



Report of the Chief Planning Officer

PLANS PANEL SOUTH & WEST

Date: 10th October, 2013

Subject: APPLICATION 13/03717/FU - Change of use of restaurant (use class A3) to bar (use class A4) at 55 Otley Road, Headingley, Leeds. LS6 3AB

APPLICANT
Mr D Groom.

DATE VALID
09.08.2013

TARGET DATE
14.10.2013

Electoral Wards Affected:

Headingley

Yes Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

1. Defer and delegate approval subject to the conditions specified and the completion of a Legal Agreement to cover:
 - 1) Personal consent
 - 2) No fancy dress or groups larger than 6;
 - 3) Both floors to have tables and chairs laid out in accordance with the approved layout plan;
 - 4) No more than 2 patrons allowed outside at any one time to smoke.

List of planning conditions 13/03717/FU:

1. Commencement of development within 3 years.
2. Approval of plans
3. No external drinking
4. Signage to be provided to ensure no large groups or Fancy Dress
5. Noise insulation scheme to be implemented prior to occupation of the flats above the premises if those flats are built.
6. No amplified music outside the premises

7. Hours of opening to be:
10:30 – 23:00 Sunday to Wednesday
10:30 – 00:00 Thursday to Saturday
8. Any delivery vehicles shall not exceed the capacity of a Rigid Van with a maximum capacity of between 7.5 and 17 tonnes GVW.
9. Floorspace of the A4 use shall not exceed 152 square metres.

1.0 INTRODUCTION:

- 1.1 This application is presented to Plans Panel at the request of Ward Councillor Neil Walshaw who objects on the grounds that the Cumulative Impact Area should be protected as he considers that once licensed the premises will then become a Vertical Drinking establishment, and also that the premises has too narrow a pavement which will result in smokers congregating and thereby reducing footfall to adjacent premises.
- 1.2 Some Members may recall a similar development at the adjacent Arndale Centre from 2009, where the Plans Panel approved the change of use of a vacant retail unit to extend the Arcadia Bar on behalf of Market Town Taverns. That scheme was approved subject to a Personal Consent and a S.106 Legal agreement which restricts the activities which can take place within the building.
- 1.3 This application has similarities to the Arcadia proposals and it is therefore proposed to apply similar conditions and restrictions to this application in order to ensure that the proposed Bar does not result in any undue loss of amenity of the area.

2.0 PROPOSAL:

- 2.1 The proposal involves the change of use of an existing restaurant (A3) to a Bar (A4).
- 2.2 The proposal relates to the ground and first floors of the property.
- 2.3 The proposed use will be restricted to within the property, with no external tables or external drinking to take place. A floor plan showing tables and chairs has been produced which relates to both Ground and First floors with a maximum number of seats and covers provided, with this layout to be set out and retained prior to first occupation to reduce vertical drinking areas in the premises.
- 2.4 The proposed use is intended to serve a niche market aimed at the more mature customer. It is intended that the premises will not serve Cocktails, shots or alcopops and will not have any Gaming Machines, neon lights, Cheap Drinks Promotions or Loud Dance music, and will not feature late night opening. The premises will operate a policy of restricting large groups or those in Fancy Dress. Security personnel will be employed at weekends and Bank Holidays to help enforce this policy.
- 2.5 The use is described as having a traditional style, serving craft-beers, wines, spirits and soft drinks, with a range of quality refreshments including speciality teas and coffees, cakes and tarts, seasonal specialities including Mulled wines and featuring an underlying theme of Yorkshire and the traditions of cricket, trading under the name "Sticky Wicket" and having a 50/50 split between food and drink.

- 2.4 A new shopfront is also proposed as part of the scheme. This will be a glazed aluminium frontage with central doors, which is considered acceptable in the context of the wider parade.

3.0 SITE AND SURROUNDINGS:

- 3.1 The site is currently occupied as a Greek restaurant (A3) and is a compact commercial unit within a Primary Shopping Frontage and is in the Defined Town Centre.
- 3.2 The existing restaurant operates from the ground floor only. The first floor of the property is used for storage.
- 3.3 The property is within a parade of shops and offices, which comprises 14 units in a mixture of retail and non-retail uses.
- 3.5 The site is within the Headingley Conservation Area.
- 3.4 The site is within an area covered by the Cumulative Impact Policy for Licensed premises.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 08/06182/FU: Change of use of retail unit at 55a Otley Road to enlarged restaurant. Refused 02/02/2009. This application was subsequently granted permission on Appeal in 2009.
- 4.2 26/112/04/FU: Refurbishment of shops and new second and third floors to form 14 flats above. This application was approved, and all conditions have been discharged. It has therefore been implemented as works have been commenced, but the construction of the second and third floor to form flats has not yet taken place.
- 4.3 08/05827/FU : Change of use of retail unit at Unit 35 Arndale Centre to form an enlarged Bar (Arcadia). Approved by Plans Panel subject to a Personal condition and a S.106 agreement restricting the use of the site so as to prevent access by large groups of individuals or persons wearing Fancy Dress, with the internal layout controlled and laid out in accordance with an approved Floor Plan to avoid creating vertical drinking areas.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 The applicant submitted a pre-application enquiry in July 2013 and was advised that he should engage with Ward Members and other local community groups prior to submitting an application for Change of Use.
- 5.2 The applicant consulted the Ward Members and other local groups prior to the submission of the application, and has submitted details of comments received to accompany the current submission. These comments appear to form a very limited response but include positive comments from the Far Headingley Village Society, a

letter of support from the St Chad's Residents' Association but with an objection from the Headingley Network. There is also a response from Ward Councillor Janette Walker in which she has indicated that she would be unable to discuss the scheme at that stage due to her position on the Plans Panel.

6.0 PUBLIC/LOCAL RESPONSE:

6.1 The application has been publicised by means of site notices. There have been 6 representations received including one from Ward Councillor Neil Walshaw. These are all objections on the following grounds:

- Cumulative Impact Policy
- Impact on Highway safety caused by patrons congregating outside to smoke
- Impact on pedestrian footfall to adjacent premises caused by patrons congregating outside
- Impact on Highway safety caused by Taxis plying for trade outside
- Harm to residents if the Bar changes operators and adopts a less community-friendly approach
- Increase noise
- Increased litter

7.0 CONSULTATION RESPONSES:

7.1 Highways – no objections.

7.2 Licensing – Observational comments received indicating that applications for new Licensed premises will normally be refused unless the applicant can demonstrate that their application would not add to the cumulative impact of such licensed premises in the area.

7.3 Neighbourhoods and Housing – No objections

7.4 Access Officer – No objection provided that there is no external drinking or seating areas.

8.0 PLANNING POLICIES:

8.1 As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 this application has to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

8.2 The most relevant Policies in the adopted Leeds Unitary Development Plan are outlined below.

- Policy S2: This seeks to maintain and enhance the vitality and viability of local town centres including that in Headingley. Non-retail development will not normally be permitted where it would reduce significantly the shopping function of a centre. Retail development will be encouraged unless it would undermine the vitality and viability of the centres or adversely affect the range of services and functions within the centres.

Policy SF7: This refers to proposals to change the use of retail to non-retail within primary shopping frontages and imposes strict guidelines on the proportion of retail to non-retail uses. The main aim of the policy is to safeguard the overall retailing characteristics and vitality of primary shopping frontages.

Policy GP5 refers to detailed planning considerations and is intended to avoid any undue loss of amenity.

Policy N22 seeks to protect the special architectural or historical interest of any designated Conservation Area.

Policy A4 refers to the need to ensure free and safe access for all members of society.

8.2 **Supplementary Planning Guidance**

Headingley and Hyde Park Neighbourhood Design Statement. This SPD was adopted in September 2000 and seeks to preserve the character of the area whilst acknowledging its cultural diversity.

8.3 **Emerging Core Strategy**

The Publication Draft of the Core Strategy was issued for public consultation on 28th February 2012 and the consultation period closed on 12th April 2012.

The Core Strategy sets out strategic level policies and vision to guide the delivery of development investment decisions and the overall future of the district. On 26th April 2013 the Council submitted the Publication Draft Core Strategy to the Secretary of State for examination and an Inspector has been appointed. It is expected that the examination will commence in October 2013.

As the Council has submitted the Publication Draft Core Strategy for examination some weight can now be attached to the document and its contents recognising that the weight to be attached may be limited by outstanding representations which have been made which will be considered at the future examination.

Policy P4 of the Emerging Core Strategy refers to the function of neighbourhood shopping parades. It seeks to avoid negative impacts on the vitality and viability of the range of shops which serve day-to-day needs resulting from changes of use of retail premises to non-retail premises.

Proposals for such uses will be considered against the following criteria:

(i) The cumulative impact of such development, particularly upon the amenity of the area

and traffic generation, especially where concentrations of such uses already exist,

(ii) Where a proposal involves evening opening, account will be taken of the proposal in

relation to the proximity of the premises (and associated parking requirements), to nearby residential accommodation, the nature and character of the neighbourhood parade and existing noise levels;

(iii) The availability of public transport, convenient on/off street car and cycle parking provision and impact on highway safety. Where there is insufficient car parking or where traffic movements are such as to create a traffic hazard, planning consent is likely to be refused.

8.4 **National Planning Policy Guidance:**

The National Planning Policy Framework came into effect on 27th March 2012, and replaces the advice provided in Planning Policy Guidance Notes and Statements. The aim of this document is to make the planning system less complex and more accessible, to protect the environment and to promote sustainable growth. Local planning authorities are expected to “plan positively” and that there should be a presumption in favour of sustainable development:

“At the heart of the planning system is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking” (paragraph 14).

8.5 The Government’s pursuit of sustainable development involves seeking a wide variety of positive improvements including:

1. making it easier for jobs to be created in cities, towns and villages
2. replacing poor design with better design
3. improving the conditions in which people live, work, travel and take leisure

The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

8.6 **Other legislation:**

L.C.C. Statement of Licensing Policy Jan 2005 was produced under Section 5 of the Licensing Act 2003. Whilst not a Planning document officers consider that its contents are of relevance to this application. The document makes the following statement:

‘It is the Licensing Authorities’ policy, on receipt of relevant representations, to refuse applications in Area 2 (which includes North Lane and this part of the Otley Road frontage) for new night clubs and for pubs and clubs which are characterised as large capacity vertical drinking premises (sometimes called high volume vertical drinking establishments) which are premises with high capacity used primarily or exclusively for the sale or consumption of alcohol, and which have little or no seating for patrons. It is also the Licensing Authorities’ policy to refuse applications to materially extend the opening hours of any licensed premises within the area.’

8.7 This is a measure designed specifically to protect the amenity of residents in the area from the impact of negative environmental effects of such establishments through noise, nuisance and other forms of anti-social behaviour.

8.8 The applicant will be required to apply for a separate licence which will be formally assessed under this legislation.

9.0 **MAIN ISSUES:**

9.1 The following main issues have been identified:

- (1) Principle of development

- (2) Impact on the vitality of the Headingley Town Centre
- (3) Highway safety and Access for All
- (4) Impact on neighbouring amenity and health
- (5) Cumulative Impact Policy

10.0 APPRAISAL:

10.1 Principle of development

Section 38(6) of the Planning & Compulsory Purchase Act 2004, indicates that in considering planning applications the determination must be made in accordance with the plan unless material considerations indicate otherwise. The application site lies within the urban area of Headingley. The site lies within the Headingley Town Centre. The site is within the town centre which offers immediate access to public transport provision. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development.

10.2 Headingley Town Centre comprises a mixture of developments of contrasting scale and styles featuring both traditional and contemporary developments. The Town Centre is characterised by its busy and bustling ambience and is historically defined by a mixture of commercial uses but with a retail dominance.

10.3 The National Planning Policy Framework states that Bars and Public Houses are an appropriate Town Centre use.

10.4 In this instance, the site is currently used as a restaurant (A3) which means that there will be no loss of retail use and therefore policy SF7 of the Adopted RUDP is not affected as this policy seeks to protect existing retail premises in shopping parades within the Town Centre. In addition to complying with adopted RUDP policy, the proposal also complies with Emerging Core Strategy P4 as there will be no loss of a retail unit in this case.

10.5 Officers consider that the proposed Bar differs significantly from other drinking establishments and should therefore be viewed more positively. The applicant has indicated that he is prepared to accept a conditions and a Legal Agreement to emphasise this point, and has submitted a detailed business case which indicates that the Bar will not be aimed at, for example, the "Otley Run", instead having a more ambient atmosphere with a more restricted customer base which is intended for the more mature client and not aimed at either Binge Drinkers or large crowds.

10.6 As such, it is considered that the principle of the use as a Bar is therefore acceptable in this instance.

10.7 Impact on the vitality of the Headingley Town Centre

10.8 When assessing the impact on vitality and viability as a starting point it is necessary to assess the Council's policy in relation to development proposals in such areas.

10.9 Significant weight must therefore be given to the requirements of National guidance within the NPPF, which states that Bars and Pubs are appropriate uses within Town Centres and which emphasises in Paragraph 23 the need to ensure that the "needs for . . . leisure are met in full".

10.10 Officers consider therefore that the proposed use can achieve the aims of promoting the leisure and night-time economy needs of the Town Centre provided that activities within the premises are carefully controlled and monitored, as the

applicant has stated in his submission that he does not wish to open 'just another drinking establishment'. The proposal is instead intended to serve a niche market aimed at a more mature audience, with defined drinking areas, no drinks promotions and no late night opening, but instead promoting a more ambient atmosphere based on the history of Yorkshire and cricket, under the Trading Name "Sticky Wicket". The proposal will also incorporate measures to limit the numbers of smokers outside to no more than 2 at any one time, with no external drinking. Given that the applicant has indicated that he will accept conditions and complete a Section 106 Legal agreement, Officers therefore consider that the proposed use can therefore be more readily controlled and monitored.

10.11 On this basis, it is considered that the proposed use will serve to attract a wider range of clientele to the Town Centre and thus serve to promote a more positive and varied environment, provided that appropriate conditions are imposed and a Legal Agreement is entered into to control activities within the premises. Furthermore, although concerns have been raised that the use of the premises is likely to deter footfall to adjacent premises due the congregation of smokers outside the premises, it is not considered that the levels of such activity would be significantly greater than that currently generated by the existing use as a restaurant. The numbers of patrons outside smoking will also be controlled by a S.106 agreement.

10.12 Highway safety and Access for All.

10.13 The application has been assessed by the Highways Officer, who has commented that the proposal would not have a material effect on highway safety, as the site is in a sustainable location with Traffic Regulatory measures in place including Yellow Lines outside the premises and restrictions on loading/unloading which prevent deliveries at peak times. It is noted that concerns have been raised by the Access Officer and local residents that the use would potentially restrict pedestrian movements along the Otley Road frontage due to the narrow nature of the pavement. In light of these concerns, the applicant has agreed that there shall be no drinking or tables outside the property, and has indicated that the proposal is intended to appeal to a more local clientele due to the nature of its business aimed the local community rather than crowds of drinkers. A condition will also be imposed to limit the maximum size of delivery vehicles so as to prevent large or articulated deliveries taking place. This is considered acceptable, and sufficient to ensure that no undue impact to Highway Safety or pedestrian movement ensues.

10.14 Impact on neighbouring amenity

10.15 The site is within a commercial parade, with no residential properties currently above. There are residential properties to the West but these are separated by a highways and more than 20 metres away and there will be no patrons accessing the property from the rear. The site is within a commercial parade, with no residential properties currently above. As such, the levels of noise from the proposed Bar are not likely to result in any significant impact on existing nearby dwellings. The hours of the proposed use are not considered excessive or likely to add to problems of noise and disturbance.

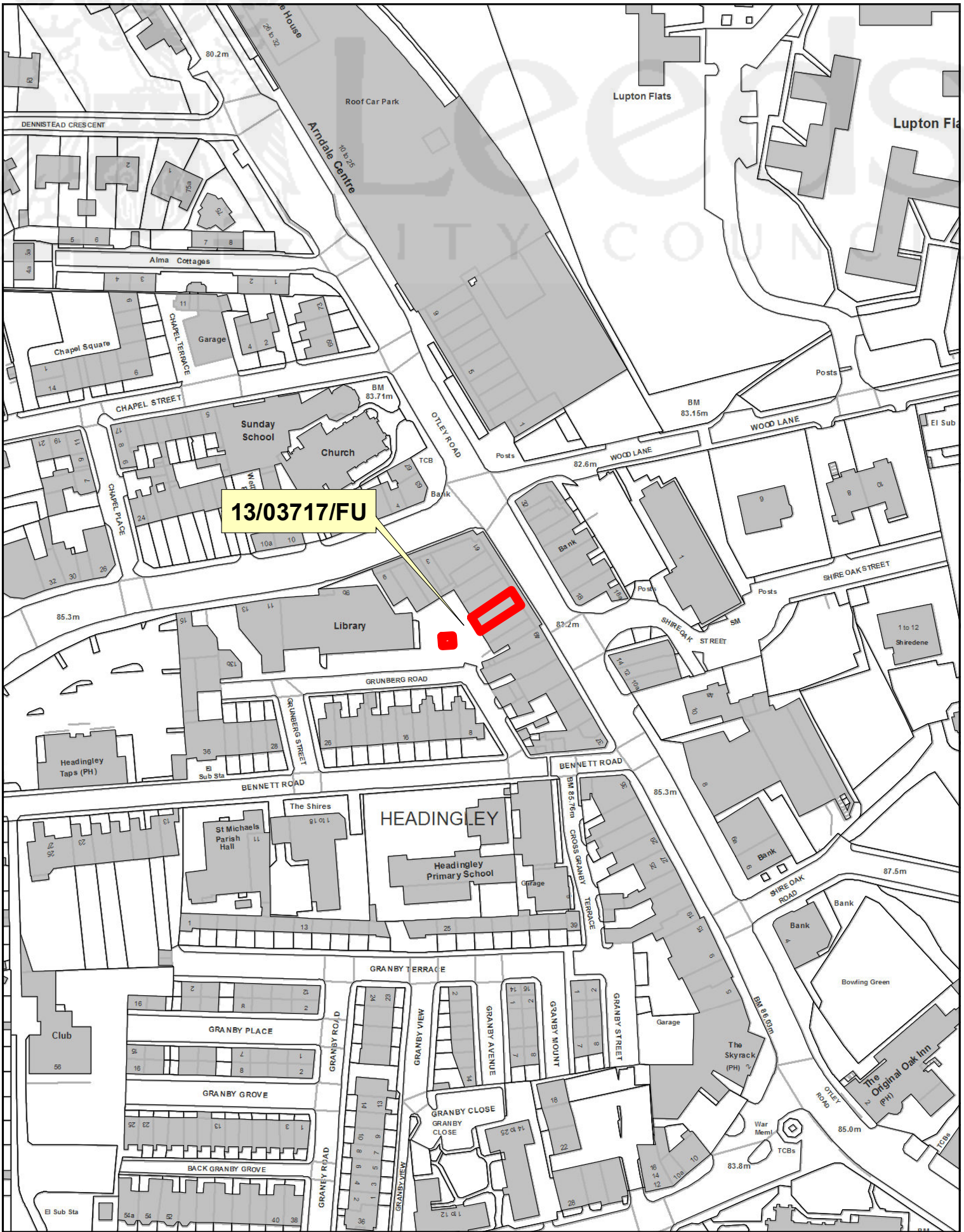
10.16 However, planning permission was recently granted for the creation of 14 new self-contained flats above the parade. As such, it is considered that appropriate measures should be carried out to ensure that no undue levels of noise or other disturbance results from activities within the building.

- 10.17 Subject to such measures, including sound insulation and no late opening, being conditioned, the use of the premises as a Bar is therefore considered to result in no undue loss of residential amenity.
- 10.18 Section 12 of the Health and Social Care Act places a duty upon the Council to consider health matters and to take steps to improve the health of residents. In this case, the change of use of a restaurant to a Bar is not envisaged to have a significant impact upon health considerations given that the existing use has similarities to the proposal in terms of function. It is noted that the current premises has an Alcohol licence. Furthermore, given the stringent planning controls which the applicant is willing to enter into, it is not envisaged that this premises will add to concerns over the proliferation of Bars in the area.
- 10.19 Cumulative Impact Policy
- 10.20 The site is an area covered by the City Council's Cumulative Impact Policy, which was originally adopted in 2005 by the Licensing Department and has been renewed since that time. Although a material consideration, very limited weight can be attached to this policy as it relates to separate legislation to the Town and Country Planning Act and has not been through the consultation processes required by Planning policies.
- 10.21 This policy is a measure designed specifically to protect the amenity of residents in the area from the impact of negative environmental effects of such establishments through noise, nuisance and other forms of anti-social behavior and means that applications for an alcohol licence for new night clubs and for pubs and clubs which are characterised as large capacity vertical drinking premises (sometimes referred to as high volume vertical drinking establishments), i.e. premises with high capacity used primarily or exclusively for the sale or consumption of alcohol in Area 2 (defined as Otley Road and North Lane including the Lounge) will normally be refused. As well as altering the range and balance of uses in the centre the number of such establishments is seen by this policy as resulting in genuine adverse impacts on amenity of the wider area and notably the surrounding close by residential areas.
- 10.22 It is noted that there are no other Bars within this part of the parade. The site is, however, next to an existing Mexican restaurant and is not intended to appeal to large groups or the Otley Run, with conditions being imposed to control this.
- 10.23 In this instance, it is therefore considered that the specialist nature of the proposed Bar is such as to fall outside the category of "vertical drinking establishment". It is described as being aimed at a more mature audience and seeks to provide a focal point for the local community and to also offer meeting facilities for local groups and organisations rather than being just a drinking establishment, having clearly defined seating area and being aimed at a more mature clientele, with a Section 106 Legal agreement proposed to govern activities within the premises. This is considered positive and to therefore accord with the general aims of the aforementioned Policy.
- 10.24 Conclusions and Recommendation
- 10.25 It is considered that the proposed change of use of the existing restaurant to a Bar(A4) is acceptable subject to conditions and a Section 106 agreement to control Opening Hours, seating areas, careful management of customers/clientele and the provision of a Noise insulation scheme prior to first occupation of the flats above the site.

Background Papers:

Application file;

Certificate of Ownership.



13/03717/FU

SOUTH AND WEST PLANS PANEL

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SCALE : 1/1500

