment) would result in an increase of noise and disturbance in the locality as expected, however the nearest neighbouring properties are predominantly commercial and situated in part of the town centre where there is a concentration of activity and a level of disturbance from a range of sources over a prolonged period of the day including other drinking establishments and town centre traffic. Accordingly, some degree of noise and disturbance would not be unreasonable. With the nature of the town centre location taken into consideration, it is not considered that the proposed change of use would result in any further significant impacts in terms of noise or disturbance.

Odour: The proposal does not make any provision for odour extraction, though it is likely that any future A3/A4 use would require some form of commercial kitchen extraction/ventilation system, and as such it is not possible to assess the potential odour impacts and whether adequate extraction can be achieved. However it is considered that such matters can be satisfactorily controlled through a condition requiring a detailed scheme of odour control prior to the occupation of any A3 or A4 use. Subject to this control it is considered that the change of use would not give rise to detrimental impacts in terms of odour. It is to be noted that any externally mounted equipment associated with a future extraction system would require a separate planning permission.

On balance, given its town centre location the proposed range of uses would not result in levels of noise and disturbance over and above that already experienced which would warrant the refusal of the application. Conditions are recommended to ensure adequate noise mitigation measures and adequate odour suppression as appropriate. Subject to these controls, the proposal would have an acceptable impact on levels of amenity in this town centre setting and would therefore comply with Policy SP5.

Highway Safety and Parking

The site is located within the pedestrianised area of the town centre and is serviced at the rear by St James's Lane. The site is unable to offer any off-street parking however given this is a highly accessible and sustainable town centre location with good public transportation links and parking within reasonable walking distance, it is accepted that no off-street parking can be provided. The Highways Authority do not raise any objections to the proposal subject to a condition requiring the provision of external lighting to the rear of the premises on St James's Lane for the reasons of highway safety. Subject to this control, the proposal is not considered to cause or exacerbate congestion, highway safety issues or on-street parking problems. It would therefore satisfy the relevant local plan policies IC1 and IC3 and the NPPF which aims to only prevent or refuse

development on highway grounds where there is an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

Refuse and Recycling

Policy SP5 requires refuse and recycling to be appropriate to the scale and type of premises. The proposed uses will utilise the existing commercial waste/refuse storage facility in the rear yard which will be serviced via St James's Lane. Whilst an A1 or A2 use is likely to have no greater impact in the storing and handling of waste than currently exists, an A3 and A4 use may exceed the provision. Accordingly a condition is recommended to ensure the submission of a detailed scheme for the storage of waste and refuse. Subject to this control, the proposal would comply with Policy SP5.

Planning Balance:

The conflict with Policies TC2 and TC3, which seeks to ensure that retail (Class A1) remains the principal and dominant land use within primary frontage, weighs heavily against the grant of planning permission. In this case however, the principle of the loss of the A1 use has been established by the deemed prior approval for A3 use (café/restaurant). Moreover through the recent changes to use classes the unit could change use to A1, A2 and A3 without the need for planning permission and whilst this change would not directly affect this proposal in respect of the proposed A4 (drinking establishment) use it is a significant material consideration in respect of how it would affect local plan policies for the town centre and in particular the aims of retaining primary retail frontages (Policy TC3).

In relation to the aim of Policy TC3, the NPPF has a greater emphasis on allowing town centres to diversify to respond to rapid changes in the retail and leisure industries and in doing so promotes a move away from the protection of primary frontages in recognition that the main footfall drivers are often dispersed across the shopping area and are no longer focussed exclusively on A1 retail.

A prolonged period of time has elapsed since the unit made any meaningful contribution to the local economy and the vitality of the town centre and it has been proven that there is no reasonable prospect of viable demand for the continued A1 use. Allowing a change to an alternative range of town centre uses would increase the appeal of the premises to a wider pool of potential occupiers thereby increasing the prospects of the re-use of the unit, an approach which is consistent local and national policy. It would also contribute to the wider objectives of the area, including the potential to broaden the evening/night-time economy, and form an important part of the town centre offer thus increasing its vitality and viability.

On this basis the proposal would make use of a long term vacant unit consistent with town centre uses and would fulfil many of the functions of a retail unit by retaining an active ground floor frontage and generating footfall along the street which would help support and sustain other retail uses within the primary shopping area. The A3 and A4 use has the potential to broaden the evening economy and create some employment opportunities therefore supporting the vitality and viability of the town centre in accordance with general aims of local and national policy.

Although significant weight is placed on the Local Plan, in this instance it is found that there are other material considerations that outweigh the conflict with the development plan. This indicates that permission should be granted notwithstanding that the development does not accord with policies TC2 and TC3 which seek to retain the retail emphasis of the primary retail frontage.

Recommendation: Approve with conditions

Conditions and Reasons:

1. The development must be begun within three years of the date of this decision.

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the ground floor layout in the following approved plan: Proposed Ground Floor at 1:50 Scale dated March 2020.

Reason: To ensure the development is implemented in accordance with the approved plans and to avoid ambiguity.

3. Before any A3 or A4 uses hereby permitted takes place, a scheme for the storage and disposal of refuse (including segregated waste recycling and disposal of food waste) shall have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. The implemented scheme shall be retained as approved thereafter.

Reason: To ensure satisfactory refuse storage provision and in the interests of the visual amenities of the area, in accordance with the Policies SP5 of Burnley's Local Plan (July 2018).

4. Before any hot food preparation equipment is used on the premises, a scheme to control the emission and dispersal of fumes, vapours and odours from the premises including details of the appearance, technical specification and siting of any external ventilation ducting and/or plant shall be submitted to and approved in writing by the Local Planning Authority. The implemented equipment, measures and specifications shall be retained and maintained as approved thereafter.

Reason: To protect the surrounding environment, including occupiers of nearby premises from nuisance from cooking odours in accordance with Policies SP5 and NE5 of Burnley's Local Plan (July 2018).

5. Before any fixed plant and/or machinery is used on the premises, it shall have been acoustically insulated/designed in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority. The implemented measures and specifications shall be retained and maintained as approved thereafter.

Reason: To protect the surrounding environment, including occupiers of nearby premises from noise nuisance in accordance with Policies SP5 and NE5 of Burnley's Local Plan (July 2018).

6. This planning permission is granted for the duration of ten years from the date on which the permission was granted.

Reason: To clarify the terms of consent and in accordance with Part 3 Class V of the General Permitted Development Order 2015 (as amended).